



# JUDICIAL COUNCIL OF CALIFORNIA

APPELLATE ADVISORY  
COMMITTEE

[www.courts.ca.gov/aac.htm](http://www.courts.ca.gov/aac.htm)  
[aac@jud.ca.gov](mailto:aac@jud.ca.gov)

## APPELLATE ADVISORY COMMITTEE

### MINUTES OF OPEN MEETING

November 14, 2019

10:00 a.m.

Teleconference

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**Advisory Body Members Present:** Hon. Louis R. Mauro, Chair; Hon. Kathleen M. Banke, Vice-Chair; Mr. Kevin Green, Mr. Jonathan Grossman, Hon. Adrienne M. Grover, Hon. Joan K. Irion, Mr. Joshua A. Knight, Hon. Leondra R. Kruger, Mr. Jeffrey Laurence, Ms. Heather MacKay, Ms. Mary K. McComb, Ms. Milica Novakovic, Ms. Beth Robbins, Hon. Laurence D. Rubin, and Hon. M. Bruce Smith,

**Advisory Body Members Absent:** Mr. Michael G. Colantuono, Mr. Jorge Navarrete, Mr. Timothy M. Schooley, Hon. Stephen D. Schuett, Ms. Mary-Christine Sungaila, and Hon. Helen E. Williams

**Others Present:** Ms. Christy Simons (lead staff), Ms. Karene Alvarado, Hon. Kimberly Gaab, Mr. Daniel Richardson, Ms. Nichole Rocha, and Ms. Adetunji Olude

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#### OPEN MEETING

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##### **Call to Order and Roll Call**

The chair called the meeting to order at 10:00 a.m., and took roll call.

No public comments were received.

##### **Chair's Report**

Justice Mauro informed the committee members that the committee's annual agenda was approved by the Rules and Projects Committee (RUPRO). Christy will send the committee members the approved annual agenda and an advisory body reference guide for committee members.

##### **Approval of Minutes**

The committee reviewed and approved the minutes of the September 25, 2019, Appellate Advisory Committee meeting with a minor edit (in Item 1, change "must be done" to "should be done").

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#### DISCUSSION AND ACTION ITEMS (ITEMS 1-5)

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##### **Item 1**

**Proposal to Amend Rule 10.469**

Judge Gaab presented CJERAC's proposed modifications to rule 10.469. This proposal would change the wording under access and fairness education to mandatory as opposed to permissive and would add an education requirement for judicial officers on prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct.

**Action: No action required. The committee was encouraged to send feedback to Judge Gaab.**

## Item 2

### Liaison Report

Ms. Adetunji Olude, Center for Judicial Education and Research, updated the committee on behalf of the Appellate Practice Curriculum Committee. There will be an Appellate Justices Institute in the Spring and some of the course offerings include ethics core course, sexual harassment, and implicit bias.

**Action: No action required**

## Item 3

### Legislative Update

Ms. Nichole Rocha, Governmental Affairs, updated the committee on legislation of interest to the appellate courts.

**Action: No action required.**

## Item 4

### Appointment of Counsel in Misdemeanor Appeals

Consider whether to recommend circulation of proposed amendments to the rule regarding appointment of counsel in misdemeanor appeals to conform to the California Supreme Court's opinion in *Gardner v. Appellate Division of Superior Court* (2019). The proposal also includes revisions to forms CR-131-INFO and CR-133. The committee decided to remove mention of *Gardner* from the text of the rule and include the citation in an advisory committee comment. The committee discussed and approved deleting proposed subdivision (d) regarding self-representation because it is insufficiently related to the rest of rule 8.851. The committee approved other minor edits to the rule and forms.

**Action: The proposal as amended at the meeting was approved for RUPRO action.**

## Item 5

### Access to Juvenile Case Files in Appellate Court Proceedings

Consider whether to recommend circulation of proposed rule amendments, a new form, and revisions to existing forms to implement recent legislation regarding access to juvenile case files in appellate court proceedings (joint proposal with the Family and Juvenile Law Advisory Committee). This is a revised version of the proposal that originally circulated earlier this year.

**Action: The proposal was approved for action by RUPRO.**

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**ADJOURNMENT**

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There being no further business, the meeting was adjourned at 11:45 a.m..

Approved by the advisory body on enter date.



## JUDICIAL COUNCIL OF CALIFORNIA

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### MEMORANDUM

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Date	Action Requested
March 3, 2020	For your information
To	Deadline
Hon. Louis Mauro, Chair	N/A
Hon. Kathleen Banke, Vice Chair	
Members, Appellate Advisory Committee	Contact
	Andi Liebenbaum
From	916-323-3121 phone
Cory Jasperson, Director	<a href="mailto:andi.liebenbaum@jud.ca.gov">andi.liebenbaum@jud.ca.gov</a>
Andi Liebenbaum, Attorney	
Governmental Affairs, Judicial Council of CA	
Subject	
Legislative Support and Advocacy	

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The Judicial Council of California has, among its responsibilities to the branch, the obligation to monitor bills that are introduced in the Legislature each year that may impact the courts operationally and/or in terms of resources. The council is also able, as appropriate, to sponsor legislation that, after rigorous internal evaluation and review, provides appropriate support for the branch. These responsibilities are carried out, in large measure, by the staff in the Governmental Affairs unit.

Attached with and embedded in this memo are documents and links that will help frame and present the issues related to the advocacy and crafting of legislation.

1. PCLC orientation materials in which a discussion of the Judicial Council's purview is discussed.
2. List of current Governmental Affairs advocates for the various legislative topics.
3. Timeline for JCC-sponsored legislation which, although specifically dated to 2020, serves as a general model for the development of JCC-sponsored legislation every year.

Appellate Advisory Committee

March 3, 2020

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4. 2019 Summary of Court-Related Legislation - [https://www.courts.ca.gov/documents/2019\\_LegSummary.pdf](https://www.courts.ca.gov/documents/2019_LegSummary.pdf)
5. 2019 Legislative Policy Summary - <https://www.courts.ca.gov/documents/legislative-policy-summary.pdf>
6. Current list of bills being tracked that address Courts of Appeal decisions

For additional comments, questions, or feedback, please contact [Cory Jaspersen](#) or [Andi Liebenbaum](#).



# Policy Coordination and Liaison Committee

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ORIENTATION MATERIALS

SEPTEMBER 24, 2019



JUDICIAL COUNCIL  
OF CALIFORNIA

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GOVERNMENTAL AFFAIRS

# Judicial Council of California Governmental Affairs

## Policy Coordination and Liaison Committee Orientation Materials

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## Policy Coordination and Liaison Committee

The role of the Policy Coordination and Liaison Committee (PCLC) is to represent the council before the legislative and executive branches of government, build consensus with stakeholders and individuals outside the branch and coordinate an annual plan for communication and interaction with other agencies and entities.

The charge and duties of the committee, set forth in California Rules of Court, rule 10.12, include the following:

1. Take positions on behalf of the council on pending legislative bills, after evaluating input from the council advisory bodies and the courts, provided that the position is consistent with the council's established policies and precedents.
2. Make recommendations to the council on all proposals for council-sponsored legislation and on an annual legislative agenda after evaluating input from council advisory bodies and the courts.
3. Represent the council's position before the Legislature and other bodies or agencies and acting as liaison with other governmental entities, the bar, the judiciary, and the public regarding council-sponsored legislation, pending legislative bills, and the council's legislative positions and agendas.
4. Build consensus on issues of importance to the judicial branch consistent with the council's strategic plan with entities and individuals outside the branch.
5. Develop an annual plan for communication and interaction with other branches and levels of government, components of the judicial system, the bar, the media, and the public.
6. Direct any advisory committee to provide it with analysis or recommendations on pending or proposed legislation.

### **Voting**

PCLC is made up of both voting members and advisory members of the Judicial Council. California Rule of Court 10.10(e) states that a nonvoting "advisory council member may vote on any internal committee matter unless the committee is taking final action on behalf of the council." Based on Rule 10.10(e) PCLC members may vote as follows:

#### **All members may vote on the following actions:**

- Approval of legislative proposals for Invitation to Comment
- Recommending Judicial Council–sponsorship of legislative proposals
- Recommending adoption of Judicial Council Legislative Priorities



**Only voting members may vote on following actions:\***

- Taking positions on pending legislation
- Approval of proposed Judicial Council–sponsored legislation under urgent circumstances

\*A nonvoting advisory member may raise any item to a vote by making or seconding a motion but may not vote on the item.

Quorum at each meeting is determined by the type of vote being taken.

**Judicial Council Purview**

The Policy Coordination and Liaison Committee will only take action on legislation that is within Judicial Council purview. The Judicial Council supports the integrity and independence of the judicial branch and seeks to ensure that judicial procedures enhance efficiency and access to the courts. The council generally does not take a position on substantive law or policy. However, the council may take a position on legislation that involves issues central to the council’s mission and goals as stated in the [Judicial Branch’s Strategic Plan](#). The council may also take a position on an apparent issue of substantive law if issues presented directly affect court administration or negatively affect existing judicial services by imposing unrealistic burdens on the judicial branch.

## Judicial Council–Sponsored Legislation Calendar

<b>Month</b>	<b>Judicial Council</b>
January – February	<ul style="list-style-type: none"> <li>• Advisory committees, in consultation with Governmental Affairs staff, develop proposals for council–sponsored legislation.</li> </ul>
March – May	<ul style="list-style-type: none"> <li>• Advisory committees, in consultation with Governmental Affairs staff, circulate draft proposals for council–sponsored legislation to interested and affected parties.</li> </ul>
June	<ul style="list-style-type: none"> <li>• Deadline for public comment on proposed council–sponsored legislation.</li> </ul>
June – August	<ul style="list-style-type: none"> <li>• Advisory committees consult with Governmental Affairs staff regarding responses to comments and further development of proposals for council–sponsored legislation.</li> </ul>
August	<ul style="list-style-type: none"> <li>• Deadline for advisory committee and Governmental Affairs staff to jointly submit finalized draft proposals for council–sponsored legislation to the Policy Coordination and Liaison Committee (PCLC).</li> </ul>
September	<ul style="list-style-type: none"> <li>• PCLC makes recommendations for council action on council–sponsored legislative proposals for the upcoming legislative year.</li> </ul>
November	<ul style="list-style-type: none"> <li>• Judicial Council acts on PCLC recommendations for council–sponsored legislation for the upcoming legislative year.</li> </ul>

## **Guidelines for Development of Judicial Council–Sponsored Legislation**

This summary describes the typical process the Judicial Council follows when developing and approving proposals for sponsored legislation. It also describes how Governmental Affairs advocates for these proposals in the Legislature. **Because it often takes several months to fully develop a legislative proposal, the process should begin early in the year.** (See the *Judicial Council–Sponsored Legislation Calendar*, at page 5.)

### **I. Judicial Council Process**

#### **A. Sources of Legislative Proposals**

Judicial Council advisory committees are well situated to identify and develop proposals for statutory change. Committee members have extensive expertise in the committee’s subject area and often have ideas for improving statutory law. In addition, advisory committees may receive requests for council–sponsorship of legislative proposals from outside sources.

Suggestions for how an advisory committee may wish to identify proposals for council–sponsored legislation include:

- The advisory committee chair may devote a portion of one or more meetings each year to identifying legislative proposals for the following year’s legislative session.
- The advisory committee may establish a working group or task force composed of committee members responsible for reviewing the relevant codes, or specific subjects or issues within those codes, to identify potential legislation.
- Advisory committees may receive legislative proposals from outside sources. When a person or organization submits a legislative proposal to the Judicial Council, the council may forward the proposal to the appropriate advisory committee and Governmental Affairs staff for consideration.

#### **B. Advisory Committee Process for Developing Proposals**

This section describes the steps an advisory committee takes to develop and review legislative proposals for substantive merit.

1. Assess Viability of Proposal – For each legislative proposal, the advisory committee must take the following actions:
  - The advisory committee, in consultation with Governmental Affairs staff, determines a time frame for consideration of the proposal, keeping in mind

the deadlines for submission of legislative proposals to PCLC (See JC-Sponsored Calendar).

