JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
December 7, 2018

To
Rules Subcommittee of the Appellate Advisory Committee

From
Christy Simons
Attorney

Subject
Word limits for appellate briefs in civil cases

Action Requested
Please review before December 12 subcommittee meeting

Deadline
December 12, 2018

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Introduction

Item11 on the Appellate Advisory Committee's annual agenda is to consider whether to recommend amending the rule regarding the format of appellate briefs to reduce the permitted word limit of briefs in civil appeals. The rule currently provides that briefs produced on a computer must not exceed 14,000 words, including footnotes. The suggestion to consider the word limit for civil briefs is from committee member Kevin Green. Mr. Green has drafted a memo, included in your materials, that, among other things, provides information on recent amendments to federal rules reducing word limits for briefs and the issues raised in comments for and against those changes, and the history of word limits in California. The memo presents the case for reducing the word limits for briefs, and recommends that, at this time, the subcommittee develop a proposal to reduce the word limit for reply briefs.

This memo presents some countervailing arguments and discusses the issues and options the subcommittee may want to consider.

Background

Court of Appeal

Rule 8.204 of the California Rules of Court governs the content and form of briefs in the Courts of Appeal. Prior to 2002, the predecessor rule only specified that briefs must not exceed 50 pages.

In 2002, the rule regarding the length of briefs was amended to add a provision for measuring the length of a brief by word count. "Revised [former rule], which governs the maximum permissible length of a brief, is derived from the federal procedure for measuring the length of a brief produced on a computer by the number of words in the brief. ([Federal Rules of Appellate Procedure (FRAP)] 32(a)(7).) Like FRAP 32(a)(7)(B)(i), revised [former rule] imposes a limit of 14,000 words if the brief is produced on a computer."[1] The amendment was based directly on the 1998 federal rule amendment that established the 14,000 word limit.

Subsequent amendments to the rule have not changed these limits.

Subdivision (c) of rule 8.204 addresses the length of briefs. It provides:

(1) A brief produced on a computer must not exceed 14,000 words, including footnotes. Such a brief must include a certificate by appellate counsel or an unrepresented party stating the number of words in the brief. The person certifying may rely on the word count of the computer program used to prepare the brief.

(2) A brief produced on a typewriter must not exceed 50 pages.

(3) The tables required under (a)(1), the cover information required under (b)(10), the Certificate of Interested Entities or Persons required under rule 8.208, a certificate under (1), any signature block, and any attachment under (d) are excluded from the limits stated in (1) or (2).

(4) A combined brief in an appeal governed by rule 8.216 must not exceed double the limits stated in (1) or (2).

(5) On application, the presiding justice may permit a longer brief for good cause.

Notably, the 14,000 word limit applies to all briefs in the Court of Appeal.

[1] The rule retained the existing limit of 50 pages for briefs produced on a typewriter.

California Supreme Court

Rule 8.520 governs the content and format of briefs that are filed after the Supreme Court has ordered review in a case. The current rule, as amended in 2008, provides that the petitioner's brief on the merits and the opposing party's answer brief on the merits may be up to 14,000 words or 50 pages in length, and that the petitioner's reply brief on the merits may be 8,400 words or 30 pages. (Rule 8.520(c)(1), (2).)

Prior to 2008, reply briefs were limited to 4,200 words or 15 pages. Regarding this amendment, the Appellate Advisory Committee's 2007 report to the Judicial Council notes that "[i]t is very difficult for petitioners to reply to 50 pages of argument by the opposing party in only 15 pages." Further, "[i]ncreasing the permissible length of reply briefs on the merits will give petitioners additional space to more fully articulate their response to the opposing party's arguments. Given the relatively small number of cases in which the Supreme Court grants review and the potential importance of these cases, the committee believes it is appropriate to give the petitioner this additional space. Additional discussion of the issues by the petitioner at this phase is likely to be helpful to the court. Increasing the page limit on these briefs is also likely to reduce the need for petitioners to make and the court to consider requests to file overlength reply briefs."

Arguments for and against changing the word limits

Mr. Green suggests that the subcommittee develop a proposal to amend the rule to establish a reduced word limit for reply briefs of either 8,400 words or 7,000 words. He presents a strong case in favor of reducing the size of briefs to assist courts with heavy workloads. Please refer to his memo for the arguments in favor of reducing the word limit for reply briefs.

To present considerations on the other side of the issue for the subcommittee, Dan Kolkey prepared the following comments that present countervailing arguments as to why reply briefs in the Court of Appeal are longer than those in the Supreme Court.

> First, briefs in the Court of Appeal, including reply briefs, are longer because they usually address more issues. As a prior report of the Appellate Advisory Committee observed in 2008, "[a]t the Supreme Court, the issues have been narrowed from those presented in the Court of Appeal to only those on which the Supreme Court granted review." (Report dated September 3, 2008 of the Appellate Advisory Committee regarding amendments to rules 8.504 and 8.520, p. 2.) In contrast, "[t]here is likely to be a broader range of issues and arguments raised by both parties in the Court of Appeal than in the Supreme Court." (*Id*., p. 3.) For that reason, the committee rejected a prior suggestion that reply briefs in the Court of Appeal be shortened to the same length as those in the Supreme Court.

Second, briefs in the Court of Appeal are longer because there are factual disputes and a greater discussion of the facts, whereas the facts are ordinarily settled at the Supreme Court stage (unless the issue has been raised in a petition for rehearing).

Third, briefing has a more important role in the California appellate courts since the California appellate courts ordinarily have a draft tentative decision by the time of oral argument, making it more important for the parties to have responded to each point in the opposing party's briefing to avoid the court going down the wrong path.

Notwithstanding these differences, it should be noted that faced with the federal courts' modest rule change from 14,000 to 13,000 words for opening and answering briefs and a reduction in 1500 words for reply briefs, 4 of the circuits chose not to reduce the word limit.

Mr. Green's memo astutely suggests taking a modest step by only addressing the word limit in reply briefs and not tackling the word limits for opening and answering briefs until there is more experience in the federal courts regarding their recent word limit reduction. The Committee should consider whether it should await that experience before tackling any reduction in the word limits and then taking a holistic approach to the word count for all briefs in a single rules cycle.

If the Committee decides to proceed with a word count reduction for reply briefs, it might consider a higher limit than the limit for reply briefs in the California Supreme Court, in light of this Committee's 2008 observation that "[t]here is likely to be a broader range of issues and arguments raised by both parties in the Court of Appeal than in the Supreme Court." (Report dated September 3, 2008 of the Appellate Advisory Committee regarding amendments to rules 8.504 and 8.520, p. 3.) For instance, if reply briefs were limited to 70% of the size of the opening brief, that would be a word count limit of 9800 words.

Subcommittee's Task

The subcommittee's task is to review this memo and Mr. Green's memo, attached, and:

- Approve developing a proposal to reduce the word limit for reply briefs in civil cases, including deciding on the word limit to propose;
- Approve developing a broader word limit proposal, including deciding on the word limits to propose;
- Recommend to the full advisory committee that no proposal be developed at this time; or
- Ask staff or committee members for further information/analysis.

Attachments

December 6, 2018 memorandum to the Rules Subcommittee from Kevin K. Green, at pp. 6-17
Attachment A to Mr. Green's memorandum, at pp. 18-49

MEMORANDUM

TO: Rules Subcommittee – Appellate Advisory Committee
Daniel M. Kolkey (Chair)

FR: Kevin K. Green*

CC: Hon. Louis Mauro (Chair, Appellate Advisory Committee)
Christy Simons (Staff Counsel)

RE: Word Limits in Civil Appeals – Item 11 (2018-19 Annual Agenda)

DA: December 6, 2018

This memo addresses the length of Court of Appeal briefs – specifically, whether the word limits should be kept at current levels or reduced. Per the Appellate Advisory Committee's charge for Agenda Item 11, the discussion is confined to the main briefing (opening, respondent, and reply) in civil appeals only.[1]

The rule amendments reducing word limits in the United States Courts of Appeals in 2016, and the United States Supreme Court's current proposal to lower its word limits, underscore the timely nature of the topic. Perhaps California's current limits are working well and call for no adjustment. But these were set nearly two decades ago, during the appellate rules modernization project, and were grounded in part on federal standards that have evolved.

As elaborated below, other things have changed relevant to word limits. The subject thus warrants our committee's attention even if, ultimately, the current limits are maintained.

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*Certified Appellate Specialist (State Bar of California Board of Legal Specialization) Hagens Berman Sobol Shapiro LLP, San Diego, CA. The author has seen both sides of the bench. Before entering appellate practice in 1999, I had the good fortune of clerking for two years at the Indiana Supreme Court and one year at the United States District Court for the Southern District of California. The latter included sittings by designation on the Ninth Circuit Court of Appeals. The views expressed are solely my own stated as a member of the Appellate Advisory Committee.

[1] The analysis thus does not apply to criminal appeals or other types of appellate filings, such as motions, petitions for writ or other extraordinary relief, or rehearing petitions. It does not apply to "multiparty" appeals (meaning, cross-appeal situations or cases with multiple opening or respondent briefs filed by separately represented parties). And it does not apply to briefing in the California Supreme Court.

Part I touches on overarching developments in the past two decades relevant to the length of appellate briefs.

Part II summarizes the data I was able to gather pertinent to word limits, including the main arguments and counterarguments aired out in the recent federal debate.

Part III identifies gaps in the data and how they might be filled.

Part IV concludes with my recommendation that the Rules Subcommittee consider an amendment reducing the limit for reply briefs in civil appeals, consistent with practice nationwide, to 8,400 words or 7,000 words. This will provide some relief, with little or no downside, to Court of Appeal Justices tasked with reading, by one estimate, thousands of pages of briefing per month.

Before doing more, it would be wise to await the consequences, once those can be reliably documented, of the federal limit reductions. If federal developments mark a trend toward lower word limits on appeal, without the adverse impact some have predicted, the committee may want to consider lower limits for principal briefs in civil appeals and other types of appellate filings.

I. Appellate Briefs in the New Millennium

Since the Judicial Council last considered the length of Court of Appeal briefs in 2001, a few developments stand out as impacting California appellate practice and decisionmaking. There are undoubtedly others but, for present purposes, I focus on three.

First, the California courts have endured harsh and unforeseeable budget cuts. Although judicial funding is beginning to increase, the amount allotted for court operations each year, once stable and predictable, is now a matter of annual uncertainty. Less funding, with less predictability, is the new normal.

I attempted to determined how much Court of Appeal budgets have been cut since the Great Recession. The Fourth District Court of Appeal, Division One, estimates a 10% budget reduction, which triggered furloughs and hiring freezes. I do not know whether this number is representative of funding cuts at other districts and divisions.

The budget cuts were so impactful that some intermediate judgeships, for a time, went unfilled to save money. With the current governor about to leave office, many new justices have been tapped only recently. The vacancies no doubt took a toll as sitting justices carried the court's full weight at less than full strength. And again, even when fully staffed, California courts are operating within the constrained paradigm, for the foreseeable future, of less funding.

The budgetary need for California's reviewing courts to do the same (or more) with less funding suggests that lawyers, in their appellate submissions, also make do with less. As counterparts in appellate justice, the bar can share the pain by writing shorter.

Second, to cope with information overload, there is a strong societal trend toward more concise communication. The internet has facilitated virtually boundless information a few mouse clicks away. And the digital age has spawned a host of new ways to communicate it. The constant bombardment of informational input, if only due to the smartphone, is almost certainly shortening human attention spans. Greater brevity in communication is an unsurprising reaction to the digital age. Our common calling would be wise to learn from this phenomenon rather than bucking it.

Third, some of the information explosion is, of course, pertinent to law practice. This is the flip side of the coin: more information out there suggests permissible length limits. With cyberspace imposing no word count, more factual and legal sources than ever may be marshalled in a brief (or a judicial decision). This falls under the broad umbrella of what lawyers call complexity. The argument that "more law" supports longer appellate submissions carries some force in the word limit debate.

Yet the law is inherently fluid. There is always more, every day, for practitioners to know and cite for their positions. That is the nature of law practice, but word limits cannot be linked to the length of the California Code or California Reporter. Whatever the universe of information, appellate counsel plays a filtering role by identifying (at least from one side's vantage point) the factually and legally relevant points for the reviewing court.

One thing has not changed. Lawyers enjoy an enormous benefit as writers: a captive audience. Unlike pleasure reading – a dull novel can be put down and forgotten – the court must read (and remember) what is said in our briefs. But for appellate judges, this means reading immense quantities of legal writing of varying quality. Against this backdrop, it is worthwhile to examine the evolution of word limits.

II. A Brief History of Word Limits

My analysis begins with federal word limits because the recent federal debate vetted arguments and counterarguments on the central considerations. Also, federal practice is historically relevant to state practice. California's switch from page to word count in 2002, as part of rules modernization, was based on the Federal Rules of Appellate Procedure making this change in 1998.[2]

[2] See Ex. A at pp. 4, 20-21, 28 (Report Summary, Revision of Rules on Appeal: First Installment, Rules 1-18 [July 3, 2001].)

A. Federal Practice

On December 1, 2016, two years ago, the Federal Rules of Appellate Procedure were amended to reduce the 1998 word limits. As relevant here – other word limits were changed – the permissible length of principal briefs (opening and answering) was reduced from 14,000 to 13,000 words and, for reply briefs, from 7,000 to 6,500 words. (Fed. R. App. P. 32(a)(7)(B).)

Initially, the Federal Advisory Committee on Appellate Rules (Advisory Committee) proposed cuts to 12,500 and 6,250 words, respectively. As detailed below, practitioner pushback led to the slightly higher, but reduced, limits.

On motions for overlength, the Advisory Committee added this comment:

> In a complex case, a party may need to file a brief that exceeds the type-volume limitations specified in these rules, such as to include unusually voluminous information explaining relevant background or legal provisions or to respond to multiple briefs by opposing parties or amici. The Committee expects that courts will accommodate those situations by granting leave to exceed the type-volume limitations as appropriate.

(Fed. R. App. P. 32 [Committee Notes – 2016 Amendment].)

Four of the thirteen federal circuits – each handling extensive complex litigation – have opted to retain the old limits.[3]

There were over 50 public comments on the proposed federal word limit reductions.[4] A wide spectrum of stakeholders took the following positions.

SUPPORT:

- The judges of the D.C. Circuit and Tenth Circuit, each commenting collectively;

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[3] The federal circuits are expressly permitted to adopt longer word limits. (Fed. R. App. P. 32(e).) The First, Third, Fifth, Sixth, Eighth, Tenth, and D.C. Circuits have not departed. The Fourth Circuit enacted a minor deviation. (4th Cir., Local Rules of Ct., rule 32(b) [additional 200 words for "opening or response brief that cites to both the paper appendix and the electronic record"].) The Second, Seventh, Ninth, and Federal Circuits kept the 1998 limits. (2d Cir., Local Rules of Ct., rule 32.1(a)(4); 7th Cir., Local Rules of Ct., rule 32(c); 9th Cir., Local Rules of Ct., rule 32-1(a)-(b); Fed. Cir., Local Rules of Ct., rule 32(a).)

[4] Proposed Amendments to the Federal Rules of Appellate Procedure, at <https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&dct=PS&D=USC-RULES-AP-2014-0002> (as of Dec. 3, 2018).

- One judge commenting individually (Hon. Laurence H. Silberman, D.C. Circuit);

- Two bar or advocacy organizations; and

- Three sole practitioners.

The Office of Solicitor General (U.S. Department of Justice) also supported the reduced limits, with the proviso that the notes to Fed. R. App. P. 32 state expressly that overlength briefs, when warranted, should be allowed. The Solicitor General's suggestion regarding the rule notes was the apparent impetus for the Advisory Committee comment, set forth above, on motions for overlength.

OPPOSE:

- One judge commenting individually (Hon. Frank H. Easterbrook, Seventh Circuit);

- Twenty bar or advocacy organizations, including the California Academy of Appellate Lawyers and State Bar Committee on Appellate Courts;
- Twenty-two law firm or sole practitioner submissions (several "Big Law" firms filed joint comment letters, which were counted as one submission); and

- Two federal agencies – the Securities and Exchange Commission and the Equal Employment Opportunity Commission.

In proposing the reductions, the Advisory Committee reasoned that when the federal length limits were changed from page to word count in 1998, the switch was grounded on a conversion error. The rulemakers had assumed 280 words per page (hence, for a 50-page brief, a limit of 14,000 words). But, according to the Advisory Committee over 15 years later, the calculation should have assumed 250 words per page (hence, the proposed reduction to 12,500 words for principal briefs, and replies not longer than half this amount).

Several commentators cried foul over the seemingly technical rationale given for a material reduction to word limits. Fortunately for our purposes, apart from the correct math two decades ago, the numerous comments raised policy and practical considerations bearing on word limits for appellate briefs.

Those ***supporting*** the proposed reductions stated, most prominently, the following reasons (in order of emphasis):

- Lower limits will generate more focused briefs, stripped of extraneous and secondary points, that will be more helpful to the panel.

- Too many lawyers treat the word limit as the word target, burying in a mass of prose what is truly crucial and necessary to decide the appeal.

- Most appeals do not require principal briefs of 14,000 words – this length only imposes unnecessarily on both the court and opposing counsel who must respond.

- The bar, especially the appellate practitioner, knows that motions for overlength are disfavored – so lower limits are unlikely to trigger a flood of these requests.

Those *opposing* the proposed reductions stated, most prominently, the following reasons (also in order of emphasis):

- Complex appeals, such as those involving novel issues or large records, require the current limits.

- Lower limits will burden the court with more motions to file overlength briefs, with the request sometimes decided by a judge or panel unfamiliar with the case.

- The only litigants impacted by reduced limits will be those legitimately needing, due to complexity, the full word count.

- Legal complexity is increasing, often requiring longer briefs.

- More concise, but still fully effective, briefs will not be achieved through lower limits – the fix for bad briefing is better education on briefwriting.

- Lower limits will heighten the need for independent judicial research on the law or the record – less help from the parties will expand judicial workloads.

- Reducing the limits increases the odds of waiver, and will require wholesale omission of meritorious arguments, due to lack of space for adequate treatment.

- Client costs will go up due to the difficulty in some appeals of editing the brief to meet a lower word limit ("if I had more time, I would have written a shorter letter").

- There is no documented problem with the current limits.

In opposition, several commentators observed that oral arguments in the federal appellate courts are becoming rarer and shorter, but this factor does not apply to the Court of Appeal where there is a state constitutional right to oral argument. Some commentators objected

that word limit reductions would have an especially adverse impact on criminal appeals, but the analysis here is limited to civil appeals. (See fn. 1, *ante*.)

Of general interest on this topic, the United States Supreme Court is currently inviting public comment on lower word limits for briefs on the merits. The proposed rule amendment would, for principal briefs, reduce the limit from 15,000 to 13,000 words and, for replies, from 6,000 to 4,500 words. The court's comment explains: "Experience has shown that litigants in this Court are able to present their arguments effectively, and without undue repetition, with word limits slightly reduced from those under the current rule. Reductions similarly designed were implemented for briefs in the federal courts of appeals in 2016."[5]

B. California Practice

Until 2002, Court of Appeal briefs were subject to a simple page limit. It did not distinguish between principal and reply briefs: "Excluding tables and indices, a brief shall not be longer than 50 pages, whether the brief is typewritten or proportionally spaced." (Cal. Rules of Court, rule 15(e) [2001, repealed].)

As part of rules modernization, the permissible length was changed to a word count (with the alternative option of a page count). Drawing directly on the federal appellate rules, the 2001 Report Summary explained:

> *Length of brief measured by word count.* Revised rule 14(c)(1), which governs the maximum permissible length of a brief, is derived from the federal procedure for measuring the length of a brief produced on a computer by the number of words in the brief. (FRAP 32(a)(7).) Like FRAP 32(a)(7)(B)(i), revised rule 14(c)(1) imposes a limit of 14,000 words if the brief is produced on a computer.

(Ex. A at p. 20.) Practitioners "uniformly praised" this amendment. (*Id.* at pp. 4, 28.)

The permissible length of Court of Appeal briefs is now governed by Cal. Rule of Court 8.204(c)(1): "A brief produced on a computer must not exceed 14,000 words, including footnotes." The Advisory Committee Comment notes that this limit "is derived from the federal procedure of measuring the length of a brief produced on a computer by the number of words in the brief. (FRAP 32(a)(7).)"

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[5] Proposed Revisions to Rules of the Supreme Court of the United States, Nov. 2018, at <https://www.supremecourt.gov/filingandrules/2018ProposedRulesChangesforPublicComment.pdf> (as of Dec. 3, 2018). Although the high court is of inherent public interest, this memo does not cover courts of last resort because, in my view, their word limits do not provide a useful comparison. As in other jurisdictions, the Court of Appeal and Supreme Court serve distinct institutional functions in California appellate review. The word limits for one tribunal are not necessarily a good fit for the other.

The modern California rule is thus grounded on now-retired federal limits, except for reply briefs. Federal practice then, as now, permitted reply briefs "no more than half of the type volume" allowed for principal briefs. (Fed. R. App. P. 32(a)(7)(B)(ii).)

Although it may exist, I could locate no history on whether the Appellate Rules Project Task Force chose the 14,000-word benchmark in the interest of consistency with federal practice. I was also unable to discern whether specific consideration was given to the vast difference then, and still, between the permissible length of reply briefs in the Court of Appeal and the federal system.

Our committee last addressed word limits in 2008. The length for replies on the merits in the Supreme Court was doubled to 8,400 words. The Invitation to Comment reasoned that "after the court has ordered review in a case, giving the petitioner additional space to more fully articulate his or her argument is likely to assist the court in its consideration of the case. It is also likely to reduce petitioners' need to make requests to the court to file over-length reply briefs."[6]

III. Further Study to Understand the Judicial Perspective

Practitioners' largely consistent perspective on word limits is now well known from the recent federal debate. But there is a large gap in the data bearing on where to strike the balance. Evidence on the *judicial perspective*, particularly of Court of Appeal Justices, is thin.

In determining fair word limits, it seems highly relevant to obtain the views of those who read the briefs. As a federal circuit judge put it in urging shorter briefs: "I would think the view of the consumers of briefs, rather than the producers, would be more influential. We judges, of course, are in an advantageous position to determine whether a longer or somewhat shorter brief is more persuasive."[7] Two appellate practitioners with Horvitz & Levy LLP, supporting the proposed federal reductions, distilled what appellate judges, in the main, prefer: "The message from the bench is clear – say it once, say it briefly, then stop saying it."[8]

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[6] Invitation to Comment, SPR08-01, at http://www.courts.ca.gov/documents/spr08-01.pdf (as of Dec. 3, 2018); see Cal. Rules of Court, rule 8.520(c)(1).

[7] Letter from Hon. Laurence H. Silberman, at <file:///C:/Users/keving/Downloads/Silberman_Comment%20(1).pdf> (as of Dec. 3, 2018).

[8] Axelrad & Batalden, *Briefing Between Brevity and Boredom*, Los Angeles Daily Journal (Aug. 29, 2014), at <https://www.horvitzlevy.com/230F70/assets/files/News/PKB_DMA%20-%20Briefing%20Between%20Brevity%20and%20Boredom.pdf> (as of Dec. 3, 2018).

At legal education programs and related events, California appellate justices have been known to chide practitioners that briefs are not brief. They are unnecessarily long. Get to the point faster; cut the fluff; and always remember – *less is more.* I have never heard an appellate judge, or research attorney, say that briefs are too short or too abbreviated to be helpful. But, to my knowledge, the sentiments of the intermediate bench – the consumers of the product – have not been systematically examined.

Also pertinent, what is the average workload of a Court of Appeal Justice not only statistically, but day to day? Does the quantity of reading require working on nights and weekends? Is the quantity so much that it creates the possibility of error due to sheer overload? We do not know the answers to these questions.

The data gap is worth narrowing because it has fostered misunderstanding in the bar on the role of briefs in appellate decisionmaking.

For example, in opposing cuts to federal word limits, some practitioners argued that shorter briefs will increase independent judicial research on the law and the record. But, in my experience as a clerk, wholly apart from the briefs, the judge is duty-bound to become steeped in both the law and record. For Court of Appeal practice, research attorneys consulted for this memo echoed the point: appellate courts would abdicate their duty if they simply took the parties' word for it.

The reviewing court's independent scrutiny, beyond the briefs, of both the law and the record is already part of the process. It is essential to deciding the appeal correctly. So the concern that courts will be forced to do more in this regard if briefs are shorter is misplaced – especially in California where an appeal cannot be resolved based on an unbriefed issue. (Gov. Code, § 68081.)

In an ideal world, more skilled and tightly crafted briefs would stem from improved education. But CLE programs and the like have emphasized the same appellate briefwriting lessons for decades. To take one illustration, trial litigators handling their own appeals are often disinclined to concede or give something up. Yet seminars have stressed for generations the core need to shift mindsets on appeal to prune issues. For whatever reason, the need for careful issue selection has not fully gotten through to lawyers framing their claims of error.

Perhaps the importance of issue selection would sink in if the message were reinforced more often by judges. As one court colorfully stated: "When a party comes to us with nine grounds for reversing the district court, that usually means there are none." (*Fifth Third Mortgage Co. v. Chicago Title Ins. Co.* (6th Cir. 2012) 692 F.3d 507, 509.) Excessive issues

presented for review, several research attorneys told me, is the root cause of many long briefs that by the end have worn out their welcome.

These and other practitioner misconceptions could be dispelled by greater public data on what Court of Appeal Justices prefer and need in appellate briefing. Likewise, more concrete information on Court of Appeal workloads will help strike the right balance in changing any of the word limits.

Invitations to Comment are one means to glean the practical impact of a rule change on appellate decisionmaking, but historically few comments have come from Court of Appeal Justices. On word limits, the Judicial Council could go further through a formal survey or questionnaire. This was employed in a pathbreaking article to unearth judicial preferences in one division. (Bird & Kennard, *Objective Analysis of Advocacy Preferences and Prevalent Mythologies in One California Appellate Court* (2002) 4 J. App. Prac. & Process 141.) The top grievance stated there about briefs – a "high level of dissatisfaction" – was that they were "[t]oo long for [the] complexity of issues." (*Id.* at pp. 155-156.) The Judicial Council is the logical entity to conduct a statewide survey of the intermediate bench.[9]

There is data suggesting that collecting this information is worth the effort. For my current research, one Court of Appeal Justice estimated monthly brief reading of 3,000 pages. Along with other judicial responsibilities, thousands of pages per month seems a heavy load. Since 2014, the time from notice of appeal to opinion in the Third District has averaged two years and close of briefing to opinion has averaged 10 months. Although I was unable to obtain these data points for the other districts individually, a period of 18 months from close of briefing to oral argument in one division of the First District is not unusual. Use of superior court judges sitting by designation has increased.

By some statistical measures, there is no doubt the Court of Appeal has plenty of work and would benefit from shorter briefs:

- For over a decade, the total contested matters annually per authorized justice has hovered around 200.

- As of mid-2016, the average number of pending appeals per justice was 148.

[9] In greater detail than the Court of Appeal, trial court workloads are examined regularly. See, e.g., Judicial Workload Assessment: 2016 Update of Judicial Needs Assessment, at <http://www.courts.ca.gov/documents/jc-20161028-16-161.pdf> (as of Dec. 3, 2018).

- In 2015-16, the average majority opinions per judge equivalent was 98 – meaning each Court of Appeal Justice is involved each year in around 300 dispositions.[10]

These numbers easily exceed one recommended workload level for an intermediate court. "In the absence of special circumstance, no state appellate court operating at the first level of review should be asked or permitted to make more than 100 dispositions on the merits per judgeship per year." (Kelso, *A Report on the California Appellate System* (1994) 45 Hastings L.J. 433, 441.)

For purposes of word limits, more specific data on whether Court of Appeal Justices are burdened by unnecessarily long briefs would be useful and relevant.

IV. Recommendation Regarding Reply Briefs

As detailed above, California has long allowed reply briefs of equal length as the principal briefs. But, keeping in mind the narrow function of replies, there are virtually no civil cases that warrant a reply brief anywhere close to 14,000 words. At least in my experience, any reply exceeding half the length of the opening brief commits the cardinal sins of repeating the opening or raising new arguments – and other diversions.

This is an abuse. Although the frequency is unknown, reviewing courts should not be burdened, at all, by briefs of this character.

The data I have discussed, although incomplete, suffices to support action by this committee to lighten Court of Appeal workloads in *some* respect. A reduction in the permitted reply length to 8,400 words (consistent with Supreme Court practice) or 7,000 words (consistent with intermediate practice virtually everywhere) will eliminate abusive replies, without curtailing access to justice.

The comment process would be valuable to ascertain the extent of this problem, along with practitioner and judicial views on action to take. But there is clearly one step, in my view, *not* to take. The Solicitor General's suggestion to offset a word limit reduction with a committee note favoring the disfavored – motions for overlength – seems inadvisable. Those motions should continue to be governed by the familiar good cause standard. (Cal. Rules of Court, rule 8.204(c)(5).)

The federal debate unfortunately did not state the paramount question up front: are appellate briefs too long? A proposed amendment to Rule 8.204(c)(1), although narrowly focused on reply briefs, would also be a vehicle to initiate a healthy dialogue on word limits.

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[10] 2017 Court Statistics Report at 45-48, at <http://www.courts.ca.gov/documents/2017-Court-Statistics-Report.pdf> (as of Dec. 3, 2018).

V. Conclusion

In the interest of stability, the California Rules of Court should be amended only with ample justification. But, against the backdrop of California looking previously to federal practice, the status quo on word limits is itself changing. The federal inclination toward brevity, I suspect, marks a trend.

Fair word limits, workable for both the bench and bar, require thoughtful and informed balancing of the relevant considerations. For Court of Appeal practice, more data is desirable, particularly on the judicial view of appropriate length limits. This committee is well positioned to address whether California appellate briefs can be shorter without sacrificing access to justice or cramping appellate advocacy.

Beyond a possible rule amendment on reply briefs in civil cases, our committee would be wise to await the consequences of the recent word limit reductions for the U.S. Court of Appeals. Given the importance of this subject for the sound administration of justice, I respectfully suggest that Agenda Item 11, irrespective of any rulemaking action taken this cycle, be placed in ongoing status to keep it on the committee's agenda going forward.

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
455 Golden Gate Avenue
San Francisco, California 94102-3660

Report Summary

TO: Members of the Judicial Council

FROM: Appellate Advisory Committee
Justice Joyce L. Kennard, Chair
Peter Belton, Chair, Appellate Rules Project Task Force
Suzanne Murphy, Committee Counsel, 415-865-7583

DATE: July 3, 2001

SUBJECT: Revision of Rules on Appeal: First Installment, Rules 1–18 (repeal Cal. Rules of Court, rules 1–18; adopt revised rules 1–18 and related Advisory Committee Comments)[1] (Action Required)

Issue Statement

Under the direction of the Appellate Advisory Committee, the Appellate Rules Project Task Force was formed in early 1998 to revise the entire body of rules on appeal. The goal of the revision project was to remove the many ambiguous, inconsistent, obsolete, and redundant provisions that have accumulated in the rules since they were originally written by Bernard E. Witkin in 1942–1943. This proposal is the first installment of the revised rules on appeal, which have been rewritten and reorganized with great care to clarify their meaning and to facilitate their use by practitioners, parties, and court personnel.

Recommendation

In order to clarify the meaning of the rules that govern civil appeals, and to facilitate their use by practitioners, litigants, and court personnel, the Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2002, repeal existing rules 1–18 of the California Rules of Court, and adopt revised rules 1–18 and the related Advisory Committee Comments.

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[1] Various technical amendments to existing rules 28, 29.3, 29.5, 37, 40, and 56, and a proposal to adopt new rules 41.5 and 389, are required to relocate language from existing rules 2 5, 4.5, 14, and 17 to other existing rules, and to two new rules, in order to place the language with related provisions in a more logical sequence after the repeal of rules 1–18. In addition, rules A–D—which were adopted in 1989 in the aftermath of the Loma Prieta Earthquake—have been rendered obsolete by the passage of time and may be repealed. These technical amendments are discussed in a separate report to the council, dated June 26, 2001

The text of revised rules 1–18, and the accompanying Advisory Committee Comments, are attached at pages 84–159.[2]

Rationale for Recommendation

To achieve the broad goals of clarity and ease of use, the revision simplifies wording and removes ambiguities; eliminates inconsistencies of style and terminology; deletes redundant or obsolete provisions; restructures individual rules into subdivisions to promote readability and understanding; and rearranges the order of subdivisions or the rules themselves when logic or clarity dictates. In addition, when necessary and appropriate, the revision makes substantive changes in order to fill gaps in rule coverage; to conform older rules to current law, practice, and technology; and to otherwise improve the appellate process. Where the revision has resulted in a substantive change to a rule, an Advisory Committee Comment to that rule identifies and explains the change.

The most striking feature of the revised rules in this proposal is the spare, straightforward language, structured into short subdivisions, with the activities governed by each rule and series of rules arranged, to the extent possible, in chronological order. The task force developed this style by applying basic principles of "plain English" rule drafting. In addition, to reduce repetition, the task force developed a new, simplified cross-referencing system.

Alternative Actions Considered

A broad range of alternatives was examined and weighed for every provision in rules 1–18, and each provision that appears in this proposal was thoroughly vetted and consciously chosen after considering extensive input from judicial officers, court personnel, practitioners, and the public. Nothing short of such a complete revision would have been adequate to the task of removing the many inconsistent, ambiguous, obsolete, and redundant provisions that have accumulated in the rules on appeal since they were first adopted in 1943.

Comments From Interested Parties

The Appellate Advisory Committee first circulated drafts of these rules for public comment in 1999. A second circulation was conducted from August to October 2000. Extensive, detailed comments were received from associate justices of the

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[2] Because the revisions to existing rules 1–18 have been so extensive, it was impracticable to prepare the usual struck-through and underlined version of the rule text to show each specific addition to and deletion from the existing rules. Instead, the committee has recommended that existing rules 1–18 be repealed in their entirety and replaced by revised rules 1–18, as presented in this proposal. The full text of existing rules 1–18, with strikethrough marks indicating their repeal, may be found in Appendix A to the report at pages 35–71. Disposition tables showing the fate of each subdivision of the existing rules, and the derivation of each subdivision of the revised rules, are also attached to the report as Appendixes B (the "from/to" table) and C (the "to/from" table"), respectively, at pages 72–83.

Courts of Appeal; judicial staff attorneys; clerks from the superior courts and the Courts of Appeal, and their associations; court reporters and their associations; local bar associations; and numerous appellate specialists and other practitioners.

A significant proportion of the comments received were highly favorable and supportive of the revision project. The proposal was, however, revised in numerous respects in response to concerns raised by the many individuals and groups that submitted comments. A comprehensive chart of comments received, and the committee's responses, accompanies this report at pages 160–223. Among the hundreds of comments received, the following are the most significant.

Comments from appellate court justices
The rules committee from one Court of Appeal objected that no revised rules should be adopted until all the appellate rules (rules 1–80) have been revised. Because the revised rules are significantly clearer, more complete, and easier to use than the existing rules, however, the Appellate Advisory Committee believes the bench and bar should have the benefit of the revised rules as soon as reasonably possible after they are approved. The revision is therefore proceeding by installments, each installment containing rules on related topics.

The same commentator raised the general objection that the revised rules contain too many substantive changes. The committee believes this concern arose in large part because, to help users identify the differences between the revised and existing rules, the Advisory Committee Comments use the label "substantive" in a very broad sense, applying it not only to the relatively few changes that are intended solely to improve the appellate process, but also to the much greater number of new and revised provisions that simply fill unintended gaps, resolve ambiguities, or conform older rules to current law, practice, and technology. It was not, however, the intent of the committee to make any major changes in the basic policies underlying the existing appellate rules. Accordingly, and in response to this comment, all proposed "substantive" changes that drew negative comments from the public or court personnel were carefully re-evaluated after the second circulation and, as a result, many of them were withdrawn.

Comments from court personnel
A large number of comments were submitted by court employees who process appeals and facilitate the record preparation and briefing stages of the proceedings. Of particular concern to the clerks of the Courts of Appeal were proposed changes in provisions concerning the wording of default notices, sanctions against appellants who fail to perform acts necessary to procure the record on appeal, and the deadlines for filing the appellant's opening brief. The commentators' suggestions on each of these issues were accepted, at least in part, and the relevant rules modified accordingly. However, despite objections from court personnel, the committee is recommending retention of provisions in existing rule 16(a) that require the Court of

Appeal to honor a stipulated extension of time to file a party's brief. (See revised rule 15(b)(1).)

Comments from appellate practitioners
Many of the comments received from appellate attorneys were favorable. For example, practitioners uniformly praised revised rule 14(c)(1), which governs the maximum permissible length of a brief. The revised rule was derived from rule 32 of the Federal Rules of Appellate Procedure (FRAP), which established a standard for measuring the length of a brief produced on a computer by the number of words in the brief. Like FRAP 32(a)(7)(B)(i), revised rule 14(c)(1) imposes a limit of 14,000 words if the brief is produced on a computer. The practitioner commentators were also pleased by the clarification provided as to revised rule 15(b) regarding the reviewing court's obligation to honor the parties' stipulations for extension of the time to file their briefs, and by a new provision (revised rule 14(d)) that specifically allows a party filing a brief to attach copies of exhibits or other materials to the brief.

Comments from court reporters
The committee also received voluminous comments from individual court reporters and from court reporters' associations, primarily regarding revised rules 4 and 9. Each of the court reporters' comments was carefully considered and, in most instances, their suggestions were accepted and the proposed rules were modified accordingly. To the extent the court reporters' suggestions were rejected, it was because the committee believed that legal considerations and the interests of other stakeholders outweighed the concerns expressed by the court reporters.

Perhaps the most controversial of the amendments proposed by the committee were the provisions of revised rules 4(b)(3), 4(d)(3), and 9(d) that circulated for comment in August 2000. These provisions—which are based upon the "substituted transcript" provisions of existing rules 4(c) and 9(d)—would have allowed the parties to substitute "dailies" or other partial transcripts prepared during the course of litigation in place of a deposit or waiver from the reporter, and would have clarified the reporter's duties with respect to pagination, indexing, covers, and bindings for such transcripts. These provisions drew strong positive comments from appellate practitioners, who believe that ambiguity in the existing rules has caused confusion and has, in many instances, resulted in their clients having to pay court reporters "hourly" fees that are not authorized by statute or, in some cases, to pay twice for the same transcript. However, these provisions remain objectionable to the court reporters who commented on them, primarily because the proposed rules did not provide a mechanism by which court reporters might be compensated for the services required by revised rule 9(d).

After carefully considering the court reporters' comments, the committee initially voted to recommend adoption of revised rules 4(b)(3), 4(d)(3), and 9(d), as described in the preceding paragraph. In addition, the committee voted to recommend a new

subdivision (b)(4) for rule 4, which would have established a mechanism for payment of fees authorized by statute for services the official court reporters would be required to perform under proposed rule 9(d). However, upon further reflection after the proposal was considered by the Rules and Projects Committee (RUPRO), the Appellate Advisory Committee agreed to join RUPRO in recommending that the council adopt revised rules 1–18 as initially proposed by the Appellate Advisory Committee, but with stylistically compatible language in revised rules 4(b) and 9(d) that temporarily maintains the status quo with respect to the procedures for handling dailies and other substituted transcripts.[3] The text of revised rules 4 and 9, containing language approved by both the Appellate Advisory Committee and RUPRO to maintain the status quo regarding substituted transcripts, is attached at pages 100–108 and 130–132.

Implementation Requirements and Costs

The clerk's office in each of the six appellate districts will need to review the body of appellate rules as finally adopted and make necessary adjustments to some of their filing and calendaring procedures. Various standard operating procedures and forms used to notify the parties of the steps required to perfect the appeal might also have to be revised to conform to the new provisions. Costs to the Courts of Appeal and the superior courts should otherwise be minimal.

[3] RUPRO further recommended that the matter of substituted transcripts be referred to the Court Reporters Subcommittee of the Court Executives Advisory Committee, which has been reconstituted recently to deal with a number of interrelated issues concerning the relationship between the courts and their official court reporters and fees for preparation of reporters' transcripts The referral will include directions to the subcommittee to report its recommendation back to the Appellate Advisory Committee for further action. The Appellate Advisory Committee also agreed to this aspect of RUPRO's recommendation.

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Report

TO: Members of the Judicial Council

FROM: Appellate Advisory Committee
Justice Joyce L. Kennard, Chair
Peter Belton, Chair, Appellate Rules Project Task Force
Suzanne Murphy, Committee Counsel, 415-865-7583

DATE: July 3, 2001

SUBJECT: Revision of Rules on Appeal: First Installment, Rules 1–18 (repeal Cal. Rules of Court, rules 1–18; adopt revised rules 1–18 and related Advisory Committee Comments)[4] (Action Required)

Issue Statement

Under the direction of the Appellate Advisory Committee, the Appellate Rules Project Task Force was formed in early 1998 to revise the entire body of rules on appeal.[5] The revision project was undertaken to produce the first general overhaul of the appellate rules since they were originally written by Bernard E. Witkin in 1942–1943. This proposal is the first installment of the revised rules on appeal, rules 1–18, which have been rewritten and reorganized with great care to clarify their meaning and to facilitate their use by practitioners, parties, and court personnel.

Recommendation

In order to clarify the meaning of the rules that govern civil appeals, and to facilitate their use by practitioners, litigants, and court personnel, the Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2002, repeal existing rules 1–18 of the California Rules of Court, and adopt revised rules 1–18 and the related Advisory Committee Comments .

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[4] Various technical amendments to existing rules 28, 29.3, 29 5, 37, 40, and 56, and a proposal to adopt new rules 41 5 and 389, are required to relocate language from existing rules 2.5, 4.5, 14, and 17 to other existing rules, and to two new rules, in order to place the language with related provisions in a more logical sequence after the repeal of rules 1–18. In addition, rules A–D—which were adopted in 1989 in the aftermath of the Loma Prieta Earthquake—have been rendered obsolete by the passage of time and may be repealed. These technical amendments are discussed in a separate report to the council, dated June 26, 2001.

[5] The task force includes an associate justice of the California Supreme Court, appellate practitioners, judicial staff attorneys, and the Reporter of Decisions.

The text of revised rules 1–18, and the accompanying Advisory Committee Comments, are attached at pages 84–159.[6]

Rationale for Recommendation

Over the past three years, the task force has held more than 50 meetings, each of three hours' duration, during which the task force members engaged in an intense, collaborative effort to thoroughly revise and reorganize the rules governing civil appeals, rules 1–18 of the California Rules of Court.[7] This effort was the initial phase of the larger project to produce the first general overhaul of the appellate rules since they were originally written by Bernard E. Witkin in 1942–1943.

Rules 1–18 have been rewritten and reorganized with great care to clarify their meaning and to facilitate their use by practitioners, parties, and court personnel. To achieve these broad goals, the revision:

- Simplifies wording;
- Removes ambiguities;
- Eliminates inconsistencies of style and terminology;
- Deletes redundant or obsolete provisions;
- Restructures individual rules into subdivisions to promote readability and understanding;
- Rearranges the order of subdivisions or the rules themselves when logic or clarity dictates; and
- When necessary and appropriate, makes substantive changes in order to fill gaps in rule coverage; to conform older rules to current statutory and case law, practice, and technology; and to otherwise improve the appellate process.

The Appellate Advisory Committee first circulated drafts of these rules for public comment in late 1998 (rules 1–4 and 5.2–12) and in late 1999 (rules 4.5, 5, 5.1, and

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[6] Because the revisions to existing rules 1–18 have been so extensive, it was impracticable to prepare the usual struck-through and underlined version of the rule text to show each specific addition to and deletion from the existing rules Instead, the committee has recommended that existing rules 1–18 be repealed in their entirety and replaced by revised rules 1–18, as presented in this proposal. The full text of existing rules 1–18, with strikethrough marks indicating their repeal, may be found in Appendix A to the report at pages 35–71. Disposition tables showing the fate of each subdivision of the existing rules, and the derivation of each subdivision of the revised rules, are also attached to the report as Appendixes B (the "from/to" table) and C (the "to/from" table"), respectively, at pages 72–83.

[7] The task force has also revised and reorganized rules 19 through 29.9, and will be presenting those revised rules for circulation within the next few months.

13–18). The task force carefully considered the first set of comments received and made numerous changes to that version of the revised rules. A second circulation was conducted from August to October 2000. Again, the task force painstakingly reviewed each comment and made numerous additional revisions in response. This proposal is the culmination of those efforts.

The most striking feature of the revised rules in this proposal is the spare, straightforward language, structured into short subdivisions arranged to the extent possible using a chronological ordering of the activities governed by each rule and by the series of rules. The task force developed this style by applying basic principles of "plain English" rule drafting, including those found in Garner, *Guidelines for Drafting and Editing Court Rules* (n.d., Administrative Office of the United States Courts).

The task force also elected to use "must" instead of "shall" throughout the revised rules, a decision that was endorsed by the Judicial Council at its business meeting in October 2000. The reasons for this decision are succinctly stated under the entry entitled "Words of Authority" in Garner, *A Dictionary of Modern Legal Usage* (2d ed. 1995) at pages 939 to 942. As used in these rules, the term "must" and the other words of authority are defined in an Introductory Advisory Committee Comment, as follows: "Must" is mandatory and "may" is permissive; "should" expresses a preference or a nonbinding recommendation; and "will" expresses a future contingency or predicts action by a court or a judicial officer.

To reduce repetition, the task force developed a new, simplified cross-referencing system. When a revised rule refers to a different rule in the California Rules of Court, it cites that rule by its rule number (e.g., "under rule 985" [see revised rule 1(b)(1)]). When a revised rule refers to a different subdivision of the same rule, it cites that subdivision by its letter only (e.g., "As used in (a) and (d)" [see revised rule 2(f)]). And when a revised rule refers to a different numbered paragraph of the same subdivision, it cites that paragraph by its number only (e.g., "under (1)" [see revised rule 1(c)(2)]).

The vast majority of the changes in revised rules 1–18 are stylistic only. Where the revision has resulted in a substantive change to a rule, an Advisory Committee Comment to that rule identifies the change and explains its reason. To help users identify the differences between the revised and existing rules, the Advisory Committee Comments use the label "substantive" in a very broad sense, applying it not only to the relatively few changes that are intended solely to improve the appellate process, but also to the much greater number of new and revised provisions that simply fill unintended gaps in the coverage of the existing rules, resolve ambiguities in those rules, or conform older rules to current statutory and case law, practice, and technology.

It was not, however, the intent of the committee to make any major changes in the policies underlying the existing appellate rules. Accordingly, all proposed "substantive" changes that drew negative comments from the public or court personnel have been carefully re-evaluated and, as a result, a number of them have been withdrawn. Of those substantive changes that remain, the reasons for their retention have been explained in the Advisory Committee Comments and in the committee's responses to the public comments.

The fate of each subdivision of the existing rules on appeal is carefully documented in the Advisory Committee Comments to each revised rule. To track a provision of an existing rule that does not appear in the corresponding revised rule or is not discussed in its Advisory Committee Comment, consult the Disposition Tables. (See Appendixes B and C.) Any necessary reorganization and renumbering after the final installment is adopted will be undertaken at that time.

Significant Amendments to the Rules Governing Civil Appeals

For the convenience of council members, the most significant amendments and new provisions embodied in the revised rules on appeal are summarized and explained as follows:

1. Commencement of the Appeal (revised rules 1 & 2)

   (a) *Notification of filing of notice of appeal.* Under revised rule 1(d)(2), a notification of the filing of a notice of appeal must show the date on which the clerk mailed the document, as does the clerk's "certificate of mailing" that is currently in use in many superior courts. In addition, rule 1(d)(1) requires the superior court clerk to mail a notification of the filing of the notice of appeal to the appellant's attorney, or to the appellant if he or she is unrepresented. These substantive changes are intended to provide greater certainty about the date on which the 20-day extension of the time to file a cross-appeal under revised rule 3(e) begins to run.

   (b) *Elimination of duty to mail court reporters list.* The fourth paragraph of existing rule 1(b) requires the clerk, upon the filing of a notice of appeal, to send a copy of the court reporters list (see rule 980.4) to the parties and to the reviewing court clerk. In current practice, however, if appellate counsel receive this list at all, it is usually too late to be of practical use. The revised rule, therefore, deletes this provision in a substantive change intended to relieve the clerk of an unnecessary burden. It should be noted, however, that the revised rule does not eliminate the court reporters list, only the requirement that the superior court clerk send it to the parties and to the reviewing court. The revision thus does not change in any way the list's utility for superior court clerks and reporters.

(c) *Date of mailing of clerk's notice of entry of judgment.* Under revised rule 2(a)(1), a notice of entry of judgment (or a copy of the judgment) must show the date on which the clerk mailed the document, analogously to the clerk's "certificate of mailing" currently in use in many superior courts. This change is intended to establish with greater certainty the date that the 60-day period under revised rule 2(a)(1) begins to run.

2. Extensions of Time for Filing Notice of Appeal (revised rule 3)

(a) *Denial of motion for new trial.* Existing rule 3(a) provides that the denial of a motion for new trial triggers a 30-day extension of the time to appeal from the judgment, beginning on the date of entry of the order of denial. Revised rule 3(a)(1) provides that the 30-day extension begins to run on the date the superior court clerk mails, or a party serves, either the order of denial or a notice of entry of that order. This substantive change eliminates a trap for litigants and makes the rule consistent with the primary rule on the time to appeal from the judgment (revised rule 2(a)).

(b) *Motion for judgment notwithstanding the verdict (JNOV) without a motion for new trial.* Revised rule 3(c) is derived from existing rule 3(d), but contains two substantive changes. First, the existing rule provides an extension of time after an order denying a motion for JNOV only if the moving party has also moved for a new trial and that motion has been denied. Revised rule 3(c)(1) deletes the limitation as unduly restrictive, and provides an extension after an order denying a motion for JNOV regardless of whether the moving party also moved unsuccessfully for a new trial. Second, the existing rule makes provision for "the time for filing the notice of appeal from the judgment or from the denial of the motion to enter a judgment notwithstanding the verdict" (existing rule 3(d)); revised rule 3(c)(1) makes provision only for "the time to appeal from the judgment . . . ." The revision is intended to resolve an ambiguity that arises when, as often occurs, a motion for JNOV is joined with a motion for new trial. A statute requires the court to rule on both motions at the same time. (Code Civ. Proc., § 629, 2d par.) These changes are discussed in detail in the Advisory Committee Comment to revised rule 3(c).

(c) *Motion for reconsideration of an appealable order.* Existing rule 3 makes no provision for an extension of the time to appeal from an appealable order when a party files a valid motion to reconsider that order (Code Civ. Proc., § 1008). The case law has drawn different inferences from the absence of such a provision. Revised rule 3(d) provides an extension of the time to appeal after a motion to reconsider an appealable order, in a substantive change intended to encourage recourse to the trial court for relief from an appealable order; if granted, such relief would obviate the

need for an appeal. (See *Rojes v. Riverside General Hospital* (1988) 203 Cal.App.3d 1151, 1159-1160.) The scope of revised rule 3(d) is very specific: It applies to any "appealable order," whether made before or after judgment (see Code Civ. Proc., § 904.1, subd. (a)(2) to (12)), but it extends only the time to appeal "from that order." The revised subdivision thus takes no position on whether a judgment is subject to a motion to reconsider (see, e.g., *Ramon v Aerospace Corp.* (1996) 50 Cal.App.4th 1233, 1236-1238), or whether an order denying a motion to reconsider is itself appealable (compare *Santee v. Santa Clara County Office of Education* (1990) 220 Cal.App.3d 702, 710-711, with *Rojes*, *supra*, 203 Cal.App.3d at pp. 1160-1161). Both of these issues are legislative matters.

(d) *Protective cross-appeals.* Existing rule 3(c) provides an extension of time for filing a protective cross-appeal from the judgment when the trial court grants a motion for new trial or a motion to vacate the judgment, but does not provide the same extension when the trial court grants a motion for JNOV. No reason appears to believe the omission was intentional; thus, revised rule 3(e)(2) fills the gap.

(e) *Specification of date of mailing notice or order triggering extension.* Revised rule 3(f) is a new provision under which an order or notice mailed by the clerk or a party under this rule must show the date on which the clerk mailed or the party served the document. This is a substantive change intended to establish the date on which an extension of the time to appeal begins to run after the clerk mails such an order or notice.

3. Reporter's Transcript (revised rule 4) Revised rule 4 moves many of the provisions of existing rule 4 into different subdivisions for reasons of logic and clarity. It also makes a number of substantive changes, as follows.

(a) *Date of "mailing" vs. date of "receipt" of notices.* Under existing rule 4, the time within which a reporter or a party must take specified action generally runs from the date the reporter or the party *receives* a notice; except as provided in revised rule(c)(2), that time will run under the revised rules from the date the notice is *mailed.* The changes are intended to provide certainty in fixing the time when a period begins, and consistency with similar periods prescribed elsewhere in the rules (e.g., revised rules 2(a)(1) & 3(e)(1)).

(b) *Notice designating reporter's transcript; substitution of previously prepared transcripts.* Under existing rule 4, an appellant serves and files a notice to "prepare" a reporter's transcript, and the notice identifies the proceedings to be "transcribed." Under the revised rule, the appellant serves and files a notice "designating" a reporter's transcript (revised rule 4(a)(1)), and the notice identifies the proceedings to be "included" (revised

rule 4(a)(4)). The broader wording better recognizes that under revised rule 4(b)(3)—as under existing rule 4(c)—the appellant, instead of depositing the reporter's cost to transcribe the proceedings, may substitute certified transcripts of proceedings that have already been transcribed (e.g., daily transcripts). The revised wording is also consistent with the rule governing the clerk's transcript (revised rule 5).

(c) *Notice of intent to proceed without reporter's transcript.* Revised rule 4(a)(1) provides that, within 10 days after filing the notice of appeal, an appellant who does not want consideration of the oral proceedings must serve and file a notice of intent to proceed without a reporter's transcript. This is a substantive change intended to expedite preparation of the reporter's transcript. Under the existing rule, the superior court clerk cannot know whether an appellant's failure to timely file a notice designating a reporter's transcript evidences a deliberate intent to proceed without such a transcript or a simple failure to comply with the 10-day time limit. The revised rule makes the filing of one notice or the other an "act required to procure the record" within the meaning of revised rule 8(a). Under that rule, a failure to file such a notice triggers the clerk's duty to issue a 15-day notice of default and thereby allows the appellant to cure the default in superior court.

(d) *Specificity of partial designation*: Revised rule 4(a)(4) requires that every notice designating a reporter's transcript identify which proceedings are to be included, and that it do so by specifying the date or dates on which those proceedings took place; an appellant who does not want a portion of the proceedings on a given date to be included should identify that portion by means of a descriptive reference. This is a substantive change intended to make the rule consistent with common practice, promote uniformity, and minimize uncertainty in the description of the proceedings to be transcribed.

(e) *Simplified procedure in Transcript Reimbursement Fund cases.* Under a new simplified procedure in revised rule 4(c), a party seeking reimbursement of the cost of the reporter's transcript from the Transcript Reimbursement Fund (Bus. & Prof. Code, § 8030.8), files its application with the Court Reporters Board, and serves and files a copy of that application at the same time as its notice designating the proceedings to be transcribed (revised rule 4(c)(1)); the application is a permissible substitute for the required deposit of the reporter's fee (revised rule 4(b)(3)) and thereby prevents issuance of a notice of default (revised 4(d)(4)). Also, because the applicable statutes do not require the Court Reporters Board to mail notice of approval of an application to the reporter, and it is the practice of the Board to notify only the applicant, revised rule 4(c)(2), like

existing rule 4(f), provides that the time for the reporter to prepare the transcript after such approval begins when the reporter receives—rather than when the Board mails—that notice. (See also revised rule 4(f)(1).)

(f) *Date of mailing clerk's notice of designation of reporter's transcript.* Under revised rule 4(d)(2), the clerk's notice to the reporter must show the date on which the clerk mailed the notice. This substantive change establishes with greater certainty the date when the period for preparing the reporter's transcript under revised rule 4(f)(1) begins to run.

(g) *Responsibility for pagination, indexes, covers, and binding of substituted transcripts.* Existing rules 4(c) and 9(d) allow parties to substitute certified daily transcripts for a portion or all of the reporter's transcript, but do not specify who is responsible for repaginating the substituted transcripts, preparing their indexes and covers, or binding them. The committee's initial proposal for revised rules 4(b)(3), 4(d)(3), and 9(d) would have placed that responsibility on the reporter, and a new subdivision (b)(4) would have been added to rule 4 to provide a mechanism by which the reporter could seek to increase the deposit to cover any fees authorized by statute for such services. Upon reconsideration in light of the court reporters' continuing objections, however, the committee has joined in a recommendation by the council's Rules and Projects Committee (RUPRO) that the ambiguous substituted transcript provisions of existing rules 4(c) and 9(d) be retained on an interim basis, pending further study by the Court Reporters Subcommittee of the Court Executives Advisory Committee. Thereafter, the Appellate Advisory Committee will revisit the issue of substituted transcripts at the earliest possible date.

(h) *Notice of dishonored check or abandoned or dismissed appeal.* Revised rule 4(d)(5) is a new provision that fills a gap in existing rule 4, by requiring the clerk of the superior court to notify the court reporter if a deposit check has been dishonored or if the appeal has been abandoned. Revised rule 4(f)(3) requires payment of the reporter for work completed up to the time he or she is notified of the abandonment or dismissal of the appeal.

(i) *Duty to provide copy of transcript in computer-readable format.* Revised rule 4(f)(4) fills a gap in existing rule 4, in order to implement statutory provisions (e.g., Code Civ. Proc., § 269, subd. (c); Gov. Code, § 69954), regarding requests for a copy of the reporter's transcript in computer-readable format. In recognition of the fact that in some rare instances the reporter may be unable to provide a copy in that format, the revised subdivision also authorizes the reporter to apply to the superior court for relief from this requirement.

4. Clerk's Transcript (revised rule 5)

(a) *Designating portions of documents to be included.* Revised rule 5(a)(4) allows a party designating documents for inclusion in the clerk's transcript to specify *portions* of such documents that are not to be included, e.g., because they are duplicates of other designated documents or because they are not necessary for proper consideration of the issues raised in the appeal. This change is intended to simplify and therefore expedite the preparation of the clerk's transcript, to reduce its cost to the parties, and to relieve the courts of the burden of reviewing a record containing redundant or irrelevant documents.

(b) *The parties' duty to deliver exhibits returned after trial.* Existing rule 5 assumes that the superior court clerk has custody of all exhibits the parties might designate on appeal. But other provisions of law (e.g., Code Civ. Proc., § 1952) authorize the superior court to return exhibits to parties. Revised rule 5(a)(5) fills this gap by requiring that the party with custody of any such exhibit promptly deliver it to the clerk if it is designated for copying into the clerk's transcript. (See also revised rule 18(b)(2).)

(c) *Mandatory contents of clerk's transcript.* Revised rule 5(b)(1)(D) fills a gap by adding references to motions for JNOV and for reconsideration of an appealable order, any ruling thereon, and any notice of its entry. In a change intended to assist the reviewing court in determining the accuracy of the clerk's transcript, revised rule 5(b)(1)(F) adds a reference to the register of actions, if any. Revised rule 5(b)(1) deletes as obsolete a reference to "the pretrial [conference] order," a procedural step that was eliminated in 1985.

(d) *Deposits for original and copies of clerk's transcript.* Revised rule 5(c)(1) fills a gap by requiring the clerk to notify the appellant of the cost of both the original and a copy of the transcript, and to notify each other party of the cost of a copy for that party's use. Under revised rule 5(c)(2), a clerk who sends such notices must include a certificate stating the date the clerk sent it. This change is intended to establish the date when the 10-day period for depositing the cost of the clerk's transcript begins to run. As a substitute for depositing the cost of the clerk's transcript, revised rule 5(c)(3) permits a party to submit an application for, or an order granting, a waiver of that cost.

5. Proceeding by Appendix Instead of Clerk's Transcript (revised rule 5.1)

(a) *Duty to provide parties with copy of register of actions* Revised rule 5.1(a)(3)(B) is a substantive change intended to assist appellate counsel in preparing an appendix by providing them with the list of pleadings and

other filings found in the register of actions or "docket sheet" in those counties that maintain such registers. (See Gov. Code, § 69845.) The provision is derived from rule 10-1 of the United States Court of Appeals for the Ninth Circuit. In a corresponding change, revised rule 5.1(b)(1)(A) requires the parties to include the provided register of actions in a joint appendix or an appellant's appendix. This change, which is derived from Ninth Circuit rule 30-1.3(a)(ii), is intended to assist the reviewing court in determining the accuracy of the appendix.

(b) *Limitations on contents of appendixes.* Revised rule 5.1(b)(2) prohibits the inclusion in the appendix of documents *or portions of documents* that are not necessary for proper consideration of the issues raised in the appeal. This provision—which is adapted from Ninth Circuit rule 30-1.4—is intended to simplify and therefore expedite the preparation of the appendix, to reduce its cost to the parties, and to relieve the courts of the burden of reviewing a record containing redundant, irrelevant or immaterial documents. Similarly, revised rule 5.1(b)(3) prohibits the inclusion in an appendix of transcripts of oral proceedings that may be made part of a reporter's transcript. This change is intended to prevent a party filing an appendix from evading the requirements and safeguards imposed by revised rule 4 on the process of designating and preparing a reporter's transcript, or the requirements imposed by revised rule 9(d) on the substitution of daily or other certified transcripts.

(c) *Use of unconformed copies of documents filed in the trial court.* Existing rule 5.1(c)(1) requires that any document not bearing a clerk's date stamp be conformed to show its filing date. Revised rule 5.1(c) deletes this requirement because, in current practice, served copies of filed documents often bear no clerk's date stamp and are not conformed. This change is intended to relieve the parties of the burden of obtaining conformed copies at the cost of considerable time and expense, thereby expediting the preparation of the appendix and the processing of the appeal. It is to be noted, however, that under revised rule 5.1(b)(1)(A) each document necessary to determine the timeliness of the appeal must show the date required under rule 2 or 3. Also, revised rule 5.1(f), like existing rule 5.1(i), provides that a party filing an appendix represents under penalty of sanctions that its copies of documents are accurate.

(d) *New deadline for filing joint appendix.* Revised rule 5.1(d)(2) provides the same filing deadline for an appellant's appendix as did existing rule 5.1(e), but provides a new filing deadline for a *joint* appendix. Rather than requiring that a joint appendix be filed no later than the filing of the *respondent's* brief, the revised subdivision requires it to be filed with the *appellant's* opening brief. The new deadline is intended to improve the

briefing process by enabling the appellant's opening brief to include citations to the record. To provide for the case in which a respondent concludes in light of the appellant's opening brief that the joint appendix should have included additional documents, revised rule 5.1(b)(6) permits the respondent to file an appendix containing any document that could have been included in the joint appendix (see revised subd. (d)(3)).

(e) *Sanctions for violating rule 5.1.* Under existing rule 5.1(i)(1), the reviewing court can sanction a party for filing an appendix containing inaccurate copies of documents only if the filing is "[w]illful or grossly negligent." Revised rule 5.1(f) deletes the latter restriction because the burden imposed on the reviewing court and the other parties does not depend on the degree of culpability of the filing party but on the nature of the inaccuracies and the importance of the documents. The remainder of existing rule 5.1(i) provides for sanctions only for the improper *omission* of documents from an appendix, and authorizes only monetary sanctions for that violation of the rule. Revised rule 5.1(f) extends the reviewing court's sanction power to any appropriate type of sanction for any act that violates this rule.

6. Agreed and Settled Statements (revised rules 6 and 7)

(a) *Cross-references to rule 5 lists of contents for clerk's transcripts.* Revised rules 6(a) and 7(b) identify the mandatory and optional contents of, respectively, agreed and settled statements. Provisions cross-referencing the lists of mandatory and optional documents for inclusion in a clerk's transcript (revised rule 5(b)(1)-(4)) have been added to these rules. This cross-referencing will result in the inclusion of certain items not mentioned in existing rules 6(a) and 7(b), and is intended to promote completeness and consistency.

(b) *Motion to use a settled statement.* Existing rule 7(a) provides that an appellant may use a settled statement as a substitute for a normal record in order to achieve a substantial cost saving, "if allowed by the trial judge on noticed motion," but does not specify a procedure for determining an appellant's right to use a settled statement on the other grounds listed, i.e., inability to pay for a reporter's transcript or unavailability of such a transcript. To fill that gap, revised rule 7(a) provides for a motion to use a settled statement on any of the grounds listed. To fill an additional gap, revised rule 7(a)(3) specifies what the appellant must do if the court denies the motion.

7. Failure to Designate or Pay for Record (revised rule 8)

(a) *Definition of "default."* Revised rule 8 is derived from existing rule 10(c). Revised rule 8(a) treats as a default the failure of a party to "do an act required to procure the record," but requires the clerk promptly to issue a default warning notice specifying a 15-day period within which the party must cure the default.

(b) *Defaults by respondents.* In a substantive change intended to fill a gap in the existing rule 10(c), which addresses defaults by appellants only, revised rule 8 also addresses defaults by respondents (see revised rule 8(a)(2), (b)(2)).

(c) *Limitation on motion for sanctions.* Existing rule 10(c), first paragraph, provides that if the appellant fails to do a required act "and such failure is the fault of the appellant and not of any court officer or any other party, the appeal may be dismissed on motion of the respondent or on the reviewing court's own motion." The quoted language has been rendered obsolete by the notice-of-default procedure and has, therefore, been deleted. As a precaution, however, revised rule 8(c) authorizes a party to move for sanctions in the reviewing court in the rare case in which the superior court clerk fails to promptly give a notice required by revised rule 8(a). But the motion must be denied if the defaulting party cures the default within 15 days after the motion is served.

8. Form of the Record (revised rule 9)

(a) *Mandatory information on the cover of each volume.* Revised rule 9(c) requires that the cover of each volume of the clerk's and reporter's transcripts state the volume number and the inclusive page numbers of that volume, and that the cover of each volume of the reporter's transcript state the dates of the proceedings reported in that volume. These changes are intended to facilitate the use of multivolume transcripts.

(b) *Responsibility for incorporating substituted transcripts into record.* Existing rules 4(c) and 9(d) allow parties to substitute certified daily transcripts for a portion or all of the reporter's transcript, but do not specify who was responsible for repaginating the substituted transcripts, preparing their indexes and covers, or binding them. This ambiguous language has been retained, on an interim basis, pending further study of the issue of substituted transcripts. (See discussion of this issue in sections 3(b) and (g), *ante.*)

9. Record for Multiple or Later Appeals in the Same Case (revised rule 10)

(a) *Broad preference for single record.* Existing rule 11(a) provides for a single record when there are multiple appeals from "the same judgment" or part thereof and when there is "a cross-appeal pursuant to rule 3." Revised rule 10(a)(1) provides more broadly for a single record whenever there are multiple appeals "from the same judgment or a related order." Multiple appeals from the *same judgment* include all cases in which opposing parties, or multiple parties on the same side of the case, appeal from the judgment; multiple appeals from a judgment *and a related order* include all cases in which one party appeals from the judgment and another party appeals from any appealable order arising from or related to the judgment—i.e., not only orders contemplated by rule 3 but also, for example, posttrial orders granting or denying attorney fees. This is a substantive change only to the extent that the revised wording is more inclusive, and its purpose is to encourage, when practicable, the preparation of a single record for all appeals taken in the same case.

(b) *Copies of record for each separately represented appellant.* Revised rule 10(a)(2), like existing rule 11(a), requires multiple parties appealing from the same judgment to equally share the cost of preparing a single record unless the superior court orders otherwise. To fill a gap, the first sentence of revised rule 10(a)(2) recognizes that the *parties* may also agree otherwise. Revised rule 10(a)(2) fills another gap in the existing rule by providing that each of the multiple appellants is entitled to a copy of a record whose cost it shares.

(c) *Duty of party to specify portions of record of prior appeal for incorporation by reference.* Existing rule 11(b) requires the superior court clerk to prepare and insert in the record in the later appeal a "list and description" of the parts of the prior record designated for incorporation by reference, together with "specific references to the places in the prior record" where they can be found. Revised rule 10(b)(1) relieves the clerk of this responsibility and instead requires the *party* seeking incorporation by reference to "specify those parts in its designation of the record, with page numbers if available." The existing rule also requires the superior court clerk to place in the record "a notation of the clerk's office in which [the incorporated parts of the prior record] are filed," and to "make arrangements to obtain" the designated parts of the prior record, "which may be lodged in another clerk's office or offices." In current practice, however, a record in a prior appeal does not remain "filed" in the clerk's office in which it was originally filed, but instead is sent to storage in central archive facilities. These provisions are therefore deleted as

obsolete, and as inappropriate micromanagement of the reviewing court clerk's office.

10. Lending, Augmenting, and Correcting the Record (revised rules 11 and 12)

(a) *Lending to any party upon request.* Existing rule 10(e) applies on its face only to a *respondent* who does not purchase its own copy of the record. Revised rule 11(b)(1) fills a gap by extending the rule to any party who has not purchased its own copy. Revised rule 11(b)(3) fills another gap by specifying that the borrowing party must bear the cost of sending the copy of the record from the lending party to the borrowing party, and the cost of returning it to the lending party. Under revised rule 11(b)(2), the record must be returned when the borrowing party's brief is filed or the time for filing a brief has expired.

(b) *Formal motion required for augmentation.* Existing rule 12(a) allows a party to request augmentation of the record by "suggestion." Revised rule 12(a) requires instead a formal motion to augment. This is a substantive change intended to bring order and predictability to the process of augmenting the record. It should be noted, however, that a party may apply for—and the reviewing court may order—augmentation of the record at any time. This is not a substantive change: the existing rule likewise imposes no time limit on requesting or granting augmentation.[8]

11. Briefs by Parties and Amicus Curiae in the Court of Appeal (revised rule 13)

(a) *Joinder in other parties' briefs.* Revised rule 13(a)(5) makes it clear that a party may both file a brief and adopt by reference, as part of that brief, all or part of another brief in the same or a related appeal. The change is substantive and is intended primarily to expedite briefing in multiparty appeals.

(b) *Conforming amicus curiae practice in Court of Appeal to that of Supreme Court.* Under revised rule 13(b)(3), amicus curiae practice in the Court of Appeal is brought into conformity with amicus curiae practice in the Supreme Court by requiring that the application for permission to file an amicus curiae brief be accompanied by the proposed brief. The change is substantive, and is intended to expedite the briefing process.

[8] Revised rule 12.5 is existing rule 12.5, with only technical amendments designed to bring its style into conformity with that of the balance of revised rules 1–18. No substantive change to rule 12.5, which was adopted by the council effective January 1, 2001, is intended.

12. Form of Appellate Briefs (revised rule 14) Revised rule 14(b) combines and simplifies subdivisions (b) through (d) of existing rule 15. No substantive changes are intended, with the following exceptions:

(a) *Method of reproduction.* The first sentence of revised rule 14(b)(1) confirms that any method of reproduction is acceptable provided it results in a clear black image of letter quality. The provision is derived from subdivision (a)(1) of rule 32 of the Federal Rules of Appellate Procedure (hereafter FRAP 32). Although the revised subdivision omits the dot matrix printing specifications stated in existing rule 15(b)(5) as unnecessary micromanagement, it is not intended to prohibit the use of that printing method.

(b) *Updated specifications for typeface, type style, and type size.* Revised rule 14(b)(2) through (4) states requirements for *typeface*, *type style*, and *type size* (see also subd. (b)(11)(C)). These terms are defined in The Chicago Manual of Style (14th ed. 1993) at pages 856 to 857. Revised rule 14(b)(2) allows the use of any conventional typeface—e.g., Times New Roman, Courier, Arial, Helvetica—and permits the typeface to be either proportionally spaced or monospaced. The latter provision is derived from existing rule 15(b). Revised rule 14(b)(3) requires the type style to be roman, but permits the use of italics, boldface, or underscoring for emphasis; it also requires case names to be italicized or underscored. These provisions are derived from FRAP 32(a)(6).

(c) *Use of single spacing.* Revised rule 14(b)(5) allows headings to be single-spaced; it is derived from FRAP 32(a)(4). The revised provision also permits quotations of any length to be block-indented and single-spaced at the discretion of the brief writer.

(d) *Uniform margin size for all briefs.* Revised rule 14(b)(6) simplifies the margin requirements by providing a uniform margin size regardless of how the brief is produced. The benefits of uniformity were deemed to outweigh any reason for the small differences in margin sizes prescribed in the existing rules. (See existing rule 15(c)(5) and (d)(3).)

(e) *Length of brief measured by word count.* Revised rule 14(c)(1), which governs the maximum permissible length of a brief, is derived from the federal procedure for measuring the length of a brief produced on a computer by the number of words in the brief. (FRAP 32(a)(7).) Like FRAP 32(a)(7)(B)(i), revised rule 14(c)(1) imposes a limit of 14,000 words if the brief is produced on a computer. If the brief is produced on a typewriter, revised rule 14(c)(2) continues the existing limit of 50 pages. (See existing rule 15(e).) Given the requirements of minimum type size

(revised rule 14(b)(4)) and minimum margin size (revised rule 14(b)(6)), a limit of 14,000 words is the approximate equivalent of a limit of 50 pages.

(f) *Attachments to briefs*. Revised rule 14(d) is new. It permits a party filing a brief to attach copies of exhibits or other materials, provided they are part of the record on appeal and do not exceed a total of 10 pages. This change is intended to improve the appellate process by allowing the brief writer, in appropriate cases, to focus the reviewing court's attention on especially significant or explanatory exhibits or other documents, and by relieving the court of the burden of finding those items in a lengthy record. If the brief writer attaches, under rule 977(c), a copy of an unpublished opinion or an opinion available only in computerized form, that opinion does not count toward the 10-page limit stated in revised rule 14(d).

13. Deadlines for Service and Filing of Briefs (revised rule 15)

(a) *Applications for extension of time*. Revised rule 15(b)(2) clarifies that a party seeking an extension of time from the presiding justice must proceed by application under rule 43 (see also rules 45(c) and 45.5) rather than by motion under rule 41. The subdivision also provides that to support such a request the applicant must show good cause, *and either* that it has been unable for any reason to obtain an extension by stipulation (revised rule 15(b)(2)(A)) *or* that the parties have stipulated to the 60-day maximum but the applicant seeks a further extension (revised rule 15(b)(2)(B)). A party may comply with revised rule 15(b)(2)(A) by showing facts establishing that it would have been futile to seek an initial or a further stipulation from the opposing party. This is a substantive change adapted from rule 7(a) of the local rules of the Court of Appeal, First Appellate District, and is intended to reduce the burden on reviewing courts by encouraging parties to proceed by stipulation whenever possible.

(b) *Parties' right to self-executing stipulation for 60-day extension*. Existing rule 16(a) specifies the periods within which the parties are required to file their briefs, but then provided that "[b]y stipulation filed with the reviewing court the parties may extend each of such periods for not more than 60 days, and thereafter the time may be extended only by the Chief Justice or Presiding Justice, for good cause shown." The plain implication of the quoted provision, as recognized in widespread practice, is that the parties have the right to effectuate such extensions for up to 60 days on their own accord by filing such a stipulation in the reviewing court, and that the stipulation requires no action by the reviewing court to be effective. In addition, the existing rule does not contemplate the reviewing court's exercising discretion over the length of a stipulated extension for the first 60 days; on the contrary, any inference of such a discretion is

negated by the wording of the provision itself, which declares that "*the parties may extend* each of such periods" for up to 60 days and that it is only "thereafter" that a further extension will require action by the reviewing court. Revised rule 15(b)(1) continues these provisions in effect but clarifies their wording. It is therefore not a substantive change. Revised subdivision (b)(1) also makes it clear that the parties may file more than one self-executing stipulation to extend the briefing periods, provided the total of such extensions does not exceed 60 days.

(c) *No need for application for extension during rule 17 period.* Revised rule 15(b)(3) provides that a party need not apply for an extension of time if it can file its brief within the time prescribed by rule 17, and that the clerk must file a brief submitted within that time if it otherwise complies with these rules. This is a substantive change adapted from rule 7(a) of the local rules of the Court of Appeal, First Appellate District, and is intended to relieve the reviewing courts of the burden of considering unnecessary applications for extension.

14. Briefs in Appeals in Which a Party is Both an Appellant and a Respondent (revised rule 16)

(a) *Rule not limited to cross-appeals.* Revised rule 16 combines in one rule disparate provisions on the briefs in an appeal in which any party is both an appellant and a respondent. The relevant existing rules apply only when a cross-appeal is taken under rule 3 (see existing rules 14(d), 16(a)), but revised rule 16 applies more broadly. It includes all cases in which opposing parties both appeal from the judgment, and all cases in which one party appeals from the judgment and another party appeals from any appealable order arising from or related to the judgment. This change is substantive only to the extent the revised wording is more inclusive. Its purpose is to provide, in all such appeals, a single unified procedure for resolving uncertainties as to the order in which the parties must file their briefs.

(b) *Initial burden on parties to devise briefing sequence.* Revised rule 16(a) implements the above-stated purpose by providing a procedure for determining both the briefing sequence and the briefing schedule—i.e., the periods of time (e.g., 30 days or 70 days, etc.) within which the briefs must be filed. This substantive change places the burden on the parties in the first instance to propose a briefing sequence, jointly if possible but separately if not. The purpose of this requirement is to assist the reviewing court by giving it the benefit of the parties' views on what is the most efficient briefing sequence in the circumstances of the case. Then, revised rule 16(a)(2) prescribes the role of the reviewing court: After considering

the parties' proposal, the court will decide on the briefing sequence, prescribe the briefing periods, and notify the parties of both. The reviewing court, of course, may thereafter modify its order just as it may in a single-appeal case. Extensions of time are governed by revised rule 15(b).

(c) *Combined brief required.* Revised rule 16(b)(1) makes mandatory what is permissive under existing rule 14(d), by providing that a party appearing as both an appellant and a respondent must combine its respondent's brief with its appellant's opening brief or its reply brief, if any, whichever is appropriate under the briefing sequence the reviewing court orders. This is a substantive change intended to promote consistency in briefing and to facilitate the reviewing court's use of the briefs.

15. Failure to File Brief (revised rule 17)

(a) *Grace period for cross-respondent's combined brief.* In order to eliminate redundancy, subdivisions (a), (c), and (d) of revised rule 17 combine and restate provisions of subdivisions (a) and (b) of the existing rule. The revised rule makes clear that it does not apply to an ordinary reply brief. However, revised rule 17(b) expressly provides a 15-day grace period for the "combined respondent's brief and appellant's reply brief" filed by a party who is both an appellant and a respondent under revised rule 16.

(b) *No need for application for extension during rule 17 period.* As noted above, a party who fails to timely file a required brief need not make a formal application to permit a late filing (e.g., under rule 45(e)) during the 15-day grace period; it is sufficient to file the brief within the period specified in the notice under rule 17(a). (See revised rule 15(b)(3).) However, under revised rule 17(d), a party may file a rule 43 application for an extension of time beyond the grace period, "for good cause." In conformity with current practice, the revised subdivision also clarifies that if a brief is not filed within such an extension granted by the court, the court may impose sanctions without further notice.

(c) *No motion to dismiss for untimeliness during rule 17 grace period.* Existing rule 17(a) authorizes the respondent to move to dismiss if "the appeal is not dismissed on the court's own motion . . . ." The revised rule deletes this provision for two reasons. First, the purpose of rule 17 is to give appellants an incentive to complete and file opening briefs within the 15-day grace period; it defeats that purpose to require an appellant to take time during the same period to oppose a respondent's motion to dismiss the appeal on the same ground of tardiness. Second, to require the reviewing court to entertain such a motion is inconsistent with the court's discretion to dismiss under rule 17(c) and hence unnecessarily burdens the court.

16. Transmittal of Exhibits (revised rule 18)

(a) *Early request for transmittal.* Under existing rule 10(d), parties wanting original exhibits transmitted to the reviewing court cannot request their transmittal until the reviewing court sends formal notice that the appeal has been set for hearing—usually a date no more than 30 days before oral argument. Revised rule 18(a)(1) allows parties to request transmittal of the exhibits as soon as the last respondent's brief is filed or, if no such brief is filed, the last day on which the brief could have been filed under rule 17. This substantive change is intended to increase the likelihood that, when the reviewing court begins its work on the appeal, it will have before it the exhibits the parties believe are necessary to support their positions.

(b) *Requirement to serve reviewing court with notice of request.* Revised rule 18(a)(3) requires any party filing a notice designating exhibits to serve a copy of the notice on the reviewing court. This change is intended to inform the reviewing court as soon as possible of the exhibits that will be transmitted to the court unless it orders otherwise.

(c) *Procedure when superior court has returned exhibits to parties.* Revised rule 18(b)(2) provides a procedure by which parties send designated exhibits directly to the reviewing court in cases in which the superior court has returned the exhibits to the parties under Code of Civil Procedure section 1952 or otherwise. This is a substantive change that is intended to fill a gap in the existing rule. (See also revised rule 5(a)(5).)

(d) *Procedure for later transmittal.* Revised rule 18(c) addresses the situation in which the need for a party to designate a certain exhibit does not arise until after the period specified in subdivision (a) has expired—for example, when the appellant makes a point in its reply brief that the respondent reasonably believes justifies the reviewing court's consideration of an exhibit it has not previously designated. In that event, revised rule 18(c) authorizes the party to apply to the reviewing court for permission to send the exhibit on a showing of good cause.

Alternative Actions Considered

As this project began to unfold, the committee realized that the rules on appeal contained many inconsistent, ambiguous, obsolete, and redundant provisions that were difficult to understand and follow. After the first draft was circulated, the rules were extensively revised in response to the comments of various interested parties. After the second circulation, the task force and committee again carefully evaluated every comment and made additional changes. In short, although no alternatives to the project as a whole were considered, a broad range of alternatives was examined and weighed for every provision in rules 1–18, and each of the provisions that appears in this proposal was thoroughly vetted and consciously chosen during the

revision process. Nothing short of such a complete revision would have been adequate to the task of removing the many layers of detritus that have accumulated in the rules on appeal since they were first adopted in 1943.

Comments From Interested Parties

The Appellate Advisory Committee first circulated drafts of these rules for public comment from December 1998 to February 1999 (revised rules 1–4 and 5.2–12) and from October through December 1999 (revised rules 4.5, 5, 5.1, and 13–18). The proposed rules were, at that time, mailed to about 600 individuals and groups. The task force carefully considered each of the comments received and made numerous changes to that version of the revised rules. A second circulation commenced on August 28, 2000, and continued until October 31, 2000. Again, the task force painstakingly reviewed each comment and made numerous additional revisions in response. At a meeting on May 3, 2001, the Appellate Advisory Committee carefully reviewed each of the revised rules and proposed responses to the public comments, recommended various additional changes to the rules text and, with those amendments, endorsed the proposal prepared by the task force.

Extensive, detailed comments were received from associate justices of the Courts of Appeal; judicial staff attorneys; clerks from the superior courts and the Court of Appeal, and their associations; court reporters and their associations; local bar associations; and numerous appellate specialists and other practitioners. A significant proportion of the comments received were highly favorable and supportive of the revision project. The proposal was, however, revised in numerous respects in response to concerns raised by the many individuals and groups that submitted comments. A comprehensive chart of comments received, and the committee's responses, accompanies this report at pages 160–223. Of the hundreds of comments received, the following are the most significant.

Comments from appellate court justices

The Second District Court of Appeal Rules Committee objected that no revised rules should be adopted until all the appellate rules (rules 1–80) have been revised. Because the revised rules are significantly clearer, more complete, and easier to use than the existing rules, however, the Appellate Advisory Committee believes the bench and bar should have the benefit of the revised rules as soon as reasonably possible after they are approved. The revision is therefore proceeding by installments, each installment containing rules on related topics. Coordination between revised rules and rules not yet revised is being managed through disposition tables and other editorial techniques. (See Appendixes B and C.) Any necessary reorganization and renumbering after the final installment is adopted will be undertaken at that time.

The Second District Rules Committee also raised the general objection that the revised rules contained too many "substantive" changes. The Appellate Advisory

Committee believes that this concern arose in large part because of the decision to provide detailed Advisory Committee Comments to trace the origins of each subdivision in the revised rules, and to explain the addition of new provisions and the deletion of old provisions. In particular, to help users identify the differences between the revised and the existing rules, the Advisory Committee Comments use the label "substantive" in a very broad sense, applying it not only to the relatively few changes that are intended solely to improve the appellate process, but also to the much greater number of provisions that simply fill unintended gaps in the coverage of the existing rules, resolve ambiguities in those rules, or conform older rules to current statutory and case law, practice, and technology.

It was not, however, the intent of the committee to make any major changes in the basic policies underlying the existing appellate rules. Accordingly, and in response to the comment of the Second District Rules Committee, all proposed "substantive" changes that drew negative comments from the public or court personnel were carefully reevaluated after the second circulation and, as a result, many of them were withdrawn. Of those substantive changes that remain in the proposal, the reasons for their retention are explained in the Advisory Committee Comments and in the committee's responses to the public comments.

Comments from court personnel

A large number of comments were submitted by court employees who process appeals and facilitate the record preparation and briefing stages of the proceedings. Of particular concern to the clerks of the Courts of Appeal were proposed changes in provisions concerning the wording of default notices. For example, the committee accepted the suggestion of the clerk of the First Appellate District to change the word "may" to "will" in the provisions of revised rule 1(c)(2) and (3) that require the clerk to notify the appellant of the possibility of dismissal for failure to pay the filing fee, make the deposit, or apply for a waiver. Although technically inaccurate, the committee agreed that appellants should be advised in the strongest possible terms of the serious consequences —i.e., that the appeal "will be dismissed"—that might result from failure to comply with rule 1(b). (See also revised rule 8(a), regarding failure to procure the record.)

However, the same commentator's suggestion to change "may" to "will" in rule 1(c)(5) was not accepted. After careful consideration, the committee concluded that this provision informs appellants of the reviewing court's undoubted discretion to dismiss the appeal for failure to comply with rule 1(b) after it has given notice of default, as well as its discretion to vacate such a dismissal for good cause. Providing the parties with this accurate information does not undermine the seriousness of noncompliance. (See also revised rule 8(b), regarding the reviewing court's discretion to vacate a dismissal and provide relief from default.)

The appellate court clerks also objected to the proposed deletion of language in existing rule 10(c) regarding a respondent's motion for sanctions against an appellant who fails to perform any act necessary to procure the record on appeal. It was never the intention of the committee to preclude such a motion in appropriate circumstances; rather, the committee believed such motions were rendered obsolete by the notice-of-default procedure established by rule 8(a). As a precaution, however, and in response to the clerks' comments, a new subdivision (c) was added to revised rule 8 to authorize a motion for sanctions in the reviewing court if the superior court clerk fails to promptly give notice as required by subdivision (a); but revised rule 8(c) further provides that the motion must be denied if the defaulting party cures the default within 15 days after the motion is served.

The clerks of the First, Second, and Third Appellate Districts also voiced concerned about the committee's initial proposal for rule 15(a)(1), under which the time to file the appellant's opening brief was to be triggered by the date of mailing of a notice that the record has been filed. The clerks urged retention of the terms of existing rule 16(a), under which the time to file the appellant's opening brief begins running from the date the record is filed. The clerks argued that the current notice provides accurate and certain information with which the parties can calculate the brief's due date, that having to reprogram the courts' computerized case management system "could be problematic and a resource waste," and that other due dates—for subsequent briefs, petitions for rehearing, and remittiturs—would be affected if calendared from the issuance of a notice.

Although the current procedure may provide accurate notice that the briefing period has begun, it does not always provide *timely* notice if the notice is sent later than the day on which the record is filed. Thus, the committee's initial proposal was designed to ensure that the parties *timely* know when the appellant's opening brief is due. Nevertheless, because of logistical and other concerns raised by the appellate court clerks, the committee decided to retain the provisions of the existing rule on the time for filing briefs, albeit stated more clearly and in plain English. (See revised rule 15(a).)

Another objection raised by two appellate court clerks and by the Second District Rules Committee concerns revised rule 15(b)(1), which makes explicit what existing rule 16(a)—by its plain language—clearly indicates: that the Court of Appeal may not shorten a stipulated extension of time to file a party's brief. As the Advisory Committee Comment explains, existing rule 16(a) specifies the periods within which the parties are required to file their briefs, but then provides that "By stipulation filed with the reviewing court the parties may extend each of such periods for not more than 60 days, and thereafter the time may be extended only by the Chief Justice or Presiding Justice, for good cause shown." The committee believes the plain implication of the quoted provision, as recognized in widespread practice, is that the parties have the right to effectuate such extensions for up to 60 days on their own

accord by filing such a stipulation in the reviewing court, and that the stipulation requires no action by the reviewing court to be effective. In addition, the existing rule does not contemplate the reviewing court's exercising discretion over the length of a stipulated extension for the first 60 days; on the contrary, any inference of such discretion is negated by the wording of the provision itself, which declares that "*the parties may extend* each of such periods" for up to 60 days and that it is only "thereafter" that a further extension requires action by the reviewing court. Revised rule 15(b)(1) continues these provisions in effect but clarifies their wording. It is therefore not a substantive change.

The appellate court clerks also objected to the revised rules providing for earlier transmittal of exhibits to the Court of Appeal. (See revised rule 18(a)(1).) The appellate clerks claimed this new provision would create storage problems for reviewing courts, and asserted that the court would be required to keep the exhibits for a period of time during which the exhibits are not needed, possibly several months before the case is decided. The committee disagreed. The earlier designation is intended to maximize the chance that the reviewing court will receive exhibits in time for meaningful review, i.e., before the court begins to work on the case. This is especially important in courts that are current, that is, those that begin work on appeals immediately after (or in some cases before) they become fully briefed. Revised rule 18 assumes, however, that parties will make judicious use of the designation procedure, requesting only those *original* exhibits required for review. The rule also provides for prompt return of designated exhibits upon issuance of the remittitur.

Comments from appellate practitioners

Many of the comments received from appellate attorneys were favorable. For example, practitioners uniformly praised revised rule 14(c)(1), which governs the maximum permissible length of a brief. The revised rule was derived from the federal procedure for measuring the length of a brief produced on a computer by the number of words in the brief. (FRAP 32(a)(7).) Like FRAP 32(a)(7)(B)(i), revised rule 14(c)(1) imposes a limit of 14,000 words if the brief is produced on a computer. The practitioner commentators were also pleased by the clarification provided as to revised rule 15(b) regarding the reviewing court's obligation to honor the parties' stipulations for extension of the time to file their briefs, and by a new provision (revised rule 14(d)) that specifically allows a party filing a brief to attach copies of exhibits or other materials. One certified appellate specialist responded with great enthusiasm to the provisions in revised rule 18 requiring earlier transmittal of exhibits to the reviewing court.

Several attorneys whose practice is focused on criminal appeals expressed concern about how the revised rules would apply in criminal cases. One commentator suggested that all the civil rules that apply to criminal appeals should be repeated in the portion of the rules governing criminal appeals and, if not, each revised rule

should state whether it applies only to civil appeals or also to criminal appeals, with appropriate cross-references to related provisions in the criminal rules. In response, the committee decided that Part I as revised will be entitled "Taking Civil Appeals." Part V (beginning with rule 30) will be entitled "Criminal Appeals." The issue of cross-referencing or repeating portions of the civil rules will be considered when the criminal rules are revised.

Comments from court reporters
The committee received voluminous comments from individual court reporters and court reporters' associations, primarily regarding revised rules 4 and 9. In addition, after the second round of public comment was completed, representatives of the California Court Reporters Association (CCRA) requested—and were granted—an opportunity to meet face to face with committee staff to discuss their concerns, as official court reporters, about the rules governing preparation of the transcript on appeal. A meeting for that purpose was held in late April 2001.

Each of the court reporters' comments was carefully considered. In most instances, their suggestions were accepted and the proposed rules were modified accordingly. For example, in response to the court reporters' comments, revised rule 4(a)(4) requires the parties to designate proceedings to be transcribed by date rather than by type of proceeding—an improvement over the existing rule. Also, in response to a concern about the 10-day period initially proposed for informing the clerk that the deposit is inadequate after the clerk sends the reporter a notice to prepare the transcript, the time period was enlarged to 15 days from the mailing of that notice. (See revised rule 4(b)(2).)

In addition, the committee deleted a requirement in existing rule 4(d) under which the reporter must specify which party requested a jury instruction not submitted in writing, as well as any number given it. The committee agreed that the existing requirement is too burdensome, that the reporter might not know or be able to determine which party requested an extemporaneous instruction (or whether the court gave it sua sponte), and that it should be the responsibility of the parties to make a clear record of this information.

To the extent the court reporters' suggestions were rejected by the committee, it was because the committee believed that legal considerations and the interests of other stakeholders outweighed the concerns expressed by the court reporters. For example, a suggestion that parties be required to make a "full-day" deposit of $650 for each designated proceeding, regardless of length, was rejected as unduly burdensome on parties in a large percentage of civil appeals who know with a high degree of certainty that the proceedings lasted less than three hours (e.g., in appeals taken from a summary judgment or the sustaining of a demurrer without leave to amend). On that basis, the committee retained the "half-day" deposit of $325 for proceedings of three hours or less. (See revised rule 4(b)(1)(B).)

Perhaps the most controversial of the amendments proposed by the committee were the provisions of revised rules 4(b)(3), 4(d)(3), and 9(d) that circulated for comment in August 2000.. These provisions were designed to eliminate ambiguity in existing rules 4(c) and 9(d) regarding the use of "substituted transcripts." That is, the existing rules allow parties to substitute "dailies" or other partial transcripts prepared during the course of litigation in place of a deposit or waiver from the reporter, but—because existing rule 9(d) is written in the passive voice—they do not clearly specify who is responsible for producing indexes and incorporating substituted transcripts into a properly bound, consecutively paginated record of oral proceedings.

The version of revised rules 4(b)(3), 4(d)(3), and 9(d) that circulated for comment in August 2000 would have placed that responsibility on the reporter. These provisions drew strong positive comments from appellate practitioners, who believe that the ambiguity in the existing rules has caused confusion and has, in many instances, resulted in their clients having to pay court reporters "hourly" fees that are not authorized by statute (see Gov. Code, § 69947) or, in some cases, to pay twice for the same transcript.[9] However, these provisions remain objectionable to the CCRA and other court reporters who commented on them, primarily because the revised rules as initially proposed by the committee did not provide a mechanism by which court reporters might be compensated for the services required by revised rule 9(d).

Some of the court reporters who commented take the position that, under existing rules 4(c) and 9(d), they have no duty to perform any of the functions required by rule 9(d). They believe that, if rule 9(d) is revised to expressly require them to perform the services specified in that subdivision, they will no longer be free to decline to provide those services for parties who are unwilling to negotiate and pay hourly fees.

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[9] An informal survey conducted by committee staff after the second round of comments revealed that, whatever its origins, there is a high degree of confusion and uncertainty under the existing rules regarding who is responsible for repaginating dailies and incorporating them into the record on appeal with proper indexes, covers and bindings, as well as how—if at all—such services are to be compensated. Based on information obtained from the court reporters and court managers consulted in this survey, it appears there is a wide array of practices for accomplishing these required tasks. Some court reporters provide waivers and accept the responsibility for repaginating, indexing, covering, and binding "dailies" and other partial transcripts—without additional compensation—as part of the larger project of preparing the record on appeal. Some reporters provide indexes and covers at the usual per-page rates prescribed by statute (see Gov. Code, § 69950). Some reporters refuse to provide any of the required services unless the parties agree to pay for them at a "negotiated" hourly rate. If the litigants and court reporters do not agree on such an arrangement, the litigants either attempt to perform the services required by existing rule 9(d) themselves, or must resort to private deposition services to obtain those services In some counties, the superior court does not allow the parties to submit dailies as part of a transcript on appeal—despite provisions in existing rule 4(c) and 9(d) which give parties that right—and requires them to purchase another copy (at a copy rate) of the transcript of oral proceedings that have already been transcribed.

There is no express statutory authority for court reporters to charge an hourly rate for the services required by rule 9(d) when litigants use substituted transcripts as part of the record on appeal. (See Gov. Code, § 69947 et seq.) Although all dailies and many of the other partial transcripts prepared during the course of litigation are prepared at the premium rate provided by Government Code section 69951, the court reporters believe that the fees provided by statute are inadequate when the transcript includes dailies or other previously prepared portions that must be repaginated, indexed, and otherwise integrated with the portions of the proceedings designated for the first time on appeal.

By the end of the comment process, the committee was convinced of the need to clarify the rules governing the use of substituted transcripts as part of the record on appeal. The committee concluded that its initial proposal for revised rules 4 and 9—with the addition of a new subdivision (b)(4) under which the court reporter could apply for an increased deposit to cover any fees to which he or she might be entitled for performing the services required under rule 9(d)—would strike a fair balance between the competing interests.[10] The committee's proposal would also provide a clear set of procedures for ensuring timely preparation of integrated, consecutively paginated, and properly indexed transcripts to facilitate review by the appellate courts.

However, when the controversy over substituted transcripts was brought to the attention of the Rules and Projects Committee (RUPRO), alternative methods of resolving the dispute were discussed with that body. As a result of those discussions, RUPRO decided to recommend that the council adopt the Appellate Advisory Committee's proposal for rules 1–18, but with stylistically compatible language in revised rules 4(b) and 9(d) that temporarily maintains the status quo with respect to the procedures for handling dailies and other substituted transcripts. RUPRO further recommended that the Appellate Advisory Committee's proposal for rules 4(b)(3) and (4), 4(d)(3), and 9(d), be referred to the Court Reporters Subcommittee of the Court Executives Advisory Committee for further study, with directions to report its recommendation back to the Appellate Advisory Committee for further action. The Court Reporters Subcommittee is an appropriate forum for such a study because its members will be addressing a number of other issues related to the rights and responsibilities of court reporters in consultation with representatives of the court reporters associations. Upon further reflection after the RUPRO meeting, the Appellate Advisory Committee agreed to reconsider its initial recommendation on revised rules 4 and 9, and to join RUPRO in recommending these interim measures.

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[10] Any attempt to address the court reporters' concerns about inadequacy of the statutory fee schedule would be outside the scope of the revision project, and beyond the council's rule-making authority (Gov. Code, § 66947, see also *California Court Reporters Association v Judicial Council* (1995) 39 Cal.App 4th 15; *California Court Reporters Association v Judicial Council* (1997) 59 Cal.App 4th 959.)

The text of revised rules 4 and 9, containing language approved by both the Appellate Advisory Committee and RUPRO to maintain the status quo regarding substituted transcripts pending further study by the Court Reporters Subcommittee, is attached at pages 100–108 and 130–132.

Implementation Requirements and Costs

The clerk's office in each of the six appellate districts will need to review the body of appellate rules as finally adopted and make necessary revisions in some of their filing and calendaring procedures. Various standard operating procedures and forms used to notify the parties of the steps required to perfect the appeal might also have to be adjusted to conform to the new provisions. Costs to the Courts of Appeal and the superior courts should otherwise be minimal.

Court reporters will also need to study the revised rules carefully for changes in the method of calculating certain deadlines. In many respects, the revised rules allow for greater certainty or a small amount of additional time to complete the process of record preparation, or both.

WORD & LENGTH LIMITS IN CIVIL APPEALS (as of 12/10/18)

STATE INTERMEDIATE COURTS

***States permitting replies exceeding half the length of principal briefs**

	Principal Briefs	Reply Briefs
Alabama	70 pages	35 pages
Alaska	50 pages	20 pages
Arizona	14,000	7,000
Arkansas	30 pages (argument section)	15 pages
California*	**14,000**	**14,000**
Colorado*	**9,500**	**5,700**
Connecticut	35 pages	15 pages
Delaware	(no intermediate court)	
Florida	50 pages	15 pages
Georgia	13,000	Half this length
Hawaii	35 pages	15 pages
Idaho*	**50 pages**	**50 pages**
Illinois	15,000	7,000
Indiana	14,000	7,000
Iowa	14,000	Half this length
Kansas	50 pages	15 pages
Kentucky	25 pages	5 pages
Louisiana	31 pages	13 pages
Maine	(no intermediate court)	
Maryland	9,100	3,900
Massachusetts	11,000 (eff. 3/1/19)	4,500
Michigan	50 pages	10 pages
Minnesota	14,000	7,000

Mississippi	50 pages	25 pages
Missouri	31,000 (AOB)/27,900 (RB)	7,750
Montana	(no intermediate court)	
Nebraska	Combined 50 pages per side	
Nevada	14,000	Half this length
New Hampshire	(no intermediate court)	
New Jersey	65 pages	20 pages
New Mexico	11,000	4,400
New York	14,000	7,000
North Carolina	8,750	3,750
North Dakota	(no intermediate court)	
Ohio	35 pages	15 pages
Oklahoma*	**30 pages**	**30 pages**
Oregon	10,000	3,300
Pennsylvania	14,000	7,000
Rhode Island	(no intermediate court)	
South Carolina	50 pages	25 pages
South Dakota	(no intermediate court)	
Tennessee	50 pages	25 pages
Texas	15,000	7,500
Utah	14,000	7,000
Vermont	(no intermediate court)	
Virginia	8,750	2,625
Washington	50 pages	25 pages
West Virginia	(no intermediate court)	
Wisconsin	11,000	3,000
Wyoming	(no intermediate court)	