JUDICIAL COUNCIL
OF CALIFORNIA

APPELLATE ADVISORY
COMMITTEE

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APPELLATE ADVISORY COMMITTEE

MINUTES OF OPEN MEETING

February 21, 2019
10:00 a.m.

Advisory Body Members Present:	Hon. Louis Mauro, chair; Hon. Kathleen M. Banke, vice-chair; Mr. Kevin Green, Mr. Jonathan Grossman, Hon. Adrienne M. Grover (phone), Hon. Joan K. Irion (phone), Hon. Kent M. Kellegrew, Mr. Daniel M. Kolkey, Mr. Jeffrey Laurence, Ms. Heather MacKay, Ms. Mary K. McComb, Mr. Jorge Navarrete, Ms. Milica Novakovic, Ms. Beth Robbins, Hon. Laurence D. Rubin, Mr. Timothy Schooley, Hon. Stephen D. Schuett (phone), and Hon. M. Bruce Smith
Advisory Body Members Absent:	Ms. Laura Arnold, Hon. Leondra R. Kruger, Ms. Mary-Christine Sungaila
Others Present:	Ms. Christy Simons, Ms. Sarah Abbott, Ms. Kristi Morioka (phone), Mr. Dan Pone, and Mr. Jay Harrell

OPEN MEETING

Call to Order and Roll Call
The chair called the meeting to order at 10:00 a.m., and roll was called.

Chair's Report
Justice Mauro acknowledged the staff and attorneys working for the committee and the strong relationship with RUPRO. Due to the unexpected staffing shortage during this rules cycle, projects were re-prioritized and some Privacy Subcommittee projects have been deferred until a later time.

Approval of Minutes
Minutes of the 06/01/2017, 07/31/2017, 07/17/2018, and 09/11/2018 Appellate Advisory Committee meetings were approved.

DISCUSSION AND ACTION ITEMS (ITEMS 1–12)

Item 1

Legislative Update (Information Only)
Mr. Dan Pone provided the committee an update on the budget and pending legislation that is of interest to the committee.

Item 2

Update from the Privacy Subcommittee (Information Only)

Justice Banke provided an update on the work of the subcommittee. She observed that rule 8.90 has been effective and courts are becoming more mindful of privacy concerns in drafting appellate opinions. Justice Banke also updated the committee on a non-committee project she and Mr. Schooley undertook to draft a chapter on privacy for the judicial appellate attorney manual.

Item 3

Format of Motions and Applications (Action Required)

Consider whether to recommend circulation of a proposed new rule governing formatting of documents filed in the appellate division of the superior courts.

Action:

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

Item 4

Oral Argument in Misdemeanor and Limited Civil Appeals (Action Required)

Consider whether to recommend circulation of amended rules to provide that oral argument will not be set in cases presenting no arguable issues and to set forth a procedure for waiving oral argument. The proposal also includes two optional forms, one for limited civil cases and one for misdemeanor cases, to assist litigants in waiving oral argument if they choose to do so. The committee discussed possible amendments to the waiver procedure. Mr. Kolkey raised an issue regarding the submission date of *Wende* appeals.

Action:

The committee reviewed the proposal and recommended that it be circulated for public comment as submitted, with the understanding that staff would look into the submission date issue to determine whether the proposal should be modified. The committee delegated approval of any modification and the final language of the proposal to the committee chair. Any comments should be sent to Ms. Simons.

Item 5

Appellate Procedure: Notice of Appeal and the Record in Civil Commitment Cases (Action Required)

Consider whether to recommend circulation of a new rule setting forth the required contents of the normal record on appeal for civil commitment cases and a new form notice of appeal for civil commitment cases. The new rule is modeled on the rule regarding the record on appeal in criminal cases. Mr. Kolkey described the Rules Subcommittee's discussion regarding where to place the new rule and recommendation that an advisory committee comment be added to the criminal rule to assist practitioners in finding the new rule. The committee discussed modifying the language regarding the reports that must be included in the clerk's transcript. Mr. Kolkey noted that the proposed rule provides that all written defense motions are included in the clerk's transcript, but that the oral proceedings of defense motions are included in the reporter's transcript only if the appellant is the person subject to the commitment order.

Action:

The committee recommended that the proposal be circulated for comment as modified, with the understanding that staff would look into whether the inconsistency in the inclusion of defense

motions in the clerk's transcript and the reporter's transcript should stand or be modified. The committee delegated approval of any modification and the final language of the proposal to the chair.

Item 6

Appellate Procedure: Advisement of appellant rights in juvenile cases (Action Required)

Consider whether to recommend circulation of an amended 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. To alleviate any burden created by requiring the court to provide this advisement to parents and guardians who are not present at the hearing, the proposal also includes a new optional form notice for clerks to send with court orders following a hearing to provide the advisement.

Action:

The committee recommended that the proposal, with minor, non-substantive changes to the form, be circulated for public comment.

Item 7

CEQA: New fees for expedited review (Action Required)

Consider whether to approve the approach recommended by the working group to develop rules to implement Assembly Bills 734, 987, and 1826, which require the council to implement procedures for the expedited resolution of CEQA actions and proceedings for "Oakland sports and mixed use projects" (relating to a new baseball park), the Inglewood NBA arena project, and additional projects related to the capitol building annex projects. The new laws for the Oakland ballpark and the Inglewood arena projects include provisions that projects applicants must agree to pay "any additional costs incurred by the court in hearing and deciding any case subject to this [new law]" in a form and manner specified by the council in rules of court. This is a joint project with the Civil and Small Claims Advisory Committee; an ad hoc working group chaired by Justice Robie will develop the proposal.

Action:

The committee voted to approve the approach recommended by the ad hoc working group.

Item 8

Appellate Procedure: Word limit for petitions for rehearing in unlimited civil cases (Action Required)

Consider whether to recommend circulation of an amended rule to reduce the maximum length of petitions for rehearing and answers to those petitions in the Court of Appeal. Currently, the rule sets forth maximum limits of 14,000 words for briefs produced on a computer and 50 pages for briefs produced on a typewriter. These limits apply to all types of briefs. This proposal would provide lower limits of 7,000 words and 25 pages for petitions for rehearing and answers.

Action:

The committee voted to recommend circulation of the proposal as submitted.

Item 9

Appellate Procedure: Access to juvenile case files in appellate court proceedings (Action Required)

Consider whether to recommend for circulation amended rules and new and revised forms to implement legislation amending the statute that specifies who may access and copy records in a

juvenile case file. The statutory amendment clarified that a person who has been granted access to records in a juvenile court proceeding by the juvenile court is entitled to access the same records on review in the appellate court. The proposal would implement the legislation by updating the rules relating to juvenile appeals to include provisions relating to persons with limited access to the juvenile case file and the record that must be prepared and provided to these persons. The committee discussed options for creating a limited record, including a redacted version of the normal record, a separate record containing only records the juvenile court had released to the person, and an appendix. The committee also noted some language on the forms conflates writs and appeals.

Action:

The committee voted to recommend circulation of the proposal with the understanding that Mr. Kolkey and Justice Banke will provide clarifying language regarding a limited record, and that the forms language will be referred to staff to the Family and Juvenile Law Advisory Committee. The committee delegated final approval of the proposal as modified to the chair.

Item 10

Appellate Procedure: Service copy of petitions for review (Action Required)

Consider whether to recommend circulation of an amended rule regarding petitions for review in the California Supreme Court to remove the outdated requirement to send to the Court of Appeal a separate service copy of an electronically filed petition for review. When a petition is filed electronically, the Court of Appeal automatically receives a filed/endorsed copy of the petition; a separate service copy is unnecessary. This proposal does not change the requirement to serve the Court of Appeal with a separate copy if a petition for review is filed in paper form. Mr. Navarrete confirmed that the Courts of Appeal are receiving copies of e-filed petitions and that receipt is without delay.

Action:

The committee voted to recommend circulation of the proposal as submitted.

Item 11

Rules modernization: Uniform formatting rules for electronic documents (Action Required)

Consider whether to recommend circulation of amended rules to create uniform formatting rules for electronic documents filed in the appellate courts. The committee discussed issues related to paper and electronic copies, bookmarking, and pagination, and suggested a number of modifications to clarify certain provisions. The committee also discussed challenges that arise from cross-referencing to other rules that address formatting of paper and electronic documents, and how to clarify for litigants which rules to apply. One member asked about the origin of banning Times New Roman; the Second District's local rules ban it because of readability concerns. The ban on e-filing documents with color components and the limits of ACCMS were also discussed. One member noted that there seemed to be some disconnect between what practitioners say is do-able (for example, with respect to pagination) and what the courts want or need.

Action:

The committee voted to approve the proposal in concept and recommended that it circulate for public comment with the modification to rule 8.74(a)(2) proposed by Mr. Green and subject to further changes to implement committee suggestions. The committee delegated final approval to the chair.

Item 12

E-filing for incarcerated individuals (Action Required)
Consider whether to recommend to the Judicial Council a pilot program with the California Department of Corrections and Rehabilitation for e-filing between one prison and the Court of Appeal, Third Appellate District.

Action:

The committee voted to approve the pilot project.

Item 13

Liaison Reports (Information Only)
No liaison reports were presented.

ADJOURNMENT

There being no further business, the meeting was adjourned at 2:10 p.m.

Approved by the advisory body on enter date.

Item 01

JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
July 5, 2019

To
Court of Appeal Presiding Justices and Clerks
Members, Administrative Presiding Justices Advisory Committee
Members, Appellate Advisory Committee

From
Cory T. Jasperson, Director

Subject
Report of 2019 Legislation of Interest to Appellate Courts

Action Requested
For Your Information

Deadline
N/A

Contact
Andi Liebenbaum, 916-323-3121
andi.liebenbaum@jud.ca.gov

Attached you will find two charts reflecting actions on legislation in the 2019–2020 legislative session. The first chart consists of legislation of potential interest to the appellate courts. The second consists of legislation that is responding to California appellate and Supreme Court decisions.

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

CTJ/AL/yc-s
Attachments
cc: Martin Hoshino
Millicent Tidwell

2019–20 LEGISLATION AFFECTING CALIFORNIA APPELLATE PROCEDURE

BILL	AUTHOR	SUMMARY	STATUS as of July 5, 2019
AB 685	**Reyes**	**Juveniles: Indian tribes: counsel** Requires the State Bar of California to administer grants to qualified legal services projects and support centers for the purpose of providing legal services to Indian Tribes in Child Welfare matters under the Indian Child Welfare Act (ICWA). Requires development/adoption of training requirements that include instruction on ICWA. Requires the Court of Appeal to appoint separate counsel for a child, at the request of the tribe, in any appellate proceeding involving an Indian child. [As introduced.]	Senate Judiciary Committee
SB 25	**Caballero and Glazer**	**California Environmental Quality Act: expedited review: projects funded by qualified opportunity zone funds or other public funds.** Among other things, requires, to the extent feasible, a 270-day expedited judicial review, including any potential appeals, of the environmental review and approvals granted for an undefined number of projects that could be located in qualified opportunity zones throughout the state. [As revised June 27, 2019.]	Assembly Natural Resources Committee
SB 621	**Glazer and Caballero**	**California Environmental Quality Act: expedited review: affordable housing projects** Among other things, requires the Judicial Council, on or before July 1, 2020, to adopt a rule of court applicable to actions or proceedings brought pursuant to the California Environmental Quality Act (CEQA) seeking judicial review of environmental review documents and approvals granted for certain affordable housing projects. It requires these actions or proceedings, including any appeals therefrom, to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court. [As amended June 17, 2019.]	Assembly Natural Resources Committee

NOTE: This cumulative table is current through 07.05.19. For additional information such as bill analyses, legislative deadlines, hearing dates, or Judicial Council positions on legislation, please contact the Judicial Council's Governmental Affairs office at (916) 323-3121. Bills can be found on the Internet at http://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml

2019–20 LEGISLATION AFFECTING CALIFORNIA APPELLATE PROCEDURE

BILL	AUTHOR	SUMMARY	STATUS as of July 5, 2019
SB 744	Caballero	**California Environmental Quality Act: expedited review: supportive housing projects** This bill, among other things, requires the Judicial Council, on or before September 1, 2020, to amend specified rules of court to establish procedures applicable to actions or proceedings brought pursuant to the California Environmental Quality Act (CEQA) seeking judicial review of environmental review documents and approvals granted for certain No Place Like Home supported housing projects. It requires these actions or proceedings, including any appeals therefrom, to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court. [As amended April 29, 2019.]	Assembly Natural Resources Committee

2019–20 LEGISLATION *RESPONDING* TO CALIFORNIA APPELLATE AND SUPREME COURT DECISIONS

BILL	AUTHOR	SUMMARY	STATUS as of July 5, 2019
AB 5	Gonzalez	**Worker status: independent contractors** Among other things, states the intent of the Legislature to codify *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (Dynamex; (2018) 4 Cal.5th 903. Provides that the "ABC" test be applied to determine the status of a worker as an employee or independent contractor unless another definition or specification of "employee" is provided. Exempts specified professions from these provisions and instead substitutes the test adopted in *S.G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341 to determine the employment relationship. [As amended May 24, 2019.]	Senate Labor, Public Employment and Retirement Committee
AB 71	Melendez	**Employment standards: independent contractors and employees** Among other things, seeks to abrogate the California Supreme Court's holding in *Dynamex Operations W. v. Superior Court* (2018) 4 Cal.5th 903. This bill would, instead, require a determination of whether a person is an employee or an independent contractor to be based on a specific multifactor test, including whether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired, and other identified factors. The bill would make related, conforming changes [As amended February 25, 2019.]	Assembly Labor and Employment Committee 2-year bill
AB 227	Jones-Sawyer	**Crimes: assessments: restitution: ability to pay** Makes defendant's inability to pay a fine a compelling and extraordinary reason for a court to not impose a restitution fine upon a conviction for a misdemeanor or felony. Requires the court to impose the court facility and court operation assessments unless the court determines that the defendant does not have the ability to pay. Codifies the decision of *People v. Dueñas* (2019) 30 Cal.App.5th 1157. [As introduced.]	Assembly Appropriations Committee 2-year bill

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BILL	AUTHOR	SUMMARY	STATUS as of July 5, 2019
AB 233	Cooley	**Insurance: Independent contractors** Clarifies the application of case law (*Dynamex Operations West v. Superior Court*) to persons licensed by the Department of Insurance to transact insurance in specified capacities by providing that those persons are not employees when they have entered into a written agreement with an insurer or organizational licensee that includes specified provisions, including that the worker is classified as an independent contractor, that each party has the right to terminate the agreement upon notice to the other party, and that the worker is responsible for the payment of necessary expenditures and applicable taxes. Allows the parties to the agreement to classify the worker as either an employee or an independent contractor, but would prohibit a worker from being classified as an independent contractor unless the agreement contains specified provisions. [As introduced.]	NOTE: April 11, 2019 amendments removed the Legislative findings and declarations.
AB 303	Cervantes	**Mental health: sexually violent predators: trial.** Establishes procedures and timelines for requesting, responding to, and granting continuances in Sexually Violent Predator (SVP) civil trial proceedings. This legislation is in response to *People v. Superior Court (Vasquez)* (2018), 27 Cal.App.5th 36, in which an SVP petition against George Vazquez was dismissed for due process violations based on the lengthy delay in bringing the case to trial. Mr. Vasquez was detained in state hospitals for over 17 years awaiting trial on the petition, as a series of six appointed attorneys slowly moved his case toward trial. The court applied a due process balancing test established by U.S. Supreme Court and concluded that under the balancing test Mr. Vasquez had suffered prejudice due to the excessive delay and that the delay was caused by the state. In reaching that holding, the Appellate Court stated, "[t]he ultimate responsibility for bringing a person to trial on an SVP petition at a 'meaningful time' rests with the government." (Id. at 58.) [As amended April 23, 2019.]	Senate Appropriations Committee

2019–20 LEGISLATION *RESPONDING* TO CALIFORNIA APPELLATE AND SUPREME COURT DECISIONS

BILL	AUTHOR	SUMMARY	STATUS as of July 5, 2019
AB 1380	Obernolte	**Premarital agreements: enforcement** Requires that the party against whom enforcement of a premarital agreement is sought to be advised to seek independent legal counsel, and that advisement shall be made at least 7 days before the final agreement is signed. States that this provision is declaratory of existing law. Provides that, with respect to premarital agreements executed on or after January 1, 2020, that the agreement may not be deemed voluntary unless the party against whom enforcement is sought had at least 7 days between being first presented with the final agreement and signing the agreement, regardless of whether the party is represented by legal counsel. States that paragraph (B) of paragraph (2) of subdivision (c) of Section 1615 of the Family Code is intended to supersede, on a prospective basis, the holding *in re Marriage of Caldwell, Faso v. Faso* (2011) 191 Cal.App.4th 945. [As amended June 10, 2019.]	Senate Floor
AB 1618	Jones-Sawyer	**Plea bargaining: benefits of later enactments** States that a provision of a plea bargain that requires a defendant to generally waive future potential benefits of legislative enactments, initiatives, judicial decisions, or other changes in the law that may retroactively apply after the date of the plea is void as against public policy. The bill appears to be in response to *People v. Wright*, (2019) 31 Cal.App.5th 749, which ruled that "[i]f parties to a plea agreement want to insulate the agreement from future changes in the law they should specify that the consequences of the plea will remain fixed despite amendments to the relevant law" and *People v. Barton*, (2019) 32 Cal.App.5th 1088, which held that when a defendant negotiates a plea for a stipulated sentence and waives the right to appeal the sentence, the defendant cannot seek to change his/her sentence after a favorable sentencing law is later enacted. [As amended June 13, 2019.]	Senate Appropriations Committee

2019–20 LEGISLATION *RESPONDING* TO CALIFORNIA APPELLATE AND SUPREME COURT DECISIONS

BILL	AUTHOR	SUMMARY	STATUS as of July 5, 2019
AB 1798	**Levine**	**California Racial Justice Act: death penalty** Prohibits a person from being executed pursuant to a judgment that was either sought or obtained on the basis of race if the court makes a finding that race was a significant factor in seeking or imposing the death penalty. The bill would provide that a finding that race was a significant factor would include statistical evidence or other evidence that death sentences were sought or imposed significantly more frequently upon persons of one race than upon persons of another race or that race was a significant factor in decisions to exercise preemptory challenges during jury selection. This bill codifies the holding in *People v. Wheeler* (1978) 22 Cal. 3d 258) which held that the practice of excusing jurors from the jury pool on the basis of race was unconstitutional. [As amended March 21, 2019.]	Assembly Appropriations Committee 2-year bill
SB 145	**Wiener**	**Sex offenders: relief from registration** Exempts a person convicted of certain offenses involving minors from the duty to register as a sex offender if the person is not more than 10 years older than the minor. According to press accounts, this bill seeks to abrogate the decision of the California Supreme Court in *Johnson v. California Department of Justice* (2015) 60 Cal.4th 871. [As amended May 21, 2019.]	Assembly Public Safety Committee

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BILL	AUTHOR	SUMMARY	STATUS as of July 5, 2019
SB 238	Grove	**Worker status: factors for determination of employee status** Among other things, seeks to abrogate the California Supreme Court's holding in *Dynamex Operations W. v. Superior Court* (2018) 4 Cal.5th 903. The bill would require, for purposes of claims for wages and benefits arising under wage orders, an analysis as to whether the worker is economically dependent upon the hiring entity to determine whether that worker is an employee based upon the economic reality of the relationship with the hiring entity. The bill would also require this analysis to be based solely upon enumerated factors that are similar to those used as a part of the Economic Realities Test in the federal Fair Labor Standards Act of 1938. In addition, the bill would provide legislative findings and declarations in support of these provisions, and would state in the findings and declarations that it is the intent of the Legislature that the test under these provisions be applied retroactively to claims filed on and after April 30, 2018. [As amended March 28, 2019.]	Senate Labor, Public Employees and Retirement Committee 2-year bill

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BILL	AUTHOR	SUMMARY	STATUS as of July 5, 2019
SB 707	Wieckowski	**Arbitration agreements: enforcement** Among other things, specifies that in an employment or consumer arbitration that requires, either expressly or through application of state or federal law or the rules of the arbitration administrator, the drafting party to pay certain fees and costs before the arbitration can proceed, if the fees or costs to initiate an arbitration proceeding are not paid within 30 days of their due date, the drafting party is in material breach of the arbitration agreement, is in default of the arbitration, and waives its right to compel arbitration under CCP section 1281.2. States the intent of the Legislature in enacting this measure to affirm the decisions in *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, *Brown v. Dillard's, Inc.* (2005) 430 F.3d 1004, and *Sink v. Aden Enterprises, Inc.* (2010) 352 F.3d 1197, that a company's failure to pay arbitration fees pursuant to a mandatory arbitration provision constitutes a breach of the arbitration agreement and allows the non-breaching party to bring a claim in court. Specifies that sanctions shall be monetary sanctions on the drafting party who impartially preaches an arbitration agreement and would authorize the court to impose other sanctions as specified in an employment or consumer arbitration, regardless of whether the drafting party, as defined, is required to pay certain fees and costs before the arbitration can proceed, or during the pendency of the arbitration proceeding. [As amended May 20, 2019.]	Assembly Floor

Item 02

Report will be provided orally at meeting.

Item 03

JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
July 3, 2019

To
Members of the Appellate Advisory Committee

From
Appellate Division Subcommittee,
Hon. Kent Kellegrew, Chair

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

Action Requested
Please read before July 19 committee meeting

Deadline
July 19, 2019

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

Introduction

As you may recall, earlier this spring the Appellate Advisory Committee recommended circulating for public comment a proposal to adopt California Rules of Court, rule 8.815,[1] governing the form of filed documents in the appellate division. This new rule would be included in chapter 1 (General Rules Applicable to Appellate Division Proceedings) of division 2 (Rules Relating to the Superior Court Appellate Division) of title 8 (Appellate Rules) of the California Rules of Court and is intended to resolve uncertainty and provide clarity regarding the proper formatting of documents filed in the appellate division of the superior courts. The new rule would provide in full:

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

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

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. This memorandum discusses the public comments received on the proposal.

Public Comments

One law firm, two organizations (the Committee on Appellate Courts of the Litigation Section of the California Lawyers Association and the Orange County Bar Association) and four courts submitted comments on this proposal. All seven commenters agreed with the proposal. Two commenters, the Superior Court of San Bernardino County and the Superior Court of Los Angeles County, agreed with the proposal without providing further comment. One commenter, the Committee on Appellate Courts of the Litigation Section of the California Lawyers Association, specifically noted that the proposal "addresses a genuine problem for litigants and counsel in determining which formatting rules, trial court or court of appeal, govern the format of applications, motions, and other documents in the appellate division. The proposed new rule provides clarity and consistency for appellate division litigants." The full text of the comments received and the proposed committee responses are set out in the attached comment chart. Also attached is a draft report to the Judicial Council, as well as the text of proposed new rule 8.815.

The only comment addressing the substance of the proposed new rule was submitted by a law firm (Horvitz & Levy), which agreed with the proposal but noted that: "The new rule and Rule 8.883 do not address electronically filed documents (and I don't know if appellate divisions in superior court currently allow for electronic filing but I assume they are moving in that direction) but given Rule 8.72 alters the formatting in Rule 8.204, there should likely be some discussion or explanation of how these rules interact." The subcommittee understands this comment to refer to the potential interplay between this proposal and another proposal also currently being considered by the Appellate Advisory Committee that would, among other things, amend rules 8.40, 8.72, 8.74, and 8.204 to create uniform formatting rules for electronically filed documents in the Court of Appeal and Supreme Court (the appellate courts). If the uniform formatting rules proposal is approved as it was circulated for public comment during this spring cycle, it would significantly revise and standardize the formatting requirements for documents filed electronically in the appellate courts.

The Appellate Division subcommittee discussed this comment during its meeting on June 26, and decided that this proposal to adopt new rule 8.815—governing the formatting of applications, motions and other documents in the appellate division—need not be modified based on the comment. The separate uniform formatting rules proposal does not address the format of electronically filed documents in the appellate division, creates no inconsistencies in the appellate division rules that must be addressed in this proposal, and will not alter any existing

formatting requirements in the appellate division. Thus, any modification, such as adding an advisory committee comment, would seem to create, rather than negate, confusion about the interplay of the two separate rules schemes.

The subcommittee also considered that proposed new rule 8.815, which incorporates by reference the formatting requirements for appellate division briefs set forth in rule 8.883(c), was initially drafted to mirror existing appellate rule 8.40(a), which in turn incorporates by reference the existing formatting requirements for civil appellate briefs set forth in rule 8.204(b). And if the separate proposal described above relating to electronically filed documents in the appellate courts is approved by the council, then the new appellate division rule 8.815 and existing rule 8.883(c) will no longer mirror the amended appellate rules. The subcommittee does not view this as an issue that requires modification of this proposal. While it is beneficial for the appellate division and appellate rules to be parallel where appropriate, this appears to be an instance where the rules should differ, at least for the time being. Electronic filing is not available in all appellate divisions, and the proposed new uniform rules scheme governing electronic filing in the appellate courts may not be appropriate for all appellate divisions or all case-types within an appellate division. In any event, adding formatting requirements for electronically filed documents in the appellate division would exceed the scope of this proposal. However, electronic filing is increasing in the appellate division, and the rules for this process, including the format of electronically filed documents, should very likely be considered in the future.[2] *The committee may wish to discuss whether it agrees with the subcommittee's conclusion that no modification of the proposal is needed in light of this comment.*

The only other substantive comments, made by the superior courts of San Diego, Orange and Los Angeles Counties, addressed the potential implementation requirements for courts. The Superior Court of San Diego County stated that some staff training on the new rule would be required, additional counter time working with self-represented parties would be expected, and procedures for handling non-complying filings would need to be created. However, the Superior Court of Orange County pointed out that, because the new formatting rule incorporates existing guidelines, "training requirements would be minimal for staff. Staff would just need to be made aware that specific guidelines now exist and that they are similar to what is used for misdemeanor briefs." The Superior Court of Los Angeles County does not believe any additional training will be required. It appears from these comments that any potential implementation requirements would be minimal, and the subcommittee does not believe they present a barrier to adoption of the new rule.

[2] If the committee believes that the appellate division rules should be amended to mirror the other proposal that would standardize the rules governing formatting of electronically filed documents in the appellate courts, this broader proposal would likely be appropriate for inclusion on the committee's annual agenda in the future.

Committee Task

Attached is a draft of the report to the Judicial Council on this proposal, including the proposed text of the new rule. The committee's task with respect to this proposal is to:

- Discuss the comments received on the proposal and approve or modify the subcommittee's suggestions for responding to these comments, as reflected in the draft comment chart and draft report to the Judicial Council; and

- Discuss and approve or modify the subcommittee's recommendation regarding adoption of the proposal, as reflected in the draft report to the Judicial Council.

Attachments:
1. Draft of report to the Judicial Council
2. Draft California Rules of Court, rule 8.815
3. Comment chart with draft committee responses

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: Form of Filed Documents in the Appellate Division

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

Recommended by
Appellate Advisory Committee
Hon. Louis Mauro, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
July 3, 2019

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

Executive Summary

The Appellate Advisory Committee recommends adopting rule 8.815 to govern the form of filed documents in the appellate division. The new rule would incorporate by reference the existing formatting requirements for civil and misdemeanor briefs filed in the appellate division as set forth in rule 8.883(c). The new rule will resolve uncertainty and provide clarity regarding the proper formatting of documents filed in the appellate division of the superior courts.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2020, adopt rule 8.815 to govern the form of filed documents in the appellate division by incorporating the existing formatting requirements for civil and misdemeanor briefs filed in the appellate division set forth in rule 8.883(c).

The text of the new rule is attached at page 7.

Relevant Previous Council Action

The rules governing the appellate division of the superior courts, rules 8.800 through 8.936 of the California Rules of Court, were repealed and replaced in full effective January 1, 2009. Rule 8.883 was amended in 2011, 2013, 2014, and 2016, but these amendments are not relevant to this proposal.

Analysis/Rationale

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

The trial court rules, rules 2.1 through 2.1100, "apply to all cases in the superior courts unless otherwise specified by a rule or statute."[5] Rules 2.100 through 2.118, included within these rules, govern the "form and format of papers to be filed in the trial courts"[6] and contain detailed formatting requirements for trial court papers. Arguably, in the absence of any appellate division rule specifically governing the format of applications, motions, and other documents in that division, these trial court formatting rules should apply. However, this is unclear under the existing statutory scheme.

Separately, appellate rules 8.40 and 8.204 govern the format of "documents filed in a reviewing court,"[7] which is defined to mean the Supreme Court and Court of Appeal and to exclude the appellate division of the superior courts.[8] There is no rule expressly governing the proper format

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

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

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

[4] See rules 8.806 (Applications) and 8.808 (Motions).

[5] See rule 2.2.

[6] See rule 2.100(b).

[7] See rule 8.40(a).

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

for applications, motions, or other documents in the appellate courts. Instead, existing rule 8.40[9] generally provides that such documents "may be either produced on a computer or typewritten and must comply with the relevant provisions of rule 8.204(b)." Rule 8.204(b), in turn, contains detailed requirements regarding the formatting of briefs to be filed in civil appeals in the Court of Appeal. Although specific to civil briefs, rule 8.204(b) is incorporated by reference into rule 8.40 and thus is also applicable to other documents filed in the appellate courts more generally, including applications and motions. As noted above, however, these rules do not apply to documents filed in the appellate division.

Although there are similarities among the rules governing the form of filed documents in the trial courts and appellate courts, as well as civil and misdemeanor briefs filed in the appellate division, there are also notable differences.[10] In the absence of specific guidance for formatting motions, applications, and other documents in the appellate division, litigants are left to format their submissions as best they can. Proposed new rule 8.815 is intended to provide clarity as to the proper formatting of applications, motions, and other documents filed in the appellate division. The new rule would mirror existing rule 8.40(a) governing formatting in the appellate courts, and provide that documents filed in the appellate division must comply with the relevant provisions of rule 8.883(c), which sets forth the formatting requirements for briefs in limited civil and misdemeanor cases in the appellate division. Since litigants in the appellate division should already be familiar with the appellate division rules, and those appealing limited civil and misdemeanor cases will need to comply with the requirements of rule 8.883 in preparing their briefs, this approach would provide clarity for litigants and courts.

Policy implications

The committee did not identify any significant policy implications relating to the proposed new rule. The committee notes, however, that if the separate proposal to amend several appellate rules to create a uniform formatting scheme for electronically filed documents in the appellate courts is approved by the council, then new appellate division rule 8.815 will no longer mirror Court of Appeal rule 8.40(a) (and existing appellate division formatting rule 8.883(c) will no longer mirror amended Court of Appeal formatting rule 8.204(b)). However, as discussed further below, the committee believes that this difference is appropriate, given the relevant operational differences between the appellate division and the appellate courts, including differences in the

[9] There is a separate proposal, *Appellate Procedure: Uniform Formatting Rules for Electronic Documents*, currently before the council that would, among other things, amend rules 8.40 and 8.204 to create uniform formatting rules for documents filed electronically in the appellate courts. The discussion of rules 8.40 and 8.204 included herein relates to the *existing* version of the rules.

[10] For example, 12-point font is used in trial courts (rule 2.104) whereas 13-point font is used in the Court of Appeal (rule 8.204(b)(4)) and for civil and misdemeanor briefs in the appellate division (rule 8.883(c)(4)); papers in the trial court must contain line numbers (rule 2.108), Court of Appeal documents must not (rule 8.204(b)(5)), and rule 8.883(c) is silent as to line numbering of civil and misdemeanor briefs in the appellate division. The requirements for the format of the first page of documents filed in the trial courts, appellate division, and Court of Appeal differ in numerous ways (compare rules 2.111, 8.40(b) and (c), 8.204(b)(10), 8.816(a), and 8.883(c)(8)). Compare generally rules 2.102 through 2.118 to rules 8.204(b) and 8.883(c).

electronic filing requirements and capabilities of the various appellate divisions throughout the state.

Comments

The proposed new rule was circulated for public comment between April 11 and June 10, 2019, as part of the regular spring comment cycle. One law firm, two organizations (the Committee on Appellate Courts of the Litigation Section of the California Lawyers Association and the Orange County Bar Association), and four courts submitted comments on this proposal. All seven commenters agreed with the proposal. A chart with the full text of the comments received and the committee's responses is attached at pages 8–11.

Two commenters, the Superior Court of San Bernardino County and the Superior Court of Los Angeles County, agreed with the proposal without providing further comment. One commenter, the Committee on Appellate Courts of the Litigation Section of the California Lawyers Association, specifically noted that the proposal "addresses a genuine problem for litigants and counsel in determining which formatting rules, trial court or court of appeal, govern the format of applications, motions, and other documents in the appellate division. The proposed new rule provides clarity and consistency for appellate division litigants."

The only comment addressing the substance of the proposed new rule was submitted by a law firm (Horvitz & Levy LLP), which agreed with the proposal but noted, "The new rule and Rule 8.883 do not address electronically filed documents (and I don't know if appellate divisions in superior court currently allow for electronic filing but I assume they are moving in that direction) but given Rule 8.72 alters the formatting in Rule 8.204, there should likely be some discussion or explanation of how these rules interact." The Appellate Advisory Committee understands this comment to refer to the potential interplay between this proposal and another proposal currently before the council that would, among other things, amend rules 8.40, 8.72, 8.74, and 8.204 to create uniform formatting rules for electronic documents filed in the Court of Appeal and Supreme Court (the appellate courts). If the uniform formatting rules proposal is approved as it was circulated for public comment during this spring cycle (SPR19-07), it would significantly revise and standardize the formatting requirements for documents filed electronically in the appellate courts.

The committee does not recommend that this proposal to adopt new rule 8.815 be modified based on this comment. The separate uniform formatting rules proposal does not address the format of electronically filed documents in the appellate division, creates no inconsistencies in the appellate division rules that must be addressed in this proposal, and will not alter any existing formatting requirements in the appellate division. Thus, any modification, such as adding an advisory committee comment, would seem to create, rather than negate, confusion about the interplay of the two separate rules schemes.

Additionally, it is true that proposed new rule 8.815, which incorporates by reference the formatting requirements for appellate division briefs set forth in rule 8.883(c), was initially drafted to mirror existing appellate rule 8.40(a), which in turn incorporates by reference the

existing formatting requirements for civil appellate briefs set forth in rule 8.204(b). And if the separate proposal relating to electronically filed documents in the appellate courts is approved by the council, then new appellate division rule 8.815 and existing rule 8.883(c) will no longer mirror the amended appellate rules. The committee does not view this as an issue that requires modification of this proposal. While it is beneficial for the appellate division and appellate rules to be parallel where appropriate, this is an instance where the rules should differ, at least for now. Electronic filing is not available in all appellate divisions, and the proposed new uniform rules scheme governing electronic filing in the appellate courts is not currently appropriate for all appellate divisions or all case types within an appellate division. In any event, adding formatting requirements for electronically filed documents in the appellate division would exceed the scope of this proposal. However, electronic filing is increasing in the appellate division, and in the future the committee may well take up the issue.

Alternatives considered

The committee considered not making any changes to the rules, but concluded that a new rule specifically addressing the proper format for documents filed in the appellate division would provide clarity to litigants and courts.

The committee also considered whether to amend rule 8.817, the existing rule governing service and filing, to address the form of filed documents. However, the committee decided that it would be advisable to maintain a parallel structure between the Court of Appeal rules and appellate division rules by creating a standalone formatting rule for the appellate division that mirrors rule 8.40, rather than adding new subject matter to an existing rule.

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

The committee also considered whether to amend rules 8.806 and 8.808, the rules governing appellate division applications and motions, to include formatting requirements. However, the committee concluded that the new formatting requirements should not be limited to applications and motions and that adopting a more general formatting rule governing all filed documents in the appellate division would be more useful.

Finally, in response to the comment discussed above about formatting for electronically filed documents (presumably in connection with the separate proposal before the council), the committee also considered whether further revision of proposed new rule 8.815, existing rule 8.883, or any other appellate division rules is necessary to address this issue. For the reasons discussed above, the committee concluded that no modification of the proposal is needed. Electronic filing in the appellate division, including rules governing the formatting of electronically filed documents in that division, may be considered in the future.

Fiscal and Operational Impacts

Some minimal fiscal and/or operational impacts are expected. In their comments, the Superior Courts of San Diego, Orange, and Los Angeles Counties addressed the potential implementation requirements. The San Diego court stated that some staff training on the new rule would be required, additional counter time working with self-represented parties would be expected, and procedures for handling noncomplying filings would need to be created. The Orange court pointed out that, because the new formatting rule incorporates existing guidelines, "training requirements would be minimal for staff. Staff would just need to be made aware that specific guidelines now exist and that they are similar to what is used for misdemeanor briefs." The Los Angeles court does not believe any additional training will be required. It appears from these comments that any potential implementation requirements would be minimal and should not present a barrier to adoption of the new rule.

Attachments and Links

1. Cal. Rules of Court, rule 8.815, at page 7
2. Chart of comments, at pages 8–11

Rule 8.815 of the California Rules of Court is adopted, effective January 1, 2020, to read:

Rule 8.815. Form of filed documents

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

SPR19-02
Appellate Procedure: Form of Filed Documents in the Appellate Division (adopt rule 8.815)

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	A	The Committee on Appellate Courts supports this proposal. The proposal addresses a genuine problem for litigants and counsel in determining which formatting rules, trial court or court of appeal, govern the format of applications, motions, and other documents in the appellate division. The proposed new rule provides clarity and consistency for appellate division litigants.	The committee notes the commenter's support for the proposal; no response is required.
2.	Horvitz & Levy By Andrea Russi, Senior Counsel San Francisco, CA	A	Currently it is unclear whether an appellate brief filed in superior court should follow the formatting rules for superior court filings or for appellate court filings (Rule 8.204). Under the new rule, the appellate division would be governed by rule 8.815 which adopts rule 8.883 setting forth the content and form of briefs (which largely mirrors 8.204). The new rule and Rule 8.883 do not address electronically filed documents (and I don't know if appellate divisions in superior court currently allow for electronic filing but I assume they are moving in that direction) but given Rule 8.72 alters the formatting in Rule 8.204, there should likely be some discussion or explanation of how these rules interact.	The committee appreciates this comment and suggestion. The separate proposal to amend several rules governing the format of electronically filed documents in the Court of Appeal and the Supreme Court does not address the format of electronically filed documents in the appellate division. It creates no inconsistencies in the appellate division rules that must be addressed in this proposal. However, e-filing is increasing in the appellate division, and the committee agrees that rules for this process, including the format of electronically filed documents, should be considered in the future.
3.	Orange County Bar Association By Deirdre Kelly, President	A	Subject to the comments of the administering courts, this change clarifies the formatting for documents to be filed in the appellate division of the Superior Courts.	The committee notes the commenter's support for the proposal; no response is required.

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

SPR19-02
Appellate Procedure: Form of Filed Documents in the Appellate Division (adopt rule 8.815)

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

	Commentator	Position	Comment	Committee Response
4.	Superior Court of Los Angeles County	A	No specific comment.	The committee notes the commenter's support for the proposal; no response is required.
5.	Superior Court of Orange County By Denise Parker, Program Coordinator/Specialist	NI	Agree with the proposal. The new rule of court was created to remedy the absence of formatting rules for the appellate division for superior courts. The new rule essentially states that the appellate division should follow the same guidelines as rule 8.883(c) which was written for filings in the Court of Appeal. 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? Yes. 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), or modifying case management systems? Because the new format mimics existing guidelines, training requirements would be minimal for staff. Staff would just need to be made aware that specific guidelines now exist and that they are similar to what is used for misdemeanor briefs.	The committee notes the commenter's support for the proposal and has considered the stated potential implementation requirements; no further response is required.

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

SPR19-02
Appellate Procedure: Form of Filed Documents in the Appellate Division (adopt rule 8.815)

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

	Commentator	Position	Comment	Committee Response
			• 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 proposal should work for courts of all sizes. There should be no difference to the implementation plan.	
6.	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.
7.	Superior Court of San Diego County By Mike Roddy, Executive Officer	A	• Does the proposal appropriately address the stated purpose? Yes. • 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), 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; additional counter time working with self-represented parties would be expected. Procedures would have to be created for handling non-complying filings.	The committee notes the commenter's support for the proposal and has considered the stated potential implementation requirements; no further response is required.

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

SPR19-02
Appellate Procedure: Form of Filed Documents in the Appellate Division (adopt rule 8.815)

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

	Commentator	Position	Comment	Committee Response
			• 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. Additional counter time working with self-represented parties would be expected.	

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

Item 04

JUDICIAL COUNCIL OF CALIFORNIA

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

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 23-24, 2019:

Title
Appellate Procedure: Oral Argument in Appellate Division Appeals

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 8.885 and 8.886; approve forms APP-108 and CR-138; revise forms APP-101-INFO and CR-131-INFO

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

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
July 19, 2019

Contact
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Executive Summary

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

Recommendation

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

1. Amend California Rules of Court, rule 8.885 to provide that oral argument will not be set in appeals that raise no arguable issues and to set forth a procedure for waiving oral argument in advance;
2. Amend rule 8.886 to provide a date of submission for appeals that are not set for oral argument;
3. Approve new optional form APP-108 for litigants in limited civil appeals to use in waiving oral argument;
4. Approve new optional form CR-138 for litigants in misdemeanor appeals to use in waiving oral argument;
5. Revise form APP-101-INFO to reflect the amendments to rule 8.885 for litigants in limited civil appeals; and
6. Revise for CR-131-INFO to reflect the amendments to rule 8.885 for litigants in misdemeanor appeals and to correct errors.

The text of the amended rules and the new and revised forms are attached at pages 8–36.

Relevant Previous Council Action

The rules governing the appellate division of the superior courts, California Rules of Court, rules 8.800 through 8.936, were repealed and replaced in full effective January 1, 2009. Rule 8.885 was amended in 2010, but the amendments are not relevant to this proposal. Forms APP-101-INFO and CR-101-INFO have been revised from time to time, but no previous revisions have bearing on this proposal.

Analysis/Rationale

Rule amendments

Appeals that raise no arguable issues

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

In a *Wende* appeal, the defendant's appellate counsel finds no arguable issues after reviewing the record, and files a brief pursuant to *People v. Wende* requesting that the court conduct an independent review. Although the defendant has an opportunity to file a brief, it is rarely done. The People may file a respondent's brief, but there is no need to do so because there is nothing in the opening brief to oppose.

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

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

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

Procedure for waiving oral argument

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

The proposed amendments to rule 8.885(d) regarding waiver of argument are intended to save time and money for litigants and the courts. The current rule allows parties to waive oral argument, but provides no guidance on how or when to do so. The amendments provide a procedure that allows parties to waive argument by filing a notice of waiver within seven days after the notice of oral argument is sent by the court. If all parties waive oral argument, the court may, but is not required to, vacate the oral argument. If the court vacates the argument, it must take the affirmative step of notifying the parties. The proposal includes an Advisory Committee Comment to clarify that if not all parties waive oral argument, or if the court rejects a waiver request, the matter will remain on the oral argument calendar, and any party, including one who previously filed a notice of waiver, may participate in the oral argument.

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

Date of submission

One result of placing all cases on the oral argument calendar is that, unless the court permits supplemental briefing, all cases are submitted on the date of the argument or the date its waiver is approved. If cases are not set for argument or taken off calendar in advance, the date of submission must be determined.

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

For non–*Wende* cases in which oral argument is waived in advance and taken off calendar, the current rule provides the date of submission: the date the court approves the waiver.

However, for *Wende* appeals, oral argument would no longer be set and the current rule, which presupposes that oral argument is set and either heard or its waiver approved, does not provide a time of submission. Therefore, the committee recommends amending rule 8.886(a) to provide that, for *Wende* appeals that raise no arguable issues, the cause is submitted when the time to file all briefs and papers expires. The appellant's opening brief—in *Wende* appeals, counsel's brief identifying the appeal as raising no arguable issues—must be served and filed within 30 days after the record is filed in the appellate division, and any respondent's brief must be served and filed within 30 days after the appellant's opening brief is filed. (Rule 8.882(a)(1), (2).) In the vast majority of *Wende* appeals, no respondent's brief is filed, and the date of submission would be 30 days after the filing date of the appellant's opening brief.

New forms

The committee also recommends new forms for litigants to use in waiving oral argument. The forms will simplify the waiver process for litigants by taking any guesswork out of how and when to file a notice of waiver. Following the convention for appellate division forms, there is one waiver form for limited civil cases (*Notice of Waiver of Oral Argument (Limited Civil Case)*, form APP-108) and one for misdemeanor cases (*Notice of Waiver of Oral Argument (Misdemeanor)*, form CR-138), and both forms are in plain language format. Both forms include instructions on filing and service, and refer the party to other forms that provide information on appeal procedures.

The forms include a box with text labeled "Notice" to present and highlight information on the waiver process. This information is based on the proposed amendments to rule 8.885(d). In addition, in item 2 above the signature line, both forms include language advising that, by signing the form, the party or the party's attorney is requesting to waive or give up the opportunity to appear in court and argue the case. Item 2 also advises that if the court accepts the waiver, the court will decide the matter on the briefs and the record. The forms are for optional use; a party may draft its own waiver.

Amended forms

The committee recommends amending *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) and *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO) to conform to the changes to rule 8.885. Both forms describe oral argument and the option to waive it. The revisions describe the new procedure for waiving oral argument and include reference to the new notice of waiver forms. The revisions also clarify that if not all parties waive and the court holds oral argument, any party may choose to participate, including

any who filed a notice of waiver. In addition, the revisions clarify that the time for the appellate division to decide the appeal runs from either the date of oral argument or the date the court approved its waiver. Finally, form CR-131-INFO includes an advisement that oral argument will not be set in cases that present no arguable issues.

The committee also recommends, in response to a comment (see below), that certain provisions in form CR-131-INFO that contain erroneous information regarding a misdemeanor defendant's right to self-representation be corrected.

Policy implications

The committee has identified no significant policy implications associated with this proposal.

Comments

This proposal was circulated for public comment from April 11 to June 10, 2019 as part of the regular spring comment cycle. The committee received five comments. Two commenters (the Superior Court of Los Angeles County and the Orange County Bar Association) agreed with the proposal. Three commenters (the Criminal Appellate Section of the Los Angeles City Attorney's Office, the Superior Court of San Diego County, and the Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC)) agreed with the proposal if modified. A chart with the full text of the comments received and the committee's responses is attached at pages 37-47.

The Criminal Appellate Section of the Los Angeles City Attorney's Office suggested that the proposal be modified by including a provision allowing each appellate division to opt-out of the waiver provisions in proposed rule 8.885(d). The commenter explained that, because of the variation in rules and procedures for oral argument in appellate divisions across the state, the proposed waiver procedure might not achieve the desired efficiency for a particular court. As an example, the commenter pointed out that the Los Angeles Superior Court Appellate Division issues tentative rulings on the afternoon before oral argument.

The committee disagrees with modifying the proposed rule amendments to include an opt-out provision or otherwise provide that the rule is optional. The proposal sets forth a procedure to enable parties to waive oral argument far enough in advance that the matter may be taken off calendar before the panel has prepared for the argument. The intent is not to preclude or make less efficient a practice such as issuing tentative rulings, or to preclude appellate divisions from establishing their own procedures that are not inconsistent with the rules of court.

The comment from JRS pertains to court operations. The committee has addressed it in the Fiscal and Operational Impacts section of this report.

In addition to providing comments on the proposal, the Superior Court of San Diego County requested revisions to the misdemeanor forms (CR-131-INFO and CR-138) to reflect accurately that there is no right to self-representation in misdemeanor appeals. (See e.g., *Martinez v. California* (2000) 528 U.S. 152; *In re Walker* (1976) 56 Cal.App.3d 225, 227; *People v. Scott*

(1998) 64 Cal.App.4th 550.) The committee has made limited revisions to clarify that self-representation in misdemeanor appeals is allowed only if the appellate division permits it. These are minor substantive revisions that are unlikely to create controversy and are necessary to correct erroneous information on the forms. (Rule 10.22(d).) The committee will reserve the more extensive revisions suggested by the commenter for future consideration.

Alternatives considered

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

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

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

Fiscal and Operational Impacts

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

The Los Angeles Superior Court stated that implementation would include the development of docket codes in the case management system and a procedure to accept and process waivers. It expected that staff training on the process would be no more than two hours.

The San Diego Superior Court also indicated that staff training would be needed, but that it would be minimal for staff already familiar with working with appellate division appeals. The court would need to revise procedures, but not having to calendar and prepare for waived cases would save time and money.

The Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee (JRS) expressed concern that the proposed date for implementation "is not feasible or is problematic" and added that given the potential for a number of new rules being implemented on the same timeline, "it would be advisable to give trial courts more time to implement a rule change that affects due process rights in both limited civil and misdemeanor appeals." In following up with JRS, the committee was advised that the comment regarding the proposed implementation date is not specific to this proposal. Rather, it is based on the broader issue of the number of rules that need to be implemented and the short time frame for implementation. The committee acknowledges the challenges courts, and particularly smaller courts, face in implementing a number of new and amended rules at the same time.

Notwithstanding these potential impacts, the committee has concluded that the proposal will save time and effort for the courts, and time and expense for litigants.

Attachments and Links

1. Cal. Rules of Court, rules 8.885 and 8.886, at pages 8-9
2. Forms APP-101-INFO, APP-108, CR-131-INFO, and CR-138, at pages 10-36
3. Chart of comments, at pages 37-47

Rules 8.885 and 8.886 of the California Rules of Court would be amended, effective January 1, 2020, to read:

Rule 8.885. Oral argument

(a) Calendaring and sessions

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

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

(b) * * *

(c) Notice of argument

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

(2) * * *

(d) Waiver of argument

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

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

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

(e) * * *

Rules 8.885 and 8.886 of the California Rules of Court would be amended, effective January 1, 2020, to read:

Advisory Committee Comment

Subdivision (a). * * *

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

Rule 8.886. Submission of the cause

(a) When the cause is submitted

(1) Except as provided in (2), a cause is submitted when the court has heard oral argument or approved its waiver and the time has expired to file all briefs and papers, including any supplemental brief permitted by the court. The appellate division may order the cause submitted at an earlier time if the parties so stipulate.

(2) For appeals that raise no arguable issues under *People v. Wende* (1979) 25 Cal.3d 436, the cause is submitted when the time has expired to file all briefs and papers, including any supplemental brief permitted by the court.

(b) * * *

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

GENERAL INFORMATION

1 What does this information sheet cover?

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

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

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

2 What is an appeal?

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

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

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

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

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

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

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

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

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

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

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

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

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

INFORMATION FOR THE APPELLANT

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

5 Who can appeal?

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

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

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

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

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

7 How do I start my appeal?

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

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

"Serve and file" means that you must:

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

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

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

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

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

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

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

10 Do I have to pay to file an appeal?

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

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

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

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

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

Since the appellate division judges were not there to see what happened in the trial court, an official record of what happened must be prepared and sent to the appellate division for its review. You can use *Appellant's Notice Designating Record on Appeal*

(Limited Civil Case) (form APP-103) to ask the trial court to prepare this record. You can get form APP-103 at any courthouse or county law library or online at *www.courts.ca.gov/forms.*

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

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

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

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

There are three parts of the official record:

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

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

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

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

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

In a limited civil case, you can use *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) to tell the court whether you want a record of the oral proceedings and, if so, the form of the record that you want to use. You can get form APP-103 at any courthouse or county law library or online at *www.courts.ca.gov/forms.*

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

- If you or the other party arranged to have a court reporter there during the trial court proceedings, the reporter can prepare a record, called a "reporter's transcript."

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

Read below for more information about these options.

(1) Reporter's transcript

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

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

Contents: If you elect to use a reporter's transcript, you must identify by date (this is called "designating") what proceedings you want included in the reporter's transcript. You can use the same form you used to tell the court you wanted to use a reporter's transcript—*Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103)—to do this.
If you elect to use a reporter's transcript, the respondent also has the right to designate additional proceedings to be included in the reporter's transcript. If you elect to proceed without a reporter's transcript, however, the respondent may not designate a reporter's transcript without first getting an order from the appellate division.

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

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

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

(2) Official electronic recording or transcript

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

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

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

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

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

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

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

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

(3) Agreed statement

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

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

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

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

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

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

(4) Statement on appeal

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

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

Contents: A statement on appeal must include:

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

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

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

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

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

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

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

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

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

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

b. Record of the documents filed in the trial court

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

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

Read below for more information about these options.

(1) Clerk's transcript

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

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

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

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

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

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

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

(2) Trial court file

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

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

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

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

(3) Agreed statement

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

c. Exhibits

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

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

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

14 What happens after the official record has been prepared?

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

15 What is a brief?

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

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

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

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

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

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

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

16 What happens after I file my brief?

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

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

17 What happens after all the briefs have been filed?

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

18 What is "oral argument"?

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

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

19 What happens after oral argument?

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

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

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

INFORMATION FOR THE RESPONDENT

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

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

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

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

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

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

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

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

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

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

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

a. Reporter's transcript

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

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

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

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

b. Agreed statement

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

c. Statement on appeal

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

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

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

d. Clerk's transcript

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

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

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

25 What happens after the official record has been prepared?

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

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

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

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

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

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

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

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

26 What happens after all the briefs have been filed?

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

"Oral argument" is the parties' chance to explain their arguments to appellate division judges in person. You do not have to participate in oral argument if you do not want to; you can notify the appellate division that you want to "waive" (give up) oral argument by serving and filing a notice within 7 days after the notice of oral argument was sent by the court. You can use *Notice of Waiver of Oral Argument (Limited Civil Case)* (form APP-108) to waive oral argument.

If all parties waive oral argument, and the appellate division approves the waiver and takes the oral argument off calendar, the judges will decide the appeal based on the briefs and the record that were submitted. But if one party waives oral argument and another party or parties do not, the appellate division will hold oral argument with any party or parties who choose to participate, including any party who asked to waive oral argument.

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

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

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

Clerk stamps date here when form is filed.

DRAFT

03/15/19

Not approved by the Judicial Council

Instructions

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

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

Superior Court of California, County of

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

Trial Court Case Number:

Trial Court Case Name:

You fill in the appellate division case number:

Appellate Division Case Number:

1 Your Information

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

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

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

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

Phone: _____ E-mail: _____

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

Name: _____ State Bar number: _____

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

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

Phone: _____ E-mail: _____

Fax: _____

NOTICE

Appeals in limited civil cases are scheduled for oral argument. Parties may waive oral argument by filing a notice of waiver of oral argument within 7 days after the notice of oral argument is sent.

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

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

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

Date: _____

_____ ▶ _____

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

CR-131-INFO Information on Appeal Procedures for Misdemeanors

1 What does this information sheet cover?

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

For information about appeal procedures in other cases, see:

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

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

2 What is a misdemeanor?

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

3 What is an appeal?

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

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

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

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

4 Do I need a lawyer to appeal?

You will probably need a lawyer. You are allowed to represent yourself in an appeal in a misdemeanor case only if the appellate division permits you to do so. But appeals can be complicated, and you would have to follow the same rules that lawyers have to follow. If you have any questions about the appeal procedures, you should talk to a lawyer.

If the appellate division permits you to represent yourself, you must put your address, telephone number,

fax number, and e-mail address (if available) on the cover of every document

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

5 How do I get a lawyer to represent me?

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

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

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

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

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

6 Who can appeal?

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

The party that is appealing is called the APPELLANT; in a misdemeanor case, this is usually the party

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

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

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

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

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

8 How do I start my appeal?

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

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

Yes. Except in the very limited circumstances listed in rule 8.853(b), in a misdemeanor case, you must file your notice of appeal within **30 days** after the trial court makes ("renders") its final judgment in your case or issues the order you are appealing. (You can get a copy of rule 8.853 at any courthouse or county law library or online at *www.courts.ca.gov/rules*). The date the trial court makes its judgment is normally the date the trial court issues its order saying what your punishment is (sentences you). **This deadline for filing the notice of appeal cannot be extended. If your notice of appeal is late, the appellate division will not be able to consider your appeal.**

10 How do I file my notice of appeal?

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

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

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

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

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

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

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

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

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

- within 20 days after you file your notice of appeal; or, if it is later,
- within 10 days after the court decides whether to appoint a lawyer to represent you (if you ask the court to appoint a lawyer within 20 days after you file your notice of appeal).

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

You do not *have* to send the appellate division a record of what was said in the trial court. But if you want to raise any issue in your appeal that would require the

appellate division to consider what was said in the trial court, the appellate division will need a record of these oral proceedings. For example, if you are claiming that there was not substantial evidence supporting the

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

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

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

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

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

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

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

Read below for more information about these options.

a. Reporter's transcript

When available: In some misdemeanor cases, a court reporter is there in the trial court and makes a record of the oral proceedings. If a court reporter made a record of your case, you can ask to have the court reporter prepare a transcript of those oral

proceedings, called a "reporter's transcript." You should check with the trial court to see if a court reporter made a record of your case before you choose this option. Some courts also have local rules that establish procedures for deciding whether a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising on appeal. You should check whether the court has such a local rule.

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

If, however, you are indigent (you cannot afford to pay the cost of a reporter's transcript), you may be able to get a free transcript. If you were represented by the public defender or another court-appointed lawyer in the trial court, you are automatically considered indigent. If you were not represented by a court-appointed lawyer in the trial court, you can complete and file *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form CR-105), to show that you are indigent. You can get form CR-105 at any courthouse or county law library or online at *www.courts.ca.gov/forms.* The court will review this form to decide whether you are indigent.

If the court finds that you are indigent, a court reporter made a record of your case, and you show that you need a transcript, the court must provide

you with a free transcript. Whether you need a transcript depends on the issues you are raising on appeal. If the issues you are raising on appeal include that there was not substantial evidence supporting the judgment, order, or other decision you are appealing or that there was misconduct in your case that harmed you, that is generally enough to show that you need a transcript. If you ask for a reporter's transcript, the court may ask you what issues you are raising on appeal and may decide that a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising.

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

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

b. Official electronic recording or transcript from an official recording

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

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

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

If, however, you are indigent (you cannot afford to pay the cost of the transcript or recording), you may be able to get a free transcript or recording. If you were represented by the public defender or another court-appointed attorney in the trial court, you are automatically considered indigent. If you were not represented by a court-appointed lawyer in the trial court, you can complete and file *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form CR-105) to show that you are indigent. You can get form CR-105 at any courthouse or county law library or online at *www.courts.ca.gov/forms.* The court will review this form to decide whether you are indigent.

If you are indigent, an official electronic recording of your case was made, and you show that you need a transcript, the court must provide you with a free transcript. As with reporter's transcripts, whether you need a transcript depends on the issues you are raising on appeal. If the issues you are raising on appeal include that there was not substantial evidence supporting the judgment, order, or other decision you are appealing or that

there was misconduct in your case that harmed you, that is generally enough to show that you need a transcript. If you ask for a transcript, the court may ask you what issues you are raising on appeal and may decide that a statement on appeal or a transcript of only some of the oral

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

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

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

c. Statement on appeal

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

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

Contents: A statement on appeal must include:

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

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

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

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

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

proposed statement to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

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

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

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

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

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

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

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

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

16 What happens after the record is prepared?

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

17 What is a brief?

A brief is a party's written description of the facts in the case, the law that applies, and the party's argument about the issues being appealed. If you are represented by a

lawyer in your appeal, your lawyer will prepare your brief. If the appellate division has permitted you to represent yourself, you will have to prepare your brief yourself. You should read rules 8.880–8.891 of the California Rules of Court, which set out the requirements for preparing,

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

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

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

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

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

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

18 What happens after I file my brief?

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

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

19 What happens after all the briefs have been filed?

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

20 What is oral argument?

"Oral argument" is the parties' chance to explain their arguments to the appellate division judges in person. You do not have to participate in oral argument if you do not want to; you can notify the appellate division that you want to "waive" (give up) oral argument by serving and filing a notice within 7 days after the notice of oral argument was sent by the court. You can use *Notice of Waiver of Oral Argument (Misdemeanor)* (form CR-138) to waive oral argument.

If all parties waive oral argument, and the appellate division approves the waiver and takes the oral argument off calendar, the judges will decide your appeal based on

the briefs and the record that were submitted. But if one party waives oral argument and another party or parties do not, the appellate division will hold oral argument with any party or parties who choose to participate, including any party who asked to waive oral argument.

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

21 What happens after oral argument?

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

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

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

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

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

Clerk stamps date here when form is filed.

DRAFT

07-08-19

Not approved by the Judicial Council

Instructions

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

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

Superior Court of California, County of

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

Trial Court Case Number:

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

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

Appellate Division Case Number:

1 Your Information

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

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

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

Phone: _____ E-mail: _____

b. Party's lawyer *(skip this if the court has permitted you to represent yourself in this appeal):*

Name: _____ State Bar number: _____

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

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

Phone: _____ E-mail: _____

Fax: _____

NOTICE

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

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

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

(2) Request to Waive Oral Argument *(check (a) or (b).)*

a. ☐ I am appellant's attorney. I have read this form and am requesting to waive oral argument. I understand that by signing this form, I am waiving the opportunity to appear in court and argue the case on behalf of my client. I have informed my client that I am waiving oral argument. I also understand that if all parties waive oral argument and the court accepts the waiver and takes the oral argument off the calendar, the court will decide the appeal based on the briefs and the record that were submitted.

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

Date: _____

_____ ▶ _____

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

SPR19-04

Appellate Procedure: Oral Argument in Appellate Division Appeals (Amend Cal. Rules of Court, rules 8.885 and 8.886; approve forms APP-108 and CR-138; revise forms APP-101-INFO and CR-131-INFO)

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

	Commenter	Position	Comment	Committee Response
1.	Criminal Appellate Section, Los Angeles City Attorney's Office by Kent J. Bullard Supervising Deputy City Attorney Los Angeles	AM	In light of variation in procedures and rules governing oral argument in appellate divisions throughout the state – for example, the Los Angeles Superior Court Appellate Division provides tentative rulings the afternoon before an oral argument calendar (see Super Ct. L.A. County, Local Rules, rule 9.7(e)), whereas some other appellate divisions apparently do not provide tentative rulings – each appellate division should be permitted to determine whether new provisions governing oral argument waivers will achieve the intended goal of efficiency, and thus any new statewide rule should include a provision allowing each appellate division to opt out of provisions such as the waiver provisions in proposed Rule 8.885(d).	The committee notes the commenter's agreement with the proposal if it is modified. The committee recognizes that appellate division procedures vary, but disagrees with making the waiver procedure optional. The proposed new provisions create a procedure for waiving oral argument in advance so that judges do not needlessly prepare for argument when the parties know ahead of time that they do not wish to argue. This does not preclude appellate divisions from issuing tentative rulings or developing other procedures that are not inconsistent with the rules of court.
2.	Orange County Bar Association By Deirdre Kelly President	A	No specific comment.	The committee notes the commenter's agreement with the proposal. No further response is required.
3.	Superior Court of Los Angeles County	A	**Does the proposal appropriately address the stated purpose?** Yes, the proposal appropriately addresses the stated purpose. **Are the proposed waiver forms helpful and should any other content be included?**	The committee notes the commenter's agreement with the proposal, and appreciates the commenter's answers to specific questions presented in the invitation to comment. No further response is required.

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

SPR19-04

Appellate Procedure: Oral Argument in Appellate Division Appeals (Amend Cal. Rules of Court, rules 8.885 and 8.886; approve forms APP-108 and CR-138; revise forms APP-101-INFO and CR-131-INFO)

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

	Commenter	Position	Comment	Committee Response
			Yes, the proposed forms are helpful. No additional information is required. **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 the development of docket codes in the Case Management System and a procedure to accept and process waivers. Staff training on the process would be no more than 2 hours. **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 this feedback. The committee thanks the commenter for this information on implementation requirements.
4.	Superior Court of San Diego County by Mike Roddy Executive Officer	AM	• Does the proposal appropriately address the stated purpose? Yes. • Are the proposed waiver forms helpful and should any other content be included? Yes, the form is helpful.	The committee notes the commenter's agreement with the proposal if modified and appreciates the responses to questions presented in the invitation to comment.

	Commenter	Position	Comment	Committee Response
			Correct/revise the misdemeanor forms to accurately reflect that there is no right to self-representation in misdemeanor appeals. (See e.g., *Martinez v. California* (2000) 528 U.S. 152*; In re Walker* (1976) 56 Cal.App.3d 225, 227; *People v. Scott* (1998) 64 Cal.App.4th 550.) That being said, individual appellate divisions may, in their discretion, grant a misdemeanor appellant's request for self-representation (but as there is no right to self-representation, a misdemeanor appellant may not merely "elect" to be self-represented). Specifically, correct/revise CR-131-INFO as follows: - Section 4 (Do I need a lawyer to appeal?): Replace first paragraph with: "You will likely need a lawyer to appeal. Appeals can be complicated, and there is no right to self-representation in misdemeanor appeals. The appellate division may appoint a lawyer to represent you on appeal or you may have to hire your own lawyer. If you would like to represent yourself on appeal, you must file a written request, which may not be granted. If you have any questions, about the	The committee thanks the commenter and has made limited revisions to the forms to clarify that self-representation in misdemeanor appeals is allowed only if the appellate division permits it. These are minor substantive changes that are unlikely to create controversy. (Rule 10.22(d).) The committee will reserve the more extensive revisions suggested by the commenter for future consideration. The committee has made a limited revision to this item. See response above.

	Commenter	Position	Comment	Committee Response
			appeal process, you should talk to a lawyer." Replace the first sentence of the second paragraph with: "If the appellate division grants your request to represent yourself, you must put your address, telephone number, e-mail address, and fax number (if available) on the cover of every document…." - Section 5 (How do I get a lawyer to represent me?): last paragraph, revise first sentence to read: "If you are not indigent or if the appellate division does not appoint a lawyer, you must hire a lawyer at your own expense unless the appellate division grants your request to represent yourself." Delete "If you want a lawyer and". - Section 17 (What is a brief?): Replace "If you are not represented by a lawyer in your appeal" with "If the appellate division has granted your request to represent yourself." - Section 20 (What is oral argument?): Revise second paragraph to read: "If a party chooses to participate in oral	The committee has made this change. The committee declines to make this change. See response above. The committee has made this change. The committee has made limited revisions to this item. See response above.

	Commenter	Position	Comment	Committee Response
			argument, only his or her lawyer may participate in oral argument unless the appellate division has granted your request to represent yourself on appeal. Each party will have up to 10 minutes to argue, unless the court orders otherwise. Remember that the judges will already have read the briefs, so it is more important for a party to argue the most important issues or ask the judges if they have any questions." Correct/revise CR-138 as follows: - Top section – add that CR-138 must be served and accompanied by a proof of service and a copy must be served by someone who is not a party (see language in "Service and filing" in section 17 of CRC-131-INFO; APP-109, and APP-109-INFO (What is Proof of Service?). - Section 1.b. – Replace parenthetical to read: "skip this if the party's request to represent themselves on appeal has been granted") - Section 2 – correct/revise to read: Please check ONE and initial: ☐ I am appellant's attorney. I have read this form and am requesting to waive	The committee declines to make this change because the form would be inconsistent with other misdemeanor appellate forms. The committee will retain this suggestion for future consideration of whether service information should be included on the forms. The committee has made a limited revision to this item. The committee has revised this item.

	Commenter	Position	Comment	Committee Response
			oral argument. I understand that by signing this form, I am waiving the opportunity to appeal in court and argue the case on behalf of my client. I have informed my client that I am waiving oral argument. I also understand that if all parties waive oral argument and the … [same language as last sentence]" ☐ The appellate division has granted my request to represent myself. "I have read this form… [same language as current paragraph in section 2]" ___ (Initials) In addition to the aforementioned case law unequivocally holding that there is no right to self-representation in criminal appeals (*Martinez v. California* (2000) 528 U.S. 152*; In re Walker* (1976) 56 Cal.App.3d 225, 227; *People v. Scott* (1998) 64 Cal.App.4th 550): - "Unlike the constitutional right of indigents to be represented by court appointed counsel in the trial court, representation on appeal is regarded as discretionary with all reviewing courts, except in rare cases in which appointment of counsel is required by	The committee appreciates this additional supporting research. No further response required.

	Commenter	Position	Comment	Committee Response
			statute." (*People v. Vigil* (1961) 189 Cal.App.2d 478, 480.) - "Counsel on Appeal" section of 6 Witkin, Cal. Crim. Law 4th Crim Appeal § 51 (2012): On application of the defendant, the appellate division must appoint counsel on appeal for any defendant convicted of a misdemeanor who is subject to incarceration or a fine of more than $500 (including penalty and other assessments), or who is likely to suffer significant adverse collateral consequences as a result of the conviction, if the defendant was represented by appointed counsel in the trial court. (C.R.C., Rule 8.851(a); see Judicial Council Form No. CR-133 [Request for Court-Appointed Lawyer in Misdemeanor Appeal].) Th[e] rule [that on application, the App. Div. must appoint counsel in a misdemeanor appeal…] clearly involves misdemeanor convictions that have certain adverse consequences, and the theory of *Douglas v. California* (1963) 372 U.S. 353, 83 S.Ct. 814, 9 L.Ed.2d 811, supra, § 35, although involving a felony appeal, is also applicable to convictions of *serious* misdemeanors. *In re Henderson* (1964) 61 C.2d 541, 39 C.R.	

	Commenter	Position	Comment	Committee Response
			373, 393 P.2d 685, a conviction for lewd conduct in public (P.C. 647(a)) makes this extension for California: although *Douglas* involved a felony, a conviction under P.C. 647(a) also has serious consequences. "In addition to the sentence imposed a person convicted of violating that subdivision is disqualified from teaching in public schools and is required to register with a law enforcement agency. … [U]pon the reinstatement of his appeal the principle enunciated in *Douglas* is applicable, and he is entitled to have an attorney assigned to represent him in the further proceedings." (61 C.2d 543.) In making the determination as to the seriousness of misdemeanor convictions, the courts have held that punishment for a misdemeanor battery is of serious consequence, entitling the defendant to appointed counsel on appeal. (People v. Wilson (1977) 72 C.A.3d Sup p. 59, 62, 140 C.R. 274 [fine not exceeding $1,000, punishment in county jail not exceeding 6 months, or both].) However, counsel is not required on appeal of a misdemeanor traffic offense	

	Commenter	Position	Comment	Committee Response

			where the punishment consists only of a fine, even a substantial one, and no collateral consequences are involved. (*People v. Wong* (1979) 93 C.A.3d 151, 154, 155 C.R. 453 [$65 fine]; *People v. Batiste* (1980) 109 C.A.3d 328, 332, 167 C.R. 171 [$150 fine].)
			- Witkin, Cal. Crim. Law 4th Crim Appeal § 38 provides further explanation as to why there is "no right to self-representation" in criminal appeals.
			- The Appellate Division Best Practices Manual states the following relative to misdemeanor appeals:
			  - Appellate Division is in a position to require counsel on appeal; no *Faretta* right to self-representation in misdemeanor appeal, *Faretta v. California* (1975) 422 U.S. 806
			  - CRC, Rule 8.851: Sixth Amendment right to effective assistance of counsel on appeal
			
			Answers to additional questions:
			
			• Would the proposal provide cost savings? If so, please quantify.
				The committee thanks the commenter for the responses to these questions.

	Commenter	Position	Comment	Committee Response
			Yes. Amount unknown. It would save time & money to not have to calendar/prepare for these 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? 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 working with appellate division appeals. Procedures would need to be revised to indicate the change. • 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 committee appreciates this feedback. The committee thanks the commenter for this information on implementation requirements.

	Commenter	Position	Comment	Committee Response
			It would work very well.	
5.	Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) by TCPJAC/CEAC Joint Rules Subcommittee (JRS)	AM	The JRS notes the following impact to court operations: • Proposed date for implementation is not feasible or is problematic. Given the potential for a number of new Rules of Court being implemented on the same timeline; it would be advisable to give trial courts more time to implement a rule change that affects due process rights in both limited civil and misdemeanor appeals. This proposal would be workable for courts of all sizes.	The committee notes the commenter's agreement with the proposal if modified. Based on the response to a request for clarification, the comment regarding the proposed implementation date is not specific to this proposal. Rather, it is based on the broader issue of the number of rules that need to be implemented and the short time frames for implementation. The committee acknowledges the challenges courts, and particularly smaller courts, face in implementing a number of new and amended rules at the same time.

Item 05

JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
July 16, 2019

To
Members of the Appellate Advisory Committee

From
Rules Subcommittee,
Mr. Daniel M. Kolkey, Chair

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

Action Requested
Please read before July 23 committee meeting

Deadline
July 23, 2019

Contact
Sarah Abbott
415-865-7687
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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. This memorandum discusses the public comments received on the proposal. Additionally, as was done before this proposal was recommended for circulation, input was also sought on the public comments and possible responses from other

[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."

Judicial Council staff with knowledge of mental health proceedings and the input received to date has been incorporated herein.

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 committee. 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, attaching the text of the proposed new rule and form. The proposed rule and form reflect, using yellow highlighting, modifications to the proposal recommended by the rules subcommittee 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. The subcommittee 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, the subcommittee 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.

The subcommittee considered these suggestions to expand the scope of proposed new rule 8.483 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, the subcommittee decided that Murphy conservatorship appeals appear to be covered by existing rule 8.480, governing the record on appeal from orders establishing conservatorships under Welfare & Institutions section 5350, et seq.[3] It could create confusion if the scope of rule 8.483 were expanded to also include Murphy conservatorships under the LPS Act. However, to avoid confusion, the subcommittee recommends modifying the proposal to add 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." *The committee should consider whether it agrees with this proposed modification to the proposal.*

Additionally, in discussing the public comments with Judicial Council staff with mental health expertise, it was also informally 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 new 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 subcommittee considered this suggestion, but decided that making this change would be inconsistent with the intent to draft a rule governing civil commitments stemming from criminal

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

proceedings. However, the subcommittee noted that it might make sense to consider—as part of a separate proposal in the future—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 a separate rule. *The committee should discuss whether it agrees with the subcommittee's recommendation not to expand the scope of the proposed new rule to also include appeals 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) the subcommittee understands this comment to similarly reflect agreement with the treatment of documentary exhibits under the proposed new rule as circulated.

However, Mr. Kraft commented 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 agreed with this suggestion because it may be helpful and non-burdensome in the relatively few cases to which it applies, and recommends modifying subdivision (c)(8) to also include probable cause hearing transcripts as part of the reporter's transcript. *The committee should discuss whether it agrees with the subcommittee's recommendation to make this change to the proposal.*

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 in evidence. The subcommittee agreed that the inclusion of these reports is important to attorneys and helpful to the court, and recommends modifying the proposal to make clear that diagnostic or psychological reports submitted to the court, "including at the trial or probable cause hearing" should be included in the clerk's transcript. *The committee should discuss whether it agrees with the subcommittee's recommended change to the proposal.*

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. The subcommittee considered this issue, but determined that the rule, as it was circulated, is consistent with the procedure set forth in rule 8.320 and does not create a bar to augmenting the record when otherwise appropriate so no modification is needed. *The committee should consider whether it agrees with the subcommittee that no modification of proposed rule 8.483 is needed 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. First, FDAP suggested 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. The subcommittee discussed this comment, and decided

[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.

that involuntary medication orders, and appeals therefrom, may be separate from the civil commitment appeals intended to be encompassed by the new rule. Additionally, the records needed for the record on appeal of a civil commitment case may be quite different from the record in an appeal of an involuntary medication order. Thus, the subcommittee does not recommend adding the suggested language to subdivision (a)(1), and instead recommends omitting the phrase "or motion for involuntary medication" from subdivision (c)(1) to make clear that the rule does not apply to the appeal of involuntary medication orders. *The committee should discuss whether it agrees with this recommended modification of the proposal.*

Second, FDAP recommended 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. The subcommittee agrees that this proposed modification would provide clarity. *The committee should discuss whether it agrees with this recommended modification of the proposal.*

Third, FDAP recommended 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." The subcommittee discussed this suggestion, and also considered that the proposed modification would make subdivision (b)(1) different from existing rule 8.480(b)(1) governing the record in LPS conservatorship appeals. However, the subcommittee noted that some other appellate rules require, not only the petition, but also supporting documents filed therewith, so this modification would not make rule 8.483(b)(1) an outlier. The subcommittee recommends that the proposal be modified in this way.[5] *The committee should discuss whether it agrees with this recommended modification of the proposal.*

Fourth, FDAP recommended 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. The subcommittee discussed this comment and agreed with the commenter that a certificate of probable cause should not be a part of the record on appeal in civil commitment cases and recommends modifying the proposal accordingly. *The committee should discuss whether it agrees with this recommended modification of the proposal.*

[5] FDAP also noted 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."

The committee should discuss whether it agrees with subcommittee's recommendations to modify the proposal as discussed in light of each of these comments. Proposed language reflecting these recommendations has been highlighted in yellow within proposed rule 8.483 for the committee'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. The subcommittee 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, concern that the form will be used for an unauthorized purpose may be overstated and the subcommittee does not recommend modification based on this comment.

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. The subcommittee agrees with this suggestion, 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)."[6] This potential modification is highlighted in yellow on the form, and the committee 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 also believes that it would be appropriate to modify proposed new rule 8.483 subdivision (a)(1) to extend to MDSO appeals and recommends this modification to the rule as well.

[6] This is similar to the checkbox included for this purpose in the *Petition for Writ of Habeas Corpus—Penal Commitment* (form HC-003).

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 appeals 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, rather than omitting this category of civil commitments from the scope of the form and creating a second new form, the subcommittee decided that it would be preferable 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 at least one county. Staff discussions with Judicial Council mental health staff confirmed that it would likely be useful to have a form Notice of Appeal that could be used in LPS Act appeals. Having further considered the issue, the subcommittee is persuaded 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.) would be useful to litigants and courts, and the scope of the form should be expanded beyond civil commitments stemming from criminal matters to include LPA Act conservatorship and commitment appeals.

In light of the foregoing, the subcommittee recommends modifying item 3 of the form to add a checkbox for: (1) "Welfare & Institutions Code, § 5300 et seq. (LPS Act commitments);" (2) "Welfare & Institutions Code, § 5350 et seq. (LPS Act conservatorships);" and (3) "Former Welfare & Institutions Code, § 6300 et seq. (MDSO)." To more accurately indicate the expanded scope of the form, the subcommittee also recommends modifying the form name to "Notice of Appeal–Civil Commitment / Mental Health Proceedings" and referencing rule 8.480 in the bottom right corner. All of these recommended modifications are highlighted in yellow on the draft form APP-060. *The committee should discuss whether it agrees that the scope of the proposed new form Notice of Appeal should be expanded in this way and whether the name accurately reflects this expanded scope.*

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 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 committee may recall, the rules subcommittee and committee grappled with these and related issues before the proposal was circulated for comment. With respect to the use of "People of the State of California v." in the caption, in light of the recommended expanded scope of the form, the subcommittee 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. *The committee should discuss whether it agrees with modification of the proposal.* With respect to how to refer to the confined person, after much discussion, 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 may be used for 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 committee has already considered and decided this issue, the subcommittee does not recommend modifying the form to remove all reference to "Defendant" in response to this comment. *The committee should discuss whether it agrees that no modification of the proposal is needed based on 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. The subcommittee 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 consistent with its suggestion relating to the rule discussed above. The subcommittee 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. *The committee should discuss whether it agrees with these recommended modifications of the proposal.*

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.

Committee Task

Attached is 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 potential modifications to the proposal, which are shown in yellow highlighting. The committee's task with respect to this proposal is to:

- Discuss the comments received on the proposal and approve or modify the subcommittee's suggestions for responding to these comments, as reflected in the draft comment chart and draft report to the Judicial Council; and

- Discuss and approve or modify the subcommittee's recommendation regarding adoption of the proposal, as reflected in the draft report to the Judicial Council.

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

JUDICIAL COUNCIL OF CALIFORNIA

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

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 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
July 16, 2019

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

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 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 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 seq., including

[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.

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 and mental health proceedings (form APP-060) is based on *Notice of Appeal—Felony (Defendant)* (form CR-120), but modified for use in civil commitment and LPS Act appeals. [STAFF NOTE: The following is subject to change based on 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 broader in scope than the proposed new rule of court governing the normal record on appeal in civil commitment cases, because it may also be used in LPS Act conservatorship and commitment appeals. It includes an item listing the types of proceedings 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 Appellate Advisory Committee and is subject to change based on the 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. The subcommittee 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, the subcommittee 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.

The subcommittee considered these suggestions to expand the scope of proposed new rule 8.483 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, the subcommittee decided that Murphy conservatorship appeals appear to be covered by existing rule 8.480, governing the record on appeal from orders establishing conservatorships under Welfare & Institutions section 5350, et seq.[4] It could create confusion if the scope of rule 8.483 were expanded to also include Murphy conservatorships under the LPS Act. However, to avoid confusion, the subcommittee recommends modifying the proposal to add 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." *The committee should consider whether it agrees with this proposed modification to the proposal.*

Additionally, in discussing the public comments with Judicial Council staff with mental health expertise, it was also informally 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 new 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 subcommittee considered this suggestion, but decided that making this change would be inconsistent with the intent to draft a rule governing civil commitments stemming from criminal proceedings. However, the subcommittee noted that it might make sense to consider—as part of a separate proposal in the future—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 a separate rule. *The committee should discuss whether it agrees with the subcommittee's*

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

recommendation not to expand the scope of the proposed new rule to also include appeals 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) the subcommittee understands this comment to similarly reflect agreement with the treatment of documentary exhibits under the proposed new rule as circulated.

However, Mr. Kraft commented 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 agreed with this suggestion because it may be helpful and non-burdensome in the relatively few cases to which it applies, and recommends modifying subdivision (c)(8) to also include probable cause hearing transcripts as part of the reporter's transcript. *The committee should discuss whether it agrees with the subcommittee's recommendation to make this change to the proposal.*

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 in evidence. The subcommittee agreed that the inclusion of these reports is important to attorneys and helpful to the court, and recommends modifying the proposal to make clear that diagnostic or psychological reports submitted to the court, "including at the trial or probable cause hearing" should be included in the clerk's transcript. *The committee should discuss whether it agrees with the subcommittee's recommended change to the proposal.*

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 commitment appeals, appellate counsel is often not appointed until after the record is prepared,

[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.

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. The subcommittee considered this issue, but determined that the rule, as it was circulated, is consistent with the procedure set forth in rule 8.320 and does not create a bar to augmenting the record when otherwise appropriate so no modification is needed. *The committee should consider whether it agrees with the subcommittee that no modification of proposed rule 8.483 is needed 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. First, FDAP suggested 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. The subcommittee discussed this comment, and decided that involuntary medication orders, and appeals therefrom, may be separate from the civil commitment appeals intended to be encompassed by the new rule. Additionally, the records needed for the record on appeal of a civil commitment case may be quite different from the record in an appeal of an involuntary medication order. Thus, the subcommittee does not recommend adding the suggested language to subdivision (a)(1), and instead recommends omitting the phrase "or motion for involuntary medication" from subdivision (c)(1) to make clear that the rule does not apply to the appeal of involuntary medication orders. *The committee should discuss whether it agrees with this recommended modification of the proposal.*

Second, FDAP recommended 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. The subcommittee agrees that this proposed modification would provide clarity. *The committee should discuss whether it agrees with this recommended modification of the proposal.*

Third, FDAP recommended 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." The subcommittee discussed this suggestion, and also considered that the proposed modification would make subdivision (b)(1) different from existing rule 8.480(b)(1) governing the record in LPS conservatorship appeals. However, the subcommittee noted that some other appellate rules require, not only the petition, but also supporting documents filed therewith, so this modification would not make rule 8.483(b)(1) an outlier. The subcommittee recommends that the proposal be modified in this way.[6] *The committee should discuss whether it agrees with this recommended modification of the proposal.*

Fourth, FDAP recommended 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. The subcommittee discussed this comment and agreed with the commenter that a certificate of probable cause should not be a part of the record on appeal in civil commitment cases and recommends modifying the proposal accordingly. *The committee should discuss whether it agrees with this recommended modification of the proposal.*

The committee should discuss whether it agrees with subcommittee's recommendations to modify the proposal as discussed in light of each of these comments. Proposed language reflecting these recommendations has been highlighted in yellow within proposed rule 8.483 for the committee'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. The subcommittee therefore recommends that the proposal, as it relates to proposed new form APP-060, move forward subject to the potential modifications discussed below.

[6] FDAP also noted 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."

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, concern that the form will be used for an unauthorized purpose may be overstated and the subcommittee does not recommend modification based on this comment.

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. The subcommittee agrees with this suggestion, 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)."[7] This potential modification is highlighted in yellow on the form, and the committee 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 also believes that it would be appropriate to modify proposed new rule 8.483 subdivision (a)(1) to extend to MDSO appeals and recommends this modification to the rule as well.

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 appeals 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, rather than omitting this category of civil commitments from the scope of the form and creating a second new form, the subcommittee believes it would be preferable 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

[7] This is similar to the checkbox included for this purpose in the *Petition for Writ of Habeas Corpus—Penal Commitment* (form HC-003).

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 at least one county. Staff discussions with Judicial Council mental health staff confirmed that it would likely be useful to have a form Notice of Appeal that could be used in LPS Act appeals. Having further considered the issue, the subcommittee is persuaded 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.) would be useful to litigants and courts, and the scope of the form should be expanded beyond civil commitments stemming from criminal matters to include LPA Act conservatorship and commitment appeals.

In light of the foregoing, the subcommittee recommends modifying item 3 of the form to add a checkbox for: (1) "Welfare & Institutions Code, § 5300 et seq. (LPS Act commitments);" (2) "Welfare & Institutions Code, § 5350 et seq. (LPS Act conservatorships);" and (3) "Former Welfare & Institutions Code, § 6300 et seq. (MDSO)." To more accurately indicate the expanded scope of the form, the subcommittee also recommends modifying the form name to "Notice of Appeal–Civil Commitment / Mental Health Proceedings" and referencing rule 8.480 in the bottom right corner. All of these recommended modifications are highlighted in yellow on the draft form APP-060. *The committee should discuss whether it agrees that the scope of the proposed new form Notice of Appeal should be expanded in this way and whether the name accurately reflects this expanded scope.*

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 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 committee may recall, the rules subcommittee and committee grappled with these and related issues before the proposal was circulated for comment. With respect to the use of "People of the State of California v." in the caption, in light of the recommended expanded scope of the

form, the subcommittee 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. *The committee should discuss whether it agrees with modification of the proposal.* With respect to how to refer to the confined person, after much discussion, 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 may be used for 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 committee has already considered and decided this issue, the subcommittee does not recommend modifying the form to remove all reference to "Defendant" in response to this comment. *The committee should discuss whether it agrees that no modification of the proposal is needed based on 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. The subcommittee 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 consistent with its suggestion relating to the rule discussed above. The subcommittee 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. *The committee should discuss whether it agrees with these recommended modifications of the proposal.*

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, rule 8.320, 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 committee discussion.] The

committee further considered whether to include civil commitments or conservatorships 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 Act civil commitments. The committee also decided not to extend the new rule to Murphy conservatorship appeals because they are already subject to rule 8. 480, but decided that an Advisory Committee Comment to this effect would provide needed clarity. Other potential modifications to the proposal were considered in connection with the comments and are addressed above.

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 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 and more useful 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 most appropriate 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 may 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 be consistent with the new rule and limited to civil commitments stemming from criminal proceedings, or whether it should be broader and include other types of proceedings, such as commitments and conservatorships 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 committee discussion.] Ultimately, the committee concluded that it would be useful to have a single form Notice of Appeal available for use in a broad range of civil commitment and LPS Act commitment and conservatorship appeals.

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 the scope of the form was expanded to include appeals of commitments and conservatorships that do not necessarily stem from criminal proceedings, 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/mental health proceedings 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 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); 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); and former Welfare & Institutions Code section 6300 et seq. (mentally disordered sex offenders).

(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;

(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 at the trial or 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.

(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.

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** **7-15-2019** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF	
PEOPLE OF THE STATE OF CALIFORNIA vs. **or** **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)

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
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 committee agree with this approach / response? 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.]**
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, 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	The committee notes the commenter's support for this portion of the proposal; no response is required.

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

	Commentator	Position	Comment	Committee Response
			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 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	The committee appreciates this suggestion. However, involuntary medication proceedings, 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. To minimize confusion and provide clarity, the proposal has instead been modified to omit the phrase "or motion for involuntary medication" has been omitted from subdivision (c)(1). The committee appreciates this suggestion to revise the parenthetical description of Penal Code section 1600 et seq. and has modified the proposal accordingly.

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

	Commentator	Position	Comment	Committee Response
			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] 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	The committee appreciates this suggestion to expand subdivision (b)(1) of the proposed new rule to include "[t]he petition <u>and any supporting documents filed along with the petition</u>," and has modified the proposal accordingly.

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	Commentator	Position	Comment	Committee Response
			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 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	The committee agrees with this suggestion to omit reference to a certificate of probable cause and has modified subdivision (b)(10) of the proposed new rule accordingly.

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	Commentator	Position	Comment	Committee Response
			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 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]	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. Having considered this issue, the committee agrees that it would be useful to expand the scope of the form for use in a broader range of civil commitment and LPS Act conservatorship appeals. **[Does the committee agree with this approach / response?]**

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	Commentator	Position	Comment	Committee Response
			[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 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	

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	Commentator	Position	Comment	Committee Response
			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 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)	

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	Commentator	Position	Comment	Committee Response
			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 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	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 committee agree with this approach / response?]** The committee appreciates the commenter pointing out this typographical issue and has modified the proposal accordingly. The committee appreciates this suggestion and has modified the proposal accordingly. **[Does the**

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	Commentator	Position	Comment	Committee Response
			admission, stipulation, or submission." The "Other" checkbox would then be renumbered as 2.d. **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. 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)."	**committee agree with this approach / response?]** The committee appreciates this suggestion and has modified the proposal accordingly. The committee has considered this suggestion agrees that the scope of the form should be expanded to also include LPS Act conservatorship appeals. **[Does the committee agree with this approach / response? If the committee 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 the name of the form will also 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.	

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	Commentator	Position	Comment	Committee Response
			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. 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. 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	The committee appreciates this suggestion, but believes it could cause confusion to expand the scope of the proposed new civil commitment rule to govern the normal record in Murphy conservatorship appeals, especially 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. The committee appreciates this suggestion and has modified the language of subdivision (c)(8) to reference transcripts from probable cause hearings. **[Does the committee agree with this approach / response?]**

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	Commentator	Position	Comment	Committee Response
			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 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	The committee appreciates this suggestion and has modified subdivision (b)(13) of the proposal accordingly. The portion of the comment relating to exhibits more generally is addressed below. **[Does the committee 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
			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 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	

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	Commentator	Position	Comment	Committee Response
			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 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	The committee understands the concerns described above, and has considered these alternative suggestions. However, the committee does not view the rule as drafted as a bar to augmenting the record in appropriate cases, and believes appellate counsel will be able to obtain a complete record on appeal in civil commitment

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	Commentator	Position	Comment	Committee Response
			transcript can be augmented to include exhibits rather than prohibiting such an augmentation.	cases. Additionally, subdivision (d) mirrors rule 8.320(e), and the committee believes it could cause confusion to have a different procedure for exhibits in civil commitment cases than in criminal cases. **[Does the committee agree with this approach / response, or is modification needed to appropriately address the stated concerns?]**
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.	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 and appreciates the answers to questions presented in the invitation to comment. No further response is required.

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	Commentator	Position	Comment	Committee Response
			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, 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, but has concluded that it would be helpful to litigants and courts to expand the scope of the form for use in a broader range of civil commitment and LPS Act conservatorship appeals. **[Does the committee agree with this approach / response?]**
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	The committee appreciates this comment and has given significant consideration to this issue. The committee has decided that using the term

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	Commentator	Position	Comment	Committee Response
			"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 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.	"Defendant/Respondent," defined in the first instance as "the person subject to the civil commitment order" most clearly signifies that the form may be used in a broad range of appeals, including civil commitment proceedings 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 committee agree with this approach / response?]** The committee appreciates this suggestion and has modified both the proposed new rule and form accordingly. 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 and scope of the proposed new form. **[Does the committee agree with this approach / response?]**

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
			Request for Specific Comments Does the proposal appropriately address the stated purpose? 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?	The committee notes the commenter's support for the proposal. The committee appreciates the answers to the questions presented in the invitation to comment and the perspective on the impact on courts. No further 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
			Yes, categorizing this as an appeal form allows for consistency in the designation of appeals. 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 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

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	Commentator	Position	Comment	Committee Response
			the title. We recommend that this be left fillable as cases may be initiated by the Public Guardian or a hospital.	Committee comment to proposed new rule 8.483 to clarify that rule 8.480 governs Murphy conservatorship appeals. 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 committee 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.

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.

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 but has concluded that it would be useful to expand the scope of the form for use in a broader range of civil commitment and LPS Act conservatorship appeals. **[Does the committee agree with this approach / response?]** The committee appreciates the commenter's input into the potential implementation requirements.

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.	

Item 06

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
July 8, 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 that the opinion 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. 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 U.S. Supreme Court Rule 33(g)(v)–(vii), at *https://www.supremecourt.gov/filingandrules/2019RulesoftheCourt.pdf*.

Attachments and Links

Rules 8.204 and 8.268 of the California Rules of Court are 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.

Item 07

JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
July 15, 2019

To
Members of the Appellate Advisory Committee

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 July 19, 2019

Deadline
July 19, 2019

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

Introduction

This 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. The rules subcommittee considered the comments on June 27, 2019. This memorandum discusses the comments received and the rules subcommittee's recommendations for responding to the comments and modifying the proposal. *[The draft Judicial Council report will include a discussion of the comments following the committee meeting.]*

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 the rules subcommittee's recommended 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 to absent parents and guardians by counsel rather than the court; (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 courts indicated that these implementation requirements would be problematic.

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. In developing the proposal, the committee considered issues relating to counsel, 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 committee 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 and guardians who are present at the hearing should be amended. The committee 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 and 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 and

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 or 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 and 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 and 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. In addition, one commenter (the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee (JRS)) suggested adding a provision to the rule regarding the sufficiency of the notice if sent by first class mail to the last known address. The subcommittee recommends this amendment.

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. The rules subcommittee recommends a number of revisions based on the comments. A draft form that includes these revisions is included in these materials. For comparison purposes, please refer to the version of the form that circulated for public comment, which is included in the attached invitation to comment.

Suggested amendments to rule 5.590
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 defeat the purpose of the proposal, and the rules subcommittee does not recommend this modification.

The draft rule includes text to implement the 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. Ms. 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. The rules subcommittee concluded 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 recommended that the comment be retained for future consideration and referred to the Family and Juvenile Law Advisory Committee.

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 and guardians to the rule so that they, along with parties, receive the written advisement. The rules subcommittee concluded that amending a different subdivision of the rule is beyond the scope of the proposal but recommended that the suggestion be retained for future consideration and referred to the Family and Juvenile Law Advisory Committee.

Whether to retain the current notice on certain JV forms
At the request of the Family and Juvenile Law Advisory Committee, 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. This feedback will be provided to the Family and Juvenile Law Advisory Committee.

Committee Task

The committee's task is to:

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

Attachments

1. Draft Report to the Judicial Council
2. Rule 5.590
3. Form JV-805-INFO
4. Draft comment chart
5. Invitation to comment (including the version of form JV-805-INFO that circulated for public comment)

JUDICIAL COUNCIL OF CALIFORNIA

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

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 23-24, 2019:

Title
Appellate Procedure: Advisement of Appellate Rights in Juvenile Cases

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

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

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
July 16, 2019

Contact
Christy Simons, 415-865-7694
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Executive Summary

The Appellate Advisory Committee recommends 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 recommends the adoption of a new optional form notice for clerks to send with court orders following a hearing to provide the advisement. This proposal, which originated with a suggestion from an attorney in San Diego, is intended to promote greater awareness of parents' and guardians' appellate rights in juvenile cases and to assist the courts in complying with the requirement to provide this notice.

Recommendation

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

1. Amend California Rules of Court, rule 5.590 to remove the limitation that courts need only provide notice of appellate rights to parents and guardians who are present in court for the hearing; and

2. Approve new optional form JV-805-INFO for courts to send after a hearing to provide the advisement of appellate rights.

The text of the amended rule and the new form are attached at pages X–XX.

Relevant Previous Council Action

The predecessor to rule 5.590, including the "if present" limitation on providing the advisement of appellate rights, was adopted in 1973. The Judicial Council has taken no action relevant to the recommendations in this report.

Analysis/Rationale

Background

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

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.[3] 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.[4] 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.[5] 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

[1] All further unspecified statutory references are to the Welfare and Institutions Code.

[2] 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.

[3] Judicial Council of Cal., staff rep., *Report and Recommendation Concerning Advising Juveniles of Their Appeal and Rehearing Rights* (Oct. 11, 1972), at p. 1.

[4] *Id*. at pp. 3–7.

[5] *Id*. at pp. 7–8.

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 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, recommends 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.) 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, and transportation issues, and other rules that provide for parental advisement of appellate rights do not limit the notice to parents who are present at the hearing.[6]

Form notice

[6] 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).

The committee also recommends 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 courts in complying 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.

Policy implications

[See memo. To be added following discussion by the committee. This section will identify any policy implications that underlie the choices made by the committee in responding to the issues raised by the comments.]

Comments

[See memo and comment chart. Add discussion following committee meeting.]

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 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.

[See memo and comment chart. Add fiscal and operational impacts described by courts in the comments.]

Attachments and Links

Rule 5.590 of the California Rules of Court is 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) * * *

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.

(b)–(c) * * *

JV-805-INFO Information Regarding Appeal Rights

1 Your Right to Appeal

You may have the right to appeal judgments and orders in juvenile proceedings under Welfare and Institutions Code sections 300, 601, and 602. If you do not appeal in time, you could lose any right to appeal the judgment or order.

A judgment or order of a referee or commissioner becomes appealable after any rehearing proceedings are completed or the time to apply for a rehearing 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 renders the judgment or makes 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. An order of a referee or commissioner becomes final 10 calendar days after the order is served if no rehearing proceedings are initiated.

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.

3 Requesting an Attorney

If you cannot afford to hire an attorney for the appeal, 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 for the appeal, 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.

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	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 declines to make this change to maintain consistency with the prior item on the form and to avoid confusion.

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

	Commenter	Position	Comment	Committee Response
			attorney, then the "may be" qualifier could 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	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.

	Commenter	Position	Comment	Committee Response
			attorney, online, at the courtroom, and that 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	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 differential treatment. Absent parents are no less entitled to the advisement, without regard to the potential merit of any appeal.

	Commenter	Position	Comment	Committee Response
			meritorious. The proposed rule is likely to result in greater administrative burdens on an overtaxed judicial system and is unlikely 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.	The committee acknowledges that most litigants will have appointed counsel and agrees that counsel should advise parents and guardians of their appellate rights. However, the committee concluded that these points do not outweigh the benefit of providing the advisement to protect 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 made revisions to the form.

	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? 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.	The committee notes the commenter's support for this proposal. The committee appreciates the commenter's feedback on this question.

	Commenter	Position	Comment	Committee Response
			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.	
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	The committee appreciates this feedback on the proposal. START HERE

	Commenter	Position	Comment	Committee Response
			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 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 . . . ."	The committee understands the commenter to suggest limiting the scope of the rule to parents and guardians who have taken steps to become parties 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 declines to make the suggested changes because they do not advance the goals of this proposal, i.e., to provide the same information to parents and guardians who are not present at a hearing as is provided to those who are not present, and to promote greater awareness on the part of parents and guardians of their appellate rights.

	Commenter	Position	Comment	Committee Response
			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.	The committee appreciates this input.
			C. JV-805/Information Regarding Appeal Rights is incomplete in regard to the 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 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

	Commenter	Position	Comment	Committee Response
			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 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.	request that this issue be considered in the future and refer it to the Family and Juvenile Law Advisory Committee. 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.	The committee notes the commenter's support for the proposal if modified.

	Commenter	Position	Comment	Committee Response
			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?* 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>	The committee declines to make this change because the form will be used in all types of juvenile proceedings and it is not necessary to include instructions regarding what attorneys can and cannot do.

	Commenter	Position	Comment	Committee Response
			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? 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 <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 committee appreciates this feedback and will provide it to the Family and Juvenile Law Advisory Committee.
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**	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.

	Commenter	Position	Comment	Committee Response
			Should the form include any other information regarding appellate rights? 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**	The committee appreciates the commenter's input on this proposal.

	Commenter	Position	Comment	Committee Response
			Code section 300, 601, or 602 cases ▪ 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	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. The committee has simplified this section of the form. (The committee has also corrected the typographical error referring to section 600; the correct statute is section 601.) The committee has made certain revisions to this section to improve readability but has retained language where necessary to avoid potential confusion. The committee thanks the commenter for this input.

	Commenter	Position	Comment	Committee Response
			parent/guardian, there will be an increase in cost associated with printing, mailing, and staff processing time.	
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-	The committee notes the commenter's opposition to the proposal and appreciates the responses to questions presented in the invitation to comment. 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.

	Commenter	Position	Comment	Committee Response
			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 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.	The committee appreciates this input.
			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.	The committee thanks the commenter for responding to the questions for courts in the invitation to comment.
			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.	The committee notes the implementation requirements for courts.
			Would three months from Judicial Council approval of this proposal until its effective	

	Commenter	Position	Comment	Committee Response
			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.	No further response required. No further response required.
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	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 at every stage of dependency proceedings when the court issues findings and order. Those findings and orders become final and, if the

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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
			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.	parent or guardian is unaware of the right to appeal and an appeal is not timely filed, the parent or guardian will lose the right to appeal.
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. There is a typo on the first line of the new form: 600 should be 601.	The committee notes the commenter's support for the proposal and appreciates the input regarding implementation requirements. 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	The committee notes the commenter's support for the proposal and appreciates the feedback regarding implementation requirements for courts. The committee appreciates this input.

	Commenter	Position	Comment	Committee Response
			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?* 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*	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.

	Commenter	Position	Comment	Committee Response
			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. (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.	See response above. See response below.

	Commenter	Position	Comment	Committee Response
			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. 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	The committee notes this concern, but expects that courts will take steps to avert potential problems such as delay when implementing the rule change.

	Commenter	Position	Comment	Committee Response
			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.	
			We do not recommend that this language be eliminated from the forms. The advisement, even if unnecessary, may still be helpful to the public.	The committee thanks the commenter for this input and will provide it to the Family and Juvenile Law Advisory Committee.
			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	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.

	Commenter	Position	Comment	Committee Response
			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?* 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*	The committee appreciates this information regarding implementation requirements.

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
			its effective date provide sufficient time for implementation? Three months is a reasonable amount of time to allow for implementation.	No further response required.
			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.

JUDICIAL COUNCIL OF CALIFORNIA

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

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
christy.simons@jud.ca.gov

Executive Summary and Origin

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

Background

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

[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.

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. It is circulated for comment purposes only.

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.

Item 08

JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
July 18, 2019

To
Members of the Appellate Advisory Committee

From
The Rules Subcommittee

Subject
Appellate Procedure, Juvenile Law: Access to Juvenile Case Files in Appellate Court Proceedings

Action Requested
Please review for meeting on July 23, 2019

Deadline
July 23, 2019

Contact
Christy Simons
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christy.simons@jud.ca.gov

Daniel Richardson
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Introduction and Recommendation

The Appellate Advisory Committee and the Family and Juvenile Law Advisory Committee recommended circulating for public comment a proposal to amend rules, adopt a new form and revise existing forms to implement recent Judicial Council– sponsored legislation amending the statute that specifies who may access and copy records in a juvenile case file in an appeal or writ proceeding challenging a juvenile court order. The legislation clarified that people who are entitled to seek review of certain orders in juvenile proceedings or who are respondents or real parties in interest in such appellate proceedings may, for purposes of those appellate proceedings, access and copy those records to which they were previously given access by the juvenile court. The proposal would implement the legislation by updating the rules relating to juvenile appeals to include provisions relating to persons with limited access to the juvenile case file and the limited record that must be prepared and provided to these persons. The proposal includes a new information sheet and a notice on certain forms regarding the requirement to seek

authorization from the juvenile court to access records in the case file before commencing an appeal.

The Judicial Council's Rules and Projects Committee approved the recommendation for circulation and the proposal was circulated for public comment from April 11-June 10, 2019 as part of the regular spring comment cycle. A copy of the invitation to comment, which describes the specifics of the proposal and provides background information, is included in your meeting materials.

On July 10, the joint ad hoc working group composed of members from both AAC and Fam/Juv reviewed the comments and discussed the issues that were raised, and proposed several modifications to the proposal. This committee's Rules Subcommittee met on July 15 to consider the comments and the working group's recommendations. Both the working group and the Rules Subcommittee noted significant issues and gaps in the proposal that were identified or suggested in the comments. To keep the proposal moving forward, the working group and the Rules Subcommittee recommended modifications to the proposal to address the issues.

Subsequently, Judicial Council staff in both the Legal Services office and the Center for Families, Children and the Courts met to review the status of the proposal, including proposed modifications to address concerns in the comments. Proposed modifications to the rule regarding briefs would require (1) notice that a brief contains confidential information to which the designated person has not been granted access, and (2) serving a redacted brief on a designated person and following the procedures in rule 8.47 to seek to file the brief under seal. Staff expressed concern that these are significant changes that should circulate for public comment. However, not answering the question of what brief to serve on a designated party leaves a serious gap for litigants trying to follow the procedures outlined in the rules.

These concerns, in addition to other issues raised in the comments that cannot be addressed without recirculating, such as a time frame for juvenile courts to rule on section 827 petitions, lead staff to recommend deferring the proposal briefly until the winter cycle this year in order to make substantive modifications and recirculate a proposal that more fully addresses the comments and other issues.

The rest of this memo summarizes the public comments received on the proposal and the working group's proposed draft responses and draft modifications to the proposal. Some of the comments address matters that exceed the scope of the proposal or suggest modifications that would be inconsistent with statute. They reflect concerns about how the proposed rules would operate in practice. In reviewing the memo and comment chart, the subcommittee should consider whether, if the changes proposed are not practical or possible, other modifications to the proposal might better address the underlying issues. The subcommittee should also consider whether the proposal requires more development and should circulate again for public comment.

Note: for background on this proposal, please see the invitation to comment at the end of these materials.

Public Comments

The committees received eight comments on the proposal from organizations, courts, and one individual attorney. One commenter indicated agreement with the proposal, four indicated that they agreed with the proposal if modified, and three did not state a position but suggested changes, requested clarification, or expressed concern with certain aspects of the proposal. A chart with the text of comments received and staff's draft responses is attached. The main issues raised by the comments, possible responses, possible modifications to the proposal, and questions for the working group are discussed below. There are other comments and possible responses presented only in the draft comment chart, so please review the draft comment chart carefully.

Broadly speaking, the comments address (1) due process concerns; (2) delay resulting from the process of petitioning the juvenile court for access to records; (3) whether designated persons are "parties" under section 827(a)(1)(E); (4) whether counsel for designated persons should have access to the complete normal record in appellate court proceedings; (5) whether parties' briefs should be served on designated persons; and (6) suggested revisions to forms.

Due process

Two commenters expressed extensive due process concerns.

According to Advokids, juvenile courts routinely release pleadings and documents through means other than a petition for access to records pursuant to Welfare and Institutions Code section 827 (827 petition), such as in response to a discovery request or motion made in the course of the proceeding, based on due process considerations. The commenter cites *In re Matthew P.* (1999) 71 Cal.App.4th 841, 850-851 (holding that the de facto parents' due process rights were violated when the juvenile court denied their section 388 petition to regain placement of the minors based on adverse information in the social worker's report but did not allow the de facto parents to cross-examine the social worker).

[Staff note: The *Matthew P.* appellants were de facto parents and therefore considered "parties" to the proceedings, and the issue was not access to the juvenile case file under section 827. Different interests would be weighed in cases involving designated persons and access to juvenile case files. Other cases take a more limited view of de facto parents' due process rights. (See, e.g., *In re B.F.* (2010) 190 Cal.App.4th 811, 817 ("While de facto parents have 'standing to participate as parties' (rule 5.534(e), their role is limited and they do not enjoy the same due process rights as parents.").) The *In re B.F.* court stated, "De facto parents do not have an automatic right to receive the Agency's reports and other documents filed with the court." (*Ibid.*)

Rather, they may petition the juvenile court for access to records under section 827. (*Id*., at p. 818.]

Advokids objects to "the notion that the documents employed in the proceedings from which appellate review is sought are confidential from the persons who either filed or had access to those very same documents when they participated in the juvenile court proceedings," and to a requirement that "a person who was present at and participated in a hearing must file a section 827 petition to obtain a reporter's transcript of that same hearing." The commenter suggests considering any access afforded the person during juvenile court proceedings "to be the equivalent of a section 827(a)(1)(Q) order" without the need to file an 827 petition. Staff is unsure how this could be squared with the statute.

Advokids suggests that designated persons should be recognized as "parties" to the specific juvenile court proceedings in which they participated, citing *Wayne F. v. Superior Court* (2006) 145 Cal.App.4th 1331, which held that prospective adoptive parents, although not parties to the underlying dependency proceedings, were entitled to "fully participate" in hearings concerning proposed removal from their home. In addition, under section 827(a)(1)(E), an appellate court could determine that designated persons are parties and their attorneys should be given access to the record, solving the problem of unequal access to the record.

Advokids also suggests modifying the rules regarding preparation of the record to specify a different record when the appeal or notice of intent is filed by someone who is not a party to the underlying dependency proceeding. The rules should provide that all parties to the appeal or writ proceedings receive record comprised only of documents filed in or used in connection with the proceeding that is the subject of the appellate court proceeding, and any transcripts of the hearing. In this way, all litigants in the appellate court would have access to the same record.

Appellate Defenders (AD) raises due process concerns with appellate issues being raised and considered from two different records. AD points out that the designated person working from a limited record is unable to cite to favorable evidence (or defend against unfavorable evidence) that is included in the normal record but omitted from the limited record. Further, the court and other parties will rely on the entire case record to determine section 388 issues. (See *In re Justice P.* (2004) 123 Cal.App.4th 181, 189 (court can rely on entire case record when determining whether a section 388 petition makes a prima facie showing).

AD raises issues with language on form JV-291-INFO that advises the designated person filing a section 827 petition to request only a narrow set of documents. This omits matters that are also relevant "and not necessarily confidential" such as: social worker interviews with the designated person and references in the reports to them, visitation between the designated person and the minor; any assessments of the designated person regarding placement or visitation, statements the minor makes about the designated person, etc. AD also suggests that, if a designated person

was present at any other hearings (other than the proceeding from which the appeal was taken), those proceedings arguably are not confidential as to that individual.

To alleviate due process concerns, Appellate Defenders suggests that counsel for a designated person, but not designated persons themselves, should have access to the complete normal record. This would also relieve designated persons from having to file section 827 petitions to access materials cited in the other parties' briefs and thereby reduce delay in these cases. The commenter proposes a modification to rule 8.401(b).

Possible response:

The due process concerns are all based on the problem of litigants' having unequal access to the record on appeal. One option the working group and Rules Subcommittee considered was to add provisions to rule 8.412, which governs briefs by parties and amici curiae. Subdivision (a)(5) could include a requirement that a party whose brief relies on information in the case file to which a designated person has not been granted access, i.e., the information is not in the limited record, must add a notice to the brief that the brief contains confidential information. The rule would require the party to describe the records containing the information and the relevance of the information to the appeal. The notice would raise awareness of potential due process concerns so that the designated person and the court could take appropriate action (petition the juvenile court for access to more records; extend time for filing further briefs, etc.).

To address the question regarding whether the party's brief that contains confidential information should be served on the designated person, the working group and Rules Subcommittee considered recommending the addition of a new paragraph to subdivision (e) of rule 8.412. The new paragraph would require the party to serve a redacted version of the brief on a designated person, lodge an unredacted brief, and follow the requirements of rule 8.47 to request permission to file the unredacted brief under seal. The Rules Subcommittee acknowledged that this adds more work and will cause these proceedings to take even longer, but Welfare and Institutions Code section 827 requires that designated persons not be provided with information to which they have not been given access by the juvenile court.

The working group and Rules Subcommittee agreed that similar provisions, modified for writs, should be added to writ rules 8.452 and 8.456.

Delay

Three comments discuss concerns about the extensive delays that result from the 827 petition process. Neither the statute nor the rules specify a time frame for juvenile courts to rule on 827 petitions, and, according to Advokids, they languish for months before being acted upon. In the meantime, issues related to the child's well-being, stability, or permanency are delayed or not decided at all.

Advokids requests time limits within which the juvenile court must act on a section 827 petition. The working group should discuss this idea and decide whether to pursue it in a future rules cycle. Any proposed time limits for courts to do something would need to circulate for public comment.

Appellate Defenders comments that initial and subsequent section 827 petitions will create additional delay, and suggests the possibility of a *Marsden*-type approach. Specifically, the respondent would have to notify the court that its briefing refers to matters beyond the limited record. This would provide cause for the court to issue a section 827 order granting access to the designated person.

Possible response:

The working group and Rules Subcommittee acknowledge that section 827 petitions will result in delay. Motions to file briefs under seal will cause delay. However, section 827 is clear that persons who are not identified as being entitled to access the juvenile case file must petition for access and obtain a juvenile court order granting access. Allowing a party to divulge confidential information in the case file by discussing it in a brief and serving that brief on someone not entitled to access would undermine the intent of the statute.

The Rules Subcommittee is open to the idea of proposing a time frame for the section 827 petition process. As noted above, any such amendment would require that the proposal recirculate for public comment.

Whether designated persons are parties under section 827(a)(1)(E)

Advokids contends that designated persons could be considered "parties" to the juvenile court proceeding in which they were involved, and that their attorneys on appeal could be entitled to the case file under section 827(a)(1)(E). (See discussion in Due Process section.)

Possible response:

The working group and the Rules Subcommittee disagree with writing this interpretation of the statute into the rules. Issues around who is a party to a juvenile court proceeding, how much standing an individual has, and the extent of due process protections the individual is entitled to exceed the scope of this project, which is simply to implement new subdivision (a)(6) of section 827.

Whether counsel for designated persons should have access to the normal record

If designated persons are "parties" under section 827(a)(1)(E), their counsel would be entitled to access to the complete juvenile case file under the same provision. (See discussion in Due Process section.)

Possible response:

The answer is no, in light of the prior response.

Whether parties' briefs should be served on designated persons

The issue is whether designated persons should receive briefs that likely include confidential information from documents to which the designated person has not been granted access. The commenter requests clarification on this point in the rule. Should the rules address which briefs should be served on designated persons? Should the rules provide that the designated person's attorney may only receive the same briefs and record that the designated person receives? (But see other comment suggesting that designated persons' attorneys should receive the normal record on appeal.)

Possible response:

This comment identifies a gap in the rules that should be addressed. The working group and the Rules Subcommittee considered the option of requiring that a designated person be served with a redacted brief. However, any addition to the proposal that would address the issue would be a substantive change requiring recirculation. (See discussion in Due Process section, above.)

Forms revisions

The suggested revisions to forms are not discussed in this memo. Please review the attached forms and the draft comment chart for the suggestions and proposed responses.

Committee's Task

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

- Discuss the comments received on the proposal;
- Discuss and approve or modify suggestions for responding to the comments, as reflected in the draft comment chart; and
- Discuss and decide whether the proposal should move forward now or be deferred until the winter cycle to allow for further development and recirculation with substantive changes;

Attachments and Links

1. Rules, at pages X-XX
2. Forms, at pages X-XX
3. Draft comment chart, at pages X-XX
4. Invitation to comment, at pages X-XX

Rules 8.400, 8.401, 8.405, 8.407–8.410, 8.412, 8.416, 8.450, 8.452, 8.454, and 8.456 of the California Rules of Court are amended, effective January 1, 2020, to read:

Rule 8.400. Application and definitions

(a) Application

The rules in this chapter govern:

(1) Appeals from judgments or appealable orders in:

(A) Cases under Welfare and Institutions Code sections 300, 601, and 602; and

(B) Actions to free a child from parental custody and control under Family Code section 7800 et seq. and Probate Code section 1516.5;

(2) Appeals or orders requiring or dispensing with an alleged father's consent for the adoption of a child under Family Code section 7662 et seq.; and

(3) Writ petitions under Welfare and Institutions Code section 366.26 and 366.28.

(b) Definitions

In addition to the definitions and use of terms in rule 8.10, the following definitions and use of terms apply to the rules in this chapter:

(1) "Designated person" means a party to the appeal or writ proceeding who is not otherwise authorized to access the juvenile case file under Welfare and Institutions Code section 827 and who has been granted access to inspect and copy specified records in a juvenile case file by order of the juvenile court after filing a petition under section 827(a)(1)(Q).

(2) "Limited record" means the record prepared for a designated person for purposes of the appeal or writ proceeding and containing the records in the juvenile case file to which the designated person has been granted access by order of the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q).

(3) "Juvenile case file" includes the records listed in rule 5.552(a).

Rule 8.401. Confidentiality

(a) * * *

(b) Access to filed documents

(1) Except as provided in (2)–~~(3)~~(4), the record on appeal and documents filed by the parties in proceedings under this chapter may be inspected only by the reviewing court and appellate project personnel, the parties, ~~or~~ including their attorneys, and other persons the court may designate.

(2) A designated person may inspect and copy only the limited record on appeal.

~~(2)~~(3) Filed documents that protect anonymity as required by (a) may be inspected by any person or entity that is considering filing an amicus curiae brief.

~~(3)~~(4) Access to records that are sealed or confidential under authority other than Welfare and Institutions Code section 827 is governed by rules 8.45–8.47 and the applicable statute, rule, sealing order, or other authority.

(c) * * *

Rule 8.405. Filing the appeal

(a) Notice of appeal

(1)–(2) * * *

(3) If the appellant is aware that a party to the appeal is an individual not authorized to access the juvenile case file without an approved petition under Welfare and Institutions Code section 827(a)(1)(Q), the appellant must indicate so on the notice of appeal and is encouraged to attach a copy of any order granting access to specified records under section 827(a)(1)(Q).

~~(3)~~(4) The notice of appeal must be liberally construed, and is sufficient if it identifies the particular judgment or order being appealed. The notice need not specify the court to which the appeal is taken; the appeal will be treated as taken to the Court of Appeal for the district in which the superior court is located.

(b) Superior court clerk's duties

(1) When a notice of appeal is filed, the superior court clerk must immediately:

(A) * * *

(B) Notify the reporter by telephone and in writing to prepare a reporter's transcript and any limited reporter's transcript and deliver it or them to the clerk within 20 days after the notice of appeal is filed.

(2) * * *

(3) The notification must also identify any party to the appeal who is not authorized under Welfare and Institutions Code section 827(a)(1)(A)–(P) to access the juvenile case file. If such party is a designated person, a copy of the juvenile court order under section 827(a)(1)(Q) granting access to specified records in the juvenile case file, if available, must be included.

~~(3)~~(4) The notification to the reviewing court clerk must also include a copy of the notice of appeal and any sequential list of reporters made under rule 2.950.

~~(4)~~(5) A copy of the notice of appeal is sufficient notification if the required information is on the copy or is added by the superior court clerk.

~~(5)~~(6) The mailing of a notification is a sufficient performance of the clerk's duty despite the discharge, disqualification, suspension, disbarment, or death of the attorney.

~~(6)~~(7) Failure to comply with any provision of this subdivision does not affect the validity of the notice of appeal.

Rule 8.407. Record on appeal

(a)–(e) * * *

(f) Limited record for designated persons

(1) A limited record must contain only those records in a juvenile case file to which the designated person has been granted access by the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q). A designated person as defined in rule 8.400(b)(1) is authorized to receive only the limited record.

(2) To apply for additions to the limited record, a designated person must petition the juvenile court by filing *Request for Disclosure of Juvenile Case File* (form JV-570).

Rule 8.408. Record in multiple appeals in the same case

If more than one appeal is taken from the same judgment or related order, only one appellate record need be prepared, which must be filed within the time allowed for filing the record in the latest appeal. If an appeal involves a designated person, a limited record must also be prepared, as provided in rule 8.409(f).

Rule 8.409. Preparing and sending the record

(a) * * *

(b) Form of record

(1) The clerk's and reporter's transcripts must comply with rules 8.45–8.47, relating to sealed and confidential records, and with rule 8.144. An electronic clerk's transcript must also comply with rule 8.74.

(2) The clerk's and reporter's transcripts for a limited record must be produced and paginated separately from the transcripts for the normal record, and must be designated as limited clerk's transcript and limited reporter's transcript.

(c) Preparing and certifying the transcripts

Except as provided in (f), within 20 days after the notice of appeal is filed:

(1)–(2) * * *

(d) * * *

(e) Sending the record

(1) Except as provided in (f), when the transcripts are certified as correct, the court clerk must immediately send:

(A)–(B) * * *

(2)–(3) * * *

(f) Limited record

(1) Application

If the appellant or the respondent is a designated person as defined in 8.400(b)(1), the clerk and the reporter must prepare, and the clerk must send, a separate limited record, as defined in 8.400(b)(2), that includes only those records and transcripts in the juvenile case file to which the designated person has been granted access by the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q). A designated person may receive a copy of the limited record only, and may not receive a copy of any records to which the designated person has not been granted access by the juvenile court.

(2) Preparing and certifying the transcripts in a limited record

Within 20 days after the notice of appeal is filed:

(A) The clerk must prepare, in compliance with rules 8.74 and 8.144, and certify as correct an original of the clerk's transcript for a limited record and one copy each for the appellant, the respondent, the child's Indian tribe if the tribe has intervened, and the child if the child is represented by counsel on appeal or if a recommendation has been made to the Court of Appeal for appointment of counsel for the child under rule 8.403(b)(2) and that recommendation is either pending with or has been approved by the Court of Appeal but counsel has not yet been appointed; and

(B) The reporter must prepare, certify as correct, and deliver to the clerk an original of the reporter's transcript for a limited record and the same number of copies as (A) requires of the clerk's transcript.

(3) Sending the limited record

(A) When the transcripts for a limited record are certified as correct, the court clerk must immediately send:

(i) The original transcripts for a limited record to the reviewing court, noting the sending date on each original; and

(ii) One copy of each transcript for a limited record to the appellate counsel for the following, if they have appellate counsel:

a. The appellant;

b. The respondent;

c. The child's Indian tribe, if the tribe has intervened; and

d. The child.

(B) If appellate counsel has not yet been retained or appointed for the appellant or the respondent, or if a recommendation has been made to the Court of Appeal for appointment of counsel for the child under rule 8.403(b)(2) and that recommendation is either pending with or has been approved by the Court of Appeal but counsel has not yet been appointed, when the transcripts for a limited record are certified as correct, the clerk must send that counsel's copy of the transcripts for a limited record to the district appellate project. If a tribe that has intervened is not represented by counsel when the transcripts are certified as correct, the clerk must send that counsel's copy of the transcripts for a limited record to the tribe.

(C) The clerk must not send a copy of the transcripts for a limited record to the Attorney General or the district attorney unless that office represents a party.

Advisory Committee Comment

Subdivision (a). * * *

Subdivision (b). * * *

Subdivision (e). * * *

Subdivision (f). If a party is not otherwise authorized to access records in the juvenile case file under Welfare and Institutions Code section 827, and has not been granted access to any records in the juvenile case file by the juvenile court under section 827(a)(1)(Q) at the time the record on appeal is being prepared, there is no limited record to be prepared. To obtain access to records, and thus meet the definition of a designated person, the party must petition the juvenile court by filing *Request for Disclosure of Juvenile Case File* (form JV-570).

Rule 8.410. Augmenting and correcting the record in the reviewing court

(a) Omissions

If, after the record is certified, the superior court clerk or the reporter learns that the record or the limited record omits a document or transcript that any rule or order requires to be included, without the need for a motion or court order, the clerk must promptly copy and certify the document or the reporter must promptly prepare and

certify the transcript and the clerk must promptly send the document or transcript—as an augmentation of the record—to all those who are listed under 8.409(e), except as provided in rule 8.409(f).

(b) Augmentation or correction by the reviewing court

(1) Except as provided in (3), on motion of a party or on its own motion, the reviewing court may order the record augmented or corrected as provided in rule 8.155(a) and (c).

(2) If, after the record is certified, the trial court amends or recalls the judgment or makes any other order in the case, the trial court clerk must notify each entity and person to whom the record is sent under rule 8.409(e) and (f).

(3) The reviewing court may order a limited record augmented or corrected only to include records to which the designated person has been granted access by the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q).

Rule 8.412. Briefs by parties and amici curiae

(a) Contents, form, and length

(1) * * *

(2) Except as provided in (3) and (4), rules 8.74 and 8.204 governs the form and contents of briefs. Rule 8.216 also applies in appeals in which a party is both appellant and respondent.

(3) * * *

(4) Any reference to a matter in the limited record must be supported by a citation to the limited record, including a limited clerk's transcript, abbreviated as "LCT," and a limited reporter's transcript, abbreviated as "LRT," where the matter appears.

(5) If an appeal involves a designated person, and the brief of a party who is not a designated person refers to juvenile case records that are not in the limited record, the designated person may petition the juvenile court for access to those records and may request an extension of time from the reviewing court under subdivision (c).

(b)–(e) * * *

Rule 8.416. Appeals from all terminations of parental rights; dependency appeals in Orange, Imperial, and San Diego Counties and in other counties by local rule

(a) * * *

(b) Form of record

(1) The clerk's and reporter's transcripts and any transcripts for a limited record must comply with rules 8.45–8.47, relating to sealed and confidential records, and, except as provided in (2) and (3), with rule 8.144. An electronic clerk's transcript and any electronic limited clerk's transcript must also comply with rule 8.74.

(2)–(3) * * *

(c) Preparing, certifying, and sending the record

(1) Within 20 days after the notice of appeal is filed:

(A) Except as provided in (C), the clerk must prepare and certify as correct an original of the clerk's transcript and one copy each for the appellant, the respondent, the district appellate project, the child's Indian tribe if the tribe has intervened, and the child if the child is represented by counsel on appeal or if a recommendation has been made to the Court of Appeal for appointment of counsel for the child under rule 8.403(b)(2) and that recommendation is either pending with or has been approved by the Court of Appeal but counsel has not yet been appointed; and

(B) Except as provided in (C), the reporter must prepare, certify as correct, and deliver to the clerk an original of the reporter's transcript and the same number of copies as (A) requires of the clerk's transcript.

(C) If the appellant or the respondent is a designated person as defined in rule 8.400(b)(1), the clerk and the reporter must prepare and certify as correct separate transcripts for a limited record, as provided in rule 8.409(f), that includes only those records and transcripts in the juvenile case file to which the designated person has been granted access by the juvenile court. Originals and copies of a limited clerk's transcript and a limited reporter's transcript must be prepared and delivered as provided in (A) and (B).

(2) When the clerk's and reporter's transcripts are certified as correct, the clerk must immediately send:

(A) The original transcripts, including any transcripts for a limited record, to the reviewing court by the most expeditious method, noting the sending date on each original; and

(B) Except as provided in (C), one copy of each transcript to the district appellate project and to the appellate counsel for the following, if they have appellate counsel, by any method as fast as United States Postal Service express mail:

(i)–(iv) * * *

(C) One copy of the transcripts for a limited record, if any, to the designated person and the parties identified in (B). A designated person may receive a copy of the limited record only, and may not receive a copy of any records to which the designated person has not been granted access by the juvenile court.

(3) * * *

**(d)–(h) * * *

Rule 8.450. Notice of intent to file writ petition to review order setting hearing under Welfare and Institutions Code section 366.26

(a)–(d) * * *

(e) Notice of intent

(1) A party seeking writ review under rules 8.450–8.452 must file in the superior court a notice of intent to file a writ petition and a request for the record. If the party seeking writ review is aware that a party to the writ proceeding is an individual not authorized to access the juvenile case file without an approved petition under Welfare and Institutions Code section 827(a)(1)(Q), the party seeking writ review must indicate so on the notice of intent to file a writ petition.

(2)–(4) * * *

(f)–(g) * * *

(h) Preparing the record

When the notice of intent is filed, the superior court clerk must:

(1) Immediately notify each court reporter by telephone and in writing to prepare a reporter's transcript of the oral proceedings at each session of the hearing that resulted in the order under review and to deliver the transcript to the clerk within 12 calendar days after the notice of intent is filed; ~~and~~

(2) If any party is a designated person, immediately notify each court reporter by telephone and in writing to prepare a separate reporter's transcript for a limited record of the oral proceedings at each session of the hearing that resulted in the order under review, and to which the designated person has been granted access by the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q), and deliver the transcript to the clerk within 12 calendar days after the notice of intent is filed;

(~~2~~)(3) Within 20 days after the notice of intent is filed, prepare a clerk's transcript that includes the notice of intent, proof of service, and all items listed in rule 8.407(a); and

(4) If any party is a designated person, within 20 days after the notice of intent is filed, prepare a separate clerk's transcript for a limited record that includes only those records in the juvenile case file to which the designated person has been granted access by the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q).

(i) Sending the record

When the transcripts are certified as correct, the superior court clerk must immediately send:

(1) The original transcripts, including any transcripts for a limited record, to the reviewing court by the most expeditious method, noting the sending date on each original~~.~~; ~~and~~

(2) Except as provided in (3), one copy of each transcript, including any transcripts for a limited record, to each counsel of record and any unrepresented party by any means as fast as United States Postal Service express mail; and

(3) One copy of the transcripts for a limited record to any party who is a designated person. A designated person may receive a copy of the limited

record only, and may not receive a copy of any records to which the designated person has not been granted access by the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q).

(j) * * *

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

(a) * * *

(b) Contents of the memorandum

(1) Except as provided in (2), the memorandum must:

~~(1)~~(A) ~~The memorandum must~~ Provide a summary of the significant facts, limited to matters in the record;

~~(2)~~(B) ~~The memorandum must~~ State each point under a separate heading or subheading summarizing the point and support each point by argument and citation of authority; and

~~(3)~~(C) ~~The memorandum must~~ Support any reference to a matter in the record by a citation to the record. The memorandum should explain the significance of any cited portion of the record and note any disputed aspects of the record.

(2) If the petitioner is a designated person, the summary of significant facts in the memorandum is limited to matters in the limited record. The memorandum must support any reference to a matter in the limited record by a citation to the limited record, including a limited clerk's transcript, abbreviated as "LCT," and a limited reporter's transcript, abbreviated as "LRT."

(c)–(i) * * *

Rule 8.454. Notice of intent to file writ petition under Welfare and Institutions Code section 366.28 to review order designating specific placement of a dependent child after termination of parental rights

(a)–(d) * * *

(e) Notice of intent

(1) A party seeking writ review under rules 8.454–8.456 must file in the superior court a notice of intent to file a writ petition and a request for the record. If the party seeking writ review is aware that a party to the writ proceeding is an individual not authorized to access the juvenile case file without an approved petition under Welfare and Institutions Code section 827(a)(1)(Q), the party seeking writ review must indicate so on the notice of intent to file a writ petition.

(2)–(5) * * *

**(f)–(g) * * *

(h) Preparing the record

When the notice of intent is filed, the superior court clerk must:

(1) Immediately notify each court reporter by telephone and in writing to prepare a reporter's transcript of the oral proceedings at each session of the hearing that resulted in the order under review and to deliver the transcript to the clerk within 12 calendar days after the notice of intent is filed; ~~and~~

(2) If any party is a designated person, immediately notify each court reporter by telephone and in writing to prepare a separate reporter's transcript for a limited record of the oral proceedings at each session of the hearing that resulted in the order under review, and to which the designated person has been granted access by the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q), and to deliver the transcript to the clerk within 12 calendar days after the notice of intent is filed;

~~(2)~~(3) Within 20 days after the notice of intent is filed, prepare a clerk's transcript that includes the notice of intent, proof of service, and all items listed in rule 8.407(a); and

(4) If any party is a designated person, within 20 days after the notice of intent is filed, prepare a separate clerk's transcript for a limited record that includes only those records in the juvenile case file to which the designated person has been granted access by the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q).

(i) Sending the record

When the transcripts are certified as correct, the superior court clerk must immediately send:

(1) The original transcripts, including any transcripts for a limited record, to the reviewing court by the most expeditious method, noting the sending date on each original; ~~and~~

(2) Except as provided in (3), one copy of each transcript, including any transcripts for a limited record, to each counsel of record and any unrepresented party and unrepresented custodian of the dependent child by any means as fast as United States Postal Service express mail~~.~~; and

(3) One copy of the transcripts for a limited record to any party who is a designated person. A designated person may receive a copy of the limited record only, and may not receive a copy of any records to which the designated person has not been granted access by the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q).

(j) * * *

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

(a) * * *

(b) Contents of memorandum

(1) Except as provided in (2), the memorandum must:

~~(1)~~(A) ~~The memorandum must~~ Provide a summary of the significant facts, limited to matters in the record;

~~(2)~~(B) ~~The memorandum must~~ State each point under a separate heading or subheading summarizing the point and support each point by argument and citation of authority; and

~~(3)~~(C) ~~The memorandum must~~ Support any reference to a matter in the record by a citation to the record. The memorandum should explain the significance of any cited portion of the record and note any disputed aspects of the record.

(2) If the petitioner is a designated person, the summary of significant facts in the memorandum is limited to matters in the limited record. The memorandum must support any reference to a matter in the limited record by a citation to

the limited record, including a limited clerk's transcript, abbreviated as "LCT," and a limited reporter's transcript, abbreviated as "LRT."

(c)–(i) *** * ***

JV-285 Relative Information

Clerk stamps date here when form is filed.

DRAFT
Not approved by
the Judicial Council

As the relative of a child who has been removed from the home, you may give written information to the court about the child at any time on this form or in a letter. After filling out this form, give it to the clerk of the court.

Please note that other people involved in the case, including the parents, will see your answers on this form. If you prefer to keep your contact information private, fill out *Confidential Information* (form JV-287) and do not write your address or telephone number below.

Social worker fills in court name and street address.

Superior Court of California, County of

Social worker fills in child's name and date of birth.

Child's Name:

Date of Birth:

Social worker fills in case number.

Case Number:

1 Your name: _____

Your Address: _____

_____

Your telephone number: _____

☐ *Check here if contact information is confidential and form JV-287 is attached.*

2 Your relation to the child: ☐ maternal ☐ paternal

☐ grandparent ☐ brother/sister ☐ aunt/uncle ☐ cousin

☐ family friend

☐ tribal extended family member

☐ other *(specify):* _____

3 Child's name: _____

4 ☐ I would like to talk to the judge at the next court hearing.

Please fill in as much of the following information as you know. If you need more space to respond to any section on this form, attach additional pages as needed and check the box at item 12.

5 Information about the child's medical, dental, and general physical health:

_____

_____

6 Information about the child's emotional and behavioral health:

_____

_____

7 Information about the child's education:

_____

_____

8 Other information that might be helpful to the court:

_____

_____

_____

_____

_____

_____

Child's name: _____ **Case Number:**

Below are some things you might do to help the child. You can pick some or none of the things listed below. It is up to the social worker and the court whether you will be asked to do these things.

9 I want to

- ☐ telephone the child.
- ☐ write letters to the child.
- ☐ take the child on outings.
- ☐ take the child to/from school.
- ☐ take the child to visits with brothers or sisters.
- ☐ take the child to therapy.
- ☐ take the child to family gatherings.
- ☐ help the social worker make a case plan for the child.
- ☐ take the child to visits with parents.
- ☐ take the child to medical appointments.
- ☐ supervise the child during visits with brothers and sisters.
- ☐ watch the child after school.
- ☐ have the child live with me.
- ☐ other *(describe):* _____

_____

_____

You can also help the parents. For example, you might help with transportation, housing, visits, or child care. It is up to the social worker and the court whether you will be asked to do these things.

10 I want to help the ☐ father ☐ mother
(Describe): _____

_____

11 Other relatives who might be able to help the child:

a. Name: _____ Relationship to child: _____
Contact information: _____
or ☐ I want to keep the contact information confidential and ask that the child's social worker get this information from me.

b. Name: _____ Relationship to child: _____
Contact information: _____
or ☐ I want to keep the contact information confidential and ask that the child's social worker get this information from me.

c. Name: _____ Relationship to child: _____
Contact information: _____
or ☐ I want to keep the contact information confidential and ask that the child's social worker get this information from me.

12 ☐ If you need more space to respond to any section on this form, please check this box and attach additional pages.
Number of pages attached: _____

NOTICE

If you are not the child, the child's parent, or the child's legal guardian, you may have a right to challenge a decision by the juvenile court, but only in very limited circumstances. You may also need a court order granting you access to records in the juvenile case file. For more information, please see *Information on a Nonparty's Right to Seek Review and the Requirement to Request Access to Records* (form JV-291-INFO). You can get form JV-291-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.

Date:

_____ ▶ _____

Type or print your name *Sign your name*

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY* **DRAFT** **Not approved by the Judicial Council**
CHILD'S NAME: HEARING DATE AND TIME:	
CAREGIVER INFORMATION FORM	CASE NUMBER:

To the current caregiver, preadoptive parent, community care facility, or foster family agency caring for the child: You may submit written information to the court, and you may attend review and permanency hearings. You may use this optional form to provide written information to the court. Please type or print clearly in ink and submit the original and eight copies of the form to the court clerk's office at least five calendar days (or seven calendar days, if filing by mail) before the hearing. Be aware that other individuals involved in the case have access to this information. See form JV-290-INFO for instructions on how to complete this form and file it with the court.

1. a. Child's name:
   b. Child's date of birth: c. Child's age:
2. **Caregiver Information** *(Answer only if you are a caregiver, skip #3.):*
   a. Name of caregiver:
   b. Type of caregiver: ☐ Foster parent ☐ Relative ☐ Legal guardian ☐ Preadoptive parent ☐ Nonrelative extended family member ☐ Other *(specify):*
   c. The child has been living in my home for *(specify):* years months.
3. **Agency or Facility Information** *(Answer only if you are an agency or facility, skip #2.):*
   a. Name of agency or facility:
   b. Address:
   c. Telephone number:
   d. Type of facility: ☐ Foster family agency ☐ Community care agency ☐ Other *(specify):*
   e. The child has been placed with our agency/facility for *(specify):* years months and in the current home for (specify): years months.
   f. Name of person completing form: Title:
   g. Hours per week the person completing this form spends with the child *(specify):* hours/week.
   h. The information on this form consists of
      (1) ☐ the observations and recommendations of the person filling out this form.
      (2) ☐ the observations and recommendations of a group or team made up of the following individuals *(specify):*
4. **Current Status of Child's Medical, Dental, and General Physical and Emotional Health**
   a. ☐ There is no new or additional information since the last court hearing.
   b. ☐ There is new or additional information since the last court hearing, as follows *(do not include the names of doctors):*
5. **Current Status of Child's Education**
   a. ☐ There is no new or additional information since the last court hearing.
   b. ☐ There is new or additional information since the last court hearing, as follows *(do not include the names of schools):*

Form Approved for Optional Use
Judicial Council of California
JV-290 [Rev. January 1, 2020]

Welfare and Institutions Code, §§ 366.21(c), (d); 16010(f)(3);
Cal. Rules of Court, rule 5.534(m)
www.courtinfo.ca.gov

CHILD'S NAME:	CASE NUMBER:

6. **Child's Special Education Status**
   a. ☐ The child is a specila education student. Date of last Individualized Education Plan (IEP):
   b. ☐ The child is not a special education student.
   c. ☐ I do not know the child's special education status.

7. **Current Status of Child's Adjustment to Living Arrangement**
   a. ☐ There is no new or additional information since the last court hearing.
   b. ☐ There is new or additional information since the last court hearing, as follows:

8. **Current Status of Child's Social Skills and Peer Relationships**
   a. ☐ There is no new or additional information since the last court hearing.
   b. ☐ There is new or additional information since the last court hearing, as follows:

9. **Current Status of Child's Special Interests and Activities**
   a. ☐ There is no new or additional information since the last court hearing.
   b. ☐ There is new or additional information since the last court hearing, as follows:

10. **Other Helpful Information**
    a. ☐ There is no new or additional information since the last court hearing.
    b. ☐ There is new or additional information since the last court hearing, as follows:

11. **Recommendation for Disposition *(Outcome)***
    a. ☐ I have no recommendation for disposition *(outcome).*
    b. ☐ I am recommending the following disposition *(outcome).*

12. ☐ If you need more space to respond to any section on this form, please check this box and attach additional pages.
    Number of pages attached:

NOTICE

If you are not the child, the child's parent, or the child's legal guardian, you may have a right to challenge a decision by the juvenile court, but only in very limited circumstances. You may also need a court order granting you access to records in the juvenile case file. For more information, please see *Information on a Nonparty's Right to Seek Review and the Requirement to Request Access to Records* (form JV-291-INFO). You can get form JV-291-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF CAREGIVER OR FACILITY/AGENCY STAFF PERSON WHO HAS COMPLETED THIS FORM)

JV-291-INFO Information on a Nonparty's Right to Seek Review and the Requirement to Request Access to Records

Under very limited circumstances, a person who is not the child, parent, or legal guardian in a dependency or delinquency case has the right to seek review of decisions made by the juvenile court by filing an appeal or writ petition in the Court of Appeal. These individuals, however, are typically not entitled to access records that will be considered on appeal from the juvenile court case file for purposes of an appeal or writ proceeding unless they get approval from the juvenile court. The purpose of this information sheet is to inform those individuals who are not the child, parent, or legal guardian, and who may have the right to seek appellate review, of the requirement to request access to records in the juvenile court case file by filing a *Request for Disclosure of Juvenile Case File* (form JV-570) to have access to the juvenile case file duringan appeal or writ.

1 When would I have the right to seek review?

To have a right to seek review, you must be harmed by an order or judgment of the juvenile court. In the vast majority of cases, only the child, parent, legal guardian, the county welfare department or district attorney will have the right to file an appeal or a writ petition challenging a juvenile court ruling. However, the law also protects those individuals who have a compelling relationship to the child in certain situations.

You might have a right to appeal or file a writ petition if, for example, you are:

- The child's relative, and the child was removed from your home, or you requested that the child be placed in your home or that your home be assessed for possible placement, and the court denied your request for placement or the placing agency never assessed your home.
- Someone who cared for the child and requested de facto parent status, which was denied.
- Someone who requested a change of court order through a section 388 petition (JV-180), which was denied.
- A prospective adoptive parent challenging the juvenile court's decision to remove the child from the home.

2 If I want to file an appeal or writ petition, what additional steps must I take?

To have access to records in the juvenile case file for an appeal or writ proceeding, you must request access from the juvenile court. To make this request, you must file *Request for Disclosure of Juvenile Case File* (formJV-570). You will need to serve a copy of this form on all interested parties to the case if you know their names and addresses, including the child, parents, social worker, and probation officer.

On the request form, you will need to identify which specific records you are requesting. Your request for information can include any documents that you are aware of that exist in the juvenile court file, or are in possession of the social worker or probation officer. Be sure to indicate the dates of the hearings that relate to the decision you are challenging. As the basis for the request, you may indicate the appeal or writ proceeding in the Court of Appeal. You will also need to explain why you are requesting the records. Your explanation should show how the records, including any transcripts, relate to the decision you are challenging (for example, a report or court order following a hearing on your issue). The juvenile court will make a decision on your request by issuing an order that identifies the records you are authorized to access. The court's order is made on *Order After Judicial Review* (form JV-574).

When you file a notice of appeal or a notice of intent to file a writ petition, you should attach the court's order if you have one. Doing so will alert the clerk that you are authorized to access records in the case file and will ensure that a record will be prepared for you.

Note: an order from the juvenile court granting you access to records in the case file is not a prerequisite for filing an appeal or writ petition.

It is recommended that you consult with an attorney when considering whether you should file an appeal or a writ petition and request access to the juvenile court record. You must file a notice of appeal within sixty days of the date in which the juvenile court made the order that is being appealed. For writ review, the notice of intent to file a writ petition usually must be filed within seven days after the court makes the order you are challenging. But note that the deadlines for filing a notice of intent to file a writ petition are different depending on the circumstances. For more information, read rules 8.450 and 8.454 of the California Rules of Court. These timelines apply whether or not the court has granted you access to the juvenile case file through a section 827 petition.

JV-295 De Facto Parent Request

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

The address of any licensed foster family home must remain confidential unless the judge or the foster parent authorizes release of the address. Court clerks should not send this page to the parties without a court order or authorization of the foster parent. (Welf. & Inst. Code, § 308(a).)

1 My/Our name(s): _____

My/Our address: _____

City: _____ State: _____ Zip: _____

My/Our phone #: _____

Fill in court name and street address:

Superior Court of California, County of

2 I am/We are asking that I/we be appointed de facto parent(s) of

(Child's name): _____

Court fills in case number when form is filed.

Case Number:

Date: _____ _____ ▶ _____

Type or print your name *Signature of person requesting de facto parent status*

Date: _____ _____ ▶ _____

Type or print your name *Signature of person requesting de facto parent status*

Date: _____ _____ ▶ _____

Type or print attorney's name *Signature of attorney (if applicable)*

Attorney's address: _____

City: _____ State: _____ Zip: _____

Attorney's phone #: _____

NOTICE

If you are not the child, the child's parent, or the child's legal guardian, you may have a right to challenge a decision by the juvenile court, but only in very limited circumstances. You may also need a court order granting you access to records in the juvenile case file. For more information, please see *Information on a Nonparty's Right to Seek Review and the Requirement to Request Access to Records* (form JV-291-INFO). You can get form JV-291-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.

JV-321 Request for Prospective Adoptive Parent Designation

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

After filling out this form, bring it to the clerk of the court. If you want to keep an address or telephone number confidential, do not write the information on this form. Instead, fill out Confidential Information—Prospective Adoptive Parent *(form JV-322).*

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's Name:

Date of Birth:

Fill in case number:

Case Number:

1 Information about the person or persons you want to be designated as prospective adoptive parents:

a. Name: _____

b. Name: _____

c. Street address: _____

d. City: _____ State: _____ Zip: _____

e. Telephone number: _____

2 If you are not a person in (1), fill out below.

a. Name: _____

b. I am the ☐ child ☐ child's attorney ☐ other
(specify role): _____

c. Street address: _____

d. City: _____ State: _____ Zip: _____

e. Telephone number: _____

3 If you are not the child's attorney and you know who the child's attorney is, fill out below.

a. Name of child's attorney: _____

b. Street address of child's attorney: _____

c. City: _____ State: _____ Zip: _____

d. Telephone number of child's attorney: _____

4 ☐ The child is 10 years of age or older. Child's telephone number: _____
or ☐ Telephone number is confidential.

5 The child has lived with the person from *(date):* _____ to the present.
In order for the person in (1) to become a prospective adoptive parent, the child must be living with that person now.

6 Date of Welfare and Institutions Code section 366.26 hearing: _____
The person in (1) should not file this form with the court until a Welfare and Institutions Code section 366.26 hearing has been scheduled.

7 ☐ The person in (1) is committed to adopting the child.

Child's name: _____

Case Number:

8 The person in **1** has *(check all that apply):*

a. ☐ Applied for an adoptive home study.
b. ☐ In a case in which tribal customary adoption is the permanent plan, been identified by the Indian child's tribe as the prospective adoptive parent.
c. ☐ Cooperated with an adoptive home study.
d. ☐ Signed an adoptive placement agreement.
e. ☐ Requested de facto parent status.
f. ☐ Been designated by the juvenile court or the licensed adoption agency as the adoptive parent.
g. ☐ Discussed a postadoption contact agreement with the social worker, child's attorney, child's Court Appointed Special Advocate (CASA) volunteer, adoption agency, or court.
h. ☐ Worked to overcome any impediments that have been identified by the California Department of Social Services or the licensed adoption agency.
i. ☐ Attended any of the classes required of prospective adoptive parent.
j. ☐ Taken other steps toward adopting the child *(explain):* _____

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

If you need more space, attach a sheet of paper and write "JV-321, Item 8—Steps Toward Adoption" at the top. Number of pages attached: _____

I declare under penalty of perjury under the laws of the State of California that the information in items 1 through 8 is true and correct, which means if I lie on this form, I am committing a crime.

Date:

_____ ▶ _____
Type or print your name *Sign your name*

_____ ▶ _____
Type or print your name *Sign your name*

NOTICE

If you are not the child, the child's parent, or the child's legal guardian, you may have a right to challenge a decision by the juvenile court, but only in very limited circumstances. You may also need a court order granting you access to records in the juvenile case file. For more information, please see *Information on a Nonparty's Right to Seek Review and the Requirement to Request Access to Records* (form JV-291-INFO). You can get form JV-291-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.

JV-325 Objection to Removal

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

If you do not agree with the removal, you can request a court hearing by filling out this form. The following people can object to removal: a current caregiver, the child's attorney, the child (if 10 years of age or older), the child's identified Indian tribe or custodian, and the child's CASA program. Bring this form to the clerk of the court. If you want to keep an address or a phone number confidential, fill out Confidential Information—Prospective Adoptive Parent *(form JV-322), and do not write the address or phone number on this form.*

If you are a caregiver or the child and you requested the hearing, the clerk will provide notice of the hearing to you and any other participants.

If you are the child's attorney and you requested the hearing, you must provide notice of the hearing to all other participants.

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's Name:

Date of Birth:

Fill in case number:

Case Number:

1 Information about the caregiver or caregivers:

a. Name: _____

b. Name: _____

c. Address: _____

d. Phone number: _____

2 If you *(the person objecting to the removal)* are not the caregiver, fill out below.

a. Name: _____

b. I am the ☐ child ☐ child's attorney ☐ child's identified Indian tribe ☐ child's identified Indian custodian ☐ child's CASA program

_____

c. Address: _____

d. Phone number: _____

3 If you are not the child's attorney and you know who the child's attorney is, fill out below.

a. Name of child's attorney: _____

b. Address of child's attorney: _____

c. Phone number of child's attorney: _____

4 ☐ The child is 10 years of age or older. Child's telephone number: _____
☐ Confidential phone number in court file

5 ☐ The child has an identified Indian tribe *(specify tribe):* _____
Phone number of tribe: _____

6 ☐ The child has a Court Appointed Special Advocate (CASA) volunteer.
Phone number of CASA program, if known: _____

7 ☐ The caregiver or caregivers have been designated by the judge as the child's prospective adoptive parent or parents.

8 ☐ The caregiver or caregivers may meet the definition of prospective adoptive parent or parents. *Request for Prospective Adoptive Parent Designation* (form JV-321), will be filed with this objection and request for hearing.

9 The social worker should not remove the child from the caregiver's home because *(give reasons):*

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

If you need more space, attach a sheet of paper and write "JV-325, Item 9—Reasons to Not Remove Child" at the top. Number of pages attached: _____

I declare under penalty of perjury under the laws of the State of California that the information on this form is true and correct, which means that if I lie on this form, I am committing a crime.

Date:

_____ ▶ _____

Type or print your name *Sign your name*

NOTICE

If you are not the child, the child's parent, or the child's legal guardian, you may have a right to challenge a decision by the juvenile court, but only in very limited circumstances. You may also need a court order granting you access to records in the juvenile case file. For more information, please see *Information on a Nonparty's Right to Seek Review and the Requirement to Request Access to Records* (form JV-291-INFO). You can get form JV-291-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms*.

What if I am deaf or hard of hearing?

Requests for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the proceeding. Contact the clerk's office or go to *www.courts.ca.gov/forms* for *Request for Accommodations by Persons With Disabilities and Response* (form MC-410). (Civ. Code, § 54.8.)

JV-570 Request for Disclosure of Juvenile Case File

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Fill in case number, if known:

Case Number:

If you are requesting a court order to obtain the juvenile case file of a child who is alive, fill out all items on this form, and file it with the court. You must also fill out and file Proof of Service—Request for Disclosure *(form JV-569).*

If you are a member of the public requesting the juvenile case file of a child who is deceased, you can:

a. *Fill out items 1–4 and 7 on this form and file it with the court. You must then provide a copy of this form to the Custodian of Records of the county child welfare agency, who will then provide notice of this request.*

Or

b. *Do not complete the form and request the juvenile case file from the child welfare agency under Welfare and Institutions Code section 10850.4.*

(1) Your name: _____

Relationship to child *(if any):* _____

Street address: _____

City: _____ State: _____ Zip: _____

Telephone number: _____

Lawyer *(if any) (name, address, telephone numbers, and State Bar number):* _____

_____

_____

(2) Name of child *(if known):* _____

(3) Child's date of birth *(if known):* _____

(4) a. ☐ A petition regarding the child in (2) has been filed under
- ☐ Welfare and Institutions Code section 300
- ☐ Welfare and Institutions Code section 601
- ☐ Welfare and Institutions Code section 602 or

b. ☐ I believe the child in (2) died as a result of abuse or neglect. Approximate date of death: _____

Note: You must provide a copy of this form to all interested parties if you know their names and addresses.

Your name: _____ **Case Number:**

5 The records I want are: *(Describe in detail. Attach more pages if you need more space. For a nonparty seeking review in an appellate court, specify the request is for transcripts and evidence considered by the juvenile court at hearings related to the appeal or writ proceeding. For example, you should describe a report by providing its title (such as, "status review report," "jurisdiction/deposition report," or "CASA report.") and the date of the hearing when the document was considered.)*

☐ Continued on Attachment 5.

6 The reasons for this request are:

a. ☐ Civil court case pending in *(name of county):* _____
Case number: _____ Hearing date: _____

b. ☐ Criminal court case pending in *(name of county):* _____
Case number: _____ Hearing date: _____

c. ☐ Juvenile court case pending in *(name of county):* _____
Case number: _____ Hearing date: _____

d. ☐ Appellate court case by a nonparty.
Case number *(if applicable):* _____
Hearing dates related to the juvenile court order being challenged or to be challenged on appeal or by writ:

e. ☐ Other *(specify):* _____
Case number: _____ Hearing date: _____

7 I need the records because: *(Describe in detail. Attach more pages if you need more space.)*

☐ Continued on Attachment 7.

8 I declare under penalty of perjury under the laws of the State of California that the information in this form is true and correct. This means that if I lie on this form, I am guilty of a crime.

Date:

_____ ▶ _____
Type or print your name *Sign your name*

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	*FOR COURT USE ONLY* **DRAFT** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
NOTICE OF APPEAL—JUVENILE	CASE NUMBER:

— NOTICE —

- You or your attorney **must** fill in items 1 and 2 and sign this form at the bottom of the page. If possible, to help process your appeal, fill in items 6–8 on the reverse of this form.
- Rule 8.406 says that to appeal from an order or judgment, you must file a written notice of appeal within **60** days after rendition of the judgment or the making of the order being appealed or, in matters heard by a referee, within **60** days after the order of the referee becomes final.
- You are advised that if you wish to file an appeal of the order for transfer to a tribal court, you (1) may ask the juvenile court to stay (delay the effective date of) the transfer order and (2) must file the appeal before the transfer to tribal jurisdiction is finalized. Read rule 5.483 and the advisory committee comment.
- If you are not the county welfare department, district attorney, the child, the child's parent, or the child's legal guardian, you may have a right to challenge a decision by the juvenile court, but only in very limited circumstances. You may also need a court order granting you access to records in the juvenile case file. For more information, please see *Information on a Nonparty's Right to Seek Review and the Requirement to Request Access to Records* (form JV-291-INFO). You can get form JV-291-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.

1. I appeal from the findings and orders of the court *(specify date of order or describe order):*

2. This appeal is filed by
   a. Appellant *(name):*
   b. Address: c. Phone number:
   d. Name, address, and phone number of person to be contacted *(if different from appellant):*

   e. (1) ☐ Appellant is not the county welfare department, district attorney, child, parent, or legal guardian.
   (2) ☐ Appellant has been granted access to specified records in the juvenile case file, and the court's order under Welfare and Institutions Code section 827(a)(1)(Q) on form JV-574 *Order after Judicial Review,* if available, is attached.

3. ☐ I request that the court appoint an attorney on appeal. I ☐ was ☐ was not represented by an appointed attorney in the superior court.

4. ☐ Answer only if you know: The appeal involves another person or respondent who is not the county welfare department, district attorney, child, parent, or legal guardian. This party may require the preparation of a limited record as defined in rule 8.400(b)(2).

Date:

TYPE OR PRINT NAME

▶ SIGNATURE OF ☐ APPELLANT ☐ ATTORNEY

5. Items 6 through 8 on the reverse are ☐ completed ☐ not completed.

Form Approved for Optional Use
Judicial Council of California
JV-800 [Rev. January 1, 2020]

Cal. Rules of Court, rules 8.400, 8.401, 8.405, 8.406
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

6. Appellant is the
   a. ☐ child.
   b. ☐ mother.
   c. ☐ father.
   d. ☐ legal guardian.
   e. ☐ de facto parent.
   f. ☐ county welfare department.
   g. ☐ district attorney.
   h. ☐ child's tribe.
   i. ☐ other *(state relationship to child or interest in the case):*

7. This notice of appeal pertains to the following child or children *(specify number of children included):*
   a. Name of child:
      Child's date of birth:
   b. Name of child:
      Child's date of birth:
   c. Name of child:
      Child's date of birth:
   d. Name of child:
      Child's date of birth:
      ☐ Continued in Attachment 7.

8. The order appealed from was made under Welfare and Institutions Code *(check all that apply)*
   a. ☐ **Section 305.5** (transfer to tribal court)
      ☐ Granting transfer to tribal court
   b. ☐ **Section 360** (declaration of dependency) ☐ Removal of custody from parent or guardian ☐ Other orders
      ☐ with review of section 300 jurisdictional findings
      Dates of hearing *(specify):*
   c. ☐ **Section 366.26** (selection and implementation of permanent plan in which a petition for extraordinary writ review that substantively addressed the specific issues to be challenged was timely filed and summarily denied or otherwise not decided on the merits)
      ☐ Termination of parental rights ☐ Appointment of guardian ☐ Planned permanent living arrangement
      Dates of hearing *(specify):*
   d. ☐ **Section 366.28** (order designating a specific placement after termination of parental rights in which a petition for extraordinary writ review that substantively addressed the specific issues to be challenged was timely filed and summarily denied or otherwise not decided on the merits)
      Dates of hearing *(specify):*
   e. ☐ Other appealable orders relating to dependency *(specify):*
      Dates of hearing *(specify):*
   f. ☐ **Section 725** (declaration of wardship and other orders)
      ☐ with review of section 601 jurisdictional findings
      ☐ with review of section 602 jurisdictional findings
      Dates of hearing *(specify):*
   g. ☐ Other appealable orders relating to wardship *(specify):*
      Dates of hearing *(specify):*
   h. ☐ Other *(specify):*

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **Not approved by** **the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
NOTICE OF INTENT TO FILE WRIT PETITION AND REQUEST FOR RECORD TO REVIEW ORDER SETTING A HEARING UNDER WELFARE AND INSTITUTIONS CODE SECTION 366.26 **(California Rules of Court, Rule 8.450)**	CASE NUMBER:

NOTICE

The juvenile court has decided it will make a permanent plan for this child that may result in the termination of your parental rights and adoption of the child. If you want an appeals court to review the juvenile court's decision, you must first tell the juvenile court by filing a Notice of Intent. You may use this form as your Notice of Intent. In most cases, you have only 7 days from the court's decision to file a Notice of Intent. Please see page 2 for your specific deadline for filing this form.

If you are not the county welfare department, the child, the child's parent, or the child's legal guardian, you may have a right to challenge a decision by the juvenile court, but only in very limited circumstances. You may also need a court order granting you access to records in the juvenile case file. For more information, please see *Information on a Nonparty's Right to Seek Review and the Requirement to Request Access to Records* (form JV-291-INFO). You can get form JV-291-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.

1. Petitioner's name:
2. Petitioner's address:
3. Petitioner's phone number:
4. Petitioner is
   - a. ☐ parent *(name):*
   - b. ☐ legal guardian.
   - c. ☐ county welfare department.
   - d. ☐ child.
   - e. ☐ other *(state relationship to child or interest in the case):*
5. Child's name: Child's date of birth:
6. a. On *(date):* the juvenile court made an order setting a hearing under Welfare and Institutions Code section 366.26. Petitioner intends to file a writ petition to challenge the findings and orders made by the court on that date and requests that the clerk assemble the record.
   b. List all known dates of the hearing that resulted in the order:
7. The hearing under Welfare and Institutions Code section 366.26 is set for *(date, if known):*
8. a. ☐ Petitioner is not the county welfare department, child, parent, or legal guardian.
   b. ☐ Petitioner has been granted access to specified records in the juvenile case file, and the court's order under Welfare and Institutions Code section 827(a)(1)(Q) on form *Order after Judicial Review* (form JV-574), if available, is attached.
9. ☐ Answer only if you know: This writ proceeding involves another person or respondent who is not the county welfare department, child, parent, or legal guardian. This party may require the preparation of a limited record as defined in rule 8.400 (b)(2).

Date:

TYPE OR PRINT NAME

SIGNATURE OF ☐ PETITIONER ☐ ATTORNEY

The *Notice of Intent to File Writ Petition* must be signed by the person who intends to file the writ petition or by the attorney of record.

PLEASE READ THE BACK OF THIS FORM FOR IMPORTANT INFORMATION AND DEADLINES

Form Approved for Optional Use
Judicial Council of California
JV-820 [Rev. January 1, 2020]

NOTICE OF INTENT TO FILE WRIT PETITION AND REQUEST FOR RECORD TO REVIEW ORDER SETTING A HEARING UNDER WELFARE AND INSTITUTIONS CODE SECTION 366.26
(California Rules of Court, Rule 8.450)

Welfare and Institutions Code, § 366.26;
Cal. Rules of Court, rule 8.450
www.courts.ca.gov

APPELLATE CASE TITLE:	APPELLATE CASE NUMBER:

WHAT WILL HAPPEN AT THE HEARING TO MAKE A PERMANENT PLAN?

- The court may order the termination of parental rights and adoption of the child.
- The court may order a legal guardianship for the child.
- The court may order a permanent plan of placement of the child with a fit and willing relative.
- The court may order a permanent plan of placement of the child in a foster home.

The above options are listed in the normal order of preference, because the main goal is to give the child a stable and permanent living situation.

SEE WELF. & INST. CODE, § 366.26 FOR MORE INFORMATION

HOW DO I CHALLENGE THE COURT'S DECISION TO SET A HEARING TO MAKE A PERMANENT PLAN?

- File this Notice of Intent to File Writ Petition and Request for Record in the juvenile court within the time specified below in the next box. This will let the court know you intend to file a writ petition, and the court will prepare the record.
- You will be notified after the record is filed in the Court of Appeal, and you will get copies of the record. **You have 10 days after the record is filed in the Court of Appeal to file and serve your writ petition.**
- You may use the optional Judicial Council form JV-825 to complete your writ petition, or, if you have an attorney, your attorney can write the writ petition for you.
- After you file a writ petition in the Court of Appeal, you must send copies of the petition to all of the parties in the case, to the child's CASA volunteer, to the child's present caregiver, and to any de facto parent who has standing to participate in the juvenile court proceedings. With your writ petition, you must file a Proof of Service confirming you have sent a copy of the petition to these people.

SEE WELF. & INST. CODE, § 366.26(l); CAL. RULES OF COURT, RULES 8.450–8.452

WHEN DO I HAVE TO FILE MY NOTICE OF INTENT TO FILE WRIT PETITION AND REQUEST FOR RECORD?

- If you were present when the court set the hearing to make a permanent plan, you must file the Notice of Intent within 7 days from the date the court set the hearing.
- If you were not present in court but were given notice by mail of the court's decision to set a hearing to make a permanent plan and you live in California, you must file the Notice of Intent within 12 days from the date the clerk mailed the notification.
- If you were not present in court but were given notice by mail of the court's decision to set a hearing to make a permanent plan and you live in a state other than California, you must file the Notice of Intent within 17 days from the date the clerk mailed the notification.
- If you were not present in court but were given notice by mail of the court's decision to set a hearing to make a permanent plan and you live outside the United States, you must file the Notice of Intent within 27 days from the date the clerk mailed the notification.
- If you are a party in a custodial institution you must give the Notice of Intent to custodial officials for mailing within the time specified in this box.

SEE CAL. RULES OF COURT, RULES 8.450, 5.540(c)

- If the order setting the hearing was made by a referee not acting as a temporary judge, you have an additional 10 days to file the Notice of Intent.

SEE WELF. & INST. CODE, §§ 248–252; CAL. RULES OF COURT, RULES 5.538, 5.540

SIGNATURE ON NOTICE OF INTENT

- Must be signed by the person who intends to file the writ petition, or
- By the attorney of record

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
NOTICE OF INTENT TO FILE WRIT PETITION AND REQUEST FOR RECORD TO REVIEW ORDER DESIGNATING OR DENYING SPECIFIC PLACEMENT OF A DEPENDENT CHILD AFTER TERMINATION OF PARENTAL RIGHTS **(California Rules of Court, Rule 8.454)**	CASE NUMBER:

NOTICE

The juvenile court has ordered or denied a specific placement for this child. If you want an appeals court to review the juvenile court's decision, you must first tell the juvenile court by filing a Notice of Intent. You may use this form as your Notice of Intent. In most cases, you have only 7 days from the court's placement decision to file a Notice of Intent. Please see page 2 for your specific deadline for filing this form.

If you are not the county welfare department, the child, the child's parent, or the child's legal guardian, you may have a right to challenge a decision by the juvenile court, but only in very limited circumstances. You may also need a court order granting you access to records in the juvenile case file. For more information, please see *Information on a Nonparty's Right to Seek Review and the Requirement to Request Access to Records* (form JV-291-INFO). You can get form JV-291-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.

1. Petitioner's name:
2. Petitioner's address:
3. Petitioner's phone number:
4. Petitioner is
   a. ☐ child's caretaker *(specify dates in your care):*
   b. ☐ child.
   c. ☐ county welfare department.
   d. ☐ legal guardian.
   e. ☐ other *(state relationship to child or interest in the case):*
5. Child's name: Child's date of birth:
6. a. On *(date):* the juvenile court terminated parental rights under Welfare and Institutions Code section 366.26.
   b. On *(date):* the court made a specific placement order or denied a specific placement request that the dependent child is to reside in, be retained in, or be removed from a specific placement. Petitioner intends to file a writ petition to challenge the specific placement order or the denial of a specific placement request made by the court on that date and requests that the clerk assemble the record.
7. a. ☐ Petitioner is not the county welfare department, child, parent, or legal guardian.
   b. ☐ Petitioner has been granted access to specified records in the juvenile case file, and the court's order under Welfare and Institutions Code section 827(a)(1)(Q) on *Order after Judicial Review* (form JV-574), if available, is attached.

PLEASE READ THE BACK OF THIS FORM FOR IMPORTANT INFORMATION AND DEADLINES

Form Approved for Optional Use
Judicial Council of California
JV-822 [Rev. January 1, 2020]

NOTICE OF INTENT TO FILE WRIT PETITION AND REQUEST FOR RECORD TO REVIEW ORDER DESIGNATING OR DENYING SPECIFIC PLACEMENT OF A DEPENDENT CHILD AFTER TERMINATION OF PARENTAL RIGHTS
(California Rules of Court, Rule 8.454)

Welfare and Institutions Code, § 366.28; Cal. Rules of Court, rule 8.454;
www.courts.ca.gov

8. ☐ Answer only if you know: This writ proceeding involves another person or respondent who is not the county welfare department, child, parent, or legal guardian. This party may require the preparation of a limited record as defined in rule 8.400(b)(2).

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF ☐ PETITIONER ☐ CHILD'S ATTORNEY)

The *Notice of Intent to File Writ Petition* must be signed by the person intending to file the writ petition or, if it is to be filed on behalf of the child, by the child's attorney of record. See below for more information.

HOW DO I CHALLENGE THE COURT'S PLACEMENT DECISION AFTER TERMINATION OF PARENTAL RIGHTS?

- File this *Notice of Intent to File Writ Petition and Request for Record* in the juvenile court within the time listed below in the next box. This will let the court know you intend to file a writ petition, and the court will prepare the record.
- You will be notified after the record is filed in the Court of Appeal, and you will get a copy of the record. **You have 10 days after the record is filed in the Court of Appeal to file and serve your writ petition.**
- You may use the optional Judicial Council form JV-825 to complete your writ petition, or, if you have an attorney, your attorney can write the writ petition for you.
- After you file a writ petition in the Court of Appeal you must send a copy of the petition to all of the parties in the case, to the child's CASA volunteer, to the child's present caregiver, and to any de facto parent who has standing to participate in the juvenile court proceedings.

SEE CAL. RULES OF COURT, RULES 8.454–8.456

WHEN DO I HAVE TO FILE MY NOTICE OF INTENT TO FILE WRIT PETITION AND REQUEST FOR RECORD?

- If you were present when the court granted or denied the specific placement, you must file the *Notice of Intent* within 7 days from the date the court granted or denied the specific placement.
- If you were not present in court but were given notice by mail of the court's decision to grant or deny the specific placement, you must file the *Notice of Intent* within 12 days from the date the clerk mailed the notification.
- If the order granting or denying the specific placement was made by a referee not acting as a temporary judge, you must file the *Notice of Intent* within 17 days from the date the court set the hearing.

SIGNATURE ON *NOTICE OF INTENT*

- Must be signed by the person who intends to file the writ petition, *or*
- If petition will be filed on behalf of a child, by the child's attorney, *or*
- The reviewing court may waive this requirement for good cause on the basis of a declaration by the attorney of record explaining why the party could not sign the notice. (Cal. Rules of Court, rule 8.454(e)(3).)

SPR19-06

Appellate Procedure, Juvenile Law: Access to Juvenile Case Files in Appellate Court Proceedings (Amend Cal. Rules of Court, rules 8.400, 8.401, 8.405, 8.407–8.410, 8.412, 8.416, 8.450, 8.452, 8.454, and 8.456; approve form JV-291-INFO; revise forms JV-285, JV-290, JV-295, JV-321, JV-325, JV-570, JV-800, JV-820, and JV-822)

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

	Commenter	Position	Comment	Committee Response
1.	Advokids By Janet G. Sherwood, J.D., CWLS Deputy Director	NI	The following comments to the proposed rule are submitted by Advokids, a nonprofit organization that advocates for the rights of children in foster care, including the right to safety, security, stability, and timely permanency decisions. These responses to the specific questions posed by the proposal and as well as all other comments were prepared by a certified child welfare law specialist with over 40 years of experience in the field. She was also a certified appellate law specialist until she closed her private practice in 2016 to work full-time with Advokids. **Does the proposal adequately address the stated purpose?** **No**. It needlessly creates a barrier to timely appeals by appearing to require juvenile court approval of a Welfare and Institutions Code section 827[1] petition before either the appeal can be filed or the record prepared. It is not entirely clear from the proposal when the 827 petition must be filed. It can be read to say that the only documents that may be included in the record are those for which the juvenile court granted an 827 petition *during* the juvenile court proceedings resulting in the order being appealed and	The committees appreciate this feedback on the proposal. Section 827 governs access to the juvenile case file and the legislature has clarified in section 827(a)(6) that the confidentiality of section 827 applies to documents on appeal. Section 827(a)(1)(Q) provides that individuals who are not specifically listed in section 827(a)(1)(A)-(P) must petition the court for access to specific records in the case file. To implement the recently added subdivision (a)(6), which provides that a litigant who petitioned for and was granted access to records in the juvenile court under section 827

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

	Commenter	Position	Comment	Committee Response
			that the petition must have been granted before the appeal or notice of intent can be filed. (See, e,g., JV-291-INFO ["When you file a notice of appeal or a notice of intent to file a writ petition, you will need to attach the juvenile court's order indicating the records to which it granted you access."]	is entitled to the same access to records in the appellate court, the committees concluded that the rules should provide guidance and clarify the procedures to be followed by litigants, courts, and others to comply with the statutory requirements. In practice, the requirement that individuals described by section 827(a)(1)(Q) must petition for access to records in the juvenile case file may mean that, to be entitled to a record in appellate court proceedings, those individuals will require an approved section 827 petition. The proposed rule changes do not create a prohibition on the filing of an appeal or writ prior to being granted access to the juvenile case file; they implement section 827(a)(6) by clarifying what portion of the juvenile case file the individual is entitled to access in appellate court proceedings. In addition, the proposal contains no time requirement for when a section 827 must be filed. If a section 827 petition is filed during an appeal or writ proceeding, the record can be augmented by the Court of Appeal. (See rule 8.410(b)(3) of amended rules.) The committees agree that form JV-291-INFO should not indicate that attaching the

SPR19-06

Appellate Procedure, Juvenile Law: Access to Juvenile Case Files in Appellate Court Proceedings (Amend Cal. Rules of Court, rules 8.400, 8.401, 8.405, 8.407–8.410, 8.412, 8.416, 8.450, 8.452, 8.454, and 8.456; approve form JV-291-INFO; revise forms JV-285, JV-290, JV-295, JV-321, JV-325, JV-570, JV-800, JV-820, and JV-822)

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

	Commenter	Position	Comment	Committee Response
				section 827 petition is required. The JV-291-INFO has been amended to reflect that when the notice of appeal or notice of intent to file a writ petition is filed, the section 827 petition should be attached if one is available, but that it is not required to file the notice of appeal or writ.
			The proposal also does not adequately address the stated purpose because there are no time limits on how much time a juvenile court can take to act on a section 827 petition nor is there any remedy available when the juvenile court wrongfully denies a section 827 petition, thereby effectively preventing the appeal or writ from being considered. For example, the Los Angeles Superior Court has a practice of refusing to file notices of appeal or notices of intent to file a writ petition from de facto parents as well as persons who are not the parent, the child, or the agency unless that person also files a section 827 petition. Those section 827 petitions then languish for months and months before they are acted upon. It is also not unheard of for those petitions to be sent for a ruling to the judge whose order is being appealed, even though the procedure	The committees agree that there are legitimate concerns about delays in a decision by the juvenile court on the section 827 petitions. The committees also note that section 827(a)(2)(E)-(F) provides a timeline for a juvenile court's decision on a section 827 petition in the case of a deceased child. The statute is silent regarding a timeline for the court's decision in other circumstances. The committees interpret this comment as a request for rules setting forth the timing of a section 827 petition in circumstances not addressed by section 827(a)(2). Including such rules would be a substantive change to the proposal that, under rule 10.22, would require circulation for public comment. The committees will retain the suggestion for consideration in a future rules cycle.

	Commenter	Position	Comment	Committee Response
			specified by section 827 requires the presiding judge to make that determination. In the meantime, resolution of issues important to the child's stability, permanency, or well-being are being unnecessarily delayed or not decided at all. If the proposal requires a ruling on the section 827 petition before a notice of appeal or notice or intent can be filed, then the absence of time limits on when the juvenile court must act on the section 827 petition must be addressed. The time limits for filing a Notice of Intent are very short. Even if a section 827 petition is filed before the notice of intent, it will not have been acted upon before the notice of intent must be filed to preserve the right to file a writ petition after the record is prepared and no record will be prepared because the court has not yet acted on the pending section 827 petition. The statutory writ proceedings under sections 366.26(*l*) and 366.28 were adopted because the Legislature wanted the issues raised by these writ petitions to be resolved swiftly, usually in no more than in 120 days from the date of the order. If there are no time limits on when the juvenile court must act on a prerequisite section 827	See responses above. In addition, to alert individuals described by section 827(a)(1)(Q) of the need for an approved section 827 petition for access to records in the juvenile case file, the proposal includes adding notices to several Judicial Council forms to provide this information. The burden on these individuals to pursue access to the juvenile case file is a statutory requirement. The Court of Appeal may determine whether good cause exists to grant an extension of time based on the section 827 petition process in the juvenile court. (See rule 8.412(a)(5) and (c).)

	Commenter	Position	Comment	Committee Response
			petition and no remedy when such petitions are wrongfully denied, then the purpose of the writ procedures can be completely thwarted by the failure of a juvenile court to make a prompt decision on the section 827 petition. **Should other rules apply to preparing, sending, and using a limited record?** **Yes.** There are a number of proceedings in juvenile court for which a formal section 827 petition is not considered or granted for access to the pleadings or other documents during that proceeding but from which a writ petition or appeal may appropriately be taken by a party to that proceeding who is not also a party to the entire juvenile court case. The most prominent examples are 388 petitions filed by relatives or other interested persons for modification of an existing juvenile court order, de facto parent requests that are denied, and writ petitions filed under section 366.28 after the court has made a prospective adoptive parent determination under section 366.26, subdivision (n) or otherwise granted or denied a change in adoptive placement. In those cases, if the appellate review is sought by someone who is not otherwise a	The committees appreciate this comment but do not believe that there is an avenue to avoid the requirements of section 827 in the situations mentioned. The legislature has clearly required that the confidentiality of section 827 will apply to the record on appeal or in a writ proceeding. Access to the record therefore must be resolved within the parameters of section 827. The committees do not believe that a trial court that informally allows an individual not listed in section 827(a)(1)(A-Q) to access the juvenile case file conforms to the requirements of section 827. Whether trial courts may consider an individual to be a "party" under section 827(a)(1)(E) is beyond the scope of this proposal. This approach however will only permit disclosure to the individual's attorney. And while in certain instances, due process may require that certain individuals have

	Commenter	Position	Comment	Committee Response
			party to the entire section 300 proceeding, the appropriate record would include the documents before the court for that specific proceeding and reporter's transcripts, if any, of those proceedings. Generally speaking, if the juvenile court grants access to social worker reports or other documents during those proceedings, it does not do so by employing the formal 827 process. It makes a ruling authorizing access in response to a discovery request or similar motion in the course of the proceeding, usually because due process requires that the information be made available to ensure a fair opportunity to be heard and to defend against any adverse information in those reports. (See, e.g., *In re Matthew P.* (1999) 71 Cal.App.4th 841, 850-851 [denial of due process to decide section 388 petition without permitting cross-examination of social worker regarding information in the social worker's report adverse to the de facto parents].) Aside from the due process problems that arise when an appellant or writ petitioner is barred from having access to the same documents as the other parties to the appeal or writ proceeding, the notion that the	access to the juvenile case file, these individuals can request this information through a section 827 petition. While this creates a greater burden on juvenile courts and individuals not listed in section 827(a)(1)(A-Q), the committees believe this is required by section 827(a)(6). In addition, the changes suggested would be a substantive change to the proposal that, under rule 10.22, would require circulation for public comment. The committees however will take this comment into consideration for possible future proposals. The committees acknowledge these concerns. However, any substantive modifications to the proposal would require recirculation.

	Commenter	Position	Comment	Committee Response
			documents employed in the proceedings from which appellate review is sought are confidential from the persons who either filed or had access to those very same documents when they participated in the juvenile court proceeding is illogical and ridiculous. The notion that a person who was present at and participated in a hearing must file a section 827 hearing to obtain a reporter's transcript of that same hearing is likewise ridiculous. Adding the completely unnecessary step of requiring a section 827 petition before the person who filed the documents in the trial court or participated in the hearing can see documents or a reporter's transcript of that hearing in the appellate record would be a huge waste of resources for both the juvenile courts and the courts of appeal. A better way to address this issue would be to consider any access afforded the petitioner during the proceedings by the juvenile court to be the equivalent of a section 827(a)(1)(Q) order even though no separate section 827 petition was filed and granted.	See response above. The committees wish to emphasize that section 827 remains the only avenue the Legislature has permitted for access to the juvenile case file.

	Commenter	Position	Comment	Committee Response
			People who petition the juvenile court under section 388 or section 366.26(n) or who were denied de facto parent status are all granted limited standing, by statute or rule of court, to participate in specified juvenile court proceedings covered by the rule or statute. It would be quite reasonable to recognize those people as "parties" to those specified proceedings. (See. e.g., *Wayne F. v. Superior Court* (2006) 145 Cal.App.4th 1331, [prospective adoptive parents, while not parties to the underlying dependency proceedings unless they are also de facto parents, were entitled to "fully participate" in 366.26(n) hearings concerning proposed removal from their home].) Under the exceptions listed in new section 827(a)(6), their attorneys should be given access to the documents submitted to the juvenile court and the transcripts of those proceedings under section 827(a)(1)(E) (attorneys for parties) without having to waste a lot of time and resources, including the court's resources, seeking a section 827 order. It would make more sense to modify the appellate rules concerning preparation of the record to specify that something other than the "normal record" is to be prepared when the appeal or notice of intent is filed	

	Commenter	Position	Comment	Committee Response
			by persons who requested de facto parent status or who were parties to a 388 petition or a section 366.26(n) prospective adoptive parent proceeding or adoptive placement decision, but who are not parties to the entire juvenile court proceeding. In those cases, the rules should specify that only the documents filed in connection with the proceedings resulting in the order being challenged, any other documents to which access was granted by the court, and the reporter's transcripts of those proceedings should be included in the appellate record. Any questions about documents other than those listed should be resolved by the courts of appeal in the context of a motion to augment the record, not by the juvenile court in the context of a section 827 petition. **Does the proposed notice on the JV forms adequately alert individuals of the requirement to request access to records in the juvenile case file by filing a petition under section 827(a)(1)(Q)?** **No**. It is confusing and incomplete. The information is incomplete because it excludes de facto parents, who are parties to the juvenile court proceedings and, as such,	The notice reads "If you are not the child, the child's parent, or the child's legal guardian, you may have a right to challenge a decision by the juvenile court, but only in very limited

	Commenter	Position	Comment	Committee Response
			are entitled to appeal a juvenile court decision that adversely affects their interests. It is interesting to note that 8.409(c)(1) and the proposed amendment to rule 8.409 (f)(2)(A) specify that the record on appeal must be sent to any Indian tribe that has intervened (making the tribe a party) but does not mention de facto parents. **Should the notice be included on forms that may not typically relate to an appeal, such as Relative Information (form JV-**	circumstances." This would include a de facto parent. An Indian tribe's access to the juvenile case file is specifically addressed in section 827(f), which states that "the persons described in subparagraphs (A), (E), (F), (H), (K), (L), (M), and (N) of paragraph (1) of subdivision (a) include persons serving in a similar capacity for an Indian tribe, reservation, or tribal court when the case file involves a child who is a member of, or who is eligible for membership in, that tribe." In addition, the child's Indian tribe was included in rule 8.409 prior to the proposal, and its inclusion in rule 8.409 was not a matter this proposal intended to consider. De facto parents' standing is addressed in rule 5.534(a). De facto parents have standing to participate as parties, but they have a limited role, do not enjoy the same due process rights as a parent and they do not have an automatic right to receive the placing agency's reports and other documents filed with the court. (*In re B.F.*, (2010) 190 Cal.App.4th 811, at p. 817.)

	Commenter	Position	Comment	Committee Response
			285) and Caregiver Information Form (form JV-290)? **No**. The notice is confusing and inaccurate to the extent it excludes de facto parents from the list of people who will have the right to file an appeal or a writ petition. Although they are required by law to do so, most counties do not actually send either of these forms to relatives or caregivers. In addition, those forms are designed for the purpose of providing a vehicle for relatives and caregivers to provide information about the child to the court without having to make a court appearance. Including the proposed language might be read as suggesting that relatives and caregivers who file the forms have appellate rights that they do not actually have. **Does the proposed information sheet, form JV-291-INFO, provide the information necessary for an individual**	The notice reads "If you are not the child, the child's parent, or the child's legal guardian, you may have a right to challenge a decision by the juvenile court, but only in very limited circumstances." This would include a de facto parent. The committees agree with the concern that the forms may be read as suggesting that relatives and caregivers will have appellate rights they do not actually have. The committees however believe that this concern is outweighed by the need to alert individuals not listed in section 827(a)(1)(A)-(P) of the need to petition the juvenile court for access to the juvenile case file in the event of an appeal or writ petition. The notice on the forms makes clear that the right to challenge a decision by the juvenile court only applies in "very limited circumstances." In addition, the notice references the form JV-291-INFO, which explains in greater detail when there may be a right to appeal or petition for a writ.

	Commenter	Position	Comment	Committee Response
			to understand the right to appeal and the process for requesting access to records in the juvenile case file? Should other information be included? Should other scenarios be listed in item 1 to describe when someone not entitled to access the juvenile case file would have a right to appeal? **No.** The second to the last paragraph states that the person seeking review "will need to attach the juvenile court's order indicating the records to which the court has granted you access." This suggests that the person must have the order in hand before the notice of appeal or notice of intent may be filed. As noted above, if a granted section 827 petition is a prerequisite to filing the notice of appeal or a notice of intent, many people will be deprived of any review at all. Because there are no time limits on how long the juvenile court has to act on a section 827 petition, the section 827 petition may still be undecided when the time limits for filing a notice of intent (7 days) or a notice of appeal (60 days) have run. Attempting to list all possible scenarios is fraught with peril. The first example--a relative who requested placement but the	The committee agrees that form JV-291-INFO should not indicate that attaching the section 827 petition is required. The JV-291-INFO has been amended to reflect that when the notice of appeal or notice of intent to file a writ petition is filed, the section 827 petition should be attached if one is available, but it is not required to file the notice of appeal or writ. The list of scenarios in form JV-291-INFO is intended to provide some guidance to individuals unfamiliar with dependency or

	Commenter	Position	Comment	Committee Response
			placing agency did not assess their home for placement before a hearing to terminate parental right—may be read to suggest that these people may file an appeal even though there is no juvenile court order denying them placement. The fourth—the child's sibling who requested visitation or an exception to adoption—is at best questionable. Siblings who are juvenile court dependents have the right to notice of and the right to be present and represented by counsel at each other's hearings. (Welf. & Inst. Code §349.) This arguably makes them parties to each other's cases. If a sibling has participated in a hearing which results in a request for appellate review, that sibling's appellate counsel should have the same access to the appellate record as all other appellate counsel. Thank you for your consideration of these comments.	delinquency proceedings. It is not an exhaustive list. The first example has been revised to indicate that the juvenile court issued an order related to a relative's request for placement of the child. The sibling example has been deleted; see comment below. The committees agrees that it is not necessary to address sibling standing in this portion of the form. The fourth bullet point of item 1 has been removed.
2.	Appellate Defenders, Inc. by Elaine Alexander Executive Director San Diego	NI	**Summary of Provisions**. The proposed rules create a new method of preparing the appellate record when the appellant is an individual who is not entitled to access the juvenile court record under the	The committees appreciate these comments.

	Commenter	Position	Comment	Committee Response
			provisions section 827. (Rule 8.405.) The proposal refers to these individuals as the "designated person." (Rule 8.400(b)(1).) The proposal envisions the creation of two appellate records: a limited record for the designated person and a regular, full record for the court, the petitioning agency, the parents and minor(s). (Rules 8.400(b)(2); 8.407(f).) The limited record is to be paginated separately from the full record. (Rule 8.409(b)(2).) The proposal provides that counsel for the designated person may receive only the limited record. (Rule 8.409(f)(3)(A) & (B).) The limited record contains only the material to which the designated person has been granted access by the juvenile court pursuant to a section 827 petition for disclosure they must file. (Rule 8.400(b)(2).) The proposal includes a revision to the 827 petition, form JV-570. Several other forms are proposed to notify the designated person of the need to file a petition for access to the file pursuant to section 827. (Pages 48-63 of the Invitation to Comment package.)	

	Commenter	Position	Comment	Committee Response
			If the other parties to the appeal cite to material that is not in the limited record, the proposal allows the designated person to file another 827 petition to request the juvenile court give them access to this additional material. (Rule 8.412 (a)(5).) They may also request an extension from the COA. (*Ibid*.) Provisions almost identical to those described above are proposed for the statutory writ records. (Rules 8.450-8.456.) **Our analysis**. **1. The Limited Record Raises Due Process Concerns.** We have a fundamental concern about appellate issues being raised and considered from two different records, which essentially infringes on an appellant's right to appeal. – The designated person working from the limited record is at a distinct disadvantage. They are unable to discern and cite to favorable evidence supporting their position in the case record that is omitted from the limited record.	The committees acknowledge these concerns. However, this proposal can only implement what the Legislature has prescribed. The legislation requires that the section 827 process apply to access to the juvenile case file in an appeal or writ proceeding; it clarifies that a litigant is entitled to the same access to the case file in the appellate court as was granted by the juvenile court pursuant to a section 827 petition. Allowing an individual not authorized under section 827 to have access to the case file would conflict with the clear and unambiguous language of section

	Commenter	Position	Comment	Committee Response
			– The court (and other parties) will rely on the entire case record to determine 388 issues (most relative placement issues are raised in 388 petitions). (See *In re Justice P.* (2004) 123 Cal.App.4th 181, 189, [court can rely on entire case record when determining whether a section 388 petition makes a prima facie showing].)	827(a)(6). While the committees agree that there are potential due process concerns, the rules adopted cannot be inconsistent with statute. (Cal. Const. Art. VI §6.) This rule proposal is therefore bound by what the Legislature has required. Individuals not listed in section 827(a)(1)(A)-(P) on appeal will still have the avenue of access to the case file through the granting of a section 827(a)(1)(Q) petition.
			– The proposed instruction sheet given to the designated person explaining the need to obtain the 827 order **instructs** them to request a very limited record from the juvenile court. The form, "Right to Appeal for a Nonparty– Requirement to Request Access to Juvenile Record" (JV-291-INFO, found at page 48 of the packet), states: "You should indicate (on the 827 application) you are requesting the record and transcripts relating to the dates of the hearing related to the issue you are appealing, and that you are requesting transcripts as well."	
			Omitted from this narrow request are matters that are relevant and not necessarily confidential: social worker interviews with	The committees note that if the source of the information is the juvenile case file (as defined by rule 5.552(a)), the records are

	Commenter	Position	Comment	Committee Response
			the nonparty and references in the reports to them; visitation between the nonparty and the minor(s); any assessments of the nonparty regarding placement or visitation; statements the minor makes about the designated person; descriptions of the minor's visits with the designated person. This information is relevant to a request for placement per the statutory factors the court must consider (section 361.3) and as demonstrated by the case *Isabella G.* (2016) 246 Cal.App.4th 708, 724 [evidence the minor missed her grandmother, was happy to be with her, requested more contact with her, the caregiver thought the minor should be placed with Grandmother, was relevant to show prejudice from the court's failure to apply the relative placement criteria). This information is also relevant to requests for visitation.	confidential under section 827. The proposal does not address records that are not confidential under section 827. The committees disagree with attempting to include in the JV-291-INFO form an exhaustive list of potential records or information in the case file that could be relevant to different types of proceedings. Any such list would be extensive, could not address specific circumstances of each case, and would not provide the general guidance that is the goal of the form. In addition, such a list would not be compatible with the requirement that a section 827 petitioner must demonstrate that the files sought are identified based on knowledge, information, and belief that such files exist (rule 5.552(b)(1)). Listing items that could be in the case file but not known to the petitioner would encourage individuals to request items that they do not have knowledge of or may not exist. The committees agree, however, with adding clarifying language to indicate that the request can include any additional documents in possession of the social worker or probation officer that the petitioner is aware of and that would relate to the juvenile court's decision that is being challenged.

	Commenter	Position	Comment	Committee Response
			If the designated person was present at any other hearings (besides the hearing from which the appeal is taken), those proceedings are arguably not confidential as to this individual. The ability of the designated person to obtain this more extensive information through a juvenile court 827 order would begin to address the due process concerns. In item 4, below, we are proposing modifications to the 827 application for records designed to [elicit] this relevant information. **2. Counsel for the Designated Person Should Have a Full Record.** The due process concerns outlined above could be alleviated by providing a full copy of the record to counsel for the designated party. The designated person's access to the record can be circumscribed by the 827 order; counsel will not turn over any portion of the record to the client not authorized by the 827 order. It is highly unlikely counsel for the designated person will cite to material that	Determining the confidentiality of certain records in the juvenile case file is beyond the scope of this proposal. The committees appreciate this suggestion but cannot create an exception to section 827 to allow the attorney to access the juvenile case file. Access to the juvenile case file will have to be determined through section 827. In addition, as discussed above, the committees have elected to require that notice be provided to a designated party if a brief cites to information not contained in the limited record. This will give the designated person notification that a section 827 petition will be

	Commenter	Position	Comment	Committee Response
			isn't relevant to the issue raised. And it is very likely this material will be cited by either the respondent or the court. The designated person is allowed to apply to see material cited in other parties' briefs through another section 827 petition per Rule 8.412(a)(5). Providing the full record to appellate counsel for the designated person eliminates the need for the second (or third) 827 petition, and eliminates a big source of delay in these fast track cases. Rule 8.401 (b) (2) would presumably address the case of pro per designated persons, and instruct them to obtain a section 827 order from the juvenile court. We propose Rule 8.401(b) read as follows (new provisions italicized) **8.401** **(a)** . . . . **(b) Access to filed documents** (1) Except as limited in (2) or as provided in (2) (3) (4), the record on appeal and documents filed by the parties in proceedings under this chapter may be inspected only by the reviewing court and appellate project personnel, the parties including their attorneys, *the*	required to access the information cited in the brief. See response above. The proposed modification would be a substantive change requiring recirculation.

	Commenter	Position	Comment	Committee Response
			appellate attorneys for the designated persons, although not the designated persons themselves, except as provided in (b), and other persons the court may designate. **3. Separately Paginated Records**: Separately paginating the limited record will prove cumbersome, as the court and other parties will be working from two different records. The respondent's brief will certainly cite to material beyond the limited record. The designated person is able to request access to cited material outside the limited record through another 827 petition. This process will create additional delay. Two or more 827 petitions have to be processed in juvenile court to facilitate the direct appeal. The designated person will be citing to two different records in the reply brief. Would a sort of *Marsden* type approach work better? The respondent has to notify the court that its briefing referred to matters beyond the limited record. This then provides cause for an 827 order to be issued	The committees agree that working with a limited record in any form will prove challenging. However, section 827 is clear that the petition process applies to the appellate record. The suggestion for a different approach to obtaining access to records in the juvenile case file is beyond the scope of this proposal, and any procedure set forth by rules cannot be

	Commenter	Position	Comment	Committee Response
			granting the designated person access? We think the better approach is to provide the designated person a redacted record. Everyone will be working from the same page citations.	inconsistent with statute. The committees will retain the suggestion for future consideration. The committees received feedback from juvenile court clerks that they preferred a separate limited record because it is easier to prepare than a redacted record. The committees decline to change the form of the limited record.
			4. Delay Concerns There are multiple ways in which the proposed process creates delay: – The initial 827 process. (See Appendix, time lines for two cases that went through this process); – The subsequent 827 process to obtain material cited in other parties' briefs. Example: If a parent or minor is a co-appellant with the designated person, the entire appeal can be delayed: the record won't be filed until the initial 827 process is completed. If the co-appellant parent cites to material not in the limited record, the designated person can request it via another 827 petition. (Rule	The committees agree that the process granting access to the juvenile case file to individuals not listed in section 827(a)(1)(A)-(P) in an appeal or writ proceeding has the potential to create significant delays. But as discussed above, this rule proposal must be consistent with statute. The Court of Appeal may determine whether an 827 petition for access to records in the juvenile case file constitutes good cause for an extension of time in the appeal or writ proceeding.

	Commenter	Position	Comment	Committee Response
			8.412(a)(5).) And with yet another 827 petition if the respondent's brief cites to additional material not in the limited record. **5. More Specificity in the application for an 827 order**. We believe the proposed form, JV-570 (found at p. 58 of the packet) is too general and not very helpful to the lay person. A check-the-box format will likely prove helpful to the juvenile court in eliciting more specificity from the applicant. A proposed attachment to form JV-570 is found in the Appendix. **6. Clarify the JV-291 Information Form:** The form presently suggests that obtaining the 827 order is a condition of being able to file an NOA. It states: "When you file the notice of appeal . . . you will need to attach the court's order indicating which records the court has granted you access."	The committees believe that including the items listed in the appendix to this comment on the JV-570 form would encourage petitioners to check all the boxes listed, and would therefore lack the specificity required for a section 827 petition under rule 5.552(b)(1) and encourage requests for access to files that the petitioner does not know exists. This would create an undue burden for the juvenile court reviewing the petition. The committee has however elected to amend item 5 of form JV-570 to provide more guidance to the petitioner by giving instructions to include the type of report by name and date. The committees agree that form JV-291-INFO should not indicate that attaching the section 827 petition is required. The JV-291-INFO has been revised to reflect that when the notice of appeal or notice of intent to file a writ petition is filed, the section 827 petition should be attached if one is available, but it is

	Commenter	Position	Comment	Committee Response
			Our concern is the 60-day appeal period will expire before the 827 order is obtained. At a minimum, the information form should indicate the NOA must be filed before 60-day appeal period expires and it can be filed before the 827 order is issued. **Appendix** **Delay in Utilizing the 827 Petition Process: Two Case Examples** **1. D073770**: the Court of Appeal ordered the non-party appellant to obtain an 827 order from the Juvenile Court which sets forth the record to which she can have access. This appellant is an attorney who was able to navigate this process much better than a lay person. The 827 process took more than three months: – Court of Appeal's order to seek 827 order issued November 29th 2018; – 827 petition filed in Juvenile Court December 3, 2018; – 827 order rendered by the Juvenile Court February 1, 2019;	not required to file the notice of appeal or writ. In addition, the form has been amended to specify that the timelines for an appeal or writ proceeding will apply regardless of whether or not a section 827 petitioner has been granted. The timelines for an appeal or writ are now also referenced in the form. The committees appreciate the inclusion of this additional information. The committees agree that timeliness issues as illustrated in this case are a concern. As mentioned above, the committees are hopeful that the notices included on Judicial Council forms included in this proposal and the proposed information sheet JV-291-INFO will help to raise awareness of the need to request access to the juvenile case file prior to the Court of Appeal ordering the appellant to obtain a section 827 order from the juvenile court, as illustrated in this example.

	Commenter	Position	Comment	Committee Response
			– Court of Appeal ordered limited record prepared February 27, 2019; – Limited record filed in the Court of Appeal March 11, 2019. **2. D073296**: This fast-track case took 10 months to decide, 6 months to order the limited record: Mother – appellant: NOA filed 12/28/17 – appointed counsel 1/9/18 Maternal great aunt & 388 NOA filed 12/28/17 – appointed counsel 2/16/18 Minors W. & J (RB) Counsel appointed on court's own motion – 4/13/18 (apptd. 4/18/18) Minors M & Je (RB) appointed counsel – 1/25/18 de facto father (RB, retained counsel) de facto mother (RB, retained counsel) Record filed 1/19/18 Augment by mother (denied) 2/2/18 De facto 827 motion 3/29/18 Oppo to 827 motion by mother & aunt 4/2/18 Mother & aunt file AOB 4/4/18 County counsel do not oppo release 4/5/18 (since aunt already has record) Oppo to release by minors M & J 5/25/18	

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

	Commenter	Position	Comment	Committee Response
			Court orders limited record 6/6/18 – attorneys ordered not to provide the record to the aunt or de facto De facto father files augment 6/8/18 Mother & aunt oppose 6/14/18 Court orders augment considered w/appeal 6/19/18 RB by de facto father filed 7/27/18 County RB filed after 17B notice 7/31/18 De facto father requests judicial notice 8/1/18 – post-appeal info re: resolution of 1 issue – ordered to be considered w/appeal 8/16/18 minors' letter brief of W & J 8/23/18 Court's request for further briefing 8/30/18 – statutory interp. for relative placement issue ARB filed by mother 9/4/18 ARB filed by aunt 9/4/18 Mother's, aunt's, minors W & J's, agency's, de facto father's – supplemental briefs filed 9/14/18 minors M& J filed supplemental brief 9/17/18 case fully briefed 9/17/18 case submitted 10/23/18 opinion filed 10/23/18 remittitur issued 1/2/19	

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

	Commenter	Position	Comment	Committee Response
			ATTACHMENT TO JV-570 For use by appellants who are designated persons with access to a limited record as described in Rule 8.400(b). The records I want are: (Check all that apply.) o All reports, documents and orders the judge expressly stated were considered or were admitted as evidence in making the challenged order. (List, if known.) _____ _____ _____ _____ _____ _____ o The reporter's transcript from each hearing Petitioner attended. The dates are: _____ _____ _____ _____ o All reports and attachments prepared by the county agency and/or the CASA containing information about the placement history of the child/children. o All reports and attachments prepared by the county agency and/or the CASA	See response above.

	Commenter	Position	Comment	Committee Response
			containing information about Petitioner's visitation and/or request for visitation with the child/children. o All reports and attachments prepared by the county agency and/or the CASA containing information about interviews or conversations with Petitioner. o All reports and attachments prepared by the county agency and/or the CASA containing information about interviews or conversations with any parties or collateral contacts discussing Petitioner's request for placement and/or visitation. o Other: (Describe in detail any records that are not covered above.) _____ _____ _____ _____ _____ _____ _____ _____ _____ _____	
3.	First District Appellate Project by Jonathan Soglin Executive Director	AM	The notice of appeal (NOA) form (JV-800) and notice of intent forms (JV-820 and JV-822) are frequently used forms serving	The committees note the commenter's agreement with the proposal if modified and appreciate this feedback.

	Commenter	Position	Comment	Committee Response
	Oakland		parties in a variety of delinquency and dependency proceedings. Usually (e.g. for most delinquency and many dependency appeals) the form is used when there is no need for a limited-record. We are concerned that the some aspects of the modifications increase the complexity of the forms in a way that will create confusion without the anticipated benefits. For these reasons, we suggest a change that might strike a balance between helpful information for the clerk and reducing potential confusion. On one hand, we suggest retaining the proposed new boxes requiring the filing party to state whether they are "not the department, child, parent, or legal guardian," and whether they were granted access to specified records. This will be useful to the clerk and it is information the filing party should have at hand. On the other hand, we recommend omitting the line asking the filing party to identify whether the appeal or writ involves "a respondent who is not the department, child, parent, or legal guardian" (item 4 on the NOA and item 8 or 9 on the notices of	The committees agree that including this item in the forms will benefit the court clerks responsible for preparing the record. The committees agree with revising this item to indicate that a response is not required; the information should be provided if known.

	Commenter	Position	Comment	Committee Response
			intent). It is no simple matter to determine who is a "respondent" in a dependency appeal or writ. These proceedings frequently involve a multitude of interested persons whose interests can align or be opposed in patterns that are not easy to predict, even for the filing party. This is particularly difficult for the many pro per parties who file NOAs and notices of intent, but it also problematic in a counseled case. For these reasons, the inclusion of the item asking the filing party to predict who might be a respondent seems unlikely to assist the superior court appellate clerks in determining who must receive a limited record and, worse, it could add confusion for parties and counsel. Accordingly, we recommend omitting from the forms item 4 on form JV-800, item 9 on JV-820, and item 8 on JV-822.	
4.	Stephanie Miller	NI	Thank you for this opportunity to comment. The Committees' Proposal seeks "to balance the policy considerations favoring confidentiality of juvenile case files against designated persons' need for access to these record to effectuate their right to participate in appellate proceedings in these	The committees thank the commenter for this feedback.

	Commenter	Position	Comment	Committee Response
			cases." (Invitation to Comment, p. 3 [IC].) The Committees recognize that "these individuals were already privy to the record in the juvenile court proceedings . . ." (Ibid.) This is an important point. To some extent, the nonrelated caretaker of the child who seeks de facto parent status is "privy" to the dependency case as a result of the child's placement in the caretaker's home. In many instances, the caretaker is the monitor for parental visits, thus a relationship between the caretaker and the parent is established. To a greater extent, a close relative of the child who seeks relative placement or petitions for modification of the juvenile court orders may be intimately aware of the circumstances requiring juvenile court intervention as a result of the relative's preexisting relationship with the child and/or the child's parents. The social worker's assessment of a relative for the child's placement may result in disclosure of confidential information in the course of an interview to determine whether the relative was aware of the circumstances requiring juvenile court intervention, but had failed to protect the child. (Welf. & Inst. Code, § 361.3, subd. (a)(7)(D).) Thus, the child's and/or the parent's expectation	The committees do not disagree that relatives, caretakers, and others may, through involvement with the child, be aware of confidential information. However, the purpose of the proposal is to comply with the legislative mandate that the Judicial Council adopt rules to implement section 827(a)(6). Access to the juvenile case file in an appeal or writ proceeding must be addressed within the framework of section 827. If the individual was granted access to information from the case file under section 827 by the juvenile court, that access will also be extended to an appeal or writ proceeding. An individual's awareness of information contained in the juvenile case file is not a substitute for the section 827 requirements that access to the case file is based on belonging to the categories set forth in section 827(a)(1)(A)-

	Commenter	Position	Comment	Committee Response
			of confidentiality in the dependency case may be affected and reduced by the reality of family relationships preceding juvenile court intervention (grandparents, aunts and uncles, siblings, etc.) or by the substitute caregiver relationships created as a result of that intervention (foster parent or de facto parent/child). The Proposal should seek to protect only information which is actually confidential, i.e., information that has not previously been disclosed to the designated person, in- or outside of the courtroom. Not addressed in the Proposal is the potential obstacle to confidentiality presented by the request of a designated person who is a party in the appeal or writ proceeding to be served with a party's brief. Currently, the court rules do not require service on a "designated person." (Cal. Rules of Ct., rule 8.412(e).) But, the proposed Rule 8.412(a)(4) contemplates that the designated party will be served with the brief filed by a party. Although the parties are required to refer to the parent, guardian, and child by their initials if necessary to protect their privacy, the contents of the briefs filed by the party who is not a designated person will likely reveal	(P), or being granted access by the juvenile court through a section 827(a)(1)(Q) petition. The comment identifies an issue that should be addressed in the rules. However, any such provisions would constitute a substantive change that requires recirculation.

	Commenter	Position	Comment	Committee Response
			more of the juvenile court record than the juvenile court previously allowed the designated person to access. (Cal. Rules of Ct., rule 8.401(a).) Thus, service alone of the party's brief on the designated person could result in the disclosure of confidential information. One method of addressing the access of persons other than the parent, child, or guardian to the confidential juvenile court record is to limit the access of those persons (hereafter, designated persons) to the courtroom in the first instance, with the following exceptions: (1) a relative who has filed a petition for modification of orders; (2) a caregiver who has filed an application for de facto parent status. Those filings are appropriate actions necessary to confer the petitioner or applicant with the status of a party in the dependency case. (See In re Joseph G. (2000) 83 Cal.App.4th 712, 725.) Upon the first appearance of the petitioner or applicant, the judicial officer can then direct him or her to complete and deliver to the courtroom clerk then and there the JV-570	The committees appreciate this suggestion, but cannot by rule of court limit access to juvenile court proceedings. Discretion to admit members of the public to juvenile court hearings is vested in the juvenile court pursuant to section 346. In addition, any modifications to the proposal along these lines would be a substantial change that would require circulation for public comment. The committees express no opinion with respect to whether a juvenile court could adopt the approach suggested here or something similar, and acknowledge that juvenile courts have discretion to develop procedures and processes that are not inconsistent with statutes or rules.

	Commenter	Position	Comment	Committee Response
			form. The 388 petitioner or de facto parent applicant, or the courtroom clerk should then and there complete the JV-570 form to designate the date of the first appearance, and the record of those proceedings, as the approved record in the event of an appeal. As indicated in the Proposal, the juvenile court clerk should thus begin the creation of a separate file for the designated person. The separate file can also include the minute order for each hearing at which the designated person/party is present. Thereafter, at each appearance made by the designated person who has acquired party status, the judicial officer can direct him or her to complete a new JV-570 form. The additional JV-570 form and the minutes should be added to the separate file created for the designated person. In this manner, the record accessible to the designated person can be "marked" as it is made. Also, any objections to disclosure of that portion of the juvenile court record to the designated person can be entertained each time a designated person appears in court. If and when the designated person files a notice of appeal, the portions of the	

	Commenter	Position	Comment	Committee Response
			confidential juvenile court record will be readily identifiable by the previously completed JV-570 forms and the minutes orders. In this manner, the separate file created for the designated person can timely identify the record to which that individual was previously given access by the juvenile court, and after notice to the other party. In order to address the parties' right to confidentiality and the right of designated persons to appellate review, several years ago the Second District adopted Local Rule 8. (Local Rules Court of Appeal Second District Rule 8 [Filing of an appeal in a dependency matter by a person who is not the parent, child or guardian].) It is the experience of the California Appellate/Los Angeles that while the local rule has served to protect the right of the parties to confidentiality, it has not served the right of a designated person to review. Pursuant to Local Rule 8, the designated person is required to complete and file a JV-570 form and file it with the notice of appeal, or within 10 days after receipt of the juvenile court clerk's request for that form. The	

	Commenter	Position	Comment	Committee Response
			delay in the preparation of the appellate record for the designated person occurs between the filing of the JV-570 form, with the notice of appeal, and the judicial officer's designation of the portions of the confidential record which will comprise the appellate record for the designated person. The record designation process takes many months. I hope that my comments are useful to the Committees. I appreciate their work.	The committees agree that timeliness issues as illustrated in this example are a concern. As mentioned above, the committees are hopeful that the notices included on Judicial Council forms included in this proposal and the proposed information sheet JV-291-INFO will help to raise awareness of the need to request access to the juvenile case file prior to being ordered by the appellate court to obtain a section 827 order from the juvenile court.
5.	Office of the County Counsel County of Los Angeles by Alyssa Skolnick Principal Deputy County Counsel Monterey Park	AM	1. I believe the intent is that when the appeal/writ proceeding involves a designated person (as defined under the proposed court rules), the designated person (or his/her attorney of record) will receive a limited record, while everyone else who is entitled to access the records will receive both (1) limited record; (2) normal/complete record. However, the fact the normal/complete record (in addition to limited record) will be provided to all parties entitled to access needs to be clarified. (See California Rule of Court, rule 8.409, et seq.)	The committees note the commenter's agreement with the proposal if modified. The committees decline to modify the proposed rule language because it is sufficiently clear that the normal record is to be provided to all parties (and not to designated persons). Subdivision (e) of rule 8.409 specifies that after the transcripts are certified, the court clerk must immediately send a copy to the individuals listed in subdivision (e)(B)(i)-(iv), except as provided in subdivision (f) of the same rule.

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

	Commenter	Position	Comment	Committee Response
			2. The proposed changes to the California Rules of Court do not address whether the non-designated persons (those who are entitled to the normal/complete record) should serve the designated persons with their briefs (redacted or un-redacted), which will almost certainly include significant information that the designated person is not entitled to access. This has been a significant issue historically. If the appellant/respondent/petitioner etc. is a "designated person," which briefs are they entitled to access and be served with? This is a significant concern because once the designated person is served with an un-redacted brief, they have all the information in the record that they were not previously privy to. We have historically struggled with this and the Court of Appeal has not been consistent with respect to whether it wants our office to serve redacted or un-redacted briefs on those who were not entitled to access under WIC 827 and are being referred to as "designated persons" in the proposed rules. The California Rules of Court need to directly address which briefs (Writ Petition, Appellant's Opening Brief, Respondent's Brief/Answer/Reply Brief etc.) the designated person is entitled to	The comment identifies a significant issue. Any proposed rule to address the matter would be a substantive change to the proposal requiring recirculation. See response above.

	Commenter	Position	Comment	Committee Response
			because unless the designated party was given access to the entire case file, the briefs from the other parties will always contain information that the designated person has not been granted access to. The only hint of this issue in the proposed rules is proposed amended California Rule of Court, rule 8.412(a)(5), which states, "If an appeal involves a designated person, and the brief of a party who is not a designated person refers to juvenile case records that are not in the limited record, the designated person may petition the juvenile court for access to those records and may petition the juvenile court for access to those records …" Does this assume that the designated person is to be served with un-redacted briefs that necessarily included case history and records that the designated person was not previously granted access to? It is our office's practice to only serve the party who is not entitled to access the records (referred to as "designated person in the proposed rules) with heavily redacted briefs that omit all the information they are not privy to unless otherwise ordered by the Court of Appeal.	

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

	Commenter	Position	Comment	Committee Response
			3. Proposed amendments to California Rules of Court, rules 8.405 and 8.450(e)(1) state that if the appellant/party seeking writ review is aware that a party to the appeal is an individual not authorized to access the juvenile case file without petition pursuant to WIC 827(A)(1)(Q), the appellant/party seeking writ review must indicate this on the notice of appeal. However, the (a) proposed amended Notice of Appeal (JV-800) and (b) Notice of Intent to File a Writ Petition (JV-820) do not include a section for this information or notice of the requirement – they only include a box indicating that the appellant/person seeking writ review is not a child, legal guardian or parent – it does not include a box to indicate a different party is not authorized to access the case file.	Both forms JV-800 and JV-820 include the identified language. On form *Notice of Appeal–Juvenile* (JV-800), proposed item 4 states "The appeal involves a respondent who is not the department, child, parent, or legal guardian. This individual may require the preparation of a limited record as defined in rule 8.400(b)(2)." On form *Notice of Intent to File Writ Petition* (JV-820), proposed item 9 states "The writ involves a respondent who is not the department, child, parent, or legal guardian. This individual may require the preparation of a limited record as defined in rule 8.400(b)(2)."
			4. The California Rules of Court should clarify that the designated person's attorney of record is not entitled to any documents/records that the designated party is not entitled to. This has come up with respect to California Rule of Court, rule 8.452 and 8.456 Petitions/Answers.	The committees believe that section 827 sufficiently addresses whether an attorney for a designated person on appeal is entitled to access the juvenile case file.

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	Commenter	Position	Comment	Committee Response
			5. The admonishment language from the proposed JV-291-Info form that has been added (proposed) to various other forms states "In the vast majority of cases, only the child, parent, or guardian have the right to appeal a juvenile court ruling." This is inaccurate in that it does not include CPS as a party having a right to appeal. It also does not reference writ proceedings.	The committees agree with this comment and have revised the form to indicate that the child welfare department or district attorney also has the right to appeal and petition for a writ.
6.	Orange County Bar Association By Deirdre Kelly President Newport Beach	A	No specific comment.	The committees note the commenter's agreement with the proposal.
7.	Superior Court of Los Angeles County	AM	**Proposed Modifications** **Rule 8.405 (b)(1)(B), Rule 8.450 (h)(1) and h(2), and Rule 8.454 (h)(1) and (h)(2)** The requirement to immediately notify each court reporter by telephone should be updated by either eliminating the telephone requirement or changing it to an email requirement. Change:	The committees note the commenter's agreement with the proposal if modified and appreciate the responses to questions presented in the invitation to comment. This suggestion is outside the scope of this proposal. The committees will retain the suggestion for future consideration.

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	Commenter	Position	Comment	Committee Response
			"immediately notify each court reporter by telephone" to: "immediately notify each court reporter." **Request for Specific Comments** **Does the proposal adequately address the stated purpose?** Yes, the proposal adequately addresses the stated purpose. **What is the most effective way to communicate that people should request access to records in the juvenile case file before the commencement of appellate court proceedings?** The most effective communication is by written notice. **What is the best way to alert the clerk that the appeal or writ proceeding involves a limited record, particularly when the limited record is required for a party who is not the appellant or the petitioner?** The most effective way to alert the clerk is by written notification. **Should other rules apply to preparing, sending, and using a limited record?** No, other rules should not apply.	No response required. No response required. No response required.

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

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

	Commenter	Position	Comment	Committee Response
			Should the rules further address the situation of a designated person responding to a brief or memorandum by a party who is using the normal record and referring to matters in documents to which the designated person has not been granted access? Yes, the rules should address this.	No response required. As noted above, addressing this issue substantively in the rules will require recirculation.

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

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	Commenter	Position	Comment	Committee Response
			Does the proposed notice on the JV forms adequately alert individuals of the requirement to request access to records in the juvenile case file by filing a petition under section 827(a)(1)(Q)? Should the notice be included on forms that may not typically relate to an appeal, such as Relative Information (form JV-285) and Caregiver Information Form (form JV-290)? Yes, the proposed notice adequately alerts individuals of the requirement and should be included on the other forms.	No response required.
			Does the proposed information sheet, form JV-291-INFO, provide the information necessary for an individual to understand the right to appeal and the process for requesting access to records in the juvenile case file? Should other information be included? Should other scenarios be listed in item 1 to describe when someone not entitled to access the juvenile case file would have a right to appeal? Yes, the proposed information sheet provides the information necessary.	No response required.

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

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	Commenter	Position	Comment	Committee Response
			Would the proposal provide cost savings? If so, please quantify. No.	No response required.
			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 include training, procedure updates, and changes to event codes in the Case Management System.	No response required.
			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.	No response required.
8.	Superior Court of San Diego County by Mike Roddy Executive Officer	AM	“Designated person" is defined in rule 8.400(b), but it is still confusing in the context of some of the other rules. For	The committees note the commenter’s agreement with the proposal if modified, and appreciate the answers to questions presented in the invitation to comment. Rule 8.401(b)(1) does allow a Court of Appeal to designate a person to have access to filed documents. The committees however

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

	Commenter	Position	Comment	Committee Response
			example, rule 8.401(b)(1) allows access by a person designated by the Court of Appeal, but then in subdivision (b)(2) "designated person" is a person designated by the juvenile court, not the Court of Appeal.	don't believe that this language supersedes the requirements created in the rest of the propose rule and section 827(A)(6) for the confidentiality of the juvenile case file.
			Preparation of both a full record and a limited record seems like double work. However, this is probably the most efficient way.	The committees acknowledge that preparation of a limited record, in whatever form, will result in additional work for court clerks. However, the committees agree that this is the most efficient way to comply with the requirements of section 827(a)(6).
			CRC 8.409(b)(2): "must be designated as a limited clerk's transcript and a limited reporter's transcript."	The suggested revisions have been made.
			Proposed revisions to Form JV-291-INFO: 1) Add "or probation officer" in item 2 to the list of those who must be served.	The suggested revision has been made.
			2) Add "legal" before guardian throughout.	The suggested revision has been made.
			3) It should be stated clearly that there is a deadline to seek review by writ or appeal and that deadline is not extended to seek access to records. (The JV-570 process can	The committees agree with this suggestion and have added language to the form to indicate that the timelines for the appeal or

	Commenter	Position	Comment	Committee Response
			take a long time and I foresee people missing the appeal deadline while they wait for a resolution to their JV-570.) Proposed revisions to Form JV-570: 1) The proposed change in item 5 is confusing and unnecessary. Why call out just one type of request when there are so many reasons a person could file a JV-570? 2) The proposed change in item 6 is good. Proposed revisions to Forms JV-800, 820, 822: "department" is unclear. It is believed to mean county welfare department and our court recommends it be spelled out. Change "County Welfare Agency" to "county welfare department" on the JV-820 for consistency with the other two forms.	writ petition will not be extended for seeking access to the juvenile case file. The form already includes check boxes for types of requests that are typical, including pending civil and criminal cases. The committees want to ensure that individuals who may have a right to appeal but need to be granted access to the juvenile case file by the juvenile court, many of whom may not have attorneys, receive some guidance on what information they will need to request when they file the JV-570. No response required. The committees agree with this suggestion and have revised the forms to indicate “county welfare department.” In addition, “district attorney” will be added to the list on form JV-800 to address probation cases.

SPR19-06

Appellate Procedure, Juvenile Law: Access to Juvenile Case Files in Appellate Court Proceedings (Amend Cal. Rules of Court, rules 8.400, 8.401, 8.405, 8.407–8.410, 8.412, 8.416, 8.450, 8.452, 8.454, and 8.456; approve form JV-291-INFO; revise forms JV-285, JV-290, JV-295, JV-321, JV-325, JV-570, JV-800, JV-820, and JV-822)

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

	Commenter	Position	Comment	Committee Response
			Proposed revision to Form JV-800, item 7: Change Attachment 5 to Attachment 7 to match the new item number. Proposed revision to Form JV-822, page 2: 1) 1st box: See ~~the back of this form~~ below for more information. (Or delete sentence completely.) 2) 3rd box, 1st 2 bullet points: Change "specified placement" to "specific placement." 3) 4th box, 3rd bullet point: change CRC citation to 8.454(e)(3).	The suggested revision has been made. The suggested revision has been made. The suggested revision has been made. [Note: for consistency with title of the form.] The suggested revision has been made.

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR19-__

Title
Appellate Procedure, Juvenile Law: Access to Juvenile Case Files in Appellate Court Proceedings

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rules 8.400, 8.401, 8.405, 8.407–8.410, 8.412, 8.416, 8.450, 8.452, 8.454, and 8.456; approve form JV-291-INFO; revise forms JV-285, JV-290, JV-295, JV-321, JV-325, JV-570, JV-800, JV-820, and JV-822

Proposed by
Appellate Advisory Committee
Hon. Louis R. Mauro, Chair
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Action Requested
Review and submit comments by June 10, 2019

Proposed Effective Date
January 1, 2020

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Executive Summary and Origin

The Appellate Advisory Committee and the Family and Juvenile Law Advisory Committee propose amended rules and new and revised forms to implement recent Judicial Council–sponsored legislation amending the statute that specifies who may access and copy records in a juvenile case file in an appeal or writ proceeding challenging a juvenile court order. The statutory amendment clarified that people who are entitled to seek review of certain orders in juvenile proceedings or who are respondents or real parties in interest in such appellate proceedings may, for purposes of those appellate proceedings, access and copy those records to which they were previously given access by the juvenile court. This proposal would implement the legislation by updating the rules relating to juvenile appeals to include provisions relating to persons with limited access to the juvenile case file and the limited record that must be prepared and provided to these persons. The committees also propose a new information sheet and a

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

notice on certain forms regarding the requirement to seek authorization from the juvenile court to access records in the case file before commencing an appeal.

Background

The confidentiality of juvenile case files is established by Welfare and Institutions Code section 827.[1] This confidentiality is intended to protect the privacy rights of the child who is the subject of the juvenile court proceedings. Subdivision (a)(1) of this statute identifies those who may inspect and receive copies of a juvenile court case file, including the child who is the subject of the proceeding, the child's parent or guardian, the attorneys for the parties, the petitioning agency in a dependency action, or the district attorney, city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law.

Ordinarily, to help resolve these matters as quickly as possible, when an appeal or petition is filed challenging a judgment or order in a juvenile proceeding, the record for that appellate proceeding is prepared and sent to the Court of Appeal and the parties very quickly. The items that must be included in the record on appeal or for certain writ proceedings are listed in California Rules of Court, rules 8.407, 8.450, and 8.454. The trial court is required to begin preparing the record in these proceedings as soon as a notice of appeal or notice of intent to file a writ petition is filed. A premise of this practice seems to be that all the parties to the appellate proceeding are entitled under section 827 to inspect and receive copies of the records in the juvenile case file.

However, some individuals who are authorized to participate in juvenile proceedings and have the right to seek review of certain orders in those proceedings or who have a right to respond to an appeal or petition seeking such review are not entitled under section 827 to inspect or copy any records in a juvenile case file. This situation occurs, for example, when the appellant is a family member or other person who files a petition seeking de facto parent status and is appealing the denial of that petition or who files a petition under section 388 to change, modify, or set aside a juvenile court order on grounds of change of circumstance or new evidence and is appealing the denial of that petition. In those cases, before the recent legislation, the juvenile courts and Courts of Appeal followed various procedures to decide, on a case-by-case basis, what records the parties to the appellate proceeding could receive. Doing so took time and resources of the juvenile court, the Court of Appeal, and the persons seeking review or the respondents in such proceedings. It also resulted in delays and, particularly when the appellant or petitioner was self-represented, procedural dismissals of these appeals without consideration of their merit.

In 2017, the Appellate Advisory Committee, in consultation with the Family and Juvenile Law Advisory Committee, recommended that the Judicial Council sponsor legislation to address this

[1] All further unspecified statutory references are to the Welfare and Institutions Code, and all rule references are to the California Rules of Court. You can access the full text of this statute at *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=827.&lawCode=WIC*).

situation. The legislation, Assembly Bill 1617, which added new paragraph (a)(6) to section 827, took effect on January 1, 2019. The new paragraph provides that a person who is not otherwise authorized to access the case file under section 827(a)(1)(A)–(P) and files a notice of appeal or petition challenging a juvenile court order or who is a respondent or real party in interest in such an appellate proceeding may, for purposes of the appellate proceeding, access and copy those records to which they have been given access by the juvenile court. New paragraph (a)(6) also requires the Judicial Council to adopt rules to implement the new provision.

The Proposal

Rule amendments

To implement the new legislation, the committees are proposing amendments to the juvenile appellate rules in title 8 to include provisions regarding parties to appellate proceedings who have been granted access to records by the juvenile court and the limited record that must be prepared for such parties. The amendments include new terms and definitions for ease of reference to these parties ("designated persons") and the record ("limited record") to which they are entitled. The amendments also provide guidance to juvenile court clerks who must prepare and send both the record and the limited record for appellate court proceedings.

The committees believe that these proposed rule amendments appropriately balance the policy considerations favoring confidentiality of juvenile case files against designated persons' need for access to these records to effectuate their right to participate in appellate proceedings in these cases. Because these individuals were already privy to the records in the juvenile court proceedings, the proposal would not dilute the confidentiality protections of the child. By eliminating the necessity for special procedures to authorize the individuals' access to these records, the proposal would reduce barriers to their access to justice, delays in these proceedings, and time and expenses for the parties and the courts.

General provisions

Rule 8.400, Application. The proposed amendments add "and definitions" to the title and a new subdivision (b) containing definitions of "designated person" and "limited record." New subdivision (b) also clarifies that a "juvenile case file" includes the records listed in rule 5.552(a).

Rule 8.401, Confidentiality. The proposed amendment adds a new paragraph to subdivision (b) to specify that designated persons may receive only the limited record.

Appeals

Rule 8.405, Filing the appeal. A proposed new paragraph in subdivision (a) provides that an appellant who is aware that a party to the appeal is not authorized to access the juvenile case file without an approved petition must indicate so on the notice of appeal. Amendments to subdivision (b) regarding the clerk's duties address notifying the court reporter to prepare the reporter's transcript for a limited record and identifying, in the notification of the filing of the notice of appeal, any party who is a designated person.

Rule 8.407, Record on appeal. The proposed amendment adds subdivision (f) regarding a limited record for designated persons. This subdivision will specify that the limited record for a designated person must contain only those records to which the designated person has been granted access by the juvenile court. It will also provide that, to apply for additions to the limited record, the designated person must petition the juvenile court.

Rule 8.408, Record in multiple appeals in the same case. The proposed amendment provides that in cases involving more than one appeal, a limited record must be prepared for any party who is a designated person.

Rule 8.409, Preparing and sending the record. The proposed amendments to subdivision (b) provide that the clerk's and reporter's transcripts for a limited record must be prepared and paginated separately from the transcripts for the normal record on appeal. This change reflects the committee's determination, based on feedback from juvenile court clerks, that separate transcripts, rather than redacted versions of transcripts in the normal record, were the better form of the limited record to propose.

The committees also propose adding new subdivision (f) to this rule to present rules for preparing and certifying transcripts in a limited record and sending the limited record. A proposed new advisory committee comment for this subdivision clarifies that if a party not otherwise authorized to access the juvenile case file has not been granted access to records in the juvenile case file, there is no limited record to be prepared, and to obtain access, the party must file a petition in the juvenile court.

Rule 8.410, Augmenting and correcting the record in the reviewing court. The amendment adds language to include a limited record. Augmentation or correction of a limited record by a reviewing court can include only documents or transcripts to which the designated person has been granted access by the juvenile court.

Rule 8.412, Briefs by parties and amici curiae. New paragraph (a)(4) clarifies that a designated person's brief must include citations to the limited record. This requirement mirrors a provision in rule 8.204 that applies to parties using the normal record. New paragraph (a)(5) provides that, in an appeal involving a designated person, if another party's brief references material in the normal record to which the designated person has not previously been granted access, the designated person may seek such access by filing a petition in the juvenile court.

Rule 8.416, Appeals from all terminations of parental rights; dependency appeals in Orange, Imperial, and San Diego Counties and in other counties by local rule. The proposed amendments include provisions for designated persons and limited records.

Writs

Rule 8.450, Notice of intent to file writ petition to review order setting hearing under Welfare and Institutions Code section 366.26. The proposed amendments add provisions for identifying a party who is a designated person and attaching to the notice of intent a copy of the juvenile

court's order granting access to records, preparing the limited record for a designated person, and sending the limited record.

Rule 8.452, Writ petition to review order setting hearing under Welfare and Institutions Code section 366.26. New paragraph (b)(2) requires that if the petitioner is a designated person, the summary of facts in the memorandum is limited to matters in the limited record and must be supported by citations to the limited record.

Rule 8.454, Notice of intent to file writ petition under Welfare and Institutions Code section 366.28 to review order designating specific placement of a dependent child after termination of parental rights. These amendments mirror those proposed for rule 8.450.

Rule 8.456, Writ petition under Welfare and Institutions Code section 366.28 to review order designating or denying specific placement of a dependent child after termination of parental rights. These amendments mirror those proposed for rule 8.452.

New and revised forms

The committees also propose a new form and revisions to existing forms. The form revisions are intended to assist the juvenile court and potential designated persons in addressing access to the juvenile case file before an appeal or writ. The new form is an information sheet for potential designated persons regarding the right to appeal and the requirement to seek access to records in the juvenile case file for purposes of an appeal.

Proposed information sheet

Information on a Nonparty's Right to Seek Review and the Requirement to Request Access to Records (form JV-291-INFO) would provide information on the right to appeal, for nonparties such as relatives and de facto parents, and the requirement to request access to the juvenile case file through a petition under section 827(a)(1)(Q). The form emphasizes that nonparties to a dependency or delinquency case have a right to appeal only in limited circumstances.

Notice to potential designated persons through JV forms

The committees anticipate that potential designated persons in appellate proceedings often may be unaware of the requirement to petition for access, and thus would not file such a petition for access to records in the juvenile case file until after the appellate proceeding has begun. This situation could cause delays and difficulties for litigants and the courts—problems the legislation was intended to solve. The committees propose adding a short notice explaining the right to appeal for nonparties to the juvenile court proceeding, and including a reference to the new information sheet (form JV-291-INFO) to forms typically used by nonparties in dependency and delinquency cases. The notice would read as follows:

> "If you are not the child, the child's parent, or the child's legal guardian, you may have a right to challenge a decision by the juvenile court, but only in very limited circumstances. You may also need a court order granting you access to records in the juvenile case file. For more information, please see *Information on a*

Nonparty's Right to Seek Review and the Requirement to Request Access to Records (form JV-291-INFO). You can get form JV-291-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms*."

The committees propose adding the notice to the following forms:

- *Relative Information* (form JV-285)
- *Caregiver Information Form* (form JV-290)
- *De Facto Parent Request* (form JV-295)
- *Request for Prospective Adoptive Parent Designation* (form JV-321)
- *Objection to Removal* (form JV-325)
- *Notice of Appeal—Juvenile* (form JV-800)
- *Notice of Intent to File Writ Petition and Request for Record to Review Order Setting a Hearing Under Welfare and Institutions Code Section 366.26* (form JV-820)
- *Notice of Intent to File Writ Petition and Request for Record to Review Order Designating or Denying Specific Placement of a Dependent Child After Termination of Parental Rights* (form JV-(822)

Revise* Request for Disclosure of Juvenile Case File *(form JV-570)

Form JV-570 is the mandatory form used to request disclosure of (i.e., petition for access to) the juvenile case file. It requires the petitioner to describe in detail the records that are sought and why the records are needed. The committees propose revising the item on the form that requires the petitioner to indicate the reason for the requested records. Revised item 6 adds the option that access to records is being sought for purposes of an appeal or writ petition and provides space for the petitioner to list the relevant hearing dates.

Alternatives Considered

The committees never considered proposing *no* rule changes because AB 1617 specifically requires the Judicial Council to adopt rules to implement the legislation.

The committees considered making no changes to the JV forms, but rejected this option. Because of the likelihood that individuals who are not authorized to access the juvenile case file but who are involved in appellate proceedings may be unaware of the requirement to petition for access to records in the juvenile case file, the committees chose to develop a new information sheet and include a notice on certain forms.

The committees also considered two alternatives for a limited record: (1) creating a limited record that would be a separate citable document provided to all parties, and (2) redacting copies of the normal record. The committees sought input from juvenile court clerks[2] who preferred the

[2] The committees sought feedback from court clerks who will be preparing these records as to which option they would prefer. Fourteen counties responded, with 10 preferring option one and 4 preferring option two. Most of the clerks thought that redacting the record would be too burdensome and preferred to prepare a separate limited record.

first alternative because redacting would be too time-consuming. Rule 8.409(f), therefore, requires the juvenile court clerk to prepare a separate limited record.

Finally, the committees considered alternatives to identifying parties as designated persons at the outset of an appeal or writ proceeding for purposes of timely preparing and sending the limited record, including requiring the appellant or petitioner to identify any designated persons on the notice of appeal or notice of intent, respectively, and requiring the juvenile court clerk to determine whether any party is a designated person. The proposal reflects a combination of these alternatives.

Request for Specific Comments

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

- Does the proposal adequately address the stated purpose?
- What is the most effective way to communicate that people should request access to records in the juvenile case file *before* the commencement of appellate court proceedings?
- What is the best way to alert the clerk that the appeal or writ proceeding involves a limited record, particularly when the limited record is required for a party who is not the appellant or the petitioner?
- Should other rules apply to preparing, sending, and using a limited record?
- Should the rules further address the situation of a designated person responding to a brief or memorandum by a party who is using the normal record and referring to matters in documents to which the designated person has not been granted access?
- Does the proposed notice on the JV forms adequately alert individuals of the requirement to request access to records in the juvenile case file by filing a petition under section 827(a)(1)(Q)? Should the notice be included on forms that may not typically relate to an appeal, such as *Relative Information* (form JV-285) and *Caregiver Information Form* (form JV-290)?
- Does the proposed information sheet, form JV-291-INFO, provide the information necessary for an individual to understand the right to appeal and the process for requesting access to records in the juvenile case file? Should other information be included? Should other scenarios be listed in item 1 to describe when someone not entitled to access the juvenile case file would have a right to appeal?

The advisory committees also seek comments from *courts* on the following cost and implementation matters:

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

Attachments and Links

1. Cal. Rules of Court, rules 8.400–8.456, at pages 9–22
2. Forms JV-285, JV-290, JV-291-INFO, JV-295, JV-321, JV-325, JV-800, JV-820, *and* JV-822, at pages 23–40

Rules 8.400, 8.401, 8.405, 8.407–8.410, 8.412, 8.416, 8.450, 8.452, 8.454, and 8.456 of the California Rules of Court are amended, effective January 1, 2020, to read:

Rule 8.400. Application and definitions

(a) Application

The rules in this chapter govern:

(1) Appeals from judgments or appealable orders in:

(A) Cases under Welfare and Institutions Code sections 300, 601, and 602; and

(B) Actions to free a child from parental custody and control under Family Code section 7800 et seq. and Probate Code section 1516.5;

(2) Appeals or orders requiring or dispensing with an alleged father's consent for the adoption of a child under Family Code section 7662 et seq.; and

(3) Writ petitions under Welfare and Institutions Code section 366.26 and 366.28.

(b) Definitions

In addition to the definitions and use of terms in rule 8.10, the following definitions and use of terms apply to the rules in this chapter:

(1) "Designated person" means a party to the appeal or writ proceeding who is not otherwise authorized to access the juvenile case file under Welfare and Institutions Code section 827 and who has been granted access to inspect and copy specified records in a juvenile case file by order of the juvenile court after filing a petition under section 827(a)(1)(Q).

(2) "Limited record" means the record prepared for a designated person for purposes of the appeal or writ proceeding and containing the records in the juvenile case file to which the designated person has been granted access by order of the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q).

(3) "Juvenile case file" includes the records listed in rule 5.552(a).

Rule 8.401. Confidentiality

(a) * * *

(b) Access to filed documents

(1) Except as provided in (2)–~~(3)~~(4), the record on appeal and documents filed by the parties in proceedings under this chapter may be inspected only by the reviewing court and appellate project personnel, the parties, ~~or~~ including their attorneys, and other persons the court may designate.

(2) A designated person may inspect and copy only the limited record on appeal.

~~(2)~~(3) Filed documents that protect anonymity as required by (a) may be inspected by any person or entity that is considering filing an amicus curiae brief.

~~(3)~~(4) Access to records that are sealed or confidential under authority other than Welfare and Institutions Code section 827 is governed by rules 8.45–8.47 and the applicable statute, rule, sealing order, or other authority.

(c) * * *

Rule 8.405. Filing the appeal

(a) Notice of appeal

(1)–(2) * * *

(3) If the appellant is aware that a party to the appeal is an individual not authorized to access the juvenile case file without an approved petition under Welfare and Institutions Code section 827(a)(1)(Q), the appellant must indicate so on the notice of appeal and is encouraged to attach a copy of any order granting access to specified records under section 827(a)(1)(Q).

~~(3)~~(4) The notice of appeal must be liberally construed, and is sufficient if it identifies the particular judgment or order being appealed. The notice need not specify the court to which the appeal is taken; the appeal will be treated as taken to the Court of Appeal for the district in which the superior court is located.

(b) Superior court clerk's duties

(1) When a notice of appeal is filed, the superior court clerk must immediately:

(A) * * *

(B) Notify the reporter by telephone and in writing to prepare a reporter's transcript and any limited reporter's transcript and deliver it or them to the clerk within 20 days after the notice of appeal is filed.

(2) * * *

(3) The notification must also identify any party to the appeal who is not authorized under Welfare and Institutions Code section 827(a)(1)(A)–(P) to access the juvenile case file. If such party is a designated person, a copy of the juvenile court order under section 827(a)(1)(Q) granting access to specified records in the juvenile case file, if available, must be included.

~~(3)~~(4) The notification to the reviewing court clerk must also include a copy of the notice of appeal and any sequential list of reporters made under rule 2.950.

~~(4)~~(5) A copy of the notice of appeal is sufficient notification if the required information is on the copy or is added by the superior court clerk.

~~(5)~~(6) The mailing of a notification is a sufficient performance of the clerk's duty despite the discharge, disqualification, suspension, disbarment, or death of the attorney.

~~(6)~~(7) Failure to comply with any provision of this subdivision does not affect the validity of the notice of appeal.

Rule 8.407. Record on appeal

(a)–(e) * * *

(f) Limited record for designated persons

(1) A limited record must contain only those records in a juvenile case file to which the designated person has been granted access by the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q). A designated person as defined in rule 8.400(b)(1) is authorized to receive only the limited record.

(2) To apply for additions to the limited record, a designated person must petition the juvenile court by filing *Request for Disclosure of Juvenile Case File* (form JV-570).

Rule 8.408. Record in multiple appeals in the same case

If more than one appeal is taken from the same judgment or related order, only one appellate record need be prepared, which must be filed within the time allowed for filing the record in the latest appeal. If an appeal involves a designated person, a limited record must also be prepared, as provided in rule 8.409(f).

Rule 8.409. Preparing and sending the record

(a) * * *

(b) Form of record

(1) The clerk's and reporter's transcripts must comply with rules 8.45–8.47, relating to sealed and confidential records, and with rule 8.144. An electronic clerk's transcript must also comply with rule 8.74.

(2) The clerk's and reporter's transcripts for a limited record must be produced and paginated separately from the transcripts for the normal record, and must be designated as limited clerk's transcript and limited reporter's transcript.

(c) Preparing and certifying the transcripts

Except as provided in (f), within 20 days after the notice of appeal is filed:

(1)–(2) * * *

(d) * * *

(e) Sending the record

(1) Except as provided in (f), when the transcripts are certified as correct, the court clerk must immediately send:

(A)–(B) * * *

(2)–(3) * * *

(f) Limited record

(1) Application

If the appellant or the respondent is a designated person as defined in 8.400(b)(1), the clerk and the reporter must prepare, and the clerk must send, a separate limited record, as defined in 8.400(b)(2), that includes only those records and transcripts in the juvenile case file to which the designated person has been granted access by the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q). A designated person may receive a copy of the limited record only, and may not receive a copy of any records to which the designated person has not been granted access by the juvenile court.

(2) Preparing and certifying the transcripts in a limited record

Within 20 days after the notice of appeal is filed:

(A) The clerk must prepare, in compliance with rules 8.74 and 8.144, and certify as correct an original of the clerk's transcript for a limited record and one copy each for the appellant, the respondent, the child's Indian tribe if the tribe has intervened, and the child if the child is represented by counsel on appeal or if a recommendation has been made to the Court of Appeal for appointment of counsel for the child under rule 8.403(b)(2) and that recommendation is either pending with or has been approved by the Court of Appeal but counsel has not yet been appointed; and

(B) The reporter must prepare, certify as correct, and deliver to the clerk an original of the reporter's transcript for a limited record and the same number of copies as (A) requires of the clerk's transcript.

(3) Sending the limited record

(A) When the transcripts for a limited record are certified as correct, the court clerk must immediately send:

(i) The original transcripts for a limited record to the reviewing court, noting the sending date on each original; and

(ii) One copy of each transcript for a limited record to the appellate counsel for the following, if they have appellate counsel:

a. The appellant;

b. The respondent;

c. The child's Indian tribe, if the tribe has intervened; and

d. The child.

(B) If appellate counsel has not yet been retained or appointed for the appellant or the respondent, or if a recommendation has been made to the Court of Appeal for appointment of counsel for the child under rule 8.403(b)(2) and that recommendation is either pending with or has been approved by the Court of Appeal but counsel has not yet been appointed, when the transcripts for a limited record are certified as correct, the clerk must send that counsel's copy of the transcripts for a limited record to the district appellate project. If a tribe that has intervened is not represented by counsel when the transcripts are certified as correct, the clerk must send that counsel's copy of the transcripts for a limited record to the tribe.

(C) The clerk must not send a copy of the transcripts for a limited record to the Attorney General or the district attorney unless that office represents a party.

Advisory Committee Comment

Subdivision (a). * * *

Subdivision (b). * * *

Subdivision (e). * * *

Subdivision (f). If a party is not otherwise authorized to access records in the juvenile case file under Welfare and Institutions Code section 827, and has not been granted access to any records in the juvenile case file by the juvenile court under section 827(a)(1)(Q) at the time the record on appeal is being prepared, there is no limited record to be prepared. To obtain access to records, and thus meet the definition of a designated person, the party must petition the juvenile court by filing *Request for Disclosure of Juvenile Case File* (form JV-570).

Rule 8.410. Augmenting and correcting the record in the reviewing court

(a) Omissions

If, after the record is certified, the superior court clerk or the reporter learns that the record or the limited record omits a document or transcript that any rule or order requires to be included, without the need for a motion or court order, the clerk must promptly copy and certify the document or the reporter must promptly prepare and

certify the transcript and the clerk must promptly send the document or transcript—as an augmentation of the record—to all those who are listed under 8.409(e), except as provided in rule 8.409(f).

(b) Augmentation or correction by the reviewing court

(1) Except as provided in (3), on motion of a party or on its own motion, the reviewing court may order the record augmented or corrected as provided in rule 8.155(a) and (c).

(2) If, after the record is certified, the trial court amends or recalls the judgment or makes any other order in the case, the trial court clerk must notify each entity and person to whom the record is sent under rule 8.409(e) and (f).

(3) The reviewing court may order a limited record augmented or corrected only to include records to which the designated person has been granted access by the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q).

Rule 8.412. Briefs by parties and amici curiae

(a) Contents, form, and length

(1) * * *

(2) Except as provided in (3) and (4), rules 8.74 and 8.204 governs the form and contents of briefs. Rule 8.216 also applies in appeals in which a party is both appellant and respondent.

(3) * * *

(4) Any reference to a matter in the limited record must be supported by a citation to the limited record, including a limited clerk's transcript, abbreviated as "LCT," and a limited reporter's transcript, abbreviated as "LRT," where the matter appears.

(5) If an appeal involves a designated person, and the brief of a party who is not a designated person refers to juvenile case records that are not in the limited record, the designated person may petition the juvenile court for access to those records and may request an extension of time from the reviewing court under subdivision (c).

**(b)–(e) * * *

Rule 8.416. Appeals from all terminations of parental rights; dependency appeals in Orange, Imperial, and San Diego Counties and in other counties by local rule

(a) * * *

(b) Form of record

(1) The clerk's and reporter's transcripts and any transcripts for a limited record must comply with rules 8.45–8.47, relating to sealed and confidential records, and, except as provided in (2) and (3), with rule 8.144. An electronic clerk's transcript and any electronic limited clerk's transcript must also comply with rule 8.74.

(2)–(3) * * *

(c) Preparing, certifying, and sending the record

(1) Within 20 days after the notice of appeal is filed:

(A) Except as provided in (C), the clerk must prepare and certify as correct an original of the clerk's transcript and one copy each for the appellant, the respondent, the district appellate project, the child's Indian tribe if the tribe has intervened, and the child if the child is represented by counsel on appeal or if a recommendation has been made to the Court of Appeal for appointment of counsel for the child under rule 8.403(b)(2) and that recommendation is either pending with or has been approved by the Court of Appeal but counsel has not yet been appointed; and

(B) Except as provided in (C), the reporter must prepare, certify as correct, and deliver to the clerk an original of the reporter's transcript and the same number of copies as (A) requires of the clerk's transcript.

(C) If the appellant or the respondent is a designated person as defined in rule 8.400(b)(1), the clerk and the reporter must prepare and certify as correct separate transcripts for a limited record, as provided in rule 8.409(f), that includes only those records and transcripts in the juvenile case file to which the designated person has been granted access by the juvenile court. Originals and copies of a limited clerk's transcript and a limited reporter's transcript must be prepared and delivered as provided in (A) and (B).

(2) When the clerk's and reporter's transcripts are certified as correct, the clerk must immediately send:

(A) The original transcripts, including any transcripts for a limited record, to the reviewing court by the most expeditious method, noting the sending date on each original; and

(B) Except as provided in (C), one copy of each transcript to the district appellate project and to the appellate counsel for the following, if they have appellate counsel, by any method as fast as United States Postal Service express mail:

(i)–(iv) * * *

(C) One copy of the transcripts for a limited record, if any, to the designated person and the parties identified in (B). A designated person may receive a copy of the limited record only, and may not receive a copy of any records to which the designated person has not been granted access by the juvenile court.

(3) * * *

(d)–(h) * * *

Rule 8.450. Notice of intent to file writ petition to review order setting hearing under Welfare and Institutions Code section 366.26

(a)–(d) * * *

(e) Notice of intent

(1) A party seeking writ review under rules 8.450–8.452 must file in the superior court a notice of intent to file a writ petition and a request for the record. If the party seeking writ review is aware that a party to the writ proceeding is an individual not authorized to access the juvenile case file without an approved petition under Welfare and Institutions Code section 827(a)(1)(Q), the party seeking writ review must indicate so on the notice of intent to file a writ petition.

(2)–(4) * * *

(f)–(g) * * *

(h) Preparing the record

When the notice of intent is filed, the superior court clerk must:

(1) Immediately notify each court reporter by telephone and in writing to prepare a reporter's transcript of the oral proceedings at each session of the hearing that resulted in the order under review and to deliver the transcript to the clerk within 12 calendar days after the notice of intent is filed; ~~and~~

(2) If any party is a designated person, immediately notify each court reporter by telephone and in writing to prepare a separate reporter's transcript for a limited record of the oral proceedings at each session of the hearing that resulted in the order under review, and to which the designated person has been granted access by the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q), and deliver the transcript to the clerk within 12 calendar days after the notice of intent is filed;

(~~2~~)(3) Within 20 days after the notice of intent is filed, prepare a clerk's transcript that includes the notice of intent, proof of service, and all items listed in rule 8.407(a); and

(4) If any party is a designated person, within 20 days after the notice of intent is filed, prepare a separate clerk's transcript for a limited record that includes only those records in the juvenile case file to which the designated person has been granted access by the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q).

(i) Sending the record

When the transcripts are certified as correct, the superior court clerk must immediately send:

(1) The original transcripts, including any transcripts for a limited record, to the reviewing court by the most expeditious method, noting the sending date on each original~~.~~; ~~and~~

(2) Except as provided in (3), one copy of each transcript, including any transcripts for a limited record, to each counsel of record and any unrepresented party by any means as fast as United States Postal Service express mail; and

(3) One copy of the transcripts for a limited record to any party who is a designated person. A designated person may receive a copy of the limited

record only, and may not receive a copy of any records to which the designated person has not been granted access by the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q).

(j) * * *

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

(a) * * *

(b) Contents of the memorandum

(1) Except as provided in (2), the memorandum must:

~~(1)~~(A) ~~The memorandum must~~ Provide a summary of the significant facts, limited to matters in the record;

~~(2)~~(B) ~~The memorandum must~~ State each point under a separate heading or subheading summarizing the point and support each point by argument and citation of authority; and

~~(3)~~(C) ~~The memorandum must~~ Support any reference to a matter in the record by a citation to the record. The memorandum should explain the significance of any cited portion of the record and note any disputed aspects of the record.

(2) If the petitioner is a designated person, the summary of significant facts in the memorandum is limited to matters in the limited record. The memorandum must support any reference to a matter in the limited record by a citation to the limited record, including a limited clerk's transcript, abbreviated as "LCT," and a limited reporter's transcript, abbreviated as "LRT."

(c)–(i) * * *

Rule 8.454. Notice of intent to file writ petition under Welfare and Institutions Code section 366.28 to review order designating specific placement of a dependent child after termination of parental rights

(a)–(d) * * *

(e) Notice of intent

(1) A party seeking writ review under rules 8.454–8.456 must file in the superior court a notice of intent to file a writ petition and a request for the record. If the party seeking writ review is aware that a party to the writ proceeding is an individual not authorized to access the juvenile case file without an approved petition under Welfare and Institutions Code section 827(a)(1)(Q), the party seeking writ review must indicate so on the notice of intent to file a writ petition.

(2)–(5) * * *

(f)–(g) * * *

(h) Preparing the record

When the notice of intent is filed, the superior court clerk must:

(1) Immediately notify each court reporter by telephone and in writing to prepare a reporter's transcript of the oral proceedings at each session of the hearing that resulted in the order under review and to deliver the transcript to the clerk within 12 calendar days after the notice of intent is filed; ~~and~~

(2) If any party is a designated person, immediately notify each court reporter by telephone and in writing to prepare a separate reporter's transcript for a limited record of the oral proceedings at each session of the hearing that resulted in the order under review, and to which the designated person has been granted access by the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q), and to deliver the transcript to the clerk within 12 calendar days after the notice of intent is filed;

~~(2)~~(3) Within 20 days after the notice of intent is filed, prepare a clerk's transcript that includes the notice of intent, proof of service, and all items listed in rule 8.407(a); and

(4) If any party is a designated person, within 20 days after the notice of intent is filed, prepare a separate clerk's transcript for a limited record that includes only those records in the juvenile case file to which the designated person has been granted access by the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q).

(i) Sending the record

When the transcripts are certified as correct, the superior court clerk must immediately send:

(1) The original transcripts, including any transcripts for a limited record, to the reviewing court by the most expeditious method, noting the sending date on each original; ~~and~~

(2) Except as provided in (3), one copy of each transcript, including any transcripts for a limited record, to each counsel of record and any unrepresented party and unrepresented custodian of the dependent child by any means as fast as United States Postal Service express mail~~.~~; and

(3) One copy of the transcripts for a limited record to any party who is a designated person. A designated person may receive a copy of the limited record only, and may not receive a copy of any records to which the designated person has not been granted access by the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q).

(j) * * *

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

(a) * * *

(b) Contents of memorandum

(1) Except as provided in (2), the memorandum must:

~~(1)~~(A) ~~The memorandum must~~ Provide a summary of the significant facts, limited to matters in the record;

~~(2)~~(B) ~~The memorandum must~~ State each point under a separate heading or subheading summarizing the point and support each point by argument and citation of authority; and

~~(3)~~(C) ~~The memorandum must~~ Support any reference to a matter in the record by a citation to the record. The memorandum should explain the significance of any cited portion of the record and note any disputed aspects of the record.

(2) If the petitioner is a designated person, the summary of significant facts in the memorandum is limited to matters in the limited record. The memorandum must support any reference to a matter in the limited record by a citation to

the limited record, including a limited clerk's transcript, abbreviated as "LCT," and a limited reporter's transcript, abbreviated as "LRT."

(c)–(i) * * *

JV-285 Relative Information

Clerk stamps date here when form is filed.

DRAFT
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the Judicial Council

As the relative of a child who has been removed from the home, you may give written information to the court about the child at any time on this form or in a letter. After filling out this form, give it to the clerk of the court.

Please note that other people involved in the case, including the parents, will see your answers on this form. If you prefer to keep your contact information private, fill out *Confidential Information* (form JV-287) and do not write your address or telephone number below.

Social worker fills in court name and street address.

Superior Court of California, County of

Social worker fills in child's name and date of birth.

Child's Name:

Date of Birth:

Social worker fills in case number.

Case Number:

1 Your name: _____

Your Address: _____

_____

Your telephone number: _____

☐ *Check here if contact information is confidential and form JV-287 is attached.*

2 Your relation to the child: ☐ maternal ☐ paternal

☐ grandparent ☐ brother/sister ☐ aunt/uncle ☐ cousin

☐ family friend

☐ tribal extended family member

☐ other *(specify):* _____

3 Child's name: _____

4 ☐ I would like to talk to the judge at the next court hearing.

Please fill in as much of the following information as you know. If you need more space to respond to any section on this form, attach additional pages as needed and check the box at item 12.

5 Information about the child's medical, dental, and general physical health:

_____

_____

6 Information about the child's emotional and behavioral health:

_____

_____

7 Information about the child's education:

_____

_____

8 Other information that might be helpful to the court:

_____

_____

_____

_____

_____

_____

Child's name: _____ **Case Number:**

Below are some things you might do to help the child. You can pick some or none of the things listed below. It is up to the social worker and the court whether you will be asked to do these things.

9 I want to

- ☐ telephone the child.
- ☐ write letters to the child.
- ☐ take the child on outings.
- ☐ take the child to/from school.
- ☐ take the child to visits with brothers or sisters.
- ☐ take the child to therapy.
- ☐ take the child to family gatherings.
- ☐ help the social worker make a case plan for the child.
- ☐ take the child to visits with parents.
- ☐ take the child to medical appointments.
- ☐ supervise the child during visits with brothers and sisters.
- ☐ watch the child after school.
- ☐ have the child live with me.
- ☐ other *(describe):* _____

You can also help the parents. For example, you might help with transportation, housing, visits, or child care. It is up to the social worker and the court whether you will be asked to do these things.

10 I want to help the ☐ father ☐ mother
(Describe): _____

11 Other relatives who might be able to help the child:

a. Name: _____ Relationship to child: _____
Contact information: _____
or ☐ I want to keep the contact information confidential and ask that the child's social worker get this information from me.

b. Name: _____ Relationship to child: _____
Contact information: _____
or ☐ I want to keep the contact information confidential and ask that the child's social worker get this information from me.

c. Name: _____ Relationship to child: _____
Contact information: _____
or ☐ I want to keep the contact information confidential and ask that the child's social worker get this information from me.

12 ☐ If you need more space to respond to any section on this form, please check this box and attach additional pages.
Number of pages attached: _____

NOTICE

If you are not the child, the child's parent, or the child's legal guardian, you may have a right to challenge a decision by the juvenile court, but only in very limited circumstances. You may also need a court order granting you access to records in the juvenile case file. For more information, please see *Information on a Nonparty's Right to Seek Review and the Requirement to Request Access to Records* (form JV-291-INFO). You can get form JV-291-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.

Date:

_____ ▶ _____
Type or print your name *Sign your name*

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY* **DRAFT** **Not approved by the Judicial Council**
CHILD'S NAME: HEARING DATE AND TIME:	
CAREGIVER INFORMATION FORM	CASE NUMBER:

To the current caregiver, preadoptive parent, community care facility, or foster family agency caring for the child: You may submit written information to the court, and you may attend review and permanency hearings. You may use this optional form to provide written information to the court. Please type or print clearly in ink and submit the original and eight copies of the form to the court clerk's office at least five calendar days (or seven calendar days, if filing by mail) before the hearing. Be aware that other individuals involved in the case have access to this information. See form JV-290-INFO for instructions on how to complete this form and file it with the court.

1. a. Child's name:
   b. Child's date of birth: c. Child's age:
2. **Caregiver Information** *(Answer only if you are a caregiver, skip #3.):*
   a. Name of caregiver:
   b. Type of caregiver: ☐ Foster parent ☐ Relative ☐ Legal guardian ☐ Preadoptive parent ☐ Nonrelative extended family member ☐ Other *(specify):*
   c. The child has been living in my home for *(specify):* years months.
3. **Agency or Facility Information** *(Answer only if you are an agency or facility, skip #2.):*
   a. Name of agency or facility:
   b. Address:
   c. Telephone number:
   d. Type of facility: ☐ Foster family agency ☐ Community care agency ☐ Other *(specify):*
   e. The child has been placed with our agency/facility for *(specify):* years months and in the current home for (specify): years months.
   f. Name of person completing form: Title:
   g. Hours per week the person completing this form spends with the child *(specify):* hours/week.
   h. The information on this form consists of
      (1) ☐ the observations and recommendations of the person filling out this form.
      (2) ☐ the observations and recommendations of a group or team made up of the following individuals *(specify):*
4. **Current Status of Child's Medical, Dental, and General Physical and Emotional Health**
   a. ☐ There is no new or additional information since the last court hearing.
   b. ☐ There is new or additional information since the last court hearing, as follows *(do not include the names of doctors):*
5. **Current Status of Child's Education**
   a. ☐ There is no new or additional information since the last court hearing.
   b. ☐ There is new or additional information since the last court hearing, as follows *(do not include the names of schools):*

Form Approved for Optional Use
Judicial Council of California
JV-290 [Rev. January 1, 2020]

Welfare and Institutions Code, §§ 366.21(c), (d); 16010(f)(3);
Cal. Rules of Court, rule 5.534(m)
www.courtinfo.ca.gov

CHILD'S NAME:	CASE NUMBER:

6. **Child's Special Education Status**
   a. ☐ The child is a specila education student. Date of last Individualized Education Plan (IEP):
   b. ☐ The child is not a special education student.
   c. ☐ I do not know the child's special education status.

7. **Current Status of Child's Adjustment to Living Arrangement**
   a. ☐ There is no new or additional information since the last court hearing.
   b. ☐ There is new or additional information since the last court hearing, as follows:

8. **Current Status of Child's Social Skills and Peer Relationships**
   a. ☐ There is no new or additional information since the last court hearing.
   b. ☐ There is new or additional information since the last court hearing, as follows:

9. **Current Status of Child's Special Interests and Activities**
   a. ☐ There is no new or additional information since the last court hearing.
   b. ☐ There is new or additional information since the last court hearing, as follows:

10. **Other Helpful Information**
    a. ☐ There is no new or additional information since the last court hearing.
    b. ☐ There is new or additional information since the last court hearing, as follows:

11. **Recommendation for Disposition *(Outcome)***
    a. ☐ I have no recommendation for disposition *(outcome).*
    b. ☐ I am recommending the following disposition *(outcome).*

12. ☐ If you need more space to respond to any section on this form, please check this box and attach additional pages.
    Number of pages attached:

NOTICE

If you are not the child, the child's parent, or the child's legal guardian, you may have a right to challenge a decision by the juvenile court, but only in very limited circumstances. You may also need a court order granting you access to records in the juvenile case file. For more information, please see *Information on a Nonparty's Right to Seek Review and the Requirement to Request Access to Records* (form JV-291-INFO). You can get form JV-291-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF CAREGIVER OR FACILITY/AGENCY STAFF PERSON WHO HAS COMPLETED THIS FORM)

JV-291-INFO Information on a Nonparty's Right to Seek Review and the Requirement to Request Access to Records

Under very limited circumstances, a person who is not the child, parent, or guardian in a dependency or delinquency case has the right to seek review of decisions made by the juvenile court by filing an appeal or writ petition in the Court of Appeal. These individuals, however, are not entitled to access records in the juvenile court case file for purposes of an appeal or writ proceeding unless they get approval from the juvenile court. The purpose of this information sheet is to inform those individuals who are not the child, parent, or guardian, and who may have the right to seek review, of the requirement to request access to records in the juvenile court case file by filing a *Request for Disclosure of Juvenile Case File* (form JV-570).

1 When would I have the right to seek review?

To have a right to seek review, you must be harmed by an order or judgment of the juvenile court. In the vast majority of cases, only the child, parent, or guardian will have the right to file an appeal or a writ petition challenging a juvenile court ruling. However, the law also protects those individuals who have a compelling relationship to the child in certain situations.

You might have a right to appeal or file a writ petition if you are:

- The child's relative, who requested placement of the child but the placing agency did not assess the home for placement before a hearing to terminate parental rights.
- Someone who cared for the child and requested de facto parent status, which was denied.
- Someone who requested a change of court order through a section 388 petition (JV-180), which was denied.
- The child's sibling, who requested visitation or an exception to adoption based on preserving the sibling relationship, which was denied.
- A prospective adoptive parent challenging the juvenile court's decision to remove the child from the home.

2 If I want to file an appeal or writ petition, what additional steps must I take?

To have access to records in the juvenile case file for an appeal or writ proceeding, you must request access from the juvenile court. To make this request, you must file *Request for Disclosure of Juvenile Case File* (form JV-570). You will need to serve a copy of this form on all interested parties to the case if you know their names and addresses, including the child, parents, and social worker.

On the request form, you will need to identify which specific records you are requesting. Be sure to indicate the dates of the hearings that relate to the decision you are challenging. As the basis for the request, you may indicate the appeal or writ proceeding in the Court of Appeal. You will also need to explain why you are requesting the records. Your explanation should show how the records, including any transcripts, relate to the decision you are challenging (for example, a report or court order following a hearing on your issue).

When you file a notice of appeal or a notice of intent to file a writ petition, you will need to attach the juvenile court's order indicating the records to which the court has granted you access. Doing so will alert the clerk that you are authorized to access records in the case file and will ensure that a record will be prepared for you. The court's order is made on *Order After Judicial Review* (form JV-574).

It is recommended that you consult with an attorney when considering whether you should file an appeal or a writ petition and request access to the juvenile court record.

JV-295 De Facto Parent Request

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

The address of any licensed foster family home must remain confidential unless the judge or the foster parent authorizes release of the address. Court clerks should not send this page to the parties without a court order or authorization of the foster parent. (Welf. & Inst. Code, § 308(a).)

1 My/Our name(s): _____

My/Our address: _____

City: _____ State: _____ Zip: _____

My/Our phone #: _____

Fill in court name and street address:

Superior Court of California, County of

2 I am/We are asking that I/we be appointed de facto parent(s) of

(Child's name): _____

Court fills in case number when form is filed.

Case Number:

Date: _____ _____ ▶ _____

Type or print your name *Signature of person requesting de facto parent status*

Date: _____ _____ ▶ _____

Type or print your name *Signature of person requesting de facto parent status*

Date: _____ _____ ▶ _____

Type or print attorney's name *Signature of attorney (if applicable)*

Attorney's address: _____

City: _____ State: _____ Zip: _____

Attorney's phone #: _____

NOTICE

If you are not the child, the child's parent, or the child's legal guardian, you may have a right to challenge a decision by the juvenile court, but only in very limited circumstances. You may also need a court order granting you access to records in the juvenile case file. For more information, please see *Information on a Nonparty's Right to Seek Review and the Requirement to Request Access to Records* (form JV-291-INFO). You can get form JV-291-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.

JV-321 Request for Prospective Adoptive Parent Designation

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

After filling out this form, bring it to the clerk of the court. If you want to keep an address or telephone number confidential, do not write the information on this form. Instead, fill out Confidential Information—Prospective Adoptive Parent *(form JV-322).*

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's Name:

Date of Birth:

Fill in case number:

Case Number:

1 Information about the person or persons you want to be designated as prospective adoptive parents:

a. Name: _____

b. Name: _____

c. Street address: _____

d. City: _____ State: _____ Zip: _____

e. Telephone number: _____

2 If you are not a person in (1), fill out below.

a. Name: _____

b. I am the ☐ child ☐ child's attorney ☐ other
(specify role): _____

c. Street address: _____

d. City: _____ State: _____ Zip: _____

e. Telephone number: _____

3 If you are not the child's attorney and you know who the child's attorney is, fill out below.

a. Name of child's attorney: _____

b. Street address of child's attorney: _____

c. City: _____ State: _____ Zip: _____

d. Telephone number of child's attorney: _____

4 ☐ The child is 10 years of age or older. Child's telephone number: _____
or ☐ Telephone number is confidential.

5 The child has lived with the person from *(date):* _____ to the present.
In order for the person in (1) to become a prospective adoptive parent, the child must be living with that person now.

6 Date of Welfare and Institutions Code section 366.26 hearing: _____
The person in (1) should not file this form with the court until a Welfare and Institutions Code section 366.26 hearing has been scheduled.

7 ☐ The person in (1) is committed to adopting the child.

Child's name: _____

Case Number:

8 The person in **1** has *(check all that apply):*

a. ☐ Applied for an adoptive home study.
b. ☐ In a case in which tribal customary adoption is the permanent plan, been identified by the Indian child's tribe as the prospective adoptive parent.
c. ☐ Cooperated with an adoptive home study.
d. ☐ Signed an adoptive placement agreement.
e. ☐ Requested de facto parent status.
f. ☐ Been designated by the juvenile court or the licensed adoption agency as the adoptive parent.
g. ☐ Discussed a postadoption contact agreement with the social worker, child's attorney, child's Court Appointed Special Advocate (CASA) volunteer, adoption agency, or court.
h. ☐ Worked to overcome any impediments that have been identified by the California Department of Social Services or the licensed adoption agency.
i. ☐ Attended any of the classes required of prospective adoptive parent.
j. ☐ Taken other steps toward adopting the child *(explain):* _____

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

If you need more space, attach a sheet of paper and write "JV-321, Item 8—Steps Toward Adoption" at the top. Number of pages attached: _____

I declare under penalty of perjury under the laws of the State of California that the information in items 1 through 8 is true and correct, which means if I lie on this form, I am committing a crime.

Date:

_____ ▶ _____
Type or print your name *Sign your name*

_____ ▶ _____
Type or print your name *Sign your name*

NOTICE

If you are not the child, the child's parent, or the child's legal guardian, you may have a right to challenge a decision by the juvenile court, but only in very limited circumstances. You may also need a court order granting you access to records in the juvenile case file. For more information, please see *Information on a Nonparty's Right to Seek Review and the Requirement to Request Access to Records* (form JV-291-INFO). You can get form JV-291-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.

JV-325 Objection to Removal

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's Name:

Date of Birth:

Fill in case number:

Case Number:

If you do not agree with the removal, you can request a court hearing by filling out this form. The following people can object to removal: a current caregiver, the child's attorney, the child (if 10 years of age or older), the child's identified Indian tribe or custodian, and the child's CASA program. Bring this form to the clerk of the court. If you want to keep an address or a phone number confidential, fill out Confidential Information—Prospective Adoptive Parent *(form JV-322), and do not write the address or phone number on this form.*

If you are a caregiver or the child and you requested the hearing, the clerk will provide notice of the hearing to you and any other participants.

If you are the child's attorney and you requested the hearing, you must provide notice of the hearing to all other participants.

1 Information about the caregiver or caregivers:

a. Name: _____

b. Name: _____

c. Address: _____

d. Phone number: _____

2 If you *(the person objecting to the removal)* are not the caregiver, fill out below.

a. Name: _____

b. I am the ☐ child ☐ child's attorney ☐ child's identified Indian tribe ☐ child's identified Indian custodian ☐ child's CASA program

_____

c. Address: _____

d. Phone number: _____

3 If you are not the child's attorney and you know who the child's attorney is, fill out below.

a. Name of child's attorney: _____

b. Address of child's attorney: _____

c. Phone number of child's attorney: _____

4 ☐ The child is 10 years of age or older. Child's telephone number: _____
☐ Confidential phone number in court file

5 ☐ The child has an identified Indian tribe *(specify tribe):* _____
Phone number of tribe: _____

6 ☐ The child has a Court Appointed Special Advocate (CASA) volunteer.
Phone number of CASA program, if known: _____

7 ☐ The caregiver or caregivers have been designated by the judge as the child's prospective adoptive parent or parents.

Child's name: _____

Case Number:

8 ☐ The caregiver or caregivers may meet the definition of prospective adoptive parent or parents. *Request for Prospective Adoptive Parent Designation* (form JV-321), will be filed with this objection and request for hearing.

9 The social worker should not remove the child from the caregiver's home because *(give reasons):*

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

If you need more space, attach a sheet of paper and write "JV-325, Item 9—Reasons to Not Remove Child" at the top. Number of pages attached: _____

I declare under penalty of perjury under the laws of the State of California that the information on this form is true and correct, which means that if I lie on this form, I am committing a crime.

Date:

_____ ▶ _____

Type or print your name *Sign your name*

NOTICE

If you are not the child, the child's parent, or the child's legal guardian, you may have a right to challenge a decision by the juvenile court, but only in very limited circumstances. You may also need a court order granting you access to records in the juvenile case file. For more information, please see *Information on a Nonparty's Right to Seek Review and the Requirement to Request Access to Records* (form JV-291-INFO). You can get form JV-291-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms*.

What if I am deaf or hard of hearing?

Requests for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the proceeding. Contact the clerk's office or go to *www.courts.ca.gov/forms* for *Request for Accommodations by Persons With Disabilities and Response* (form MC-410). (Civ. Code, § 54.8.)

JV-570 Request for Disclosure of Juvenile Case File

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Fill in case number, if known:

Case Number:

If you are requesting a court order to obtain the juvenile case file of a child who is alive, fill out all items on this form, and file it with the court. You must also fill out and file Proof of Service—Request for Disclosure *(form JV-569).*

If you are a member of the public requesting the juvenile case file of a child who is deceased, you can:

a. *Fill out items 1–4 and 7 on this form and file it with the court. You must then provide a copy of this form to the Custodian of Records of the county child welfare agency, who will then provide notice of this request.*

Or

b. *Do not complete the form and request the juvenile case file from the child welfare agency under Welfare and Institutions Code section 10850.4.*

(1) Your name: _____

Relationship to child *(if any):* _____

Street address: _____

City: _____ State: _____ Zip: _____

Telephone number: _____

Lawyer *(if any) (name, address, telephone numbers, and State Bar number):* _____

_____

_____

(2) Name of child *(if known):* _____

(3) Child's date of birth *(if known):* _____

(4) a. ☐ A petition regarding the child in (2) has been filed under
- ☐ Welfare and Institutions Code section 300
- ☐ Welfare and Institutions Code section 601
- ☐ Welfare and Institutions Code section 602 or

b. ☐ I believe the child in (2) died as a result of abuse or neglect. Approximate date of death: _____

Note: You must provide a copy of this form to all interested parties if you know their names and addresses.

Your name: _____ **Case Number:**

5 The records I want are: *(Describe in detail. Attach more pages if you need more space. For a nonparty seeking review in an appellate court, specify the request is for transcripts and evidence considered by the juvenile court at hearings related to the appeal or writ proceeding.)*

☐ Continued on Attachment 5.

6 The reasons for this request are:

a. ☐ Civil court case pending in *(name of county):* _____
Case number: _____ Hearing date: _____

b. ☐ Criminal court case pending in *(name of county):* _____
Case number: _____ Hearing date: _____

c. ☐ Juvenile court case pending in *(name of county):* _____
Case number: _____ Hearing date: _____

d. ☐ Appellate court case by a nonparty.
Case number *(if applicable):* _____
Hearing dates related to the juvenile court order being challenged or to be challenged on appeal or by writ:

e. ☐ Other *(specify):* _____
Case number: _____ Hearing date: _____

7 I need the records because: *(Describe in detail. Attach more pages if you need more space.)*

☐ Continued on Attachment 7.

8 I declare under penalty of perjury under the laws of the State of California that the information in this form is true and correct. This means that if I lie on this form, I am guilty of a crime.

Date:

_____ ▶ _____
Type or print your name *Sign your name*

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	*FOR COURT USE ONLY* **DRAFT** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
NOTICE OF APPEAL—JUVENILE	CASE NUMBER:

— NOTICE —

- You or your attorney **must** fill in items 1 and 2 and sign this form at the bottom of the page. If possible, to help process your appeal, fill in items 6–8 on the reverse of this form.
- Rule 8.406 says that to appeal from an order or judgment, you must file a written notice of appeal within **60** days after rendition of the judgment or the making of the order being appealed or, in matters heard by a referee, within **60** days after the order of the referee becomes final.
- You are advised that if you wish to file an appeal of the order for transfer to a tribal court, you (1) may ask the juvenile court to stay (delay the effective date of) the transfer order and (2) must file the appeal before the transfer to tribal jurisdiction is finalized. Read rule 5.483 and the advisory committee comment.
- If you are not the child, the child's parent, or the child's legal guardian, you may have a right to challenge a decision by the juvenile court, but only in very limited circumstances. You may also need a court order granting you access to records in the juvenile case file. For more information, please see *Information on a Nonparty's Right to Seek Review and the Requirement to Request Access to Records* (form JV-291-INFO). You can get form JV-291-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.

1. I appeal from the findings and orders of the court *(specify date of order or describe order):*

2. This appeal is filed by
   a. Appellant *(name):*
   b. Address: c. Phone number:
   d. Name, address, and phone number of person to be contacted *(if different from appellant):*

   e. (1) ☐ Appellant is not the department, child, parent, or legal guardian.
   (2) ☐ Appellant has been granted access to specified records in the juvenile case file, and the court's order under Welfare and Institutions Code section 827(a)(1)(Q) on form JV-574 *Order after Judicial Review,* if available, is attached.

3. ☐ I request that the court appoint an attorney on appeal. I ☐ was ☐ was not represented by an appointed attorney in the superior court.

4. ☐ The appeal involves a respondent who is not the department, child, parent, or legal guardian. This individual may require the preparation of a limited record as defined in rule 8.400(b)(2).

Date:

TYPE OR PRINT NAME

▶ SIGNATURE OF ☐ APPELLANT ☐ ATTORNEY

5. Items 6 through 8 on the reverse are ☐ completed ☐ not completed.

Form Approved for Optional Use
Judicial Council of California
JV-800 [Rev. January 1, 2020]

NOTICE OF APPEAL—JUVENILE

Cal. Rules of Court, rules 8.400, 8.401, 8.405, 8.406
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

6. Appellant is the
   a. ☐ child.
   b. ☐ mother.
   c. ☐ father.
   d. ☐ guardian.
   e. ☐ de facto parent.
   f. ☐ county welfare department.
   g. ☐ district attorney.
   h. ☐ child's tribe.
   i. ☐ other *(state relationship to child or interest in the case):*

7. This notice of appeal pertains to the following child or children *(specify number of children included):*
   a. Name of child:
      Child's date of birth:
   b. Name of child:
      Child's date of birth:
   c. Name of child:
      Child's date of birth:
   d. Name of child:
      Child's date of birth:
      ☐ Continued in Attachment 5.

8. The order appealed from was made under Welfare and Institutions Code *(check all that apply)*
   a. ☐ **Section 305.5** (transfer to tribal court)
      ☐ Granting transfer to tribal court
   b. ☐ **Section 360** (declaration of dependency) ☐ Removal of custody from parent or guardian ☐ Other orders
      ☐ with review of section 300 jurisdictional findings
      Dates of hearing *(specify):*
   c. ☐ **Section 366.26** (selection and implementation of permanent plan in which a petition for extraordinary writ review that substantively addressed the specific issues to be challenged was timely filed and summarily denied or otherwise not decided on the merits)
      ☐ Termination of parental rights ☐ Appointment of guardian ☐ Planned permanent living arrangement
      Dates of hearing *(specify):*
   d. ☐ **Section 366.28** (order designating a specific placement after termination of parental rights in which a petition for extraordinary writ review that substantively addressed the specific issues to be challenged was timely filed and summarily denied or otherwise not decided on the merits)
      Dates of hearing *(specify):*
   e. ☐ Other appealable orders relating to dependency *(specify):*
      Dates of hearing *(specify):*
   f. ☐ **Section 725** (declaration of wardship and other orders)
      ☐ with review of section 601 jurisdictional findings
      ☐ with review of section 602 jurisdictional findings
      Dates of hearing *(specify):*
   g. ☐ Other appealable orders relating to wardship *(specify):*
      Dates of hearing *(specify):*
   h. ☐ Other *(specify):*

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:	*FOR COURT USE ONLY*
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **Not approved by** **the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
NOTICE OF INTENT TO FILE WRIT PETITION AND REQUEST FOR RECORD TO REVIEW ORDER SETTING A HEARING UNDER WELFARE AND INSTITUTIONS CODE SECTION 366.26 **(California Rules of Court, Rule 8.450)**	CASE NUMBER:

NOTICE

The juvenile court has decided it will make a permanent plan for this child that may result in the termination of your parental rights and adoption of the child. If you want an appeals court to review the juvenile court's decision, you must first tell the juvenile court by filing a Notice of Intent. You may use this form as your Notice of Intent. In most cases, you have only 7 days from the court's decision to file a Notice of Intent. Please see page 2 for your specific deadline for filing this form.

If you are not the child, the child's parent, or the child's legal guardian, you may have a right to challenge a decision by the juvenile court, but only in very limited circumstances. You may also need a court order granting you access to records in the juvenile case file. For more information, please see *Information on a Nonparty's Right to Seek Review and the Requirement to Request Access to Records* (form JV-291-INFO). You can get form JV-291-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.

1. Petitioner's name:
2. Petitioner's address:
3. Petitioner's phone number:
4. Petitioner is
   a. ☐ parent *(name):*
   b. ☐ guardian.
   c. ☐ County welfare agency.
   d. ☐ child.
   e. ☐ other *(state relationship to child or interest in the case):*
5. Child's name: Child's date of birth:
6. a. On *(date):* the juvenile court made an order setting a hearing under Welfare and Institutions Code section 366.26. Petitioner intends to file a writ petition to challenge the findings and orders made by the court on that date and requests that the clerk assemble the record.
   b. List all known dates of the hearing that resulted in the order:
7. The hearing under Welfare and Institutions Code section 366.26 is set for *(date, if known):*
8. a. ☐ Petitioner is not the department, child, parent, or legal guardian.
   b. ☐ Petitioner has been granted access to specified records in the juvenile case file, and the court's order under Welfare and Institutions Code section 827(a)(1)(Q) on form *Order after Judicial Review* (form JV-574), if available, is attached.
9. ☐ The writ involves a respondent who is not the department, child, parent, or legal guardian. This individual may require the preparation of a limited record as defined in rule 8.400(b)(2).

Date:

TYPE OR PRINT NAME

SIGNATURE OF ☐ PETITIONER ☐ ATTORNEY

The *Notice of Intent to File Writ Petition* must be signed by the person who intends to file the writ petition or by the attorney of record.

PLEASE READ THE BACK OF THIS FORM FOR IMPORTANT INFORMATION AND DEADLINES

Form Approved for Optional Use
Judicial Council of California
JV-820 [Rev. January 1, 2020]

APPELLATE CASE TITLE:	APPELLATE CASE NUMBER:

WHAT WILL HAPPEN AT THE HEARING TO MAKE A PERMANENT PLAN?

- The court may order the termination of parental rights and adoption of the child.
- The court may order a legal guardianship for the child.
- The court may order a permanent plan of placement of the child with a fit and willing relative.
- The court may order a permanent plan of placement of the child in a foster home.

The above options are listed in the normal order of preference, because the main goal is to give the child a stable and permanent living situation.

SEE WELF. & INST. CODE, § 366.26 FOR MORE INFORMATION

HOW DO I CHALLENGE THE COURT'S DECISION TO SET A HEARING TO MAKE A PERMANENT PLAN?

- File this Notice of Intent to File Writ Petition and Request for Record in the juvenile court within the time specified below in the next box. This will let the court know you intend to file a writ petition, and the court will prepare the record.
- You will be notified after the record is filed in the Court of Appeal, and you will get copies of the record. **You have 10 days after the record is filed in the Court of Appeal to file and serve your writ petition.**
- You may use the optional Judicial Council form JV-825 to complete your writ petition, or, if you have an attorney, your attorney can write the writ petition for you.
- After you file a writ petition in the Court of Appeal, you must send copies of the petition to all of the parties in the case, to the child's CASA volunteer, to the child's present caregiver, and to any de facto parent who has standing to participate in the juvenile court proceedings. With your writ petition, you must file a Proof of Service confirming you have sent a copy of the petition to these people.

SEE WELF. & INST. CODE, § 366.26(l); CAL. RULES OF COURT, RULES 8.450–8.452

WHEN DO I HAVE TO FILE MY NOTICE OF INTENT TO FILE WRIT PETITION AND REQUEST FOR RECORD?

- If you were present when the court set the hearing to make a permanent plan, you must file the Notice of Intent within 7 days from the date the court set the hearing.
- If you were not present in court but were given notice by mail of the court's decision to set a hearing to make a permanent plan and you live in California, you must file the Notice of Intent within 12 days from the date the clerk mailed the notification.
- If you were not present in court but were given notice by mail of the court's decision to set a hearing to make a permanent plan and you live in a state other than California, you must file the Notice of Intent within 17 days from the date the clerk mailed the notification.
- If you were not present in court but were given notice by mail of the court's decision to set a hearing to make a permanent plan and you live outside the United States, you must file the Notice of Intent within 27 days from the date the clerk mailed the notification.
- If you are a party in a custodial institution you must give the Notice of Intent to custodial officials for mailing within the time specified in this box.

SEE CAL. RULES OF COURT, RULES 8.450, 5.540(c)

- If the order setting the hearing was made by a referee not acting as a temporary judge, you have an additional 10 days to file the Notice of Intent.

SEE WELF. & INST. CODE, §§ 248–252; CAL. RULES OF COURT, RULES 5.538, 5.540

SIGNATURE ON NOTICE OF INTENT

- Must be signed by the person who intends to file the writ petition, or
- By the attorney of record

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
NOTICE OF INTENT TO FILE WRIT PETITION AND REQUEST FOR RECORD TO REVIEW ORDER DESIGNATING OR DENYING SPECIFIC PLACEMENT OF A DEPENDENT CHILD AFTER TERMINATION OF PARENTAL RIGHTS **(California Rules of Court, Rule 8.454)**	CASE NUMBER:

NOTICE

The juvenile court has ordered or denied a specific placement for this child. If you want an appeals court to review the juvenile court's decision, you must first tell the juvenile court by filing a Notice of Intent. You may use this form as your Notice of Intent. In most cases, you have only 7 days from the court's placement decision to file a Notice of Intent. Please see page 2 for your specific deadline for filing this form.

If you are not the child, the child's parent, or the child's legal guardian, you may have a right to challenge a decision by the juvenile court, but only in very limited circumstances. You may also need a court order granting you access to records in the juvenile case file. For more information, please see *Information on a Nonparty's Right to Seek Review and the Requirement to Request Access to Records* (form JV-291-INFO). You can get form JV-291-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.

1. Petitioner's name:
2. Petitioner's address:
3. Petitioner's phone number:
4. Petitioner is
   a. ☐ child's caretaker *(specify dates in your care):*
   b. ☐ child.
   c. ☐ county welfare department.
   d. ☐ legal guardian.
   e. ☐ other *(state relationship to child or interest in the case):*
5. Child's name: Child's date of birth:
6. a. On *(date):* the juvenile court terminated parental rights under Welfare and Institutions Code section 366.26.
   b. On *(date):* the court made a specific placement order or denied a specific placement request that the dependent child is to reside in, be retained in, or be removed from a specific placement. Petitioner intends to file a writ petition to challenge the specific placement order or the denial of a specific placement request made by the court on that date and requests that the clerk assemble the record.
7. a. ☐ Petitioner is not the department, child, parent, or legal guardian.
   b. ☐ Petitioner has been granted access to specified records in the juvenile case file, and the court's order under Welfare and Institutions Code section 827(a)(1)(Q) on *Order after Judicial Review* (form JV-574), if available, is attached.

PLEASE READ THE BACK OF THIS FORM FOR IMPORTANT INFORMATION AND DEADLINES

Form Approved for Optional Use
Judicial Council of California
JV-822 [Rev. January 1, 2020]

NOTICE OF INTENT TO FILE WRIT PETITION AND REQUEST FOR RECORD TO REVIEW ORDER DESIGNATING OR DENYING SPECIFIC PLACEMENT OF A DEPENDENT CHILD AFTER TERMINATION OF PARENTAL RIGHTS
(California Rules of Court, Rule 8.454)

Welfare and Institutions Code, § 366.28; Cal. Rules of Court, rule 8.454;
www.courts.ca.gov

8. ☐ The writ involves a respondent who is not the department, child, parent, or legal guardian. This individual may require the preparation of a limited record as defined in rule 8.400(b)(2).

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF ☐ PETITIONER ☐ CHILD'S ATTORNEY)

The *Notice of Intent to File Writ Petition* must be signed by the person intending to file the writ petition or, if it is to be filed on behalf of the child, by the child's attorney of record. See the back of this form for more information.

HOW DO I CHALLENGE THE COURT'S PLACEMENT DECISION AFTER TERMINATION OF PARENTAL RIGHTS?

- File this *Notice of Intent to File Writ Petition and Request for Record* in the juvenile court within the time listed below in the next box. This will let the court know you intend to file a writ petition, and the court will prepare the record.
- You will be notified after the record is filed in the Court of Appeal, and you will get a copy of the record. **You have 10 days after the record is filed in the Court of Appeal to file and serve your writ petition.**
- You may use the optional Judicial Council form JV-825 to complete your writ petition, or, if you have an attorney, your attorney can write the writ petition for you.
- After you file a writ petition in the Court of Appeal you must send a copy of the petition to all of the parties in the case, to the child's CASA volunteer, to the child's present caregiver, and to any de facto parent who has standing to participate in the juvenile court proceedings.

SEE CAL. RULES OF COURT, RULES 8.454–8.456

WHEN DO I HAVE TO FILE MY NOTICE OF INTENT TO FILE WRIT PETITION AND REQUEST FOR RECORD?

- If you were present when the court granted or denied the specified placement, you must file the *Notice of Intent* within 7 days from the date the court granted or denied the specified placement.
- If you were not present in court but were given notice by mail of the court's decision to grant or deny the specified placement, you must file the *Notice of Intent* within 12 days from the date the clerk mailed the notification.
- If the order granting or denying the specific placement was made by a referee not acting as a temporary judge, you must file the *Notice of Intent* within 17 days from the date the court set the hearing.

SIGNATURE ON *NOTICE OF INTENT*

- Must be signed by the person who intends to file the writ petition, *or*
- If petition will be filed on behalf of a child, by the child's attorney, *or*
- The reviewing court may waive this requirement for good cause on the basis of a declaration by the attorney of record explaining why the party could not sign the notice. (Cal. Rules of Court, rule 8.450(e)(3).)

Item 09

JUDICIAL COUNCIL OF CALIFORNIA

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

MEMORANDUM

Date
July 12, 2019

To
Members of the Appellate Advisory Committee

From
Eric Long,
Attorney, Legal Services

Subject
Appellate Procedure: Service Copy of a Petition for Review

Action Requested
Please review before July 19 committee meeting

Deadline
July 19, 2019

Contact
Eric Long
Attorney, Legal Services
415-865-7691
eric.long@jud.ca.gov

Executive Summary

The Information Technology Advisory Committee and Appellate Advisory Committee recommended circulating for public comment a proposal amending the appellate rule regarding petitions for review to remove the requirement to send to the Court of Appeal a service copy of a petition for review when a petition is filed electronically. The proposal was circulated for public comment as part of the regular spring comment cycle from April 11 to June 10, 2019. One bar association and one superior court submitted comments, both agreeing with the proposal without modification. The Joint Appellate Technology Subcommittee met on July 1, 2019 to review the public comments concerning this proposal and recommended approval, and the Information Technology Advisory Committee met on July 10, 2019 and voted to recommend the Judicial Council approve the proposal without modification.

Background

Rule 8.500 governs petitions for review in the Supreme Court. Subdivision (f)(1) of this rule

provides that "[t]he petition must also be served on the superior court clerk and the clerk/executive officer of the Court of Appeal." This service requirement has existed in the rule since it was adopted in 2003. However, under California Rules of Court, rule 8.71 and rules 3 and 4 of the Supreme Court Rules Regarding Electronic Filing, electronic filing in the Supreme Court is now mandatory for parties represented by counsel and voluntary for self-represented litigants and trial courts. As a result, a large majority of petitions for rehearing are now filed electronically. Under current practice, when a petition for review is accepted for electronic filing by the Supreme Court, the Court of Appeal automatically receives a filed/endorsed copy of the petition through the electronic filing service provider (EFSP). Thus, in actual practice, the electronic filing of a petition satisfies the requirement to serve the Court of Appeal with a copy, and there is no need for an electronic filer to serve the Court of Appeal with another copy as required by the existing rule. The proposal clarifies that when a petition for review is filed electronically, the filer does not need to serve a separate copy on the Court of Appeal. When a petition for review is filed in paper, however, the clerk/executive officer of the Court of Appeal must still be served, and in all instances, a copy of the petition must be served on the superior court clerk.

The proposal circulated for public comment amends rule 8.500(f)(1) as follows:

> The petition must also be served on the superior court clerk and, if filed in paper format, the clerk/executive officer of the Court of Appeal. Electronic filing of a petition constitutes service of the petition on the clerk/executive officer of the Court of Appeal.

As stated above, the two comments received were both in support of the proposal without modification.

Committee Task

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

- Approve the proposal and drafts;
- Modify or reject the proposal and drafts; or
- Ask staff or committee members for further information/analysis.

Attachments

1. Draft Report to the Judicial Council
2. Draft comment chart
3. Invitation to comment, SPR19-08

JUDICIAL COUNCIL OF CALIFORNIA
455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 24, 2019

Title
Appellate Procedure: Service Copy of a Petition for Review

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 8.500

Recommended by
Appellate Advisory Committee
Hon. Louis R. Mauro, Chair
Information Technology Advisory Committee
Hon. Sheila F. Hanson, Chair
Hon. Louis R. Mauro, Vice-Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
July 12, 2019

Contact
Eric Long, 415-865-7691
eric.long@jud.ca.gov

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

DRAFT

Executive Summary

The Information Technology Advisory Committee and Appellate Advisory Committee recommend amending the rule regarding petitions for review in the California Supreme Court to remove the requirement to send to the Court of Appeal a service copy of a petition for review when a petition is filed electronically. Under current practice, when a petition for review is accepted for electronic filing by the Supreme Court, the Court of Appeal automatically receives a filed/endorsed copy of the petition through the electronic filing service provider (EFSP). Thus, in actual practice, the electronic filing of a petition satisfies the requirement to serve the Court of Appeal with a copy, and there is no need for an electronic filer to serve the Court of Appeal with another copy as required by the rules. The proposed amendment does not change the requirement to serve a copy of the petition on the superior court clerk in all instances, and, if a petitioner files in paper format, to also serve a copy of the petition on the Court of Appeal.

Recommendation

The Information Technology Advisory Committee and Appellate Advisory Committee recommend that the Judicial Council, effective January 1, 2020, add language to California Rules of Court, rule 8.500(f)(1) that requires a petitioner to serve a copy of a petition for review on the clerk/executive officer of the Court of Appeal only when the petition is filed in paper format, and to clarify that a service copy to the Court of Appeal is not required when a petition is filed electronically.

The text of the amended rule is attached at page 4.

Relevant Previous Council Action

Although the Judicial Council has acted previously on this rule, this proposal recommends only minor revisions that streamline the service requirements adopted through prior action. The Judicial Council adopted the predecessor to rule 8.500(f) effective January 1, 2004. Effective January 1, 2007, the Judicial Council amended the rule to require that a petition for review also be served on the clerks of the superior court and the Court of Appeal. Effective January 1, 2018, the Judicial Council amended the rule again to require service of the petition for review on the clerk for the superior court and the clerk/executive officer of the Court of Appeal.

Analysis/Rationale

Recognizing that the courts of appeal are automatically receiving copies of petitions for review when they are filed electronically this proposal would clarify that electronic filing constitutes service of a petition on the clerk/executive officer of the Court of Appeal, and that electronic filers do not need to serve a duplicate copy of an electronically-filed petition on the clerk/executive officer of the Court of Appeal. When a petition for review is filed in paper format, however, the filer must still serve the petition on the superior court clerk and the clerk/executive officer of the Court of Appeal. The current EFSP automatically sends a copy of the petition for review to the clerk/executive officer of the Court of Appeal when it is filed electronically. But the current rule nevertheless requires an electronic filer to serve a copy of the petition on the clerk/executive officer of the Court of Appeal. This service requirement causes additional effort and expense for the electronic filer and additional workload for the courts of appeal.

Policy implications

This proposal is intended to eliminate unnecessary cost and effort for counsel and self-represented litigants in preparing and serving copies of e-filed petitions, and to eliminate duplicative processing efforts for appellate court staff relating to petitions that, in effect, already have been served on the Court of Appeal.

Comments

This proposal was circulated for public comment as part of the regular spring comment cycle from April 11 to June 10, 2019. One bar association and one superior court submitted comments, both agreeing with the proposal, without modifications.

DRAFT

A chart with the full text of the comments received and the committees' responses is attached at pages 5–6.

Alternatives considered

The committees considered maintaining the current requirement that petitioners serve on the Court of Appeal duplicate copies of petitions filed electronically. The committees concluded that the proposed changes were appropriate because they eliminate unnecessary and duplicative effort and expense.

Fiscal and Operational Impacts

The committees anticipate that appellate courts will likely incur some cost to train staff on the new procedures, but do not anticipate any appreciable implementation costs. The superior court commenter states that minimal training in the revised procedures would be needed. The committees expect that the amended rule should save court resources by eliminating duplicate paper filings for electronically filed petitions.

Attachments and Links

1. Cal. Rules of Court, rule 8.500, at page 4
2. Chart of comments, at pages 5–6

DRAFT

SPR19-08
Appellate Procedure: Service Copy of a Petition for Review
(Amend Cal. Rules of Court, rule 8.500)

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

	Commenter	Position	Comment	DRAFT Committees Responses
1.	Orange County Bar Association by Deirdre Kelly, President	A	No specific comment.	The committees note the commenter's support for the proposal.
2.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	•Does the proposal appropriately address the stated purpose? Yes. The committees also seek comments from courts on the following cost and implementation matters: •Would the proposal provide cost savings? If so, please quantify. Yes. It would save the costs of printing copies for the parties. •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 working the counter in Appeals. Procedures would need to be revised to indicate the change. •Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.	The committees note the commenter's support for the proposal, and appreciate the commenter's input on these questions.

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

DRAFT

SPR19-08
Appellate Procedure: Service Copy of a Petition for Review (Amend Cal. Rules of Court, rule 8.500)

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	Commenter	Position	Comment	DRAFT Committees Responses
			•How well would this proposal work in courts of different sizes? Fine.	

DRAFT

JUDICIAL COUNCIL OF CALIFORNIA

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

INVITATION TO COMMENT

SPR19-08

Title
Appellate Procedure: Service Copy of a Petition for Review

Action Requested
Review and submit comments by June 10, 2019

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rule 8.500

Proposed Effective Date
January 1, 2020

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

Information Technology Advisory Committee
Hon. Sheila F. Hanson, Chair
Hon. Louis R. Mauro, Vice-Chair

Contact
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Executive Summary and Origin

To update court procedures and provide clarity, the Appellate Advisory Committee and the Information Technology Advisory Committee propose amending the rule regarding petitions for review in the California Supreme Court to remove the requirement to send to the Court of Appeal a separate service copy of an electronically filed petition for review. Under current practice, when a petition for review is accepted for electronic filing by the Supreme Court, the Court of Appeal automatically receives a filed/endorsed copy of the petition through the electronic filing service provider (EFSP). Thus, in actual practice, the electronic filing of a petition satisfies the requirement to serve the Court of Appeal, and there is no need for a petitioner to serve the Court of Appeal with another copy as required by the rules. This proposal does not change the requirement to serve the Court of Appeal with a separate copy if a petition for review is filed in paper form. This proposal originated from a suggestion submitted by an appellate court administrator.

Background

Rule 8.500 governs petitions for review in the Supreme Court. Subdivision (f)(1) of this rule provides that "[t]he petition must also be served on the superior court clerk and the

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. It is circulated for comment purposes only.

clerk/executive officer of the Court of Appeal."[1] This requirement has existed in the rule since it was adopted as rule 28 on January 1, 2003.[2] However, under rule 8.71 of the California Rules of Court and rules 3 and 4 of the Supreme Court Rules Regarding Electronic Filing, electronic filing in the Supreme Court is now mandatory for parties represented by counsel and voluntary for self-represented litigants and trial courts. As a result, a large majority of petitions for rehearing are now filed electronically.

Notably, the Supreme Court has recognized the redundancy of requiring separate service on the Court of Appeal of an electronically filed petition. On its webpage, the Supreme Court provides this advisement:

> Notwithstanding the requirements set forth in California Rules of Court, Rule 8.500(f)(1), submission of a petition for review through TrueFiling that is accepted for filing by the Supreme Court constitutes service of the petition on the Court of Appeal.

The Proposal

This proposal would clarify that when a petition for review is filed electronically, the filer does not need to serve a separate copy on the Court of Appeal. When a petition for review is filed in paper, however, the clerk/executive officer of the Court of Appeal must still be served.

This proposal is intended to eliminate duplicative and unnecessary effort by counsel, self-represented litigants, and appellate court staff. The current EFSP automatically sends a copy of the petition for review to the clerk/executive officer of the Court of Appeal when it is filed electronically. But the rules require the filer to serve the clerk/executive officer of the Court of Appeal. This causes additional effort and expense for the filer, and additional workload for the clerk/executive officer of the Court of Appeal.

The committee proposes amending rule 8.500(f)(1) as follows:

> The petition must also be served on the superior court clerk and<u>, if filed in paper format,</u> the clerk/executive officer of the Court of Appeal. <u>Electronic filing of a petition constitutes service of the petition on the clerk/executive officer of the Court of Appeal.</u>

Alternatives Considered

The committee considered maintaining the current requirements that parties serve the Courts of Appeal separately. The committee concluded that these rule changes are appropriate because they eliminate unnecessary and duplicative effort and expense.

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[1] An advisory committee comment clarifies that the service requirement applies only to the petition, not to an answer or a reply.

[2] Rule 28 was renumbered as rule 8.500 in 2007.

Fiscal and Operational Impacts

This proposal should not have appreciable implementation costs, and should save court resources by eliminating duplicate electronic filings.

Request for Specific Comments

In addition to comments on the proposal as a whole, the committees are interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The committees also seek comments from *courts* on the following cost and implementation matters:

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

Attachments and Links

1. Cal. Rules of Court, rule 8.500, at page 4

Rule 8.500 of the California Rules of Court would be amended, effective January 1, 2020, to read:

Title 8. Appellate Rules

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

Chapter 9. Proceedings in the Supreme Court

Rule 8.500. Petition for review

(a)–(e) * * *

(f) Additional requirements

(1) The petition must also be served on the superior court clerk and, if filed in paper format, the clerk/executive officer of the Court of Appeal. Electronic filing of a petition constitutes service of the petition on the clerk/executive officer of the Court of Appeal.

(2)–(3) * * *

(g) * * *

Item 10

JUDICIAL COUNCIL OF CALIFORNIA

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Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

MEMORANDUM

Date
July 12, 2019

To
Members of the Appellate Advisory Committee

From
Eric Long
Attorney, Legal Services

Subject
Appellate Procedure: Uniform Formatting Rules for Electronic Documents

Action Requested
Please review before July 19 committee meeting

Deadline
July 19, 2019

Contact
Eric Long
Attorney, Legal Services
415-865-7691 phone
eric.long@jud.ca.gov

Introduction

The Information Technology Advisory Committee and Appellate Advisory Committee recommended circulating for public comment a proposal to amend rules 8.40, 8.44, 8.71, 8.72, 8.74, 8.204, and 8.252, regarding formatting of electronic documents, to create uniform standards in the appellate courts. The Judicial Council's Rules and Projects Committee approved the recommendation for circulation, and the proposal was circulated for public comment from April 11 to June 10, 2019 as part of the regular spring comment cycle. (A copy of the invitation to comment is included in your meeting materials.) The Joint Appellate Technology Subcommittee met on July 1, 2019 to review the public comments concerning this proposal and to consider appropriate modifications. The Information Technology Advisory Committee met on July 10, 2019 and voted to approve the proposal with the subcommittee's modifications. This memorandum discusses the public comments received on the proposal and recommendations for responding to these comments.

Background

Various appellate districts of the Courts of Appeal implemented electronic filing at different times. As each court did so, it adopted its own set of local rules addressing format requirements for electronic documents and leaving the format requirements for paper documents in place. While there are similarities among the local rules, they differ in various respects. Over the years, best practices have begun to emerge for the format of electronic documents. At the same time, court users have complained that the differing formatting rules among the appellate courts impose significant burdens on practice. A more limited rules amendment project began in 2017, but that project was deferred. The proposed amendments include both substantive and technical changes to the existing rules for the format of electronic documents in appellate courts. Uniform formatting rules would provide consistency, clarity, and efficiency.

The proposal that was circulated for public comment would amend seven rules. JATS recommends technical amendments to three additional rules if the committee decides to adopt the proposal as modified.

Public Comments & JATS Recommendation

In total, eighteen individuals, organizations, court staff, and trial and appellate courts submitted comments on this proposal. Four commenters indicated that they agreed with the proposal, four indicated that they agreed with the proposal if modified, six did not take a position on the proposal but suggested changes or asked for additional clarity or consistency with other rules, and four indicated that they were against one specific provision of the proposal: the prohibition on Times New Roman font. Several comments were extensive, with responses to the questions asked by the committees and suggestions for modifying the proposal. A chart with the text of the comments received and staff's draft responses is attached.[1] This draft reflects the modifications to the proposal recommended by JATS.

The main issues raised by the comments, possible responses, and possible modifications to the proposal are discussed below, but there are other comments and responses discussed only in the draft comment chart, so please review the draft comment chart carefully. Broadly speaking, the comments address three areas: (1) rule language, scope, and clarity, (2) technology, and (3) page layout and content. Also attached are drafts of the proposed rule amendments showing JATS's recommended modifications. The changes to the rule amendments are shown using yellow highlighting.

[1] Two comment letters are abridged for space. A complete copy of each letter is attached to the chart for the committee's reference.

Rule language, scope, and clarity

Rule 8.40's exceptions and cross-references to other rules

Two commenters asked for clarity on rule 8.40(a), which addresses the form of filed documents. One noted that the provision suggests the existence of exceptions to mandatory electronic filing but that the provision does not reference any specific exceptions. Another commenter indicated that subdivision (a) requires compliance with "the relevant format provisions" of this rule and other rules, but that the rules are not entirely clear about which format provisions are relevant to electronic filing.

Because the proposal uses already existing rules to implement uniform formatting, subdivision (a) is entirely duplicative of several other rules. Under the circumstances, JATS recommends that Rule 8.40 be amended to reflect only cover requirements for paper documents, thereby eliminating confusing cross-references to the rules concerning mandatory electronic filing, exceptions, and format provisions. Other options might include accepting rule 8.40(a) as proposed, making it more general, or expanding it to cross-reference specific exceptions and format provisions. JATS recommends changes to rules 8.74 and 8.204, which are discussed in more detail below, that would make the limited cross-references easier to discern.

Rule 8.74's scope and complexity

Several commenters observed that, as written, rule 8.74(a) (format of electronic documents) applies to all electronic documents, and as a result it imposes format requirements on documents that are not prepared for filing in the first instance in a reviewing court. The commenters noted that such documents, including appendices, transcripts, trial exhibits, and other documents, may already have margins, text, and line spacing that cannot, or should not, be reformatted to comply with rule 8.74. The commenters suggest modifying the proposal to make clear that only certain parts of rule 8.74(a) apply to all documents filed in electronic format. Some of the more detailed comments addressed the complexity of rule 8.74, focusing on proposed subdivision (b)'s requirements for certain electronic documents and the cross-references to other rules in those provisions. The e-filing working group staff of the Supreme Court commented that the text-searchable PDF provision set out in rule 8.74(a)(1) requires e-filers to convert rather than scan documents to ensure text searchability, but that certain documents, including handwritten documents, forms, photographs, diagrams, etc., may not be amenable to being "converted" by a means other than scanning, or if they can be converted to PDF without scanning a paper document, some documents may not be text searchable.

Based on these comments, JATS recommends substantive and structural changes to rule 8.74. To address the concerns identified by the e-filing working group of the Supreme Court for some documents that can be filed electronically but which may not be converted to a text-searchable PDF, the subcommittee proposes expanding the exception in subdivision (a)(1) for documents an electronic filer possesses only in paper format to include documents that cannot practicably be

converted into a text-searchable file, for example, if the document is entirely or substantially handwritten, a photograph, or a graphic such as a chart or diagram that is not primarily text-based. To make this allowance clearer, JATS recommends adopting an advisory committee comment explaining subdivision (a)'s exceptions, as follows:

> **Subdivision (a)(1)**. If an electronic filer must file a document that the electronic filer possesses only in paper format, use of a scanned image is a permitted means of conversion to PDF, but optical character recognition (OCR) must be used if possible. If a document cannot practicably be converted into a text-searchable PDF file (e.g., if the document is entirely or substantially handwritten, a photograph, or a graphic such as a chart or diagram that is not primarily text-based), the document may be converted to non-text-searchable PDF.

JATS also recommends moving several subparts of subdivision (a) into a new subdivision (b), titled "Additional format requirements applicable to documents prepared for electronic filing in the first instance in a reviewing court." As its title indicates, subdivision (a) would continue to set out the format requirements applicable to all electronic documents. The new subdivision (b) would set out additional format requirements for documents prepared for electronic filing in the reviewing court, and would house five of the provisions previously located in proposed subdivision (a). As modified, the rule would treat documents prepared for filing in the reviewing court differently from other documents. JATS recommends including an advisory committee comment explaining subdivision (b)'s scope, as follows:

> **Subdivision (b)**. Subdivision (b) governs documents prepared for electronic filing in the first instance in a reviewing court, and does not apply to previously created documents (such as exhibits) as to which the formatting cannot or should not be altered.

JATS further proposes adding to rule 8.74(b) each of the relevant format provisions for documents filed in paper form that are contained in rule 8.204(b), and the relevant cover or first-page information provisions contained in rule 8.40(c). To accomplish this, JATS recommends eliminating any cross-references between formatting rules for briefs among the three rules. By adding all relevant format provisions presently located in rules 8.40(c) and 8.204(b) to rule 8.74, and expressly limiting the application of rules 8.40 and 8.204(b) to briefs filed in paper form, the rules will more clearly provide the format requirements for electronic filings and paper filings. Finally, if the format requirements located in rules 8.40(c) and 8.204 are added to 8.74, the introductory sentence of rule 8.204(b) is unnecessary. These changes are intended to eliminate overlap and inconsistencies between these three rules. Again, these modifications are in yellow highlighting in the attached rule document.

Suggested changes to rules outside the proposal
Two commenters noted that other rules related to electronic filing in Title 8 are not part of the proposal. One commenter suggested updating all existing provisions relating to electronic filing, including requirements for signatures (rules 8.42 and 8.75), general provisions for sealed and confidential records (rule 8.45), electronic service (rule 8.78), court order for electronic service (rule 8.79), form of the record (rule 8.144), and new authorities (rule 8.254). Neither commenter identified any specific inconsistencies or immediately necessary changes based on the proposal, but one commenter suggested that either rule 8.72 or rule 8.74 cross-reference rule 8.78's electronic service provisions. (As discussed in more detail below, JATS recommends technical amendments to rules 8.77 and 8.78 to update two existing cross-references to rule 8.74(a)(4), because that provision has been relocated to rule 8.72(b)(2).) The comment from the e-filing working group staff of the Supreme Court noted that the proposal does not amend rule 8.78(a)(2)(B)'s provision concerning consent to electronic service, even though the equivalent rule in the trial court rules, rule 2.251(b)(1)(B), was recently amended to be in compliance with newly enacted section 1010.6 of the Code of Civil Procedure, which, at least in the trial courts, no longer permits use of the act of electronic filing to serve as consent. This issue is addressed in part by adding rule 8.74(a)(9)(A), which provides that "inclusion of a fax number or e-mail address on any electronic document does not constitute consent to service by fax or e-mail unless otherwise provided by law," but rule 8.78(a)(2)(B) still provides: "The act of electronic filing shall be deemed to show that the party agrees to accept service at the electronic service address that the party has furnished to the court under rule 8.74(a)(4), unless the party serves a notice on all parties and files the notice with the court that the party does not accept electronic service and chooses instead to be served paper copies at an address specified in the notice." At this time, JATS recommends only a technical amendment to update the existing cross-reference.

Because under California Rules of Court, rule 10.22, substantive changes to a rule need to circulate for public comment before being recommended for amendment by the Judicial Council, staff suggests that the committee retain the commenters' suggestions concerning other rules in Title 8 for future consideration. With respect to consent and electronic service, staff proposes the committee consider amending rule 8.78 during the next rules cycle. As to rules 8.42, 8.45, 8.75, 8.79, 8.144, and 8.254, staff suggests that the committee consider additional changes if experience with electronic filing warrants amendments to these other rules.

Manual filings, paper copies, and sealed materials
One bar association commenter suggested that more detailed instructions with respect to manual filings, electronic filing of sealed materials, and delivery of paper copies of electronic filings might be helpful. A comment from the e-filing working group staff of the Supreme Court identified a potential need for clarity in the provision concerning sealed and confidential records. Specifically, the e-filing working group staff suggested amendments to proposed rule 8.74(b)(7) (rule 8.74(c)(7) in the attached rule document), offering more consistent terminology and

expanding the provision to address both the filing of pages that have redactions and the filing of documents with multiple-pages omitted.

JATS recommends implementing the suggestions from the e-filing working group staff of the Supreme Court, with minor changes, as follows:

> *Sealed and confidential records*: Under rule 8.45(c)(1), electronic records that are sealed or confidential must be filed separately from publicly filed records. If one or more pages are omitted from a record and filed separately as a sealed or confidential record, an omission page or pages must be inserted in the publicly filed record at the location of the omitted page or pages. The omission page must identify the type of pages omitted. Each omission page must be paginated consecutively with the rest of the publicly filed record, must be bookmarked, and must be listed in any indexes included in the publicly filed record. The PDF counter for each omission page must match the page number of the page omitted from the publicly filed record. Separately filed sealed or confidential records must comply with this rule and rules 8.45, 8.46, and 8.47.

With respect to the bar association's comments concerning manual filings and courtesy paper copies, staff suggests retaining these comments for future consideration. If courts' experience with electronic filing warrants action, the committee could address these provisions in the future.

Technology

File-size restrictions
Several commenters questioned rule 8.74's 25 megabytes file-size restriction. Commenters asked whether the 300-page limit for certain appendices was necessary if it is possible for e-filers to prepare those volumes within the 25 megabytes file-size restriction. Commenters also questioned the wisdom of requiring manual filing for filings containing over five volumes, which are common in complex cases, when only one court has such a volume limitation in place.

JATS recommends that the committee maintain the proposal's 25 megabytes file-size restriction at this time. The principle reason not to defer action on the file-size restriction is that the 25 megabytes limit is uniform across the state. JATS proposes, however, two minor changes to the related restrictions concerning page limits and multiple-volume filings. First, rather than impose a 300-page limit on certain electronic documents, JATS recommends that the rule permit filers to exceed the 300-page limit applicable to certain documents contained in other rules (e.g., rule 8.124(d)(1) (appendixes), rule 8.144(b)(6) (clerks' and reporters' transcripts), and rule 8.144(g) (agreed or settled statements)). Those rules imposing a 300-page limit on volumes would still apply to the individual documents, but an electronic filing comprised of multiple volumes would be permitted as long as the component volumes of an electronic filing comply with those rules'

page limitations and the electronic filing is 25 megabytes or smaller. As drafted, the rule does not seem to permit this. Second, as the commenters note, only one court requires manual filing when an electronic filer seeks to file an electronic document consisting of more than five files. JATS recommends increasing this restriction to ten files, because the Appellate Court Case Management System (ACCMS) has capability for (1) a maximum of twenty-five documents per filings, and (2) a maximum of 250 megabytes per multiple-document filing. Under existing limits, increasing the restriction from five to ten files would relieve electronic filers of the burden of manual filing in more cases, and the multi-volume filing limit would not exceed the file-size restrictions currently in place.

Concerns have been raised about establishing a rule with a file-size limit when capacity may change. One alternate option for the committee to consider would be to recommend that the file-size and related restrictions be delegated to the courts to address by local rule. The provision could provide: "An electronic filing may not be larger than the maximum file size imposed by local rule. A reviewing court must specify a maximum file size for each filing. The maximum file size is based on how much disk space it consumes and not the number of pages." Another alternative would be to add file-size limits to the court's responsibilities in rule 8.71(a): "A court must have a published rule establishing an electronic file size limitation."

There are drawbacks to codifying technological parameters such as file size when technological changes outpace the Judicial Council's rules cycles. However, as a practical matter, an increase in file size could be done by technical change outside a normal rules cycle. And ultimately, the motivating purpose of this proposal is uniformity. That goal would be lost if each court were permitted to impose unique file-size limits on e-filers. Although commenters suggested that an increased file size might be possible, none indicated that the existing 25 megabytes restriction was unworkable or regularly compromised their electronic filings.

Color component prohibition

Two commenters asked whether rule 8.74's prohibition on color components was necessary in light of existing technology, and advocated for color components to be permitted if possible. They emphasized that color components can be persuasive in appellate advocacy. One commenter noted that only one appellate district prohibits filings with color components. The invitation to comment indicated that color components were not supported in ACCMS. Staff has confirmed that color components on their own do not present a problem for ACCMS. Instead, color components necessarily increase file size, and increased file size affects loading time. With this new information, JATS recommends moving the color component provision to subdivision (a), which is applicable to all electronic documents, and permitting electronic documents with color components as long as they do not exceed the file-size limit:

(8) *Color*: An electronic document with a color component may be electronically filed or manually filed on electronic media, depending on its file size. An electronically filed document must not have a color cover.

Although the color cover provisions of rule 8.40, as modified, would apply only to paper filings, JATS recommends retaining the prohibition on color covers in the electronic document rule to avoid needlessly large file sizes due to color covers.

Another rule impacted by the color component restriction is rule 8.74(a)(6)'s manual filing provision. Based on the comments, JATS recommends deleting the references to PowerPoint and "documents containing photographs or any color component." The rule should still provide a format for manually filed photographs, because color photographs may require manual filing on electronic media if the file exceeds the 25MB file-size limit. The new subdivisions to rule 8.74(a)(6) would provide as follows:

(B) Electronic media files such as audio or video must be manually filed. Audio files must be filed in .wav or mp3 format. Video files must be filed in .avi or mp4 format.

(C) If manually filed, photographs must be filed in .jpg, .png, .tif, or .pdf format.

At the JATS meeting on July 1, 2019, members of the subcommittee expressed concern about original electronic files if an e-filer has to convert the format of an electronic media file. Based on this concern, staff suggests adding another subdivision to the manual filing provision:

(D) If an original electronic media file is converted to a required format for manual filing, the electronic filer must retain the original.

ITAC approved the proposal with this staff suggestion.

Filing problems

One commenter requested that rule 8.72's court responsibilities provision speak to filing deadlines. The commenter asked that courts be required to address deadlines/extensions of time in any notice of filing problems required by the provision. JATS recommends that the committee decline to add provisions concerning deadlines that add responsibilities for the courts because, under rule 8.71, filing a document electronically does not alter any filing deadline. Unless a court elects to provide otherwise in a notice to a party, it would be incumbent on the party or other person adversely affected by the problem that impedes or precludes electronic filing, upon receipt of notice of the problem, to seek relief from the court. Staff suggests that the committee retain this comment for future consideration if experience supports reallocating responsibility from the electronic filer to the courts.

Virus/harmful software requirement

One commenter protested that rule 8.72(b)'s "all reasonable steps" requirement for electronic filers was likely to cause confusion.[2] The commenter suggested that rule 8.72(b)(1) be rewritten to state that "[e]ach electronic filer must: (1) Comply with all electronic filing requirements in these rules and not intentionally file any document containing computer code, including viruses, that might be harmful to the court's electronic filing system and to other users of that system."

Based on this comment, JATS recommends adding an advisory committee comment to rule 8.72. JATS does not advise adding a mental-state requirement to the provision. To address the commenter's concern about the requirement, JATS recommends explaining that one reasonable step an electronic filer can take to ensure that a filing does not contain harmful computer code is to use a commercial virus scan program, and stating that absence of intent to harm is not sufficient to comply with the subdivision. The advisory committee comment would read:

> **Subdivision (b)(1)**. One example of a reasonable step an electronic filer may take is to use a commercial virus scanning program. Compliance with this subdivision requires more than an absence of intent to harm the court's electronic filing system or other users' systems.

Hyperlinks

In response to the questions presented in the invitation to comment, some commenters indicated that "hyperlinks" might not be commonly understood, but one court commented that the term is sufficiently clear and does not warrant further explication. Another commenter noted that rule 8.74 encourages the use of hyperlinks, but that the rule was drafted in a manner suggesting that hyperlinks are used only to link to legal authority, not to exhibits and appendices.

Based on these comments, JATS recommends amending the hyperlinks provision as follows:

> Hyperlinks to legal authorities and appendices or exhibits are encouraged but not required. However, if an electronic filer elects to include hyperlinks in a document, the hyperlink must be active as of the date of filing and if the hyperlink is to a legal authority, it should be formatted to standard citation format as provided in the California Rules of Court.

With respect to defining the term hyperlinks, no member of JATS or ITAC expressed concern about the clarity of the term.

[2] The relevant provision of rule 8.72 provides: "Each electronic filer must: (1) Take all reasonable steps to ensure that the filing does not contain computer code, including viruses, that might be harmful to the court's electronic filing system and to other users of that system[.]"

Page Layout and Content

The proposal addresses various formatting standards, including font, line spacing, page alignment, margins, page numbering, and bookmarking. As mentioned above, some commenters expressed concerns about how certain documents filed in the appellate courts could not be formatted in the manner set forth in rule 8.74. JATS therefore recommends addressing these issues by adding a subdivision and two advisory committee comments, as discussed in more detail above. With respect to documents that are prepared for original filing in reviewing courts, several commenters addressed font and page layout issues, including font style and size, footnote size, emphasis, line spacing, page alignment, margins, page numbering, and bookmarking.

Font

As circulated for public comment, the proposed amendments to rule 8.74 require a proportionally-spaced serif font such as Century Schoolbook, and expressly prohibit use of Times New Roman. The proposal came from the Court of Appeal, Second Appellate District's local rule, which seeks to promote readability. Four comments against the prohibition on Times New Roman were received, and two commenters questioned whether the prohibition on this particular font, which itself is a proportionally-spaced font, was necessary. Just one commenter supported the ban of Times New Roman. Based on these comments, JATS recommends modifying the proposal to allow for use of Times New Roman, because it is an example of a proportionally-spaced serif font as required by the provision, but that the proposal state the courts' preference for e-filers to prepare documents using Century Schoolbook, which is considered to be one of the most readable fonts.

One commenter asked why the rule required 13-point font, instead of 14-point font. Another commenter noted that 13-point Century Schoolbook font is "huge," and suggested that footnote size be set at 12-point instead of 13-point font. The local rules of all six appellate districts and the Supreme Court require a 13-point font for body text and footnotes. In light of the existing uniform standard, JATS does not recommend changing the rule based on these two comments concerning font size.

Several commenters requested that sans serif fonts be allowed, and one commenter asked that use of all capitals in headings be prohibited because text in all caps is virtually unreadable. To promote readability, JATS recommends modifying rule 8.74(b) to permit use of sans-serif fonts in headings, subheadings, and captions, and to prohibit the use of all capitals for emphasis. JATS considered did not endorse the requested prohibition on all capitals in headings.

Line Spacing

One commenter noted that rule 8.74's 1-1/2 line-spacing requirement is unclear, especially if read with rule 8.204(b)(5), which defines single spaced as "six lines to a vertical inch." Line spacing, or leading, is a typography term that describes the distance between each line of text.

JATS recommends setting the line spacing requirement as "1.5 spacing," rather than "1-1/2 spacing," because word processors use a decimal to define the line spacing option between single-spaced and double-spaced. Other than this minor change, JATS does not advise additional changes to the line-spacing rule for electronic documents at this time. As discussed above, JATS recommends modifications to rules 8.74 and 8.204 that make these two rules stand alone, which eliminates the inconsistency identified by the commenter. The suggested changes remove some of the potential confusion as to whether a provision applies to paper or electronic documents. An alternate option would be to change the line spacing rule to allow some range because word processors offer numerous ways to set line spacing, such as "Lines of text must have line spacing of at least 170 percent of the font size but no more than 1.5 spaced."

Page alignment
One commenter asked why rule 8.74 prohibits full page justification, and requested that the formatting rules allow for full justification with hyphenation. JATS recommends that the committee adopt the requirement for left aligned text, without modification. The rule was taken from the Second Appellate District's electronic formatting guidelines, which recognize that left aligned text is easier to read than justified text.

Margins
A commenter noted that Microsoft Word uses default margins of 1-inch, and wondered whether future technologies like the Transcript Assembly Program (TAP) might allow for 1-inch margins in electronic filings. Based on this and other comments, and as discussed above, JATS recommends that the formatting rules carve out documents not originally prepared for electronic filing in appellate courts so that the margin requirements for clerk's and reporter's transcripts are not directly implicated by rule 8.74's margin requirements. At present, only one appellate district requires 1-1/2 inch margins on all sides. JATS also recommends modifying the rule to provide for 1-inch margins on the top and bottom, so that paper and electronic documents have the same margin requirements. The proposed 1-1/2 inch left and right margins allow readers additional room for notations, both on paper and in most annotation software for electronic documents. JATS encourages the committee to prioritize the readability and usability of a document (especially briefs and petitions) over the default settings of Microsoft Word, which Microsoft may change in the future and which users can adjust. The committee may consider the margin requirements for transcripts after courts have more experience with mandatory electronic filing under the uniform rules or if technological changes warrant revision.

Page numbering
The proposed rules for pagination in rule 8.74(a)(2) are consistent with the pagination requirements set by local rules around the state. Despite the existing uniformity in practice, one commenter advocated for "traditional" page numbering (i.e., the use of Roman numerals for prefatory pages like tables of contents and tables of authorities) in electronic documents. According to the commenter, Roman numeral pagination for tables is superior to consecutive,

all-Arabic page numbering that the courts currently require by local rule, because the pagination of the main document (e.g., brief or petition) can be finalized before any tables are created. JATS recommends that the committee decline to allow for Roman numeral page numbering for tables and Arabic page numbering for the body of a document. As one court commenter noted, consecutive, all-Arabic pagination allows the court and the parties to accurately locate a cited page and ensures that page citations are consistent throughout a document. The utility of page numbers on a document that match an electronic page counter justifies any burden on electronic filers imposed by the pagination requirement. At this time, an electronic page counter cannot be re-set to match the page number when different numbering systems are employed.

The committees have been alerted to problems filers may face when they create tables of contents and authorities under this pagination rule. It has been suggested that once the tables are created, the tables change the pagination of the document, requiring the tables to be created a second time. It was suggested that tables be placed at the end of the document to avoid this problem. JATS recommends maintaining the status quo in this regard, as the proposed pagination rule has been in place for some time by local rule and changing the placement of tables would be a significant change that was not presented for public comment.

Bookmarking
The comments concerning bookmarking were uniformly in favor of the requirement. Two commenters, however, suggested revisions. One commenter asked for an exception to the bookmarking requirement for shorter documents—like requests for extensions of time—where bookmarks might not be as helpful to readers. Another commenter requested that the rule make voluntary, instead of mandatory, the technical requirement that bookmarks be set to retain the reader's selected zoom setting, because existing software requires several mouse clicks to set each and every bookmark.

JATS recommends that the committee decline to change the bookmarking provision for at least two reasons. First, attempting to draft an exception for shorter filings is likely to be simultaneously overinclusive and underinclusive, and in any event, fulfilling the bookmarking requirement for shorter documents will not be labor-intensive. Second, to fulfill their purpose, bookmarks must be user-friendly. If the zoom level requirement were merely voluntary, many e-filers would rely on default settings that do not preserve a reader's preferred view. Although retaining a reader's selected zoom setting for each bookmark will require e-filers to spend additional time formatting their filings, the utility of bookmarks for readers outweighs the burdens placed on e-filers.

Implementation concerns

One comment from the Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges Advisory Committee & Court Executives Advisory Committee expressed support for the

proposal, but raised a concern about the proposal's impact on court operations. JRS noted that the proposal requires local rule changes, and asked whether a six-month time table, instead of three-months, is appropriate considering the local rule amendment process may be too short to accomplish the necessary changes. The committee may want to consider whether three months is adequate. Notably, no courts of appeal answered the timing question—either affirmatively or negatively—in the invitation to comment.

Technical amendments

If the committee recommends the proposal with the suggested changes, four rules—one originally addressed by the proposal (rule 8.204) and three others (rules 8.46, 8.77, and 8.78)—require technical amendments because of existing cross-references. The changes to rule 8.40 make cross-references in rules 8.46 and 8.204 to that rule's cover provisions inaccurate. JATS recommends minor changes to update those existing cross-references, including adding a cross-reference to rule 8.74(a) for records in electronic form. Two additional technical amendments are necessary because of relocating the electronic filer responsibilities. Rules 8.77(a)(3) and 8.78(a)(2)(B) cross-reference the requirement that an electronic filer furnish electronic service addresses, which was moved into rule 8.72(b)(2) from rule 8.74(a)(4). These four technical changes are reflected in yellow highlighting in the attached draft rules.

Committee Task

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

- Discuss the comments received on the proposal;
- Discuss and approve or modify JATS's recommendations for responding to the comments, as reflected in the draft comment chart and draft rule amendments; and
- Discuss and resolve how to address the comments regarding the rules.

Attachments

1. Draft rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252
2. Draft comment chart
3. Invitation to comment, SPR19-07

Rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252 of the California Rules of Court would be amended, effective January 1, 2020, to read:

Rule 8.40. ~~Form of filed documents~~Cover requirements for documents filed in paper form

(a) ~~Form of electronic documents~~

~~Except as these rules provide otherwise, documents filed in a reviewing court may be either produced on a computer or typewritten and must comply with the relevant provisions of rule 8.204(b).~~

~~Under rule 8.71(a), a document filed in a reviewing court must be in electronic form unless these rules provide otherwise. An electronic document must comply with the relevant format provisions of this rule and rules 8.74, 8.144, and 8.204.~~

~~(b) Form and~~Cover color ~~of paper documents~~

~~(1) To the extent these rules authorize the filing of a paper document in a reviewing court, the document must comply with the relevant format provisions of this rule and rules 8.144 and 8.204.~~

(1) As far as practicable, the covers of briefs and petitions filed in paper form must be in the following colors:

Appellant's opening brief or appendix	Green
Respondent's brief or appendix	Yellow
Appellant's reply brief or appendix	Tan
Joint appendix	White
Amicus curiae brief	Gray
Answer to amicus curiae brief	Blue
Petition for rehearing	Orange
Answer to petition for rehearing	Blue

Petition for original writ	Red
Answer (or opposition) to petition for original writ	Red
Reply to answer (or opposition) to petition for original writ	Red
Petition for transfer of appellate division case to Court of Appeal	White
Answer to petition for transfer of appellate division case to Court of Appeal	Blue
Petition for review	White
Answer to petition for review	Blue
Reply to answer to petition for review	White
Opening brief on the merits	White
Answer brief on the merits	Blue
Reply brief on the merits	White

(2) In appeals under rule 8.216, the cover of a combined respondent's brief and appellant's opening brief filed in paper form must be yellow, and the cover of a combined reply brief and respondent's brief filed in paper form must be tan.

(3) A paper brief or petition not conforming to (1) or (2) must be accepted for filing, but in case of repeated violations by an attorney or party, the court may proceed as provided in rule 8.204(e)(2).

(eb) Cover information ~~for electronic and paper documents~~

(1)–(2) * * *

~~(3) The covers of electronic documents must also comply with the provisions of rule 8.74.~~

Rule 8.44. Number of copies of filed documents

(a)–(b) * * *

(c) Electronic copies of paper documents

~~A court that permits electronic filing will specify any requirements regarding electronically filed documents in the electronic filing requirements published under rule 8.74. In addition,~~ Even when filing a paper document is permissible, a court may provide by local rule for the submission of an electronic copy of ~~a document that is not electronically filed~~ the paper document either in addition to the copies of the document required to be filed under (a) or (b) or as a substitute for one or more of these copies. The local rule must ~~specify the format of the electronic copy and~~ provide for an exception if it would cause undue hardship for a party to submit an electronic copy.

Rule 8.46. Sealed records

(a)–(c) * * *

(d) Record not filed in the trial court; motion or application to file under seal

(1)–(2) * * *

(3) To lodge a record, the party must transmit the record to the court in a secure manner that preserves the confidentiality of the record to be lodged. The record must be transmitted separate from the rest of a clerk's or reporter's transcript, appendix, supporting documents, or other records sent to the reviewing court with a cover sheet that complies with rule ~~8.40(c)~~8.40(b) if the record is in paper form or rule 8.74(a)(9) if the record is in electronic form, and labels the contents as "CONDITIONALLY UNDER SEAL." If the record is in paper form~~at~~, it must be placed in a sealed envelope or other appropriate sealed container.

(e)–(g) * * *

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Rule 8.71. Electronic filing

(a) Mandatory electronic filing

Except as otherwise provided by these rules, the Supreme Court Rules Regarding Electronic Filing, ~~the local rules of the reviewing court,~~ or by court order, all parties are required to file all documents electronically in the reviewing court.

(b)–(g) * * *

Rule 8.72. Responsibilities of court and electronic filer

(a) ~~Publication of electronic filing requirements~~ Responsibilities of court

(1) The court will publish, in both electronic and print formats, the court's electronic filing requirements.

~~(b) Problems with electronic filing~~

(2) If the court is aware of a problem that impedes or precludes electronic filing, it must promptly take reasonable steps to provide notice of the problem.

(b) Responsibilities of electronic filer

Each electronic filer must:

(1) Take all reasonable steps to ensure that the filing does not contain computer code, including viruses, that might be harmful to the court's electronic filing system and to other users of that system;

(2) Furnish one or more electronic service addresses, in the manner specified by the court, at which the electronic filer agrees to accept service; and

(3) Immediately provide the court and all parties with any change to the electronic filer's electronic service address.

Advisory Committee Comment

Subdivision (b)(1). One example of a reasonable step an electronic filer may take is to use a commercial virus scanning program. Compliance with this subdivision requires more than an absence of intent to harm the court's electronic filing system or other users' systems.

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Rule 8.74. ~~Responsibilities of electronic filer~~ Format of electronic documents

~~(a) Conditions of filing~~

~~Each electronic filer must:~~

~~(1) Comply with any court requirements designed to ensure the integrity of electronic filing and to protect sensitive personal information;~~

~~(2) Furnish information that the court requires for case processing;~~

~~(3) Take all reasonable steps to ensure that the filing does not contain computer code, including viruses, that might be harmful to the court's electronic filing system and to other users of that system;~~

~~(4) Furnish one or more electronic service addresses, in the manner specified by the court, at which the electronic filer agrees to accept service; and~~

~~(5) Immediately provide the court and all parties with any change to the electronic filer's electronic service address.~~

~~(b) Format of documents to be filed electronically~~

~~(1) A document that is filed electronically with the court must be in a format specified by the court unless it cannot be created in that format.~~

~~(2) The format adopted by a court must meet the following minimum requirements:~~

~~(A) The format must be text-searchable while maintaining original document formatting.~~

~~(B) The software for creating and reading documents must be in the public domain or generally available at a reasonable cost.~~

~~(C) The printing of documents must not result in the loss of document text, format, or appearance.~~

~~(3) The page numbering of a document filed electronically must begin with the first page or cover page as page 1 and use only Arabic numerals (e.g., 1, 2, 3). The page number may be suppressed and need not appear on the cover page.~~

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~~(4) If a document is filed electronically under the rules in this article and cannot be formatted to be consistent with a formatting rule elsewhere in the California Rules of Court, the rules in this article prevail.~~

(a) Format requirements applicable to all electronic documents

(1) *Text-searchable portable document format*: Electronic documents must be in text-searchable portable document format (PDF) while maintaining the original document formatting. In the limited circumstances in which a document cannot practicably be converted into a text-searchable PDF, the document may be scanned or converted to non-text-searchable PDF. An electronic filer is not required to use a specific vendor, technology, or software for creation of a searchable format document, unless the electronic filer agrees to such use. The software for creating and reading electronic documents must be in the public domain or generally available at a reasonable cost. ~~If an electronic filer must file a document that the electronic filer possesses only in paper format, the electronic filer must convert the document to an electronic document by a means that complies with this rule.~~ The printing of an electronic document must not result in the loss of document text, format, or appearance. It is the electronic filer's responsibility to ensure that any document filed is complete and readable.

(2) *Pagination*: The electronic page counter for the electronic document must match the page number for each page of the document. The page numbering of a document filed electronically must begin with the first page or cover page as page 1 and use only Arabic numerals (e.g., 1, 2, 3). Documents may not contain more than one numbering system; for example, they may not contain Roman numerals for the table of contents and Arabic numerals for the body of the document. The page number for the cover page may be suppressed and need not appear on the cover page. When a document is filed in both paper and electronic formats, the pagination in both versions must comply with this subparagraph.

(3) *Bookmarking*: An electronic bookmark is a descriptive text link that appears in the bookmarks panel of an electronic document. Each electronic document must include an electronic bookmark to each heading, subheading, and to the first page of any component of the document, including any table of contents, table of authorities, petition, verification, memorandum, declaration, certificate of word count, certificate of interested entities or persons, proof of service, exhibit, or attachment. Each electronic bookmark must briefly describe the item to which it is linked. For example, an electronic bookmark to a heading must provide the text of the heading, and an electronic bookmark to an exhibit or attachment must include the letter or number of the

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exhibit or attachment and a brief description of the exhibit or attachment. An electronic appendix must have bookmarks to the indexes and to the first page of each separate exhibit or attachment. Exhibits or attachments within an exhibit or attachment must be bookmarked. All bookmarks must be set to retain the reader's selected zoom setting.

(4) *Protection of sensitive information*: Electronic filers must comply with rules 1.201, 8.45, 8.46, 8.47, and 8.401 regarding the protection of sensitive information, except for those requirements exclusively applicable to paper format.

(5) *Size and multiple files*: An electronic filing may not be larger than 25 megabytes. This rule does not change the limitations on word count or number of pages otherwise established by the California Rules of Court for documents filed in the court. ~~Unless a 300-page limit applies to the volumes of an electronic document~~Although certain provisions in the California Rules of Court require volumes of no more than 300 pages (see, e.g., rules 8.124(d)(1), 8.144(b)(6), 8.144(g)), ~~a file~~an electronic filing may exceed 300 pages so long as its individual components comply with the 300-page volume requirement and the electronic filing does not exceed 25 megabytes. If a document exceeds the 25-megabyte file-size limitation, the electronic filer must submit the document in more than one file, with each file 25 megabytes or less. The first file must include a master chronological and alphabetical index stating the contents for all files. Each file must have a cover page setting forth (a) the file number for that file, (b) the total number of files for that document, and (c) the volumes and page numbers contained in that file. (For example: File 1 of 4, Volumes 1–2, pp. 1–400.) In addition, each file must be paginated consecutively across all files in the document, including the cover pages for each file. (For example, if the first file ends on page 400, the cover of the second file must be page 401.) If a multiple-file document is submitted to the court in both electronic and paper formats, the cover pages for each file must be included in the paper documents.

(6) *Manual Filing*:

(A) When an electronic filer seeks to file an electronic document consisting of more than ~~five~~ten files, or when the document cannot or should not be electronically filed in multiple files, or when electronically filing the document would cause undue hardship, the document must not be electronically filed but must be manually filed with the court on electronic media such as a flash drive, DVD, or compact disc (CD). When an electronic filer files one or more documents on electronic media such as a flash drive, DVD, or CD with the court, the electronic

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filer must electronically file, on the same day, a "manual filing notification" notifying the court and the parties that one or more documents have been filed on electronic media, explaining the reason for the manual filing. The electronic media must be served on the parties in accordance with the requirements for service of paper documents. To the extent practicable, each document or file on the electronic media must comply with the format requirements of this rule.

(B) Electronic media files such as audio~~,~~ or video ~~, or PowerPoint, and documents containing photographs or any color component,~~ must be manually filed. Audio files must be filed in .wav or mp3 format. Video files must be filed in .avi or mp4 format.

(C) If manually filed, photographs must be filed in .jpg, .png, .tif, or .pdf format.

(D) If an original electronic media file is converted to a required format for manual filing, the electronic filer must retain the original.

(7) *Page size*: All documents must have a page size of 8-1/2 by 11 inches.

(8) ~~*No e*~~*Color*: ~~Notwithstanding provisions to the contrary in the California Rules of Court, a~~An electronic document with a~~ny~~ color component may ~~not~~ be electronically filed or ~~. It must be~~ manually filed on electronic media, depending on its file size. An electronically filed document must not have a color covers~~, color signatures, or other color components absent leave of court. This requirement does not apply to the auto-color feature of hyperlinks~~.

(9) *Cover or first-page information*:

(A) Except as provided in (B), the cover—or first page if there is no cover—of every electronic document filed in a reviewing court must include the name, mailing address, telephone number, fax number (if available), e-mail address (if available), and California State Bar number of each attorney filing or joining in the document, or of the party if he or she is unrepresented. The inclusion of a fax number or e-mail address on any electronic document does not constitute consent to service by fax or e-mail unless otherwise provided by law.

(B) If more than one attorney from a law firm, corporation, or public law office is representing one party and is joining in the document, the name and State Bar number of each attorney joining in the electronic document must be provided on the cover. The law firm, corporation, or

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public law office representing each party must designate one attorney to receive notices and other communication in the case from the court by placing an asterisk before that attorney's name on the cover and must provide the contact information specified under (A) for that attorney. Contact information for the other attorneys from the same law firm, corporation, or public law office is not required but may be provided.

(b) Additional format requirements applicable to documents prepared for electronic filing in the first instance in a reviewing court

(~~8~~1) *Font*: The font style must be a proportionally spaced serif face. ~~, such as~~ Century Schoolbook is preferred. A sans-serif type face may be used for headings, subheadings, and captions. ~~Do not use Times New Roman.~~ Font size must be 13-point, including in footnotes. For emphasis, italics or boldface may be used or the text may be underscored. Case names must be italicized or underscored. Do not use all capitals (i.e., ALL CAPS) for emphasis.

(~~9~~2) *Spacing*: Lines of text must be 1~~-1/2~~.5 spaced. Footnotes, headings, subheadings, and quotations may be single-spaced. The lines of text must be unnumbered.

(~~10~~3) *Margins*: The margins must be set at 1-1/2 inches ~~on all sides~~ on the left and right and 1 inch on the top and bottom. Quotations may be block-indented.

(~~11~~4) *Alignment*: Paragraphs must be left-aligned, not justified.

(~~12~~5) *Hyperlinks*: Hyperlinks to legal authorities and appendices or exhibits are encouraged but not required. However, if an electronic filer elects to include hyperlinks in a document, the hyperlink must be active as of the date of filing and if the hyperlink is to a legal authority, it should be formatted to standard citation format as provided in the California Rules of Court.

~~(13) *No color*: Notwithstanding provisions to the contrary in the California Rules of Court, an electronic document with any color component may not be electronically filed. It must be manually filed on electronic media. An electronically filed document must not have color covers, color signatures, or other color components absent leave of court. This requirement does not apply to the auto-color feature of hyperlinks.~~

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(~~b~~c) Additional format requirements for certain electronic documents

(1) *Brief*: In addition to compliance with this rule, an electronic brief must also comply with the contents and length requirements set forth in rule 8.204~~, except for the requirements exclusively applicable to paper format including the provisions in rule 8.204(b)(2), (4), (5), and (6)~~(a) and (c). The brief need not be signed. ~~In addition to providing the cover information required by rule 8.40(c), t~~The cover must state:

(A) The title of the brief;

(B) The title, trial court number, and Court of Appeal number of the case;

(C) The names of the trial court and each participating trial judge;

(D) The name of the party that each attorney on the brief represents.

(2) *Request for judicial notice or request or motion supported by documents*: When seeking judicial notice of documents or when a request or motion is supported by documents, the electronic filer must attach the documents to the request or motion. The request or motion and its attachments must comply with this rule.

(3) *Appendix*: The format of an appendix must comply with this rule~~, rule 8.124(d),~~ and rule 8.144 pertaining to clerk's transcripts.

(4) *Agreed statement and settled statement*: The format for an agreed statement or a settled statement must comply with this rule and rule~~s~~ 8.144 ~~and 8.124(d)~~.

(5) *Reporter's transcript and clerk's transcript*: The format for an electronic reporter's transcript must comply with Code of Civil Procedure section 271 and rule 8.144. The format for an electronic clerk's transcript must comply with this rule and rule 8.144.

(6) *Exhibits*: Electronic exhibits must be submitted in volumes no larger than 25 megabytes, rather than as individual documents.

(7) *Sealed and confidential records*: Under rule 8.45(c)(1), electronic records that are sealed or confidential ~~or under seal~~ must be filed separately from publicly filed records. If one or more pages are omitted from a ~~source document~~record and filed separately as a sealed or confidential record, an omission page or pages must be inserted in the~~source document~~ publicly filed

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record at the location of the omitted page or pages. The omission page must identify the type of pages omitted. ~~The~~ Each omission page must be paginated consecutively with the rest of the ~~source document~~publicly filed record, ~~it~~ must be bookmarked, and ~~it~~ must be listed in any indexes included in the ~~source document~~ publicly filed record. The PDF counter for ~~the~~ each omission page must match the page number of the ~~omission~~ page omitted from the publicly filed record. Separately filed sealed or confidential ~~or sealed~~records must comply with this rule and rules 8.45, 8.46, and 8.47.

(~~ed~~) Rejection of an electronic filing for noncompliance; exemptions

The court will reject an electronic filing if it does not comply with the requirements of this rule. However, if the requirements of this rule cause undue hardship or significant prejudice to any electronic filer, the electronic filer may file a motion for an exemption from the requirements of this rule.

(~~de~~) This rule prevails over other formatting rules

If a document is filed electronically and cannot be formatted to be consistent with a formatting provision elsewhere in the California Rules of Court, the provisions of this rule prevail.

Advisory Committee Comment

Subdivision (a)(1). If an electronic filer must file a document that the electronic filer possesses only in paper format, use of a scanned image is a permitted means of conversion to PDF, but optical character recognition (OCR) must be used if possible. If a document cannot practicably be converted into a text-searchable PDF file (e.g., if the document is entirely or substantially handwritten, a photograph, or a graphic such as a chart or diagram that is not primarily text-based), the document may be converted to non-text-searchable PDF.

Subdivision (a)(3). An electronic bookmark's brief description of the item to which it is linked should enable the reader to easily identify the item. For example, if a declaration is attached to a document, the bookmark to the declaration might say "Robert Smith Declaration," and if a complaint is attached to a document as an exhibit, the bookmark to the complaint might say "Exhibit A, First Amended Complaint filed 8/12/17."

Subdivision (b). Subdivision (b) governs documents prepared for electronic filing in the first instance in a reviewing court, and does not apply to previously created documents (such as exhibits) as to which the formatting cannot or should not be altered.

Subdivision (~~bc~~)(7). In identifying the type of pages omitted, the omission page might say, for example, "probation report" or "*Marsden* hearing transcript."

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Rule 8.77. Actions by court on receipt of electronic filing

(a) * * *

(1) * * *

(2) * * *

(3) *Transmission of confirmations*

The court must arrange to send receipt and filing confirmation to the electronic filer at the electronic service address that the filer furnished to the court under rule ~~8.74(a)(4)~~8.72(b)(2). The court or the electronic filing service provider must maintain a record of all receipt and filing confirmations.

(4) * * *

Rule 8.78. Electronic service

(a) * * *

(1) * * *

(2) * * *

(A) * * *

(B) Electronically filing any document with the court. The act of electronic filing shall be deemed to show that the party agrees to accept service at the electronic service address that the party has furnished to the court under rule ~~8.74(a)(4)~~8.72(b)(2), unless the party serves a notice on all parties and files the notice with the court that the party does not accept electronic service and chooses instead to be served paper copies at an address specified in the notice.

(3) * * *

(b)–(g) * * *

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Rule 8.204. Contents and form of briefs

(a) * * *

(b) Format of briefs filed in paper form

~~Briefs filed in electronic form must comply with the formatting provisions in rule 8.74(a) and (b)(1), which prevail over inconsistent provisions in this subdivision.~~

(1)–(9) * * *

(10) If filed in paper form, the cover must be in the color prescribed by rule 8.40(~~b~~a). In addition to providing the cover information required by rule 8.40(~~c~~b), the cover must state:

(A) The title of the brief;

(B) The title, trial court number, and Court of Appeal number of the case;

(C) The names of the trial court and each participating trial judge;

(D) The name of the party that each attorney on the brief represents.

(11) * * *

(c)–(e) * * *

Rule 8.252. Judicial notice; findings and evidence on appeal

(a) Judicial notice

(1)–(2) * * *

(3) If the matter to be noticed is not in the record, the party must ~~serve and file a copy with the motion or explain~~ attach to the motion a copy of the matter to be noticed or an explanation of why it is not practicable to do so. ~~The pages of the copy of the matter or matters to be judicially noticed must be consecutively numbered, beginning with the number 1.~~ The motion with attachments must comply with rule 8.74 if filed in electronic form.

(b) * * *

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(c) Evidence on appeal

(1)–(2) * * *

(3) For documentary evidence, a party may offer ~~the original, a certified copy, a photocopy, or, in a case in which electronic filing is permitted,~~ an electronic copy~~.~~, or if filed in paper form, the original, a certified copy, or a photocopy. The court may admit the document into evidence without a hearing.

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SPR19-07
Appellate Procedure: Uniform Formatting Rules for Electronic Documents
(Amend California Rules of Court, rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252)

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

	Commenter	Position	Comment	DRAFT Committees Responses
1.	Jessica Coffin Butterick, Lead Appellate Court Attorney Court of Appeal, Second Appellate District	AM	I would agree with the new rules if modified. Please see my comments below. Rule 8.74(a)(8) — Font 13 pt Century in footnotes is HUGE. Footnote point size should be 12. I hate Times New Roman as much as the next person and am glad you're banning it, but there are lots of terrible system fonts out there. If you're going to ban TNR, please also ban Cambria, which is even worse, and will be people's next choice if they don't have Century Schoolbook installed on their machines. Rule 8.74(a)(9) — Spacing Headings should be added to the list of things that can be single-spaced to clarify that they are they not considered "lines of text" that must be 1.5 spaced. (Headings should not be single-spaced.) More importantly, what does 1.5 spacing mean in the context of this rule? True 1.5 line spacing (150% of point size) is 20.5 points for a 13pt font. This is what the rule should mean. In Microsoft Word, however, the "1.5 lines" spacing option yields spacing of about 175% of point size, and many people seem to think that's what 1.5 spacing means. (See explanation at https://practicaltypography.com/line-spacing.html) On its own, that doesn't matter all that much, but it becomes a big problem if we're supposed to	The committees thank the commenter and note the support for the proposal. The committees appreciate the commenter's concerns. The committees decline to allow differing font sizes, or to ban additional proportional-spaced fonts. Based on this and other comments, the committees have deleted the prohibition on the use of Times New Roman, but the committees have preserved the rule's preference for Century Schoolbook, which is considered to be one of the most readable fonts. The committees agree that headings should be added to the list of things that may be single-spaced, and have made this change. To the extent the comment relates to interaction between rules 8.74 and rule 8.204(b), based on this comment and others, the committees have amended rules 8.74 and 8.204(b).

	Commenter	Position	Comment	DRAFT Committees Responses
			interpret 1.5 spacing in terms of rule 8.204(b)(5). That rule unwisely redefines a typographical term in California by defining single line spacing as "six lines to a vertical inch." Applying that definition, 1.5 line spacing is 4 lines per vertical inch. But neither true 1.5 line spacing (150% of point size) nor MS Word line spacing (175% of point size) complies with that definition. (Please see the attached document, which I prepared to demonstrate what the rule 8.204(b)(5) definition looks like in practice and how it differs from what both typographers and MS Word adherents consider 1.5 line spacing. It also shows why the definition is problematic for single line spacing with 13pt fonts.) [Commenter's document not attached to comment chart.] Or are we supposed to disregard rule 8.204(b)(5)? I can't tell. · Proposed rule 8.40(a) tells us we must comply with "relevant format provisions" of rule 8.204. This certainly seems relevant. · Proposed rule 8.74(d) tells us to comply with other formatting provisions unless it's impossible to do so. It's possible to comply with rule 8.204(b)(5), even if it's not advisable. · Proposed rule 8.74(b)(1) tells us we must comply with rule 8.204 "except for the requirements exclusively applicable to paper format including the provisions in rule 8.204(b) (2), (4), (5), and (6)." I find this baffling (see my comments to rule 8.74(b)(1) below), but if it means we shouldn't	The committees thank the commenter for this input. Based on this comment and others, the committees have amended the rule to clarify the line-spacing requirements of rule 8.74, and to eliminate the cross-references between rule 8.74 and rules 8.40 and 8.204(b). Subdivision (b) of rule 8.204 has been amended to apply only to documents filed in paper form, and the relevant provisions of rules 8.40(c) and 8.204(b) have been added to rule 8.74.

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			comply with the 6-lines-per-vertical-inch definition of line spacing, the consequence is that we'll be using at least TWO DIFFERENT definitions of the same typographical term in California courts depending on the method of filing. I suppose that's better than having to comply with rule 8.204(b)(5), but revising rule 8.204(b)(5) seems like a better choice. Please revise rule 8.204(b)(5) as part of this project. It should be consistent with this rule. Rule 8.74(a)(11) — Alignment Why can't paragraphs be justified? This seems arbitrary. Justification should be allowed as long as hyphenation is turned on. Regardless, if we're going to regulate things like justification, while we're at it, can we please tell people not to use all-caps headings if the heading is more than 3–5 words long? They are impossible to read. (Rule 8.204(b)(3) allows the complete heading to be in capital letters.) Rule 8.74(b)(1) — Brief As mentioned above, you should really, really revise rule 8.204 as part of this project. It should be consistent with rule 8.74(a). If you're not going to revise rule 8.204, you need to, AT MINIMUM, revise proposed rule 8.74(b)(1) to tell people EXACTLY which provisions of rule 8.204 continue to apply to electronically-filed documents and which don't. For example: "Electronic filers must still comply with rule	The committees thank the commenter for this input. The committees decline to add an allowance for justified alignment because left-aligned text is easier to read than justified text. Based on this comment, the committees have added a prohibition on the use of all caps for emphasis. The committees thank the commenter for this input. Based on this and other comments, the committees have amended rule 8.204 to clarify that subdivision (b) does not apply to electronic filings. The relevant requirements are now set out in rule 8.74.

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

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			8.204(X), (Y), and (Z). They do not need to comply with (R), (S), or (T), which only apply to paper filers." I do statutory interpretation for a living. I have thought deeply and at length about legal typography. Yet, based on the text of proposed rule 8.74(b)(1), I would be hard-pressed to tell you which provisions of rule 8.204 continue to apply. Does "including the provisions in rule 8.204(b)(2), (4), (5), and (6)" refer to the requirements electronic briefs must also comply with? Or, since there's no comma after the word "format," is that text part of the "except for" clause, meaning that those provisions are among those that are exclusively applicable to paper format? It would be a lot more straightforward if you (1) made the rule two sentences, and (2) made it clear which provisions are still in and which are out. Rule 8.40(a) — Form of electronic documents This rule tells me I must comply with rule 8.74 AND rule 8.204. But rule 8.74(b) tells me I don't need to comply with the provisions that exclusively relate to paper filing. Unfortunately, as discussed above, I don't know what the relevant portions of rule 8.204 are.	Based on this and other comments, the committees have eliminated the cross-references between rule 8.74 and rules 8.40 and 8.204(b). Subdivision (b) of rule 8.204 has been amended to apply only to documents filed in paper form, and the relevant provisions of rules 8.40(c) and 8.204(b) have been added to rule 8.74.
2.	California Academy of Appellant Lawyers by John Taylor, Jr., President	AM	As the current president of the California Academy of Appellate Lawyers, I'm writing on behalf of its membership to support SPR19-07. The Academy consists of more than 100 California appellate lawyers with substantial experience in the briefing and argument of appeals in the California court	The committees thank the commenter, and note the California Academy of Appellant Lawyers' support for the proposal.

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			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 strongly endorses the enactment of uniform requirements for electronic filing throughout the State. We have some suggestions on the content of the proposed new state-wide rules for electronic documents filed in the appellate courts. It appears that in seeking to accommodate less technologically advanced Districts, the proposed rules will impose some limitations on more technologically advanced Districts and the lawyers who have cases there. We therefore strongly urge that, if the proposed rules are adopted in their present form, steps be taken to rapidly improve all Districts' technological capability so there can be uniform rules that permit the best practices that more advanced Districts already follow. The Academy has identified four items for comment, the first two of which involve subjects that should be revised when technologically feasible to increase access to e-filing. 1. File number/size limitation. Proposed rules 8.74(a)(5) & (6) indicate that electronic files can be up to 25MB, but (i) under subdivision (5) they must be limited to 300 pages if that is what the other rules require—particularly including appendices; and (ii) under subdivision (6) "an electronic document consisting of more than	The committees appreciate the commenter's concern, and have amended the multiple-file provision to allow an electronic filing so long as the combined volumes of an electronic filing satisfy the 25 megabytes file-size limit and the individual component volumes of the electronic filing comply with any applicable 300-page

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			five files" must be manually filed (in electronic form, but manually rather than e-filed). In other words, any appendix of more than five 300-page volumes must be filed manually even if the total file size is less than 25MB. And, apparently, only a single 25MB file—not multiple files—can be e-filed, so that if a 4-volume appendix exceeds 25M it must be manually filed, if even it could be filed as a 20MB and a 10MB file. Appendices that exceed five 300-page volumes are relatively common—and indeed frequent for our members, who tend to handle large, complex cases. In recent years, these appendices could be filed entirely electronically in some Districts. The proposed limitations therefore represent a step backward for lawyers and their staff in those Districts, creating more work and reducing some existing benefits of electronic filing.	requirement(s). The committees also amended the manual filing requirement for multiple volumes, changing the limit to ten rather than five. The committees will consider additional changes in the future if they are supported by technological changes.
			2. Documents with color components Rule 8.74(a)(13) prohibits electronic filing of "an electronic document with any color component." While many judicial readers may not care about colored covers or signatures, color can be an important part of a presentation. For example, a key exhibit may only make sense in color. A party may even want to include that color exhibit in their brief because it lucidly explains something that text cannot effectively convey. The Academy suggests	The committees agree that color components may be helpful and persuasive in appellate filings, and have modified the proposal to allow for color components in electronic filings as long as the file complies with the file-size limit.

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			that the courts may not wish to discourage documents with color that can make the document more useful to the court. The invitation to comment says that color "causes problems with ACCMS" (p. 4), but doesn't explain the nature of those problems. The proposal suggests that PDFs with color components are not problematic. Because any document with color can be converted to PDF, the rule could require that any document with a color component (other than videos) must be filed in PDF and, in that case, could be filed electronically, rather than manually. While color PDFs can be large, PDF programs provide ways to reduce the file size. Rather than banning color, the present or future rules could include technical specifications that keep file sizes small. Manual filing should remain an option, but the rules should make it unnecessary. 3. Manual filing and date of filing It would seem fair to parties and practitioners throughout the state that a manually filed document be considered filed on the date the notice of manual filing is submitted, and the physical electronic media with the actual document is sent to the court, rather than requiring the electronic media to be delivered to the court on the due date.	No further response required. The committees thank the commenter for this input. The committees decline to add provisions concerning deadlines and effective filing dates where service and delivery requirements already exist in the rules. The committees will revisit the issue if courts' experience with manual delivery of electronic media warrants additional action.

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			4. Paper copies We suggest the rules provide that in cases in which the Court wants paper copies of a filing, the filer be notified of that requirement by email. The filer should be given a specific deadline to file the paper copy. The Ninth Circuit has followed this practice for many years, and it works well. Among other things, this avoids parties submitting paper copies only to find that the clerk requests changes to a document, requiring another set of paper copies to be prepared and delivered. It will also ensure the Courts receive paper copies timely, as requirements for paper are few and diminishing and such requirements can be easily overlooked. In sum, the Academy supports state-wide uniformity for e-filing procedures, but hopes that the various appellate districts will strive to achieve technological uniformity, so that the problems identified above can be corrected soon, if not in the current rule cycle.	The committees appreciate this input, and note that the proposal does not require courtesy paper copies of electronic filings. No response required.
3.	Court of Appeal, Fifth Appellate District by Brian Cotta, Clerk/Executive Officer	AM	In regard to: "Proposed subdivision (a)(13) specifies that a document with any color component must be manually filed rather than electronically filed. This is because color causes problems in ACCMS. The subdivision prohibits color components in electronically filed documents." Comment: Since the documents and viewing location will be changed from ACCMS to Hyland OnBase, will the existing challenge/issue not be	The committees appreciate the commenter's concern. Based on this and other comments, the committees have modified the proposal to allow

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			resolved on its own rather soon or does another technical issue apply that is unrelated to where the actual document(s) is/are stored or accessed? In regard to: "Rule 8.124 (appendixes), 8.144 (form of the record), and 8.212 (service and filing of briefs) were reviewed, and it was determined that amendments to those rules are not needed at this time." Comment: I would kindly suggest and request that Rule 8.144 (Form of the record) be updated to require 1.0 inch margins (or larger from left edge) rather than 1.25. My reasoning to justify the request is that Microsoft Word used to have default margins of 1.25 inch (version 2003 and prior), but since Microsoft Word 2007, have 1.0 inch margins. The margin requirement is/was likely to allow for binding and related hole punching. However, with electronic use now surpassing what is actually printed, loosening this requirement will also for more progressive technology applications (e.g. TAP) to be used for clerk's transcript assembly and therefore be in compliance of the rule.	for color components in electronic filings as long as the file complies with the file-size limit. The committees thank the commenter for this input. With respect to the commenter's suggestion to amend rule 8.144 (Form of record) to provide for 1-inch margins, that rule is beyond the scope of this proposal. The margin requirement set forth in 8.144(b)(2)(E) remains unchanged for clerk's and reporter's transcripts. Because under California Rules of Court, rule 10.22, substantive changes to a rule need to circulate for public comment before being recommended for adoption by the Judicial Council, the committees will retain the suggestion for future consideration if technological changes warrant change to margin requirements for clerk's and reporter's transcripts. To the extent this comment relates to the 1-1/2 inch margin requirement found in proposed rule 8.74, the proposed rule amendments are intended to implement best practices from the courts of appeal. The committees considered 1-inch margins but chose 1-1/2 inch margins because wider side margins allow readers additional room for notations, both on paper and in most annotation software for electronic documents. In choosing a margin requirement, the committees weighed the readability of a document over the default settings of Microsoft Word. Microsoft Word is not the only word processing software that practitioners use to create electronic filings,

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				and default settings change and can be adjusted. Based on this and other comments, however, the committees have added a subdivision to rule 8.74 providing that the margin provision applies to documents prepared for filing in the first instance in the reviewing court, not to documents like transcripts generated in the superior courts.
4.	Criminal Justice League Foundation by Kent Scheidegger, Legal Director and General Counsel	AM	The Criminal Justice Legal Foundation is a nonprofit, public interest organization promoting the rights of victims of crime in the criminal justice system. We submit this comment regarding the proposed rules on formatting electronic documents. We are particularly concerned with the formatting of appellate briefs, as that is our primary activity in the judicial system. Proposed Rule 8.74(a)(2) quite reasonably requires that "[t]he electronic page counter for the electronic document must match the page number for each page of the document." * * * What is most remarkable about the rule's prohibition of traditional numbering, though, is the complete absence of any reason for it. Traditional numbering, if matched in the PDF file, causes no inconvenience to the reader whatever. There is simply no reason to forbid it. The United States Supreme Court allows it. The federal courts of appeals allow it. California courts should allow it.	The committees thank the commenter for providing input on this proposal. The committees considered but declined to allow for Roman numeral page numbering for tables and Arabic numbering for the body of the document. The proposal's pagination requirement implements rules that already exist in California's appellate courts. All six appellate districts and the Supreme Court use consecutive Arabic-numbering as set forth in rule 8.74. The committees appreciate that numbering all pages, including preliminary pages like tables, in this manner may require additional preparation time, but consecutive pagination allows courts and parties to accurately locate the cited pages and ensures that page citations are consistent throughout a document. The utility of page numbers that match

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			CJLF respectfully suggests that the second and third sentences of the proposed Rule 8.74(a)(2) be deleted and the language in italics below inserted: (2) Pagination: The electronic page counter for the electronic document must match the page number for each page of the document. This requirement may be met either by (i) beginning with the first page or cover page as page 1 and using only Arabic numerals (e.g., 1, 2, 3), or (ii) using Roman numerals for the tables and Arabic numerals for the body of the document and conforming the electronic page counter of the electronic document to match. The page number for the cover page may be suppressed and need not appear on the cover page, or if method (ii) above is used the cover page may be unnumbered. When a document is filed in both paper and electronic formats, the pagination in both versions must comply with this subparagraph. [The commenter provided extensive comments, not all of which addressed specific provisions of the proposal. Certain portions of the comment therefore are not included in this chart.]	an electronic page counter (which cannot be re-set to match the page number) justifies any burden on electronic filers imposed by this pagination requirement. The committees will reconsider this requirement if technology changes.
5.	Jeffrey Ehrlich Ehrlich Law Firm	AM	I am a certified appellate specialist and have been practicing appellate law in California for over 35 years. I would urge the Council not to adopt the current proposal concerning the font style or typefaces that are acceptable. The current proposal seems to uncritically track the conclusions of the ABA's "Leap from E-filing" publication, which	The committees thank the commenter for this input. Based on this and other comments, the committees have deleted the prohibition on the use of Times New Roman.

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			in turn seems to express the idiosyncratic beliefs of the author or authors of that publication about which typefaces are desirable. First, I see no reason to ban Times New Roman. While that font is too small to read comfortably in 12-point weight, it's fine in 13-point or 14-point. I don't use that font, but the custom "Equity" font that I do use, which was created by Matthew Butterick, is very similar. By banning Times New Roman font, the proposal adds uncertainty about what fonts are acceptable, particularly because Times New Roman is a proportionally spaced font with a serif face, as the rule requires. Second, with the update to the rules concerning typeface styles, I think it's time to delete the ban on san serif fonts. I note that this comment form uses a san serif font, and it is highly readable. Most electronic devices now display text in san serif fonts, and they are highly readable -- perhaps more readable than fonts with a serif face. When I started in appellate practice, Horvitz & Levy used a very readable san serif font for all of its briefs. Given the chance, I would love to use Matthew Butterick's "Concourse" san serif font, which is highly readable and very attractive.	No further response required. The committees appreciate the commenter's input on this issue. Because a PDF retains the image quality of a printed document, readers can display a PDF as intended. Therefore, the committees decline to allow sans serif fonts in body and footnote text because of their more limited readability, but the committees have added an allowance for sans serif type face in headings, subheadings, and captions.
6.	Horvitz & Levy by Andrea Russi, Senior Counsel	A	We agree with this proposal and believe adopting one uniform rule for electronic filing across the six districts will make life easier for everyone. One suggestion:	The committees thank the commenter for this input and note the agreement with the proposal.

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			The new electronic filing rule does not specifically address the service of electronic documents. The current version of Rule 8.78 addresses electronic service but neither rule incorporates the language of the current local rules on electronic filing. The existing local rules address TrueFiling. (See Third District Rule 5(l); Sixth District Rule 2(j); First District Rule 16(j)). The uniform electronic filing rule should contain similar language about service. The new rule on electronic filing should cross-reference Cal Rules of Court, Rule 8.78 re: Electronic Service. Revised Rules 8.72 or 8.74 should contain language about the service of electronic filings, including an explanation of TrueFiling.	The suggestion would be a substantive addition to the proposal. Because under California Rules of Court, rule 10.22, substantive changes to a rule need to circulate for public comment before being recommended for adoption by the Judicial Council, the committees will consider this suggestion during the next rules cycle.
7.	Hon. Jo-Lynne Lee, Superior Court of Alameda County	N	I would oppose a change to the appellate rules prohibiting the use of Times New Roman. I prefer this font myself and don't understand the reason why it should be prohibited. Perhaps it is because increasing the font size to 13 impacts use of Times New Roman? An explanation would help.	The committees thank the commenter for providing input on this proposal. Based on this and other comments, the committees have deleted the prohibition on the use of Times New Roman.
8.	Lynn Loschin, Senior Research Attorney Court of Appeal, Fourth Appellate District	AM	As a research attorney who works with e-filed documents every day, I appreciate the opportunity to comment on the proposed changes. Pagination: Clarification that hard-coded page numbers must match electronic page counters is very useful. Being able to see what page I am looking at by looking at the counter, rather than	The committees thank the commenter for providing input on this proposal. The committees note the commenter's support for 8.74's pagination requirements.

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			scrolling to the bottom of the page, saves a great deal of time. It's also much more efficient to find pages using the counter than it is to scroll or search for them. I support this proposed change. Bookmarks: The requirement that bookmarks retain the reader's selected zoom setting is particularly welcome, as this has been a consistent problem with e-filed documents. When this option is not selected, it renders both bookmarks and the ability to use custom zoom settings less useful, and there is no way to quickly change all bookmarks to this option in bulk. I support this proposed change. Fonts: I am uncertain about prohibiting the use of Times New Roman. It's what everyone is must accustomed to and is the standard for most courts around the country, including California's trial courts. Further, there are far worse fonts that could be chosen that aren't specifically banned. I am also unsure why sans serif fonts are not allowed - they generally look better on screens (while serif fonts look better in print), which is why most web sites, including courts.ca.gov, use sans serif fonts. So much of our work is done on screens now that I am not sure that prohibiting all sans serif fonts is the direction the courts should be going. I would suggest a modification to the proposed rule that recommends specific fonts (maybe two or three	The committees note the commenter's support for 8.74's bookmarking requirements, including retention of a reader's selected zoom setting. The committees thank the commenter for providing input on this proposal. Based on this and other comments, the committees have deleted the prohibition on the use of Times New Roman. Because PDFs retain the image quality of a printed document, all readers can display a PDF as intended—even on screens. Therefore, the committees decline to allow sans serif fonts in body and footnote text because of their more limited readability, but the committees have added an allowance for sans serif type face in headings, subheadings, and captions. See responses above.

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			others in addition to Century), but does not ban either Times New Roman or all sans serif fonts.	
9.	Steven Murray	N	The rules regarding useable fonts should not be changed. Prohibiting Times New Roman and requiring Century Schoolbook would seriously interfere with many small firms and sole practitioners who have established formats for appellate work. The cost of appellate work is already so high, why enact a new rule which would take significant time and effort to implement. And prohibiting 14 point fonts (as this Equity Text A) does a disservice to the appellate staff and justices which have to read volumes of material.) In plain English, don't fix what is not broken. If any changes are needed (and I seriously doubt that), make them optional. Or better yes, as now, let each Division of the Court of Appeal or the Supreme Court make its own determination if any thinks change is necessary. Note the Second District stands alone, there has been no rush to follow.	The committees thank the commenter for providing input on this proposal. Based on this and other comments, the committees have deleted the prohibition on the use of Times New Roman. The committees decline, however, to allow font sizes other than 13 point. The committees appreciate the commenter's input, but favor uniformity over the existing patchwork of local rules, which make practice in the appellate courts more complicated than is necessary.
10.	Orange County Bar Association (OCBA) by Deirdre Kelly, President	AM	The OCBA believes the proposal appropriately addresses its stated purposes if amended as follows: (1) proposed Rule 8.40 provides for electronic filing "unless these rules provide otherwise" but no references are given to any of the exceptions which are given to the basic format provisions; to this point the OCBA can only determine the "exceptions" to be under Rules 8.44, 8.71, 8.74 & 8.79 for undue hardship, significant prejudice, format problems, self-represented parties, trial courts, and Supreme	The committees thank the commenter and note the OCBA's support for the proposal. With respect to rule 8.44(c)'s allowance for local rules requiring electronic copies of paper filings, the committees appreciate that local rules may not be uniform, which is the principle goal of this proposal. However, the requirement here applies

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			Court rules, but they are scattered about the rules and difficult to locate; (2) proposed Rule 8.44(c) defeats the purpose of creating uniform rules by allowing "by local rule" for required submission of electronic copies of any paper documents which may be authorized for filing by the rules; this authorization defeats the purposes of all stated exceptions to the electronic filing rules; (3) the OCBA recommends that the Judicial Council also consider amendments to the following additional rules which are applicable to electronic filing, service, signatures, and documents: Rule 8.42 (requirements for signatures), Rule 8.45 (general provisions for sealed and confidential records), Rule 8.75 (requirements for signatures), Rule 8.78 (electronic service), Rule 8.79 (Court order for electronic service), Rule 8.144 (form of the record), and Rule 8.254 (new authorities).	only to paper filings, and paper filers likely will not be able to comply with the uniform formatting requirements set forth in these rules. Therefore, the committees defer to the courts as to what format they require for electronic copies of paper filings. With respect to amending additional rules in Title 8 that are applicable to electronic filing, service, signatures, and other documents, the suggestion would be a substantive addition to the proposal. Because under California Rules of Court, rule 10.22, substantive changes to a rule need to circulate for public comment before being recommended for adoption by the Judicial Council, the committees will retain the suggestion for future consideration.
11.	Daniel Repp	N	I'm offering comment in response to proposed Rule 8.74. Specifically, I write to urge the committee to change that portion of the rule (8.74(a)(8)) that would bar the use of Times New Roman of appellate briefs. Times New Roman should not be banned. * * * (1) There's No Conflict Between the Appellate Districts Regarding Font Choice, So There Is No Need for a Uniform Rule Regarding Font Choice I do not see how the specific proscription against Times New Roman furthers the purpose of	The committees thank the commenter for this input. Based on this and other comments, the committees have deleted the prohibition on the use of Times New Roman. No response required.

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			uniformity in appellate court electronic document filing requirements. First, the e-filing requirements of only one district (i.e., the Second District) actually touch on the subject matter of font choice, so there is no true conflict among the Districts' Local Rules that has to be ironed out with a uniform rule. In this sense, the portion of the rule banning the use of Times New Roman (8.74(a)(8)) goes to far. * * * Reasonable minds can disagree about what's easiest on the eyes (I can read Times New Roman all day), but I don't think it's fair for one person's idea of what's readable (Century Schoolbook) to come at the expense of someone else's choice on the matter (whatever they prefer that's easiest on their eyes). At the risk of sounding like someone who's already read too much into this, I'm also going to say that I can't help but worry that this proposed rule unfairly favors the convenience of appellate justices and their staff (a small population) at the expense of practicing lawyers and their staff (a much larger body by comparison). (5) People Should Be Allowed to Use San Serif Fonts, Even if Some People Hate Them I understand that sans serif fonts can come off as too casual (I disagree with their use in pleadings), but this one (Century Gothic) is more readable than Arial and Tahoma, and even some of the fancy serif fonts out there. Why shouldn't someone be allowed to use it in a brief? It gets the job done.	No response required. The committees appreciate the commenter's input. The committees decline to allow sans serif fonts in body and footnote text because of its more limited readability. However, the committees have

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			* * * [The commenter provided extensive comments, not all of which addressed specific provisions of the proposal. Certain portions of the comment therefore are not included in this chart.]	added an allowance for sans serif type face in headings, subheadings, and captions.
12.	San Diego County Bar Association by Heather Guerena, Chair, Appellate Practice Section	AM	The Appellate Practice Section of the San Diego County Bar Association shared with its membership the proposed changes to the California Rules of Court contained in Invitation to Comment SPR19-07. After canvassing its membership and discussing the proposed changes among its board and other interested members, the Appellate Practice Section has the following comments about those proposed changes: General Comments: The Invitation to Comment requested comments on these two general topics. 1. Does the proposal appropriately address the stated purposes? The Executive Summary of the Invitation to Comment states that the purposes of the proposed changes include creating uniform formatting rules to provide consistency and clarity across all the appellate courts in California. The Appellate Practice Section believes that practitioners benefit from having, to the extent possible, one set of rules for all California appellate courts and that the proposed rules generally seem to promote the stated	The committees thank the commentator for this input and note the Appellate Practice Section of the San Diego County Bar Association's agreement with the proposal if modified. The committees appreciate this feedback.

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			purposes. The Appellate Practice Committee further believes that acceptance of the proposed changes would be enhanced if the Judicial Council also expressed that the proposed rule changes are intended to improve the readability of electronic filings on electronic readers used by judicial officers and staff and that the proposed changes are based upon the courts' experiences with electronic filings and electronic readers to date. Users should want their filings to be readable without difficulty and are more likely to embrace the proposed changes if they understand that these changes are designed to ease reading on electronic reading devices. Because the proposed rules would bring about a major change from the days of paper filing documents, the Appellate Practice Committee suggests that the Judicial Council organize a webinar with speakers drawn from court staff, practitioners, and perhaps software vendors to explain the rules and address issues practitioners may encounter in implementing them. Such a webinar should be broadcast statewide by video and audio over the internet, and it should be recorded for playback by anyone not able to attend the live session. Questions about the changes also should be solicited in advance of the webinar and during the webinar itself.	The committees support the suggestion for a webinar, which could be offered by a bar group or continuing education provider. The Judicial Council's Center for Judicial Education and Research (CJER) provides educational services that support continuing professional development for justices, judges, subordinate judicial officers, and court personnel. CJER does not organize or provide education for practitioners.

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			2. Are there terms that need further reference or definition, such as the words "omission page" or file-type references like ".mp3" or "hyperlink"? The terms "omission page" and "hyperlink" in particular may not be well-known to all electronic filers, especially those who have limited experience to date with electronic filing. Users of the rules would benefit from providing some definition or description of these terms, as is discussed further below in the Appellate Practice Section's comments to specific proposed rule changes.	The committees thank the commenter for this input. The committees note that an advisory committee comment gives two examples of the type of information to include in identifying pages omitted. Because hyperlinks are encouraged but not required, the committees have chosen not to provide a definition for this reasonably well-known term.
			Specific Comments: The Appellate Practice Section's specific comments to the proposed rule changes are as follows: Rule 8.40 No comments. Rule 8.44 No comments. Rule 8.71(a) No comments.	No response required.
			Rule 8.72 Rule 8.72(a)(1): Electronic filers should benefit from having courts publish, in both electronic and print formats, their electronic filing requirements. Such publications would be a logical place to include a statement that the requirements are intended to improve the readability of such filings on electronic readers.	The committees thank the commenter for this input.
			Rule 8.72(a)(2): As is proposed, the rules should retain the requirement that the courts take reasonable steps to provide notice of a problem that impedes or	

	Commenter	Position	Comment	DRAFT Committees Responses
			precludes electronic filing. Any such notice likely would raise the question whether, and to what extent, the stated problem requires or supports a postponement of filing deadlines. To minimize uncertainty among filers and unnecessary phone calls or other communications to court staff after each notice is given, the proposed rule should also state something like: "Any such notice should state whether, and to what extent, any filing deadlines affected by the problem are extended." Rule 8.72(b): Paragraph (1) of this proposed rule incorporates current Rule 8.74(a)(3), which requires each filer to "take all reasonable steps to ensure that the filing does not contain computer code, including viruses, that might be harmful to the court's electronic filing system and to other users of that system." This rule seems likely to cause confusion as to what is required. The Appellate Practice Section understands that if a filer otherwise complies with the formatting rules for electronic documents, particularly those requiring filings to be in portable document format (PDF), the filing should be free of viruses given current technology. The rule as written leaves it unclear whether filing in this format is a sufficient reasonable step and, if not, what additional steps a filer must take. The Appellate Practice Section suggests that proposed Rule 8.72(b)(1) be rewritten to state that "Each electronic filer must: (1) Comply with all electronic filing requirements in these rules and not	The committees thank the commenter for this input. The proposal does not require courts to provide anything more than notice to the parties because under rule 8.71 filing a document electronically does not alter any filing deadline. Unless a notice from a court provides otherwise, it would be incumbent on a party or attorney adversely affected by a problem that impedes or precludes electronic filing, upon receipt of notice of the problem, to seek appropriate relief from the court. The committees thank the commenter for this input. The committees decline to add a mental-state requirement to this provision. Based on this comment, however, the committees have added an advisory committee comment to clarify that more is required than not intentionally harming the court or other users, and that one reasonable step would be to use a commercial virus scanning program.

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			intentionally file any document containing computer code, including viruses, that might be harmful to the court's electronic filing system and to other users of that system." Rule 8.74 Rule 8.74(a): The title to proposed Rule 8.74(a) is "Format requirements applicable to all electronic documents." Consequently, this rule would apply not only to the briefs, applications, motions, etc. that have been prepared for original filing in the appellate court but also to all documents in an appendix, attachment, or exhibit that were first filed in some other forum. Proposed Rule 8.74(a) includes font, spacing, margin, and alignment requirements. Thus, as written, all documents filed in another forum from which an appeal might be taken would have to be in the format set by Rule 8.74(a) when originally filed or would be precluded from the record on appeal. The problem could be resolved by changing the title of Rule 8.74(a) to "Format requirements for all briefs, applications, motions, or other documents prepared for original filing in appellate court." Rule 8.74(a)(3): The last sentence of proposed Rule 8.74(a)(3) states, "All bookmarks must be set to retain the reader's selected zoom setting." This requirement is not likely to be understood by all users, especially those without experience with	The committees agree with the commenter that, as drafted and circulated for comment, rule 8.74 unintentionally encompassed documents that are not prepared for electronic filing in the first instance in the reviewing court. Based on this and other comments, the committees have made changes to the proposal, and have included an advisory committee comment to make this requirement clearer. The committees appreciate the commenter's input on this proposal. The committees will recommend

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			electronic filing. Also, at least for filers using current Adobe Acrobat to generate pdf documents, this requirement imposes a significant burden on the filer. Current Adobe Acrobat by default sets zoom as "custom" and does not seem to allow this setting to be changed other than by manually changing the zoom setting for each bookmark to "inherit zoom." Because this setting is buried several layers down in Adobe Acrobat, not only must the user change the setting for each bookmark, each such change requires a number of "clicks" to accomplish the change. The Judicial Council, which it is believed has more sway than individual attorneys with pdf software vendors, should on its own or in conjunction with local and statewide bar associations approach pdf software vendors, explain the issue, and request that the vendors change their software to allow the equivalent of "inherit zoom" either to be the default setting or to be easily changed to this setting at one time for all bookmarks rather than having to be changed bookmark-by-bookmark. Second, at least until such change has been made by the applicable software vendors, the rule should be written as permissive rather than as mandatory, such as "To maximize the readability of filings on electronic readers, bookmarks in the pdf software used by the filer should be set so that the screen	that courts publish instructions on how to comply with the bookmarking requirement. The committees appreciate the commenter's input on this proposal. The committees acknowledge the suggestion concerning software vendors and will forward it to appropriate Judicial Council staff for consideration. The committees have decided that the benefits of the bookmarking requirement outweigh the burden on electronic filers, and decline to make the bookmarking view voluntary.

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			retrieved by use of the bookmark maintains the zoom setting being used by the reader of the document." Rule 8.74(a)(4): See comment to proposed Rule 8.74(b)(7) below. Rule 8.74(a)(6): Consistent with the comments below to proposed Rule 8.74(a)(13), and given the 25mb size limitation in proposed rule 8.74(a)(5), this rule should be rewritten to delete the reference to Power Point and to photographs and color components as follows: "Audio or video files must be manually filed. Audio files must be filed in .wav or mp3 format. Video files must be filed in .avi or .mp4 format." Rule 8.74(a)(7): The proposed rule would require all electronically filed documents to use a "proportionally spaced serif face" font. The only example given of an acceptable font is "Century Schoolbook," and the only example given of a prohibited font is "Times New Roman." The purpose of this rule seems to be to require a font most easily readable on electronic readers. A problem with mandating any particular font or fonts is that the names of fonts may differ among word processing programs. It also may be difficult for filers to determine whether any particular font is a proportionally spaced serif face font. The proposed rule as drafted might create further confusion	Based on this and other comments, the committees have amended this provision and the color component provision. Based on this and other comments, the committees have deleted the prohibition on the use of Times New Roman, but the committees have preserved the rule's preference for Century Schoolbook, which is considered to be one of the most readable fonts. The committees have chosen to favor uniformity over the existing patchwork of local rules, which make practice in the appellate courts more complicated than is necessary.

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			because Times New Roman, the font the rule specifically disallows, is itself a proportionally spaced serif face font. The most-preferred font or fonts also may differ from court to court. This rule could be improved by permitting a court to provide by local rule a list of fonts acceptable to that court but not required by that court. With this change, any filer could file using Century Schoolbook in any court, but a filer also could file using other acceptable fonts that may be preferred by a particular court. Because the other fonts would be permitted but not required, allowing courts to provide a list of preferred fonts by local rule would not undermine the purpose of the proposed changes to provide statewide uniform rules. Rule 8.74(a)(12): This rule may cause some confusion as written. Because "hyperlink" is not defined, some users may not know what it means. Additionally, a filing could contain hyperlinks not only to legal citations but also to an appendix/record. The rule seems to be directed only at hyperlinks to legal citations, however, leaving it unclear whether the courts encourage hyperlinks to the appendix/record, as well. This should be clarified. Also, it has been the experience of some members of the Appellate Practice Section that commercially	Based on this and other comments, the committees have clarified the provision relating to hyperlinks. Because hyperlinks are encouraged but not required, the committees chose not to provide a definition for a reasonably well-known term. The committees will recommend that courts publish instructions on how to create hyperlinks.

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			available software, such as that provided by Lexis or West, can be problematic, which may discourage users from providing hyperlinks if not required by the courts. If done correctly, hyperlinks would be to the benefit of the court and the parties. The Appellate Practice Section suggests that, apart from the proposed rules revisions, the Judicial Council approach vendors of hyperlink software to determine whether such software could be written and purchased by the courts to be applied by to electronic filings after they are filed in pdf rather than before they are filed by parties. If this is possible, then the courts could ensure that all documents to be read by the courts are hyperlinked. Whether such software could be incorporated into current court budgets, or whether there would need to be a per document fee imposed on filers, could be determined once the cost of any such software is known. Rule 8.74(a)(13): The Appellate Section of the San Diego County Bar Association supports the goal of establishing consistency with respect to electronic filing in all Appellate Districts. However, we have a concern with the prohibition against the electronic filing of any documents containing color expressed in the proposed Rule 8.74, subd. (a)(6) and (a)(13). The Executive Summary for SPR19-07 expresses that the purpose of these rules is to ease the burden on filers. We believe that requiring manual filing of any color documents in fact increases the burden on	The committees acknowledge the suggestion concerning vendors of hyperlink software and will forward it to appropriate Judicial Council staff for consideration. Based on this and other comments, the committees have confirmed that ACCMS allows for the filing of color components, and have removed the special filing requirements for documents with color components. Under the modified provisions, manual filing will be required when a filing with a color component

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			any filing party and increases the burden on the Courts in organizing their case files. In contrast, the ability to electronically file color documents, exhibits, etc., benefits all parties, including the Courts, by providing clarity and emphasis where it is necessary. This prohibition is especially problematic in the context of proposed Rule 8.74, subd. (b), which requires exhibits not to be filed as individual documents but rather as "volumes no larger than 25 megabytes." The segregation and manual submission of color exhibits impacts the organization and order of any appendix or exhibit list. The same concern applies to the extent the filer is required to submit its brief manually. Moreover, if the purpose of this rule is to limit the size of files by limiting the color content, that concern is already addressed by the size limit articulated in proposed Rule 8.74, subd. (a)(5). At present, it appears that only the Third Appellate District restricts filers' ability to electronically file color documents. (Local Rule 5, subd. (e)(7).) The Appellate Practice Section respectfully requests that the Judicial Council consider that the remainder of Appellate Districts have no such restriction and that imposing such a restriction on filers in all Districts creates an undue burden on the filers, as well as the Courts, as it negatively impacts the efficiency and economy associated with organizing and maintaining the manual and electronic portions	exceeds the file-size requirements or in other limited circumstances under the rule. No response required.

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			of appellate case files. The proposed rules thus should not bar electronic filing of color documents within the 25 mb restriction but should allow the Third Appellate District to have a local rule barring color filing until such time as that District is able to accept color in electronically filed documents. Rule 8.74(b): As written, proposed Rule 8.74(b) seems to impose on all documents within its scope (including appendices under Rule 8.74(b)(3), trial transcripts under 8.74(b)(5), and trial exhibits under Rule 8.74(b)(6)) all the requirements of proposed Rule 8.74(a). Although some subparts of Rule 8.74(a) (such as (1)-(7)) could be applied to documents such as appendices, transcripts, and exhibits, other subparts (such as (8)-(11)) would not seem to apply to these documents other than the extent to which cover pages and tables or indices are prepared for them for use in the appellate courts. See comment above to the proposed title of Rule 8.74(a). The following language should be added at the beginning of the text of each of proposed Rule 8.74(b)(3) and (5): "Except for cover pages, tables, or indices prepared for an appellate court, . . ." In addition, for each of 8.74(b)(3) and (5), the phrase "must comply with this rule" should be changed to "must comply with parts (a)(1) through (a)(7) of this rule . . . ." If the title to proposed Rule 8.74(a) is changed as suggested above, there may not need to be any changes to proposed Rule 8.74(b)(6).	The committees thank the commenter for this input. Based on this comment and others, the committees have amended the rule to clarify the line-spacing requirements of 8.74, and to eliminate the cross-reference between rule 8.74 and rule 8.204(b). Subdivision (b) of rule 8.204 has been amended to apply only to documents filed in paper form, and the relevant provisions of rules 8.40(c) and 8.204(b) have been added to rule 8.74.

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

	Commenter	Position	Comment	DRAFT Committees Responses
			Rule 8.74(b)(7): The proposed rules and California Rules of Court, rules 8.45, 8.46 and 8.47, do not provide clear instructions regarding the method for separate electronic submittal of confidential or sealed records. In order to provide clarity and uniformity, and to lessen the burden on Court Staff in answering inquiries pertaining to confidential and sealed filings, the method of electronic submittal should be specified, or if such method is set forth on the Truefiling webpage a reference to where that information can be found should be included. In addition, the rules should provide filers with a more concrete description of what language/references should be included on an omission page. Rule 8.204 No comment. Rule 8.252 No comment.	The suggestion would be a substantive addition to the proposal. Because under California Rules of Court, rule 10.22, substantive changes to a rule need to circulate for public comment before being recommended for adoption by the Judicial Council, the committees will retain the suggestion for future consideration. The committees thank the commenter for this input. To the extent the commenter seeks additional guidance, the proposal includes an advisory committee comment that gives examples of descriptions for an omission page.
13.	Superior Court of Los Angeles County	A	Does the proposal appropriately address the stated purpose? Yes, this is an attempt to provide consistency in the way electronic documents are filed in reviewing courts. Are there terms that need further reference or definition, such as the words “omission page” or file-type references like “.mp3” or “hyperlink”? Yes, it would be beneficial to litigants to have a glossary description of terms available through hyperlink in the rule or as an attachment to assist in clarifying technical terms.	The committees appreciate the commenter’s input on this question. The committees appreciate the commenter’s input on this question. Because hyperlinks are encouraged but not required, the committees have chosen not to provide a definition for this reasonably well-known term. The committees will

	Commenter	Position	Comment	DRAFT Committees Responses
			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, the cost savings for filing electronically have or will be realized through other court initiatives. This proposal addresses consistent formats for filing electronic documents. • 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 include training for staff (1-2 hours) and possible modification to the case management system(s) to ensure that the required filing elements of the rule are contained in the documents accepted. • Would 3 months from Judicial Council–approval of this proposal until its effective date provide sufficient time for implementation? Yes, three months is sufficient contingent upon the programming updates to the Case Management Systems being completed.	recommend that courts publish instructions on how to create hyperlinks. The committees appreciate the commenter's input on this question. The committees appreciate the commenter's input on this question. The committees appreciate the commenter's input on this question.
14.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	• Does the proposal appropriately address the stated purpose? Yes.	The committees appreciate the commenter's input on this question.

	Commenter	Position	Comment	DRAFT Committees Responses
			• Are there terms that need further reference or definition, such as the words "omission page" or file-type references like ".mp3" or "hyperlink"? No.	The committees appreciate the commenter's input on this question.
			• Would the proposal provide cost savings? If so, please quantify. Yes. It would save the costs of printing copies for the parties. The exact costs are unknown.	The committees appreciate the commenter's input on this question.
			• 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 very minimal training for staff. Possible need to adopt procedures for non-compliance.	The committees appreciate the commenter's input on this question.
			• Would 3 months from Judicial Council–approval of this proposal until its effective date provide sufficient time for implementation? Yes. No additional comments.	The committees appreciate the commenter's input on this question.
15.	Supreme Court of California by e-filing working group staff	NI	Comments regarding Proposed Appellate Court E-Filing Rules, SPR19-07 **1) Rule 8.74(a)(1), requirement to "convert" paper documents**: The description of the proposed	The committees thank the commenter for this input. Based on this comment and others, the

	Commenter	Position	Comment	DRAFT Committees Responses
			rule states, "To ensure text searchability, the proposal requires a filer to 'convert' a paper document to electronic form, *rather than scanning a printed document*." (Italics added) Although the proposed rule itself does not explicitly exclude scanning the document, assuming that is the intent, there are documents, e.g., some exhibits submitted in support of a habeas corpus petition, that are not amenable to being "converted" by a means other than scanning the document. These exhibits often include handwritten documents such as letters, forms with extensive handwriting, photographs, charts, diagrams, etc. It is unclear how such documents could be practicably converted by a means other than scanning, a scanned image of the document typically is sufficient for the purposes for which the document has been filed, and it is more efficient to have these documents part of the electronic volume of exhibits rather than, e.g., having them separately filed as a paper document. It may, therefore, be beneficial to have an exception in the rule for such documents. Possible language could be as follows: If an electronic filer must file a document that the electronic filer possesses only in paper format, the electronic filer must convert the document to an electronic document by a means that complies with this rule. <u>Use of a scanned image of a paper document is not a permitted means of conversion unless the document cannot practicably be converted</u>	committees have amended rule 8.74 to address PDF conversion and scanning of paper-only documents. The committees also have recommended an advisory committee comment on this provision addressing the types of documents mentioned by the commenter.

	Commenter	Position	Comment	DRAFT Committees Responses
			into a text-searchable file, for example, if the document is entirely or substantially handwritten, a photograph, or a graphic such as a chart or diagram that is not primarily text-based. The printing of an electronic document must not. . . . **2) Rule 8.74(b)(7), additional requirements for sealed and confidential records**: The language of the proposed rule could be revised to be more consistent with the terminology in the rules addressing sealed and confidential records. In addition, the proposed rule appears focused on the procedure for full-page redactions of documents. Typically, parties must submit and, upon ruling by the court, are permitted to file redacted and unredacted versions of the document at issue. In order to maintain the same page numbering in the two versions of the document, there should be an "omission page" for each page that has been redacted, not merely a single page representing a range of pages. A suggested revision in clean and redline versions follows. Proposed Rule 8.74(b)(7) as revised: *Sealed and confidential records:* Under rule 8.45(c)(1), electronic records that are sealed or confidential must be filed separately from publicly filed records. If one or more pages are omitted from a publicly filed record and filed separately as a	Based on this comment and others, the committees have modified the provision concerning sealed and confidential documents.

	Commenter	Position	Comment	DRAFT Committees Responses
			sealed or confidential record, an omission page or pages must be inserted in the publicly filed record at the location of the omitted page or pages. The omission page(s) must provide a title for the page(s) omitted that does not disclose the substance of the page(s). The omission page(s) must be paginated consecutively with the rest of the publicly filed record, must be bookmarked, and must be listed in any indexes included in the publicly filed record. The PDF counter for the omission page(s) must match the page number(s) of the omission page(s). Separately filed sealed or confidential records must comply with this rule and rules 8.45, 8.46, and 8.47. *Sealed and confidential records*: Under rule 8.45(c)(1), electronic records that are sealed or confidential ~~or under seal~~ must be filed separately~~.~~ from publicly filed records. If one or more pages are omitted from a ~~source document~~publicly filed record and filed separately as a sealed or confidential record, an omission page or pages must be inserted in the ~~source document~~publicly filed record at the location of the omitted page or pages. The omission page(s) must ~~identify~~provide a title for the ~~type of pages~~page(s) omitted~~.~~ that does not disclose the substance of the page(s). The omission page(s) must be paginated consecutively with the rest of the ~~source document, it~~publicly filed record, must be bookmarked, and ~~it~~ must be listed in any indexes included in the ~~source document.~~publicly filed record. The PDF counter for the omission	The committees appreciate the suggested changes submitted by the e-filing working group staff, and have recommended adopting most of them.

	Commenter	Position	Comment	DRAFT Committees Responses
			page(s) must match the page number(s) of the omission page~~-~~(s). Separately filed sealed or confidential ~~or sealed~~ records must comply with this rule and rules 8.45, 8.46, and 8.47. **3) Rule 8.78(a)(2)(B), consent to electronic service**: The proposed rules do not revise this rule. However, the equivalent rule in the trial court rules, Rule 2.251(b)(1)(B), was recently revised to be in compliance with newly enacted section 1010.6 of the Code of Civil Procedure, which, at least in the trial courts, no longer permits use of the act of electronic filing to serve as consent. Rather, affirmative consent is required. (See Report to the Judicial Council for September 21, 2018 Meeting, Item 18-141, pp. 3 & 9, available at https://jcc.legistar.com/View.ashx?M=F&ID=6612001&GUID=E5CF50DA-2B58-487A-BBC3-A77A1A2ABAE3) Must or should rule 8.78(a)(2)(B) be similarly revised?	The suggestion would be a substantive addition to the proposal. Because under California Rules of Court, rule 10.22, substantive changes to a rule need to circulate for public comment before being recommended for adoption by the Judicial Council, the committees will consider this suggestion during the next rules cycle.
16.	Trial Court Presiding Judges Advisory Committee (TCPJAC)/Court Executives Advisory Committee (CEAC) Joint Rules Subcommittee (JRS)	A	The JRS notes the following impact to court operations: • Requires development of local rules and/or forms. The JRS also notes that the proposal should be implemented because it seeks to streamline and establish consistencies for electronic filing requirements among all appellate courts. As it will also require local rule changes, a 3-month period of time considering the rule revision process may be insufficient depending upon when the changes are approved. A 6-month time table is more realistic.	The committees appreciate the commenter's input and note JRS's support for the proposal. [For committee discussion: JRS expressed concerns that amendment of the courts' local rules will require more time than the January 2020, effective date for the proposal.]

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

	Commenter	Position	Comment	DRAFT Committees Responses
17.	Kristin Traicoff Law Office of Kristin Traicoff	AM	As an appellate practitioner, I believe proposed rule 8.74(a)(3) should be amended where it states: "Each electronic document must include..." It should, instead, provide that certain electronic documents are exempted from the bookmarking requirement -- such exemptions might include requests for extensions of time, service copies of supplemental records requests made to the trial court under Rule 8.340(b), and other short motions that do not contain the subsections that this rule appears to contemplate (for instance, a request that the Court of Appeal transmit a sealed record to counsel, a Motion to Augment the Record, etc). Perhaps this could be effectuated by amending the proposed rule text to provide that bookmarking is required for each electronic document that exceeds a certain number of pages. The purpose of my proposal is to save appellate counsel the undue burden of adding bookmarks to documents where, realistically, the court is unlikely to find the bookmarks useful or rely on them in any way.	The committees thank the commenter for providing input on this proposal. The proposal's bookmarking requirements apply to documents with certain components. The bookmarking requirements are intended to aid readers of all electronic documents. The committees appreciate that creating bookmarks will require additional time, but the utility of bookmarks for readers justifies any burden on filers imposed by this requirement.
18.	Norm Vance	N	The ban on Times New Roman in proposed rule 8.74(a)(8) is silly. The rule requires use of a "proportionally spaced serif font." Times New Roman is exactly that. It is perhaps the best known and most widely used example of such a font. I realize that certain courts in the state do not appear to like it. I, for one, do. I find it very readable. Is this really a necessary rule?	The committees thank the commenter for providing input on this proposal. Based on this and other comments, the committees have deleted the prohibition on the use of Times New Roman.

Rule 8.204(b)(5), defines spacing thusly: "The lines of text must be unnumbered and at least one-and-a-half-spaced. Headings and footnotes may be single-spaced. Quotations may be block-indented and single-spaced. Single-spaced means six lines to a vertical inch." In addition to redefining a typographical term in California—because typographically, spacing depends on point size (the height of the font) not on an arbitrary number of lines/inch—the court's definition yields unreadable results:

13pt (true single) spacing using 13pt Century Schoolbook yields 5 lines/vertical inch, which doesn't comply with the rule:

Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch.

MS Word's "single" spacing option yields 4 lines/vertical inch, which also doesn't comply with the rule:

Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch.

To get to 6 lines per vertical inch and comply with the rule using 13pt Century Schoolbook, you need to set the spacing to 12pt:

Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch.

Based on rule 8.204(b)(5)'s definition of single spacing, I assume 1.5 spacing is supposed to be 4 lines per vertical inch.

20.5 pt (true 1.5) spacing in 13pt Century Schoolbook yields 3 lines/ vertical inch (*almost* 4), which doesn't comply with the rule:

Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch.

MS Word's "1.5 lines" spacing option yields 3 lines/vertical inch, which also doesn't comply with the rule:

Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch.

To get to 4 lines per vertical inch using 13pt Century Schoolbook, you need to set the spacing to 19 pt:

Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch. Single-spaced means six lines to a vertical inch.

Criminal Justice Legal Foundation

June 6, 2019

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Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102-3688
Via Electronic Mail

Re: Invitation to Comment SPR19-07, Appellate Procedure:
Uniform Formatting Rules for Electronic Documents

Judicial Council:

The Criminal Justice Legal Foundation is a nonprofit, public interest organization promoting the rights of victims of crime in the criminal justice system. We submit this comment regarding the proposed rules on formatting electronic documents. We are particularly concerned with the formatting of appellate briefs, as that is our primary activity in the judicial system.

Proposed Rule 8.74(a)(2) quite reasonably requires that "[t]he electronic page counter for the electronic document must match the page number for each page of the document." There are two ways to achieve that match. The proposal oddly *forbids* the superior method and *requires* the inferior method. No reason is given for this inversion. None is apparent. The lack of a reason suggests that it is the product of simple ignorance.

For good reasons, lawyers and book publishers have traditionally begun the Arabic numbering of pages (1, 2, ...) on the first page of text and numbered preliminary pages, such as tables of contents and authorities, with Roman numerals (i, ii, iii, ...). However, programs that create PDF documents will number the pages with sequential Arabic numbers from cover to end unless directed otherwise. This mismatch is inconvenient for the reader. Hence, many courts have issued rules to prevent the mismatch. They have generally required numbering the pages to match the PDF numbers rather than the other way around. I have never seen an explanation for forbidding numbering the PDF

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document in the traditional manner. I suspect that many of the courts that have issued such rules are simply unaware that it can be done.

Numbering the pages of a PDF file in the traditional way is quite easily done with Adobe Acrobat. CJLF has been numbering its electronic briefs this way for years in courts that allow it. See, for example, our brief in *Virginia House of Delegates v. Bethune-Hill*, No. 18-281, http://cjlf.org/program/briefs/VAHouse.pdf in the United States Supreme Court. The high court itself numbers the recent PDF versions of the bound volumes of its reports this way. See, for example, 569 U.S., https://www.supremecourt.gov/opinions/boundvolumes/569BV.pdf.

The traditional numbering has conveniences for both the reader and the author. The reader can easily skip to the first page of text simply by entering "1" in the page number box at the top of either the full Adobe Acrobat or the free Adobe Reader. The proposed rule requires electronic bookmarks, which can also be used for this purpose of course, but just entering "1" may be more convenient, particularly if the bookmark panel is not yet open.

The primary convenience, though, is for the authors. The final preparation of a brief is sometimes hectic with a deadline approaching. Although the tables appear first in the brief, they are created after the text. The text is generally written and paginated first, often with internal cross-references to page numbers, at a time when the number of preliminary pages is unknown. The tables refer to page numbers in the text, but the creation of the tables forces changes in the page numbers to which they refer, causing a "chicken and egg" problem. This additional complication in the sometimes stressful "home stretch" of brief preparation would seem to require a substantial justification.

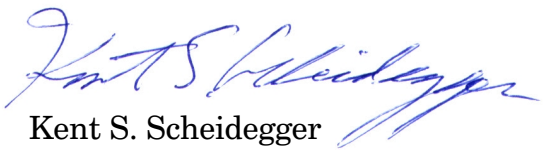
What is most remarkable about the rule's prohibition of traditional numbering, though, is the complete absence of *any* reason for it. Traditional numbering, if matched in the PDF file, causes no inconvenience to the reader whatever. There is simply no reason to forbid it. The United States Supreme Court allows it. The federal courts of appeals allow it. California courts should allow it.

CJLF respectfully suggests that the second and third sentences of the proposed Rule 8.74(a)(2) be deleted and the language in italics below inserted:

> (2) Pagination: The electronic page counter for the electronic document must match the page number for each page of the document. *This requirement may be met either by (i) beginning with the first page or cover page as page 1 and using only Arabic numerals (e.g., 1, 2, 3), or (ii) using Roman numerals for the tables and Arabic numerals for the body of the document and conforming the electronic page counter of the electronic document to match.* The page number for the cover page may be suppressed and need not appear on the cover page*, or if method (ii) above is used the cover page may be unnumbered*. When a document is filed in both paper and electronic formats, the pagination in both versions must comply with this subparagraph.

Thank you for your consideration of this suggestion.

Very truly yours,



Kent S. Scheidegger

KSS:iha

Daniel Repp
1001 Los Molinos Way
Sacramento, CA 95864

June 10, 2019

To: invitations@jud.ca.gov

In re: Comments on SPR-19-07

Dear Gentle Person,

I'm offering comment in response to proposed Rule 8.74. Specifically, I write to urge the committee to change that portion of the rule (8.74(a)(8)) that would bar the use of Times New Roman of appellate briefs. Times New Roman should not be banned.

Abstract

Times New Roman *is* readable. The law offices I've worked in use it exclusively, and I actually find it somewhat jarring to see anything but Times New Roman (or Courier) in a pleading or a ruling. I once helped prepare a brief (using Times New Roman) that was filed in the Third District Court of Appeal, and that District issued its opinion using Times New Roman. (What a coincidence that Justice Mauro from the Third District is proposing this rule!)

We never gave any thought over whether to use a font other than Times New Roman, and we would have scratched our heads if we were forced to use something *other* than Times New Roman. (We were conscientious enough to check the briefing requirements under the local rules and the California Rules and would have honored any such requirement).

The Part of the Rule With Which I Disagree

"Font: The font style must be a proportionally spaced serif face, such as Century Schoolbook. Do not use Times New Roman. Font size must be 13-point, including in footnotes." (Proposed Rule 8.74(a)(8); underline added.)

The Committee's Question

Does the proposal appropriately address the stated purpose?

My Answer and Comments in Support of That Answer to the Committee's Question

As I'm sure you've already guessed, my answer is no.

Reasons Why I Disagree

(1) *There's No Conflict Between the Appellate Districts Regarding Font Choice, So There Is No Need for a Uniform Rule Regarding Font Choice*

I do not see how the specific proscription against Times New Roman furthers the purpose of uniformity in appellate court electronic document filing requirements. First, the e-filing requirements of only one district (i.e., the Second District) actually touch on the subject matter of font choice, so there is no true conflict among the Districts' Local Rules that has to be ironed out with a uniform rule. In this sense, the portion of the rule banning the use of Times New Roman (8.74(a)(8)) goes to far.

One could argue that there's a lack of uniformity, because not all Districts have the same rule (it's the Second District versus all others who have yet to venture an opinion) regarding font style (proportional or not-proportional), but, again, I think the portion of the rule banning Times New Roman is a step too far, and is simply the latest incursion in what can only be described as a kind of culture war over font choice in the legal profession (that I want no part of).

(2) *Whether One Uses Times New Roman (or Something Else) in a Brief Should Not Be Important So Long as You're Not Writing the Brief in Your Own Sloppy, Unreadable Handwriting*

Readability is the proffered reason for requiring a proportionally spaced serif font like Century Schoolbook but, again, Times New Roman is readable.

I mean this in the best way possible: it really shouldn't matter whether you're using a proportional or non-proportionally spaced serif font in an appellate brief so long as a type-written font is being used. Objectively, both are readable. (Much more readable than the handwriting of some lawyers!) Remember, it could always be worse. *(Can you imagine reading a brief in Lucida Handwriting? I can imagine a pro per thinking it would be.)*

(3) *Readability is More Than Just One Font*

A readable document is more than just one font. I've found that creating space between lines (one and a half or double), making regular paragraph indentations (to avoid the one, big, never-ending paragraph), increasing font size (to 14-point), and using left-aligned justification ("ragged right") does more for readability in pleadings by avoiding sameness and monotony than the use of a font ever could on its own.

That's the problem with proportionally spaced mono-type fonts: they come off as monotonous. Each letter takes up the same amount of width as all the others, which means you have a font that essentially offers no kind

of diversity in word length beyond the length of the word itself. If you justify the line spacing, it becomes even more uninviting because that indescribable feeling of sameness just increases all the more.

(4) *What's Convenient For a Few Should Not Come at the Expense of What's Suitable for Everyone Else*

Reasonable minds can disagree about what's easiest on the eyes (I can read Times New Roman all day), but I don't think it's fair for one person's idea of what's readable (Century Schoolbook) to come at the expense of someone else's choice on the matter (whatever they prefer that's easiest on *their* eyes).

At the risk of sounding like someone who's already read too much into this, I'm also going to say that I can't help but worry that this proposed rule unfairly favors the convenience of appellate justices and their staff (a small population) at the expense of practicing lawyers and their staff (a much larger body by comparison).

(5) *People Should Be Allowed to Use San Serif Fonts, Even if Some People Hate Them*

I understand that sans serif fonts can come off as too casual (I disagree with their use in pleadings), but this one (Century Gothic) is more readable than Arial and Tahoma, and even some of the fancy serif fonts out there. Why shouldn't someone be allowed to use it in a brief? It gets the job done.

(6) *Aren't The Merits of the Case More Important? (Warning: Unkind Remark About Matthew Butterick Appears Below.)*

There are simply more important things to worry about. Like meeting deadlines. Or deciding how to frame the case in a way that's sympathetic to your client without getting called a liar. Or resisting the urge to write that opposing counsel "has decided to go slumming" because they've cited a federal case from the United States District Court in Mississippi even though the case is being litigated in Superior Court here in California and concerns an issue of state law (FEHA). Again, the merits of the case are what's important, not whether you're using Times New Roman.

And I know I'm going to piss somebody off by saying this, but in the interest of honesty I'm just going to say it: Matthew Butterick is a professional menace to those of us who do not want to be judged by the kind of font we use. For every person like Butterick who exalts typography, there's a philistine like me who just doesn't see the difference and wants to avoid getting dragged into it because the workload is more than enough to keep busy.

/ / /

(7) *Typography Guru Matthew Butterick Agrees That Times New Roman is Readable Even Though He Seems to Hate It*

On the subject of Times New Roman, Butterick has admitted that "[o]jectively, there's nothing wrong with Times New Roman". This hasn't stopped Butterick from dismissing the font with the kind of presumptuous disdain that drives me nuts whenever I see it. "To look at Times New Roman," says Butterick, "is to gaze into the void." It's simply over-the-top.)

I apologize for being mean to Butterick (a man whom I've never met), but typography isn't where all the ink needs to be spilled. It's stressful enough just to meet deadlines in the legal profession without needing to worry about the kind of font you're using.

Conclusion

Please don't ban the use of Times New Roman. It's been around forever and some people swear by it. At the end of the day, the font that's most readable is a matter of taste and opinion.

Thank you for permitting members of the legal community to offer comment.

Yours sincerely,

Daniel Repp,
Lincoln Law School of Sacramento
Class of 2018, Co-Salutatorian

JUDICIAL COUNCIL OF CALIFORNIA

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

INVITATION TO COMMENT

SPR19-07

Title
Appellate Procedure: Uniform Formatting Rules for Electronic Documents

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rules 8.40, 8.44, 8.71, 8.72, 8.74, 8.204, and 8.252

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

Information Technology Advisory Committee
Hon. Sheila F. Hanson, Chair
Hon. Louis R. Mauro, Vice-Chair

Action Requested
Review and submit comments by June 10, 2019

Proposed Effective Date
January 1, 2020

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Executive Summary

To provide consistency and clarity, the Appellate Advisory Committee and the Information Technology Advisory Committee propose revising California Rules of Court, rules 8.40, 8.44, 8.71, 8.72, 8.74, 8.204, and 8.252 to create uniform formatting rules for electronic documents filed in the appellate courts. The rules currently provide some formatting requirements for electronic documents, but they do not include various local rule requirements such as bookmarking. Moreover, local rules around the state differ in their requirements and scope. By establishing uniform, comprehensive rules for all appellate courts, this proposal will ease the burden on filers caused by differing format rules. This project initially focused on rules for exhibits and bookmarking, but was expanded in scope to include other formatting requirements. It originated from a suggestion by a member of the Joint Appellate Technology Subcommittee of the Appellate Advisory Committee and the Information Technology Advisory Committee.

Background

Various appellate districts of the Courts of Appeal implemented electronic filing at different times. As each court did so, it adopted its own set of local rules addressing the formatting

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. It is circulated for comment purposes only.

requirements for electronic documents. While there are similarities among the local rules, they differ in various respects. Over the years, best practices have begun to emerge for the format of electronic documents. At the same time, court users have complained that the differing formatting rules among the appellate courts impose significant burdens on practice.

A more limited rules amendment project began in 2017, but was deferred; the current proposal is expanded in scope. The proposed amendments include both substantive and technical changes to the existing rules for the format of electronic documents in appellate courts. Uniform formatting rules would provide consistency, clarity, and efficiency.

The Proposal

Though this proposal recommends amendments to seven rules, most of the amendments are to rule 8.74. That rule currently sets forth responsibilities of electronic filers but also establishes certain minimum format requirements for electronic documents. This proposal would remove the filer responsibility provisions from rule 8.74 and add them to the court responsibility provisions in rule 8.72, and significantly expand the format provisions in rule 8.74. As expanded, rule 8.74 would establish the specific formatting requirements currently articulated in local rules, such as standards for cover pages, pagination, and bookmarks.

Rule 8.40. Form of filed documents

Rule 8.40 governs the form of filed documents. The current rule provides that filed documents may be produced on a computer or be typewritten.

The proposed amendments would create different subdivisions for electronic and paper documents, would reference the formatting rules applicable to those different types of documents, and would clarify that certain unchanged formatting requirements only apply to paper. The rule would be amended to provide that e-filing is mandatory unless an exemption applies.

Rule 8.44. Number of copies of filed documents

Rule 8.44 sets forth the rules for paper copies in the California Supreme Court and the Courts of Appeal, and in subdivision (c) addresses electronic copies. Among other things, it refers to a court that "permits" electronic filing, and it requires a local rule specifying the format of an electronic copy. Because e-filing is now mandatory, and the format of electronic documents is addressed in proposed rule 8.74, the proposal deletes those outdated references.

Rule 8.71. Electronic filing

Rule 8.71 imposes mandatory e-filing, but it allows for various exemptions, including those established by local rule. The proposal would delete the reference to exemption by local rule, and add the Supreme Court Rules Regarding Electronic Filing in subdivision (a), as follows: "Except as otherwise provided by these rules, the Supreme Court Rules Regarding Electronic Filing, ~~the local rules of the reviewing court,~~ or by court order, all parties are required to file all documents electronically in the reviewing court."

Rule 8.72. Responsibilities of the court

Rule 8.72 sets forth the e-filing responsibilities of a court. The proposal takes the provisions for the responsibilities of electronic filers from current rule 8.74 and moves them to rule 8.72 in a new subdivision (b), thereby combining the responsibilities of court and filer into a single rule, and leaving rule 8.74 to address format. The proposal also deletes current rule subdivisions 8.72(b)(1) and (b)(2) as no longer needed.

Rule 8.74. Responsibilities of electronic filer

The proposal amends rule 8.74 to establish uniform formatting rules for electronic documents filed with the appellate courts and proposes to change the title of the section accordingly. Rule 8.74(a) currently establishes the responsibilities of an electronic filer. As previously discussed, this proposal moves the content of subdivision (a) to rule 8.72. Current rule 8.74(b) authorizes appellate courts to establish requirements for electronic documents, but it sets forth certain minimum format standards such as text searchability. The proposal retains some of the existing language, moves it to a new proposed subdivision (a), and significantly expands the formatting requirements by drawing from the best practices developed among the appellate courts through their local rules.

The expanded formatting rules address topics such as bookmarking, protection of sensitive information, file size, manual filing, font, spacing, margins, hyperlinks, and color. The proposal adds a new subdivision (b) to address specific formatting requirements for briefs, requests for judicial notice, appendices, agreed statements and settled statements, reporter's transcripts, clerk's transcripts, exhibits, and sealed and confidential records. Subdivision (c) provides that a court will reject an electronic filing if the formatting rules are not followed and provides that an electronic filer can file a motion for an exemption. Newly proposed subdivision (d) of rule 8.74 provides that this rule prevails over other formatting provisions if they are in conflict.

Proposed rule 8.74(a)(1) references portable document format (PDF), a file format used to present and exchange documents reliably, independent of software, hardware, or operating system. Existing California Supreme Court and Courts of Appeal local rules require documents to be in "text-searchable PDF." To ensure text searchability, the proposal requires a filer to "convert" a paper document to electronic form, rather than scanning a printed document.

The rules for pagination in proposed subdivision (a)(2) are consistent with the local rule pagination requirements around the state.

Proposed subdivision (a)(3) defines an electronic bookmark and includes requirements for bookmarking specified parts of a document. A new advisory committee comment provides examples of what is intended by the requirement that the bookmark contain a brief description of the item to which it is linked.

Proposed subdivision (a)(4) requires protection of sensitive information found in other rules, namely, rules 1.201, 8.45, 8.46, 8.47, and 8.401.

Proposed subdivision (a)(5) sets a file-size limit of 25 megabytes. The 25-megabyte limit is the current capacity of a file in the Appellate Court Case Management System (ACCMS).

Proposed subdivision (a)(6) describes manual filing of oversized documents or documents that otherwise cannot be electronically filed. The proposal permits the filer to file a flash drive, DVD, or compact disc (CD) with the court and then give notice of the filing. The term DVD is considered sufficiently descriptive that it is not spelled out, but the term CD is spelled out for clarity. The file types for video, audio, and photographs are based on local rules and the current capacity at the courts.

Proposed subdivision (a)(7) specifies that the page size for all electronic documents must be 8-1/2 by 11 inches.

Proposed subdivision (a)(8) describes the font type and font size for electronic documents. It requires a serif font such as Century Schoolbook. The suggestion comes from the Court of Appeal, Second Appellate District's local rule, which seeks to promote readability.

Proposed subdivision (a)(13) specifies that a document with any color component must be manually filed rather than electronically filed. This is because color causes problems in ACCMS. The subdivision prohibits color components in electronically filed documents.

Proposed rule 8.74(b) addresses specific format requirements for certain documents. Proposed rule 8.74(b) does not repeat the general formatting rules when discussing the specific documents.

Rule 8.204. Contents and form of briefs

Rule 8.204 explains the requirements for briefs filed in the Courts of Appeal. There is only one amendment in this rule. The proposed amendment explains that briefs filed in electronic form must comply with the formatting provisions in rule 8.74(a) and (b)(1), which prevail over inconsistent provisions in rule 8.204(b).

Rule 8.252. Judicial notice; filings and evidence on appeal

Rule 8.252 establishes the procedure for seeking judicial notice of a matter. The proposed amendment would require the moving party to attach to the motion a copy of the matter to be noticed or an explanation why it is not practicable to do so. In addition, the proposed amendment would specify that the motion with attachments must comply with rule 8.74 if filed in electronic form.

Proposed rule 8.252(c)(3) is reorganized to reflect the presumption of electronic filing unless an exemption applies.

Alternatives Considered

The committee considered deferring action, but determined that the experience of the Supreme Court and the Courts of Appeal thus far warranted action. The revised rules will provide uniform

guidance to litigants and practitioners, and will give the appellate courts time to amend their local rules accordingly.

Rule 8.124 (appendixes), 8.144 (form of the record), and 8.212 (service and filing of briefs) were reviewed, and it was determined that amendments to those rules are not needed at this time.

Fiscal and Operational Impacts

The proposed changes are intended to make electronic formatting rules consistent in the appellate courts. The committees anticipate efforts will be needed to amend local rules to make them consistent with these proposals.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Are there terms that need further reference or definition, such as the words "omission page" or file-type references like ".mp3" or "hyperlink"?

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

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

Attachments and Links

1. Cal. Rules of Court, rules 8.40, 8.44, 8.71, 8.72, 8.74, 8.204, and 8.252, at pages 6–15

Rules 8.40, 8.44, 8.71, 8.72, 8.74, 8.204, and 8.252 of the California Rules of Court would be amended, effective January 1, 2020, to read:

Rule 8.40. Form of filed documents

(a) Form of electronic documents

~~Except as these rules provide otherwise, documents filed in a reviewing court may be either produced on a computer or typewritten and must comply with the relevant provisions of rule 8.204(b).~~

Under rule 8.71(a), a document filed in a reviewing court must be in electronic form unless these rules provide otherwise. An electronic document must comply with the relevant format provisions of this rule and rules 8.74, 8.144, and 8.204.

(b) Form and cover color of paper documents

(1) To the extent these rules authorize the filing of a paper document in a reviewing court, the document must comply with the relevant format provisions of this rule and rules 8.144 and 8.204.

~~(1)~~(2) As far as practicable, the covers of briefs and petitions filed in paper form must be in the following colors:

Appellant's opening brief or appendix	Green
Respondent's brief or appendix	Yellow
Appellant's reply brief or appendix	Tan
Joint appendix	White
Amicus curiae brief	Gray
Answer to amicus curiae brief	Blue
Petition for rehearing	Orange
Answer to petition for rehearing	Blue

Petition for original writ	Red
Answer (or opposition) to petition for original writ	Red
Reply to answer (or opposition) to petition for original writ	Red
Petition for transfer of appellate division case to Court of Appeal	White
Answer to petition for transfer of appellate division case to Court of Appeal	Blue
Petition for review	White
Answer to petition for review	Blue
Reply to answer to petition for review	White
Opening brief on the merits	White
Answer brief on the merits	Blue
Reply brief on the merits	White

(~~2~~)(3) In appeals under rule 8.216, the cover of a combined respondent's brief and appellant's opening brief filed in paper form must be yellow, and the cover of a combined reply brief and respondent's brief filed in paper form must be tan.

(~~3~~)(4) A paper brief or petition not conforming to ~~(1) or~~ (2) or (3) must be accepted for filing, but in case of repeated violations by an attorney or party, the court may proceed as provided in rule 8.204(e)(2).

(c) Cover information for electronic and paper documents

(1)–(2) * * *

(3) The covers of electronic documents must also comply with the provisions of rule 8.74.

Rule 8.44. Number of copies of filed documents

(a)–(b) * * *

(c) Electronic copies of paper documents

~~A court that permits electronic filing will specify any requirements regarding electronically filed documents in the electronic filing requirements published under rule 8.74. In addition,~~ Even when filing a paper document is permissible, a court may provide by local rule for the submission of an electronic copy of ~~a document that is not electronically filed~~ the paper document either in addition to the copies of the document required to be filed under (a) or (b) or as a substitute for one or more of these copies. The local rule must ~~specify the format of the electronic copy and~~ provide for an exception if it would cause undue hardship for a party to submit an electronic copy.

Rule 8.71. Electronic filing

(a) Mandatory electronic filing

Except as otherwise provided by these rules, the Supreme Court Rules Regarding Electronic Filing, ~~the local rules of the reviewing court,~~ or by court order, all parties are required to file all documents electronically in the reviewing court.

(b)–(g) * * *

Rule 8.72. Responsibilities of court and electronic filer

(a) ~~Publication of electronic filing requirements~~ Responsibilities of court

(1) The court will publish, in both electronic and print formats, the court's electronic filing requirements.

~~(b) Problems with electronic filing~~

(2) If the court is aware of a problem that impedes or precludes electronic filing, it must promptly take reasonable steps to provide notice of the problem.

(b) Responsibilities of electronic filer

Each electronic filer must:

(1) Take all reasonable steps to ensure that the filing does not contain computer code, including viruses, that might be harmful to the court's electronic filing system and to other users of that system;

(2) Furnish one or more electronic service addresses, in the manner specified by the court, at which the electronic filer agrees to accept service; and

(3) Immediately provide the court and all parties with any change to the electronic filer's electronic service address.

Rule 8.74. ~~Responsibilities of electronic filer~~ Format of electronic documents

~~**(a) Conditions of filing**~~

~~Each electronic filer must:~~

~~(1) Comply with any court requirements designed to ensure the integrity of electronic filing and to protect sensitive personal information;~~

~~(2) Furnish information that the court requires for case processing;~~

~~(3) Take all reasonable steps to ensure that the filing does not contain computer code, including viruses, that might be harmful to the court's electronic filing system and to other users of that system;~~

~~(4) Furnish one or more electronic service addresses, in the manner specified by the court, at which the electronic filer agrees to accept service; and~~

~~(5) Immediately provide the court and all parties with any change to the electronic filer's electronic service address.~~

~~**(b) Format of documents to be filed electronically**~~

~~(1) A document that is filed electronically with the court must be in a format specified by the court unless it cannot be created in that format.~~

~~(2) The format adopted by a court must meet the following minimum requirements:~~

~~(A) The format must be text-searchable while maintaining original document formatting.~~

~~(B) The software for creating and reading documents must be in the public domain or generally available at a reasonable cost.~~

~~(C) The printing of documents must not result in the loss of document text, format, or appearance.~~

~~(3) The page numbering of a document filed electronically must begin with the first page or cover page as page 1 and use only Arabic numerals (e.g., 1, 2, 3). The page number may be suppressed and need not appear on the cover page.~~

~~(4) If a document is filed electronically under the rules in this article and cannot be formatted to be consistent with a formatting rule elsewhere in the California Rules of Court, the rules in this article prevail.~~

(a) Format requirements applicable to all electronic documents

(1) *Text-searchable portable document format*: Electronic documents must be in text-searchable portable document format (PDF) while maintaining the original document formatting. An electronic filer is not required to use a specific vendor, technology, or software for creation of a searchable format document, unless the electronic filer agrees to such use. The software for creating and reading electronic documents must be in the public domain or generally available at a reasonable cost. If an electronic filer must file a document that the electronic filer possesses only in paper format, the electronic filer must convert the document to an electronic document by a means that complies with this rule. The printing of an electronic document must not result in the loss of document text, format, or appearance. It is the electronic filer's responsibility to ensure that any document filed is complete and readable.

(2) *Pagination*: The electronic page counter for the electronic document must match the page number for each page of the document. The page numbering of a document filed electronically must begin with the first page or cover page as page 1 and use only Arabic numerals (e.g., 1, 2, 3). Documents may not contain more than one numbering system; for example, they may not contain Roman numerals for the table of contents and Arabic numerals for the body of the document. The page number for the cover page may be suppressed and need not appear on the cover page. When a document is filed

in both paper and electronic formats, the pagination in both versions must comply with this subparagraph.

(3) *Bookmarking*: An electronic bookmark is a descriptive text link that appears in the bookmarks panel of an electronic document. Each electronic document must include an electronic bookmark to each heading, subheading, and to the first page of any component of the document, including any table of contents, table of authorities, petition, verification, memorandum, declaration, certificate of word count, certificate of interested entities or persons, proof of service, exhibit, or attachment. Each electronic bookmark must briefly describe the item to which it is linked. For example, an electronic bookmark to a heading must provide the text of the heading, and an electronic bookmark to an exhibit or attachment must include the letter or number of the exhibit or attachment and a brief description of the exhibit or attachment. An electronic appendix must have bookmarks to the indexes and to the first page of each separate exhibit or attachment. Exhibits or attachments within an exhibit or attachment must be bookmarked. All bookmarks must be set to retain the reader's selected zoom setting.

(4) *Protection of sensitive information*: Electronic filers must comply with rules 1.201, 8.45, 8.46, 8.47, and 8.401 regarding the protection of sensitive information, except for those requirements exclusively applicable to paper format.

(5) *Size and multiple files*: An electronic filing may not be larger than 25 megabytes. This rule does not change the limitations on word count or number of pages otherwise established by the California Rules of Court for documents filed in the court. Unless a 300-page limit applies to the volumes of an electronic document (see, e.g., rules 8.124(d)(1), 8.144(b)(6)), a file may exceed 300 pages so long as it does not exceed 25 megabytes. If a document exceeds the 25-megabyte file-size limitation, the electronic filer must submit the document in more than one file, with each file 25 megabytes or less. The first file must include a master chronological and alphabetical index stating the contents for all files. Each file must have a cover page setting forth (a) the file number for that file, (b) the total number of files for that document, and (c) the page numbers contained in that file. (For example: File 1 of 4, pp. 1–400.) In addition, each file must be paginated consecutively across all files in the document, including the cover pages for each file. (For example, if the first file ends on page 400, the cover of the second file must be page 401.) If a multiple-file document is submitted to the court in both electronic and paper formats, the cover pages for each file must be included in the paper documents.

(6) *Manual Filing*:

(A) When an electronic filer seeks to file an electronic document consisting of more than five files, or when the document cannot or should not be electronically filed in multiple files, or when electronically filing the document would cause undue hardship, the document must not be electronically filed but must be manually filed with the court on electronic media such as a flash drive, DVD, or compact disc (CD). When an electronic filer files one or more documents on electronic media such as a flash drive, DVD, or CD with the court, the electronic filer must electronically file, on the same day, a "manual filing notification" notifying the court and the parties that one or more documents have been filed on electronic media, explaining the reason for the manual filing. The electronic media must be served on the parties in accordance with the requirements for service of paper documents. To the extent practicable, each document or file on the electronic media must comply with the format requirements of this rule.

(B) Electronic media files such as audio, video, or PowerPoint, and documents containing photographs or any color component, must be manually filed. Audio files must be filed in .wav or mp3 format. Video files must be filed in .avi or mp4 format. Photographs must be filed in .jpg, .png, .tif, or .pdf format.

(7) *Page size*: All documents must have a page size of 8-1/2 by 11 inches.

(8) *Font*: The font style must be a proportionally spaced serif face, such as Century Schoolbook. Do not use Times New Roman. Font size must be 13-point, including in footnotes.

(9) *Spacing*: Lines of text must be 1-1/2 spaced. Footnotes and quotations may be single-spaced.

(10) *Margins*: The margins must be set at 1-1/2 inches on all sides.

(11) *Alignment*: Paragraphs must be left-aligned, not justified.

(12) *Hyperlinks*: Hyperlinks are encouraged but not required. However, if an electronic filer elects to include hyperlinks in a document, the hyperlink must be active as of the date of filing and should be formatted to standard citation format as provided in the California Rules of Court.

(13) *No color*: Notwithstanding provisions to the contrary in the California Rules of Court, an electronic document with any color component may not be electronically filed. It must be manually filed on electronic media. An electronically filed document must not have color covers, color signatures, or other color components absent leave of court. This requirement does not apply to the auto-color feature of hyperlinks.

(b) Additional format requirements for certain electronic documents

(1) *Brief*: In addition to compliance with this rule, an electronic brief must also comply with the requirements set forth in rule 8.204, except for the requirements exclusively applicable to paper format including the provisions in rule 8.204(b)(2), (4), (5), and (6).

(2) *Request for judicial notice or request or motion supported by documents*: When seeking judicial notice of documents or when a request or motion is supported by documents, the electronic filer must attach the documents to the request or motion. The request or motion and its attachments must comply with this rule.

(3) *Appendix*: The format of an appendix must comply with this rule, rule 8.124(d), and rule 8.144 pertaining to clerk's transcripts.

(4) *Agreed statement and settled statement*: The format for an agreed statement or a settled statement must comply with this rule and rules 8.144 and 8.124(d).

(5) *Reporter's transcript and clerk's transcript*: The format for an electronic reporter's transcript must comply with Code of Civil Procedure section 271 and rule 8.144. The format for an electronic clerk's transcript must comply with this rule and rule 8.144.

(6) *Exhibits*: Electronic exhibits must be submitted in volumes no larger than 25 megabytes, rather than as individual documents.

(7) *Sealed and confidential records*: Under rule 8.45(c)(1), electronic records that are confidential or under seal must be filed separately. If one or more pages are omitted from a source document and filed separately as a sealed or confidential record, an omission page must be inserted in the source document at the location of the omitted page or pages. The omission page must identify the type of pages omitted. The omission page must be paginated consecutively with the rest of the source document, it must be bookmarked, and it must be listed in any indexes included in the source

document. The PDF counter for the omission page must match the page number of the omission page. Separately filed confidential or sealed records must comply with this rule and rules 8.45, 8.46, and 8.47.

(c) Rejection of an electronic filing for noncompliance; exemptions

The court will reject an electronic filing if it does not comply with the requirements of this rule. However, if the requirements of this rule cause undue hardship or significant prejudice to any electronic filer, the electronic filer may file a motion for an exemption from the requirements of this rule.

(d) This rule prevails over other formatting rules

If a document is filed electronically and cannot be formatted to be consistent with a formatting provision elsewhere in the California Rules of Court, the provisions of this rule prevail.

Advisory Committee Comment

Subdivision (a)(3). An electronic bookmark's brief description of the item to which it is linked should enable the reader to easily identify the item. For example, if a declaration is attached to a document, the bookmark to the declaration might say "Robert Smith Declaration," and if a complaint is attached to a document as an exhibit, the bookmark to the complaint might say "Exhibit A, First Amended Complaint filed 8/12/17."

Subdivision (b)(7). In identifying the type of pages omitted, the omission page might say, for example, "probation report" or "*Marsden* hearing transcript."

Rule 8.204. Contents and form of briefs

(a) * * *

(b) Form

Briefs filed in electronic form must comply with the formatting provisions in rule 8.74(a) and (b)(1), which prevail over inconsistent provisions in this subdivision.

(1)–(11) * * *

(c)–(e) * * *

Rule 8.252. Judicial notice; findings and evidence on appeal

(a) Judicial notice

(1)–(2) * * *

(3) If the matter to be noticed is not in the record, the party must ~~serve and file a copy with the motion or explain~~ attach to the motion a copy of the matter to be noticed or an explanation of why it is not practicable to do so. ~~The pages of the copy of the matter or matters to be judicially noticed must be consecutively numbered, beginning with the number 1.~~ The motion with attachments must comply with rule 8.74 if filed in electronic form.

(b) * * *

(c) Evidence on appeal

(1)–(2) * * *

(3) For documentary evidence, a party may offer ~~the original, a certified copy, a photocopy, or, in a case in which electronic filing is permitted,~~ an electronic copy~~.~~, or if filed in paper form, the original, a certified copy, or a photocopy. The court may admit the document into evidence without a hearing.