- If the advisory committee rejects a proposal submitted by an outside source, committee staff will notify the proponent of that action.
  - If the advisory committee accepts or modifies a proposal from an outside source, or decides to recommend sponsorship of an internally generated proposal, the committee proceeds to the next steps.
2. Coordinate with Governmental Affairs – Advisory committee staff should work with Governmental Affairs staff to coordinate work on all aspects of the proposals.
  3. Review and Analyze – Advisory committees review proposals for substantive merit before transmitting them to PCLC. A typical analysis of a proposal should include:
    - A description of the problem to be addressed, including its scope.
    - A description of how the problem affects the judicial branch.
    - A description of the proposed solution.
    - A discussion of any alternative solutions, including an analysis of why the recommended solution is preferable.
    - A discussion of any opposing viewpoints.
    - A description of any foreseeable problems with the proposed solution.
    - Draft language for the proposed legislation.
    - A determination whether the Judicial Council and/or the Legislature should give the proposal urgent consideration and the reasons for this.

Advisory committees should use the worksheet provided on page 16 to assist with this analysis and other important considerations.

4. Evaluate Sponsorship Criteria – Once an advisory committee determines that a particular proposal has merit, the committee should consider certain criteria in assessing whether Judicial Council–sponsorship is appropriate and desirable. Limited resources, competing priorities, and political realities impose practical limitations on the council’s ability to sponsor every

worthwhile legislative proposal presented. The advisory committee and Governmental Affairs should jointly consider each of the following questions:

- Is the proposal within the Judicial Council’s purview?

Council–sponsored measures should involve only those issues that are central to the council’s mission and goals as stated in the [Judicial Branch’s Strategic Plan](#).

- Should the proposal be addressed through the Judicial Council’s rulemaking authority rather than by a change in statute?

The council prefers to implement changes through rules of court wherever appropriate.

- Is the Judicial Council the best sponsor?

The advisory committee and Governmental Affairs staff may determine that a proposal more closely serves the mission or objectives of another organization. A Judicial Council–sponsored proposal should be within purview addressing issues fundamental to the administration of justice and broadly serving the needs of the courts statewide.

- What political factors are associated with the proposal?

Governmental Affairs is responsible for providing advice about the political factors associated with a proposal.

5. Circulate for Comment – If an advisory committee wishes to circulate a proposal for comment, the committee staff consults with Governmental Affairs. If it is determined that the proposal is appropriate for circulation, the committee submits the proposal to PCLC for consideration. With PCLC’s approval, the proposal may be circulated for public comment. After the comment deadline, committee staff and Governmental Affairs jointly review the comments. Advisory committee staff then summarizes and presents the comments to the committee
6. Advisory Committee Action – Upon completion of the review procedures and consideration of the evaluation criteria above, the advisory committee may take one of the following actions:
  - Approve the proposal as submitted.
  - Approve the proposal with modifications.

- Reject the proposal. The advisory committee should inform the source of the proposal of this decision.

If the advisory committee approves the proposal, the committee forwards the proposal to PCLC for consideration. Final proposals must be submitted to PCLC by the August deadline in order to be considered for Judicial Council–sponsorship during the following legislative year. All advisory committee proposals submitted to PCLC are referred to Governmental Affairs, which may prepare a separate analysis and recommendation for PCLC.

### **C. Policy Coordination and Liaison Committee Action**

Each September, PCLC reviews the proposal(s), the advisory committee recommendation(s), and any analyses and recommendations prepared by Governmental Affairs. PCLC may recommend the proposal for Judicial Council–sponsorship and forward it to the Judicial Council, send it back to the advisory committee for further consideration, or take other action as necessary. If PCLC modifies or rejects the proposal, Governmental Affairs will return the proposal to the submitting advisory committee. The advisory committee may either accept PCLC’s recommendation or request that the full council review PCLC’s recommendation. The *Worksheet for Judicial Council Sponsored Legislation* must be completed by the recommending advisory committee staff prior to the September PCLC meeting.

### **D. Judicial Council Action**

Sponsored legislation proposals are presented by PCLC to the Judicial Council each November for consideration. The Judicial Council reviews the proposals, along with PCLC’s recommendation contained in a report prepared by Governmental Affairs. Once the council approves a proposal, it becomes “sponsored” legislation. If the Judicial Council does not approve a proposal for sponsorship, or takes a different action on the proposal, Governmental Affairs will communicate the action to the submitting advisory committee.

### **E. Delegation of authority to PCLC to sponsor legislative proposals on behalf of the council**

The Judicial Council has delegated to PCLC the authority to sponsor legislative proposals on behalf of the council when time is of the essence. Acting under this delegation, PCLC notifies the chairs of the Executive and Planning Committee and the Rules and Projects Committee of any PCLC meetings at which such actions will be considered so that they may participate if available. PCLC is also required to notify all other Judicial Council members, if feasible, of the intended action. After acting under this delegation, PCLC is required to notify the Judicial Council of all actions taken.

## **II. Advocacy Process**

### **A. Legislative Author**

Governmental Affairs staff will seek a legislator to introduce the council–sponsored proposal. An appropriate author for the bill is one who:

- Has substantial experience with the subject of the bill; often the author is the chair or a member of the policy committee with subject-matter jurisdiction over the bill.
- Understands Judicial Council needs and objectives.
- Has experience with the legislative process.
- Is an effective negotiator with members of both parties.

### **B. Governmental Affairs Responsibilities**

Governmental Affairs acts as the primary advocate for Judicial Council–sponsored legislation. Governmental Affairs advocates are responsible for the following, among other things:

- Preparing background material for the bill, including analyses and fact sheets for the author. The analyses include a description of the problem the bill seeks to address, an explanation of how the bill corrects that problem, the likely supporters and opponents of the bill, questions the bill raises that may need further research, and any other information necessary. This will be done in consultation with the lead staff to the recommending advisory body.
- Communicating information about the bill to the appropriate legislative committee(s) with subject-matter jurisdiction. Advocates work extensively with committee staff as well as the committee members. In moving through the legislative process, a bill will be heard by at least one policy committee and, if appropriate, a fiscal committee, before being debated and voted upon by the full membership on the floor of each house.
- Writing sponsorship letters and testifying at bill hearings. Coordinating and preparing witnesses for bill hearings.
- Working with stakeholders to build support for the bill.
- Coordinating the content and timing of communications between all supporters and the Legislature.

- Negotiating with the proposal's opponents to determine whether amendments can eliminate opposition and still achieve the council's objectives.
- Meeting with the Governor and/or his or her staff to advocate that the bill be signed into law.



## **Formulating a Position on Pending Legislation (not sponsored by Judicial Council)**

The Judicial Council, acting through the Policy Coordination and Liaison Committee (PCLC), strives to improve the administration of justice by representing the interests of the judicial branch to the Legislature, the executive branch, other entities involved in the legislative process or interested in the judiciary, and the general public. The following are procedures Governmental Affairs uses in developing recommendations for taking positions on pending legislation.

### **Judicial Council Purview**

The Judicial Council supports the integrity and independence of the judicial branch and seeks to ensure that judicial procedures enhance efficiency and access to the courts. The council generally does not take a position on substantive law or policy. However, the council may take a position on legislation that involve issues central to the council's mission and goals as stated in the [Judicial Branch's Strategic Plan](#). The council may also take a position on an apparent issue of substantive law if issues presented directly affect court administration or negatively affect existing judicial services by imposing unrealistic burdens on the judicial branch.

### **Positions on Legislation**

Governmental Affairs reviews all introduced and amended legislation to determine whether a bill is of interest to the judicial branch. For each bill, staff determines whether the council is likely to take, or may want to take a position on the bill. One or more council advisory committees (or subcommittees) within the appropriate subject area review each bill on which the council may want to take a position. The advisory committees may either recommend a position or recommend that the council take no position.

Governmental Affairs submits bills on which an advisory committee recommends a position to PCLC for determination of a council position. Additionally, staff may also choose to bring a bill before PCLC on which an advisory committee has recommended no position. Staff presents each bill to PCLC with an analysis that includes a summary of the bill, a recommended position from one or more advisory committees and, if different, the staff recommendation, the rationale for the recommendation(s), positions the council has taken on related bills, fiscal and workload impacts, and other relevant information.

There are a variety of positions PCLC may take on a bill. These positions include:

1. **Oppose**: An oppose position may be taken on a bill that conflicts with established council mission, goals or policies, and for which amendments would not resolve the conflict.
2. **Oppose unless amended/Oppose unless funded** An oppose, unless amended or oppose, unless funded position may be taken on a bill that the council will oppose unless identified amendments are taken to address those conflicts with council policy, impacts on the courts, or unless funding issues are resolved. If the bill is amended or funded as requested, the Judicial Council position will be neutral or no position.

3. **Neutral if amended/Neutral if funded:** A neutral position may be taken on a bill the substance of which does not implicate council policy, but on which technical corrections or amendments would improve the measure.
4. **Support in concept:** A support in concept position may be taken on a bill that, in concept, furthers council policy, but that is not yet drafted in sufficient detail for the council to support.
5. **Support if amended/Support if funded:** A support, if amended or support, if funded position may be taken on a bill that, with specified amendments or funding, would further the council's policies. Absent the amendments or necessary funding the council position would be neutral.
6. **Support:** A support position taken on a bill that aligns with or furthers council mission, goals or policies.
7. **No position:** A "no position" may be taken on a bill that addresses substantive issues on which the council takes no position, though the measure may affect the courts.

PCLC may also provide instruction to Governmental Affairs to do further research, raise concerns, or work with the author prior to taking a position on a bill.

All positions taken by PCLC on any pending legislation must be based solely on and within Judicial Council purview.

### **PCLC Meeting Schedule and Agenda**

PCLC meets regularly during the legislative session, usually by conference call. Beginning in late February or early March, the committee sets a schedule of meetings at least every three weeks. If a meeting is not needed, Governmental Affairs will notify PCLC members by e-mail of the cancellation. Late in the legislative session, and during budget negotiations, it may be necessary to schedule several meetings on short notice to discuss or resolve late-breaking issues. All PCLC meetings must be in compliance with California Rule of Court, Rule 10.75 governing meetings of advisory bodies.

Governmental Affairs prepares a written report on each bill for PCLC. Governmental Affairs may place bills that do not appear to require discussion or deliberation on PCLC's consent calendar. The consent calendar saves the committee time by eliminating the need to review bills that are consistent with clearly established council policies and positions. However, any committee member may remove an item from the consent calendar to discuss the bill's merits or the recommended action.

Bills that are on the discussion agenda include those that require discussion and those bills on which the staff recommendation differs from the recommendation of an advisory committee or when the recommendations from two or more advisory committees differ. In the latter instances, staff will request that a representative of the advisory committee(s) participate in the PCLC meeting. The representatives will present the advisory committee's views, and take questions

from PCLC members. PCLC may then excuse the guests and deliberate further and prior to taking action.

### **Legislative Advocacy**

Once PCLC adopts a position on a bill, it is the official position of the Judicial Council. That position and associated policies become the cornerstone of Governmental Affairs advocacy efforts. The adopted position is presented in subsequent negotiating sessions, discussions with interested parties, and meetings with legislators. A letter setting forth the position and policies is sent to the bill's author, legislative committee members, the Governor, and other interested parties.

Generally, PCLC's initial guidance and position is sufficient to direct Governmental Affairs advocacy throughout the legislative process. Occasionally, as a bill progresses or is amended, staff will request further direction from PCLC because of a particular bill's significance, complexity, the sensitivity of an issue, or the direction taken by the amendments.

### **Legislative Fiscal Impact Statement**

In addition to its legislative screening process, Governmental Affairs identifies bills that require a fiscal impact statement. In the years since the State assumed responsibility for trial court funding, Governmental Affairs has, through joint efforts with the Budget Services Office, developed a process to ensure that both timely and accurate fiscal impact statements are submitted to the Legislature. The legislative advocate works with the budget staff to develop an accurate fiscal impact statement. The budget staff confirms the cost issues and, if necessary, works with the advocate to determine an appropriate approach and methodology, identify available resources, and clarify any technical issues affecting the analysis.

