JUDICIAL COUNCIL
OF CALIFORNIA

APPELLATE ADVISORY
COMMITTEE

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APPELLATE ADVISORY COMMITTEE

MINUTES OF OPEN MEETING

June 1, 2017
12:00 p.m.
Teleconference

Advisory Body Members Present:	Hon. Louis R. Mauro, chair, Hon. Kathleen M. Banke, Mr. Kevin K. Green, Mr. Jonathan D. Grossman, Hon. Adrienne Grover, Hon. Richard D. Huffman, Mr. Daniel M. Kolkey, Hon. Leondra R. Kruger, Mr. Joseph A. Lane, Mr. Jorge Navarrete, Hon. Stephen D. Schuett, Ms. MC Sungaila, Hon. Thomas L. Willhite, Jr.
Advisory Body Members Absent:	Ms. Laura Arnold, Hon. Kent M. Kellegrew, Mr. Jeffrey Laurence, Ms. Mary K. McComb, Ms. Sheran L. Morton, Hon. M. Bruce Smith, Ms. Kimberly A. Stewart
Others Present:	Ms. Heather Anderson, Mr. Patrick O'Donnell, Mr. Dan Pone, Ms. Christy Simons, Hon. Elizabeth W. Johnson

OPEN MEETING

Call to Order and Roll Call
The chair called the meeting to order at 12:00 p.m., and roll was called.

Approval of Minutes
The advisory body reviewed and approved the minutes of the January 30, 2017, Appellate Advisory Committee meeting.

Chair's Report
Justice Mauro provided an update from JATS on e-filing and a document management system. The Supreme Court is going live with e-filing in July; it will be optional until September 1, and then mandatory. The Second District Court of Appeal is also going to e-filing. A new document management system for the appellate courts will be piloted in the Third District Court of Appeal and the Fifth District Court of Appeal. OnBase will replace ACCMS as the document repository, and additional functionality will be added over the next couple of years.

Justice Mauro announced a new project led by the Information Technology Advisory Committee to develop standards for online access to court records. Justice Banke volunteered to assist.

Patrick O'Donnell provided information on a privacy resource guide that is being developed to provide guidance on rules and standards relating to privacy.

DISCUSSION AND ACTION ITEMS (ITEMS A–H)

Item A

Format of electronic reporter's transcripts

The committee reviewed public comments on proposed amendments to rule 8.144 to include additional provisions regarding the format of electronic reporter's transcripts. AB 1450 amending Code of Civil Procedure section 271 is pending; the rule amendments cannot be finalized until the bill is signed. There are strong objections in the comments, but those groups are willing to discuss. A key concern is placing responsibility for a master index on the lead court reporter; practices are not consistent across all 58 counties. Justice Mauro will meet with stakeholders.

Action: The committee approved the rules subcommittee's recommendation that action be delayed on this proposal.

Item B

Legislative Update (Information only)

Dan Pone provided information about legislative activities of interest to the committee including the Governor's May budget revisions.

Action: No action required

Item C

Verification of Writ Petitions

The committee reviewed the public comments on the proposal circulated for comment and the rules subcommittee's recommendations for responding to these comments.

Action: The committee voted to recommend adoption of this proposal as circulated, as recommended by the rules subcommittee.

Item D

Settled Statements

The committee reviewed the public comments on the proposal circulated for comment and the rules subcommittee's recommendations for responding to these comments. The committee considered input from the Family and Juvenile Law Advisory Committee (Fam/Juv), which recommended a separate settled statement form for family law and probate proceedings. The committee also considered whether to delay recommending adoption of all or any part of the proposal to allow for development of other forms and plain language review. Committee members expressed concern with delaying the guidance on settled statements.

Action: The committee voted to recommend adoption of this proposal as recommended by the rules subcommittee.

Item E

Record on Appeal in Juvenile Case

The committee reviewed the public comments on proposed amendments to Welfare and Institutions Code section 827 and the rules subcommittee's recommendations for responding to the comments. The committee also considered input from the Family and Juvenile Law Advisory Committee members who had worked on the invitation to comment on the rules subcommittee's suggested revisions to the proposal. The Fam/Juv members expressed concern with some of the proposed language identifying the records an individual who is a party to an appeal or writ proceeding would be authorized to inspect and copy. Staff noted that there was time to bring the working group members back together to consider the issues and provide the committee with a recommendation.

Action: The committee approved having the working group of AAC and Fam/Juv members meet to discuss the issue and hold a conference call of the AAC to consider the working group's recommendation.

Item F

Designation of the Record

The committee reviewed the public comments on the proposal that circulated for comment and the appellate division subcommittee's proposed responses to the comments. The responses included the subcommittee's recommendation that form APP-103 be revised to clarify the deposit options for a transcript of an electronic recording.

Action: The committee voted to recommend adoption of the proposal as recommended by the appellate division subcommittee.

Item G

Service of Briefs

The committee reviewed the public comments on the proposal that circulated for comment and the appellate division subcommittee's proposed responses to the comments.

Action: The committee voted to recommend adoption of the proposal as recommended by the appellate division subcommittee.

Item H

Payment for Partially Prepared Transcripts

The committee reviewed the public comments on the proposal that circulated for comment and the appellate division subcommittee's proposed responses to the comments. The committee

discussed and declined to accept the suggestion to require the court reporter to provide any partial transcript to the appellant.

Action: The committee voted to recommend adoption of the proposal as recommended by the appellate division subcommittee.

ADJOURNMENT

There being no further business, the meeting was adjourned at 1:10 p.m.

Approved by the advisory body on enter date.

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Minutes of Action by E-mail Between Meetings for Appellate Advisory Committee

July 31, 2017

Notice

On July 27, 2017, in accordance with California Rules of Court, rule 10.75(o)(1)(A), public notice was given that the Appellate Advisory Committee proposed to act by email between meetings on July 31, 2017.

E-mail Proposal

At its June 1 meeting, the Appellate Advisory Committee considered the public comments on the committee's proposal to amend Welfare and Institutions Code section 827. At that time, the Rules Subcommittee and the Family and Juvenile Law Advisory Committee members who had provided input on the proposal before it circulated had made different recommendations about how to respond to the public comments regarding defining those records from the juvenile court file that a participant in an appellate proceeding could access without a court order. The committee decided that it needed additional input from the Family and Juvenile Law Advisory Committee members and therefore referred this issue back to the ad hoc joint working group of Appellate Advisory Committee and Family and Juvenile Law Advisory Committee members who had worked on the proposal before it circulated. That group met and ultimately recommended moving forward with the language that was in the proposal as circulated for public comment.

Action Taken

The committee voted to recommend approval of the proposed amendment to Welfare and Institutions Code section 827 as previously approved by the committee for circulation and as ultimately recommended by the ad hoc joint working group of the Appellate Advisory Committee and the Family and Juvenile Law Advisory Committee.

Approved by the advisory body on enter date.

Posted on: **Month/Day/Year**

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APPELLATE ADVISORY COMMITTEE

MINUTES OF OPEN MEETING

July 17, 2018
12:00 p.m.
Teleconference

Advisory Body Members Present:	Hon. Louis R. Mauro, Chair; Hon. Kathleen M. Banke, Vice-chair; Ms. Laura Arnold; Mr. Kevin K. Green; Mr. Jonathan D. Grossman; Hon. Adrienne M. Grover; Hon. Kent M. Kellegrew; Mr. Daniel M. Kolkey; Hon. Leondra R. Kruger; Mr. Jeffrey Laurence; Ms. Heather J. MacKay; Ms. Mary K. McComb; Mr. Jorge Navarrete; Ms. Beth Robbins; Hon. Laurence D. Rubin; Mr. Timothy M. Schooley; Hon. Stephen D. Schuett; Hon. M. Bruce Smith
Advisory Body Members Absent:	Hon. Richard D. Huffman; Ms. Sheran L. Morton; Ms. Mary-Christine Sungaila
Others Present:	Ms. Christy Simons; Ms. Sarah Abbott; Ms. Ingrid Leverett; Ms. Gabrielle Selden; Mr. Dan Pone, Ms. Adetunji Olude

OPEN MEETING

Call to Order and Roll Call
The chair called the meeting to order at 12:00 p.m., and roll was taken.

Approval of Minutes
The advisory body reviewed and approved the minutes of the February 27, 2018, and the March 5, 2018, Appellate Advisory Committee meetings.

DISCUSSION AND ACTION ITEMS (ITEMS 1–7)

Item 1
Legislative Update
Mr. Pone provided an update on legislative matters of interest to the committee, including information on the judicial branch budget and three pending bills that would require amending the rules of court to provide for expedited review of challenges under CEQA to three development projects.

Action: No action required; information only

Item 2

Update from the Privacy Subcommittee.

Justice Banke provided an update on the subcommittee's activities, including an upcoming meeting to review the pilot program and results thus far and to discuss other potential projects to raise awareness of issues regarding individual privacy concerns.

Action: No action required; information only

Item 3

Rules Modernization: Sealed and Confidential Records

The committee reviewed the comments on the proposal that circulated and the draft responses to the comments recommended by JATS, including the addition of an advisory committee comment. The committee discussed the proposed advisory committee comment and agreed to revise some of its language.

Action: The committee voted to recommend adoption of the proposal as circulated with the addition of the revised advisory committee comment.

Item 4

Finality in Appellate Division Matters

The committee reviewed the public comments on the proposal that circulated and the draft responses to comments recommended by the appellate division subcommittee. The committee discussed the concern expressed by a superior court that the date a decision is "sent" is not sufficiently clear for purposes of determining when that decision is final. The committee discussed several options, including changing the word "sent" to "served," but had reservations about changing the terminology in a rule and causing unanticipated problems/unintended consequences.

Action: The committee voted to change "sent" to "served" tentatively, with directions to staff to research this change, and authorized committee leadership to decide, based on the research, whether to make the change.

Note: Committee leadership decided the change should not be made.

Item 5

Appellate Division Forms

The committee reviewed the public comments on the proposal that circulated and the draft responses to comments recommended by the appellate division subcommittee. The committee discussed proposed modifications recommended by the subcommittee in response to comments.

Action: The committee voted to recommend adoption of the proposal as modified.

Item 6

Settled Statement Forms

The committee reviewed public comments on the proposal that circulated and the rules subcommittee's recommended responses to the comments. The committee discussed a number of proposed modifications in response to comments and other modifications requested by the Family and Juvenile Law Advisory Committee.

Action: The committee voted to recommend adoption of the proposal as modified and authorized committee leadership to approve additional modifications to language in form APP-001-INFO.

Item 7

Liaison Reports

- Ms. Adetunji Olude, Center for Judicial Education and Research. Ms. Olude informed the committee that the education plan for 2018-2020 was approved by the Judicial Council. The plan includes education programs for appellate justices, attorneys, and staff, and appellate division judges and research attorneys. At the upcoming justices institute, topics include bail reform, Proposition 66, and sexual harassment prevention.
- Hon. Kent M. Kellegrew, Trial Court Presiding Judges Advisory Committee. Judge Kellegrew stated there was no report from TCPJAC.

Action: No action required; information only

ADJOURNMENT

There being no further business, the meeting was adjourned at 1:55 p.m.

Approved by the advisory body on enter date.

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APPELLATE ADVISORY COMMITTEE

MINUTES OF OPEN MEETING

September 11, 2018
3:00 PM
Teleconference

Advisory Body Members Present:	Hon. Louis R. Mauro, chair; Hon. Kathleen M. Banke, vice-chair; Mr. Kevin K. Green, Mr. Jonathan D. Grossman; Hon. Adrienne M. Grover; Mr. Daniel M. Kolkey; Mr. Jeffrey Laurence; Ms. Heather J. MacKay; Ms. Mary K. McComb; Mr. Jorge Navarrete; Ms. Beth Robbins; Hon. Laurence D. Rubin; Mr. Timothy M. Schooley; Hon. M. Bruce Smith
Advisory Body Members Absent:	Ms. Laura Arnold; Hon. Richard D. Huffman; Hon. Kent M. Kellegrew; Hon. Leondra R. Kruger; Ms. Sheran L. Morton; Hon. Stephen D. Schuett; Ms. Mary-Christine Sungaila
Others Present:	Ms. Christy Simons; Ms. Kristi Morioka; Ms. Deborah Morrison; Hon. Joan K. Irion; Ms. Milica Novakovic

OPEN MEETING

Call to Order and Roll Call
The chair called the meeting to order at 3:00, and took roll call.

Chair's Report
The chair thanked departing committee members Ms. Morton and Justice Huffman, and welcomed new members Justice Irion and Ms. Novakovic.

DISCUSSION AND ACTION ITEMS (ITEM 1)

Item 1

Review of potential items for inclusion on proposed annual agenda (Action Required)
The committee discussed the projects recommended by the subcommittees, including timeframes and priority levels. The committee also discussed the ad hoc privacy subcommittee's recommendation that it be converted to a standing subcommittee.

Action: The committee agreed on the projects to include in its proposed annual agenda. The committee also agreed to request that the Rules and Projects Committee approve converting the ad hoc privacy subcommittee to a standing subcommittee.

ADJOURNMENT

There being no further business, the meeting was adjourned at 4:04 PM.

Approved by the advisory body on enter date.

Item 01

Report will be provided orally at meeting.

Item 02

Report will be provided orally at meeting.

Item 03

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

MEMORANDUM

Date
January 31, 2019

To
Members of the Appellate Advisory Committee

From
Sarah Abbott,
Attorney, Legal Services

Subject
Proposed new rule governing formatting of filed documents in the appellate division

Action Requested
Please review for February 21 committee meeting

Deadline
February 21, 2019

Contact
Sarah Abbott
415-865-7687
sarah.abbott@jud.ca.gov

Introduction

Item 12 on the Appellate Advisory Committee's annual agenda this year is to consider whether to recommend amending the California Rules of Court[1] to resolve uncertainty and provide clarity regarding the proper formatting of documents filed in the appellate division of the superior courts. This is a priority 2(b) project with a proposed January 1, 2020 completion date. At its January 29, 2019 meeting, the Appellate Division Subcommittee reviewed a draft of a proposed new rule 8.815 that would govern the form of filed documents in the appellate division. The subcommittee recommends that the committee move forward with circulating this proposed new rule for public comment. Attached for the committee's review is a draft rule 8.815 that would govern the form of filed documents in the appellate division, as well as an invitation to comment addressing the proposed new rule.

Background

Proceedings in the appellate division of the superior courts are generally governed by rules 8.800 through 8.936. The appellate division rules contain specific requirements governing the format of

[1] All further references to "rule" or "rules" are to the California Rules of Court.

appellate division briefs for limited civil and misdemeanor appeals[2] and infraction appeals.[3] The appellate division rules also contain detailed formatting requirements for briefs to be filed in the Court of Appeal after an order of transfer from the appellate division.[4] However, while the existing appellate division rules set forth specific requirements regarding the service and filing, contents, envelope requirements, and disposition of applications an motions, they are *silent as to the required format of these and other documents filed in the appellate division*.[5] As discussed below, the suggestion that generated Item 12 on the committee's annual agenda was intended to provide clarity to litigants as to the proper formatting of applications, motions, and other documents filed in the appellate division.[6]

Generally, the trial court rules, rules 2.1 through 2.1100, "apply to all cases in the superior courts unless otherwise specified by a rule or statute."[7] Rules 2.100 through 2.118, included within the trial court rules, govern the "form and format of papers to be filed in the trial courts."[8] These formatting rules contain detailed requirements regarding, among other things, paper, font, margins, spacing, line and page numbering, headers and footers, first page formatting, binding, exhibits, and hole punching for trial court papers. Arguably, in the absence of any appellate division rule specifically governing the format of applications, motions, and other documents in that division, the trial court formatting rules should apply. However, this is unclear under the existing statutory scheme and appears to cause confusion for litigants.

Separately, appellate rules 8.40 and 8.204 govern the format of "documents filed in a reviewing court," which is defined to mean the Supreme Court and Court of Appeal and to exclude the appellate division of the superior courts.[9] Rule 8.40 (Form of filed documents) generally provides that such documents "may be either produced on a computer or typewriter and must

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[2] See rule 8.883 (detailing formatting requirements and page number limitations for limited civil and misdemeanor briefs).

[3] See rule 8.928 (detailing formatting requirements and page number limitations for infraction briefs).

[4] See rule 8.1012 (requiring that, except as otherwise provided, briefs following an order of transfer comply with the form and contents requirements of rule 8.204(a)(1), (b), and (d)).

[5] See rule 8.806 (Applications); 8.808 (Motions).

[6] The original suggestion was to amend existing rule 8.817 (which currently governs service and filing in the appellate division) to add a subsection (c) which would incorporate by reference either (1) the rules governing the format of papers filed in the trial courts, or (2) the rules governing the format of papers filed in the Court of Appeal, so that one or the other of these sets of formatting rules would expressly apply to applications and motions in the appellate division. However, as discussed below, the subcommittee instead recommends that a new rule 8.815 be adopted to govern the form of filed documents in the appellate division, and that the new rule incorporate by reference the formatting requirements for appellate division civil and misdemeanor briefs contained in rule 8.883, rather than the trial court or court of appeal formatting rules.

[7] See rule 2.2.

[8] See rule 2.100(b).

[9] See rule 8.10(6) ("'Reviewing court' means the Supreme Court or the Court of Appeal to which an appeal is taken, in which an original proceeding is begun, or to which an appeal or original proceeding is transferred."); rule 8.4 ("The rules in this division apply to: (1) Appeals from the superior courts, except appeals to the appellate divisions of the superior courts"). In direct contrast, the appellate division rules define "reviewing court" as "the appellate division of the superior court." Rule 8.803(21).

comply with the relevant provisions of rule 8.204(b)."[10] Rule 8.204(b) in turn contains detailed requirements regarding the form (including, among other things, paper, font, line and page numbering, margins, binding, and signatures) of briefs to be filed in civil appeals in the Court of Appeal. Although rule 8.204(b) is specific to civil briefs, it is incorporated by reference into rule 8.40 and thus is also applicable to other documents filed in the court of appeal more generally, including applications and motions.[11]

Although there are similarities among the rules governing the form of filed documents in the trial courts, the Court of Appeal, and for civil and misdemeanor briefs filed in the appellate division, there are also notable differences.[12] In the absence of specific guidance for formatting motions, applications, and other documents in the appellate division, litigants are left to format their submissions as best they can.

Draft Rule 8.815

The subcommittee recommends that the committee propose the adoption of a new rule—rule 8.815—specifically addressing the form of filed documents in the appellate division. This new appellate division rule would mirror rule 8.40(a), governing the form of filed documents in the Court of Appeal, and would provide that documents filed in the appellate division must comply with the relevant provisions of rule 8.883(c), which sets forth the formatting requirements for briefs in limited civil and misdemeanor cases in the appellate division.

Creating a parallel structure between the Court of Appeal and appellate division rules was a significant priority when the appellate division rules were repealed and replaced in full in 2008.[13] In the Court of Appeal, there is no rule expressly governing the proper format for applications, motions, or other documents. Instead, rule 8.40(a), which governs the form of filed documents,

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[10] Rule 8.40 also governs specified cover colors and certain information to be included on the cover page. See rule 8.40(b)–(c).

[11] Applications and motions filed in the Court of Appeal are governed by rules 8.50 and 8.54 respectively, but neither of these rules addresses the proper format for such documents.

[12] For example: 12-point font is used in trial courts (rule 2.104) while 13-point font is used in the Court of Appeal (rule 8.204(b)(4)) and for civil and misdemeanor briefs in the appellate division (rule 8.883(c)(4)); papers in the trial court must contain line numbers (rule 2.108) while Court of Appeal documents may not (rule 8.204(b)(5)) and rule 8.885(c) is silent as to line numbering of civil and misdemeanor briefs in the appellate division; and the requirements for the format of the first page of documents filed in the trial courts, appellate division, and Court of Appeal differ in numerous ways (compare rules 2.11, rules 8.40(b)–(c), 8.204(b)(10), 8.816(a), and 8.885(c)(8). Compare generally rules 2.102–2.118 to rule 8.204(b) and rule 8.885(c).

[13] See Judicial Council of Cal., Appellate Advisory Com. Rep., *Appellate Procedure: Rules and Forms for the Superior Court Appellate Divisions* (Feb. 6, 2008), p. 8. ("In developing its proposed revisions to the appellate division rules, the advisory committee [] took as its starting premise that the language of the Court of Appeal rules should be used as a model for revisions to equivalent provisions in the appellate division rules.") However, where appropriate to account for substantive differences between proceedings in the appellate division and in the Court of Appeal (including that appellate division matters are often "smaller' and involve unrepresented litigations) and to keep appellate division matters as simple as possible, not all existing appellate division rules mirror the corresponding rule governing the Court of Appeal. (*Ibid*.)

incorporates by reference the "relevant provisions" of the rule governing the form of civil briefs in the Court of Appeal, rule 8.204(b), and applies them generally to other documents. Adopting a new rule containing language that mirrors rule 8.40(a) and applies the relevant provisions of the appellate division rule governing the form of limited civil and misdemeanor briefs, rule 8.883(c), to other filed documents would maintain this parallel structure.[14] This would be consistent with the overall structure of the appellate division rules and the intent that they mirror the Court of Appeal rules where appropriate. In addition, since litigants in the appellate division will already be familiar with appellate division rules, and those appealing limited civil and misdemeanor cases will need to comply with the requirements of rule 8.883 in preparing their briefs, the subcommittee believes that this approach will provide the most clarity for appellate division litigants. The new rule would also be consistent with the rules governing infraction cases in the appellate division, as rules 8.880-8.890 generally govern briefs, hearing, and decision in such cases.[15]

Attached for the committee's consideration is draft rule 8.815 for inclusion in chapter 1 (General Rules Applicable to Appellate Division Proceedings) of division 2 (Rules Relating to the Superior Court Appellate Division) of title 8 (Appellate Rules) of the California Rules of Court. The rule would provide:

> **Rule 8.815. Form of filed documents**
>
> **Except as these rules provide otherwise, documents filed in the appellate division may be either produced on a computer or typewritten and must comply with the relevant provisions of rule 8.883(c).**

Alternatives Considered

As an alternative to creating a new rule, the subcommittee also considered the original suggestion, made by Jonathan Grossman of the Sixth District Appellate Program and a current member of this committee, that rule 8.817 (which governs service and filing in the appellate division) be amended by adding a subsection (c) to address the form of filed documents.

Though one member of the subcommittee thought it might provide more clarity to unrepresented litigants to address formatting in the same rule with service and filing, rule 8.817 currently governs only the service and filing of documents in the appellate division. It would be a departure from the parallel appellate rule structure to amend rule 8.817 to also include formatting. And although the name of the rule could be amended to signal the addition of formatting content, it could create confusion for litigants already familiar with rule 8.817 if a new subdivision adding entirely new subject matter was added to it. In addition, formatting rules do not intuitively belong with service and filing rules. Thus, the subcommittee concluded that it would be better to maintain a parallel structure between the court of appeal and appellate

[14] It is unclear from the rule history why an appellate division rule corresponding to rule 8.40 was not adopted in 2008 when many other appellate division rules were adopted in parallel to the corresponding court of appeal rules.

[15] See rule 8.925.

division rules by creating a stand-alone formatting rule for the appellate division that mirrors court of appeal rule 8.40, rather than adding new subject matter to existing rule 8.817.

The subcommittee also considered whether it would be better to incorporate by reference the rules governing formatting in the trial courts (rules 2.100 through 2.118) into an appellate division rule regarding formatting as was originally suggested, rather than incorporating rule 8.883(c). This has some appeal because these trial court rules arguably apply to the appellate division by default since the Supreme Court and Court of Appeal rules expressly do not apply under rule 8.4. Moreover, to the extent that appellate division litigants, attorneys, clerks, and judges are familiar with trial court formatting rules, applying the same set of rules in both trial courts and appellate divisions makes some sense. However, as noted above, other procedural rules governing the appellate division largely mirror corresponding Court of Appeal rules—not the trial court rules—by design. The subcommittee concluded that it would be anomalous to apply the trial court formatting rules to documents to be filed in the appellate division when most other appellate division procedure far more closely mirrors that of the Court of Appeal.

The subcommittee further considered whether to incorporate the rules governing formatting in the Court of Appeal (rules 8.40 and 8.204(b)) into an appellate division rule regarding the form of filed documents, as was originally suggested as an alternative. This would make the formatting rules governing documents filed in the appellate division and the Court of Appeal identical. To the extent that litigants in the appellate division are already familiar with Court of Appeal rules, this could simplify the document preparation process for them. Conversely, it would likely complicate this portion of the appeal process for unrepresented litigants and others in the appellate division who may be unfamiliar with the Court of Appeal rules.[16] The subcommittee concluded that incorporating by reference appellate division rule 8.883(c), rather than the Court of Appeal rules, is likely to provide the most clarity to litigants.

Finally, because the initial suggestion focused on clarifying the format requirements for applications and motions in the appellate division, the subcommittee also considered whether to instead amend rules 8.806 and 8.808, the rules specifically governing these types of documents, to include formatting requirements therein. However, this is not how the parallel Court of Appeal rules governing applications and motions are drafted.[17] Additionally, this would limit the reach of the new formatting rules to applications and motions and would not provide guidance as to the proper format of other documents filed in the appellate division. The subcommittee concluded that it would be better to follow the structure of the corresponding Court of Appeal rules and add a more general formatting rule governing all filed documents in the appellate division.

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[16] While rule 8.204(b) is very similar—and in some respects identical—to rule 8.883(c), there are at least the following differences: (1) both sides of the paper may always be used in civil briefs in the Court of Appeal (rule 8.204(b)(4)) but both sides may only be used where briefs are "unbound" in the appellate division (rule 8.883(c)(1)); (2) lines of text must be unnumbered in the Court of Appeal (rule 8.204(b)(5)) but the corresponding appellate division rule is silent on line-numbering (rule 8.883(b)(5)); (3) page numbering requirements differ slightly (compare rules 8.204(7) to rule 8.883(c)(7)); (4) the information required for the cover page differs slightly (compare rules 8.40(c) and 8.204(b)(10) to rules 8.816(a)(1) and 8.883(c)(8)); and (5) paper briefs in the Court of Appeal must be unbound (8.204(b)(8)) while those in the appellate division must be bound (rule 8.883(c)(9)).

[17] See rules 8.50, 8.54.

Committee Task

Attached for the committee's review is a draft invitation to comment reflecting the Appellate Division Subcommittee recommendation that this proposal be circulated for public comment. **Please note** that the Appellate Division Subcommittee reviewed the draft rule 8.815, but it did not review the draft invitation to comment or this cover memo.

The committee's task is to review this draft invitation to comment and:
(1) ask staff or committee members for further information/analysis;
(2) recommend to RUPRO that the invitation to comment, as proposed or as further revised by the committee, be approved for circulation; or
(3) reject the proposal.

JUDICIAL COUNCIL OF CALIFORNIA

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

INVITATION TO COMMENT

SPR19-__

Title
Appellate Procedure: Form of Filed Documents in the Appellate Division

Proposed Rules, Forms, Standards, or Statutes
Adopt Cal. Rules of Court, rule 8.815

Proposed by
Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

Action Requested
Review and submit comments by June 7, 2019

Proposed Effective Date
January 1, 2020

Contact
Sarah Abbott, 415-865-7687
sarah.abbott@jud.ca.gov

Executive Summary and Origin

The Appellate Advisory Committee proposes the adoption of a new rule of court governing the form of filed documents in the appellate division. The rule is intended to provide clarity to litigants, court staff, and judges as to the proper formatting of applications, motions and other documents to be filed in the appellate division. This proposal is in response to a suggestion from a member of this committee.

Background

Proceedings in the appellate division of the superior courts are generally governed by rules 8.800 through 8.936. The appellate division rules contain specific requirements governing the format of appellate division briefs for limited civil and misdemeanor appeals[1] and infraction appeals,[2] as well as briefs to be filed in the Court of Appeal after an order of transfer from the appellate division.[3] However, while the existing appellate division rules set forth specific requirements regarding the service and filing, contents, envelope requirements, and disposition of applications an motions, they are silent as to the required format of these and other documents filed in the appellate division.[4]

[1] See rule 8.883 (detailing formatting requirements and page number limitations for limited civil and misdemeanor briefs).
[2] See rule 8.928 (detailing formatting requirements and page number limitations for infraction briefs).
[3] See rule 8.1012 (requiring that, except as otherwise provided, briefs following an order of transfer comply with the form and contents requirements of rule 8.204(a)(1), (b), and (d)).
[4] See rule 8.806 (Applications); 8.808 (Motions).

Generally, the trial court rules, rules 2.1 through 2.1100, "apply to all cases in the superior courts unless otherwise specified by a rule or statute."[5] Rules 2.100 through 2.118, included within the trial court rules, govern the "form and format of papers to be filed in the trial courts"[6] and contain detailed formatting requirements for trial court papers.

Separately, appellate rules 8.40 and 8.204 govern the format of "documents filed in a reviewing court," which is defined to mean the Supreme Court and Court of Appeal and to exclude the appellate division of the superior courts.[7] Rule 8.40 (Form of filed documents) generally provides that such documents "may be either produced on a computer or typewriter and must comply with the relevant provisions of rule 8.204(b)."[8] Rule 8.204(b) in turn contains detailed requirements regarding the formatting of briefs to be filed in civil appeals in the Court of Appeal. Although rule 8.204(b) is specific to civil briefs, it is incorporated by reference into rule 8.40 and thus is also applicable to other documents filed in the Court of Appeal more generally.

Although there are similarities among the rules governing the form of filed documents in the trial courts, the Court of Appeal, and for civil and misdemeanor briefs filed in the appellate division, there are also notable differences.[9] In the absence of specific guidance for formatting motions, applications, and other documents in the appellate division, litigants are left to format their submissions as best they can.

The Proposal

To remedy this confusion as to the proper formatting of applications, motions and other documents in the appellate division, the committee is proposing to adopt rule 8.815, which would govern the form of filed documents in that division. This new appellate division rule would mirror rule 8.40(a), governing the form of filed documents in the Court of Appeal, and provide that documents filed in the appellate division must comply with the relevant provisions of rule 8.883(c), which sets forth the formatting requirements for briefs in limited civil and misdemeanor cases in the appellate division.

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[5] See rule 2.2.

[6] See rule 2.100(b).

[7] See rule 8.10(6) ("'Reviewing court' means the Supreme Court or the Court of Appeal to which an appeal is taken, in which an original proceeding is begun, or to which an appeal or original proceeding is transferred."); rule 8.4 ("The rules in this division apply to: (1) Appeals from the superior courts, except appeals to the appellate divisions of the superior courts").

[8] Rule 8.40 also governs specified cover colors and certain information to be included on the cover page. See rule 8.40(b)–(c).

[9] For example: 12-point font is used in trial courts (rule 2.104) while 13-point font is used in the Court of Appeal (rule 8.204(b)(4)) and for civil and misdemeanor briefs in the appellate division (rule 8.883(c)(4)); papers in the trial court must contain line numbers (rule 2.108) while Court of Appeal documents may not (rule 8.204(b)(5)) and rule 8.885(c) is silent as to line numbering of civil and misdemeanor briefs in the appellate division; and the requirements for the format of the first page of documents filed in the trial courts, appellate division, and Court of Appeal differ in numerous ways (compare rules 2.11, rules 8.40(b)–(c), 8.204(b)(10), 8.816(a), and 8.885(c)(8). Compare generally rules 2.102–2.118 to rule 8.204(b) and rule 8.885(c).

Creating a parallel structure between the Court of Appeal and appellate division rules was a significant priority when the appellate division rules were repealed and replaced in full in 2008.[10] In the Court of Appeal, there is no rule expressly governing the proper format for applications, motions, or other documents. Instead, rule 8.40(a), which governs the form of filed documents, incorporates by reference the "relevant provisions" of the rule governing the form of civil briefs in the Court of Appeal, rule 8.204(b), and applies them generally to other documents. Adopting a new rule containing language that mirrors rule 8.40(a) and applies the relevant provisions of the appellate division rule governing the form of limited civil and misdemeanor briefs, rule 8.883(c), to other filed documents would maintain this parallel structure. In addition, since litigants in the appellate division will already be familiar with appellate division rules, and those appealing limited civil and misdemeanor cases will need to comply with the requirements of rule 8.883 in preparing their briefs, this approach should provide the most clarity for appellate division litigants.

Alternatives Considered

The committee considered not making any changes to the rules, but concluded that the proposed new rule would provide clarity to litigants, court staff, and judges.

The committee also considered whether to instead amended existing rule 8.817 to add a subparagraph (c) to address the form of filed documents. However, the committee decided that it would advisable to maintain a parallel structure between the court of appeal and appellate division rules by creating a stand-alone formatting rule for the appellate division that mirrors court of appeal rule 8.40, rather than adding new subject matter to an existing rule.

The committee further considered whether to instead incorporate by reference the rules governing formatting in the trial courts (rules 2.100 through 2.118) or the Court of appeal (rules 8.40 and 8.204(b) into an appellate division rule regarding formatting, rather than incorporating rule 8.883(c), but decided that applying the formatting requirements contained in an existing appellate division rule would provide more clarity.

Finally, the committee considered whether to instead amend rules 8.806 and 8.808, the rules governing appellate division applications and motions, to include formatting requirements therein. However, the subcommittee concluded that the new formatting requirements should not be limited to applications and motions, and it would be better to adopt a more general formatting rule governing all filed documents in the appellate division.

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[10] See Judicial Council of Cal., Appellate Advisory Com. Rep., *Appellate Procedure: Rules and Forms for the Superior Court Appellate Divisions* (Feb. 6, 2008), p. 8. ("In developing its proposed revisions to the appellate division rules, the advisory committee [] took as its starting premise that the language of the Court of Appeal rules should be used as a model for revisions to equivalent provisions in the appellate division rules.") However, where appropriate to account for substantive differences between proceedings in the appellate division and in the Court of Appeal (including that appellate division matters are often "smaller' and involve unrepresented litigations) and to keep appellate division matters as simple as possible, not all existing appellate division rules mirror the corresponding rule governing the Court of Appeal. (*Ibid*.)

Implementation Requirements, Costs, and Operational Impacts

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

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?

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

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

Attachments and Links

1. Cal. Rules of Court, rule 8.815, page 5.

Rule 8.815 of the California Rules of Court would be added, effective January 1, 2020, to read:

Rule 8.815. Form of filed documents

Except as these rules provide otherwise, documents filed in the appellate division may be either produced on a computer or typewritten and must comply with the relevant provisions of rule 8.883(c).

Item 04

JUDICIAL COUNCIL OF CALIFORNIA

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

INVITATION TO COMMENT

SPR19-__

Title
Appellate Procedure: Oral Argument in Appellate Division Appeals

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rule 8.885; approve forms APP-108 and CR-138; revise forms APP-101-INFO and CR-131-INFO

Proposed by
Appellate Advisory Committee
Hon. Louis R. Mauro, Chair
Christy Simons, Attorney

Action Requested
Review and submit comments by June 7, 2019

Proposed Effective Date
January 1, 2020

Contact
Christy Simons, 415-865-7694
christy.simons@jud.ca.gov

Executive Summary and Origin

To increase efficiency and provide guidance for litigants, the Appellate Advisory Committee proposes amending the rule regarding oral argument in limited civil and misdemeanor appeals to provide that oral argument will not be set in cases presenting no arguable issues and to set forth a procedure for waiving oral argument. The committee also proposes the adoption of two optional forms, one for limited civil cases and one for misdemeanor cases, to assist litigants in waiving oral argument if they choose to do so. This proposal originated with suggestions from a presiding judge of an appellate division and a member of the committee.

Background

Oral argument in limited civil and misdemeanor appeals is governed by California Rules of Court, rule 8.885. Subdivision (a) of this rule requires that oral argument be set in every appeal , "[u]nless otherwise ordered." Thus, the rule requires setting oral argument in misdemeanor appeals pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende* appeals) that raise no arguable issues.

In a *Wende* appeal, the defendant's appellate counsel finds no arguable issues after reviewing the record, and files a brief pursuant to *People v. Wende* requesting that the court conduct an independent review. Although the defendant has an opportunity to file a brief, it is rarely done.

The People may file a respondent's brief, but there is no need to do so because there is nothing in the opening brief to oppose.

Some, but not all, appellate divisions set oral argument in these cases. However, when a *Wende* appeal is placed on calendar and the case is called, if any party or attorney appears, it is only to submit the matter.

Subdivision (d) of rule 8.885 provides that "[p]arties may waive oral argument." The rule establishes this option for litigants but leaves it to the appellate divisions and litigants to decide how this may be accomplished. In the absence of any procedure to waive argument in advance, many litigants appear at argument only to submit the matter. Some defense counsel in misdemeanor cases inform the district attorney's office that they will not pursue oral argument, and they do not appear. The attorney for the People then informs the court that the appellant wishes to waive oral argument and the People do not oppose the request. In both situations, the judges have prepared for the oral argument.

The Proposal

Rule Amendments

Appeals that raise no arguable issues

This proposal would add new paragraph (2) to rule 8.885(a) providing that "[o]ral argument will not be set in appeals pursuant to *People v. Wende* (1979) 25 Cal.3d 436 where no arguable issue is raised." The current content of the subdivision would be numbered as paragraph (1), and would be modified to identify paragraph (2) as providing an exception to the rule that oral argument be set in all cases.

The committee's goal in proposing the amendment to subdivision (a) is to address an inefficiency in oral argument procedure. Setting *Wende* appeals for oral argument is unnecessary because they present no issues to be argued. However, the proposed rule amendment does not affect the court's authority to order oral argument in any particular case. In addition, in the exceedingly rare instance where an arguable issue is found by the defendant or the court in conducting its review of the record, new paragraph (2) would not apply and the case would be set for oral argument.

Procedure for waiving oral argument

The proposed amendments to rule 8.885(d) regarding waiver of argument are also intended to save time and money for litigants and the courts. The current rule allows parties to waive oral argument, but provides no guidance on how or when to do so. The amendments provide a procedure that allows parties to file a notice of waiver within 7 days after the notice of oral argument is sent by the court. If all parties waive oral argument, the court may, but is not required to, vacate the oral argument. If the court vacates the argument, it must take the affirmative step of notifying the parties. The proposal also includes an Advisory Committee

Comment to clarify that if all parties do not waive oral argument, or if the court rejects a waiver request, the matter will remain on the oral argument calendar, and any party who previously filed a notice of waiver may participate in the oral argument.

Setting forth a procedure that allows parties to waive and courts to vacate oral argument in advance will save parties the time and expense of appearing in court simply to waive oral argument and submit the matter. It will also spare judges the time and effort of preparing for an oral argument that is taken off calendar when the case is called.

Date of submission

The committee recognizes that one result of placing all cases on the oral argument calendar is that, unless the court permits supplemental briefing, all cases are submitted on the date of the argument. If cases are not set for argument or taken off calendar, the date of submission must be determined. This is a straightforward task under the current rules.

Rule 8.886 governs submission in limited civil and misdemeanor cases. It provides that "[a] cause is submitted when the court has heard oral argument or approved its waiver and the time has expired to file all briefs and papers, including any supplemental brief permitted by the court." (Rule 8.886(a).)

Under this rule, the date of submission of *Wende* appeals would be the date when the time to file all briefs and papers expires. The appellant's opening brief—in *Wende* appeals, counsel's brief identifying the appeal as raising no arguable issues—must be served and filed within 30 days after the record is filed in the appellate division, and any respondent's brief must be served and filed within 30 days after the appellant's opening brief is filed. (Rule 8.882(a)(1), (2).) In the vast majority of *Wende* appeals, no respondent's brief is filed, and the date of submission is 30 days after the filing date of the appellant's opening brief.

The date of submission for non-*Wende* cases in which oral argument is waived by the parties and taken off calendar would be the date the court approves the waiver.

New Forms

The committee also proposes new forms for litigants to use in waiving oral argument. Following the conventions for appellate division forms, there is one waiver form for limited civil cases (APP-108, *Notice ofWaiver of Oral Argument (Limited Civil Case)*) and one for misdemeanor cases (CR-138, *Notice of Waiver of Oral Argument (Misdemeanor)*), and both forms are in plain language format. Both forms include instructions on filing and service, and refer the party to other forms that provide information on appeal procedures.

The forms include a box with text labeled "Notice" to present and highlight information on the waiver process. This information is based on the amendments proposed to rule 8.885(d). In addition, in item 2 above the signature line, the forms include language advising that, by signing the form, the party or the party's attorney is requesting to waive or give up the opportunity to

appear in court and argue the case. Item 2 also advises that if the court accepts the waiver, the court will decide the matter on the briefs and the record. The forms are for optional use; a party may draft its own waiver.

The forms will simplify the waiver process for litigants by taking any guesswork out of how and when to file a notice of waiver.

Amended Forms

The committee proposes amending Information on Appeal Procedures for Limited Civil Cases (form APP-101-INFO) and Information on Appeal Procedures for Misdemeanors (form CR-131-INFO) to conform to the changes to rule 8.885. Both forms describe oral argument and the option to waive it. The revisions describe the new procedure for waiving oral argument and include reference to the new notice of waiver forms. The revisions also clarify that if not all parties waive and the court holds oral argument, all parties may choose to participate, including any that filed a notice of waiver. In addition, the revisions clarify that the 90 days for the appellate division to decide the appeal runs from either the date of oral argument or the date the court approved its waiver. Finally, form CR-131-INFO includes an advisement that oral argument will not be set in cases that present no arguable issues.

Alternatives Considered

The committee considered not proposing any rule amendments or forms, but concluded that the savings in time and resources to be gained from taking *Wende* cases off the oral argument calendar and providing a procedure for waiving oral argument in advance justified moving forward with a proposal.

The committee also considered a different waiver procedure that would have allowed a party to file a notice of waiver within 10 days after the notice of oral argument is sent, and would have required the other party or parties to object within 10 days of the notice of waiver if they wished to keep the case on calendar. The committee rejected this option because it would be too cumbersome and too time-consuming, and would allow one party to unilaterally take the case off calendar in the absence of a response from the other party.

Finally, the committee considered not proposing any forms for waiver, but concluded that the forms would be helpful, particularly for self-represented litigants.

Fiscal and Operational Impacts

The committee does not expect any fiscal impacts from this proposal.

With respect to operational impacts, this proposal would require appellate division clerks to track *Wende* appeals and waived cases separately for purposes of determining the date of submission and the deadline for filing the decision. This is already required for cases that are waived in advance of the argument date or have different submission dates for other reasons. In addition, the proposal may require appellate divisions in which the panel typically confers regarding

pending cases only on the date of the oral argument to schedule conferences at other times for cases with different submission dates.

Notwithstanding these potential impacts, the committee has concluded that the proposal will save time and effort for the courts, and time and expense for litigants, and that these benefits outweigh any operational changes that may be required.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Are the proposed waiver forms helpful and should any other content be included?

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

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

Attachments and Links

1. Cal. Rules of Court, rule 8.885

Title 8. Appellate Rules

Division 2. Rules Relating to the Superior Court Appellate Division

Chapter 4. Briefs, Hearing, and Decision in Limited Civil and Misdemeanor Appeals

Rule 8.885. Oral argument

(a) Calendaring and sessions

(1) Unless otherwise ordered, and except as provided in (2), all appeals in which the last reply brief was filed or the time for filing this brief expired 45 or more days before the date of a regular appellate division session must be placed on the calendar for that session by the appellate division clerk. By order of the presiding judge or the division, any appeal may be placed on the calendar for oral argument at any session.

(2) Oral argument will not be set in appeals pursuant to *People v. Wende* (1979) 25 Cal.3d 436 where no arguable issue is raised.

(b) Oral argument by videoconference

(1) Oral argument may be conducted by videoconference if:

(A) It is ordered by the presiding judge of the appellate division or the presiding judge's designee on application of any party or on the court's own motion. An application from a party requesting that oral argument be conducted by videoconference must be filed within 10 days after the court sends notice of oral argument under (c)(1); or

(B) A local rule authorizes oral argument to be conducted by videoconference consistent with these rules.

(2) If oral argument is conducted by videoconference:

(A) Each judge of the appellate division panel assigned to the case must participate in the entire oral argument either in person at the superior court that issued the judgment or order that is being appealed or by videoconference from another court.

(B) Unless otherwise allowed by local rule or ordered by the presiding judge of the appellate division or the presiding judge's designee, all the parties must appear at oral argument in person at the superior court that issued the judgment or order that is being appealed.

(C) The oral argument must be open to the public at the superior court that issued the judgment or order that is being appealed. If provided by local rule or ordered by the presiding judge of the appellate division or the presiding judge's designee, oral argument may also be open to the public at any of the locations from which a judge of the appellate division is participating in oral argument.

(D) The appellate division must ensure that:

(i) During oral argument, the participants in oral argument are visible and their statements are audible to all other participants, court staff, and any members of the public attending the oral argument;

(ii) Participants are identified when they speak; and

(iii) Only persons who are authorized to participate in the proceedings speak.

(E) A party must not be charged any fee to participate in oral argument by videoconference if the party participates from the superior court that issued the judgment or order that is being appealed or from a location from which a judge of the appellate division panel is participating in oral argument.

(c) Notice of argument

(1) Except for appeals covered by (a)(2), ~~A~~as soon as all parties' briefs are filed or the time for filing these briefs has expired, the appellate division clerk must send a notice of the time and place of oral argument to all parties. The notice must be sent at least 20 days before the date for oral argument. The presiding judge may shorten the notice period for good cause; in that event, the clerk must immediately notify the parties by telephone or other expeditious method.

(2) If oral argument will be conducted by videoconference under (b), the clerk must specify, either in the notice required under (1) or in a supplemental notice sent to all parties at least 5 days before the date for oral argument, the

location from which each judge of the appellate division panel assigned to the case will participate in oral argument.

(d) Waiver of argument

(1) Parties may waive oral argument in advance by filing a notice of waiver of oral argument within 7 days after the notice of oral argument is sent.

(2) The court may vacate oral argument if all parties waive oral argument.

(3) If the court vacates oral argument, the court must notify the parties that no oral argument will be held.

(e) Conduct of argument

Unless the court provides otherwise:

(1) The appellant, petitioner, or moving party has the right to open and close. If there are two or more such parties, the court must set the sequence of argument.

(2) Each side is allowed 10 minutes for argument. The appellant may reserve part of this time for reply argument. If multiple parties are represented by separate counsel, or if an amicus curiae—on written request—is granted permission to argue, the court may apportion or expand the time.

(3) Only one counsel may argue for each separately represented party.

Advisory Committee Comment

Subdivision (a). Under rule 10.1108, the appellate division must hold a session at least once each quarter, unless no matters are set for oral argument that quarter, but may choose to hold sessions more frequently.

Subdivision (d). If all parties do not waive oral argument, or if the court rejects a waiver request, the matter will remain on the oral argument calendar. Any party who previously filed a notice of waiver may participate in the oral argument.

APP-108 Notice of Waiver of Oral Argument (Limited Civil Case)

Clerk stamps date here when form is filed.

DRAFT

02-15-2019

Not approved by the Judicial Council

Instructions

- This form is only for requesting to waive (give up) oral argument in an appeal in **a limited civil case.**
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*.
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving.*
- Take or mail the completed form and proof of service on the other parties to the appellate division clerk's office. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order that is being appealed:

Superior Court of California, County of

You fill in the number and name of the trial court case in which the judgment or order is being appealed::

Trial Court Case Number:

Trial Court Case Name:

You fill in the appellate division case number:

Appellate Division Case Number:

1 Your Information

a. Name of party requesting to waive oral argument: _____

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

Street address: _____ _____ _____ _____
Street *City* *State* *Zip*

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

Phone: _____ E-mail: _____

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

Name: _____ State Bar number: _____

Street address: _____ _____ _____ _____
Street *City* *State* *Zip*

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

Phone: _____ E-mail: _____

Fax: _____

NOTICE

Except for cases that raise no arguable issues pursuant to *People v. Wende* (1979) 25 Cal.3d 436, appeals are scheduled for oral argument. Parties may waive oral argument by filing a notice of waiver of oral argument within 7 days after the notice of oral argument is sent.

If all parties in the case waive oral argument, the court may vacate the oral argument and take it off the calendar. If the court vacates oral argument, you will receive notification from the court.

If not all parties waive oral argument, or if the court does not accept the waiver request, the court will not vacate oral argument and it will remain on the court's calendar. All parties will be able to participate in the oral argument, including any parties who previously requested a waiver.

(2) I have read this form and I am/my client is requesting to waive oral argument. **I understand that by signing this form I am/my client is waiving (giving up) the opportunity to appear in court and argue the case.** I also understand that if all parties waive oral argument and the court accepts the waiver and takes the oral argument off calendar, the court will decide the appeal based on the briefs and the record that were submitted.

Date: _____

_____ ▶ _____

Type or print your name *Signature of party or attorney*

CR-138 Notice of Waiver of Oral Argument (Misdemeanor)

Clerk stamps date here when form is filed.

DRAFT

02-15-2019

Not approved by the Judicial Council

Instructions

- This form is only for requesting to waive (give up) oral argument in a **misdemeanor** case.
- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO) to know your rights and responsibilities. You can get form CR-131-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the appellate division clerk's office. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

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

Superior Court of California, County of

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

Trial Court Case Number:

Trial Court Case Name:
The People of the State of California v.

You fill in the appellate division case number (if you know it):

Appellate Division Case Number:

1 Your Information

a. Name of party requesting to waive oral argument: _____

Street address: _____ (*Street*) _____ (*City*) _____ (*State*) _____ (*Zip*)

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

Phone: _____ E-mail: _____

b. Party's lawyer *(skip this if the party does not have a lawyer for this appeal):*

Name: _____ State Bar number: _____

Street address: _____ (*Street*) _____ (*City*) _____ (*State*) _____ (*Zip*)

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

Phone: _____ E-mail: _____

Fax: _____

NOTICE

Except for cases that raise no arguable issues pursuant to *People v. Wende* (1979) 25 Cal.3d 436, appeals are scheduled for oral argument. Parties may waive oral argument by filing a notice of waiver of oral argument within 7 days after the notice of oral argument is sent.

If all parties in the case waive oral argument, the court may vacate the oral argument and take it off the calendar. If the court vacates oral argument, you will receive notification from the court.

If not all parties waive oral argument, or if the court does not accept the waiver request, the court will not vacate oral argument and it will remain on the court's calendar. All parties will be able to participate in the oral argument, including any parties who previously requested a waiver.

(2) I have read this form and I am/my client is requesting to waive oral argument. **I understand that by signing this form I am/my client is waiving (giving up) the opportunity to appear in court and argue the case.** I also understand that if all parties waive oral argument and the court accepts the waiver and takes the oral argument off the calendar, the court will decide the appeal based on the briefs and the record that were submitted.

Date: _____

_____ ▶ _____

Type or print your name *Signature of party or attorney*

APP-101-INFO Information on Appeal Procedures for Limited Civil Cases

GENERAL INFORMATION

1 What does this information sheet cover?

This information sheet tells you about appeals in limited civil cases. These are civil cases in which the amount of money claimed is $25,000 or less.

If you are the party who is appealing (asking for the trial court's decision to be reviewed), you are called the APPELLANT, and you should read Information for the Appellant, starting on page 2. If you received notice that another party in your case is appealing, you are called the RESPONDENT and you should read Information for the Respondent, starting on page 11.

This information sheet does not cover everything you may need to know about appeals in limited civil cases. It is meant only to give you a general idea of the appeal process. To learn more, you should read rules 8.800–8.843 and 8.880–8.891 of the California Rules of Court, which set out the procedures for limited civil appeals. You can get these rules at any courthouse or county law library or online at *www.courts.ca.gov/rules.*

2 What is an appeal?

An appeal is a request to a higher court to review a decision made by a judge or jury in a lower court. **In a limited civil case, the court hearing the appeal is the appellate division of the superior court and the lower court—called the "trial court" in this information sheet—is the superior court.**

It is important to understand that **an appeal is NOT a new trial**. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits. The appellate division's job is to review a record of what happened in the trial court and the trial court's decision to see if certain kinds of legal errors were made:

For information about appeal procedures in other kinds of cases, see:

- *Information on Appeal Procedures for Unlimited Civil Cases* (form APP-001)
- *Information on Appeal Procedures for Infractions* (form CR-141-INFO)
- *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO)

You can get these forms at any courthouse or county law library or online at *www.courts.ca.gov/forms.*

- ***Prejudicial error:*** The appellant (the party who is appealing) may ask the appellate division to determine if an error was made about either the law or court procedures in the case that caused substantial harm to the appellant (this is called "prejudicial error").

  Prejudicial error can include things like errors made by the judge about the law, errors or misconduct by the lawyers, incorrect instructions given to the jury, and misconduct by the jury that harmed the appellant. When it conducts its review, the appellate division presumes that the judgment, order, or other decision being appealed is correct. It is the responsibility of the appellant to show the appellate division that an error was made and that the error was harmful.
- ***No substantial evidence:*** The appellant may also ask the appellate division to determine if there was substantial evidence supporting the judgment, order, or other decision being appealed. When it conducts its review, the appellate division only looks to see if there was evidence that reasonably supports the decision. The appellate division generally will not reconsider the jury's or trial court's conclusion about which side had more or stronger evidence or whether witnesses were telling the truth or lying.

The appellate division generally will not overturn the judgment, order, or other decision being appealed unless the record clearly shows that one of these legal errors was made.

3 Do I need a lawyer to represent me in an appeal?

You do not *have* to have a lawyer; if you are an individual (rather than a corporation, for example), you are allowed to represent yourself in an appeal in a limited civil case. But appeals can be complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about the appeal procedures, you should talk to a lawyer.

If you decide not to use a lawyer, you must put your address, telephone number, fax number (if available), and e-mail address (if available) on the first page of every document you file with the court and let the court know if this contact information changes so that the court can contact you if needed.

4 Where can I find a lawyer to help me with my appeal?

You have to hire your own attorney if you want one. You can get information about finding an attorney on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-lowcosthelp.htm* in the Getting Started section.

INFORMATION FOR THE APPELLANT

This part of the information sheet is written for the appellant—the party who is appealing the trial court's decision. It explains some of the rules and procedures relating to appealing a decision in a limited civil case. The information may also be helpful to the respondent. Additional information for respondents can be found starting on page 11 of this information sheet.

5 Who can appeal?

Only a party in the trial court case can appeal a decision in that case. You may not appeal on behalf of a friend, a spouse, a child, or another relative unless you are a legally appointed representative of that person (such as the person's guardian or conservator).

6 Can I appeal *any* decision the trial court made?

No. Generally, you can only appeal the final judgment—the decision at the end that decides the whole case. Other rulings made by the trial court before the final judgment generally cannot be separately appealed but can be reviewed only later as part of an appeal of the final judgment. There are a few exceptions to this general rule. Code of Civil Procedure section 904.2 lists a few types of orders in a limited civil case that can be appealed right away. These include orders that:

- Change or refuse to change the place of trial (venue)
- Grant a motion to quash service of summons or grant a motion to stay or dismiss the action on the ground of inconvenient forum
- Grant a new trial or deny a motion for judgment notwithstanding the verdict
- Discharge or refuse to discharge an attachment or grant a right to attach
- Grant or dissolve an injunction or refuse to grant or dissolve an injunction
- Appoint a receiver
- Are made after final judgment in the case

(You can get a copy of Code of Civil Procedure section 904.2 at *http://leginfo.legislature.ca.gov/faces /codes.xhtml*.)

7 How do I start my appeal?

First, you must serve and file a notice of appeal. The notice of appeal tells the other party or parties in the case and the trial court that you are appealing the trial court's decision. You may use *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (form APP-102) to prepare a notice of appeal in a limited civil case. You can get form APP-102 at any courthouse or county law library or online at *www.courts.ca.gov/forms*.

8 How do I "serve and file" the notice of appeal?

"Serve and file" means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send ("serve") the notice of appeal to the other party or parties in the way required by law. If the notice of appeal is mailed or personally

delivered, it must be by someone who is not a party to the case—so not you.

- Make a record that the notice of appeal has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the notice of appeal, who was served with the notice of appeal, how the notice of appeal was served (by mail, in person, or electronically), and the date the notice of appeal was served.
- Bring or mail the original notice of appeal and the proof of service to the trial court that issued the judgment, order, or other decision you are appealing. You should make a copy of the notice of appeal you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the notice of appeal to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-serving.htm.*

9 Is there a deadline to file my notice of appeal?

Yes. In a limited civil case, except in the very limited circumstances listed in rule 8.823, you must file your notice of appeal within **30 days** after the trial court clerk or a party serves either a document called a "Notice of Entry" of the trial court judgment or a file-stamped copy of the judgment or within 90 days after entry of the judgment, whichever is earlier.

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

10 Do I have to pay to file an appeal?

Yes. Unless the court waives this fee, you must pay a fee for filing your notice of appeal. You can ask the clerk of the court where you are filing the notice of appeal what the fee is or look up the fee for an appeal in a limited civil case in the current Statewide Civil Fee Schedule linked at *www.courts.ca.gov/7646.htm* (note that the "Appeal and Writ Related Fees" section is near the end of this schedule and that there are different fees for limited civil cases depending on the amount demanded in the case). If you cannot afford to pay the fee, you can ask the court to waive it. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at *www.courts.ca.gov/forms.* You can file this application either before you file your notice of appeal or with your notice of appeal. The court will review this application to determine if you are eligible for a fee waiver.

11 If I file a notice of appeal, do I still have to do what the trial court ordered me to do?

Filing a notice of appeal does NOT automatically postpone most judgments or orders, such as those requiring you to pay another party money or to deliver property to another party (see Code of Civil Procedure sections 917.1–917.9 and 1176; you can get a copy of these laws at *www.leginfo.legislature.ca.gov/faces /codes.xhtml*). These kinds of judgments or orders will be postponed, or "stayed," only if you request a stay and the court grants your request. In most cases, other than unlawful detainer cases in which the trial court's judgment gives a party possession of the property, if the trial court denies your request for a stay, you can apply to the appellate division for a stay. If you do not get a stay and you do not do what the trial court ordered you to do, court proceedings to collect the money or otherwise enforce the judgment or order may be started against you.

12 What do I need to do after I file my notice of appeal?

You must ask the clerk of the trial court to prepare and send the official record of what happened in the trial court in your case to the appellate division.

Since the appellate division judges were not there to see what happened in the trial court, an official record of what happened must be prepared and sent to the appellate division for its review. You can use *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) to ask the trial court to prepare this record. You can get form APP-103 at any courthouse or county law library or online at *www.courts.ca.gov/forms.*

You must serve and file this notice designating the record on appeal within 10 days after you file your notice of appeal. "Serving and filing" this notice means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send ("serve") the notice to the other party or parties in the way required by law. If the notice is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the notice has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the notice, who was served with the notice, how the notice was served (by mail, in person, or electronically), and the date the notice was served.
- Bring or mail the original notice and the proof of service to the trial court that issued the judgment, order, or other decision you are appealing. You should make a copy of the notice you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the notice to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courts.ca.gov /selfhelp-serving.htm.*

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

There are three parts of the official record:

- A record of what was said in the trial court (this is called the "oral proceedings")
- A record of the documents filed in the trial court (other than exhibits)
- Exhibits that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court

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

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

The first part of the official record of the trial court proceedings is a record of what was said in the trial court (this is called a record of the "oral proceedings"). You do not *have* to send the appellate division a record of the oral proceedings. But if you want to raise any issue in your appeal that would require the appellate division to consider what was said in the trial court, the appellate division will need a record of those oral proceedings. For example, if you are claiming that there was not evidence supporting the judgment, order, or other decision you are appealing, the appellate division will need a record of the oral proceedings.

You are responsible for deciding how the record of the oral proceedings will be provided and, depending on what option you select and your circumstances, you may also be responsible for paying for preparing this record or for preparing an initial draft of the record. If you do not take care of these responsibilities, a record of the oral proceedings in the trial court will not be prepared and sent to the appellate division. **If the appellate division does not receive this record, it will not be able to review any issues that are based on what was said in the trial court and it may dismiss your appeal.**

In a limited civil case, you can use *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) to tell the court whether you want a record of the oral proceedings and, if so, the form of the record that you want to use. You can get form APP-103

at any courthouse or county law library or online at *www.courts.ca.gov/forms.*

There are four ways in which a record of the oral proceedings can be prepared for the appellate division:

- If you or the other party arranged to have a court reporter there during the trial court proceedings, the reporter can prepare a record, called a "reporter's transcript."
- If the proceedings were officially electronically recorded, the trial court can have a transcript prepared from that recording or, if the court has a local rule permitting this and you and the other party agree ("stipulate") to this, you can use the *official electronic recording* itself instead of a transcript.
- You can use an agreed statement.
- You can use a statement on appeal.

Read below for more information about these options.

(1) Reporter's transcript

Description: A reporter's transcript is a written record (sometimes called a "verbatim" record) of the oral proceedings in the trial court prepared by a court reporter. Rule 8.834 of the California Rules of Court establishes the requirements relating to reporter's transcripts.

When available: If a court reporter was there in the trial court and made a record of the oral proceedings, you can choose ("elect") to have the court reporter prepare a reporter's transcript for the appellate division. In most limited civil cases, however, a court reporter will not have been there unless you or another party in your case made specific arrangements to have a court reporter there. Check with the court to see if a court reporter made a record of the oral proceedings in your case before choosing this option.

Contents: If you elect to use a reporter's transcript, you must identify by date (this is called "designating") what proceedings you want included in the reporter's transcript. You can use the same form you used to tell the court you wanted to use a reporter's transcript—*Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103)—to do this.

If you elect to use a reporter's transcript, the respondent also has the right to designate additional proceedings to be included in the reporter's transcript. If you elect to proceed without a reporter's transcript, however, the respondent may not designate a reporter's transcript without first getting an order from the appellate division.

Cost: The appellant is responsible for paying for preparing a reporter's transcript. The trial court clerk or the court reporter will notify you of the cost of preparing an original and one copy of the reporter's transcript. You must deposit payment for this cost (and a fee for the trial court) or one of the substitutes allowed by rule 8.834 with the trial court clerk within 10 days after this notice is sent. (See rule 8.834 for more information about this deposit and the permissible substitutes, such as a waiver of this deposit signed by the court reporter.)

Unlike the fee for filing the notice of appeal and the costs for preparing a clerk's transcript, the court cannot waive the fee for preparing a reporter's transcript. A special fund, called the Transcript Reimbursement Fund, may be able to help pay for the transcript. You can get information about this fund at *www.courtreportersboard.ca.gov/consumers/index.shtml#rtf.* If you are unable to pay the cost of a reporter's transcript, a record of the oral proceedings can be prepared in other ways, by using an agreed statement or a statement on appeal, which are described below.

Completion and delivery: After the cost of preparing the reporter's transcript or a permissible substitute has been deposited, the court reporter will prepare the transcript and submit it to the trial court clerk. When the record is complete, the trial court clerk will submit the original transcript to the appellate division and send you a copy of the transcript. If the respondent has purchased it, a copy of the reporter's transcript will also be mailed to the respondent.

(2) Official electronic recording or transcript

When available: In some limited civil cases, the trial court proceedings were officially recorded on approved electronic recording equipment. If your case was officially recorded, you can choose ("elect") to have a transcript prepared from the recording. Check with the trial court to see if the oral proceedings in your case were officially electronically recorded before you choose this option. If the court has a local rule permitting this and all the parties agree ("stipulate"), a copy of an official electronic recording itself can be used as the record, instead of preparing a transcript. If you choose this option, you must attach a copy of this agreement ("stipulation") to your notice designating the record on appeal.

Contents: If you elect to use a transcript of an official electronic recording, you must identify by date (this is called "designating") what proceedings you want included in the transcript. You can use the same form you used to tell the court you wanted to use a transcript of an official electronic recording —*Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103)—to do this.

Cost: The appellant is responsible for paying the court for the cost of either (a) preparing a transcript *or* (b) making a copy of the official electronic recording.

(a) If you elect to use a transcript of an official electronic recording, you will need to deposit the estimated cost of preparing the transcript with the trial court clerk and pay the trial court a $50 fee. There are two ways to determine the estimated cost of the transcript:

- You can use the amounts listed in rule 8.130(b)(1)(B) for each full or half day of court proceedings to estimate the cost of making a transcript of the proceeding you have designated in your notice designating the record on appeal. Deposit this estimated amount and the $50 fee with the trial court clerk when you file your notice designating the record on appeal.
- You can ask the trial court clerk for an estimate of the cost of preparing a transcript of the proceedings you have designated in you notice designating the record on appeal. You must deposit this amount and the $50 fee with the trial court within 10 days of receiving the estimate from the clerk.

(b) If the court has a local rule permitting the use of a copy of the electronic recording itself, rather than a transcript, and you have attached your agreement with the other parties to do this ("stipulation") to the notice designating the record on appeal that you filed with the court, the trial court clerk will provide you with an estimate of the costs for this copy of the recording. You must pay this amount to the trial court.

If you cannot afford to pay the cost of preparing the transcript, the $50 fee, or the fee for the copy of the official electronic recording, you can ask the court to waive these costs. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at *www.courts.ca.gov/forms.* The court will review this application to determine if you are eligible for a fee waiver.

Completion and delivery: After the estimated cost of the transcript or official electronic recording has been paid or waived, the clerk will have the transcript or copy of the recording prepared. When the transcript is completed or the copy of the official electronic recording is prepared and the rest of the record is complete, the clerk will send it to the appellate division.

(3) Agreed statement

Description: An agreed statement is a written summary of the trial court proceedings agreed to by all the parties.

When available: If the trial court proceedings were not recorded either by a court reporter or by official electronic recording equipment or if you do not want to use one of these options, you can choose ("elect") to use an agreed statement as the record of the oral proceedings (please note that it may take more of your time to prepare an agreed

statement than to use either a reporter's transcript or official electronic recording, if they are available).

Contents: An agreed statement must explain what the trial court case was about, describe why the appellate division is the right court to consider an appeal in this case (why the appellate division has "jurisdiction"), and describe the rulings of the trial court relating to the points to be raised on appeal.

The statement should include only those facts that you and the other parties think are needed to decide the appeal.

Preparation: If you elect to use this option, you must file the agreed statement with your notice designating the record on appeal or, if you and the other parties need more time to work on the statement, you can file a written agreement with the other parties (called a "stipulation") stating that you are trying to agree on a statement. If you file this stipulation, within the next 30 days you must either file the agreed statement or tell the court that you and the other parties were unable to agree on a statement and file a new notice designating the record.

(4) Statement on appeal

Description: A statement on appeal is a summary of the trial court proceedings that is approved by the trial court judge who conducted those proceedings (the term "judge" includes commissioners and temporary judges).

When available: If the trial court proceedings were not recorded either by a court reporter or by official electronic recording equipment or if you do not want to use one of these options, you can choose ("elect") to use a statement on appeal as the record of the oral proceedings (please note that it may take more of your time to prepare a statement on appeal than to use either a reporter's transcript or official electronic recording, if they are available).

Contents: A statement on appeal must include:

- A statement of the points you (the appellant) are raising on appeal;
- A summary of the trial court's rulings and judgment; and
- A summary of the testimony of each witness and other evidence that is relevant to the issues you are raising on appeal.

(See rule 8.837 of the California Rules of Court for more information about what must be included in a statement on appeal and the procedures for preparing a statement. You can get a copy of this rule at any courthouse or county law library or online at *www.courts.ca.gov/rules*.)

Preparing a proposed statement: If you elect to use a statement on appeal, you must prepare a proposed statement. If you are not represented by a lawyer, you must use *Proposed Statement on Appeal (Limited Civil Case)* (form APP-104) to prepare your proposed statement. You can get form APP-104 at any courthouse or county law library or online at *www.courts.ca.gov/forms*.

Serving and filing a proposed statement: You must serve and file the proposed statement with the trial court within 20 days after you file your notice designating the record. "Serve and file" means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send ("serve") the proposed statement to the respondent in the way required by law. If the proposed statement is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the proposed statement has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the proposed statement, who was served with the proposed statement, how the proposed statement was served (by mail, in person, or electronically), and the date the proposed statement was served.
- File the original proposed statement and the proof of service with the trial court. You should make a copy of the proposed statement you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the proposed statement to the clerk when you file your original and ask the

clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-serving.htm.*

Review and modifications: The respondent has 10 days from the date you serve your proposed statement to serve and file proposed changes (called "amendments") to this statement. The trial court judge then reviews both your proposed statement and any proposed amendments filed by the respondent. The trial judge will either make or order you (the appellant) to make any corrections or modifications to the statement that are needed to make sure that the statement provides an accurate summary of the testimony and other evidence relevant to the issues you indicated you are raising on appeal.

Completion and certification: If the judge makes any corrections or modifications to the proposed statement, the corrected or modified statement will be sent to you and the respondent for your review. If the judge orders you to make any corrections or modifications to the proposed statement, you must serve and file the corrected or modified statement within the time ordered by the judge. If you or the respondent disagree with anything in the modified or corrected statement, you have 10 days from the date the modified or corrected statement is sent to you to serve and file objections to the statement. The judge then reviews any objections, makes or orders you to make any additional corrections to the statement, and certifies the statement as an accurate summary of the testimony and other evidence relevant to the issues you indicated you are raising on appeal.

Sending statement to the appellate division: Once the trial court judge certifies the statement on appeal, the trial court clerk will send the statement to the appellate division along with any record of the documents filed in the trial court.

b. Record of the documents filed in the trial court

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

- *A clerk's transcript*
- The original *trial court file* or
- An *agreed statement*

Read below for more information about these options.

(1) Clerk's transcript

Description: A clerk's transcript is a record of the documents filed in the trial court prepared by the clerk of the trial court.

Contents: Certain documents, such as the notice of appeal and the trial court judgment or order being appealed, must be included in the clerk's transcript. These documents are listed in rule 8.832(a) of the California Rules of Court and in *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103).

If you want any documents other than those listed in rule 8.832(a) to be included in the clerk's transcript, you must tell the trial court in your notice designating the record on appeal. You can use form APP-103 to do this. You will need to identify each document you want included in the clerk's transcript by its title and filing date or, if you do not know the filing date, the date the document was signed.

If you—the appellant—request a clerk's transcript, the respondent also has the right to ask the clerk to include additional documents in the clerk's transcript. If this happens, you will be served with a notice saying what other documents the respondent wants included in the clerk's transcript.

Cost: The appellant is responsible for paying for preparing a clerk's transcript. The trial court clerk will send you a bill for the cost of preparing an original and one copy of the clerk's transcript. You must do one of the following things within 10 days after the clerk sends this bill or the appellate division may dismiss your appeal:

- Pay the bill.
- Ask the court to waive the cost because you cannot afford to pay. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at *www. courts.ca.gov /forms.* The court will review this application to determine if you are eligible for a fee waiver.
- Give the court a copy of a court order showing that your fees in this case have already been waived by the court.

Completion and delivery: After the cost of preparing the clerk's transcript has been paid or waived, the trial court clerk will compile the requested documents into a transcript format and, when the record on appeal is complete, will forward the original clerk's transcript to the appellate division for filing. The trial court clerk will send you a copy of the transcript. If the respondent bought a copy, the clerk will also send a copy of the transcript to the respondent.

(2) Trial court file

When available: If the court has a local rule allowing this, the clerk can send the appellate division the original trial court file instead of a clerk's transcript (see rule 8.833 of the California Rules of Court).

Cost: As with a clerk's transcript, the appellant is responsible for paying for preparing the trial court file. The trial court clerk will send you a bill for this preparation cost. You must do one of the following things within 10 days after the clerk sends this bill or the appellate division may dismiss your appeal:

- Pay the bill.
- Ask the court to waive the cost because you cannot afford to pay. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at *www.courts.ca.gov /forms*. The court will review this application to determine if you are eligible for a fee waiver.
- Give the court a copy of a court order showing that your fees in this case have already been waived by the court.

Completion and delivery: After the cost of preparing the trial court file has been paid or waived and the record on appeal is complete, the trial court clerk will send the file and a list of the documents in the file to the appellate division. The trial court clerk will also send a copy of the list of documents to the appellant and respondent so that you can put your own files of documents from the trial court in the correct order.

(3) Agreed statement

When available: If you and the respondent have already agreed to use an agreed statement as the record of the oral proceedings (see a(3) above) and agree to this, you can use an agreed statement instead of a clerk's transcript. To do this, you must attach to your agreed statement all of the documents that are required to be included in a clerk's transcript.

c. Exhibits

The third part of the official record of the trial court proceeding is the exhibits, such as photographs, documents, or other items that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court. Exhibits are considered part of the record on appeal, but the clerk will not include any exhibits in the clerk's transcript unless you ask that they be included in your notice designating the record on appeal. *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103), includes a space for you to make this request.

You also can ask the trial court to send original exhibits to the appellate division at the time briefs are filed (see rule 8.843 for more information about this procedure and see below for information about briefs).

Sometimes, the trial court returns an exhibit to a party at the end of the trial. If the trial court returned an exhibit to you or another party and you or the other party ask for that exhibit to be included in the clerk's transcript or sent to the appellate division, the party who has the exhibit must deliver that exhibit to the trial court clerk as soon as possible.

14 What happens after the official record has been prepared?

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

15 What is a brief?

Description: A "brief" is a party's written description of the facts in the case, the law that applies, and the party's argument about the issues being appealed. If you are represented by a lawyer in your appeal, your lawyer will prepare your brief. If you are not represented by a lawyer, you will have to prepare your brief yourself. You should read rules 8.882–8.884 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in limited civil appeals, including requirements for the format and length of these briefs. You can get copies of these rules at any courthouse or county law library or online at *www.courts.ca.gov/rules.*

Contents: If you are the appellant, your brief, called an "appellant's opening brief," must clearly explain what you believe are the legal errors made in the trial court. Your brief must refer to the exact places in the clerk's transcript and the reporter's transcript (or the other forms of the record you are using) that support your argument. Remember that an appeal is not a new trial. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits, so do not include any new evidence in your brief.

Serving and filing: You must serve and file your brief in the appellate division by the deadline the court set in the notice it sent you, which is usually 30 days after the record is filed in the appellate division. "Serve and file" means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send ("serve") the brief to the other parties in the way required by law. If the brief is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the brief has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail, in person, or electronically), and the date the brief was served.
- File the original brief and the proof of service with the appellate division. You should make a copy of the brief you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-serving.htm.*

You and the other parties can agree (stipulate) to extend the time for filing this brief by up to 30 days (see rule 8.882(b) for requirements for these agreements). You can also ask the court to extend the time for filing this brief if you can show good cause for an extension (see rule 8.811(b) for a list of the factors the court will consider in deciding whether there is good cause for an extension). You can use *Application for Extension of Time to File Brief (Limited Civil Case)* (form APP-106) to ask the court for an extension.

If you do not file your brief by the deadline set by the appellate division, the court may dismiss your appeal.

16 What happens after I file my brief?

Within 30 days after you serve and file your brief, the respondent may, but is not required to, respond by serving and filing a respondent's brief. If the respondent does not file a brief, the appellant does not automatically win the appeal. The court will decide the appeal on the record, the appellant's brief, and any oral argument by the appellant.

If the respondent files a brief, within 20 days after the respondent's brief was filed, you may, but are not required to, file another brief replying to the respondent's brief. This is called a "reply brief."

17 What happens after all the briefs have been filed?

Once all the briefs have been filed or the time to file them has passed, the appellate division will notify you of the date for oral argument in your case.

18 What is "oral argument"?

"Oral argument" is the parties' chance to explain their arguments to the appellate division judges in person. You do not have to participate in oral argument if you do not want to; you can notify the appellate division that you want to "waive" oral argument. If all parties waive oral argument, the judges will decide your appeal based on the briefs and the record that were submitted. But if one party waives oral argument and another party or parties does not, the appellate division will hold oral argument with the party or parties who did not waive it.

If you do choose to participate in oral argument, you will have up to 10 minutes for your argument unless the appellate division orders otherwise. Remember that the judges will have already read the briefs, so you do not need to read your brief to the judges. It is more helpful to tell the judges what you think is most important in your appeal or ask the judges if they have any questions you could answer.

19 What happens after oral argument?

After oral argument is held (or the date it was scheduled passes if all the parties waive oral argument), the judges of the appellate division will make a decision about your appeal. The appellate division has 90 days after the date scheduled for oral argument to decide the appeal. The clerk of the court will mail you a notice of the appellate division's decision.

20 What should I do if I want to give up my appeal?

If you decide you do not want to continue with your appeal, you must file a written document with the appellate division notifying it that you are giving up (this is called "abandoning") your appeal. You can use *Abandonment of Appeal (Limited Civil Case)* (form APP-107) to file this notice in a limited civil case. You can get form APP-107 at any courthouse or county law library or online at *www.courts.ca.gov/forms*.

INFORMATION FOR THE RESPONDENT

This section of this information sheet is written for the respondent—the party responding to an appeal filed by another party. It explains some of the rules and procedures relating to responding to an appeal in a limited civil case. The information may also be helpful to the appellant.

21 I have received a notice of appeal from another party. Do I need to do anything?

You do not *have* to do anything. The notice of appeal simply tells you that another party is appealing the trial court's decision. However, this would be a good time to get advice from a lawyer, if you want it. You do not *have* to have a lawyer; if you are an individual (not a corporation, for example), you are allowed to represent yourself in an appeal in a limited civil case. But appeals can be complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about the appeal procedures, you should talk to a lawyer. You must hire your own lawyer if you want one. You can get information about finding a lawyer on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-lowcosthelp.htm*.

(22) If the other party appealed, can I appeal too?

Yes. Even if another party has already appealed, you may still appeal the same judgment or order. This is called a "cross-appeal." To cross-appeal, you must serve and file a notice of appeal. You can use *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (form APP-102) to file this notice in a limited civil case. Please read the information for appellants about filing a notice of appeal, starting on page 2 of this information sheet, if you are considering filing a cross-appeal.

(23) Is there a deadline to file a cross-appeal?

Yes. You must serve and file your notice of appeal within either the regular time for filing a notice of appeal (generally 30 days after mailing or service of Notice of Entry of the judgment or a file-stamped copy of the judgment) or within 10 days after the clerk of the trial court mails notice of the first appeal, whichever is later.

(24) I have received a notice designating the record on appeal from another party. Do I need to do anything?

You do not *have* to do anything. A notice designating the record on appeal lets you know what kind of official record the appellant has asked to be sent to the appellate division. Depending on the kind of record chosen by the appellant, however, you may have the option to:

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

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

(a) Reporter's transcript

If the appellant is using a reporter's transcript, you have the option of asking for additional proceedings to be included in the reporter's transcript. To do this, within 10 days after the appellant files its notice designating the record on appeal, you must serve and file a notice designating additional proceedings to be included in the reporter's transcript.

Whether or not you ask for additional proceedings to be included in the reporter's transcript, you must generally pay a fee if you want a copy of the reporter's transcript. The trial court clerk or reporter will send you a notice indicating the cost of preparing a copy of the reporter's transcript. If you want a copy of the reporter's transcript, you must deposit this amount (and a fee for the trial court) or one of the substitutes allowed by rule 8.834 with the trial court clerk within 10 days after this notice is sent. (See rule 8.834 for more information about this deposit and the permissible substitutes, such as a waiver of this deposit signed by the court reporter.)

Unlike the fee for preparing a clerk's transcript, the court cannot waive the fee for preparing a reporter's transcript. A special fund, called the Transcript Reimbursement Fund, may be able to help pay for the transcript. You can get information about this fund at w*ww.courtreportersboard.ca.gov/consumers /index.shtml#trf.* The reporter will not prepare a copy of the reporter's transcript for you unless you deposit the cost of the transcript, or one of the permissible substitutes, or your application for payment by the Transcript Reimbursement Fund is approved.

If the appellant elects not to use a reporter's transcript, you may not designate a reporter's transcript without first getting an order from the appellate division.

(b) Agreed statement

If you and the appellant agree to prepare an agreed statement (a summary of the trial court proceedings that is agreed to by the parties), you and the appellant will need to reach an agreement on that statement within 30 days after the appellant files its notice designating the record.

(c) Statement on appeal

If the appellant elects to use a statement on appeal (a summary of the trial court proceedings that is approved by the trial court), the appellant will send you a proposed statement to review. You will have 10 days from the date the appellant sent you this proposed statement to serve and file suggested changes (called "amendments") that you think are needed to make sure that the statement provides an accurate summary of the testimony and other evidence relevant to the issues the appellant indicated he or she is raising on appeal. "Serve and file" means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send ("serve") the proposed amendments to the appellant in the way required by law. If the proposed amendments are mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the proposed amendments have been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the proposed amendments, who was served with the proposed amendments, how the proposed amendments were served (by mail, in person, or electronically), and the date the proposed amendments were served.
- File the original proposed amendments and the proof of service with the trial court. You should make a copy of the proposed amendments you are planning to file for your own records before you file them with the court. It is a good idea to bring or mail an extra copy of the proposed amendments to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courts.ca.gov /selfhelp-serving.htm*.

(d) Clerk's transcript

If the appellant is using a clerk's transcript, you have the option of asking the clerk to include additional documents in the clerk's transcript.

To do this, within 10 days after the appellant serves its notice designating the record on appeal, you must serve and file a notice designating additional documents to be included in the clerk's transcript.

Whether or not you ask for additional documents to be included in the clerk's transcript, you must pay a fee if you want a copy of the clerk's transcript. The trial court clerk will send you a notice indicating the cost for a copy of the clerk's transcript. If you want a copy, you must deposit this amount with the court within 10 days after the clerk's notice was sent. If you cannot afford to pay this cost, you can ask the court to waive it. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at *www.courts.ca.gov/forms.* The court will review this application and determine if you are eligible for a fee waiver. The clerk will not prepare a copy of the clerk's transcript for you unless you deposit payment for the cost or obtain a fee waiver.

25 What happens after the official record has been prepared?

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

A brief is a party's written description of the facts in the case, the law that applies, and the party's argument about the issues being appealed. If you are represented by a lawyer, your lawyer will prepare your brief. If you are not represented by a lawyer in your appeal, you will have to prepare your brief yourself. You should read rules 8.882–8.884 of the California Rules of Court, which set out the requirements for preparing, serving,

and filing briefs in limited civil appeals, including requirements for the format and length of these briefs. You can get these rules at any courthouse or county law library or online at *www.courts.ca.gov/rules.htm.*

The appellant serves and files the first brief, called an "appellant's opening brief." You may, but are not required to, respond by serving and filing a respondent's brief within 30 days after the appellant's opening brief is filed. "Serve and file" means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send ("serve") the brief to the other parties in the way required by law. If the brief is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the brief has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail, in person, or electronically), and the date the brief was served.
- File the original brief and the proof of service with the appellate division. You should make a copy of the brief you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed. You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-serving.htm.*

You and the other parties can agree (stipulate) to extend the time for filing this brief by up to 30 days (see rule 8.882(b) for requirements for these agreements). You can also ask the court to extend the time for filing this brief if you can show good cause for an extension (see rule 8.811(b) for a list of the factors the court will consider in deciding whether there is good cause for an extension). You can use *Application for Extension of Time to File Brief (Limited Civil Case)* (form APP-106) to ask the court for an extension.

If you do not file a respondent's brief, the appellant does not automatically win the appeal. The court will decide the appeal on the record, the appellant's brief, and any oral argument by the appellant. Remember that an appeal is not a new trial. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits, so do not include any new evidence in your brief.

If you file a respondent's brief, the appellant then has an opportunity to serve and file another brief within 20 days replying to your brief.

26 What happens after all the briefs have been filed?

Once all the briefs have been filed or the time to file them has passed, the court will notify you of the date for oral argument in your case.

"Oral argument" is the parties' chance to explain their arguments to appellate division judges in person. You do not have to participate in oral argument if you do not want to; you can notify the appellate division that you want to "waive" oral argument by filing a notice within 7 days after the notice of oral argument was sent by the court. You can use *Notice of Waiver of Oral Argument* (form APP-108) to waive oral argument. If all parties waive oral argument, the judges will decide the appeal based on the briefs and the record that were submitted. But if one party waives oral argument and another party or parties do not, the appellate division will hold oral argument with any party or parties who choose to participate, including any party who asked to waive oral argument.

If you choose to participate in oral argument, you will have up to 10 minutes for your argument unless the appellate division orders otherwise. Remember that the judges will have already read the briefs, so you do not need to read your brief to the judges. It is more helpful to tell the judges what you think is most important in the appeal or ask the judges if they have any questions you could answer.

After oral argument is held (or all parties waive oral argument and the court approves the waiver), the judges of the appellate division will make a decision about the appeal. The appellate division has 90 days after oral argument (or the date its waiver was approved) to decide the appeal. The clerk of the court will mail you a notice of the appellate division's decision.

CR-131-INFO Information on Appeal Procedures for Misdemeanors

1 What does this information sheet cover?

This information sheet tells you about appeals in misdemeanor cases. It is only meant to give you a general idea of the appeal process, so it does not cover everything you may need to know about appeals in misdemeanor cases. To learn more, you should read rules 8.800–8.816 and 8.850–8.890 of the California Rules of Court, which set out the procedures for misdemeanor appeals. You can get these rules at any courthouse or county law library or online at *www.courts.ca.gov/rules.*

For information about appeal procedures in other cases, see:

- *Information on Appeal Procedures for Infractions* (form CR-141-INFO)
- *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO)

You can get these forms at any courthouse or county law library or online at *www.courts.ca.gov/forms.*

2 What is a misdemeanor?

A misdemeanor is a crime that can be punished by jail time of up to one year, but not by time in state prison. (See Penal Code sections 17 and 19.2. You can get a copy of these laws at at *http://leginfo.legislature.ca.gov/faces/codes.xhtml*.) If you were also charged with or convicted of a felony, then your case is a felony case, not a misdemeanor case.

3 What is an appeal?

An appeal is a request to a higher court to review a decision made by a lower court. **In a misdemeanor case, the court hearing the appeal is the appellate division of the superior court and the lower court—called the "trial court" in this information sheet—is the superior court.**

It is important to understand that **an appeal is NOT a new trial**. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits. The appellate division's job is to review a record of what happened in the trial court and the trial court's decision to see if certain kinds of legal errors were made in the case:

- ***Prejudicial error:*** The party that appeals (called the "appellant") may ask the appellate division to determine if an error was made about either the law or court procedures in the case that caused substantial harm to the appellant (this is called "prejudicial error"). Prejudicial error can include things like errors made by the judge about the law, errors or misconduct by the lawyers, incorrect instructions given to the jury, and misconduct by the jury that harmed the appellant. When it conducts its review, the appellate division presumes that the judgment, order, or other decision being appealed is correct. It is the responsibility of the appellant to show the appellate division that an error was made and that the error was harmful.
- ***No substantial evidence:*** The appellant may also ask the appellate division to determine if there was substantial evidence supporting the judgment, order, or other decision being appealed. When it conducts its review, the appellate division only looks to see if there was evidence that reasonably supports the decision. The appellate division generally will not reconsider the jury's or trial court's conclusion about which side had more or stronger evidence or whether witnesses were telling the truth or lying.

The appellate division generally will not overturn the judgment, order, or other decision being appealed unless the record clearly shows that one of these legal errors was made.

4 Do I need a lawyer to appeal?

You do not *have* to have a lawyer; you are allowed to represent yourself in an appeal in a misdemeanor case. But appeals can be complicated, and you will have to follow the same rules that lawyers have to follow. If you have any questions about the appeal procedures, you should talk to a lawyer.

If you are representing yourself, you must put your address, telephone number, fax number, and e-mail address (if available) on the cover of every document

you file with the court and let the court know if this contact information changes so that the court can contact you if needed.

5 How do I get a lawyer to represent me?

The court is required to appoint a lawyer to represent you if you are indigent (you cannot afford to pay for a lawyer) and:

- Your punishment includes going to jail or paying a fine of more than $500 (including penalty and other assessments) or
- You are likely to suffer other significant harm as a result of being convicted.

The court may, but is not required to, appoint a lawyer to represent you on appeal in other circumstances if you are indigent. You are automatically considered indigent if you were represented by the public defender or other court-appointed lawyer in the trial court. You will also be considered indigent if you can show that your income and assets are too low to pay for a lawyer.

If you think you are indigent, you can ask the court to appoint a lawyer to represent you for your appeal. You may use *Request for Court-Appointed Lawyer in Misdemeanor Appeal* (form CR-133) to ask the court to appoint a lawyer to represent you on appeal in a misdemeanor case. You can get form CR-133 at any courthouse or county law library or online at *www.courts.ca.gov/forms*.

If you want a lawyer and you are not indigent or if the court turns down your request to appoint a lawyer, you must hire a lawyer at your own expense. You can get information about finding a lawyer on the California Courts Online Self-Help Center at *www.courts.ca.gov /selfhelp.htm* at the "Getting Started" tab.

6 Who can appeal?

Only a party in the trial court case can appeal a decision in that case. You may not appeal on behalf of a friend, a spouse, a child, or another relative.

The party that is appealing is called the APPELLANT; in a misdemeanor case, this is usually the party convicted of committing the misdemeanor. The other party is called the RESPONDENT; in a misdemeanor case, this is usually the government agency that filed the criminal charges (on court papers, this party is called the People of the State of California).

7 Can I appeal *any* decision that the trial court made?

No. Generally, you may appeal only the final judgment —the decision at the end that decides the whole case. The final judgment includes the punishment that the court imposed. With the exception listed below, rulings made by the trial court before final judgment generally cannot be separately appealed, but can be reviewed only later as part of an appeal of the final judgment. In a misdemeanor case, the party convicted of committing a misdemeanor usually appeals that conviction or the sentence (punishment) ordered by the trial court. In a misdemeanor case, a party can also appeal:

- Before the trial court issues a final judgment in the case, from an order granting or denying a motion to suppress evidence (Penal Code section 1538.5(j))
- From an order made by the trial court after judgment that affects a substantial right of the appellant (Penal Code section 1466(2)(B))

You can get a copy of these laws at *http://leginfo.legislature.ca.gov/faces/codes.xhtml*.

8 How do I start my appeal?

First, you must file a notice of appeal. The notice of appeal tells the other party in the case and the trial court that you are appealing the trial court's decision. You may use *Notice of Appeal (Misdemeanor)* (form CR-132) to prepare and file a notice of appeal in a misdemeanor case. You can get form CR-132 at any courthouse or county law library or online at *www.courts.ca.gov/forms*.

9 Is there a deadline for filing my notice of appeal?

Yes. Except in the very limited circumstances listed in rule 8.853(b), in a misdemeanor case, you must file your notice of appeal within **30 days** after the trial court

makes ("renders") its final judgment in your case or issues the order you are appealing. (You can get a copy of rule 8.853 at any courthouse or county law library or online at *www.courts.ca.gov/rules*) The date the trial court makes its judgment is normally the date the trial court issues its order saying what your punishment is (sentences you). **This deadline for filing the notice of appeal cannot be extended. If your notice of appeal is late, the appellate division will not be able to consider your appeal.**

10 How do I file my notice of appeal?

To file the notice of appeal in a misdemeanor case, you must bring or mail the original notice of appeal to the clerk of the trial court that made the judgment or issued the order you are appealing. It is a good idea to bring or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

There is no fee for filing the notice of appeal in a misdemeanor case. You can ask the clerk of that court if there are any other requirements for filing your notice of appeal.

After you file your notice of appeal, the clerk will send a copy of your notice of appeal to the office of the prosecuting attorney (for example, the district attorney, county counsel, city attorney, or state Attorney General).

11 If I file a notice of appeal, do I still have to go to jail or complete other parts of my punishment?

Filing the notice of appeal does NOT automatically postpone your punishment, such as serving time in jail, paying fines, or probation conditions.

If you have been sentenced to jail in a misdemeanor case, you have a right to be released either with or without bail while your appeal is waiting to be decided, but you must ask the court to set bail or release you. If the trial court has not set bail or released you after your notice of appeal has been filed, you must ask the trial court to set bail or release you. If the trial court denies your release or sets the bail amount higher than you think it should be, you can apply to the appellate division for release or for lower bail.

Other parts of your punishment, such as fines or probation conditions, will be postponed ("stayed") only if you request a stay and the court grants your request. If you want a stay, you must first ask the trial court for a stay. You can also apply to the appellate division for a stay, but you must show in your application to the appellate division that you first asked the trial court for a stay and that the trial court unjustifiably denied your request. If you do not get a stay and you do not pay your fine or complete another part of your punishment by the date ordered by the court, a warrant may be issued for your arrest or a civil collections process may be started against you, which could result in a civil penalty being added to your fine.

12 What do I need to do after I file my appeal?

You must tell the trial court (1) whether you have agreed with the respondent ("stipulated") that you do not need parts of the normal record on appeal, and (2) whether you want a record of what was said in the trial court (this is called a record of the "oral proceedings") sent to the appellate division and, if so, what form of that record you want to use. You may use *Notice Regarding Record on Appeal (Misdemeanor)* (form CR-134) for this notice. (You can get form CR-134 at any courthouse or county law library or online at *www.courts.ca.gov/forms*) You must file this notice either:

(1) within 20 days after you file your notice of appeal, or, if it is later

(2) within 10 days after the court decides whether to appoint a lawyer to represent you (if you ask the court to appoint a lawyer within 20 days after you file your notice of appeal).

13 In what cases does the appellate division need a record of what was said in the trial court?

You do not *have* to send the appellate division a record of what was said in the trial court. But if you want to raise any issue in your appeal that would require the appellate division to consider what was said in the trial court, the appellate division will need a record of these oral proceedings. For example, if you are claiming that there was not substantial evidence supporting the

judgment, order, or other decision you are appealing, the appellate division will need a record of the oral proceedings. Since the appellate division judges were not there for the proceedings in the trial court, an official record of these oral proceedings must be prepared and sent to the appellate division for its review.

Depending on what form of the record you choose to use, you will be responsible for paying to have the official record of the oral proceedings prepared (unless you are indigent) or for preparing an initial draft of this record yourself. If you do not take care of these responsibilities, a record of the oral proceedings in the trial court will not be prepared and sent to the appellate division. If the appellate division does not receive this record, it will not be able to consider what was said in the trial court in deciding whether a legal error was made and it may dismiss your appeal.

(14) What are the different forms of the record?

There are three ways a record of the oral proceedings in the trial court can be prepared and provided to the appellate division in a misdemeanor case:

a. If a court reporter was there during the trial court proceedings, the reporter can prepare a record called a *"reporter's transcript."*

b. If the proceedings were officially electronically recorded, the trial court can have a transcript prepared from that recording; or if the court has a local rule permitting this and you and the respondent (the prosecuting agency) agree ("stipulate") to this, you can use the *official electronic recording* itself as the record, instead of a transcript.

c. You can use a *statement on appeal.*

Read below for more information about these options.

a. Reporter's transcript

When available: In some misdemeanor cases, a court reporter is there in the trial court and makes a record of the oral proceedings. If a court reporter made a record of your case, you can ask to have the court reporter prepare a transcript of those oral proceedings, called a "reporter's transcript." You should check with the trial court to see if a court reporter made a record of your case before you choose this option. Some courts also have local rules that establish procedures for deciding whether a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising on appeal. You should check whether the court has such a local rule.

Cost*:* Ordinarily, the appellant must pay for preparing a reporter's transcript. The court reporter will provide the clerk of the trial court with an estimate of the cost of preparing the transcript and the clerk will notify you of this estimate. If you want the reporter to prepare a transcript, you must deposit this estimated amount or one of the substitutes allowed under rule 8.866 with the clerk within 10 days after the clerk sends you the estimate. However, under rule 8.866 you can decide to use a different form of the record or take other action instead of proceeding with a reporter's transcript.

If, however, you are indigent (you cannot afford to pay the cost of a reporter's transcript), you may be able to get a free transcript. If you were represented by the public defender or another court-appointed lawyer in the trial court, you are automatically considered indigent. If you were not represented by a court-appointed lawyer in the trial court, you can complete and file *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210), to show that you are indigent. You can get form MC-210 at any courthouse or county law library or online at *www.courts.ca.gov/forms.* The court will review this form to decide whether you are indigent.

If the court finds that you are indigent, a court reporter made a record of your case, and you show that you need a transcript, the court must provide you with a free transcript. Whether you need a transcript depends on the issues you are raising on appeal. If the issues you are raising on appeal include that there was not substantial evidence supporting the judgment, order, or other decision

you are appealing or that there was misconduct in your case that harmed you, that is generally enough to show that you need a transcript. If you ask for a reporter's transcript, the court may ask you what issues you are raising on appeal and may decide that a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising.

If the court finds that you are not indigent, it will send you a notice and you will have a chance to pick another form of the record or take other actions listed in rule 8.866.

Completion and delivery: Once you deposit the estimated cost of the transcript or one of the substitutes allowed under rule 8.866 or show the court you are indigent and need a transcript, the clerk will notify the reporter to prepare the transcript. When the reporter completes the transcript, the clerk will send the reporter's transcript to the appellate division along with the clerk's transcript.

b. Official electronic recording or transcript from an official recording

When available: In some misdemeanor cases, the trial court proceedings are officially recorded on approved electronic recording equipment. If your case was officially recorded, you can ask to have a transcript prepared from that official electronic recording. You should check with the trial court to see if your case was officially electronically recorded before you choose this option. As with reporter's transcripts, some courts also have local rules that establish procedures for deciding whether a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising on appeal. You should check whether the court has such a local rule.

If the court has a local rule for the appellate division permitting this and all the parties agree ("stipulate"), a copy of the official electronic recording itself can be used as the record of the oral proceedings instead of preparing a transcript. You should check with the trial court to see if your case was officially electronically recorded and check to make sure there is a local rule permitting the use of the recording itself before choosing this option. If you choose this option, you must attach a copy of your agreement with the other parties (called a "stipulation") to your notice regarding the oral proceedings.

Cost: Ordinarily, the appellant must pay for preparing a transcript or making a copy of the official electronic recording. The court will send you an estimate of the cost for this transcript or the copy of the electronic recording. If you still want this transcript or recording, you must deposit this amount with the court. However, you can also choose to use a statement on appeal instead, or take one of the other actions listed in rule 8.868.

If, however, you are indigent (you cannot afford to pay the cost of the transcript or recording), you may be able to get a free transcript or recording. If you were represented by the public defender or another court-appointed attorney in the trial court, you are automatically considered indigent. If you were not represented by a court-appointed lawyer in the trial court, you can complete and file *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210) to show that you are indigent. You can get form MC-210 at any courthouse or county law library or online at *www.courts.ca.gov/forms.* The court will review this form to decide whether you are indigent.

If you are indigent, an official electronic recording of your case was made, and you show that you need a transcript, the court must provide you with a free transcript. As with reporter's transcripts, whether you need a transcript depends on the issues you are raising on appeal. If the issues you are raising on appeal include that there was not substantial evidence supporting the judgment, order, or other decision you are appealing or that there was misconduct in your case that harmed you, that is generally enough to show that you need a transcript. If you ask for a transcript, the court may ask you what issues you are raising on appeal and may decide that a statement on appeal or a transcript of only some of the oral

proceedings will be a good enough record to consider the issues you are raising.

If the court finds that you are not indigent, it will send you a notice and you will have a chance to use a statement on appeal instead or take one of the other actions listed in rule 8.868.

Completion and delivery: Once you deposit the estimated cost of the transcript or the official electronic recording with the clerk or show the court you are indigent and need a transcript, the clerk will have the transcript or copy of the recording prepared. When the transcript is completed or the copy of the official electronic recording is prepared, the clerk will send the transcript or recording to the appellate division along with the clerk's transcript.

c. Statement on appeal

Description: A statement on appeal is a summary of the trial court proceedings approved by the trial court judge who conducted those proceedings (the term "judge" includes commissioners and temporary judges).

When available: If the trial court proceedings were not recorded either by a court reporter or by official electronic recording equipment, or if you do not want to use either of these forms of the record, you can choose ("elect") to use a statement on appeal as the record of the oral proceedings in the trial court (please note that it may take more of your time to prepare a statement on appeal than to use either a reporter's transcript or electronic recording, if they are available).

Contents: A statement on appeal must include:

- A statement of the points you (the appellant) are raising on appeal;
- A summary of the trial court's rulings and judgment; and
- A summary of the testimony of each witness and other evidence that is relevant to the issues you are raising on appeal.

(See rule 8.869 of the California Rules of Court for more information about what must be included in a statement on appeal and the procedures for preparing a statement. You can get this rule at any courthouse or county law library or online at *www.courts.ca.gov/rules.htm*)

Preparing a proposed statement: If you choose to use a statement on appeal, you must prepare a proposed statement. If you are not represented by a lawyer, you must use *Proposed Statement on Appeal (Misdemeanor)* (form CR-135) to prepare your proposed statement. You can get form CR-135 at any courthouse or county law library or online at *www.courts.ca.gov/forms.*

Serving and filing a proposed statement: You must serve and file your proposed statement in the trial court within 20 days after you file your notice regarding the record of the oral proceedings. "Serve and file" means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") a copy of the proposed statement to the prosecuting attorney and any other party in the way required by law.
- Make a record that the proposed statement has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the proposed statement, who was served with the proposed statement, how the proposed statement was served (by mail or in person), and the date the proposed statement was served.
- File the original proposed statement and the proof of service with the trial court. You should make a copy of the proposed statement you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the proposed statement to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-serving.htm.*

Review and modifications: The prosecuting attorney and any other party have 10 days from the date you serve your proposed statement to serve and file proposed changes (called "amendments") to this statement. The trial court judge then reviews both your proposed statement and any proposed amendments filed by the prosecuting attorney and any other party. The judge will then make or order you to make any corrections or modifications to the statement needed to make sure that the statement provides a complete and accurate summary of the relevant testimony and other evidence.

Completion and certification: If the judge makes or orders you to make any corrections or modifications to the proposed statement, the corrected or modified statement will be sent to you, the prosecuting attorney, and any other party for your review. If you disagree with anything in the judge's statement, you will have 10 days from the date the statement is sent you to serve and file objections to the statement. The judge then reviews any objections, makes any additional corrections to the statement, and certifies the statement as a complete and accurate summary of the relevant testimony and other evidence.

Sending the statement to appellate division: Once the trial court judge certifies the statement on appeal, the trial court clerk will send the statement to the appellate division along with the clerk's transcript.

15 Is there any other part of the record that needs to be sent to the appellate division?

Yes. There are two other parts of the official record that need to be sent to the appellate division:

- ***Documents filed in the trial court:*** The trial court clerk is responsible for preparing a record of the written documents filed in your case, called a "clerk's transcript," and sending this to the appellate division. (The documents the clerk must include in this transcript are listed in rule 8.861 of the California Rules of Court. You can get a copy of this rule at any courthouse or county law library or online at *www.courts.ca.gov/rules*)

- ***Exhibits submitted during trial:*** Exhibits, such as photographs, that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court are considered part of the record on appeal. If you want the appellate division to consider such an exhibit, however, you must ask the trial court clerk to send the original exhibit to the appellate division within 10 days after the last respondent's brief is filed in the appellate division. (See rule 8.870 of the California Rules of Court for more information about this procedure. You can get a copy of this rule at any courthouse or county law library or online at *www.courts.ca.gov/rules*.) Sometimes, the trial court returns an exhibit to a party at the end of the trial. If the trial court returned an exhibit to you or another party and you or the other party ask for the exhibit to be sent to the appellate division, the party who has the exhibit must deliver that exhibit to the appellate division as soon as possible.

16 What happens after the record is prepared?

As soon as the record of the oral proceeding is ready, the clerk of the trial court will send it to the appellate division along with the clerk's transcript. When the appellate division receives this record, it will send you a notice telling you when you must file your brief in the appellate division.

17 What is a brief?

A brief is a party's written description of the facts in the case, the law that applies, and the party's argument about the issues being appealed. If you are represented by a lawyer in your appeal, your lawyer will prepare your brief. If you are not represented by a lawyer in your appeal, you will have to prepare your brief yourself. You should read rules 8.880–8.891 of the California Rules of Court, which set out the requirements for preparing,

serving, and filing briefs in misdemeanor appeals, including requirements for the format and length of those briefs. You can get copies of these rules at any courthouse or county law library or online at *www.courts.ca.gov/rules.*

Contents: If you are the appellant (the party who is appealing), your brief, called the "appellant's opening brief," must clearly explain what you believe are the legal errors made in the trial court. Your brief must refer to the exact places in the clerk's transcript and the reporter's transcript (or other record of the oral proceedings) that support your argument. Remember that an appeal is not a new trial. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits, so do not include any new evidence in your brief.

Serving and filing: You must serve and file your brief in the appellate division by the deadline the court set in the notice it sent you, which is usually 30 days after the record is filed in the appellate division. "Serve and file" means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the brief to the respondent (the prosecuting agency) and any other party in the way required by law.
- Make a record that the brief has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail or in person), and the date the brief was served.
- File the original brief and the proof of service with the appellate division. You should make a copy of the brief you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and at *www.courts.ca.gov/selfhelp-serving.htm.*

If you do not file your brief by the deadline set by the appellate division, the court may dismiss your appeal.

18 What happens after I file my brief?

Within 30 days after you serve and file your brief, the respondent (the prosecuting agency) may, but is not required to, respond by serving and filing a respondent's brief. If the respondent does not file a brief, the appellant does not automatically win the appeal. The court will decide the appeal on the record, the appellant's brief, and any oral argument by the appellant.

If the respondent serves and files a brief, within 20 days after the respondent's brief was served, you may, but are not required to, serve and file another brief replying to the respondent's brief. This is called a "reply brief."

19 What happens after all the briefs have been filed?

Once all the briefs have been served and filed or the time to serve and file them has passed, the court will notify you of the date for oral argument in your case unless your case presents no issues for the court to consider. If your case presents not arguable issues, the court will not hold oral argument.

20 What is oral argument?

"Oral argument" is the parties' chance to explain their arguments to the appellate division judges in person. You do not have to participate in oral argument if you do not want to; you can notify the appellate division that you want to "waive" oral argument by filing a notice within 7 days after the notice of oral argument was sent by the court. You can use *Notice of Waiver of Oral Argument* (form APP-108) to waive oral argument. If all parties waive oral argument, the judges will decide your appeal based on the briefs and the record that were submitted. But if one party waives oral argument and another party or parties do not, the appellate division will hold oral argument with any party or parties who choose to participate, including any party who asked to waive oral argument.

If you choose to participate in oral argument, you will have up to 10 minutes for your argument, unless the court orders otherwise. Remember that the judges will already have read the briefs, so you do not need to read

your brief to the judges. It is more helpful to tell the judges what you think is most important in your appeal or ask the judges if they have any questions you could answer.

21 What happens after oral argument?

After the oral argument is held (or all parties waive oral argument and the court approves the waiver), the judges of the appellate division will make a decision about the appeal. The appellate division has 90 days after oral argument (or the date its waiver was approved) to decide the appeal. The clerk of the court will mail you a notice of that decision.

22 What should I do if I want to give up my appeal?

If you decide you do not want to continue with your appeal, you must file a written document with the appellate division notifying it that you are giving up (this is called "abandoning") your appeal. You can use *Abandonment of Appeal (Misdemeanor)* (form CR-137) to file this notice in a misdemeanor case. You can get form CR-137 at any courthouse or county law library or online at *www.courts.ca.gov/forms.*

If you decide not to continue your appeal and it is dismissed, you will (with only very rare exceptions) permanently give up the chance to raise any objections to your conviction, sentence, or other matter that you could have raised on the appeal. If you were released from custody with or without bail or your sentence or any probation conditions were stayed during the appeal, you may be required to start serving your sentence or complying with your probation conditions immediately after your appeal is dismissed.

Item 05

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

MEMORANDUM

Date
February 14, 2019

To
Members of the Appellate Advisory Committee

From
Sarah Abbott, Attorney, Legal Services

Subject
Civil commitment cases—rule for the normal record on appeal and form notice of appeal

Action Requested
Please read before February 21, 2019 committee meeting

Deadline
February 21, 2019

Contact
Sarah Abbott
415-865-7687
Sarah.abbott@jud.ca.gov

Introduction

Item 9 on the Appellate Advisory Committee's annual agenda this year is to consider whether to develop (1) a California Rule of Court[1] setting forth the required contents of the normal record on appeal for civil commitment cases and (2) a form notice of appeal for civil commitment cases.[2] This is a priority 2(b) project with a proposed January 1, 2020 completion date. At its February 4 and 7, 2018 meetings, the Rules Subcommittee reviewed a draft rule and draft form governing appeals of civil commitment orders.

The subcommittee recommends that the committee move forward with circulating for public comment a proposed new rule 8.483[3] and new form *Notice of Appeal- Civil Commitment* (GC-

[1] All further references to "rule" or "rules" are to the California Rules of Court.

[2] The project summary states that civil commitment cases include extensions for those found not guilty by reason of insanity (Pen. Code, § 1026 et seq.) and those found incompetent to stand trial (Pen. Code, § 1367 et seq.), as well as commitments under the Mentally Disordered Offenders Act (Pen. Code, § 2962 et seq.), the Lanterman-Petris-Short (LPS) Act (Welf. & Inst. Code, § 5000 et seq.), the Developmentally Disabled Persons Act (Welf. & Inst. Code, § 6500 et seq.), and the Sexually Violent Predators Act (Welf. & Inst. Code, § 6600 et seq.). As discussed further below, the subcommittee does *not* recommend that the new rule and form extend to LPS commitment proceedings.

[3] To alert litigants appealing civil commitments stemming from criminal proceedings to the existence of the new rule, the subcommittee also recommends adding an Advisory Committee Comment to rule 8.320

600). This memorandum discusses the proposed rule and form as well as alternatives that the subcommittee considered. Attached for the committee's review is a draft invitation to comment addressing the proposed new rule and form.

Background

The California Rules of Court provide specific direction as to what should be included in the normal record on appeal in many types of cases. For example, rule 8.120 governs the normal record in *civil appeals*, rule 8.320 governs the normal record in *criminal appeals*, rule 8.407 governs the normal record in *juvenile appeals and writs*, and rule 8.610 governs the normal record in *death penalty appeals*. For appeals to a superior court appellate division, rule 8.860 governs the normal record in *misdemeanor appeals*, rule 8.910 governs the same in *infraction appeals*, and rule 8.957 governs the record in *small claims appeals*. Additionally, rule 8.480 governs the record on appeal from *orders establishing conservatorships* under the LPS Act, Welfare and Institutions Code section 5350 et seq.,[4] and rule 8.388 governs the contents of the record in appeals from *orders granting relief by writ of habeas corpus*. However, there is no clear rule as to what constitutes the normal record on appeal in civil commitment cases. Perhaps due to the absence of a directly applicable rule, appellate records in civil commitment cases may be inadequate but there is no clear ground for asking the clerk of the superior court to correct the record. Jonathan Grossman of the Sixth District Appellate Program and a current member of the Appellate Advisory Committee suggested the adoption of a new rule of court that would provide needed guidance to litigants and the courts and ensure that appellate records in such cases are complete.

Likewise, the Judicial Council publishes several form notices of appeal, including *Notice of Appeal-Felony (Defendant*) (CR-120); *Notice of Appeal (Misdemeanor)* (CR-132), *Notice of Appeal and Record on Appeal (Infraction)* (CR-142), *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (APP-102), *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)* (APP-002), *Notice of Appeal (Small Claims)* (SC-140), and *Notice of Appeal (Juvenile)* (JV-800).[5] However, there is no form notice of appeal specific to civil commitment cases. Based on a suggestion from a staff attorney at the First District Appellate Project, Mr. Grossman also suggested that a form notice of appeal for civil commitment cases could help simplify the process for litigants and court staff.

Draft New Rule 8.483 Governing the Normal Record in Civil Commitment Appeals

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referencing the new rule as follows: "Rule 8.483 governs the normal record and exhibits in civil commitment appeals."

[4] Rule 8.480 states that, except as otherwise provided, rules 8.304 through 8.368 (including rule 8.320, governing the normal record in criminal appeals) govern appeals from orders establishing LPS conservatorships.

[5] The council also publishes a form *Petition for Writ of Habeas Corpus—Penal Commitment* (HC-003) and *Petition for Writ of Habeas Corpus—LPS Act* (HC-002).

The initial suggestion that generated the proposed new rule governing the normal record on appeal in civil commitment cases was to base the rule on existing rule 8.320, governing the contents of the normal record on appeal in criminal cases, as modified to make the new rule appropriate for civil commitment appeals. The subcommittee believes that basing a new rule governing the normal record in civil commitment appeals on existing rule 8.320, with appropriate modifications, makes significant sense. While civil commitment cases are not "criminal" per se, many or most of these matters stem from criminal proceedings and requiring a similar record on appeal would likely be helpful to trial court staff tasked with compiling such records. The subcommittee therefore recommends adoption of a new rule of court based on existing rule 8.320, with modifications as described below.

In drafting the new rule, the subcommittee evaluated the suggested modifications to rule 8.320, and considered other potential modifications intended to generate a complete and useful record for civil commitment appeals. In particular, the subcommittee discussed the appropriate scope of the new rule. While the initial suggestion was to adopt a new rule of court governing the contents of the normal record on appeal in civil commitment cases "where the person is entitled to appointed counsel"[6] (including commitments under the Mentally Disordered Offenders Act, the LPS Act, the Developmentally Disabled Persons Act, and the Sexually Violent Predators Act, as well as extensions for those found not guilty by reason of insanity and those found incompetent to stand trial) the subcommittee believes that the new rule should be more conservative in scope and not extend to appeals of commitments under the LPS Act. To that end, the subcommittee agreed that it would be useful for the rule to explicitly state what types of proceedings it applies to as part of an "application and scope" subsection (a), to provide clarity for courts and litigants.

The subcommittee further agreed that several other modifications to the language of rule 8.320 are appropriate for civil commitment appeals, including, among other things: adding a requirement that court-ordered diagnostic or psychological reports and documentary exhibits be included in the record, replacing the term "defendant" with "person subject to the civil commitment order," and omitting in its entirety subsection (d) regarding a "limited normal record in certain appeals."

The subcommittee also considered *where* within the appellate rules a new rule governing the normal record on appeal in civil commitment cases should be placed. The appellate rules are generally organized into divisions (Supreme Court /Court of Appeal, appellate division, and small claims) and then divided into chapters by subject matter (e.g., civil, criminal, juvenile, conservatorship, miscellaneous writs). However, given the varying contexts in which the issue of civil commitment may arise, civil commitment appeals do not fall neatly into any one of the existing divisions or chapters of the appellate rules. The subcommittee considered multiple possible locations for the placement of a new rule, and concluded that the best alternative would be to amend title 8 (Appellate Rules), division 1 (Rules Relating to the Supreme Court and Courts of Appeal), chapter 6 (Conservatorship Appeals) to expand the scope of the chapter to also apply to civil commitment appeals by renaming it "Conservatorship and Civil Commitment

[6] The initial suggestion did not specify the significance of making the rule only applicable to civil commitment cases where a right to counsel attaches, though it appears that this was intended to limit the scope of the suggested rule to civil commitment proceedings stemming from criminal proceedings.

Appeals." A new rule 8.483 would be added immediately following existing rules 8.480 and 8.482 governing LPS conservatorship appeals contained in that chapter. As part of the subcommittee's discussion of how to organize the new rule, an effort has therefore been made to structure and phrase the new rule similarly to the other rules in chapter 6.

This subcommittee is aware that this rule placement is not without issue. Though conservatorship and civil commitment may both arise in some cases, adding a rule governing the normal record in civil commitment appeals to the existing chapter of the rules governing conservatorship appeals could be confusing where there is no overlap of the issues. Moreover, the civil commitment rule is intended to govern appeals of civil commitment orders stemming from criminal proceedings, and is not intended to apply to LPS commitments. Nevertheless, the subcommittee believes that expanding the scope of chapter 6 and including a civil commitment rule therein is the best alternative. And to address any potential confusion for criminal litigants, the subcommittee recommends adding an Advisory Committee Comment to rule 8.320 (governing the record for criminal appeals) to ensure that litigants and courts are aware of the separate rule governing civil commitment appeals that may be applicable.

The attached invitation to comment includes the draft proposed rule 8.483 governing the normal record on appeal in civil commitment cases, as recommended by the rules subcommittee. For the committee's reference, the modifications to rule 8.320 that have been incorporated into the proposed new rule are as follows, with the differences highlighted in yellow:

Chapter 6. Conservatorship and Commitment Appeals

Rule 8.483. ~~Normal record; exhibits~~ Appeal from order of civil commitment

(a) Application and Contents

(1) Application

Except as otherwise provided in this rule, rules 8.300–8.368 and 8.508 govern appeals from civil commitment orders under Penal Code sections 1026 et seq. (not guilty by reason of insanity), 1370 et seq. (incompetent to stand trial), 1600 et seq. (continue outpatient treatment or return to confinement), 2962 et seq. (Mentally Disordered Offenders Act), and Welfare & Institutions Code sections 1800 et seq. (extended detention of dangerous persons), 6500 et seq. (Developmentally Disabled Persons Act, and 6600 et seq. (Sexually Violent Predators Act).

(~~a~~2) Contents

~~If the defendant appeals from a judgment of conviction, or of the People appeal from an order granting a new trial~~In an appeal from a civil commitment order, the record must contain a clerk's transcript and a reporter's transcript, which together constitute the normal record.

(b) Clerk's transcript

The clerk's transcript must contain:

(1) The petition~~The accusatory pleading and any amendment~~;

(2) Any demurrer or other plea, admission, or denial;

(3) All court minutes;

(4) All jury instructions that any party submitted in writing and the cover page required by rule 2.1055(b)(2) indicating the party requesting each instruction, and any written jury instructions given by the court;

(5) Any written communication between the court and the jury or any individual juror;

(6) Any verdict;

(7) Any written opinion of the court;

(8) The commitment order and any judgment or other order appealed from~~and any abstract of judgment or commitment~~;

(9) Any motion for new trial, with supporting and opposing memoranda and attachments;

(10) The notice of appeal and any certificate of probable cause filed under rule 8.304(b);

(11) Any transcript of a sound or sound-and-video recording furnished to the jury or tendered to the court under rule 2.1040;

(12) Any application for additional record and any order on the application;

(13) Any court-ordered diagnostic or psychological report required under Penal Code section 1369 and any documentary exhibits;[7]

~~(13) And, if the appellant is the defendant:~~

(~~A~~14) Any written defense motion denied in whole or in part, with supporting and opposing memoranda and attachments;

~~(B) If related to a motion under (A), any search warrant and return and the reporter's transcript of any preliminary examination or grand jury hearing;~~

(~~C~~15) Any document admitted in evidence to prove a ~~prior~~ juvenile adjudication, criminal conviction, or prison term; and

~~(D) The probation officer's report; and~~

[7] Under rule 8.320(b)(13)(E), if the appellant is the defendant, the clerk's transcript must contain: "Any court-ordered diagnostic or psychological report required under Penal Code section 12303.03(b) or 1369." The committee should consider whether the draft proposed language of rule 8.483(b)(13)—which additionally requires "any documentary exhibits"—is appropriate, or whether it should conform to rule 8.320(b)(13)(E).

~~(E) Any court-ordered diagnostic or psychological report required under Penal Code section 1203.03(b) or 1369.~~

(16) Any written waiver of the right to a jury trial or the right to be present.

(c) Reporter's transcript

The reporter's transcript must contain:

(1) The oral proceedings on the entry of any admission or submission to the commitment petition or motion for involuntary medication~~plea other than a not guilty plea~~;

(2) The oral proceedings on any motion in limine;

(3) The oral proceedings at trial, but excluding the voir dire examination of jurors and any opening statement;

(4) All instructions given orally;

(5) Any oral communication between the court and the jury or any individual juror;

(6) Any oral opinion of the court;

(7) The oral proceedings on any motion for new trial;

(8) The oral proceedings of the commitment order or other dispositional hearing ~~at sentencing, granting or denying of probation, or other dispositional hearing~~;

(9) Any oral waiver of the right to a jury trial or the right to be present;

(~~9~~10) And, if the appellant is the person subject to the civil commitment order~~defendant~~:

(A) The oral proceedings on any defense motion denied in whole or in part except motions for disqualification of a judge ~~and motions under Penal Code section 995~~;

(B) The closing arguments; and

(C) Any comment on the evidence by the court to the jury.

~~**(d) Limited normal record in certain appeals**~~

~~If the People appeal from a judgment on a demurrer to the accusatory pleading, or if the defendant or the People appeal from an appealable order other than a ruling on a motion for new trial, the normal record is composed of:~~

~~(1) *Clerk's transcript*~~

~~A clerk's transcript containing:~~

~~(A) The accusatory pleading and any amendment;~~

~~(B) Any demurrer or other plea;~~

~~(C) Any written motion or notice of motion granted or denied by the order appealed from, with supporting and opposing memoranda and attachments;~~

~~(D) The judgment or order appealed from and any abstract of judgment or commitment;~~

~~(E) Any court minutes relating to the judgment or order appealed from and:~~

~~(i) If there was a trial in the case, any court minutes of proceedings at the time the original verdict is rendered and any subsequent proceedings; or~~

~~(ii) If the original judgment of conviction is based on a guilty plea or nolo contendere plea, any court minutes of the proceedings at the time of entry of such plea and any subsequent proceedings;~~

~~(F) The notice of appeal; and~~

~~(G) If the appellant is the defendant, all probation officer reports and any court-ordered diagnostic report required under Penal Code section 1203.03(b).~~

~~(2) *Reporter's transcript*~~

~~(A) A reporter's transcript of any oral proceedings incident to the judgment or order being appealed; and~~

~~(B) If the appeal is from an order after judgment, a reporter's transcript of:~~

~~(i) The original sentencing proceeding; and~~

~~(ii) If the original judgment of conviction is based on a guilty plea or nolo contendere plea, the proceedings at the time of entry of such plea.~~

(de) Exhibits

Exhibits admitted in evidence, refused, or lodged are deemed part of the record, but may be transmitted to the reviewing court only as provided in rule 8.224.

(ef) Stipulation for partial transcript

If counsel for the person subject to the civil commitment order~~defendant~~ and the People stipulate in writing before the record is certified that any part of the record is not required for proper determination of the appeal, that part must not be prepared or sent to the reviewing court.

Alternatives Considered

The proposed new rule stemmed from a suggestion to create a new rule governing the normal record in civil commitment appeals by starting with the language of rule 8.320 (governing the normal record in criminal appeals) and modifying it appropriately for civil commitment cases. The subcommittee alternatively considered whether it would be more appropriate to instead start with language of rule 8.480 (governing LPS conservatorship appeals) and instead modify the language of that rule as appropriate for civil commitment appeals. However, because the

subcommittee believes that the new rule should be directed to civil commitments stemming from criminal proceedings, it recommends that the rule be based on the language of existing rule 8.320 as initially suggested, and not on rule 8.480.

The subcommittee also considered the appropriate scope of the new rule, and whether it should include an explicit definition of "civil commitment" proceeding, either in the rule itself or in an advisory committee comment, to ensure that there is no confusion as to what type of proceedings the rule applies to. To provide clarity, the subcommittee recommends adding a paragraph regarding application of the rule to subdivision (a). The subcommittee further considered whether to include civil commitments under the LPS Act within the scope of the rule, as was initially suggested. However, civil commitments under LPS Act do not necessarily stem from criminal proceedings, and may be subject to other rules of court. The subcommittee believes that the scope of the rule should be conservative, and therefore recommends that the new rule *not* extend to LPS civil commitments.

With respect to placement of the new rule, the subcommittee considered three alternative placements and—as noted above—recommends that the scope of chapter 6 be expanded to include both conservatorship and civil commitment appeals, and that the new rule be placed therein. The subcommittee alternatively considered whether the new rule should be located in title 8 (Appellate Rules), division 1 (Rules Relating to the Supreme Court and Courts of Appeal), chapter 1 (Criminal Appeals), Article 2 (Record on Appeal), directly after the rule governing the normal record in criminal appeals, by creating a new rule 8.321 governing civil commitment proceedings. This placement could make clear that the rule is intended to cover only appeals of civil commitment proceedings stemming from criminal proceedings. However, because civil commitments are technically not criminal proceedings, the subcommittee concluded that placement of a rule governing civil commitments in the chapter governing criminal appeals could be confusing for litigants and might lead to unintended questions as to whether the new rule constitutes a change in substantive law regarding the proper legal characterization of civil commitments. The subcommittee therefore does not recommend that the new rule be placed within the criminal appeal rules. As an additional alternative, the subcommittee considered whether to add a new chapter 13 to division 1 of the appellate rules, directed specifically to appeals in civil commitment proceedings, and add a new rule 8.718 under this new chapter. While this would be consistent with the overall structure of division 1, which contains separate chapters for various types of appeals, it would require the creation of a new chapter containing only a single rule, which is disfavored.

Draft New Form Notice of Appeal for Civil Commitment Appeals

The initial suggestion for a new form notice of appeal for civil commitment proceedings, including a draft form provided by the proponents of this proposal, appears to have been based on existing form *Notice of Appeal–Felony (Defendant)* (CR-120). The proposed form GC-605, *Notice of Appeal—Civil Commitment* attached to the invitation to comment has been modified to comport with the Judicial Council's standard formatting and style guidelines. Additionally, the subcommittee concluded that other substantive modifications are appropriate for a notice of appeal specific to civil commitment proceedings. The subcommittee's recommendations are reflected in the attached proposed form.

In particular, the subcommittee considered the appropriate name for the form, and recommends that the name *Notice of Appeal—Civil Commitment* be used. Moreover, given that the person subject to the civil commitment order being appealed is not necessarily a "defendant," and might be either the "petitioner" or "respondent" for purposes of the appeal, the subcommittee discussed how to most appropriately and succinctly reference this person throughout the form. The subcommittee concluded that it would be most clear to use the term "Petitioner/Respondent" and define the term to mean the person subject to the civil commitment order at its first use. This recommendation is also reflected throughout the attached proposed form.

The subcommittee further considered the appropriate scope of the new form, and recommends that it be consistent in scope with the new rule of court governing the normal record on appeal in civil commitment cases discussed above. The subcommittee believes that a parallel scope would provide clarity and avoid confusion for litigants, counsel, and the courts. As such, the subcommittee recommends that the form notice of appeal include an item listing the types of civil commitment proceedings with which it may be used (in a "check box" format) that is consistent with the types of proceedings included in proposed new rule 8.483(a)(1)— i.e., civil commitment orders under Penal Code sections 1026 et seq. (not guilty by reason of insanity), 1370 et seq. (incompetent to stand trial), 1600 et seq. (return to confinement), 2962 et seq. (Mentally Disordered Offenders Act), and Welfare & Institutions Code sections 1800 et seq. (extended detention of dangerous persons), 6500 et seq. (Developmentally Disabled Persons Act, and 6600 et seq. (Sexually Violent Predators Act). For the reasons discussed above with respect to the new rule, the subcommittee does not recommend that civil commitment orders under the LPS Act be included in this list.

Though not raised by the initial suggestion, the subcommittee also considered what category designation a new form notice of appeal for civil commitment cases should bear (i.e., APP, CR, CIV, MC, GC, etc.) The subcommittee recommends that the form be included within the "Guardianships and Conservatorships" or "GC" category, and that the category name be changed to "Guardianships, Conservatorships, and Commitments."[8]

Alternatives Considered

The subcommittee considered alternative names for the form, including names such as *Notice of Appeal—Involuntary Civil Commitments* or *Notice of Appeal—Civil Commitments/Mental Health*, both of which were included in the initial suggestion. However, the subcommittee believes that *Notice of Appeal—Civil Commitment* is the clearest name for the form and does not recommend these alternatives.

With respect to how to reference the person subject to the civil commitment order being appealed, the subcommittee considered whether to use the term "person subject to the civil commitment order," "Petitioner/Respondent," "Petitioner/Defendant," or some variation thereof

[8] The process for changing the name of a category of forms is somewhat unclear, and staff will investigate how best to accomplish the category name change recommended by the subcommittee if the committee agrees that this change is appropriate. Regardless, the category designator "GC" would remain the same, so that no existing forms would need to be changed as a result of changing the category name.

throughout the form. Because the person subject to the commitment order is not technically a defendant for purposes of the civil commitment proceedings, and may be either a petitioner or respondent for purposes of the appeal, the subcommittee does not recommend using the term "Defendant" on the form. As noted above, the subcommittee instead recommends defining the term "Petitioner/Respondent" when it is first used and then using this term consistently throughout the remainder of the form.

Further, item 2 of the proponents' suggested draft form included check-boxes asking whether the appeal comes after a "jury or court trial," "contested hearing," "stipulated judgment," or "other (specify)." The subcommittee determined that the inclusion of "stipulated judgment" in this list could be confusing for litigants because, in most contexts, stipulated judgments are not appealable. Therefore, "stipulated judgment" has not been included as a choice in item 2. If a civil commitment matter was initially decided by stipulated judgment, this can be indicated by checking "other" and providing an explanation.

Additionally, consideration was given to the scope of a new form notice of appeal, and whether it should include commitments under the LPS Act and/or other types of commitments. Likewise, it was suggested that the new form notice of appeal might be used for appeals of other types of orders relating to civil commitment proceedings, such as: Welfare & Institutions Code sections 5275 (judicial review of detention by certification), 5300 (petition for order of additional intensive treatment), 5326.7 (proceeding to administer convulsive treatment; determination that patient lacks capacity to consent), and 5332–5334 (*Riese* hearing, involuntary psychotropic medication). The subcommittee concluded that this would expand the scope of the new form notice of appeal well beyond the scope of the proposed rule of court, could create confusion for litigants and courts, and would thus be inadvisable. Instead the subcommittee recommends that the scope of the new form notice of appeal for civil commitments be consistent with that of the new rule governing the record on appeal in civil commitment cases.

With respect to how to categorize the form, the subcommittee considered whether the form should be included within the criminal forms and given a "CR" form designation. Because civil commitment appeals are not technically criminal in nature, and in light of the subcommittee's recommendation that the proposed new rule of court not be placed in the chapter of the appellate rules governing criminal appeals, the subcommittee concluded that the form should not be labeled "CR." Likewise, the subcommittee considered whether the "APP" moniker might be appropriate, but determined that this is generally used for appeals in more traditionally civil cases. The subcommittee also considered recommending the "MC" category designation for the new form, given the unique subject matter of civil commitment proceedings. However, the subcommittee does not recommend this designation because locating this notice of appeal within the miscellaneous forms it could make it difficult for litigants to locate.

Finally, the subcommittee considered whether expanding the scope of an existing form notice of appeal, or adding an instruction to an existing form so that the form may also be used in civil commitment appeals, would suffice. Following a review of existing form notices of appeal, the subcommittee believes it would be clearer to create a new form than to use any of the pre-existing form notices of appeal and therefore does not recommend this option.

Committee Task

Attached for the committee's review is a draft invitation to comment reflecting the Rules Subcommittee recommendation that this proposal be circulated for public comment. **Please note** that the subcommittee reviewed previous versions of the draft rule and form and agreed on modifications thereto that are reflected in the proposal, but it did not review the draft invitation to comment or this cover memo.

The committee's task is to review this invitation to comment and:
(1) ask staff or committee members for further information/analysis;
(2) recommend to RUPRO that the invitation to comment, as proposed or as further revised by the committee, be approved for circulation; or
(3) reject the proposal.

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INVITATION TO COMMENT

SPR19-__

Title
Civil Commitment Cases: Rule for the Normal Record on Appeal and Form Notice of Appeal

Proposed Rules, Forms, Standards, or Statutes
Adopt Cal. Rules of Court, rule 8.483; amend rule 8.320; and approve form GC-605

Proposed by
Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

Action Requested
Review and submit comments by June 7, 2019

Proposed Effective Date
January 1, 2020

Contact
Sarah Abbott, 415-865-7687
sarah.abbott@jud.ca.gov

Executive Summary and Origin

The Appellate Advisory Committee proposes (1) a new rule of court setting forth the required contents of the normal record on appeal for civil commitment cases and (2) a new form notice of appeal for civil commitment cases. This proposal is in response to a suggestion from a member of this committee and is intended to provide needed guidance to litigants and the courts and ensure that appellate records in civil commitment cases are complete.

Background

The California Rules of Court provide specific direction as to what should be included in the normal record on appeal in many types of cases.[1] However, there is no clear rule as to what constitutes the normal record on appeal in civil commitment cases. Perhaps due to the absence of a directly applicable rule, appellate records in civil commitment cases may be inadequate but there is no clear ground for asking the clerk of the superior court to correct the record.

[1] See, for example, rule 8.120 (unlimited civil appeals); rule 8.320 (criminal appeals); rule 8.407 (juvenile appeals and writs); rule 8.610 (death penalty appeals); rule 8.830 (limited civil appeals); and rule 8.860 (misdemeanor appeals). Additionally, rule 8.480 governs the record on appeal from orders establishing conservatorships under Welfare & Institutions Code section 5350 et seq. (the LPS Act), and rule 8.388 governs the contents of the record in appeals from orders granting relief by writ of habeas corpus.

Likewise, the Judicial Council publishes several form notices of appeal.[2] However, there is no form notice of appeal specific to civil commitment cases, and it has been suggested that a form could help simplify the appeal process for litigants and court staff.

Proposed New Rule 8.483

The Proposal

The proposed new rule governing the normal record on appeal in civil commitment cases is based on existing rule 8.320, governing the contents of the normal record on appeal in criminal cases, as modified to make the rule appropriate for civil commitment appeals. While civil commitment cases are not "criminal" per se, many or most of these matters stem from criminal proceedings and thus the contents of the record on appeal will be similar. The new rule is intended to generate a complete and useful record for civil commitment appeals.

The proposed new rule is limited in scope and applies to appeals of civil commitment orders stemming from criminal proceedings, but not to other types of commitment orders such as those made pursuant to the Lanterman-Petris-Short Act, Welfare & Institutions Code section 5300 et seq., which may be subject to other rules. To provide clear guidance to litigants and courts, the proposed rule explicitly states the types of proceedings to which it applies in subdivision (a). Other modifications to the language of rule 8.320 have also been incorporated into the new rule, including, among others: adding a requirement that court-ordered diagnostic or psychological reports and documentary exhibits be included in the record, replacing the term "defendant" with "person subject to the civil commitment order," and omitting in its entirety subsection (d) regarding a "limited normal record in certain appeals."

With respect to placement of the new rule, the appellate rules are generally organized into divisions (Supreme Court /Court of Appeal, appellate division, and small claims) and then divided into chapters by subject matter. Given the varying contexts in which the issue of civil commitment may arise, such appeals may not fall neatly into any one of the existing divisions or chapters of the appellate rules. Thus, the proposal is to amend title 8 (Appellate Rules), division 1 (Rules Relating to the Supreme Court and Courts of Appeal), chapter 6 (Conservatorship Appeals) to expand the scope of the chapter to also apply to civil commitment appeals by renaming it "Conservatorship and Civil Commitment Appeals." New rule 8.483 immediately follows the existing rules in that chapter governing LPS conservatorship appeals. To address any potential confusion for criminal litigants due to the placement of the new rule, it is further proposed that an Advisory Committee Comment be added to rule 8.320 (governing the record for criminal appeals) to ensure that litigants and courts are aware of the separate rule governing civil commitment appeals that may be applicable.

[2] See, for example, APP-002 (*Notice of Appeal/Cross-Appeal (Unlimited Civil Case)*); CR-120 (*Notice of Appeal-Felony (Defendant*)); JV-800 (*Notice of Appeal (Juvenile)*); APP-102 (*Notice of Appeal/Cross-Appeal (Limited Civil Case)*); and CR-132 (*Notice of Appeal (Misdemeanor)*).

Alternatives Considered

The committee considered not making any changes to the rules but concluded that the proposed new rule would provide clarity to litigants, court staff, and judges. The committee also considered basing the new civil commitment rule on the language of rule 8.480 (governing LPS conservatorship appeals) and modifying that language as appropriate for civil commitment appeals. However, because the new rule is directed to appeals of civil commitment orders stemming from criminal proceedings, not commitments under the LPS Act, the committee decided that it would be preferable to base the new rule on the existing rule governing criminal appeals.

The committee further considered the appropriate scope of the new rule, and whether it should include an explicit definition of "civil commitment" proceeding, either in the rule itself or in an advisory committee comment. The committee added a paragraph regarding application of the rule to subdivision (a) to ensure that there is no confusion as to what type of proceedings the rule applies to. The committee further considered whether to include civil commitments under the LPS Act within the scope of the rule, but because civil commitments under LPS Act do not necessarily stem from criminal proceedings and may be subject to other rules of court, the committee decided *not* to extend the rule to govern appeals of LPS civil commitments.

With respect to placement of the rule, the committee considered three alternative placements and decided that it would provide the most clarity to expand the scope of chapter 6 to include both conservatorship and civil commitment appeals, and that the new rule be placed therein. The committee alternatively considered whether the rule should be located in title 8 (Appellate Rules), division 1 (Rules Relating to the Supreme Court and Courts of Appeal), chapter 1 (Criminal Appeals), Article 2 (Record on Appeal), directly after the rule governing the normal record in criminal appeals. While this placement could make clear that the rule is intended to cover only appeals of civil commitment orders stemming from criminal proceedings, it could also cause confusion or questions as to whether the new rule constitutes a change in substantive law because civil commitments are not criminal proceedings. Consideration was also given to whether to add a new chapter 13 to division 1 of the appellate rules, directed specifically to appeals in civil commitment proceedings, and add a new rule under this new chapter. While this would be consistent with the overall structure of division 1, which contains separate chapters for various types of appeals, it would require the creation of a new chapter containing only a single rule, which is disfavored.

Proposed Form GC-605 (*Notice of Appeal–Civil Commitment*)

The Proposal

The proposed new form notice of appeal for civil commitment proceedings, GC-605, is based on form CR-120 (*Notice of Appeal–Felony (Defendant)*), as modified for use in civil commitment appeals. In particular, given that the person subject to the civil commitment order being appealed is not necessarily a "defendant," and might be either the "petitioner" or "respondent" for purposes of the appeal, the form uses the term "Petitioner/Respondent" throughout and defines the term to mean the "person subject to the civil commitment order" at its first use. The form is also intended to be consistent in scope with the proposed new rule of court governing the normal record on appeal in civil commitment cases. The form includes an item listing the types of civil commitment proceedings with which it may be used that is consistent with the types of proceedings included in proposed new rule 8.483(a)(1). The form will be

included within the "Guardianships and Conservatorships" or "GC" category, and that the category name will be changed to "Guardianships, Conservatorships, and Commitments."

Alternatives to the Proposed New Form Considered

The committee considered not developing a new form notice of appeal for civil commitment orders, and instead expanding the scope of an existing form notice of appeal, or adding an instruction to an existing form so that the form might also be used in civil commitment appeals. Following a review of existing form notices of appeal, the committee concluded that it would be clearer to create a new form than to use any of the pre-existing form notices of appeal.

The committee considered alternative names for the new form but determined that *Notice of Appeal—Civil Commitment* is the clearest name. With respect to how to reference the person subject to the civil commitment order being appealed in the clearest and most succinct manner throughout the form, the committee considered whether to use the term "person subject to the civil commitment order," "Petitioner/Respondent," "Petitioner/Defendant," or some variation thereof. Because the person subject to the commitment order is not technically a defendant for purposes of the civil commitment proceedings, and may be either a petitioner or respondent for purposes of the appeal, the term "Defendant" is not used on the form and "Petitioner/Respondent" is defined and used instead.

Additionally, consideration was given to the scope of a new form, and whether it should include commitments under the LPS Act and/or other types of commitments. Likewise, the committee considered whether the new form might be used for appeals of other types of orders relating to civil commitment proceedings, but concluded that this would expand the scope of the new form well beyond the scope of the associated proposed new rule of court and could create confusion for litigants and courts.

With respect to how to categorize the form, the committee considered whether the form should be included within the criminal forms and given a "CR" (criminal) form designation. Because civil commitment appeals are not technically criminal in nature, and in light of the committee's decision not to place the proposed new rule of court in the chapter of the appellate rules governing criminal appeals, the "CR" designation was not used. Likewise, the committee considered use of the "APP" (appellate) moniker but determined that, because this is generally used for forms in civil appeals, litigants might not look there for the new form. Finally, the committee considered using the "MC" (miscellaneous) category designation, given the unique subject matter of civil commitment proceedings, but concluded that this could also make it difficult for litigants to locate the new form.

Implementation Requirements, Costs, and Operational Impacts

No significant implementation requirements, costs, or operational impacts are anticipated. However, there is likely to be some cost associated with duplication and distribution of the new form, and some additional training will be required for court staff responsible for preparing the record on appeal in civil commitment cases.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Is the scope of the rule appropriate, and in particular should the rule be applicable to any other type of civil commitment order, such as commitments under the LPS Act?
- Is the scope of the form appropriate, and in particular should it be available for the appeal of any other type of civil commitment order, such as commitments under the LPS Act?

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

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

Attachments and Links

1. Cal. Rules of Court, rule 8.830 and 8.484, pages 6–9.
2. Notice of Appeal–Civil Commitment (GC-605), page 10.

Rule 8.320 of the California Rules of Court would be amended and Rule 8.483 of the California Rules of Court would be added, effective January 1, 2020, to read:

Title 8. Appellate Rules

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

Chapter 3. Criminal Appeals

Article 2. Record on Appeal

Rule 8.320. Normal record; exhibits

***

Advisory Committee Comment

Rule 8.483 governs the normal record and exhibits in civil commitment appeals.

Chapter 6. Conservatorship and Civil Commitment Appeals

Rule 8.483. Appeal from order of civil commitment

(a) Application and Contents

(1) *Application*

Except as otherwise provided in this rule, rules 8.300-8.368 and 8.508 govern appeals from civil commitment orders under Penal Code sections 1026 et seq. (not guilty by reason of insanity), 1370 et seq. (incompetent to stand trial), 1600 et seq. (continue outpatient treatment or return to confinement), 2962 et seq. (Mentally Disordered Offenders Act), and Welfare & Institutions Code sections 1800 et seq. (extended detention of dangerous persons), 6500 et seq. (Developmentally Disabled Persons Act, and 6600 et seq. (Sexually Violent Predators Act).

(2) *Contents*

In an appeal from a civil commitment order, the record must contain a clerk's transcript and a reporter's transcript, which together constitute the normal record.

(b) Clerk's transcript

The clerk's transcript must contain:

(1) The petition;

(2) Any demurrer or other plea, admission, or denial;

(3) All court minutes;

(4) All jury instructions that any party submitted in writing and the cover page required by rule 2.1055(b)(2) indicating the party requesting each instruction, and any written jury instructions given by the court;

(5) Any written communication between the court and the jury or any individual juror;

(6) Any verdict;

(7) Any written opinion of the court;

(8) The commitment order and any judgment or other order appealed from;

(9) Any motion for new trial, with supporting and opposing memoranda and attachments;

(10) The notice of appeal and any certificate of probable cause filed under rule 8.304(b);

(11) Any transcript of a sound or sound-and-video recording furnished to the jury or tendered to the court under rule 2.1040;

(12) Any application for additional record and any order on the application;

(13) Any court-ordered diagnostic or psychological report required under Penal Code section 1369 and any documentary exhibits;

(14) Any written defense motion denied in whole or in part, with supporting and opposing memoranda and attachments;

(15) Any document admitted in evidence to prove a juvenile adjudication, criminal conviction, or prison term; and

(16) Any written waiver of the right to a jury trial or the right to be present.

(c) Reporter's transcript

The reporter's transcript must contain:

(1) The oral proceedings on the entry of any admission or submission to the commitment petition or motion for involuntary medication;

(2) The oral proceedings on any motion in limine;

(3) The oral proceedings at trial, but excluding the voir dire examination of jurors and any opening statement;

(4) All instructions given orally;

(5) Any oral communication between the court and the jury or any individual juror;

(6) Any oral opinion of the court;

(7) The oral proceedings on any motion for new trial;

(8) The oral proceedings of the commitment hearing or other dispositional hearing;

(9) Any oral waiver of the right to a jury trial or the right to be present;

(10) And, if the appellant is the person subject to the civil commitment order:

(A) The oral proceedings on any defense motion denied in whole or in part except motions for disqualification of a judge;

(B) The closing arguments; and

(C) Any comment on the evidence by the court to the jury.

(d) Exhibits

Exhibits admitted in evidence, refused, or lodged are deemed part of the record, but may be transmitted to the reviewing court only as provided in rule 8.224.

(e) Stipulation for partial transcript

If counsel for the person subject to the civil commitment order and the People stipulate in writing before the record is certified that any part of the record is not required for proper determination of the appeal, that part must not be prepared or sent to the reviewing court.

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **2-14-2019** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF	
PEOPLE OF THE STATE OF CALIFORNIA vs. Petitioner/Respondent:	
NOTICE OF APPEAL—CIVIL COMMITMENT	CASE NUMBER:

NOTICE

You must file this form in the SUPERIOR COURT WITHIN 60 DAYS after the court rendered the judgment or made the order you are appealing.

1. Petitioner/Respondent (the person subject to the civil commitment) appeals from a judgment rendered or an order of commitment made by the superior court.

   NAME of Petitioner/Respondent:
   DATE of the order or judgment:

2. This appeal is (check one):
   a. ☐ After a jury or court trial.
   b. ☐ After a contested hearing.
   c. ☐ Other (specify):

3. Petitioner/Respondent is currently being held pursuant to:
   ☐ Penal Code, § 1026 et seq. (not guilty by reason of insanity)
   ☐ Penal Code, § 1370 et seq. (incompetent to stand trial)
   ☐ Penal Code, § 1600 et seq. (return to confinement)
   ☐ Penal Code, § 2962 et seq. (Mentally Disordered Offenders)
   ☐ Welf. & Inst. Code, § 1800 et seq. (extended detention of dangerous persons)
   ☐ Welf. & Inst. Code, § 6500 et seq. (Developmentally Disabled Persons Act)
   ☐ Welf. & Inst. Code, § 6600 et seq. (Sexually Violent Predators Act)
   ☐ Other *(specify):* _____

4. ☐ Petitioner/Respondent requests that the court appoint an attorney for this appeal. Petitioner/Respondent ☐ was ☐ was not represented by an appointed attorney in the superior court.

5. Petitioner/Respondent's mailing address is: ☐ same as in attorney or party without attorney box above.
   ☐ as follows:

Date:

_____ ▶ _____

(TYPE OR PRINT NAME) (SIGNATURE OF PETITIONER/RESPONDENT OR ATTORNEY)

Item 06

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR19-__

Title
Appellate Procedure: Advisement of Appellate Rights in Juvenile Cases

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rule 5.590; and approve form JV-805-INFO)

Proposed by
Appellate Advisory Committee
Hon. Louis R. Mauro, Chair
Christy Simons, Attorney

Action Requested
Review and submit comments by June 7, 2019

Proposed Effective Date
January 1, 2020

Contact
Christy Simons, 415-865-7694
christy.simons@jud.ca.gov

Executive Summary and Origin

To promote greater awareness of parents' and legal guardians' appellate rights in juvenile court proceedings, the Appellate Advisory Committee proposes amending the rule regarding advisement of appellate rights to remove the limitation that the court need only provide this information to parents and guardians who are present at the hearing that resulted in the judgment or order. The committee also proposes the adoption of a new optional form notice for clerks to send with court orders following a hearing to provide the advisement. This proposal originated with a suggestion from an attorney in San Diego.

Background

Rule 5.590 of the California Rules of Court[1] governs advisement of the right to review in Welfare and Institutions Code section 300, 601, and 602[2] cases (i.e., juvenile dependency and delinquency cases). Subdivision (a) of the rule provides: "If at a contested hearing on an issue of fact or law the court finds that the child is described by Welfare and Institutions Code section 300, 601, or 602 or sustains a supplemental or subsequent petition, the court after making its disposition order other than orders covered in (b) must advise, orally or in writing, the child, if of sufficient age, and, if present, the parent or guardian of:" the right to appeal, if there is one; the

[1] All further rules references are to the California Rules of Court.
[2] All further unspecified statutory references are to the Welfare and Institutions Code.

steps and timing of an appeal; and an indigent appellant's rights to appointed counsel and a free copy of the transcript.[3]

This rule was adopted in 1973 as rule 251 in response to a request by the State Bar's Board of Governors for a rule requiring juvenile court judges and referees to advise minors, and their parents or guardians, of the *minors'* appeal rights.[4] The initial focus of the rule was on ensuring that minors would be advised of their appellate rights in delinquency cases, although the rule that was adopted was not limited to delinquency proceedings.[5] In 1978, the rule was amended to apply specifically to juvenile court proceedings in which the minor is found to be a person described by section 300, 600, or 601. The "if present" limitation on providing the advisement to a minor's parent or guardian has been part of the rule since its inception.[6] Over time, the language of the rule has changed little, but its application has expanded to include the appellate rights of parents and guardians, particularly in juvenile dependency proceedings.

The requirement in rule 5.590(a) that a parent must be present at the hearing to receive an advisement of appellate rights was recently challenged by a parent in a dependency case. In *In re Albert A*. (2016) 243 Cal.App.4th 1220 (*Albert A*.), the mother was not present for the disposition hearing, did not appeal the dispositional orders, and, following termination of her parental rights, challenged the juvenile court's failure to advise her of her right to appeal the disposition. The Court of Appeal rejected her contentions, concluding that a parent does not have a fundamental due process right to be advised of the right to appeal. Rather, the right to such advisement rests solely on the language of the rule itself. (*Id*., at pp. 1238-1239.)

Following this decision, counsel for the mother in *Albert A*. submitted the suggestion that rule 5.590(a) be amended to remove the requirement that a parent be present to receive an advisement of appellate rights.

In 2017, the Family and Juvenile Law Advisory Committee responded by proposing to notify parents and guardians that they may not be advised of their appellate rights if they do not attend the court hearing by placing a notice on certain forms. Following approval by the Judicial Council, effective January 1, 2018, certain JV forms were revised to include the following language:

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

[3] Subdivision (b) addresses advisement of the requirement to seek a writ to preserve appellate rights when the court orders a hearing under section 366.26.
[4] Judicial Council of Cal., staff rep., *Report and Recommendation Concerning Advising Juveniles of Their Appeal and Rehearing Rights* (Oct. 11, 1972), at p. 1.
[5] *Id*., at pp. 3-7.
[6] *Id*., at pp. 7-8.

hearing you may not be advised or your appellate rights. Contact your attorney if you miss the next hearing and want to discuss your appellate rights.

The Proposal

The committee, in consultation with the Family and Juvenile Law Advisory Committee, proposes amending rule 5.590(a) to remove the "if present" limitation so parents and guardians will be advised of their appellate rights whether they are present for the hearing or not. Removing the limitation will promote greater awareness on the part of parents and guardians of their right to appeal juvenile court orders. This is particularly important in dependency cases where parents are parties and have appeal rights at all stages of the proceedings. (See Welf. & Inst. Code, § 395.) Other rules that provide for parental advisement of appellate rights do not limit the notice to parents who are present at the hearing.[7] In addition, the committee recognizes that there are any number of reasons why a parent or guardian may not be present at a hearing, including reasons related to the court's dependency jurisdiction, medical issues, transportation issues, and so on.

Rule text

Rule 5.590, Advisement of right to review in Welfare and Institutions Code section 300, 601, or 602 cases, would be amended as follows:

(a) Advisement of right to appeal

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

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

Notice

The committee also proposes a new, optional form notice for courts to send after a hearing to provide the advisement of appellate rights, *Information Regarding Appeal Rights* (form JV-805-INFO). The committee recognizes that the rule amendment would require courts to provide the

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

appellate rights advisement to parents and guardians who are not present at hearings, and the new form is intended to assist with that. The form advises litigants of the right to appeal, the steps and time for taking an appeal, and the rights of indigent appellants regarding appointed counsel and a free copy of the transcript.

Alternatives Considered

The committee considered whether no rule amendment was necessary in light of the information added to certain JV forms advising parties to consult with their attorneys regarding the right of appeal. However, the committee decided to propose the rule amendment because it concluded that removing the limitation would better promote parties' awareness of the appellate rights.

The committee also considered a suggestion to amend rule 5.590(a) to better track the statutory right to appeal because the current rule's language is too narrow and conflicts with section 395. Based on feedback from the Family and Juvenile Law Advisory Committee, the committee declined to pursue the suggestion because there is no indication that juvenile courts read the rule so narrowly as to only provide an advisement of appellate rights following disposition hearings or that courts or parties are confused or unsure about which findings and orders are appealable.

The committee also looked into a suggestion to correct an error in an Advisory Committee Comment to rule 5.590, but the proponent provided no details and the committee found no error.

Lastly, the committee considered not developing a form, but concluded that a form would assist courts in providing the advisement required by the rule amendment.

Fiscal and Operational Impacts

The proposal would require courts to send an advisement of appellate rights to parents and legal guardians who did not attend a hearing. One option for implementation would be for courts to include the new form when sending findings and orders following a hearing to the parties.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Is item 3 on the form accurate and helpful in describing the right to request appointed counsel?
- Should the form include any other information regarding appellate rights?

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

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

Attachments and Links

1. Cal. Rules of Court, rule 5.590, at pp. 6-7
2. *Information Regarding Appeal Rights*, form JV-805-INFO, at p. 8

Rule 5.590 of the California Rules of Court would be amended effective January 1, 2020, to read:

Title 5. Family and Juvenile Rule3

Division 3. Juvenile Rules

Chapter 5. Appellate Review

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

(a) Advisement of right to appeal

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

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

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

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

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

(b) – (c) * * *

Advisory Committee Comment

Subdivision (a). The right to appeal in Welfare and Institutions Code section 601 or 602 (juvenile delinquency) cases is established by Welfare and Institutions Code section 800 and case law (see, for example, *In re Michael S.* (2007) 147 Cal.App.4th 1443, *In re Jeffrey M.* (2006) 141 Cal.App.4th 1017, and *In re Sean R.* (1989) 214 Cal.App.3d 662). The right to appeal in Welfare and Institutions Code section 300 (juvenile dependency) cases is established by Welfare and Institutions Code section 395 and case law (see, for example, *In re Aaron R.* (2005) 130 Cal.App.4th 697, and *In re Merrick V.* (2004) 122 Cal.App.4th 235).

Rule 5.590 of the California Rules of Court would be amended effective January 1, 2020, to read:

Subdivision (b). Welfare and Institutions Code section 366.26(*l*) establishes important limitations on appeals of judgments, orders, or decrees setting a hearing under section 366.26, including requirements for the filing of a petition for an extraordinary writ and limitations on the issues that can be raised on appeal.

JV-805-INFO INFORMATION REGARDING APPEAL RIGHTS

(Welf. & Inst. Code §§ 395, 800; Cal. Rules of Court, rule 5.590)

1 Appealability.

A judgment in a proceeding under Section 300, 600, or 602 of the Welfare and Institutions Code may be appealed in the same manner as any final judgment, and any subsequent order may be appealed as an order after judgment.

A judgment or subsequent order entered by a referee or commissioner shall become appealable whenever proceedings pursuant to Section 252, 253, or 254 have become completed or, if proceedings pursuant to Section 252, 253, or 254 are not initiated, when the time for initiating the proceedings has expired.

2 Steps and Time for Taking an Appeal.

To appeal from a judgment or an appealable order or this court, you must file a written notice of appeal within 60 days after rendition of the judgment or the making of the order being appealed, or, in matters heard by a referee or commissioner, within 60 days after the order of the referee or commissioner becomes final. You may use form JV-800, *Notice of Appeal—Juvenile*, for this purpose.

The notice of appeal must be filed in this court, not the Court of Appeal. The notice must clearly state that you are appealing, identify the judgment or order by date or describe it, and indicate whether you are appealing the entire judgment or order, or just part of it. You or your attorney must sign the notice of appeal.

3 Requesting an Attorney

If you cannot afford to hire an attorney, you may request that the Court of Appeal appoint an attorney to represent you. After you file the notice of appeal and make the request for an attorney, the Court of Appeal will contact you to find out whether you have the right to an appointed attorney.

4 Free Copy of the Transcript

If you cannot afford to hire an attorney, you may also be eligible for a free copy of the transcript.

Important!

You must keep the Court of Appeal advised of your current mailing address.

Item 07

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

MEMORANDUM

Date
February 15, 2019

To
Appellate Advisory Committee
Hon. Louis R. Mauro, chair

From
Anne Ronan, Attorney
Christy Simons, Attorney
Legal Services

Subject
CEQA: New Fees for Expedited Review (adopt new rule and amend rules 3.2200, 3.2220-3.2223, and 8.700-8.703)

Action Requested
Review before advisory committee meeting

Deadline
February 21, 2019

Contact
Anne Ronan, anne.ronan@jud.ca.gov
415-865-8933

Christy Simons, christy.simons@jud.ca.gov
415-865-7694

Executive Summary

The Judicial Council has previously, as mandated by the Legislature, adopted rules and established procedures that implemented a statutory scheme for the expedited resolution of actions and proceedings brought under the California Environmental Quality Act ("CEQA") challenging "environmental leadership projects", "Sacramento arena projects," and capitol building annex projects." (See Pub. Res. Code, §§ 21185 and 21168.6.6.[1]) This year, the Legislature enacted Assembly Bills 734, 987, and 1826, requiring the Judicial Council to amend the Rules of Court implementing the procedures for the expedited resolution of CEQA actions and proceedings to include "Oakland sports and mixed use projects" (relating to a new baseball park), the Inglewood NBA arena project, and additional projects related to the capitol building annex projects. The required rule amendments are to be in place by July 1, 2019.

[1] All statutory references hereafter are to the Public Resources Code unless otherwise noted.

Most of the amendments are minimal, and will require little discussion. However, for the Oakland ballpark and Inglewood arena projects, the statute adds a new factor—the new laws require that, in order to be certified for the streamlined process under those provisions, the project applicant must agree, among other things, to pay "any additional costs incurred by the court in hearing and deciding any case subject to this [new law]" in a form and manner specified by the Judicial Council in the Rules of Court. This provision is similar, although not identical, to a provision enacted several years ago requiring project applicants in environmental leadership projects to agree to pay the costs (not merely the additional costs) of the Court of Appeals in hearing and deciding the CEQA action in any of those cases.

A joint ad hoc subcommittee with members of the Appellate Advisory Committee and Civil and Small Claims Advisory Committee was formed to consider what rules and the fees that should be implemented. The committee has met twice, and reviewed the costs that have been incurred in the one case staff was aware of that have proceeded under the expedited rules through the appeals process (the Warrior's Mission Bay Arena). The subcommittee's original proposal based on that work is described in the attached Invitation to Comment.

However, shortly after the joint subcommittee reached its conclusions, staff learned about another environmental leadership case that has been litigated under the expedited CEQA review process, a challenge to a large mixed use project on Sunset Boulevard in Los Angeles. The challenge was litigated in four cases which were consolidated at the Superior Court of Los Angeles, two of which continued on appeal to the Second District Court of Appeal, which issued its opinion in 2018. Staff is in the process of obtaining more information about the time spent at the trial court and appellate court on that case, so that the court cost of that litigation can be evaluated. The joint ad hoc subcommittee will need to consider whether and how those new figures impact the proposal, and may want to adjust the amount of the proposed fees in light of that new information.

These rules are themselves on an expedited schedule and will require a special comment cycle to allow public input prior to the July 1, 2019 operative date of the statutes.

Attachments

1. Draft Invitation to Comment with revised Rules of Court

JUDICIAL COUNCIL OF CALIFORNIA

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

INVITATION TO COMMENT

[ItC Sp-__

Title
CEQA: New Fees for Expedited Review

Proposed Rules, Forms, Standards, or Statutes
Adopt rule 3.2240 and amend rules 3.2200, 3.2220-3.2223, and 8.700-8.703

Proposed by
Appellate Advisory Committee
Hon. Louis R. Mauro, chair
Civil and Small Claims Advisory Committee,
Hon. Ann I. Jones, chair

Action Requested
Review and submit comments by April __, 2019

Proposed Effective Date
July 1, 2019

Contact
Anne Ronan, anne.ronan@jud.ca.gov
415-865-8933

Christy Simons, christy.simons@jud.ca.gov
415-865-7694

Executive Summary and Origin

The Judicial Council has previously, as mandated by the Legislature, adopted rules and established procedures that implemented a statutory scheme for the expedited resolution of actions and proceedings brought under the California Environmental Quality Act ("CEQA") challenging certain projects that have been certified for streamlined procedures, including "environmental leadership projects", "Sacramento arena projects," and capitol building annex projects." (See Cal. Rules of Court, rules 3.2200 et seq. and 8.700 et seq.) This proposal will implement recently enacted Assembly Bills 734, 987, and 1826, which mandate that the Judicial Council amend these rules to include "Oakland sports and mixed use projects" (relating to a new baseball park), the Inglewood NBA arena project, and additional projects related to the capitol building annex projects. The proposal will also implement the new statutory provisions requiring the council to, by rule of court, set out a new fee to be paid by a project applicant for expedited CEQA review in a proceeding challenging an Oakland ballpark or Inglewood arena project, and amend the rule implementing similar provisions in environmental leadership cases. The required rule amendments are to be in place by July 1, 2019.

Background

In 2011, the Legislature enacted Assembly Bill 900 (Stats. 2011, ch. 354), creating an expedited judicial review procedure for CEQA cases relating to "environmental leadership projects." Under

that legislation, challenges to such projects were to be brought directly to the Court of Appeal with geographic jurisdiction over the project, and that court was to complete its review within 175 days. (§ 21185. [1]) Project applicant who sought to have their projects certified for various streamlined processes, including this expedited review, were required to agree to pay the costs of the Court of Appeal, in an amount to be determined by Judicial Council rule. (§ 21183(f).) AB 900 required the Judicial Council to adopt rules of court to implement this expedited review procedure and it did so, adopting rule 8.497. A year later, however, the Superior Court of Alameda County held that the provision in AB 900 requiring that a petition for writ relief be filed only and directly to the Court of Appeal is unconstitutional. The trial court's decision was never challenged.

In 2013, the Legislature again addressed the question of expedited CEQA review by the courts in environmental leadership cases, as well as in cases relating to a new sports arena in Sacramento. Senate Bill 743 (Stats. 2013, ch. 386). SB 743 replaced the statutory provisions relating to the time for the Court of Appeal to act on environmental leadership cases with a requirement that the Judicial Council adopt rules that require the actions or proceedings, including any potential appeals therefrom, be resolved, within 270 days of certification of the record of proceedings (SB 743, § 11; amending Pub. Resources Cde, § 21185). SB 743 similarly provided for an expedited review process for projects relating to a new basketball arena and surrounding sports and entertainment complex planned for Sacramento (SB 743, § 7; adding § 21168.6.6).[2]

The Legislature did not provide any discrete time frames in which both the actions and proceedings in the trial court and proceedings in the Courts of Appeal were to be resolved, but only a single time period of 270 days for completion of the proceedings in the trial courts and Courts of Appeal, along with a mandate for the council to adopt implementing rules. (§§21185 and 21168.6.6)[3]

In 2014, the Judicial Council adopted rules 3.2220-3.2231 and 8.700 - 8.705[4] to implement the expedited review process.[5] In developing those rules, the committees determined, among other things, that there was a distinction made in the Legislature's delegation of authority to the council with respect to procedures it could adopt for the Sacramento arena cases versus the environmental leadership cases. Specifically, SB 743 provided that for the Sacramento arena cases the expedited procedures to be established by the Judicial Council will apply "*notwithstanding any other law* (emphasis added)." (§ 21168.6.6(c)). There was no similar provision in the statutes enacted regarding environmental leadership cases. (§21185). For this

[1] All statutory references hereafter are to the Public Resources Code unless otherwise noted.
[2] SB 743 also addressed the constitutional issue raised by the Superior Court of Alameda County's decision by eliminating the requirement that a CEQA challenge to a leadership project be brought directly in the Court of Appeal.
[3] No change was made to the requirement that the project applicant in environmental leadership cases pay for the Court of Appeal costs, but the new statute did not add a similar provision in the Sacramento arena cases, and did not provided for payment of trial court costs in either category.
[4] The existing rule providing for payment of costs to the Court of Appeal was at that time renumbered as rule 8.705.
[5] The 2014 report to the Judicial Council is available at: http://www.courts.ca.gov/documents/jc-20140425-itemM.pdf

reason, the committees concluded that the council was authorized to adopt rules "notwithstanding the provisions" of the Public Resources Code or the Code of Civil Procedure in relation to expediting the review of the Sacramento arena cases, and so the rules for those cases require earlier service of the petition than required by statute.[6]).

In 2015 Senate Bill 836 added provisions similar to those enacted by SB 743. That bill required that the Judicial Council adopt rules to implement the expedited review procedures for resolution of CEQA challenges to "capitol building annex projects" within 270 days from the date of certification of the administrative record. (§21189.51). The council amended the rules at that time to include the capitol building projects, which were adopted by the council effective July 2016.

The Proposal

New projects eligible for expedited review

In three bills passed last year, the Legislature has once again expanded the type of projects for which streamlined administrative approval and CEQA court review is available, and for which the trial courts and Courts of Appeal must provide expedited CEQA review:

- Assembly Bills 734[7] adds "Oakland Sports and Mixed Use Projects", which is comprised of projects own or developed by the Oakland Athletics in a certain area in Oakland, including a baseball park and adjacent residential, retail, commercial, cultural, entertainments and recreational uses, which meets certain requirements set out in the statute (Oakland baseball project). (See new §21168.6.7.)

- Assembly Bill 987[8] adds projects located in Inglewood, California, comprised of an NBA arena plus related parking and access infrastructure, office space, sports medicine clinic, and retail, restaurants, community, and hotel spaces, which meet certain statutory requirements (Inglewood arena project). (See new § 21168.6.8.)

- Assembly Bill 1826[9] expands the statutes providing expedited review of the capitol building annex project to include work related to that project, such as parking or visitor facilities, as well as a new state office building close to the capitol (expanded capitol annex project). (See amended §§ 21189.50—21189.53, and Gov. Code, § 9125.)

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[6] See rule 3.2236. The rules for the other cases include an incentive for earlier service in those cases, rather than mandating it. See rule 3.2222(d).
[7] Assembly Bill 734 may be viewed at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB734
[8] Assembly Bill 987 may be viewed at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB987
[9] Assembly Bill 1826 may be viewed at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB987

The proposed amended rules are intended to satisfy the requirement of the new legislation by adding these new projects to the list of projects to which the existing rules for expedited CEQA review apply, and incorporating them by reference where appropriate in those rules.
The new statutes regarding the Oakland baseball project and the Inglewood arena both include an identical provision mandating the expedited review:

> Rules 3.2220 to 3.2237, inclusive, of the California Rules of Court, as may be amended by the Judicial Council, shall apply to any action or proceeding brought to attack, review, set aside, void, or annul the certification or adoption of any environmental impact report for the project that is certified pursuant to subdivision (d) or the granting of any project approvals, to require the action or proceeding, including any potential appeals therefrom, to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court.

(See new §§ 21168.6.7(c) and 21168.6.8(f).)

Although rules referenced in the statutes are trial court rules only, not rules relating to courts of appeals, the proposed amendments have been made to both trial court and appellate rules. Because the statute also states that any action relating to the environmental impact report "including any potential appeals therefrom" must be completed within the 270 days, it appears that the provision is intended to encompass appeals as well as trial court proceedings, even though the rules referenced in the new statute apply only to trial court proceedings.

It should be noted that the amended rules in the proposal do *not* include the rules directed solely to the Sacramento arena projects, even though those rules (rules 3.2235-3.2237) are included in the rules cited in the statutes.[10] As noted above, those rules were adopted only for cases on Sacramento arena projects because of the provision in that statute that the expedited procedures shall apply "notwithstanding any other law". While a similar provision is included in AB 987,[11] the Inglewood arena statute, there is no such provision in AB 734, the Oakland ballpark statute. But because both statutes use identical provisions in mandating the expedited review and direct that the same rules apply to both projects, it appears the Legislature intended for the review for projects from both areas to be the same. Therefore, because the special service rules could not be applied to the Oakland ballpark cases, they have not been applied to either.[12]

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[10] The committee note that the Sacramento arena project has been completed for some time, and there are no pending projects that these rules durrently apply to.
[11] Section 21168.6.8(e): Notwithstanding any other law, the procedures set forth in subdivision (f) shall apply to any action or proceeding brought to attack, review, set aside, void, or annul the certification of any environmental impact report for the project that is certified pursuant to this section or the granting of any project approvals.
[12] Because the council had previously concluded that the special service rules should not be amended to apply to the original capitol annex project cases, the committee has not considered applying them to the expanded cases under the expanded capitol annex statute, AB 1875.

New Fee for Expedited Review

The Oakland ball park statute[13] and the Inglewood arena statute[14] include nearly identical provisions requiring that, before the Governor certifies a project for streamlining (including the expedited court review), the project applicant must agree to pay for "any additional costs incurred by the courts in hearing and deciding any case subject to this section". The statutes provide that the costs be determined by the council. These provisions (set out in the footnotes) are similar to the provision for the environmental leadership cases, contained in section 21182(e).[15] The primary differences is that the earlier provision provides for payment of "the costs of the Court of Appeal. . . in hearing and deciding" the expedited case, and the new law provides for payment of "any additional costs incurred by the courts in hearing and deciding" such a case. (Emphasis added.) The new law also provides for payment of costs to the trial court as well as appellate court.

The new proposal includes new amounts for the Oakland ballpark and Inglewood arena projects: $130,000 at the trial court level, to be paid by the project developer within ten days of the filing of the petition, and $100,000 at the appellate level, to be paid within 10 days of the filing of a notice of appeal. It also amends the current amount to be paid at the Court of Appeal in environmental leadership cases from $100,000 to $175,000. As discussed below, in developing these proposed amounts, the committees looked to the existing fee for streamlined environmental leadership cases, the experiences in the one case that has been litigated under those rules, and the provision in the new statutes that amount is for "additional" costs incurred by the courts in providing the expedited procedures.

The current environmental leadership rule originally adopted by the council in 2012[16] provides for payment of a fee of $100,000 by the project developer at the time a notice of appeal is filed, as well as payment of the costs of any special master or contract personnel retained to work on the case. As stated in the report to the council on the original rule, that $100,000 amount was determined as follows:

> This proposed fee was calculated based on estimates collected from courts about the time spent by judges, justices, research attorneys, and judicial assistants on recent CEQA cases regarding projects of the size eligible for participation in the act's expedited review

[13] Oakland--Section 21168.6.8(d)(6): The project applicant agrees to pay for any additional costs incurred by the courts in hearing and deciding any case brought pursuant to this section, including payment of the costs for the appointment of a special master if deemed appropriate by the court, in a form and manner specified by the Judicial Council, as provided in the rules of court adopted by the Judicial Council.

[14] Inglewood--Section 21168.6.9(b)(6): The project applicant agrees to pay any additional costs incurred by the courts in hearing and deciding any case subject to this section, including payment of the costs for the appointment of a special master if deemed appropriate by the court, in a form and manner specified by the Judicial Council, as provided in the Rules of Court adopted by the Judicial Council.

[15] Environmental leadership--Section 21182(f): The project applicant agrees to pay the costs of the Court of Appeal in hearing and deciding any case, including payment of the costs for the appointment of a special master if deemed appropriate by the court, in a form and manner specified by the Judicial Council, as provided in the Rules of Court adopted by the Judicial Council pursuant to Section 21185.

[16] See rule 8.705. Originally adopted as rule 8.497, the rule has been renumbered since but is otherwise unchanged.

procedure. The fee assumes that, on average, the following amount of time will be spent on such a case:

- 108 hours by the justice assigned to prepare a draft decision;
- 10 hours by each of the other two justices on the panel;
- 230 hours by research attorneys; and
- 31 hours by judicial assistants. [17]

It turns out that the estimates made in 2012 fell far short of reality for the work necessary for a trial court to complete the expedited process. In late 2016, the Judicial Council submitted a legislatively required report on how AB 900 (the environmental leadership statute) had fared in the courts, and the impact it had on judicial administration At that time, a single case had been tried and appealed under the environmental leadership project rules, a challenge to the Event Center and Mixed Use Development at Mission Bay Blocks 29-32 (the Warrior's Mission Bay project).[18] The details of the timing of that case, in which the Court of Appeal decision was issued 327 days after the case was initially filed, [19] are set out in a report to the Legislature and have been reviewed in more detail in preparation for this recommendation. But after that delay, the courts moved quite expeditiously, as required under the expedited procedures. The report to the Legislature describes the work entailed as follows:

> The Mission Bay project CEQA case is extremely large and complex. The administrative record filed in both the trial court and the Court of Appeal comprises 56 volumes—more than 168,000 pages. The joint appendix filed in the Court of Appeal is 1,514 pages in length. The petitioners' petition for writ of mandate filed in the trial court included three separate causes of action raising multiple issues regarding the approval of the Mission Bay project. The petitioners' brief filed in the Court of Appeal, First Appellate District also raised multiple issues. Many of the issues raised in this case involve highly technical questions that require specialized expertise to evaluate.

Because this same volume and level of complexity may be expected from the Oakland ballpark and Inglewood arena projects, the committees looked to the amount of work incurred by the courts on the Mission Bay case to determine an appropriate fee to assess in these cases.

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[17] Judicial Council of CA, *Appellate Procedure: Review of California Environmental Quality Act Cases Under Public Resources Code Sections 21178– 21189.3* (April 11, 2012). The report may be viewed at http://www.courts.ca.gov/documents/jc-20120424-itemA1.pdf

[18] One additional case has gone through the courts since that point under the environmental leadership provisions, a challenge to the 8150 Sunset Boulevard Mixed Use Project (Sunset Boulevard Project), in Superior Court of Los Angeles.

[19] At the time of the report, oral argument had not yet been held. However it was held shortly thereafter, and the Court or Appeal issued its opinion on November 29, 2016. The work on the case was not completed within the 270 days for several reasons, but primarily because of time expended on petitioner's efforts at the trial court and Third District Court of Appeal to keep the case in Sacramento (where initially filed) rather than in San Francisco (where it was ultimately ruled on). Per the case dockets in attached Appendix C, it took 64 days between the time of filing and when the case was eventually received in the San Francisco Superior Court. The court time expended in those 64 days by the Superior Court of Sacramento County and the Third District Court of Appeal was not taken into consideration in developing the amount of the new fee.

- The CEQA judge at Superior Court of San Francisco County reported that he spent 5 hours a day on the case (he could not spend full time due to other commitments at the court) as well as 15 hours each weekend throughout the time the case was at the trial court. This means that 740 hours (the equivalent of 92 working days) were expended on the case by the judicial officer, rather than the 108 hours estimated in 2012. (The total number of work days that could occur under the time frame for the trial court proceedings in the expedited rules, if no continuances granted, is 95, so it appears that all the time was needed and used.) In addition, the equivalent of one full time research attorneys worked on the case throughout the time it was in the trial court (91 work days), resulting in well over 700 hours of research attorney time.
- At the Court of Appeal, First Appellate District, the Mission Bay case took precedence over all other cases assigned to the division handling this case, including juvenile dependency cases. The court assigned two research attorneys to work on this case, rather than the usual single attorney, who worked on this case essentially on a full-time basis for a total of three months. The over 900 hours of research time at the Court of Appeal is also significantly more than the 240 hours originally estimated in establishing the $100,000 fee in the leadership cases.

[DISCUSSION OF Sunset Boulevard Project challenge in LOS ANGELES AND 2d DCA NEEDS TO BE ADDED HERE]

The fee for environmental leadership cases (which is the category under which the Mission Bay case was certified for streamlining) is solely for the costs incurred by the Court of Appeal on such a case, and is to cover all those costs. As calculated by Judicial Council staff based on time reported by the court, in the case challenging the Mission Bay Project, the time of the primary justice assigned to the case along with the time of the research attorneys alone came to approximately $160,000.[20] [NEED TO ADD 2d DCA NUMBERS]. For that reason, and considering the additional costs of the two other justices who worked on the case as well as the time of the judicial assistant, the committees are proposing that the amount to be paid for the costs incurred by the Court of Appeal in environmental leadership cases should be increased to $175,000.

In considering how to address the "additional" costs incurred by the courts to handle the expedited CEQA procedures in the Oakland ballpark and Inglewood arena projects, the committees considered how the courts would be able to handle such enormous cases in such a short period of time. It appears that to comply with the extremely shortened timeline, it would be necessary for a court to take the case out of the normal processing system and assign personnel to it full time. The committees determined that one way to value that time is to look at the cost

[20] CHART TO BE ATTACHED SHOWING BASIS FOR THIS CALCULATION

of an assigned judge (in the case of the Court of Appeal, a retired appellate justice), who could either handle the CEQA case or handle the other cases that the CEQA judge would not be able to handle during that period, and the cost of at least one full time additional research attorney for period in which the case would be active in each court.

Under the rules, the time allocated to each court's handling of an expedited CEQA case is approximately 135 calendar days. This period equals 19.2 weeks. Considering time for holidays during that period, this results in approximately 91 work days at the trial court and the same at the Court of Appeal. (Note that the Mission Bay trial court judge estimates that he spent the equivalent of 92 work days on the case, so very close to this projection. [ADD NOTE RE LA CASE])

- In the trial court, the cost of an assigned judge for 91 days would be $69,160 and the cost of a trial court research attorney for that time would be $61,968. Based on these figures, the committees propose that the additional cost charged for the expedited review by the trial court should be $130,000. (See proposed rule 3.2240). In addition, as permitted by the statute, the rules allow for costs for any special master required for the matter to be charged directly to the project developer, as is currently provided in the environmental leadership cases.

- Because the appellate court in the Mission Bay [NEED TO ADD CONSIDERATION OF 2d DCA CASE] case reported spending somewhat less time than the trial court, the committees looked at the cost of an assigned appellate justice for 60 days, which would be $54,940, and the cost of an appellate court research attorney for that same time, which would be $48,180. Based on these figures, the committees propose that the additional cost charged for the expedited review by the Court of Appeal should be $100,000. (See proposed rule 8.705(2).)

Other amendments

At the time it was circulated in 2012, a couple of comments received on the proposal for the $100,000 fee for expedited CEQA review by the Court of Appeal in environmental leadership cases was that the rule should clarify that this is not a recoverable cost. The Appellate Advisory Committee declined to include this provision at the time,[21] but noted that, if this issue was not addressed by the Legislature, the committee would consider the possibility of circulating a new proposal regarding this issue in the future. The committees are now including such a rule in this proposal. See, proposed rules 3.2240(4) and 8.

Alternatives Considered

Because the new rules and fees are mandated by the Legislature, the committees did not consider the alternative of no rules.

[21] The committee noted in its report to the council at that time that such a provision had not been included in the rule as circulated and was a sufficiently substantive change that the committee could not recommend it without further circulation.

The committees considered a different method of determining the costs to be paid: by requiring the posting of a $100,000 deposit, calculating the court's actual costs for hearing and deciding that particular case at the conclusion of the case, and requiring payment of these costs at the end of the case. The committee ultimately decided against this approach, however, because of the administrative burden associated with calculating and collecting these costs in each case, particularly in determining what would be considered "additional" costs.

Fiscal and Operational Impacts

Implementing the new legislation requiring expedited review of CEQA challenges to new project types may generate costs and operational impacts for both the trial courts and the Courts of Appeal in which the proceedings governed by these statutes are filed. The committees do not anticipate that this rule proposal will result in any additional costs to the courts.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee [or other proponent] is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Is it appropriate or necessary to include the provision that the new fees are not recoverable (see rule 3.2240(4) and rule 8.705(5))?

Attachments and Links

1. Proposed amended and new Rules of Court, rules 3.2220-3.2235, 3.2228 and 8.700-8.705
2. Appendix A (chart of cost estimates **TO BE ADDED]**

Rules 3.2220-3.2235 and rules 8.700-8.705 of the California Rules of Court would be amended, and rule 3.2238 adopted, effective July 1, 2019, to read:

Chapter 2. California Environmental Quality Act Proceedings Under Public Resources Code Sections 21168.6–21168.8, 21178–21189.3, and 21189.50–21189.57

Article 1. General Provisions

Rule 3.2200. Application

Except as otherwise provided in chapter 2 of the rules in this division, which govern actions under Public Resources Code sections 21168.6–21168.8, 21178–21189.3, and 21189.50–21189.57, the rules in this chapter apply to all actions brought under the California Environmental Quality Act (CEQA) as set forth in division 13 of the Public Resources Code.

Rule 3.2220. Definitions and application

(a) Definitions

As used in this chapter:

(1) A "streamlined CEQA project" means any project within the definitions stated in (1) through (5)

~~(1)~~(2) An "environmental leadership development project" or "leadership project" means a project certified by the Governor under Public Resources Code sections 21182–21184.

~~(2)~~(3) The "Sacramento entertainment and sports center project" or "Sacramento arena project" means an entertainment and sports center project as defined by Public Resources Code section 21168.6.6, for which the proponent provided notice of election to proceed under that statute described in section 21168.6.6(j)(1).

(4) An "Oakland sports and mixed use project" or "Oakland ballpark project" means a project as defined in Public Resources Code section 21168.6.7 and certified by the Governor under that section.

(5) An "Inglewood arena project" means a project as defined in Public Resources Code section 21168.6.8 and certified by the Governor under that section.

~~(3)~~(6) A "capitol building annex project" means a state capitol building annex project, annex project related work, or state office building project as defined by Public Resources Code section 21189.50.

(b) Proceedings governed

The rules in this chapter govern actions or proceedings brought to attack, review, set aside, void, or annul the certification of the environmental impact report or the grant of any project approvals for ~~the Sacramento arena project, a leadership project, or a capitol building annex project~~ a streamlined CEQA project. Except as otherwise provided in Public Resources Code sections 21168.6–21168.8, 21178–21189.3, and 21189.50–21189.57 and these rules, the provisions of the Public Resources Code and the CEQA Guidelines adopted by the Natural Resources Agency (Cal. Code Regs., tit. 14, § 15000 et seq.) governing judicial actions or proceedings to attack, review, set aside, void, or annul acts or decisions of a public agency on the grounds of noncompliance with the California Environmental Quality Act and the rules of court generally apply in proceedings governed by this rule.

(c) Complex case rules

***

Rule 3.2221. Time

(a) Extensions of time

***

(b) Extensions of time by parties

If the parties stipulate to extend the time for performing any acts in actions governed by these rules, they are deemed to have agreed that the time for resolving the action may be extended beyond 270 days by the number of days by which the performance of the act has been stipulated to be extended, and to that extent to have waived any objection to noncompliance with the deadlines for completing review stated in Public Resources Code sections 21168.6.6–21168.8, ~~and~~ 21185, and 21189.51. Any such stipulation must be approved by the court.

(c) Sanctions for failure to comply with rules

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

(1)-(2) ***

(3) If the failure to comply is by respondent or a real party in interest, removal of the action from the expedited procedures provided under Public Resources Code sections 21168.6.6~~(c) (d),~~--21168.6.8, 21185, and 21189.51, and these rules; or

(4) ***

Rule 3.2222. Filing and service

(a)-(c) ***

(d) Service of petition in action regarding ~~leadership project, and capitol building annex project~~ streamlined CEQA project

If the petition or complaint in an action governed by these rules and relating to ~~a~~ leadership project, ~~or~~ a capitol building annex project, or an Oakland ballpark project is not personally served on any respondent public agency, any real party in interest, and the Attorney General within three court days following filing of the petition, the time for filing petitioner's briefs on the merits provided in rule 3.2227(a) and rule 8.702(e) will be decreased by one day for every additional two court days in which service is not completed, unless otherwise ordered by the court for good cause shown.

(e) ***

Rule 3.2223. Petition

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

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

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

(A) The proponent of the project at issue provided notice to the lead agency that it was proceeding under Public Resources Code section 21168.6.6, 21168.6.7, or 21168.6.8 (whichever is applicable) and is subject to this rule; or

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

(C) The project at issue is a capitol building annex project as defined by Public Resources Code section 21189.50 and is subject to this rule;

(3) If the project is an Oakland ballpark project or an Inglewood arena project, provide notice that the person or entity that applied for certification of the

project for streamlined review must make the payments required by rule 3.2240 and, if the case goes to the Court of Appeal, by rule 8.705.

~~(3)~~(4) If a leadership project, provide notice that the person or entity that applied for certification of the project as a leadership project must, if the matter goes to the Court of Appeal, make the payments required by Public Resources Code section 21183(f); and

~~(4)~~(5) ***

Article 3. Trial Court Costs in Certain Streamlined CEQA Projects

Rule 3.2240. Trial Court Costs in Oakland Ballpark and Inglewood Arena Projects

In fulfillment of the provisions in Public Resources Code sections 21168.6.7 and 21168.6.8 regarding payment of trial court costs with respect to cases concerning certain streamlined CEQA projects:

(1) Within 10 days after service of the petition or complaint in a case concerning an Oakland ballpark project or Inglewood arena project, the person who applied for certification of the project as streamlined project must pay a fee of $130,000 to the court.
[STAFF NOTE: a provision may be added to address earmarking the funds to be used on expedited CEQA projects]

(2) If the court incurs any of the following costs, the person who applied for certification of the project must also pay, within 10 days of being ordered by the court, the following costs or estimated costs:

(A) The costs of any special master appointed by the court in the case; and

(B) The costs of any contract personnel retained by the court to work on the case.

(3) If the party fails to timely pay the fee or costs specified in this rule, the court may impose sanctions that the court finds appropriate after notifying the party and providing the party with an opportunity to pay the required fee or costs.

(4) Any fee or cost paid under this section is not a recoverable cost.

Chapter 11. Review of California Environmental Quality Act Cases Under Public Resources Code Sections 21168.6.6–21168.8, 21178–21189.3, and 21189.50–21189.57.

Rule 8.700. Definitions and application

(a) Definitions

As used in this chapter:

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

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

(3) The "Oakland sports and mixed use project" or "Oakland ballpark project" means a project as defined in Public Resources Code section 21168.6.7 and certified by the Governor under that section.

(4) The "Inglewood arena project" means all a project as defined in Public Resources Code section 21168.6.8 and certified by the Governor under that section.

~~(3)~~(5) A "capitol building annex project" means a state capitol building annex project, annex project related work, or state office building project as defined by Public Resources Code section 21189.50.

(6) A "streamlined CEQA project" means any project within the definitions stated in (1) through (5)

(b) Proceedings governed

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

Rule 8.702. Appeals

(a) Application of general rules for civil appeals

***

(b) Notice of appeal

(1) ***

(2) *Contents of notice of appeal*

The notice of appeal must:

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

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

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

(c)-(e) ***

(f) Briefing

(1)-(3) ***

(4) *Extensions of time to file briefs*

If the parties stipulate to extend the time to file a brief under rule 8.212(b), they are deemed to have agreed that the time for resolving the action may be extended beyond 270 days by the number of days by which the parties stipulated to extend the time for filing the brief and, to that extent, to have waived any objection to noncompliance with the deadlines for completing review stated in Public Resources Code sections 21168.6.6–8, ~~(c) (d),~~ 21185, and 21189.51 for the duration of the stipulated extension.

(5) ***

(g) Oral argument

***

Advisory Committee Comment

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

Rule 8.703. Writ proceedings

(a) Application of general rules for writ proceedings

***

(b) Petition

(1) ***

(2) *Contents of petition*

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

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

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

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

Rule 8.705. Court of Appeal costs in leadership and streamlined CEQA projects

In fulfillment of the provisions in Public Resources Code sections 21168.6.7, 21168.6.8, and 21183, regarding payment of the Court of Appeal's costs with respect to cases concerning ~~leadership~~ certain streamlined CEQA review projects:

(1) Within 10 days after service of the notice of appeal or petition in a case concerning a leadership project, the person who applied for certification of the project as a leadership project must pay a fee of $~~100,000~~175,000 to the Court of Appeal.

(2) Within 10 days after service of the notice of appeal or petition in a case concerning an Oakland ballpark project or Inglewood arena project, the person who applied for certification of the project must pay a fee of $175,000 to the Court of Appeal.

[STAFF NOTE: an additional provision may be added to earmark the funds in (1) and (2) for use in these cases]

(~~2~~ 3) If the Court of Appeal incurs any of the following costs, the person who applied for certification of the project must also pay, within 10 days of being ordered by the court, the following costs or estimated costs:

(A) The costs of any special master appointed by the Court of Appeal in the case; and

(B) The costs of any contract personnel retained by the Court of Appeal to work on the case.

(~~3~~ 4) If the party fails to timely pay the fee or costs specified in this rule, the court may impose sanctions that the court finds appropriate after notifying the party and providing the party with an opportunity to pay the required fee or costs.

(5) Any fee or cost paid under this section is not recoverable as costs.

Item 08

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR19-__

Title
Appellate Procedure: Word limits for petitions for rehearing in unlimited civil cases

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rules 8.204 and 8.268

Proposed by
Appellate Advisory Committee
Hon. Louis R. Mauro, Chair
Christy Simons, Attorney

Action Requested
Review and submit comments by June 7, 2019

Proposed Effective Date
January 1, 2020

Contact
Christy Simons, 415-865-7694
christy.simons@jud.ca.gov

Executive Summary and Origin

To establish limits on the length of petitions for rehearing that reflect the limited scope of the procedure, the Appellate Advisory Committee proposes reducing the maximum length of petitions and answers by amending the rule that governs the content and form of briefs in the Court of Appeal. Currently, the rule sets forth maximum limits of 14,000 words for briefs produced on a computer and 50 pages for briefs produced on a typewriter. These limits apply to all types of briefs, including briefs on the merits of the issues raised on appeal. This proposal would provide lower limits of 7,000 words and 25 pages for petitions for rehearing and answers. This proposal arises out of suggestions from appellate practitioners, including a current committee member, that the committee consider reducing word limits for civil briefs in the Court of Appeal.

Background

Until 2002, Court of Appeal briefs were subject only to a page limit: "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].)

In 2002, as part of a project to rewrite and reorganize the appellate rules, a word count was added as an alternative to a page count.[1] The amended rule was based on the federal appellate rules, as explained in the 2001 report summary: "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. (FRAP32(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."[2]

Rule 14 was renumbered in 2007 as rule 8.204, which now governs the length of briefs in the Court of Appeal. Rule 8.204(c) retains the limits of 14,000 words[3] and 50 pages.

Rehearing in the Court of Appeal is governed by rule 8.268. Subdivision (b)(3) provides that "[t]he petition and answer must comply with the relevant provisions of rule 8.204." These include the length of briefs among other formatting provisions, and thus, petitions for rehearing are subject to the 14,000 word and 50 page limits.

The Proposal

This proposal would amend rule 8.204(c) to add new paragraph (5) providing for a word limit of 7,000 words and a page limit of 25 pages for petitions for rehearing and answers to those petitions. The proposal is intended to encourage brevity and concise, focused arguments, eliminate repetition, and set length limits that reflect the limited purpose of petitions for rehearing. Such petitions are appropriate to raise particular issues such as the court's opinion contains a material omission or misstatement of fact or a material misstatement of the law, or the opinion is based on an issue that was not raised or briefed by the parties, or the court lacked subject matter jurisdiction. Conversely, a petition for rehearing is not an opportunity to reargue the case, raise arguments the parties did not address, or generally argue that the court reached the wrong result. In addition, the court is familiar with the case, so no summary of the factual and procedural background in the petition is needed. For these reasons, the current limits seem to far exceed what is reasonably necessary.

The committee is proposing new limits of 7,000 words and 25 pages to reduce by 50 percent the permissible length of these briefs. The committee expects that this will assist courts by reducing the time it takes for Court of Appeal justices to review these petitions. For litigants, the reduced limits may also save them time, effort, and expense. In the rare instance when longer briefing

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[1] Judicial Council of Cal., staff rep., *Revision of Rules on Appeal: First Installment, Rules 1-18* (July 3, 2001), [insert hyperlink].

[2] *Id*., at p. 20.

[3] In 2016, FRAP 32 was amended to reduce the 14,000 word limit to 13,000, based on what the committee notes to the rule explain as a revision to the conversion ratio: "When Rule 32(a)(7)(B)'s type-volume limits for briefs were adopted in 1998, the word limits were based on an estimate of 280 words per page. In the course of adopting word limits for the length limits in Rules 5, 21, 27, 35, and 40, and responding to concern about the length of briefs, the Committee has reevaluated the conversion ratio (from pages to words) and decided to apply a conversion ratio of 260 words per page." (FRAP, rule 32, Com. Notes on Rules–2016 Amend.)

may be necessary, rule 8.204 provides, and will continue to provide, that, "[o]n application, the presiding justice may permit a longer brief for good cause."

To ensure that litigants are aware of the new word and page limits, the committee also proposes amending rule 8.268, which governs rehearing in the Court of Appeal. Currently, rule 8.268(b)(3) provides: "The petition and answer must comply with the relevant provisions of rule 8.204." The proposed amendment would refer specifically to the new length limits specific to petitions for rehearing in rule 8.204(c)(5).

Alternatives Considered

The committee considered whether to propose reduced limits for other types of briefs in unlimited civil appeals. The topic is timely because the United States Supreme Court is currently considering reducing the length of briefs filed in that court. However, the committee recognizes that the topic is complex and implicates a number of competing concerns. More research and data would be needed to support any such proposal in the future.

The committee also considered not proposing any change to the length of briefs. The committee rejected this option because the benefits of reducing the length of petitions for rehearing—reducing time spent by justices to review them and resources expended by the parties to prepare them—seem clear, and any downsides—a possible increase in applications to file an overlong brief—seem minimal.

In addition, the committee considered whether to place the new word and page limits in rule 8.204 regarding briefs or rule 8.268 regarding rehearing. There were good reasons for both options, but the committee decided to include the new length limits in rule 8.204 because "briefs" are defined to include petitions for rehearing in rule 8.10, and litigants are accustomed to finding format requirements for briefs in rule 8.204. To ensure that litigants who are seeking or opposing rehearing are aware of the new briefing length limits, the committee proposes adding a specific reference in rule 8.268 to the new length limits in rule 8.204.

Fiscal and Operational Impacts

There are no fiscal or operational impacts, and no costs of implementation other than informing courts and litigants of the new rule amendments.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Are the proposed limits of 7,000 words and 25 pages appropriate for petitions for rehearing?

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

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

Attachments and Links

1. Cal. Rules of Court, rules 8.204 and 8.268, at p. 5-6

Title 8. Appellate Rules

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

Chapter 2. Civil Appeals

Article 3. Briefs in the Court of Appeal

Rule 8.204. Contents and form of briefs

(a)–(b) * * *

(c) Length

(1) Except as provided in (5), ~~A~~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) Except as provided in (5), ~~A~~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) A petition for rehearing or an answer to a petition for rehearing produced on a computer must not exceed 7,000 words, including footnotes. A petition or answer produced on a typewriter must not exceed 25 pages.

~~(5)~~(6) On application, the presiding justice may permit a longer brief for good cause.

(d) * * *

Article 4. Hearing and Decision in the Court of Appeal

Rule 8.268. Rehearing

(a) * * *

(b) Petition and answer

(1)–(2) * * *

(3) The petition and answer must comply with the relevant provisions of rule 8.204, including the length provisions in subdivision (c)(5).

(4) * * *

(c)–(d) * * *

Item 09

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR19-__

Title
Appellate Procedure and Juvenile Law: Access to Juvenile Case Files in Appellate Court Proceedings

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rules 8.400, 8.401, 8.405, 8.407, 8.408, 8.409, 8.410, 8.412, 8.416, 8.450, 8.452, 8.454, and 8.456; Adopt form JV-291; amend forms JV-285, JV-290, JV-295, JV-321, JV-325, JV-570, JV-800, and JV-820

Proposed by
Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Action Requested
Review and submit comments by June 7, 2019.

Proposed Effective Date
January 1, 2020

Contact
Christy Simons, 415-865-7694
christy.simons@jud.ca.gov

Daniel Richardson, 415-865-7619
Daniel.richardson@jud.ca.gov

Executive Summary and Origin

The Appellate Advisory Committee and the Family and Juvenile Law Advisory propose amended rules and new and revised forms to implement recent Judicial Council-sponsored legislation amending the statute that specifies who may access and copy records in a juvenile case file. The statutory amendment clarified that people who are entitled to seek review of certain orders in juvenile proceedings or who are respondents in such appellate proceedings may, for purposes of those appellate proceeding, access and copy those records to which they were previously given access by the juvenile court. This proposal would implement the legislation by updating the rules relating to juvenile appeals to include provisions relating to persons with limited access to the juvenile case file and the record that must be prepared and provided to these persons. The committees also propose a new information sheet and a notice on certain forms

regarding the requirement to seek authorization from the juvenile court to access records in the case file prior to commencing an appeal

Background

The confidentiality of juvenile case files is established by Welfare and Institutions Code section 827.[1] This confidentiality is intended to protect the privacy rights of the child who is the subject of the juvenile court proceedings. Subdivision (a)(1) of this statue identifies those who may inspect and receive copies of a juvenile court case file.[2] These include the child who is the subject of the proceeding, the child's parent or guardian, the attorneys for the parties, the petitioning agency in a dependency action, or the district attorney, city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law.

Ordinarily, to help resolve these matters as quickly as possible, when an appeal or petition is filed challenging a judgment or order in a juvenile proceeding, the record for that appellate proceedings is prepared and sent to the Court of Appeal and the parties very quickly. The items that must be included in the record on appeal or for certain writ proceedings are listed in California Rules of Court, rules 8.407, 8.450, and 8.454. The trial court is required to begin preparing the record in these proceedings as a notice of appeal or notice of intent to file a writ petition is filed. A premise of this practice seems to be that all the parties to the appellate proceeding are entitled under section 827 to inspect and receive copies of the records from the juvenile case file that would be included in the record.

However, some individuals who are authorized to participate in juvenile proceedings and have the right to seek review of certain orders in those proceedings or who have a right to respond to an appeal or petition seeking such review are not entitled under section 827 to inspect or copy any records in a juvenile case file. This situation occurs, for example, when the appellant is a family member or other person who files a petition seeking de facto parent status and is appealing the denial of that petition or who files a petition under Welfare and Institutions Code section 388 to change, modify, or set aside a juvenile court order on grounds of change of circumstance or new evidence and is appealing the denial of that petition. In those cases, prior to the recent legislation, the juvenile courts and Courts of Appeal followed various procedures to decide, on a case-by-case basis, what records the parties to the appellate proceeding could receive. Doing so took time and resources for the persons who were seeking review or who were respondents in such proceedings, for the juvenile court, and for the Court of Appeal. It also resulted in delays and, particularly when the appellant or petitioner was self-represented, procedural dismissals of these appeals without consideration of their merit.

In 2017, the Appellate Advisory Committee, in consultation with the Family and Juvenile Law Advisory Committee, recommended that the Judicial Council sponsor legislation to address this

[1] All further code references are to the Welfare and Institutions Code and all rule references are to the California Rules of Court unless otherwise indicated.

[2] You can access the full text of this section at *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=827.&lawCode=WIC).*

situation. The legislation, Assembly Bill 1617 (AB 1617), added new paragraph (a)(6) to Welfare and Institutions Code section 827 (section 827) and took effect on January 1, 2019. New paragraph (a)(6) of section 827 provides that a person who is not otherwise authorized to access the case file under section 827(a)(1)(A)-(P) who files a notice of appeal or petition challenging a juvenile court order or who is a respondent or real party in interest in such an appellate proceeding may, for purposes of the appellate proceeding, access and copy those records to which they have been given access by the juvenile court. New paragraph (a)(6) also requires the Judicial Council to adopt rules to implement the paragraph.

The Proposal

The proposal is being made in response to AB 1617, which made amendments to section 827 providing that persons not otherwise entitled to access the juvenile case file under section 827, who file a notice of appeal or writ petition challenging a juvenile court order or who are a respondent or real party in interest in such an appellate proceeding may, for purposes of the appellate proceeding, access and copy those records to which they were previously given access by the juvenile court under section 827(a)(1)(Q). The proposal will:

- Create uniform rules for the preparation and disclosure of the appellate record for these individuals by amending various rules in Title 8 of the rules of court relating to juvenile appeals;

- Provide notice to individuals who will need to petition the juvenile court for access to the appellate record by creating *Information Sheet-Right to Appeal for a Nonparty-Requirement to Request Access to Juvenile Record* (form JV-291); and

- Provide notice to individuals who will need to petition the juvenile court for access to the appellate record by placing a notice and a reference to form JV-291, on the following

forms, commonly used by individuals who will need to request access to the appellate record:

  - JV-285-Relative Information
  - JV-290-Caregive Information Form
  - JV-295-De Facto Parent Request
  - JV-321-Request for Prospective Adoptive Parent Designation
  - JV-325-Objection to Removal
  - JV-800-Notice of Appeal
  - JV-820-Notice of Intent to File Writ Petition

- Revise form *Request for Disclosure of Juvenile Case File* (form JV -570) to include an option for the petitioner seeking access to the juvenile case file to indicate that the disclosure is related to an appeal.

- Create a procedure by which the appellant or writ petitioner must notify the juvenile court clerk that the appellant or writ petitioner, or a respondent, would require the preparation of a separate limited record in accordance with section 827, by amending various rules in title 8 and revising form *Notice of Appeal* (form JV-800) and *Notice of Intent to File Writ Petition* (form JV-820).

Rule Amendments

To implement the new legislation, the committees are proposing amendments to juvenile appellate rules to include provisions regarding parties to appellate proceedings who have been granted access to records by the juvenile court and the limited record that must be prepared for such parties. The amendments include new terms and definitions for ease of referring to these parties ("designated persons") and the record ("limited record") to which they are entitled. The amendments also provide guidance to juvenile court clerks who must prepare and send the record for appellate court proceedings.

The committees believe that these proposed rule amendments balance the policy considerations favoring confidentiality of juvenile case files against designated persons' need for access to these records for purposes of effectuating their right to participate in appellate proceedings in these cases. Since these individuals were already privy to the records in the juvenile court proceedings, the proposal would not dilute the confidentiality protections for the child. By eliminating the necessity for special procedures to authorize the individuals' access to these records, the proposal would reduce barriers to their access to justice, delays in these proceedings, and time and expenses for the parties and the courts.

General provisions (rules 8.400-8.402)

Rule 8.400, Application: The proposed amendment adds definitions to the title and a new subdivision (b) containing definitions of "designated person" and "limited record." A "designated person" means a person authorized by order of the juvenile court upon filing a

petition under Welfare and Institutions Code section 827(a)(1)(Q) to inspect a juvenile case file and who is a party to the appeal or writ proceeding. "Limited record" means the record prepared for a designated person for purposes of the appeal or writ proceeding which contains the documents in a juvenile case file that the juvenile court has ordered be made available under Welfare and Institutions Code section 827(a)(1)(Q). New subdivision (b) also clarifies that a juvenile case file includes the records listed in rule 5.552(a).

Rule 8.401, Confidentiality: The proposed amendment adds a new paragraph to subdivision (b) to specify that designated persons may only access the limited record.

Appeals (rules 8.405-8.416)

Rule 8.405, Filing the Appeal: There are several proposed amendments to this rule. A new paragraph in subdivision (a) provides that an appellant who is aware that a party to the appeal is not authorized to access the juvenile case file without a court order must indicate this on the notice of appeal. Amendments to subdivision (b) regarding the clerk's duties address notifying the court reporter to prepare the reporter's transcript for a limited record, and identifying in the notification of the filing of the notice of appeal any party who is a designated person.

Rule 8.407, Record on Appeal: The proposed amendment adds subdivision (f) regarding a limited record for designated persons and adds limiting language to subdivision (c) regarding new subdivision (f). This subdivision will specify that the limited record for a designated person may contain only those records to which the designated person has been granted access by the juvenile court.

Rule 8.408, Record in multiple appeals in the same case: The proposed amendment provides that in cases involving more than one appeal, a limited record must be prepared for any party who is a designated person.

Rule 8.409, Preparing and sending the record: The proposed amendments to subdivision (b) provide that the transcripts for a limited record must be prepared and paginated separately from the transcripts for the normal record on appeal. This reflects the committee's determination, based on feedback from juvenile court clerks, that separate transcripts, rather than a redacted version of transcripts in the normal record, was the better form of the limited record to propose.

The committees also propose adding new subdivision (f) to this rule to set forth rules for preparing and certifying transcripts in a limited record and sending the limited record. A proposed new advisory committee comment for this subdivision clarifies that if a party not otherwise authorized to access the juvenile case file has not been granted access the juvenile case file, there is no limited record to be prepared and to obtain access, the party must file a petition in the juvenile court.

Rule 8.410, Augmenting and correcting the record in the reviewing court: The amendment adds language to include a limited record. Augmentation or correction of a limited record by a

reviewing court can only include documents or transcripts to which the designated person has been granted access by the juvenile court.

Rule 8.412, Briefs by parties and amici curiae: New paragraph (a)(4) clarifies that a designated persons brief must include citations to the limited record. This mirrors a provision in rule 8.204 that applies to parties using the normal record. New paragraph (a)(5) provides that, in an appeal involving a designated person, if another party's brief references material in the normal record to which the designated person has not previously been granted access, the designated person may seek such access by filing a petition in the juvenile court.

Rule 8.416, Appeals from all terminations of parental rights; dependency appeals in Orange, Imperial, and san Diego Counties and in other counties by local rule: The proposed amendments include provisions for designated persons and limited records.

Writs (rules 8.450-8.456)

Rule 8.450, Notice of intent to file writ petition challenging order setting hearing under Welfare and Institutions Code section 366.26: The proposed amendments add a provision requiring that a petitioner who is aware that a party is not authorized to access the juvenile case file without a court order must indicate this on the notice of intent to file a writ petition. The amendments also include provisions for preparing the limited record for a designated person and sending the limited record.

Rule 8.452. Writ petition to review order setting hearing under Welfare and Institutions Code section 366.26: New paragraph (b)(4) requires that if the petitioner is a designated person, the summary of facts in the memorandum is limited to matters in the limited record and citations must be to the limited record.

Rule 8.454, Notice of intent to file writ petition under Welfare and Institutions Code section 366.28 to review order designating specific placement of a dependent child after termination of parental rights: These amendments mirror those proposed for rule 8.450.

Rule 8.456, Writ petition under Welfare and Institutions Code section 366.28 to review order designating or denying specific placement of a dependent child after termination of parental rights: These amendments mirror those proposed for rule 8.452.

New and Revised Forms

The committees also propose a new form and revisions to existing forms. The form revisions are intended to assist the juvenile court and potential designated persons in addressing access to the juvenile case file prior to an appeal or writ. In addition, a new information sheet is proposed

which is directed at potential designated persons, to inform them of the parameters of the right to appeal and the requirements to seek access to the juvenile case file for purposes of an appeal. timely access to the juvenile case file by assist potential "designated persons" of the requirement to petition for access to the juvenile case file prior to an appeal, to assist the juvenile court

Proposed Information Sheet JV-291

Information Sheet-Right to Appeal for a Nonparty-Requirement to Request Access to Juvenile Record (form JV-291): A new JV form information sheet is proposed to provide information on the right to appeal for nonparties such as relatives and de facto parents, and of the requirement to request access to the juvenile case file through a petitioner under section 827(a)(1)(Q). This form will be referenced in the notice proposed on other JV forms discussed below and provide a reference for nonparties who may have a right to appeal and notify them of the requirement to request access to the juvenile case file for purposes of an appeal. The form emphasizes that the right to appeal by nonparties to a dependency or delinquency case only applies in limited circumstances.

Notify Potential Designated Persons Through JV Forms

The committees sought to address the likely recurrence of potential designated persons on appeal not being aware of the requirement to request access to the juvenile case file until after the appeal has commenced, and thus seeking access to the juvenile case file after the appeal has commenced. This could create delays which the legislation was passed to help to avoid, and could create a difficult situation for the juvenile court. The committees propose adding a short notice explain the right to appeal for nonparties, and referencing the JV-291 Information Sheet mentioned above to forms typically used by nonparties in a dependency or delinquency case. The notice would read as follows:

> "If you are not the parent to the child, the child, or the child's legal guardian, in very limited circumstances, a right to appeal may exist. Please see form JV-291-*Information Sheet – Right To Appeal For A Nonparty – Requirement To Request Access To Juvenile Record* for further information on the requirements for an appeal. "

The notice is recommended for the following forms that are often used by nonparties in dependency and delinquency cases:

- JV-285-*Relative Information*
- JV-290-*Caregive Information Form*
- JV-295-*De Facto Parent Request*
- JV-321-*Request for Prospective Adoptive Parent Designation*
- JV-325-*Objection to Removal*
- JV-800-*Notice of Appeal*
- JV-820-*Notice of Intent to File Writ Petition*

Amend Form JV-570-Request for Disclosure

Form JV-570-*Request for Disclosure of Juvenile Case File* is the mandatory form used to request disclosure of the juvenile case file. It requires the petitioner to describe in detail the records requested and why the records are needed. The committees propose providing guidance for the juvenile court and the petitioner that access to the juvenile case file is sought for the purpose of an appeal or writ. Item 6 requires that the petitioner state the reason for the request, and lists some typical reasons for the request. A new option is proposed added that specifies the request is for a pending or anticipated appellate case and list the specific hearing dates related to the appeal.

In addition, new checkboxes are proposed be added to forms JV-800-*Notice of Appeal* and JV-820-*Notice of Intent to File Writ Petition,* to indicate if the appellant or writ petitioner is not the department, child, parent, or legal guardian that they must attach the court order on form JV-574-*Order After Hearing* (the form used for the juvenile court to order a release of records under section 827(a)(1)(Q)), to the form if one exits. Doing so will alert the clerk that a limited record needs to be prepared. The committees also elected to require the appellant or writ petitioner to indicate on the form that a respondent may be an individual not entitled to access the juvenile case file, which also will alert the clerk that a respondent to the appeal may require a limited record.

Alternatives Considered

The committees did not consider proposing no rule changes because AB 1617 specifically requires the Judicial Council to adopt rules to implement the legislation.

The committees considered not making any changes to the JV forms, but rejected this option. Because of the likelihood that individuals not authorized to access the juvenile case file who are involved in appellate proceedings may not be aware of the requirement to petition for access to the record to access the record on appeal, the committees chose to develop a new information sheet and include a notice on certain forms.

The committees also considered two alternatives for a limited record: (1) creating a separate limited record that would be a separate citable document provided to all parties, or (2) redacting copies of the normal record. The committees sought input from juvenile court clerks[3] who preferred the first alternative because redacting would be too time-consuming. Subdivision (f) of rule 8.409 therefore requires that a separate limited record be prepared and a copy sent to the appellant, the respondent, the child's Indian tribe if the tribe has intervened, and the child if the child is represented by counsel on appeal.

Finally, the committees considered alternatives for identifying parties as designated persons at the outset of an appeal or writ proceeding for purposes of timely preparing and sending the

[3] The committees sought feedback from court clerks that will be preparing these records as to which option they would prefer. Fourteen counties responded, with 10 preferring option one and 4 preferring option two. Most of the clerks felt that redacting the record would be too burdensome and preferred to prepare a separate limited record.

limited record. The committees considered requiring the appellant or petitioner to identify any designated persons as a respondent on the notice of appeal or notice of intent, respectively, and requiring the juvenile court clerk to determine whether any party is a designated person. The proposal reflects a combination of these alternatives.

Request for Specific Comments

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

- Are there any additional suggestions on how to ensure that the release of records is requested prior to the commencement of the appeal?
- Do the rule amendments and form amendments provide enough information to the court clerk responsible for preparing a limited record? There are other suggestions on how to alert the clerk that the appeal requires a limited record?
- Is the notice on the JV forms alerting individuals of a possible right to appeal necessary to alert them of the requirement to request release of the juvenile case file through a petition under section 827(a)(1)(Q)?
- Does the proposed JV-291 Information Sheet contain sufficient information to describe the right to appeal in plain language, and the requirement to seek release of the records in the juvenile case file through a petition under Welfare and Institutions Code section 827(a)(1)(Q)? What other information could be provided to clarify this process? Are there other scenarios that should be listed in item 1 that describe when someone not entitled to access the juvenile case file would have a right to an appeal?
- Are there any additional suggestions to ensure that the clerk is aware that a designated party is a respondent to the appeal?
- Should the limited record be prepared as a separate volume or as a redacted version of the full appellate record?

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

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

Attachments and Links

1. Cal. Rules of Court, rules 8.400-8.456
2. JV-291-*Information Sheet-Right to Appeal for a Nonparty-Requirement to Request Access to Juvenile Record*

3. JV-285-*Relative Information.*
4. JV-290-*Caregive Information Form.*
5. JV-295-*De Facto Parent Request.*
6. JV-321-*Request for Prospective Adoptive Parent Designation*.
7. JV-325-*Objection to Removal.*
8. JV-800-*Notice of Appeal.*
9. JV-820-*Notice of Intent to File Writ Petition.*

Title 8. Appellate Rules

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

Chapter 5. Juvenile Appeals and Writs

Article 1. General provisions

Rule 8.400. Application and Definitions

(a) The rules in this chapter govern:

(1) Appeals from judgments or appealable orders in:

(A) Cases under Welfare and Institutions Code sections 300, 601, and 602; and

(B) Actions to free a child from parental custody and control under Family Code section 7800 et seq. and Probate Code section 1516.5;

(2) Appeals of orders requiring or dispensing with an alleged father's consent for the adoption of a child under Family Code section 7662 et seq.; and

(3) Writ petitions under Welfare and Institutions Code sections 366.26 and 366.28.

(b) In addition to the definitions and use of terms in rule 8.10, the following apply to the rules in this chapter:

(1) "Designated person" means a party to the appeal or writ proceeding who is not otherwise authorized to access the juvenile case file under Welfare and Institutions Code section 827 and who has been granted access to inspect and copy specified records in a juvenile case file by order of the juvenile court after filing a petition under section 827(a)(1)(Q).

(2) "Limited record" means the record prepared for a designated person for purposes of the appeal or writ proceeding that contains the records in the juvenile case file to which the designated person has been granted access by order of the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q).

(3) "Juvenile case file" includes the records listed in rule 5.552(a).

Rule 8.401. Confidentiality

(a) References to juveniles or relatives in documents

To protect the anonymity of juveniles involved in juvenile court proceedings:

(1) In all documents filed by the parties in proceedings under this chapter, a juvenile must be referred to by first name and last initial; but if the first name is unusual or other circumstances would defeat the objective of anonymity, the initials of the juvenile may be used.

(2) In opinions that are not certified for publication and in court orders, a juvenile may be referred to either by first name and last initial or by his or her initials. In opinions that are certified for publication in proceedings under this chapter, a juvenile must be referred to by first name and last initial; but if the first name is unusual or other circumstances would defeat the objective of anonymity, the initials of the juvenile may be used.

(3) In all documents filed by the parties and in all court orders and opinions in proceedings under this chapter, if use of the full name of a juvenile's relative would defeat the objective of anonymity for the juvenile, the relative must be referred to by first name and last initial; but if the first name is unusual or other circumstances would defeat the objective of anonymity for the juvenile, the initials of the relative may be used.

(b) Access to filed documents

(1) Except as limited in (2) or as provided in ~~(2)~~ (3) (4), the record on appeal and documents filed by the parties in proceedings under this chapter may be inspected only by the reviewing court and appellate project personnel, the parties including their attorneys, and other persons the court may designate.

(2) A designated person may inspect and copy only the limited record on appeal.

~~(2)~~(3) Filed documents that protect anonymity as required by (a) may be inspected by any person or entity that is considering filing an amicus curiae brief.

~~(3)~~(4) Access to records that are sealed or confidential under authority other than Welfare and Institutions Code section 827 is governed by rules 8.45–8.47 and the applicable statute, rule, sealing order, or other authority.

(c) Access to oral argument

The court may limit or prohibit public to oral argument.

Article 2. Appeals

Rule 8.403. Right to appointment of appellate counsel and prerequisites for appeal

(a) Welfare and Institutions Code section 601or 602 proceedings

In appeals of proceedings under Welfare and Institutions Code section 601 or 602, the child is entitled to court-appointed counsel.

(b) Welfare and Institutions Code section 300 proceedings

(1) Any judgment, order, or decree setting a hearing under Welfare and Institutions Code section 366.26 may be reviewed on appeal following the order at the Welfare and Institutions Code section 366.26 hearing only if:

(A) The procedures in rules 8.450 and 8.452 regarding writ petitions in these cases have been followed; and

(B) The petition for an extraordinary writ was summarily denied or otherwise not decided on the merits.

(2) The reviewing court may appoint counsel to represent an indigent child, parent, or guardian.

(3) Rule 5.661 governs the responsibilities of trial counsel in Welfare and Institutions Code section 300 proceedings with regard to appellate representation of the child.

Advisory Committee Comment

The right to appeal in Welfare and Institutions Code section 601 or 602 (juvenile delinquency) cases is established by Welfare and Institutions Code section 800 and case law (see, for example, *In re Michael S.* (2007) 147 Cal.App.4th 1443, *In re Jeffrey M.* (2006) 141 Cal.App.4th 1017 and *In re Sean R.* (1989) 214 Cal.App.3d 662). The right to appeal in Welfare and Institutions Code section 300 (juvenile dependency) cases is established by Welfare and Institutions Code section 395 and case law (see, for example, *In re Aaron R.* (2005) 130 Cal.App.4th 697, and *In re Merrick V.* (2004) 122 Cal.App.4th 235).

Subdivision (b)(1). Welfare and Institutions Code section 366.26(*l*) establishes important limitations on appeals of judgments, orders, or decrees setting a hearing under section 366.26, including requirements

for the filing of a petition for an extraordinary writ and limitations on the issues that can be raised on appeal.

Rule 8.404. Stay pending appeal

The court must not stay an order or judgment pending an appeal unless suitable provision is made for the maintenance, care, and custody of the child.

Rule 8.405. Filing the appeal

(a) Notice of appeal

(1) To appeal from a judgment or appealable order under these rules, the appellant must file a notice of appeal in the superior court. Any notice of appeal on behalf of the child in a Welfare and Institutions Code section 300 proceeding must be authorized by the child or the child's CAPTA guardian ad litem.

(2) The appellant or the appellant's attorney must sign the notice of appeal.

(3) If the appellant is aware that a party to the appeal is an individual not authorized to access the juvenile case file without an approved petition under Welfare and Institutions Code section 827(a)(1)(Q), the appellant must indicate this on the notice of appeal.

(4) ~~(3)~~ The notice of appeal must be liberally construed, and is sufficient if it identifies the particular judgment or order being appealed. The notice need not specify the court to which the appeal is taken; the appeal will be treated as taken to the Court of Appeal for the district in which the superior court is located.

(b) Superior court clerk's duties

(1) When a notice of appeal is filed, the superior court clerk must immediately:

(A) Send a notification of the filing to:

(i) Each party other than the appellant, including the child if the child is 10 years of age or older;

(ii) The attorney of record for each party;

(iii) Any person currently awarded by the juvenile court the status of the child's de facto parent;

(iv) Any Court Appointed Special Advocate (CASA) volunteer;

(v) If the court knows or has reason to know that an Indian child is involved, the Indian custodian, if any, and tribe of the child or the Bureau of Indian Affairs, as required under Welfare and Institutions Code section 224.2; and

(vi) The reviewing court clerk; and

(B) Notify the reporter by telephone and in writing to prepare a reporter's transcript and any limited reporter's transcript and deliver it or them to the clerk within 20 days after the notice of appeal is filed.

(2) The notification must show the name of the appellant, the date it was sent, the number and title of the case, and the date the notice of appeal was filed. If the information is available, the notification must also include:

(A) The name, address, telephone number, e-mail address, and California State Bar number of each attorney of record in the case;

(B) The name of the party that each attorney represented in the superior court; and

(C) The name, address, telephone number and e-mail address of any unrepresented party.

(3) The notification must also identify any party to the appeal who is not authorized under Welfare and Institutions Code section 827(a)(1)(A-P) to access the juvenile case file. If such party is a designated person, a copy of the juvenile court order under section 827(a)(1)(Q) granting access to specified records in the juvenile case file, if available, must be included.

(4)~~(3)~~ The notification to the reviewing court clerk must also include a copy of the notice of appeal and any sequential list of reporters made under rule 2.950.

(5)~~(4)~~ A copy of the notice of appeal is sufficient notification if the required information is on the copy or is added by the superior court clerk.

(6)~~(5)~~ The mailing of a notification is a sufficient performance of the clerk's duty despite the discharge, disqualification, suspension, disbarment, or death of the attorney.

(7)~~(6)~~ Failure to comply with any provision of this subdivision does not affect the validity of the notice of appeal.

Advisory Committee Comment

Subdivision (a). *Notice of Appeal—Juvenile (California Rules of Court, Rule 8.400)* (form JV-800) may be used to file the notice of appeal required under this rule. This form is available at any courthouse or county law library or online at *www.courts.ca.gov/forms*.

Rule 8.406. Time to appeal

(a) Normal time

(1) Except as provided in (2) and (3), a notice of appeal must be filed within 60 days after the rendition of the judgment or the making of the order being appealed.

(2) In matters heard by a referee not acting as a temporary judge, a notice of appeal must be filed within 60 days after the referee's order becomes final under rule 5.540(c).

(3) When an application for rehearing of an order of a referee not acting as a temporary judge is denied under rule 5.542, a notice of appeal from the referee's order must be filed within 60 days after that order is served under rule 5.538(b)(3) or 30 days after entry of the order denying rehearing, whichever is later.

(b) Cross-appeal

If an appellant timely appeals from a judgment or appealable order, the time for any other party to appeal from the same judgment or order is either the time specified in (a) or 20 days after the superior court clerk sends notification of the first appeal, whichever is later.

(c) No extension of time; late notice of appeal

Except as provided in rule 8.66, no court may extend the time to file a notice of appeal. The superior court clerk must mark a late notice of appeal "Received [date] but not filed," notify the party that the notice was not filed because it was late, and send a copy of the marked notice of appeal to the district appellate project.

(d) Premature notice of appeal

A notice of appeal is premature if filed before the judgment is rendered or the order is made, but the reviewing court may treat the notice as filed immediately after the rendition of judgment or the making of the order.

Advisory Committee Comment

Subdivision (c). See rule 8.25(b)(5) for provisions concerning the timeliness of documents mailed by inmates or patients from custodial institutions.

Rule 8.407. Record on appeal

(a) Normal record: clerk's transcript

The clerk's transcript must contain:

(1) The petition;

(2) Any notice of hearing;

(3) All court minutes;

(4) Any report or other document submitted to the court;

(5) The jurisdictional and dispositional findings and orders;

(6) The judgment or order appealed from;

(7) Any application for rehearing;

(8) The notice of appeal and any order pursuant to the notice;

(9) Any transcript of a sound or sound-and-video recording tendered to the court under rule 2.1040;

(10) Any application for additional record and any order on the application;

(11) Any opinion or dispositive order of a reviewing court in the same case; and;

(12) Any written motion or notice of motion by any party, with supporting and opposing memoranda and attachments, and any written opinion of the court.

(b) Normal record: reporter's transcript

The reporter's transcript must contain any oral opinion of the court and:

(1) In appeals from disposition orders, the oral proceedings at hearings on:

(A) Jurisdiction;

(B) Disposition;

(C) Any motion by the appellant that was denied in whole or in part; and

(D) In cases under Welfare and Institutions Code section 300 et seq., hearings:

(i) On detention; and

(ii) At which a parent of the child made his or her initial appearance.

(2) In appeals from an order terminating parental rights under Welfare and Institutions Code section 300 et seq., the oral proceedings at all section 366.26 hearings.

(3) In all other appeals, the oral proceedings at any hearing that resulted in the order or judgment being appealed.

(c) Application in superior court for addition to normal record

Except as provided in (f):

(1) Any party or Indian tribe that has intervened in the proceedings may apply to the superior court for inclusion of any oral proceedings in the reporter's transcript.

(2) An application for additional record must describe the material to be included and explain how it may be useful in the appeal.

(3) The application must be filed in the superior court with the notice of appeal or as soon thereafter as possible, and will be treated as denied if it is filed after the record is sent to the reviewing court.

(4) The clerk must immediately present the application to the trial judge.

(5) Within five days after the application is filed, the judge must order that the record include as much of the additional material as the judge finds proper to fully present the points raised by the applicant. Denial of the application does not preclude a motion in the reviewing court for augmentation under rule 8.155.

(6) If the judge does not rule on the application within the time prescribed by (5), the requested material–other than exhibits–must be included in the clerk's transcript or the reporter's transcript without a court order.

(7) The clerk must immediately notify the reporter if additions to the reporter's transcript are required under (5) or (6).

(d) Agreed or settled statement

To proceed by agreed or settled statement, the parties must comply with rule 8.344 or 8.346, as applicable.

(e) Transmitting exhibits

Exhibits that were admitted in evidence, refused, or lodged may be transmitted to the reviewing court as provided in rule 8.224.

(f) Limited record for designated persons

A limited record may contain only those records in a juvenile case file to which the designated person has been granted access by the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q). A designated person as defined in rule 8.400(b)(1) is authorized to receive only the limited record.

Advisory Committee Comment

Rules 8.45–8.47 address the appropriate handling of sealed or confidential records that must be included in the record on appeal. Examples of confidential records include records of proceedings closed to inspection by court order under *People v. Marsden* (1970) 2 Cal.3d 118 and in-camera proceedings on a confidential informant.

Subdivision (a)(4). Examples of the documents that must be included in the clerk's transcript under this provision include all documents filed with the court relating to the Indian Child Welfare Act, including but not limited to all inquiries regarding a child under the Indian Child Welfare Act (*Indian Child Inquiry Attachment* [form ICWA-010(A)]), any *Parental Notification of Indian Status* (form ICWA-020), any *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030) sent, any signed return receipts for the mailing of form ICWA-030, and any responses received to form ICWA-030.

Subdivision (b). Subdivision (b)(1) provides that only the reporter's transcript of a hearing that resulted in the order being appealed must be included in the normal record. This provision is intended to achieve consistent record requirements in all appeals of cases under Welfare and Institutions Code section 300, 601, or 602 and to reduce the delays and expense caused by transcribing proceedings not necessary to the appeal.

Subdivision (b)(1)(A) recognizes that findings made in a jurisdictional hearing are not separately appealable and can be challenged only in an appeal from the ensuing disposition order. The rule therefore specifically provides that a reporter's transcript of jurisdictional proceedings must be included in the normal record on appeal from a disposition order.

Subdivision (b)(1)(C) specifies that the oral proceedings on any motion by the appellant that was denied in whole or in part must be included in the normal record on appeal from a disposition order. Rulings on such motions usually have some impact on either the jurisdictional findings or the subsequent disposition order. Routine inclusion of these proceedings in the record will promote expeditious resolution of appeals of cases under Welfare and Institutions Code section 300, 601, or 602.

Rule 8.408. Record in multiple appeals in the same case

If more than one appeal is taken from the same judgment or related order, only one appellate record need be prepared, which must be filed within the time allowed for filing the record in the latest appeal. If an appeal involves a designated person, a limited record must also be prepared as provided in 8.409(f).

Rule 8.409. Preparing and sending the record

(a) Application

This rule applies to appeals in juvenile cases except cases governed by rule 8.416.

(b) Form of record

(1) The clerk's and reporter's transcripts must comply with rules 8.45–8.47, relating to sealed and confidential records, and with rule 8.144.

(2) The clerk's and reporter's transcripts for a limited record must be produced and paginated separately from the transcripts for the normal record.

(Subd (b) amended effective January 1, 2015; adopted effective January 1, 2014.)

(c) Preparing and certifying the transcripts

Except as provided in (f), ~~W~~within 20 days after the notice of appeal is filed:

(1) The clerk must prepare and certify as correct an original of the clerk's transcript and one copy each for the appellant, the respondent, the child's Indian tribe if the tribe has intervened, and the child if the child is represented by counsel on appeal or if a recommendation has been made to the Court of Appeal for appointment of counsel for the child under rule 8.403(b)(2) and that recommendation is either pending with or has been approved by the Court of Appeal but counsel has not yet been appointed; and

(2) The reporter must prepare, certify as correct, and deliver to the clerk an original of the reporter's transcript and the same number of copies as (1) requires of the clerk's transcript

(d) Extension of time

(1) The superior court may not extend the time to prepare the record.

(2) The reviewing court may order one or more extensions of time for preparing the record, including a reporter's transcript, not exceeding a total of 60 days, on receipt of:

(A) A declaration showing good cause; and

(B) In the case of a reporter's transcript, certification by the superior court presiding judge, or a court administrator designated by the presiding judge, that an extension is reasonable and necessary in light of the workload of all reporters in the court.

(e) Sending the record

(1) Except as provided in (f), ~~W~~when the transcripts are certified as correct, the court clerk must immediately send:

(A) The original transcripts to the reviewing court, noting the sending date on each original; and

(B) One copy of each transcript to the appellate counsel for the following, if they have appellate counsel:

(i) The appellant;

(ii) The respondent;

(iii) The child's Indian tribe if the tribe has intervened; and

(iv) The child.

(2) If appellate counsel has not yet been retained or appointed for the appellant or the respondent, or if a recommendation has been made to the Court of Appeal for appointment of counsel for the child under rule 8.403(b)(2) and that recommendation is either pending with or has been approved by the Court of Appeal but counsel has not yet been appointed, when the transcripts are certified as correct, the clerk must

send that counsel's copy of the transcripts to the district appellate project. If a tribe that has intervened is not represented by counsel when the transcripts are certified as correct, the clerk must send that counsel's copy of the transcripts to the tribe.

(3) The clerk must not send a copy of the transcripts to the Attorney General or the district attorney unless that office represents a party.

(f) Limited record

(1) Application

If the appellant or the respondent is a designated person as defined in 8.400(b)(1), the clerk and the reporter must prepare, and the clerk must send, a separate limited record as defined in 8.400(b)(2) that includes only those records and transcripts in the juvenile case file to which the designated person has been granted access by the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q). A designated person may receive a copy of the limited record only, and may not receive a copy of any records to which the designated person has not been granted access by the juvenile court.

(2) Preparing and certifying the transcripts in a limited record

Within 20 days after the notice of appeal is filed:

(A) The clerk must prepare, in compliance with rules 8.74 and 8.144, and certify as correct an original of the clerk's transcript for a limited record and one copy each for the appellant, the respondent, the child's Indian tribe if the tribe has intervened, and the child if the child is represented by counsel on appeal or if a recommendation has been made to the Court of Appeal for appointment of counsel for the child under rule 8.403(b)(2) and that recommendation is either pending with or has been approved by the Court of Appeal but counsel has not yet been appointed; and

(B) The reporter must prepare, certify as correct, and deliver to the clerk an original of the reporter's transcript for a limited record and the same number of copies as (A) requires of the clerk's transcript.

(3) Sending the limited record

(A) When the transcripts for a limited record are certified as correct, the court clerk must immediately send:

(i) The original transcripts for a limited record to the reviewing court, noting the sending date on each original; and

(ii) One copy of each transcript for a limited record to the appellate counsel for the following, if they have appellate counsel:

(I) The appellant;

(II) The respondent;

(III) The child's Indian tribe if the tribe has intervened; and

(IV) The child.

(B) If appellate counsel has not yet been retained or appointed for the appellant or the respondent, or if a recommendation has been made to the Court of Appeal for appointment of counsel for the child under rule 8.403(b)(2) and that recommendation is either pending with or has been approved by the Court of Appeal but counsel has not yet been appointed, when the transcripts for a limited record are certified as correct, the clerk must send that counsel's copy of the transcripts for a limited record to the district appellate project. If a tribe that has intervened is not represented by counsel when the transcripts are certified as correct, the clerk must send that counsel's copy of the transcripts for a limited record to the tribe.

(C) The clerk must not send a copy of the transcripts for a limited record to the Attorney General or the district attorney unless that office represents a party.

Advisory Committee Comment

Subdivision (a). Subdivision (a) calls litigants' attention to the fact that a different rule (rule 8.416) governs the record in appeals from judgments or orders terminating parental rights and in dependency appeals in certain counties.

Subdivision (b). Examples of confidential records include records closed to inspection by court order under *People v. Marsden* (1970) 2 Cal.3d 118 and in-camera proceedings on a confidential informant.

Subdivision (e). Under rule 8.71(c), the superior court clerk may send the record to the reviewing court in electronic form. Subsection (1)(B) clarifies that when a child's Indian tribe has intervened in the proceedings, the tribe is a party who must receive a copy of the appellate record. The statutes that require notices to be sent to a tribe by registered or certified mail return receipt requested and generally be addressed to the tribal chairperson (25 U.S.C. § 1912(a), 25 C.F.R. § 23.11, and Welf. & Inst. Code, § 224.2) do not apply to the sending of the appellate record.

Subdivision (f). If a party is not otherwise authorized to access records in the juvenile case file under Welfare and Institutions Code section 827, and has not been granted access to any records in the juvenile case file by the juvenile court under section 827(a)(1)(Q) at the time the record on appeal is being prepared, there is no limited record to be prepared. To obtain access to records, and thus meet the definition of a designated person, the party must file a petition in the juvenile court.

Rule 8.410. Augmenting and correcting the record in the reviewing court

(a) Omissions

If, after the record is certified, the superior court clerk or the reporter learns that the record or the limited record omits a document or transcript that any rule or order requires to be included, without the need for a motion or court order, the clerk must promptly copy and certify the document or the reporter must promptly prepare and certify the transcript and the clerk must promptly send the document or transcript—as an augmentation of the record—to all those who are listed under 8.409(e) except as limited in 8.409(f).

(b) Augmentation or correction by the reviewing court

(1) Except as limited in (3), ~~O~~on motion of a party or on its own motion, the reviewing court may order the record augmented or corrected as provided in rule 8.155(a) and (c).

(2) If, after the record is certified, the trial court amends or recalls the judgment or makes any other order in the case, the trial court clerk must notify each entity and person to whom the record is sent under rule 8.409(e) and (f).

(3) The reviewing court may order a limited record augmented or corrected only to include records to which the designated person has been granted access by the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q).

Rule 8.411. Abandoning the appeal

(a) How to abandon

An appellant may abandon the appeal at any time by filing an abandonment of the appeal. The abandonment must be authorized by the appellant and signed by either the appellant or the appellant's attorney of record. In a Welfare and Institutions Code section 300 proceeding in which the child is the appellant, the abandonment must be authorized by the child or, if the child is not capable of giving authorization, by the child's CAPTA guardian ad litem.

(b) Where to file; effect of filing

(1) If the record has not been filed in the reviewing court, the appellant must file the abandonment in the superior court. The filing effects a dismissal of the appeal and restores the superior court's jurisdiction.

(2) If the record has been filed in the reviewing court, the appellant must file the abandonment in that court. The reviewing court may dismiss the appeal and direct immediate issuance of the remittitur.

(c) Clerk's duties

(1) If the abandonment is filed in the superior court, the clerk must immediately send a notification of the abandonment to:

(A) Every other party;

(B) The reviewing court; and

(C) The reporter if the appeal is abandoned before the reporter has filed the transcript.

(2) If the abandonment is filed in the reviewing court and the reviewing court orders the appeal dismissed, the clerk must immediately send a notification of the order of dismissal to every party.

Advisory Committee Comment

The Supreme Court has held that appellate counsel for an appealing minor has the power to move to dismiss a dependency appeal based on counsel's assessment of the child's best interests, but that the motion to dismiss requires the authorization of the child or, if the child is incapable of giving authorization, the authorization of the child's CAPTA guardian ad litem *(In re Josiah Z.* (2005) 36 Cal.4th 664).

Rule 8.412. Briefs by parties and amici curiae

(a) Contents, form, and length

(1) Rule 8.200 governs the briefs that may be filed by parties and amici curiae.

(2) Except as provided in (3) and (4), rule 8.204 governs the form and contents of briefs. Rule 8.216 also applies in appeals in which a party is both appellant and respondent.

(3) Rule 8.360 (b) governs the length of briefs.

(4) A designated person's brief must support any reference to a matter in the limited record by a citation to the volume and page number of the limited record where the matter appears.

(5) If an appeal involves a designated person, and the brief of a party who is not a designated person refers to juvenile case records that are not in the limited record, the designated person may petition the juvenile court for access to those records and may request that the reviewing court grant an extension under subdivision (c).

(b) Time to file

(1) Except in appeals governed by rule 8.416, the appellant must serve and file the appellant's opening brief within 40 days after the record is filed in the reviewing court.

(2) The respondent must serve and file the respondent's brief within 30 days after the appellant's opening brief is filed.

(3) The appellant must serve and file any reply brief within 20 days after the respondent's brief is filed.

(4) In dependency cases in which the child is not an appellant but has appellate counsel, the child must serve and file any brief within 10 days after the respondent's brief is filed.

(5) Rule 8.220 applies if a party fails to timely file an appellant's opening brief or a respondent's brief, but the period specified in the notice required by that rule must be 30 days.

(c) Extensions of time

The superior court may not order any extensions of time to file briefs. Except in appeals governed by rule 8.416, the reviewing court may order extensions of time for good cause.

(d) Failure to file a brief

(1) Except in appeals governed by rule 8.416, if a party fails to timely file an appellant's opening brief or a respondent's brief, the reviewing court clerk must promptly notify the party's counsel or the party, if not represented, in writing that the brief must be

filed within 30 days after the notice is sent and that failure to comply may result in one of the following sanctions:

(A) If the brief is an appellant's opening brief:

(i) If the appellant is the county, the court will dismiss the appeal;

(ii) If the appellant is other than the county and is represented by appointed counsel on appeal, the court will relieve that appointed counsel and appoint new counsel;

(iii) If the appellant is other than the county and is not represented by appointed counsel, the court will dismiss the appeal.

(B) If the brief is a respondent's brief, the court will decide the appeal on the record, the opening brief, and any oral argument by the appellant.

(2) If a party fails to comply with a notice under (1), the court may impose the sanction specified in the notice.

(3) Within the period specified in the notice under (1), a party may apply to the presiding justice for an extension of that period for good cause. If an extension is granted beyond the 30-day period and the brief is not filed within the extended period, the court may impose the sanction under (2) without further notice.

(e) Additional service requirements

(1) A copy of each brief must be served on the superior court clerk for delivery to the superior court judge.

(2) A copy of each brief must be served on the child's trial counsel, or, if the child is not represented by trial counsel, on the child's guardian ad litem appointed under rule 5.662.

(3) If the Court of Appeal has appointed counsel for any party:

(A) The county child welfare department and the People must serve two copies of their briefs on that counsel; and

(B) Each party must serve a copy of its brief on the district appellate project.

(4) In delinquency cases the parties must serve copies of their briefs on the Attorney General and the district attorney. In all other cases the parties must not serve copies

of their briefs on the Attorney General or the district attorney unless that office represents a party.

(5) The parties must not serve copies of their briefs on the Supreme Court under rule 8.44(b)(1).

Advisory Committee Comment

Subdivision (b). Subdivision (b)(1) calls litigants' attention to the fact that a different rule (rule 8.416(e)) governs the time to file an appellant's opening brief in appeals from judgments or orders terminating parental rights and in dependency appeals in certain counties.

Subdivision (c). Subdivision (c) calls litigants' attention to the fact that a different rule (rule 8.416(f)) governs the showing required for extensions of time to file briefs in appeals from judgments or orders terminating parental rights and in dependency appeals in certain counties.

Rule 8.416. Appeals from all terminations of parental rights; dependency appeals in Orange, Imperial, and San Diego Counties and in other counties by local rule

(a) Application

(1) This rule governs:

(A) Appeals from judgments or appealable orders of all superior courts terminating parental rights under Welfare and Institutions Code section 366.26 or freeing a child from parental custody and control under Family Code section 7800 et seq.; and

(B) Appeals from judgments or appealable orders in all juvenile dependency cases of:

(i) The Superior Courts of Orange, Imperial, and San Diego Counties; and

(ii) Other superior courts when the superior court and the District Court of Appeal with jurisdiction to hear appeals from that superior court have agreed and have adopted local rules providing that this rule will govern appeals from that superior court.

(2) In all respects not provided for in this rule, rules 8.403–8.412 apply.

(b) Form of record

(1) The clerk's and reporter's transcripts and any transcripts for a limited record, must comply with rules 8.45–8.467, relating to sealed and confidential records, and, except as provided in (2) and (3), with rule 8.144.

(2) In appeals under (a)(1)(A), the cover of the record must prominently display the title "Appeal From [Judgment or Order] Terminating Parental Rights Under [Welfare and Institutions Code Section 366.26 or Family Code Section 7800 et seq.]," whichever is appropriate.

(3) In appeals under (a)(1)(B), the cover of the record must prominently display the title "Appeal From [Judgment or Order] Under [Welfare and Institutions Code Section 300 et seq. or Family Code Section 7800 et seq.]," whichever is appropriate.

(c) Preparing, certifying, and sending the record

(1) Except as provided in (C), w~~W~~ithin 20 days after the notice of appeal is filed:

(A) The clerk must prepare and certify as correct an original of the clerk's transcript and one copy each for the appellant, the respondent, the district appellate project, the child's Indian tribe if the tribe has intervened, and the child if the child is represented by counsel on appeal or if a recommendation has been made to the Court of Appeal for appointment of counsel for the child under rule 8.403(b)(2) and that recommendation is either pending with or has been approved by the Court of Appeal but counsel has not yet been appointed; and

(B) The reporter must prepare, certify as correct, and deliver to the clerk an original of the reporter's transcript and the same number of copies as (A) requires of the clerk's transcript.

(C) If the appellant or the respondent is a designated person as defined in rule 8.400(b)(1), the clerk and the reporter must prepare separate transcripts for a limited record as provided in rule 8.409(f) that includes only those records and transcripts in the juvenile case file to which the designated person has been granted access by the juvenile court.

(2) Except as provided in (C), w~~W~~hen the clerk's and reporter's transcripts are certified as correct, the clerk must immediately send:

(A) The original transcripts to the reviewing court by the most expeditious method, noting the sending date on each original; and

(B) One copy of each transcript to the district appellate project and to the appellate counsel for the following, if they have appellate counsel, by any method as fast as United States Postal Service express mail:

(i) The appellant;

(ii) The respondent;

(iii) The child's Indian tribe if the tribe has intervened; and

(iv) The child.

(C) One copy of the transcripts for a limited record to an appellant or a respondent who is a designated person. A designated person may receive a copy of the limited record only, and may not receive a copy of any records to which the designated person has not been granted access by the juvenile court.

(3) If appellate counsel has not yet been retained or appointed for the appellant or the respondent or if a recommendation has been made to the Court of Appeal for appointment of counsel for the child under rule 8.403(b)(2) and that recommendation is either pending with or has been approved by the Court of Appeal but counsel has not yet been appointed, when the transcripts are certified as correct, the clerk must send that counsel's copies of the transcripts to the district appellate project. If a tribe that has intervened is not represented by counsel when the transcripts are certified as correct, the clerk must send that counsel's copy of the transcripts to the tribe.

(d) Augmenting or correcting the record

(1) Except as provided in (2) and (3), rule 8.410 governs any augmentation or correction of the record.

(2) An appellant must serve and file any motion for augmentation or correction within 15 days after receiving the record. A respondent must serve and file any such motion within 15 days after the appellant's opening brief is filed.

(3) The clerk and the reporter must prepare any supplemental transcripts within 20 days, giving them the highest priority.

(4) The clerk must certify and send any supplemental transcripts as required by (c).

(e) Time to file briefs

(1) To permit determination of the appeal within 250 days after the notice of appeal is filed, the appellant must serve and file the appellant's opening brief within 30 days after the record is filed in the reviewing court.

(2) Rule 8.412(b) governs the time for filing other briefs.

(f) Extensions of time

The superior court may not order any extensions of time to prepare the record or to file briefs; the reviewing court may order extensions of time, but must require an exceptional showing of good cause.

(g) Failure to file a brief

Rule 8.412(d) applies if a party fails to timely file an appellant's opening brief or a respondent's brief, but the period specified in the notice required by that rule must be 15 days.

(h) Oral argument and submission of the cause

(1) Unless the reviewing court orders otherwise, counsel must serve and file any request for oral argument no later than 15 days after the appellant's reply brief is filed or due to be filed. Failure to file a timely request will be deemed a waiver.

(2) The court must hear oral argument within 60 days after the appellant's last reply brief is filed or due to be filed, unless the court extends the time for good cause or counsel waive argument.

(3) If counsel waive argument, the cause is deemed submitted no later than 60 days after the appellant's reply brief is filed or due to be filed.

Advisory Committee Comment

Subdivision (c). Under rule 8.71(c), the superior court clerk may send the record to the reviewing court in electronic form.

Subdivision (g). Effective January 1, 2007, revised rule 8.416 incorporates a new subdivision (g) to address a failure to timely file a brief in all termination of parental rights cases and in dependency appeals in Orange, Imperial, and San Diego Counties. Under the new subdivision, appellants would not have the

full 30-day grace period given in rule 8.412(d) in which to file a late brief, but instead would have the standard 15-day grace period that is given in civil cases. The intent of this revision is to balance the need to determine the appeal within 250 days with the need to protect appellants' rights in this most serious of appeals.

Subdivision (h). Subdivision (h)(1) recognizes certain reviewing courts' practice of requiring counsel to file any request for oral argument within a time period other than 15 days after the appellant's reply brief is filed or due to be filed. The reviewing court is still expected to determine the appeal "within 250 days after the notice of appeal is filed." (*Id*., Subd 8.416(e).)

Article 3. Writs

Rule 8.450. Notice of intent to file writ petition to review order setting hearing under Welfare and Institutions Code section 366.26

(a) Application

Rules 8.450–8.452 and 8.490 govern writ petitions to review orders setting a hearing under Welfare and Institutions Code section 366.26.

(b) Purpose

Rules 8.450–8.452 are intended to encourage and assist the reviewing courts to determine on their merits all writ petitions filed under these rules within the 120-day period for holding a hearing under Welfare and Institutions Code section 366.26.

(c) Who may file

The petitioner's trial counsel, or, in the absence of trial counsel, the party, is responsible for filing any notice of intent and writ petition under rules 8.450–8.452. Trial counsel is encouraged to seek assistance from or consult with attorneys experienced in writ procedure.

(d) Extensions of time

The superior court may not extend any time period prescribed by rules 8.450–8.452. The reviewing court may extend any time period but must require an exceptional showing of good cause.

(e) Notice of intent

(1) A party seeking writ review under rules 8.450–8.452 must file in the superior court a notice of intent to file a writ petition and a request for the record. If the party seeking writ review is aware that a party to the writ proceeding is an individual not authorized to access the juvenile case file without an approved petition under Welfare and Institutions Code section 827(a)(1)(Q), the party seeking writ review must indicate this on the notice of intent to file a writ petition.

(2) The notice must include all known dates of the hearing that resulted in the order under review.

(3) The notice must be authorized by the party intending to file the petition and must be signed by that party or by the attorney of record for that party.

(4) The date of the order setting the hearing is the date on which the court states the order on the record orally, or issues an order in writing, whichever occurs first. The notice of intent must be filed according to the following timeline requirements:

(A) If the party was present at the hearing when the court ordered a hearing under Welfare and Institutions Code section 366.26, the notice of intent must be filed within 7 days after the date of the order setting the hearing.

(B) If the party was notified of the order setting the hearing only by mail, the notice of intent must be filed within 12 days after the date the clerk mailed the notification.

(C) If the party was notified of the order setting the hearing by mail, and the notice was mailed to an address outside California but within the United States, the notice of intent must be filed within 17 days after the date the clerk mailed the notification.

(D) If the party was notified of the order setting the hearing by mail, and the notice was mailed to an address outside the United States, the notice of intent must be filed within 27 days after the date the clerk mailed the notification.

(E) If the order was made by a referee not acting as a temporary judge, the party has an additional 10 days to file the notice of intent as provided in rule 5.540(c).

(f) Premature or late notice of intent to file writ petition

(1) A notice of intent to file a writ petition under Welfare and Institutions Code section 366.26 is premature if filed before an order setting a hearing under Welfare and Institutions Code section 366.26 has been made.

(2) If a notice of intent is premature or late, the superior court clerk must promptly:

(A) Mark the notice of intent "Received [date] but not filed;"

(B) Return the marked notice of intent to the party with a notice stating that:

(i) The notice of intent was not filed either because it is premature, as no order setting a hearing under Welfare and Institutions Code section 366.26 has been made, or because it is late; and

(ii) The party should contact his or her attorney as soon as possible to discuss this notice, because the time available to take appropriate steps to protect the party's interests may be short; and

(C) Send a copy of the marked notice of intent and clerk's notice to the party's counsel of record, if applicable.

(g) Sending the notice of intent

(1) When the notice of intent is filed, the superior court clerk must immediately send a copy of the notice to:

(A) The attorney of record for each party;

(B) Each party, including the child if the child is 10 years of age or older;

(C) Any known sibling of the child who is the subject of the hearing if that sibling either is the subject of a dependency proceeding or has been adjudged to be a dependent child of the juvenile court as follows:

(i) If the sibling is under 10 years of age, on the sibling's attorney;

(ii) If the sibling is 10 years of age or over, on the sibling and the sibling's attorney.

(D) The mother, the father, and any presumed and alleged parents;

(E) The child's legal guardian, if any;

(F) Any person currently awarded by the juvenile court the status of the child's de facto parent;

(G) The probation officer or social worker;

(H) Any Court Appointed Special Advocate (CASA) volunteer;

(I) The grandparents of the child, if their address is known and if the parents' whereabouts are unknown; and

(J) If the court knows or has reason to know that an Indian child is involved, the Indian custodian, if any, and tribe of the child or the Bureau of Indian Affairs as required under Welfare and Institutions Code section 224.2.

(2) The clerk must promptly send by first-class mail, e-mail, or fax a copy of the notice of intent and a list of those to whom the notice of intent was sent to:

(A) The reviewing court; and

(B) The petitioner if the clerk sent the notice of intent to the Indian custodian, tribe of the child, or the Bureau of Indian Affairs.

(3) If the party was notified of the order setting the hearing only by mail, the clerk must include the date that the notification was mailed.

(h) Preparing the record

When the notice of intent is filed, the superior court clerk must:

(1) Immediately notify each court reporter by telephone and in writing to prepare a reporter's transcript of the oral proceedings at each session of the hearing that resulted in the order under review and to deliver the transcript to the clerk within 12 calendar days after the notice of intent is filed; ~~and~~

(2) If any party is a designated person, immediately notify each court reporter by telephone and in writing to prepare a separate reporter's transcript for a limited record of the oral proceedings at each session of the hearing that resulted in the order under review, and to which the designated person has been granted access by the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q), and to deliver the transcript to the clerk within 12 calendar days after the notice of intent is filed;

(3)~~(2)~~ Within 20 days after the notice of intent is filed, prepare a clerk's transcript that includes the notice of intent, proof of service, and all items listed in rule 8.409(a);

(4)~~(3)~~ If any party is a designated person, within 20 days after the notice of intent is filed, prepare a separate clerk's transcript for a limited record that includes only those records in the juvenile case file to which the designated person has been granted access by the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q).

(i) Sending the record

When the transcripts are certified as correct, the superior court clerk must immediately send:

(1) The original transcripts, including any transcripts for a limited record, to the reviewing court by the most expeditious method, noting the sending date on each original; ~~and~~

(2) Except as limited by (3), ~~O~~one copy of each transcript, including any transcripts for a limited record, to each counsel of record and any unrepresented party and unrepresented custodian of the dependent child, except that copies must not be sent to any by any means as fast as United States Postal Service express mail~~.~~; and

(3) One copy of the transcripts for a limited record to any party who is a designated person. A designated person may receive a copy of the limited record only, and may not receive a copy of any records to which the designated person has not been granted access by the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q).

(j) Reviewing court clerk's duties

(1) The reviewing court clerk must immediately lodge the notice of intent. When the notice is lodged, the reviewing court has jurisdiction of the writ proceedings.

(2) When the record is filed in the reviewing court, that court's clerk must immediately notify the parties, stating the date on which the 10-day period for filing the writ petition under rule 8.452(c)(1) will expire.

Advisory Committee Comment

Subdivision (d). The case law generally recognizes that the reviewing courts may grant extensions of time under these rules for exceptional good cause. (See, e.g., *Jonathan M. v. Superior Court* (1995) 39 Cal.App.4th 1826, and *In re Cathina W.* (1998) 68 Cal.App.4th 716 [recognizing that a late notice of intent may be filed on a showing of exceptional circumstances not under the petitioner's control].) It may constitute exceptional good cause for an extension of the time to file a notice of intent if a premature

notice of intent is returned to a party shortly before the issuance of an order setting a hearing under Welfare and Institutions Code section 366.26.

Subdivision (e)(4). See rule 8.25(b)(5) for provisions concerning the timeliness of documents mailed by inmates or patients from custodial institutions.

Subdivision (f)(1). A party who prematurely attempts to file a notice of intent to file a writ petition under Welfare and Institutions Code section 366.26 is not precluded from later filing such a notice after the issuance of an order setting a hearing under Welfare and Institutions Code section 366.26.

Subdivision (i). Under rule 8.71(c), the superior court clerk may send the record to the reviewing court in electronic form.

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

(a) Petition

(1) The petition must be liberally construed and must include:

(A) The identities of the parties;

(B) The date on which the superior court made the order setting the hearing;

(C) The date on which the hearing is scheduled to be held;

(D) A summary of the grounds of the petition; and

(E) The relief requested.

(2) The petition must be verified.

(3) The petition must be accompanied by a memorandum.

(b) Contents of the memorandum

Except as limited by (4):

(1) The memorandum must provide a summary of the significant facts, limited to matters in the record.

(2) The memorandum must state each point under a separate heading or subheading summarizing the point and support each point by argument and citation of authority.

(3) The memorandum must support any reference to a matter in the record by a citation to the record. The memorandum should explain the significance of any cited portion of the record and note any disputed aspects of the record.

(4) If the petitioner is a designated person, the summary of significant facts in the memorandum is limited to matters in the limited record. The memorandum must support any reference to a matter in the limited record by a citation to the limited record.

(c) Serving and filing the petition and response

(1) The petition must be served and filed within 10 days after the record is filed in the reviewing court. The petitioner must serve a copy of the petition on:

(A) Each attorney of record;

(B) Any unrepresented party, including the child if the child is 10 years of age or older;

(C) Any known sibling of the child who is the subject of the hearing if that sibling either is the subject of a dependency proceeding or has been adjudged to be a dependent child of the juvenile court as follows:

(i) If the sibling is under 10 years of age, on the sibling's attorney;

(ii) If the sibling is 10 years of age or over, on the sibling and the sibling's attorney.

(D) The child's Court Appointed Special Advocate (CASA) volunteer;

(E) Any person currently awarded by the juvenile court the status of the child's de facto parent; and

(F) If the court sent the notice of intent to file the writ petition to an Indian custodian, tribe, or Bureau of Indian Affairs, then to that Indian custodian, tribe of the child, or the Bureau of Indian Affairs as required under Welfare and Institutions Code section 224.2.

(2) Any response must be served on each of the people and entities listed above and filed:

(A) Within 10 days—or, if the petition was served by mail, within 15 days—after the petition is filed; or

(B) Within 10 days after a respondent receives a request from the reviewing court for a response, unless the court specifies a shorter time.

(d) Order to show cause or alternative writ

If the court intends to determine the petition on the merits, it must issue an order to show cause or alternative writ.

(e) Augmenting or correcting the record in the reviewing court

(1) Except as provided in (2) and (3), rule 8.410 governs any augmentation or correction of the record.

(2) The petitioner must serve and file any request for augmentation or correction within 5 days—or, if the record exceeds 300 pages, within 7 days; or, if the record exceeds 600 pages, within 10 days—after receiving the record. A respondent must serve and file any such request within 5 days after the petition is filed or an order to show cause has issued, whichever is later.

(3) A party must attach to its motion a copy, if available, of any document or transcript that the party wants added to the record. The pages of the attachment must be consecutively numbered, beginning with the number one. If the reviewing court grants the motion, it may augment the record with the copy.

(4) If the party cannot attach a copy of the matter to be added, the party must identify it as required under rules 8.122 and 8.130.

(5) An order augmenting or correcting the record may grant no more than 15 days for compliance. The clerk and the reporter must give the order the highest priority.

(6) The clerk must certify and send any supplemental transcripts as required by rule 8.450(h). If the augmentation or correction is ordered, the time to file any petition or response is extended by the number of additional days granted to augment or correct the record.

(f) Stay

The reviewing court may stay the hearing set under Welfare and Institutions Code section 366.26, but must require an exceptional showing of good cause.

(g) Oral argument

(1) The reviewing court must hear oral argument within 30 days after the response is filed or due to be filed, unless the court extends the time for good cause or counsel waive argument.

(2) If argument is waived, the cause is deemed submitted not later than 30 days after the response is filed or due to be filed.

(h) Decision

(1) Absent exceptional circumstances, the reviewing court must decide the petition on the merits by written opinion.

(2) The reviewing court clerk must promptly notify the parties of any decision and must promptly send a certified copy of any writ or order to the court named as respondent.

(3) If the writ or order stays or prohibits proceedings set to occur within 7 days or requires action within 7 days—or in any other urgent situation—the reviewing court clerk must make a reasonable effort to notify the clerk of the respondent court by telephone or e-mail. The clerk of the respondent court must then notify the judge or officer most directly concerned.

(4) The reviewing court clerk need not give telephonic or e-mail notice of the summary denial of a writ, unless a stay previously issued will be dissolved.

(i) Filing, modification, finality of decision, and remittitur

Rule 8.490 governs the filing, modification, finality of decisions, and remittitur in writ proceedings under this rule.

Advisory Committee Comment

Subdivision (d). Subdivision (d) tracks the second sentence of former rule 39.1B(*l*). (But see *Maribel M. v. Superior Court* (1998) 61 Cal.App.4th 1469, 1471–1476.)

Subdivision (h). Subdivision (h)(1) tracks former rule 39.1B(o). (But see *Maribel M. v. Superior Court* (1998) 61 Cal.App.4th 1469, 1471–1476.)

Rule 8.454. Notice of intent to file writ petition under Welfare and Institutions Code section 366.28 to review order designating specific placement of a dependent child after termination of parental rights

(a) Application

Rules 8.454–8.456 and 8.490 govern writ petitions to review placement orders following termination of parental rights entered on or after January 1, 2005. "Posttermination placement order" as used in this rule and rule 8.456 refers to orders following termination of parental rights.

(b) Purpose

The purpose of this rule is to facilitate and implement Welfare and Institutions Code section 366.28. Delays caused by appeals from court orders designating the specific placement of a dependent child after parental rights have been terminated may cause a substantial detriment to the child.

(c) Who may file

The petitioner's trial counsel, or, in the absence of trial counsel, the party, is responsible for filing any notice of intent and writ petition under rules 8.454–8.456. Trial counsel is encouraged to seek assistance from, or consult with, attorneys experienced in writ procedure.

(d) Extensions of time

The superior court may not extend any time period prescribed by rules 8.454–8.456. The reviewing court may extend any time period, but must require an exceptional showing of good cause.

(e) Notice of intent

(1) A party seeking writ review under rules 8.454–8.456 must file in the superior court a notice of intent to file a writ petition and a request for the record. If the party seeking writ review is aware that a party to the writ proceeding is an individual not authorized to access the juvenile case file without an approved petition under Welfare and Institutions Code section 827(a)(1)(Q), the party seeking writ review must indicate this on the notice of intent to file a writ petition.

(2) The notice must include all known dates of the hearing that resulted in the order under review.

(3) The notice must be authorized by the party intending to file the petition and signed by the party or by the attorney of record for that party.

(4) The notice must be served and filed within 7 days after the date of the posttermination placement order or, if the order was made by a referee not acting as a temporary judge, within 7 days after the referee's order becomes final under rule 5.540(c). The date of the posttermination placement order is the date on which the court states the order on the record orally or in writing, whichever first occurs.

(5) If the party was notified of the posttermination placement order only by mail, the notice of intent must be filed within 12 days after the date that the clerk mailed the notification.

(f) Premature or late notice of intent to file writ petition

(1) A notice of intent to file a writ petition under Welfare and Institutions Code section 366.28 is premature if filed before a date for a posttermination placement order has been made. The reviewing court may treat the notice as filed immediately after the posttermination order has been made.

(2) The superior court clerk must mark a late notice of intent to file a writ petition under section 366.28 "Received [date] but not filed," notify the party that the notice was not filed because it was late, and send a copy of the marked notice to the party's counsel of record, if applicable.

(g) Sending the notice of intent

(1) When the notice of intent is filed, the superior court clerk must immediately send a copy of the notice to:

(A) The attorney of record for each party;

(B) Each party, including the child if the child is 10 years of age or older;

(C) Any known sibling of the child who is the subject of the hearing if that sibling either is the subject of a dependency proceeding or has been adjudged to be a dependent child of the juvenile court as follows:

(i) If the sibling is under 10 years of age, on the sibling's attorney;

(ii) If the sibling is 10 years of age or over, on the sibling and the sibling's attorney;

(D) Any prospective adoptive parent;

(E) The child's legal guardian if any;

(F) Any person currently awarded by the juvenile court the status of the child's de facto parent;

(G) The probation officer or social worker;

(H) The child's Court Appointed Special Advocate (CASA) volunteer, if any; and

(I) If the court knows or has reason to know that an Indian child is involved, the Indian custodian, if any, and tribe of the child or the Bureau of Indian Affairs as required under Welfare and Institutions Code section 224.2.

(2) The clerk must promptly send by first-class mail, e-mail, or fax a copy of the notice of intent and a list of those to whom the notice of intent was sent to:

(A) The reviewing court; and

(B) The petitioner if the clerk sent a copy of the notice of intent to the Indian custodian, tribe of the child, or the Bureau of Indian Affairs.

(3) If the party was notified of the post placement order only by mail, the clerk must include the date that the notification was mailed.

(h) Preparing the record

When the notice of intent is filed, the superior court clerk must:

(1) Immediately notify each court reporter by telephone and in writing to prepare a reporter's transcript of the oral proceedings at each session of the hearing that resulted in the order under review and to deliver the transcript to the clerk within 12 calendar days after the notice of intent is filed; ~~and~~

(3) If any party is a designated person, immediately notify each court reporter by telephone and in writing to prepare a separate reporter's transcript for a limited record of the oral proceedings at each session of the hearing that resulted in the order under review, and to which the designated person has been granted access by the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q), and to deliver the transcript to the clerk within 12 calendar days after the notice of intent is filed;

(3)~~(2)~~ Within 20 days after the notice of intent is filed, prepare a clerk's transcript that includes the notice of intent, proof of service, and all items listed in rule 8.409(a);

(4)~~(3)~~ If any party is a designated person, within 20 days after the notice of intent is filed, prepare a separate clerk's transcript for a limited record that includes only those records in the juvenile case file to which the designated person has been granted access by the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q).

(i) Sending the record

When the transcripts are certified as correct, the superior court clerk must immediately send:

(1) The original transcripts, including any transcripts for a limited record, to the reviewing court by the most expeditious method, noting the sending date on each original; ~~and~~

(2) Except as limited by (3), ~~O~~one copy of each transcript, including any transcripts for a limited record, to each counsel of record and any unrepresented party and unrepresented custodian of the dependent child, except that copies must not be sent to any by any means as fast as United States Postal Service express mail~~.~~; and

(3) One copy of the transcripts for a limited record to any party who is a designated person. A designated person may receive a copy of the limited record only, and may not receive a copy of any records to which the designated person has not been granted access by the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q).

(j) Reviewing court clerk's duties

(1) The reviewing court clerk must promptly lodge the notice of intent. When the notice is lodged, the reviewing court has jurisdiction over the writ proceedings.

(2) When the record is filed in the reviewing court, that court's clerk must immediately notify the parties, stating the date on which the 10-day period for filing the writ petition under rule 8.456(c)(1) will expire.

Advisory Committee Comment

Subdivision (f)(2). See rule 8.25(b)(5) for provisions concerning the timeliness of documents mailed by inmates or patients from custodial institutions.

Subdivision (i). Under rule 8.71(c), the superior court clerk may send the record to the reviewing court in electronic form.

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

(a) Petition

(1) The petition must be liberally construed and must include:

(A) The identities of the parties;

(B) The date on which the superior court made the posttermination placement order;

(C) A summary of the grounds of the petition; and

(D) The relief requested.

(2) The petition must be verified.

(3) The petition must be accompanied by a memorandum.

(b) Contents of memorandum

Except as limited by (4):

(1) The memorandum must provide a summary of the significant facts, limited to matters in the record.

(2) The memorandum must state each point under a separate heading or subheading summarizing the point and support each point by argument and citation of authority.

(3) The memorandum must support any reference to a matter in the record by a citation to the record. The memorandum should explain the significance of any cited portion of the record and note any disputed aspects of the record.

(4) If the petitioner is a designated person, the summary of significant facts in the memorandum is limited to matters in the limited record. The memorandum must support any reference to a matter in the limited record by a citation to the limited record.

(c) Serving and filing the petition and response

(1) The petition must be served and filed within 10 days after the record is filed in the reviewing court. The petitioner must serve the petition on:

(A) Each attorney of record;

(B) Any unrepresented party, including the child if the child is 10 years of age or older;

(C) Any known sibling of the child who is the subject of the hearing if that sibling either is the subject of a dependency proceeding or has been adjudged to be a dependent child of the juvenile court as follows:

(i) If the sibling is under 10 years of age, on the sibling's attorney;

(ii) If the sibling is 10 years of age or over, on the sibling and the sibling's attorney;

(D) Any prospective adoptive parent;

(E) The child's Court Appointed Special Advocate (CASA) volunteer;

(F) Any person currently awarded by the juvenile court the status of the child's de facto parent; and

(G) If the court sent the notice of intent to file the writ petition to an Indian custodian, tribe, or Bureau of Indian Affairs, then to that Indian custodian, tribe, or the Bureau of Indian Affairs as required under Welfare and Institutions Code section 224.2.

(2) Any response must be served on each of the people and entities listed in (1) and filed:

(A) Within 10 days–or, if the petition was served by mail, within 15 days–after the petition is filed; or

(B) Within 10 days after a respondent receives a request from the reviewing court for a response, unless the court specifies a shorter time.

(d) Order to show cause or alternative writ

If the court intends to determine the petition on the merits, it must issue an order to show cause or alternative writ.

(e) Augmenting or correcting the record in the reviewing court

(1) Except as provided in (2) and (3), rule 8.410 governs augmentation or correction of the record.

(2) The petitioner must serve and file any request for augmentation or correction within 5 days—or, if the record exceeds 300 pages, within 7 days; or, if the record exceeds 600 pages, within 10 days—after receiving the record. A respondent must serve and file any such request within 5 days after the petition is filed or an order to show cause has issued, whichever is later.

(3) A party must attach to its motion a copy, if available, of any document or transcript that it wants added to the record. The pages of the attachment must be consecutively numbered, beginning with the number one. If the reviewing court grants the motion, it may augment the record with the copy.

(4) If the party cannot attach a copy of the matter to be added, the party must identify it as required under rules 8.122 and 8.130.

(5) An order augmenting or correcting the record may grant no more than 15 days for compliance. The clerk and the reporter must give the order the highest priority.

(6) The clerk must certify and send any supplemental transcripts as required by rule 8.454(i). If the augmentation or correction is ordered, the time to file any petition or response is extended by the number of additional days granted to augment or correct the record.

(f) Stay

A request by petitioner for a stay of the posttermination placement order will not be granted unless the writ petition shows that implementation of the superior court's placement order pending the reviewing court's decision is likely to cause detriment to the child if the order is ultimately reversed.

(g) Oral argument

(1) The reviewing court must hear oral argument within 30 days after the response is filed or due to be filed, unless the court extends the time for good cause or counsel waive argument.

(2) If argument is waived, the cause is deemed submitted not later than 30 days after the response is filed or due to be filed.

(h) Decision

(1) Absent exceptional circumstances, the reviewing court must review the petition and decide it on the merits by written opinion.

(2) The reviewing court clerk must promptly notify the parties of any decision and must promptly send a certified copy of any writ or order to the court named as respondent.

(3) If the writ or order stays or requires action within 7 days—or in any other urgent situation—the reviewing court clerk must make a reasonable effort to notify the clerk of the respondent court by telephone or e-mail. The clerk of the respondent court must then notify the judge or officer most directly concerned.

(4) The reviewing court clerk need not give telephonic or e-mail notice of the summary denial of a writ, unless a stay previously issued and will be dissolved.

(5) Rule 8.490 governs the filing, modification, finality of decisions, and remittitur in writ proceedings under this rule.

(i) Right to appeal other orders

This section does not affect the right of a parent, a legal guardian, or the child to appeal any order that is otherwise appealable and that is issued at a hearing held under Welfare and Institutions Code section 366.26.

JV-291-INFO Right to Appeal for a Nonparty–Requirement to Request Access to Juvenile Record

In very limited circumstances, a person who is not the child, parent or guardian in a dependency or delinquency case has the right to appeal decisions made by the juvenile court. These individuals however are not entitled to access information in the juvenile court case file for purposes of appeal unless they get approval from the juvenile court. The purpose of this information sheet is to inform those individuals who are not the child, parent or guardian, who may have the right to appeal, of the requirement to request access to the juvenile court record by filing a JV-570-*Request for Disclosure of Juvenile Case File*.

1 When would I have the right to appeal?

To have a right to appeal, the person must have had a legal right that was aggrieved by the judgment of juvenile court. In the vast majority of cases, only the child, parent, or guardian will have the right to appeal a juvenile court ruling. However, the law also protects those individuals that have a compelling relationship to the child in certain situations.

The following individuals might have a right to appeal:

- A relative of the child, in the limited situation where the placing agency does not assess their home for placement sometime before a hearing to terminate parental rights.
- Someone who has cared for the child and requested de facto parent status and the request was denied.
- Someone who requested a change of court order through a section 388 petition (JV-180).
- A sibling to the child who made a request to the juvenile court for visitation for example, or for an exception to adoption based on preserving the sibling relationship.
- A prospective adoptive parent when the child is removed from their home.

2 If I appeal, what additional steps must I take?

If you believe that you might have a right to appeal, or if you anticipate that you may need to appeal an order of the juvenile court, you will need to request access to the record with the juvenile court. To make this request, file the JV-570-*Request for Disclosure of Juvenile Case File*. You will need to provide a copy of this form to all interested parties to the case if you know their names and addresses, including the child, parents, and social worker.

On the request form, specify the reason that you are requesting a release of the records. You can say you are requesting the release to have access to the record on appeal. You will need to explain to the court why you think you should be given access to the records and which records you are requesting. You should indicate you are requesting the record and transcripts relating to the dates of the hearings related to the issue you are appealing, and that you are requesting the transcript as well.

When you file the notice of appeal on the form JV-800 *Notice of Appeal-Juvenile* or form JV-820 *Notice of intent to File Writ Petition and Request for Record to Review Order Setting a Hearing Under Welfare and Institutions Code Section 366.26*, you will need to attach the court's order indicating which records the court has granted you access. Doing so will alert the clerk that you are entitled to access the case file and will ensure that a record on appeal will be prepared for you. The court's order is made on form JV-574 *Order After Judicial Review*.

It is recommended that you consult with an attorney when considering whether you should appeal a case and request access to the juvenile court record.

JV-285 Relative Information

Clerk stamps date here when form is filed.

DRAFT
Not approved by
the Judicial Council

As the relative of a child who has been removed from the home, you may give written information to the court about the child at any time on this form or in a letter. After filling out this form, give it to the clerk of the court.

Please note that other people involved in the case, including the parents, will see your answers on this form. If you prefer to keep your contact information private, fill out the *Confidential Information* (form JV-287) and do not write your address or telephone number below.

Social worker fills in court name and street address:

Superior Court of California, County of

Social worker fills in child's name and date of birth:

Child's Name:

Date of Birth:

Social worker fills in case number:

Case Number:

1 Your name: _____

Your Address: _____

_____

Your telephone number: _____

☐ *Check here if contact information is confidential and form JV-287 is attached.*

2 Your relation to the child: ☐ maternal ☐ paternal

☐ grandparent ☐ brother/sister ☐ aunt/uncle ☐ cousin

☐ family friend

☐ tribal extended family member

☐ other *(specify):* _____

3 Child's name: _____

4 ☐ I would like to talk to the judge at the next court hearing.

Please fill in as much of the following information as you know. If you need more space to respond to any section on this form, attach additional pages as needed and check the box at item 12.

5 Information about the child's medical, dental, and general physical health:

_____

_____

6 Information about the child's emotional and behavioral health:

_____

_____

7 Information about the child's education:

_____

_____

8 Other information that might be helpful to the court:

_____

_____

_____

_____

_____

_____

Child's name: _____ **Case Number:**

Below are some things you might do to help the child. You can pick some or none of the things listed below. It is up to the social worker and the court whether you will be asked to do these things.

9 I want to

- ☐ telephone the child.
- ☐ write letters to the child.
- ☐ take the child on outings.
- ☐ take the child to/from school.
- ☐ take the child to visits with brothers or sisters.
- ☐ take the child to therapy.
- ☐ take the child to family gatherings.
- ☐ help the social worker make a case plan for the child.
- ☐ take the child to visits with parents.
- ☐ take the child to medical appointments.
- ☐ supervise the child during visits with brothers and sisters.
- ☐ watch the child after school.
- ☐ have the child live with me.
- ☐ other *(describe):* _____

You can also help the parents. For example, you might help with transportation, housing, visits, or child care. It is up to the social worker and the court whether you will be asked to do these things.

10 I want to help the ☐ father ☐ mother
(Describe): _____

11 Other relatives who might be able to help the child:

a. Name: _____ Relationship to child: _____
Contact information: _____
or ☐ I want to keep the contact information confidential and ask that the child's social worker get this information from me.

b. Name: _____ Relationship to child: _____
Contact information: _____
or ☐ I want to keep the contact information confidential and ask that the child's social worker get this information from me.

c. Name: _____ Relationship to child: _____
Contact information: _____
or ☐ I want to keep the contact information confidential and ask that the child's social worker get this information from me.

12 ☐ If you need more space to respond to any section on this form, please check this box and attach additional pages.
Number of pages attached: _____

NOTICE

If you are not the parent to the child, the child, or the child's legal guardian, in very limited circumstances, a right to appeal may exist. Please see form JV-291-INFO – *Right To Appeal For A Nonparty – Requirement To Request Access To Juvenile Record* for further information on the requirements for an appeal.

Date:

_____ ▶ _____
Type or print your name *Sign your name*

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY* **DRAFT** **Not approved by the Judicial Council**
CHILD'S NAME: HEARING DATE AND TIME:	
CAREGIVER INFORMATION FORM	CASE NUMBER:

To the current caregiver, preadoptive parent, community care facility, or foster family agency caring for the child: You may submit written information to the court and you may attend review and permanency hearings. You may use this optional form to provide written information to the court. Please type or print clearly in ink and submit the original and eight copies of the form to the court clerk's office at least five calendar days (or seven calendar days if filing by mail) before the hearing. Be aware that other individuals involved in the case have access to this information. See form JV-290-INFO for instructions on how to complete this form and file it with the court.

1. a. Child's name:
   b. Child's date of birth: c. Child's age:
2. **Caregiver Information** *(Answer only if you are a caregiver, skip #3.):*
   a. Name of caregiver:
   b. Type of caregiver: ☐ Foster parent ☐ Relative ☐ Legal guardian ☐ Preadoptive parent ☐ Nonrelative extended family member ☐ Other *(specify):*
   c. The child has been living in my home for *(specify):* years months.
3. **Agency or Facility Information** *(Answer only if you are an Agency or Facility, skip #2.):*
   a. Name of agency or facility:
   b. Address:
   c. Telephone number:
   d. Type of facility: ☐ Foster family agency ☐ Community care agency ☐ Other *(specify):*
   e. The child has been placed with our agency/facility for *(specify):* years months and in the current home for (specify): years months.
   f. Name of person completing form: Title:
   g. Hours per week the person completing this form spends with the child *(specify):* hours/week.
   h. The information on this form consists of
      (1) ☐ the observations and recommendations of the person filling out this form.
      (2) ☐ the observations and recommendations of a group or team made up of the following individuals *(specify):*
4. **Current Status of Child's Medical, Dental, and General Physical and Emotional Health**
   a. ☐ There is no new or additional information since the last court hearing.
   b. ☐ There is new or additional information since the last court hearing, as follows *(do not include the names of doctors):*
5. **Current Status of Child's Education**
   a. ☐ There is no new or additional information since the last court hearing.
   b. ☐ There is new or additional information since the last court hearing, as follows *(do not include the names of schools):*

Form Approved for Optional Use
Judicial Council of California
JV-290 [Rev. January 1, 2020]

Welfare and Institutions Code, §§ 366.21(c), (d); 16010(f)(3);
Cal. Rules of Court, rule 5.534(m)
www.courtinfo.ca.gov

CHILD'S NAME:	CASE NUMBER:

6. **Child's Special Education Status**
   a. ☐ The child is a specila education student. Date of last Individualized Education Plan (IEP):
   b. ☐ The child is not a special education student.
   c. ☐ I do not know the child's special education status.

7. **Current Status of Child's Adjustment to Living Arrangement**
   a. ☐ There is no new or additional information since the last court hearing.
   b. ☐ There is new or additional information since the last court hearing, as follows:

8. **Current Status of Child's Social Skills and Peer Relationships**
   a. ☐ There is no new or additional information since the last court hearing.
   b. ☐ There is new or additional information since the last court hearing, as follows:

9. **Current Status of Child's Special Interests and Activities**
   a. ☐ There is no new or additional information since the last court hearing.
   b. ☐ There is new or additional information since the last court hearing, as follows:

10. **Other Helpful Information**
    a. ☐ There is no new or additional information since the last court hearing.
    b. ☐ There is new or additional information since the last court hearing, as follows:

11. **Recommendation for Disposition *(Outcome)***
    a. ☐ I have no recommendation for disposition *(outcome).*
    b. ☐ I am recommending the following disposition *(outcome).*

12. ☐ If you need more space to respond to any section on this form, please check this box and attach additional pages.
    Number of pages attached:

NOTICE

If you are not the parent to the child, the child, or the child's legal guardian, in very limited circumstances, a right to appeal may exist. Please see form JV-291-INFO – *Right To Appeal For A Nonparty – Requirement To Request Access To Juvenile Record* for further information on the requirements for an appeal.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF CAREGIVER OR FACILITY/AGENCY STAFF PERSON WHO HAS COMPLETED THIS FORM)

JV-295 De Facto Parent Request

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

The address of any licensed foster family home must remain confidential unless the judge or the foster parent authorizes release of the address. Court clerks should not send this page to the parties without a court order or authorization of the foster parent. (Welf. & Inst. Code, § 308(a).)

1 My/Our name(s): _____

My/Our address: _____

City: _____ State: _____ Zip: _____

My/Our phone #: _____

2 I am/We are asking that I/we be appointed de facto parent(s) of

(Child's name): _____

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

Date: _____ _____ ▶ _____

Type or print your name *Signature of person requesting de facto parent status*

Date: _____ _____ ▶ _____

Type or print your name *Signature of person requesting de facto parent status*

Date: _____ _____ ▶ _____

Type or print attorney's name *Signature of attorney (if applicable)*

Attorney's address: _____

City: _____ State: _____ Zip: _____

Attorney's phone #: _____

NOTICE

If you are not the parent to the child, the child, or the child's legal guardian, in very limited circumstances, a right to appeal may exist. Please see form JV-291-INFO – *Right To Appeal For A Nonparty – Requirement To Request Access To Juvenile Record* for further information on the requirements for an appeal.

JV-321 Request for Prospective Adoptive Parent Designation

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

After filling out this form, bring it to the clerk of the court. If you want to keep an address or telephone number confidential, do not write the information on this form. Instead, fill out Form JV-322, Confidential Information—Prospective Adoptive Parent.

Fill in court name and street address:

Superior Court of California, County of

1 Information about the person or persons you want to be designated as prospective adoptive parents:

a. Name: _____

b. Name: _____

c. Street address: _____

d. City: _____ State: _____ Zip: _____

e. Telephone number: _____

2 If you are not a person in **1**, fill out below.

a. Name: _____

b. I am the ☐ child ☐ child's attorney ☐ other
(specify role): _____

c. Street address: _____

d. City: _____ State: _____ Zip: _____

e. Telephone number: _____

Fill in child's name and date of birth:

Child's Name:

Date of Birth:

Fill in case number:

Case Number:

3 If you are not the child's attorney and you know who the child's attorney is, fill out below.

a. Name of child's attorney: _____

b. Street address of child's attorney: _____

c. City: _____ State: _____ Zip: _____

d. Telephone number of child's attorney: _____

4 ☐ The child is 10 years of age or older. Child's telephone number: _____
or ☐ Telephone number is confidential.

5 The child has lived with the person from *(date):* _____ to the present.
In order for the person in **1** *to become a prospective adoptive parent, the child must be living with that person now.*

6 Date of Welfare and Institutions Code section 366.26 hearing: _____
The person in **1** *should not file this form with the court until a Welfare and Institutions Code section 366.26 hearing has been scheduled.*

7 ☐ The person in **1** is committed to adopting the child.

Child's name: _____

Case Number:

8 The person in **1** has *(check all that apply):*

a. ☐ Applied for an adoptive home study
b. ☐ In a case in which tribal customary adoption is the permanent plan, been identified by the Indian child's tribe as the prospective adoptive parent.
c. ☐ Cooperated with an adoptive home study
d. ☐ Signed an adoptive placement agreement
e. ☐ Requested de facto parent status
f. ☐ Been designated by the juvenile court or the licensed adoption agency as the adoptive parent
g. ☐ Discussed a postadoption contact agreement with the social worker, child's attorney, child's Court Appointed Special Advocate (CASA) volunteer, adoption agency, or court
h. ☐ Worked to overcome any impediments that have been identified by the California Department of Social Services or the licensed adoption agency
i. ☐ Attended any of the classes required of prospective adoptive parent
j. ☐ Taken other steps toward adopting the child *(explain):* _____

If you need more space, attach a sheet of paper and write "JV-321, Item 8—Steps Toward Adoption" at the top. Number of pages attached: _____

I declare under penalty of perjury under the laws of the State of California that the information in items 1 through 8is true and correct, which means if I lie on this form, I am committing a crime.

Date:

_____ ▶ _____
Type or print your name *Sign your name*

_____ ▶ _____
Type or print your name *Sign your name*

NOTICE

If you are not the parent to the child, the child, or the child's legal guardian, in very limited circumstances, a right to appeal may exist. Please see form JV-291-INFO – *Right To Appeal For A Nonparty – Requirement To Request Access To Juvenile Record* for further information on the requirements for an appeal.

JV-325 Objection to Removal

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's Name:

Date of Birth:

Fill in case number:

Case Number:

If you do not agree with the removal, you can request a court hearing by filling out this form. The following people can object to removal: a current caregiver, the child's attorney, the child (if 10 years of age or older), the child's identified Indian tribe or custodian, and the child's CASA program. Bring this form to the clerk of the court. If you want to keep an address or a phone number confidential, fill out form JV-322, Confidential Information—Prospective Adoptive Parent, *and do not write the address or phone number on this form.*

If you are a caregiver or the child and you requested the hearing, the clerk will provide notice of the hearing to you and any other participants.

If you are the child's attorney and you requested the hearing, you must provide notice of the hearing to all other participants.

1 Information about the caregiver or caregivers:

a. Name: _____

b. Name: _____

c. Address: _____

d. Phone number: _____

2 If you *(the person objecting to the removal)* are not the caregiver, fill out below.

a. Name: _____

b. I am the ☐ child ☐ child's attorney ☐ child's identified Indian tribe ☐ child's identified Indian custodian ☐ child's CASA program

_____

c. Address: _____

d. Phone number: _____

3 If you are not the child's attorney and you know who the child's attorney is, fill out below.

a. Name of child's attorney: _____

b. Address of child's attorney: _____

c. Phone number of child's attorney: _____

4 ☐ The child is 10 years of age or older. Child's telephone number: _____
☐ Confidential phone number in court file

5 ☐ The child has an identified Indian tribe *(specify tribe):* _____
Phone number of tribe: _____

6 ☐ The child has a Court Appointed Special Advocate (CASA) volunteer.
Phone number of CASA program, if known: _____

7 ☐ The caregiver or caregivers have been designated by the judge as the child's prospective adoptive parent or parents.

Child's name: _____

Case Number:

8 ☐ The caregiver or caregivers may meet the definition of prospective adoptive parent or parents. Form JV-321, *Request for Prospective Adoptive Parent Designation,* will be filed with this objection and request for hearing.

9 The social worker should not remove the child from the caregiver's home because *(give reasons):*

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

If you need more space, attach a sheet of paper and write "JV-325, Item 9—Reasons to Not Remove Child" at the top. Number of pages attached: _____

I declare under penalty of perjury under the laws of the State of California that the information on this form is true and correct, which means that if I lie on this form, I am committing a crime.

Date:

_____ ▶ _____

Type or print your name *Sign your name*

NOTICE

If you are not the parent to the child, the child, or the child's legal guardian, in very limited circumstances, a right to appeal may exist. Please see form JV-291-INFO – *Right To Appeal For A Nonparty – Requirement To Request Access To Juvenile Record* for further information on the requirements for an appeal.

What if I am deaf or hard of hearing?

Requests for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the proceeding. Contact the clerk's office or go to *www.courts.ca.gov/forms* for *Request for Accommodations by Persons With Disabilities and Response* (form MC-410). (Civ. Code, § 54.8.)

JV-570 Request for Disclosure of Juvenile Case File

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Fill in case number if known:

Case Number:

If you are requesting a court order to obtain the juvenile case file of a child who is alive, fill out all items on this form, and file it with the court. You must also fill out and file Proof of Service—Request for Disclosure *(form JV-569).*

If you are a member of the public requesting the juvenile case file of a child who is deceased, you can:

a. *Fill out items 1–4 and 7 on this form and file it with the court. You must then provide a copy of this form to the Custodian of Records of the county child welfare agency, who will then provide notice of this request.*

Or

b. *Do not complete the form and request the juvenile case file from the child welfare agency under Welfare and Institutions Code section 10850.4.*

(1) Your name: _____

Relationship to child *(if any):* _____

Street address: _____

City: _____ State: _____ Zip: _____

Telephone number: _____

Lawyer *(if any) (name, address, telephone numbers, and State Bar number):* _____

_____

_____

(2) Name of child *(if known):* _____

(3) Child's date of birth *(if known):* _____

(4) a. ☐ A petition regarding the child in (2) has been filed under
- ☐ Welfare and Institutions Code section 300
- ☐ Welfare and Institutions Code section 601
- ☐ Welfare and Institutions Code section 602 or

b. ☐ I believe the child in (2) died as a result of abuse or neglect. Approximate date of death: _____

Note: You must provide a copy of this form to all interested parties if you know their names and addresses.

Your name: _____ **Case Number:**

5 The records I want are: *(Describe in detail. Attach more pages if you need more space.)*

_____

_____

_____

_____

_____

_____

_____

_____

☐ Continued on Attachment 5.

6 The reasons for this request are:

a. ☐ Civil court case pending in *(name of county):* _____
Case number: _____ Hearing date: _____

b. ☐ Criminal court case pending in *(name of county):* _____
Case number: _____ Hearing date: _____

c. ☐ Juvenile court case pending in *(name of county):* _____
Case number: _____ Hearing date: _____

d. ☐ Appeal of a juvenile court order in the child's case by a nonparty.
☐ I am requesting access to the transcripts and the reports and evidence considered at the following hearings that resulted in the order I am appealing or will consider appealing:
List hearing dates: _____

e. ☐ Other *(specify):* _____
Case number: _____ Hearing date: _____

7 I need the records because: *(Describe in detail. Attach more pages if you need more space.)*

_____

_____

_____

_____

_____

_____

_____

_____

☐ Continued on Attachment 7.

8 I declare under penalty of perjury under the laws of the State of California that the information in this form is true and correct. This means that if I lie on this form, I am guilty of a crime.

Date:

_____ ▶ _____

Type or print your name *Sign your name*

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **Not approved by** **the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
NOTICE OF APPEAL—JUVENILE	CASE NUMBER:

— NOTICE —

- You or your attorney **must** fill in items 1 and 2 and sign this form at the bottom of the page. If possible, to help process your appeal, fill in items 4–6 on the reverse of this form.
- Rule 8.406 says that to appeal from an order or judgment, you must file a written notice of appeal within **60** days after rendition of the judgment or the making of the order being appealed or, in matters heard by a referee, within **60** days after the order of the referee becomes final.
- You are advised that if you wish to file an appeal of the order for transfer to a tribal court, you (1) may ask the juvenile court to stay (delay the effective date of) the transfer order and (2) must file the appeal before the transfer to tribal jurisdiction is finalized. Read rule 5.483 and the advisory committee comment.
- If you are not the parent to the child, the child, or the child's legal guardian, in very limited circumstances, a right to appeal may exist. Please see form JV-291-INFO – *Right To Appeal For A Nonparty – Requirement To Request Access To Juvenile Record* for further information on the requirements for an appeal.

1. I appeal from the findings and orders of the court *(specify date of order or describe order):*

2. This appeal is filed by
   a. Appellant *(name):*
   b. Address: c. Phone number:
   d. Name, address, and phone number of person to be contacted *(if different from appellant):*

   e. ☐ If not the child, legal guardian, parent, or their attorney, the court's order under Welfare and Institutions Code section 827 (a)(1)(Q) on form JV-574 *Order after Judicial Review,* if one exists, is attached.

3. ☐ I request that the court appoint an attorney on appeal. I ☐ was ☐ was not represented by an appointed attorney in the superior court.

Date:

TYPE OR PRINT NAME

▶ SIGNATURE OF ☐ APPELLANT ☐ ATTORNEY

4. Items 5 through 7 on the reverse are ☐ completed ☐ not completed.

Form Approved for Optional Use
Judicial Council of California
JV-800 [Rev. Jan 1, 2020]

Cal. Rules of Court, rule 8.400, 8.401, 8.405, 8.406
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

5. Appellant is the
   a. ☐ child
   b. ☐ mother
   c. ☐ father
   d. ☐ guardian
   e. ☐ de facto parent
   f. ☐ county welfare department
   g. ☐ district attorney
   h. ☐ child's tribe
   i. ☐ other *(state relationship to child or interest in the case):*

6. This notice of appeal pertains to the following child or children *(specify number of children included):*
   a. Name of child:
      Child's date of birth:
   b. Name of child:
      Child's date of birth:
   c. Name of child:
      Child's date of birth:
   d. Name of child:
      Child's date of birth:
   ☐ Continued in Attachment 5.

7. The order appealed from was made under Welfare and Institutions Code *(check all that apply):*
   a. ☐ **Section 305.5** (transfer to tribal court)
      ☐ Granting transfer to tribal court
   b. ☐ **Section 360** (declaration of dependency) ☐ Removal of custody from parent or guardian ☐ Other orders
      ☐ with review of section 300 jurisdictional findings
      Dates of hearing *(specify):*
   c. ☐ **Section 366.26** (selection and implementation of permanent plan in which a petition for extraordinary writ review that substantively addressed the specific issues to be challenged was timely filed and summarily denied or otherwise not decided on the merits)
      ☐ Termination of parental rights ☐ Appointment of guardian ☐ Planned permanent living arrangement
      Dates of hearing *(specify):*
   d. ☐ **Section 366.28** (order designating a specific placement after termination of parental rights in which a petition for extraordinary writ review that substantively addressed the specific issues to be challenged was timely filed and summarily denied or otherwise not decided on the merits)
      Dates of hearing *(specify):*
   e. ☐ Other appealable orders relating to dependency *(specify):*
      Dates of hearing *(specify):*
   f. ☐ **Section 725** (declaration of wardship and other orders)
      ☐ with review of section 601 jurisdictional findings
      ☐ with review of section 602 jurisdictional findings
      Dates of hearing *(specify):*
   g. ☐ Other appealable orders relating to wardship *(specify):*
      Dates of hearing *(specify):*
   h. ☐ Other *(specify):*

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **Not approved by** **the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
NOTICE OF INTENT TO FILE WRIT PETITION AND REQUEST FOR RECORD TO REVIEW ORDER SETTING A HEARING UNDER WELFARE AND INSTITUTIONS CODE SECTION 366.26 **(California Rules of Court, Rule 8.450)**	CASE NUMBER:

NOTICE

The juvenile court has decided it will make a permanent plan for this child that may result in thetermination of your parental rights and adoption of the child. If you want an appeals court to review the juvenile court's decision, you must first tell the juvenile court by filing a Notice of Intent. You may use this form as your Notice of Intent. In most cases, you have only 7 days from the court's decision to file a Noticeof Intent. Please see page 2 for your specific deadline for filing this form.

If you are not the parent to the child, the child, or the child's legal guardian, in very limited circumstances, a right to appeal may exist. Please see form JV-291-INFO – *Right To Appeal For A Nonparty – Requirement To Request Access To Juvenile Record* for further information on the requirements for an appeal.

1. Petitioner's name:
2. Petitioner's address:
3. Petitioner's phone number:
4. Petitioner is
   a. ☐ parent *(name):*
   b. ☐ guardian
   c. ☐ County welfare agency
   d. ☐ child
   e. ☐ other *(state relationship to child or interest in the case):*
5. Child's name: Child's date of birth:
6. a. On *(date):* the juvenile court made an order setting a hearing under Welfare and Institutions Code section 366.26. Petitioner intends to file a writ petition to challenge the findings and orders made by the court on that date and requests that the clerk assemble the record.
   b. List all known dates of the hearing that resulted in the order:
7. The hearing under Welfare and Institutions Code section 366.26 is set for *(date, if known):*
8. ☐ If not the child, legal guardian, parent, or their attorney, the court's order under Welfare and Institutions Code section 827(a)(1)(Q) on form JV-570 *Order after Judicial Review,* if one exists, is attached.

Date:

TYPE OR PRINT NAME

▶ SIGNATURE OF ☐ PETITIONER ☐ ATTORNEY

The *Notice of Intent to File Writ Petition* must be signed by the person who intends to file the writ petition or by the attorney of record.

PLEASE READ THE BACK OF THIS FORM FOR IMPORTANT INFORMATION AND DEADLINES

Form Approved for Optional Use
Judicial Council of California
JV-820 [Rev. Jan 1, 2020]

Welfare and Institutions Code, § 366.26;
Cal. Rules of Court, rule 8.450
www.courts.ca.gov

APPELLATE CASE TITLE:	APPELLATE CASE NUMBER:

WHAT WILL HAPPEN AT THE HEARING TO MAKE A PERMANENT PLAN?

- The court may order the termination of parental rights and adoption of the child.
- The court may order a legal guardianship for the child.
- The court may order a permanent plan of placement of the child with a fit and willing relative.
- The court may order a permanent plan of placement of the child in a foster home.

The above options are listed in the normal order of preference, because the main goal is to give the child a stable and permanent living situation.

SEE WELF. & INST. CODE, § 366.26 FOR MORE INFORMATION

HOW DO I CHALLENGE THE COURT'S DECISION TO SET A HEARING TO MAKE A PERMANENT PLAN?

- File this Notice of Intent to File Writ Petition and Request for Record in the juvenile court within the time specified below in the next box. This will let the court know you intend to file a writ petition, and the court will prepare the record.
- You will be notified after the record is filed in the Court of Appeal, and you will get copies of the record. **You have 10 days after the record is filed in the Court of Appeal to file and serve your writ petition.**
- You may use the optional Judicial Council form JV-825 to complete your writ petition, or, if you have an attorney, your attorney can write the writ petition for you.
- After you file a writ petition in the Court of Appeal, you must send copies of the petition to all of the parties in the case, to the child's CASA volunteer, to the child's present caregiver, and to any de facto parent who has standing to participate in the juvenile court proceedings. With your writ petition, you must file a Proof of Service confirming you have sent a copy of the petition to these people.

SEE WELF. & INST. CODE, § 366.26(l); CAL. RULES OF COURT, RULES 8.450-8.452

WHEN DO I HAVE TO FILE MY NOTICE OF INTENT TO FILE WRIT PETITION AND REQUEST FOR RECORD?

- If you were present when the court set the hearing to make a permanent plan, you must file the Notice of Intent within 7 days from the date the court set the hearing.
- If you were not present in court but were given notice by mail of the court's decision to set a hearing to make a permanent plan and you live in California, you must file the Notice of Intent within 12 days from the date the clerk mailed the notification.
- If you were not present in court but were given notice by mail of the court's decision to set a hearing to make a permanent plan and you live in a state other than California, you must file the Notice of Intent within 17 days from the date the clerk mailed the notification.
- If you were not present in court but were given notice by mail of the court's decision to set a hearing to make a permanent plan and you live outside the United States, you must file the Notice of Intent within 27 days from the date the clerk mailed the notification.
- If you are a party in a custodial institution you must give the Notice of Intent to custodial officials for mailing within the time specified in this box.

SEE CAL. RULES OF COURT, RULES 8.450, 5.540(c)

- If the order setting the hearing was made by a referee not acting as a temporary judge, you have an additional 10 days to file the Notice of Intent.

SEE WELF. & INST. CODE, §§ 248-252; CAL. RULES OF COURT, RULES 5.538, 5.540

SIGNATURE ON NOTICE OF INTENT

- Must be signed by the person who intends to file the writ petition, or
- By the attorney of record

Item 10

JUDICIAL COUNCIL OF CALIFORNIA

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

INVITATION TO COMMENT

SPR19-__

Title
Appellate Procedure: Service Copy of a Petition for Review

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rule 8.500

Proposed by
Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

Information Technology Advisory Committee
Hon. Sheila F. Hanson, Chair
Hon. Louis R. Mauro, Vice-Chair

Action Requested
Review and submit comments by June 7, 2019

Proposed Effective Date
January 1, 2020

Contact
Kristi Morioka
916-643-7056
kristi.morioka@jud.ca.gov

Executive Summary

To update court procedures and provide clarity, the Appellate Advisory Committee and the Information Technology Advisory Committee propose amending the rule regarding petitions for review in the California Supreme Court to remove the requirement to send to the Court of Appeal a separate service copy of an electronically filed petition for review. Under current practice, when a petition for review is accepted for electronic filing by the Supreme Court, the Court of Appeal automatically receives a filed/endorsed copy of the petition through the electronic filing service provider (EFSP). Thus, in actual practice, the electronic filing of a petition satisfies the requirement to serve the Court of Appeal, and there is no need for a petitioner to serve the Court of Appeal with another copy as required by the rules. This proposal does not change the requirement to serve the Court of Appeal with a separate copy if a petition for review is filed in paper form. This project originated from a suggestion submitted by an appellate court administrator.

Background

Rule 8.500 governs petitions for review in the Supreme Court. Subdivision (f)(1) of this rule provides that "[t]he petition must also be served on the superior court clerk and the

clerk/executive officer of the Court of Appeal."[1] This requirement has existed in the rule since it was adopted as rule 28 on January 1, 2003.[2]

However, pursuant to rule 8.71 and rules 3 and 4 of the Supreme Court Rules Regarding Electronic Filing, electronic filing in the Supreme Court is now mandatory for parties represented by counsel and voluntary for self-represented litigants and trial courts. As a result, a large majority of petitions for rehearing are now filed electronically.

Notably, the Supreme Court has recognized the redundancy of requiring separate service on the Court of Appeal of an electronically filed petition. On its web page, the Supreme Court provides this advisement:

> Notwithstanding the requirements set forth in California Rules of Court, Rule 8.500(f)(1), submission of a petition for review through TrueFiling that is accepted for filing by the Supreme Court constitutes service of the petition on the Court of Appeal.

The Proposal

This proposal would clarify that when a petition for review is filed electronically, the filer does not need to serve a separate copy on the Court of Appeal. When a petition for review is filed in paper, however, the clerk/executive officer of the Court of Appeal must still be served.

This proposal is intended to eliminate duplicative and unnecessary effort by counsel, self-represented litigants, and appellate court staff. The current EFSP automatically sends a copy of the petition for review to the clerk/executive officer of the Court of Appeal when it is filed electronically. But the rules require the filer to serve the clerk/executive officer of the Court of Appeal. This causes additional effort and expense for the filer and additional workload for the clerk/executive officer of the Court of Appeal.

The committee proposes amending rule 8.500(f)(1) as follows:

> The petition must also be served on the superior court clerk and, if filed in paper format, the clerk/executive officer of the Court of Appeal. Electronic filing of a petition constitutes service of the petition on the clerk/executive officer of the Court of Appeal.

Alternatives Considered

The committee considered maintaining the current requirements that parties serve the Courts of Appeal separately. The committee concluded that these rule changes are appropriate because they eliminate unnecessary and duplicative effort and expense.

---

[1] An advisory committee comment clarifies that the service requirement applies only to the petition, not to an answer or a reply.

[2] Rule 28 was renumbered as rule 8.500 in 2007.

Fiscal and Operational Impacts

This proposal should not have appreciable implementation costs and should save court resources by eliminating duplicate electronic filings.

Request for Specific Comments

In addition to comments on the proposal as a whole, the committees are interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The committees also seek comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rule 8.550, at p. 4

Title 8. Appellate Rules

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

Chapter 9. Proceedings in the Supreme Court

Rule 8.500. Petition for review

(a) – (e) * * *

(f) Additional requirements

(1) The petition must also be served on the superior court clerk and, if filed in paper format, the clerk/executive officer of the Court of Appeal. Electronic filing of a petition constitutes service of the petition on the clerk/executive officer of the Court of Appeal.

(2)-(3) * * *

(g) * * *

Item 11

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

MEMORANDUM

Date
February 15, 2019

To
Members of the Appellate Advisory Committee

From
Kristi Morioka,
Attorney, Legal Services

Subjects
Rules modernization: Uniform formatting rules for electronic documents

Action Requested
Please review before committee meeting on February 21, 2019

Deadline
February 21, 2019

Contact
Kristi Morioka
Attorney, Legal Services
916-643-7056 phone
kristi.morioka@jud.ca.gov

Introduction

This proposal to circulate for public comment combines items 6 and part of item 15 from the Appellate Advisory Committee's annual agenda, Rules modernization: Uniform formatting rules for electronic documents. This is a priority 1 project with a completion date of January 1, 2020, when the proposed rule amendments would take effect. Attached for the committee's review is the draft Invitation to Comment and proposed amendments to California Rules of Court, rules 8.40, 8.44, 8.71, 8.72, 8.74, 8.204, and 8.252. JATS recommends that the committee move forward with circulating this proposal for public comment.

Background / Draft Revisions

On August 30, 2018, JATS met and considered potential topics for proposals to be developed during the 2019 rules cycle. In a prior cycle, certain projects had been suggested for rules regarding exhibits and bookmarking of electronic documents, but JATS members realized those projects identified a larger need. All appellate courts had implemented e-filing, but local rules

for the format of electronic documents differed among the appellate courts, resulting in burdens for court users. JATS decided to develop uniform format rules for electronic documents filed in the appellate courts.

On February 4, 2019, JATS met to consider revisions regarding amendments to rules 8.40, 8.44, 8.71, 8.72, 8.74, 8.204, and 8.252 on uniform formatting for electronic documents and drafted proposed rule changes for these specific rules.

The Invitation for Comment lays out each individual rule and proposed changes considered by the subcommittee with specificity.

Committee action

The committee should review the attached draft invitation to comment and:

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

Attachments

1. Proposed Invitation to Comment on Appellate Procedure: Rules Modernization, Uniform Formatting Rules for electronic Documents
2. Proposed amendments to California Rules of Court, rules 8.40, 8.44, 8.71, 8.72, 8.74, 8.204, and 8.252.

JUDICIAL COUNCIL OF CALIFORNIA

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

INVITATION TO COMMENT

SPR19-__

Title
Appellate Procedure: Rules Modernization, Uniform Formatting Rules for Electronic Documents

Proposed Rules, Forms, Standards, or Statutes
Amend California Rules of Court, rules 8.40, 8.44, 8.71, 8.72, 8.74, 8.204, and 8.252

Proposed by
Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

Information Technology Advisory Committee
Hon. Sheila F. Hanson, Chair
Hon. Louis R. Mauro, Vice-Chair

Action Requested
Review and submit comments by June 7, 2019

Proposed Effective Date
January 1, 2020

Contact
Kristi Morioka, Attorney
916-643-7056 phone
kristi.morioka@jud.ca.gov

Christy Simons, Attorney
415-865-7694 phone
christy.simons@jud.ca.gov

Executive Summary

To provide consistency and clarity, the Appellate Advisory Committee and the Information Technology Advisory Committee propose revising California Rules of Court, rules 8.40, 8.44, 8.71, 8.72, 8.74, 8.204, and 8.252 to create uniform formatting rules for electronic documents filed in the appellate courts. The rules currently provide some formatting requirements for electronic documents, but they do not include various local rule requirements such as bookmarking. Moreover, local rules around the state differ in their requirements and scope. By establishing uniform, comprehensive rules for all appellate courts, this proposal will ease the burden on filers caused by differing format rules. This project initially focused on rules for exhibits and bookmarking, but was expanded in scope to include other format requirements. It originated from a suggestion by a member of the Joint Appellate Technology Subcommittee of the Appellate Advisory Committee and the Information Technology Advisory Committee.

Background

Various appellate districts of the Courts of Appeal implemented electronic filing at different times. As each court did so, it adopted its own set of local rules addressing the format requirements for electronic documents. While there are similarities among the local rules, they differ in various respects. Over the years, best practices have begun to emerge for the format of electronic documents. At the same time, court users have complained that the differing format rules among the appellate courts impose significant burdens on practice.

A more limited rules amendment project began in 2017, but was deferred; the current proposal is expanded in scope. The proposed amendments include both substantive and technical changes to the existing rules for the format of electronic documents in appellate courts. Uniform format rules would provide consistency, clarity, and efficiency.

The Proposal

Though this proposal recommends amendments to seven rules, most of the amendments are to rule 8.74. That rule currently sets forth responsibilities of electronic filers but also establishes certain minimum format requirements for electronic documents. This proposal would remove the filer responsibility provisions from 8.74 and add them to the court responsibility provisions in rule 8.72, and significantly expand the format provisions in rule 8.74. As expanded, rule 8.74 would establish the specific format requirements currently articulated in local rules, such as standards for cover pages, pagination, and bookmarks.

Rule 8.40. Form of filed documents

Rule 8.40 governs the form of filed documents. The current rule provides that filed documents may be produced on a computer or be typewritten.

The proposed amendments would create different subdivisions for electronic and paper documents, would reference the format rules applicable to those different types of documents, and would clarify that certain unchanged format requirements only apply to paper. The rule would be amended to provide that e-filing is mandatory unless an exemption applies.

Rule 8.44. Number of copies of filed documents

Rule 8.44 sets forth the rules for paper copies in the California Supreme Court and the Courts of Appeal, and in subdivision (c) addresses electronic copies. Among other things, it refers to a court that "permits" electronic filing, and it requires a local rule specifying the format of an electronic copy. Because e-filing is now mandatory, and the format of electronic documents is addressed in proposed rule 8.74, the proposal deletes those outdated references.

Rule 8.71. Electronic filing

Rule 8.71 imposes mandatory e-filing, but it allows for various exemptions, including those established by local rule. The proposal would delete the reference to exemption by local rule, and add the Supreme Court Rules Regarding Electronic Filing in subdivision (a), as follows: "Except as otherwise provided by these rules, the Supreme Court Rules Regarding Electronic

Filing, ~~the local rules of the reviewing court,~~ or by court order, all parties are required to file all documents electronically in the reviewing court."

Rule 8.72. Responsibilities of the court

Rule 8.72 sets forth the e-filing responsibilities of a court. The proposal takes the provisions for the responsibilities of electronic filers from current rule 8.74 and moves them to rule 8.72 in a new subdivision (b), thereby combining the responsibilities of court and filer into a single rule, and leaving rule 8.74 to address format. The proposal also deletes current rule subdivisions 8.72(b)(1) and (b)(2) as no longer needed.

Rule 8.74. Responsibilities of electronic filer

The proposal amends rule 8.74 to establish uniform formatting rules for electronic documents filed with the appellate courts and proposes to change the title of the section accordingly. Rule 8.74(a) currently establishes the responsibilities of an electronic filer. As previously discussed, this proposal moves the content of subdivision (a) to rule 8.72. Current rule 8.74(b) authorizes appellate courts to establish requirements for electronic documents, but it sets forth certain minimum format standards such as text-searchability. The proposal retains some of the existing language, moves it to a new proposed subdivision (a), and significantly expands the format requirements by drawing from the best practices developed among the appellate courts through their local rules. The expanded format rules address topics such as bookmarking, protection of sensitive information, file size, manual filing, font, spacing, margins, hyperlinks and color. The proposal adds a new subdivision (b) to address specific format requirements for briefs, requests for judicial notice, appendices, agreed statements and settled statements, reporter's transcripts, clerk's transcripts, exhibits and sealed and confidential records. Subdivision (c) provides that a court will reject an electronic filing if the formatting rules are not followed and provides that an electronic filer can file a motion for an exemption. Newly proposed subdivision (d) of rule 8.74 provides that this rule prevails over other formatting provisions if they are in conflict.

Proposed rule 8.74(a)(1) references portable document format (PDF), a file format used to present and exchange documents reliably, independent of software, hardware or operating system. Existing California Supreme Court and Courts of Appeal local rules require documents to be in "text-searchable PDF." To ensure text searchability, the proposal requires a filer to "convert" a paper document to electronic form, rather than scanning or printing the document.

The rules for pagination in proposed subdivision (a)(2) are consistent with the local rule pagination requirements around the state. Proposed subdivision (a)(3) defines an electronic bookmark and includes requirements for bookmarking specified parts of a document.

Proposed subdivision (a)(4) requires protection of sensitive information found in other rules, namely, rules 1.201, 8.45, 8.46, 8.47 and 8.401.

Proposed subdivision (a)(5) sets a file-size limit of 25 megabytes. The 25-megabyte limit is the current capacity of the Appellate Court Case Management System (ACCMS).

Proposed subdivision (a)(6) describes manual filing of oversized documents or documents that otherwise cannot be electronically filed. The proposal permits the filer to file a flash drive, DVD or compact disc (CD) with the court and then give notice of the filing. The term DVD is considered sufficiently descriptive that it is not spelled out, but the term CD is spelled out for clarity. The file types for video, audio and photographs are based on local rules and the current capacity at the courts.

Proposed subdivision (a)(7) specifies that the page size for all electronic documents must be 8-1/2 by 11 inches.

Proposed subdivision (a)(8) describes the font type and font size for electronic documents. It specifies a serif font such as Century School Book. The suggestion comes from the Court of Appeal, Second Appellate District's local rule, which seeks to promote readability.

Proposed subdivision (a)(14) specifies that a document with any color component must be manually filed rather than electronically filed. This is because color causes problems in ACCMS. The subdivision prohibits color components in electronically filed documents.

Proposed rule 8.74(b) addresses specific format requirements for certain documents. Proposed rule 8.74(b) does not repeat the general format rules when discussing the specific documents.

Rule 8.204. Contents and form of briefs

Rule 8.204 explains the requirements for briefs filed in the Courts of Appeal. There is only one amendment in this rule. The proposed amendment explains that briefs filed in electronic form must comply with the formatting provisions in rule 8.74(a) and (b)(1), which prevail over inconsistent provisions in rule 8.204(b).

Rule 8.252. Judicial notice; filings and evidence on appeal

Rule 8.252 establishes the procedure for seeking judicial notice of a matter. The proposed amendment would require the moving party to attach to the motion a copy of the matter to be noticed or an explanation why it is not practicable to do so. In addition, the proposed amendment would specify that the motion with attachments must comply with rule 8.74 if filed in electronic form.

Proposed rule 8.252(c)(3) is reorganized to reflect the presumption of electronic filing unless an exemption applies.

Alternatives Considered

The committee considered deferring action, but determined that the experience of the Supreme Court and the Courts of Appeal thus far warranted action. The revised rules will provide uniform guidance to litigants and practitioners and will give the appellate courts time to amend their local rules accordingly.

Rule 8.124 [appendixes], 8.144 [form of the record], and 8.212 [service and filing of briefs] were reviewed, and it was determined that amendments to those rules are not needed at this time.

Fiscal and Operational Impacts

The proposed changes are intended to make electronic formatting rules consistent in the appellate courts. The committees anticipate efforts will be needed to amend local rules to make them consistent with these proposals.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Are there terms that need further reference or definition, such as the words "omission page" or file-type references like .mp3 or hyperlink?

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

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would 6 months from Judicial Council-approval of this proposal until its effective date provide sufficient time for implementation?

Attachments and Links

1. Cal. Rules of Court, rules 8.40, 8.44, 8.71, 8.72, 8.74, 8.204, and 8.252, at pages X–XX.

Title 8. Appellate Rules

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

Chapter 1. General Provisions

Article 2. Service, Filing, Filing Fees, Form, and Privacy

Rule 8.40. Form of filed documents

(a) Form of electronic documents

~~Except as these rules provide otherwise, documents filed in a reviewing court may be either produced on a computer or typewritten and must comply with the relevant provisions of rule 8.204(b).~~

Pursuant to rule 8.71(a), a document filed in a reviewing court must be in electronic form unless these rules provide otherwise. An electronic document must comply with the relevant format provisions of this rule and rules 8.74, 8.144 and 8.204.

~~(b) Cover color~~

(b) Form and cover color of paper documents

(1) To the extent these rules authorize the filing of a paper document in a reviewing court, the document must comply with the relevant format provisions of this rule and rules 8.144 and 8.204.

(2) ~~(1)~~ As far as practicable, the covers of briefs and petitions filed in paper form must be in the following colors:

Appellant's opening brief or appendix	Green
Respondent's brief or appendix	Yellow
Appellant's reply brief or appendix	Tan
Joint appendix	White

Amicus curiae brief	Gray
Answer to amicus curiae brief	Blue
Petition for rehearing	Orange
Answer to petition for rehearing	Blue
Petition for original writ	Red
Answer (or opposition) to petition for original writ	Red
Reply to answer (or opposition) to petition for original writ	Red
Petition for transfer of appellate division case to Court of Appeal	White
Answer to petition for transfer of appellate division case to Court of Appeal	Blue
Petition for review	White
Answer to petition for review	Blue
Reply to answer to petition for review	White
Opening brief on the merits	White
Answer brief on the merits	Blue
Reply brief on the merits	White

(~~2~~3) In appeals under rule 8.216, the cover of a combined respondent's brief and appellant's opening brief filed in paper form must be yellow, and the cover of a combined reply brief and respondent's brief filed in paper form must be tan.

(~~3~~4) A paper brief or petition not conforming to ~~(1) or~~ (2) or (3) must be accepted for filing, but in case of repeated violations by an attorney or party, the court may proceed as provided in rule 8.204(e)(2).

(c) Cover information for electronic and paper documents

(1) Except as provided in (2), the cover—or first page if there is no cover—of every document filed in a reviewing court must include the name, mailing address, telephone number, fax number (if available), e-mail address (if available), and California State Bar number of each attorney filing or joining in the document, or of the party if he or she is unrepresented. The inclusion of a fax number or e-mail address on any document does not constitute consent to service by fax or e-mail unless otherwise provided by law.

(2) If more than one attorney from a law firm, corporation, or public law office is representing one party and is joining in the document, the name and State Bar number of each attorney joining in the document must be provided on the cover. The law firm, corporation, or public law office representing each party must designate one attorney to receive notices and other communication in the case from the court by placing an asterisk before that attorney's name on the cover and must provide the contact information specified under (1) for that attorney. Contact information for the other attorneys from the same law firm, corporation, or public law office is not required but may be provided.

(3) The covers of electronic documents must also comply with the provisions of rule 8.74.

Rule 8.44. Number of copies of filed documents

(a)–(b) * * *

(c) Electronic copies

~~A court that permits electronic filing will specify any requirements regarding electronically filed documents in the electronic filing requirements published under rule 8.74. In addition,~~ A court may provide by local rule for the submission of an

electronic copy of a document that is not electronically filed either in addition to the copies of a document required to be filed under (a) or (b) or as a substitute for one or more of these copies. ~~The local rule must specify the format of the electronic copy and provide for an exception if it would cause undue hardship for a party to submit an electronic copy.~~

Title 8. Appellate Rules

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

Chapter 1. General Provisions

Article 5. E-filing

Rule 8.71. Electronic filing

(a) Mandatory electronic filing

Except as otherwise provided by these rules, the Supreme Court Rules Regarding Electronic Filing, ~~the local rules of the reviewing court,~~ or by court order, all parties are required to file all documents electronically in the reviewing court.

(b)–(g) * * *

Rule 8.72. Responsibilities of court and electronic filer

(a) ~~Publication of electronic filing requirements~~ Responsibilities of court

(1) Publication of electronic filing requirements

The court will publish, in both electronic and print formats, the court's electronic filing requirements.

~~(b)~~ (2) Problems with electronic filing

If the court is aware of a problem that impedes or precludes electronic filing, it must promptly take reasonable steps to provide notice of the problem.

(b) Responsibilities of electronic filer

Each electronic filer must:

~~(1) Comply with any court requirements designed to ensure the integrity of electronic filing and to protect sensitive personal information;~~

~~(2) Furnish information that the court requires for case processing;~~

~~(3)~~(1) Take all reasonable steps to ensure that the filing does not contain computer code, including viruses, that might be harmful to the court's electronic filing system and to other users of that system;

~~(4)~~(2) Furnish one or more electronic service addresses, in the manner specified by the court, at which the electronic filer agrees to accept service; and

~~(5)~~(3) Immediately provide the court and all parties with any change to the electronic filer's electronic service address.

Rule 8.74. ~~Responsibilities of electronic filer~~ Format of electronic documents

~~**(a) Conditions of filing**~~

~~Each electronic filer must:~~

~~(1) Comply with any court requirements designed to ensure the integrity of electronic filing and to protect sensitive personal information;~~

~~(2) Furnish information that the court requires for case processing;~~

~~(3) Take all reasonable steps to ensure that the filing does not contain computer code, including viruses, that might be harmful to the court's electronic filing system and to other users of that system;~~

~~(4) Furnish one or more electronic service addresses, in the manner specified by the court, at which the electronic filer agrees to accept service; and~~

~~(5) Immediately provide the court and all parties with any change to the electronic filer's electronic service address.~~

~~**(b) Format of documents to be filed electronically**~~

~~(1) A document that is filed electronically with the court must be in a format specified by the court unless it cannot be created in that format.~~

~~(2) The format adopted by a court must meet the following minimum requirements:~~

~~(A) The format must be text-searchable while maintaining original document formatting.~~

~~(B) The software for creating and reading documents must be in the public domain or generally available at a reasonable cost.~~

~~(C) The printing of documents must not result in the loss of document text, format, or appearance.~~

~~(3) The page numbering of a document filed electronically must begin with the first page or cover page as page 1 and use only Arabic numerals (e.g., 1, 2, 3). The page number may be suppressed and need not appear on the cover page.~~

~~(4) If a document is filed electronically under the rules in this article and cannot be formatted to be consistent with a formatting rule elsewhere in the California Rules of Court, the rules in this article prevail.~~

(a) Format requirements applicable to all electronic documents

(1) Text-searchable portable document format. Electronic documents must be in text-searchable portable document format (PDF) while maintaining the original document formatting. An electronic filer is not required to use a specific vendor, technology, or software for creation of a searchable format document, unless the electronic filer agrees to such use. The software for creating and reading electronic documents must be in the public domain or generally available at a reasonable cost. If an electronic filer must file a document that the electronic filer possesses only in paper format, the electronic filer must convert the document to an electronic document by a means that complies with this rule. The printing of an electronic document must not result in the loss of document text, format, or appearance. It is the electronic filer's responsibility to ensure that any document filed is complete and readable.

(2) Pagination. The page numbering of a document filed electronically must begin with the first page or cover page as page 1 and use only Arabic numerals (e.g., 1, 2, 3). Documents may not contain more than one numbering system; they may not contain Roman numerals for the table of contents and Arabic numerals for the body of the document. The electronic page counter for the electronic document must match the page number for each page of the document. The page number for the cover page may be suppressed and need not appear on the cover page. When a document is filed in both paper and electronic formats, the pagination in both versions must comply with this subparagraph.

(3) Bookmarking. An electronic bookmark is a descriptive text link that appears in the bookmarks panel of an electronic document. Each electronic document must include an electronic bookmark to each heading, subheading, and to the first page of any component of the document,

including but not limited to any table of contents, table of authorities, petition, verification, points and authorities, declaration, certificate of word count, certificate of interested entities or persons, proof of service, tab, exhibit, or attachment. Each electronic bookmark must describe the item to which it is linked. For example, an electronic bookmark to a heading must provide the text of the heading, and an electronic bookmark to a tab, exhibit, or attachment must include the letter or number of the tab, exhibit, or attachment and a description of the tab, exhibit, or attachment. An electronic appendix must have bookmarks to the indexes and to the first page of each separate exhibit or attachment. Tabs, exhibits, or attachments within a tab, exhibit, or attachment must be bookmarked. All bookmarks must be set to "Inherit Zoom," or its functional equivalent, to retain the reader's selected zoom setting.

(4) Protection of sensitive information. Electronic filers must comply with rules 1.201, 8.45, 8.46, 8.47, and 8.401~~,~~ regarding the protection of sensitive information, except for those requirements exclusively applicable to paper format.

(5) Size and multiple files. An electronic filing may not be larger than 25 megabytes. This rule does not change the limitations on word count or number of pages otherwise established by the California Rules of Court for documents filed in the court. If a document exceeds the 25-megabyte file-size limitation, the electronic filer must submit the document in more than one file, with each file 25 megabytes or less. The first file must include a master chronological and alphabetical index stating the contents for all files. Each file must have a cover page setting forth (a) the file number for that file, (b) the total number of files for that document, (c) the page numbers contained in that file, and (d) the total number of pages for that document. (Example: File 1 of 4, pp. 1 of 1198.) In addition, each file must be paginated consecutively across all files in the document, including the cover pages for each file. (For example, if the first file ends on page 400, the cover of the second file must be page 401.) If a multiple-file document is submitted to the court in both electronic and paper formats, the cover pages for each file must be included in the paper documents.

(6) Manual Filing.

(A) When an electronic filer seeks to file an electronic document consisting of more than five files, or when the document cannot or should not be electronically filed in multiple files, or when electronically filing the document would cause undue hardship, the document must not be electronically filed but must be manually filed

with the court on electronic media such as a flash drive, DVD or compact disc (CD). When an electronic filer files one or more documents on electronic media such as a flash drive, DVD or CD with the court, the electronic filer must electronically file, on the same day, a "manual filing notification" notifying the court and the parties that one or more documents have been filed on electronic media, explaining the reason for the manual filing. The electronic media must be served on the parties in accordance with the requirements for service of paper documents. To the extent practicable, each document or file on the electronic media must comply with the format requirements of this rule.

(B) Electronic media files such as audio, video, or PowerPoint, and documents containing photographs or any color component, must be manually filed. Audio files must be filed in .wav or mp3 format. Video files must be filed in .avi or mp4 format. Photographs must be filed in .jpg, .png, .tif, or .pdf format.

(7) Page size. All documents must have a page size of 8-1/2 by 11 inches.

(8) Font. The font style must be a proportionally spaced serif face, such as Century School Book. Do not use Times New Roman. Font size must be 13-point, including in footnotes.

(9) Spacing. Lines of text must be one-and-a-half-spaced. Footnotes and quotations may be single-spaced.

(10) Margins. The margins must be set at 1-1/2 inches on all sides.

(11) Alignment. Paragraphs must be left-aligned, not justified.

(12) Hyperlinks. Hyperlinks are encouraged but not required. However, if an electronic filer elects to include hyperlinks in a document, the hyperlink must be active as of the date of filing and should be formatted to standard citation format as provided in the California Rules of Court.

(13) Tabs. Documents must include tabs to the extent required by the California Rules of Court. A tab must be a separate page identifying the content following the tab (such as a page stating "Exhibit A").

(14) No color. Notwithstanding provisions to the contrary in the California Rules of Court, an electronic document with any color component may not be electronically filed. It must be manually filed on electronic media. An

electronically filed document must not have color covers, color signatures, or other color components absent leave of court. This requirement does not apply to the auto-color feature of hyperlinks.

(b) Additional format requirements for certain electronic documents

(1) Brief. An electronic brief must comply with the requirements set forth in rule 8.204, except for the requirements exclusively applicable to paper format including the provisions in rule 8.204(b)(2), (4), (5), and (6). This rule sets forth the font, spacing, and margin requirements for electronic documents.

(2) Request for judicial notice or request to add documents to the appellate record. When seeking judicial notice or when seeking to add documents to the appellate record, the electronic filer must attach the documents to be noticed or added to the request. The request with attachments must comply with this rule.

(3) Appendix. The format of an appendix must comply with this rule, rule 8.124(d) and rule 8.144 pertaining to clerk's transcripts.

(4) Agreed statement and settled statement. The format for an agreed statement or a settled statement must comply with this rule and rules 8.144 and 8.124(d).

(5) Reporter's transcript and clerk's transcript. The format for an electronic reporter's transcript must comply with Code of Civil Procedure section 271 and rule 8.144. The format for an electronic clerk's transcript must comply with this rule and rule 8.144.

(6) Exhibits. Electronic exhibits must be submitted in volumes no larger than 25 megabytes, rather than as individual documents.

(7) Sealed and confidential records. Pursuant to rule 8.45(c)(1), electronic records that are confidential or under seal must be filed separately. If one or more pages are omitted from a source document and filed separately as a sealed or confidential record, an omission page must be inserted in the source document at the location of the omitted page or pages. The omission page must identify the type of pages omitted. The omission page must be paginated consecutively with the rest of the source document, it must be bookmarked, it must be listed in any indexes included in the source document, and the PDF counter for the omission page must match the page

number of the omission page. Separately filed confidential or sealed records must comply with this rule and rules 8.45, 8.46, and 8.47.

(c) Rejection of an electronic filing for noncompliance; exemptions

The court will reject an electronic filing if it does not comply with the requirements of this rule. However, if the requirements of this rule cause undue hardship or significant prejudice to any electronic filer, the electronic filer may file a motion for an exemption from the requirements of this rule.

(d) This rule prevails over other formatting rules

If a document is filed electronically and cannot be formatted to be consistent with a formatting provision elsewhere in the California Rules of Court, the provisions of this rule prevail.

Title 8. Appellate Rules

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

Chapter 1. General Provisions

Article 3. Briefs in Court of Appeal

Rule 8.204. Contents and form of briefs

(a) Contents

(1) Each brief must:

(A) Begin with a table of contents and a table of authorities separately listing cases, constitutions, statutes, court rules, and other authorities cited;

(B) State each point under a separate heading or subheading summarizing the point, and support each point by argument and, if possible, by citation of authority; and

(C) Support any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears. If any part of the record is submitted in an electronic format, citations to that part must identify, with the same specificity required for the printed record, the place in the record where the matter appears.

(2) An appellant's opening brief must:

(A) State the nature of the action, the relief sought in the trial court, and the judgment or order appealed from;

(B) State that the judgment appealed from is final, or explain why the order appealed from is appealable; and

(C) Provide a summary of the significant facts limited to matters in the record.

(b) Form

Briefs filed in electronic form must comply with the formatting provisions in rule 8.74(a) and (b)(1), which prevail over inconsistent provisions in this subdivision.

(1) A brief may be reproduced by any process that produces a clear, black image of letter quality. All documents filed must have a page size of 8-1/2 by 11 inches. If filed in paper form, the paper must be white or unbleached and of at least 20-pound weight.

(2) Any conventional font may be used. The font may be either proportionally spaced or monospaced.

(3) The font style must be Roman; but for emphasis, italics or boldface may be used or the text may be underscored. Case names must be italicized or underscored. Headings may be in uppercase letters.

(4) Except as provided in (11), the font size, including footnotes, must not be smaller than 13-point, and both sides of the paper may be used.

(5) The lines of text must be unnumbered and at least one-and-a-half-spaced. Headings and footnotes may be single-spaced. Quotations may be block-indented and single-spaced. Single-spaced means six lines to a vertical inch.

(6) The margins must be at least 1-1/2 inches on the left and right and 1 inch on the top and bottom.

(7) The pages must be consecutively numbered. The page numbering must begin with the cover page as page 1 and use only Arabic numerals (e.g., 1, 2, 3). The page number may be suppressed and need not appear on the cover page.

(8) If filed in paper form, the brief must be filed unbound unless otherwise provided by local rule or court order.

(9) The brief need not be signed.

(10) If filed in paper form, the cover must be in the color prescribed by rule 8.40(b). In addition to providing the cover information required by rule 8.40(c), the cover must state:

(A) The title of the brief;

(B) The title, trial court number, and Court of Appeal number of the case;

(C) The names of the trial court and each participating trial judge;

(D) The name of the party that each attorney on the brief represents.

(11) If the brief is produced on a typewriter:

(A) A typewritten original and carbon copies may be filed only with the presiding justice's permission, which will ordinarily be given only to unrepresented parties proceeding in forma pauperis. All other typewritten briefs must be filed as photocopies.

(B) Both sides of the paper may be used if a photocopy is filed; only one side may be used if a typewritten original and carbon copies are filed.

(C) The type size, including footnotes, must not be smaller than standard pica, 10 characters per inch. Unrepresented incarcerated litigants may use elite type, 12 characters per inch, if they lack access to a typewriter with larger characters.

(c) Length

(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.

(d) Attachments to briefs

A party filing a brief may attach copies of exhibits or other materials in the appellate record or copies of relevant local, state, or federal regulations or rules,

out-of-state statutes, or other similar citable materials that are not readily accessible. These attachments must not exceed a combined total of 10 pages, but on application the presiding justice may permit additional pages of attachments for good cause. A copy of an opinion required to be attached to the brief under rule 8.1115(c) does not count toward this 10-page limit.

(e) Noncomplying briefs

If a brief does not comply with this rule:

(1) The reviewing court clerk may decline to file it, but must mark it "received but not filed" and return it to the party; or

(2) If the brief is filed, the reviewing court may, on its own or a party's motion, with or without notice:

(A) Order the brief returned for corrections and refiling within a specified time;

(B) Strike the brief with leave to file a new brief within a specified time; or

(C) Disregard the noncompliance.

Title 8. Appellate Rules

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

Chapter 2. Civil Appeals

Article 4. Hearing and Decision in the Court of Appeal

Rule 8.252. Judicial notice; findings and evidence on appeal

(a) Judicial notice

(1) To obtain judicial notice by a reviewing court under Evidence Code section 459, a party must serve and file a separate motion with a proposed order.

(2) The motion must state:

(A) Why the matter to be noticed is relevant to the appeal;

(B) Whether the matter to be noticed was presented to the trial court and, if so, whether judicial notice was taken by that court;

(C) If judicial notice of the matter was not taken by the trial court, why the matter is subject to judicial notice under Evidence Code sections 451, 452, or 453; and

(D) Whether the matter to be noticed relates to proceedings occurring after the order or judgment that is the subject of the appeal.

(3) If the matter to be noticed is not in the record, the party must attach to the motion ~~a copy with the motion or explain~~ a copy of the matter to be noticed or an explanation of why it is not practicable to do so. ~~The pages of the copy of the matter or matters to be judicially noticed must be consecutively numbered, beginning with the number 1.~~ The motion with attachments must comply with rule 8.74 if filed in electronic form.

(b) Findings on appeal

A party may move that the reviewing court make findings under Code of Civil Procedure section 909. The motion must include proposed findings.

(c) Evidence on appeal

(1) A party may move that the reviewing court take evidence.

(2) An order granting the motion must:

(A) State the issues on which evidence will be taken;

(B) Specify whether the court, a justice, or a special master or referee will take the evidence; and

(C) Give notice of the time and place for taking the evidence.

(3) For documentary evidence, a party may offer ~~the original, a certified copy, a photocopy, or, in a case in which electronic filing is permitted,~~ an electronic copy~~.~~, or if filed in paper form, the original, a certified copy, or a photocopy. The court may admit the document into evidence without a hearing.

Item

12

Report will be provided orally at meeting.

Item

13

Report will be provided orally at meeting.