JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
January 28, 2018

To
Rules Subcommittee of the Appellate Advisory Committee

From
Christy Simons
Attorney, Legal Services

Subject
Settled statement forms

Action Requested
Please review before February 1 subcommittee meeting

Deadline
February 1, 2018

Contact
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Introduction

Item 2 on the committee's annual agenda this committee year is to consider whether to recommend new and amended forms for the settled statement procedure in unlimited civil appeals, which include family law appeals. The Appellate Advisory Committee (AAC) received these suggestions as comments on its proposal regarding settled statements in 2017. In response to the comments, this proposal is focused on improving litigants' (particularly a self-represented litigant's) ability to access this procedure and successfully produce a statement that is certified ("settled") by the trial court. This memo discusses the proposed new and amended forms and the issues and options that the rules subcommittee may want to consider.

This is a joint proposal with the Family and Juvenile Law Advisory Committee (Fam/Juv). Several comments received on the 2017 settled statements proposal were directed at improving the forms for use by family law litigants. Fam/Juv is considering this proposal at its meeting on February 1, 2018.

The overall scope of this project to improve the settled statement procedure includes working with Fam/Juv to consider rule amendments and other possible new forms and revisions to forms in future rules cycles.

Background

2017 proposal

In 2017, this committee recommended amending the rule regarding settled statements in Court of Appeal proceedings (rule 8.137) to, among other things, remove the requirement for obtaining a court order to use this procedure in certain circumstances, approving a new optional form for appellants to use is preparing proposed statements, and revising the form for designating the record on appeal to conform to these changes. The intent of the proposal was to make the settled statement procedure in unlimited civil cases less burdensome for appellants and the courts.

The proposal circulated for public comment in the spring of 2017. A committee received a number of comments regarding the complexity of the forms and comments specifically intended to improve the forms for use by family law litigants. The comments raised questions about whether the forms could be adapted to apply to family law proceedings or whether separate settled statement forms for family law matters were necessary. AAC discussed these comments with Fam/Juv and the two committees agreed to work together on issues that were beyond the scope of that proposal.

The Judicial Council approved the final proposal, and the rule and form changes took effect January 1, 2018.

Suggestions

The committee received suggestions that *Proposed Statement on Appeal (Unlimited Civil Case)* (form APP-014) be reworded to eliminate complicated legal terminology and make the form more understandable and user-friendly for self-represented litigants and attorneys. The Advisory Committee on Providing Access and Fairness recommended prioritizing the self-represented litigant's ability to understand and successfully complete the form.

The comments also included suggestions for adjusting form APP-014 to meet the needs of family law litigants or to develop a new form specifically for family law appeals. These comments highlighted some differences in family law matters, such as that many of these matters are decided on the law-and-motion calendar, and thus are not a traditional "trial," but still result in appealable orders. At many family law hearings, the court receives testimony. Thus, the commentator suggested revising the item regarding testimony and evidence which instructed the appellant to skip it if there was no trial.

The committee also received comments on Appellant's Notice Designating Record on Appeal (Unlimited Civil Case) (form APP-003) suggesting that it be rewritten to be less complex and easier to understand and complete. A state bar standing committee comment suggested revising form APP-003 to look more like form APP-103, the form for appellants to designate the record on appeal in limited civil cases, because form APP-103 was easier to read and the formatting was clearer.

Finally, the committee received a suggestion to develop a form motion for litigants to use in seeking the court's permission to use a settled statement under rule 8.137(b)(2). The commentator indicated that a form would provide guidance and assist litigants in avoiding unnecessary procedural defaults.

Ad hoc joint working group

On January 12, a group with members representing Fam/Juv and AAC held a telephone conference to discuss this proposal and make some preliminary determinations to move the project forward. The group agreed with converting the proposed settled statement form to standard format and moving the instructions for filling out the form to an information sheet. The two advisory committees will need to decide whether one settled statement form will work for all unlimited civil cases or whether a separate settled statement form for family law cases is necessary.

The group also discussed possible amendments to rule 8.137, but for several reasons, including that AAC would need to seek approval from RUPRO to amend its annual agenda and that any substantive changes to the rule would impact other rules and forms, the group agreed to pursue consideration of the rule after the current rules cycle.

Discussion

The following is a summary of proposed revisions to current forms and proposed new forms. The subcommittee should review the forms and provide feedback on the substance, organization, and formatting of these forms, keeping in mind their use by an increasing number of self-represented litigants. Additional specific questions are presented in the discussion of each form.

Form APP-014, *Proposed Settled Statement (Unlimited Civil Case)*

The proposed revision to this form are intended to make the settled statement process easier for appellants who must draft them. The major changes are:

The revised version of the form is in standard format, rather than plain language format. The instructions have been moved to a more comprehensive information sheet (form APP-014-INFO), which results in a shorter settled statement form.

The space for describing motions on the current form (item 5) has been removed from the revised version. This change is intended to reflect the fact that many family law matters are heard in law-and-motion proceedings and involve witness testimony. These proceedings need not be described separately from trial proceedings. However, there are other motions that may be relevant to an appeal, such as motions in limine, motions to strike, etc. The subcommittee should consider whether the form should include a section for summarizing relevant motions.

The revised version of the form separates the description of party testimony and evidence from other witness testimony and evidence. This change was suggested by Fam/Juv because, often in family law proceedings, it is only the parties (e.g., mom and dad) testifying. The form provides space for describing party testimony and evidence; an attachment has been created for non-party testimony and evidence (new form APP-014A, described below). The subcommittee should consider whether this organizational change will work well for other unlimited civil matters.

In addition to reviewing the forms for content, organization, and formatting, staff have identified the following specific questions:

- Does this form work for submitting an amended proposed statement?

- Should the form include a section for summarizing relevant motions?

- Should item 2, The Dispute, be retained on the form? Is it helpful to provide the broad context for the settled statement, or is it unnecessary and confusing for appellants completing the form?

- If item 2 should be retained, is there a better way to phrase the parenthetical instruction in 2b?

- In item 4 and the attachment for non-party testimony and evidence, which provide space for summarizing the testimony of parties and non-parties, Fam/Juv has suggested including space for the appellant to state the date of each witness's testimony. Does the subcommittee have feedback on requesting this information?

- In item 4 and the attachment for other witness testimony and evidence, there are questions about whether, as to each witness who testified, any evidence introduced through that witness was either admitted into or excluded from evidence (see, e.g., item 4a(1)(B), (C)). There is space for relevant evidence that was admitted to be described (item 4c) and space for evidence that was excluded to be described (item 4d). The subcommittee should consider whether these questions should be retained on the form.

Form APP-014A, *Other Party and Non-Party Witness Testimony and Evidence Attachment*

This proposed new form is an attachment for form APP-014. It is to be used when the appellant wants to summarize more party testimony and evidence than space allows on form APP-014 and all non-party testimony and evidence. The formatting is identical to that of form APP-014, and walks the appellant through the process of summarizing the testimony and evidence.

The subcommittee should consider whether this organization of testimony and evidence will work well for all unlimited civil matters.

Form APP-014-INFO, *Information Sheet for Proposed Settled Statement on Appeal*

This proposed new form provides information to the appellant on how to complete form APP-014, the proposed settled statement. Converting the current settled statement form from plain language format to standard format required moving the instructions to an information sheet. This form is for use by appellants in drafting their proposed settled statements; it does not provide general information on the appeals process.

The subcommittee should review this form, ideally reading it concurrently with form APP-014, to consider its effectiveness in helping appellants complete a proposed settled statement. Specific questions:

- Is there more information that should be included?
- Should any content be removed?
- Are the definitions of legal terms correct and helpful?
- Should any sections be re-worded or re-formatted?

Form APP-003, *Appellant's Notice Designating Record on Appeal*

This form has minor revisions intended to make it more understandable and easier to complete, as suggested in the comments to the 2017 proposal. Of note, it includes a notice in the caption advising appellants to read *Information on Appeal Procedures for Unlimited Civil Cases* (form APP-001-INFO) (see discussion regarding this proposed new form, below).

The form also includes, for an appellant choosing to proceed with a reporter's transcript as the record of the oral proceedings, an expanded description of how the appellant pays for the transcript by depositing the approximate cost.

The subcommittee should review these proposed revisions to decide whether they improve the form, and suggest any additional revisions.

Form APP-010, *Respondent's Notice Designating Record on Appeal*

This form has minor revisions that conform to the changes to form APP-003 and to the recent amendment of Code of Civil Procedure section 271 (see item 2b). The form includes the same

advisement to read *Information on Appeal Procedures for Unlimited Civil Cases* (form APP-001-INFO) and the same expanded description of how to deposit the approximate cost of a reporter's transcript that have been added to form APP-003.

As with form APP-003, the subcommittee should review the proposed revisions and suggest any additional revisions to clarify the language and formatting of the form.

Form APP-020, *Response to Appellant's Proposed Settled Statement on Appeal*
This proposed new form is intended to facilitate a response by the respondent to the appellant's proposed statement. It allows the respondent to indicate approval or request changes. If a motion section is added back in to form APP-014, the response form should be revised accordingly. The subcommittee should consider whether the proposed form addresses all of the proposed modifications a respondent might request.

Form APP-022, *Order on Appellant's Proposed Settled Statement*
This proposed new form will streamline the court's role in the settled statement process. It provides for the court to order certification of the statement, the preparation of a reporter's transcript, or corrections/modifications to the appellant's proposed statement. There is space to specify any necessary corrections that must be made and any content required by rule 8.137 that must be added to the proposed statement. In addition, it includes space for the court to indicate the date by which the appellant must serve and file a corrected proposed statement.

Form APP-025, *Appellant's Motion to Use a Settled Statement on Appeal*
This draft form motion is intended for use by appellants who are not automatically entitled to use a settled statement. Rule 8.137(b)(1) provides that an appellant may elect to use a settled statement as the record of the oral proceedings without filing a motion if the proceedings were not reported by a court reporter or the appellant has an order waiving court fees and costs.

In other circumstances, an appellant who wants to use a settled statement instead of a reporter's transcript must seek court permission by filing a motion with its notice designating the record on appeal. Rule 8.137(b)(2) requires that the motion be supported by a showing that:

- Using a settled statement will result in a substantial cost saving and will not significantly burden the court or the parties;
- The designated oral proceedings cannot be transcribed; or
- Although the appellant does not have a fee waiver, the appellant cannot afford to pay for a transcript and funds are not available from the Transcript Reimbursement Fund (rule 8.130(c)).

The appellant must also designate the proceedings to be included in the settled statement and provide specific information about each proceeding, including the date, the name of the court

reporter (if any and if known), and whether a certified transcript was previously prepared. (Rule 8.137(b)(3). This information is also required to be provided on form APP-003, *Appellant's Notice Designating the Record on Appeal*, by an appellant electing to use a settled statement. The draft form motion includes the same chart to identify the designated proceedings as the one on form APP-003, and the same instructions.

The proposed motion form also includes a section for the appellant to support the motion with a showing of one (or more) of the reasons identified in rule 8.137(b)(2). The reasons are stated on the form, and space is provided for the appellant to explain why one (or more) of those reasons applies.

The draft form also includes a section entitled Notice of Hearing with space for information about the hearing (date, time, department, room, etc.) and a warning to the person served about filing a response and appearing at the hearing. *Staff would like input from the subcommittee regarding whether hearings are set on motions to use a settled statement and whether the subcommittee thinks this section should be retained on the form or not*.

Form APP-001-INFO, *Information on Appeal Procedures for Unlimited Civil Cases*

This proposed new form updates and expands upon current form APP-001, also entitled *Information on Appeal Procedures for Unlimited Civil Cases*, and is intended to replace that form. Form APP-001-INFO is based on form APP-101-INFO, *Information on Appeal Procedures for Limited Civil Cases*.

Among the differences in new form APP-001-INFO as compared with form APP-001:

- The new form is in plain language format, which is reflected in the circled item numbers, more headings, headings in the form of questions, and lots of white space, bullet points, and other formatting mechanisms intended to make the form more user-friendly and easy to follow.
- It is renumbered –INFO to signify that it is an information sheet;
- It is divided into sections addressed to the appellant and the respondent (see pages 2 and 12);
- It includes expanded information on how to serve and file documents (see item 8);
- It includes a new section on whether a notice of appeal stays enforcement of the judgment (see items 11, 15);
- It includes an expanded description of the record on appeal and the options for providing a record of the documents and oral proceedings (see item 13)
- It includes new sections describing oral argument and what happens after after oral argument.

The subcommittee should review this new form and decide whether to recommend that it replace current form APP-001.

Subcommittee's task

The subcommittee's task is to review the draft forms and provide feedback. The subcommittee may choose to:

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

Attachments

Revised form APP-003, *Appellant's Notice Designating Record on Appeal*, at pp. 9-12
Revised form APP-010, *Respondent's Notice Designating Record on Appeal*, at pp. 13-15
Revised form APP-014, *Proposed Settled Statement (Unlimited Civil Case)*, at pp. 16-21
New form APP-014A, *Other Party and Non-Party Witness Testimony and Evidence Attachment*, at pp. 22-24
New form APP-014-INFO, *Information Sheet for Proposed Settled Statement on Appeal*, at pp. 25-28
New form APP-020, *Response to Appellant's Proposed Settled Statement on Appeal*, at pp. 29-30
New form APP-022, *Order on Appellant's Proposed Settled Statement*, at pp. 31-32
New form APP-025, *Appellant's Motion to Use a Settled Statement on Appeal*, at pp. 33-34
New form APP-001-INFO, *Information on Appeal Procedures for Unlimited Civil Cases*, at pp. 35-49

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR *(name):*	**DRAFT** **01-03-2018** **Not approved by the Judicial Council**
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 *Information on Appeal Procedures for Unlimited Civil Cases* (form APP-001-INFO) 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 (choose)/My client elects 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, or d, 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 (item 4) on pages 2 and 3 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 rules 3.50-3.58; or

(b) ☐ An application for a waiver of court fees and costs under rules 3.50-3.58. *(Use Request to Waive Court Fees (form FW-001) 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, and Fourth Appellate Districts, permit parties to stipulate (agree) 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).)*

2. RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT

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

a. ☐ WITHOUT a record of the oral proceedings (what was said) 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 deciding whether an error was made in the superior court proceedings.

CASE NAME:	SUPERIOR COURT CASE NUMBER:

2. b. ☐ WITH the following record of the oral proceedings in the superior court *(you must check (1), (2), or (3) below)*:

(1) ☐ A reporter's transcript under rule 8.130. *(You must fill out the reporter's transcript section (item 5) on pages 3 and 4 of this form.)* I have *(check all that apply):*

(a) ☐ Deposited with the superior court clerk the approximate cost of preparing the transcript by including the deposit 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 under rule 8.130(b)(3)(A) 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 stipulated (agreed) in writing 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, and fill out the settled statement section (item 6) on page 4.)*

(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 I have an order waiving my fees and I am 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(b) to this form.)*

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

☐ I request that the clerk transmit to the Court of Appeal 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 (choose) 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 in the transcript the following documents that were filed in the superior court proceeding. *(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)		

☐ Check here if you need more space to list additional documents. List these documents on a separate page or pages labeled "Attachment 4b," and start with number (13).

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)			

☐ Check here if you need more space to list additional exhibits. List these exhibits on a separate page or pages labeled "Attachment 4c," and start with number (6).

5. NOTICE DESIGNATING REPORTER'S TRANSCRIPT

You must complete both a and b in this section if you checked item 2b(1) above indicating that you choose 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. **Format of the reporter's transcript**
I request that the reporters provide *(check one):*

(1) ☐ My copy of the reporter's transcript in electronic format.

(2) ☐ My copy of the reporter's transcript in paper format.

(3) ☐ My copy of the reporter's transcript in electronic format and a second copy in paper format.

(Code Civ. Proc., § 271.)

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 [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)						☐ Yes ☐ No
(2)						☐ Yes ☐ No
(3)						☐ Yes ☐ No
(4)						☐ Yes ☐ No

☐ Check here if you need more space to list additional proceedings. List these exhibits on a separate page or pages labeled "Attachment 5b," and start with number (5).

6. **NOTICE DESIGNATING PROCEEDINGS TO BE INCLUDED IN SETTLED STATEMENT**

(You must complete this section if you checked item 2b(3) above indicating you choose 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], 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)						☐ Yes ☐ No
(2)						☐ Yes ☐ No
(3)						☐ Yes ☐ No
(4)						☐ Yes ☐ No

☐ Check here if you need more space to list additional proceedings. List these proceedings on a separate page or pages labeled Attachment 6 beginning with number (5).

7. a. The proceedings designated in 5b or 6 ☐ include ☐ do not include all of the testimony in the superior court.

b. 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) and rule 8.137(d)(1) provide that your appeal will be limited to these points unless the Court of Appeal permits otherwise.)*

Points are set forth: ☐ Below ☐ On a separate page labeled Attachment 7.

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF APPELLANT OR ATTORNEY)

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NO.:		
NAME:			
FIRM NAME:			
STREET ADDRESS:			
CITY:	STATE:	ZIP CODE:	
TELEPHONE NO.:	FAX NO.:		
E-MAIL ADDRESS:			
ATTORNEY FOR (*name*):			

DRAFT

01-04-2018

Not approved by the Judicial Council

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
STREET ADDRESS:
MAILING ADDRESS:
CITY AND ZIP CODE:
BRANCH NAME:

PLAINTIFF/PETITIONER:
DEFENDANT/RESPONDENT:

RESPONDENT'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 *Information on Appeal Procedures for Unlimited Civil Cases* (form APP-001-INFO) before you fill out 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**

The appellant has elected (chosen) to use a clerk's transcript under rule 8.122.

a. ☐ **Additional documents.** *(If you want any documents from the superior court proceedings in addition to the documents designated by the appellant to be included in the clerk's transcript, you must identify those documents here.)*

In addition to the documents designated by the appellant, I request that the clerk include in the transcript the following documents from the superior court proceedings. *(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
(1)		
(2)		
(3)		

☐ Check here if you need more space to list additional documents. List these documents on a separate page or pages labeled "Attachment 1(a)," and start with number 4.

b. ☐ **Additional exhibits.** *(If you want any exhibits from the superior court proceedings in addition to those designated by the appellant to be included in the clerk's transcript, you must identify those exhibits here.)*

In addition to the exhibits designated by the appellant, 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)			

☐ Check here if you need more space to list additional exhibits. List these exhibits on a separate page or pages labeled "Attachment 1(b)," and start with number 4.

Form Approved for Optional Use
Judicial Council of California
APP-010 [Rev. January 1, 2019]

Cal. Rules of Court, rules 3.50, 8.121–8.124, 8.128, 8.130, 8.134, 8.137
www.courts.ca.gov

CASE NAME:	SUPERIOR COURT CASE NUMBER:

1. c. ☐ **Copy of clerk's transcript.** I request a copy of the clerk's transcript. *(Check (1) or (2).)*

   (1) ☐ I will pay the superior court clerk for this transcript when I receive the clerk's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, I will not receive a copy.

   (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 rules 3.50-3.58; or

   (b) ☐ An application for a waiver of court fees and costs under rules 3.50-3.58. (*Use* Request to Waive Court Fees *(form FW-001) to prepare and file this application.*)

2. **RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT**

   The appellant has elected to use a reporter's transcript under rule 8.130.

   a. ☐ **Designation of additional proceedings.** *(If you want any oral proceedings in addition to the proceedings designated by the appellant to be included in the reporter's transcript, you must identify those proceedings here.)*

   (1) In addition to the proceedings designated by the appellant, 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?
(a)						☐ Yes ☐ No
(b)						☐ Yes ☐ No
(c)						☐ Yes ☐ No
(d)						☐ Yes ☐ No
(e)						☐ Yes ☐ No
(f)						☐ Yes ☐ No
(g)						☐ Yes ☐ No

☐ Check here if you need more space to list additional proceedings. List these proceedings on a separate page or pages labeled "Attachment 2(a)(1)," and start with letter (h).

CASE NAME:	SUPERIOR COURT CASE NUMBER:

2. a. (2) **Deposit for additional proceedings.**

I have *(check a, b, c, or d):*

(a) ☐ Deposited with the superior court clerk the approximate cost of preparing the additional proceedings by including the deposit 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 under rule 8.130(b)(3)(A) 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).

b. **Copy of reporter's transcript.**

(1) ☐ I request a copy of the reporter's transcript.

(2) ☐ I request that the reporters provide *(check (a), (b), or (c))* :

(a) ☐ My copy of the reporter's transcript in electronic format.

(b) ☐ My copy of the reporter's transcript in paper format.

(c) ☐ My copy of the reporter's transcript in electronic format and a second copy of the reporter's transcript in paper format.

(*Code Civ. Proc., § 271.)*

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF RESPONDENT OR ATTORNEY)

PARTY WITHOUT ATTORNEY OR ATTORNEY: STATE BAR NO.:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **01-29-2018** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	
APPELLANT'S PROPOSED SETTLED STATEMENT ☐ _____Amended	SUPERIOR COURT CASE NUMBER:
RE: Appeal filed on*(date):*	COURT OF APPEAL CASE NUMBER:

☑ Use this form to prepare a written record of the oral trial court proceedings for an appeal.

☑ File this form in the superior court, not in the Court of Appeal.

☑ For information on how to complete this form, read form APP-014-INFO, *Information Sheet for Proposed Settled Statement.*

1. **PRELIMINARY INFORMATION**

   a. I am appealing ☐ an order filed on ☐ a judgment entered on *(specify date):*

   b. On *(fill in the date):* _____, I filed a notice of appeal. A copy of the judgment or order I am appealing is attached.

   c. On *(fill in the date)*

      ☐ I filed a notice designating the record on appeal, choosing to use a settled statement.

      ☐ The court sent ☐ I was served with an order granting my request to use a settled statement.

   d. ☐ On *(fill in the date):* _____, the court ordered me to modify or correct my proposed settled statement.

2. **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).

      ☐ Other Parent/Party *(specify name):*

   b. The dispute in the case is about *(briefly describe the issue that was litigated in the trial court that resulted in the order or judgment you are appealing):*

☐ Attachment 2b

   c. Is the appeal related to a judgment entered after a trial? ☐ No *(skip to 3)* ☐ Yes *(complete 2d)*

   d. What type of trial was there in your case? ☐ Jury trial ☐ Trial by judge only

Form Approved for Optional Use
Judicial Council of California
APP-014 [New. January 1, 2019]

Cal. Rules of Court, rule 8.137
www.courts.ca.gov

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER	COURT OF APPEAL CASE NUMBER

3. **REASONS FOR YOUR APPEAL**

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

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

☐ Attachment 3a

b. ☐ ***Legal errors.*** The court made the following error or errors about either the law or court procedure that caused substantial harm to me. *(Describe each error and how that error affected the outcome of the case.)*

(1) Describe the legal error made by the court:

Describe how you were harmed by the error.

(2) Describe another legal error made by the court, if any:

Describe how you were harmed by the error.

(3) Describe another legal error made by the court, if any:

Describe how you were harmed by the error.

☐ Attachment 3b

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER	COURT OF APPEAL CASE NUMBER

4. **SUMMARY OF THE PARTIES' TESTIMONY AND OTHER EVIDENCE**

a. Did any of the parties testify at the trial or hearing? ☐ yes ☐ no

Specify the name of the party who testified and the date of the proceeding. Then, write a complete and accurate summary of what each party said that is relevant to the reasons you gave in item 3 for this appeal (for example, what the party said in response to questions asked by his or her own attorney, the other party (or the attorney) and/or the court). Include only what was actually said; do not comment or give your opinion about what was said.

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

Summary:

☐ Attachment 4a(1)

(A) Did a party (or attorney) make an objection to this party's testimony? ☐ no ☐ yes *(Specify in item 4b.)*

(B) During this party's testimony, were any exhibits (documents, records, or other materials) relevant to the appeal presented that the judge allowed to be used as evidence to support or disprove this party's testimony? ☐ no ☐ yes *(Specify in item 4c.)*

(C) During this party's testimony, were any exhibits (documents, records, or other materials) relevant to the appeal presented that the judge *did not* allow to be used as evidence to support or disprove this party's testimony? ☐ no ☐ yes *(Specify in item 4d.)*

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER	COURT OF APPEAL CASE NUMBER

4. a. (2) Name of party: _____ testified on *(date)*: _____

Summary:

☐ Attachment 4a(2)

(A) Did a party (or attorney) make an objection to this party's testimony? ☐ no ☐ yes *(Specify in item 4b.)*

(B) During this party's testimony, were any exhibits (documents, records, or other materials) relevant to the appeal presented that the judge allowed to be used as evidence to support or disprove this party's testimony? ☐ no ☐ yes *(Specify in item 4c.)*

(C) During this party's testimony, were any exhibits (documents, records, or other materials) relevant to the appeal presented that the judge *did not* allow to be used as evidence to support or disprove this party's testimony? ☐ no ☐ yes *(Specify in item 4d.)*

(3) Was there testimony from other parties? ☐ no ☐ yes

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

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER	COURT OF APPEAL CASE NUMBER

4. b. **Objections to a party's testimony relevant to the appeal**
(Indicate the person who made the objection, which party's testimony was objected to, and if the court "sustained the objection" (prevented the party from saying something) or "overruled the objection" (allowed the party to make a statement).

Summary:

☐ Attachment 4b

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

Summary:

☐ Attachment 4c

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

☐ Attachment 4d

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER	COURT OF APPEAL CASE NUMBER

5. **SUMMARY OF NON-PARTY TESTIMONY AND OTHER EVIDENCE**

   a. Was there testimony from non-party witnesses that is relevant to the reasons for the appeal? ☐ No ☐ Yes

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

6. **TRIAL COURT'S FINDINGS**

   a. Did the judge make findings at the hearing or trial in the case? ☐ No ☐ Yes *(Complete 6b)*

   (A judge makes a "finding" when he or she decides that something is a fact, is true, or is relevant.)

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

☐ Attachment 6

7. **ORDER OR JUDGMENT YOU ARE APPEALING**

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

Date:

(TYPE OR PRINT NAME)

▶

(SIGNATURE OF PARTY OR ATTORNEY)

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER	COURT OF APPEAL CASE NUMBER

OTHER PARTY AND NON-PARTY WITNESS TESTIMONY AND EVIDENCE ATTACHMENT

Use this form as an attachment to *Appellant's Proposed Settled Statement* (form APP-014) if other parties or non-party witnesses provided testimony relevant to the reasons you are appealing the order or judgment in the case.

- Specify the name of any other party or non-party witnesses who testified at the trial or hearing and other information specified below.
- Write a complete and accurate summary of what each person said that is relevant to the reasons for this appeal (form example, in response to questions asked by any of the parties (or attorneys) and/or the court). Include only what was actually said; do not comment or give your opinion about what was said.

1. **SUMMARY OF TESTIMONY AND EVIDENCE**

a. Name: _____ ☐ a party ☐ a non-party witness in the case

testified on behalf of *(specify):* ☐ petitioner/plaintiff ☐ respondent/defendant ☐ other parent/party

on *(date):*

Summary:

☐ Attachment 1a

(1) Did a party (or attorney) make an objection to this person's testimony? ☐ no ☐ yes *(Specify in item 2)*

(2) During this person's testimony, were any exhibits (documents, records, or other materials) relevant to the appeal presented that the judge allowed to be used as evidence to support or disprove the testimony? ☐ no ☐ yes *(Specify in item 3)*

(3) During this person's testimony, were any exhibits (documents, records, or other materials) relevant to the appeal presented that the judge *did not* allow to be used as evidence to support or disprove the testimony? ☐ no ☐ yes *(Specify in item 4)*

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER	COURT OF APPEAL CASE NUMBER

b. Name: _____ ☐ a party ☐ a non-party witness in the case
testified on behalf of *(specify):* ☐ petitioner/plaintiff ☐ respondent/defendant ☐ other parent/party
on *(date):*

Summary:

☐ Attachment 1b

(1) Did a party (or attorney) make an objection to this person's testimony? ☐ no ☐ yes *(Specify in item 2)*

(2) During this person's testimony, were any exhibits (documents, records, or other materials) relevant to the appeal presented that the judge allowed to be used as evidence to support or disprove the testimony? ☐ no ☐ yes *(Specify in item 3)*

(3) During this person's testimony, were any exhibits (documents, records, or other materials) relevant to the appeal presented that the judge *did not* allow to be used as evidence to support or disprove the testimony? ☐ no ☐ yes *(Specify in item 4)*

c. Was there testimony from other parties or other non-party witnesses? ☐ no ☐ yes

If you answered "yes," fill out and attach to this form another *Other Party and Non-Party Witness Testimony and Evidence Attachment* (form APP-014(A)) or provide information in another documents, such form MC-025, labeled as Attachment 1c.

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER	COURT OF APPEAL CASE NUMBER

2. **Objections to the other party's or non-party witness's testimony relevant to the appeal**
(Indicate the person who made the objection, which person's testimony was objected to, and if the court "sustained the objection" (prevented the person from saying something) or "overruled the objection" (allowed the person to make a statement).

Summary:

☐ Attachment 2

3. **Exhibits (documents, records, or other materials) relevant to the appeal allowed to be used as evidence to support or disprove the testimony.** (*Write a complete and accurate summary of the exhibits. Do not comment or give your opinion about the exhibits.)*

Summary:

☐ Attachment 3

4. **Exhibits (documents, records, other materials) relevant to the appeal not allowed to be used as evidence to support or disprove the testimony?**
Write a complete and accurate summary of the documents, records, or other materials. Do not comment or give your opinion about the items.)

☐ Attachment 4

APP-014-INFO Information Sheet for Proposed Settled Statement

1 Where can I find general information about the appeals process?

This information sheets provides information about *Appellant's Proposed Settled Statement* (form APP-014).

It includes: instructions for completing the form, defines legal terms found in the form, deadlines for filing and serving the form, and the process for asking the court to certify your proposed statement for use in the Court of Appeal. This form does not cover general information about the appeals process.

For general information about the appeals process, read *Information on Appeals Procedures in Unlimited Civil Cases* (form APP-00-INFO) (family law cases are one type of unlimited civil case). To learn more, you can also:

- Visit the California Courts Online Web site at *http://www.courts.ca.gov/selfhelp-appeals.htm*
- Find out about self help resources for the district in which you filed your appeal, at *http://www.courts.ca.gov/courtsofappeal.htm.*
- Read rules 8.1-8.278 of the California Rules of Court, which set out the procedures for unlimited civil appeals. You can get these rules at any courthouse or county law library or online at *www.courts.ca.gov/rules*.
- Consult with a lawyer. Find a lawyer through your local bar association, the State Bar of California at *http:/calbar.ca.gov*, or the Lawyer Referral Service at 1-866-442-2529.

2 What is a settled statement on appeal?

A settled statement is a summary of the oral (spoken) trial court proceedings prepared by the person filing the appeal (the appellant) when authorized, as specified in 3. The trial court judge who conducted the proceeding must "settle" the statement before it is sent to the Court of Appeal. The Court of Appeal will rely on this statement in deciding your case.

3 When would I use *Proposed Settled Statement on Appeal* ?

Use the form if you want prepare a record of the oral (spoken) trial court proceedings for an appeal if:

- The trial or hearing was not reported by a court reporter;
- You have an order waiving your court fees and costs; or
- The court orders that you can use a settled statement instead of a court reporter's transcript.

4 What must be included in a proposed settled statement on appeal?

The proposed settled statement must include all of the following:

- A statement of the points you plan to raise on appeal;
- A concise factual summary of the evidence and testimony of each witness that relate to the points you plan to raise on appeal; and
- A copy of the judgment or order being appealed must be attached to it.

5 What is the deadline to file the form?

File the original form in the trial court:

- At the same time you file *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) or within **30 days** of that date,

OR

- Within 30 days of the date that the court sends, or a party serves, an order granting your motion to use a settled statement, if applicable.

6 What do these legal words mean that are found in form APP-014 and this information sheet?

- ***Evidence***: Any proof legally presented at a hearing or trial through witnesses, records, and/or exhibits.

  Substantial evidence: Evidence that is reasonable, credible, and of solid value. It is not just any evidence. The focus is on the quality--not the quantity--of evidence needed to support a legal conclusion.
- ***Findings*:** A determination by a judicial officer that something is a fact, or true, or is relevant to the case.

APP-014-INFO Information Sheet for Proposed Settled Statement

6 Legal terms (continued)

- ***Issue:*** A point that the parties disagree about in a lawsuit.
- ***Judgment:*** The official decision of a court that resolves the argument between the parties to a lawsuit and states the terms of the decision.
- ***Legal error:*** The appellant may ask the Court of Appeal to determine if an error was made by the trial court about either the law or court procedures in the case. If an error caused substantial harm, it is called "prejudicial error."

  Prejudicial error is an error that was serious enough to affect the outcome of the trial court proceedings.

  When it conducts its review, the Court of Appeal presumes that the judgment, order, or other decision being appealed is correct.

  Therefore, it is the responsibility of the appellant to demonstrate to the Court of Appeal that the trial court made and error and that, if the trial court had not made the error, it is reasonably probable that the trial court's decision would have been more favorable to the appellant.
- ***Objection.*** A formal protest made by a party about what a party or witness says at the trial or hearing or to any documents or exhibits that the other side tries to introduce during a trial or hearing.
- ***Order.*** A decision made by a judicial officer on an issue that is raised by a party in a lawsuit.
- ***Rulings on objections.*** A ruling is a judge's decision on a party's objection to the introduction of a witness's testimony, records, or exhibits at the trial or hearing. The judge can "sustain the objection" or "overrule the objection."

  If the judge *sustains* the objection, the judge is agreeing with the objection and will not consider that part of the testimony or evidence that is being objected to. If the judge *overrules* the objection, the judge is disagreeing with the objection, and will allow the evidence to be introduced.
- ***Stating the point you intend to raise on appeal*** means stating the reasons you intend to appeal the order or judgment that was not favorable to you.

7 How do I complete the caption (the top part of the form)?

If you have a lawyer for the appeal, your lawyer will fill out the form. If you do not have a lawyer for the appeal, write your name and provide your contact information in the first part of the caption.
Next, complete the address for the superior court where your case is filed and write the names of the parties in the case.

Note for Domestic Violence Restraining Order cases: If you are appealing a Domestic Violence Restraining Order, write your name next to Plaintiff/Petitioner if you are the Protected Person on the restraining order. Write your name next to Defendant/Respondent, if you are the Restrained Person on the restraining order.

Finally, fill in the date your appeal was filed, as well as the and the superior court case number and court of appeal case number.

8 How do I complete item 1: Preliminary Information?

In this section, write the dates that are requested about: the order or judgment, the notice of appeal, your choice to use, or the court's order allowing you to use a settled statement. Also, if applicable, provide the date that the court ordered you to modify or correct your proposed settled statement.

9 How do I complete item 2: The Dispute?

Item 2 provides the space for you to provide information on the trial court proceedings in your case. Indicate if you filed the complaint/petition or responded to the complaint/petition. Next, briefly describe the issue that was litigated in the trial court that is related to the order or judgment you are appealing. Then, if the appeal is related to a judgment entered after a trial, indicate if the trial was a jury trial or a trial by judge only.

If you need more space to describe the dispute, attach a separate page or pages (you can use form MC-025). At the top of each page used, write "APP-014, item 2b."

10 How do I complete item 3: Reasons for Your Appeal?

In item 3 of APP-014, you describe the points that you intend to raise on appeal by specifying the legal error or errors you believe were made by the court at the hearing or trial. For example:

- *No substantial evidence*

  You might argue that there was no substantial evidence that supported the judgment or order that is attached to the proposed settled statement.

- *Legal error*

  You might argue that the court made an error or errors about either the law or court procedure that affected the outcome of the trial or hearing.

Before you complete this item, you should understand that the Court of Appeal can only review a case based on an argument that the trial court made certain kinds of errors that changed the judgment or order in your case.

YOUR REASONS CAN BE BECAUSE:	
☑	There was no substantial evidence that supported the judgment or order.
☑	The court made an error or errors about either the law or court procedure that caused substantial harm (for example, the court misinterpreted the law, wrongly ruled on an objection, or misapplied the law).

YOUR REASONS CANNOT BE TO:	
☒	Present your case all over again to the Court of Appeal.
☒	Present new evidence or new witnesses to the Court of Appeal.
☒	Generally complain about the judge or a lawyer; or
☒	Explain to the the Court of Appeal that a witness did not tell the truth at the trial.

11 How do I complete item 4: Summary the Parties' Testimony and Other Evidence?

Indicate in item 4 if a party in the case gave testimony at the trial or hearing. Item 4 provides space to summarize the testimony that is relevant to the reasons you gave in item 3 for this appeal.

After summarizing the testimony, indicate if there were any objections and exhibits relevant to the appeal that the judge allowed, or did not allow, to be used as evidence to support or disprove the party's testimony. If you answer "yes, to the series of questions following each party's testimony, complete items 4b-d on page 5.

If you need more space to describe the testimony or evidence, check the box below the summary of the testimony (for example, "Attachment 4a(1)"). Then, attach a separate page or pages (you can use form MC-025) to continue the summary. Label the attachment "APP-014, Attachment 4a(1)" if you are continuing to summarize the testimony of the party named in item 4a(1).

If more than two parties provided testimony, complete *Other Party and Non-Party Witness Testimony and Other Evidence* (form APP-014(A)) and attach it to form APP-014.

12 How do I complete item 5: Summary of Non-Party Testimony and Other Evidence?

If non-party witnesses (persons other than the parties in the case) provided testimony at the trial or hearing that is relevant to the reasons that you are appealing the judgment or order, you will need to complete a separate form or document and attach the form to APP-014.

You may use *Other Party and Non-Party Witness Testimony and Other Evidence* (form APP-014(A)) to provide this information as part of your proposed settled statement.

13 How do I complete item 6: Trial Court's Findings?

Indicate if the judge made any findings (decisions about the facts or the law) that are relevant to your reasons in item 3 for this appeal. A judge makes a finding when he or she decides, for example, that something is or is not a fact, or is or is not true, or that a particular law applies or does not apply.

If you need more space to describe the trial court's findings, check the box "Attachment 6." Then, attach a separate page or pages (you can use form MC-025) to continue the summary. Label the attachment "APP-014, Attachment 6."

14 Attach order or judgment and make copies.

When you have finished your proposed settled statement:

- Attach a copy of the order or judgment you are appealing;
- Make one copy for each party in your case.
- Keep a copy for your records.

15 Have all parties in the case served

Have each party in your case served with a copy of the complete proposed settled statement with attachments.

For information about serving your documents:

- See *Information Sheet for Proof of Service* (form APP-009, and
- Go to the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-serving.htm.*

16 File the proof of service forms with the court

- You can file the forms in person, by mail, or e-filing (if available) in the court that made the order or judgment you are appealing.
- Ask the court clerk to stamp the extra copy for your records to show that the original was filed.

17 Respondent reviews, then court reviews

The respondent has 20 calendar days from the date you serve your proposed statement to serve and file proposed amendments (changes) 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 the statement provides an accurate summary of the testimony and other evidence relevant to the issues you indicated you are raising on appeal.

18 Completion and certification

- If the judge makes any corrections or changes 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 calendar days from the date the modified or corrected statement is sent to you to serve and file proposed amendments or objections to the statement.

- The judge then:
  - reviews any proposed amendments or 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.

19 Statement sent to Court of Appeal

Once the trial court judge certifies the statement on appeal, the trial court clerk will send the statement to the Court of Appeal.

PARTY WITHOUT ATTORNEY OR ATTORNEY: STATE BAR NO.: 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:	***FOR COURT USE ONLY*** **DRAFT-** **NOT APPROVED BY THE JUDICIAL COUNCIL**
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	
RESPONSE TO APPELLANT'S PROPOSED SETTLED STATEMENT ON APPEAL ☐ _____Amended	SUPERIOR COURT CASE NUMBER:
Notice: Use this form to prepare a response to *Appellant's Proposed Settled Statement* (form APP-014). For information about serving and filing this form, read *Information on Appeals Procedures in Unlimited Civil Cases* (**form APP-001-INFO**).	COURT OF APPEAL CASE NUMBER:

Important! Do not use this form if you elect to provide a reporter's transcript instead of proceeding with a settled statement.

1. **SUMMARY OF THE PARTIES' TESTIMONY AND OTHER EVIDENCE**
   a. ☐ I do not request changes to this section of appellant's proposed settled statement.
   b. ☐ I request the following changes to this section of appellant's proposed settled statement *(specify):*

   c. ☐ I request the above changes for the following reasons *(specify):*

☐ Attachment 1

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER	COURT OF APPEAL CASE NUMBER

2. **SUMMARY OF NON-PARTY WITNESS TESTIMONY AND OTHER EVIDENCE**
   a. ☐ I do not request changes to this section of appellant's proposed settled statement.
   b. ☐ I request the following changes to this section of appellant's proposed settled statement *(specify):*

   c. ☐ I request the above changes for the following reasons *(specify):*

☐ Attachment 2

3. **TRIAL COURT'S FINDINGS**
   a. ☐ I do not request changes to this section of appellant's proposed settled statement.
   b. ☐ I request the following changes to this section of appellant's proposed settled statement *(specify):*

   c. ☐ I request the above changes for the following reasons *(specify):*

Date:

☐ Attachment 3

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF PARTY OR ATTORNEY)

PARTY WITHOUT ATTORNEY OR ATTORNEY: STATE BAR NO.: 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:	***FOR COURT USE ONLY*** **DRAFT-** **NOT APPROVED BY THE JUDICIAL COUNCIL**
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	
ORDER ON APPELLANT'S PROPOSED SETTLED STATEMENT ☐ _____Amended	SUPERIOR COURT CASE NUMBER:
	COURT OF APPEAL CASE NUMBER:

1. The court has received and reviewed the following:
   a. ☐ *Appellant's Proposed Settled Statement* (form APP-014) ☐ _____Amended filed by the appellant on *(date):*
   b. ☐ *Response to Appellant's Proposed Settled Statement on Appeal* (form APP-020) ☐ _____Amended filed by the respondent on *(date):*
   c. ☐ Other *(specify):*

2. The court makes the following order:
   a. ☐ *Certification*. The court certifies that the statement proposed by the appellant in 1a is an accurate summary of the evidence and testimony for the issues the court addressed in the order or judgment that is being appealed. The court settles the statement and certifies that it is ready to be sent to the Court of Appeal.
   b. ☐ *Court reporter transcript required*. The trial court proceedings in this case were reported by a court reporter. Instead of correcting the settled statement, the court orders under rule 8.137(f)(2) that a transcript be prepared as the record of these proceedings. *(Check the court's local rules to make sure the court has a rule providing that this option is available.)*
   c. ☐ *Corrections required.* Corrections are needed for the settled statement proposed by the appellant to be an accurate summary of the evidence and testimony for the issues the court addressed in the order or judgment being appealed.
      (1) ☐ A modified settled statement is attached to this order. This modified settled statement must be sent to the parties.
      (2) ☐ The appellant is ordered to prepare a settled statement incorporating the modifications listed below and to serve and file the modified statement.
      (A)
      (B)

Form Adopted for Mandatory Use
Judicial Council of California
APP-022 [New. January 1, 2019]

Cal. Rules of Court, rule 8.137
www.courts.ca.gov

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER	COURT OF APPEAL CASE NUMBER

2. Court orders (continued)

(C)

(D)

(E)

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

d. ☐ (1) The proposed settled statement does not contain the following material required by rule 8.137.

(2) The appellant is ordered to prepare a new proposed settled statement that includes this material. The new proposed settled statement must be served and filed by *(date):* .

e. ☐ Other orders are specified below:

Date:

Signature of trial court judicial officer

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR *(name):*	**DRAFT** **12-22-2017** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
APPELLANT'S MOTION TO USE A SETTLED STATEMENT ON APPEAL	**S**UPERIOR COURT CASE NUMBER:
RE: Appeal filed on *(date):*	COURT OF APPEAL CASE NUMBER *(if known)*:

INSTRUCTIONS TO APPELLANT

- *Use this form to request a court order to use a settled statement instead of a reporter's transcript of the trial court oral proceedings for an appeal.*
- *Attach this form to your notice designating the record on appeal..*
- *File both forms in the superior court, not the Court of Appeal.*

NOTICE OF HEARING

1. TO *(name(s)):* _____
   ☐ Petitioner ☐ Respondent ☐ Other Parent/Party ☐ Other *(specify):*

2. **A COURT HEARING WILL BE HELD AS FOLLOWS:**
   a. Date: Time: ☐ Dept.: ☐ Room.:
   b. Address of court ☐ same as noted above ☐ other *(specify):*

3. **WARNING to the person served with *Appellant's Motion to Use a Settled Statement on Appeal:*** The court may make the requested order without you if you do not file a response opposing the motion, serve a copy on the other party or parties at least nine court days before the hearing, and appear at the hearing.

4. **PROCEEDINGS**

I request that the following proceedings in the trial 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 proceeding [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 reported the proceedings [if any and 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?
(a)						☐ Yes ☐ No
(b)						☐ Yes ☐ No
(c)						☐ Yes ☐ No
(d)						☐ Yes ☐ No

☐ Additional proceedings are listed on a separate page or pages. *(At the top of each page, write "Attachment 4" and begin with letter (e).)*

CASE NAME:	SUPERIOR COURT CASE NUMBER:

5. **REASON FOR ALLOWING USE OF SETTLED STATEMENT**

You must support your motion to use a settled statement by showing one [or more] of the following:

a. ☐ A substantial cost saving will result and the statement can be settled without significantly burdening opposing parties or the court. Explain:

b. ☐ The oral proceedings requested in item 4 cannot be transcribed because:

c. ☐ I do not have a fee waiver, but I am unable to pay for the reporter's transcript and funds are not available from the Transcript Reimbursement Fund (see rule 8.130(c)). Explain:

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF APPELLANT OR ATTORNEY)

APP-001-INFO Information on Appeal Procedures for Unlimited Civil Cases

GENERAL INFORMATION

(1) What does this information sheet cover?

This information sheet tells you about appeals in unlimited civil cases. These are civil cases in which the amount of money claimed is more than $25,000, as well as other types of cases, such those filed in family court, probate court, and juvenile court.

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 12.

This information sheet does not cover everything you may need to know about appeals in unlimited civil cases. It is meant only to give you a general idea of the appeal process. To learn more, you should read rules 8.1–8.278 of the California Rules of Court, which set out the procedures for unlimited 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 an unlimited civil case, the court hearing the appeal is the Court of Appeal for the district in which the superior court is located. 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 Court of Appeal will not consider new evidence, such as the testimony of new witnesses or new exhibits. The appellate court'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 Limited Cases* (form APP-101-INFO)
- *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 Court of Appeal 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 Court of Appeal presumes that the judgment, order, or other decision being appealed is correct. It is the responsibility of the appellant to show the Court of Appeal that an error was made and that the error was harmful.

- ***No substantial evidence:*** The appellant may also ask the Court of Appeal to determine if there was no substantial evidence supporting the judgment, order, or other decision being appealed. When it conducts its review, the Court of Appeal only looks to see if there was evidence that reasonably supports the decision. The Court of Appeal 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 Court of Appeal 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 an unlimited 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 an unlimited civil case. The information may also be helpful to the respondent. Additional information for respondents can be found starting on page 12 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 904.1 lists a few types of orders in an unlimited civil case that can be appealed right away. These include orders that:

- 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 904.1 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 (Unlimited Civil Case)* (form APP-002) to prepare a notice of appeal in an unlimited civil case. You can get form APP-002 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 (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) 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 *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.*

(9) Is there a deadline to serve and file my notice of appeal?

Yes. Generally, in an unlimited civil case, the notice of appeal must be served on the other party or parties in the case and filed with the clerk of the superior court within **60 calendar 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. If the clerk served neither of these documents, the notice of appeal must be filed within 180 calendar days after entry of judgment (generally, the date the judgment is file-stamped).

This deadline for filing the notice of appeal cannot be extended. If your notice of appeal is late, the Court of Appeal will not be able to consider your appeal.

If a notice of appeal has been filed in a case, any other party to the case may file its own appeal from the same judgment or order. This is called a cross-appeal.

To cross-appeal, a party must file a notice of appeal within either the regular time for filing a notice of appeal or within 20 calendar days after the clerk of the superior court mails notice of the first appeal, whichever is later You may use Judicial Council form APP-002, *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)*, to file this notice in an unlimited civil case.

(10) Do I have to pay a fee to file a notice of 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 an unlimited civil case in the current Statewide Civil Fee Schedule linked at *www.courts.ca.gov/7646.htm* (see the "Appeal and Writ Related Fees" section is near the end of this schedule.)

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, if the trial court denies your request for a stay, you can apply to the Court of Appeal 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?

Within 15 days after the trial court clerk mails a notice that a notice of appeal has been filed in an unlimited civil case, the appellant must serve and file in the Court of Appeal a completed *Civil Case Information Sheet* (form APP-004), attaching a copy of the judgment or appealed order that shows the date it was entered. See rules 8.100 and 8.104 of the California Rules of Court.

In addition, since the Court of Appeal justices were not there to see what happened in the trial court, an official record of what happened must be prepared and sent to the Court of Appeal for its review.

Within 10 days of filing the notice of appeal, the appellant must tell the trial court in writing ("designate") what documents and oral proceedings, if any, to include in the record that will be sent to the Court of Appeal.

You will need to designate all parts of the record that the Court of Appeal will need to decide the issues you raised in the appeal. You can use *Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) to designate the record in an unlimited civil case. You can get form APP-003 at any courthouse or county law library or online at *www.courts.ca.gov/forms.htm*

You must serve and file this notice designating the record on appeal within 10 calendar 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 (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) 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 *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.*

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

There are three parts of the official record:

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

b. A record of what was said in the trial court (this is called the "oral proceedings")

c. Exhibits that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court

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

a. Record of the documents filed in the trial court

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

(1) A *clerk's transcript* or an *appendix*
(2) The original *trial court file* or
(3) An *agreed statement*

Read below for more information about these options.

(1) Clerk's transcript or Appendix

Description: A clerk's transcript is a compilation of the documents filed in the trial court that is prepared by the trial court clerk. An appendix is a compilation of these documents prepared by a party. (Cal. Rules of Court, rule 8.124).

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 or appendix. These documents are listed in rule 8.122(b) and rule 8.124(b) of the California Rules of Court and in *Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003).

Clerk's transcript. If you want any documents other than those listed in rule 8.122(b) 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-003 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 three things within 10 days after the clerk sends this bill or the Court of Appeal 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 Court of Appeal 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.

Appendix. If you choose to prepare an appendix of the documents filed in the superior court, rather than designating a clerk's transcript, that appendix must include all of the documents and be prepared in the form required by rule 8.124 of the California Rules of Court. The parties may prepare separate appendixes or stipulate (agree) to a joint appendix. If separate appendixes are prepared, each party must pay for its own appendix. If a joint appendix is prepared, the parties can agree on how the cost of preparing the appendix will be paid or the cost will be paid by the appellant(s).

The party preparing the appendix must serve the appendix on each other party (unless the parties have agreed or the Court of Appeal has ordered

otherwise) and file the appendix in the Court of Appeal. The appellant's appendix or a joint appendix must be served and filed with the appellant's opening brief. See (15) for information about the brief.

(2) Trial court file

When available: If the Court of Appeal has a local rule allowing this, and the parties agree, the clerk can send the Court of Appeal the original trial court file instead of a clerk's transcript as a record of documents filed in the trial court (see rule 8.128 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 Court of Appeal 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 number the pages and send the file and a list of the documents in the file to the Court of Appeal. 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 and number the pages.

(3) Agreed statement

Description: An agreed statement is a summary of the trial court proceedings agreed to by the parties. (See rule 8.134 of the California Rules of Court.)

When available: If you and the respondent agree to this, you can use an agreed statement instead of a clerk's transcript as a record of documents filed in the trial court. 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. (See rule 8.122(b) of the California Rules of Court.)

If you choose this alternative, you must file with your notice designating the record on appeal either the agreed statement or a written agreement with the respondent (a "stipulation"), stating that you are trying to agree on a statement. Within the next 30 days, you must then file the agreed statement or tell the court that you were unable to agree on a statement and file a new notice designating the record.

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

The second part of the official record of the trial court proceedings is a record of what was said in the trial court (this is called a record of the "oral proceedings"). You do not *have* to send the Court of Appeal a record of the oral proceedings. But if you want to raise any issue in your appeal that would require the Court of Appeal to consider what was said in the trial court, the Court of Appeal will need a record of those oral proceedings. For example, if you are claiming that there was not substantial evidence supporting the judgment, order, or other decision you are appealing, the Court of Appeal 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 Court of Appeal. **If the Court of Appeal 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 an unlimited civil case, you can use *Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) 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-003 at any courthouse or county law library or online at *www.courts.ca.gov/forms.*

There are three ways in which a record of the oral proceedings can be prepared for the Court of Appeal:

(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) You can use an *agreed statement.*

(3) 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 8.130 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 Court of Appeal. 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. If you are unsure, 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 (Unlimited Civil Case)* (form APP-003)—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 Court of Appeal.

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 8.130 with the trial court clerk within 10 calendar days after this notice is sent. (See rule 8.130 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. Money from a special fund, called the Transcript Reimbursement Fund, may be available to help you 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 Court of Appeal 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) Agreed statement

Description: An agreed statement is a written summary of the trial court proceedings agreed to by all the parties. See rule 8.134 of the California Rules of Court.

When available: If the trial court proceedings were not recorded by a court reporter or if you do not want to use this option, 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 a reporter's transcript, if it is available.

Contents: An agreed statement must explain what the trial court case was about, describe why the Court of Appeal is the right court to consider an appeal in this case (why the Court of Appeal 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 calendar 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) Settled statement

Description: A settled statement 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: Under rule 8.137 of the California Rules of Court, you can choose ("elect") to use a settled statement on appeal as the record of the oral proceedings if (1) the trial court proceedings were not recorded by a court reporter or (2) if you have an order waiving your court fees and costs. Please note that it may take more of your time to prepare a settled statement than to use a reporter's transcript, if it is available.

If you want to use a settled statement as the record of the oral proceedings for reasons other than the two previously mentioned, you must file a motion (known in family law cases as a *Request for Order*) (form FL-300)) to ask the trial court for an order. You may use *Appellant's Motion to Use a Settled Statement on Appeal* (form APP-025) for this purpose. Read rule 8.137 about the requirements of your motion or request for order.

Contents: A settled statement must include:

- A statement of the points you (the appellant) are raising on appeal;
- A condensed narrative of the oral proceedings that you specified in the notice designating the record on appeal or motion. The condensed narrative is a summary of the testimony of each witness and other evidence that is relevant to the issues you are raising on appeal; and
- A copy of the judgment or ordering you are appealing attached to it.

(See rule 8.137 of the California Rules of Court for more information about what must be included in a settled statement 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 settled statement, you must prepare a proposed statement. You may use *Proposed*

Statement (Unlimited Civil Case) (form APP-014) to prepare your proposed statement. You can get the form 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 within 30 days after filing your notice electing to use a settled statement or within 30 days after the trial court clerk sends, or a party serves, the order granting the motion to use a settled statement. "Serve and file" means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send ("serve") the proposed settled 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 settled statement has been served. This record is called a "proof of service." *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) 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 settled 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 *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.*

Next steps. The respondent has 20 calendar days from the date you serve your proposed settled statement to serve and file either:

- Proposed changes (called "amendments") to the proposed statement; or
- If the oral proceedings in the trial court were reported by a court reporter, a notice indicating that the respondent is electing to provide a reporter's transcript instead of proceeding with a settled statement.

Review of appellant's proposed settled statement: If the respondent proposes changes, the trial court judge then reviews both your proposed statement and the respondent's proposed amendments. 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. For more information, see rule 8.137(f) of the California Rules of Court. See also rule 8.140, which explains the consequences for a party's failure to make corrections that are ordered to be made the proposed statement.

Note: Hearing possible to review proposed settled statement: No later than 10 days after the respondent files proposed amendments, or the time to do so has expired, a party may request a hearing to review and correct the proposed statement. No hearing will be held unless ordered by the trial court judge. A judge will not ordinarily order a hearing unless there is a factual dispute about a material aspect of the trial court proceeding. If there is a hearing, see rule 8.137 for more information.

Additional review procedures: If there is no hearing after the respondent proposes changes to the settled statement, and after 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. See rule 8.140, which explains the consequences for a party's failure to make corrections to the proposed statement.

If you or the respondent disagree with anything in the modified or corrected statement, you have 10 calendar 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 oral proceedings relevant to the issues you indicated you are raising on appeal.

Completion and certification
If the judge does not order any corrections to the proposed statement, the judge must promptly certify the statement.

Alternatively, the parties may serve and file a stipulation (agreement) that the statement as originally served or corrected or modified is correct. Such a stipulation is equivalent to the judge's certification of the statement.

Sending settled statement to the Court of Appeal: Once the trial court judge certifies the statement or the trial court receives the parties' stipulation, the trial court clerk will ~~transmit~~ send the statement to the Court of Appeal as required under rule 8.150 of the California Rules of Court.

c. Exhibits

The third part of the official record of the trial court proceeding is the exhibits, such as photographs, documents, or other items that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court. Exhibits are considered part of the record on appeal, but the clerk will not include any exhibits in the clerk's transcript unless you ask that they be included in your notice designating the record on appeal. *Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003), includes a space for you to make this request.

You also can ask the trial court to send original exhibits to the Court of Appeal at the time briefs are filed. (See rule 8.224 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 Court of Appeal, 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 Court of Appeal for the district in which the trial court is located. When the Court of Appeal receives the record, it will send you a notice telling you when you must file your brief in the Court of Appeal.

(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 8.200–8.224 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in unlimited 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 and format of briefs: If you are the appellant, your brief, called an "appellant's opening brief," must clearly explain the legal errors you believe were 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. Each brief must be no longer than 14,000 words if produced on a computer, including footnotes. A brief produced on a typewriter must not be longer than 50 pages. The brief must contain a table of contents and a table of authorities. The cover of

appellant's opening brief filed in paper form must be green. For other content and formatting requirements for the brief, read rules 8.40 and 8.204 of the California Rules of Court.

Remember that an appeal is not a new trial. The Court of Appeal 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 opening brief within 40 days after the record is filed in the Court of Appeal or 70 days from the date the appellant chooses to proceed with no reporter's transcript under rule 8.124. "Serve and file" means that you must:

- Have somebody over 18 years old mail, personally 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 (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) 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 Court of Appeal. 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.
- Note: If a party chooses to prepare an appendix of the documents filed in the trial court instead of designating a clerk's transcript, the appellant's appendix or a joint appendix must be served and filed with the appellant's opening brief.

You can get more information about how to serve court papers and proof of service from *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-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 60 calendar days (see rule 8.212(b) for requirements for these agreements). You can also apply to the presiding justice of the court to extend the time for filing this brief if you can show good cause for an extension (see rule 8.63 for information about extensions of time). You can use *Application for Extension of Time to File Brief (Civil Case)* (form APP-006) to ask the court for an extension.

If you do not file your brief by the deadline set by the Court of Appeal, 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 must respond by serving and filing a respondent's 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 Court of Appeal 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 Court of Appeal justices in person. You do not have to participate in oral argument if you do not want to; you can notify the Court of Appeal that you want to "waive" oral argument. If all parties waive oral argument, the justices 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 Court of Appeal 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 30 minutes for your argument unless the Court of Appeal orders otherwise. Remember that the justices will have already read the briefs, so you do not need to read your brief to the justices. It is more helpful to tell the justices what you think is most important in

your appeal or ask the justices if they have any questions you could answer. Read rule 8.256 for more information.

(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 justices of the Court of Appeal will make a decision about your appeal. The Court of Appeal 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 Court of Appeal'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 Court of Appeal notifying it that you are giving up (this is called "abandoning") your appeal. You can use *Abandonment of Appeal (Unlimited Civil Case)* (form APP-005) to file this notice in an unlimited civil case. You can get form APP-005 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 an unlimited 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 an unlimited 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 (Unlimited Civil Case)* (form APP-002) to file this notice in an unlimited 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 60 days after service of Notice of Entry of the judgment or a file-stamped copy of the judgment) or within 20 days after the clerk of the trial court serves 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 Court of Appeal. Depending on the kind of record chosen by the appellant, however, you may have the option to:

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

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

what your options are when the appellant has chosen that form of the record.

(a) Clerk's transcript or Appendix

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 calendar 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. You may use *Respondent's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-010) for this purpose.

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.

Appendix. If the appellant is using an appendix, and you and the appellant have not agreed to a joint appendix, you may prepare a separate respondent's index. See page 5 for more information about preparing an appendix.

(b) Reporter's transcript

If the appellant is using a reporter's transcript, you have the option of asking for additional proceedings to be included in the reporter's transcript. To do this, within 10 days after the appellant files its notice designating the record on appeal, you must serve and file a notice designating additional proceedings to be included in the reporter's transcript. You may use *Respondent's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-010) for this purpose.

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 substitute one of the options allowed by rule 8.130 with the trial court clerk within 10 calendar days after this notice is sent. (See rule 8.130 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. Money from a special fund, called the Transcript Reimbursement Fund, may be available to help you 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 provide one of the permissible substitutes, or your application for payment by the Transcript Reimbursement Fund is approved.

(c) Agreed statement

If you and the appellant agree to prepare an agreed statement (a summary of the trial court proceedings that is agreed to by the parties), you and the appellant will need to reach an agreement on that statement within 40 calendar days after the appellant files its notice of appeal. See rule 8.134 of the California Rules of Court.

(d) Statement on appeal (settled statement)

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 20 calendar-days from the date the appellant served you this proposed statement to serve and file either:

- Suggested changes (called "amendments") that you think are needed to make sure that the statement provides an accurate summary of the testimony and other oral proceedings relevant to the issues the appellant is raising on appeal;* or
- If the oral proceedings in the trial court were reported by a court reporter, a notice indicating that you are electing to provide a reporter's transcript, at your expense, instead of proceeding with a settled statement**.

* See page 9 of this form and rule 8.137(e)-(h) for more information about the amendment process.

** See rule 8.137(e)(2) for the requirements for electing to provide a reporter's transcript.

Have somebody over 18 years old mail, personally 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 (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) 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 *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) and on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-serving.htm.*

(25) What happens after the official record has been prepared?

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

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 8.200–8.224 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in unlimited 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 must 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, personally 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 (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) 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 Court of Appeal. 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 *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-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 60 days (see rule 8.212(b) for requirements for these agreements). You can also apply to the presiding justice of the Court of Appeal to extend the time for filing this brief if you can show good cause for an extension. You can use *Application for Extension of Time to File Brief (Unlimited Civil Case)* (form APP-006) 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 Court of Appeal 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 calendar 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 Court of Appeal justices in person. You do not have to participate in oral argument if you do not want to; you can notify the Court of Appeal that you want to "waive" oral argument. If all parties waive oral argument, the justices 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 Court of Appeal 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 30 minutes for your argument unless the Court of Appeal orders otherwise. Remember that the justices will have already read the briefs, so you do not need to read your brief to the justices. It is more helpful to tell the justices what you think is most important in the appeal or ask the justices if they have any questions you could answer.

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

JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
January 22, 2018

To
Rules Subcommittee of the Appellate Advisory Committee

From
Christy Simons
Attorney, Legal Services

Subject
Advisement of Appellate Rights in Juvenile Cases

Action Requested
Please review before subcommittee meeting on February 1, 2018

Deadline
February 1, 2018

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

Introduction

Item 10 on the committee's annual agenda this committee year is to consider whether to recommend (1) amending the rule regarding advisement of appellate rights in juvenile cases; and/or (2) developing a notice explaining appellate rights that would accompany juvenile court orders. The rule as currently written provides that the court must advise parents of their appellate rights if they are present at the hearing; the suggestion would delete from the rule the "if present" limitation on providing this notice. This memo discusses the issues and options that the rules subcommittee may want to consider.

Background

Rule 5.590 of the California Rules of Court governs advisement of the right to review in Welfare and Institutions Code section 300, 601, or 602 cases (i.e., juvenile dependency and delinquency cases). Subdivision (a) of the rule provides: "If at a contested hearing on an issue of fact or law the court finds that the child is described by Welfare and Institutions Code section 300, 601, or

602 or sustains a supplemental or subsequent petition, the court after making its disposition order other than orders covered in (b) must advise, orally or in writing, the child, if of sufficient age, and, if present, the parent or guardian of:" the right to appeal, if there is one; the steps and timing of an appeal; an indigent appellant's right to appointed counsel; and an indigent appellant's right to a free copy of the transcript.

In 2016, Division Two of the Fourth District Court of Appeal considered this rule in *In re Albert A.* (2016) 243 Cal.App.4th 1220. The court concluded that, based on the language of rule 5.590(a), the mother, who was absent from the continued jurisdictional hearing and failed to appeal the dispositional orders, had no right to advisement of her appellate rights. (*In re Albert A.*, *supra*, 243 Cal.App.4th at pp. 1236-1238.) The court also rejected mother's due process argument, declining to find a due process exception to application of the waiver rule. The court reasoned that mother was present for the detention hearing and the original jurisdiction hearing, and thus had notice of the continued jurisdictional hearing. In addition, mother cited no decision holding that due process requires advisement of appellate rights to a parent who is absent from a hearing. (*Id*. at pp. 1238-1239.)

The suggestion

In response to this decision, counsel for mother, Rosemary Bishop, contacted the Appellate Advisory Committee (AAC) and the Family and Juvenile Law Advisory Committee (Fam/Juv) later in 2016 and suggested amending rule 5.590(a) to remove the requirement that a parent be present at a hearing in order to receive an advisement of appellate rights. Below is the amendment to subdivision (a) suggested by Ms. Bishop:

(a) Advisement of right to appeal

If at a contested hearing on an issue of fact or law the court finds that the child is described by Welfare and Institutions Code section 300, 601, or 602 or sustains a supplemental or subsequent petition, the court after making its disposition order other than orders covered in (b) must advise, orally or in writing, the child, if of sufficient age, and~~, if present,~~ the parent or guardian of:

(1) The right of the child, parent, and guardian to appeal from the court order if there is a right to appeal;
(2) The necessary steps and time for taking an appeal;
(3) The right of an indigent appellant to have counsel appointed by the reviewing court; and
(4) The right of an indigent appellant to be provided with a free copy of the transcript.

Ms. Bishop explains that the problem with the current rule is that it provides that parents who are not present at hearings in both dependency (§ 300) and delinquency (§§ 601, 602) cases are not

entitled to notice of their appeal rights. She states that this is particularly impactful in dependency cases where parents are parties and have appeal rights at all stages of the proceedings. (See Welf. & Inst. Code, § 395.) She also states that the rule does not derive from statute or case law; there is no other authority for denying notice of appeal rights to parents who are not present at a dependency hearing.

Ms. Bishop points out that other rules providing for parental advisement of appellate rights do not limit notice to parents who are present at the hearing. (See rules 5.542(f), 5.590(b) and (c).)[1] She also argues that public policy favors advising a party of the right to appeal a decision that affects a fundamental interest (in dependency cases, the right to parent one's child). The complete text of Ms. Bishop's submission is attached to this memo.

Consideration and Action by the Family and Juvenile Law Advisory Committee in 2017

Fam/Juv considered the suggestion at its January 12, 2017 meeting.

Staff to Fam/Juv provided information to that committee on the origins and history of the rule and the changing nature of dependency law since the rule was adopted in 1973. (What follows is a brief summary of the full discussion contained in Mr. Richardson's memo, which is attached.) The language of the rule has changed little during that time, but the rule's application has expanded from providing notice to children and their parents or guardians of the *children's* appellate rights, to providing notice of the *parents'* appellate rights as well. Over the years, a greater recognition of the fundamental rights of families to due process and maintenance of familial bonds, and procedural protections for families in the dependency process, have evolved. Although the appellate and due process rights of parents have expanded, the court in *Albert A.* concluded that there is no fundamental due process right for a parent to be advised of the right to appeal. Rather, the right to an advisement of appellate rights rests in the language of the rule itself.[2]

Fam/Juv proposed notifying parents that they will not be advised of their appellate rights if they do not attend the court hearing by placing a notice on certain forms. Fam/Juv asked AAC to review the proposal.

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[1] See rule 5.542(f) [judge must advise, "either orally or in writing, the child, parent or guardian" of appellate rights following denial of an application for rehearing of a proceeding heard by a referee]; rule 5.590(b) [advisement of requirement for writ petition to preserve appellate rights must be sent by the clerk to any party not present at the hearing within one day of the court's order]; rule 5.590(c) [advisement of appellate rights must be provided orally and in writing to all parties when the court grants a petition transferring a case to tribal court].

[2] In an earlier case, the same appeals court found that the failure to advise a parent, who was *present* at the hearing, of her right to appeal was a "special circumstance constituting an excuse for failure to timely appeal." (*In re A.O.* (2015) 242 Cal.App.4th 145, 149 [internal quotation marks, brackets, and citation omitted].)

AAC considered the proposal at its January 30, 2017 meeting. AAC suggested also exploring the option of developing a notice regarding appellate rights that could be served on parents with the trial court's order.

After AAC's January 2017 meeting, Fam/Juv proceeded to recommend adding an advisement regarding appellate rights on certain JV forms that were at the time the subject of pending revisions.[3] Following approval by the Judicial Council, the forms were revised effective January 1, 2018 to include the following language in a box at the end of the forms:

> **For Your Information**
>
> You may have a right to appellate review of some or all of the orders made during this hearing. Contact your attorney to discuss your appellate rights. Decisions made at the next hearing may also be subject to appellate review. If you do not attend the next hearing you may not be advised of your appellate rights. Contact your attorney if you miss the next hearing and want to discuss your appellate rights.

Mr. Richardson indicates that Fam/Juv will monitor future opportunities to provide this admonition, and suggests other forms that could be revised to include this advisement. Fam/Juv does not plan to recommend its inclusion on delinquency forms in light of parents' limited options for appealing in those cases. He also notes that staff is preparing language to add to the script used by judicial officers in dependency status review hearings. The language would indicate that parents who are not present at future hearings will not be advised of their appellate rights.

Discussion

The first issue for the subcommittee is to decide whether the advisement that was added to the JV forms effective January 1, 2018 is sufficient and thus that no further action is required.

The admonition added to the JV forms does provide notice that parents may have appellate rights with respect to the orders "made during this hearing" and decisions made at the next hearing. It also warns them that they may not be advised of these rights if they do not attend the next hearing. These findings and orders after hearing forms are sent by the court to all parties, including parents, and include the date of the next hearing.

[3] The forms are: *Findings and Orders After Dispositional Hearing* (form JV-415); *Findings and Orders After Six-Month Prepermanency Hearing* (form JV-430); *Findings and Orders After 12-Month Permanency Hearing* (form JV-435); *Findings and Orders After Eighteen-Month Permanency Hearing* (form JV-440); and *Findings and Orders After 24-Month Permanency Hearing* (form JV-455).

At this time, the admonition is not included on all findings and orders after hearing forms or information sheets in juvenile proceedings. In addition it does not include a discussion of actual appellate rights, but instead refers parties to their attorneys for this information.

The subcommittee should discuss whether adding this advisement to these forms provides sufficient advisement to parents of their appellate rights.

If the subcommittee concludes that this is not sufficient, the subcommittee should discuss what further action the subcommittee may want to propose to Fam/Juv. Possible options include:

- Proposing to add the same advisement to additional orders forms or information sheets in juvenile proceedings, such as *Orders under Welfare and Institutions Code Sections 366.24, 366.26, 727.3, 727.31* (form JV-320), *Findings and Orders After Detention Hearing* (form JV-410), *What happens if your child is taken from your home?* (form JV-050-INFO), and *Juvenile Court—Information for Parents* (form JV-060). This option would ensure that parents are provided with information about their potential appellate rights in more circumstances. Staff to Fam/Juv have already noted this possibility.

- Proposing a notice providing specific information on appellate rights that would accompany juvenile court orders. The potential benefit of this option is that it would provide parents with specific information about their appellate rights. The difficulty would be in drafting a clear and accurate notice form that is acceptable to both AAC and Fam/Juv. Most likely, the notice would need to address the matters referenced in rule 5.590(a), which requires the oral advisement for those present at a hearing to include:
  (1) The right of the child, parent, and guardian to appeal from the court order if there is a right to appeal;
  (2) The necessary steps and time for taking an appeal;
  (3) The right of an indigent appellant to have counsel appointed by the reviewing court; and
  (4) The right of an indigent appellant to be provided with a free copy of the transcript.

- Proposing to amend rule 5.590(a) as suggested by Mr. Bishop to delete "if present." Note, however, that Fam/Juv, which is charged with making recommendations to the Judicial Council for "improving the administration of justice in all cases involving marriage, family, or children" (rule 10.43), considered this suggestion last year and declined to recommend this rule amendment, recommending the forms revisions instead. It is therefore not clear if Fam/Juv would be amenable to this option.

Input from Other Committees

This issue is one on which staff recommends that AAC work closely with Fam/Juv. As you know, AAC is charged with making recommendations to the Judicial Council for "improving the

administration of justice in appellate proceedings" (rule 10.40). As noted above, Fam/Juv is charged with making recommendations to the Judicial Council for "improving the administration of justice in all cases involving marriage, family, or children" (rule 10.43). The issue of advisement of appellate rights implicates both of these charges. In addition, traditionally, Fam/Juv has taken the lead with respect to modifications to the rules in Title 5 and the forms used in the trial court proceedings while AAC has taken the lead with respect to modification of the rules in Title 8 and forms used in appeals or writ proceedings. Therefore, before any action is taken by the committee on this potential project, staff recommends obtaining input from Fam/Juv.

Staff also recommends that, if the subcommittee recommends moving forward with any additional proposals on this topic, the committee obtain input from the Trial Court Presiding Judges Advisory Committee.

The subcommittee's task

The subcommittee's task is to consider the issues and provide feedback on whether the advisement added to the JV forms effective January 1, 2018 provides sufficient advisement to parents of their appellate rights or whether the subcommittee wishes to develop a proposal for additional form or rule changes at this time. If the subcommittee wishes to develop a proposal, the task is to identify what changes the subcommittee recommends be included in such a proposal.

Attachments

DRAFT OUTLINE OF PROPOSAL TO AMEND RULE 5.590(A)

1) Text of proposed amendment to rule 5.590(a): Amend subdivision to read as follows [only amendment is to delete the words, "if present," as in bold below]:

Rule 5.590. Advisement of right to review in Welfare and Institutions Code section 300, 601, or 602 cases

. **(a) Advisement of right to appeal** If at a contested hearing on an issue of fact or law the court finds that the child is described by Welfare and Institutions Code section 300, 601, or 602 or sustains a supplemental or subsequent petition, the court after making its disposition order other than orders covered in (b) must advise, orally or in writing, the child, if of sufficient age, and~~, if present,~~ the parent or guardian of:

. (1) The right of the child, parent, and guardian to appeal from the court order if there is a right to appeal;

. (2) The necessary steps and time for taking an appeal;

. (3) The right of an indigent appellant to have counsel appointed by the reviewing court; and

. (4) The right of an indigent appellant to be provided with a free copy of the transcript.

2) A description of the problem to be addressed:

The problem is the current rule 5.590(a), read literally, provides parents who are not present at hearings are not entitled to notice of appeal rights. The rule applies both to delinquency cases (Welf. and Inst. Code §§ 601,602 et seq.), and dependency cases (Welf. and Inst. Code § 300 et seq.).

In delinquency cases, parents have some appellate rights, at least when their own interests are affected. (*In re Michael S.* (2007) 147 Cal.App.4th 1443 and *In re Jeffrey M.* (2006) 141 Cal.App.4th 1017 [upholding parent's standing to appeal money judgment against parent for delinquent acts of child]; Cf. *In re Almalik S.* (1998) 68 Cal.App.4th 851 [child not removed from home; mother had no standing to appeal], reasoning rejected in *Michael S.*, *supra*, and *In re Q.N.* (2012) 211 Cal.App.4th 896, 904-905.) Even if they don't have a right to appeal a particular order, they may have an interest in knowing whether their delinquent child has a right to appeal an order. In dependency cases, parents are primary parties and have appeal rights at all stages. (Welf. & Inst. Code §395.)

Rule 5.590(a), is not based on any statutory provision or case law. There is no authority, other than this rule, for denying notice of appeal rights to parents who are not present at their dependency hearing.

a) The "if present" limitation on notice is confusing and has been interpreted inconsistently.

Rule 5.590(a) is confusing in the dependency context, and has been interpreted inconsistently. One treatise has interpreted rule 5.590(a), as providing "the court must advise all parties, including children who are present and old enough to understand, of [appeal rights]." [Emphasis added.] (Cal. Juvenile Dependency Practice (Cont. Ed. Bar 3rd Ed. 2015) § 10.6 pp. 830-831.) Another treatise simply repeats the language of the rule without analysis. (See, 10 Witkin Parent and Child (Supp. 2015) § 700 pp. 614-615.) A third treatise notes the normal rule for waiver of issues on appeal may not be followed where the parent was not provided with "notice of the right of appeal or the right to file [a writ]." [Emphasis added.] (Seiser and Kumli 1-2 California Juvenile Courts Practice and Procedure (Matthew Bender 2015) § 2.190.)

A recent published decision by the Court of Appeal follows the literal language of rule 5.590(a), and holds parents in dependency cases are not entitled to notice of appeal rights if they are not present at the hearing. (*In re Albert A.* (2016) 243 Cal.App.4th 1220.)

Even the judicial council has characterized rule 5.590 as providing for advisement of appeal rights to all parents. Rule 5.542, enacted in 1991 and amended in 2007, in the context of allowing rehearing requests after a case is heard by a referee, provides:

(f) Advisement of appeal rights—rule 5.590 If the judge of the juvenile court denies an application for rehearing...the judge must advise, either orally or in writing, the child and the parent or guardian of all of the following [appeal rights].

(Rule 5.542(f), emphasis added.) This rule references rule 5.590, but does not contain the "if present" limitation on notice that is in rule 5.590(a).

Rule 5.590(c), added in January 2016, requires the trial court to provide appellate rights to parties when the court grants a petition to transfer a dependency case to tribal court. The court must advise the parties orally and in writing of the need to appeal before the transfer and obtain a stay. This new provision does not limit such notice to parents who are present at the hearing.

b) Denying notice of appellate rights to parents who are not present at the hearing is inconsistent with the dependency system and public policy.

When a statute grants the right to appeal a decision that affects a fundamental interest [in dependency cases, the right to parent one's child], public policy should be in favor of advising the party of that right. Many parents in the dependency system have limited education and less than average access to legal services or to information about them through such means as the Internet. It is reasonable to shift the burden to the state, which is acting to limit the party's rights, to explain the proceedings and the party's basic remedies.

It is true parents, even if not present at a hearing, are generally represented by counsel. Dependency counsel have notoriously unmanageable caseloads and often fewer resources than

the court. It is risky to put the sole burden for notification on counsel when a simple form notice could be sent directly to the party.

The parent's non-presence at the hearing does not justify withholding notice of appeal rights. Parents who do not appear do not necessarily lack concern for their children or the proceedings. Many other factors—illness, employment, other family obligations, lack of transportation or child care, disruptions in living arrangements, etc.—may explain an absence. Yet the requirement a parent be present to receive notice of basic appellate rights, effectively punishes parents who are not present, without regard to their culpability. Individualized judgments as to parents' culpability should be made by trial courts, in their dispositions on the merits. Rule-makers should not risk distorting the decision-making process by selectively withholding appeal information from certain parties.

A decision made at a hearing where the parent is not present, is equally likely to contain errors that need to be remedied on appeal. Absent statutory authority, denial of notice of appellate rights to non-present parents is inconsistent with the statutory purpose of allowing appeals at key stages of dependency proceedings. (Welf. & Inst. Code § 395.) "Notice of all hearings and rights" has been described as a key safeguard for parents in the dependency system. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 307-308.)

3) The proposed solution and alternative solutions:

The proposed solution is to amend the current rule to provide for notice of the right to appeal post-jurisdiction orders, to parents and children of sufficient age, without regard to whether the parents are present at the hearing. This solution is set forth at #1 above: eliminate the clause, "if present," from rule 5.590(a). It is consistent with rule 5.590(b), which governs writ rights and provides for notice to "all parties," as well as to the child's parent or adult relative if present.

One alternative solution would be, as suggested by a previous comment in 2010 (see #8 below), to have separate rules or subdivisions governing dependency (§ 300) and delinquency (§§ 601, 602) appeal advisements. The Judicial Council has already acknowledged parents in these two types of proceedings have different appeal rights. (Judicial Council comments in history of 2010 amendments to rule 5.590.) However, rule 5.590 (a)(1) has already been amended to clarify the court is to provide notice only "if there is a right to appeal." Under the current rule, the court may provide notice as applicable to the type of proceeding. It may be unnecessary and more cumbersome to create separate rules.

4) Any likely implementation problems:

Implementation should not be complex. Trial courts are already mailing notice to parents and other parties of writ rights pursuant to rule 5.590(b). The same procedures could be used for notice of appeal rights. In fact, San Diego County uses a local court form that already includes

both writ rights and appeal rights. (Form SDSC JUV-026, attached.) This form could be revised for clarity and used by other Counties to implement the change.

5) Any need for urgent consideration:

None, other than the recent published decision in *In re Albert A.*, *supra*, 243 Cal.App.4th 1220, may be leading trial courts to forego notice of appeal rights to parents who are not present at post-jurisdiction hearings.

6) Known proponents and opponents:

Unknown.

7) Any known fiscal impact:

The only cost should be clerical time and postage in sending written notice of appeal rights to parties after jurisdiction hearings. Some counties may already do this, by sending a minute order and appeal rights notice to parties. (See Form SDSC JUV-026, attached.)

8) Any previous action taken by the Judicial Council or an advisory committee:

Unknown. In 2010, in the context of making other amendments to rule 5.590, the Council received one comment at least partially relevant to this issue:

One commentator from a district appellate project suggested that rule 5.590 should not require the trial court to tell parents, without qualification, that they always have the right to appeal. They suggested that the rule be redrafted, separating out section 300 and section 601/602 advisements.

(Excerpt from history of 2010 amendments.)

In response to this comment, the Council did add the language "if there is a right to appeal," to rule 5.590(a) (1). It did not separate section 300 and section 601/602 advisements because that would be a major change that had not been part of the public notice.

JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
January 26, 2018

To
Appellate Advisory Committee

From
Daniel Richardson, Attorney Center for Family Children & the Courts

Subject
Juvenile Law-Advisement of Appellate Rights

Action Requested
Please Review

Deadline
N/A

Contact
Daniel Richardson, Center for Families, Children & the Courts
415-865-7619 phone
Daniel.richardson@jud.ca.gov

In 2016, the Family and Juvenile Law Advisory Committee and the Appellate Advisory Committee received a suggestion to amend California Rule of Court 5.590(a),[1] requesting that the council remove the requirement that a parent be present in order to receive an advisement of appellate rights. On January 30, 2017, the Appellate Advisory Committee considered and provided input on the Family and Juvenile Law Advisory Committee's proposed response. This memorandum is intended to inform the Appellate Advisory Committee of the resolution of that proposal.

[1] Unless otherwise indicated, all further statutory references are to the Welfare and Institutions Code and all further rule references are to the California Rules of Court.

Background

California Rule of Court 5.590(a), only requires that the advisement of appellate rights be given if the parent is present.[2]

> **(a) Advisement of right to appeal** If at a contested hearing on an issue of fact or law the court finds that the child is described by Welfare and Institutions Code section 300, 601, or 602 or sustains a supplemental or subsequent petition, the court after making its disposition order other than orders covered in (b) must advise, orally or in writing**,** the child, if of sufficient age, and if present the parent or guardian of: ***

A 2016 published opinion found that based on the language in rule 5.590(a), there is no right to the advisement of appellate rights under the rule unless the parent is present at the hearing. *In re Albert A.* (2016) 243 Cal.App.4th 1220, 1237. In response to this decision, staff was contacted by the appellate attorney who represented the appellant on the case. She requested the committees consider removing the words "if present" from rule 5.590(a), to read as follows:

> **(a) Advisement of right to appeal** If at a contested hearing on an issue of fact or law the court finds that the child is described by Welfare and Institutions Code section 300, 601, or 602 or sustains a supplemental or subsequent petition, the court after making its disposition order other than orders covered in (b) must advise, orally or in writing**,** the child, if of sufficient age, and ~~if present~~ the parent or guardian of: ***

The attorney presented several arguments for why the rule should be amended, including:

- Public policy favors advising a party of the right to appeal a decision that affects a fundamental interest.
- The requirement a parent be present to receive notice of basic appellate rights, effectively punishes parents who are not present, without regard to their culpability for not being present.
- There is no other authority besides rule 5.590(a) for denying notice of appeal rights to parents who are not present at their dependency hearing.
- The language is confusing in the dependency context and has been interpreted inconsistently by various treatises.
- More recently adopted rules of court contain the requirement of advisement of appellate rights in dependency cases orally or in writing, including rule 5.590(b) & (c) and rule 5.542(f).

[2] Rule 5.590 subsection (b) and (c) require that an advisement of appellate rights be sent in writing for certain hearings. Subsection (b) requires the written advisement when the court sets a section 366.26 hearing, and subsection (c) requires a written advisement of an order transferring a case to tribal court.

- Many parents have limited education and less than average access to legal services, and it is reasonable to switch the burden to the state to explain the proceedings and the party's basic remedies.
- It is risky to put the sole burden for notification on counsel for the parent, when dependency counsel have notoriously unmanageable caseloads and often fewer resources than the court.

The Family and Juvenile Law Advisory Committee considered the origins of the rule and the changing nature of the dependency since 1973 when the rule was adopted. The language "if present" as it relates to parents and guardians has been in the rule since its inception and has not since been altered. Rule 5.590, originally adopted in 1973 as rule 251, was initially focused on ensuring children would be advised of their appellate rights. The rule was adopted in response to a request by the Board of Governors that a rule be adopted requiring juvenile court judges and referees to advise minors, and their parents or guardians, of the minors' appeal rights.

Over time, the language of the rule has changed little, but the rule's application has expanded to incorporate increased due process rights of parents. Since the rules inception, the rule has been expanded to include an advisement of a parent's appellate rights as well as a child's appellate rights. In addition, since 1973, there has been a substantial evolution towards greater recognition of the fundamental rights of families to due process and the maintenance of familial bonds. [3] When the rule was enacted in 1973, a parent's due process rights in dependency was still in its embryonic stage.

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[3] The rule was enacted shortly after the US Supreme Court in *Stanley v. Illinois* found that a parent had a due process right to hearing on parental fitness. *Stanley v. Illinois* (1972) 405 U.S. 645. And in 1981, the US Supreme Court ruled that the heightened standard of proof clear and convincing evidence of parental unfitness was required when considering terminating parental rights. *Santosky II v. Kramer*, (1981) 455 U.S. 745. The *Santosky* court found that the balance of private interests strongly favored heightened procedural protections when a court is severing a parent's fundamental right to their custody of their children. *Id.* at p. 760.

In 1982, California adopted the federal law Public Law 96-273, which established a more structured framework for the protection of abused, neglected and abandoned children as dependents of the juvenile court and for services to the family. This included regular review hearings every six months. Pursuant to the new federal law, California mandated active efforts to keep children in their home if possible, to reunify families if removal proved necessary, and to select permanent plans, including adoption, in a timely fashion if families could not be reunified.

Further changes to the dependency scheme were established in 1987 when SB 243 was enacted. Parents were now entitled to court-appointed counsel to represent them through the proceedings if they cannot afford counsel. (Section 317(b)). Appointment of counsel previously had been a matter of juvenile court discretion. *Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, p. 248 fn. 4. SB 243 also brought termination of parental rights for dependent children within the dependency process, eliminating the need to file a separate Civil Code section 232 proceeding. In addition, six month review hearings carried with them a presumption that the minor would be returned to parental custody unless the department of social services carried the burden that the minor would be at risk if returned home.

Further, notice of all hearings and rights has been described as key safeguard for parents in the dependency system. *In re Marilyn H.* (1993) 5 Cal.4th 295, 307-308. And new subdivisions were added to 5.590(b) in 2009 that include a requirement that an advisement of appellate rights be given in writing if it cannot be done orally when the court is setting a section 366.26 hearing.

In addition, with these significant changes in the dependency scheme since 1973 came more expansive appellate rights and appealable issues. Under section 395, all subsequent orders to disposition are directly appealable without limitation. As a result of these broad statutory terms, juvenile dependency law does not abide by the normal prohibition against interlocutory appeals. *In re S.B.* (2009) 46 Cal.4th 529, 532 [citing cases].[4] And as a consequence of section 395, unappealed disposition or postdisposition orders are final and binding and may not be attacked on an appeal from a later appealable order. *Id.*

While the appellate and due process rights of parents has expanded, there is no fundamental due process right for a parent to be advised of the right to appeal. As interpreted by the court of appeal in *In re Albert*, the right to an advisement of appellate rights rests in the language of the rule itself, and not as a fundamental due process right. *In re Albert, supra.* at p. 1238-39. The court in *In re Albert* failed to find any authority to support the argument that due process entitled a parent to an advisement of appellate rights if they were not present at the hearing. *Id.* As such, there is currently no due process error when a parent misses a hearing and is not advised of their appellate rights. As the court of appeal noted, the advisement of a parent's right to appeal from a disposition order has always been predicated on presence at the jurisdictional hearing, despite numerous opportunities for the Judicial Council to provide otherwise. *Id.* In a separate case, the same appeals court found that the failure to advise a parent who was present at the hearing of their appellate rights as required by rule 5.590(a) was a special circumstance constituting an excuse for failure to timely appeal. *In re A.O.* (2015) 242 Cal.App.4th 145.

Committee Inquiry and Resolution

At its meeting on January 12, 2017, the Family and Juvenile Law Advisory Committee considered the request to remove the language "if present" from the rule and the historical information above before deciding not to remove this requirement. However, the committee elected to notify parents that they will not be advised of their appellate rights if they do not attend the court hearing by placing a notice on certain court forms. The committee requested the Appellate Advisory Committee review the proposal as well.

The proposal was presented to the Appellate Advisory Committee at its meeting on January 30, 2017. The Appellate Advisory Committee discussed the proposal and supported the option of developing a notice regarding appellate rights that could be served on parents with the trial court's order.

After these committee meetings, the Family and Juvenile Law Advisory Committee proceeded to include an appellate advisement on certain JV forms that were at the time the subject of proposed amendments through a pending RUPRO proposal. In order to provide parents with information

[4] Only "findings" are appealable however. *In re L.B.* (2009) 173 Cal.App.4th 562, 565

about the right to seek appellate review and alert them that they will not be advised of their appellate rights if they fail to appear at a future hearing, the Judicial Council approved the recommended revisions to optional finding and order forms for certain dependency hearings, forms JV-415, JV-430, JV-435, JV-440, and JV-455. [5] The amended forms go into effect on January 1, 2018.

The forms were revised to include the following language in a section titled "For Your Information":

> You may have a right to appellate review of some or all of the orders made during this hearing. Contact your attorney to discuss your appellate rights. Decisions made at the next hearing may also be subject to appellate review. If you do not attend the next hearing you may not be advised of your appellate rights. Contact your attorney if you miss the next hearing and want to discuss your appellate rights.

This additional admonition will help to ensure that parents are aware of their appellate rights and the implications of not attending a hearing. The Family and Juvenile Law Advisory Committee will continue to monitor other opportunities to provide this admonition.[6]

In addition, staff is working on language to add to the script for dependency status review hearings used by judicial officers. This language would indicate that if a parent is not present at their future hearings, they will not be advised of their appellate rights.

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[5] Form JV-415, *Findings and Orders After Dispositional Hearing (Welf., & Inst. Code, § 361 et seq.)*; form JV-430, *Findings and Orders After Six-Month Prepermanency Hearing (Welf. & Inst. Code, § 361.21(e))*; form JV-435, *Findings and Orders After 12-Month Permanency Hearing (Welf. & Inst. Code, § 366.21(f))*; form JV-440, *Findings and Orders After Eighteen-Month Permanency Hearing (Welf. & Inst. Code, § 366.22)*; and form JV-455, *Findings and Orders After 24-Month Permanency Hearing (Welf. & Inst. Code, § 366.25).*

[6] This could include including the advisement in additional forms, including: form JV-050-INFO, *What happens if your child is taken from your home?*; form JV-060, *Juvenile Court—Information for Parents*; form JV-10 and JV-110, *Juvenile Dependency Petition (Version One and Two)*; form JV-320 *Orders under Welfare and Institutions Code Sections 366.24, 366.26, 727.3, 727.31*; form JV-410, *Findings and Orders After Detention Hearing (Welf. & Inst. Code, § 319)*; form JV-425, *Findings and Orders After In-Home Status Review Hearing (Welf. & Inst. Code §§ 364, 366.21);* form JV-426, *Findings and Orders After In-Home Status Review Hearing-Child Placed With Previously Noncustodial Parent (Welf. & Inst. Code, §§ 364, 366.21);* form JV-446, *Findings and Orders After Postpermanency Hearing—Permanent Plan Other Than Adoption (Welf. & Inst. Code, § 366.3);* form JV-505, *Statement Regarding Parentage (Juvenile).* The Family and Juvenile Law Advisory committee is not considering including the notice in delinquency forms, given that parent's have limiting options for appeals in delinquency cases and the focus of the rules history is on dependency.