There are a variety of resources available to assist in the development of fiscal and workload analyses. The Office of Court Research assists in data collection and analysis. Governmental Affairs also works closely with other council program areas (e.g., civil, criminal, family and juvenile law, jury service, traffic programs, and the court interpreter program). Staff also works with local courts to assist in the development of fiscal analyses. A fiscal impact statement may be submitted on bills that the council has not taken a position on.

As previously directed by PCLC, a fiscal impact statement will not be developed for bills that would create new or expanded civil causes of action and new or expanded crimes.

### **Judicial Council Legislative Policy Summary**

The Judicial Council Legislative Policy Summary sets forth the council's historical policies on key legislative issues. The summary helps to ensure that council members, advisory committee members, and council staff have a common understanding of council policy on issues presented in proposed legislation. The summary reflects the council's most recent positions on legislative issues and identifies how those positions are derived from the Judicial Council's strategic plan. The Judicial Council adopts the Legislative Policy Summary on an annual basis.

## Overview in Formulating a Judicial Council Position on Legislation (not sponsored by Judicial Council)

### **Governmental Affairs**

As bills are introduced in the Legislature, Governmental Affairs identifies those that may affect the judicial branch. Governmental Affairs analyzes the bill for key aspects/impacts of the legislation and, if within Judicial Council purview, forwards the bill to a Judicial Council advisory committee for review and recommendation.

### **Advisory Committee**

The advisory committee (or its subcommittee) reviews the legislation and recommends a position. The advisory committee recommendation along with Governmental Affairs report and recommendation are presented to the PCLC for review.

### **Policy Coordination and Liaison Committee**

PCLC reviews the bill, Governmental Affairs report, and recommendation(s). The committee, on behalf of the Judicial Council, may adopt one of the following positions on the bill:

- oppose
- oppose unless amended/Oppose unless funded
- neutral, if amended/Neutral if funded
- support in concept
- support if amended/Support if funded
- support
- no position

In an unusual circumstance, PCLC may refer the bill to the full Judicial Council for review and position. Once a position is adopted, Governmental Affairs advocates that position throughout the legislative process.

## Worksheet for Judicial Council–Sponsored Legislation Proposal

Advisory Committee: \_\_\_\_\_ Date: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Governmental Affairs Liaison: \_\_\_\_\_

1. Describe the problem to be addressed.
2. How does this problem affect the judicial branch?
3. What is the proposed solution?
4. Discuss alternative solutions. Why is the recommended solution preferable?
5. Any foreseeable problems with the proposed solution?
6. Is the proposal within the Judicial Council’s purview?
7. Could the proposal be carried out by amending the California Rules of Court instead of legislation?
8. Please estimate costs or operational impacts of the proposal.
9. Why is the Judicial Council the best sponsor?
10. What political factors are associated with the proposal? Is there any expected opposition or support for the proposal?
11. Does this proposal require urgent consideration? If so, why?

***Note: This worksheet must be completed and submitted to Governmental Affairs staff prior to the sponsored proposal being placed on the PCLC agenda for final consideration.***

## Governmental Affairs

The mission of Governmental Affairs is to promote and maintain effective relations with the legislative and executive branches and to present the Judicial Council's recommendations on legislative matters pursuant to constitutional mandate. (Cal. Const., art. VI, § 6). Governmental Affairs staff are responsible for the following subject matter areas:

<b>Subject Matter</b>	<b>Contact</b>
General Advocacy	Cory Jasperson
Access to Justice/Self-represented Litigants	Andi Liebenbaum
Appellate Law	<del>Daniel Pone</del>
Bench-Bar Coalition	Cory Jasperson
Budget	Cory Jasperson
Child Welfare	Andi Liebenbaum
Civil Procedure	<del>Daniel Pone</del>
Communications Liaison	Cory Jasperson
Court Closures/Service Reduction	Cory Jasperson
Court Facilities	Cory Jasperson
Court Interpreters	Andi Liebenbaum
Court Reporters	Andi Liebenbaum
Court Security	Cory Jasperson
Criminal Procedure	Sharon Reilly
Day on the Bench	Cory Jasperson
Family Law	Andi Liebenbaum
Fiscal Impact of Legislation/Appropriations	Mark Neuburger
Judgeships/Judicial Officers	Andi Liebenbaum
Judicial Fellowship Program	Cory Jasperson
Judicial Conduct	Cory Jasperson
Judicial Education	Cory Jasperson
Judicial Elections	Cory Jasperson
Judicial Service	Cory Jasperson
Jury Issues	<del>Daniel Pone</del> , Sharon Reilly
Juvenile Justice	Andi Liebenbaum
Labor and Employment	Cory Jasperson
Probate and Mental Health	<del>Daniel Pone</del>
Redistricting/Judicial Redistricting	Cory Jasperson
State Bar/Practice of Law	<del>Daniel Pone</del>
Traffic Law	Andi Liebenbaum

## **Staff Biographies**

**Cory Jasperson** leads the judicial branch's legislative and executive advocacy efforts as the Director of Governmental Affairs. Mr. Jasperson worked in the State Capitol for 12 years, holding positions in both the Assembly and Senate. Prior to joining the Judicial Council in December 2012, he served as Chief of Staff to Senator Joe Simitian (D-Palo Alto). Mr. Jasperson also held the position of Chief of Staff to the Assembly Speaker pro Tempore. Before joining the Legislature in 2000, Mr. Jasperson worked at the Santa Clara County Board of Supervisors, Stanford University, and the Greenlining Institute, a statewide multi-ethnic public policy and advocacy center. He has a BA in International Relations from the University of California, Davis.

**Leily Arzy** is the Judicial Fellow with Judicial Council Governmental Affairs. Leily graduated from Emory University in Atlanta, Georgia, with a bachelor's degree in international studies and minoring in Persian language. Her honors thesis on juvenile justice reform required extensive research and analysis of legislation from all 50 states. While attending Emory University she interned for the American Civil Liberties Union of Georgia, the Public Defender's Office, Fulton County and the Stacey Abrams for Governor campaign.

**Luz Bobino** is an Executive Secretary to the Director and Supervising Attorney of Governmental Affairs. Ms. Bobino joined Governmental Affairs in March 2000 from Sutter Health Information Technology as an application support analyst providing assistance in system analysis, design, development, documentation, and configuration as well as testing and training of the product. Ms. Bobino also worked for the Stockton Fire Department Executive Office as an office clerk, while attending San Joaquin Delta College, majoring in Psychology.

**Yvette Casillas-Sarcos** is an Administrative Coordinator with Governmental Affairs and has been employed by the Judicial Council since 1997. She is responsible for coordinating bill tracking and screening criminal and traffic legislation, as well as supporting the work of two advocates and the Policy Coordination and Liaison Committee.

**Jenniffer Herman** is an Administrative Coordinator with Governmental Affairs and has been employed by the Judicial Council since 2017. Prior to joining the Judicial Council, Ms. Herman was a personnel specialist with the California Department of Parks and Recreation. Ms. Herman relocated to Sacramento in 2006 from the Bay Area and attended Sacramento City College, majoring in English Literature.

**Monica LeBlond** has been the Administrative Support Supervisor at Governmental Affairs since January 2002. Prior to joining the Judicial Council, she worked as an administrative and quality manager for an environmental consulting firm in Sacramento. Ms. LeBlond has a bachelor's degree from the State University of New York.

**Andi Liebenbaum** is an Attorney with Governmental Affairs. Ms. Liebenbaum serves as a liaison between Judicial Council Advisory Committees and the Legislature on issues pertaining to access to justice, self-help and self-represented litigants, family law, juvenile delinquency and

dependency, judicial officers, court interpreters, court reporters, and traffic law including fines, fees, penalties, and assessments. Prior to joining the council in 2012, Ms. Liebenbaum served as senior legislative consultant to Assembly Member Jared Huffman. She began her legal career as an attorney in juvenile dependency and delinquency matters, environmental policy including CEQA litigation, and immigration law. She transitioned into nonprofit workforce development and youth advocacy for 16 years, working throughout California and as a consultant to the US Department of State undertaking program development and capacity building in Central and South America. Ms. Liebenbaum received her undergraduate degrees from Boston University, and her juris doctorate from Loyola Law School in Los Angeles.

**Mark Neuburger** is the Legislative Advocate at Governmental Affairs responsible for assessing the fiscal impacts of legislation. Prior to joining the Judicial Council in 2018, Mr. Neuburger worked as a Budget Analyst with the Department of Finance. Mr. Neuburger has also worked for the Department of Fish and Wildlife and was a 2011–12 Judicial Administration Fellow at the Placer Superior Court. Before his career in public service, Mr. Neuburger worked for variety of companies in the insurance industry as a claims analyst handling personal auto, disability and workers' compensation claims. Mark has a BS in Criminal Justice and an MA in International Relations from Sacramento State University.

**Sharon Reilly** has been with the Judicial Council since January 2013 as an Attorney for criminal law and procedure legislation. Ms. Reilly previously served as chief counsel for the California Bureau of State Audits (BSA) for 13 years and served as a deputy legislative counsel in the California Office of Legislative Counsel for 9 years. As chief counsel with BSA, Ms. Reilly was the executive responsible for the Investigations Division, and also oversaw issues involving the criminal justice system, including juvenile justice realignment, campus crime statistics, the Three Strikes law, and probation requirements. While working at the Legislative Counsel Bureau she served as counsel to several legislative committees, including the Senate Appropriations Committee, the Joint Legislative Budget Committee, and the Constitutional Revision Commission. A University of California, Berkeley graduate, Ms. Reilly earned her juris doctorate degree from the University of California at Davis.

**Nicole Rapier Rocha** started her role as the Supervising Attorney in the Governmental Affairs office on September 19, 2019. She is lead staff on the Policy Coordination and Liaison Committee and will also manage Judicial Council-sponsored legislation. Ms. Rocha brings with her extensive knowledge of the legislative process. Nichole has served on legislative committees in both houses. Ms. Rocha was counsel on the Senate Judiciary Committee working with Governmental Affairs attorneys on judicial-related legislation for several years. And for the past two years, she has been a consultant for the Assembly Committee on Privacy and Consumer Protection. Ms. Rocha received her Bachelor of Arts degree from the University of California, Berkeley and her Juris Doctor from the University of California, Davis School of Law.



## **Outreach Activities**

Governmental Affairs seeks to promote effective communications within California's judicial branch, and with the legislative and executive branches of government. To enhance these efforts, Governmental Affairs has established outreach programs that inform the Governor, members of the Legislature, and the legal community about the judicial branch and issues of mutual concern.

## **State of the Judiciary Address**

The Chief Justice of California typically delivers an annual State of the Judiciary address early in the calendar year to a joint session of the Legislature. The address focuses on significant issues and challenges facing the judiciary in the upcoming year. Following the address, a meet-and-greet is conducted, providing an opportunity for members of the Legislature, the executive branch, appellate and trial courts, and the Bench-Bar Coalition to discuss issues and meet informally with the Chief Justice and other judicial branch leaders.

## **Legislative Visits**

Governmental Affairs coordinates legislative visits for courts or Judicial Council members as needed or requested.

## **Liaison Activities**

Working with interested groups toward achieving common goals has been a long-standing component of Governmental Affairs' advocacy work. Governmental Affairs continues ongoing efforts to work cooperatively with stakeholders involved with and important to the judicial branch, including the Attorney General, the California Judges Association, the California State Association of Counties, the California District Attorneys Association, the California Public Defenders Association, the State Bar of California, civil plaintiffs and defense bars, legal services organizations, and others. Where our positions on issues concur, we form alliances to enhance our advocacy efforts. When our positions on issues differ, we negotiate to reach agreements whenever possible. In support of this ongoing liaison effort, annual meetings are hosted with the leadership of several external organizations to discuss issues of mutual concern.

## **Statewide Bench-Bar Coalition**

The Judicial Council coordinates the statewide Bench-Bar Coalition (BBC). The BBC enhances communication and coordinates the advocacy activities of the judicial community with local, minority and specialty bars associations and legal services organizations regarding issues of common interest, particularly in the legislative arena. Governmental Affairs also coordinates the BBC's annual Day in Sacramento, which is held in conjunction with the Chief Justice's State of the Judiciary address.

## **Day on the Bench Program**

The Day on the Bench program is an event in which a legislator spends a day (or portion of a day) in court with a judge in the legislator's district. This program, cosponsored with the California Judges Association, is designed to give legislators an understanding of the volume, complexity, variety, and difficulty of a trial court judge's daily duties and responsibilities.

## **Publications and Information Services**

To facilitate communication, staff distributes the following information on current legislative developments.

Legislative Status Chart – Governmental Affairs prepares a chart that provides an easy reference to all council actions on pending legislation, including Judicial Council-sponsored legislation.

Table of Bills Affecting Appellate Courts – Governmental Affairs prepares a chart of legislative bills that affect the appellate courts or that respond to California appellate court decisions.

Each year, Governmental Affairs publishes a comprehensive summary of enacted legislation that affects the courts or is of general interest to the legal community. The Legislative Summary includes brief descriptions of the measures, organized by subject. Current and prior-year summaries can be downloaded from the California Courts Website, Court-related Legislation page: [www.courts.ca.gov/4121.htm](http://www.courts.ca.gov/4121.htm)

To view bills being tracked by Governmental Affairs visit the California Courts website at [Court-Related Legislation - OGA](http://www.courts.ca.gov/4121.htm) (<http://www.courts.ca.gov/4121.htm>)

A copy of any legislative measure may be obtained from the Bill Room in the State Capitol building by calling 916-445-2323. Bills and legislative analyses can also be accessed on the Internet at [Bill Search](http://leginfo.legislature.ca.gov) (<http://leginfo.legislature.ca.gov>)

For additional information on the Policy Coordination and Liaison Committee visit the committee's website at [Policy Coordination and Liaison Committee - judicial council advisory groups](http://www.courts.ca.gov/pclc.htm) ([www.courts.ca.gov/pclc.htm](http://www.courts.ca.gov/pclc.htm))



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HON. TANI CANTIL-SAKAUYE  
*Chief Justice of California*  
*Chair of the Judicial Council*

MARTIN HOSHINO  
*Administrative Director*

## FACT SHEET

January 2020

### Governmental Affairs Contacts

The mission of the Judicial Council of California's Governmental Affairs office is to promote and maintain effective relations with the legislative and executive branches and to present the council's recommendations on legislative matters pursuant to constitutional mandate. (Cal. Const., art. VI, § 6). An overview of the office's activities can be found at [www.courts.ca.gov/policyadmin-oga.htm](http://www.courts.ca.gov/policyadmin-oga.htm).

For information or questions regarding specific program areas, staff may be contacted as follows:

Judicial Council of California  
Governmental Affairs  
520 Capitol Mall, Suite 600, Sacramento, CA 95814-4717  
Telephone: 916-323-3121, Fax: 916-323-4347

#### Subject Matter

General Advocacy  
Access to Justice/Self-represented Litigants  
Appellate Law  
Bench-Bar Coalition  
Budget  
Child Welfare  
Civil Procedure  
Communications Liaison  
Court Closures/Service Reduction  
Court Facilities  
Court Interpreters/Reporters  
Court Security  
Court Technology  
Criminal Fines, Fees, Penalties and Assessment  
Criminal Procedure  
Day on the Bench  
Family Law  
Fiscal Impact of Legislation/Appropriations  
Judgeships/Judicial Officers  
Judicial Fellowship Program  
Judicial Service (Conduct, Education, Election)  
Jury Issues  
Juvenile Justice  
Labor and Employment  
Mental Health  
Probate  
Redistricting/Judicial Redistricting  
State Bar/Practice of Law  
Traffic Law

#### Contact

Cory Jasperson  
Andi Liebenbaum  
Cory Jasperson  
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Mark Neuburger  
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## JUDICIAL COUNCIL OF CALIFORNIA

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### MEMORANDUM

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Date	Action Requested
November 21, 2019	Please review
To	Deadline
Advisory Committee Chairs and Staff	N/A
From	Contact
Hon. Marla O. Anderson, Chair Policy Coordination and Liaison Committee	Nichole Rocha, 916-323-3121 nichole.rocha@jud.ca.gov
Subject	
2020 Deadlines for Judicial Council– Sponsored Legislation	

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As Chair of the Judicial Council’s Policy Coordination and Liaison Committee, I am writing to advise you of the timelines and process for developing potential proposals for Judicial Council–sponsored legislation. Each year, the council sponsors bills that seek to improve the administration of justice in California and assist, where needed, in accomplishing branchwide goals and objectives. Judicial Council advisory committees are ideally positioned to identify and develop proposals for statutory change given committee members’ extensive subject matter expertise.

In order to meet the deadlines for developing, refining, circulating, and revising proposals for possible Judicial Council sponsorship in 2021, your committee should be developing proposals in January–February 2020. The timeline for the development of sponsored legislation is attached for your reference.

Judicial Council directive 23 seeks to identify legislative requirements that impose unnecessary reporting or other mandates on the courts and the Judicial Council and make appropriate efforts to repeal such mandates. When considering possible sponsorship proposals, please keep this directive in mind and assist Governmental Affairs in identifying items that should be repealed.

Advisory Committee Chairs and Staff

November 21, 2019

Page 2

Please contact your advisory committee staff or Nichole Rocha in Governmental Affairs at 916-323-3121, if you have any questions. Thank you.

MOA/NR/yc-s

Attachment

## Schedule for Judicial Council–Sponsored Legislation

Action	2020 Deadline
<p><b>Proposal development</b> Advisory committee (AC) staff, in consultation with Governmental Affairs (GA) staff, develops proposals for Judicial Council–sponsored legislation.</p>	<b>Jan.–Feb.</b>
<p><b>Proposals to Governmental Affairs staff</b> AC staff requests Editing and Graphics (EGG) copyediting of draft invitations to comment (ITCs) and forwards final draft ITCs to GA staff for review.</p>	<b>Mar. 6</b>
<p><b>Proposals to Policy Coordination and Liaison Committee (PCLC)</b> GA staff, in consultation with AC staff, finalizes ITCs and submits them to PCLC.</p>	<b>Mar. 26</b>
<p><b>PCLC meeting to review ITCs</b> PCLC determines if proposals may be circulated for public comment.</p>	<b>Apr. 2</b>
<p><b>Posting to the public website</b> GA staff sends approved ITCs to RUPRO staff for posting to the public website for public comment.</p>	<b>Apr. 9</b>
<p><b>Comment period</b> AC staff, in consultation with GA staff, circulates draft Judicial Council–sponsored legislation proposals to interested and affected parties.</p>	<b>Apr. 10–June 9</b>
<p><b>Staff consultation</b> AC staff consults with its committee(s)/subcommittee(s) and then with GA staff regarding responses to comments for further development of proposals for Judicial Council–sponsored legislation into council reports.</p>	<b>June 10–July 31</b>
<p><b>Final drafts to Governmental Affairs</b> AC staff submits final drafts to GA staff. Submittal deadline to GA is considered final for action by the Judicial Council in November.</p>	<b>Aug. 10</b>
<p><b>Final proposals for Judicial Council–Sponsorship</b> GA staff sends final proposals to PCLC.</p>	<b>Sept. 11</b>
<p><b>PCLC meeting</b> PCLC meets to review proposals for possible Judicial Council–sponsorship.</p>	<b>Sept. 24 or Sept. 25</b> <i>In-person meeting</i>
<p><b>Judicial Council meeting</b> Judicial Council takes action on proposals for Judicial Council–sponsored legislation for upcoming legislative year.</p>	<b>Nov. 13</b>

## Appellate Chart Bills List

### Tuesday, March 03, 2020 4:15 PM

**[AB 2124](#) (Stone, Mark D) Guardianships.**

**Introduced:** 2/6/2020

**Last Amend:** 3/2/2020

**Status:** 3/2/2020-From committee chair, with author's amendments: Amend, and re-refer to Com. on HUM. S. Read second time and amended.

**Summary:** The Guardianship-Conservatorship Law, authorizes a probate court, upon hearing of a petition by a parent, relative, or other person, to appoint a guardian of a minor in accordance with specified provisions of law governing the custody of a minor child. Current law authorizes a court hearing a guardianship petition, if the proposed ward is or may be abused or neglected, to refer the matter to the local child welfare services agency to initiate an investigation to determine whether proceedings in juvenile court should be commenced. This bill, except as specified, would require, rather than authorize, the court to immediately refer the matter to the local child welfare services agency for investigation under those circumstances. The bill would prohibit the guardianship proceedings from being completed until the investigation is completed and a report is provided to the juvenile court.

Position	Priority	Assigned	Subject	Group
	Action	Liebenbaum, Andi	Child Welfare, Probate	Appellate Chart, LIAP

**[AB 2155](#) (Obernalte R) Public officers: contracts: prohibited interests.**

**Introduced:** 2/10/2020

**Status:** 2/11/2020-From printer. May be heard in committee March 12.

**Summary:** Current law prohibits members of the Legislature, and state, county, district, judicial district, and city officers or employees from being financially interested in any contract made by them in their official capacity, or by any body or board of which they are members, subject to certain exceptions and qualifications. A contract made in violation of these provisions may be avoided at the instance of any party, except the officer who is interested in it. This bill would define "party," for these purposes, for a contract formed on and after January 1, 2021, as a California taxpayer.

Position	Priority	Assigned	Subject	Group
	W	Jasperson, Cory	Administrative	Appellate Chart

**[AB 2512](#) (Stone, Mark D) Death penalty: person with an intellectual disability.**

**Introduced:** 2/19/2020

**Status:** 2/27/2020-Referred to Com. on PUB. S.

**Summary:** Current law requires the court to order a hearing to determine whether the defendant has an intellectual disability upon the submission of a declaration by a qualified expert stating the expert's opinion that the defendant is a person with an intellectual disability. Current law defines "intellectual disability" for these purposes as a condition of significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before 18 years of age. This bill would change the definition of "intellectual disability" to include conditions that manifest before the end of the developmental period, as defined by clinical standards.

Position	Priority	Assigned	Subject	Group
	Action	Reilly, Sharon	Criminal Law and Procedure	Appellate Chart, New Laws

**[SB 1043](#) (Pan D) Care facilities: incapacitated patients rights.**

**Introduced:** 2/18/2020

**Status:** 2/27/2020-Referred to Com. on RLS.

**Summary:** Would state the intent of the Legislature to enact legislation that would appropriately implement the decision in California Advocates for Nursing Home Reform v. Smith (2019) 38 Cal.App.5th 838, which required that nursing homes adopt, and the State Department of Public Health to enforce, notice and hearing requirements when determining medical incompetence for purposes of Section 1418.8 of the Health and Safety Code, as well as establishing requirements for the composition of interdisciplinary teams for incapacitated patients.

Position	Priority	Assigned	Subject	Group
	W	Casillas-Sarcos, Yvette, Jasperson, Cory		Appellate Chart

**Total Measures: 4**

**Total Tracking Forms: 4**



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 25, 2020

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**Title**

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

**Rules, Forms, Standards, or Statutes Affected**

Amend Cal. Rules of Court, rules 5.552 and 8.401; approve form JV-291-INFO; revise forms JV-285, JV-290, JV-295, JV-321, JV-325, JV-569, JV-570, JV-571, JV-572, JV-573, JV-574, JV-800, JV-820, and JV-822

**Recommended by**

Appellate Advisory Committee  
Hon. Louis R. Mauro, Chair  
Family and Juvenile Law Advisory Committee  
Hon. Jerilyn L. Borack, Chair  
Hon. Mark A. Juhas, Chair

**Agenda Item Type**

Action Required

**Effective Date**

September 1, 2020

**Date of Report**

March 3, 2020

**Contact**

Christy Simons, 415-865-7694

[christy.simons@jud.ca.gov](mailto:christy.simons@jud.ca.gov)

Daniel Richardson, 415-865-7619

[daniel.richardson@jud.ca.gov](mailto:daniel.richardson@jud.ca.gov)

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## Executive Summary

To implement recent Judicial Council–sponsored legislation amending the statute that governs access to records in a juvenile case, the Appellate Advisory Committee and the Family and Juvenile Law Advisory Committee recommend amending the rules regarding confidentiality in juvenile court and appellate court proceedings. The statutory amendment provides that individuals who petitioned for, and by order of the juvenile court were granted access to, the juvenile case file are entitled to access those same records for purposes of appellate court proceedings in which they are parties. The committees also recommend a new information sheet to assist those litigants who must file a petition to request access to records and revisions to existing forms related to the petition process to add a new notice about access to records on review and make other clarifying changes.



## Recommendation

The Appellate Advisory Committee and the Family and Juvenile Law Advisory Committee recommend that the Judicial Council, effective September 1, 2020:

1. Approve *Information on Requesting Access to Records for Persons with a Limited Right to Appeal* (form JV-291-INFO);
2. Amend Cal. Rules of Court, rule 5.552, to replace the terms “disclosure” and “disclosed” with “access to” and “released,” to more accurately describe the juvenile court’s action as permitting access to records in the juvenile case file rather than permitting disclosure;
3. Amend rule 8.401(b) to add new paragraph (2) to implement the new statutory provision, add a new advisory committee comment for new paragraph (2), add definitions to clarify terms, and make other changes to clarify the application of each paragraph;
4. Revise the following forms to add a notice to potential parties in appellate proceedings who are not entitled to access records in the juvenile case file absent court order regarding the requirement to petition for such access and the new information sheet, form JV-291-INFO;
  - a. *Relative Information* (form JV-285)
  - b. *Caregiver Information Form* (form JV-290)
  - c. *De Facto Parent Request* (form JV-295)
  - d. *Request for Prospective Adoptive Parent Designation* (form JV-321)
  - e. *Objection to Removal* (form JV-325)
5. Revise *Proof of Service—Request for Disclosure* (form JV-569) to rename it *Proof of Service—Petition for Access to Juvenile Case File*, update language to refer to “access” and “petition for access” rather than “disclosure” and “request for disclosure,” and add new item 3 for the filer to explain any failure to serve required public entities;
6. Revise *Request for Disclosure of Juvenile Case File* (form JV-570) to rename it *Petition for Access to Juvenile Case File*, update language to refer to “access” and “petition for access” rather than “disclosure” and “request for disclosure,” and make other clarifying changes;
7. Revise *Notice of Request for Disclosure of Juvenile Case File* (form JV-571) to rename it *Notice of Petition for Access to Juvenile Case File* and update language to refer to “access” and “petition for access” rather than “disclosure” and “request for disclosure;”
8. Revise *Objection to Release of Juvenile Case File* (form JV-572) to update language to refer to “access” and “petition for access” rather than “disclosure” and “request for disclosure;”

9. Revise *Order on Request for Disclosure of Juvenile Case File* (form JV-573) to rename it *Order on Petition for Access to Juvenile Case File*, update language to refer to “access” and “petition for access” rather than “disclosure” and “request for disclosure,” add check boxes and space in item 1 for the judicial officer to state the reason for denying the petition, and add new item 6 to provide space for other orders;
10. Revise *Order After Judicial Review* (form JV-574) to rename it *Order After Judicial Review on Petition for Access to Juvenile Case File*, update language to refer to “access” and “petition for access” rather than “disclosure” and “request for disclosure,” and add check boxes for the judicial officer to indicate the reason for denying the petition and information regarding redaction and dissemination of records;
11. Revise *Notice of Appeal—Juvenile* (form JV-800) to add a notice to potential parties in appellate proceedings who are not entitled to access records in the juvenile case file absent court order regarding the requirement to petition for such access and the new information sheet, form JV-291-INFO, to add an item allowing the litigant who has been granted access to records by order of the juvenile court to indicate this and attach a copy of the order, if it is available, and to add to the list of appealable orders in item 7 an order under Welfare and Institutions Code section 305.5 denying transfer to the tribal court and an order under section 388;
12. Revise *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) to add a notice to potential parties in appellate proceedings who are not entitled to access records in the juvenile case file absent court order regarding the requirement to petition for such access and the new information sheet, form JV-291-INFO, and to add an item allowing the litigant who has been granted access to records by order of the juvenile court to indicate this and attach a copy of the order, if it is available; and
13. Revise *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) to add a notice to potential parties in appellate proceedings who are not entitled to access records in the juvenile case file absent court order regarding the requirement to petition for such access and the new information sheet, form JV-291-INFO, add an item allowing the litigant who has been granted access to records by order of the juvenile court to indicate this and attach a copy of the order, if it is available; and clarify that this form may be signed by the attorney of record.

The text of the amended rules and the new and revised forms are attached at pages 13-41.

### **Relevant Previous Council Action**

In 2017, the Appellate Advisory Committee, after consultation with the Family and Juvenile Law Advisory Committee, recommended that the Judicial Council sponsor legislation to amend the statute that specifies who may access and copy records in a juvenile case file. The amendment

would clarify that persons who are entitled to seek review of certain orders in juvenile proceedings or who are respondents in such appellate proceedings may, for purposes of those appellate proceedings, access and copy those records to which they were previously given access by order of the juvenile court.

This legislation, Assembly Bill 1617 (AB 1617), added new paragraph (a)(6) to Welfare and Institutions Code section 827 (section 827) and took effect on January 1, 2019. New paragraph (a)(6) of section 827 authorizes a person who is not entitled to access the juvenile case file under section 827(a)(1)(A)-(P) to access records in the case file for purposes of the appeal or writ if the person has previously petitioned for, and been granted access to, those records under section 827(a)(1)(Q) by the juvenile court. New paragraph (a)(6) also requires the Judicial Council to adopt rules to implement the paragraph.

Rules 5.552 and 8.401 have been amended over the years, but the council has not taken action relevant to the recommendations contained herein. Similarly, the forms have been revised periodically, but none of those prior revisions has bearing on this proposal.

### **Analysis/Rationale**

This proposal is intended to help parties to appellate court proceedings, particularly those who are self-represented, recognize as early as possible whether they need to file a petition for access to records, better understand the procedure, and better navigate the process. The new and revised forms are also intended to assist judicial officers, who must review the petitions and make decisions regarding access to records in the juvenile case file, and court staff, who must prepare and send the record.

### **Background**

The confidentiality of juvenile case files is established by Welfare and Institutions Code section 827.<sup>1</sup> 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

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<sup>1</sup> All further unspecified statutory references are to the Welfare and Institutions Code, and all rule references are to the California Rules of Court. The full text of this statute is available at [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=827.&lawCode=WIC](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=827.&lawCode=WIC).

preparing the record in these proceedings upon filing of the notice of appeal or notice of intent to file a writ petition.

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, absent court order, to access (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 Court of Appeal followed various procedures to decide, on a case-by-case basis, what records such litigants could receive. Doing so took time and resources of the juvenile court, the Court of Appeal, and the persons seeking access to records for such proceedings. It also resulted in delays and, particularly when the appellant or petitioner was self-represented and failed to obtain the necessary records, procedural dismissals of these appeals without consideration of their merit.

### **Prior Circulation**

This proposal circulated previously in spring 2019. At that time, the committees proposed extensive amendments to several rules relating to juvenile appeals and writs to include provisions relating to persons required to petition for access to records in the juvenile case file and the limited record to be prepared and provided to these persons. The proposal included a new information sheet and a notice on certain forms regarding the process to seek authorization from the juvenile court to access records in the juvenile case file.

The committees received a number of public comments raising various concerns with the prior proposal, including, among others, due process issues and perceived gaps in the proposed rules that would require more rules. The committees concluded that, in attempting to provide detailed procedures and information for litigants and courts and to account for various situations that could arise, the proposal's scope and complexity expanded beyond what was necessary to implement the legislation, which was narrow in scope and aimed at a situation that arises relatively infrequently. Accordingly, the committees determined that the best way to move forward would be a more focused rules proposal to add the juvenile court petition process to the appellate rule on access to records in a juvenile case.

### **Rule amendments**

The committees recommend amending both the appellate and juvenile rules on confidentiality of records. The proposed rule amendments appropriately track the provisions of section 827.

#### ***Rule 5.552***

To be consistent with the language of section 827, the committees recommend amending the rule on confidentiality of records in the juvenile court to replace the terms “disclosure” and “disclosed” with “access to” and “released,” respectively. The committees also recommend

making these changes to the names of several forms that are referenced in the rule and are part of this proposal (see below). These changes would more accurately describe the juvenile court's action in granting a petition as permitting *access* to records in the juvenile case file rather than permitting *disclosure*, which could suggest that the petitioner may disclose the information.

### ***Rule 8.401***

Rule 8.401 is the appellate rule on confidentiality in juvenile proceedings; subdivision (b) addresses access to documents and records. The committees recommend adding a new paragraph regarding access to records in the juvenile case file under section 827 stating that individuals who were granted access to records by order of the juvenile court may access the same records for purposes of an appeal or writ proceeding. A new advisory committee comment would describe the petition process under section 827 and refer to rule 5.552 and the mandatory form a petitioner must use.

Other amendments to this rule would add definitions to clarify terms. Existing rule 8.401(b) refers to “filed documents,” “documents filed by the parties,” “the record on appeal,” and “records” in presenting various rules regarding access to documents and records, and proposed new subdivision (b)(2) would add the term “records in the juvenile case file.” To eliminate confusion and draw clear distinctions, the committees recommend defining “filed document,” “record on appeal,” “record on a writ proceeding,” and “records in the juvenile case file.”

### **New and revised forms**

Whereas the rules component of this revised proposal is narrower than what was originally circulated, the forms portion now includes several additional forms. The committees recommend a new information sheet for individuals who must use the petition process to access records in the juvenile case file and adding a notice regarding the petition process to certain forms. Other revisions to forms are intended to raise awareness of the possible need to petition for access to records and to assist the juvenile court and litigants in that process. In addition, several changes are intended to update or clarify content on the forms.

### ***Proposed information sheet***

New *Information on Requesting Access to Records for Persons With a Limited Right to Appeal* (form JV-291-INFO) provides information for individuals with a limited right to seek review of a juvenile court order, such as relatives and de facto parents. This includes information about requesting access to the juvenile case file through a petition under section 827(a)(1)(Q). The form emphasizes that these individuals have a right to appeal or file a writ petition only in limited circumstances. This form is substantially similar to the version included in the earlier proposal, but renamed and with other minor clarifying changes.

### ***Notice on JV forms***

Potential parties in appellate proceedings who are not entitled to access records in the juvenile case file absent a court order may be unaware of the requirement to petition for such access, and thus may not file such a petition until after the appellate proceeding has begun. This situation can cause delays and difficulties for litigants and the courts—problems the legislation was intended

to solve. The committees recommend adding a short notice to forms typically used by these litigants in dependency and juvenile justice cases. The notice reads as follows:

If you are not the child, child's parent, or 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 need a court order granting you access to records in the juvenile case file. For more information, please see *Information on Requesting Access to Records for Persons With a Limited Right to Appeal* (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](http://www.courts.ca.gov/forms).

The committees recommend adding this 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)

***Revisions to notice of appeal and notice of intent to file writ petition forms***

In addition to adding the notice described above, the committees recommend adding an item to these forms so that the litigant who has been granted access to records by order of the juvenile court may indicate this and attach a copy of the order, if it is available. This item will provide notice to the juvenile court clerk who prepares the appellate court record that the litigant's access to records is specified in the juvenile court's order.

The committees recommend adding this item to the following forms:

- *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 (California Rules of Court, Rule 8.450)* (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 (California Rules of Court, Rule 8.454)* (form JV-822)

### ***Revisions to mandatory forms for the section 827 petition process***

The Judicial Council adopted mandatory forms for use by litigants and the juvenile courts in the section 827 petition process. The committees recommend updating the names of these forms and language within the forms to refer to “access” and “petition for access” rather than “disclosure” and “request for disclosure.”

The committees propose making these revisions to the following forms:

- *Proof of Service—Request for Disclosure* (form JV-569), renamed *Proof of Service—Petition for Access to Juvenile Case File*
- *Request for Disclosure of Juvenile Case File* (form JV-570), renamed *Petition for Access to Juvenile Case File*
- *Notice of Request for Disclosure of Juvenile Case File* (form JV-571), renamed *Notice of Petition for Access to Juvenile Case File*
- *Objection to Release of Juvenile Case File* (form JV-572)
- *Order on Request for Disclosure of Juvenile Case File* (form JV-573), renamed *Order on Petition for Access to Juvenile Case File*
- *Order After Judicial Review* (form JV-574), renamed *Order After Judicial Review on Petition for Access to Juvenile Case File*

### ***Other revisions to forms***

The committees recommend additional changes to the forms as described below.

Form JV-569 is the mandatory form for filing proof of service of the petition under section 827(a)(1)(Q). Under rule 5.552, the petitioner is required to serve notice of the petition on certain individuals and entities, but if the petitioner does not know the names and addresses and is unable to effect service for that reason, the clerk must do it. The committees recommend adding a new item 3 for litigants who indicate that they were unable to serve county counsel and the child welfare agency (if the petition is filed under section 300), or the district attorney and the probation department (if the petition is filed under section 601 or 602). The new item requires the litigant to describe the efforts to locate the addresses and to provide an explanation for not being able to locate the addresses. This is intended to reduce the number of instances in which the burden of serving notice on public entities is unnecessarily transferred to the court.

Form JV-570 is the mandatory form used to 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 recommend expanding the instructions for item 5, which requires the petitioner to describe the records being sought, and revising item 6 to add the option that records are sought for a juvenile court proceeding or an appellate court proceeding and provide space for the petitioner to list the relevant hearing dates.

Form JV-573 is the mandatory form for the juvenile court to make its ruling on the petition. The revisions would add check boxes and space in item 1 for the judicial officer to indicate the reason for denying the petition, and add new item 6 to provide space for other orders.

Form JV-574 is the mandatory form for the juvenile court to issue orders after judicial review of the juvenile case file. The committees recommend adding check boxes and space in item 2 for the judicial officer to indicate the reason or reasons for denying the petition, adding a check box to items 3a and 4c to indicate that records released to the petitioner must be redacted, and adding a check box and space to item 6 to permit the petitioner to disseminate records to a specified person and to indicate that those records must be redacted or are subject to a protective order.

Form JV-800, the notice of appeal form, would be revised to add check boxes to item 7, which lists appealable orders under different sections of the Welfare and Institutions Code, to include an order under section 305.5 denying transfer to a tribal court and an order under section 388 (request to change a court order).

Form JV-820, the notice of intent to file a writ petition challenging the setting of a hearing under section 366.26, would be revised to add language to the box on page two titled *What Will Happen at the Hearing to Make a Permanent Plan* to include the court's option of ordering another planned permanent living arrangement for a child who is sixteen years old or older at the section 366.26 hearing.

Form JV-822, the notice of intent to file a writ petition challenging the court's placement order, would be revised to add language to the box on page two titled Signature on *Notice of Intent* to clarify that the notice of intent may be signed by the attorney of record.

### **Policy implications**

The committees have identified no policy implications.

### **Comments**

This proposal was circulated for public comment from December 13, 2019, to February 11, 2020, as part of the regular winter comment cycle. Eleven organizations submitted comments on this proposal. Three commenters agreed with the proposal. Five organizations, including the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee, agreed if the proposal is modified. Three others submitted comments but did not state a position. A chart with the full text of all comments received and the committee's responses is attached at pages 42–96.

### ***Difficult process***

Three commenters, Advokids, Appellate Defenders, and California Appellate Project Los Angeles (CAP LA), submitted extensive comments regarding the petition process: that it is difficult and frustrating, causes long delays, and results in an inadequate record on appeal. The committees understand the difficulties and attempted to address them more fully in the earlier proposal. However, as described above, those proposed rule amendments raised extensive issues and concerns, created additional gaps in procedures, and far exceeded the legislative mandate to implement the new statutory provision.



Advokids comments that limiting access to the record in appellate matters without also amending the rules regarding juvenile appeals and writs will create confusion and delay. To address this issue and to streamline the process, Advokids proposes revising several forms used in the juvenile court to add an item that requests an order granting access to records in the juvenile case file pursuant to section 827(a)(1)(Q). The committees note that the limitation on access to records in the juvenile case file is mandated by statute and has not changed as a result of this proposal. The committees will retain this suggestion for consideration in the future.

To ease the delay problems, Appellate Defenders contends that third party litigants (family members, former caretakers) who have been present at juvenile court hearings have been implicitly granted access to the records used at those hearings, meaning they should not have to file a petition. This commenter also suggests that a full copy of the record should be provided for appellate counsel for the third party, with the caveat that counsel cannot share it with the client. However, absent case law or statute supporting these interpretations, the committees reject these interpretations as inconsistent with section 827. To address the problem of an inadequate record, Appellate Defenders suggest including on form JV-570 additional specific types of records to assist third party litigants with requesting what they will need. The committees declined to add this content to the form, reasoning that the additions would likely result in voluminous requests and that the instructions on the form are sufficient.

CAP LA suggests shifting the burden of designating the record and serving the JV-570 petition from the third party appellant to the juvenile court judicial officer who heard the dependency case, and to include a timeframe for the judicial officer to return form JV-570 to the clerk. The commenter suggests that the judicial officer is better able to identify the necessary record based on the order being appealed from, and also suggests adding a mechanism for seeking completion of an inadequate record filed in the Court of Appeal, prior to briefing. These comments are beyond the scope of the proposal that circulated for public comment. The committees will retain them for consideration as part of a future proposal.

### ***Questions presented in the ITC***

The committees included four additional questions on the ITC.

On the first question regarding whether the definition of “records in the juvenile case file” in rule 8.401(b) should more closely track the definition of “juvenile case file” in rule 5.552(a) or Welfare and Institutions Code section 827(e), the committees received four responses that came to various conclusions. The committees considered the feedback and modified the definition of “records in the juvenile case file” to include records lodged, as well as filed, in the juvenile court.

The second question asked for feedback on the new information sheet, form JV-291-INFO. Most of the commenters responded that the form is helpful and provides the necessary information. One commenter suggested formatting it along the lines of form JV-060-INFO, which uses a question and answer format. The committees will retain this suggestion for future consideration. Two commenters suggested including a note of caution or warning that the

petition process can cause lengthy delays. The committees declined to add this note because each court is different and there are no “typical” timeframes. In addition, such warning might have the unintended effect of deterring someone from filing a petition.

The third and fourth questions concerned the notice requirements of rule 5.552. Question three asked whether rule 5.552 should continue to require notice to county counsel and the parents when a petition for access to records is filed by an adult who is a former or current dependent. Question four asked whether the rule should be changed to require that a parent’s attorney of record receive notice of a petition for access to records. To the third question, two commenters responded no, and one said yes. Five commenters responded to the fourth question; all said some version of yes. The committees decided that notice to parents and county counsel is important to any petition for access as their input is needed on confidentiality issues concerning records in the case file. The committees also determined that notice to parents usually includes their attorney if they have one, so notice is sufficient in this respect as well.

### ***Suggestions for rules and forms***

Several commenters submitted specific suggestions for clarifying edits and corrections to rule language and the forms. As indicated in the comment chart, a number of these suggestions were accepted; others were declined or deferred.

### **Alternatives Considered**

The committees did not consider proposing no rule changes because the legislation requires the Judicial Council to adopt implementing rules.

As described above, the committees previously proposed more extensive rule amendments to describe procedures for appellate proceedings involving individuals whose access to records is limited. However, these extensive changes to the juvenile appellate rules would have added numerous new procedures, raised many more issues that would have to be addressed, and went well beyond what is necessary to implement the new statutory provision.

The committees considered making no changes to JV forms, but rejected this option. Because of the likelihood that individuals may be unaware of the potential need to petition for access to records in the juvenile case file, the committees chose to develop a new information sheet, include a notice on certain forms, and make other changes to improve awareness of the petition process and assist litigants and courts in navigating it.

### **Fiscal and Operational Impacts**

The Joint Rules Subcommittee and a superior court advise that implementation requirements for the courts will include staff time and printing costs for the new information sheet, communication with judicial officers and staff, and possible revisions to procedures and updates to case management systems.

Another superior court cited training for staff who process appeals and writ petitions and clerks who process petitions for access to records under section 827. Revision of local rules, local forms, and local procedures will also be required. In addition, the court indicated that it may need to collaborate with the Court of Appeal to ensure efficiency and compliance with new rules.

A third superior court also mentioned training, including training on redaction software, and updates to its case management system. The court also noted that non-party appeals and writs require significant additional resources. Redactions to both clerks' and reporters' transcripts are necessary and costly.

### **Attachments and Links**

1. Cal. Rules of Court, rules 5.552 and 8.401, at pages 13–15
2. Forms JV-291-INFO, JV-285, JV-290, JV-295, JV-321, JV–325, JV-569, JV-570, JV-571, JV-572, JV-573, JV-574, JV-800, JV-820, and JV-822, at pages 16–41
3. Chart of comments, at pages 42–96
4. Attachment A: Chart of comments on proposal SPR19-06 [this proposal circulated for comment twice, and this chart from the first comment cycle is provided for background]
5. Link A: Welfare and Institutions Code section 827, CORRECT THIS LINK  
[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=297.&lawCode=WIC](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=297.&lawCode=WIC)
6. Link B: Assembly Bill 1617 (Stats. 2018, ch. 992), CORRECT THIS LINK  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201120120SB368&search\\_keywords=](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB368&search_keywords=)

Rules 5.552 and 8.401 of the California Rules of Court would be amended, effective September 1, 2020, to read:

1 **Rule 5.552. Confidentiality of Records (§§ 827, 827.12, 828)**

2  
3 (a) \* \* \*

4  
5 (b) **Petition**

6  
7 Juvenile case files may be obtained or inspected only in accordance with sections  
8 827, 827.12, and 828. They may not be obtained or inspected by civil or criminal  
9 subpoena. With the exception of those persons permitted to inspect juvenile case  
10 files without court authorization under sections 827 and 828, and the specific  
11 requirements for accessing juvenile case files provided in section 827.12(a)(1),  
12 every person or agency seeking to inspect or obtain juvenile case files must petition  
13 the court for authorization using *Request for Disclosure of Petition for Access to*  
14 *Juvenile Case File* (form JV-570). A chief probation officer seeking juvenile court  
15 authorization to access and provide data from case files in the possession of the  
16 probation department under section 827.12(a)(2) must comply with the  
17 requirements of subdivision (e) of this rule.

18  
19 (1)–(2) \* \* \*

20  
21 (c) **Notice of petition for disclosure access**

22  
23 (1) At least 10 days before the petition is submitted to the court, the petitioner  
24 must personally or by first-class mail serve *Request for Disclosure of Petition*  
25 *for Access to Juvenile Case File* (form JV-570), *Notice of Request for*  
26 *Disclosure of Petition for Access to Juvenile Case File* (form JV-571), and a  
27 blank copy of *Objection to Release of Juvenile Case File* (form JV-572) on  
28 the following:

29  
30 (A)–(I) \* \* \*

31  
32 (2) The petitioner must complete *Proof of Service—Request for Disclosure*  
33 *Petition for Access to Juvenile Case File* (form JV-569) and file it with the  
34 court.

35  
36 (3) If the petitioner **or the petitioner’s counsel** does not know **or cannot**  
37 **reasonably determine** the identity or address of any of the parties in (c)(1)  
38 above, the clerk must:

39  
40 (A) Serve personally or by first-class mail to the last known address a copy  
41 of *Request for Disclosure of Petition for Access to Juvenile Case File*

1 (form JV-570), *Notice of ~~Request for Disclosure of~~ Petition for Access*  
2 *to Juvenile Case File* (form JV-571), and a blank copy of *Objection to*  
3 *Release of Juvenile Case File* (form JV-572); and

4  
5 (B) Complete *Proof of Service—Request for Disclosure Petition for Access*  
6 *to Juvenile Case File* (form JV-569) and file it with the court.

7  
8 (4) For good cause, the court may, on the motion of the person seeking the order  
9 or on its own motion, shorten the time for service of the petition for  
10 ~~disclosure~~ access.

11  
12 **(d) Procedure**

13  
14 (1)–(4) \* \* \*

15  
16 (5) If the court grants the petition, the court must find that the need for ~~discovery~~  
17 access outweighs the policy considerations favoring confidentiality of  
18 juvenile case files. The confidentiality of juvenile case files is intended to  
19 protect the privacy rights of the child.

20  
21 (6) The court may permit ~~disclosure of~~ access to juvenile case files only insofar  
22 as is necessary, and only if petitioner shows by a preponderance of the  
23 evidence that the records requested are necessary and have substantial  
24 relevance to the legitimate need of the petitioner.

25  
26 (7) If, after in-camera review and review of any objections, the court determines  
27 that all or a portion of the juvenile case file may be ~~disclosed~~ accessed, the  
28 court must make appropriate orders, specifying the information ~~to be~~  
29 disclosed that may be accessed and the procedure for providing access to it.

30  
31 (8) \* \* \*

32  
33 **(e)–(f) \* \* \***

34  
35 **Rule 8.401. Confidentiality**

36  
37 **(a) \* \* \***

38  
39 **(b) Access to filed documents and records**

40  
41 For the purposes of this rule, “filed document” means a brief, petition, motion,  
42 application, or other thing filed by the parties in the reviewing court in a proceeding  
43 under this chapter; “record on appeal” means the documents referenced in rule

1 8.407; “record on a writ petition” means the documents referenced in rules 8.450  
2 and 8.454; and “records in the juvenile case file” means all or part of a document,  
3 paper, exhibit, transcript, opinion, order, or other thing filed or lodged in the  
4 juvenile court.

5  
6 (1) Except as provided in (2)–(3)(4), a filed document, the record on appeal, or  
7 the record on a writ petition and documents filed by the parties in  
8 proceedings under this chapter may be inspected only by the reviewing court,  
9 and appellate project personnel, the parties, or their attorneys for the parties,  
10 and or other persons the reviewing court may designate.

11  
12 (2) Access to records in the juvenile case file, including any such records made  
13 part of the record on appeal or the record on a writ petition, is governed by  
14 Welfare and Institutions Code section 827. Persons who are not A person  
15 who is not described in subdivision (a)(1)(A)-(P) and have petitioned the  
16 juvenile court under subdivision (a)(1)(Q) may inspect and copy only those  
17 may not access records in the juvenile case file to which that person was  
18 granted access, including any such records made part of the record on appeal  
19 or the record on a writ petition, unless that person petitioned the juvenile  
20 court under subdivision (a)(1)(Q) and was granted access by order of the  
21 juvenile court.

22  
23 (3) A filed documents that protects anonymity as required by (a) may be  
24 inspected by any person or entity that is considering filing an amicus curiae  
25 brief.

26  
27 ~~(3)~~(4) Access to a filed document or records items in the record on appeal or the  
28 record on a writ petition that are sealed or confidential under authority other  
29 than Welfare and Institutions Code section 827 is governed by rules 8.45–  
30 8.47 and the applicable statute, rule, sealing order, or other authority.

31  
32 (c) \* \* \*

33  
34 **Advisory Committee Comment**

35  
36 Subdivision (b)(2). Welfare and Institutions Code section 827(a)(1)(Q) authorizes a petition by  
37 which a person may request access to records in the juvenile case file. The petition process is  
38 stated in rule 5.552. The Judicial Council has adopted a mandatory form—*Petition for Access to*  
39 *Juvenile Case File* (form JV-570)—that must be filed in the juvenile court to make the request.  
40 This form is available at any courthouse or county law library or online at  
41 [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).  
42

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

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, child's parent, or 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 need a court order granting you access to records in the juvenile case file. For more information, please see *Information on Requesting Access to Records for Persons With a Limited Right to Appeal* (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](http://www.courts.ca.gov/forms).

Date: \_\_\_\_\_

\_\_\_\_\_  
Type or print your name

▶  
\_\_\_\_\_  
Sign your name



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

CHILD'S NAME:

CASE NUMBER:

**6. Child's Special Education Status**

- a.  The child is a special 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, child's parent, or 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 need a court order granting you access to records in the juvenile case file. For more information, please see *Information on Requesting Access to Records for Persons With a Limited Right to Appeal* (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](http://www.courts.ca.gov/forms).

Date:

(TYPE OR PRINT NAME)

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

Under very limited circumstances, a person who is not the child, parent, or legal guardian in a dependency or juvenile justice 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. Such a person, however, is typically not entitled to access records from the juvenile court case file that will be considered by the Court of Appeal unless the person gets approval from the juvenile court. The purpose of this information sheet is to inform those persons who are not the child, parent, or legal guardian, and who may have the right to seek appellate review, of the requirement to file a *Petition for Access to Juvenile Case File* (form JV-570) to have access to certain records in the juvenile case file during an 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, 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 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 ordered to be removed from your home, or you requested that the child live with you and the court denied your request.
- Someone who requested de facto parent status, which was denied;
- Someone who requested a change of court order through a section 388 petition (form JV-180), which was denied; or
- A prospective adoptive parent or de facto parent challenging the juvenile court's decision to remove the child from your home.

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

If the juvenile court has not already authorized you to access records in the juvenile case file, to have access to such records for an appeal or writ proceeding, you must request access from the juvenile court. To make this request, you must file *Petition for Access to Juvenile Case File* (form JV-570). Use *Notice of Petition for Access to*

*Juvenile Case File* (form JV-571) to provide notice of this request. You will need to serve copies of these forms 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 petition 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. Be sure to indicate the dates of the hearings that relate to the decision you are challenging. As the basis for the petition, 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 petition by issuing an order that identifies the records you are authorized to access. The court's order is made on *Order After Judicial Review on Petition for Access to Juvenile Case File* (form JV-574).

When you file a notice of appeal or a notice of intent to file a writ petition, you should attach a copy of the court's order on the JV-574, 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 condition for filing an appeal or writ petition.

You may wish to consult with an attorney when considering whether to file an appeal or a writ petition and request access to records in the juvenile case file. The timelines for filing an appeal or a writ petition apply whether or not the juvenile court has granted you access to the juvenile case file. A notice of appeal usually must be filed within 60 days of the date the order being appealed was made. For writ review, a notice of intent to file a writ petition must be filed as early as 7 days after the court makes the challenged order, either orally in court or in writing, whichever occurs first. But note that the deadlines for filing a notice of appeal or a notice of intent to file a writ petition may differ, depending on the circumstances. For more information, read rules 8.406, 8.450, and 8.454 of the California Rules of Court.

Clerk stamps date here when form is filed.

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**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, child's parent, or 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 need a court order granting you access to records in the juvenile case file. For more information, please see *Information on Requesting Access to Records for Persons With a Limited Right to Appeal* (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](http://www.courts.ca.gov/forms).

**Request for Prospective Adoptive Parent Designation**

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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 that information on this form. Instead, **include that information in Confidential Information—Prospective Adoptive Parent (form JV-322).**

- 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: \_\_\_\_\_

Fill in court name and street address:

**Superior Court of California, County of**

- ② If you are not a person in ①, fill out below.
- a. Name: \_\_\_\_\_
- b. I am the  child  child's attorney  other  
(specify role): \_\_\_\_\_
- c. Street address: \_\_\_\_\_
- d. City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_
- e. Telephone number: \_\_\_\_\_

Fill in child's name and date of birth:

**Child's Name:****Date of Birth:**

Fill in case number:

**Case Number:**

- ③ If you are not the child's attorney and you know who the child's attorney is, fill out below.
- a. Name of child's attorney: \_\_\_\_\_
- b. Street address of child's attorney: \_\_\_\_\_
- c. City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_
- d. Telephone number of child's attorney: \_\_\_\_\_
- ④  The child is 10 years of age or older. Child's telephonenumber: \_\_\_\_\_  
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 a 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, child's parent, or 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 need a court order granting you access to records in the juvenile case file. For more information, please see *Information on Requesting Access to Records for Persons With a Limited Right to Appeal* (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](http://www.courts.ca.gov/forms).

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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 telephonenumber: \_\_\_\_\_  
 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, child's parent, or 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 need a court order granting you access to records in the juvenile case file. For more information, please see *Information on Requesting Access to Records for Persons With a Limited Right to Appeal* (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](http://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](http://www.courts.ca.gov/forms) for *Request for Accommodations by Persons With Disabilities and Response* (form MC-410). (Civ. Code, § 54.8.)



*Clerk stamps date here when form is filed.*

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*Fill in court name and street address:*

**Superior Court of California, County of**

*Fill in case number if known.*

**Case Number:**

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  I was not able to provide notice of this petition to the following because I did not know their names or addresses. If this is a request for the case file of a living child, the clerk must serve a copy of the petition. If this is a request for the case file of a deceased child, the custodian of records must serve a copy of the petition.
  - a.  County counsel or other attorney representing the child welfare agency if petition filed under section 300
  - b.  District attorney if petition filed under section 601 or 602
  - c.  Child
  - d.  Attorney of record for the child
  - e.  Child’s parent
  - f.  Child’s legal guardian
  - g.  Probation department if petition filed under section 601 or 602
  - h.  Child welfare agency/custodian of records if petition filed under section 300
  - i.  Child’s identified Indian tribe
  - j.  Child’s CASA volunteer

3 If you checked box 2a, 2b, 2g, or 2h, describe the efforts made to locate those addresses and explain why you are unable to locate the addresses:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4  Copies of *Petition for Access to Juvenile Case File (JV-570)*, *Notice of Petition for Access to Juvenile Case File (JV-571)*, and a blank *Objection to Release of Juvenile Case File (JV-572)* have been served personally or placed in a sealed envelope with postage paid and deposited in the United States mail addressed to the following:  
a.  County counsel or other attorney representing the child welfare agency if petition filed under section 300 (name and address): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
 Date mailed: \_\_\_\_\_ or  Personally served on (date): \_\_\_\_\_



Case Number:

Your name: \_\_\_\_\_

- 4 b.  District attorney if petition filed under section 601 or 602 (*name and address*): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
 Date mailed: \_\_\_\_\_ or  Personally served on (*date*): \_\_\_\_\_
- c.  Child (*name and address*): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
 Date mailed: \_\_\_\_\_ or  Personally served on (*date*): \_\_\_\_\_
- d.  Attorney of record for the child (*name and address*): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
 Date mailed: \_\_\_\_\_ or  Personally served on (*date*): \_\_\_\_\_
- e.  Child's parent (*name and address*): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
 Date mailed: \_\_\_\_\_ or  Personally served on (*date*): \_\_\_\_\_
- f.  Child's parent (*name and address*): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
 Date mailed: \_\_\_\_\_ or  Personally served on (*date*): \_\_\_\_\_
- g.  Child's legal guardian (*name and address*): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
 Date mailed: \_\_\_\_\_ or  Personally served on (*date*): \_\_\_\_\_
- h.  Probation department if petition filed under section 601 or 602 (*name and address*): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
 Date mailed: \_\_\_\_\_ or  Personally served on (*date*): \_\_\_\_\_



Case Number: \_\_\_\_\_

Your name: \_\_\_\_\_

i.  Child welfare agency/custodian of records if petition filed under section 300 (*name and address*):

\_\_\_\_\_

Date mailed: \_\_\_\_\_ or  Personally served on (*date*): \_\_\_\_\_

j.  The Indian child's tribal representative (*name and address*): \_\_\_\_\_

\_\_\_\_\_

Date mailed: \_\_\_\_\_ or  Personally served on (*date*): \_\_\_\_\_

k.  The child's CASA volunteer (*name and address*): \_\_\_\_\_

\_\_\_\_\_

Date mailed: \_\_\_\_\_ or  Personally served on (*date*): \_\_\_\_\_

5 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, you may be guilty of a crime.

Date:

\_\_\_\_\_  
*Type or print your name*



\_\_\_\_\_  
*Sign your name*

Clerk stamps date here when form is filed.

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If you are requesting a court order to obtain access to the juvenile case file of a child who is alive, fill out all items on this form, and file it with the juvenile court. You must also fill out and file Proof of Service—Petition for Access to Juvenile Case File (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 1–5 and 7 on this form and file it with the juvenile 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 petition.

**Or**

b. Do not complete the form, and instead request the juvenile case file from the child welfare agency under Welfare and Institutions Code section 10850.4.

Fill in court name and street address:

**Superior Court of California, County of**

Fill in case number, if known:

**Case Number:**

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: \_\_\_\_\_

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: \_\_\_\_\_

⑤ The records I want are: (Describe in detail. Attach more pages if you need more space. If you are involved in a pending proceeding in an appellate court or you are preparing to participate in such a proceeding, you should describe here the transcripts, reports, and any other evidence considered by the juvenile court at hearings related to the subject of the appeal or writ proceeding. For example, you should describe a report by providing its title (such as, "status review report," "jurisdiction/disposition report," or "CASA report") and the date of the hearing when the document was considered.)

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Continued on Attachment 5.



Your name: \_\_\_\_\_

Case Number: \_\_\_\_\_

**6** The reasons for this petition 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.  Family Law court case pending in (name of county): \_\_\_\_\_  
Case number: \_\_\_\_\_ Hearing date: \_\_\_\_\_
- e.  Writ or appeal case pending in (name of district): \_\_\_\_\_  
Case number (if available): \_\_\_\_\_  
Hearing dates related to the juvenile court order being challenged or to be challenged on appeal or by writ: \_\_\_\_\_
- f.  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

**Note: You must provide a copy of this completed form to all interested parties if you know their names and addresses.**

**RE: Release of Juvenile Case File and Right to File an Objection**

You must provide notice to all those listed in item 2 on Proof of Service—**Petition for Access to Juvenile Case File (form JV-569)**.

TO (names):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

① Child's name: \_\_\_\_\_

② Information relating to the child named in item ① is being sought by (name): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

③ The requested information is described in the attached **Petition for Access to Juvenile Case File (form JV-570)**.

④ If you object to the release of these records and information, you must fill out *Objection to Release of Juvenile Case File (form JV-572)* and return it to the court listed at the address above within 10 days of the date you received this notice.

Clerk stamps date here when form is filed.

**DRAFT**  
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Fill in court name and street address:

**Superior Court of California, County of**

Court fills in case number when form is filed.

**Case Number:**

Date:

\_\_\_\_\_  
*Type or print your name*



\_\_\_\_\_  
*Sign your name*

**Warning: If you do not object, the court may grant access to the child's case file.**

Clerk stamps date here when form is filed.

**DRAFT  
Not approved by  
the Judicial Council**

Objections to the release of information and records described in the attached **Petition for Access** to Juvenile Case File (form JV-570) must be filed with the juvenile court.

1 Name of child: \_\_\_\_\_

2 My relationship to the child, if any, is: \_\_\_\_\_

3 I object to the release of information and records relating to the child named in item 1.

4 I do not want the juvenile court to release the records because (describe in detail, attach additional pages if necessary):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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\_\_\_\_\_

Fill in court name and street address:

**Superior Court of California, County of**


Court fills in case number when form is filed.

**Case Number:**

Date: \_\_\_\_\_

\_\_\_\_\_

*Type or print your name*

 \_\_\_\_\_

*Sign your name*

**Warning: If you do not object, the court may grant access to the child’s case file.**

*Clerk stamps date here when form is filed.*

**DRAFT  
Not approved by  
the Judicial Council**

**The Court finds and orders:**

- ①  The child is alive and the request is denied.
  - a.  Petitioner has not shown good cause for the release of the requested records.
  - b.  Petitioner has not met the notice requirements of rule 5.552(c).
  - c.  Request for records is overbroad or records sought are insufficiently identified.
  - d.  Other: \_\_\_\_\_

- ②  The child is alive and the court sets a hearing on the request. Applicant has shown good cause for release of the juvenile case file, but the court must balance the interests of the applicant, the child, other parties to the juvenile court proceedings, and the public. Clerk to send notice under rule 5.552 of the California Rules of Court.  
 Date of hearing: \_\_\_\_\_  
 Time of hearing: \_\_\_\_\_  
 Location: \_\_\_\_\_

- ③  The child is alive and the court will conduct a review of the juvenile case file and any filed objections.

- ④  The child is deceased and the court sets a hearing on the request.  
 Date of hearing: \_\_\_\_\_  
 Time of hearing: \_\_\_\_\_  
 Location: \_\_\_\_\_

- ⑤  The child is deceased and the court will conduct a review of the juvenile case file and any filed objections.

- ⑥  Other: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

*Fill in court name and street address:*

**Superior Court of California, County of**

*Court fills in case number when form is filed.*

**Case Number:**

Date:

\_\_\_\_\_  
*Judicial Officer*



**Order After Judicial Review on  
Petition for Access to  
Juvenile Case File**

Clerk stamps date here when form is filed.

**DRAFT  
Not approved by  
the Judicial Council**

1 Name of petitioner: \_\_\_\_\_

**The court finds and orders:**

2  After a review of the juvenile case file and review of any filed objections  and a noticed hearing, the court denies the request.

Reason(s) for denial:

- a.  Access is not in the child’s best interests.
- b.  The need for access does not outweigh the privacy rights of the child and the policy considerations favoring confidentiality of the juvenile case file.
- c.  Petitioner has not shown by a preponderance of the evidence that the records requested are necessary and have substantial relevance to the legitimate need of the petitioner.
- d.  There are no responsive records.
- e.  Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Fill in court name and street address:  
**Superior Court of California, County of**

Court fills in case number when form is filed.  
**Case Number:**

3  After a review of the juvenile case file and review of any filed objections  and a noticed hearing, the court grants the request. The petitioner has shown by a preponderance of the evidence that access to records is necessary and that records have substantial relevance to the legitimate needs of the petitioner. The court has balanced these needs with the child’s best interest. The court finds that the need for access outweighs the policy considerations favoring confidentiality of juvenile records.

a.  The following records may be disclosed:  with redactions  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b.  The procedure for providing access is:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

c.  See attached.

4  This child is deceased, and the request is granted.

a.  The court has read and considered the following:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Your name: \_\_\_\_\_

- 4 b.  There is a presumption under Welfare and Institutions Code section 827(a)(2)(B) in favor of the release of the documents unless a statutory reason for confidentiality is shown to exist. The court has balanced only the interests of the child who is the subject of the juvenile case file and the interests of other children who may be named in the file with \_\_\_\_\_.
- c.  The following records may be disclosed:  with redactions  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
- d.  The procedure for providing access is:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
- e. Any information that relates to another child or could identify another child, except for information about the deceased, must be redacted.
- f.  See attached.

- 5  The child is deceased and the request is denied. The court finds by a preponderance of the evidence that access to the juvenile case file or of any portion of it is detrimental to the safety, protection, or physical or emotional well-being of another child who is directly or indirectly connected to the juvenile case that is the subject of the request.

**Additional orders:**

- 6 a.  Petitioner may not disseminate the information to anyone who is not specified in Welfare and Institutions Code section 827 or 827.10.
- b.  Petitioner may disseminate the disclosed records listed in item 3a only to: \_\_\_\_\_  
 as redacted     subject to protective order     additional orders attached

- 7  Disclosure subject to protective order (*list orders*): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

- 8  Other: \_\_\_\_\_  
 \_\_\_\_\_

- 9  See attached.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Judicial Officer*

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<b>FOR COURT USE ONLY</b>  <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
<b>NOTICE OF APPEAL—JUVENILE</b>	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 an 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, child, child's parent, or 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 need a court order granting you access to records in the juvenile case file. For more information, please see *Information on Requesting Access to Records for Persons With a Limited Right to Appeal* (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](http://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.  Appellant has been granted access to specified records in the juvenile case file, and a copy of the court's order under Welfare and Institutions Code section 827(a)(1)(Q), on *Order After Judicial Review on Petition for Access to Juvenile Case File* (form JV-574) 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.

Date:

\_\_\_\_\_  
 TYPE OR PRINT NAME

\_\_\_\_\_  
 SIGNATURE OF  APPELLANT  ATTORNEY

4. Items 5 through 7 on the reverse are  completed  not completed.

CHILD'S NAME:	CASE NUMBER:
---------------	--------------

5. 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):

6. This notice of appeal pertains to the following child or children (specify number of children included):

- a. Name of child: \_\_\_\_\_  
Child's date of birth: \_\_\_\_\_
  - b. Name of child: \_\_\_\_\_  
Child's date of birth: \_\_\_\_\_
  - c. Name of child: \_\_\_\_\_  
Child's date of birth: \_\_\_\_\_
  - d. Name of child: \_\_\_\_\_  
Child's date of birth: \_\_\_\_\_
- Continued in Attachment 6.

7. The order appealed from was made under Welfare and Institutions Code (check all that apply):

- a.  **Section 305.5** (transfer to tribal court)  
 Granting transfer to tribal court       Denying transfer to tribal court  
 Dates of hearing (specify): \_\_\_\_\_
- 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)  
 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.  **Section 388** (request to change court order)  
 Dates of hearing (specify): \_\_\_\_\_
- f.  Other appealable orders relating to dependency (specify): \_\_\_\_\_  
 Dates of hearing (specify): \_\_\_\_\_
- g.  **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): \_\_\_\_\_
- h.  Other appealable orders relating to wardship (specify): \_\_\_\_\_  
 Dates of hearing (specify): \_\_\_\_\_
- i.  Other (specify): \_\_\_\_\_

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  <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME: _____	
<b>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)</b>	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 a court of appeal 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 seven days from the juvenile 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, child, child's parent, or 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 need a court order granting you access to records in the juvenile case file. For more information, please see *Information on Requesting Access to Records for Persons With a Limited Right to Appeal* (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](http://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.  Petitioner has been granted access to specified records in the juvenile case file, and a copy of the court's order under Welfare and Institutions Code section 827(a)(1)(Q), on form *Order After Judicial Review on Petition for Access to Juvenile Case File* (form JV-574) if available, is attached.

Date: \_\_\_\_\_

\_\_\_\_\_  
 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 Page 1 of 2

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 another planned permanent living arrangement if the child is sixteen years old or older.
- 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 *Petition for Extraordinary Writ* (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(f); 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**

**WHO MUST SIGN THE NOTICE OF INTENT?**

- The person who intends to file the writ petition, or
- The attorney of record for the person who intends to file the writ petition

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   <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
<b>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)</b>	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, child, child's parent, or 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 need a court order granting you access to records in the juvenile case file. For more information, please see *Information on Requesting Access to Records for Persons With a Limited Right to Appeal* (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](http://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.  Petitioner has been granted access to specified records in the juvenile case file, and a copy of the court's order under Welfare and Institutions Code section 827(a)(1)(Q), on *Order After Judicial Review on Petition for Access to Juvenile Case File* (form JV-574) if available, is attached.

**PLEASE READ THE BACK OF THIS FORM FOR IMPORTANT INFORMATION AND DEADLINES**

APPELLATE CASE TITLE:	APPELLATE CASE NUMBER:
-----------------------	------------------------

Date:

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(TYPE OR PRINT NAME)

(SIGNATURE OF  PETITIONER  ATTORNEY)

**The *Notice of Intent to File Writ Petition* must be signed by the person intending to file the writ petition or, by the 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.

**WHO MUST SIGN THE NOTICE OF INTENT?**

- The person who intends to file the writ petition; or
- The attorney of record for the person who intends to file the writ petition



**W20-02**

**Appellate Procedure, Juvenile Law: Access to Juvenile Case Files in Appellate Court Proceedings** (Amend Cal. Rules of Court, rules 5.552 and 8.401; approve form JV-291-INFO; revise forms JV-285, JV-290, JV-295, JV-321, JV-325, JV-569, JV-570, JV-571, JV-572, JV-573, JV-574, JV-800, JV-820, and JV-822)

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

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>DRAFT Committees Response</b>
1.	Advokids by Janet G. Sherwood Deputy Director	NI	<p>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, as well as all other comments, were prepared by a certified child welfare law specialist with over 45 years of experience in the field. She was also a certified appellate law specialist handling dependency appeals until 2015 when she closed her private practice to work full-time with Advokids.</p> <p>Does the Proposal Adequately Address the Stated Purpose?</p> <p>No. