

Appellate Advisory Committee

As of January 25, 2017

Hon. Louis R. Mauro, Chair

Associate Justice of the Court of Appeal
Third Appellate District

Hon. Kent M. Kellegrew

Judge of the Superior Court of California,
County of Ventura

Ms. Laura Arnold

Deputy Public Defender
Law Offices of the Public Defender
County of Riverside
Murrieta

Mr. Daniel M. Kolkey

Gibson, Dunn & Crutcher LLP
San Francisco

Hon. Kathleen M. Banke

Associate Justice of the Court of Appeal
First Appellate District
Division One

Hon. Leondra R. Kruger

Associate Justice of the Supreme Court

Mr. Kevin K. Green

Senior Counsel
Hagens, Berman, Sobel, Shapiro, LLP
San Diego

Mr. Joseph A. Lane

Clerk/Executive Officer
Court of Appeal
Second Appellate District

Mr. Jonathan D. Grossman

Appellate Attorney
6th District Appellate Program
Santa Clara

Mr. Jeffrey Laurence

Senior Assistant Attorney General
California Department of Justice
Office of the Attorney General
San Francisco

Hon. Adrienne M. Grover

Associate Justice of the Court of Appeal
Sixth Appellate District

Ms. Mary K. McComb

State Public Defender
Sacramento

Hon. Richard D. Huffman

Associate Justice of the Court of Appeal
Fourth Appellate District
Division One

Ms. Sheran L. Morton

Court Executive Officer
Superior Court of California,
County of Fresno

Mr. Jorge Navarrete

Court Administrator and Clerk of the Supreme Court

Appellate Advisory Committee

As of January 25, 2017

Hon. Stephen D. Schuett

Judge of the Superior Court of California,
County of Kern

Hon. M. Bruce Smith

Associate Justice of the Court of Appeal
Fifth Appellate District

Ms. Kimberly A. Stewart

Appellate Court Managing Attorney
Court of Appeal
Fourth Appellate District

Ms. Mary-Christine Sungaila

Partner
Haynes and Boone, LLP
Costa Mesa

Hon. Thomas Lyle Willhite, Jr.

Associate Justice of the Court of Appeal
Second Appellate District
Division Four

TCPJAC LIAISON

Hon. Elizabeth W. Johnson

Judge of the Superior Court of California,
County of Trinity

JUDICIAL COUNCIL CJER LIAISON

Ms. Adetunji Olude

Attorney
Center for Judicial Education and Research
Judicial Council of California

OGA LIAISON

Mr. Daniel Pone

Senior Attorney
Governmental Affairs
Judicial Council of California

JUDICIAL COUNCIL LEAD COMMITTEE STAFF

Ms. Heather Anderson

Supervising Attorney
Legal Services
Judicial Council of California

**Appellate Advisory Committee
2016-2017 Subcommittee Assignments**

Rules Subcommittee

Mr. Daniel Kolkey, Chair
Hon. M. Bruce Smith
Mr. Kevin Green
Mr. Jonathan Grossman
Hon. Leondra Kruger
Mr. Joseph Lane
Mr. Jeffrey Laurence
Ms. Mary McComb
Ms. Sheran Morton
Ms. Kimberly Stewart
Ms. Mary-Christine Sungaila
Hon. Thomas L. Willhite, Jr.

Appellate Division Subcommittee

Hon. Kent Kellegrew, Chair
Ms. Laura Arnold
Mr. Jonathan Grossman
Hon. Matthew P. Guasco (TCPJAC designee)
Hon. Elizabeth W. Johnson (TCPJAC liaison)
Ms. Sheran Morton
Hon. Jeffrey J. Prevost (TCPJAC designee)
Hon. Stephen Schuett
Ms. Jane Van Vloten(CEAC designee)

Joint Appellate Technology Subcommittee

Hon. Louis Mauro, Chair (ITAC and AAC)
Mr. Kevin Green (AAC)
Mr. Joseph Lane (AAC)
Mr. Jorge Navarrete (AAC)
Hon. Peter Siggins (ITAC)
Ms. Kimberly Stewart (AAC)
Mr. Don Willenburg (ITAC)

Legislative Subcommittee

Hon. Kathleen M. Banke, Chair
Hon. Adrienne Grover
Hon. Richard Huffman
Hon. Kent Kellegrew
Hon. Louis Mauro
Ms. Mary McComb
Mr. Jorge Navarrete

Ad Hoc Subcommittee on Privacy Issues in

Appellate Court Opinions

Hon. Kathleen M. Banke, Chair
Mr. Kevin Green
Hon. Adrienne Grover
Mr. Daniel Kolkey
Mr. Jeffrey Laurence
Ms. Kimberly Stewart
Hon. Thomas L. Willhite, Jr.



JUDICIAL COUNCIL OF CALIFORNIA

APPELLATE ADVISORY
COMMITTEE

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

APPELLATE ADVISORY COMMITTEE

MINUTES OF OPEN MEETING

January 30, 2017
1:00 PM

**Advisory Body
Members Present:**

Justice Louis Mauro, chair, Ms. Laura Arnold, Justice Kathleen Banke, Mr. Kevin Green (by telephone), Mr. Jonathan D. Grossman, Justice Adrienne Grover, Justice Richard Huffman (by telephone), Judge Kent Kellegrew, Mr. Daniel Kolkey, Justice Leondra Kruger, Mr. Joseph Lane (by telephone), Mr. Jeffrey Laurence, Ms. Mary McComb (by telephone), Mr. Jorge Navarrete, Judge Stephen Schuett, Ms. Kimberly Stewart, and Justice Thomas Willhite, Jr.

**Advisory Body
Members Absent:**

Ms. Sheran Morton, Justice Bruce Smith, and Ms. Mary-Christine Sungaila

Others Present:

Mr. Pone, Governmental Affairs; Ms. Audrey Fancy and Daniel Richardson, Center for Families, Children in the Courts, and Heather Anderson, Committee Counsel

OPEN MEETING

A. Call to Order and Roll Call

The chair called the meeting to order at 1:00 pm, and roll call was taken.

B. Chair's Report

The chair described committee-related activities that had occurred since the last committee meeting, including an advisory body leadership orientation on January 18.

C. Approval of Minutes

The advisory body reviewed and approved the minutes of the November 7, 2016 Appellate Advisory Committee meeting.

DISCUSSION AND ACTION ITEMS (ITEMS A-L)

Item A

Legislative Update (Information only)

Mr. Pone provided information about legislative activities of interest to the committee.

Item B

Rules to implement Senate Bill 1065 (Action Required)

Consider public comment on proposed rules to implement the requirements of Senate Bill 1065.

Action:

The committee reviewed the public comments on the proposed rules and approved the rules subcommittee's recommendations for responding to these comments and for recommending approval of the rules by the Judicial Council.

Item C

Appealability of Orders Following Voluntary Dismissal (Action Required)

Consider whether to propose amendments to the statute on appealability to permit appeals from orders following a voluntary dismissal.

Action:

The Chair of the Legislative Subcommittee reported on the subcommittee's discussion and its recommendation not to pursue this suggestion. The committee adopted the subcommittee's recommendation.

Item D

Record on Appeal in Juvenile Cases (Action Required)

Consider whether to propose rule or statutory amendments regarding the record in cases where the appellant is not a party who would ordinarily have access to the juvenile case file.

Action:

The committee reviewed the materials from the rules subcommittee and decided to form a joint working group with representatives of the Family and Juvenile Law Advisory Committee to work on language for a possible proposal to amend Welfare and Institutions Code Section 827.

Item E

Input to the Family and Juvenile Law Advisory Committee on Rule 5.590 (Action Required)

Consider and provide input on the course of action proposed by the Family and Juvenile Law Advisory Committee and its staff in response to a proposal to amend rule 5.590.

Action:

The committee discussed the Family and Juvenile Law Advisory Committee's proposal to inform parents that they will not be advised of their appellate rights if they do not attend the court hearing. The committee suggested also exploring the option of developing a notice regarding appellate rights that could be served on parents with the trial court's order.

Item F

Update from the Privacy Subcommittee (Information only)

The chair of the privacy subcommittee gave an update on the subcommittee's activities.

Item G

Rule Regarding Settled Statements (Action Required)

Consider whether to recommend circulation of proposed amendments to the rule regarding settled statements or a form to address difficulties in the timely preparation of these statements.

Action:

The committee reviewed the proposal and made several modifications, including: (1) modifying the provision permitting a respondent to elect to use a reporter's transcript to cover both when an appellant elects to use a settled statement and when an appellant moves to do so; and (2) adding provisions permitting the respondent to also make this election after receiving the appellant's proposed statement. With these changes, the committee recommended that this proposal be circulated for public comment. The committee delegated approval of the final language to the committee chair and rules subcommittee chair.

Item H

Format of Electronic Reporter's Transcripts (Action Required)

Consider proposed amendments to rule 8.144 to include additional provisions regarding the format of electronic reporter's transcripts.

Action:

The committee reviewed the proposal and made a few minor modifications. With these changes, the committee recommended that this proposal be circulated for public comment.

Item I

Verification of Writ Petitions (Action Required)

Consider whether to recommend circulation of proposed amendments to the rules regarding writ petitions to consistently reflect statutory requirements for verification of petitions.

Action:

The committee reviewed the proposal and recommended that it be circulated for public comment as submitted.

Item J

Record Designation in Limited Civil Appeals (Action Required)

Consider whether to recommend circulation of proposed revisions to the form for designating the record in limited civil appeals to address concerns about frequent defaults by appellant.

Action:

The committee reviewed the proposal and made several modifications, including: (1) adding a question about whether the appellant should be required to attach a copy of the judgment or order being appealed, rather than trying to summarize it; and (2) correcting several typographical errors on the proposed form. With these changes, the committee recommended that this proposal be circulated for public comment.

Item K

Service of Briefs in Misdemeanor Appeals (Action Required)

Consider whether to recommend circulation of proposed amendments to the rule on service of briefs in misdemeanor appeals to make it more consistent with the rule relating to briefs in felony appeals.

Action:

The committee reviewed the proposal and recommended that it be circulated for public comment as submitted.

Item L

Payment for Partially Prepared Transcripts (Action Required)

Consider whether to recommend circulation of proposed amendments to clarify the payment for partially prepared transcripts in misdemeanor appeals.

Action:

The committee reviewed the proposal and recommended that it be circulated for public comment as submitted.

A D J O U R N M E N T

There being no further business, the meeting was adjourned.

Approved by the advisory body on enter date.

DRAFT

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: <ul style="list-style-type: none">• 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. <p>(California Rules of Court, rules 10.34 and 10.40).</p>	
Advisory Body's Membership: <ul style="list-style-type: none">• 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. <p>(California Rules of Court, rule 10.40)</p>	

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
- Joint AAC/CTAC Appellate Technology Subcommittee
- **Joint Ad Hoc Subcommittee on Online Access to Records for Parties and Justice Partners**

Advisory Body's Key Objectives for 2016:

- Increasing efficiencies in appellate proceedings and providing opportunities for saving court costs; and
- Improving the administration of justice in appellate proceedings.

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	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,		

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.

#	Project ¹	Priority ²	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
	<p>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.</p>		<p>and efficient processing of all types of cases⁴</p> <p>Origin of Project: Required by committee charge in California Rules of Court, rules 10.34 and 10.40.</p> <p>Resources: N/A</p> <p>Key Objective Supported: 1 and 2</p>		
2.	<p>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.</p>	1	<p>Judicial Council Direction: Strategic Plan Goal 3, Operational Plan Objective 5</p> <p>Origin of Project: Required by committee charge in California Rules of Court, rules 10.34 and 10.40.</p> <p>Resources: Governmental Affairs staff identifies pending legislation affecting appellate court administration for the committee’s review</p> <p>Key Objective Supported: 1 and 2</p>	Ongoing	<p>Recommendations to the Policy Coordination and Liaison Committee (PCLC) regarding legislation affecting appellate court administration.</p>

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.”

#	Project ¹	Priority ²	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
3.	<p>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.</p>	1	<p>Judicial Council Direction: Strategic Plan Goal 3, Operational Plan Objective 5</p> <p>Origin of Project: Required by committee charge in California Rules of Court, rules 10.34 and 10.40.</p> <p>Resources: Governmental Affairs staff identifies enacted legislation affecting appellate court administration for the committee's review</p> <p>Key Objective Supported: 1 and 2</p>	Ongoing	Implementing rules and forms
4.	<p>Reporter's transcripts: Consider whether to recommend/support amendments to statute requiring that the original reporter's transcript be in paper format</p>	1	<p>Judicial Council Direction: Strategic Plan Goal 3, Operational Plan Objective 5</p> <p>Origin of Project: Suggestion received from Court of Appeal Justice</p> <p>Resources: Governmental Affairs staff assistance in working with appropriate constituencies on proposal and in presenting recommendations to PCLC.</p> <p>Key Objective Supported: 1</p>	January 1, 2018	Revised statute

#	Project ¹	Priority ²	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
5.	<p>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.</p>	1(e)	<p>Judicial Council Direction: Strategic Plan Goal 3, Operational Plan Objective 5</p> <p>Origin of Project: Suggestion received from members of Family and Juvenile Law Advisory Committee and Access and Fairness Advisory Committee.</p> <p>Resources:</p> <ul style="list-style-type: none"> • AAC subcommittee to consider concerns regarding privacy 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. <p>Key Objective Supported: 2</p>	January 1, 2018	Amended rules, education recommendations
6.	<p>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.</p>	1(e)	<p>Judicial Council Direction: Strategic Plan Goal 3, Operational Plan Objective 5</p> <p>Origin of Project: Suggestion received from Court of Appeal clerk/executive officer</p>	January 1, 2018	Amended rules, form

#	Project ¹	Priority ²	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
			Resources: N/A Key Objective Supported: 2		
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 Key Objective Supported: 2	January 1, 2018	Revised form
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

#	Project ¹	Priority ²	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
9.	<p>Modernize Appellate Court Rules for E-Filing and E-Business</p> <ul style="list-style-type: none"> 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 modifications to remove requirements for paper versions of documents (by amending individual rules or by introducing a broad exception for e-filing/e-service). c. Consider potential amendments to rules governing online access to court records for parties, their attorneys, local justice partners, and other government agencies. 	2(b)	<p>Judicial Council Direction: Strategic Plan Goal 3, Operational Plan Objective 5. For item c., “Develop rules, standards, and guidelines . . . for online access to court records for parties and justice partners” (Tactical Plan for Technology, 2017–2018, at page 47.)</p> <p>Origin of Project: Items a. and b., ITAC. Item c., is part of the Tactical Plan for Technology, 2017–2018 prepared by ITAC, recommended by the Judicial Council Technology Committee, and adopted by the Judicial Council on March 24, 2017.</p> <p>Resources: For items a. and b., JATS and ITAC. For item c.: Committees: Appellate Advisory Committee, Civil and Small Claims Advisory Committee, Criminal Law Advisory Committee, Family and Juvenile Law Advisory Committee, Information Technology Committee, Probate and Mental Health Advisory Committee, and Traffic Advisory Committee. Judicial Council staffing: Legal Services, Information Technology, Advisory committees’ staff</p>	January 1, 2019	Amended rules and revised forms

#	Project ¹	Priority ²	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
			Key Objective Supported: 1		
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
12.	Verification of Writ Petitions - Consider whether to recommend amendments to the rules regarding writ petitions to consistently reflect statutory	2(b)	Judicial Council Direction: Strategic Plan Goal 3, Operational Plan Objective 5	January 1, 2018	Amended rule

#	Project ¹	Priority ²	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
	requirements for verification of petitions		<p>Origin of Project: Suggestion received from appellate attorney</p> <p>Resources: N/A</p> <p>Key Objective Supported: 2</p>		
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)	<p>Judicial Council Direction: Strategic Plan Goal 3, Operational Plan Objective 5</p> <p>Origin of Project: Suggestion received from appellate attorney</p> <p>Resources: N/A</p> <p>Key Objective Supported: 2</p>	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)	<p>Judicial Council Direction: Strategic Plan Goal 3, Operational Plan Objective 5</p> <p>Origin of Project: Suggestion received from appellate attorney</p> <p>Resources: N/A</p> <p>Key Objective Supported: 2</p>	January 1, 2018	Amended rules
15.	Length of briefs – Consider whether to recommend shortening the permissible length of briefs	2(b)	<p>Judicial Council Direction: Strategic Plan Goal 3, Operational Plan Objective 5</p>	January 1, 2019	Amended rules

#	Project ¹	Priority ²	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
			<p>Origin of Project: Suggestion received from appellate attorney</p> <p>Resources: N/A</p> <p>Key Objective Supported: 1</p>		
16.	<p>Late briefs – Consider whether to eliminate the “grace period” for filing late briefs in civil appeals</p>	2(b)	<p>Judicial Council Direction: Strategic Plan Goal 3, Operational Plan Objective 5</p> <p>Origin of Project: Suggestion received from appellate attorney</p> <p>Resources: N/A</p> <p>Key Objective Supported: 2</p>	January 1, 2019	Amended rules
17.	<p>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</p>	2(b)	<p>Judicial Council Direction: Strategic Plan Goal 3, Operational Plan Objective 5</p> <p>Origin of Project: Suggestion received from attorney</p> <p>Resources: Family and Juvenile Law Advisory Committee</p> <p>Key Objective Supported: 2</p>	January 1, 2019	Amended rules
18.	<p>Appointment of counsel in misdemeanor appeals – Consider whether to recommend amendments to the</p>	2(b)	<p>Judicial Council Direction: Strategic Plan Goal 3, Operational Plan Objective 5</p>	January 1, 2019	Amended rules

#	Project ¹	Priority ²	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
	rule regarding appointment of counsel in misdemeanor appeals to clarify its application in certain cases		<p>Origin of Project: Suggestion received from court staff attorney</p> <p>Resources: Family and Juvenile Law Advisory Committee</p> <p>Key Objective Supported: 2</p>		
19.	Appellate Division forms – Consider recommending revisions to various appellate division forms to make them clearer and easier to use	2(b)	<p>Judicial Council Direction: Strategic Plan Goal 3, Operational Plan Objective 5</p> <p>Origin of Project: Suggestion received from court staff</p> <p>Resources: Family and Juvenile Law Advisory Committee</p> <p>Key Objective Supported: 2</p>	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 requirements. (b) Develop a model appellate court privacy policy, outlining the key contents and provisions	2(b)	<p>Judicial Council Direction: Strategic Plan Goal 3, Operational Plan Objective 5</p> <p>Origin of Project: Suggestion received from court staff</p> <p>Resources: Information Technology Advisory Committee</p> <p>Key Objective Supported: 2</p>	January 1, 2019	Statewide and model policies

#	Project ¹	Priority ²	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
	to address within each court's specific policy.				

III. STATUS OF 2016 PROJECTS:

[List each of the projects that were included in the 2015 Annual Agenda and provide the status for the project.]

#	Project	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.	<p>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</p> <p>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.</p>
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 legislation.	<p>Completed for 2016. All legislation received through October 30, 2015 has been reviewed and recommendations made to PCLC.</p> <p>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.</p>

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
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	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

	<p>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.</p> <p>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).</p>	<p>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.</p>
10.	<p>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</p>	<p>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.</p>
11.	<p>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</p>	<p>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.</p>
12.	<p>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</p>	<p>To be completed January 1, 2018. It is listed as item 12 on the list of 2017 committee projects.</p>
13.	<p>Verification of Writ Petitions - Consider whether to recommend amendments to the rules regarding writ petitions to consistently reflect statutory requirements for verification of petitions</p>	<p>To be completed January 1, 2018. It is listed as item 12 on the list of 2017 committee projects.</p>

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.

IV. Subgroups/Working Groups - Detail

<p>Subgroups/Working Groups:</p> <p style="text-align: center;"><i>Subcommittees including only AAC members</i></p> <p><i>Subgroup or working group name:</i> Rules Subcommittee</p> <p><i>Purpose of subgroup or working group:</i> 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</p> <p><i>Number of advisory body members on the subgroup or working group:</i> 13</p> <p><i>Number and description of additional members (not on this advisory body):</i> None</p> <p><i>Date formed:</i> In existence since at least 2001</p> <p><i>Number of meetings or how often the subgroup or working group meets:</i> 3-6 conference call meetings per year</p> <p><i>Ongoing or date work is expected to be completed:</i> Ongoing</p> <p><i>Subgroup or working group name:</i> Legislative Subcommittee</p> <p><i>Purpose of subgroup or working group:</i> 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</p> <p><i>Number of advisory body members on the subgroup or working group:</i> 6</p> <p><i>Number and description of additional members (not on this advisory body):</i> None</p> <p><i>Date formed:</i> In existence since at least 2001</p>

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.

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: 2016

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, 2018

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 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.

Subgroup or working group name: **Subcommittee to consider access to electronic records for parties, their attorneys, and justice system partners**

Purpose of subgroup or working group: Consider potential amendments to rules governing online access to court records for parties, their attorneys, local justice partners, and other government agencies (see proposed project 9c above).

Number of advisory body members on the subgroup or working group: Anticipate 1 member.

Number and description of additional members (not on this advisory body): 10-12 members from Civil and Small Claims Advisory Committee, Criminal Law Advisory Committee, Family and Juvenile Law Advisory Committee, Information Technology Committee, Probate and Mental Health Advisory Committee, and Traffic Advisory Committee

Date formed: To be formed 2017

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, 2019



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	Action Requested
May 24, 2017	Please read before June 1 committee meeting
To	Deadline
Members of the Appellate Advisory Committee	June 1, 2017
From	Contact
Heather Anderson, Supervising Attorney, Legal Services	Heather Anderson 415-865-7691 heather.anderson@jud.ca.gov
Subject	
Format for electronic reporter's transcripts	

Introduction

As you may recall, earlier this spring, the Appellate Advisory Committee recommended circulating for public comment a proposal to amend rule 8.144 to include format requirements for reporters' transcripts that are delivered in electronic form. The Judicial Council's Rules and Projects Committee approved the recommendation for circulation and the proposal was circulated for public comment February 27 and April 28, 2017 as part of the regular spring comment cycle. (A copy of the invitation to comment is included in your meeting materials). This memo provides background information about the proposal and discusses the public comments received and the rules subcommittee's recommendations regarding responding to these comments.

Background

Code of Civil Procedure section 271 authorizes courts and parties to receive, on request, copies of reporter's transcripts in computer-readable form, but requires that the original transcript be in paper form. Subdivision (a) of this statute provides:

(a) Any court, party, or other person entitled to a transcript may request that it be delivered in computer-readable form, except that an original transcript shall be on paper. A copy of the original transcript ordered within 120 days of the filing or delivery of the transcript by the official reporter or official reporter pro tempore shall be delivered in computer-readable form upon request if the proceedings were produced utilizing computer-aided transcription equipment.

Subdivision (b) of this statute establishes default standards for the format of such transcripts, but provides that these defaults apply “[e]xcept as modified by standards adopted by the Judicial Council.”

Rule 8.144 addresses the format of the record on appeal, including the format of reporter’s transcripts. Currently, this rule contains the following provision regarding the format of computer-readable reporter’s transcripts:

A computer-readable copy of a reporter's transcript must be in a text-searchable format approved by the reviewing court while maintaining original document formatting.

For the past several years, the committee has been working with representatives of unions representing court reporters on legislation to amend Code of Civil Procedure section 271. The main focus of that effort has been on eliminating the requirement that the original reporter’s transcript be in paper format. However, the draft amendments developed through this effort would also eliminate the archaic default format provisions in the statute and more directly restate that the format requirements for electronic reporter’s transcripts are to be established by rules adopted by the Judicial Council.

This year’s bill to amend section 271 is Assembly Bill 1450, a copy of which is attached or can be accessed at:

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1450. This bill would, among other things, establish “grace periods” for both the acceptance of electronic transcripts by the courts and the delivery by court reporters of electronic transcripts that comply with the Judicial Council formatting rules. These provisions are meant to recognize that, at this time, some courts may not be able to receive, store, or use transcripts that are in required electronic format and some court reporters may not be able to produce electronic transcripts that fully comply with the proposed amendments to rule 8.144. The bill would give courts and court reporters several years to take the steps necessary to make the transition to electronic transcripts in the format proposed in the amendments to rule 8.144.

The committee and the representatives of court reporters unions are continuing to actively work together on AB 1450. As of the date of this memo, the bill has passed out of the Assembly and awaiting assignment to a committee in the Senate. September 15, 2017 is the last day for each house to pass bills. October 15, 2017 is the last day for the Governor to sign bills that are passed by the Legislature on or before September 15, 2017.

Public Comments

Thirteen comments were received on this proposal from individuals or organizations:

- Four commentators indicated that they agreed with the proposal:
 - The California Appellate Court Clerks Association;
 - The Court Reporter's Office, Superior Court of Orange County;
 - The Superior Court of San Diego County; and
 - The Orange County Bar Association.
- Three commentators indicated that they agreed with the proposal if amended:
 - The Superior Court of Los Angeles County;
 - The Superior Court of Riverside County; and
 - The Superior Court of Ventura County.
- Three comments indicated that the commentators did not agree with the proposal:
 - Dana Belloli, an Official Reporter;
 - Jeannette Jessup, and Official Reporter; and
 - Service Employees International Union, California Labor Federation, IFPTE 21, Laborers International Union of North America, America, Locals 777 & 792 of the Orange County Employees Association, and American Federation of State County and Municipal Employees, who submitted a joint comment
- Three commentators did not state a position on the proposal, but provided comments:
 - The California Court Reporters Association;
 - Albert De La Isla; and
 - Jennifer Hicks

A chart with the full text of the comments received is attached. Based on these comments, the rules subcommittee recommends that the committee wait to present any recommendation on this proposal until the November 17 Judicial Council meeting.

All of the commentators who indicated that they do not agree with the proposed amendments to rule 8.144, including most of the unions representing court reporters, expressed concern about the inability of court reporters to comply with some of the proposed new formatting requirements at this time – particularly the requirements for bookmarking and merging multi-reporter transcripts into a single document. These commentators suggested that currently only one court-

reporting software can produce transcripts that comply with these requirements and that court reporters would therefore be forced to purchase the software and subscription service of that vendor, at the reporters' expense, if these rule amendments were adopted. Other commentators also expressed concerns about potentially conflicting language in this rule and the current language of Code of Civil Procedure section 271, which, as noted above, only permits copies of a transcript to be in electronic format.

These same concerns are driving the work on AB 1450 by the committee and many of these same the court reporters' unions. The bill's approach to addressing the concerns about court reporting software not currently being able to produce transcripts compliant bookmarking and other formatting requirements has not been to abandon new formatting requirements for electronic transcripts. Instead, at the suggestion of the reporters' unions, the bill would establish the "grace period" for compliance with the Judicial Council formatting rules. This grace period would give other court reporting software vendors the opportunity to update the capability of their products and for court reporters to implement these software changes along with other regular software updates. The bill would also address the concerns raised about potential conflicts between the current language of section 271 and the proposed rule language.

All of this suggests that the committee should wait to determine whether to move forward with a proposal to amend rule 8.144 until the final language and status of AB 1450 is known. Although under the existing language of Code of Civil Procedure section 271, the Judicial Council has the authority to set the format for copies of reporters' transcripts that are delivered in computer-readable form, the proposed amendments to rule 8.144 circulated this spring were designed to be a companion AB 1450. To sync-up the timing of the rule and legislative processes, the rules subcommittee recommends that this proposal not be presented to the Judicial Council at its September 15, 2017 meeting, which is the meeting at which other rule proposal are scheduled to be considered, but instead that any proposal be presented to the Judicial Council at its November 17 meeting, which will be after both the Legislature's adoption deadline and the Governor's signing deadline.

Committee Task

The committee's task with respect to this proposal is to discuss the comments received on the proposal and approve or modify the rules subcommittee recommendation for delaying action on this proposal. If the committee decides it wishes to take a different approach, a conference call of the committee can be scheduled to discuss this item later in June.

Attachments

1. Draft comment chart
2. Invitation to comment

ITC SPR17-01

Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Dana Belloli Official Court Reporter Turlock Ca	N	Having been a working reporter for the past 30 years, both freelance and official, I believe this proposal is bad law. It will require additional costs to working reporters to be paid to software company(s), with no benefit to the public. Court reporters can already provide the services presently required, and the only benefit will be to these people/company(s) who court reporters will be required to pay a monthly fee to. It will especially adversely effect those reporters who work part-time yet still must pay the month fee as required by these software company(s). Thank you.	
2.	California Appellate Court Clerks Association by Daniel P. Potter, President	A	The Clerks Association agrees with amending of rule 8.144 as proposed with one addition. That the rule requires that transcripts submitted by court reporters not be password protected. To the advisory committee's questions: <i>It is necessary for the rule to require the court reporter to both digitally and electronically sign a transcript that is delivered in electronic form? If only one requirement were included, which would be preferable?</i> It doesn't seem necessary to require both. Digital signatures obviously offer more protection for the court reporters, but depending on the digital certificates being used for the digital signature and the encryption level, it might make things more difficult for the court in terms of electronically filing, flattening and encrypting (in the case of sealed electronic	

ITC SPR17-01

Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

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	Commentator	Position	Comment	Committee Response
			<p>documents) than if those documents had just been electronically signed. It seems like requiring electronic signatures might be the least cumbersome option for the courts.</p> <p><i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> Yes.</p>	
3.	California Court Reporters Association By Brooke Ryan and Erin Spence	NI	<p>On behalf of California's court reporters, the California Court Reporters Association ("CCRA") wishes to thank the Judicial Council and the Appellate Advisory Committee for proposing these important amendments to California Rules of Court, rule 8.144. CCRA endorses the use of electronic transcripts and agrees with the forward-looking concept of proposed Rule 8.144. We believe that the proposed rule will be improved with some minor changes.</p> <p>We believe the requirements of subdivisions (a)(1)(D) and (c)(1)(C), concerning page numbering, should be harmonized. The former provides only that transcripts should contain pages which are consecutively numbered. However, the latter provides more detail, but fails to state the pages must be numbered consecutively. CCRA proposes that the requirements of these two subdivisions be merged into a single paragraph, which would be contained in subdivision (a) and thus be applicable to electronic transcripts through the</p>	

ITC SPR17-01

Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

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	Commentator	Position	Comment	Committee Response
			<p>introductory sentence of subdivision (c)(1) ["In addition to complying with (a) ..."].</p> <p>CCRA suggests that an additional section, (3)(A), possibly entitled Page Numbering, be added with respect to transcript page numbering for both paper and electronic transcriptions. CCRA proposes that transcripts of confidential proceedings (e.g., Marsden hearings) be consecutively numbered within the context of the entire transcript (as opposed to being set out in a separately numbered transcript). CCRA believes this amendment will provide needed guidance to court reporters and uniformity of practice throughout the state. To that end, CCRA proposes this language be included within the rule as adopted: "The reporter's sealed and confidential transcripts must be redacted from the main transcript while maintaining consecutive page numbers using only Arabic numerals (e.g. 1, 2, 3) throughout the document, including indices and certificates, and must be filed under separate cover."</p> <p>On Page 2, line 39, a section (a)(6) could be added to list the order of the transcript, such as Appellate Cover, Superior Court Cover, Indices Sessions, Witnesses, Exhibits. CCRA believes that it is important that all transcripts be filed in a consistent order, especially since reporters will be filing a one-volume reporters' transcript on appeal.</p> <p>Under current law [(a)(3)], confidential and</p>	

ITC SPR17-01

Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

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	Commentator	Position	Comment	Committee Response
			<p>sealed transcripts are delivered in a secure envelope. CCRA proposes that the amended rule provide electronic transcripts be delivered securely by encrypted transmission. Encryption technology is readily available and widely used in numerous industries and applications. This technology would allow the courts to control who has access to the confidential transcripts by furnishing a password to those authorized persons. Sealed and confidential electronically filed transcripts should be required to follow the guidelines currently set for paper transcripts.</p> <p>CCRA believes that (5)(1) relating to 300 sheets needs to remain because the ability to bind more than 300 pages is unwieldy. We also believe that that section should be specifically excluded if filing electronically. Suggest it is added to (c)(2)(B).</p> <p>CCRA suggests that the reference to “the cover page required by (a)(3)” in proposed subdivision (c)(2)(A) should refer to subdivision (a)(5).</p> <p>An additional correction for consideration is Page 3, line 29 – (D) is inconsistent with page 2, line 5 “(4) Indexes.” In (4), reporters filing paper transcripts must have an index for witnesses and exhibits. In (D) reporters must have a separate index for sessions, witnesses and exhibits. CCRA suggests that indexing, whether on paper or electronic, should be identical, especially since reporters are having</p>	

ITC SPR17-01

Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

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	Commentator	Position	Comment	Committee Response
			<p>to print transcripts that are currently being filed electronically on appeal to the appellate lawyers.</p> <p>Also, CCRA recommends that the last phrase of proposed subdivision (c)(2)(A) be modified to read, (A) Each individual reporter must include the cover page required by (a)(5), the indexes required by (a)(4), and an electronically signed certificate in their respective portion of the transcript.” This change is necessary because in those instances in which several reporters contribute to a transcript, each will sign a certificate as to his or her portion. The proposed rule establishes the practice as to each reporter’s portion of the entire transcript. We also suggest adding a section (D) “The primary reporter must digitally sign the single electronic document.” CCRA believes that the above changes are necessary for clarity to the reporters preparing the electronic transcripts. The need to have digital and electronic signatures separate is the fact that once a transcript is digitally signed it cannot have any changes made to it, such as merging volumes together to make one electronic document, making a master index from all volumes. Each reporter still needs to electronically sign their respective certificate page in their transcript.</p> <p>In reference to (c)(1)(A) regarding scanned documents, CCRA would suggest an additional sentence such as “except as ordered by the court.” There are certain instances (death of a</p>	

ITC SPR17-01

Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

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	Commentator	Position	Comment	Committee Response
			<p>reporter, computer crashes) where a scanned copy of a previously prepared transcript is the only way to add it to an appeal.</p> <p>Thank you for the opportunity to offer these suggestions. CCRA remains available to lend its technical experience as the proposed rule takes final form.</p>	
4.	Court Reporter's Office, Superior Court of Orange County By Sean E. Lillywhite	A	<p>The Court Reporters Office in Orange County recommends the committee consider requiring only one signature type, not both; and recommends the rule require an electronic signature.</p> <p>This court is not currently e-filing court reporter transcripts. However, this court recently launched a pilot project for e-filing of court reporter transcripts on civil and probate appeals with the DCA. Adding an e-signature component and formatting requirements would not appreciably increase cost or implementation.</p> <p>Since our court is not currently e-filing court reporter transcripts, we will have sufficient time to work the new requirements into our implementation.</p>	
5.	Albert De La Isla Principal Administrative Analyst IMPACT Team – Criminal Operations Superior Court of Orange County	NI	<p>The amendment has to do with addressing specific requirements when a court reporter's transcript is delivered in electronic form. The proposed amendment to the rule would make the formatting requirements easier to follow. This would have more impact to CRIS than</p>	

ITC SPR17-01

Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

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	Commentator	Position	Comment	Committee Response
			<p>Operations. I believe CRIS is at the moment still preparing hard copy transcripts for Criminal Appeals but there have been recent talks about changing this as they have already implemented electronic transcripts with Civil.</p> <p>If electronic transcripts are implemented in felony appeals, then the Felony Appellate procedures would have to be modified and an interface developed to be able to receive electronically and file stamp electronically.</p> <p><i>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?</i></p> <p>Response: Minimal if we are just receiving the document electronically by an electronic means. However, if we choose to build an interface so that they are loaded in the CMS and electronically filed stamped, the requirements are unknown.</p> <p><i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i></p> <p>Response: Operationally, yes if we do not build an interface.</p>	
6.	Jennifer Hicks	NI	In response to the suggested proposal, a majority of court reporters, at the present	

ITC SPR17-01

Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

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	Commentator	Position	Comment	Committee Response
			<p>moment, are capable of providing full text-searchable PDF (portable document format) at no additional cost to the court or to the court reporter. What hinders the court reporters from going forward in providing such productivity is the following:</p> <ol style="list-style-type: none">1. Bookmarking and hyperlinks <p>EXPLANATION: Bookmarking and hyperlinks – The proposed code section obligates the reporter to interpret or assume what the court or end user wants by bookmarking and attaching hyperlinks. The Court Reporter's position is to preserve the integrity of the record. By a Court Reporter taking on the role and deciding what should be hyperlinked or bookmarked for the end user assumes or could be perceived as being biased. Though it may seem minute of a task to do, it is disingenuous in asking the reporter to produce said product to prevent the Court Reporter from being in violation with the Court Reporters Board's Tenet of Ethics and/or Professional Conduct.</p> <p>In regards to exhibits being hyperlinked, this would be a very tedious task. There are some cases where counsel and the court make a clean record of marking and receiving exhibits. But there are more times, than not, that exhibits are marked and never used; they are marked in one section and then used several days later; they are misidentified, relabeled, portions redacted, and so on, to have to go through and hyperlink</p>	

ITC SPR17-01

Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

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	Commentator	Position	Comment	Committee Response
			<p>all these areas is difficult. This, again, requires the reporter to interpret what the court and counsel's intentions are or were during the proceedings which violates the neutrality of the Court Reporter's position.</p> <p>Preparing any type of transcript, whether it's lengthy or short, is time consuming and oftentimes is filed on the due date, depending on a reporter's workload. Requiring a reporter to now bookmark and hyperlink a transcript, especially with the above-mentioned scenario, is quite cumbersome that reporters will not be able to meet their deadlines and file for extensions which would prolong the appeal process. This is not only a detriment to the reporter, because it's frowned upon, but also to the court.</p> <p>The Court Reporters are capable of processing and accommodating the following procedure as proposed but request clarification.</p> <ol style="list-style-type: none">1. Conflicting codes.2. To volume or not to volume3. Block numbering/larger pagination4. Cost<ol style="list-style-type: none">a. Digital signature/electronic signatureb. program <p>EXPLANATION: When the reporter is mandated or ordered to prepare a transcript he/she would follow several codes which work together to come up with the end result of a transcript. By changing only one of the codes, the reporter falls in detriment of</p>	

ITC SPR17-01

Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

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	Commentator	Position	Comment	Committee Response
			<p>not following codes properly because the reporter will have mixed information in the process of preparing a transcript which would result in a transcript that's useless to the end user.</p> <p>1. Conflicting Code(s) - An official reporter meets those obligations without ever having to interpret what the court needs are. There is a clear understanding of what is expected of an official reporter. By implementing the suggested code section would counter existing rules and codes that reporters follow in preparing transcripts that indicate the term "Paper" or "Printed Copy." Further inquiry with the Court Reporters Board and legislation need to be made to ensure all existing rules be changed so there is a consistency and that there is no confusion amongst the reporters as to which rule they must follow and will the rules coincide with one another as intended. i.e. 69950(a), 271(a) and (b), CCP 2025, 8.130(f)4) and Government Code 69954(b). If Section 8.144 is allowed to be changed as proposed, a Court Reporter could be in violation of the above code sections and putting their license in jeopardy.</p> <p>2. To Volume or not to volume – The language on this particular procedure needs to be clarified or redefined. Due to one's own interpretation this may not be seen as intended and there could be some confusion.</p> <p>Under the new subsection (a)(5) Cover, (A)</p>	

ITC SPR17-01

Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

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	Commentator	Position	Comment	Committee Response
			<p>“Each volume’s cover,” originally under this section “Binding” it defined what a volume consisted of, 300 pages. (We are assuming this remains the same.) But the suggested proposal’s language has been stricken and there is no definition of what a volume consist of for electronic format. A volume is defined as 300 pages only if the transcript remains in paper form. We cannot assume that is what is wanted for electronic format.</p> <p>The rule needs to specify that volumes will continue to consist of 300 pages and will be merged together as a whole (1 file) upon submission.</p> <p>3. Block numbering/larger pagination – Is or could this section be optional? Some court reporters stride to paginate their pages (transcripts) consecutively so it’s one smooth flowing transcript. Easy for the end user. If it’s wished that the reporters use block numbering, this would create large page numbering and more volumes than if the pages of the transcript were done consecutively. For the end user it may feel choppy rather than flowing like a book.</p> <p>This procedure is more of a detriment to the primary reporters because they are focusing their attention on coordinating and setting block numbers rather than directing their attention to preparing the transcript at hand or other obligations they may have.</p>	

ITC SPR17-01

Appellate Procedure: Format for Reporter’s Transcripts Delivered in Electronic Form)

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	Commentator	Position	Comment	Committee Response
			<p>Where on the other hand, if paginated consecutively, the primary reporter will be notified as each reporter finishes their portion and provide a page number to the next court reporter in the segment and collaborates indexes instead of multiple pages of witness lists and exhibit pages.</p> <p>When block numbering is utilized there will be occasions when blurbs are used because all designated pages were not filled with text. When the transcript is uploaded into a program, any program, the pagination will not correspond respectively because it cannot read that “Pages 485-600 were intentionally left blank.” This will violate the proposed language under (c)(1)(C) indicating, “The electronic page counter in a PDF file viewer must match the transcript page numbering.”</p> <p>The end result is that the transcript is assembled in a book-style format so the end user is able to navigate throughout the pages with ease.</p> <p>4. Cost</p> <p>a. Digital signature/electronic signature – It is preferred to have a digital signature. There is an ongoing cost to the Court Reporter, during the reporter’s career as well as in their retirement to continue to meet their obligations.</p> <p>b. Program – As indicated, the introduction of these rules were suggested by a reporter’s association who endorses a program that will provide all the suggested changes in 8.144. Regardless if that specific plan is used or</p>	

ITC SPR17-01

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	Commentator	Position	Comment	Committee Response
			<p>not, there is a cost to the reporter to use a program to meet the need of bookmarking and hyperlinking should that language remain in. JCC is informed it's at no cost to them or the courts because the burden is on the court reporters.</p> <p>If this rule is implemented, it will force reporters to use a program to meet the guidelines, not only during their career, but also for ten years after they retire. Without going into details, this is a detriment to the reporters financially during their career as well as into retirement.</p> <p>Court Reporters can produce and accommodate the transcripts right now -- at no cost to the court and no additional cost to the court reporter -- by uploading the transcripts in PDF format. With the elimination of bookmarking and hyperlinking requirements and with making all court reporter codes consistent with computer-readable format language, this will eliminate the court reporter interpreting what the end user wants and protect the court reporter from violating codes and Tenets of Ethics and focus on preserving the integrity of the record.</p> <p>Specific comments: Implementation requirements for the court: Training and preparation will be needed to ensure staff understands the protocol thoroughly, i.e., uploading, processing, digitally file stamping, notifying parties. This applies to</p>	

ITC SPR17-01

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All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>both the clerks and the reporters. From the reporter's standpoint, not all reporters are tech savvy, and so this might be challenging for some. This will be another task that the court reporter supervisor/manager will have to monitor to ensure no delays in the process.</p> <p>It's foreseen that the transcripts will have more typographical errors and/or format errors on them because those are usually caught when the court reporter prints out the final copies to submit. Some even rely on their supervisor to catch the errors during processing of the transcript. That process will be eliminated.</p>	
7.	Jeannette Jessup Official Reporter Monterey, CA	N	<p>We are a very small county and do not use lead reporters. Some of our software also does not have the ability to bookmark. So the change for bookmarking by a lead reporter and merging all volumes in one document will be difficult if not impossible.</p>	
8.	Orange County Bar Association By Michael L. Baroni	A	No specific comment	
9.	Service Employees International Union by Kimberly Rosenberger California Labor Federation by Caitlin Vega IFPTE 21 by Shane Gusman	N	<p>We the undersigned organizations representing trial court employees write in opposition to the proposed amendment to the California Rules of Court, rule 8.144.</p> <p>We strongly urge the Appellate Advisory Committee to abandon proposals to change the rule of court, as they are too restrictive, inhibit technological advancements, and impose an</p>	

ITC SPR17-01

Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
	<p>Laborers International Union of North America, by Liberty Sanchez</p> <p>America, Locals 777 & 792 Orange County Employees Association by Patrick Moran</p> <p>American Federation of State County and Municipal Employees by Joshua Golka</p>		<p>unfair and expensive burden on court reporters. The majority of Computer-Aided Transcription (CAT) software is unable to comply with the requirements proposed, specifically the proposals found in sections (c)(1)(C), (c)(1)(D), (2)(B) and (2)(C).</p> <p>The transition to modern technology has been costly and often unsuccessful in the public sector and especially in the judicial branch. However, the most successful use of technology in the judicial branch has been that of the court reporters. Advancements have allowed for real time captioning, electronic transcripts, and so much more. This is directly due to the reporters being the owners, as well as the operators of the technology they use. The proposed amendments to the rule of court take away that autonomy and monopolize the CAT software field. The proposed rules impose requirements that only one vendor at this time provides.</p> <p>Court reporters are in a unique position where they not only are the target demographic for use of the technology, but they are also the customer. This has given the reporters purchasing power that has allowed them to directly influence the field. Court reporters have continued to evolve in the technology they use, investing in CAT software that improves the access and availability to transcripts for the courts and the public. This technology comes directly out of the pocket of the reporters, despite their rates having stagnated for over a</p>	

ITC SPR17-01

Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>quarter of a century.</p> <p>Additionally, section 2(B) requires multiple volumes to be merged into a single electronic document. Currently this is performed by court clerks in the Internal Appeals Division and accounts for a large bulk of their work. The division is responsible for collecting transcripts, tracking deadlines, and merging the total document as one unit for the Court of Appeals. To shift this work entirely on to court reporters is problematic for a number of reasons. The additional workload proposed not only creates an untenable amount of work for the reporter, but it would also result in a merging of job classifications without meeting or notifying the unions that represent these workers. Furthermore, it greatly increases the workload of reporters without any compensation. This proposal will likely result in increased backlog and delayed access to justice, as the deadlines will remain the same despite requiring new technology and new duties.</p> <p>The proposed rules place a costly onus on court reporters and also create a monopoly in the industry that discourages innovation and competition. Court reporters are supportive of efforts to shift to electronic transcripts, despite the cost and additional work placed on them. However, the proposed changes approach evolving technology in the wrong way. We oppose the proposed Rule of Courts changes, and instead urge the committee to consider</p>	

ITC SPR17-01

Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			language that allows for the advancement of technology rather than burdensome limitations.	
10.	Superior Court of Los Angeles County	AM	<p>Suggested modification: Rule 8.144 (c) (1) (E) - It would not be necessary to have both an electronic and digital signature on electronically transmitted transcripts. Once the mechanism is in place, digital signatures are fairly easy to handle or maintain. The court's concern would be validity and authentication. If the transcripts are submitted via an electronic portal or by email, there is a high certainty that it actually came from the court reporter. Electronic signature would be easier and cheaper.</p> <p><i>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?</i></p> <ul style="list-style-type: none"> • Staff training and communication <ul style="list-style-type: none"> ○ Transcript Auditors (6) 4-6 hours ○ Court Reporters (450+) 4 hours • Update Court Reporter Manual 16 hours • Update Court website information re transcript formatting, including examples 16 hours <p><i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i></p>	

ITC SPR17-01

Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			Yes, three months is sufficient for implementation.	
11.	Superior Court of Riverside County By Susan D. Ryan	AM	Only copies can be in electronic format. At this time, the original must be a hard copy. Recommend the following additions: Page 6 line 10. (c) Add the words "copies of the" after the word for. (c) Additional requirements for copies of the reporter's transcript delivered in electronic form Page 7 line 3 under the heading (2) Multivolume or multi-reporter transcripts In addition to the requirements in (1), copies of multivolume or multi-reporter transcripts delivered in electronic format must comply with the following requirements:	
12.	Superior Court of San Diego County By Michael Roddy, Executive Officer	A	<i>In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the whether it is necessary for the rule to require the court reporter to both digitally and electronically sign a transcript that is delivered in electronic form? If only one requirement were included, which would be preferable?</i> No comment. <i>What would the implementation requirements be for courts?</i> No impact on appeals clerks. <i>Would three months from Judicial Council approval of this proposal until its effective date</i>	

ITC SPR17-01

Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p><i>provide sufficient time for implementation?</i> Yes, as far as appeals clerks are concerned.</p>	
13.	Superior Court of Ventura County by Nan L Richardson	AM	<p>Digital vs. Electronic signature:</p> <ul style="list-style-type: none"> • Electronic – indicates a person’s intent to sign a record and is legally binding • Digital – encrypts a data associated with a document. Does not legally bind a signature to a document <p>Preference: All reporter transcripts be electronically signed</p> <p>Implementation:</p> <ul style="list-style-type: none"> • Training official court reporters – 3 to 4 hours per official reporter; 2 hours per contract reporter <p>Three months for implementation sufficient?</p> <ul style="list-style-type: none"> • Six months preferred <p>Title 8. Appellate Rules: Rule 8.144. Form of the Record</p> <p>(c)(1)(A) “Be generated electronically; it must not be created from a scanned document.”</p> <ul style="list-style-type: none"> • Court reporters may need to scan a transcript if the paper transcript is available and has been previously prepared, but the electronic transcript is no longer available due to reporter unavailability or technological issues that prevent access to the electronic transcript <ul style="list-style-type: none"> ○ Suggested change: “Be generated electronically; it may be scanned if electronic generation unavailable.” 	

ITC SPR17-01

Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<ul style="list-style-type: none">(2)(A) "Each individual reporter must include the cover page required by (a)(3)" ... should read (a)(5)	

Judicial Council of California

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

INVITATION TO COMMENT SPR17-02

Title	Action Requested
Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form	Review and submit comments by April 28, 2017
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 8.144	January 1, 2018
Proposed by	Contact
Appellate Advisory Committee Hon. Louis R. Mauro, Chair	Heather Anderson, 415-865-7691 heather.anderson@jud.ca.gov

Executive Summary and Origin

The Appellate Advisory Committee is proposing amendments to the rule regarding the format of the record on appeal to incorporate requirements for reporters' transcripts that are delivered in electronic form. This proposal is based on a suggestion from a court reporters association.

Background

Code of Civil Procedure section 271 authorizes courts and parties to receive, on request, copies of reporters' transcripts in "computer-readable form." Subdivision (b) of this statute establishes default standards for the format of such transcripts, but provides that these defaults apply "[e]xcept as modified by standards adopted by the Judicial Council."

Rule 8.144 generally addresses the format of the record on appeal, including the format of reporters' transcripts. Currently, this rule contains only the following provision regarding the format of computer-readable reporters' transcripts:

A computer-readable copy of a reporter's transcript must be in a text-searchable format approved by the reviewing court while maintaining original document formatting.

(Cal. Rules of Court, rule 8.144(a)(4).)

There are additional formatting issues and questions that arise when a transcript is in electronic format that it may be helpful for rule 8.144 to address.

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.

The Proposal

The committee is proposing amendments to rule 8.144 to provide additional guidance regarding the format for reporters' transcripts that are delivered in electronic form. To make the overall rule clearer, the committee is also proposing reorganizing some of the existing provisions. The main amendments include:

- Current subdivisions (a), (b), and (c), which establish general formatting requirements for reporters' and clerks' transcripts, would be consolidated into a single subdivision (a), titled *Format*. This should make it easier for rule users to find all of the general formatting requirements. To make this longer subdivision easier to follow, each paragraph would be given a heading. This also preserves the most of the headings now used in subdivisions (b) and (c). In addition, a proposed new requirement that each index begin on a separate page would be placed here, as having each index begin on a separate page would be helpful in all transcripts, whether in paper or electronic form.
- The current provisions that specifically relate to transcripts that are in paper form would be gathered together in a new subdivision (b). This reorganization should make finding these specific formatting requirements easier.
- New subdivision (c) would address the specific requirements for reporters' transcripts in delivered in electronic form, including that the transcript be in a full-text searchable PDF or other searchable format approved by the court; include an electronic bookmark to each heading, subheading, and component of the transcript; and permit users to copy and paste, keeping the original formatting. This new subdivision would include separate paragraphs for both general requirements and special requirements for multireporter or multivolume transcripts that are in electronic format. As with proposed subdivisions (a) and (b), this structure should make it easier for rule users to find all of the requirements relating to reporters' transcripts delivered in electronic form in one place.

Other nonsubstantive changes to the rule are also incorporated in this proposal.

Alternatives Considered

The committee considered not recommending any changes to rule 8.144 but concluded that providing more guidance on the format of reporters' transcripts in electronic form would be helpful.

Implementation Requirements, Costs, and Operational Impacts

No appreciable implementation requirements, costs, or operation impacts are anticipated.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on whether it is necessary for the rule to require the court reporter to both digitally and electronically sign a transcript that is delivered in electronic form? If only one requirement were included, which would be preferable?

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 three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

Attachments and Links

Proposed amendments to Cal. Rules of Court, rule 8.144, at pages 4–8

1 Title 8. Appellate Rules

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

4
5 Chapter 2. Civil Appeals

6
7 Article 2. Record on Appeal

8
9 Rule 8.144. Form of the record

10
11 (a) ~~Paper and~~ Format

12
13 (1) General

14 In the clerk's and reporter's transcripts:

15
16 (A) All documents filed must have a page size of 8½ by 11 inches. ~~If filed~~
17 ~~in paper form, the paper must be white or unbleached and of at least 20-~~
18 ~~pound weight;~~

19
20 (B) The text must be reproduced as legibly as printed matter;

21
22 (C) The contents must be arranged chronologically;

23
24 (D) The pages must be consecutively numbered, except as provided in (e);
25 and

26
27 (E) The margin must be at least 1¼ inches from the left edge.

28
29 ~~(2) If filed in paper form, in the clerk's transcript only one side of the paper may~~
30 ~~be used; in the reporter's transcript both sides may be used, but the margins~~
31 ~~must then be 1¼ inches on each edge.~~

32
33 ~~(3)~~(2) Line numbering

34 In the reporter's transcript the lines on each page must be consecutively
35 numbered and must be double-spaced or one-and-a-half-spaced; double-
36 spaced means three lines to a vertical inch.

37
38 ~~(4) A computer-readable copy of a reporter's transcript must be in a text-~~
39 ~~searchable format approved by the reviewing court while maintaining~~
40 ~~original document formatting.~~

1 ~~(5)~~(3) Sealed and confidential records

2 The clerk's and reporter's transcripts must comply with rules 8.45–8.47
3 relating to sealed and confidential records.

4
5 ~~(b)~~(4) Indexes

6 Except as provided in rule 8.45, at the beginning of the first volume of each:

7
8 ~~(1)~~(A) The clerk's transcript must contain alphabetical and chronological
9 indexes listing each document and the volume, where applicable, and
10 page where it first appears;

11
12 ~~(2)~~(B) The reporter's transcript must contain alphabetical and
13 chronological indexes listing the volume, where applicable, and page
14 where each witness's direct, cross, and any other examination, begins;
15 and

16
17 ~~(3)~~(C) The reporter's transcript must contain an index listing the volume,
18 where applicable, and page where any exhibit is marked for
19 identification and where it is admitted or refused. The index must
20 identify each exhibit by number or letter and a brief description of the
21 exhibit.

22
23 (D) Each index required by (A), (B), and (C) must begin on a separate
24 page.

25
26 ~~(e)~~(5) **Binding and Cover**

27
28 ~~(1) — If filed in paper form, clerk's and reporter's transcripts must be bound on the~~
29 ~~left margin in volumes of no more than 300 sheets.~~

30
31 ~~(2)~~(A) Each volume's cover must state the title and trial court number of
32 the case, the names of the trial court and each participating trial judge,
33 the names and addresses of appellate counsel for each party, the
34 volume number, and the inclusive page numbers of that volume.

35
36 ~~(3)~~(B) In addition to the information required by ~~(2)~~(A), the cover of each
37 volume of the reporter's transcript must state the dates of the
38 proceedings reported in that volume.

39
40 **(b) Additional requirements for record in paper form**

41
42 In addition to complying with (a), if the record is filed in paper form:
43

- 1 (1) The paper must be white or unbleached and of at least 20-pound weight;
- 2
- 3 (2) In the clerk’s transcript only one side of the paper may be used; in the
- 4 reporter’s transcript both sides may be used, but the margins must then be 1¼
- 5 inches on each edge.
- 6
- 7 (3) Clerks’ and reporters’ transcripts must be bound on the left margin in
- 8 volumes of no more than 300 sheets.
- 9

10 **(c) Additional requirements for reporter’s transcript delivered in electronic form**

11

12 (1) General

13

14 In addition to complying with (a), a reporter’s transcript delivered in

15 electronic format must:

16

- 17 (A) Be generated electronically; it must not be created from a scanned
- 18 document.
- 19
- 20 (B) Be in full text-searchable PDF (portable document format) or other
- 21 searchable format approved by the court.
- 22
- 23 (C) Be paginated beginning with the first page or cover page as page 1 and
- 24 consecutively numbered using only Arabic numerals (e.g., 1, 2, 3)
- 25 throughout the document, including indices and certificates. The
- 26 electronic page counter in a PDF file viewer must match the transcript
- 27 page numbering.
- 28
- 29 (D) Include an electronic bookmark to each heading, subheading, and
- 30 component of the transcript, including all sessions or hearings (date
- 31 lines), all witness examinations, the index, and all exhibits. All
- 32 bookmarks and hyperlinks, when clicked, must retain the user’s
- 33 currently selected zoom settings.
- 34
- 35 (E) Be digitally and electronically signed by the court reporter.
- 36
- 37 (F) Permit users to copy and paste, keeping the original formatting, but
- 38 with headers, footers, line numbers, and page numbers excluded.
- 39
- 40 (G) Permit courts to electronically add filed/received stamps.
- 41
- 42

1 (2) Multivolume or multireporter transcripts

2
3 In addition to the requirements in (1), multivolume or multireporter
4 transcripts delivered in electronic format must comply with the following
5 requirements:

6
7 (A) Each individual reporter must include the cover page required by (a)(3),
8 the indexes required by (a)(4), and a digitally and electronically signed
9 certificate in its respective portion of the transcript.

10
11 (B) The transcript must be merged into a single electronic document, which
12 may consist of multiple volumes.

13
14 (C) The primary reporter must prepare a master index for the merged
15 transcript that includes all of the information from the indexes required
16 under (A). This master index must be the first bookmark in the
17 transcript, regardless of where the master index is located within the
18 transcript.

19
20 (3) Additional functionality or enhancements

21
22 Nothing in this rule prohibits courts from accepting additional functionality
23 or enhancements in reporters' transcripts delivered in electronic form.

24
25 (d) * * *

26
27 (e) **Pagination in multiple reporter cases**

28
29 (1) In a multiple reporter case, each reporter must estimate the number of pages
30 in each segment reported and inform the designated primary reporter of the
31 estimate. The primary reporter must then assign beginning and ending page
32 numbers for each segment.

33
34 (2) If a segment exceeds the assigned number of pages, the reporter must number
35 the additional pages with the ending page number, a hyphen, and a new
36 number, starting with 1 and continuing consecutively.

37
38 (3) If a segment has fewer than the assigned number of pages, on the last page of
39 the segment, before the certificate page, the reporter must add a hyphen to the
40 last page number used, followed by the segment's assigned ending page
41 number, and state in parentheses "(next volume and page number is ____)."
42

1 (f) * * *

2

3

Advisory Committee Comment

4

5 **Subdivision (a)(3) and (4)(b).** ~~Subdivision (a)(4) is adopted under Code of Civil Procedure~~
6 ~~section 271(b), which allows the Judicial Council to adopt format requirements for computer-~~
7 ~~readable copies of a reporter's transcript. Subdivisions (a)(5) Paragraphs (3) and (b)(4) of~~
8 subdivision (a) refer to special requirements concerning sealed and confidential records
9 established by rules 8.45–8.47. Rule 8.45(c)(2) and (3) establishes special requirements regarding
10 references to sealed and confidential records in the alphabetical and chronological indexes to
11 clerks' and reporters' transcripts.

12

AMENDED IN ASSEMBLY APRIL 20, 2017

AMENDED IN ASSEMBLY APRIL 6, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 1450

Introduced by Assembly Member Obernolte

February 17, 2017

An act to repeal and add Section 271 of the Code of Civil Procedure, relating to court reporters.

LEGISLATIVE COUNSEL'S DIGEST

AB 1450, as amended, Obernolte. Court reporters: electronic transcripts.

Existing law requires an official reporter or official reporter pro tempore of the superior court to take down in shorthand specified information regarding the testimony and proceedings before the court in civil cases, felony cases, and misdemeanor or infraction cases on order of the court, and in only civil cases or felony cases, at the request of a party or counsel. Existing law authorizes a court, party, or other person entitled to a transcript to request that it be delivered in computer-readable form, except as specified.

~~This bill would instead require that all transcripts be delivered in electronic format to any court, party, or person entitled to the transcript, as specified, unless the transcript is requested to be delivered in paper form, the court lacks the technical ability to accept an electronic transcript and has received advance approval from the Judicial Council to only accept a transcript in paper form, or, until January 1, 2020, an official reporter or official reporter pro tempore has not acquired the technology to submit a transcript in electronic form and has provided~~

~~advance notice of this fact. The bill would provide that a court or other entity is not allowed to require an official reporter or official reporter pro tempore to use a specific vendor or software.~~

This bill would instead require an official reporter or official reporter pro tempore to deliver a transcript in electronic form, in compliance with the California Rules of Court, to any court, party, or person entitled to the transcript, as specified, unless, among other things, the party or person requests the transcript in paper form.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 271 of the Code of Civil Procedure is
2 repealed.
3 SEC. 2. ~~Section 271 is added to the Code of Civil Procedure,~~
4 ~~to read:~~
5 ~~271. (a) An official reporter or official reporter pro tempore~~
6 ~~shall deliver a transcript in electronic form to any court, party, or~~
7 ~~person entitled to the transcript, unless any of the following apply:~~
8 ~~(1) The party or person entitled to the transcript requests the~~
9 ~~reporter’s transcript in paper form.~~
10 ~~(2) The court lacks the technical ability to accept an electronic~~
11 ~~transcript and has received advance approval from the Judicial~~
12 ~~Council to only accept the reporter’s transcript in paper form.~~
13 ~~(3) Until January 1, 2020, an official reporter or official reporter~~
14 ~~pro tempore has not acquired the technology to submit a transcript~~
15 ~~in electronic form and the official reporter or official reporter pro~~
16 ~~tempore has provided advance notice of this fact to the court.~~
17 ~~(b) Except as specified in subdivision (e), a transcript delivered~~
18 ~~in electronic format shall comply with the California Rules of~~
19 ~~Court pertaining to the formatting of electronic transcripts.~~
20 ~~(c) (1) Until January 1, 2020, the requirements of the California~~
21 ~~Rules of Court specifically relating to the electronic filing of~~
22 ~~transcripts shall apply only if the official reporter or official~~
23 ~~reporter pro tempore has the ability to comply with the~~
24 ~~requirements. Commencing January 1, 2020, an official reporter~~
25 ~~or official reporter pro tempore shall comply with the applicable~~
26 ~~California Rules of Court.~~

1 ~~(2) Until January 1, 2020, an official reporter or official reporter~~
2 ~~pro tempore using a format that is not compliant with the~~
3 ~~requirements contained within the California Rules of Court~~
4 ~~specifically relating to the electronic filing of transcripts may~~
5 ~~electronically file transcripts upon approval by, or agreement with,~~
6 ~~the court.~~

7 ~~(d) Nothing in this section changes any requirement set forth~~
8 ~~in Sections 69950 and 69954 of the Government Code, regardless~~
9 ~~of whether a transcript is delivered in electronic or paper form.~~

10 ~~(e) An electronic transcript delivered in accordance with~~
11 ~~subdivisions (a) and (b) shall be deemed to be an original transcript~~
12 ~~for purposes of any obligation of an attorney to maintain or deliver~~
13 ~~a file for a client.~~

14 ~~(f) Nothing in this section shall be construed to require an~~
15 ~~official reporter or official reporter pro tempore to use a specific~~
16 ~~vendor or software to comply with this section, or to allow a court~~
17 ~~or other entity to require an official reporter or official reporter~~
18 ~~pro tempore to use a specific vendor or software. An official~~
19 ~~reporter or official reporter pro tempore may select the appropriate~~
20 ~~technology to comply with this section.~~

21 *SEC. 2. Section 271 is added to the Code of Civil Procedure,*
22 *to read:*

23 *271. (a) An official reporter or official reporter pro tempore*
24 *shall deliver a transcript in electronic form, in compliance with*
25 *the California Rules of Court, to any court, party, or person entitled*
26 *to the transcript, unless any of the following apply:*

27 *(1) The party or person entitled to the transcript requests the*
28 *reporter's transcript in paper form.*

29 *(2) If, prior to January 1, 2020, the court lacks the technical*
30 *ability to use or store a transcript in electronic form pursuant to*
31 *this section, the transcript may instead be delivered, upon request,*
32 *in full text-searchable portable document format (PDF) or other*
33 *searchable format approved by the court if the proceedings were*
34 *produced utilizing computer-aided transcription equipment.*

35 *(3) If, prior to January 1, 2020, the official reporter or official*
36 *reporter pro tempore lacks the technical ability to deliver a*
37 *transcript in electronic form pursuant to this section and provides*
38 *advance notice of this fact to the court, party, or person entitled*
39 *to the transcript, the transcript may instead be delivered, upon*
40 *request, in full text-searchable portable document format (PDF)*

1 *or other searchable format approved by the court if the proceedings*
2 *were produced utilizing computer-aided transcription equipment.*

3 *(b) Nothing in this section changes any requirement set forth*
4 *in Section 69950 or 69954 of the Government Code, regardless*
5 *of whether a transcript is delivered in electronic or paper form.*

6 *(c) An electronic transcript delivered in accordance with this*
7 *section shall be deemed to be an original transcript for all*
8 *purposes, including any obligation of an attorney to maintain or*
9 *deliver a file to a client.*

10 *(d) An electronic transcript shall comply with any format*
11 *requirement imposed pursuant to subdivision (a). However, an*
12 *official reporter or official reporter pro tempore shall not be*
13 *required to use a specific vendor or software to comply with this*
14 *section, unless the official reporter or official reporter pro tempore*
15 *agrees with the court, party, or person entitled to the transcript*
16 *to use a specific vendor or software. Absent that agreement, an*
17 *official reporter or official reporter pro tempore may select the*
18 *technology to comply with this section and the California Rules*
19 *of Court.*



JUDICIAL COUNCIL OF CALIFORNIA

770 L Street, Suite 1240 • Sacramento, California 95814-3368
Telephone 916-323-3121 • Fax 916-323-4347 • TDD 415-865-4272

MEMORANDUM

Date	Action Requested
May 25, 2017	For Your Information
To	Deadline
Court of Appeal Presiding Justices and Clerks Members, Administrative Presiding Justices Advisory Committee	N/A
Members, Appellate Advisory Committee	Contact
	Daniel Pone, 916-323-3121 daniel.pone@jud.ca.gov
From	
Daniel Pone, Attorney	
Subject	
Report of Legislation of Interest to Appellate Courts	

Attached you will find a chart of legislation, introduced in the 2017–2018 legislative session, that is responding to California appellate and Supreme Court decisions.

These and other bills can be found on the Internet at <http://leginfo.legislature.ca.gov/>.

DP/yc-s

Attachment

cc: Martin Hoshino
Jody Patel

2017–18 LEGISLATION RESPONDING TO CALIFORNIA APPELLATE AND SUPREME COURT DECISIONS

BILL	AUTHOR	SUMMARY	STATUS as of May 25, 2017
AB 194	Patterson	States legislative intent to abrogate the holdings in <i>Hilton v. Superior Court</i> (2014) 239 Cal.App.4th 766, and <i>People v. Waters</i> (2015) 241 Cal.App.4th 822. 2) Provides that the court retains jurisdiction to impose or modify restitution for a period of five years following the date of sentencing, or until termination of probation or mandatory supervision, whichever is longer. [As amended March 2, 2017.]	Senate Public Safety Committee
AB 411	Bloom	Codifies the holding in <i>People v. Chenault</i> (2014) 227 Cal.App.4th 1503. In that case the defendant argued that the trial court erred by allowing a support dog to be present during the testimony of two child witnesses without an individualized showing of necessity, and that the presence of the dog was inherently prejudicial and violated his federal constitutional rights to a fair trial and to confront witnesses. The Court of Appeal rejected these arguments, holding that the court had the authority to allow the support dog, and that its presence during the testimony of child sex abuse victims did not prejudice the defendant.	Senate Public Safety Committee
AB 702	Lackey	Modifies California law as it relates to refusal to submit to a chemical test due to suspicion of driving under the influence (DUI) to comply with the Supreme Court's ruling in <i>Birchfield v. North Dakota</i> , (2016) 136 S. Ct. 2160. The Supreme Court considered whether a state can criminalize a refusal to take a blood test, absent a warrant, through an implied consent law. <i>Birchfield v. North Dakota</i> , (2016) 136 S. Ct. 2160, at 2173. The court ruled that the Fourth Amendment permits warrantless breath tests for drunk driving, but does not permit warrantless blood tests. The court determined that the breath tests is barely a physical intrusion, as opposed to the blood test which can even leave DNA samples with the government. [As amended March 27, 2017.]	Assembly Appropriations Committee—Suspense file.

NOTE: This cumulative table is current through 5.25.17. For additional information such as bill analyses, legislative deadlines, hearing dates, or Judicial Council positions on legislation, please contact the Judicial Council's Governmental Affairs office at (916) 323-3121. Bills can be found on the Internet at <http://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>

2017–18 LEGISLATION RESPONDING TO CALIFORNIA APPELLATE AND SUPREME COURT DECISIONS

BILL	AUTHOR	SUMMARY	STATUS as of May 25, 2017
AB 984	Calderon	Makes various clarifications to Code of Civil Procedure (CCP) section 128.5, which governs sanctions for bad faith actions or tactics, in response to a recent decision by the Fourth District Court of Appeal in <i>San Diegans for Open Government v. City of San Diego</i> (2016) 247 Cal.App.4th 1306. Among other things, makes clear that CCP section 128.5 applies only to actions or tactics that were part of a civil case filed on or after January 1, 2015. Clarifies further that subjective bad faith is the legal standard for evaluating a request for sanctions pursuant to CCP section 128.5. Incorporates a modified version of the safe harbor provisions from CCP 128.7. [As introduced.]	Senate Judiciary Committee
AB 1626	Irwin	States the finding of the Legislature that the decisional law of this state regarding the responsibilities of Associate Licensees and Supervising Licensees in dual agency transactions requires further clarity in response to the holding in <i>Horiike v. Coldwell Banker</i> , 1 Cal.5th 1024. Describes when dual agency exists and specifies, with respect to certain provisions of existing law, some of the duties of licensees in conducting dual agency transactions. Revises the mandatory disclosure form used in dual agency transactions to make the terms in the form consistent with the above ruling by the California Supreme Court. [As amended March 30, 2017]	Assembly Judiciary Committee Two-year bill
SB 143	Beall	Among other things, states the intent of the Legislature in enacting this act to allow people who are committed to the State Department of State Hospitals upon a conviction for an offense that would otherwise fall within the resentencing provisions of Section 1170.126 or 1170.18 of the Penal Code, as enacted by Proposition 36 of the 2012 statewide general election or Proposition 47 of the 2014 statewide general election, to petition the original committing court for relief under those sections. States further that this act is intended to nullify the holding in <i>People v. Dobson</i> , 245 Cal.App.4th 310 (2016). (As amended February 21, 2017.)	Assembly Appropriations Committee—Suspense file.

NOTE: This cumulative table is current through 5.25.17. For additional information such as bill analyses, legislative deadlines, hearing dates, or Judicial Council positions on legislation, please contact the Judicial Council's Governmental Affairs office at (916) 323-3121. Bills can be found on the Internet at <http://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>

2017–18 LEGISLATION RESPONDING TO CALIFORNIA APPELLATE AND SUPREME COURT DECISIONS

BILL	AUTHOR	SUMMARY	STATUS as of May 25, 2017
SB 153	Anderson	According to the Senate Judiciary Committee’s analysis, “[t]his bill seeks to clarify any potential ambiguities stemming from the codes seemingly interchangeable use of ‘donative transfer’ and ‘gift,’ as well as the wording of Probate Code Section 21380(a)(2). The proposed changes reflect the Court’s discussion of legislative intent in <i>Jenkins v. Teegarden</i> , (2014) 230 Cal.App.4th 1128. This bill would also add fraud to legislative intent language found in Probate Code Section 21392(b).” [As introduced.]	Assembly Judiciary Committee
SB 217	Wieckowski	It is the intent of the Legislature that this act codify the holding of <i>Lappe v. Superior Court</i> (2014) 232 Cal.App.4th 774 to allow the introduction of declarations of disclosure in a divorce, separation, or jollity proceeding, even if the declaration was initially prepared for a mediation.	Assembly Judiciary Committee
SB 684	Bates	Makes various changes to the law governing incompetency to stand trial proceedings. Among other things, seeks to respond to the Fourth District Appellate Court’s decision in the case of <i>Jackson v. Superior Court of Riverside</i> (2016) 247 Cal.App.4th 767, 773, which “implore[d] the Legislature to examine subdivision (c)(2) of section 1370 [of the Penal Code] and clarify for trial courts statewide what procedures they should follow when faced with a defendant who has been committed as incompetent for the maximum time allowed under the law but who does not qualify for a Murphy conservatorship.” (As introduced.)	Senate Floor

NOTE: This cumulative table is current through 5.25.17. For additional information such as bill analyses, legislative deadlines, hearing dates, or Judicial Council positions on legislation, please contact the Judicial Council’s Governmental Affairs office at (916) 323-3121. Bills can be found on the Internet at <http://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>

2017–18 LEGISLATION RESPONDING TO CALIFORNIA APPELLATE AND SUPREME COURT DECISIONS

BILL	AUTHOR	SUMMARY	STATUS as of May 25, 2017
SB 725	Jackson	<p>Codifies the holding <i>Hopkins v. Superior Court, County of Los Angeles</i>, 2 Cal. App. 5th 1275 (Second Appellate District, Division 4 <i>cert granted</i> Cal. Supreme Court Case S237734) – holding veteran was eligible for military diversion on misdemeanor charges of driving under the influence and driving with a prohibited blood-alcohol level; the later-enacted military diversion statute functions as an implied repeal of the prohibition against pretrial diversion for defendants charged with driving under the influence, to the extent a defendant meets the qualifications for military diversion. Overrules the holding in <i>Van Vleck v. Superior Court, County of San Diego</i> 2 Cal. App. 5th 355 (Fourth Appellate District, Division 1 <i>cert granted</i> Cal. Supreme Court Case S237219) – holding that Penal Code section 1001.80 does not create an exception to Vehicle Code section 23640 thus military diversion is not available in DUI cases.</p>	In Assembly

NOTE: This cumulative table is current through 5.25.17. For additional information such as bill analyses, legislative deadlines, hearing dates, or Judicial Council positions on legislation, please contact the Judicial Council's Governmental Affairs office at (916) 323-3121. Bills can be found on the Internet at <http://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>



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	Action Requested
May 23, 2017	Please read before June 1 committee conference call
To	Deadline
Members of the Appellate Advisory Committee	June 1, 2017
From	Contact
Heather Anderson, Supervising Attorney, Legal Services	Heather Anderson 415-865-7691 heather.anderson@jud.ca.gov
Subject	
Rule requirements for verification of writ petitions	

Introduction

As you may recall, earlier this spring, the Appellate Advisory Committee recommended circulating for public comment a proposal to amend several rules in Title 8 to consistently reflect statutory requirements for verification of petitions. The Judicial Council's Rules and Projects Committee approved the recommendation for circulation and the proposal was circulated for public comment February 27 and April 28, 2017 as part of the regular spring comment cycle. (A copy of the invitation to comment is included in your meeting materials). This memo discusses the public comments received on the proposal and the rules subcommittee's recommendations regarding responding to these comments.

Public Comments

Eight individuals or organizations submitted comments on this proposal. Five commentators agreed with the proposal, two did not indicate a position on the proposal but provided comments, and one did not agree with the proposal. A chart with the full text of the comments received and the rules subcommittee's recommended responses is attached and the substantive comments are discussed below. Based on these comments, the rules subcommittee recommends that the committee recommend adoption of this proposal as circulated.

The commentator who indicated that he did not agree with the proposal, Curt Harris, did not actually comment on the content of the proposed rule amendments. His comment focuses on concern about whether petitioners in habeas proceedings receive appropriate notice of court action on their petitions. Since the issue raised is outside the scope of the proposal, staff recommend that this comment be treated as a new suggestion and be considered by the subcommittee when it is reviewing proposals for the 2017-2018 committee annual agenda.

One of the commentators who did not state a position on the proposal, Albert DeLaIsla, indicated that the proposal would have no impact on court operations and that three months from Judicial Council approval of this proposal until its effective date would be sufficient time for implementation. These comments were similar to those from the Superior Courts of Los Angeles and San Diego counties, both of which indicated that they agreed with the proposal.

The second commentator who did not state a position on the proposal – the Court of Appeal, Second Appellate District – indicated some concern that “there may be a conflict between Pen. Code section 1474(3) and the proposed provision requiring verification by the attorney under subdivision (a)(1) of rule 8.384, if “party” in 1474(3) is read to be limited to the defendant/petitioner.” Penal Code section 1474(3) states that “[t]he petition must be verified by the oath or affirmation of the party making the application.” At least one court has dismissed without prejudice a petition for habeas corpus verified by an attorney in which the critical allegations were made based on the attorney’s belief, concluding that such allegations were hearsay that could not support a prima facie case for relief (see *People v. McCarthy* (1986) 176 Cal.App.3d 593). However, in *In re Robbins* (1998) 18 Cal.4th 770, the Supreme Court declined to dismiss a habeas petition simply because it was verified by an attorney, stating:

Respondent observes that the petition is not verified by petitioner, but instead by his counsel, and asserts it should be dismissed for that reason. Penal Code section 1474 provides in subdivision 3 that a petition for writ of habeas corpus “must be verified by the oath or affirmation of the party making the application,” but it also states in its opening sentence that a petition may be “signed either by the party for whose relief it is intended, or by some person in his behalf.” (Italics added.) Because counsel may apply for habeas corpus relief on behalf of his or her client, it follows that when appointed counsel does so, verification by counsel satisfies the statute. (See *In re Davis* (1979) 25 Cal.3d 384, 389, 158 Cal.Rptr. 384, 599 P.2d 690.)

Based on this case law, verification of a habeas by attorney in and of itself should not raise concerns.

Committee Task

Staff has prepared a draft of the report that could be submitted to the Judicial Council on this proposal. This draft reflects the rules subcommittee's recommendation that the proposal be recommended for adoption as circulated for public comment. The committee's task with respect to this proposal is to:

- Discuss the comments received on the proposal and approve or modify the rules subcommittee's recommendations for responding to these comments, as reflected in the draft comment chart and draft report to the Judicial Council; and
- Discuss and approve or modify the rules subcommittee's recommendation to the advisory committee regarding adoption of the proposal, as reflected in the draft report to the Judicial Council.

Attachments

1. Draft of report to the Judicial Council
2. Draft comment chart
3. Invitation to comment



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 15, 2017

Title	Agenda Item Type
Appellate Procedure: Verification of Writ Petitions	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 8.380, 8.384, 8.452, 8.456, 8.495, 8.931, and 8.972	January 1, 2018
Recommended by	Date of Report
Appellate Advisory Committee Louis R. Mauro, Chair	May 26, 2017
	Contact
	Heather Anderson, Supervising Attorney, 415-865-7691 heather.anderson@jud.ca.gov

Executive Summary

To clarify that, under statute, all petitions for writs of mandate, certiorari, prohibition, and habeas corpus must be verified, the Appellate Advisory Committee recommends adding a provision indicating verification is required to all of the rules in title 8 relating to such petitions that do not already include such a provision.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2018, amend California Rules of Court, rules 8.380, 8.384, 8.452, 8.456, 8.495, 8.931, and 8.972 to add provisions indicating that writ petitions must be verified.

The amended rules are attached at pages 5–7.

Previous Council Action

The Judicial Council adopted rule 56, the predecessor to current rules 8.485-8.493, relating to writs of mandate, certiorari, and prohibition in the Supreme Court and Court of Appeal, effective July 1, 1943 as part of a comprehensive set of new Rules on Appeal which included rules on original proceedings. As adopted, rule 56 required that petitions seeking these writs be verified. The council has amended and renumbered this rule several time since its adoption, but the provision regarding verification of these writ petitions has remained substantively unchanged.

The 1943 Rules on Appeal also included the predecessors to rules 8.495 and 8.496, relating to writ proceedings to review cases from the Workers Compensation Appeals Board and the Public Utilities Commission, respectively. These rules did not include provisions addressing verification. Rule 8.495 has remained unchanged in this respect, but effective July 1 1981, the Judicial Council amended the predecessor to rule 8.496 to include, among other things, a provision indicating that a petition seeking review of a Public Utilities Commission decision must be verified. The report to the Council indicates that this amendment was intended to clarify the “somewhat obscure” statutory requirement that these petitions be verified.

The Judicial Council adopted rule 56.5, the predecessor to current rules 8.380-8.387, relating to habeas corpus proceedings, effective January 1, 1966. This rule generally required that such petitions be filed on a form approved by the Judicial Council. Although the rule did not refer to verification of the petition, the petition form approved by the Judicial has always indicated that verification is required.¹ Similarly, the Judicial Council approved petition forms for use in termination of parental rights cases, misdemeanor, infraction, or limited civil cases, and small claims cases all of which include a verification, even though the verification requirement is not mentioned in the relevant rules.²

Rationale for Recommendation

The statutes addressing petitions for writs of mandate, certiorari, prohibition, and habeas corpus all require that the petitions seeking these writs must be verified.³ Some of the California Rules of Court that address these writ petitions also include provisions that specifically require verification, reflecting these statutory requirements. For example, as noted above, rule 8.486, the general rule relating to petitions for writs of mandate, certiorari, and prohibition in the Supreme Court and Court of Appeal, provides in subdivision (a)(4) that “[t]he petition must be verified.”⁴

¹ The relevant Judicial Council form is *Petition for Writ of Habeas Corpus* (form MC-275).

² For rules 8.452 and 8.456, the relevant Judicial Council form is *Petition For Extraordinary Writ* (form JV-825). For rule 8.931, the relevant Judicial Council form is *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151). For rule 8.972, the relevant Judicial Council form is *Petition for Writ (Small Claims)* (form SC-300).

³ See Code Civ. Proc., §§ 1069, 1086, 1103; Pen. Code, § 1474.

⁴ See also, for example, rule 8.496, relating to review of Public Utilities Commission cases, rule 8.498, relating to review of Agricultural Labor Relations Board and Public Employment Relations Board cases, and rule 8.703,

However, there are some rules relating to writ petitions that do not specifically refer to a verification requirement. For example, rule 8.495, relating to review of Workers' Compensation Appeals Board cases, does not specifically refer to verification of the petition.

In *New York Knickerbockers v. Workers Compensation Appeals Board* (2015) 240 Cal.App.4th 1229, the petitioner contended that it did not have to file a verified petition challenging the Workers Compensation Appeals Board decision. The Court of Appeal in that case addressed whether the absence of a verification requirement in rule 8.495 implied an intent to override the statutory requirement for verifying the petition. The court concluded, given that the Judicial Council's authority to adopt rules is limited to rules that are not inconsistent with statute:

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.

To clarify the statutory requirement for verification of these writ petitions and eliminate any question about the intent of the applicable Rules of Court, the committee is recommending that any rule in Title 8 pertaining to these writs that does not already reflect the verification requirement be amended to do so.

Comments, Alternatives Considered, and Policy Implications

External comments

This proposal was circulated for public comment from February 27 to April 28, 2017 as part of the regular spring comment cycle. Eight individuals or organizations submitted comments on this proposal. Five commentators agreed with the proposal, two did not indicate a position on the proposal but provided comments, and one did not agree with the proposal. A chart with the full text of the comments received and the committee's responses is attached at pages X–XX.

The commentator who indicated that he did not agree with the proposal did not actually comment on the content of the proposed rule amendments. His comment focuses on concern about whether petitioners in habeas proceedings receive appropriate notice of court action on their petitions. Since the issue raised is outside the scope of the proposal, the committee will treat this as a new suggestion to be considered when the committee is reviewing proposals for the 2017-2018 committee annual agenda.

One of the commentators who did not state a position on the proposal indicated that the proposal would have no impact on court operations and that three months from Judicial Council approval of this proposal until its effective date would be sufficient time for implementation. These

relating to review of California Environmental Quality Act Cases under Public Resources Code sections 21168.6.6, 21178–21189.3, and 21189.50–21189.57.

comments were similar to those from other commentators who indicated that they agreed with the proposal.

The second commentator who did not state a position on the proposal indicated some concern that there may be a conflict between Penal Code section 1474(3) and the proposed provision requiring verification by the attorney under subdivision (a)(1) of rule 8.384, if “party” in 1474(3) is read to be limited to the defendant/petitioner. Penal Code section 1474(3), relating to petitions for writs of habeas corpus, states that “[t]he petition must be verified by the oath or affirmation of the party making the application.” At least one court has dismissed without prejudice a petition for habeas corpus verified by an attorney in which the critical allegations were made based on the attorney’s belief, concluding that such allegations were heresay that could not support a prima facie case for relief (see *People v. McCarthy* (1986) 176 Cal.App.3d 593). However, in *In re Robbins* (1998) 18 Cal.4th 770, the Supreme Court declined to dismiss a habeas petition simply because it was verified by an attorney, stating:

Because counsel may apply for habeas corpus relief on behalf of his or her client, it follows that when appointed counsel does so, verification by counsel satisfies the statute.”

Based on this, the committee concluded that there is no conflict between Penal Code section 1474(3) and the proposed rule amendments.

Alternatives

The committee considered not recommending any changes to these rules, but concluded that it would be helpful for all the rules relating to writ petitions to consistently alert petitioners to the verification requirement. The committee therefore concluded that it was appropriate to recommend these amendments for adoption.

Implementation Requirements, Costs, and Operational Impacts

No appreciable implementation requirements, costs, or operation impacts are anticipated.

Relevant Strategic Plan Goals and Operational Plan Objectives

These proposed amendments support Judicial Council Operational Plan Objective 5 to develop and implement effective trial and appellate case management practices.

Attachments and Links

1. Amended rules 8.380, 8.384, 8.452, 8.456, 8.495, 8.931, and 8.972, at pages 5–7
2. Chart of comments, at pages 8–15

Rules 8.380, 8.384, 8.452, 8.456, 8.495, 8.931, and 8.972 of the California Rules of Court are amended, effective January 1, 2018, to read:

1 **Title 8. Appellate Rules**

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

4
5 **Chapter 4. Habeas Corpus Appeals and Writs**

6
7 **Rule 8.380. Petition for writ of habeas corpus filed by petitioner not represented by an**
8 **attorney**

9
10 **(a) Required Judicial Council form**

11
12 A person who is not represented by an attorney and who petitions a reviewing court for
13 writ of habeas corpus seeking release from, or modification of the conditions of, custody of
14 a person confined in a state or local penal institution, hospital, narcotics treatment facility,
15 or other institution must file the petition on *Petition for Writ of Habeas Corpus* (form MC-
16 275). For good cause the court may permit the filing of a petition that is not on that form,
17 but the petition must be verified.

18
19 **(b)–(c) * * ***

20
21
22 **Rule 8.384. Petition for writ of habeas corpus filed by an attorney for a party**

23
24 **(a) Form and content of petition and memorandum**

25
26 (1) A petition for habeas corpus filed by an attorney need not be filed on *Petition for*
27 *Writ of Habeas Corpus* (form MC-275) but must contain the information requested
28 in that form and must be verified. All petitions filed by attorneys, whether or not on
29 form MC-275, must be either typewritten or produced on a computer, and must
30 comply with this rule and rules 8.40(b)–(c) relating to document covers and
31 8.204(a)(1)(A) relating to tables of contents and authorities. A petition that is not on
32 form MC-275 must also comply with the remainder of rule 8.204(a) and 8.204(b).

33
34 (2)–(3) * * *

35
36 **(b)–(d) * * ***

Rules 8.380, 8.384, 8.452, 8.456, 8.495, 8.931, and 8.972 of the California Rules of Court are amended, effective January 1, 2018, to read:

1 **Chapter 5. Juvenile Appeals and Writs**

2
3 **Article 3. Writs**

4
5 **Rule 8.452. Writ petition to review order setting hearing under Welfare and Institutions**
6 **Code section 366.26**

7
8 **(a) Petition**

9
10 (1) * * *

11
12 (2) The petition must be verified.

13
14 ~~(2)~~(3) * * *

15
16 **(b)–(i) * * ***

17
18 **Rule 8.456. Writ petition under Welfare and Institutions Code section 366.28 to review**
19 **order designating or denying specific placement of a dependent child after**
20 **termination of parental rights**

21
22 **(a) Petition**

23
24 (1) * * *

25
26 (2) The petition must be verified.

27
28 ~~(2)~~(3) * * *

29
30 **(b)–(i) * * ***

31
32 **Chapter 8. Miscellaneous Writs**

33
34 **Rule 8.495. Review of Workers' Compensation Appeals Board cases**

35
36 **(a) Petition**

37
38 (1)–(2) * * *

39
40 (3) The petition must be verified.

41
42 ~~(3)~~(4) * * *

Rules 8.380, 8.384, 8.452, 8.456, 8.495, 8.931, and 8.972 of the California Rules of Court are amended, effective January 1, 2018, to read:

1
2 **(b)–(c) * * ***

3
4
5 **Division 2. Rules Relating to the Superior Court Appellate Division**

6
7 **Chapter 6. Writ Proceedings**

8
9 **Rule 8.931. Petitions filed by persons not represented by an attorney**

10
11 **(a) Petitions**

12
13 A person who is not represented by an attorney and who petitions the appellate division for
14 a writ under this chapter must file the petition on *Petition for Writ (Misdemeanor,*
15 *Infraction, or Limited Civil Case)* (form APP-151). For good cause the court may permit
16 an unrepresented party to file a petition that is not on form APP-151, but the petition must
17 be verified.

18
19 **(b)–(d) * * ***

20
21 **Division 3. Rules Relating to Appeals and Writs in Small Claims Cases**

22
23 **Chapter 2. Writ Petitions**

24
25 **Rule 8.972. Petitions filed by persons not represented by an attorney**

26
27 **(a) Petitions**

28
29 (1) A person who is not represented by an attorney and who requests a writ under this
30 chapter must file the petition on a *Petition for Writ (Small Claims)* (form SC-300).
31 For good cause the court may permit an unrepresented party to file a petition that is
32 not on that form, but the petition must be verified.

33
34 (2)–(3) * * *

35
36 **(b)–(d) * * ***

ITC SPR17-03

Title of proposal (Appellate Procedure: Verification of Writ Petitions)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	California Appellate Court Clerks' Association by Daniel P. Potter, President	A	The Clerks Association agrees with amending these rules as proposed. Adopting a standardized provision requiring all writ petitions to have a verification would bring consistency to the California Rules of Court and would require very little on the part of the Judicial Branch to implement.	The committee notes the commentator's support for the proposal; no response required.
2.	Court of Appeal Second Appellate District by: Thomas Kallay, Managing Attorney	NI	There is some concern that there may be a conflict between Pen. Code section 1474(3) and the proposed provision requiring verification by the attorney under subdivision (a)(1) of rule 8.384, if "party" in 1474(3) is read to be limited to the defendant/petitioner.	The committee's understanding, based on discussion in <i>In re Robbins</i> (1998) 18 Cal.4th 770, is that an attorney may verify a petition for a writ of habeas corpus on behalf of his or her client.
3.	Albert DeLaIsla Principal Administrative Analyst IMPACT Team - Criminal Operations Orange County, CA	NI	No impact to operations. Will require communication to Judges and Legal Research. This would clarify that the requirement for verification is applicable to ALL petitions for writs of mandate, certiorari, prohibition, and habeas corpus. Per PC 1474 – The petition must be verified by the oath or affirmation of the party making the application. <ul style="list-style-type: none">• 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	The committee appreciates the commentator's input on these implementation questions; no response required.

ITC SPR17-03

Title of proposal (Appellate Procedure: Verification of Writ Petitions)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>management systems?</p> <p>Response: None</p> <ul style="list-style-type: none"> • Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? <p>Response: Yes.</p>	
4.	Curt Harris San Diego, CA	N	<p>Concerning the notification procedure of the Sacramento County Superior Court (and possibly other state lower courts), no written notification of a decision reached in, specifically, a writ of habeas corpus is required to be sent by the Court to the petitioner. An oversight of that magnitude can cause a petition to be denied for, possibly, invalid reasons due to lack of timely appeal.</p> <p>As habeas corpus deals solely with confinement issues, its requirement that the petitioner and, in theory, any other involved party must exercise due diligence on his or her own part to determine what the Court has decided in that case, the instructions that said party must either follow the writ’s progress online or must physically enter the courthouse to access court records is impossible to comply with. Since habeas corpus deals with a confined person, a prisoner, and even when that person is not physically confined in any penal institute but released on probation or parole, and since that, post-confinement punishment is still considered</p>	This comment raises issues that are beyond the scope of the amendments proposed in the invitation to comment. The committee will treat this as a suggestion for future consideration by the committee.

ITC SPR17-03

Title of proposal (Appellate Procedure: Verification of Writ Petitions)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>as actual confinement, habeas corpus is an appropriate avenue for redress.</p> <p>However, just as the prisoner who remains in custody, a parolee or probationer may still be unable to determine what progress the Court has made on his or her petition as that person may be unable to physically enter the Sacramento Superior Court, or, due to the type of conviction, may be barred from using the Internet entirely (a PC §290 registrant, for example); the failure of the Sacramento County Superior Court to afford a habeas corpus petitioner from the timely resolution of his or her writ due solely to the lack of any timely notification procedure not only impedes the prompt resolution of that specific matter, but does indeed thwart due process itself.</p> <p>Any untimely appeal to any state appellate court could be subject to misinterpretation due to confusion over the lower court's policies, and, if the appellate court has similar directives and policies, may further this injustice. Thus, any requirement by any California State court, be it Superior or Appellate, the requirement that a habeas corpus petitioner physically enter a courthouse, or access a court's website, or have unrestricted access to a telephone as the sole means of seeking information on a writ of habeas corpus handling, is inoperable. Any attempt by a state Appellate Court to modify any of the procedures it used to handle writs</p>	

ITC SPR17-03

Title of proposal (Appellate Procedure: Verification of Writ Petitions)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>without first attending to a lower court's notification procedures, is simply folly. The State must first offer unhindered and unimpeded access to its courts for those who file the actual petitions in them. Without that, there can be no improvement to any judicial procedure(s) and any of the state's courts.</p> <p>And, the method that the Court uses to inform the petitioner of its outcome must be unambiguous. At the moment the Sacramento Superior Court, at least, does not meet that standard. The following emails illustrate that fairly well. If a court officer did attempt to mail the results of a specific petition out via traditional postal service, in this instance it did not reach the intended recipient.</p> <p>It would appear that some attention needs be directed at the policies governing how a state court notifies writ petitioners of a writ's outcome.</p> <p>Email excerpts, Sacramento County Superior Court website:</p> <p>Sacramento Superior Court case #16HC00347</p> <p>On Tuesday, February 14, 2017, Chiamparino, Contessa <ChiampC@saccourt.ca.gov> wrote: We do not send outcomes for writs via mail or email. It is the responsibility of the petitioner to check the website for the outcome. The</p>	

ITC SPR17-03

Title of proposal (Appellate Procedure: Verification of Writ Petitions)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>information on the website is obtained from the same system that electronically reports the outcome to the Department of Justice, and is very reliable.</p> <p>You will not be able to print documents from criminal cases from the website. In order to receive copies of documents from criminal cases you would need to either request to review the file in person at the criminal records front counter located at the address listed below (there are pay per use copy machines available in the lobby where you can copy the documents), or you can mail your request, along with a check addressed to the Sacramento Superior Court. If the documents need to be certified, that will cost \$25. Copies are .50 per page.</p> <p>Tess Chiamparino Operations Manager, Criminal Division Sacramento Superior Court 720 9th Street Sacramento, CA 95814 Visit us on the web at www.saccourt.ca.gov</p> <p>On Friday, February 10, 2017, McKee, Leslie <MckeeL@saccourt.ca.gov<mailto:MckeeL@saccourt.ca.gov>> wrote: Good Morning,</p> <p>This matter was not on the record so there is no transcript to prepare. I'm not familiar with the</p>	

ITC SPR17-03**Title of proposal** (Appellate Procedure: Verification of Writ Petitions)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>process of writs so I can't even direct you to the right person.</p> <p>My apologies for not being more helpful.</p> <p>Leslie A. McKee, CSR 12810 Court Reporter, Dept. 13 Sacramento Superior Court x916 874 7263</p> <p>Good morning, Mr. Harris, Ms. McKee forwarded your request to me. I am the clerk for Judge Arguelles. This matter was “not on the record” meaning there was no live court proceeding and therefore no transcript to be prepared. Judge Arguelles made an order based on the filings and that order was mailed to you on October 26, 2016. Apparently, you did not receive this order so I have attached a copy. Thank you, Suzanne.</p> <p>Suzanne M. Slort Courtroom Clerk, Department 13 Sacramento Superior Court (916) 874-7786</p>	
5.	Orange County Bar Association by: Michael L. Baroni, President	A	No Comment	The committee notes the commentator’s support for the proposal; no response required.
6.	Superior Court Los Angeles	A	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	The committee notes the commentator’s support for the proposal and appreciates the commentator’s input on these implementation questions; no response required.

ITC SPR17-03

Title of proposal (Appellate Procedure: Verification of Writ Petitions)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>management systems, or modifying case management systems.</p> <p>Minimal staff training would be required.</p> <p>Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p> <p>Yes, the three month effective date is sufficient for implementation.</p>	
7.	Superior Court of Orange County, Appellate Division by Michael Porter	A	Looks good.	The committee notes the commentator’s support for the proposal; no response required.
8.	Superior Court of San Diego County by Michael Roddy, Executive Officer	A	<p>The advisory committee seeks comments from <i>courts</i> on the following cost and implementation matters:</p> <ul style="list-style-type: none"> • 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. Minimal implementation – if writ petition is not properly verified, the clerk would have to issue a deficiency notice and the petition could only be considered if the defect was cured. 	The committee notes the commentator’s support for the proposal and appreciates the commentator’s input on these implementation questions; no response required.

ITC SPR17-03**Title of proposal** (Appellate Procedure: Verification of Writ Petitions)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<ul style="list-style-type: none">• Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.	

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

INVITATION TO COMMENT SPR17-03

Title Appellate Procedure: Verification of Writ Petitions	Action Requested Review and submit comments by Friday, April 28
Proposed Rules, Forms, Standards, or Statutes Amend Cal. Rules of Court, rules 8.380, 8.384, 8.452, 8.456, 8.495, 8.931, and 8.972	Proposed Effective Date January 1, 2018
Proposed by Appellate Advisory Committee Hon. Louis Mauro, Chair	Contact Heather Anderson, 415-865-7691 heather.anderson@jud.ca.gov

Executive Summary and Origin

The Appellate Advisory Committee is proposing amendments to several rules relating to writ petitions to include provisions reflecting statutory requirements that these petitions be verified. This proposal is in response to a recent Court of Appeal opinion that noted the absence of such a provision in one of these rules.

Background

The statutes addressing petitions for writs of mandate, certiorari, prohibition, and habeas corpus all require that the petitions seeking these writs must be verified.¹ Some of the California Rules of Court that address these writ petitions also include provisions that specifically require verification, reflecting these statutory requirements. For example, rule 8.486, the general rule relating to petitions for writs of mandate, certiorari, and prohibition in the Supreme Court and Court of Appeal, provides in subdivision (a)(4) that “[t]he petition must be verified.”² However, there are some rules relating to writ petitions that do not specifically refer to a verification requirement. For example, rule 8.495, relating to review of Workers’ Compensation Appeals Board cases, does not specifically refer to verification of the petition.

¹ See Code Civ. Proc., §§ 1069, 1086, 1103; Pen. Code, § 1474.

² See also, for example, rule 8.496, relating to review of Public Utilities Commission cases, rule 8.498, relating to review of Agricultural Labor Relations Board and Public Employment Relations Board cases, and rule 8.703, relating to review of California Environmental Quality Act Cases under Public Resources Code sections 21168.6.6, 21178–21189.3, and 21189.50–21189.57.

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.

In *New York Knickerbockers v. Workers Compensation Appeals Board* (2015) 240 Cal.App.4th 1229, the Court of Appeal, Second Appellate District, discussed the absence of a provision addressing verification in rule 8.495.

The Proposal

To clarify that the requirement for verification is applicable to all petitions for writs of mandate, certiorari, prohibition, and habeas corpus, the committee proposes to add a provision regarding the verification requirement to all of the rules relating to such petitions in Title 8 that do not already include such a provision.

Alternatives Considered

The committee considered not recommending any changes to these rules, but concluded that it would be helpful for all the rules to consistently alert petitioners to the verification requirement.

Implementation Requirements, Costs, and Operational Impacts

No appreciable implementation requirements, costs, or operational impacts are anticipated.

Request for Specific Comments

The advisory committee 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

Proposed amendments to rules 8.380, 8.384, 8.452, 8.456, 8.495, 8.931, and 8.972

Rules 8.380, 8.384, 8.452, 8.456, 8.495, 8.931, and 8.972 of the California Rules of Court would be amended, effective January 1, 2018, to read:

Title 8. Appellate Rules

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

Chapter 4. Habeas Corpus Appeals and Writs

Rule 8.380. Petition for writ of habeas corpus filed by petitioner not represented by an attorney

(a) Required Judicial Council form

A person who is not represented by an attorney and who petitions a reviewing court for writ of habeas corpus seeking release from, or modification of the conditions of, custody of a person confined in a state or local penal institution, hospital, narcotics treatment facility, or other institution must file the petition on *Petition for Writ of Habeas Corpus* (form MC-275). For good cause the court may permit the filing of a petition that is not on that form, but the petition must be verified.

(b)–(c) * * *

Rule 8.384. Petition for writ of habeas corpus filed by an attorney for a party

(a) Form and content of petition and memorandum

(1) A petition for habeas corpus filed by an attorney need not be filed on *Petition for Writ of Habeas Corpus* (form MC-275) but must contain the information requested in that form and must be verified. All petitions filed by attorneys, whether or not on form MC-275, must be either typewritten or produced on a computer, and must comply with this rule and rules 8.40(b)–(c) relating to document covers and 8.204(a)(1)(A) relating to tables of contents and authorities. A petition that is not on form MC-275 must also comply with the remainder of rule 8.204(a) and 8.204(b).

(2)–(3) * * *

(b)–(d) * * *

1 Chapter 5. Juvenile Appeals and Writs

2
3 Article 3. Writs

4
5 Rule 8.452. Writ petition to review order setting hearing under Welfare and Institutions
6 Code section 366.26

7
8 (a) Petition

9
10 (1) * * *

11
12 (2) The petition must be verified.

13
14 ~~(2)~~(3) * * *

15
16 (b)–(i) * * *

17
18 Rule 8.456. Writ petition under Welfare and Institutions Code section 366.28 to review
19 order designating or denying specific placement of a dependent child after
20 termination of parental rights

21
22 (a) Petition

23
24 (1) * * *

25
26 (2) The petition must be verified.

27
28 ~~(2)~~(3) * * *

29
30 (b)–(i) * * *

31
32 Chapter 8. Miscellaneous Writs

33
34 Rule 8.495. Review of Workers’ Compensation Appeals Board cases

35
36 (a) Petition

37
38 (1)–(2) * * *

39
40 (3) The petition must be verified.

41
42 ~~(3)~~(4) * * *

1 (b)–(c) * * *

2
3
4 **Division 2. Rules Relating to the Superior Court Appellate Division**

5
6 **Chapter 6. Writ Proceedings**

7
8 **Rule 8.931. Petitions filed by persons not represented by an attorney**

9
10 **(a) Petitions**

11
12 A person who is not represented by an attorney and who petitions the appellate division for
13 a writ under this chapter must file the petition on *Petition for Writ (Misdemeanor,*
14 *Infraction, or Limited Civil Case)* (form APP-151). For good cause the court may permit
15 an unrepresented party to file a petition that is not on form APP-151, but the petition must
16 be verified.

17
18 (b)–(d) * * *

19
20 **Division 3. Rules Relating to Appeals and Writs in Small Claims Cases**

21
22 **Chapter 2. Writ Petitions**

23
24 **Rule 8.972. Petitions filed by persons not represented by an attorney**

25
26 **(a) Petitions**

27
28 (1) A person who is not represented by an attorney and who requests a writ under this
29 chapter must file the petition on a *Petition for Writ (Small Claims)* (form SC-300).
30 For good cause the court may permit an unrepresented party to file a petition that is
31 not on that form, but the petition must be verified.

32
33 (2)–(3) * * *

34
35 (b)–(d) * * *



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	Action Requested
May 25, 2017	Please read before June 1 committee meeting
To	Deadline
Members of the Appellate Advisory Committee	June 1, 2017
From	Contact
Heather Anderson, Supervising Attorney, Legal Services	Heather Anderson 415-865-7691 heather.anderson@jud.ca.gov
Subject	
Settled statements	

Introduction

As you may recall, earlier this spring, the Appellate Advisory Committee recommended circulating for public comment a proposal to amend rule 8.137, regarding settled statements, to address difficulties in the timely preparation of these statements, approve a new form APP-014 for appellants to use in preparing proposed statements, and revise the current form APP-003 for designating the record on appeal in unlimited civil cases to reflect these proposed changes. The Judicial Council's Rules and Projects Committee approved the recommendation for circulation and the proposal was circulated for public comment February 27 and April 28, 2017 as part of the regular spring comment cycle. (A copy of the invitation to comment is included in your meeting materials). This memo discusses background to this proposal and the public comments received on the proposal and the rules subcommittee's and Family and Juvenile Law Advisory Committee's recommendations regarding responding to these comments.

Background

Settled statements are one of the methods permitted under the Rules of Court to prepare a record of the trial court proceedings for an appeal. A settled statement is defined as a summary of the trial court proceedings prepared by the appellant and approved by the trial court (this contrasts

with an agreed statement, which is not reviewed by the trial court but is agreed to by the parties). Settled statements are typically used as the record of the oral proceedings in the trial court, replacing a reporter's transcript, but currently they can also be used to provide a record of the documents filed in the trial court, replacing a clerk's transcript or appendix.

Settled statements in unlimited civil cases

Rule 8.137 addresses the use of settled statements in appeals to the Court of Appeal in unlimited civil cases. This rule reflects a basic presumption that court reporter's transcripts will be available in these unlimited civil cases and a preference for use of these transcripts. Under subdivision (a) of this rule, an appellant must file a motion asking to use a settled statement:

(a) Motion to use settled statement

- (1) An appellant intending to proceed under this rule must serve and file in superior court with its notice designating the record on appeal under rule 8.121 a motion to use a settled statement instead of a reporter's transcript or both reporter's and clerk's transcripts.
- (2) The motion must be supported by a showing that:
 - (A) A substantial cost saving will result and the statement can be settled without significantly burdening opposing parties or the court;
 - (B) The designated oral proceedings were not reported or cannot be transcribed;
or
 - (C) The appellant is unable to pay for a reporter's transcript and funds are not available from the Transcript Reimbursement Fund (see rule 8.130(c)). A party proceeding in forma pauperis is deemed unable to pay for a transcript.

The rule also provides very little direction regarding how a proposed statement is to be prepared and how it is to be reviewed and approved by the trial court.

Given that court reporters were historically present to record the proceedings in unlimited civil cases and the hurdle of having to file a motion, in the past, settled statements were a little-used option in Court of Appeal proceedings. As noted by committee member Joseph Lane, however, times have changed. Court reporters are no longer present to record the proceedings in many civil cases and therefore more appellants are now trying to use the settled statements procedure. This has proved problematic, as appellants attempt to navigate the motion procedure and prepare proposed statements and trial court attempt to review and certify proposed statement. These problems are having an increasing impact on both litigants and the Courts of Appeal.

Statements on appeal in limited civil cases

A statement on appeal is the equivalent of a settled statement in a limited civil case appealed to the appellate division of the superior court. Unlike in unlimited civil cases, historically, court reporters were often not present to record the proceedings in limited civil cases. Statements on appeal were therefore commonly used to prepare the record in these cases and continue to be used currently.

Rule 8.837 addresses statements on appeal in limited civil cases. Unlike rule 8.137, this rule, adopted effective January 1, 2009, does not require the appellant to file a motion requesting to use a statement on appeal; the appellant may simply elect in his or her record designation to use a statement on appeal. Rule 8.837 also provides fairly detailed directions to appellants regarding the content of proposed statements on appeal and to trial courts about reviewing and approving (certifying) these statements. At the same time as it adopted this rule, the Judicial Council also approved *Proposed Statement on Appeal (Limited Civil Case)* (form APP-104) which provides a template to appellants for preparing a proposed statement.¹ Rule 8.837 generally requires self-represented appellants to use this form.

The proposal that was circulated

The proposal that was circulated for public comment, a copy of which is included in your materials, would have amended the rule on settled statement in unlimited civil cases, rule 8.137, to make it more like the rule for limited civil cases, rule 8.837. Among other things, these amendments would have eliminated the requirement to file a motion to use a settled statement if the oral proceedings were not reported by a court reporter or if the appellant was granted a fee waiver and would have added much more detail about the contents of proposed statements and the procedure for reviewing and finalizing the statements. In addition, the proposal included a new form designed to help appellants prepare their initial proposed statement – *Proposed Statement on Appeal (Unlimited Civil Case)* (form APP-014) – modeled on the existing appellate division form *Proposed Statement on Appeal (Limited Civil Case)* (form APP-104). The invitation to comment included a number of questions on which the committee sought specific input from commentators.

Public Comments

Twelve individuals or organizations submitted comments on this proposal. Four commentators indicated that they agreed with the proposal, six indicated that they agreed with the proposal if amended, and two did not indicate a position on the proposal overall. Many of the comments were extensive, with responses to the questions asked by the committee and suggestions for modifying the proposal. A chart with the full text of the comments received is attached. This

¹¹ You can access this form at: <http://www.courts.ca.gov/documents/app104.pdf>

chart is divided up by topic area so that all the comments addressing a particular question or issue can be seen together.

The Appellate Advisory Committee's rules subcommittee reviewed the public comments at its May 18 meeting. The attached comment chart includes the subcommittee's suggested responses to the public comments. The main issues raised by the comments, possible responses, and possible modifications to the proposal are discussed below, but there are other comments and responses discussed only in the draft comment chart, so **please review the draft comment chart carefully**. Please also pay particular attention to the draft responses that are shown using **yellow highlighting**. These are responses drafted by staff after the rules subcommittee meeting. Thus, although they are intended to reflect the rules subcommittee's recommendations, the text of these responses was not previously reviewed by the subcommittee.

Also attached are drafts of the proposed rule amendments and the forms showing the rules subcommittee's suggested modifications. The suggested changes to the rule amendments are shown using **yellow highlighting**, possible changes to APP-003 are shown using handwritten inserts and deletions, and possible changes to APP-014 are shown with shading.

Because, as discussed below, some of the comments addressed the use of proposed new form APP-014 in family law proceedings, input from the Family and Juvenile Law Advisory Committee was also sought on this form. That committee's recommendations are also discussed below.

Rule 8.137

The majority of the commentators who specifically addressed the proposed amendments to rule 8.137 expressed support for the concept of eliminating the requirement for filing a motion to use a settled statement when the proceedings were not reported by a court reporter or when the appellant has a fee waiver. There were three main substantive issues raised by the commentators.

Complexity of rule language

Two commentators – the Judicial Council Advisory Committee on Providing Access and Fairness (PAF) and the Court of Appeal, Second Appellate District – expressed concern about the complexity of the language used in rule 8.137. As discussed below, both of these commentators focused, in part, on the complexity caused by the option of having the settled statement serve not only as a record of the oral proceedings, but also, through attachments, as the record of the documents filed in the case. However, these commentators' concerns were broader than that. PAF suggested that the rule should be re-written in simpler language geared toward self-represented litigants and the Second District expressed general concern that proposed rule 8.137 is unnecessarily complicated.

As always, the goal is for the rules to be both accurate and easy to understand. The attached revised draft would reduce the rule's complexity somewhat by eliminating the following:

- The option of using a settled statement as the record of the documents filed in the case;
- The requirement to describe the proceedings to be included in the settled statement, and
- The requirement to summarize the trial court judgment.

The rules subcommittee discussed whether to work on further revisions to make this rule less complex and easier to understand. In thinking about this, the subcommittee considered the following:

- Overall, the California Rules of Court are not written with self-represented litigants as intended the target audience. Legal terminology is commonly used throughout the rules. If this rule were revised with the goal of gearing the language toward self-represented litigants, it would be inconsistent with the rest of the California Rules of Court. Rather than modifying the rules, the way that the council and its advisory committees have tried to help self-represented litigants navigate procedural requirements is through information sheets and resources on the self-help website.
- The proposed amendments to rule 8.137 are based in large part on the existing language of rule 8.837. This raises the question about whether it would be preferable to consider changes to similar provisions in both rules at the same time.
- If the committee wants to make changes to rule 8.137 beyond those that were circulated, depending on how extensive the possible revisions are, the proposal might need to be circulated for public comment again before being recommended for adoption by the council.

Ultimately, the rules subcommittee recommended that the committee not work on further simplification of rule 8.137 at this time. The subcommittee's view was that the substantive changes listed above will result in some simplification of the rule and that the committee could consider development of a proposal for further changes to both rule 8.137 and 8.837 at a later date. In addition, while not specifically discussed by the subcommittee, the committee could consider developing an information sheet regarding settled statements in the future as well. While there is a general information sheet on appeals to the court of appeal in civil cases – *Information on Appeal Procedures for Unlimited Civil Cases* (form APP-001) – it does not currently address the settled statement procedure.

Requirement that self-represented litigants use form APP-014

As circulated for public comment, the proposed amendments to rule 8.137 would require that a self-represented litigant use the new form that is part of this proposal – *Proposed Statement on Appeal (Unlimited Civil Case)* (form APP-014) – to file their proposed statement unless the court, for good cause, exempts them from this requirement. PAF and the Second District both

objected to this requirement. PAF generally objected to treating self-represented litigants differently from attorneys in this respect and expressed concern about imposing a new burden on self-represented litigants in the form of making a request to the court to be exempted from the requirement to use the form. The Second District suggested that the form is too complex for self-represented litigants to use and so its use should be optional.

The proposed requirement that self-represented litigant use the proposed new *Proposed Statement on Appeal (Unlimited Civil Case)* (form APP-014) is based on a similar requirement in existing rule 8.837, which, in turn, was based on the requirement in rule 8.830 that self-represented petitioners use the Judicial Council form when filing a petition for a writ of habeas corpus. The committee received comments on this topic when the proposal to adopt rule 8.837 and APP-104 were circulated for public comment in 2007. At that time, two courts – the superior courts of Los Angeles and San Diego Counties – and the Appellate Court Committee of the San Diego County Bar Association expressed support for the requirement and Public Council suggested that the proposal be modified to strongly urge, but not require the use of the Judicial Council form. The committee responded to Public Council’s 2007 comment as follows:

The committee believes that these rules appropriately recognize that self-represented litigants face special challenges in preparing proposed statements on appeal and believes that it is preferable to include a requirement, similar to that relating to petitions for writs of habeas corpus, that self-represented litigants use the Judicial Council form. The goal of this form is to assist self-represented litigants in preparing a proposed statement.

Currently, many self-represented litigants find it very difficult to prepare such proposed statements and courts, in turn, find it difficult to review proposed statements that do not contain necessary information. The committee’s intent is to make the process of preparing these statements easier for both litigants and the courts. As litigants and courts gain experience with this form, the committee would welcome suggestions for improving either the form or the rule.

In discussing these comments, the subcommittee considered, among other things:

- Whether it would be preferable to consider changes to the requirements in both rules 8.137 and 8.837 at the same time, or to consider proceeding with different language in rule 8.137.
- Whether modifying the proposal to eliminate this requirement might result in the proposal needing to be circulated for public comment again before being recommended for adoption by the council.

Ultimately, noting that there are differences in the length and complexity of limited and unlimited civil cases, the subcommittee decided to recommend that appellants in unlimited civil cases be urged, but not required, to use form APP-014. The subcommittee also recommended that courts be authorized to order the use of the form in individual cases. The subcommittee’s

view was that the issue of whether use of the form should be mandatory was clearly raised in the invitation to comment and thus this revision to the proposal is not one that requires recirculation.

Option for using settled statement as record of documents

The invitation to comment asked for input on the following question:

Rule 8.137 currently allows an appellant to use a settled statement as the record of the document filed in the trial court by attaching copies of the required documents to the statement. Should this option be eliminated given that appellants can use an appendix under rule 8.124 for this same purpose?

Five commentators directly responded to this question. Four of these commentators expressed support for eliminating this option and one did not support this. Three other commentators separately raised concerns about the complexities caused by this option.

Based on these comments, the subcommittee recommends revising the proposal to eliminate this option. Note that implementing this change requires modifications not only to rule 8.137, but also the form APP-003.

Form APP-003

In reviewing the proposal in light of the public comments, staff noticed that there is a change needed to form APP-003 to correspond with the proposed amendments to rule 8.137. As circulated for public comment, the proposed amendments to rule 8.137 require that the appellant designate the oral proceedings to be included in the settled statement. This is primarily so that, if the proceedings were recorded by a court reporter, the respondent may opt to pay for a reporter's transcript of the designated proceedings. Proposed new paragraph (b)(3)(C) uses language similar to that in rule 8.130, relating to designation of the proceedings to be included in a reporter's transcript. It also specifically references using form APP-003 to indicate whether certified reporters transcripts of any of the designated proceedings have been prepared.

To reflect this proposed rule provision, the subcommittee recommends adding a new section 6 on form APP-003 that provides a table for designating proceedings to be included in a settled statement. The subcommittee viewed this as a technical change to the form, bringing it into conformity with the proposed language of the rule, and thus not a change that would need not be circulated for public comment.

Proposed form APP-014

Helpfulness of the form

As you may recall, there was some question about whether the new *Proposed Statement on Appeal (Unlimited Civil Case)* (form APP-014) included in this proposal would be helpful to

litigants and the courts. Therefore, the invitation to comment specifically asked for input on this question. Five commentators responded directly to this inquiry and all indicated that the form would be helpful. In addition, two other commentators, while not directly responding to this inquiry, expressed agreement with the proposal as a whole without a, including this form. Based on this, the subcommittee recommends approval of this form, with the changes discussed below and in the comment chart. The changes are shown in shaded text on the attached revised draft form.

Summarizing vs. attaching judgment

The invitation to comment asked for input on the following question:

Should the form include the final section asking the appellant to summarize the final judgment, or should this section be replaced with a requirement to attach a copy of the judgment?

Five commentators directly responded to this question. Four of these commentators expressed support for replacing the section asking the appellant to summarize the judgment with a requirement to attach the judgment or order being appealed. Based on these comments, the subcommittee recommends revising the proposed form to make this change.

Single form vs. separate form for family and probate cases

Several commentators suggested that the proposed form needed to be modified before it could be used in family and probate appeals. Some of the suggested changes, such as changing the reference to “plaintiff” to “plaintiff/petitioner” and “defendant” to “defendant/respondent” seem simple and have been incorporated into the attached revised version of the form. Other changes, such as eliminating the reference to a trial, seemed like they could produce confusion in general civil cases. Staff consulted the staff to the Family and Juvenile Law Advisory Committee about these suggestions. Their view was that many changes would need to be made to the form, including changes beyond those identified by the commentators, to make the form truly useful in family proceedings. Overall, staff’s view was that it would probably be best to work on creating separate forms for family law and probate proceedings. The rules subcommittee, which met on May 18, agreed with this approach and recommended limiting proposed form APP-014 to general civil cases, which would exclude family and probate proceedings.

The issue of whether to develop a separate form for family law proceeding or try to modify proposed form APP-014 to make it workable in all unlimited civil appeals was also brought to the Family and Juvenile Law Advisory Committee (FJLAC), which met on May 25. FJLAC agreed with the idea of developing a separate form for family law proceedings. However, FJLAC’s view was that it would be preferable if the Appellate Advisory Committee delayed recommending adoption of APP-014, so that both forms could be considered for adoption at the same time. Factors that contributed to this recommendation included concern about whether

family law litigants would attempt to use APP-014 and whether that would be confusing. In addition, FJLAC members thought that if both forms (and perhaps a probate form as well) were part of a single recommendation, all of the forms could benefit from improvements in the form language that might arise from obtaining input from family law judges and practitioners and from the possible plain language review discussed below.

Plain language review

PAF recommended that proposed form APP-014 be reviewed by a professional plain-language translator. Staff is working to see if this can be done in time for the committee to consider possible revisions to the proposed form before it is presented to RUPRO. Note that, because this form is modeled in large part on form APP-104, implementing any changes to the form language suggested by such a translator would result in there being differences between portions of form APP-014 and form APP-104 that are intended to fulfill the same purpose.

Proposal timing/configuration

Both the FJLAC recommendation and the plain language review suggestion raise issues that the committee will need to consider about whether to move forward with this proposal, in whole or in part, at this time. Because the FJLAC met after the rules subcommittee, the subcommittee did not address these timing/configuration issues at its meeting. Options that the committee may want to consider in this regard include:

- Recommend adoption of the amendments to rule 8.137, the revisions to APP-003, and the approval of APP-014 effective January 1, 2018 and then work on possible plain language revisions to APP-014 and APP-104 and development of family and probate forms next year;
- Try to incorporate the plain language revisions into form APP-014 and recommend adoption this form, the amendments to rule 8.137, and the revisions to APP-003 for January 1, 2018; work on revisions to APP-104 and development of family and probate forms next year;
- Recommend adoption of the amendments to rule 8.137 and the revisions to APP-003 for January 1, 2018, but delay recommending adoption of APP-014, so that the plain language changes can be incorporated and all the forms can be presented for adoption at the same time next year with consistent language;
- Delay recommending adoption of the entire proposal, so that the final version of all forms are presented to the Judicial Council with the rule amendments.

Staff's view is that the third option – moving forward with the amendments to rule 8.137 and the revisions to APP-003, but delaying action on APP-014 – would be preferable. This approach would allow some parts of the proposal to move forward now, including eliminating the

requirement for filing a motion to use a settled statement when there was no reporter present, and also allow the committees to use additional input to develop better, consistent proposed statement forms without having to make iterative revisions to these forms.

Committee Task

The committee's task with respect to this proposal is to:

- Discuss the comments received on the proposal;
- Discuss and approve or modify the rules subcommittee's recommendations for responding to the comments, as reflected in the draft comment chart and draft revisions to the rule amendments and forms;
- Discuss the timing/configuration of this proposal, given the FJLAC recommendation and the potential plain language input on APP-014.

Attachments

1. Draft revisions to rule 8.137
2. Draft revisions to from APP-003
3. Draft revisions to proposed form APP-014
4. Draft comment chart
5. Invitation to comment

Rule 8.137 of the California Rules of Court would be amended, effective January 1, 2018, to read:

Title 8. Appellate Rules

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

Chapter 2. Civil Appeals

Article 2. Record on Appeal

Rule 8.137. Settled statement

(a) Description

A settled statement is a summary of the superior court proceedings that is approved by the superior court. An appellant may either elect under (b)(1) or move under (b)(2) to use a settled statement as the record of the oral proceedings in the superior court, instead of a reporter's transcript, and may move to use a settled statement as the record of the written documents from the superior court proceedings, instead of a clerk's transcript or appendix.

~~(a)~~(b) Motion to use When a settled statement may be used

(1) An appellant may elect in his or her notice designating the record on appeal under rule 8.121 to use a settled statement as the record of the oral proceedings in the superior court without filing a motion under (2) if:

(A) The designated oral proceedings in the superior court were not reported by a court reporter; or

(B) The appellant has an order waiving his or her court fees and costs.

~~(1)~~(2) An appellant intending to proceed under this rule for reasons other than those listed in (1) must serve and file in superior court with its notice designating the record on appeal under rule 8.121 a motion to use a settled statement instead of a reporter's transcript or both a reporter's and a clerk's transcripts.

~~(2)~~(A) The motion must be supported by a showing that:

~~(A)~~(i) A substantial cost saving will result and the statement can be settled without significantly burdening opposing parties or the court;

~~(B)~~(ii) The designated oral proceedings were not reported or cannot be transcribed; or

1 ~~(C)(iii)~~ Although the appellant does not have a fee waiver, he or she is unable
2 to pay for a reporter's transcript and funds are not available from the
3 Transcript Reimbursement Fund (see rule 8.130(c)). ~~A party proceeding~~
4 ~~in forma pauperis is deemed unable to pay for a transcript.~~

5
6 ~~(3)(B)~~ If the court denies the motion, the appellant must file a new notice designating
7 the record on appeal under rule 8.121 within 10 days after the superior court
8 clerk sends, or a party serves, the order of denial.

9
10 (3) An appellant's notice under (1) or motion under (2) must:

11
12 (A) Specify the date of each oral proceeding to be included in the settled statement;

13
14 ~~(B) Describe the proceedings specified under (A);~~

15
16 (B) Identify whether each proceeding designated under (A) was reported by a court
17 reporter and, if so, for each such proceeding:

18
19 (i) Provide the name of the court reporter, if known; and

20
21 (ii) Identify whether a certified transcript has previously been prepared by
22 checking the appropriate box on *Appellant's Notice Designating Record*
23 *on Appeal (Unlimited Civil Cases)* (form APP-003) or, if that form is not
24 used, placing an asterisk before that proceeding in the notice.

25
26 (4) If the designated oral proceedings in the superior court were reported by a court
27 reporter:

28
29 (A) Within 10 days after the appellant serves either a notice under (1) or a motion
30 under (2), the respondent may serve and file a notice indicating that he or she
31 is electing to provide a reporter's transcript in lieu of proceeding with a settled
32 statement. The respondent must also either:

33
34 (i) Deposit a certified transcript of all of the proceedings designated by the
35 appellant under (3) and any additional proceedings designated by the
36 respondent under rule 8.130(b)(3)(C); or

37
38 (ii) Serve and file a notice that the respondent is requesting preparation, at
39 the respondent's expense, of a reporter's transcript of all proceedings
40 designated by the appellant under (3) and any additional proceedings
41 designated by the respondent. This notice must be accompanied by either
42 the required deposit for the reporter's transcript under rule 8.130(b)(1) or

1 the reporter’s written waiver of the deposit in lieu of all or a portion of
2 the deposit under rule 8.130(b)(3)(A).

3
4 (B) If the respondent timely deposits the certified transcript as required under (i),
5 the appellant’s motion to use a settled statement will be dismissed. If the
6 respondent timely files the notice and makes the deposit or files the waiver as
7 provided under (ii), the appellant’s motion to use a settled statement will be
8 dismissed and the clerk must promptly send the reporter notice of the
9 designation and of the deposit, waiver, or both and notice to prepare the
10 transcript, as provided under rule 8.130(d).

11
12 **(b)(c) Time to file; contents of proposed statement**

13
14 (1) ~~Within 30 days after the superior court clerk sends, or a party serves, an order~~
15 ~~granting a motion to use~~ If the respondent does not file a notice under (b)(4)(A)
16 electing to provide a reporter’s transcript in lieu of proceeding with a settled
17 statement, the appellant must serve and file a proposed statement in superior court
18 within 30 days after filing its notice under (b)(1) or within 30 days after the superior
19 court clerk sends, or a party serves, an order granting a motion under (b)(2) a
20 condensed narrative of the oral proceedings that the appellant believes necessary for
21 the appeal. Subject to the court’s approval in settling the statement, the appellant
22 may present some or all of the evidence by question and answer.

23
24 (2) ~~Appellants who are not represented by an attorney must~~ are encouraged to file their
25 proposed statement on Proposed Statement on Appeal (Unlimited Civil Case) (form
26 APP-014). For good cause, the court may permit the filing of a statement that is not
27 on The court may order an appellant to use form APP-014.

28
29 **(d) Contents of proposed statement**

30
31 The proposed statement must ~~contain~~ contain:

32
33 (2)(1) Contain a statement of the points the appellant is raising on appeal. If the condensed
34 narrative under (2) covers only a portion of the oral proceedings, describes less than
35 all the testimony, the appellant must state the points to be raised on appeal; the
36 appeal is then limited to those the points identified in the statement unless the
37 reviewing court determines that the record permits the full consideration of another
38 point or, on motion, the reviewing court permits otherwise.

39
40 ~~(2) — A summary of the trial court’s rulings and judgment.~~

41
42 (2) Contain a condensed narrative of the oral proceedings that the appellant specified
43 under (b)(3).

1
2 (A) The condensed narrative must include a concise factual summary of the
3 evidence and the testimony of each witness relevant to the points that the
4 appellant states under (1) are being raised on appeal. Subject to the court's
5 approval in settling the statement, the appellant may present some or all of the
6 evidence by question and answer. Any evidence or portion of a proceeding not
7 included will be presumed to support the judgment or order appealed from.

8
9 (B) If one of the points that the appellant states will be raised on appeal is a
10 challenge to the giving, refusal, or modification of a jury instruction, the
11 condensed narrative must include any instructions submitted orally and not in
12 writing and must identify the party that requested the instruction and any
13 modification.

14
15 ~~(3)(4) An appellant intending to use a settled statement instead of both a reporter's and a~~
16 ~~clerk's transcripts must accompany the condensed narrative with copies of all items~~
17 ~~required by rule 8.122(b)(1), showing the dates required by rule 8.122(b)(2), and~~
18 ~~may accompany the condensed narrative with copies of any document includable in~~
19 ~~the clerk's transcript under rule 8.122(b)(3) and (4).~~

20
21 (3) Have attached to it a copy of the judgment or order being appealed.

22
23 **(e) Respondent's response to proposed statement**

24
25 (4)(1) Within 20 days after the appellant serves the condensed narrative proposed
26 statement, the respondent may serve and file either:

27
28 (A) Proposed amendments to the condensed narrative-proposed statement; or

29
30 (B) A notice indicating that he or she is electing to provide a reporter's transcript
31 in lieu of proceeding with a settled statement. The respondent must also either:

32
33 (i) Deposit a certified transcript of all the proceedings specified by the
34 appellant under (b)(3) and any additional proceedings designated by the
35 respondent under rule 8.130(b)(3)(C); or

36
37 (ii) Serve and file a notice that the respondent is requesting preparation, at
38 the respondent's expense, of a reporter's transcript of all proceedings
39 specified by the appellant under (b)(3) and any additional proceedings
40 designated by the respondent. This notice must be accompanied by either
41 the required deposit for the reporter's transcript under rule 8.130(b)(1) or
42 the reporter's written waiver of the deposit in lieu of all or a portion of
43 the deposit under rule 8.130(b)(3)(A).

1
2 ~~(5)(2)~~If the respondent serves and files The proposed statement and proposed amendments
3 under (1)(A), they may be accompanied by copies of any document includable in the
4 clerk's transcript under rule 8.122(b)(3) and (4).
5

6 **(e)(f) Settlement, preparation, and certification** **Review of appellant's proposed statement**
7

- 8 (1) ~~The clerk must set a date for a settlement hearing by the trial judge that is~~ No later
9 than 10 days after the respondent files proposed amendments or the time to do so
10 expires, whichever is earlier, and must give the parties at least five days' notice of
11 the hearing date a party may request a hearing to review and correct the proposed
12 statement. No hearing will be held unless ordered by the trial court judge, and the
13 judge will not ordinarily order a hearing unless there is a factual dispute about a
14 material aspect of the trial court proceedings.
15
- 16 (2) ~~At the hearing, the judge must settle the statement and fix the times within which the~~
17 ~~appellant must prepare, serve, and file it.~~
18
- 19 (2) The trial court judge may order that a transcript be prepared as the record of the oral
20 proceedings instead of correcting a proposed statement on appeal if the trial court
21 proceedings were reported by a court reporter, the trial court judge determines that
22 doing so would save court time and resources, and the court has a local rule
23 permitting such an order. The court will pay for any transcript ordered under this
24 subdivision.
25
- 26 (3) Except as provided in (2), if no hearing is ordered, no later than 10 days after the
27 time for requesting a hearing expires, the trial court judge must review the proposed
28 statement and any proposed amendments filed by the respondent and take one of the
29 following actions:
30
- 31 (A) If the proposed statement does not contain material required under (d), the trial
32 judge may order the appellant to prepare a new proposed statement. The order
33 must identify the additional material that must be included in the statement to
34 comply with (d) and the date by which the new proposed statement must be
35 served and filed. If the appellant does not serve and file a new proposed
36 statement as directed, the appellant will be deemed to be in default and rule
37 8.140 applies.
38
- 39 (B) If the trial judge does not issue an order under (A), the trial judge must either:
40
- 41 (i) Make any corrections or modifications to the statement necessary to
42 ensure that it is an accurate summary of the evidence and the testimony

1 of each witness relevant to the points that the appellant states under
2 (d)(1) are being raised on appeal; or

3
4 (ii) Identify the necessary corrections and modifications, and order the
5 appellant to prepare a statement incorporating these corrections and
6 modifications.

7
8 (4) If a hearing is ordered, the court must promptly set the hearing date and provide the
9 parties with at least 5 days' written notice of the hearing date. No later than 10 days
10 after the hearing, the trial court judge must either:

11
12 (A) Make any corrections or modifications to the statement necessary to ensure
13 that it is an accurate summary of the evidence and the testimony of each
14 witness relevant to the points that the appellant states under (d)(1) are being
15 raised on appeal; or

16
17 (B) Identify the necessary corrections and modifications and order the appellant to
18 prepare a statement incorporating these corrections and modifications.

19
20 (5) The trial court judge must not eliminate the appellant's specification of grounds of
21 appeal from the proposed statement.

22
23 **(g) Review of the corrected statement**

24
25 (1) If the trial court judge makes any corrections or modifications to the proposed
26 statement under (f), the clerk must serve copies of the corrected or modified
27 statement on the parties. If under (f) the trial court judge orders the appellant to
28 prepare a statement incorporating corrections and modifications, the appellant must
29 serve and file the corrected or modified statement within the time ordered by the
30 court. If the appellant does not serve and file a corrected or modified statement as
31 directed, the appellant will be deemed to be in default and rule 8.140 applies.

32
33 (2) Within 10 days after the corrected or modified statement is served on the parties, any
34 party may serve and file proposed modifications or objections to the statement.

35
36 (3) ~~If the respondent does not object to the prepared statement within five days after it is~~
37 ~~filed, it will be deemed properly prepared and the clerk must present it to the judge~~
38 ~~for certification. Within 10 days after the time for filing proposed modifications or~~
39 ~~objections under (2) has expired, the judge must review the corrected or modified~~
40 ~~statement and any proposed modifications or objections to the statement filed by the~~
41 ~~parties. The procedures in (2) or in (f)(3) apply if the judge determines that further~~
42 ~~corrections or modifications are necessary to ensure that the statement is an accurate~~

1 summary of the evidence and the testimony of each witness relevant to the points
2 that the appellant states under (d)(1) are being raised on appeal.

3
4 **(h) Certification of the statement on appeal**

5
6 (1) If the trial court judge does not order the preparation of a transcript under (f)(2) in
7 lieu of correcting the proposed statement or order any corrections or modifications to
8 the proposed statement under (f)(3), (f)(4), or (g)(3), the judge must promptly certify
9 the statement.

10
11 (4)(2) The parties² may serve and file a stipulation that the statement as originally served
12 under (c) or as ~~prepared~~ corrected or modified under (f)(3), (f)(4), or (g)(3) is correct.
13 Such a stipulation is equivalent to the judge's certification of the statement.

14
15 (3) Upon certification of the statement under (1) or receipt of a stipulation under (2), the
16 certified statement must immediately be transmitted to the clerk for filing of the
17 record under rule 8.150.
18
19

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)	SUPERIOR COURT CASE NUMBER:
RE: Appeal filed on (date):	COURT OF APPEAL CASE NUMBER (if known):

Notice: Please read form APP-001 before completing this form. This form must be filed in the superior court, not in the Court of Appeal.

1. RECORD OF THE DOCUMENTS FILED IN THE SUPERIOR COURT

I elect to use the following method of providing the Court of Appeal with a record of the documents filed in the superior court (check a, b, c, d, or e and fill in any required information):

- a. A clerk's transcript under rule 8.122. (You must check (1) or (2) and fill out the clerk's transcript section on page 2 of this form.)
 - (1) I will pay the superior court clerk for this transcript myself when I receive the clerk's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the Court of Appeal.
 - (2) I request that the clerk's transcript be provided to me at no cost because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record (check (a) or (b)):
 - (a) An order granting a waiver of court fees and costs under rule 3.50 et seq.; or
 - (b) An application for a waiver of court fees and costs under rule 3.50 et seq. use Request to Waive Court Fees (form FW-001) to prepare and file this application.
- b. An appendix under rule 8.124.
- c. The original superior court file under rule 8.128. (NOTE: Local rules in the Court of Appeal, First, Third, Fourth, and Fifth Appellate Districts, permit parties to stipulate to use the original superior court file instead of a clerk's transcript; you may select this option if your appeal is in one of these districts and all the parties have stipulated to use the original superior court file instead of a clerk's transcript in this case. Attach a copy of this stipulation.)
- d. An agreed statement under rule 8.134. (You must complete item 2b(2) below and attach to your agreed statement copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.134(a).)
- e. A settled statement under rule 8.137. (You must complete item 2b(3) below and attach to your proposed statement on appeal copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.137(b)(3).)

2. RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT

I elect to proceed: *(You must check a. or b. below) italics*

- a. WITHOUT a record of the oral proceedings in the superior court. I understand that without a record of the oral proceedings in the superior court, the Court of Appeal will not be able to consider what was said during those proceedings in determining whether an error was made in the superior court proceedings.

(you must check a. or b. below) } italics

CASE NAME:	SUPERIOR COURT CASE NUMBER:
------------	-----------------------------

2. b. WITH the following record of the oral proceedings in the superior court:
- (1) A reporter's transcript under rule 8.130. (You must fill out the reporter's transcript section on page 3 of this form.) I have (check all that apply):
- (a) Deposited the approximate cost of transcribing the designated proceedings with this notice as provided in rule 8.130(b)(1).
 - (b) Attached a copy of a Transcript Reimbursement Fund application filed under rule 8.130(c)(1).
 - (c) Attached the reporter's written waiver of a deposit for (check either (i) or (ii)):
 - (i) all of the designated proceedings.
 - (ii) part of the designated proceedings.
 - (d) Attached a certified transcript under rule 8.130(b)(3)(C).
- (2) An agreed statement. (Check and complete either (a) or (b) below.)
- (a) I have attached an agreed statement to this notice.
 - (b) All the parties have agreed in writing (stipulated) to try to agree on a statement. (You must attach a copy of this stipulation to this notice.) I understand that, within 40 days after I file the notice of appeal, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.
- (3) A settled statement under rule 8.137. (You must check (a), (b), or (c) below.)
- (a) The oral proceedings in the superior court were not reported by a court reporter.
 - (b) The oral proceedings in the superior court were reported by a court reporter, but the appellant has an order waiving his or her court fees and is unable to pay for a reporter's transcript.
 - (c) I am requesting to use a settled statement for reasons other than those listed in (a) or (b). (You must attach the motion required under rule 8.137(a) to this form.)

3. RECORD OF AN ADMINISTRATIVE PROCEEDING TO BE TRANSMITTED TO THE REVIEWING COURT

I request that the clerk transmit to the reviewing court under rule 8.123 the record of the following administrative proceeding that was admitted into evidence, refused, or lodged in the superior court (give the title and date or dates of the administrative proceeding):

Title of Administrative Proceeding	Date or Dates
------------------------------------	---------------

4. NOTICE DESIGNATING CLERK'S TRANSCRIPT

(You must complete this section if you checked item 1a. above indicating that you elect to use a clerk's transcript as the record of the documents filed in the superior court.)

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

Document Title and Description	Date of Filing
--------------------------------	----------------

- (1) Notice of appeal
- (2) Notice designating record on appeal (this document)
- (3) Judgment or order appealed from
- (4) Notice of entry of judgment (if any)
- (5) Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order (if any)
- (6) Ruling on one or more of the items listed in (5)
- (7) Register of actions or docket (if any)

CASE NAME:

SUPERIOR COURT CASE NUMBER:

4. NOTICE DESIGNATING CLERK'S TRANSCRIPT

- b. **Additional documents.** (If you want any documents from the superior court proceeding in addition to the items listed in 4a. above to be included in the clerk's transcript, you must identify those documents here.)

I request that the clerk include the following documents from the superior court proceeding in the transcript. (You must identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed.)

	Document Title and Description	Date of Filing
(8)		
(9)		
(10)		
(11)		
(12)		

See additional pages.

c. **Exhibits to be included in clerk's transcript**

I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the superior court (for each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit. Indicate whether or not the court admitted the exhibit into evidence):

	Exhibit Number	Description	Admitted (Yes/No)
(1)			
(2)			
(3)			
(4)			
(5)			

See additional pages.

5. NOTICE DESIGNATING REPORTER'S TRANSCRIPT

(You must complete this section if you checked item 2b(1) above indicating that you elect to use a reporter's transcript as the record of the oral proceedings in the superior court. Please remember that you must pay for the cost of preparing the reporter's transcript.)

- a. I request that the reporters provide (check one):

- (1) My copy of the reporter's transcript in paper format.
- (2) My copy of the reporter's transcript in computer-readable format.
- (3) My copy of the reporter's transcript in paper format and a second copy in computer-readable format.

(Code Civ. Proc., § 271; Cal. Rules of Court, rule 8.130(f)(4).)

(if known)

CASE NAME:	SUPERIOR COURT CASE NUMBER:
------------	-----------------------------

5. b. Proceedings

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

Date	Department	Full/Partial Day	Description	Reporter's Name	Prev. prepared?
(1)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(2)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(3)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(4)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(5)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(6)	<input type="checkbox"/> Additional proceeding are listed on Attachment 7 S.B. beginning with number 6.				<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
(7)					<input type="checkbox"/> Yes <input type="checkbox"/> No

7

c. The proceedings designated in 5b ^{or 6} include do not include all of the testimony in the superior court.

If the designated proceedings DO NOT include all of the testimony, state the points that you intend to raise on appeal (rule 8.130(a)(2) provides that your appeal will be limited to these points unless, on motion, the reviewing court permits otherwise).

Points are set forth Below on Attachment 7

New item 6 inserted here — see attached

Date:

(TYPE OR PRINT NAME)



(SIGNATURE OF APPELLANT OR ATTORNEY)

INSERT 6

6. NOTICE DESIGNATING PROCEEDINGS TO BE INCLUDED IN SETTLED STATEMENT

You must complete this section if you checked item 2b(3) above indicating you elect to use a settled statement. I request that the following proceedings in the superior court be included in the settled statement. (You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings—for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions—and, if applicable, the name of the court reporter who recorded the proceedings (if known) and whether a certified transcript of the designated proceeding was previously prepared.)

Date	Department	Full/Partial Day	Description	Reporter's Name	Prev. prepared?
(1)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(2)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(3)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(4)					<input type="checkbox"/> Yes <input type="checkbox"/> No

Additional proceedings are listed on Attachment(s) beginning with numbers (5).

Clerk stamps date here when form is filed.

Instructions

- This form is only for preparing a proposed statement on appeal in an **unlimited civil case**.
- This form can be attached to your *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003). If your proposed statement is not attached to that notice, it must be filed **no later than 30 days after you file that notice. Or, if you had to file a motion requesting to use a settled statement, within 30 days after you are served with an order granting that motion. If you have chosen to prepare a settled statement and do not file your proposed statement on time, the court may dismiss your appeal.**
- Fill out this form and attach a copy of the judgment or order you are appealing. Make a copy of the completed form and attachment for your records and for each of the other parties.
- Serve a copy of the completed form and attachment on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service from *Information Sheet for Proof of Service* (form APP-009-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, attachment, and proof of service on the other parties to the clerk's office for the same court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

Superior Court of California, County of

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

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

You fill in the Court of Appeal case number (if you know it):

Court of Appeal Case Number:**1 Your Information**

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

Name: _____

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

Street address: _____
Street City State ZipMailing address (*if different*): _____
Street or P.O. Box City State Zip

Phone: _____ E-mail: _____

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

Name: _____ State Bar number: _____

Firm Name: _____

Street address: _____
Street City State ZipMailing address (*if different*): _____
Street or P.O. Box City State Zip

Phone: _____ E-mail: _____

Fax: _____



2 Information About Your Appeal

- a. On (fill in the date): _____, I filed a notice of appeal in the trial court case identified in the box on page 1 of this form. A copy of the judgment or order I am appealing is attached.
- b. On (fill in the date): _____
 - I filed a notice designating the record on appeal, electing to use a settled statement.
 - The Court sent me The other party served me with an order granting my motion to use a settled statement.

Proposed Statement

3 Reasons for Your Appeal

Please note, in an appeal, the Court of Appeal can only review a case for whether certain kinds of legal errors were made:

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

The Court of Appeal:

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

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

- a. There was not substantial evidence that supported the attached judgment or order that I am appealing in this case. (Explain why you think the judgment or order was not supported by substantial evidence):

Check here if you need more space and attach a separate page or pages describing the lack of substantial evidence. You can use form MC-025 for this attachment. At the top of each page, write "APP-014, item 3.a."

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

(1) Describe the error: _____

Describe how you were harmed by the error: _____

Trial Court Case Name: _____

(2) Describe the error: _____

Describe how you were harmed by the error: _____

(3) Describe the error: _____

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

Check here if you need more space to describe these or other errors and attach a separate page or pages describing the errors. You can use form MC-025 for this attachment. At the top of each page, write "APP-014, item 3.b."

4 The Dispute

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

- Plaintiff/Petitioner (the party who filed the complaint/petition in the case).
- Defendant/Respondent (the party against whom the complaint/petition was filed).

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

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

Check here if you need more space to describe the dispute and attach a separate page or pages describing it. You can use form MC-025 for this attachment. At the top of each page, write "APP-014, Item 4."



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

a. Are you appealing an order by the trial court on a motion (request for the trial court to issue an order) made by you or another party in this case?

- Yes (fill out (1)-(5) below) No (skip to b.)

(1) Describe the motion that resulted in the order you are appealing: _____

(2) The motion was filed by the plaintiff/petitioner defendant/respondent on (date): _____

(3) There was was not a hearing on this motion.

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

(4) The trial court granted this motion. did not grant this motion.

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

Check here if you need more space to describe this motion and attach a separate page or pages describing this motion. You can use form MC-025 for this attachment. At the top of each page, write "APP-014, Item 5a."

b. Were any motions (requests for the trial court to issue an order) made in this case other than a motion described in a. that are relevant to the reasons you gave in 3 for this appeal?

- Yes (fill out c) No (skip to 6)

c. In the spaces below, describe any motions (requests for orders) that were made in the trial court that are relevant to the reasons you gave in 3 for this appeal. Write a complete and accurate summary of what was said at any hearings on these motions and indicate how the trial court ruled on these motions.

(1) First motion

(a) Describe the motion: _____

(b) The motion was filed by the plaintiff/petitioner defendant/respondent on (date): _____



Trial Court Case Name: _____

5

(1) (c) There was was not a hearing on this motion.

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

(d) The trial court granted denied this motion.

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

Check here if you need more space to describe this motion and attach a separate page or pages describing this motion. You can use form MC-025 for this attachment. At the top of each page, write "APP-014, Item 5c(1)."

(2) Second motion

(a) Describe the motion: _____

(b) The motion was filed by the plaintiff/petitioner defendant/respondent on (date): _____

(c) There was was not a hearing on this motion.

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

(d) The trial court granted denied this motion.

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

Check here if you need more space to describe this motion and attach a separate page or pages describing this motion. You can use form MC-025 for this attachment. At the top of each page, write "APP-014, item 5c(2)."



Trial Court Case Name: _____

5

- (3) Check here if any other motions were filed that are relevant to the reasons you gave in **3** for this appeal and attach a separate page describing each motion, identifying who made the motion and whether there was a hearing on the motion, summarizing what was said at the hearing on the motion, and indicating whether the trial court granted or denied the motion. You can use form MC-025 for this attachment. At the top of each page, write "APP-014, item 5c(3)."

6 Summary of Testimony and Other Evidence

a. Was there a trial in your case?

- No (skip to item **7**)
- Yes (check (1) or (2) and complete items b, c, d, and e)
- (1) Jury trial
- (2) Trial by judge only

b. Did you testify at the trial?

- No
- Yes (Write a complete and accurate summary of the testimony you gave that is relevant to the reasons you gave in **3** for this appeal. Include only what you actually said; do not comment or give your opinion about what was said. Please indicate whether any objections were made concerning your testimony or any exhibits you asked to present and whether these objections were sustained.):

- Check here if you need more space to summarize your testimony and attach a separate page or pages summarizing this testimony. You can use form MC-025 for this attachment. At the top of each page, write "APP-014, Item 6b."

c. Were there any other witnesses at the trial whose testimony is relevant to the reasons you gave in **3** for this appeal?

- No
- Yes (complete items (1), (2), and (3)):
- (1) The witness's name is (fill in the witness's name): _____
- (2) The witness testified on behalf of the (check one): plaintiff/petitioner defendant/respondent



Trial Court Case Name: _____

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

Check here if you need more space to summarize this witness’s testimony and attach a separate page or pages summarizing this testimony. *You can use form MC-025 for this attachment. At the top of each page, write “APP-014, Item 6c.”*

d. Check here if any other witnesses gave testimony at the trial that is relevant to the reasons you gave in 3 for this appeal. Attach a separate page or pages identifying each witness and who the witness testified for, summarizing what that witness said in his or her testimony that is relevant to the reasons you gave in 3 for this appeal, and indicating whether any objections were made concerning this witness’s testimony or any exhibits the witness asked to present and whether these objections were sustained. At the top of each page, write “APP-014, Item 6d.”

e. Summarize the evidence, other than testimony, that was given during the trial that is relevant to the reasons you gave in 3 for this appeal. *(Write a complete and accurate summary of the evidence given by both you and the respondent. Include only the evidence given; do not comment on or give your opinion about this evidence.)*: _____

Check here if you need more space to describe the evidence and attach a separate page or pages describing the evidence. *You can use form MC-025 for this attachment. At the top of each page, write “APP-014, Item 6e.”*



Trial Court Case Number:

Trial Court Case Name: _____

7 The Trial Court's Findings

Did the trial court make findings in the case?

No

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

Check here if you need more space to describe the trial court's findings and attach a separate page or pages describing these findings. You can use form MC-025 for this attachment. At the top of each page, write "APP-014, Item 7."

Remember to attach a copy of the judgment or order you are appealing.

Date: _____

Type or print your name



Signature of appellant or attorney

ITC SPR17-01

Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)

All comments are verbatim unless indicated by an asterisk (*).

List of All Commentators, Overall Positions on the Proposal, and General Comments

	Commentator	Position	Comment	Committee Response
1.	The Advisory Committee on Providing Access and Fairness By Hon. Kathleen E. O’Leary and Hon. Laurie D. Zelon, Co-chairs	AM	<p>The Advisory Committee on Providing Access and Fairness (PAF) is committed to addressing issues of access to the courts and fairness in the court system. An important aspect of PAF’s work is making court processes more fair, understandable, and accessible to those without attorneys. SPR17-01 attempts to make the settled statements procedure less burdensome for litigants in unlimited civil cases. PAF will support SPR17-01 if it is modified to better address the needs of self-represented litigants. PAF would like to work closely with the Appellate Advisory Committee to address the concerns and recommendations outlined below.</p> <p>See additional comments below.</p> <p>Thank you for considering these recommendations. PAF looks forward to the opportunity to work with the Appellate Advisory Committee on these recommendations</p>	
2.	California Appellate Court Clerks Association by Daniel P. Potter, President San Jose, CA	A	<p><i>Does the proposal appropriately address the stated purpose?</i></p> <p>Yes. By including settled statement as part of the designation, eliminating the need to motion the trial court to proceed by way of settled statement, and revising/creating forms for litigants, the whole process is being simplified to reduce delays.</p> <p>See additional comments below.</p>	

ITC SPR17-01**Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)**

All comments are verbatim unless indicated by an asterisk (*).

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Committee Response
3.	Court of Appeal, 2nd Appellate District By Thomas Kalay Managing Attorney	NI	<i>See additional comments below.</i>	
4.	Family Violence Appellate Project by Erin Smith San Francisco	AM	<i>Does the proposal appropriately address the stated purpose?</i> Yes <i>See additional comments below.</i>	
5.	Orange County Bar Association by Michael L. Baroni	A	No specific comment	The committee notes the commentator's support for the proposal; no response required.
6.	San Diego County Bar Association By Michael Pulos	NI	The Appellate Practice Section of the San Diego County Bar Association lauds the efforts of the Appellate Advisory Committee in amending rule 8.137 to simplify the process for obtaining a Settled Statement on Appeal. The Section offers the following observations: <i>See additional comments below.</i>	
7.	State Bar of California, Litigation Section Committee on Appellate Courts by Paula Mitchell	A	Q: Does the proposal appropriately address the stated purpose? A: Yes <i>See additional comments below.</i>	
8.	State Bar of California Standing Committee on the Delivery	AM	<i>Does the proposal appropriately address the stated purpose?</i>	

ITC SPR17-01**Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)**

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List of All Commentators, Overall Positions on the Proposal, and General Comments

	Commentator	Position	Comment	Committee Response
	of Legal Services by Sharon Djemal		Yes. See additional comments below.	
9.	Superior Court of Los Angeles County	AM	<i>Does the proposal appropriately address the stated purpose?</i> Yes. The proposal appropriately addresses the stated purpose. See additional comments below.	
10.	Superior Court of San Diego By Mike Roddy	A	<i>No specific comment</i>	The committee notes the commentator's support for the proposal; no response required.
11.	Superior Court of Orange County by Civil and Probate Operations Managers	AM	<i>See additional comments below.</i>	
12.	TCPJAC/CEAC Joint Rules Subcommittee (JRS), on behalf of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC).	AM	<i>See additional comments below.</i>	

ITC SPR17-01

Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)

All comments are verbatim unless indicated by an asterisk (*).

Rule 8.137 – General		
Commentator	Comment	Committee Response
The Advisory Committee on Providing Access and Fairness By Hon. Kathleen E. O’Leary and Hon. Laurie D. Zelon, Co-chairs	California Rule of Court 8.137 should be written in Plain Language (also known as “Plain English”). As currently written, the rule of court contains complicated legal terminology that would be difficult for the average non-attorney to understand. Self-represented litigants are expected to understand and be bound by this rule of court. The rule, therefore, should be written in a way that the average person could easily understand.	<p>The committee’s revised proposal would reduce the complexity of rule 8.137 by eliminating the following:</p> <ul style="list-style-type: none"> • The option of using a settled statement as the record of the documents filed in the case; • The requirement to describe the proceedings to be included in the settled statement, and • The requirement to summarize the trial court judgment. <p>While the committee supports the goal of making the rules as clear and simple as possible, the committee declined to attempt to re-write this rule in “Plain Language.” Overall, the California Rules of Court are not written in that way. Legal terminology is commonly used throughout the rules. Re-writing this rule to be in “Plain Language” would result in this rule being inconsistent with the remainder of the Rules of Court.</p> <p>Rather than modifying the rule text as suggested by the commentator, the committee will consider whether to develop an information sheet to assist self-represented litigants in preparing proposed settled statements.</p>
California Appellate Court Clerks Association by Daniel P. Potter, President San Jose,CA	The Clerks Association agrees with amending rule 8.137. It will make the procedure of obtaining a settled statement easier for self-represented litigants, will reduce delay and provide the court with a more adequate record to review.	The committee notes the commentator’s support for the proposal; no response required.
Family Violence Appellate Project by Erin Smith San Francisco	Recommendation: FVAP supports the proposed rule change, which aims to make the settled statements procedure in unlimited civil cases less burdensome.	The committee notes the commentator’s support for the proposal; no response required.

ITC SPR17-01

Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)

All comments are verbatim unless indicated by an asterisk (*).

Rule 8.137 – General		
Commentator	Comment	Committee Response
Court of Appeal, 2nd Appellate District By Thomas Kalay Managing Attorney	There is also a concern that proposed rule 8.137 is unnecessarily complicated. As an illustration, consider subdivision (b)(3)(B) [“Describe the proceedings specified under (A)”]. Once the date of the proceeding has been identified, and it has been ascertained that it was reported, there is no need to “describe” what happened. A self-represented litigant is bound to be baffled by this requirement which any two lawyers are likely to interpret differently.	Based on this comment, the committee has revised the proposal to eliminate proposed subdivision (b)(3)(B) from the amendments to rule 8.137. Please note, however, that this same information is currently requested on form APP-003 when designating a reporter’s transcript and, under the committee’s revised proposal, this information would be requested on the new portion of form APP-003 to be used for designating the proceedings to be included in a settled statement. The form includes examples of what type of description is being requested.
State Bar of California, Litigation Section Committee on Appellate Courts by Paula Mitchell	Our Recommendation: The Committee on Appellate Courts supports the proposed rule change, which aims to make the settled statements procedure in unlimited civil cases less burdensome.	The committee notes the commentator’s support for the proposal; no response required.

Rule 8.137 – Requirement that self-represented litigants use APP-014		
Commentator	Comment	Committee Response
The Advisory Committee on Providing Access and Fairness By Hon. Kathleen E. O’Leary and Hon. Laurie D. Zelon, Co-chairs	Requiring That Self-Represented Litigants Use Form APP-014. Under SPR17-01, self-represented litigants would be required to use proposed form APP-014. Use of the form would be optional, however, for litigants with attorneys. This appears to unfairly discriminate against self-represented litigants. PAF understands that self-represented litigants are more likely to have a difficult time drafting legally sufficient proposed statements on appeal. PAF also understands that APP-014 is designed to make it easier for litigants to draft these important	Based on this and the comments of the Court of Appeal, Second Appellate District, the committee revised the proposal to eliminate the requirement that self-represented litigants use form APP-014. Instead, the rule would encourage appellants to use this form and authorize courts to order its use in specific cases.

ITC SPR17-01**Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)**

All comments are verbatim unless indicated by an asterisk (*).

Rule 8.137 – Requirement that self-represented litigants use APP-014		
Commentator	Comment	Committee Response
	<p>statements. PAF does not, however, see sufficient reason for denying self-represented litigants the same flexibility afforded to litigants with attorneys.</p> <p>Finally, the proposal suggests that for good cause, the court may permit a self-represented litigant to file a proposed statement of appeal that is not on form APP-014. It is unclear, however, what this process would look like. Would the self-represented litigant make a specific motion to the court? Would the court determine good cause on its own motion? What factors would the court use in determining good cause? Neither Rule 8.137 nor APP-014 explain how this process would operate. This may unintentionally create a new and burdensome process for self-represented litigants. Litigants who have attorneys would not face the same burden.</p> <p>For all of the reasons stated above, PAF would prefer that APP-014 be either a required form for all litigants or an optional form for all litigants.</p>	
<p>Court of Appeal, 2nd Appellate District By Thomas Kalay Managing Attorney</p>	<p>There is a concern that Form APP-104 is far too complicated for a self-represented litigant. For that reason, use of this form by a self-represented litigant should be only at the option of such a litigant. This would require an amendment of subdivision (c)(2).</p>	<p>Please see the response to the comments of the Advisory Committee on Providing Access and Fairness above.</p>

ITC SPR17-01

Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)

All comments are verbatim unless indicated by an asterisk (*).

Rule 8.137 - Should the option to use the settled statement to provide a record of the documents in the case be eliminated given that appellants can use an appendix under rule 8.124 for this same purpose?		
Commentator	Comment	Committee Response
The Advisory Committee on Providing Access and Fairness By Hon. Kathleen E. O’Leary and Hon. Laurie D. Zelon, Co-chairs	<p>Combining Complicated Processes Under SPR17-01, the clerk’s transcript and the appellant’s appendix processes are combined into the settled statement process. Combining these processes makes California Rule of Court 8.137 long, complex, and intimidating to read. Proposed form APP-014 has also become a very long form as a result of combining these processes. Lengthy, complex, or intimidating rules or forms are particularly problematic for self-represented litigants.</p> <p>PAF asks that the Appellate Advisory Committee explore whether there is an alternative to combining the above-mentioned processes. If the Committee determines that the processes must be combined, then PAF asks that the Committee explore how to revise Rule 8.137 and form APP-014 so that they are shorter and simpler to understand.</p>	Based on this and other comments, the committee has revised its proposal to include amendments to rule 8.137 and revisions to form APP-003 and proposed form APP-014 eliminating the option to use the settled statement as a record of the documents filed in the case.
California Appellate Court Clerks Association by Daniel P. Potter, President San Jose, CA	Yes. The option to attach documents to the settled statement should be eliminated as these documents should be included in an appendix under CRC, Rule 8.124.	Please see the response to the comments of the Advisory Committee on Providing Access and Fairness above.
Court of Appeal, 2nd Appellate District By Thomas Kalay Managing Attorney	Unfortunately, proposed rule 8.137 also departs more than occasionally from plain English. As an illustration, it takes a trained appellate specialist and several readings to parse out all that is required by subdivision (b)(4). It would be more comprehensible if the rule would simply list the documents that are otherwise required in the clerk’s transcript by subdivision (b)(1) of rule 8.122. Subdivision (b)(4) states that these documents must “accompany” the condensed narrative, leaving it open just what “accompany” means, rather than stating in	Please see the response to the comments of the Advisory Committee on Providing Access and Fairness above.

ITC SPR17-01**Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)**

All comments are verbatim unless indicated by an asterisk (*).

Rule 8.137 - Should the option to use the settled statement to provide a record of the documents in the case be eliminated given that appellants can use an appendix under rule 8.124 for this same purpose?		
Commentator	Comment	Committee Response
	simple English that these documents must be submitted.	
Family Violence Appellate Project by Erin Smith San Francisco	Yes, it adds additional work that may not be necessary due to the use of the appendix.	Please see the response to the comments of the Advisory Committee on Providing Access and Fairness above.
Superior Court of Orange County by Civil and Probate Operations Managers	Furthermore, we support eliminating the option that allows an appellant to use a settled statement as the record of the documents filed in the trial court by attaching copies of the required documents to the statement given that appellants can use an appendix for the same purpose and because this option is rarely used by appellants.	Please see the response to the comments of the Advisory Committee on Providing Access and Fairness above.
State Bar of California, Litigation Section Committee on Appellate Courts by Paula Mitchell	Yes, it adds additional work that may not be necessary due to the use of the appendix.	Please see the response to the comments of the Advisory Committee on Providing Access and Fairness above.
State Bar of California Standing Committee on the Delivery of Legal Services by Sharon Djemal	No.	Please see the response to the comments of the Advisory Committee on Providing Access and Fairness above.
San Diego County Bar Association By Michael Pulos	Proposed Settled Statements; rule 8.137(a), (b)(2), and (d)(4) - When a settled statement may be used. Amended rule 8.137(b)(2) provides that an appellant who intends to proceed under this rule for reasons other than those listed in (1) must serve and file in the superior court with its notice designating the record on appeal under rule 8.121 a	Please see the response to the comments of the Advisory Committee on Providing Access and Fairness above.

ITC SPR17-01**Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)**

All comments are verbatim unless indicated by an asterisk (*).

Rule 8.137 - Should the option to use the settled statement to provide a record of the documents in the case be eliminated given that appellants can use an appendix under rule 8.124 for this same purpose?		
Commentator	Comment	Committee Response
	<p>motion to use a settled statement instead of a reporter's transcript or both a reporter's and clerk's transcripts. We have two comments:</p> <p>(a) The proposed rules would permit the use of a settled statement of superior court proceedings in place of not just the oral proceedings in a reporter's transcript but also of the written documents that normally would appear in a clerk's transcript. We suggest permitting the use of settled statements as a substitute for the clerk's transcript or appendix only in cases of lost or otherwise unavailable documents. This is because the use of a settled statement in place of clerk's transcripts would be, in many cases, inadequate—especially where the actual written document is otherwise available. For example, in an appeal that challenges a judgment on the pleadings or a dismissal without leave to amend following the sustaining of a demurrer, a mere summary of the complaint—in lieu of the complaint itself—would be a poor substitute. Simply put, the rules should not permit for the use of a settled statement in the absence of some showing that the document is unavailable. Accordingly, we recommend adding to the rule a provision that would narrow the use of settled statements as substitutes for the clerk's transcripts and appendices. It is particularly important that the rule include any limitation on such use of settled statements in order to assist courts in ruling on motions to use settled statements as records on appeal. . .</p>	

ITC SPR17-01

Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)

All comments are verbatim unless indicated by an asterisk (*).

Rule 8.137 – Other suggested changes		
Commentator	Comment	Committee Response
Family Violence Appellate Project by Erin Smith San Francisco	[M]any family law and probate matters that result in appealable orders do not have “judgments” issued by the trial court. This is acknowledged by proposed Rule 8.137(d)(3)(A)’s use of the phrase “judgment or order appealed from,” and in several places on proposed APP-014. See also Probate Code section 1300 et seq. (listing numerous Probate Court orders that are immediately appealable). Accordingly, we would suggest amending the language in proposed Rule of Court 8.137(d)(2) as follows: “A summary of the trial court’s order and/or judgment.” Similarly, we would suggest amending APP-014, question 9 to be titled, “The Trial Court’s Final Judgment or Order; The trial court issued the following final judgment or order in this case.”	Based on other comments received, the committee has revised the proposal to eliminate the requirement that the appellant summarize the judgment or order being appealed and replaced it with a requirement that a copy of the judgment or order be attached to the appellant’s proposed statement.
San Diego County Bar Association By Michael Pulos	Proposed Settled Statements; rule 8.137(f) – Review of appellant’s proposed statement. In rule 8.137(f)(3)(A), litigants who appeal are informed that if the proposed statement omits required material, the trial judge may order appellant to prepare a new proposed statement, identifying the additional material to be included and the date by which the new proposed statement must be served and filed. It goes on to state that if appellant does not serve and file a new proposed statement as directed, rule 8.140 applies. The APS recommends inserting a phrase in the last sentence of that subparagraph, explaining that “appellant will be deemed to be in default and,” after the word “directed,” and before “rule 8.140 applies.” The amended last sentence would read, “If the appellant does not serve and file a new proposed statement as directed, appellant will be deemed to be in default and rule 8.140 applies.” This suggestion is offered because many self-represented litigants may have difficulty navigating the rules of	The committee has revised the proposal to include the language suggested by the commentator in both subdivisions (f)(3)(A) and (g)(1) of rule 8.137.

ITC SPR17-01**Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)**

All comments are verbatim unless indicated by an asterisk (*).

Rule 8.137 – Other suggested changes		
Commentator	Comment	Committee Response
	court and may not immediately appreciate the dire consequences of failing to submit an amended settled statement.	
State Bar of California, Litigation Section Committee on Appellate Courts by Paula Mitchell	[M]any family law and Probate matters that result in appealable orders do not have “judgments” issued by the trial court. This is acknowledged by proposed Rule 8.137(d)(3)(A)’s use of the phrase “judgment or order appealed from,” and in several places on proposed APP-014. See also Probate Code section 1300 et seq. (listing numerous Probate Court orders that are immediately appealable). Accordingly, we would suggest amending the language in proposed Rule of Court 8.137(d)(2) as follows: “A summary of the trial court’s order and/or judgment.”	Please see the response to the comments of the Family Violence Project above.

Form APP-003		
Commentator	Comment	Committee Response
The Advisory Committee on Providing Access and Fairness By Hon. Kathleen E. O’Leary and Hon. Laurie D. Zelon, Co-chairs	<ul style="list-style-type: none"> PAF’s understanding is that litigants, including those who are self-represented, will file proposed form APP-014 along with revised form APP-003. Presently, form APP-003 and its revisions include complicated legal terminology and appears to be written at a high-grade level. PAF recommends that form APP-003 be put onto the Judicial Council’s Plain Language template and receive professional Plain Language translation. Again, these steps will improve the likelihood that the average person can understand the form. PAF understands that revised form APP-003 and proposed form APP-014 would be used by self-represented litigants 	The commentator is correct that form APP-003 is not currently in plain language format. Revising the form to be in that format is beyond the scope of this proposal. The committee will treat this as a new suggestion and will consider it when it develops its annual agenda for the next committee year.

ITC SPR17-01**Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)**

All comments are verbatim unless indicated by an asterisk (*).

Form APP-003		
Commentator	Comment	Committee Response
	<p>as well as lawyers. PAF agrees that it is important that the forms be understandable and user-friendly for both self-represented litigants as well as lawyers. PAF would recommend, however, that the Judicial Council prioritize the self-represented litigant's ability to understand and successfully use these forms. This ensures that everyone, from the inexperienced layperson to the sophisticated attorney, has adequate opportunity to understand and successfully complete the forms.</p>	
<p>California Appellate Court Clerks Association by Daniel P. Potter, President San Jose, CA</p>	<p>Revisions to form APP-003 should include the following:</p> <ul style="list-style-type: none"> • In section 1 c delete the Fifth Appellate District as it has repealed its local rule permitting the use of the superior court file. (see enclosed) • In section 2b (3)(a) correct the spelling of "proceedings" (see enclosed). • In section 5b add the words "or settled statement" to the first sentence. (see enclosed) 	<p>The committee has revised the proposal to incorporate this suggested change.</p> <p>The committee has revised the proposal to incorporate this suggested change.</p> <p>Based on other comments, the committee has revised its proposal to include amendments to rule 8.137 to eliminate the option of using a settled statements in lieu of a clerk's transcript or appendix. The committee therefore declines to recommend this suggested change.</p>
<p>State Bar of California Standing Committee on the Delivery of Legal Services by Sharon Djemal</p>	<p>Suggestions to Improve form APP-003</p> <ul style="list-style-type: none"> • Page 1, item 2. (Record of Oral Proceedings in Superior Court)" - add "(You must check a. or b. below)" after "I elect to proceed:" • Page 2, item 2.b. - after the prompt add: "(You must check (1), (2), or (3) below.)" • Make proposed form APP-003 (Appellant's Notice 	<p>The committee has revised the proposal to incorporate this suggested change.</p> <p>The committee has revised the proposal to incorporate this suggested change.</p> <p>Please see the response to the comments of the Advisory</p>

ITC SPR17-01**Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)**

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Form APP-003		
Commentator	Comment	Committee Response
	Designating Record on Appeal (Unlimited Civil Case)) look more akin to proposed form APP-103 (Appellant's Notice Designating Record on Appeal (Limited Civil Case). Proposed form APP-103, from SPR-17-04, is much easier to read and formatting is more clear.	Committee on Providing Access and Fairness above. APP-003 is not currently in plain language format. Revising the form to be in that format is beyond the scope of this proposal. The committee will treat this as a new suggestion and will consider it when it develops its annual agenda for the next committee year.

Form APP-014 - Would proposed form APP-014 be helpful to litigants and/or trial courts?		
Commentator	Comment	Committee Response
California Appellate Court Clerks Association by Daniel P. Potter, President San Jose,CA	Yes. A standardized Judicial Council form would be helpful to both litigants and the trial courts. A standardized form will be easier for the trial courts to review and hopefully help to keep pro se litigants on point.	The committee appreciates this input.
Family Violence Appellate Project by Erin Smith San Francisco	Yes, it would focus litigants on the requirements of a settled statement and provide guidance to self-represented litigants. The use of the settled statement is difficult for self-represented litigants to navigate and the form would assist moving the process through the trial court. We believe the form would overall be helpful to self-represented litigants in navigating the settled statement process	The committee appreciates this input.
State Bar of California, Litigation Section Committee on Appellate Courts by Paula Mitchell	Yes, it would focus litigants on the requirements of a settled statement and provide guidance to self-represented litigants. The use of the settled statement is difficult for self-represented litigants to navigate and the form would assist moving the	The committee appreciates this input.

ITC SPR17-01**Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)**

All comments are verbatim unless indicated by an asterisk (*).

Form APP-014 - Would proposed form APP-014 be helpful to litigants and/or trial courts?

Commentator	Comment	Committee Response
	<p>process through the trial court.</p> <p>We believe the form would overall be helpful to self-represented litigants in navigating the settled statement process</p>	
State Bar of California Standing Committee on the Delivery of Legal Services by Sharon Djemal	Yes, the Proposed Statement on Appeal would be helpful to both litigants and the courts. Rather than creating an entirely separate form for family law cases, there are suggestions below to adjust the form to meet the needs of a family law case.	The committee appreciates this input.
Superior Court of Los Angeles County	Form APP-014 would be extremely helpful to litigants and the trial courts.	The committee appreciates this input.

Form APP-014 - Should APP-014 include the final section asking the appellant to summarize the final judgment, or should this section be replaced with a requirement to attach a copy of the judgment?

Commentator	Comment	Committee Response
California Appellate Court Clerks Association by Daniel P. Potter, President San Jose,CA	It is not helpful for the appellant to summarize the final judgment as they will do so from their viewpoint. Attach a copy of the judgment.	Based on the weight of the comments received, the committee has revised proposed form APP-014 and its proposed amendments to rule 8.137 to replace the requirement that the appellant summarize the final judgment with a requirement that the judgment or order being appealed be attached to the form.
Family Violence Appellate Project by Erin Smith San Francisco	The form should include a summary of the final judgment to focus the litigant and the trial court on the disputed issues.	Please see the response to the comments of California Appellate Court Clerks Association above. The committee believes that item 4 on the form provides the appellant with the opportunity to identify the issue(s) on appeal.

ITC SPR17-01**Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)**

All comments are verbatim unless indicated by an asterisk (*).

Form APP-014 - Should APP-014 include the final section asking the appellant to summarize the final judgment, or should this section be replaced with a requirement to attach a copy of the judgment?		
Commentator	Comment	Committee Response
State Bar of California, Litigation Section Committee on Appellate Courts by Paula Mitchell	The form should include a summary of the final judgment to focus the litigant and the trial court on the disputed issues.	Please see the response to the comments of Family Violence Appellate Project above.
State Bar of California Standing Committee on the Delivery of Legal Services by Sharon Djemal	It may be more efficient and easier for the court to read the actual judgment instead of a self-represented litigant's recitation of what he or she thinks the judgment says.	Please see the response to the comments of California Appellate Court Clerks Association above.
Superior Court of Los Angeles County	Require a copy of the judgment in lieu of the summary on the last page.	Please see the response to the comments of California Appellate Court Clerks Association above.

Form APP-014 – Additional items or additional space		
Commentator	Comment	Committee Response
California Appellate Court Clerks Association by Daniel P. Potter, President San Jose,CA	<p><i>What additional items, if any, need to be included on the form?</i> None.</p> <p><i>Should the form include additional space for the summary of any of the items?</i> No.</p> <p><i>Are there items for which the summary is always likely to be too long to fit on the form and, therefore, that the form should require be done by way of attachment?</i></p>	The committee appreciates this input.

ITC SPR17-01

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Form APP-014 – Additional items or additional space		
Commentator	Comment	Committee Response
	No.	
Family Violence Appellate Project by Erin Smith San Francisco	<p><i>What additional items, if any, need to be included on the form?</i> No additional items recommended</p> <p><i>Should the form include additional space for the summary of any of the items?</i> No additional items recommended</p> <p><i>Are there items for which the summary is always likely to be too long to fit on the form and, therefore, that the form should require be done by way of attachment?</i> Number 7- the Summary of the testimony may be too long to fit in the required space and should be done via attachment.</p>	<p>The committee appreciates this input.</p> <p>The committee appreciates this input. Because item 7 includes may subparts, the committee decided it would be best to keep the current format which provides for separate attachments if the responses to any of these subparts is too long to fit in the space on the form.</p>
State Bar of California, Litigation Section Committee on Appellate Courts by Paula Mitchell	<p><i>What additional items, if any, need to be included on the form?</i> No additional items recommended</p> <p><i>Should the form include additional space for the summary of any of the items?</i> No additional items recommended</p> <p><i>Are there items for which the summary is always likely to be too long to fit on the form and, therefore, that the form should require be done by way of attachment?</i> Number 7- the Summary of the testimony may be too long to fit in the required space and should be done via attachment.</p>	<p>The committee appreciates this input.</p> <p>The committee appreciates this input. Because item 7 includes may subparts, the committee decided it would be best to keep the current format which provides for separate attachments if the responses to any of these subparts is too long to fit in the space on the form.</p>
State Bar of California Standing Committee on the Delivery of Legal Services	<p><i>What additional items, if any, need to be included on the form?</i> The following items are suggestions to adapt form APP-014 to family law cases instead of using a one-size-fits-all form:</p>	

ITC SPR17-01

Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)

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Form APP-014 – Additional items or additional space		
Commentator	Comment	Committee Response
by Sharon Djemal	<ul style="list-style-type: none"> • Page 3, item 5.a. – Plaintiff/Petitioner; Defendant/Respondent • Item 5 – add a new subpart c (current c would become subpart d). New subpart c would read: “The petitioner requested in the petition the following (briefly describe the orders requested in the petition filed with the trial court):” • Page 3, item 5. – add a new subpart e. New subpart e would read: “The respondent requested in the response the following (briefly describe the orders requested in the response filed with the trial court):” • Page 4, item 6.b.(1) – The motion was filed by the . . . plaintiff/petitioner; defendant/respondent • Item 6.b.(2) – same changes as 6.b.(1). • Page 5, item 7.c.(2) – The witness testified on behalf of the . . . plaintiff/petitioner; defendant/respondent <p><i>Should the form include additional space for the summary of any of the items?</i> It may be helpful to make the spacing 1.5 lines between the lines. It would also be helpful if the form is available in a fillable pdf format.</p> <p><i>Are there items for which the summary is always likely to be too long to fit on the form and, therefore, that the form should require be done by way of attachment?</i> The length of a summary is very case-specific. It is better to keep the prompts and have litigants fill out the form to the best of their ability and include attachments if necessary.</p>	<p>The committee has revised the form to incorporate this suggested change.</p> <p>The committee concluded that, rather than trying to modify proposed APP-014 as suggested, it would be preferable to work with the Family and Juvenile Law Advisory Committee to develop a proposed form specifically for family law appeals. The committee will propose this project for its next annual agenda.</p> <p>The committee has revised the form to incorporate this suggested change.</p> <p>The committee has revised the form to incorporate this suggested change.</p> <p>All Judicial Council plain language forms use 14 point spacing for lines and are available in fillable PDF on the California Courts website, once adopted.</p> <p>The committee appreciates this input.</p>

ITC SPR17-01

Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)

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Form APP-014 – Additional items or additional space		
Commentator	Comment	Committee Response
Superior Court of Los Angeles County	<p><i>Are there items for which the summary is always likely to be too long to fit on the form and, therefore, that the form should require be done by way of attachment?</i></p> <p>We suggest using form MC-020, Additional Page, if additional space is needed.</p>	The committee has modified its proposal in response to this comment. Because the form refers to attaching a page in lieu of writing the summary on the form, rather than using an additional page, the committee has revised the proposal to refer to Attachment (form MC-025).

Form APP-014 –Other suggested changes		
Commentator	Comment	Committee Response
The Advisory Committee on Providing Access and Fairness By Hon. Kathleen E. O’Leary and Hon. Laurie D. Zelon, Co-chairs	PAF appreciates the Appellate Advisory Committee’s use of the Plain Language template for proposed form APP-014. PAF recommends that form APP-014 also be professionally translated into Plain Language and written at a lower-grade level. These steps will improve the likelihood that the average person, who is likely to read at or below a 7th grade reading level, can understand the form.	<i>PLEASE SEE DISCUSSION IN STAFF MEMO</i>
California Appellate Court Clerks Association by Daniel P. Potter, President San Jose,CA	<p>New form APP-014 should be adopted with the following changes:</p> <ul style="list-style-type: none"> • Add date fields in the following sections: 6b (1), 6b(2), 7a(1), 7a(2), 7b and 7c(2). (see enclosed) 	The committee has revised the proposal to add spaces for the appellant to indicate the date that a motion was filed because this is likely to be helpful in identifying the relevant motion. The committee decided against adding spaces to indicate the date that the motion was granted or denied or the date of the trial, because it concluded that these dates are less likely to be necessary for the judge reviewing the proposed statement and increase the difficulty for the appellant in completing the

ITC SPR17-01

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Form APP-014 –Other suggested changes		
Commentator	Comment	Committee Response
	<ul style="list-style-type: none"> In section 9, change the heading to read "The Trial Court's Final Judgment or Order Being Appealed" and in the first sentence under the aforementioned heading to include "...or order". (see enclosed) 	<p>form.</p> <p>Based on the comments received, the committee has revised proposed form APP-014 to delete this section and replace it with a requirement that the judgment or order being appealed be attached to the form.</p>
<p>Family Violence Appellate Project by Erin Smith San Francisco</p>	<ul style="list-style-type: none"> We would encourage the Judicial Council to reconsider the wording in question 7(a). Currently the question asks, "Was there a trial in your case?" Many family law and probate matters are decided on the law-and-motion calendar and thus may not be considered a traditional "trial," but still result in appealable orders. Family Code section 217 and California Rule of Court, Rule 5.113 require that at a hearing on any request for order brought under the Family Code, absent a stipulation of the parties or a finding of good cause under (b), the court must receive any live, competent, and admissible testimony that is relevant and within the scope of the hearing. At many family law hearings, the court does not set the matter for trial and receives evidence including testimony at the short-cause hearing. Similar procedures govern probate matters (see, e.g., Probate Code § 825 [no right to jury trial in most probate proceedings]; § 1200 [notice procedures for probate hearings]). In the current APP-014 form, self-represented litigants may not think question 7 is applicable, thus omitting testimony that may support their case on appeal. We would suggest that question 7(a) of APP-014 be amended to ask: "Did the court consider evidence and/or testimony?" We believe this would provide greater clarity for self-represented individuals. 	<p>The committee concluded that, rather than trying to modify proposed APP-014 as suggested, it would be preferable to work with the Family and Juvenile Law Advisory Committee to develop a proposed form specifically for family law appeals and similarly work with the Probate and Mental Health Advisory Committee. The committee will propose this project for its next annual agenda.</p>

ITC SPR17-01

Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)

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Form APP-014 –Other suggested changes		
Commentator	Comment	Committee Response
	<ul style="list-style-type: none"> • In addition, for the same reason, many family law and probate matters that result in appealable orders do not have “judgments” issued by the trial court. This is acknowledged by proposed Rule 8.137(d)(3)(A)’s use of the phrase “judgment or order appealed from,” and in several places on proposed APP-014. See also Probate Code section 1300 et seq. (listing numerous Probate Court orders that are immediately appealable). . . . Similarly, we would suggest amending APP-014, question 9 to be titled, “The Trial Court’s Final Judgment or Order; The trial court issued the following final judgment or order in this case.” • We believe there is a typographical error on proposed APP-014, question 3. Where the first option states, “electing to use a statement on appeal,” we believe it is intended to state, “electing to use a settled statement.” • In APP-014, because family law, probate, and likely other types of cases do not have “plaintiffs” or “defendants,” but rather petitioners and respondents, we recommend that the language of questions 5(a), 6(b), and 7(c) be amended accordingly. • Similarly, in question 5(a), 5(b) and 5(c), because family law and probate cases, and possibly other types of cases as well, do not typically have “complaints,” but rather “petitions” or “requests for order,” we recommend that “complaint” be changed to “initial document.” 	<p>Based on the comments received, the committee has revised proposed form APP-014 to delete section 9 and replace it with a requirement that the judgment or order being appealed be attached to the form.</p> <p>The committee has revised proposed form APP-014 to incorporate this suggested change.</p> <p>The committee has revised proposed form APP-014 to incorporate this suggested change.</p> <p>The committee has revised proposed form APP-014 to refer to a complaint/petition.</p>
State Bar of California, Litigation Section Committee on Appellate Courts	<ul style="list-style-type: none"> • We would encourage the Judicial Council to reconsider the wording in question 7(a). Currently the question asks, “Was there a trial in your case?” Many family law and 	Please see the response to the comments of the Family Violence Appellate Project above.

ITC SPR17-01

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Form APP-014 –Other suggested changes		
Commentator	Comment	Committee Response
by Paula Mitchell	<p>Probate matters are decided on the law-and-motion calendar and thus may not be considered a traditional “trial,” but still result in appealable orders. Family Code section 217 and California Rule of Court, Rule 5.113 require that at a hearing on any request for order brought under the Family Code, absent a stipulation of the parties or a finding of good cause under (b), the court must receive any live, competent, and admissible testimony that is relevant and within the scope of the hearing. At many family law hearings, the court does not set the matter for trial and receives evidence including testimony at the short-cause hearing. Similar procedures govern probate matters (see, e.g., Probate Code section 825 [no right to jury trial in most probate proceedings]; and section 1200 [notice procedures for probate hearings]). In the current APP-014 form, self-represented litigants may not think question 7 is applicable, thus omitting testimony that may support their case on appeal. We would suggest that question 7(a) of APP-014 be amended to ask: Did the court consider evidence and/or testimony? We believe this would provide greater clarity for self-represented individuals.</p> <ul style="list-style-type: none">• In addition, for the same reason, many family law and Probate matters that result in appealable orders do not have “judgments” issued by the trial court. This is acknowledged by proposed Rule 8.137(d)(3)(A)’s use of the phrase “judgment or order appealed from,” and in several places on proposed APP-014. See also Probate Code section 1300 et seq. (listing numerous Probate Court orders that are immediately appealable). . . . Similarly, we would suggest amending APP-014, question 9 to be titled, “The Trial Court’s Final Judgment or Order; The trial court	

ITC SPR17-01

Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)

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Form APP-014 –Other suggested changes		
Commentator	Comment	Committee Response
	<p>issued the following final judgment or order in this case.”</p> <ul style="list-style-type: none">• We believe there is a typographical error on proposed APP-014, question 3. Where the first option states, “electing to use a statement on appeal,” we believe it is intended to state, “electing to use a settled statement.”• In APP-014, because family law, probate, and likely other types of cases do not have “plaintiffs” or “defendants,” but rather petitioners and respondents, we recommend that the language of questions 5(a), 6(b), and 7(c) be amended accordingly.• Similarly, in question 5(a), 5(b) and 5(c), because family law and probate cases, and possibly other types of cases as well, do not typically have “complaints,” but rather “petitions” or “requests for order,” we recommend that “complaint” be changed to “initial document.”	

ITC SPR17-01

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Other comments/suggestions		
Commentator	Comment	Committee Response
The Advisory Committee on Providing Access and Fairness (PAF) By Hon. Kathleen E. O’Leary and Hon. Laurie D. Zelon	Discretion in Timely Filed Settled Statements The invitation to comment includes a misstatement that, although minor, is worth correcting as it could lead to a misinterpretation of current law regarding timely filed settled statements. The ITC states that a revised Rule 8.137 would “[permit] an appellant to use the settled statement procedure without having to file a motion in two circumstances in which a motion would likely have been granted anyway: (1) if the trial court proceedings were not recorded by a court reporter....” (ITC SPR17-01, Page 2, bullet 1. Emphasis added). This language incorrectly assumes that granting the motion is discretionary. The current rules, however, require that a trial court judge grant a timely filed motion for a settled statement when there is no reporter's transcript.	The committee will use different language to address this issue in its report to the Judicial Council.
San Diego County Bar Association By Michael Pulos	We believe the Appellate Advisory Committee should seek to develop a form motion, similar to the proposed form for the Proposed Settled Statement, APP-014. Because the motion procedure is more complicated than the procedure to be utilized under 8.137(b)(1), some additional guidance should be provided to avoid unnecessary procedural defaults.	The committee will consider this suggestion when it develops its annual agenda for next year.
State Bar of California Standing Committee on the Delivery of Legal Services by Sharon Djemal	Develop an information sheet for APP-103, similar to proposed form APP-101-INFO that is attached to SPR-17-04 (Information on Appeal Procedures for Limited Civil Cases). Overall, it would be helpful for self-represented litigants if the appellate procedure forms and information sheets for both limited and unlimited civil cases are standardized	Current Judicial Council form <i>Information on Appeal Procedures for Unlimited Civil Cases</i> (APP-001) does provide basic information about the appellate process, but it does not currently address options other than a reporter’s transcript for preparing a record of the oral proceedings in the superior court. The committee will consider this suggestion when it develops its annual agenda for next year.

ITC SPR17-01

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Implementation requirements for courts		
Commentator	Comment	Committee Response
The Advisory Committee on Providing Access and Fairness By Hon. Kathleen E. O’Leary and Hon. Laurie D. Zelon, Co-chairs	Implementation Requirements In the request for comments section of the proposal, courts are asked what their implementation requirements would be if this proposal were to go into effect. The question seems to presume that the proposed revisions to Rule 8.137 would require more involvement by trial court judges. We think that this presumption is incorrect. We would note that revised Rule 8.137 does not change the current mandate to the trial court to grant a properly filed request for settled statement when there is no reporter’s transcript and agree that that duty should not be changed. We also note that the involvement of the trial court will continue to be significant in ensuring the accuracy and completeness of the statement before it is settled.	The inclusion of this question on the invitation to comment was not intended to create any implications about the impact of this proposal on the trial courts. This is a standard question included on all invitations to comment for rule changes.
California Appellate Court Clerks Association by Daniel P. Potter, President San Jose, CA	<i>What would be implementation requirements be for courts?</i> Minimal. We would need to update the section of the Self-Help Manual and add the new form. Possible creation of a "filed settled statement" docket code, if anyone was interested in tracking these for statistical purposes. More significant change for the Appellate Division and trial court judges since their process will change. <i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> Yes.	The committee appreciates this input.
Superior Court of Los Angeles County	<i>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</i>	The committee appreciates this input.

ITC SPR17-01

Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)

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Implementation requirements for courts		
Commentator	Comment	Committee Response
	<p><i>systems, or modifying case management systems?</i> This proposal would require minimal staff training and minimal CMS changes (addition of the same docket code used in limited civil).</p> <p><i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> Yes. The three month effective date is sufficient for implementation.</p>	
<p>Superior Court of Orange County by Civil and Probate Operations Managers</p>	<p>Implementation would require training staff (two legal processing specialists; 15 minutes), revising process and procedures to update appeal worksheet and procedure and possibly update or create a new local form, and no case management system changes.</p> <p>Three months from Judicial Council approval of this proposal until its effective date would provide sufficient time for implementation.</p>	<p>The committee appreciates this input.</p>
<p>TCPJAC/CEAC Joint Rules Subcommittee (JRS), on behalf of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC).</p>	<p>The JRS notes the following impact to court operations:</p> <ul style="list-style-type: none"> • Results in additional training, which requires the commitment of staff time and court resources – The proposal will create the need for new and/or revised procedures and possible alterations to case management systems. Staff training, and possibly judicial training, will be required. • Increases court staff workload – In each instance where a Judicial Officer is required to review a filing, court staff 	<p>The committee appreciates this input.</p>

ITC SPR17-01**Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)**

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Implementation requirements for courts		
Commentator	Comment	Committee Response
	<p>will be required to perform ministerial tasks associated with the processing of filings and orders related to the settlement of the record.</p> <ul style="list-style-type: none">• Cost savings – The proposed changes will result in cost savings for self-represented litigants because they will no longer be required to file in person a motion to use a settled statement instead of a reporter’s transcript or both a reporter’s and a clerk’s transcripts.	

Judicial Council of California

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

INVITATION TO COMMENT SPR17-01

Title

Appellate Procedure: Settled Statements in
Unlimited Civil Cases

Action Requested

Review and submit comments by April 28,
2017

Proposed Rules, Forms, Standards, or Statutes

Amend California Rules of Court, rule 8.137;
approve form APP-014; revise form APP-003

Proposed Effective Date

January 1, 2018

Proposed by

Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

Contact

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

Executive Summary and Origin

To make the settled statements procedure in unlimited civil cases less burdensome, this proposal would amend the rule regarding settled statements to remove the requirement for obtaining a court order to use this procedure in certain circumstances and would create a new form for appellants to use in preparing proposed statements. This proposal is based on a suggestion from the Clerk/Executive Officer of one of the Courts of Appeal.

Background

Settled statements are one of the methods permitted under the California Rules of Court to prepare a record of the trial court proceedings for an appeal. A settled statement is a summary of the trial court proceedings prepared by the appellant and approved by the trial court. Rule 8.137 addresses the use of settled statements in appeals to the Court of Appeal in unlimited civil cases. This rule currently reflects a basic presumption that court reporters' transcripts will be available in these unlimited civil cases and a preference for use of these transcripts. Under subdivision (a) of this rule, an appellant must file a motion asking to use a settled statement and must support this motion with a showing that a reporter's transcript is unavailable to the appellant.

Because court reporters are no longer present to record the proceedings in many civil cases, more appellants are now trying to use the settled statements procedure. This approach has proved problematic because appellants, particularly those who are self-represented, have difficulty navigating the motion procedure and preparing proposed statements. If the proposed statements are not appropriately prepared, this creates burdens for the trial court judges who must attempt to

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.

review and certify proposed statements. These problems also affect the Courts of Appeal by delaying or resulting in defaults in these cases.

Statements on appeal, which are essentially the same as settled statements, are also used in appeals to the superior court appellate division. The rules for these appeals do not require the appellant to file a motion to get permission to use a statement on appeal. Furthermore, there is a form to assist litigants, particularly self-represented litigants, in appeals to the appellate division in preparing proposed statements that contain the necessary information.

The Proposal

Amendments to rule 8.137

The Appellate Advisory Committee is proposing amendments to rule 8.137 that are modeled in large part on the rules for statements on appeal in the superior court appellate division. The main substantive changes include:

- Permitting an appellant to use the settled statement procedure without having to file a motion in two circumstances in which a motion would likely have been granted anyway: (1) if the trial court proceedings were not recorded by a court reporter, or (2) if the appellant has received a fee waiver (proposed subdivision (b)(1)). This change is intended to reduce burdens for both appellants and courts;
- Allowing the respondent to pay for a reporter's transcript in cases in which an appellant moves to use a settled statement even though a court reporter did record the proceedings, (proposed subdivisions (b)(2)(B) and (e)(1)(B)). This provision is not currently in rule 8.837; it is modeled on a provision in rule 8.702(d)(2)(B) relating to expedited California Environmental Quality Act Cases appeals. This provision is designed to give respondents the opportunity to avoid the delay and burdens associated with preparation of a settled statement by providing a reporter's transcript when one is available;
- Requiring self-represented appellants to use a proposed statement-on-appeal form, discussed below, unless the trial court authorizes them not to (proposed subdivision (c)). This provision is modeled on one in rule 8.837 and is intended to help appellants prepare proposed statements and help produce proposed statements that are easier for the trial court judge to review;
- Adding provisions from rule 8.837 regarding the contents of proposed statements (proposed subdivision (d)). This provision should also help appellants prepare proposed statements and make it easier for the trial court judge to review proposed statements;
- Adding provisions from rule 8.837 regarding the trial court's review of proposed statements (proposed subdivision (f)). This provision should clarify and simplify the procedure for the trial court and bring consistency to the procedures for statements in limited and unlimited civil cases; and

- Adding a provision designed to clarify what should happen when the statement is finalized (proposed subdivision (h)(3)). This provision is designed to reduce delays in the transmission of the record to the Court of Appeal.

Proposed form changes

This proposal also includes proposed revisions to one existing form and proposes a new form.

Appellant's Notice Designating Record on Appeal (Unlimited Civil Case) (form APP-003) would be revised to reflect the elimination of the requirement to file a motion requesting to use a settled statement if either the proceedings were not recorded by a court reporter or the appellant has received a fee waiver.

Proposed new form *Proposed Statement on Appeal (Unlimited Civil Case)* (form APP-014) is modeled on *Proposed Statement on Appeal (Limited Civil Case)* (form APP-104). It is designed to help appellants prepare their initial proposed statement. It includes spaces and prompts to help appellants identify and include necessary information in their statements. By providing a standardized format and prompting the inclusion of required information, the form is also designed to make these proposed statements easier for the trial judge to review.

The committee would particularly appreciate comments about this proposed new form. As noted above, the form is modeled largely on a form used in limited civil cases, which have a narrower range of case types—for example, they do not include family law cases. In addition, the proceedings are typically shorter and simpler than for unlimited civil cases. The committee would appreciate input on whether, given these differences, a form like APP-014 is likely to be helpful in unlimited civil cases, either as proposed or with additional modifications. Please see the Request for Specific Comments box below.

Alternatives Considered

The committee considered recommending only the clarification to the rule about what happens once a statement has been finalized. The committee concluded, however, that additional changes to the procedure would be helpful in reducing barriers for litigants and burdens on the courts. The committee also considered not recommending proposed new form APP-014, but concluded that the better approach would be to seek input from commentators on whether such a form would be helpful.

Implementation Requirements, Costs, and Operational Impacts

The committee's intent in making this proposal is to reduce burdens on litigants and trial courts associated with preparing settled statements in unlimited civil cases. The committee would particularly appreciate comments about whether the proposal is likely to achieve this goal.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Would *Proposed Statement on Appeal (Unlimited Civil Case)* (form APP-014) be helpful to litigants and/or the trial courts?
- What additional items, if any, need to be included on the form?
- Should the form include additional space for the summary of any of the items?
- Are there items for which the summary is always likely to be too long to fit on the form and, therefore, that the form should require be done by way of attachment?
- Should the form include the final section asking the appellant to summarize the final judgment, or should this section be replaced with a requirement to attach a copy of the judgment? Note that the appellant will be required to attach a copy of the judgment to the Civil Case Information Statement, which must be filed in the Court of Appeal at approximately the same time as a proposed statement must be filed in the trial court.
- Rule 8.137 currently allows an appellant to use a settled statement as the record of the document filed in the trial court by attaching copies of the required documents to the statement. Should this option be eliminated given that appellants can use an appendix under rule 8.124 for this same purpose?

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 three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

Attachments and Links

1. Proposed amended rule 8.137, at pages 5–11
2. Proposed forms APP-003 and APP-014, at pages 12–22

Rule 8.137 of the California Rules of Court would be amended, effective January 1, 2018, to read:

1 **Title 8. Appellate Rules**

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

4
5 **Chapter 2. Civil Appeals**

6
7 **Article 2. Record on Appeal**

8
9 **Rule 8.137. Settled statement**

10
11 **(a) Description**

12
13 A settled statement is a summary of the superior court proceedings that is approved by the
14 superior court. An appellant may either elect under (b)(1) or move under (b)(2) to use a
15 settled statement as the record of the oral proceedings in the superior court, instead of a
16 reporter's transcript, and may move to use a settled statement as the record of the written
17 documents from the superior court proceedings, instead of a clerk's transcript or appendix.

18
19 **~~(a)~~(b) Motion to use When a settled statement may be used**

20
21 (1) An appellant may elect in his or her notice designating the record on appeal under
22 rule 8.121 to use a settled statement as the record of the oral proceedings in the
23 superior court without filing a motion under (2) if:

24
25 (A) The designated oral proceedings in the superior court were not reported by a
26 court reporter; or

27
28 (B) The appellant has an order waiving his or her court fees and costs.

29
30 ~~(1)~~(2) An appellant intending to proceed under this rule for reasons other than those listed
31 in (1) must serve and file in superior court with its notice designating the record on
32 appeal under rule 8.121 a motion to use a settled statement instead of a reporter's
33 transcript or both a reporter's and a clerk's transcripts.

34
35 ~~(2)~~(A) The motion must be supported by a showing that:

36
37 ~~(A)~~(i) A substantial cost saving will result and the statement can be settled
38 without significantly burdening opposing parties or the court;

39
40 ~~(B)~~(ii) The designated oral proceedings ~~were not reported or~~ cannot be
41 transcribed; or

1 ~~(C)(iii)~~ Although the appellant does not have a fee waiver, he or she is unable
2 to pay for a reporter's transcript and funds are not available from the
3 Transcript Reimbursement Fund (see rule 8.130(c)). ~~A party proceeding~~
4 ~~in forma pauperis is deemed unable to pay for a transcript.~~

5
6 ~~(3)~~(B) If the court denies the motion, the appellant must file a new notice
7 designating the record on appeal under rule 8.121 within 10 days after the
8 superior court clerk sends, or a party serves, the order of denial.

9
10 (3) An appellant's notice under (1) or motion under (2) must:

11
12 (A) Specify the date of each oral proceeding to be included in the settled statement;

13
14 (B) Describe the proceedings specified under (A);

15
16 (C) Identify whether each proceeding designated under (A) was reported by a court
17 reporter and, if so, for each such proceeding:

18
19 (i) Provide the name of the court reporter, if known; and

20
21 (ii) Identify whether a certified transcript has previously been prepared by
22 checking the appropriate box on *Appellant's Notice Designating Record*
23 *on Appeal (Unlimited Civil Cases)* (form APP-003) or, if that form is not
24 used, placing an asterisk before that proceeding in the notice.

25
26 (4) If the designated oral proceedings in the superior court were reported by a court
27 reporter:

28
29 (A) Within 10 days after the appellant serves either a notice under (1) or a motion
30 under (2), the respondent may serve and file a notice indicating that he or she
31 is electing to provide a reporter's transcript in lieu of proceeding with a settled
32 statement. The respondent must also either:

33
34 (i) Deposit a certified transcript of all of the proceedings designated by the
35 appellant under (3) and any additional proceedings designated by the
36 respondent under rule 8.130(b)(3)(C); or

37
38 (ii) Serve and file a notice that the respondent is requesting preparation, at
39 the respondent's expense, of a reporter's transcript of all proceedings
40 designated by the appellant under (3) and any additional proceedings
41 designated by the respondent. This notice must be accompanied by either
42 the required deposit for the reporter's transcript under rule 8.130(b)(1) or

1 the reporter’s written waiver of the deposit in lieu of all or a portion of
2 the deposit under rule 8.130(b)(3)(A).

3
4 (B) If the respondent timely deposits the certified transcript as required under (i),
5 the appellant’s motion to use a settled statement will be dismissed. If the
6 respondent timely files the notice and makes the deposit or files the waiver as
7 provided under (ii), the appellant’s motion to use a settled statement will be
8 dismissed and the clerk must promptly send the reporter notice of the
9 designation and of the deposit, waiver, or both and notice to prepare the
10 transcript, as provided under rule 8.130(d).

11
12 ~~(b)(c)~~ **Time to file; contents of proposed statement**

- 13
14 (1) ~~Within 30 days after the superior court clerk sends, or a party serves, an order~~
15 ~~granting a motion to use~~ If the respondent does not file a notice under (b)(4)(A)
16 electing to provide a reporter’s transcript in lieu of proceeding with a settled
17 statement, the appellant must serve and file a proposed statement in superior court
18 within 30 days after filing its notice under (b)(1) or within 30 days after the superior
19 court clerk sends, or a party serves, an order granting a motion under (b)(2) a
20 condensed narrative of the oral proceedings that the appellant believes necessary for
21 the appeal. Subject to the court’s approval in settling the statement, the appellant
22 may present some or all of the evidence by question and answer.
23
24 (2) Appellants who are not represented by an attorney must file their proposed statement
25 on *Proposed Statement on Appeal (Unlimited Civil Case)* (form APP-014). For good
26 cause, the court may permit the filing of a statement that is not on form APP-014.

27
28 **(d) Contents of proposed statement**

29
30 The proposed statement must contain:

- 31
32 ~~(2)~~(1) A statement of the points the appellant is raising on appeal. If the condensed
33 narrative under (3) covers only a portion of the oral proceedings, describes less than
34 all the testimony, the appellant must state the points to be raised on appeal; the
35 appeal is then limited to those the points identified in the statement unless the
36 reviewing court determines that the record permits the full consideration of another
37 point or, on motion, the reviewing court permits otherwise.
38
39 (2) A summary of the trial court’s rulings and judgment.
40
41 (3) A condensed narrative of the oral proceedings that the appellant specified under
42 (b)(3).
43

1 (A) The condensed narrative must include a concise factual summary of the
2 evidence and the testimony of each witness relevant to the points that the
3 appellant states under (1) are being raised on appeal. Subject to the court's
4 approval in settling the statement, the appellant may present some or all of the
5 evidence by question and answer. Any evidence or portion of a proceeding not
6 included will be presumed to support the judgment or order appealed from.

7
8 (B) If one of the points that the appellant states will be raised on appeal is a
9 challenge to the giving, refusal, or modification of a jury instruction, the
10 condensed narrative must include any instructions submitted orally and not in
11 writing and must identify the party that requested the instruction and any
12 modification.

13
14 ~~(3)~~(4) An appellant intending to use a settled statement instead of both a reporter's and a
15 clerk's transcripts must accompany the condensed narrative with copies of all items
16 required by rule 8.122(b)(1), showing the dates required by rule 8.122(b)(2), and
17 may accompany the condensed narrative with copies of any document includable in
18 the clerk's transcript under rule 8.122(b)(3) and (4).

19
20 (e) **Respondent's response to proposed statement**

21
22 ~~(4)~~(1) Within 20 days after the appellant serves the condensed narrative, the respondent
23 may serve and file either:

24
25 (A) Proposed amendments to the condensed narrative; or

26
27 (B) A notice indicating that he or she is electing to provide a reporter's transcript
28 in lieu of proceeding with a settled statement. The respondent must also either:

29
30 (i) Deposit a certified transcript of all the proceedings specified by the
31 appellant under (b)(3) and any additional proceedings designated by the
32 respondent under rule 8.130(b)(3)(C); or

33
34 (ii) Serve and file a notice that the respondent is requesting preparation, at
35 the respondent's expense, of a reporter's transcript of all proceedings
36 specified by the appellant under (b)(3) and any additional proceedings
37 designated by the respondent. This notice must be accompanied by either
38 the required deposit for the reporter's transcript under rule 8.130(b)(1) or
39 the reporter's written waiver of the deposit in lieu of all or a portion of
40 the deposit under rule 8.130(b)(3)(A).

1 ~~(5)~~(2) If the respondent serves and files ~~The proposed statement and proposed amendments~~
2 under (1)(A), they may be accompanied by copies of any document includable in the
3 clerk’s transcript under rule 8.122(b)(3) and (4).
4

5 **(e)(f) Settlement, preparation, and certification Review of appellant’s proposed statement**
6

7 (1) ~~The clerk must set a date for a settlement hearing by the trial judge that is~~ No later
8 than 10 days after the respondent files proposed amendments or the time to do so
9 expires, whichever is earlier, and must give the parties at least five days’ notice of
10 the hearing date a party may request a hearing to review and correct the proposed
11 statement. No hearing will be held unless ordered by the trial court judge, and the
12 judge will not ordinarily order a hearing unless there is a factual dispute about a
13 material aspect of the trial court proceedings.
14

15 ~~(2) At the hearing, the judge must settle the statement and fix the times within which the~~
16 ~~appellant must prepare, serve, and file it.~~
17

18 (2) The trial court judge may order that a transcript be prepared as the record of the oral
19 proceedings instead of correcting a proposed statement on appeal if the trial court
20 proceedings were reported by a court reporter, the trial court judge determines that
21 doing so would save court time and resources, and the court has a local rule
22 permitting such an order. The court will pay for any transcript ordered under this
23 subdivision.
24

25 (3) Except as provided in (2), if no hearing is ordered, no later than 10 days after the
26 time for requesting a hearing expires, the trial court judge must review the proposed
27 statement and any proposed amendments filed by the respondent and take one of the
28 following actions:
29

30 (A) If the proposed statement does not contain material required under (d), the trial
31 judge may order the appellant to prepare a new proposed statement. The order
32 must identify the additional material that must be included in the statement to
33 comply with (d) and the date by which the new proposed statement must be
34 served and filed. If the appellant does not serve and file a new proposed
35 statement as directed, rule 8.140 applies.
36

37 (B) If the trial judge does not issue an order under (A), the trial judge must either:
38

39 (i) Make any corrections or modifications to the statement necessary to
40 ensure that it is an accurate summary of the evidence and the testimony
41 of each witness relevant to the points that the appellant states under
42 (d)(1) are being raised on appeal; or
43

1 (ii) Identify the necessary corrections and modifications, and order the
2 appellant to prepare a statement incorporating these corrections and
3 modifications.
4

5 (4) If a hearing is ordered, the court must promptly set the hearing date and provide the
6 parties with at least 5 days' written notice of the hearing date. No later than 10 days
7 after the hearing, the trial court judge must either:
8

9 (A) Make any corrections or modifications to the statement necessary to ensure
10 that it is an accurate summary of the evidence and the testimony of each
11 witness relevant to the points that the appellant states under (d)(1) are being
12 raised on appeal; or
13

14 (B) Identify the necessary corrections and modifications and order the appellant to
15 prepare a statement incorporating these corrections and modifications.
16

17 (5) The trial court judge must not eliminate the appellant's specification of grounds of
18 appeal from the proposed statement.
19

20 **(g) Review of the corrected statement**
21

22 (1) If the trial court judge makes any corrections or modifications to the proposed
23 statement under (f), the clerk must serve copies of the corrected or modified
24 statement on the parties. If under (f) the trial court judge orders the appellant to
25 prepare a statement incorporating corrections and modifications, the appellant must
26 serve and file the corrected or modified statement within the time ordered by the
27 court. If the appellant does not serve and file a corrected or modified statement as
28 directed, rule 8.140 applies.
29

30 (2) Within 10 days after the corrected or modified statement is served on the parties, any
31 party may serve and file proposed modifications or objections to the statement.
32

33 (3) ~~If the respondent does not object to the prepared statement within five days after it is~~
34 ~~filed, it will be deemed properly prepared and the clerk must present it to the judge~~
35 ~~for certification.~~ Within 10 days after the time for filing proposed modifications or
36 objections under (2) has expired, the judge must review the corrected or modified
37 statement and any proposed modifications or objections to the statement filed by the
38 parties. The procedures in (2) or in (f)(3) apply if the judge determines that further
39 corrections or modifications are necessary to ensure that the statement is an accurate
40 summary of the evidence and the testimony of each witness relevant to the points
41 that the appellant states under (d)(1) are being raised on appeal.
42

1 **(h) Certification of the statement on appeal**

2
3 (1) If the trial court judge does not order the preparation of a transcript under (f)(2) in
4 lieu of correcting the proposed statement or order any corrections or modifications to
5 the proposed statement under (f)(3), (f)(4), or (g)(3), the judge must promptly certify
6 the statement.

7
8 ~~(4)~~(2) The parties² may serve and file a stipulation that the statement as originally served
9 under (c) or as ~~prepared~~ corrected or modified under (f)(3), (f)(4), or (g)(3) is correct.
10 Such a stipulation is equivalent to the judge's certification of the statement.

11
12 (3) Upon certification of the statement under (1) or receipt of a stipulation under (2), the
13 certified statement must immediately be transmitted to the clerk for filing of the
14 record under rule 8.150.
15

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: TELEPHONE NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	STATE BAR NO.: STATE: ZIP CODE: FAX NO.:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:		
APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)		SUPERIOR COURT CASE NUMBER:
RE: Appeal filed on (date):		COURT OF APPEAL CASE NUMBER (if known):
Notice: Please read form APP-001 before completing this form. This form must be filed in the superior court, not in the Court of Appeal.		

1. RECORD OF THE DOCUMENTS FILED IN THE SUPERIOR COURT

I elect to use the following method of providing the Court of Appeal with a record of the documents filed in the superior court (check a, b, c, d, or e and fill in any required information):

- a. A clerk's transcript under rule 8.122. (You must check (1) or (2) and fill out the clerk's transcript section on page 2 of this form.)
- (1) I will pay the superior court clerk for this transcript myself when I receive the clerk's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the Court of Appeal.
- (2) I request that the clerk's transcript be provided to me at no cost because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record (check (a) or (b)):
- (a) An order granting a waiver of court fees and costs under rule 3.50 et seq.; or
- (b) An application for a waiver of court fees and costs under rule 3.50 et seq. use Request to Waive Court Fees (form FW-001) to prepare and file this application.
- b. An appendix under rule 8.124.
- c. The original superior court file under rule 8.128. (NOTE: Local rules in the Court of Appeal, First, Third, Fourth, and Fifth Appellate Districts, permit parties to stipulate to use the original superior court file instead of a clerk's transcript; you may select this option if your appeal is in one of these districts and all the parties have stipulated to use the original superior court file instead of a clerk's transcript in this case. Attach a copy of this stipulation.)
- d. An agreed statement under rule 8.134. (You must complete item 2b(2) below and attach to your agreed statement copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.134(a).)
- e. A settled statement under rule 8.137. (You must complete item 2b(3) below and attach to your proposed statement on appeal copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.137(b)(3).)

2. RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT

I elect to proceed:

- a. WITHOUT a record of the oral proceedings in the superior court. I understand that without a record of the oral proceedings in the superior court, the Court of Appeal will not be able to consider what was said during those proceedings in determining whether an error was made in the superior court proceedings.

CASE NAME:	SUPERIOR COURT CASE NUMBER:
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2. b. WITH the following record of the oral proceedings in the superior court:
- (1) A reporter's transcript under rule 8.130. *(You must fill out the reporter's transcript section on page 3 of this form.)* I have *(check all that apply)*:
 - (a) Deposited the approximate cost of transcribing the designated proceedings with this notice as provided in rule 8.130(b)(1).
 - (b) Attached a copy of a Transcript Reimbursement Fund application filed under rule 8.130(c)(1).
 - (c) Attached the reporter's written waiver of a deposit for *(check either (i) or (ii))*:
 - (i) all of the designated proceedings.
 - (ii) part of the designated proceedings.
 - (d) Attached a certified transcript under rule 8.130(b)(3)(C).
 - (2) An agreed statement. *(Check and complete either (a) or (b) below.)*
 - (a) I have attached an agreed statement to this notice.
 - (b) All the parties have agreed in writing (stipulated) to try to agree on a statement. *(You must attach a copy of this stipulation to this notice.)* I understand that, within 40 days after I file the notice of appeal, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.
 - (3) A settled statement under rule 8.137. *(You must check (a), (b), or (c) below.)*
 - (a) The oral proceedings in the superior court were not reported by a court reporter.
 - (b) The oral proceedings in the superior court were reported by a court reporter, but the appellant has an order waiving his or her court fees and is unable to pay for a reporter's transcript.
 - (c) I am requesting to use a settled statement for reasons other than those listed in (a) or (b). *(You must attach the motion required under rule 8.137(a) to this form.)*

3. RECORD OF AN ADMINISTRATIVE PROCEEDING TO BE TRANSMITTED TO THE REVIEWING COURT

I request that the clerk transmit to the reviewing court under rule 8.123 the record of the following administrative proceeding that was admitted into evidence, refused, or lodged in the superior court *(give the title and date or dates of the administrative proceeding)*:

Title of Administrative Proceeding	Date or Dates
---	----------------------

4. NOTICE DESIGNATING CLERK'S TRANSCRIPT

(You must complete this section if you checked item 1a. above indicating that you elect to use a clerk's transcript as the record of the documents filed in the superior court.)

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

Document Title and Description	Date of Filing
---------------------------------------	-----------------------

- (1) Notice of appeal
- (2) Notice designating record on appeal *(this document)*
- (3) Judgment or order appealed from
- (4) Notice of entry of judgment *(if any)*
- (5) Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order *(if any)*
- (6) Ruling on one or more of the items listed in (5)
- (7) Register of actions or docket *(if any)*

CASE NAME:	SUPERIOR COURT CASE NUMBER:
------------	-----------------------------

4. NOTICE DESIGNATING CLERK'S TRANSCRIPT

b. **Additional documents.** *(If you want any documents from the superior court proceeding in addition to the items listed in 4a. above to be included in the clerk's transcript, you must identify those documents here.)*

I request that the clerk include the following documents from the superior court proceeding in the transcript. *(You must identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed.)*

Document Title and Description	Date of Filing
(8)	
(9)	
(10)	
(11)	
(12)	

See additional pages.

c. **Exhibits to be included in clerk's transcript**

I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the superior court *(for each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit. Indicate whether or not the court admitted the exhibit into evidence):*

Exhibit Number	Description	Admitted (Yes/No)
(1)		
(2)		
(3)		
(4)		
(5)		

See additional pages.

5. NOTICE DESIGNATING REPORTER'S TRANSCRIPT

(You must complete this section if you checked item 2b(1) above indicating that you elect to use a reporter's transcript as the record of the oral proceedings in the superior court. Please remember that you must pay for the cost of preparing the reporter's transcript.)

a. I request that the reporters provide *(check one)*:

- (1) My copy of the reporter's transcript in paper format.
- (2) My copy of the reporter's transcript in computer-readable format.
- (3) My copy of the reporter's transcript in paper format and a second copy in computer-readable format.

(Code Civ. Proc., § 271; Cal. Rules of Court, rule 8.130(f)(4).)

CASE NAME:	SUPERIOR COURT CASE NUMBER:
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5. b. Proceedings

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

	Date	Department	Full/Partial Day	Description	Reporter's Name	Prev. prepared?
(1)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(2)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(3)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(4)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(5)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(6)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(7)						<input type="checkbox"/> Yes <input type="checkbox"/> No

c. The proceedings designated in 5b include do not include all of the testimony in the superior court.

If the designated proceedings DO NOT include all of the testimony, state the points that you intend to raise on appeal *(rule 8.130(a)(2) provides that your appeal will be limited to these points unless, on motion, the reviewing court permits otherwise).*

Date:

(TYPE OR PRINT NAME)



(SIGNATURE OF APPELLANT OR ATTORNEY)

Clerk stamps date here when form is filed.

Instructions

- This form is only for preparing a proposed statement on appeal in an **unlimited civil case**.
- This form can be attached to your *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003). If it is not attached to that notice, this form must be filed **no later than 30 days after you file that notice. Or, if you had to file a motion requesting to use a settled statement, within 30 days after you are served with an order granting that motion. If you have chosen to prepare a statement on appeal and do not file this form on time, the court may dismiss your appeal.**
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service from *Information Sheet for Proof of Service* (form APP-009-INFO) and on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-serving.htm.
- Take or mail the original completed form and proof of service on the other parties to the clerk's office for the same court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

Superior Court of California, County of

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

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

You fill in the Court of Appeal case number (if you know it):

Court of Appeal Case Number:**1 Your Information**

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

Name: _____

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

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

Phone: _____ E-mail: _____

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

Name: _____ State Bar number: _____

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

Phone: _____ E-mail: _____

Fax: _____



Information About Your Appeal

- 2 On (fill in the date): _____, I/my client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.
- 3 On (fill in the date): _____
 - I filed a notice designating the record on appeal, electing to use a statement on appeal.
 - The Court sent or the other party served me with an order granting my motion to use a settled statement.

Proposed Statement

4 Reasons for Your Appeal

Please note, in an appeal, the Court of Appeal can only review a case for whether certain kinds of legal errors were made:

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

The Court of Appeal:

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

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

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

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

(1) *Describe the error:* _____

Describe how you were harmed by the error: _____

(2) Describe the error: _____

Describe how you were harmed by the error: _____

(3) Describe the error: _____

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

Check here if you need more space to describe these or other errors and attach a separate page or pages describing the errors. At the top of each page, write "APP-014, item 4."

5 The Dispute

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

- Plaintiff (the party who filed the complaint in the case).
- Defendant (the party against whom the complaint was filed).

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

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

Check here if you need more space to describe the dispute and attach a separate page or pages describing it. At the top of each page, write "APP-014, Item 5."

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

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

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

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

(1) Describe the first motion: _____

The motion was filed by the plaintiff. defendant.

There was was not a hearing on this motion.

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

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

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

Check here if you need more space to describe this motion and attach a separate page or pages describing this motion. At the top of each page, write "APP-014, Item 6b(1)."

(2) Describe the second motion: _____

The motion was filed by the plaintiff. defendant.

There was was not a hearing on this motion.

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

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

Trial Court Case Name: _____

- ⑥
- b. Other (describe any other action the trial court took concerning this motion): _____

- Check here if you need more space to describe this motion and attach a separate page or pages describing this motion. At the top of each page, write “APP-014, item 6b(2).”
- (3) Check here if any other motions were filed that are relevant to the reasons you gave in ④ for this appeal and attach a separate page describing each motion, identifying who made the motion and whether there was a hearing on the motion, summarizing what was said at the hearing on the motion, and indicating whether the trial court granted or denied the motion. At the top of each page, write “APP-014, item 6b(3).”

⑦ **Summary of Testimony and Other Evidence**

- a. Was there a trial in your case?
- No (skip to item ⑧)
- Yes (check (1) or (2) and complete items b, c, d, and e)
- (1) Jury trial
- (2) Trial by judge only
- b. Did you testify at the trial?
- No
- Yes (Write a complete and accurate summary of the testimony you gave that is relevant to the reasons you gave in ④ for this appeal. Include only what you actually said; do not comment or give your opinion about what was said. Please indicate whether any objections were made concerning your testimony or any exhibits you asked to present and whether these objections were sustained.):
- _____

- Check here if you need more space to summarize your testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write “APP-014, Item 7b.”
- c. Were there any other witnesses at the trial whose testimony is relevant to the reasons you gave in ④ for this appeal?
- No
- Yes (complete items (1), (2), and (3)):
- (1) The witness’s name is (fill in the witness’s name): _____
- (2) The witness testified on behalf of the (check one): plaintiff. defendant.

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

Check here if you need more space to summarize this witness’s testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write “APP-014, Item 7c.”

d. Check here if any other witnesses gave testimony at the trial that is relevant to the reasons you gave in 4 for this appeal. Attach a separate page or pages identifying each witness and who the witness testified for, summarizing what that witness said in his or her testimony that is relevant to the reasons you gave in 4 for this appeal, and indicating whether any objections were made concerning this witness’s testimony or any exhibits the witness asked to present and whether these objections were sustained. At the top of each page, write “APP-014, Item 7d.”

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

Check here if you need more space to describe the evidence and attach a separate page or pages describing the evidence. At the top of each page, write “APP-014, Item 7e.”

8 The Trial Court's Findings

Did the trial court make findings in the case?

No
 Yes *(describe the findings made by the trial court)*: _____

Check here if you need more space to describe the trial court’s findings and attach a separate page or pages describing these findings. At the top of each page, write “APP-014, Item 8.”

Trial Court Case Name: _____

9 The Trial Court's Final Judgment

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

a. I was required to:

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

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

b. The other party was required to:

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

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

c. Other(*describe*): _____

Check here if you need more space to describe the trial court's judgment or order and attach a separate page or pages describing this judgment or order. At the top of each page, write "APP-014, Item 9."

Date: _____

Type or print your name



Signature of appellant or attorney



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	Action Requested
May 26, 2017	Please read before June 1 committee meeting
To	Deadline
Members of the Appellate Advisory Committee	June 1, 2017
From	Contact
Heather Anderson, Supervising Attorney, Legal Services	Heather Anderson 415-865-7691 heather.anderson@jud.ca.gov
Subject	
Record in juvenile appeals	

Introduction

As you may recall, earlier this spring, after concluding that a rule proposal could not achieve the necessary results and after working with representatives of the Family and Juvenile Law Advisory Committee, the Appellate Advisory Committee recommended circulating for public comment a proposal to amend Welfare and Institutions Code section 827 to address access to the appellate record in juvenile cases where the appellant is not a party who would ordinarily have access to the juvenile court case file. The Judicial Council's Policy Coordination and Liaison Committee approved the recommendation for circulation and the proposal was circulated for public comment February 27 and April 28, 2017 as part of the regular spring comment cycle. (A copy of the invitation to comment is included in your meeting materials). This memo discusses the public comments received on the proposal and the recommendations of the rules subcommittee and the representatives of the Family and Juvenile Law Advisory Committee regarding responding to these comments.

Public Comments

Six individuals or organizations submitted comments on this proposal. Four commentators indicated that they agreed with the proposal and two indicated that they agreed with the proposal

if amended. Some of the commentators who indicated that they agreed with the proposal also suggested some changes. A chart with the full text of the comments received and the rules subcommittee's draft responses is attached. The two main substantive issues raised by the comments, possible responses, and possible modifications to the proposal are discussed below, but there are other comments and responses discussed only in the draft comment chart, so **please review the draft comment chart carefully.**

Identification of records to be provided without court order

As circulated for public comment, the proposed amendment to section 827 would have authorized an individual who files a notice of appeal or writ petition challenging a juvenile court order or who is a respondent in such an appeal or writ proceeding to inspect and copy any records in the juvenile case file "to which the individual was previously granted access by the juvenile court, including the record on appeal that contains such records." The Superior Court of San Diego County, which indicated it agreed with the proposal, raised two concerns about this provision.

First, the court indicated that it might be difficult to identify those records to which the individual was previously granted access by the juvenile court. They therefore suggested the following alternate language that would specify particular documents that the individual could access and copy: "any minute order, report, or other document in the juvenile case file that is directly related to the hearing from which the appeal or writ was filed." This type of language was considered, but ultimately rejected, by the working group of members from the Appellate Advisory Committee and Family and Juvenile Law Advisory Committee that helped develop the proposal. That group expressed concern about this approach because there may be some documents related to a hearing, such as probation reports, or parts thereof to which such an individual should not have access.

The subcommittee considered several possible approaches to addressing this concern. One option discussed was to try to make it easier to identify the bulk of the documents to which an individual would have access by adding language providing that the individual could access any document "filed by or served on the individual" while still retaining the language from the proposal that was circulated. Because the rules subcommittee believed that that approach would not alleviate the difficulty of identifying documents to which an individual had previously been granted access, the subcommittee ultimately recommended that the proposal be revised to replace the language that was circulated with a provision indicating that the individual can have access without a court order to any document "filed by or served on the individual." This recommended language is incorporated in the attached draft of the possible amendments to section 827. The changes from what was circulated for public comment are shown with **yellow highlighting**.

Second, the court expressed concern about the phrase “including the record on appeal that contains such records” because the record on appeal might contain other records or portions thereof to which an individual should not have access. The court suggested that this phrase be changed to “including such records that are made a part of the record on appeal.” The rules subcommittee agreed with this suggested revision and it is also incorporated into the attached draft report to the Judicial Council.

Notice and opportunity to object when access to additional records is sought

As circulated for public comment, the proposed amendment to section 827 would have provided that “on order of either the judge of the juvenile court or the Court of Appeal” an individual who files a notice of appeal or writ petition challenging a juvenile court order or who is a respondent in such an appeal or writ proceeding “may inspect and copy any other record or portion thereof in the juvenile case file or appellate record.”

Two commentators – the San Diego Office of County Counsel’s Juvenile Dependency Division (one of the two commentators that agreed with the proposal if amended) and the Superior Court of San Diego County – expressed concern about the fact that this provision did not provide for notice and an opportunity to object to the release of this additional information. This notice and objection procedure is required under section 827 when a person not otherwise entitled to access to the juvenile case file petitions for access. It therefore seems logical that when an individual involved in an appellate proceeding wants access to records to which he or she did not previously have access, the notice and objection requirements should apply. Language to effectuate this has been incorporated into the attached draft of the proposed amendments to section 827.

Family and Juvenile Law Advisory Committee member input

After the rules subcommittee met, staff sought the input of the Family and Juvenile Law Advisory Committee (FJLAC) members who had worked on the invitation to comment on the rules subcommittee’s suggested revisions to the proposal. In general, they were fine with the changes to the proposal recommended by the rules subcommittee. However, at least one of the FJLAC members expressed concern that it might also be hard for the court to identify what documents were served on an individual. In addition, the FJLAC member noted that the individual might have been given access to other documents by the juvenile court through a WIC 827 request. Technically, these documents would not have been “served” on the individual, and so would not fall within the language recommended by the subcommittee. To address these concerns, the FJLAC member suggested the following modification to the language proposed by the rules subcommittee:

(6) Any individual not listed in paragraph (1) who files a notice of appeal or writ petition challenging a juvenile court order or who is a respondent in such an appeal or writ

proceeding, may, for purposes of that appeal or writ proceeding, inspect and copy any records in the juvenile case file that were filed by, or served on the individual, or provided to the individual in the juvenile court proceedings by the court or with the court's permission to which the individual was previously granted access by the juvenile court, including the record on appeal that contains any such records or portions thereof that are made a part of the appellate record. And, on order of either the judge of the juvenile court or the Court of Appeal, such individual may inspect and copy. The requirements of paragraph (3) shall continue to apply to any other record or portion thereof in the juvenile case file or made a part of the appellate record, except that a petition seeking release may be filed in and release of records ordered by either the juvenile court or the Court of Appeal. The requirements of paragraph (4) shall continue to apply to documents received under this paragraph. The Judicial Council shall adopt rules to implement this paragraph.

This language seems quite close to the language that was considered and rejected by the rules subcommittee at its May 18 meeting.

The committee will need to determine how to respond to the comments and suggestion from the FJLAC member. One option the committee might consider is having the working group of AAC and the FJLAC members that developed the proposal meet again to discuss this issue. The deadline for submitting draft reports on proposals is not until the end of June, so there is time to hold such a meeting and then hold a conference call of the AAC to consider the working groups recommendation.

Committee Task

Staff has prepared a draft of the report that could be submitted to the Judicial Council on this proposal, including the proposed text of the statutory amendments. This draft reflects the modifications to the proposal recommended by the rules subcommittee, which are shown in yellow highlighting. The committee's task with respect to this proposal is to:

- Discuss the comments received on the proposal, including the comments from FJLAC members, and decide how to respond to these comments; and
- Decide whether to recommend Judicial Council sponsorship of the proposed legislation, either as presented or as modified by the committee.

Attachments

1. Revised draft of proposed amendments to section 827
2. Draft comment chart
3. Invitation to comment

Welfare and Institutions Code section 827 would be amended, effective January 1, 2019 to read:

1
2 **§ 827. Limited dissemination of records; Misdemeanor violation of confidentiality**
3 **provisions.**
4

- 5 (a) (1) Except as provided in Section 828, a case file may be inspected only by the following:
6
7 (A) Court personnel.
8
9 (B) The district attorney, a city attorney, or city prosecutor authorized to prosecute
10 criminal or juvenile cases under state law.
11
12 (C) The minor who is the subject of the proceeding.
13
14 (D) The minor's parents or guardian.
15
16 (E) The attorneys for the parties, judges, referees, other hearing officers, probation
17 officers, and law enforcement officers who are actively participating in criminal
18 or juvenile proceedings involving the minor.
19
20 (F) The county counsel, city attorney, or any other attorney representing the
21 petitioning agency in a dependency action.
22
23 (G) The superintendent or designee of the school district where the minor is enrolled
24 or attending school.
25
26 (H) Members of the child protective agencies as defined in Section 11165.9 of the
27 Penal Code.
28
29 (I) The State Department of Social Services, to carry out its duties pursuant to
30 Division 9 (commencing with Section 10000), and Part 5 (commencing with
31 Section 7900) of Division 12, of the Family Code to oversee and monitor county
32 child welfare agencies, children in foster care or receiving foster care assistance,
33 and out-of-state placements, Section 10850.4, and paragraph (2).
34
35 (J) Authorized legal staff or special investigators who are peace officers who are
36 employed by, or who are authorized representatives of, the State Department of
37 Social Services, as necessary to the performance of their duties to inspect, license,
38 and investigate community care facilities, and to ensure that the standards of care
39 and services provided in those facilities are adequate and appropriate and to
40 ascertain compliance with the rules and regulations to which the facilities are
41 subject. The confidential information shall remain confidential except for
42 purposes of inspection, licensing, or investigation pursuant to Chapter 3
43 (commencing with Section 1500) and Chapter 3.4 (commencing with Section
44 1596.70) of Division 2 of the Health and Safety Code, or a criminal, civil, or
45 administrative proceeding in relation thereto. The confidential information may be
46 used by the State Department of Social Services in a criminal, civil, or

1 administrative proceeding. The confidential information shall be available only to
2 the judge or hearing officer and to the parties to the case. Names that are
3 confidential shall be listed in attachments separate to the general pleadings. The
4 confidential information shall be sealed after the conclusion of the criminal, civil,
5 or administrative hearings, and may not subsequently be released except in
6 accordance with this subdivision. If the confidential information does not result in
7 a criminal, civil, or administrative proceeding, it shall be sealed after the State
8 Department of Social Services decides that no further action will be taken in the
9 matter of suspected licensing violations. Except as otherwise provided in this
10 subdivision, confidential information in the possession of the State Department of
11 Social Services may not contain the name of the minor.
12

- 13 (K) Members of children's multidisciplinary teams, persons, or agencies providing
14 treatment or supervision of the minor.
15
- 16 (L) A judge, commissioner, or other hearing officer assigned to a family law case
17 with issues concerning custody or visitation, or both, involving the minor, and the
18 following persons, if actively participating in the family law case: a family court
19 mediator assigned to a case involving the minor pursuant to Article 1
20 (commencing with Section 3160) of Chapter 11 of Part 2 of Division 8 of the
21 Family Code, a court-appointed evaluator or a person conducting a court-
22 connected child custody evaluation, investigation, or assessment pursuant to
23 Section 3111 or 3118 of the Family Code, and counsel appointed for the minor in
24 the family law case pursuant to Section 3150 of the Family Code. Prior to
25 allowing counsel appointed for the minor in the family law case to inspect the file,
26 the court clerk may require counsel to provide a certified copy of the court order
27 appointing him or her as the minor's counsel.
28
- 29 (M) When acting within the scope of investigative duties of an active case, a
30 statutorily authorized or court-appointed investigator who is conducting an
31 investigation pursuant to Section 7663, 7851, or 9001 of the Family Code, or who
32 is actively participating in a guardianship case involving a minor pursuant to Part
33 2 (commencing with Section 1500) of Division 4 of the Probate Code and acting
34 within the scope of his or her duties in that case.
35
- 36 (N) A local child support agency for the purpose of establishing paternity and
37 establishing and enforcing child support orders.
38
- 39 (O) Juvenile justice commissions as established under Section 225. The
40 confidentiality provisions of Section 10850 shall apply to a juvenile justice
41 commission and its members.
42
- 43 (P) Any other person who may be designated by court order of the judge of the
44 juvenile court upon filing a petition.
45

- 1 (2) (A) Notwithstanding any other law and subject to subparagraph (A) of paragraph (3),
2 juvenile case files, except those relating to matters within the jurisdiction of the
3 court pursuant to Section 601 or 602, that pertain to a deceased child who was
4 within the jurisdiction of the juvenile court pursuant to Section 300, shall be
5 released to the public pursuant to an order by the juvenile court after a petition has
6 been filed and interested parties have been afforded an opportunity to file an
7 objection. Any information relating to another child or which could identify another
8 child, except for information about the deceased, shall be redacted from the juvenile
9 case file prior to release, unless a specific order is made by the juvenile court to the
10 contrary. Except as provided in this paragraph, the presiding judge of the juvenile
11 court may issue an order prohibiting or limiting access to the juvenile case file, or
12 any portion thereof, of a deceased child only upon a showing by a preponderance of
13 evidence that release of the juvenile case file or any portion thereof is detrimental to
14 the safety, protection, or physical or emotional well-being of another child who is
15 directly or indirectly connected to the juvenile case that is the subject of the petition.
16
- 17 (B) This paragraph represents a presumption in favor of the release of documents when
18 a child is deceased unless the statutory reasons for confidentiality are shown to
19 exist.
20
- 21 (C) If a child whose records are sought has died, and documents are sought pursuant to
22 this paragraph, no weighing or balancing of the interests of those other than a child
23 is permitted.
24
- 25 (D) A petition filed under this paragraph shall be served on interested parties by the
26 petitioner, if the petitioner is in possession of their identity and address, and on the
27 custodian of records. Upon receiving a petition, the custodian of records shall serve
28 a copy of the request upon all interested parties that have not been served by the
29 petitioner or on the interested parties served by the petitioner if the custodian of
30 records possesses information, such as a more recent address, indicating that the
31 service by the petitioner may have been ineffective.
32
- 33 (E) The custodian of records shall serve the petition within 10 calendar days of receipt.
34 If any interested party, including the custodian of records, objects to the petition,
35 the party shall file and serve the objection on the petitioning party no later than 15
36 calendar days after service of the petition.
37
- 38 (F) The petitioning party shall have 10 calendar days to file any reply. The juvenile
39 court shall set the matter for hearing no more than 60 calendar days from the date
40 the petition is served on the custodian of records. The court shall render its
41 decision within 30 days of the hearing. The matter shall be decided solely upon the
42 basis of the petition and supporting exhibits and declarations, if any, the objection
43 and any supporting exhibits or declarations, if any, and the reply and any
44 supporting declarations or exhibits thereto, and argument at hearing. The court may
45 solely upon its own motion order the appearance of witnesses. If no objection is
46 filed to the petition, the court shall review the petition and issue its decision within

1 10 calendar days of the final day for filing the objection. Any order of the court
2 shall be immediately reviewable by petition to the appellate court for the issuance
3 of an extraordinary writ.
4

5 (3) Access to juvenile case files pertaining to matters within the jurisdiction of the juvenile
6 court pursuant to Section 300 shall be limited as follows:
7

8 (A) If a juvenile case file, or any portion thereof, is privileged or confidential pursuant
9 to any other state law or federal law or regulation, the requirements of that state
10 law or federal law or regulation prohibiting or limiting release of the juvenile case
11 file or any portions thereof shall prevail. Unless a person is listed in subparagraphs
12 (A) to (O), inclusive, of paragraph (1) and is entitled to access under the other state
13 law or federal law or regulation without a court order, all those seeking access,
14 pursuant to other authorization, to portions of, or information relating to the
15 contents of, juvenile case files protected under another state law or federal law or
16 regulation, shall petition the juvenile court. The juvenile court may only release the
17 portion of, or information relating to the contents of, juvenile case files protected
18 by another state law or federal law or regulation if disclosure is not detrimental to
19 the safety, protection, or physical or emotional well-being of a child who is directly
20 or indirectly connected to the juvenile case that is the subject of the petition. This
21 paragraph shall not be construed to limit the ability of the juvenile court to carry
22 out its duties in conducting juvenile court proceedings.
23

24 (B) Prior to the release of the juvenile case file or any portion thereof, the court shall
25 afford due process, including a notice of and an opportunity to file an objection to
26 the release of the record or report to all interested parties.
27

28 (4) A juvenile case file, any portion thereof, and information relating to the content of the
29 juvenile case file, may not be disseminated by the receiving agencies to any persons
30 or agencies, other than those persons or agencies authorized to receive documents
31 pursuant to this section. Further, a juvenile case file, any portion thereof, and
32 information relating to the content of the juvenile case file, may not be made as an
33 attachment to any other documents without the prior approval of the presiding judge
34 of the juvenile court, unless it is used in connection with and in the course of a
35 criminal investigation or a proceeding brought to declare a person a dependent child
36 or ward of the juvenile court.
37

38 (5) Individuals listed in subparagraphs (A), (B), (C), (D), (E), (F), (H), and (I) of
39 paragraph (1) may also receive copies of the case file. In these circumstances, the
40 requirements of paragraph (4) shall continue to apply to the information received.
41

42 (6) Any individual not listed in paragraph (1) who files a notice of appeal or writ petition
43 challenging a juvenile court order or who is a respondent in such an appeal or writ
44 proceeding, may, for purposes of that appeal or writ proceeding, inspect and copy
45 any records in the juvenile case file that were filed by or served on the individual in
46 the juvenile court proceedings to which the individual was previously granted

1 access by the juvenile court, including the record on appeal that contains any such
2 records or portions thereof that are made a part of the appellate record. and, on
3 order of either the judge of the juvenile court or the Court of Appeal, such
4 individual may inspect and copy The requirements of paragraph (3) shall continue
5 to apply to any other record or portion thereof in the juvenile case file or made a
6 part of the appellate record, except that a petition seeking release may be filed in
7 and release of records ordered by either the juvenile court or the Court of Appeal.
8 The requirements of paragraph (4) shall continue to apply to documents received
9 under this paragraph. The Judicial Council shall adopt rules to implement this
10 paragraph.

11
12 (b) (1) While the Legislature reaffirms its belief that juvenile court records, in general, should
13 be confidential, it is the intent of the Legislature in enacting this subdivision to provide for
14 a limited exception to juvenile court record confidentiality to promote more effective
15 communication among juvenile courts, family courts, law enforcement agencies, and
16 schools to ensure the rehabilitation of juvenile criminal offenders as well as to lessen the
17 potential for drug use, violence, other forms of delinquency, and child abuse.

18
19 (2) (A) Notwithstanding subdivision (a), written notice that a minor enrolled in a public
20 school, kindergarten to grade 12, inclusive, has been found by a court of competent
21 jurisdiction to have committed any felony or any misdemeanor involving curfew,
22 gambling, alcohol, drugs, tobacco products, carrying of weapons, a sex offense
23 listed in Section 290 of the Penal Code, assault or battery, larceny, vandalism, or
24 graffiti shall be provided by the court, within seven days, to the superintendent of
25 the school district of attendance. Written notice shall include only the offense found
26 to have been committed by the minor and the disposition of the minor's case. This
27 notice shall be expeditiously transmitted by the district superintendent to the
28 principal at the school of attendance. The principal shall expeditiously disseminate
29 the information to those counselors directly supervising or reporting on the behavior
30 or progress of the minor. In addition, the principal shall disseminate the information
31 to any teacher or administrator directly supervising or reporting on the behavior or
32 progress of the minor whom the principal believes needs the information to work
33 with the pupil in an appropriate fashion, to avoid being needlessly vulnerable or to
34 protect other persons from needless vulnerability.

35
36 (B) Any information received by a teacher, counselor, or administrator under this
37 subdivision shall be received in confidence for the limited purpose of rehabilitating
38 the minor and protecting students and staff, and shall not be further disseminated
39 by the teacher, counselor, or administrator, except insofar as communication with
40 the juvenile, his or her parents or guardians, law enforcement personnel, and the

1 juvenile's probation officer is necessary to effectuate the juvenile's rehabilitation or
2 to protect students and staff.

3
4 (C) An intentional violation of the confidentiality provisions of this paragraph is a
5 misdemeanor punishable by a fine not to exceed five hundred dollars (\$500).
6

7 (3) If a minor is removed from public school as a result of the court's finding described in
8 subdivision (b), the superintendent shall maintain the information in a confidential
9 file and shall defer transmittal of the information received from the court until the
10 minor is returned to public school. If the minor is returned to a school district other
11 than the one from which the minor came, the parole or probation officer having
12 jurisdiction over the minor shall so notify the superintendent of the last district of
13 attendance, who shall transmit the notice received from the court to the
14 superintendent of the new district of attendance.
15

16 (c) Each probation report filed with the court concerning a minor whose record is subject to
17 dissemination pursuant to subdivision (b) shall include on the face sheet the school at
18 which the minor is currently enrolled. The county superintendent shall provide the court
19 with a listing of all of the schools within each school district, within the county, along with
20 the name and mailing address of each district superintendent.
21

22 (d) (1) Each notice sent by the court pursuant to subdivision (b) shall be stamped with the
23 instruction: "Unlawful Dissemination Of This Information Is A Misdemeanor." Any
24 information received from the court shall be kept in a separate confidential file at the
25 school of attendance and shall be transferred to the minor's subsequent schools of
26 attendance and maintained until the minor graduates from high school, is released from
27 juvenile court jurisdiction, or reaches the age of 18 years, whichever occurs first. After
28 that time the confidential record shall be destroyed. At any time after the date by which a
29 record required to be destroyed by this section should have been destroyed, the minor or
30 his or her parent or guardian shall have the right to make a written request to the principal
31 of the school that the minor's school records be reviewed to ensure that the record has been
32 destroyed. Upon completion of any requested review and no later than 30 days after the
33 request for the review was received, the principal or his or her designee shall respond in
34 writing to the written request and either shall confirm that the record has been destroyed
35 or, if the record has not been destroyed, shall explain why destruction has not yet
36 occurred.
37

38 (2) Except as provided in paragraph (2) of subdivision (b), no liability shall attach to any
39 person who transmits or fails to transmit any notice or information required under
40 subdivision (b).
41

42 (e) For purposes of this section, a "juvenile case file" means a petition filed in any juvenile
43 court proceeding, reports of the probation officer, and all other documents filed in that
44 case or made available to the probation officer in making his or her report, or to the judge,

1 referee, or other hearing officer, and thereafter retained by the probation officer, judge,
2 referee, or other hearing officer.

3
4 (f) The persons described in subparagraphs (A), (E), (F), (H), (K), (L), (M), and (N) of
5 paragraph (1) of subdivision (a) include persons serving in a similar capacity for an Indian
6 tribe, reservation, or tribal court when the case file involves a child who is a member of, or
7 who is eligible for membership in, that tribe.

8
9 (g) A case file that is covered by, or included in, an order of the court sealing a record
10 pursuant to Section 781 or 786 may not be inspected except as specified by Section 781 or
11 786.

12
13
14

LEG17-02**Title of proposal (Proposed Legislation (Appellate Procedure): Content of the Record in Certain Juvenile Appeals)**

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	California Appellate Court Clerks Association by Daniel P. Potter Clerk Administrator and President, California Appellate Court clerks Association San Jose, CA	A	The Clerks Association agrees with the proposed amendment to the Welfare & Institutions Code. This change would increase efficiency for the parties to appellate court proceedings as well as court staff.	The committee notes the commentator's support for the proposal; no response required.
2.	Los Angeles County by Alyssa Skolnick Principal Deputy County Counsel Monterey Park, CA	AM	LITIGATION County agencies, including child welfare and probation agencies are subject to civil lawsuits for various reasons. Unless there is a juvenile court order allowing use of a juvenile files by an attorney representing the county or its agencies in a civil lawsuit, the attorney may not inspect the file. Further, mere inspection of the file without court authorization is a violation of privacy rights and may subject the county or its agencies to liability for any unauthorized inspection. (Gonzalez v. Spencer (9th. Cir. (2003) 336 F. 832.) In Los Angeles County, the juvenile court processes all §827 petitions filed each year to allow inspection of juvenile files where the county or its agencies are parties to a civil case involving a minor. Processing these §827 petitions is very time-consuming, often taking more than a year, which results in significant delay in civil cases. If §827 was amended to allow access by counsel involved in these type of civil cases, then there would be no need for processing by the juvenile court, resulting in streamlined access. The current	The additional changes to Welfare and Institutions Code section 827 suggested by the commentator are beyond the scope of the proposal that was circulated for public comment. The committee will treat them as new suggestions for consideration when the committee develops its agenda for the next committee year.

LEG17-02

Title of proposal (Proposed Legislation (Appellate Procedure): Content of the Record in Certain Juvenile Appeals)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>process requires significant resources from the juvenile courts and county agencies. Further, it causes significant delay in the civil actions, impacting the resources of the civil courts, as well.</p> <p>Section 827 needs to be amended to clarify that an attorney representing the State, political subdivision of the State, or local child welfare and probation agencies is entitled to inspect and receive copies of the case file to investigate or defend against any lawsuit or government claim filed pursuant to Government Code Section 900, et seq. This proposed amendment mirrors State Department of Social Services, Manual of Policies and Procedures Section 19-004.5, governing a government lawyer's ability to access public social services records. This Regulation states:</p> <p>Release of Confidential Information in Conjunction with a Lawsuit: If an applicant/recipient or caretaker relative becomes a party or plaintiff in any suit against the State of California, any political subdivision of the state, or any agency administering the laws governing the administration of public social services and such suit challenges the validity of the laws governing the administration of public social services or the manner in which the laws have been applied, the attorney representing the state, political subdivision, or agency shall be given access to</p>	

LEG17-02**Title of proposal (Proposed Legislation (Appellate Procedure): Content of the Record in Certain Juvenile Appeals)**

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>all files and records relating to the plaintiff. Such files and records may be disclosed to the court having jurisdiction of the lawsuit insofar as they are relevant to the determination of any factual or legal issue in the case. In such cases, it should be brought to the court's attention, when presented with the requested information, of the state law and policy against further disclosure of the information.</p> <p>CHILD AND FAMILY TEAMS</p> <p>We also recommend that WIC 827 be revised to permit the sharing of information with members of a child and family team, as defined by WIC 16501(a)(4) as part of the State's Continuum of Care Reform. WIC 16501(a)(4) became effective January 1, 2017.</p>	
3.	Orange County Bar Association by Michael L. Baroni President Newport Beach, CA	A	No suggested changes. OCBA will merely add that this modification to Welfare and Institutions Code section 827 is long overdue and critical to efficient appellate practice in appeals taken by relatives and de facto parents who might otherwise be placed in the position of having limited access to appellate relief. That noted, rule 8.409(e) – dealing with the transmission of the appellate record in dependency appeals – may benefit from a minor modification noting that record transmission is subject to the appellants' right to such information under section 827.	The committee notes the commentator's support for the proposal.

LEG17-02**Title of proposal (Proposed Legislation (Appellate Procedure): Content of the Record in Certain Juvenile Appeals)**

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
4.	San Diego Office of County Counsel Juvenile Dependency Division by Candice H. Cohen Senior Deputy County Counsel San Diego, CA	AM	<p>My concerns with amendments to section 827, is that it allows for a greater dissemination of confidential records that were not previously provided pursuant to the original in camera review. There is no procedure to notice the parties and the subject of those records that additional information is being inspected and copied. There is no procedure to sufficiently identify what items are now being made accessible or being requested. The proposed changes do not allow for a hearing if there is opposition to portions of the juvenile case files that have not previously been ordered in a previous 827 hearing.</p> <p>There is a greater fear that records could be produced that an individual wanted kept private and are not relevant to the matter at hand. When the appellant or petitioner is self-represented, the misuse of such materials is more likely, whether out of ignorance or maliciousness.</p>	<p>The committee acknowledges the concern about the absence of requirement for notice and opportunity to object to the release of records to which an individual did not previously have access in the juvenile court proceedings. Based on this and the comments of Superior Court of California, County of San Diego, the committee has revised the proposal to clarify that the notice and opportunity to object requirements of paragraph 3 apply to such records, but that a petition seeking release of such records may be filed in and ruled on by either the juvenile court or the Court of Appeal</p> <p>The committee also acknowledges the concerns about further dissemination of confidential records by those who receive them under this proposed amendment. The proposed amendments specifies that the existing requirements of section 827 prohibiting the dissemination of material from a juvenile case file by anyone receiving that information apply to individuals receiving information under this proposed amendment. However, as with any other release of information from a juvenile case file, this provision cannot guarantee compliance by a recipient</p>
5.	Superior Court of Los Angeles by: Not stated Los Angeles, CA	A	<i>Does the proposal appropriately address the stated purpose? Is there an alternative approach for addressing this problem that would be preferable to the proposed amendment to section 827?</i>	The committee notes the commentator's support for the proposal; no response required.

LEG17-02**Title of proposal (Proposed Legislation (Appellate Procedure): Content of the Record in Certain Juvenile Appeals)**

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>This proposal will achieve its stated purpose, of increasing efficiencies and access to justice for the appellants, while reducing work for the court. In treating these appellants as entitled parties, they will be able to submit a Declaration in Support of Access for the appellate transcript, instead of a form JV-570. The form JV-570 necessitates a statutory 21-day notice period to be observed, which requires court clerks to send notices and collect objections from the noticed parties. Reducing the amount of filed form JV-570s will reduce the amount of notices sent by court clerks. Moreover, without having to comply with the statutory notice period, the court will be able to provide the appellant their records faster, which will allow for swifter disposition of the given appeal and permanence for the related child(ren).</p> <p><i>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?</i></p> <p>Any implementation requirements for the court are minimal, if any, because this proposal essentially codifies the court's current procedure for designating the appellate transcript for these types of appellants.</p>	<p>The committee appreciates the commentator's input on these implementation questions</p>

LEG17-02**Title of proposal (Proposed Legislation (Appellate Procedure): Content of the Record in Certain Juvenile Appeals)**

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
6.	Superior Court of California County of San Diego by Mike Roddy Executive Officer San Diego, CA 92101	A	<p>Overall, this is a good suggestion that will increase efficiency; however, it might be hard to know what records the individual was previously granted access to; they may not be marked or separated out. Maybe "inspect and copy any minute order, report, or other document in the juvenile case file that is directly related to the hearing from which the appeal or writ was filed" would be more clear. It should also specifically state that any information that is privileged or confidential pursuant to any other state law or federal law or regulation must be redacted or removed.</p> <p>The proposed amendment seems to grant access to anyone who files an appeal or writ, even if it turns out that person does not have standing.</p>	<p>The committee notes the commentator's support for the proposal.</p> <p>The committee acknowledges the commentator's concern about identifying the documents to which an individual previously had access. The committee decided not to modify the proposal as suggested by the commentator, however. Both in developing the proposal and in reviewing the public comments, the committee considered a variety of different options for identifying the records to which an individual appellant, petitioner, or respondent should have access without a court order. The committee considered language similar to that suggested by the commentator, but concerns were raised that even some documents or portions thereof that are directly related to the hearing might not have been made available to all participants in a hearing. To try to make it easier to quickly identify at most of the relevant documents, the committee has modified the proposal to indicate that, without a court order, an individual can have access to all documents filed by or served on that individual in the juvenile court proceedings. Access to all other documents would be through court order.</p> <p>The commentator is correct that the proposal is not drafted to make access to records without a court order dependent upon whether the person has standing to file an appeal or writ. Making access dependent on standing would potentially create difficulties and delay in preparation of the</p>

LEG17-02

Title of proposal (Proposed Legislation (Appellate Procedure): Content of the Record in Certain Juvenile Appeals)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>There are also concerns by some in our court about the highlighted language in the proposed amendment.</p> <p>“(6) Any individual not listed in paragraph (1) who files a notice of appeal or writ petition challenging a juvenile court order or who is a respondent in such an appeal or writ proceeding, may, for purposes of that appeal or writ proceeding, inspect and copy any records in the juvenile case file to which the individual was previously granted access by the juvenile court, including the record on appeal that contains such records, and, on order of either the judge of the juvenile court or the Court of Appeal, such individual may inspect and copy any other record or portion thereof in the juvenile case file or appellate record. ...”</p> <p>Is it possible there might be documents included in the record on appeal that such an individual should <u>not</u> have access to? Often, before documents are released pursuant to a WIC 827 petition, court staff redacts information which</p>	<p>appellate record since standing must be determined by the Court of Appeal. Instead, this amendment focuses on clarifying access to those records in the juvenile court file to that the individual had access to during the juvenile court proceedings. The committee believes that this approach protects the confidentiality of the proceedings by not widening existing access.</p> <p>The committee has modified the proposal as suggested by the commentator.</p>

LEG17-02

Title of proposal (Proposed Legislation (Appellate Procedure): Content of the Record in Certain Juvenile Appeals)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>must remain confidential under WIC 827(a)(3)(A), i.e., information that is privileged or confidential under some other state or federal law. An example would be the name of the reporting party, which must remain confidential under PC 11167(d).</p> <p>One of our senior clerks, who has extensive experience in preparing records for writs and appeals, confirmed that names of reporting parties are <u>not</u> redacted when the record is prepared; furthermore, the record often contains other documents that should not be disclosed to parties (e.g., psychological evaluations). If a non-party appellant or respondent is given access to the entire record on appeal, s/he will likely obtain information that should not be released to him/her.</p> <p>A possible solution: Change the language from “including the record on appeal that contains such records” to “including such records that are made a part of the record on appeal.” With this language, the appellant or respondent would not receive the <u>entire</u> record on appeal – which could include information that is confidential or privileged under other state and federal laws. Rather, s/he would receive only the documents to which s/he was previously granted access by the court.</p> <p>Finally, should the notice and opportunity to file an objection requirements when the person</p>	<p>Based on this and the comments of the San Diego Office of County Counsel Juvenile</p>

LEG17-02**Title of proposal (Proposed Legislation (Appellate Procedure): Content of the Record in Certain Juvenile Appeals)**

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			seeks access to the entire file be spelled out here, or will that be left to the amended rule of court?	Dependency Division, the committee has revised the proposal to clarify that the notice and opportunity to object requirements of paragraph 3 apply to such records, but that a petition seeking release of such records may be filed in and ruled on by either the juvenile court or the Court of Appeal

Judicial Council of California

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INVITATION TO COMMENT LEG17-02

Title	Action Requested
Proposed Legislation (Appellate Procedure): Content of the Record in Certain Juvenile Appeals	Review and submit comments by April 28, 2017
Proposed Rules, Forms, Standards, or Statutes Amend Welf. & Inst. Code, §827	Proposed Effective Date January 1, 2019
Proposed by Appellate Advisory Committee Hon. Louis R. Mauro, Chair	Contact Heather Anderson, 415-865-7691 heather.anderson@jud.ca.gov

Executive Summary and Origin

This proposal would amend the statute that specifies who may access and copy records in a juvenile case file to clarify that people who are entitled to seek review of certain orders in juvenile proceedings or who are respondents in such appellate proceedings may, for purposes of those appellate proceeding, access and copy those records to which they were previously given access by the juvenile court. The proposal would also clarify that either the juvenile court or the Court of Appeal may permit such individuals to access and copy additional records in the juvenile case file. This proposal is based on a suggestion from the executive officer of a Court of Appeal.

Background

The confidentiality of juvenile case files is established by Welfare and Institutions Code section 827. This confidentiality is intended to protect the privacy rights of the child who is the subject of the juvenile court proceedings. Subdivision (a)(1) of this statute identifies those who may inspect and receive copies of a juvenile court case file.¹ These include the child who is the subject of the proceeding, the child's parent or guardian, the attorneys for the parties, the petitioning agency in a dependency action, or the district attorney, city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law.

¹ You can access the full text of this section at
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=827.&lawCode=WIC.

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.

Ordinarily, to help resolve these matters as quickly as possible, when an appeal or petition is filed challenging a judgment or order in a juvenile proceeding, the record for that appellate proceeding is prepared and sent to the Court of Appeal and the parties very quickly. The items that must be included in the record on appeal or for certain writ proceedings are listed in California Rules of Court, rules 8.407, 8.450, and 8.454. The trial court is required to begin preparing the record in these proceedings as soon as a notice of appeal or notice of intent to file a writ petition is filed. A premise of this practice seems to be that all the parties to the appellate proceeding are entitled under section 827 to inspect and receive copies of the records from the juvenile case file that would be included in the record.

Currently, however, some individuals who have been authorized to participate in juvenile proceedings and have the right to seek review of certain orders in those proceedings or who have a right to respond to an appeal or petition seeking such review are not entitled under section 827 to inspect or copy any records in a juvenile case file. This situation may occur, for example, when the appellant is a family member or other person who filed a petition seeking de facto parent status and is appealing the denial of that petition or who filed a petition under Welfare and Institutions Code section 388 to change, modify, or set aside a juvenile court order on grounds of change of circumstance or new evidence and is appealing the denial of that petition. In these cases, the juvenile courts and Courts of Appeal are following various procedures to decide, on a case-by-case basis, what records the parties to the appellate proceeding may receive. Doing so takes time and resources for the persons who are seeking review or who are respondents in such proceedings, for the juvenile court, and for the Court of Appeal. It also results in delays and, particularly when the appellant or petitioner is self-represented, procedural dismissals of these appeals without consideration of their merit.

The Proposal

The Appellate Advisory Committee is proposing an amendment to section 827 to provide that persons not otherwise entitled to access the juvenile case file under 827 who file a notice of appeal or petition challenging a juvenile court order or who are a respondent in such an appellate proceeding may, for purposes of the appellate proceeding, access and copy those records to which they were previously given access by the juvenile court. The amendment would also provide that an order from either the juvenile court or the Court of Appeal is required for such individuals to access any other item in the juvenile court record.

The committee believes that this proposed amendment appropriately balances the policy considerations favoring confidentiality of juvenile case files against these individuals' need for access to certain records for purposes of effectuating their right to participate in appellate proceedings in these cases. Since the individuals were already privy to the records in the juvenile court proceedings, the proposal would not dilute the confidentiality protections for the child. By eliminating the necessity for special procedures to authorize the individuals' access to these records, the proposal would increase efficiency and access to justice while reducing costs and delays for the parties and the courts. The amendment would also clarify the procedure for

providing the individuals with access to any additional records from the juvenile case file in these circumstances.

Please note, to help commentators to see this proposed amendment in context, the full text of section 827, with the proposed amendment incorporated, is attached.

Alternatives Considered

The committee considered several options for possible changes to the California Rules of Court to address this issue, including:

- Specifically requiring appellants to file a petition in the juvenile court requesting access to the juvenile case file and allowing the dismissal of the appeal if they fail to do so;
- Requiring the Court of Appeal to determine, on a case-by-case basis, what items from the juvenile case file to include in the record on appeal in these cases and who can access that record on appeal; and
- Setting the contents of the record on appeal in these cases by rule.

The committee ultimately concluded, however, that none of these approaches, by themselves, was sufficient to address the issue.

Implementation Requirements, Costs, and Operational Impacts

The committee believes that this proposal will reduce burdens on litigants, trial courts, and the Courts of Appeal associated with preparing the record on appeal in these cases.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose? Is there an alternative approach for addressing this problem that would be preferable to the proposed amendment to section 827?
- Does the proposal appropriately identify the individuals who should have access to certain items from the juvenile case file without court order? Should other individuals be included? Is there a better way to identify who should have this access?
- Does the proposal appropriately identify the items from the juvenile case file that should be accessible without court order? Should other items be included?

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 three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

Attachments and Links

1. Proposed amendments to Welfare and Institutions Code section 827, at pages 5–10

Welfare and Institutions Code section 827 would be amended, effective January 1, 2019 to read:

1
2 **§ 827. Limited dissemination of records; Misdemeanor violation of confidentiality**
3 **provisions.**
4

- 5 (a) (1) Except as provided in Section 828, a case file may be inspected only by the following:
6
7 (A) Court personnel.
8
9 (B) The district attorney, a city attorney, or city prosecutor authorized to prosecute
10 criminal or juvenile cases under state law.
11
12 (C) The minor who is the subject of the proceeding.
13
14 (D) The minor's parents or guardian.
15
16 (E) The attorneys for the parties, judges, referees, other hearing officers, probation
17 officers, and law enforcement officers who are actively participating in criminal
18 or juvenile proceedings involving the minor.
19
20 (F) The county counsel, city attorney, or any other attorney representing the
21 petitioning agency in a dependency action.
22
23 (G) The superintendent or designee of the school district where the minor is enrolled
24 or attending school.
25
26 (H) Members of the child protective agencies as defined in Section 11165.9 of the
27 Penal Code.
28
29 (I) The State Department of Social Services, to carry out its duties pursuant to
30 Division 9 (commencing with Section 10000), and Part 5 (commencing with
31 Section 7900) of Division 12, of the Family Code to oversee and monitor county
32 child welfare agencies, children in foster care or receiving foster care assistance,
33 and out-of-state placements, Section 10850.4, and paragraph (2).
34
35 (J) Authorized legal staff or special investigators who are peace officers who are
36 employed by, or who are authorized representatives of, the State Department of
37 Social Services, as necessary to the performance of their duties to inspect, license,
38 and investigate community care facilities, and to ensure that the standards of care
39 and services provided in those facilities are adequate and appropriate and to
40 ascertain compliance with the rules and regulations to which the facilities are
41 subject. The confidential information shall remain confidential except for
42 purposes of inspection, licensing, or investigation pursuant to Chapter 3
43 (commencing with Section 1500) and Chapter 3.4 (commencing with Section
44 1596.70) of Division 2 of the Health and Safety Code, or a criminal, civil, or
45 administrative proceeding in relation thereto. The confidential information may be
46 used by the State Department of Social Services in a criminal, civil, or

1 administrative proceeding. The confidential information shall be available only to
2 the judge or hearing officer and to the parties to the case. Names that are
3 confidential shall be listed in attachments separate to the general pleadings. The
4 confidential information shall be sealed after the conclusion of the criminal, civil,
5 or administrative hearings, and may not subsequently be released except in
6 accordance with this subdivision. If the confidential information does not result in
7 a criminal, civil, or administrative proceeding, it shall be sealed after the State
8 Department of Social Services decides that no further action will be taken in the
9 matter of suspected licensing violations. Except as otherwise provided in this
10 subdivision, confidential information in the possession of the State Department of
11 Social Services may not contain the name of the minor.
12

- 13 (K) Members of children's multidisciplinary teams, persons, or agencies providing
14 treatment or supervision of the minor.
15
- 16 (L) A judge, commissioner, or other hearing officer assigned to a family law case
17 with issues concerning custody or visitation, or both, involving the minor, and the
18 following persons, if actively participating in the family law case: a family court
19 mediator assigned to a case involving the minor pursuant to Article 1
20 (commencing with Section 3160) of Chapter 11 of Part 2 of Division 8 of the
21 Family Code, a court-appointed evaluator or a person conducting a court-
22 connected child custody evaluation, investigation, or assessment pursuant to
23 Section 3111 or 3118 of the Family Code, and counsel appointed for the minor in
24 the family law case pursuant to Section 3150 of the Family Code. Prior to
25 allowing counsel appointed for the minor in the family law case to inspect the file,
26 the court clerk may require counsel to provide a certified copy of the court order
27 appointing him or her as the minor's counsel.
28
- 29 (M) When acting within the scope of investigative duties of an active case, a
30 statutorily authorized or court-appointed investigator who is conducting an
31 investigation pursuant to Section 7663, 7851, or 9001 of the Family Code, or who
32 is actively participating in a guardianship case involving a minor pursuant to Part
33 2 (commencing with Section 1500) of Division 4 of the Probate Code and acting
34 within the scope of his or her duties in that case.
35
- 36 (N) A local child support agency for the purpose of establishing paternity and
37 establishing and enforcing child support orders.
38
- 39 (O) Juvenile justice commissions as established under Section 225. The
40 confidentiality provisions of Section 10850 shall apply to a juvenile justice
41 commission and its members.
42
- 43 (P) Any other person who may be designated by court order of the judge of the
44 juvenile court upon filing a petition.
45

- 1 (2) (A) Notwithstanding any other law and subject to subparagraph (A) of paragraph (3),
2 juvenile case files, except those relating to matters within the jurisdiction of the
3 court pursuant to Section 601 or 602, that pertain to a deceased child who was
4 within the jurisdiction of the juvenile court pursuant to Section 300, shall be
5 released to the public pursuant to an order by the juvenile court after a petition has
6 been filed and interested parties have been afforded an opportunity to file an
7 objection. Any information relating to another child or which could identify another
8 child, except for information about the deceased, shall be redacted from the juvenile
9 case file prior to release, unless a specific order is made by the juvenile court to the
10 contrary. Except as provided in this paragraph, the presiding judge of the juvenile
11 court may issue an order prohibiting or limiting access to the juvenile case file, or
12 any portion thereof, of a deceased child only upon a showing by a preponderance of
13 evidence that release of the juvenile case file or any portion thereof is detrimental to
14 the safety, protection, or physical or emotional well-being of another child who is
15 directly or indirectly connected to the juvenile case that is the subject of the petition.
16
- 17 (B) This paragraph represents a presumption in favor of the release of documents when
18 a child is deceased unless the statutory reasons for confidentiality are shown to
19 exist.
20
- 21 (C) If a child whose records are sought has died, and documents are sought pursuant to
22 this paragraph, no weighing or balancing of the interests of those other than a child
23 is permitted.
24
- 25 (D) A petition filed under this paragraph shall be served on interested parties by the
26 petitioner, if the petitioner is in possession of their identity and address, and on the
27 custodian of records. Upon receiving a petition, the custodian of records shall serve
28 a copy of the request upon all interested parties that have not been served by the
29 petitioner or on the interested parties served by the petitioner if the custodian of
30 records possesses information, such as a more recent address, indicating that the
31 service by the petitioner may have been ineffective.
32
- 33 (E) The custodian of records shall serve the petition within 10 calendar days of receipt.
34 If any interested party, including the custodian of records, objects to the petition,
35 the party shall file and serve the objection on the petitioning party no later than 15
36 calendar days after service of the petition.
37
- 38 (F) The petitioning party shall have 10 calendar days to file any reply. The juvenile
39 court shall set the matter for hearing no more than 60 calendar days from the date
40 the petition is served on the custodian of records. The court shall render its
41 decision within 30 days of the hearing. The matter shall be decided solely upon the
42 basis of the petition and supporting exhibits and declarations, if any, the objection
43 and any supporting exhibits or declarations, if any, and the reply and any
44 supporting declarations or exhibits thereto, and argument at hearing. The court may
45 solely upon its own motion order the appearance of witnesses. If no objection is
46 filed to the petition, the court shall review the petition and issue its decision within

1 10 calendar days of the final day for filing the objection. Any order of the court
2 shall be immediately reviewable by petition to the appellate court for the issuance
3 of an extraordinary writ.
4

5 (3) Access to juvenile case files pertaining to matters within the jurisdiction of the juvenile
6 court pursuant to Section 300 shall be limited as follows:
7

8 (A) If a juvenile case file, or any portion thereof, is privileged or confidential pursuant
9 to any other state law or federal law or regulation, the requirements of that state
10 law or federal law or regulation prohibiting or limiting release of the juvenile case
11 file or any portions thereof shall prevail. Unless a person is listed in subparagraphs
12 (A) to (O), inclusive, of paragraph (1) and is entitled to access under the other state
13 law or federal law or regulation without a court order, all those seeking access,
14 pursuant to other authorization, to portions of, or information relating to the
15 contents of, juvenile case files protected under another state law or federal law or
16 regulation, shall petition the juvenile court. The juvenile court may only release the
17 portion of, or information relating to the contents of, juvenile case files protected
18 by another state law or federal law or regulation if disclosure is not detrimental to
19 the safety, protection, or physical or emotional well-being of a child who is directly
20 or indirectly connected to the juvenile case that is the subject of the petition. This
21 paragraph shall not be construed to limit the ability of the juvenile court to carry
22 out its duties in conducting juvenile court proceedings.
23

24 (B) Prior to the release of the juvenile case file or any portion thereof, the court shall
25 afford due process, including a notice of and an opportunity to file an objection to
26 the release of the record or report to all interested parties.
27

28 (4) A juvenile case file, any portion thereof, and information relating to the content of the
29 juvenile case file, may not be disseminated by the receiving agencies to any persons
30 or agencies, other than those persons or agencies authorized to receive documents
31 pursuant to this section. Further, a juvenile case file, any portion thereof, and
32 information relating to the content of the juvenile case file, may not be made as an
33 attachment to any other documents without the prior approval of the presiding judge
34 of the juvenile court, unless it is used in connection with and in the course of a
35 criminal investigation or a proceeding brought to declare a person a dependent child
36 or ward of the juvenile court.
37

38 (5) Individuals listed in subparagraphs (A), (B), (C), (D), (E), (F), (H), and (I) of
39 paragraph (1) may also receive copies of the case file. In these circumstances, the
40 requirements of paragraph (4) shall continue to apply to the information received.
41

42 (6) Any individual not listed in paragraph (1) who files a notice of appeal or writ petition
43 challenging a juvenile court order or who is a respondent in such an appeal or writ
44 proceeding, may, for purposes of that appeal or writ proceeding, inspect and copy
45 any records in the juvenile case file to which the individual was previously granted
46 access by the juvenile court, including the record on appeal that contains such

1 records, and, on order of either the judge of the juvenile court or the Court of
2 Appeal, such individual may inspect and copy any other record or portion thereof in
3 the juvenile case file or appellate record. The requirements of paragraph (4) shall
4 continue to apply to documents received under this paragraph. The Judicial Council
5 shall adopt rules to implement this paragraph.
6

7 (b) (1) While the Legislature reaffirms its belief that juvenile court records, in general, should
8 be confidential, it is the intent of the Legislature in enacting this subdivision to provide for
9 a limited exception to juvenile court record confidentiality to promote more effective
10 communication among juvenile courts, family courts, law enforcement agencies, and
11 schools to ensure the rehabilitation of juvenile criminal offenders as well as to lessen the
12 potential for drug use, violence, other forms of delinquency, and child abuse.
13

14 (2) (A) Notwithstanding subdivision (a), written notice that a minor enrolled in a public
15 school, kindergarten to grade 12, inclusive, has been found by a court of competent
16 jurisdiction to have committed any felony or any misdemeanor involving curfew,
17 gambling, alcohol, drugs, tobacco products, carrying of weapons, a sex offense
18 listed in Section 290 of the Penal Code, assault or battery, larceny, vandalism, or
19 graffiti shall be provided by the court, within seven days, to the superintendent of
20 the school district of attendance. Written notice shall include only the offense found
21 to have been committed by the minor and the disposition of the minor's case. This
22 notice shall be expeditiously transmitted by the district superintendent to the
23 principal at the school of attendance. The principal shall expeditiously disseminate
24 the information to those counselors directly supervising or reporting on the behavior
25 or progress of the minor. In addition, the principal shall disseminate the information
26 to any teacher or administrator directly supervising or reporting on the behavior or
27 progress of the minor whom the principal believes needs the information to work
28 with the pupil in an appropriate fashion, to avoid being needlessly vulnerable or to
29 protect other persons from needless vulnerability.
30

31 (B) Any information received by a teacher, counselor, or administrator under this
32 subdivision shall be received in confidence for the limited purpose of rehabilitating
33 the minor and protecting students and staff, and shall not be further disseminated
34 by the teacher, counselor, or administrator, except insofar as communication with
35 the juvenile, his or her parents or guardians, law enforcement personnel, and the
36 juvenile's probation officer is necessary to effectuate the juvenile's rehabilitation or
37 to protect students and staff.
38

39 (C) An intentional violation of the confidentiality provisions of this paragraph is a
40 misdemeanor punishable by a fine not to exceed five hundred dollars (\$500).
41

42 (3) If a minor is removed from public school as a result of the court's finding described in
43 subdivision (b), the superintendent shall maintain the information in a confidential
44 file and shall defer transmittal of the information received from the court until the
45 minor is returned to public school. If the minor is returned to a school district other
46 than the one from which the minor came, the parole or probation officer having

1 jurisdiction over the minor shall so notify the superintendent of the last district of
2 attendance, who shall transmit the notice received from the court to the
3 superintendent of the new district of attendance.
4

5 (c) Each probation report filed with the court concerning a minor whose record is subject to
6 dissemination pursuant to subdivision (b) shall include on the face sheet the school at
7 which the minor is currently enrolled. The county superintendent shall provide the court
8 with a listing of all of the schools within each school district, within the county, along with
9 the name and mailing address of each district superintendent.
10

11 (d) (1) Each notice sent by the court pursuant to subdivision (b) shall be stamped with the
12 instruction: "Unlawful Dissemination Of This Information Is A Misdemeanor." Any
13 information received from the court shall be kept in a separate confidential file at the
14 school of attendance and shall be transferred to the minor's subsequent schools of
15 attendance and maintained until the minor graduates from high school, is released from
16 juvenile court jurisdiction, or reaches the age of 18 years, whichever occurs first. After
17 that time the confidential record shall be destroyed. At any time after the date by which a
18 record required to be destroyed by this section should have been destroyed, the minor or
19 his or her parent or guardian shall have the right to make a written request to the principal
20 of the school that the minor's school records be reviewed to ensure that the record has been
21 destroyed. Upon completion of any requested review and no later than 30 days after the
22 request for the review was received, the principal or his or her designee shall respond in
23 writing to the written request and either shall confirm that the record has been destroyed
24 or, if the record has not been destroyed, shall explain why destruction has not yet
25 occurred.
26

27 (2) Except as provided in paragraph (2) of subdivision (b), no liability shall attach to any
28 person who transmits or fails to transmit any notice or information required under
29 subdivision (b).
30

31 (e) For purposes of this section, a "juvenile case file" means a petition filed in any juvenile
32 court proceeding, reports of the probation officer, and all other documents filed in that
33 case or made available to the probation officer in making his or her report, or to the judge,
34 referee, or other hearing officer, and thereafter retained by the probation officer, judge,
35 referee, or other hearing officer.
36

37 (f) The persons described in subparagraphs (A), (E), (F), (H), (K), (L), (M), and (N) of
38 paragraph (1) of subdivision (a) include persons serving in a similar capacity for an Indian
39 tribe, reservation, or tribal court when the case file involves a child who is a member of, or
40 who is eligible for membership in, that tribe.
41

42 (g) A case file that is covered by, or included in, an order of the court sealing a record
43 pursuant to Section 781 or 786 may not be inspected except as specified by Section 781 or
44 786.
45
46



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	Action Requested
May 25, 2017	Please read before June 1 committee conference call
To	Deadline
Members of the Appellate Advisory Committee	June 1, 2017
From	Contact
Heather Anderson, Supervising Attorney, Legal Services	Heather Anderson 415-865-7691 heather.anderson@jud.ca.gov
Subject	
<i>Appellant's Notice Designating Record on Appeal (Limited Civil Case)</i> (form APP-103)	

Introduction

As you may recall, earlier this spring, on the recommendation of the Appellate Division Subcommittee, the Appellate Advisory Committee recommended circulating for public comment a proposal to revise *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) to clarify the consequences for failing to designate a record of the oral proceedings and to make other changes. The Judicial Council's Rules and Projects Committee approved the recommendation for circulation and the proposal was circulated for public comment February 27 and April 28, 2017 as part of the regular spring comment cycle. (A copy of the invitation to comment is included in your meeting materials). This memo discusses the public comments received on the proposal and the Appellate Division Subcommittee's recommendations for responding to these comments.

Public Comments

Four individuals or organizations submitted comments on this proposal. Three commentators indicated that they agreed with the proposal and one agreed with the proposal if modified. A chart with the full text of the comments received and staff's draft responses is attached.

The commentator that agreed with the proposal if amended – the Civil and Probate Managers for the Superior Court of Orange County – pointed out that form APP-103 presumes that a deposit for a transcript of an electronic recording will be based on a clerk’s estimate of the cost of preparing this transcript. The commentator correctly noted that, under the relevant rules, this deposit may be based on the amounts set by rule 8.130 for transcription of a full and half day hearings. Based on this comment, the appellate division subcommittee recommends revising the proposal to include a change to form APP-103 to reflect this deposit option. These revisions are shown as handwritten changes to on page 4 of the draft of form APP-103 that follows the attached draft report to the Judicial Council (the shaded portions of the form are the changes as circulated for public comment).

Committee Task

Staff has prepared a draft of the report that could be submitted to the Judicial Council on this proposal. This draft reflects the subcommittee’s recommendation that the proposal be revised as noted above. The committee’s task with respect to this proposal is to:

- Discuss the comments received on the proposal and approve or modify the subcommittee’s suggestions for responding to these comments, as reflected in the draft comment chart and draft report to the Judicial Council; and
- Discuss and approve or modify the subcommittee’s draft recommendation to the advisory committee regarding adoption of the proposal, as reflected in the draft report to the Judicial Council.

Attachments

1. Draft of report to the Judicial Council
2. Draft of forms APP-003 and APP-101-INFO
3. Draft comment chart
4. Invitation to comment



JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 15, 2017

Title	Agenda Item Type
Appellate Procedure Designation of the Record in Limited Civil Cases	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Revise forms APP-103 and APP-101-INFO	January 1, 2018
Recommended by	Date of Report
Appellate Advisory Committee	May 17, 2017
Louis R. Mauro, Chair	Contact
	Heather Anderson, Supervising Attorney, 415-865-7691 heather.anderson@jud.ca.gov

Executive Summary

The Appellate Advisory Committee recommends revising the form that appellants in limited civil cases may use to designate the record on appeal. The revisions are intended to (1) clarify the consequences for an appellant of choosing not to designate a record of the oral proceedings in the trial court, (2) make it easier for the appellant to identify what portions of an electronic recording the appellant wants transcribed, and (3) provide spaces where the appellant can indicate that one of the permissible alternatives to a deposit for a court reporter's transcript is being used. The committee also recommends making non-substantive revisions to the information sheet about limited civil appeals to reflect these changes.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2018:

1. Revise *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) to:

- Reorder the provisions on the form so that the provisions addressing designation of the record of the oral proceedings comes first;
 - Revise the cautionary language about not designating a record of the oral proceedings to clarify that certain bases for appeal will not be available without this record;
 - Add a place where appellants can designate what portions of an official electronic recording they are requesting be transcribed;
 - Add information about the fee for depositing funds with the court for such a reporters' transcript;
 - Add places where appellants can indicate if they are using one of the permissible alternatives to making a deposit for a designated reporter's transcript; and
 - Add information about the options for calculating the cost of a transcript made from an official electronic recording.
2. Revise *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to reflect the reorganization of APP-103.

The revised forms are attached at pages X–X.

Previous Council Action

The Judicial Council adopted *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) and *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) effective January 1, 2009 as part of a comprehensive set of new rules and forms for appellate division proceedings. The council revised these forms effective July 1, 2009 to reflect changes in the law relating to fee waivers. Form APP-103 was further revised effective July 1, 2010 to include additional spaces for information that is required or may be provided in a record designation. Most recently, as part of a proposal to modernize the appellate rules and forms, the Judicial Council, effective January 1, 2017 revised APP-101-INFO to include information about electronic service and revised APP-103 to request appellants' e-mail address.

Rationale for Recommendation

Form APP-103 is the Judicial Council form that appellants in limited civil appeals can use to designate the record on appeal.

Form APP-103 currently addresses the designation of the record of the documents first, and then the designation of the record of the oral proceedings in the trial court. Because some of the options for the record of the oral proceedings can also be used to provide a record of the documents, the current form has internal cross-references. A superior court has reported that these cross-references are confusing to some appellants and result in record designation errors. To reduce these errors, the committee recommends reorganizing the form so that the designation of the record of the oral proceedings comes first. This will eliminate the internal cross-references that were confusing to some appellants. The committee is also proposing non-substantive

changes in *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to reflect this reorganization of APP-103

The portion of form APP-103 that addresses designation of the record of the oral proceedings includes language cautioning appellants about the potential consequences if they choose not to designate a record of the oral proceedings. A superior court has suggested that this language does not sufficiently alert appellants that they may not be able to appeal on certain grounds, such as sufficiency of the evidence, if they do not designate a record of the oral proceedings. To address this, the committee recommends revising this cautionary language to clarify that appellants will need to provide a record of the oral proceedings if they wish to make a claim that there was not evidence to support the judgment being appealed.

Under the rules relating to transcripts prepared from official electronic recordings, the procedures in rule 8.130 of the California Rules of Court are to be followed in designating the proceedings to be transcribed from such a recording. These procedures include specifying the date of each proceeding to be included in the transcript and identifying any proceeding for which a certified transcript has previously been prepared. Currently, however, form APP-103 does not have a space that appellants can use to comply with these requirements. To remedy this, the committee recommends revising form APP-103 to add a place where appellants can appropriately designate the proceeding from an official electronic recording that they are requesting be transcribed.

Under the rules relating to reporters' transcripts, if an appellant deposits funds with the clerk to pay for a reporter's transcript, the appellant must also pay a fee to the court for holding these funds in trust. Currently, however, form APP-103 does not include any notice of this deposit fee. In addition, under these same rules, instead of depositing the estimated cost of a reporter's transcript that the appellant has designated, the appellant can instead deposit certified transcripts of the designated proceedings or a copy of an application the appellant has filed with the Transcript Reimbursement Fund. Currently, however, form APP-103 does not have a space that appellants can use to indicate that they are using one of these alternatives. To address these gaps, the committee recommends revising form APP-103 to add information about the fee for depositing funds with the court for a reporter's transcript and to add places where appellants can indicate if they are using one of the permissible alternatives to making a deposit for a designated reporter's transcript.

Comments, Alternatives Considered, and Policy Implications

External comments

This proposal was circulated for public comment from February 27 to April 28, 2017 as part of the regular spring comment cycle. Four individuals or organizations submitted comments on this proposal. Three commentators agreed with the proposed changes and one agreed with the proposed changes if modified. A chart with the full text of the comments received and the committee's responses is attached at pages X–XX.

The commentator who agreed with the proposal if amended pointed out that form APP-103 presumes that a deposit for a transcript of an electronic recording will be based on a clerk's estimate of the cost of preparing this transcript. The commentator noted that, under the relevant rules, this deposit may be based on the amounts set by rule 8.130 for a full and half day hearings. Based on this comment, the committee revised its proposal to include a revision to form APP-103 to reflect this deposit option.

Alternatives

The committee considered not proposing changes to these forms. The committee concluded, however, that making these changes to the form would clarify appellants' options and obligations, and the consequences of designation choices they might make and would also assist courts by reducing errors in the record designation process. The committee therefore concluded that it was appropriate to recommend these changes for adoption.

Implementation Requirements, Costs, and Operational Impacts

No appreciable implementation requirements, costs, or operation impacts are anticipated. The two courts that provided input on the potential implementation requirements in their comments indicated that they would be minimal.

Relevant Strategic Plan Goals and Operational Plan Objectives

These proposed form revisions support Judicial Council Operational Plan Objective 5 to develop and implement effective trial and appellate case management practices.

Attachments and Links

1. Revised form APP-103, at pages XX–XX
2. Revised form APP-101-INFO, at pages XX–XX
3. Chart of comments, at pages XX–XX

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

Clerk stamps date here when form is filed.

DRAFT
**Not Approved by the
Judicial Council****Instructions**

- This form is only for choosing (“designating”) the record on appeal in a **limited civil case**.
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.
- This form can be attached to your notice of appeal. If it is not attached to your notice of appeal, you must serve and file this form within 10 days after you file your notice of appeal. **If you do not file this form on time, the court may dismiss your appeal.**
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service on the California Courts Online Self-Help Center site at www.courts.ca.gov/selfhelp-serving.htm.
- Take or mail the original completed form and proof of service on the other parties to the clerk’s office for the same court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

Superior Court of California, County of

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

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

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

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

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

Name: _____

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

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

Phone: _____ E-mail: _____

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

Name: _____ State Bar number: _____

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

Phone: _____ E-mail: _____

Fax: _____



Trial Court Case Name: _____

Information About Your Appeal

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

Record of Oral Proceedings in the Trial Court

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

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

a. WITHOUT a record of the oral proceedings in the trial court (skip item 4; go to item 5). I understand that if I elect to proceed without providing a record of the oral proceedings, the appellate division will not be able to review any issues I might want to raise about what was said in the trial court during those proceedings or any claim that there was not evidence to support the judgment, order or decision I am appealing.

(Write initials here): _____

b. WITH a record of the oral proceedings in the trial court (complete item 4 below). I understand that if I elect (choose) to proceed WITH a record of the oral proceedings in the trial court, I have to choose the record I want to use and take the actions described below to make sure this record is provided to the appellate division. I understand that if I do not take the actions described below and the appellate division does not receive this record, I am not likely to succeed in my appeal. (Write initials here): _____

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

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

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

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

Check here if you need more space to list other proceedings and attach a separate page or pages listing those proceedings. At the top of each page, write "APP-103, item 4a."



Trial Court Case Name: _____

4 (continued)

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

Check here if you need more space to list other points and attach a separate page or pages listing those points. At the top of each page, write "APP-103, item 4a(2)."

(3) **Certified transcripts.** I have attached to this Notice Designating Record on Appeal an original certified transcript of all the proceedings I have designated in (1). The transcript complies with the format requirements in rule 8.144 of the California Rules of Court. Under rule 8.834; no payment is due for this transcript (skip the rest of 4 and go to 5).

(4) **Payment for reporter's transcript.**

(a) I will pay for the reporter's transcript I have designated in (1). Within 10 days of getting the reporter's estimate of the cost of the transcript, I will:

Deposit an amount equal to the estimated cost with the trial court, and a fee of \$50 for the superior court to hold this deposit in trust. I understand that if I do not comply with this, my appeal may be dismissed.

File with the trial court a copy of the written waiver of deposit signed by the reporter(s). I understand that if I do not comply with this, my appeal may be dismissed.

(b) I am unable to afford the cost of the reporter's transcript I have designated in (1) and am therefore applying to the Transcript Reimbursement Fund to pay for this transcript. Within 10 days of receipt of the court reporter's estimate of the costs for these transcripts, I will file with the trial court a copy of my application to the Court Reporters Board for payment or reimbursement from the Transcript Reimbursement Fund.

(5) **Format of reporter's transcript.** I request that the reporter provide my copy of the reporter's transcript in:

(a) Paper format only.

(b) Electronic format only.

(c) Both paper and electronic format.

OR

b. **Transcript From Official Electronic Recording.** This option is available only if an official electronic recording was made of what was said in the trial court. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. Identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings, and if you know it, the name of the electronic recording monitor who recorded the proceedings:

	Date	Department	Description	Electronic Monitor's Name
(a)				
(b)				
(c)				

Check here if you need more space to describe the proceeding or to list other proceedings and attach a separate page(s) describing or listing those proceedings. At the top of each page, write "APP-103, item 4b."



(a) With this notice designating the record on appeal, I have deposited with the trial court clerk the approximate cost of transcribing the proceedings I designated above, calculated as provided in rule 8.130(b)(1)(B).

Trial Court Case Number: _____

Trial Court Case Name: _____

4 (continued) (b) Within 10 days of receipt of the clerk's estimate of the costs of the transcript, I will deposit with the clerk of the trial court the amount of this estimate.

(1) I will pay the trial court clerk for this transcript myself within 10 days of receipt of the clerk's estimate of the costs of the transcript. I understand that if I do not pay for the transcript, my appeal may be dismissed.

(2) I am asking that the transcript be provided at no cost to me because I cannot afford to pay this cost. I have attached (check (a) or (b) and attach the appropriate document):

- (a) An order granting a waiver of the cost under rules 3.50–3.58, and 8.818(d).
- (b) An application for a waiver of court fees and costs under rules 3.50–3.58, and 8.818(d). (Use Request to Waive Court Fees (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.)

OR

c. **Copy of Official Electronic Recording.** This option is available only if an official electronic recording was made of what was said in the trial court, the court has a local rule for the appellate division permitting the use of the official electronic recording itself as the record of the proceedings, and all of the parties have agreed (stipulated) that they want to use the recording itself as the record of what was said in the case. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. You must attach a copy of your agreement (stipulation) with the other parties to this notice. (Check and complete (1) or (2).):

(1) I will pay the trial court clerk for this copy of the recording myself when I receive the clerk's estimate of the costs of this copy. I understand that if I do not pay for this copy of the recording, it will not be prepared and provided to the appellate division.

(2) I am asking that a copy of the recording be provided at no cost to me because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record (check (a) or (b) and submit the appropriate document):

- (a) An order granting a waiver of the cost under rules 3.50–3.58 and 8.818(d).
- (b) An application for a waiver of court fees and costs under rules 3.50–3.58 and 8.818(d). (Use Request to Waive Court Fees (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.)

OR

d. **Agreed Statement.** An agreed statement is a summary of the trial court proceedings agreed to by the parties. See form APP-101-INFO for information about preparing an agreed statement. (Check (1) or (2).):

(1) I have attached an agreed statement to this notice.

(2) All the parties have agreed in writing (stipulated) to try to agree on a statement (you must attach a copy of this agreement (stipulation) to this notice). I understand that, within 30 days after I file this notice, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal, and if I do not, the court may dismiss my appeal.



4 (continued)

OR

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

Record of the Documents Filed in the Trial Court

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

- a. **Clerk’s Transcript.** *(Fill out (1)–(4).) Note that, if the appellate division has adopted a local rule permitting this, the clerk may prepare and send the original court file to the appellate division instead of a clerk’s transcript.*
- (1) **Required documents.** *The clerk will automatically include the following items in the clerk’s transcript, but you must provide the date each document was filed or, if that is not available, the date the document was signed.*

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



5 (continued)

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

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

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

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

(3) **Exhibits.**

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

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

Check here if you need more space to list other exhibits and attach a separate page or pages listing those exhibits. At the top of each page, write “APP-103, item 5a(3).”



Trial Court Case Name: _____

5 (continued)

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

- (a) I will pay the trial court clerk for this transcript myself when I receive the clerk’s estimate of the costs of the transcript. I understand that if I do not pay for the transcript, it will not be prepared and provided to the appellate division.
- (b) I am asking that the clerk’s transcript be provided at no cost to me because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record *(check (i) or (ii) and submit the checked document)*:
 - (i) An order granting a waiver of the cost under rules 3.50–3.58 and 8.818(d).
 - (ii) An application for a waiver of court fees and costs under rules 3.50–3.58 and 8.818(d). *(Use Request to Waive Court Fees (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.)*

OR

- b. **Agreed statement.** *(This option is only available if you have chosen to use an agreed statement as the record of the oral proceedings under item 4 above and you attach to your agreed statement copies of all the documents that are required to be included in the clerk’s transcript. These documents are listed in 5a(1) above and in rule 8.832 of the California Rules of Court.)*

Date: _____

Type or print your name

▶ _____
Signature of appellant or attorney

GENERAL INFORMATION

1 What does this information sheet cover?

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

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

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

2 What is an appeal?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

INFORMATION FOR THE APPELLANT

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

5 Who can appeal?

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

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

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

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

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

7 How do I start my appeal?

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

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

“Serve and file” means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (“serve”) the notice of appeal to the other party or parties in the way required by law. If the notice of appeal is mailed or personally

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

- Make a record that the notice of appeal has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the notice of appeal, who was served with the notice of appeal, how the notice of appeal was served (by mail, in person, or electronically), and the date the notice of appeal was served.
- Bring or mail the original notice of appeal and the proof of service to the trial court that issued the judgment, order, or other decision you are appealing. You should make a copy of the notice of appeal you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the notice of appeal to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

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

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

Yes. In a limited civil case, except in the very limited circumstances listed in rule 8.823, you must file your notice of appeal within **30 days** after the trial court clerk or a party serves either a document called a “Notice of Entry” of the trial court judgment or a file-stamped copy of the judgment or within 90 days after entry of the judgment, whichever is earlier.

This deadline for filing the notice of appeal cannot be extended. If your notice of appeal is late, the appellate division will not be able to consider your appeal.

10 Do I have to pay to file an appeal?

Yes. Unless the court waives this fee, you must pay a fee for filing your notice of appeal. You can ask the clerk of the court where you are filing the notice of appeal what the fee is or look up the fee for an appeal in a limited

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

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

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

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

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

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

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

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

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

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

There are three parts of the official record:

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

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

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

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

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

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

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

- (1) If you or the other party arranged to have a court reporter there during the trial court proceedings, the reporter can prepare a record, called a “*reporter’s transcript*.”
- (2) If the proceedings were officially electronically recorded, the trial court can have a transcript prepared from that recording or, if the court has a local rule permitting this and you and the other party agree (“stipulate”) to this, you can use the *official electronic recording* itself instead of a transcript.

- (3) You can use an *agreed statement*.
- (4) You can use a *statement on appeal*.

Read below for more information about these options.

(1) Reporter's transcript

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

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

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

If you elect to use a reporter's transcript, the respondent also has the right to designate additional proceedings to be included in the reporter's transcript. If you elect to proceed without a reporter's transcript, however, the respondent may not designate a reporter's transcript without first getting an order from the appellate division.

Cost: The appellant is responsible for paying for preparing a reporter's transcript. The trial court clerk or the court reporter will notify you of the cost of preparing an original and one copy of the reporter's transcript. You must deposit payment for this cost (and a fee for the trial court) or one of the substitutes allowed by rule 8.834 with the trial

court clerk within 10 days after this notice is sent. (See rule 8.834 for more information about this deposit and the permissible substitutes, such as a waiver of this deposit signed by the court reporter.)

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

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

(2) Official electronic recording or transcript

When available: In some limited civil cases, the trial court proceedings were officially recorded on approved electronic recording equipment. If your case was officially recorded, you can choose ("elect") to have a transcript prepared from the recording. Check with the trial court to see if the oral proceedings in your case were officially electronically recorded before you choose this option. If the court has a local rule permitting this and all the parties agree ("stipulate"), a copy of an official electronic recording itself can be used as the record, instead of preparing a transcript. If you choose this option, you must attach a copy of this agreement ("stipulation") to your notice designating the record on appeal.

Cost: The appellant is responsible for paying for preparing this transcript or making a copy of the official electronic recording. If you cannot afford

to pay this cost, you can ask the court to waive it. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at www.courts.ca.gov/forms. The court will review this application to determine if you are eligible for a fee waiver.

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

(3) Agreed statement

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

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

Contents: An agreed statement must explain what the trial court case was about, describe why the appellate division is the right court to consider an appeal in this case (why the appellate division has “jurisdiction”), and describe the rulings of the trial court relating to the points to be raised on appeal.

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

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

court that you and the other parties were unable to agree on a statement and file a new notice designating the record.

(4) Statement on appeal

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

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

Contents: A statement on appeal must include:

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

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

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

Serving and filing a proposed statement: You must serve and file the proposed statement with the trial court within 20 days after you file your

notice designating the record. “Serve and file” means that you must:

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

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

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

Completion and certification: If the judge makes any corrections or modifications to the proposed statement, the corrected or modified statement will

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

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

b. Record of the documents filed in the trial court

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

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

Read below for more information about these options.

(1) Clerk’s transcript

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

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

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

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

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

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

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

(2) Trial court file

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

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

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

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

(3) Agreed statement

When available: If you and the respondent have already agreed to use an agreed statement as the record of the oral proceedings (see a.(3) above) and agree to this, you can use an agreed statement instead of a clerk's transcript. To do this, you must attach to your agreed statement all of the documents that are required to be included in a clerk's transcript.

c. Exhibits

The third part of the official record of the trial court proceeding is the exhibits, such as photographs, documents, or other items that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court. Exhibits are considered part of the record on appeal, but the clerk will not include any exhibits in the clerk's transcript unless you ask that they be included in your notice designating the record on appeal. *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103), includes a space for you to make this request.

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

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

14 What happens after the official record has been prepared?

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

15 What is a brief?

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

at any courthouse or county law library or online at www.courts.ca.gov/rules.

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

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

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

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

You and the other parties can agree (stipulate) to extend the time for filing this brief by up to 30 days (see rule 8.882(b) for requirements for these agreements). You can also ask the court to extend the time for filing this

brief if you can show good cause for an extension (see rule 8.811(b) for a list of the factors the court will consider in deciding whether there is good cause for an extension). You can use *Application for Extension of Time to File Brief (Limited Civil Case)* (form APP-106) to ask the court for an extension.

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

16 What happens after I file my brief?

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

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

17 What happens after all the briefs have been filed?

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

18 What is "oral argument?"

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

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

19 What happens after oral argument?

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

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

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

INFORMATION FOR THE RESPONDENT

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

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

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

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

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

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

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

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

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

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

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

(a) Reporter’s transcript

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

designating additional proceedings to be included in the reporter’s transcript.

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

Unlike the fee for preparing a clerk’s transcript, the court cannot waive the fee for preparing a reporter’s transcript. A special fund, called the Transcript Reimbursement Fund, may be able to help pay for the transcript. You can get information about this fund at:

www.courtreportersboard.ca.gov/consumers/index.shtml#trf. The reporter will not prepare a copy of the reporter’s transcript for you unless you deposit the cost of the transcript, or one of the permissible substitutes, or your application for payment by the Transcript Reimbursement Fund is approved.

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

(b) Agreed statement

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

(c) Statement on appeal

If the appellant elects to use a statement on appeal (a summary of the trial court proceedings that is approved by the trial court), the appellant will send you a proposed statement to review. You will have 10 days from the date the appellant sent you this proposed statement to

serve and file suggested changes (called “amendments”) that you think are needed to make sure that the statement provides an accurate summary of the testimony and other evidence relevant to the issues the appellant indicated he or she is raising on appeal. “Serve and file” means that you must:

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

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

(d) Clerk's transcript

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

To do this, within 10 days after the appellant serves its notice designating the record on

appeal, you must serve and file a notice designating additional documents to be included in the clerk's transcript.

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

25 What happens after the official record has been prepared?

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

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

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

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

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

- Make a record that the brief has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail, in person, or electronically), and the date the brief was served.
- File the original brief and the proof of service with the appellate division. You should make a copy of the brief you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed. You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-serving.htm.

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

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

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

26 What happens after all the briefs have been filed?

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

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

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

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

SPR17-04**Title of proposal (Appellate Procedure: Designation of the Record in Limited Civil Cases)**

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Civil and Probate Managers for the Superior Court of Orange County	AM	<p>Item 4b(1) on proposed form APP-103 presumes the estimate process in rule 8.834 applies to transcripts of electronic recordings (ToER) but this does not appear to be the case. When a ToER is designated, rule 8.835(b) specifies “[w]ritten transcripts of official electronic recordings may be prepared under rule 2.952.”</p> <p>Rule 2.952(j) states: In the absence of a stipulation and approval under (1), the appellant must, within 10 days after filing a notice of appeal in a civil case, serve and file with the clerk directions indicating the portions of the oral proceedings to be transcribed and must, at the same time, deposit with the clerk the approximate cost computed as specified in rule 8.130. Other steps necessary to complete preparation of the record on appeal must be taken following, as nearly as possible, the procedures in rules 8.120 and 8.130.</p> <p>Even in a limited civil case, it appears the ToER deposit scheme is based on the fixed amounts listed in rule 8.130 and not on a notice of estimated costs as if the appellant designated a reporter’s transcript.</p> <p>Implementation would not require training staff, revising process and procedures, and changes to case management system. Three months from Judicial Council approval of this proposal until</p>	<p>The commentator is correct that, under rule 2.952, the appellant must, within 10 days after filing a notice of appeal in a civil case, serve and file with the clerk directions indicating the portions of the oral proceedings to be transcribed and must, at the same time, deposit with the clerk the approximate cost computed as specified in rule 8.130. Under rule 8.130, however, the deposit for the transcript may be made based either upon an estimate from the court reporter or upon the fixed amounts specified in rule 8.130. The committee has therefore revised the form to reflect that both of these options are available.</p> <p>The committee appreciates the commentator’s input on these implementation questions; no response required.</p>

SPR17-04**Title of proposal (Appellate Procedure: Designation of the Record in Limited Civil Cases)**

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			its effective date would provide sufficient time for implementation.	
2.	Orange County Bar Association by Michael L. Baroni, President	A	No additional comments	The committee notes the commentator's support for the proposal; no response required.
3.	Superior Court of Los Angeles County	A	<p><i>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.</i></p> <p>Minimal staff training would be required.</p> <p><i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i></p> <p>Yes. The three month effective date is sufficient for implementation.</p>	The committee appreciates the commentator's input on these implementation questions; no response required.
4.	Superior Court of San Diego County by Michael Roddy, Executive Officer	A	<p><i>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.</i></p> <p>There would be minimal training. These changes improve the form and makes it similar to the unlimited form so it should require less explanation to the litigants.</p>	The committee appreciates the commentator's input on these implementation questions; no response required.

SPR17-04**Title of proposal** (Appellate Procedure: Designation of the Record in Limited Civil Cases)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<i>Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> Yes	

JUDICIAL COUNCIL OF CALIFORNIA

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

INVITATION TO COMMENT SPR17-04

Title

Appellate Procedure: Designation of the Record in Limited Civil Cases

Action Requested

Review and submit comments by April 28, 2017

Proposed Rules, Forms, Standards, or Statutes

Revise *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) and *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO)

Proposed Effective Date

January 1, 2018

Contact

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

Proposed by

Appellate Advisory Committee
Hon. Louis Mauro, Chair

Executive Summary and Origin

The Appellate Advisory Committee is proposing revisions to the form that appellants in limited civil cases may use to designate the record on appeal. The proposed revisions are intended to (1) clarify the consequences for an appellant of choosing not to designate a record of the oral proceedings in the trial court, (2) make it easier for the appellant to identify what portions of an electronic recording the appellant wants transcribed, and (3) provide spaces where the appellant can indicate that one of the permissible alternatives to a deposit for a court reporter's transcript is being used. This proposal is in response to suggestions received from two superior courts.

Background

Appellant's Notice Designating Record on Appeal (Limited Civil Case) (form APP-103) is the Judicial Council form that appellants in limited civil appeals can use to designate the record on appeal.

Form APP-103 currently addresses the designation of the record of the documents first, and then the designation of the record of the oral proceedings in the trial court. Because some of the options for the record of the oral proceedings can also be used to provide a record of the documents, the current form has internal cross-references. A superior court has reported that these cross-references are confusing to some appellants and result in record designation errors.

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.

The portion of form APP-103 that addresses designation of the record of the oral proceedings includes language cautioning appellants about the potential consequences if they choose not to designate a record of the oral proceedings. A superior court has suggested that this language does not sufficiently alert appellants that they may not be able to appeal on certain grounds, such as sufficiency of the evidence, if they do not designate a record of the oral proceedings.

Under the rules relating to transcripts prepared from official electronic recordings, the procedures in rule 8.130 of the California Rules of Court are to be followed in designating the proceedings to be transcribed from such a recording. Currently, however, form APP-103 does not have a space that appellants can use for this purpose.

Under the rules relating to reporters' transcripts, if an appellant deposits funds with the clerk to pay for a reporter's transcript, the appellant must also pay a fee to the court for holding these funds in trust. Currently, however, form APP-103 does not include any notice of this deposit fee. In addition, under these same rules, instead of depositing the estimated cost of a reporter's transcript that the appellant has designated, the appellant can deposit certified transcripts of the designated proceedings or a copy of an application the appellant has filed with the Transcript Reimbursement Fund. Currently, however, form APP-103 does not have a space that appellants can use to indicate that they are using one of these alternatives.

The Proposal

The committee is proposing to revise form APP-103 to address all of the concerns outlined above. These proposed revisions include:

- Reorganizing the form so that the designation of the record of the oral proceedings comes first. This will eliminate the internal cross-references that were confusing to some appellants. The committee is also proposing non-substantive changes in *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to reflect this reorganization of APP-103.
- Revising the cautionary language about not designating a record of the oral proceedings to clarify that certain bases for appeal will not be available with this record.
- Adding a place where appellants can designate what proceeding contained in an official electronic recording that they are requesting be transcribed.
- Adding information about the fee for depositing funds with the court for a reporter's transcript.
- Adding places where appellants can indicate if they are using one of the permissible alternatives to making a deposit for a designated reporter's transcript.

Alternatives Considered

The committee considered not recommending any changes to form APP-103 but concluded that these changes would be helpful to clarify appellants' options and obligations, and the consequences of designation choices they might make.

Implementation Requirements, Costs, and Operational Impacts

No appreciable implementation requirements, costs, or operation impacts are anticipated.

Request for Specific Comments

The advisory committee 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 revisions to form APP-103
2. Proposed revisions to form APP-101-INFO

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

Clerk stamps date here when form is filed.

DRAFT
**Not Approved by the
Judicial Council****Instructions**

- This form is only for choosing (“designating”) the record on appeal in a **limited civil case**.
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.
- This form can be attached to your notice of appeal. If it is not attached to your notice of appeal, you must serve and file this form within 10 days after you file your notice of appeal. **If you do not file this form on time, the court may dismiss your appeal.**
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service on the California Courts Online Self-Help Center site at www.courts.ca.gov/selfhelp-serving.htm.
- Take or mail the original completed form and proof of service on the other parties to the clerk’s office for the same court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

Superior Court of California, County of

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

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

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

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

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

Name: _____

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

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

Phone: _____ E-mail: _____

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

Name: _____ State Bar number: _____

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

Phone: _____ E-mail: _____

Fax: _____



Trial Court Case Name: _____

Information About Your Appeal

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

Record of Oral Proceedings in the Trial Court

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

3 I elect (choose)/My client elects to proceed (check a or b):
 a. WITHOUT a record of the oral proceedings in the trial court (skip item 4; go to item 5). I understand that if I elect to proceed without providing a record of the oral proceedings, the appellate division will not be able to review any issues I might want to raise about what was said in the trial court during those proceedings or any claim that there was not evidence to support the judgment, order or decision I am appealing.

(Write initials here): _____

b. WITH a record of the oral proceedings in the trial court (complete item 4 below). I understand that if I elect (choose) to proceed WITH a record of the oral proceedings in the trial court, I have to choose the record I want to use and take the actions described below to make sure this record is provided to the appellate division. I understand that if I do not take the actions described below and the appellate division does not receive this record, I am not likely to succeed in my appeal. (Write initials here): _____

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

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

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

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

Check here if you need more space to list other proceedings and attach a separate page or pages listing those proceedings. At the top of each page, write “APP-103, item 4a.”



Trial Court Case Name: _____

4 (continued)

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

Check here if you need more space to list other points and attach a separate page or pages listing those points. At the top of each page, write "APP-103, item 4a(2)."

(3) **Certified transcripts.** I have attached to this Notice Designating Record on Appeal an original certified transcript of all the proceedings I have designated in (1). The transcript complies with the format requirements in rule 8.144 of the California Rules of Court. Under rule 8.834; no payment is due for this transcript (skip the rest of 4 and go to 5).

(4) **Payment for reporter's transcript.**

(a) I will pay for the reporter's transcript I have designated in (1). Within 10 days of getting the reporter's estimate of the cost of the transcript, I will:

Deposit an amount equal to the estimated cost with the trial court, and a fee of \$50 for the superior court to hold this deposit in trust. I understand that if I do not comply with this, my appeal may be dismissed.

File with the trial court a copy of the written waiver of deposit signed by the reporter(s). I understand that if I do not comply with this, my appeal may be dismissed.

(b) I am unable to afford the cost of the reporter's transcript I have designated in (1) and am therefore applying to the Transcript Reimbursement Fund to pay for this transcript. Within 10 days of receipt of the court reporter's estimate of the costs for these transcripts, I will file with the trial court a copy of my application to the Court Reporters Board for payment or reimbursement from the Transcript Reimbursement Fund.

(5) **Format of reporter's transcript.** I request that the reporter provide my copy of the reporter's transcript in:

(a) Paper format only.

(b) Electronic format only.

(c) Both paper and electronic format.

OR

b. **Transcript From Official Electronic Recording.** This option is available only if an official electronic recording was made of what was said in the trial court. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. Identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings, and if you know it, the name of the electronic recording monitor who recorded the proceedings:

	Date	Department	Description	Electronic Monitor's Name
(a)				
(b)				
(c)				

Check here if you need more space to describe the proceeding or to list other proceedings and attach a separate page(s) describing or listing those proceedings. At the top of each page, write "APP-103, item 4b."



Trial Court Case Name: _____

4

(continued)

(Check and complete (1) or (2).):

- (1) I will pay the trial court clerk for this transcript myself within 10 days of receipt of the clerk's estimate of the costs of the transcript. I understand that if I do not pay for the transcript, my appeal may be dismissed.
- (2) I am asking that the transcript be provided at no cost to me because I cannot afford to pay this cost. I have attached (*check (a) or (b) and attach the appropriate document*):
- (a) An order granting a waiver of the cost under rules 3.50–3.58, and 8.818(d).
- (b) An application for a waiver of court fees and costs under rules 3.50–3.58, and 8.818(d). (*Use Request to Waive Court Fees (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.*)

OR

- c. **Copy of Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court, the court has a local rule for the appellate division permitting the use of the official electronic recording itself as the record of the proceedings, and all of the parties have agreed (stipulated) that they want to use the recording itself as the record of what was said in the case. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. You must attach a copy of your agreement (stipulation) with the other parties to this notice. (Check and complete (1) or (2).):*
- (1) I will pay the trial court clerk for this copy of the recording myself when I receive the clerk's estimate of the costs of this copy. I understand that if I do not pay for this copy of the recording, it will not be prepared and provided to the appellate division.
- (2) I am asking that a copy of the recording be provided at no cost to me because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record (*check (a) or (b) and submit the appropriate document*):
- (a) An order granting a waiver of the cost under rules 3.50–3.58 and 8.818(d).
- (b) An application for a waiver of court fees and costs under rules 3.50–3.58 and 8.818(d). (*Use Request to Waive Court Fees (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.*)

OR

- d. **Agreed Statement.** *An agreed statement is a summary of the trial court proceedings agreed to by the parties. See form APP-101-INFO for information about preparing an agreed statement. (Check (1) or (2).):*
- (1) I have attached an agreed statement to this notice.
- (2) All the parties have agreed in writing (stipulated) to try to agree on a statement (*you must attach a copy of this agreement (stipulation) to this notice*). I understand that, within 30 days after I file this notice, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal, and if I do not, the court may dismiss my appeal.



4 (continued)

OR

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

Record of the Documents Filed in the Trial Court

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

- a. **Clerk’s Transcript.** *(Fill out (1)–(4).) Note that, if the appellate division has adopted a local rule permitting this, the clerk may prepare and send the original court file to the appellate division instead of a clerk’s transcript.*
- (1) **Required documents.** *The clerk will automatically include the following items in the clerk’s transcript, but you must provide the date each document was filed or, if that is not available, the date the document was signed.*

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



5 (continued)

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

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

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

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

(3) **Exhibits.**

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

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

Check here if you need more space to list other exhibits and attach a separate page or pages listing those exhibits. At the top of each page, write “APP-103, item 5a(3).”



Trial Court Case Name: _____

5 (continued)

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

- (a) I will pay the trial court clerk for this transcript myself when I receive the clerk’s estimate of the costs of the transcript. I understand that if I do not pay for the transcript, it will not be prepared and provided to the appellate division.
- (b) I am asking that the clerk’s transcript be provided at no cost to me because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record *(check (i) or (ii) and submit the checked document)*:
 - (i) An order granting a waiver of the cost under rules 3.50–3.58 and 8.818(d).
 - (ii) An application for a waiver of court fees and costs under rules 3.50–3.58 and 8.818(d). *(Use Request to Waive Court Fees (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.)*

OR

- b. **Agreed statement.** *(This option is only available if you have chosen to use an agreed statement as the record of the oral proceedings under item 4 above and you attach to your agreed statement copies of all the documents that are required to be included in the clerk’s transcript. These documents are listed in 5a(1) above and in rule 8.832 of the California Rules of Court.)*

Date: _____

Type or print your name

 _____
Signature of appellant or attorney

GENERAL INFORMATION

1 What does this information sheet cover?

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

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

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

2 What is an appeal?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

INFORMATION FOR THE APPELLANT

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

5 Who can appeal?

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

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

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

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

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

7 How do I start my appeal?

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

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

“Serve and file” means that you must:

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

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

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

Yes. In a limited civil case, except in the very limited circumstances listed in rule 8.823, you must file your notice of appeal within **30 days** after the trial court clerk or a party serves either a document called a “Notice of Entry” of the trial court judgment or a file-stamped copy of the judgment or within 90 days after entry of the judgment, whichever is earlier.

This deadline for filing the notice of appeal cannot be extended. If your notice of appeal is late, the

appellate division will not be able to consider your appeal.

10 Do I have to pay to file an appeal?

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

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

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

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

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

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

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

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

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

13

What is the official record of the trial court proceedings?

There are three parts of the official record:

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

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

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

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

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

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

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

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

Read below for more information about these options.

(1) Reporter’s transcript

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

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

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

If you elect to use a reporter’s transcript, the respondent also has the right to designate additional proceedings to be included in the reporter’s transcript. If you elect to proceed without a reporter’s transcript, however, the respondent may not designate a reporter’s transcript without first getting an order from the appellate division.

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

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

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

(2) Official electronic recording or transcript

When available: In some limited civil cases, the trial court proceedings were officially recorded on approved electronic recording equipment. If your

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

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

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

(3) Agreed statement

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

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

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

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

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

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

(4) Statement on appeal

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

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

Contents: A statement on appeal must include:

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

(See rule 8.837 of the California Rules of Court for more information about what must be included in a statement on appeal and the procedures for preparing a statement. You can get a copy of this

rule at any courthouse or county law library or online at www.courts.ca.gov/rules.)

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

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

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

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

Review and modifications: The respondent has 10 days from the date you serve your proposed

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

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

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

b. Record of the documents filed in the trial court

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

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

Read below for more information about these options.

(1) Clerk's transcript

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

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

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

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

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

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

- Give the court a copy of a court order showing that your fees in this case have already been waived by the court.

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

(2) Trial court file

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

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

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

Completion and delivery: After the cost of preparing the trial court file has been paid or waived and the record on appeal is complete, the trial court clerk will send the file and a list of the documents in the file to the appellate division. The trial court clerk will also send a copy of the list of documents to the appellant and respondent.

so that you can put your own files of documents from the trial court in the correct order.

(3) Agreed statement

When available: If you and the respondent have already agreed to use an agreed statement as the record of the oral proceedings (see a.(3) above) and agree to this, you can use an agreed statement instead of a clerk's transcript. To do this, you must attach to your agreed statement all of the documents that are required to be included in a clerk's transcript.

c. Exhibits

The third part of the official record of the trial court proceeding is the exhibits, such as photographs, documents, or other items that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court. Exhibits are considered part of the record on appeal, but the clerk will not include any exhibits in the clerk's transcript unless you ask that they be included in your notice designating the record on appeal. *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103), includes a space for you to make this request.

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

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

15 What is a brief?

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

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

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

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

14 What happens after the official record has been prepared?

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

idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

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

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

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

16 What happens after I file my brief?

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

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

17 What happens after all the briefs have been filed?

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

18 What is "oral argument?"

"Oral argument" is the parties' chance to explain their arguments to the appellate division judges in person. You do not have to participate in oral argument if you do not want to; you can notify the appellate division that you want to "waive" oral argument. If all parties waive

oral argument, the judges will decide your appeal based on the briefs and the record that were submitted. But if one party waives oral argument and another party or parties does not, the appellate division will hold oral argument with the party or parties who did not waive it.

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

19 What happens after oral argument?

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

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

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

INFORMATION FOR THE RESPONDENT

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

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

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

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

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

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

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

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

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

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

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

(a) Reporter's transcript

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

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

Unlike the fee for preparing a clerk's transcript, the court cannot waive the fee for preparing a reporter's transcript. A special fund, called the Transcript Reimbursement Fund, may be able to help pay for the transcript. You can get information about this fund at:

www.courtreportersboard.ca.gov/consumers/index.shtml#trf. The reporter will not prepare a copy of the reporter's transcript for you unless you deposit the cost of the transcript, or one of the permissible substitutes, or your application for payment by the Transcript Reimbursement Fund is approved.

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

(b) Agreed statement

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

(c) Statement on appeal

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

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

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

(d) Clerk's transcript

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

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

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

25 What happens after the official record has been prepared?

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

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

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

- Have somebody over 18 years old mail, deliver, or electronically send ("serve") the brief to the other parties in the way required by law. If the brief is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the brief has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail, in person, or electronically), and the date the brief was served.
- File the original brief and the proof of service with the appellate division. You should make a copy of the brief you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed. You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-serving.htm.

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

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

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

26 What happens after all the briefs have been filed?

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

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

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

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



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	Action Requested
May 23, 2017	Please read before June 1 committee meeting
To	Deadline
Members of the Appellate Advisory Committee	June 1, 2017
From	Contact
Heather Anderson, Supervising Attorney, Legal Services	Heather Anderson 415-865-7691 heather.anderson@jud.ca.gov
Subject	
Service of briefs in misdemeanor appeals	

Introduction

As you may recall, earlier this spring, on the recommendation of the Appellate Division Subcommittee, the Appellate Advisory Committee recommended circulating for public comment a proposal to amend the subdivision of rule 8.882 relating to service of briefs in misdemeanor appeals. The Judicial Council's Rules and Projects Committee approved the recommendation for circulation and the proposal was circulated for public comment February 27 and April 28, 2017 as part of the regular spring comment cycle. (A copy of the invitation to comment is included in your meeting materials). This memo discusses the public comments received on the proposal and the Appellate Division Subcommittee's recommendations regarding responding to these comments.

Public Comments

Seven individuals or organizations submitted comments on this proposal. Four commentators indicated that they agreed with the proposal, one agreed with the proposal if modified, and two did not indicate a position on the proposal, but provided comments. A chart with the full text of the comments received and subcommittee's recommended responses is attached.

The only concern expressed about the proposal was from the California Public Defenders Association, which agreed with the proposal if amended. They were concerned about whether the requirement for serving a misdemeanor defendant might potentially interfere with an attorney's ability to timely file a notice of appeal if the attorney was not able to locate his or her client. However, the proposal would only amend the rule that addresses to the service of briefs; it would not impact service of the notice of appeal.

The remaining comments either expressed support for the proposal or provided input on implementation requirements for courts, which were identified as being either moderate or minimal.

Based on these comments, the subcommittee recommends that the committee recommend adoption of this proposal as circulated.

Committee Task

Staff has prepared a draft of the report that could be submitted to the Judicial Council on this proposal. This draft reflects the subcommittee's recommendation that the proposal be recommended for adoption as circulated for public comment. The committee's task with respect to this proposal is to:

- Discuss the comments received on the proposal and approve or modify the subcommittee's recommendations for responding to these comments, as reflected in the draft comment chart and draft report to the Judicial Council; and
- Discuss and approve or modify the subcommittee's recommendation to the advisory committee regarding adoption of the proposal, as reflected in the draft report to the Judicial Council.

Attachments

1. Draft of report to the Judicial Council
2. Draft comment chart
3. Invitation to comment



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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 15, 2017

Title	Agenda Item Type
Appellate Procedure: Service of Briefs in Misdemeanor Cases	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rule 8.882	January 1, 2018
Recommended by	Date of Report
Appellate Advisory Committee	May 17, 2017
Louis R. Mauro, Chair	Contact
	Heather Anderson, Supervising Attorney, 415-865-7691 heather.anderson@jud.ca.gov

Executive Summary

To ensure that defendants in misdemeanor appeals are kept apprised of the arguments being made in their cases, the Appellate Advisory Committee recommends amending the rule regarding service of briefs in misdemeanor appeals to add provisions requiring the defendant's appellate counsel to send to the defendant a copy of each brief and requiring the People to serve an extra copy of their briefs on defendant's appellate counsel.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2018, amend California Rules of Court, rule 8.882 to:

1. Add a provision requiring that defendant's appellate counsel send a copy of each brief to the defendant personally unless the defendant requests otherwise;
2. Add a provision requiring that the People serve two copies of their briefs on the appellate counsel for each defendant who is a party to the appeal; and

3. Correct cross-references in subdivisions (e)(1) and (4).

The amended rule is attached at page 4.

Previous Council Action

The Judicial Council adopted rules 8.882 effective January 1, 2009 as part of a comprehensive set of new rules and forms for appellate division proceedings. The council has amended this rule several time since its adoption, but the provisions regarding service of briefs have remained substantively unchanged.

Rationale for Recommendation

California Rules of Court, rule 8.360(d), addresses service of briefs in felony appeals. This rule contains special requirements for defendant’s appellate counsel to send to the defendant a copy of each brief for the defendant unless the defendant requests otherwise and for the People to provide counsel for the defendant with two copies of their briefs. The history of this rule indicates that these provisions were adopted to ensure that the defendant was kept apprised of the arguments being made in his or her case.

Rule 8.882 does not currently include similar requirements for the service of briefs by defendant’s appellate counsel in misdemeanor cases. There does not appear to be a reason that the rule on misdemeanor briefs should not also include these provisions for keeping the defendant informed.

In addition to this substantive issue, there are some incorrect cross-references in rule 8.882(e)(1) and (4). These paragraphs currently refer to rules 8.25 and 8.29, respectively, both of which address service and filing in the Supreme Court and Courts of Appeal, rather than to rule 8.817, which addresses service and filing in the superior court appellate division.

Comments, Alternatives Considered, and Policy Implications

External comments

This proposal was circulated for public comment from February 27 to April 28, 2017 as part of the regular spring comment cycle. Seven individuals or organizations submitted comments on this proposal. Four commentators indicated that they agreed with the proposal, one agreed with the proposal if modified, and two did not indicate a position on the proposal, but provided comments. A chart with the full text of the comments received and the committee’s responses is attached at pages 5–9.

The one commentator who agreed with the proposal if amended expressed concern about the requirement for serving a misdemeanor defendant potentially interfering with an attorney’s ability to timely file a notice of appeal if the attorney was not able to locate his or her client. However, the committee is only proposing an amendment to the rule that addresses to the service of briefs, and thus the proposal will not impact service of the notice of appeal. The remaining

comments either expressed support for the proposal or provided input on implementation requirements for courts. Based on these comments, the committee is recommending adoption of the proposed amendment as circulated for public comment.

Alternatives

The committee considered not proposing amendments to rules 8.882. The committee concluded, however, that it would be appropriate for the rules to treat defendants in felony and misdemeanor appeals similarly with respect to being sent copies of briefs in their cases. The committee therefore concluded that it was appropriate to recommend these amendments for adoption.

Implementation Requirements, Costs, and Operational Impacts

No appreciable implementation requirements, costs, or operation impacts are anticipated. The three court representatives that provided input on the potential implementation requirements in their comments indicated that they would be moderate to minimal.

Relevant Strategic Plan Goals and Operational Plan Objectives

These proposed amendments support Judicial Council Operational Plan Objective 5 to develop and implement effective trial and appellate case management practices.

Attachments and Links

1. Amended rule 8.882, at page 4
2. Chart of comments, at pages 5–9

Rule 8.882 of the California Rules of Court, is amended, effective January 1, 2018, to read:

Title 8. Appellate Rules

Division 2. Rules Relating to the Superior Court Appellate Division

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

Rule 8.882. Briefs by parties and amici curiae

(a)–(d) * * *

(e) Service and filing

- (1) Copies of each brief must be served as required by rule ~~8.25~~ 8.817.
- (2) Unless the court provides otherwise by local rule or order in the specific case, only the original brief, with proof of service, must be filed in the appellate division.
- (3) A copy of each brief must be served on the trial court clerk for delivery to the judge who tried the case.
- (4) A copy of each brief must be served on a public officer or agency when required by rule ~~8.29~~ 8.817.
- (5) In misdemeanor appeals:
 - (A) Defendant’s appellate counsel must serve each brief for the defendant on the People and must send a copy of each brief to the defendant personally unless the defendant requests otherwise.
 - (B) The proof of service under (A) 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 writing that no copy be sent.
 - (C) The People must serve two copies of their briefs on the appellate counsel for each defendant who is a party to the appeal.

ITC SPR17-05

Title of proposal (Appellate Procedure: Service of Briefs in Misdemeanor Cases)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	California Public Defenders Association by Charles Denton, President Sacramento, CA	AM	<p>The California Public Defenders Association (CPDA), a statewide organization of public defenders, private defense counsel, and investigators is concerned that precluding defendant's appeal may be a possible unintended consequence of the proposal that appellate counsel be required to send a copy of all briefs to the defendant unless the defendant requests otherwise.</p> <p>In our experience many defendants convicted of misdemeanors are out of custody and transient. Consequently, while the defendant's former trial counsel may be able to contact the defendant on appointed court dates, there is often no dependable way to locate a defendant in order to send him a copy of all of his briefs as this rule requires. When combined with the short time limits, for filing a misdemeanor appeal, this proposal could have the unintended consequence of precluding defendant's appellate counsel from filing an appeal even when the defendant has requested the appeal be filed.</p> <p>However, we would support this proposal if the proposal were amended to allow defendant's appellate counsel to file the appeal, even if he is unable to locate the defendant, with a declaration stating that appellate council was unable to send the defendant a copy of the appeal because he was unable to locate the defendant.</p>	This proposal would only amend the rule regarding service of briefs, it would not impact service of the notice of appeal.

ITC SPR17-05

Title of proposal (Appellate Procedure: Service of Briefs in Misdemeanor Cases)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>Thank you for the opportunity to comment on this proposal. Please contact me at chuck.denton@acgov.org or 510-272-6600 if you have any questions.</p>	
2.	<p>Albert DeLaIsla Principal Administrative Analyst IMPACT Team Criminal Operations Orange County, CA</p>	NI	<p>Currently the requirement of service to the defendant of the briefs filed by Appellate Counsel and the People are only required on Felony Appeals. The proposal is to make it required on Misdemeanor Appeals as well. Current felony procedures do not require a POS to be filed stamped, the brief is automatically forwarded to the trial Judge for review. If we follow this process, there would be no impact to Operations. If it is decided that a POS should be included and filed with the Court on a Misdemeanor case, then procedures would have to be modified.</p> <p><i>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?</i> Minimal if any, potentially a new docket code and updating of procedures.</p> <p><i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i></p>	<p>The committee appreciates the commentator’s input on these implementation questions; no response required.</p>

ITC SPR17-05

Title of proposal (Appellate Procedure: Service of Briefs in Misdemeanor Cases)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			Yes.	
3.	Orange County Bar Association by: Michael L. Baroni, President	A	Rule 8.369(d) of the California Rules of Court addresses the service of briefs in felony appeals and requires appellate counsel to send a copy of each brief for the defendant to the defendant unless the defendant requests otherwise and for the People to provide counsel for the defendant with two copies of their briefs, so that one copy can be sent to the defendant by his counsel. Rule 8.882, which governs the service of briefs in misdemeanor cases currently does not include these provisions. The proposal is to amend rule 8.882 to conform to 8.369(d) with respect to these requirements. This is a good idea. The appellant in a misdemeanor appeal should be just as informed as the appellant in a felony appeal.	The committee notes the commentator’s support for the proposal; no response required.
4.	State Bar of California’s Standing Committee on the Delivery of Legal Services By: Sharon Djemal, Chair	NI	<i>Does the proposal appropriately address the stated purpose?</i> Yes. The proposal is an improvement because defendants in felony and misdemeanor appeals will be treated similarly with respect to being sent copies of briefs in their cases by their appellate counsel. Under the rule, counsel will be required to keep defendants apprised of arguments that are being made on their behalf.	The committee appreciates the commentator’s input on this question.
5.	Superior Court Los Angeles County	A	<i>What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and</i>	The committee notes the commentator’s support for the proposal and appreciates the commentator’s input on these implementation questions; no response required.

ITC SPR17-05

Title of proposal (Appellate Procedure: Service of Briefs in Misdemeanor Cases)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p><i>procedures (please describe), changing docket codes in case management systems, or modifying case management systems.</i> Minimal staff training would be required.</p> <p><i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> Yes. The three-month effective date is sufficient for implementation.</p>	
6.	Superior Court Orange County Appellate Division by Michael Porter	A	Great proposal.	The committee notes the commentator’s support for the proposal; no response required.
7.	Superior Court of California County of San Diego by Mike Roddy Executive Officer	A	<p>The advisory committee seeks comments from <i>courts</i> on the following cost and implementation matters:</p> <p><i>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?</i> Moderate implementation – if defendant’s appellate counsel or the People fail to properly serve the briefs, the clerk would have to issue a deficiency notice and follow-up to ensure receipt of amended proof of service. The rules do not specify what happens if the briefs are not properly served on defendant.</p>	The committee notes the commentator’s support for the proposal and appreciates the commentator’s input on these implementation questions; no response required.

ITC SPR17-05**Title of proposal** (Appellate Procedure: Service of Briefs in Misdemeanor Cases)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> Yes.	

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INVITATION TO COMMENT SPR17-05

Title Appellate Procedure: Service of Briefs in Misdemeanor Cases	Action Requested Review and submit comments by April 28, 2017
Proposed Rules, Forms, Standards, or Statutes Amend Cal. Rules of Court, rule 8.882	Proposed Effective Date January 1, 2018
Proposed by Appellate Advisory Committee Hon. Louis R. Mauro, Chair	Contact Heather Anderson, 415-865-7691 heather.anderson@jud.ca.gov

Executive Summary and Origin

The Appellate Advisory Committee is proposing amendments to the rule regarding service of briefs in misdemeanor appeals to add provisions requiring the defendant's appellate counsel to send to the defendant a copy of each brief for the defendant. This proposal is based on a suggestion from an attorney.

Background

California Rules of Court, rule 8.360(d), addresses service of briefs in felony appeals. This rule contains special requirements for defendant's appellate counsel to send a copy of each brief for the defendant to the defendant unless the defendant requests otherwise and for the People to provide counsel for the defendant with two copies of their briefs. The history of this rule indicates that these provisions were adopted to ensure that the defendant was kept apprised of the arguments being made in his or her case.

Rule 8.882 does not currently include similar requirements for the service of briefs by defendant's appellate counsel in misdemeanor cases. There does not appear to be a reason that the rule on misdemeanor briefs should not also include these provisions for keeping the defendant informed.

The Proposal

The committee is proposing that rule 8.882(e) be amended to apply the same requirements for sending copies of briefs to defendants in misdemeanor appeals that are in rule 8.360(d) governing the service of briefs on defendants in felony appeals.

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.

In addition to these substantive amendments, the attached proposal includes a minor technical amendment to correct cross-references in rule 8.882(e)(1) and (4). These paragraphs currently refer to rules 8.25 and 8.29, respectively, both of which address service and filing in the Supreme Court and Courts of Appeal. The proposal would change this reference to rule 8.817, which addresses service and filing in the superior court appellate division.

Alternatives Considered

The committee considered not recommending any changes to these rules, but concluded that it would be appropriate for the rules to treat defendants in felony and misdemeanor appeals similarly with respect to being sent copies of briefs in their cases.

Implementation Requirements, Costs, and Operational Impacts

No appreciable implementation requirements, costs, or operation impacts are anticipated.

Request for Specific Comments

The advisory committee 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 three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

Attachments and Links

1. Proposed amendments to Cal. Rules of Court, rule 8.882, at page 3

Rule 8.882 of the California Rules of Court would be amended, effective January 1, 2018, to read:

Title 8. Appellate Rules

Division 2. Rules Relating to the Superior Court Appellate Division

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

Rule 8.882. Briefs by parties and amici curiae

(a)–(d) * * *

(e) Service and filing

- (1) Copies of each brief must be served as required by rule ~~8.25~~ 8.817.
- (2) Unless the court provides otherwise by local rule or order in the specific case, only the original brief, with proof of service, must be filed in the appellate division.
- (3) A copy of each brief must be served on the trial court clerk for delivery to the judge who tried the case.
- (4) A copy of each brief must be served on a public officer or agency when required by rule ~~8.29~~ 8.817.
- (5) In misdemeanor appeals:
 - (A) Defendant’s appellate counsel must serve each brief for the defendant on the People and must send a copy of each brief to the defendant personally unless the defendant requests otherwise.
 - (B) The proof of service under (A) 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 writing that no copy be sent.
 - (C) The People must serve two copies of their briefs on the appellate counsel for each defendant who is a party to the appeal.



JUDICIAL COUNCIL OF CALIFORNIA

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Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

MEMORANDUM

Date

May 25, 2017

Action Requested

Please read before June 1 committee
conference call

To

Members of the Appellate Advisory
Committee

Deadline

June 1, 2017

From

Heather Anderson, Supervising Attorney,
Legal Services

Contact

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

Subject

Payment for partially prepared transcripts

Introduction

As you may recall, earlier this spring, on the recommendation of the Appellate Division Subcommittee, the Appellate Advisory Committee recommended circulating for public comment a proposal to amend the rules relating to preparation of reporter's transcripts in misdemeanor and infraction appeals to add language providing for paying court reporters out of funds deposited by an appellant for portions of transcripts that have been prepared at the point the appeal is abandoned or dismissed. The Judicial Council's Rules and Projects Committee approved the recommendation for circulation and the proposal was circulated for public comment February 27 and April 28, 2017 as part of the regular spring comment cycle. (A copy of the invitation to comment is included in your meeting materials). This memo discusses the public comments received on the proposal and the Appellate Division Subcommittee's recommendations for responding to those comments.

Public Comments

Six individuals or organizations submitted comments on this proposal. Four commentators agreed with the proposed changes, one agreed with the proposed changes if modified, and one did not indicate a position on the proposed changes. A chart with the full text of the comments

received and the committee's responses is attached. Based on these comments, the subcommittee recommends that adoption of this proposal as circulated.

The commentator that agreed with the proposed changes if amended – the Superior Court of Los Angeles County – suggested that the rules should include language to require the court reporter to provide the appellant with any portion of the transcript that was prepared at the time the appeal was abandoned or dismissed. This suggested requirement is not currently in rule 8.130, the rule on which the proposed amendments are based. The subcommittee's view is that, if the committee wants to consider such a requirement, it would be best to consider it for all three rules at the same time. Even if it were considered only for the rules that were circulated for public comment, however, this would be a substantive change to the proposal that other potentially interested persons or entities have not had an opportunity to consider. Under rule 10.22, which addresses the Judicial Council's rule-making procedure, substantive changes to the rules must be circulated for public comment before they are recommended for adoption by the Judicial Council. This would require either delaying the entire proposal until next year or taking up this new suggestion separately next year. The subcommittee therefore recommends that the committee decline to recommend the change at this time, but instead indicate that the committee will consider this suggestion when it develops its annual agenda for the next committee year.

A commentator from the Orange County Superior Court requested six months to implement this proposal, indicating that the court's case management system does not currently include procedures for accepting payment for transcripts in misdemeanor and infraction cases. Staff notes that the proposed amendments that were circulated for comment would not be creating an appellant's obligation to pay for a reporter's transcript in certain misdemeanor and infraction appeals; the rules calling for these payments have been in effect for several years now. The proposed amendments that were circulated would only address distribution of deposited funds upon abandonment or dismissal of the appeal. The Superior Courts of Los Angeles, Riverside, and San Diego counties did not express any concern about these proposed rule amendments taking effect on January 1, 2018. Based on this, the subcommittee recommends that the not altering the originally proposed January 1 effective date.

Committee Task

Staff has prepared a draft of the report that could be submitted to the Judicial Council on this proposal. This draft reflects the subcommittee's recommendation that the proposal be recommended for adoption as circulated for public comment. The committee's task with respect to this proposal is to:

May 25, 2017

Page 3

- Discuss the comments received on the proposal and approve or modify the subcommittee's suggestions for responding to these comments, as reflected in the draft comment chart and draft report to the Judicial Council; and
- Discuss and approve or modify the subcommittee's draft recommendation regarding adoption of the proposal, as reflected in the draft report to the Judicial Council.

Attachments

1. Draft of report to the Judicial Council
2. Draft comment chart
3. Invitation to comment



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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 15, 2017

Title	Agenda Item Type
Appellate Procedure: Payment for Partially Prepared Reporter's Transcripts	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 8.866 and 8.919	January 1, 2018
Recommended by	Date of Report
Appellate Advisory Committee	May 17, 2017
Louis R. Mauro, Chair	Contact
	Heather Anderson, Supervising Attorney, 415-865-7691 heather.anderson@jud.ca.gov

Executive Summary

The Appellate Advisory Committee recommends amending the rules regarding the preparation of reporters' transcripts in misdemeanor and infraction appeals to add language providing for paying court reporters out of funds deposited by an appellant for portions of transcripts that have been prepared at the point the appeal is abandoned or dismissed.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2018, amend California Rules of Court, rules 8.866 and 8.919 to provide that if the appellant in a misdemeanor or infraction appeal deposited funds with the court for a reporter's transcript and the appeal is abandoned or dismissed, the clerk will pay the court reporter out of these deposited funds for any portion of the transcript that was completed before the abandonment or dismissal of the appeal and will refund any excess deposit to the appellant.

The amended rule is attached at page 4.

Previous Council Action

The Judicial Council adopted rules 8.866 and 8.919 effective January 1, 2009 as part of a comprehensive set of new rules and forms for appellate division proceedings. The council has amended these rules several times since their adoption, but the provisions regarding deposit of the estimated cost of preparing a reporter's transcript have remained substantively unchanged.

Rationale for Recommendation

In appeals in civil cases and some misdemeanor and infraction cases, an appellant who wishes to use a reporter's transcript as the record of the oral proceedings in the trial court is required to pay for the transcript. One of the ways that an appellant can pay for a reporter's transcript in these cases is to deposit with the trial court the estimated cost of preparing the transcript. The rules relating to reporters' transcripts in civil appeals in both the Court of Appeal and the superior court appellate division address what happens to this deposit if the appeal is abandoned or dismissed. Subdivision (f) of rule 8.130 and subdivision (d) of rule 8.834 both provide that the funds deposited by the appellant must be used to pay court reporters for any portions of transcripts that were already completed at the point an appeal is abandoned or dismissed and that any remaining funds must be refunded to the appellant.

Currently, rules 8.866 and 8.919, which, respectively, address the preparation of reporter's transcripts in misdemeanor and infraction appeals, do not contain provisions addressing what happens to a deposit for a reporter's transcript if the appeal is abandoned or dismissed. To fill this gap, the committee is proposing amendments to these rules to add language similar to that in rules 8.130 and 8.834 providing that the clerk will pay the court reporter out of these deposited funds for any portion of the transcript that was completed before the abandonment or dismissal of the appeal and will refund any excess deposit to the appellant.

Comments, Alternatives Considered, and Policy Implications

External comments

This proposal was circulated for public comment from February 27 to April 28, 2017 as part of the regular spring comment cycle. Six individuals or organizations submitted comments on this proposal. Four commentators agreed with the proposed changes, one agreed with the proposed changes if modified, and one did not indicate a position on the proposed changes. A chart with the full text of the comments received and the committee's responses is attached at pages 5–7.

The commentator that agreed with the proposed changes if amended suggested that the rules should include language to require the reporter to provide the appellant with any portion of the transcript that was prepared at the time the appeal was abandoned or dismissed. Because this requirement is not currently in rule 8.130 upon which this proposal is based and would be a substantive change that was not circulated for public comment, the committee declined to recommend the change at this time, but will instead consider this suggestion when it develops its annual agenda for the next committee year.

Alternatives

In addition to the additional provision considered in connection with the comments received, the committee considered not proposing amendments to rules 8.866 and 8.919. The committee concluded, however, that it would be appropriate for these rules to treat deposits for reporters' transcripts in misdemeanor and infraction appeals that are abandoned or dismissed consistent with the way these deposits are treated in civil appeals. The committee therefore concluded that it was appropriate to recommend these amendments for adoption.

Implementation Requirements, Costs, and Operational Impacts

No appreciable implementation requirements, costs, or operation impacts are anticipated. The two courts that provided input on implementation requirements indicated that these would be minimal. The representative of one court did request six months to implement this proposal in order to make changes to the court's case management system, but two others indicated that 3 months would be adequate. Based on these comments, the committee is recommending that these rule amendments take effect on January 1, 2018, 3.5 months after the Judicial Council's September 15 meeting.

Relevant Strategic Plan Goals and Operational Plan Objectives

These proposed amendments support Judicial Council Operational Plan Objective 5 to develop and implement effective trial and appellate case management practices.

Attachments and Links

1. Amended rules 8.866 and 8.919, at page 4
2. Chart of comments, at pages 5–7

Rules 8.866 and 8.919 of the California Rules of Court, are amended, effective January 1, 2018, to read:

Title 8. Appellate Rules

Division 2. Rules Relating to the Superior Court Appellate Division

Chapter 3. Appeals and Records in Misdemeanor Cases

Article 2. Record in Misdemeanor Appeals

Rule 8.866. Preparation of reporter's transcript

(a)-(c) * * *

(d) When preparation must be completed

(1)-(2) * * *

(3) If the appellant deposited with the clerk an amount equal to the estimated cost of preparing the transcript and the appeal is abandoned or 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. The clerk must pay that amount to the reporter from the appellant's deposited funds and refund any excess deposit to the appellant.

Chapter 5. Appeals in Infraction Cases

Article 2. Record in Infraction Appeals

Rule 8.919 Preparation of reporter's transcript

(a)-(c) * * *

(d) When preparation must be completed

(1)-(2) * * *

(3) If the appellant deposited with the clerk an amount equal to the estimated cost of preparing the transcript and the appeal is abandoned or 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. The clerk must pay that amount to the reporter from the appellant's deposited funds and refund any excess deposit to the appellant.

ITC SPR17-06

Title of proposal (Appellate Procedure: Payment for Partially Prepared Reporter’s Transcripts)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Albert De La Isla IMPACT Team – Criminal Operations Orange County Superior Court	NI	<p>The current procedures for accepting payments on transcripts is missing from the Infraction/Misdemeanor Appeals procedure. A working group consisting of representatives from Criminal, Fiscal and CRIS was formed in 2015 to address this however the project was never completed. Sherry Clifford and Sheila Le are looking into forming this working group again to start looking into the process. If implemented, the procedures would have to be modified, potential new docket codes created, and a new fee distribution created by accounting to use specifically when accepting payment for a transcript.</p> <p><i>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?</i></p> <p>Development of procedures, potential new docket codes and training of courtroom clerk staff.</p> <p><i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i></p> <p>No, the court would request 6 months to implement the process on Felony / Misdemeanor appeals.</p>	The committee appreciates the commentator’s input on these implementation questions. Based on the input from other courts, however, the committee is recommending that the proposed amendments become effective January 1, 2018.

ITC SPR17-06

Title of proposal (Appellate Procedure: Payment for Partially Prepared Reporter’s Transcripts)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
2.	Orange County Bar Association by Michael L. Baroni, President	A	No specific comment.	The committee notes the commentator’s support for the proposal; no response required.
3.	Superior Court of Los Angeles County	AM	<p>Suggested modification: These rules should include language to require the reporter to provide the appellant with any portion of the transcript prepared and to declare the same when providing the invoice to the clerk for payment.</p> <p>Request for Specific Comments: <i>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.</i> Minimal staff training would be required.</p>	<p>Rule 8.130, which also addresses the handling of deposits for reporter’s transcripts when an appeal is abandoned or dismissed, does not currently include a requirement that the court reporter provide the appellant with the partially completed transcript. The committee’s view it would be best to consider whether to add such a requirement to all of the relevant rules at the same time. The proposal that was circulated did not contain any proposed amendments to rule 8.130, so this would be a substantive change to the proposal. This new requirement would also be a substantive change to the two rules addressed in the proposal. Under rule 10.22, substantive changes to the rules must be circulated for public comment before they are recommended for adoption by the Judicial Council. The committee will therefore consider this suggestion when it develops its annual agenda for the next committee year.</p> <p>The committee appreciates the commentator’s input on these implementation questions; no response required.</p>

ITC SPR17-06

Title of proposal (Appellate Procedure: Payment for Partially Prepared Reporter’s Transcripts)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p><i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> Yes. The three month effective date is sufficient for implementation</p>	
4.	Superior Court of Orange County, Appellate Division by Michael Porter	A	Looks good.	The committee notes the commentator’s support for the proposal; no response required.
5.	Superior Court of Riverside County	A	No specific comment.	The committee notes the commentator’s support for the proposal; no response required.
6.	Superior Court of San Diego County by Michael Roddy, Court Executive Officer	A	<p>Request for Specific Comments</p> <p><i>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?</i></p> <p>Minimal training and changes – this is currently our procedure for unlimited civil and the majority of the clerks are already trained on this process.</p> <p><i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> Yes</p>	The committee notes the commentator’s support for the proposal and appreciates the commentator’s input on these implementation questions; no response required.

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INVITATION TO COMMENT SPR17-06

Title Appellate Procedure: Payment for Partially Prepared Reporter's Transcripts	Action Requested Review and submit comments by April 28, 2017
Proposed Rules, Forms, Standards, or Statutes Amend Cal. Rules of Court, rules 8.866 and 8.919	Proposed Effective Date January 1, 2018
Proposed by Appellate Advisory Committee Hon. Louis R. Mauro, Chair	Contact Heather Anderson, 415-865-7691 heather.anderson@jud.ca.gov

Executive Summary and Origin

The Appellate Advisory Committee is proposing amendments to the rules regarding preparation of reporters' transcripts in misdemeanor and infraction appeals to add language providing for paying court reporters out of funds deposited by an appellant for portions of transcripts that have been prepared at the point the appeal is abandoned or dismissed. This proposal is based on a suggestion received from a court reporters' association.

Background

Subdivision (f) of rule 8.130, relating to reporters' transcripts in civil appeals to the Court of Appeal, and rule 8.834(d), relating to reporters' transcripts in civil appeals to the superior court appellate division, both provide for paying court reporters for portions of transcripts that were already completed at the point an appeal is abandoned or dismissed using funds deposited by the appellant. In some cases, appellants in misdemeanor and infraction cases also deposit funds to pay for reporters' transcripts. The rules relating to these transcripts do not currently address using the deposited funds to pay for portions of transcripts that have been prepared at the time an appeal is abandoned or dismissed.

The Proposal

The committee is proposing that rules 8.866 and 8.919, which address reporters' transcripts in misdemeanor and infraction appeals, respectively, be amended to provide that if the appellant deposited funds with the court for a reporter's transcript and the appeal is abandoned or dismissed, the clerk will pay the court reporter out of these deposited funds for the portion of the

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.

transcript that was completed before the abandonment or dismissal of the appeal and will refund any excess deposit to the appellant.

Alternatives Considered

The committee considered not recommending any changes to these rules, but concluded that it would be appropriate for these rules to treat deposits for reporters' transcripts in misdemeanor and infraction appeals that are abandoned or dismissed consistent with the way these deposits are treated in civil appeals.

Implementation Requirements, Costs, and Operational Impacts

These amendments would impose some additional duties on superior court clerks to make payments to court reporters from funds deposited for reporters' transcripts in misdemeanor and infraction appeals that are abandoned or dismissed. The committee believes that the operational impacts of this change are likely to be small because of the small number of cases in which this situation is likely to arise.

Request for Specific Comments

The advisory committee 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 three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

Attachments and Links

1. Proposed amendments to Cal. Rules of Court, rules 8.866 and 8.919, at pages 3–6

Rules 8.866 and 8.919 of the California Rules of Court would be amended, effective January 1, 2018, to read:

1 **Title 8. Appellate Rules**

2
3 **Division 2. Rules Relating to the Superior Court Appellate Division**

4
5 **Chapter 3. Appeals and Records in Misdemeanor Cases**

6
7 **Article 2. Record in Misdemeanor Appeals**

8
9 **Rule 8.866. Preparation of reporter's transcript**

10
11 (a)-(c) * * *

12
13 (d) **When preparation must be completed**

14
15 (1)-(2) * * *

16 (3) If the appellant deposited with the clerk an amount equal to the estimated cost of
17 preparing the transcript and the appeal is abandoned or dismissed before the reporter
18 has filed the transcript, the reporter must inform the clerk of the cost of the portion of
19 the transcript that the reporter has completed. The clerk must pay that amount to the
20 reporter from the appellant's deposited funds and refund any excess deposit to the
21 appellant.

22
23 **Chapter 5. Appeals in Infraction Cases**

24
25 **Article 2. Record in Infraction Appeals**

26
27 **Rule 8.919 Preparation of reporter's transcript**

28
29 (a)-(c) * * *

30
31 (d) **When preparation must be completed**

32 (1)-(2) * * *

33 (3) If the appellant deposited with the clerk an amount equal to the estimated cost of
34 preparing the transcript and the appeal is abandoned or dismissed before the
35 reporter has filed the transcript, the reporter must inform the clerk of the cost of the
36 portion of the transcript that the reporter has completed. The clerk must pay that
37 amount to the reporter from the appellant's deposited funds and refund any excess
38 deposit to the appellant.