JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
June 19, 2019

To
Appellate Advisory Committee, Rules Subcommittee

From
Sarah Abbott,
Attorney, Legal Services

Subject
Appellate Procedure: Notice of appeal and the record in civil commitment cases

Action Requested
Please read before June 27 subcommittee conference call

Deadline
June 27, 2019

Contact
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Introduction

As you may recall, earlier this spring the Appellate Advisory Committee recommended circulating for public comment a proposal to adopt a new rule of court, rule 8.483,[1] describing the required contents of the normal record on appeal for civil commitment cases stemming from criminal proceedings, as well as a new form *Notice of Appeal–Civil Commitment* (APP-060).[2]

The Judicial Council's Rules and Projects Committee approved the recommendation for circulation and the proposal was circulated for public comment from April 11 through June 10, 2019 as part of the regular spring cycle. A copy of the invitation to comment is included in your meeting materials. This memorandum discusses the public comments received on the proposal.

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

[2] To alert litigants appealing civil commitments stemming from criminal proceedings to the existence of the new rule, the committee also recommended adding the following Advisory Committee comment to existing rule 8.320 referencing the new rule: "Rule 8.483 governs the normal record and exhibits in civil commitment appeals."

As was done before this proposal was recommended for circulation, input has also been sought on the public comments and possible responses from other Judicial Council staff with knowledge of mental health proceedings and the input received to date has been incorporated herein. Staff will report orally at the subcommittee meeting on any additional input it receives.

Public Comments

The proposal was circulated for public comment in the spring comment cycle and the committee received nine comments. Four commenters (the appellate division of the Superior Court of San Bernardino County, the Superior Courts of San Bernardino and San Diego Counties, and the Orange County Bar Association) agreed with the proposal. One commenter, the Superior Court of Los Angeles County, agreed with the proposal if modified. Four commenters (individual attorney Rudy Kraft; the Civil, Small Claims and Probate division of the Superior Court of Orange County; the Committee on Appellate Courts of the Litigation Section of the California Lawyers Association (CLA); and the First District Appellate Project (FDAP)) did not indicate a position on the proposal but provided substantive comments.

A chart with the full text of the comments received and staff's draft responses is attached. The chart also includes, in **boldface type**, questions for the subcommittee. The main comments, questions, and possible modifications to the proposal are discussed below, but there may be other comments and responses discussed only in the draft comment chart, so please review the draft comment chart carefully. Also attached is a draft report to the Judicial Council on this proposal, including the text of the proposed new rule and form. The proposed rule and form reflect, using yellow highlighting, possible modifications to the proposal to respond to public comments.

Rule 8.483

None of the commenters expressed any overall opposition to the adoption of a new rule governing the record on appeal in civil commitment cases, the proposed placement of the new rule within an expanded chapter 6 of title 8, division 1 of the appellate rules, or the proposed advisory committee comment to existing rule 8.320 cross-referencing the new rule. Staff therefore recommends that the proposal, as it relates to proposed new rule 8.483, move forward subject to the modifications discussed below.

Comments regarding the scope of the rule

The invitation to comment specifically asked whether the scope of the proposed new rule was appropriate, and in particular whether it should be applicable to any other type of civil commitment order such as civil commitments under the Lanterman-Petris-Short (LPS) Act. The Superior Courts of San Bernardino and San Diego Counties, the Orange County Bar Association, and FDAP responded that the scope of the proposed rule is appropriate, and it should be limited to civil commitment appeals stemming from criminal proceedings as drafted. In contrast, individual attorney Rudy Kraft responded that the scope of the rule should be expanded to also

cover Murphy conservatorships under Welfare & Institutions Code section 5008(h)(1)(B) because these conservatorships arise out of criminal proceedings in that they follow Penal Code section 1370 competency proceedings. Likewise, the Civil, Small Claims and Probate division of the Superior Court of Orange County stated: "We agree that these changes should also apply to LPS commitments. In Murphy cases, if the case is granted and the commitment ordered, the Court must make LPS findings in addition to Murphy findings." Though not entirely clear, staff understands this comment to also reflect the opinion that Murphy conservatorships, and perhaps other types of LPS commitments, should be included within the scope of the new rule.

Notably, neither of the commenters who recommended expanding the scope of proposed new rule 8.483 to also include Murphy conservatorships under the LPS Act explained how this would work with existing rule 8.480, which currently governs appeals from orders establishing conservatorships under Welfare & Institutions section 5350, et seq., which presumably includes Murphy conservatorships.[3] Staff believes it could create confusion if the scope of rule 8.483 were expanded to also include Murphy conservatorships under the LPS Act. Though Murphy conservatorships do follow from criminal proceedings and thus could reasonably be included within the scope of the new rule, they appear to be addressed by existing rule 8.480. Neither commenter explained why it would be preferable for the normal record in Murphy conservatorship appeals to be governed by the proposed new rule, rather than by existing rule 8.480. *Therefore, staff recommends that the scope of proposed rule 8.483 not be expanded to include Murphy conservatorship appeals. However, to avoid confusion, staff recommends adding an advisory committee comment to rule 8.483 stating "The record on appeal of orders establishing conservatorships under Welfare & Institutions Code section 5350 et seq., including Murphy conservatorships for persons who are gravely disabled as defined in Welfare & Institutions Code section 5008(h)(1)(B), is governed by California Rules of Court, rule 8.480."*

Additionally, in discussing the public comments with other Judicial Council staff with mental health expertise, it was also suggested that there may be a "gap" in the rules for appeals of LPS Act commitment orders under Welfare & Institutions Code section 5300 et seq. (and perhaps other types of civil commitments that do not stem from criminal proceedings) which are not covered by rule 8.480 (mental health conservatorships) or proposed rule 8.483 (criminal-based civil commitments) as drafted. To address this gap, mental health staff suggested expanding the scope of proposed new rule 8.483 to govern "all civil commitments not involving conservatorship;" i.e., modifying subdivision (a)(1) of the proposed new rule to also include appeals of commitment orders under Welfare & Institutions Code section 5300, even though these commitments may have no connection to underlying criminal proceedings. The Invitation to Comment included the question: "Is the scope of the rule appropriate, and in particular, should

[3] See Welf. & Inst. Code, § 5350(b)(2) (referencing conservatorships under section 5008(h)(1)(B), commonly referred to as Murphy conservatorships).

the rule be applicable to any other type of civil commitment order, such as commitments under the LPS Act?" Therefore, this suggestion would likely be within the scope of the proposal as circulated. However, it appears to go beyond what the subcommittee and committee intended (creating a rule and that is modest in scope and limited to criminal-related civil commitments) or previously discussed and agreed upon. Therefore, perhaps it would make more sense to consider—as part of a separate proposal—whether the record on appeal in LPS Act commitment orders under Welfare & Institutions Code section 5300 et seq. should be governed by rule 8.480, 8.483, or something a separate rule? *The subcommittee should discuss how the new rule should address, if at all, the record on appeal in LPS Act civil commitments under Welfare & Institutions Code section 5300 et seq.*

Comments regarding other provisions of the rule

The invitation to comment also specifically asked whether any other types of documentary exhibits should be included in the clerk's transcript. The Superior Court of San Bernardino County and the Orange County Bar Association responded that they do not believe other types of documentary exhibits should be included. The Superior Court of San Diego County noted that allowed exhibits should be "based on existing rule 8.320." Because proposed rule 8.483 was drafted based on rule 8.320, which governs the normal record on appeal in criminal cases (as modified to make the rule appropriate for civil commitment appeals) staff understands this comment to similarly reflect agreement with the treatment of documentary exhibits under the proposed new rule as drafted.

However, Mr. Kraft responded that probable cause transcripts should be explicitly listed in the rule as part of the standard record on appeal. He acknowledged that such transcripts might be encompassed by the inclusion of the "dispositional hearing" transcript in subdivision (c)(8), but stated that it would be clearer to expressly include probable cause transcripts. *The subcommittee should discuss whether to recommend modifying subdivision (c)(8) to also include probable cause hearing transcripts. Staff has included proposed language highlighted in yellow within proposed rule 8.483(c)(8) for the subcommittee's consideration.*

Mr. Kraft also commented that it is unclear whether subdivision (b)(13), which requires the clerk's transcript to include "[a]ny diagnostic or psychological reports submitted to the court," also includes similar exhibits submitted to the court at trial or a probable cause hearing. He noted that exhibits should not lose their status as part of the record by being introduced to evidence. *Staff does not view the existing language of subdivision (b)(13) as unclear and does not recommend modifying this subdivision of the rule based on this comment. However, the subcommittee should consider whether it believes clarification is needed. Staff has included proposed language highlighted in yellow within proposed rule 8.483(b)(13) for the subcommittee's consideration.*

Mr. Kraft's comments also reflected a concern that proposed rule 8.483(d), addressing exhibits,[4] is problematic because it would make it more difficult for appellate counsel to obtain a complete record on appeal. He explained that exhibits in civil commitment cases are often redacted, and an unredacted version is often needed for the appeal. Additionally, according to Mr. Kraft, in civil commitment appeals, appellate counsel is often not appointed until after the record is prepared, so it is not unusual for appellate counsel to petition a Court of Appeal to augment the clerk's transcript to include additional exhibits—both redacted and unredacted—after the record is prepared. He contended that subdivision (d), as drafted, could eliminate the Court of Appeal's authority to grant such requests. If so, the only way for appellate counsel to view these exhibits prior to filing a brief would be at the courthouse, which would be inefficient and expensive. He acknowledged that subdivision (d) references the procedure of rule 8.224 (Transmitting Exhibits), which in turn recognizes the procedures available in rules 8.122 (Clerk's Transcript) and 8.124 (Appendixes) to designate items for inclusion in the clerk's transcript, but contended that this does not help counsel appointed after the record is prepared. He suggested that proposed rule 8.483 be modified to either (1) provide appellate counsel with a window of time to designate additional records under rule 8.122, or (2) modify the language of subdivision (d) to make clear that the clerk's transcript can be augmented to include exhibits. *While Mr. Kraft's explanation is persuasive, staff notes that modifying rule 8.483 as proposed would make the procedure for exhibits different for civil commitment appeals than for criminal appeals under rule 8.320. Staff has not made any changes to the text of the proposed rule based on this comment. However, the subcommittee should consider whether modification of proposed rule 8.483 is appropriate based on Mr. Kraft's concerns relating to exhibits.*

The invitation to comment further asked whether the proposed new rule should limit the record items in subdivisions (b)(15) and (c)(10) to appeals in which the appellant is the person subject to the civil commitment order. All commenters who responded to this question (the Superior Courts of San Bernardino, San Diego, and Los Angeles Counties, and the Orange County Bar Association) agreed that the rule should limit these items to appeals in which the appellant is the person subject to the civil commitment.

Finally, FDAP proposed several additional modifications to proposed new rule 8.483, including:

- modifying subdivision (a)(1) to specify that the rule governs "appeals from civil commitment orders (including involuntary medication orders) under Penal Code . . ." because subdivision (c)(1) requires that the reporter's transcript contain the oral proceedings on a motion for involuntary medication and most commitment schemes to

[4] The proposed text of rule 8.483(d) is: "Exhibits admitted into 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." This proposed phrasing is identical to existing rule 8.320(e), governing exhibits in connection with criminal appeals.

which the rule applies may lead to involuntary medication orders. *While there is a right to appeal an involuntary medication order under People v. Christiana (2010) 190 Cal. App. 4th 1040, 1046, staff questions the advisability of this proposed modification because it appears that involuntary medication orders, and appeals therefrom, may be separate from the civil commitment appeals intended to be encompassed by the new rule. Staff has included this proposed modification, highlighted in yellow, in the draft rule for the subcommittee's consideration, but the subcommittee should consider whether this proposed modification would expand the scope of the rule beyond what is intended. Assuming the subcommittee does not intend to include appeals of involuntary medication orders within the scope of rule 8.483, the subcommittee should consider omitting the phrase "or motion for involuntary medication" from subdivision (c)(1) to make this clear.*

- altering the parenthetical description of Penal Code 1600 et seq. in both subdivision (a)(1) of the rule and item 3 of the form from "(continue outpatient treatment or return to confinement)" to "(outpatient placement and revocation)" to more accurately describe the scope of that statutory scheme. *Staff agrees that this proposed modification would provide clarity and has included it in the draft rule, highlighted in yellow, for the subcommittee's consideration.*

- modifying subdivision (b)(1) to require the clerk's transcript to contain, not only the petition, but also "any supporting documents filed along with the petition." *Staff agrees that this proposed modification would provide clarity and should likely be implemented. Staff has included it, highlighted in yellow, within the proposed rule for the subcommittee's consideration. However, staff notes that this modification would make subdivision (b)(1) different from existing rule 8.480(b)(1) governing the record in LPS conservatorship appeals. Though proposed new rule 8.483 was not drafted based on rule 8.480, given the proximity and related subject matter of the rules to the extent that they can be made similar it would likely reduce confusion for litigants.*[5]

- modifying subdivision (b)(10) to remove the requirement that the certificate of probable cause be included in the clerk's transcript, because the certificate of probable cause requirement of Penal Code section 1237.5 does not apply to civil commitment proceedings, even those stemming from criminal proceedings. *However, even if a certificate of probable cause is not required for civil commitment, it seems like if one exists it could be relevant to an appeal. The subcommittee should consider the*

[5] FDAP also notes that, although beyond the scope of this proposal, it would also be appropriate to amend existing rule 8.480(b)(1) (governing the normal record in LPS conservatorship appeals) in this way. In the future, consideration may also be given to whether rule 8.480(b)(1) should be similarly amended to also include "any supporting documents filed along with the petition."

advisability of this proposed modification based on its practical experience. Staff has made this modification to the proposed new rule, highlighted in yellow for the subcommittee's consideration.

The subcommittee should discuss whether to modify the proposal in light of each of these comments. Staff has included proposed language reflecting these suggestions within proposed rule 8.483, highlighted in yellow for the subcommittee's consideration.

Form APP-060

None of the commenters expressed any general opposition to the adoption of a new form notice of appeal for civil commitment cases, or the proposed "APP" designation assigned to it. Staff therefore recommends that the proposal, as it relates to proposed new form APP-060, move forward subject to the potential modifications discussed below.

Comments regarding the scope of the form

The invitation to comment specifically asked whether the scope of proposed form APP-060 is appropriate, or whether it should also be available for other civil commitment appeals such as those under the LPS Act. The Superior Courts of San Bernardino and San Diego Counties and the Orange County Bar Association responded that the scope of the form is appropriate. CLA similarly agreed, but noted that the proposed form is not, on its face, limited for use only in civil commitment appeals stemming from criminal proceedings and expressed concern that it might be mistakenly used for civil commitment orders stemming from non-criminal proceedings. *Given that item 3 contains a checklist of code sections under which the person subject to the civil commitment is being held, staff believes this concern that the form will be used for an unauthorized purpose may be overstated and does not recommend modification based on this comment. However, it is also possible that the inclusion of the checkbox for "other" will inadvertently invite use of the form for appeals in similar proceedings, especially in the absence of an analogous form for use in those proceedings. The subcommittee should consider whether this is a reason to expand the scope of the form to include other types of LPS Act commitment and/or conservatorship appeals, as discussed below.*

Two commenters did recommend altering the scope of form APP-060. The Superior Court of Los Angeles County recommended that the form also be made available for use in appeals from Mentally Disordered Sex Offender (MDSO) commitments under former Welfare & Institutions Code section 6300 because, although that statute has been repealed, appeals of extension orders are still being filed. *Staff believes this suggestion makes sense, and recommends adding a checkbox to item 3 for selection where the person subject to the civil commitment is being held subject to "Former Welfare & Institutions Code, § 6300 (MDSO)" similar to the checkbox included for this purpose in the Petition for Writ of Habeas Corpus—Penal Commitment (form HC-003). This potential modification is highlighted in yellow on the form, and the subcommittee*

should discuss whether is agrees with this modification. Though the commenter directed this comment to the proposed form and not the proposed new rule, the subcommittee should similarly consider whether MDSO commitments under former Welfare & Institutions Code section 6300 should also be listed in subdivision (a)(1) as proceedings to which proposed new rule 8.483 applies.

Additionally, the Superior Court of Los Angeles County recommended that the form *not* be available for use in appeals of civil commitment orders made under Welfare & Institutions Code section 6500 (developmentally disabled persons)—and instead that a separate form be created for these appeals, as well as petitions under *In re Hop* (1981) 29 Cal.3d 82—where the petitioner may be one of a number of different persons or entities other than the person subject to the commitment order. *However, as discussed below, staff notes that rather than omitting this category of civil commitments from the scope of the form and creating a second new form, another approach would be to expand the scope of the form to encompass these and other types of commitment appeals that do not necessarily stem from criminal proceedings.*

Finally, while FDAP commented that proposed new rule 8.483 should exclude LPS appeals because they are already covered by existing rule 8.480, it contended that the scope of proposed new form APP-060 should be expanded so that it is available for use both in civil commitment appeals stemming from criminal proceedings as well as in LPS Act appeals. FDAP stated that there is no reason that a single form cannot be used for appeals under both rules, and noted that a single "unofficial" form notice of appeal is already being used successfully for both types of commitment appeals in Sonoma County. *Staff agrees that nothing appears to prohibit expanding the scope of form APP-060 in this way, and that a single form notice of appeal available for LPS Act proceedings (including commitments under Welfare & Institutions Code section 5300 et seq. and conservatorships under 5350 et seq.) could be useful. However, the subcommittee and committee have previously discussed the scope of the rule and form and decided that they should be limited in scope to civil commitments stemming from criminal proceedings. Moreover, the subcommittee should consider whether it would cause confusion for this proposal to include a new rule 8.483 governing the record on appeal that is inapplicable to LPS and other civil commitments that do not stem from criminal matters, but a Notice of Appeal form that is available for a far broader range of proceedings.*

The subcommittee should discuss what, if any, modifications to item 3 of the form are appropriate based on the foregoing comments, such as (1) adding a checkbox for "Former Welfare & Institutions Code, § 6300 et seq. (MDSO)"; (2) removing the checkbox for "Welfare & Institutions Code, § 6500 et seq. (developmentally disabled persons)"; (3) adding a checkbox for "Welfare & Institutions Code, § 5350 et seq. (LPS Act conservatorships)"; (4) adding a checkbox for "Welfare & Institutions Code, § 5300 et seq. (LPS Act commitments)"; and/or (5) renaming the form to reference appeals of other types of mental health proceedings (such as

"Notice of Appeal–Civil Commitment / Mental Health Proceedings") if the subcommittee decides to expand the scope of the form.

Other comments on the form

Several commenters addressed other aspects of the form. With respect to the form caption, the Civil, Small Claims and Probate division of the Superior Court of Orange County recommended that the caption, currently pre-filled with "People of the State of California v.," be left fillable because some cases (presumably including Murphy conservatorships under the LPS Act, which the court believes should be included within the scope of the new rule and form) may be initiated by a public guardian or hospital. Likewise, FDAP recommended that the caption be modified to "People of the State of California v. / In re" to account for civil commitment proceedings similarly captioned in the trial court, particularly if the scope of the form is expanded to also encompass LPS Act appeals as FDAP recommends. The Superior Court of Los Angeles County recommended that the form refer to "respondent" rather than "defendant/respondent" throughout, to make it consistent with trial court style and the Legislature's form of petition for judicial commitment set forth in Welfare & Institutions Code section 6251, reflect the treatment/public safety purpose of civil commitment, and because not all civil commitments for which the form may be used (in particular under Welfare & Institutions Code section 6500) arise out of criminal proceedings.

As the subcommittee may recall, both this subcommittee and the Appellate Advisory Committee grappled with these and related issues before the proposal went out for comment. *With respect to the use of "People of the State of California v." in the caption, staff agrees with the suggestion to modify the language used in the caption to account for appeals that do not have a criminal caption in the trial court and has added "In Re or In the Matter of (Name):" in yellow highlighting to the form.* With respect to how to refer to the confined person, it was previously decided that using the term "Defendant/Respondent," defined in the first instance as "the person subject to the civil commitment order" would most clearly signify that the form is for use in civil commitment proceedings that arise out of underlying criminal proceedings but not necessarily designate that person as a criminal defendant for purposes of the civil commitment appeal. *Given that the subcommittee and committee have already considered and decided this issue, staff does not recommend modifying the form to remove all reference to "Defendant" in response to this comment.*

FDAP also recommended that item 2 be modified to include a checkbox for when the matter has been resolved "after an admission, stipulation, or submission" and that the "other" choice be renumbered as subdivision (d) and made lower case. *Staff agrees that this modification is appropriate and has included it, highlighted in yellow, on the form.* In item 3, FDAP recommended modifying the parenthetical descriptor of Welfare & Institutions Code section

1600. *Staff agrees that this modification is appropriate for the same reason discussed above with respect to the proposed new rule and has included it, highlighted in yellow, on the form.*

Implementation Comments

The only other substantive comments addressed the potential implementation requirements for courts. The Superior Court of San Bernardino County noted that some training on the new rule and form would be required, and it would take approximately six hours to revise the court's internal manuals and forms. The Superior Courts of San Diego and Los Angeles Counties similarly stated that some minimal staff training would be require and internal procedures would need to be revised.

Staff Recommendations

For the reasons discussed above, staff recommends that the subcommittee recommend adoption of the proposal as modified, subject to the subcommittee's decisions on the questions discussed in this memo.

Subcommittee Task

Staff has prepared a draft of the report to the Judicial Council on this proposal, including the proposed text of the new rule and form. This draft reflects staff's draft of potential modifications to the proposal, which are shown in yellow highlighting. The subcommittee's task with respect to this proposal is to:

- Discuss the comments received on the proposal;
- Approve or modify staff suggestions for responding to these comments, as reflected in the draft comment chart and draft report to the Judicial Council; and
- Discuss and resolve the outstanding questions with respect to the proposal, as reflected in this memo and comment chart, including:
    - Should the subcommittee recommend that the committee revise the proposal as it relates to proposed new rule 8.483 in the following ways:
        - expand the scope of proposed new rule 8.483 by modifying subdivision (a)(1) to also include Murphy conservatorships under the LPS Act, or alternatively add an Advisory Committee comment noting that existing rule 8.480 applies to Murphy conservatorship appeals;

- expand the scope of proposed new rule 8.483 by modifying subdivision (a)(1) to also include LPS Act commitments under Welfare & Institutions Code section 5300 et seq.;

- expand the scope of proposed new rule 8.483 by modifying subdivision (a)(1) to also include Mentally Disordered Sex Offender commitments under former Welfare & Institutions Code section 6300 et seq.;

- modify subdivision (a)(1) to specify that the rule governs "appeals from civil commitment orders (including involuntary medication orders) under Penal Code . . ., or alternatively omit the phrase "or motion for involuntary medication" from subdivision (c)(1);

- alter the parenthetical description of Penal Code 1600 et seq. in both subdivision (a)(1) of the rule and item 3 of the form from "(continue outpatient treatment or return to confinement)" to "(outpatient placement and revocation);"

- modify subdivision (b)(1) to require the clerk's transcript to contain "any supporting documents filed along with the petition;"

- modify subdivision (b)(10) to remove the requirement that the certificate of probable cause be included in the clerk's transcript;

- modify subdivision (b)(13) or another portion of the rule to clarify that exhibits submitted to the court at trial or a probable cause hearing are a part of the clerk's transcript;

- expressly include probable cause hearing transcripts in subdivision (c)(8); and/or

- modify rule 8.483(d) to either (1) provide appellate counsel with a window of time to designate additional records under rule 8.122, or (2) modify the language of subdivision (d) to specify that the clerk's transcript can be augmented to include exhibits.

o Should the subcommittee recommend that the committee revise the proposal as it relates to proposed form APP-060 in the following ways:

- modify the form caption to either remove reference to the "People of the State of California v." and make it entirely fillable, or add "/In re or In the Matter of (Name):" or something similar;

- remove all reference to "Defendant" from the form;

- add a checkbox to item 2 for when the matter has been resolved "after an admission, stipulation, or submission;"

- expand the scope of the form so that it is available for use in all types of civil commitment and conservatorship appeals, including LPS Act conservatorship appeals, perhaps by adding checkboxes to item 3 for "Welfare & Institutions Code, § 5300 et seq. (LPS Act commitments)"; "Welfare & Institutions Code, § 5350 et seq. (LPS Act conservatorships)"; and/or "Former Welfare & Institutions Code, § 6300 (MDSO)";

- reduce the scope of the form by removing the checkbox in item 3 for "Welfare & Institutions Code, § 6500 (developmentally disabled persons)," and/or create a separate form for appeals where the petitioner may be one of a number of different persons or entities other than the person subject to the commitment order; and/or

- Rename the form "Notice of Appeal–Civil Commitment / Mental Health Proceedings" to account for any expanded scope.

- Approve or modify staff's draft recommendation to the Appellate Advisory Committee regarding adoption of the proposal as modified, as reflected in the draft report to the Judicial Council.

Attachments:
1. Draft of report to the Judicial Council
2. Draft California Rules of Court, rules 8.320 and 8.483
3. Draft form APP-060
4. Comment chart with draft committee responses
5. Invitation to Comment

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
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REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 23-24, 2019:

Title
Appellate Procedure: Notice of appeal and the record in civil commitment cases

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Rules of Court, rule 8.843; amend rule 8.320; approve form APP-060

Recommended by
Appellate Advisory Committee
Hon. Louis Mauro, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
June 19, 2019

Contact
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Executive Summary

The Appellate Advisory Committee recommends adopting a new California Rule of Court, rule 8.483, describing the required contents of the normal record on appeal for civil commitment cases, as well as a new form *Notice of Appeal–Civil Commitment / Mental Health Proceedings* (APP-060). This proposal is intended to provide needed guidance to litigants and the courts and ensure that appellate records in civil commitment cases are complete.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2020, adopt California Rules of Court, rule 8.483,[1] describing the required contents of the normal record on appeal for civil commitment cases. Rule 8.483 would be included in title 8 (Appellate Rules), division 1 (Rules Relating to the Supreme Court and Courts of Appeal), chapter 6 (Conservatorship Appeals), as amended to expand the scope of chapter 6 to also apply

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

to civil commitment appeals by renaming it "Conservatorship and Civil Commitment Appeals." To address any potential confusion caused by the placement of the new rule for litigants appealing civil commitments stemming from criminal proceedings, the committee also recommends adding an Advisory Committee comment to existing rule 8.320 alerting litigants to the existence of the new rule. The committee also recommends that the council approve a new form *Notice of Appeal–Civil Commitment / Mental Health Proceedings* (APP-060).

The text of new rule 8.483, amended rule 8.320, and the proposed new form are attached at pages X–X.

Relevant Previous Council Action

There is no relevant previous Judicial Council action that might impact the council's consideration of this proposal.

Analysis/Rationale

Rule 8.483

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.[2] However, no rule clearly states what constitutes the normal record on appeal in civil commitment cases. Perhaps because of 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. To eliminate confusion on behalf of litigants and the courts, the committee is proposing a new rule of court governing the normal record on appeal in civil commitment cases.

Proposed new rule 8.483 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. Although 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. [STAFF NOTE: The following is subject to change based on subcommittee/committee discussion.] The proposed rule is limited in scope and would apply to appeals of civil commitment orders stemming from criminal proceedings, but not to other types of commitment orders, such as those made under the Lanterman-Petris-Short (LPS) Act (Welf. & Inst. Code, § 5300 et seq.), which may be subject to other rules. To provide clear guidance to litigants and courts, the proposed rule explicitly states in subdivision (a) the types of proceedings to which it applies. An Advisory Committee Comment to the new rule would state that: "The record on appeal of orders establishing conservatorships under Welfare & Institutions Code section 5350 et

[2] 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 Lanterman-Petris-Short [LPS] Act), and rule 8.388 governs the contents of the record in appeals from orders granting relief by writ of habeas corpus.

seq., including Murphy conservatorships for persons who are gravely disabled as defined in Welfare & Institutions Code section 5008(h)(1)(B), is governed by California Rules of Court, rule 8.480." Other modifications to the language of rule 8.320 have been incorporated into the new rule, including, among others, adding a requirement that diagnostic or psychological reports submitted to the court be included in the record, replacing the term "defendant" with "person subject to the civil commitment order," and omitting in its entirety subdivision (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 and Courts 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 would immediately follow the existing rules in that chapter governing LPS conservatorship appeals. To address any potential confusion for criminal litigants caused by 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.

Form APP-060

The Judicial Council publishes several notice of appeal forms.[3] However, no notice of appeal form specifically applies to civil commitment cases, and it has been suggested that a such a form would help simplify the appeal process for litigants and court staff. The proposed new notice of appeal form for civil commitment proceedings (form APP-060) is based on *Notice of Appeal—Felony (Defendant)* (form CR-120), but modified for use in civil commitment appeals. [STAFF NOTE: The following is subject to change based on subcommittee/committee discussion.] In particular, given that the person subject to the civil commitment order was either a defendant or a respondent in the underlying proceeding, the form uses the term "Defendant/Respondent" throughout and defines the term to mean the "person subject to the civil commitment" 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, consistent with the types of proceedings in proposed new rule 8.483(a)(1), with which the form may be used. The form would be included in the "APP" (Appellate) category.

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

Policy implications
The committee did not identify any significant policy implications relating to the proposal.

Comments
The proposal was circulated for public comment between April 11 and June 10, 2019 as part of the regular spring comment cycle and the committee received nine comments. Four commenters (the appellate division of the Superior Court of San Bernardino County, the Superior Courts of San Bernardino and San Diego Counties, and the Orange County Bar Association) agreed with the proposal. One commenter, the Superior Court of Los Angeles County, agreed with the proposal if modified. Four commenters (individual attorney Rudy Kraft; the Civil, Small Claims and Probate division of the Superior Court of Orange County; the Committee on Appellate Courts of the Litigation Section of the California Lawyers Association (CLA); and the First District Appellate Project (FDAP)) did not indicate a position on the proposal but provided substantive comments. A chart with the full text of the comments received and the committee's responses is attached at pages X–X. The main comments and the committee's responses to these comments are discussed below.

[The following discussion of the comments at pages 4–11 has been copied directly from the memo to the subcommittee and is subject to change based on the subcommittee and Appellate Advisory Committee's discussions]

Rule 8.483
None of the commenters expressed any overall opposition to the adoption of a new rule governing the record on appeal in civil commitment cases, the proposed placement of the new rule within an expanded chapter 6 of title 8, division 1 of the appellate rules, or the proposed advisory committee comment to existing rule 8.320 cross-referencing the new rule. Staff therefore recommends that the proposal, as it relates to proposed new rule 8.483, move forward, subject to the modifications discussed below.

Comments regarding the scope of the rule
The invitation to comment specifically asked whether the scope of the proposed new rule was appropriate, and in particular whether it should be applicable to any other type of civil commitment order such as civil commitments under the Lanterman-Petris-Short (LPS) Act. The Superior Courts of San Bernardino and San Diego Counties, the Orange County Bar Association, and FDAP responded that the scope of the proposed rule is appropriate, and it should be limited to civil commitment appeals stemming from criminal proceedings as drafted. In contrast, individual attorney Rudy Kraft responded that the scope of the rule should be expanded to also cover Murphy conservatorships under Welfare & Institutions Code section 5008(h)(1)(B) because these conservatorships arise out of criminal proceedings in that they follow Penal Code section 1370 competency proceedings. Likewise, the Civil, Small Claims and Probate division of the Superior Court of Orange County stated: "We agree that these changes should also apply to LPS commitments. In Murphy cases, if the case is granted and the commitment ordered, the

Court must make LPS findings in addition to Murphy findings." Though not entirely clear, staff understands this comment to also reflect the opinion that Murphy conservatorships, and perhaps other types of LPS commitments, should be included within the scope of the new rule.

Notably, neither of the commenters who recommended expanding the scope of proposed new rule 8.483 to also include Murphy conservatorships under the LPS Act explained how this would work with existing rule 8.480, which currently governs appeals from orders establishing conservatorships under Welfare & Institutions section 5350, et seq., which presumably includes Murphy conservatorships.[4] Staff believes it could create confusion, and perhaps require a clarifying amendment to existing rule 8.480, if the scope of rule 8.483 were expanded to also include Murphy conservatorships under the LPS Act. Though Murphy conservatorships do follow from criminal proceedings and thus could reasonably be included within the scope of the new rule, they appear to be addressed by existing rule 8.480. Neither commenter explained why it would be preferable for the normal record in Murphy conservatorship appeals to be governed by the proposed new rule, rather than by existing rule 8.480. *Therefore, staff recommends that the scope of proposed rule 8.483 not be expanded to include Murphy conservatorship appeals. However, to avoid confusion, staff recommends adding an advisory committee comment to rule 8.483 stating "The record on appeal of orders establishing conservatorships under Welfare & Institutions Code section 5350 et seq., including Murphy conservatorships for persons who are gravely disabled as defined in Welfare & Institutions Code section 5008(h)(1)(B), is governed by California Rules of Court, rule 8.480."*

Additionally, in discussing the public comments with other Judicial Council staff with mental health expertise, it was also suggested that there may be a "gap" in the rules for appeals of LPS Act commitment orders under Welfare & Institutions Code section 5300 et seq. (and perhaps other types of civil commitments that do not stem from criminal proceedings) which are not covered by rules 8.480 (mental health conservatorships) or 8.483 (criminal-based civil commitments) as drafted. To address this gap, mental health staff suggested expanding the scope of proposed new rule 8.483 to govern "all civil commitments not involving conservatorship;" i.e., modifying subdivision (a)(1) of the proposed new rule to also include appeals of commitment orders under Welfare & Institutions Code section 5300, even though these commitments may have no connection to underlying criminal proceedings. The Invitation to Comment included the question: "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?" Therefore, this suggestion would likely be within the scope of the proposal. However, it appears to go beyond what the subcommittee and committee intended (limiting the rule to criminal-related civil commitments) or previously discussed and agreed upon. Therefore, perhaps it would make more sense to consider as part of a separate proposal whether the record

[4] See Welf. & Inst. Code, § 5350(b)(2) (referencing conservatorships under section 5008(h)(1)(B), commonly referred to as Murphy conservatorships).

on appeal in LPS Act commitment orders under Welfare & Institutions Code section 5300 et seq. should be governed by rule 8.480, 8.483, or something a separate rule? *The subcommittee should discuss how the new rule should address, if at all, the record on appeal in LPS Act civil commitments under Welfare & Institutions Code section 5300 et seq.*

Comments regarding other provisions of the rule

The invitation to comment also specifically asked whether any other types of documentary exhibits should be included in the clerk's transcript. The Superior Court of San Bernardino County and the Orange County Bar Association responded that they do not believe other types of documentary exhibits should be included. The Superior Court of San Diego County noted that allowed exhibits should be "based on existing rule 8.320." Because proposed rule 8.483 was drafted based on rule 8.320, which governs the normal record on appeal in criminal cases (as modified to make the rule appropriate for civil commitment appeals) staff understands this comment to similarly reflect agreement with the treatment of documentary exhibits under the proposed new rule as drafted.

However, Mr. Kraft responded that probable cause transcripts should be explicitly listed in the rule as part of the standard record on appeal. He acknowledged that such transcripts might be encompassed by the inclusion of the "dispositional hearing" transcript in subdivision (c)(8), but stated that it would be clearer to expressly include probable cause transcripts. *The subcommittee should discuss whether to recommend modifying subdivision (c)(8) to also include probable cause hearing transcripts. Staff has included proposed language highlighted in yellow within proposed rule 8.483(c)(8) for the subcommittee's consideration.*

Mr. Kraft also commented that it is unclear whether subdivision (b)(13), which requires the clerk's transcript to include "[a]ny diagnostic or psychological reports submitted to the court," also includes similar exhibits submitted to the court at trial or a probable cause hearing. He noted that exhibits should not lose their status as part of the record by being introduced to evidence. *Staff does not view the existing language of subdivision (b)(13) as unclear and does not recommend modifying this subdivision of the rule based on this comment. However, the subcommittee should consider whether it believes clarification is needed. Staff has included proposed language highlighted in yellow within proposed rule 8.483(b)(13) for the subcommittee's consideration.*

Mr. Kraft's comments also reflected a concern that proposed rule 8.483(d), addressing exhibits,[5] is problematic because it would make it more difficult for appellate counsel to obtain a complete record on appeal. He explained that exhibits in civil commitment cases are often redacted, and an unredacted version is often needed for the appeal. Additionally, according to Mr. Kraft, in civil

[5] The proposed text of rule 8.483(d) is: "Exhibits admitted into 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." This proposed phrasing is identical to existing rule 8.320(e), governing exhibits in connection with criminal appeals.

commitment appeals, appellate counsel is often not appointed until after the record is prepared, so it is not unusual for appellate counsel to petition a Court of Appeal to augment the clerk's transcript to include additional exhibits—both redacted and unredacted—after the record is prepared. He contended that subdivision (d), as drafted, could eliminate the Court of Appeal's authority to grant such requests. If so, the only way for appellate counsel to view these exhibits prior to filing a brief would be at the courthouse, which would be inefficient and expensive. He acknowledged that subdivision (d) references the procedure of rule 8.224 (Transmitting Exhibits), which in turn recognizes the procedures available in rules 8.122 (Clerk's Transcript) and 8.124 (Appendixes) to designate items for inclusion in the clerk's transcript, but contended that this does not help counsel appointed after the record is prepared. He suggested that proposed rule 8.483 be modified to either (1) provide appellate counsel with a window of time to designate additional records under rule 8.122, or (2) modify the language of subdivision (d) to make clear that the clerk's transcript can be augmented to include exhibits. *While Mr. Kraft's explanation is persuasive, staff notes that modifying rule 8.483 as proposed would make the procedure for exhibits different for civil commitment appeals than for criminal appeals under rule 8.320. Staff has not made any changes to the text of the proposed rule based on this comment. However, the subcommittee should consider whether modification of proposed rule 8.483 is appropriate based on Mr. Kraft's concerns relating to exhibits.*

The invitation to comment further asked whether the proposed new rule should limit the record items in subdivisions (b)(15) and (c)(10) to appeals in which the appellant is the person subject to the civil commitment order. All commenters who responded to this question (the Superior Courts of San Bernardino, San Diego, and Los Angeles Counties, and the Orange County Bar Association) agreed that the rule should limit these items to appeals in which the appellant is the person subject to the civil commitment.

Finally, FDAP proposed several additional modifications to proposed new rule 8.483, including:

- modifying subdivision (a)(1) to specify that the rule governs "appeals from civil commitment orders (including involuntary medication orders) under Penal Code . . ." because subdivision (c)(1) requires that the reporter's transcript contain the oral proceedings on a motion for involuntary medication and most commitment schemes to which the rule applies may lead to involuntary medication orders. *While there is a right to appeal an involuntary medication order under People v. Christiana (2010) 190 Cal. App. 4th 1040, 1046, staff questions the advisability of this proposed modification because it appears that involuntary medication orders, and appeals therefrom, may be separate from the civil commitment appeals intended to be encompassed by the new rule. Staff has included this proposed modification, highlighted in yellow, in the draft rule for the subcommittee's consideration, but the subcommittee should consider whether this proposed modification would expand the scope of the rule beyond what is intended. Assuming the subcommittee does not intend to include appeals of involuntary medication*

orders within the scope of rule 8.483, the subcommittee should consider omitting the phrase "or motion for involuntary medication" from subdivision (c)(1) to make this clear.

- altering the parenthetical description of Penal Code 1600 et seq. in both subdivision (a)(1) of the rule and item 3 of the form from "(continue outpatient treatment or return to confinement)" to "(outpatient placement and revocation)" to more accurately describe the scope of that statutory scheme. *Staff agrees that this proposed modification would provide clarity and has included it in the draft rule, highlighted in yellow, for the subcommittee's consideration.*

- modifying subdivision (b)(1) to require the clerk's transcript to contain, not only the petition, but also "any supporting documents filed along with the petition." *Staff agrees that this proposed modification would provide clarity and should likely be implemented. Staff has included it, highlighted in yellow, within the proposed rule for the subcommittee's consideration. However, staff notes that this modification would make subdivision (b)(1) different from existing rule 8.480(b)(1) governing the record in LPS conservatorship appeals. Though proposed new rule 8.483 was not drafted based on rule 8.480, given the proximity and related subject matter of the rules to the extent that they can be made similar it would likely reduce confusion for litigants.*[6]

- modifying subdivision (b)(10) to remove the requirement that the certificate of probable cause be included in the clerk's transcript, because the certificate of probable cause requirement of Penal Code section 1237.5 does not apply to civil commitment proceedings, even those stemming from criminal proceedings. *However, even if a certificate of probable cause is not required for civil commitment, it seems like if one exists it could be relevant to an appeal. The subcommittee should consider the advisability of this proposed modification based on its practical experience. Staff has not made this modification to the proposed new rule at this time.*

The subcommittee should discuss whether to modify the proposal in light of each of these comments. Staff has included proposed language reflecting these suggestions within proposed rule 8.483, highlighted in yellow for the subcommittee's consideration.

[6] FDAP notes that, although beyond the scope of this proposal, it would also be appropriate to amend existing rule 8.480(b)(1) (governing the normal record in LPS conservatorship appeals) in this way. In the future, consideration may also be given to whether rule 8.480(b)(1) should be similarly amended to also include "any supporting documents filed along with the petition."

Form APP-060

None of the commenters expressed any general opposition to the adoption of a new form notice of appeal for civil commitment cases, or the proposed "APP" designation assigned to it. Staff therefore recommends that the proposal, as it relates to proposed new form APP-060, move forward, subject to the potential modifications discussed below.

Comments regarding the scope of the form

The invitation to comment specifically asked whether the scope of proposed form APP-060 is appropriate, or whether it should also be available for other civil commitment appeals such as those under the LPS Act. The Superior Courts of San Bernardino and San Diego Counties and the Orange County Bar Association responded that the scope of the form is appropriate. The California Lawyers Association, Committee on Appellate Courts, Litigation Section, similarly agreed, but noted that the proposed form is not, on its face, limited for use only in civil commitment appeals stemming from criminal proceedings and expressed concern that it might be mistakenly used for civil commitment orders stemming from non-criminal proceedings. *Given that item 3 contains a checklist of code sections under which the person subject to the civil commitment is being held, staff believes this concern that the form will be used for an unauthorized purpose may be unfounded and does not recommend modification based on this comment. However, it is also possible that the inclusion of the checkbox for "other" will inadvertently invite use of the form for appeals in similar proceedings, especially in the absence of an analogous form for use in those proceedings. The subcommittee should consider whether this is a reason to expand the scope of the form to include other types of LPS Act commitment and/or conservatorship appeals, as discussed below.*

Two commenters did recommend altering the scope of form APP-060. The Superior Court of Los Angeles County recommended that the form also be made available for use in appeals from Mentally Disordered Sex Offender (MDSO) commitments under former Welfare & Institutions Code section 6300 because, although that statute has been repealed, appeals of extension orders are still being filed. *Staff believes this suggestion makes sense, and recommends adding a checkbox to item 3 for selection where the person subject to the civil commitment is being held subject to "Former Welfare & Institutions Code, § 6300 (MDSO)" similar to the checkbox included for this purpose in the Petition for Writ of Habeas Corpus—Penal Commitment (form HC-003). This potential modification is highlighted in yellow on the form, and the subcommittee should discuss whether is agrees with this modification. Though the commenter directed this comment to the proposed form and not the proposed new rule, the subcommittee should similarly consider whether MDSO commitments under former Welfare & Institutions Code section 6300 should also be listed in subdivision (a)(1) as proceedings to which rule 8.483 applies.*

Additionally, the Superior Court of Los Angeles County recommended that the form *not* be available for use in appeals of civil commitment orders made under Welfare & Institutions Code section 6500 (developmentally disabled persons)—and instead that a separate form be created for

these appeals, as well as petitions under *In re Hop* (1981) 29 Cal.3d 82—where the petitioner may be one of a number of different persons or entities other than the person subject to the commitment order. *However, as discussed below, staff notes that rather than omitting this category of civil commitments from the scope of the form and creating a second new form, another approach would be to expand the scope of the form to encompass these and other types of commitment appeals that do not necessarily stem from criminal proceedings.*

Finally, while FDAP commented that proposed new rule 8.483 should exclude LPS appeals because they are already covered by existing rule 8.480, it contended that the scope of proposed new form APP-060 should be expanded so that it is available for use both in civil commitment appeals stemming from criminal proceedings as well as in LPS Act appeals. FDAP stated that there is no reason that a single form cannot be used for appeals under both rules, and noted that a single "unofficial" form notice of appeal is already being used successfully for both types of commitment appeals in Sonoma County. *Staff agrees that nothing appears to prohibit expanding the scope of form APP-060 in this way, and that a single form notice of appeal available for LPS Act proceedings (including commitments under Welfare & Institutions Code section 5300 et seq. and conservatorships under 5350 et seq.) could be useful. However, the subcommittee and committee have previously discussed the scope of the rule and form and decided that they should be limited in scope to civil commitments stemming from criminal proceedings. Moreover, the subcommittee should consider whether it would cause confusion for this proposal to include a new rule 8.483 governing the record on appeal that is inapplicable to LPS and other civil commitments that do not stem from criminal matters, but a Notice of Appeal form that is available for a far broader range of proceedings.*

The subcommittee should discuss what, if any, modifications to item 3 of the form are appropriate based on the foregoing comments, such as (1) adding a checkbox for "Former Welfare & Institutions Code, § 6300 et seq. (MDSO)"; (2) removing the checkbox for "Welfare & Institutions Code, § 6500 et seq. (developmentally disabled persons)"; (3) adding a checkbox for "Welfare & Institutions Code, § 5350 et seq. (LPS Act conservatorships)"; (4) adding a checkbox for "Welfare & Institutions Code, § 5300 et seq. (LPS Act commitments);" and/or (5) renaming the form to reference appeals of other types of mental health proceedings (such as "Notice of Appeal–Civil Commitment / Mental Health Proceedings") if the subcommittee decides to expand the scope of the form.

Other comments on the form

Several commenters addressed other aspects of the form. With respect to the form caption, the Civil, Small Claims and Probate division of the Superior Court of Orange County recommended that the caption, currently pre-filled with "People of the State of California v.," be left fillable because some cases (presumably including Murphy conservatorships under the LPS Act, which the court believes should be included within the scope of the new rule and form) may be initiated by a public guardian or hospital. Likewise, FDAP recommended that the caption be modified to

"People of the State of California v. / In re" to account for civil commitment proceedings similarly captioned in the trial court, particularly if the scope of the form is expanded to also encompass LPS Act appeals as FDAP recommends. The Superior Court of Los Angeles County recommended that the form refer to "respondent" rather than "defendant/respondent" throughout, to make it consistent with trial court style and the Legislature's form of petition for judicial commitment set forth in Welfare & Institutions Code section 6251, reflect the treatment/public safety purpose of civil commitment, and because not all civil commitments for which the form may be used (in particular under Welfare & Institutions Code section 6500) arise out of criminal proceedings.

As the subcommittee may recall, both this subcommittee and the Appellate Advisory Committee grappled with these and related issues before the proposal went out for comment. *With respect to the use of "People of the State of California v." in the caption, staff agrees that the language of the caption should be expanded to account for appeals that do not have a criminal caption in the trial court and has added "/In re or In the Matter of (Name):" highlighted in yellow to the form.* With respect to how to refer to the confined person, it was previously decided that using the term "Defendant/Respondent," defined in the first instance as "the person subject to the civil commitment order" would most clearly signify that the form is for use in civil commitment proceedings that arise out of underlying criminal proceedings but not necessarily designate that person as a criminal defendant for purposes of the civil commitment appeal. *As the subcommittee and committee have already considered and decided this issue, staff does not recommend modifying the form to remove all reference to "Defendant" in response to this comment.*

FDAP also recommended that item 2 be modified to include a checkbox for when the matter has been resolved "after an admission, stipulation, or submission" and that the "other" choice be renumbered as subdivision (d) and made lower case. *Staff agrees that this modification is appropriate and has included it, highlighted in yellow, on the form.* In item 3, FDAP recommended modifying the parenthetical descriptor of Welfare & Institutions Code section 1600. *Staff agrees that this modification is appropriate for the same reason discussed above with respect to the proposed new rule and has included it, highlighted in yellow, on the form.*

Alternatives considered

Rule 8.483

The committee considered making no changes to the rules but concluded that the proposed new rule would provide clarity to litigants, court staff, and judicial officers. 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, the committee decided that basing the new rule on the existing rule governing criminal appeals would be preferable.

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. In subdivision (a), the committee included a paragraph addressing application of the rule to prevent confusion as to what type of proceedings the rule applies. [STAFF NOTE: The following is subject to change based on subcommittee/committee discussion.] The committee further considered whether to include civil commitments under the LPS Act within the scope of the rule, but because civil commitments under the 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 expanding the scope of chapter 6 to include both conservatorship and civil commitment appeals, and placing the new rule therein, would be clearest. 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 3 (Criminal Appeals), article 2 (Record on Appeal), directly after the rule governing the normal record in criminal appeals. Although 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 raise 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 to add a new rule under this new chapter. Doing so would be consistent with the overall structure of division 1, which contains separate chapters for various types of appeals, but it would require the creation of a new chapter containing only a single rule, which is discouraged.

Notice of Appeal—Civil Commitment / Mental Health Proceedings (form APP-060)

The committee considered not developing a new notice of appeal form for civil commitment orders, and instead expanding the scope of 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 forms, the committee concluded that creating a new form would be clearer than using any of the preexisting notices of appeal.

The committee considered alternative names for the new form but determined that *Notice of Appeal—Civil Commitment / Mental Health Proceedings* is the clearest name. With respect to how to reference the person subject to the civil commitment order being appealed most clearly and succinctly throughout the form, the committee considered whether to use the term "person subject to the civil commitment order," "Defendant/Respondent," "Petitioner/Respondent," or some variation thereof. Because the included civil commitment proceedings are not criminal but

arise out of underlying criminal proceedings, the committee proposes using the term "Defendant/Respondent," defined as "the person subject to the civil commitment order."

Additionally, consideration was given to the scope of a new form, and whether it should include other types of commitments, such as commitments under the LPS Act. Likewise, the committee considered whether the new form might be used for appeals of other types of orders relating to civil commitment and conservatorship proceedings, [STAFF NOTE: The following is subject to change based on subcommittee/committee discussion] but concluded that such use 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 changing the name of the "GC" (Guardianships and Conservatorships) category to also include civil commitments and using the "GC" moniker for the new form. However, because there are no other appellate forms in this category, inclusion of a notice of appeal specific to civil commitments could cause confusion for self-represented litigants in guardianship and conservatorship proceedings. Finally, the committee considered using the "MC" (Miscellaneous) category designation, given the unique subject matter of civil commitment proceedings, but concluded that such a designation could also make it difficult for litigants to locate the new form.

Fiscal and Operational Impacts

Some minimal fiscal and/or operational impacts are expected. In their comments, the Superior Courts of San Bernardino, San Diego, and Los Angeles Counties addressed the potential implementation requirements for courts. The Superior Court of San Bernardino County noted that some training on the new rule and form would be required, and it would take approximately six hours to revise the court's internal manuals and forms. The Superior Courts of San Diego and Los Angeles Counties similarly stated that some minimal staff training would be require and internal procedures would need to be revised. It appears from these comments that any potential implementation requirements would be relatively minimal and do not present a barrier to adoption of the proposal.

Attachments and Links

1. Cal. Rules of Court, rules 8.320 and 8.483, at pages X–X
2. Form APP-060, at page X
3. Chart of comments, at pages X–X

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

Rule 8.320. Normal record; exhibits

(a)–(f) * * *

Advisory Committee Comment

Rules 8.45–8.46 address the appropriate handling of sealed and confidential records that must be included in the record on appeal. Examples of confidential records include Penal Code section 1203.03 diagnostic reports, records closed to inspection by court order under *People v. Marsden* (1970) 2 Cal.3d 118 or *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, in-camera proceedings on a confidential informant, and defense expert funding requests (Pen. Code, § 987.9; *Keenan v. Superior Court* (1982) 31 Cal.3d 424, 430).

Subdivision (d)(1)(E). This rule identifies the minutes that must be included in the record. The trial court clerk may include additional minutes beyond those identified in this rule if that would be more cost-effective.

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 (including involuntary medication orders)[1] 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~~outpatient placement and revocation), and 2962 et seq. (mentally disordered offenders), as well as Welfare & Institutions Code sections 1800 et seq. (extended detention of

[1] STAFF NOTE: Alternatively, the phrase "or motion for involuntary medication" should likely be removed from subdivision (c)(1).

dangerous persons), 6500 et seq. (developmentally disabled persons), and 6600 et seq. (sexually violent predators).[2]

(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 and any supporting documents filed along with 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;

[2] STAFF NOTE: In connection with subdivision (a)(1), the subcommittee should also consider whether to add: (1) Murphy conservatorship appeals under the LPS Act (*not* recommended by staff), or alternatively add an Advisory Committee comment noting that existing rule 8.480 applies to Murphy conservatorship appeals (recommended by staff and added below); (2) LPS Act commitments under Welfare & Institutions Code section 5300 et seq. (not recommended by staff since the subcommittee previously agreed that the scope of the rule should be limited and not apply to LPS Act commitments, but this may leave a gap in the rules); and (3) MDSO commitments under former Welfare & Institutions Code section 6300 et seq. (recommended by staff).

(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 diagnostic or psychological reports submitted to the court, including as an exhibit at trial or a probable cause hearing;

(14) Any written waiver of the right to a jury trial or the right to be present; and

(15) If the appellant is the person subject to the civil commitment order:

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

(B) Any document admitted in evidence to prove a juvenile adjudication, criminal conviction, or prison term.

(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, 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, including any probable cause hearing;

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

(10) 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.[3]

(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.

Advisory Committee Comment

The record on appeal of orders establishing conservatorships under Welfare & Institutions Code section 5350 et seq., including Murphy conservatorships for persons who are gravely disabled as defined in Welfare & Institutions Code section 5008(h)(1)(B), is governed by California Rules of Court, rule 8.480.

[3] STAFF NOTE: The subcommittee should also consider whether subdivision (d) should be modified to either provide a window of time in which to designate additional records, or clarify that the clerk's transcript may be augmented to include exhibits.

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	*FOR COURT USE ONLY* **DRAFT** **6-17-2019** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF	
PEOPLE OF THE STATE OF CALIFORNIA vs./**In re [or In the Matter of (Name)]:** Defendant/Respondent:	
NOTICE OF APPEAL—CIVIL COMMITMENT/ MENTAL HEALTH PROCEEDINGS	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. Defendant/Respondent (the person subject to the civil commitment) appeals from a judgment rendered or an order of commitment or conservatorship made by the superior court.
   NAME of Defendant/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. ☐ after an admission, stipulation, or submission.
   d. ☐ other (*specify*):
3. Defendant/Respondent is currently being held under:
   ☐ 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)
   ☐ Welfare & Institutions Code, § 1800 et seq. (extended detention of dangerous persons)
   ☐ Welfare & Institutions Code, § 5300 et. seq. (LPS Act commitments)
   ☐ Welfare & Institutions Code, § 5350 et. seq. (LPS Act conservatorships)
   ☐ former Welfare & Institutions Code, § 6300 et. seq. (MDSO)
   ☐ Welfare & Institutions Code, § 6500 et seq. (developmentally disabled persons)
   ☐ Welfare & Institutions Code, § 6600 et seq. (sexually violent predators)
   ☐ Other *(specify):* _____
4. ☐ Defendant/Respondent requests that the court appoint an attorney for this appeal. Defendant/Respondent ☐ was ☐ was not represented by an appointed attorney in the superior court.
5. Defendant/Respondent's mailing address is ☐ same as in ATTORNEY OR PARTY WITHOUT ATTORNEY box above.
   ☐ as follows:

Date:

_____ ▶ _____

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

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Appellate Procedure: Notice of appeal and the record in civil commitment cases (adopt rule 8.483, amend rule 8.320, approve form APP-060)

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

	Commentator	Position	Comment	Committee Response
1.	Committee on Appellate Courts of the Litigation Section of the California Lawyers Association Sacramento, CA	NI	The Committee on Appellate Courts supports this proposal. The Committee has some concerns that the proposed form, APP-060 does not facially limit its use for appeals of civil commitment orders stemming from criminal proceedings, but not other types of commitment orders. As such, there is some concern that litigants subject to other civil commitment orders may mistakenly use APP-060 to appeal civil commitment orders stemming from non-criminal proceedings.	The committee notes the commenter's support for the proposal, and has considered the stated concern that the form might be used for an unauthorized purpose. However, given that item 3 contains a checklist of code sections under which the person subject to the civil commitment is being held, the committee believes that the form as drafted makes clear that it is for use in those specified proceedings. **[Does the subcommittee agree with this approach / response? Staff notes that it is possible that the inclusion of the checkbox for "other" will inadvertently invite use of the form for appeals in similar types of proceedings, especially in the absence of an analogous form for use in those proceedings. As discussed elsewhere, the subcommittee should consider whether this is a reason to expand the scope of the form to include other types of LPS Act commitment and/or conservatorship appeals.]**
2.	First District Appellate Project By Jonathan Soglin, Executive Director Oakland, CA	AM	A. Proposed New Rule 8.483 FDAP agrees with the Committee's proposed addition of new rule 8.483 governing the contents of the normal record on appeal in civil commitment cases. The contents of appellate records in the types of civil commitment cases to which the new rule would apply are sufficiently different from the contents of records in LPS Act appeals such that the creation of a separate rule (in additional to rule 8.480) seems appropriate. The location of the new rule appears appropriate as well. Therefore,	The committee notes the commenter's support for this portion of the proposal; no response is required.

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	Commentator	Position	Comment	Committee Response
			FDAP's comments are limited to the provisions of the proposed new rule itself. **Subdivision (a)(1)**, which specifies the types of proceedings to which the proposed new rule would apply, does not include any reference to involuntary medication proceedings, though subdivision (c)(1) indicates the rule is intended to apply to such proceedings. Therefore, FDAP recommends that the opening clause of proposed subdivision (a)(1) be amended to add the following bolded language: "Except as otherwise provided in this rule, rules 8.300-8.368 and 8.508 govern appeals from civil commitment orders **(including involuntary medication orders)** under Penal Code…." Nearly all of the civil commitment schemes to which the proposed new rule applies may lead to involuntary medication orders. (See, e.g., Pen. Code, § 1370, subd. (a)(2)(b) [incompetent to stand trial]; *In re Qawi* (2004) 32 Cal.4th 1 [mentally disordered offenders]; *In re Calhoun* (2004) 121 Cal.App.4th 1315 [sexually violent predators]; *In re Greenshields* (2014) 227 Cal.App.4th 1284 [not guilty by reason of insanity].) **Subdivision (a)(1)** includes orders issued under Penal Code section "1600 et seq. (continue outpatient treatment or return to confinement)" as one of the types of orders to which the new rule would apply. FDAP recommends altering the parenthetical description of this statutory framework to read: "(outpatient placement and	The committee appreciates this suggestion. While there is a right to appeal an involuntary medication order under *People v. Christiana* (2010) 190 Cal. App. 4th 1040, 1046, involuntary medication orders, and appeals therefrom, may be separate from the civil commitment appeals encompassed by the new rule, and this proposed modification would thus expand the scope of the rule beyond what is intended. **[Does the subcommittee agree with this approach / response? To make this clearer, the subcommittee may wish to consider omitting the phrase "or motion for involuntary medication" from subdivision (c)(1) to minimize confusion, if the intention is not to include appeals of involuntary medication proceedings within the scope of the rule.]** The committee appreciates this suggestion and has modified the proposal accordingly. **[Does the**

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	Commentator	Position	Comment	Committee Response
			revocation)." As currently proposed, the description does not account for appeals taken from the denial of conditional release into a supervised outpatient program (see, e.g., *People v. Sword* (1994) 29 Cal.App.4th 614); instead, it only describes continued placement and termination of outpatient status. The shorter language FDAP provides would be more comprehensive. **Subdivision (b)(1)** requires inclusion of the "The petition" in the clerk's transcript as a normal record item. FDAP recommends changing this language to "The petition and any supporting documents filed along with the petition," as, in our experience, appellate records in civil commitment appeals sometimes include only the petition but not the supporting affidavits, declarations, reports, or other documents attached to the petition. (See, e.g., Pen. Code, § 2970, subd. (b) ["The petition shall be accompanied by affidavits specifying that treatment, while the prisoner was released from prison on parole, has been continuously provided by the State Department of State Hospitals either in a state hospital or in an outpatient program"]; Pen. Code, 1026.5, subd. (b)(2) ["The petition shall state the reasons for the extended commitment, with accompanying affidavits specifying the factual basis for believing that the person meets each of the requirements set forth in paragraph (1)"].)[1]	**subcommittee agree with this approach / response?]** The committee appreciates this suggestion and has modified the proposal accordingly. **[Does the subcommittee agree with this approach / response? Note that this modification would make rule 8.483(b)(1) different from rule 8.480(b)(1).]**

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	Commentator	Position	Comment	Committee Response
			1 Although not contemplated by the invitation to comment, FDAP also recommends a similar amendment to rule 8.480(b)(1), which identifies normal record items in LPS Act appeals, such that the language, which currently reads "The petition" as well, be amended to read "The petition and any supporting documents filed along with the petition." (See, e.g., Welf. & Inst. Code, § 5361 ["The petition must include the opinion of two physicians or licensed psychologists"].) **Subdivision (b)(10)** mandates that the clerk's transcript include "The notice of appeal and any certificate of probable cause filed under rule 8.304(b)." Because the certificate of probable cause requirement set forth in Penal Code section 1237.5 applies only to appeals taken from a judgment of conviction and does not apply to civil commitment appeals – even where the commitment follows criminal proceedings that previously involved a guilty or no contest plea – FDAP recommends omitting any reference to certificates of probable cause, such that the subdivision would simply read: "The notice of appeal." (See, e.g., *People v. Sanders* (2012) 203 Cal.App.4th 839, 847 [where the Court of Appeal recognized that the certificate of probable cause requirement "is not technically applicable in SVPA proceedings"]; *People v. Wagoner* (1979) 89 Cal.App.3d 605, 610 ["the Legislature could not have intended	The committee appreciates this suggestion, but believes that a certificate of probable cause, if one exists, may be relevant to an appeal and an appropriate part of the record. **[Does the subcommittee agree with this approach / response?]**

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	Commentator	Position	Comment	Committee Response
			that [Penal Code] section 1237.5 would apply to appeals from convictions following an insanity plea"]; *People v. Kraus* (1975) 47 Cal.App.3d 568, 573 [no certificate of probable cause required on appeal from the denial of a post-judgment motion because "[t]he only statutory requirement for a certificate of probable cause is in Penal Code section 1237.5 which refers only to appeals 'from a judgment of conviction'"]; *People v. Arriaga* (2014) 58 Cal.4th 950, 959 [same].) **B. Proposed Notice of Appeal – Civil Commitment (form APP-060)** **1. Comments on the Omission of LPS Act Conservatorships** The Committee's proposed notice of appeal form would not apply to LPS Act appeals because such an approach, according to the Committee, 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." (Invitation to Comment at page 4.) While it is true, as the Committee points out, that the proposed new rule of court for normal records in civil commitment appeals (8.483) solely applies to non-LPS Act civil commitments, that is only the case because there already is a rule of court for LPS Act appeals (8.480). And there is no reason why a single notice of appeal	The committee appreciates this comment, which it interprets as a suggestion to expand the scope of the form for use in all types of civil commitment and LPS Act appeals. While the commenter is correct that nothing appears to prohibit expanding the scope of the form in this way, and that a single form notice of appeal available for all civil

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			cannot be used for appeals falling under different rules of court. Significantly, the LPS Act serves as the state's "general civil commitment statute." (*In re Smith* (2008) 42 Cal.4th 1251, 1267.) The proposed new "Civil Commitment" notice of appeal should thus apply to LPS Act appeals as well.[2] [2] In deciding not to extend proposed rule 8.483 to LPS Act appeals, the committee pointed out, as one justification, that "civil commitments under the LPS Act do not necessarily stem from criminal proceedings[.]" (Invitation to Comment at page 3.) FDAP notes that civil commitment proceedings conducted under Welfare and Institutions Code section 6500 et seq. do not necessarily stem from criminal proceedings either, but such proceedings have been included in the proposed rule 8.483 and the proposed civil commitment notice of appeal form. Accordingly, LPS Act appeals would not be out of place alongside appeals from proceedings conducted under Welfare and Institutions Code section 6500 et seq. Omitting LPS Act appeals from the proposed form would create confusion for litigants and courts. Excluding LPS Act conservatorships from the proposed civil commitment notice of appeal form will leave such cases in limbo, as	commitments could be useful, the committee believes that it could cause confusion for this proposal to include a new rule 8.483 governing the record on appeal that is inapplicable to LPS and other civil commitments that do not stem from criminal matters, but a Notice of Appeal form that is available for use in such proceedings. **[Does the subcommittee agree with this approach / response? Or does the subcommittee think that it would be more efficient to expand the form to be used for all types of civil commitment and LPS Act appeals?]**

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			litigants are often confused as to whether they should be using the general civil form (APP-002) or the felony criminal appeal form (CR-120) for filing LPS Act appeals, especially because neither already existing form on its face appears to be appropriate for LPS Act appeals. Public defenders in the First Appellate District often contact FDAP asking which form to use to appeal from LPS Act conservatorships. Since August 2017, the Sonoma County Public Defender has been successfully using an unofficial notice of appeal form developed by that office and FDAP for appeals not just from civil commitments more closely related to criminal proceedings but also from LPS Act conservatorships. FDAP is aware of no confusion among litigants and courts attributable to the use of this form. In fact, FDAP has helped trial attorneys and conservatees file LPS Act appeals using the unofficial form and, anecdotally, is aware of litigants and courts who have used the form being pleased (and relieved) to know how to file an appeal from LPS Act conservatorships. **2. Comments on Contents of the Proposed Form Itself** **Sample Caption:** In the third box down from the top left, the proposed form provides a sample caption that begins with "PEOPLE OF THE STATE OF CALIFORNIA vs." Although it is generally the district attorney that initiates the commitment proceedings covered by the	

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			proposed notice of appeal form, not all the listed civil commitment proceedings are commonly captioned in this manner. For examples, appellate cases involving juvenile extended detention petitions (Welf. & Inst. Code, § 1800 et seq.) are usually captioned "In re" and not "People v." (See, e.g, *In re Lemanuel C.* (2007) 41 Cal.4th 33; *In re Howard N.* (2005) 35 Cal.4th 117.) Moreover, should the Judicial Council adopt FDAP's above proposal for the civil commitment notice of appeal form to include LPS Act conservatorships, a caption beginning with "People v." would be particularly inappropriate. Thus, FDAP recommends that the case caption language be amended to read: "PEOPLE OF THE STATE OF CALIFORNIA vs./IN RE." **Section 2:** The proposed form includes three checkboxes for indicating the manner in which the case was resolved in the trial court: "after a jury or court trial," "after a contested hearing," and "Other." First, FDAP notes that only one of the three options begins with a capital letter. For consistency, either "Other" should begin with a lower case "o" or the word "after" alongside the other two checkboxes should begin with a capital "A." More substantively, FDAP recommends adding a fourth checkbox for when the matter has been resolved by admission, stipulation, or submission, which commonly occurs in civil commitment cases, particularly in cases involving competency commitments and LPS Act conservatorships. (See, e.g., Proposed	The committee appreciates this suggestion and has modified the proposal to expand the caption of the form to reflect its use in a broader range of proceedings. **[Does the subcommittee agree with this approach / response?]** The committee appreciates the commenter pointing out this typographical issue and has modified the proposal accordingly.

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			Rule 8.483(b)(1) [identifying as a normal record item to be included in the reporter's transcript "The oral proceedings on the entry of any admission or submission to the commitment petition or motion for involuntary medication"].) FDAP recommends the addition of a checkbox – 2.c. – that reads "after an admission, stipulation, or submission." The "Other" checkbox would then be renumbered as 2.d.	The committee appreciates this suggestion and has modified the proposal accordingly. **[Does the subcommittee agree with this approach / response?]**
			Section 3: The proposed notice of appeal form includes orders issued under Penal Code section "1600 et seq. (return to confinement)." FDAP recommends altering the parenthetical description of this statutory framework to read: "(outpatient placement and revocation)." As currently proposed, the description does not account for appeals taken from the denial of conditional release into a supervised outpatient program (see, e.g., *People v. Sword*, *supra*, 29 Cal.App.4th 614); instead, it only describes termination of outpatient status.	The committee appreciates this suggestion and has modified the proposal accordingly. **[Does the subcommittee agree with this approach / response?]**
			Lastly, should the Judicial Council adopt FDAP's above proposal for the civil commitment notice of appeal form to include LPS Act conservatorships, section 3 should be amended to add a checkbox for "Welfare and Institutions Code, § 5350 et seq. (LPS Act conservatorships)."	The committee appreciates this suggestion but does not believe that the scope of the form should be expanded to also include LPS conservatorship appeals. **[Does the subcommittee agree with this approach / response? If the subcommittee decides that the scope of the form should be expanded to include other types of civil commitment and conservatorship appeals, then appeals from section 5300 and 5350 conservatorships should likely be included, and**

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	Commentator	Position	Comment	Committee Response
				the name of the form would need to be changed.]
3.	Rudy Kraft Attorney San Luis Obispo, CA	NI	This is a comment on Rule 8.483, the proposed rule relating to appellate records in civil commitment cases. I am a full time appellate attorney. Currently, my practice is 99% civil commitment and mental health appeals. I handle appeals in all of the various courts of appeal in the state.	

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			As proposed, the rule does not cover Murphy Conservatorships as found in Welfare and Institutions Code section 5008(h)(1)(B). I recognize that this is the Lanterman-Petris-Short section of the law which was deliberately excluded because those types of commitments do not arise out of the criminal justice system, but Murphy Conservatorships do, in fact, arise out of the criminal justice system. In fact, they follow upon Penal Code section 1370 competency procedures which are specifically included in the new rules. All of the specific reasons that the proposed rule has for including the type of proceedings that are included also apply to Murphy Conservatorships. The rule should be changed to include coverage of Murphy Conservatorships.	The committee appreciates this suggestion, but believes it could cause confusion to expand the scope of the rule to govern the normal record in Murphy conservatorship appeals in light of existing rule 8.480. However, the committee has modified the proposal to add an Advisory Committee comment to proposed new rule 8.483 to clarify that rule 8.480 governs Murphy conservatorship appeals. **[Does the subcommittee agree with this approach / response? Would it be clearer to either expressly exclude or include Murphy conservatorship appeals from rule 8.480 or 8.483?]**
			Sexually violent predators proceedings have probable cause hearings. Those hearings can be an important part of the appellate record and should be part of the standard record on appeal. There are appellate issues which directly arise out of those part of the proceedings. Depending on the case, the appeal might arise directly from the ruling at the probable cause hearing. Admittedly, in those cases that hearing might be viewed as the "dispositional hearing" but it would be clearer to just state that probable cause transcripts are part of the standard record. Under current law where criminal rules are used, they are a standard part of the record on appeal. There is no reason to change this.	The committee appreciates this suggestion and has modified the language of subdivision (c)(8) to reference transcripts from probable cause hearings. **[Does the subcommittee agree with this approach / response?]**

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			The proposed rule also includes "Any diagnostic or psychological reports submitted to the court" as being a standard part of the record on appeal which is good. However, it is not entirely clear if a diagnostic or psychological report which is submitted to the court as an exhibit at trial or at the probable cause hearing is included. Those exhibits should not lose their status as a part of the standard record on appeal if they are introduced into evidence. In fact, the provisions of the proposed rule governing exhibits is problematic because it will make it more difficult for appellate counsel to obtain a complete record on appeal. Under current law—especially following the Supreme Court's ruling in People v. Sanchez (2006) 63 Cal.4th 665—it is not uncommon for a significant number of exhibits to be introduced into evidence in civil commitment cases. These exhibits are often critical to the appellate process and the evaluation of potential issues. Often these exhibits are redacted based upon disputed rulings by the trial court. Both the redacted and unredacted versions of these exhibits are necessary for the appellate attorney to evaluate the correctness of the trial court's rulings. Some exhibits which have not been redacted are also critical to the appellate process. Currently, some courts of appeals will grant motions to augment the records to included these exhibits (both redacted and unredacted) in the clerk's transcript while others	The committee appreciates this suggestion but does not believe that the rule, including subdivision (b)(13) relating to "diagnostic or psychological reports" is unclear as drafted. The portion of the comment relating to exhibits more generally is addressed below. **[Does the subcommittee agree with this approach / response, and more generally with the draft rule's treatment of exhibits?]**

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	Commentator	Position	Comment	Committee Response
			will not. Proposed Rule 8.483(d), may well eliminate the courts of appeal's authority to grant such requests. This means that before filing the briefs, the only way for appellate counsel to view the exhibits is by traveling to the trial court. This problematic because appointed counsel in civil commitment cases does not necessarily live anywhere near the trial court. As already noted, I represent civil commitment defendants from all over the state. Depending on the county it can cost the state well in excess of $1000 for me to travel to a courthouse to look at documents. On the other hand, if the documents are included in the record, the cost is just the photocopying time and expense for the superior court clerk's office. This might be a necessary problem if such exhibits are not an appropriate part of the record for some actual reason but they are a part of the record. Rule 8.483(d) makes that clear, but states that exhibits must be transmitted to the court of appeal pursuant to rule 8.224. However, that rule is not any real help both because it only kicks in after the respondent's brief has been filed and because appellate attorneys are often not located anywhere near the appellate court house. Rule 8.224(a)(1) does recognize the availability of the procedures in Rules 8.122 and 8.124 but those procedures are drafted with normal civil cases in mind where the trial attorney is likely to be the appellate attorney or at least have some involvement in the appeal. That is not now	

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	Commentator	Position	Comment	Committee Response
			things work in the civil commitment arena. I am normally not appointed to represent my clients until after the record is prepared. Even in those cases where I am appointed before the record is complete, I know nothing about the case until I get the record on appeal. Under Rule 8.122(a)(3) all exhibits can be included in the clerk's transcript if they are specifically identified by a party in its notice of designation of the record. This procedure may be adequate in the normal civil case but it is of no use in a civil commitment case where by the time appellate counsel is appointed the Rule 8.122 record designation process is no available. (Rule 8.124 doesn't help because appointed appellate counsel will not have copies of the exhibits and even if he or she obtains them from trial counsel, he or she would not be in position to affirmatively assert that the copies are correct and complete.) Therefore, I suggest that the proposed rule should address this problem. It could provide appellate counsel with a window of time to designate additional record under Rule 8.122. In the alternative, Rule 8.493(d) could be rewritten to make it clear that the clerk's transcript can be augmented to include exhibits rather than prohibiting such an augmentation.	The committee understands the concerns described above, and has considered these alternative suggestions. However, subdivision (d) as drafted mirrors rule 8.320(e), and the committee believes it would be anomalous to have a different procedure for exhibits in civil commitment cases than in criminal cases. The committee believes that the rule as drafted will enable appellate counsel to obtain a complete record on appeal in civil commitment cases. **[Does the subcommittee agree with this approach / response, or is modification needed to**

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	Commentator	Position	Comment	Committee Response
				appropriately address the stated concerns, including about augmenting the record to include redacted and unredacted exhibits?]
4.	Orange County Bar Association By Deirdre Kelly, President	A	Does the proposal appropriately address the stated purpose? Yes. 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? Scope is appropriate, but rule should not be applicable to other types of civil commitment orders. Should the rule specify any other types of documentary exhibits to be included in the clerk's transcript? No. Should the rule limit the record items in subdivisions (b)(15) and (c)(10) to appeals in which the appellant is the person subject to the civil commitment order? Yes. Should the new rule be placed in an expanded chapter 6 of title 8, division 1, or should it be placed elsewhere in the appellate rules?	The committee notes the commenter's support for the proposal and appreciates the answers to questions presented in the invitation to comment. The committee appreciates the commenter's input into the appropriate scope of the proposed new rule. **[Does the subcommittee agree with this approach / response? The response will need to be modified if the subcommittee decides to expand the scope of the rule to other types of civil commitments.]**

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	Commentator	Position	Comment	Committee Response
			Yes, it should be placed in an expanded chapter 6 of title 8, division 1. Are civil commitment appeals sufficiently different from other case types to warrant a separate form notice of appeal? Yes. 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 scope of the form is appropriate. It should not be available for other types of civil commitment order. Should the form be given an "APP" (Appellate) form designation, or should it be in another category of forms? Yes, give it "APP".	The committee appreciates the commenter's input into the appropriate scope of the proposed new form. **[Does the subcommittee agree with this approach / response? The response will need to be modified if the subcommittee decides to expand the scope of the form to other types of civil commitments or conservatorships.]**
5.	Superior Court of Los Angeles County	AM	Proposed Modifications First, the style of the appellate case in the notice of appeal form should not refer to the committed person as "defendant/respondent" but only as "respondent." This would make it consistent with the styles used in the trial courts on these civil petitions as well as the Legislature's	The committee appreciates this comment and has given significant consideration to this issue. The committee has decided that using the term "Defendant/Respondent," defined in the first instance as "the person subject to the civil commitment order" most clearly signifies that the form is for use in civil commitment proceedings

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			petition forms set forth in Welfare and Institutions Code sections 6251 et seq., and prevent the treatment and public safety purposes of these civil commitments from being tainted with any penal purpose. Additionally, not all Welfare and Institutions Code section 6500 petitions for commitment of dangerous developmentally disabled persons arise out of criminal proceedings – see, Welfare and Institutions Code section 6502. Second, the new Notice of Appeal form should include appeals from Mentally Disordered Sex Offenders committed under Welfare and Institutions Code section 6300. Although there are no new filings under the statute, there are still extension petitions for commitments under the statute being filed. Third, appeals from Welfare and Institutions Code section 6500 commitments should be covered by a separate notice of appeal form, since by statute the "petitioner" may be a number of different persons or entities, such as a parent, guardian, conservator, etc. This way, the style in the notice of appeal could be left blank to be filled in. Also, that notice should cover appeals from In re Hops petitions which also involve different persons. Request for Specific Comments Does the proposal appropriately address the stated purpose?	that arise out of underlying criminal proceedings, while not designating that person as a criminal defendant for purposes of the civil commitment appeal. **[Does the subcommittee agree with this approach / response?]** The committee appreciates this suggestion and has modified the proposal accordingly. **[Does the subcommittee agree with this approach / response?]** The committee appreciates this suggestion but does not feel that a second form should be created at this time, and has instead altered the caption on the proposed new form. **[Does the subcommittee agree with this approach / response?]** The committee notes the commenter's support for the proposal and appreciates the answers to questions presented in the invitation to comment.

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

	Commentator	Position	Comment	Committee Response
			Yes, the proposal addresses the 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? No comment regarding applicability, however, from a clerical standpoint, it would be easier if there was standardization in processing civil commitment appeals. Should the rule limit the record items in subdivisions (b)(15) and (c)(10) to appeals in which the appellant is the person subject to the civil commitment order? Yes, it would be easier for the clerical staff to prepare the record if we limit the number and types of items that are required for consideration to only those that are relevant to the civil commitment. Should the new rule be placed in an expanded chapter 6 of title 8, division 1, or should it be placed elsewhere in the appellate rules? Yes, there is a close relationship between civil commitments and conservatorships. Should the form be given an "APP" (Appellate) form designation, or should it be in another category of forms? Yes, categorizing this as an appeal form allows for consistency in the designation of appeals.	

SPR19-01

Appellate Procedure: Notice of appeal and the record in civil commitment cases (adopt rule 8.483, amend rule 8.320, approve form APP-060)

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

	Commentator	Position	Comment	Committee Response
			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? There would be a requirement to instruct and train staff on the use of this form in conjunction with current appeal processing guidelines. There would also be a need to develop event and/or docket codes to identify this appeal type in the case management system. Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes, three months would be sufficient. How well would this proposal work in courts of different sizes? This proposal will work well in all courts.	The committee appreciates the commenter's input into the potential implementation requirements; no response is required.
6.	Superior Court of Orange County Civil, Small Claims and Probate division By Sean E. Lillywhite, Administrative Analyst/Officer	A	We agree that these changes should also apply to LPS commitments. In Murphy cases, if the case is granted and the commitment ordered, the Court must make LPS findings in addition to Murphy findings. The proposed form is pre-filled with "People of the State of California" in the title. We recommend that this be left fillable as cases may be initiated by the Public Guardian or a hospital.	The committee appreciates this suggestion, but believes it could cause confusion to expand the scope of the rule to govern the normal record in Murphy conservatorship appeals in light of existing rule 8.480. However, the committee has modified the proposal to add an Advisory Committee comment to proposed new rule 8.483 to clarify that rule 8.480 governs Murphy conservatorship appeals. **[Does the subcommittee**

SPR19-01

Appellate Procedure: Notice of appeal and the record in civil commitment cases (adopt rule 8.483, amend rule 8.320, approve form APP-060)

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

	Commentator	Position	Comment	Committee Response
				agree with this approach / response? Would it be clearer to either expressly exclude or include Murphy conservatorship appeals from rule 8.480 or 8.483?] The committee agrees that the caption of the form should be modified to reflect potential use of the form where an underlying case contains a caption other than "People v." and the form has been modified accordingly. **[Does the subcommittee agree with this approach / response?]**
7.	Superior Court of San Bernardino County By Executive Office, Court Executive Office	A	• Does the proposal appropriately address the stated purpose? Yes • 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? Yes • Should the rule specify any other types of documentary exhibits to be included in the clerk's transcript? No • Should the rule limit the record items in subdivisions (b)(15) and (c)(10) to appeals in which the appellant is the person subject to the civil commitment order? Yes • Should the new rule be placed in an expanded chapter 6 of title 8, division 1, or should it be placed elsewhere in the appellate rules? Place in chapter 6 of title 8, division 1	The committee notes the commenter's support for the proposal and input into the potential implementation requirements; no response is required.

SPR19-01

Appellate Procedure: Notice of appeal and the record in civil commitment cases (adopt rule 8.483, amend rule 8.320, approve form APP-060)

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

	Commentator	Position	Comment	Committee Response
			• Are civil commitment appeals sufficiently different from other case types to warrant a separate form notice of appeal? Yes • 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? Yes • Should the form be given an "APP" (Appellate) form designation, or should it be in another category of forms? Yes, App form designation. 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? Legal Processing Assistant training- Expected hours: 4 hours minimum. Revising processes and procedures- Expected hours: 6 hours to revise manuals, internal forms and update rules of court on current internal forms. • Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes	

SPR19-01

Appellate Procedure: Notice of appeal and the record in civil commitment cases (adopt rule 8.483, amend rule 8.320, approve form APP-060)

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

	Commentator	Position	Comment	Committee Response
			• How well would this proposal work in courts of different sizes? It should not significantly impact business processes in courts of varying sizes.	
8.	Superior Court of San Bernardino County By Hon. Carlos M. Cabrera Appellate Division Presiding Judge	A	No specific comment.	The committee notes the commenter's support for the proposal; no response is required.
9.	Superior Court of San Diego County By Mike Roddy, Executive Officer	A	• Does the proposal appropriately address the stated purpose? Yes. • 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? Yes, it is appropriate. It should be applicable to matters that stem from criminal proceedings. • Should the rule specify any other types of documentary exhibits to be included in the clerk's transcript? Exhibits should be included based on existing CRC 8.320. • Should the rule limit the record items in subdivisions (b)(15) and (c)(10) to appeals in which the appellant is the person subject to the civil commitment order? Yes. • Should the new rule be placed in an expanded chapter 6 of title 8, division 1, or should	The committee notes the commenter's support for the proposal and appreciates the answers to questions presented in the invitation to comment.

SPR19-01

Appellate Procedure: Notice of appeal and the record in civil commitment cases (adopt rule 8.483, amend rule 8.320, approve form APP-060)

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

	Commentator	Position	Comment	Committee Response
			it be placed elsewhere in the appellate rules? Yes, in an expanded chapter 6 of title 8, division 1. • Are civil commitment appeals sufficiently different from other case types to warrant a separate form notice of appeal? Yes. • 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? Yes, it is appropriate if the DOB/CDC & Rehabilitation # is not needed as it is on the Felony NOA. The form should be available for matters that stem from criminal proceedings. • Should the form be given an "APP" (Appellate) form designation, or should it be in another category of forms? Yes, it should be given an "APP" (Appellate) form designation. • 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? Implementation requirements for court would be: Training for staff at the COC, I, II, III & Lead positions. The expected number of hours are unknown; however, it should be minimal training for staff that are already familiar with	The committee appreciates this comment as to the scope of the form. **[Does the subcommittee agree with this approach / response, or does the subcommittee think that the scope of the form should be expanded?]**

SPR19-01

Appellate Procedure: Notice of appeal and the record in civil commitment cases (adopt rule 8.483, amend rule 8.320, approve form APP-060)

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

	Commentator	Position	Comment	Committee Response
			processing felony appeals. Procedures would need to be revised to add the normal record requirements for this appeal type. • Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes. • How well would this proposal work in courts of different sizes? It would work well. Would not create issues.	The committee appreciates the commenter's input into the potential implementation requirements.

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INVITATION TO COMMENT

SPR19-01

Title
Appellate Procedure: Notice of appeal and the record in civil commitment cases

Proposed Rules, Forms, Standards, or Statutes
Adopt Cal. Rules of Court, rule 8.483; amend rule 8.320; approve form APP-060

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

Action Requested
Review and submit comments by June 10, 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 a new rule of court describing the required contents of the normal record on appeal for civil commitment cases and a new notice of appeal form 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, no rule clearly states what constitutes the normal record on appeal in civil commitment cases. Perhaps because of 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 Lanterman-Petris-Short [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 notice of appeal forms.[2] However, no notice of appeal form specifically applies to civil commitment cases, and such a form could help simplify the appeal process for litigants and court staff.

The Proposal

Proposed new rule 8.483

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. Although 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 would apply to appeals of civil commitment orders stemming from criminal proceedings, but not to other types of commitment orders, such as those made under the Lanterman-Petris-Short Act (Welf. & Inst. Code, § 5300 et seq.), which may be subject to other rules. To provide clear guidance to litigants and courts, the proposed rule explicitly states in subdivision (a) the types of proceedings to which it applies. Other modifications to the language of rule 8.320 have been incorporated into the new rule, including, among others, adding a requirement that diagnostic or psychological reports submitted to the court be included in the record, replacing the term "defendant" with "person subject to the civil commitment order," and omitting in its entirety subdivision (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 and Courts 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 would immediately follow the existing rules in that chapter governing LPS conservatorship appeals. To address any potential confusion for criminal litigants caused by 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, *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)* (form APP-002); *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (APP-102); *Notice of Appeal—Felony (Defendant)* (form CR-120); *Notice of Appeal (Juvenile)* (JV-800); and *Notice of Appeal (Misdemeanor)* (CR-132).

Proposed *Notice of Appeal—Civil Commitment* (form APP-060)

The proposed new notice of appeal form for civil commitment proceedings (form APP-060) is based on *Notice of Appeal—Felony (Defendant)* (form CR-120), but modified for use in civil commitment appeals. In particular, given that the person subject to the civil commitment order was either a defendant or a respondent in the underlying proceeding, the form uses the term "Defendant/Respondent" throughout and defines the term to mean the "person subject to the civil commitment" 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, consistent with the types of proceedings in proposed new rule 8.483(a)(1), with which the form may be used. The form would be included in the "APP" (Appellate) category.

Alternatives Considered

Proposed new rule 8.483

The committee considered making no changes to the rules but concluded that the proposed new rule would provide clarity to litigants, court staff, and judicial officers. 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 basing the new rule on the existing rule governing criminal appeals would be preferable.

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. In subdivision (a), the committee included a paragraph addressing application of the rule to prevent confusion as to what type of proceedings the rule applies. The committee further considered whether to include civil commitments under the LPS Act within the scope of the rule, but because civil commitments under the 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 expanding the scope of chapter 6 to include both conservatorship and civil commitment appeals, and placing the new rule therein, would be clearest. 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 3 (Criminal Appeals), article 2 (Record on Appeal), directly after the rule governing the normal record in criminal appeals. Although 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 raise 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 to add a new rule under this new chapter. Doing so would be consistent with the overall structure of division 1, which contains separate chapters for various types of appeals, but it would require the creation of a new chapter containing only a single rule, which is discouraged.

Proposed *Notice of Appeal—Civil Commitment* (form APP-060)

The committee considered not developing a new notice of appeal form for civil commitment orders, and instead expanding the scope of 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 forms, the committee concluded that creating a new form would be clearer than using any of the preexisting 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 most clearly and succinctly throughout the form, the committee considered whether to use the term "person subject to the civil commitment order," "Defendant/Respondent," "Petitioner/Respondent," or some variation thereof. Because the included civil commitment proceedings are not criminal but arise out of underlying criminal proceedings, the committee proposes using the term "Defendant/Respondent," defined as "the person subject to the civil commitment order."

Additionally, consideration was given to the scope of a new form, and whether it should include other types of commitments, such as commitments under the LPS Act. 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 such use 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 changing the name of the "GC" (Guardianships and Conservatorships) category to also include civil commitments and using the "GC" moniker for the new form. However, because there are no other appellate forms in this category, inclusion of a notice of appeal specific to civil commitments could cause confusion for self-represented litigants in guardianship and conservatorship proceedings. Finally, the committee considered using the "MC" (Miscellaneous) category designation, given the unique subject matter of civil commitment proceedings, but concluded that such a designation could also make it difficult for litigants to locate the new form.

Fiscal and Operational Impacts

No significant implementation requirements, costs, or operational impacts are anticipated. However, some cost associated with duplication and distribution of the new form is likely, 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?
- Should the rule specify any other types of documentary exhibits to be included in the clerk's transcript?
- Should the rule limit the record items in subdivisions (b)(15) and (c)(10) to appeals in which the appellant is the person subject to the civil commitment order?
- Should the new rule be placed in an expanded chapter 6 of title 8, division 1, or should it be placed elsewhere in the appellate rules?
- Are civil commitment appeals sufficiently different from other case types to warrant a separate form notice of appeal?
- 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?
- Should the form be given an "APP" (Appellate) form designation, or should it be in another category of forms?

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

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

Attachments and Links

1. Cal. Rules of Court, rules 8.830 and 8.483, at pages 6–9
2. Form APP-060, at page 10

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

Rule 8.320. Normal record; exhibits

(a)–(f) * * *

Advisory Committee Comment

Rules 8.45–8.46 address the appropriate handling of sealed and confidential records that must be included in the record on appeal. Examples of confidential records include Penal Code section 1203.03 diagnostic reports, records closed to inspection by court order under *People v. Marsden* (1970) 2 Cal.3d 118 or *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, in-camera proceedings on a confidential informant, and defense expert funding requests (Pen. Code, § 987.9; *Keenan v. Superior Court* (1982) 31 Cal.3d 424, 430).

Subdivision (d)(1)(E). This rule identifies the minutes that must be included in the record. The trial court clerk may include additional minutes beyond those identified in this rule if that would be more cost-effective.

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), and 2962 et seq. (mentally disordered offenders), as well as Welfare & Institutions Code sections 1800 et seq. (extended detention of dangerous persons), 6500 et seq. (developmentally disabled persons), and 6600 et seq. (sexually violent predators).

(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 diagnostic or psychological reports submitted to the court;

(14) Any written waiver of the right to a jury trial or the right to be present; and

(15) If the appellant is the person subject to the civil commitment order:

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

(B) Any document admitted in evidence to prove a juvenile adjudication, criminal conviction, or prison term.

(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, 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; and

(10) 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.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	*FOR COURT USE ONLY* **DRAFT** **03-28-2019** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF	
PEOPLE OF THE STATE OF CALIFORNIA vs. Defendant/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. Defendant/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 Defendant/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. Defendant/Respondent is currently being held under:
   - ☐ 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)
   - ☐ Welfare & Institutions Code, § 1800 et seq. (extended detention of dangerous persons)
   - ☐ Welfare & Institutions Code, § 6500 et seq. (developmentally disabled persons)
   - ☐ Welfare & Institutions Code, § 6600 et seq. (sexually violent predators)
   - ☐ Other *(specify):* _____

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

5. Defendant/Respondent's mailing address is ☐ same as in ATTORNEY OR PARTY WITHOUT ATTORNEY box above.
   ☐ as follows:

Date:

_____ ▶ _____

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

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
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REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 23-24, 2019:

Title
Appellate Procedure: Word Limits for Petitions for Rehearing in Unlimited Civil Cases

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

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

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
June 17, 2019

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

Executive Summary

The Appellate Advisory Committee recommends amending the rule that governs the length of briefs in civil cases in the Court of Appeal to reduce the maximum length of petitions for rehearing and answers to those petitions from 14,000 words to 7,000 words for briefs produced on a computer, and from 50 pages to 25 pages for briefs produced on a typewriter. This change, which is based on suggestions from appellate practitioners to consider reducing word limits for all types of briefs filed in the Court of Appeal, is intended to establish limits on briefing that reflect the limited scope of petitions for rehearing in unlimited civil cases.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2020:

1. Amend California Rules of Court, rule 8.204, to add a new paragraph 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; and

2. Amend rule 8.268, the rule that governs rehearing in the Court of Appeal, to cross-reference the maximum length provisions in rule 8.204 for the petition and answer.

The text of the amended rules is attached at page 5.

Relevant Previous Council Action

In 2002, as part of a project to rewrite and reorganize the appellate rules, the Judicial Council added a word count as an alternative to a page count for measuring the length of a brief. The existing 50-page limit for a brief produced on a typewriter was retained, and the approximate equivalent of 14,000 words for a brief produced on a computer was added. The rule governing the contents and form of briefs in the Court of Appeal was renumbered in 2007. There is no other previous council action with respect to the length of briefs in the Court of Appeal that is relevant to this proposal.

Analysis/Rationale

The Appellate Advisory Committee recommends amending 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 to reduce by 50 percent the permissible length of petitions for rehearing and answers to those petitions in civil appeals.[1] The new provision 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 that the court's opinion contains a material omission or misstatement of fact or a material misstatement of the law, or is based on an issue that was not raised or briefed by the parties, or that 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. The court already is familiar with the case, so the petition need not include a summary of the factual and procedural background of the case. For these reasons, the current limits seem to far exceed what is reasonably necessary.

The committee expects that reducing the permissible length of petitions for rehearing will assist courts by decreasing the time Court of Appeal justices must spend to review these petitions. The reduced limits may also save litigants time, effort, and expense. In the rare instance when longer briefing 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 recommends amending rule 8.268, which governs rehearing in civil appeals in the Court of Appeal. Currently, rule 8.268(b)(3) provides: "The petition and answer must comply with the

[1] The proposed new length limits for briefs would not apply to rehearing in criminal cases or juvenile cases. (See rules 8.360(b) and 8.412(a)(3).) The new limits also would not apply to rehearing in limited civil and misdemeanor appeals. (See rule 8.883(b).)

relevant provisions of rule 8.204." The proposed amendment would refer specifically to the new length limits for petitions for rehearing in rule 8.204(c)(5).

Policy implications

The committee has identified no significant policy implications associated with the recommended rule amendments.

Comments

This proposal was circulated for public comment from April 11 to June 10, 2019 as part of the regular spring comment cycle. Five individuals or organizations submitted comments on this proposal. All five commenters agreed with the proposed changes. A chart with the full text of the comments received and the committee's responses is attached at pages 6-9.

Alternatives considered

Under a broader original project description on the committee's annual agenda, the committee considered whether to propose reduced length limits for other types of briefs in civil appeals.[2] However, the committee recognizes that the topic is complex and implicates a number of competing concerns. The committee would want to further consider the issues before making 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 where 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 word limit for briefs, the committee recommends adding a specific reference in rule 8.268 to the new length limits in rule 8.204.

Fiscal and Operational Impacts

The committee anticipates no significant fiscal or operational impacts and no costs of implementation other than informing courts and litigants of the new rule amendments.

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[2] The topic is timely because, effective July 1, 2019, the U.S. Supreme Court adopted rules reducing the length of merits briefs filed by the appellant or petitioner and the appellee or respondent from 15,000 words to 13,000 words. The Court retained the existing 6,000 word limit for reply briefs. See Supreme Court Rule 33(g)(v)-(vii). *https://www.supremecourt.gov/filingandrules/2019RulesoftheCourt.pdf*

Attachments and Links

Rules 8.204 and 8.268 of the California Rules of Court would be amended, effective January 1, 2020, to read:

Rule 8.204. Contents and form of briefs

(a)–(b) * * *

(c) Length

(1) Except as provided in (5), 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 brief produced on a typewriter must not exceed 50 pages.

(3)–(4) * * *

(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)–(e) * * *

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) * * *

SPR19-05

Appellate Procedure: Word Limits form Petitions for Rehearing in Unlimited Civil Cases (Amend Cal. Rules of Court, rules 8.204 and 8.268)

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

	Commenter	Position	Comment	Committee Response
1.	California Academy of Appellate Lawyers by John A. Taylor, Jr. President Burbank	A	As the current president of the California Academy of Appellate Lawyers, I'm writing on behalf of its membership to support SPR19-05 (Appellate Procedure: Word Limits for Petitions for Rehearing in Unlimited Civil Cases). The Academy consists of more than 100 California appellate lawyers with substantial experience in the briefing and argument of appeals in the California court system. The Academy has a vital interest in ensuring that the rules governing appellate practice promote the efficient and fair administration of justice at the appellate level. The Academy supports the proposed rule change, which shortens the current word limit for petitions for rehearing and answers in unlimited civil appeals. Presently petitions for rehearing and answers can run to 14,000 words without leave of court, the same length as briefs on the merits. That may lead some practitioners and unrepresented parties to the erroneous conclusion that a rehearing arguments may typically be as detailed as the merits arguments or even to repeat merits arguments that the court has already considered.	The committee notes the commenter's support for the proposal. No further response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Committee Response
			Reducing the length limitation to 7,000 words confirms what is already known to experienced practitioners: that rehearing petitions should be focused and not mere repetition of the merits briefing. Even in a complex case, rarely would a rehearing petition need to be longer than 7,000 words but, in those unusual cases, permission may be sought to file a longer petition. We appreciate the opportunity to present these comments for consideration by the Judicial Council.	
2.	Orange County Bar Association by Deirdre Kelly President Newport Beach	A	The Orange County Bar Association believes that the answer to both requests for specific comments is "yes." Given the purpose of petitions for rehearing, it is unnecessary for these petitions to be as long as the underlying merits briefs.	The committee notes the commenter's support for the proposal. No further response required.
3.	John Schreiber Certified Appellate Specialist Benica, California	A	Petitions for rehearing are meant to address specific, focused issues rather than rearguard the entire appeal. The provision to allow for petitions exceeding the word limits should address this instances in which greater length is necessary.	The committee notes the commenter's support for the proposal. No further response required.

SPR19-05
Appellate Procedure: Word Limits form Petitions for Rehearing in Unlimited Civil Cases (Amend Cal. Rules of Court, rules 8.204 and 8.268)

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

	Commenter	Position	Comment	Committee Response
4.	Superior Court of San Diego County by Mike Roddy Executive Officer	A	• Does the proposal appropriately address the stated purpose? Yes. • Are the proposed limits of 7,000 words and 25 pages appropriate for petitions for rehearing? Unknown. The briefs are filed in the Court of Appeal. • Would the proposal provide cost savings? If so, please quantify. Unknown. The briefs are filed in the Court of Appeal. • 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? Unknown. The briefs are filed in the Court of Appeal. • Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Unknown. The briefs are filed in the Court of Appeal. No additional comments.	The committee notes the commenter's support for the proposal. No further response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR19-05

Appellate Procedure: Word Limits form Petitions for Rehearing in Unlimited Civil Cases (Amend Cal. Rules of Court, rules 8.204 and 8.268)

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

	Commenter	Position	Comment	Committee Response
5.	Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) by TCPJAC/CEAC Joint Rules Subcommittee (JRS)	A	No specific comment.	The committee notes the commenter's support for the proposal. No further response required.

JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
June 26, 2019

To
Members of the Rules Subcommittee

From
Christy Simons
Attorney, Legal Services

Subject
Comments on Proposal re Advisement of Appellate Rights in Juvenile Cases

Action Requested
Please review before meeting on June 27, 2019

Deadline
June 27, 2019

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

Introduction

The Appellate Advisory Committee recommended circulating for public comment a proposal to amend rule 5.590, the rule regarding advisement of appellate rights in juvenile cases, 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 proposal also includes a new, optional form notice for clerks to send with court orders following a hearing to provide the advisement. The Judicial Council's Rules and Projects Committee approved the recommendation and the proposal circulated for public comment from April 11 through June 10, 2019 as part of the regular spring comment cycle. A copy of the invitation to comment is included in your meeting materials. This memorandum discusses the comments received and sets forth some options for the subcommittee's consideration.

Discussion

The committee received 13 comments on the proposal from individual attorneys, organizations, and trial courts. Five commenters indicated that they agreed with the proposal, two indicated that

they agreed with the proposal if modified, three did not take a position on the proposal but suggested changes or commented on certain aspects of the proposal, and three indicated that they disagreed with the proposal. A chart with the full text of the comments received and staff's draft responses is attached. The main issues raised by the comments, possible responses, and possible modifications to the proposal, are discussed below, but there are other comments and responses contained only in the comment chart, so please review the draft comment chart carefully.

The positive comments agree that this is a much-needed change to the rule and that parents/guardians should receive an advisement of their appellate rights from the court whether they are present for the hearing or not.

The main issues discussed by the commenters address three areas: (1) whether the advisement should be provided by counsel; (2) whether the benefit of the proposal is outweighed by the burden on courts; and (3) improving the language of the form. The committee also received several comments from courts on implementation requirements such as new procedures, training for staff, and adding codes to case management systems. None of the comments indicated that these requirements would be a problem.

Whether the advisement should be provided by counsel
Several commenters noted that parents and guardians have counsel in dependency proceedings and indicated that counsel should provide the advisement. One comment further stated that, because personal presence is not required in dependency proceedings, the presence of counsel should suffice. The subcommittee considered issues relating to counsel in developing the proposal, including whether the problem the proposal intends to address was more a matter of training and practice for attorneys in juvenile proceedings than an issue arising from a rule of court. The subcommittee noted that counsel's representation and responsibilities are separate issues from whether the rule that requires the court to provide the advisement only to parents/guardians who are present at the hearing should be amended. The subcommittee found no compelling reason for the rule to draw this distinction.

Whether the burden outweighs the benefit
Several commenters expressed concern that the proposed rule change will result in a substantial burden on already overtaxed juvenile courts without providing sufficient benefit. In addition to arguing that the proposal is unnecessary because attorneys representing parents/guardians should provide the advisement, commenters questioned whether the added burden on courts was reasonable as a practical matter. Santa Clara County Counsel opined that appeals by parents/guardians who have not been present at hearings are unlikely to be meritorious. The San Bernardino Superior Court noted that, in the proceedings addressed by the rule, no hearing has been set to terminate parental rights and the parent/guardian is not losing the right to appeal. The Riverside Superior Court indicated that requiring the court to provide the advisement whether or not parents/guardians are present at the hearing "may not lead to actual notice." Draft responses

on the comment chart indicate that these are not persuasive reasons to modify the proposal or recommend that it not go forward. Whether a potential appeal is likely meritorious, the gravity of the rights affected by the court's order, and the fact that lack of notice does not equate with losing the right to appeal are separate issues from whether the court should provide the advisement to all parents/guardians regardless of their physical presence at the hearing.

One comment questioned whether issues with providing the advisement, such as whether the advisement was timely sent or sent to the correct address, could result in contentions on appeal and thereby cause delay in these cases. This appears to be a possibility, but courts routinely put procedures in place to ensure that notices, orders, and other documents are sent in a timely manner to the correct address on file, and to take other steps to mitigate such potential problems.

Text of the form
Several commenters asked that the language of the form be simplified and use more descriptive language so that litigants can more easily understand the information being provided. Please refer to the draft forms (text only) in these materials for possible revisions. The first draft form shows possible edits in track changes; the second draft form shows the changes accepted (the former text that has changed has been removed). Attached to the invitation to comment is the version of the form that went out for public comment. The form itself will be revised based on the subcommittee's recommendations.

Suggested amendments to rule 5.590
Several commenters

Two commenters requested that, instead of requiring the court to give notice of appeal rights to absent parents and guardians, the rule provide that the court must provide the advisement to parents/guardians if present or by/through counsel. However, this amendment would substantively change the proposal (see discussion above). The draft rule in these materials shows the two suggestions for making this change, but staff does not recommend either amendment.

The draft rule also includes text to implement a suggestion from JRS to clarify that notice is sufficient if sent by first-class mail to the last known address. This text mirrors language found in subdivision (b).

Stephanie Miller addressed the issue of whether the language of the rule requires an advisement of appellate rights only after disposition hearings and reported that, last year, one juvenile court in Los Angeles indicated that it would no longer inform parents of their right to appeal orders made at section 366.26 permanency planning hearings, but would continue to mail the minutes of those proceedings to the parents. The court cited rule 5.590(a)'s language requiring that notice of the right to appeal be given only following disposition hearings. Miller stated that, in discussions with the Second District Court of Appeal, the point was made that there are a large number of

potentially appealable orders in dependency cases and that it may not be practical to identify all such orders and require the juvenile court to inform parties regarding the right to appeal in all of those instances. Staff's proposed response indicates that amending the language of the rule to remove or modify reference to disposition hearings would be a substantive change to the proposal that would require recirculation, and that the comment will be retained for future consideration.

JRS raised the option of amending rule 5.590(b)(2), which requires the court to provide written advisement of appellate rights to parties when the court orders a permanency planning hearing under section 366.26. JRS suggests adding parents/guardians to the rule so that they, along with parties, receive the written advisement. Staff's draft response states that any such amendment is beyond the scope of the proposal but that the suggestion will be retained for future consideration.

Whether to retain the current notice on certain JV forms

The invitation to comment asked for feedback regarding whether, if the rule is amended as proposed, the current notice should be retained on certain JV forms. Six commenters responded: two recommended removing the notice because it would no longer be accurate; two recommended retaining it, even if unnecessary, because it could be helpful to the public; and two recommended revising it.

The notice currently provides:

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

The Riverside Superior Court recommends removing the sentence "If you do not attend the next hearing you may not be advised of your appellate rights." Staff agrees that this could be a good option.

The Orange County Bar Association recommends more substantial modifications to the notice: "You may have a right to appellate review of some or all of the orders made during this hearing. Contact your attorney <u>to discuss whether it is advisable for you to appear at the hearing and</u> to discuss your appellate rights. Decisions made at the ~~next~~ hearing may also be subject to appellate review. If you do not attend the next hearing you may not be <u>personally</u> advised of your appellate rights <u>by the court</u>. Contact your attorney if you miss the next hearing and want to discuss your appellate rights."

The subcommittee should consider the options and decide on a recommendation.

List of commenters and position
Appellate Defenders: A.
Rosemary Bishop: A.
Santa Clara County Counsel: N.
Executive Committee of Family Law Section of CLA: A.
LA County Public Defender: NI.
Stephanie Miller: NI.
Orange County Bar Association: AM.
Superior Court of LA: AM.
Superior Court of Orange County, Juv Div: NI.
Superior Court Riverside: N.
Superior Court San Bernardino: N.
Superior Court San Diego: A.
JRS of TPCPAC/CEAC: A.

Subcommittee Task

The subcommittee's task is to:

- Discuss the comments received on the proposal;
- Discuss and approve or modify staff suggestions for responding to the comments, as reflected in the draft comment chart and draft modifications to the rule amendments; and
- Decide whether to recommend that the proposal move forward to the full committee.

Attachments

1. Rule 5.590
2. Text of form JV-805-INFO with suggested revisions (in track changes)
3. Text of form JV-805-INFO with suggested revisions (changes accepted)
4. Draft comment chart
5. Invitation to comment (including proposed form JV-805-INFO)

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

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)–(4) * * *

(b)–(c) * * *

Suggested amendments from comments:

(a) Advisement of right to appeal

By Stephanie Miller: If at a contested hearing …, 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 personally present or by counsel, the parent or guardian of:

By Orange County juvenile court: If at a contested hearing …, 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 or through counsel, the parent or guardian of:

By JRS of TCPJAC/CEAC: If at a contested hearing …, 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)–(4) * * *

If the parent or guardian is not present at the hearing, the advisement must be made by the clerk of the court by first-class mail to the last known address of the party [or by electronic service in accordance with section 212.5].

INFORMATION REGARDING APPEAL RIGHTS

SUGGESTED REVISIONS IN TRACK CHANGES

1. ~~Appealability~~Your Right to Appeal

~~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.~~You may have the right to appeal judgments and orders in juvenile dependency, delinquency, and justice proceedings under Welfare and Institutions Code section 300, 601, and 602. If you do not appeal in time, you could lose the right to challenge the judgment or order later in these proceedings.

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

2. Steps and Time for Taking an Appeal

To appeal from a judgment or an appealable order of 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~~the judge makes the decision you are challenging, or, in matters heard by a referee or commissioner, within 60 days after the order of the referee or commissioner becomes final. An order of a referee or commissioner becomes final 10 calendar days after the order is served.

You may use form JV-800, *Notice of Appeal--Juvenile*, for this purpose. You can get form JV-800 at any courthouse or county law library or online at www.courts.ca.gov/forms.htm.

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. Your attorney cannot file a notice of appeal on your behalf without your approval.

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. You may use form JV-800, Notice of Appeal--Juvenile, to make this request by checking the appropriate box. 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~~ are ~~also be~~ eligible for a free copy of the transcript.

Important!

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

Optional Use

Rules 5.540, 5.585, 5.590, 8.400, 8.405, 8.406

JV-805-INFO [New Jan. 1, 2020]

INFORMATION REGARDING APPEAL RIGHTS
SUGGESTED REVISIONS INCORPORATED

1. Your Right to Appeal

You may have the right to appeal judgments and orders in juvenile dependency, delinquency, and justice proceedings under Welfare and Institutions Code section 300, 601, and 602. If you do not appeal in time, you could lose the right to challenge the judgment or order later in these proceedings.

A judgment or order entered by a referee or commissioner becomes appealable whenever a rehearing by a judge under section 252, 253, or 254 has been completed or, if rehearing under section 252, 253, or 254 is not initiated, when the time for initiating rehearing proceedings has expired.

2. Steps and Time for Taking an Appeal

To appeal from a judgment or an appealable order of this court, you must file a written notice of appeal within 60 days after the judge makes the decision you are challenging, or, in matters heard by a referee or commissioner, within 60 days after the order of the referee or commissioner becomes final. An order of a referee or commissioner becomes final 10 calendar days after the order is served.

You may use form JV-800, *Notice of Appeal--Juvenile*, for this purpose. You can get form JV-800 at any courthouse or county law library or online at www.courts.ca.gov/forms.htm.

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. Your attorney cannot file a notice of appeal on your behalf without your approval.

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. You may use form JV-800, Notice of Appeal--Juvenile, to make this request by checking the appropriate box. 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 are eligible for a free copy of the transcript.

Important!

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

Optional Use
JV-805-INFO [New Jan. 1, 2020]

Rules 5.540, 5.585, 5.590, 8.400, 8.405, 8.406

SPR19-03

Appellate Procedure: Advisement of Appellate Rights in Juvenile Cases (Amend Cal. Rules of Court, rule 5.590 and approve form JV-805-INFO)

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

	Commenter	Position	Comment	Committee Response
1.	Appellate Defenders, Inc. by Elaine Alexander Executive Director San Diego	A	This change is a much-need correction. Parties should be told of their appellate rights regardless of their ability to attend a particular hearing. The new form will expedite the advisal.	The committee notes the commenter's support for the proposal.
2.	Rosemary Bishop Attorney Law Offices of Rosemary Bishop San Diego	A	1. Does the rule change address the stated purpose? Yes. The rule change does effectively address the stated purpose by deleting the language, "if present". Parents who are not present at the hearings covered by this rule should be advised of appeal rights and the rule change makes this clear. 2 and 3. Are parts 3 and 4 of the proposed form accurate and helpful and should the form include additional information on appellate rights? Part 3 is accurate in advising the recipient about the right to appointed counsel. It would be helpful to add that the recipient may request an appointed attorney by checking the box on the notice of appeal form. Part 4 of the form is accurate. If an appellant is always eligible for a free transcript if they qualify for an appointed attorney, then the "may be" qualifier could	The committee notes the commenter's support for the proposal and appreciates the responses to questions presented in the invitation to comment. The committee appreciates this suggestion and has revised the new form to include the option to request an appointed attorney on the notice of appeal form. The committee appreciates this suggestion and has revised the form.

	Commenter	Position	Comment	Committee Response
			be deleted to avoid uncertainty or confusion. To make the form more helpful, parts 1 and 2 could be simplified or put into plainer language and still be accurate and less intimidating or confusing. For example, the first sentence in part 1 could be captioned "Your right to appeal" and read: "You have the right to appeal judgments and orders in proceedings [under Welfare and Institutions Code sections.....] and if you do not appeal in time you could lose the right to challenge the judgment or order later in these proceedings." The first sentence in Part 2 could be simplified to read: "...you must file a notice of appeal within 60 days of the judgment or order..." Also, if the JV-800 notice of appeal form is attached, then that should be referenced. It would be helpful to attach a notice of appeal form (JV-800) to this new form JV-805. If the notice of appeal form is not attached, then the JV-805 should tell the recipient how to get one—from trial attorney, online, at the courtroom, and that	The committee appreciates this recommendation and the suggested language. The committee has revised the form to use simplified and more descriptive language. The committee appreciates this suggestion and has included information on how to obtain the form.

SPR19-03

Appellate Procedure: Advisement of Appellate Rights in Juvenile Cases (Amend Cal. Rules of Court, rule 5.590 and approve form JV-805-INFO)

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

	Commenter	Position	Comment	Committee Response
			the trial attorney can file the notice for the client upon request. 4. Should forms JV-415 through JV-455 be revised to remove statement parents may not be advised of appeal rights if they don't attend the hearing? Yes. This information is no longer accurate if the rule is changed.	The committee appreciates this input.
3.	County of Santa Clara Office of the County Counsel by James R. Williams County Counsel and Gita c. Suraj Assistant County Counsel	N	1. Does the proposal appropriately address the stated purpose? No. The stated purpose is to "promote greater awareness of parents' and legal guardians' appellate rights in juvenile court proceedings." In furtherance of this goal, the rule would require appellate advisements to be sent out to parties who are not present in court when orders are made. If the court has an address of record for a litigant, that litigant likely has appointed counsel who is available and able to advise the parent of their appellate rights. Further, any appeal by a litigant who has not been present at the hearing and is not in contact with court-appointed counsel is very unlikely to be meritorious. The proposed rule is likely to result in greater administrative burdens on an overtaxed judicial system and is unlikely	The committee thanks the commenter for providing input on this proposal and notes the commenter's opposition to the proposal . The committee disagrees that the factors cited by the commenter outweigh the benefit of the proposed rule change. The proposal is intended to eliminate the current distinction in the rule that requires courts to advise some parents and guardians (those who are present for a hearing) but not others (those who are not present). The committee agrees that juvenile courts face tremendous workload challenges, but sees no principled reason for different treatment. Absent parents are no less entitled to the advisement, without regard to the potential merit of any appeal. The committee acknowledges that most litigants will have appointed counsel and agrees that counsel should advise parents and

SPR19-03

Appellate Procedure: Advisement of Appellate Rights in Juvenile Cases (Amend Cal. Rules of Court, rule 5.590 and approve form JV-805-INFO)

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

	Commenter	Position	Comment	Committee Response
			as a practical matter to further or preserve the due process rights of litigants in juvenile court. Further, in the event the required notices are on occasion sent in error or not sent at all, they may generate contentions on appeal that a litigant's late notice of appeal should be excused, resulting in greater burdens on the appellate courts and greater delay in resolution of status for dependent children.	guardians of their appellate rights. However, the committee concluded that these points do not outweigh the benefit of providing the advisement in an effort to preserve parents' and guardians' due process rights. The committee appreciates the commenter's concern that improper notice could create contentions on appeal, but notes that courts routinely create procedures, including case management codes, to comply with the rules of court and changes to those rules, and has received no indication that compliance will present any problems.
			2. Are items 3 and 4 of the form accurate and helpful in describing the right of an indigent appellant to appointed counsel and a free copy of the transcript? Sections 2 and 3 are accurate, but would be more helpful if they used simpler language more easily understood by less sophisticated litigants.	The committee agrees with this observation and has revised the form accordingly.
			3. Should the form include any other information regarding appellate rights? No.	

SPR19-03

Appellate Procedure: Advisement of Appellate Rights in Juvenile Cases (Amend Cal. Rules of Court, rule 5.590 and approve form JV-805-INFO)

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

	Commenter	Position	Comment	Committee Response
			4. If rule 5.590 is amended as proposed, should forms JV-415, JV-430, JV-435, JV-440, and JV-455 be revised to remove the notice to parents and guardians that they may not be advised of their appellate rights if they do not attend the juvenile court hearing? Our county does not use any of these optional forms, so we have no comment with respect to this question.	No response required.
4.	Executive Committee of the Family Law Section of the California Lawyers Association (FLEXCOM) By Saul Bercovitch Director of Governmental Affairs	A	The Invitation to Comment requests feedback on the question of whether related juvenile forms should be modified to delete language that a parent will not be advised of their appellate rights if they fail to appear at a hearing. FLEXCOM believes this language should remain in the various forms. Adopting a requirement that notice of appellate rights be mailed to parents not attending the hearing will increase the number of litigants receiving this advisement. However, there will be instances where notice is not successful. For example, a parent may not update their mailing address with the court. Or, a parent may fail to pick up mail at their current address. Thus, there likely will be occasions when absent parents continue to go without receiving actual notice.	The committee notes the commenter's support for this proposal. The committee appreciates the commenter's feedback on this question.

SPR19-03

Appellate Procedure: Advisement of Appellate Rights in Juvenile Cases (Amend Cal. Rules of Court, rule 5.590 and approve form JV-805-INFO)

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

	Commenter	Position	Comment	Committee Response
5.	Los Angeles County Public Defender by Ricardo D. Garcia Public Defender Erika Anzoategui Acting Alternate Public Defender	NI	We do not object to the language of the proposed rule. However, we feel that the proposed JV-805 form contains an advisement that would be confusing to a layperson. Item 1 advises that judgment by a referee or commissioner becomes appealable "whenever proceedings under section 252, 253, or 254" have been completed. The advisement does not explain what proceedings under sections 252, 253, and 254 are, and it is unlikely that a layperson would know that they refer to a rehearing by a judge. Therefore, we suggest making the advisement more descriptive by stating that judgment by a referee or commissioner becomes appealable "whenever a rehearing by a judge under section 252, 253, or 254 has been completed."	The committee thanks the commenter for submitting feedback on this proposal. The committee agrees and has revised this section of the form.
6.	Stephanie Miller	NI	Thank you for this opportunity to comment. A. The proposal overreaches. The stated purpose should be to ensure that the parent or the guardian (and, obviously, the child) **who is a party of record** is advised of the right to seek review by appeal of the judgment entered at disposition. If the proposal is adopted, Rule 5.590 will be interpreted to include within its scope the parent or guardian	The committee appreciates this feedback on the proposal. [Note: does the subcommittee agree with the commenter that only parents and guardians who have taken steps to become parties of record should receive the rule 5.590(a) advisement of appellate rights?]

	Commenter	Position	Comment	Committee Response
			who received notice of the proceedings but who did not take appropriate steps to become a party in them. (See *In re Joseph G*. (2000) 83 Cal.App.4th 712, 715.) Second, because **personal presence** by a party is not required in a dependency proceeding, the existing **presence** requirement could be interpreted to allow for the **presence** of the parent or guardian through his or her attorney. (See *In re Dolly D*. (1995) 41 Cal.App.4th 440, 444-446 [personal appearance by a party is not essential; appearance by an attorney is sufficient and equally effective].) Rule 5.590(a) should be modified to provide that "the court after making its disposition order . . . must advise, orally or in writing, the child, if of sufficient age, and, if **personally present or by counsel**, the parent or guardian of . . . ." B. If Rule 5.590(a) is revised in the manner suggested above, the forms should be revised to delete the notice that parents or guardians who do not personally appear may not be advised of their right to appeal. C. JV-805/Information Regarding Appeal Rights is incomplete in regard to the	The committee understands the commenter to suggest limiting the scope of the rule to parents and guardians who have taken steps to become a party to the proceedings and allowing the court to provide the advisement of appellate rights to a parent's or guardian's attorney rather than requiring that the advisement be provided a parent or guardian who is not present at the hearing. The committee is aware that most parties in dependency proceedings are represented by counsel and agrees that counsel should provide their clients with information regarding their appellate rights. However, the suggested modifications do not address the distinction in the rule between parents who are present and parents who are not, and do not advance the goal of promoting greater awareness on the part of parents and guardians of their appellate rights. The committee appreciates this input.

	Commenter	Position	Comment	Committee Response
			explanation of the time within which to seek review of the findings and orders made by a referee. The form states that in matters heard by a referee, the notice of appeal must be filed within 60 days after the referee's order becomes final, but it does not explain when the referee's order becomes final. The form should include the language now found in Rules 5.540(c) [finality date of referee's order] and 5.538(b)(3) [completion of service of referee's findings and orders].)	The committee thanks the commenter for this suggestion and has revised the form to include information regarding finality of a referee's order.
			D. Contrary to the feedback thus far received from the Family and Juvenile Law Advisory Committee that "there is no indication that juvenile court read the rule so narrowly as to only provide an advisement of appellate rights following disposition hearings. . [,]" in April 2018 the Los Angeles County Edmund D. Edelman Children's Court in Monterey Park hearing dependency cases informed the Second District that the juvenile court would no longer inform the parent of the right to appeal the orders made at the Welfare and Institutions Code section 366.26 permanency planning hearing, although it would mail the minutes of those	The committee thanks the commenter for this information. Amending the language of subdivision (a) to remove or modify the reference to disposition would be a substantive change that requires circulation for public comment. (See rule 10.22(d).) The committee will retain this comment as a request that this issue be considered in the future.

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

	Commenter	Position	Comment	Committee Response
			proceedings to the parent. It was noted that the existing rules – i.e., Rule 5.590(a) – require notice of the right to appeal **only** following disposition hearings. In discussions with the Second District about the juvenile court's intention, which was not opposed, the point was made that there are a large number of potentially appealable events in a dependency case. It may not be practical to identify and list all such events, and to require the juvenile court to inform the parties of the right to appeal in all those situations.	The committee notes this concern and considered this issue in developing the proposal.
7.	Orange County Bar Association by Deirdre Kelly President	AM	*Does the proposal appropriately address the stated purpose?* Yes. *Are items 3 and 4 of the form accurate and helpful in describing the right of an indigent appellant to appointed counsel and a free copy of the transcript?* Yes, but see below. *Should the form include any other information regarding appellate rights?*	The committee notes the commenter's support for the proposal if modified.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Committee Response
			Yes. Frequently, attorneys are appointed to represent parents in dependency proceedings who later absent themselves from the proceedings entirely and lose touch with their attorneys. In those situations, attorneys will typically continue to represent the absent parents' interests. Those parents, who will be the beneficiaries of the Committee's proposed changes, should understand that their attorney cannot file a notice of appeal without their approval (*In re Sean S.* (1996) 46 Cal.App.4th 350, 352.) Consequently, we recommend the following amendment to item at the very end of time 2: <u>However, your attorney cannot file an appeal on your behalf without your approval.</u> *If rule 5.590 is amended as proposed, should forms JV-415, JV-430, JV-435, JV-440 and JV-455 be revised to remove the notice to parents and guardians that they may not be advised of their appellate rights if they do not attend the juvenile court hearing?*	The committee has revised this item on the form. The committee declines to make the suggested revisions to the second because the

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

	Commenter	Position	Comment	Committee Response
			We would recommend the following amendment to the advisement contained on the listed forms: "You may have a right to appellate review of some or all of the orders made during this hearing. Contact your attorney to discuss whether it is advisable for you to appear at the hearing and to discuss your appellate rights. Decisions made at the [next] hearing may also be subject to appellate review. If you do not attend the next hearing, you may not be personally advised of your appellate rights by the court. Contact your attorney if you miss the next hearing and want to discuss your appellate rights	listed forms are sent to parties *following* the hearing, a party would not discuss with counsel whether the party should appear *at that hearing*. The committee agrees that if the rule is amended as proposed, the fourth sentence of the advisement should be modified. [Possible modification to the notice: You may have a right to appellate review of some or all of the orders made during this hearing. Contact your attorney to discuss your appellate rights. Decisions made at the next hearing may also be subject to appellate review. If you do not attend the next hearing, you ~~may~~ will not be advised in-person of your appellate rights by the court.] [Other options are to delete the last sentence of the notice and to delete the notice altogether.]
8.	Superior Court of Los Angeles County	AM	**Proposed Modifications** If notice is personally given at the initial hearing when parents/guardians are present it would save the court workload and postage costs. **Request for Specific Comments** **Should the form include any other information regarding appellate rights?**	The committee notes the commenter's support for the proposal if modified, and agrees that providing the advisement to parents and guardians who are present at the hearing saves work and time for the courts.

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

	Commenter	Position	Comment	Committee Response
			No, the form should not include 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.** No, we do not anticipate cost savings. **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?** Implementation requirements would include changes to procedure and the creation of new events codes in the Case Management System. **Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?** Yes, three months is sufficient.	The committee appreciates the commenter's responses to questions asked in the invitation to comments. The committee notes the commenter's implementation requirements.
9.	Superior Court of Orange County Juvenile Court Division	NI	**Comments** ▪ **Rule 5.590 Advisement of right to review in Welfare and Institutions Code section 300, 601, or 602 cases**	The committee appreciates the commenter's input on this proposal.

	Commenter	Position	Comment	Committee Response
			▪ Amend the rule to include "or through counsel" in the last sentence of section (a). This would allow the option for counsel to provide parties, if not present, notification of their right to appeal. ▪ **Information Regarding Appeal Rights (JV-805-INFO)** ▪ In the *Appealability* section, replace "300, 600, and 602" with language that is easier for parents to understand. Such as, juvenile justice, delinquency, or dependency case. In the *Steps and Time for Taking an Appeal* section, replace the word "rendition" with language that is easier for parents/guardians to understand. Such as, "within 60 days after the court has made a decision…" **Request for Specific Comments** ▪ *Would the proposal provide a cost savings?* No, there will not be a cost savings. If the Court provides the optional form to the parent/guardian, there will be an increase in cost associated with printing, mailing, and staff processing time.	The committee declines to amend the rule to provide that notice to counsel for absent parents is sufficient. The suggested amendment does not correct the issue of parents not receiving the advisement from the court if they are not present at the hearing. [Does the subcommittee agree? See also Stephanie Miller comment and response.] The committee has added a description of the code sections. (The committee has also corrected the typographical error referring to section 600; the correct statute is section 601.) The committee agrees with modifying this language and has revised this section of the form. The committee thanks the commenter for this input.

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	Commenter	Position	Comment	Committee Response
10.	Superior Court of Riverside County by Susan Ryan Chief Deputy, Legal Services	N	Position on Proposal: Generally do not agree that this change is necessary. Does the proposal appropriately address the stated purpose? Unsure. Requiring the court to give notice whether or not the party is at the hearing may not lead to actual notice. The minor in delinquency cases and the minor and parents in dependency cases will have an attorney. It would be more effective if the attorney made sure that parents who are not present at hearings were aware of these rights. Are items 3 and 4 of the form accurate and helpful in describing the right of an indigent appellant to appointed counsel and a free copy of the transcript? Yes. Should the form include any other information regarding appellate rights? No. If rule 5.590 is amended as proposed, should forms JV-415, JV-430, JV-435, JV-440, and JV-455 be revised to remove the notice to parents and guardians that they may not be advised of their appellate rights if they do not attend the juvenile court hearing? If rule 5.590 is amended then the forms should remove the sentence "If you	The committee notes the commenter's opposition to the proposal. The committee appreciates the commenter's feedback and observations. The proposal is intended to correct an imbalance in the rule that only requires courts to provide an advisement of appellate rights to parents and guardians who are present in court. Although written notice may not always lead to actual notice, the committee concludes that the benefits of taking this step to protect absent parents' and guardians' due process rights outweighs the burden of doing so. The committee appreciates this input.

	Commenter	Position	Comment	Committee Response
			do not attend the next hearing you may not be advised of your appellate rights" from the "For Your Information" box at the bottom as this information would no longer be accurate. Would the proposal provide cost savings? If so, please quantify? No, it would cost the court more. Staff time, paper, toner, envelopes and postage would be needed to send out this additional notice. What would the implementation requirements be for courts? Staff would need to be trained that advisement of appellate rights should always be given whether or not the parents were at the hearing or not. Courts would likely create a code to enter into the CMS that the notice was mailed. Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes How well would this proposal work in courts of different sizes? The same notifications and update codes would likely need to be made in all courts. The proposal should work for courts of all sizes.	The committee thanks the commenter for responding to the questions for courts in the invitation to comment. The committee notes the implementation requirements for courts. No further response required. No further response required.

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

	Commenter	Position	Comment	Committee Response
11.	Superior Court of San Bernardino County by Hon. Annemarie Pace Presiding Judge, Juvenile Court	N	This proposal places an undue burden on the already overwhelmed juvenile courts. The current law already requires the court to send writ/appeal rights notice to absent parents/guardians when a permanency hearing is set or when their parental rights have been terminated. Parents/guardians who appear at any stage of the proceedings get appointed counsel. Counsel is present at the disposition hearing whether or not the parent appears and can file an appeal as well as notify their client of their right to appeal. This proposed requirement would only apply where a permanency hearing is not set and in many cases where at least one party is receiving reunification services. The burden on the court outweighs the benefit in these cases because (1) notice of the recommendation has been sent to the party by the child welfare agency; (2) the party is represented by counsel; (3) no hearing has been set to terminate parental rights; and (4) the party is not losing the right to appeal - just the necessity of the court sending notice of the right to appeal.	The committee notes the commenter's opposition to the proposal and appreciates this feedback. The committee recognizes that parents and guardians have appointed counsel and that subdivision (b) of the rule requires that the court send notice to absent parents and guardians when hearings for permanency planning and to terminate parental rights are set. The committee disagrees that the burden on the court outweighs the benefit. Parents and guardians have substantial interests at stake when juvenile courts make findings and orders at every stage of dependency proceedings. Those findings and orders become final, and the party does lose the right to appeal, if the party is unaware of the right to appeal and an appeal is not timely filed.
12.	Superior Court of San Diego County by Mike Roddy Executive Officer	A	This change will require us to send the new form with the minute order and will require the orders clerk to be trained. It also may result in more appeals. Our court believes this is a good change.	The committee notes the commenter's support for the proposal and appreciates the input regarding implementation requirements.

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	Commenter	Position	Comment	Committee Response
			There is a typo on the first line of the new form: 600 should be 601.	The committee appreciates this note and has corrected the error.
13.	Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) by TCPJAC/CEAC Joint Rules Subcommittee (JRS)	A	The JRS notes the following impact to court operations: • Impact on existing automated systems (e.g., case management system, accounting system, technology infrastructure or security equipment, Jury Plus/ACS, etc.) • Results in additional training, which requires the commitment of staff time and court resources. • Increases court staff workload. The JRS notes that the rule change will provide greater awareness on the part of parents and guardians of appellate rights. Since the rule now requires an additional advisement to be sent if a parent is not present this will increase the workload of the Clerk's Office staff to track and record the appearance of each parent. In addition, depending on the number of parents not present, this may significantly increase postage costs for courts with large caseloads. *1. Does the proposal address the stated purpose?*	The committee notes the commenter's support for the proposal and appreciates the feedback regarding implementation requirements for courts. The committee appreciates this input.

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

	Commenter	Position	Comment	Committee Response
			Yes, the proposed modification squarely addresses, and accomplishes the stated purpose. However, Rule of Court 5.590(b)(2) also references advisements to be given to parents who are present when a hearing is set. To be consistent, subdivision (b)(2) could include the term "the child's parent, guardian." That section states, When the court orders a hearing under section 366.26, the court must advise all parties and, if present, the child's parent, guardian, or adult relative, that if the party wishes to preserve any right to review on appeal of the order setting the hearing under section 366.26, the party is required to seek an extraordinary writ by filing a *Notice of Intent to File Writ Petition and Request for Record (California Rules of Court, Rule 8.450)* (form JV-820) or other notice of intent to file a writ petition and request for record and a *Petition for Extraordinary Writ (California Rules of Court, Rules 8.452, 8.456)* (form JV-825) or other petition for extraordinary writ. (1)The advisement must be given orally to those present when the court orders the hearing under section 366.26.	The committee appreciates this suggestion. Amending subdivision (b) of rule 5.590 is beyond the scope of this proposal, but the committee will retain the suggestion for future consideration. See response above.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Committee Response
			(2)If a party, or the child's parent, guardian is not present when the court orders a hearing under section 366.26, within 24 hours of the hearing, the advisement must be made by the clerk of the court by first-class mail to the last known address of the party or by electronic service in accordance with section 212.5. If the notice is for a hearing at which the social worker will recommend the termination of parental rights, the notice may be electronically served in accordance with section 212.5, but only in addition to service of the notice by first-class mail. This change would have additional financial consequences as discussed herein. Finally, the new requirements may have unintended consequences including delay of dependency proceedings (based on notice issues). *2. Are items 3 and 4 accurate and helpful in describing the right of an indigent appellant to appointed counsel and a free copy of the transcript?* Yes.	See response below. The committee notes this concern, but expects that courts will take steps to avert potential problems such as delay when implementing the rule change.

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	Commenter	Position	Comment	Committee Response
			3. *Should the form include any other information regarding appellate rights*? No. *4. If rule 5.590 is amended as proposed, should forms JV-415, JV-430, JV-435, JV-440, and JV-455 be revised to remove the notice to parents and guardians that they may not be advised of their appellate rights if they do not attend the juvenile court hearing?* The above-recited judicial council forms provide the following notification: For Your Information -You may have a right to appellate review of some or all of the orders made during this hearing. Contact your attorney to discuss your appellate rights. Decisions made at the next hearing may also be subject to appellate review. If you do not attend the next hearing you may not be advised of your appellate rights. Contact your attorney if you miss the next hearing and want to discuss your appellate rights.	The committee thanks the commenter for this input.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Committee Response
			We do not recommend that this language be eliminated from the forms. The advisement, even if unnecessary, may still be helpful to the public. *5. Would the proposal provide cost savings? If so, please quantify.* No, the proposal would not provide cost savings. To the contrary, the proposal would have result in an increase in court labor, training, changes to automated systems, and other costs related to the additional form requirement. Further, the burden placed upon the court will include efforts to ascertain parent/guardian addresses and follow-up where notices are returned. This might be mitigated with language allowing notice to sufficient if sent by first class mail to the last known address. *6. 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?*	The committee thanks the commenter for this information on costs to the court. The committee agrees and has added language to rule 5.590(a) to this effect. The committee appreciates this information regarding implementation requirements.

	Commenter	Position	Comment	Committee Response
			Implementation of the rule modification will include training all juvenile clerks of the requirements, including when and to whom the judicial council advisement form must be mailed, and how to update the minutes, docket and case management system. Such training should not be expected to take longer 1 hour. The burden on the court for this task will depend on the size of the juvenile department and the number of clerks. The implementation will also require modification to case management systems, and possible automation. *7. Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?* Three months is a reasonable amount of time to allow for implementation. *8. How well would this proposal work in courts of different sizes?* As noted above, the burden on the court will vary, depending on the size of the court and juvenile department. Nevertheless, implementation will not unduly burden the large courts.	No further response required. No further response required.

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR19-03

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
Judicial Council staff
Christy Simons, Attorney

Action Requested
Review and submit comments by June 10, 2019

Proposed Effective Date
January 1, 2020

Contact
Christy Simons, 415-865-7694
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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

[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.

sufficient age, and, if present, the parent or guardian of" the right to appeal, if there is one; the steps and timing of an appeal; 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 A.A*. (2016) 243 Cal.App.4th 1220, the mother was not present for the continued jurisdictional 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 constitutional due process right to be advised of the right to appeal, and that, under rule 5.590(a), mother was not entitled to an advisement because she was not present at the hearing. (*Id*. at pp. 1236–1239.)

Following this decision, counsel for the mother in *In re A.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.

The Family and Juvenile Law Advisory Committee responded by proposing a notice on certain forms to notify parents and guardians that they may not be advised of their appellate rights if they do not attend the juvenile court hearing. Effective January 1, 2018, certain JV forms (e.g., JV-415, JV-430, and JV-435) were revised by the Judicial Council 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

[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.

made at the next hearing may also be subject to appellate review. If you do not attend the next hearing you may not be advised of your appellate rights. Contact your attorney if you miss the next hearing and want to discuss your appellate rights.

The Proposal

Rule

The Appellate Advisory 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.

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 appellate rights advisement to parents and guardians who are not present at hearings, and the new form is intended to assist with that requirement. 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 their appellate rights.

The committee also considered a suggestion to amend rule 5.590(a) to better track the statutory right to appeal as provided in section 395. Based on feedback from the Family and Juvenile Law Advisory Committee, the committee declined to pursue the suggestion because there is no

[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).

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 notice, but concluded that a form would assist courts in providing the advisement that would be 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 to the parties following a hearing.

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 items 3 and 4 of the form accurate and helpful in describing the right of an indigent appellant to appointed counsel and a free copy of the transcript?
- Should the form include any other information regarding appellate rights?
- If rule 5.590 is amended as proposed, should forms JV-415, JV-430, JV-435, JV-440, and JV-455 be revised to remove the notice to parents and guardians that they may not be advised of their appellate rights if they do not attend the juvenile court hearing? (See links below.)

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, rule 5.590, at page 6

2. Form JV-805-INFO, at page 7

Links to related forms not part of proposal:

3. Link to form JV-415, Findings and Orders After Dispositional Hearing (Welf. & Inst. Code, § 361 et seq.)
4. Link to form JV-430, Findings and Orders After Six-Month Status Review Hearing (Welf. & Inst. Code, § 361.21(e))
5. Link to form JV-435, Findings and Orders After 12-Month Permanency Hearing (Welf. & Inst. Code, § 366.21(f))
6. Link to form JV-440, Findings and Orders After 18-Month Permanency Hearing (Welf. & Inst. Code, § 366.22)
7. Link to form JV-455, Findings and Orders After 24-Month Permanency Hearing (Welf. & Inst. Code, § 366.25)

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

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)–(4) * * *

**(b)–(c) * * *

JV-805-INFO Information Regarding Appeal Rights

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 later order may be appealed as an order after judgment.

A judgment or later order entered by a referee or commissioner becomes appealable whenever proceedings under section 252, 253, or 254 have completed or, if proceedings under 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 of 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 *Notice of Appeal—Juvenile* (form JV-800) 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.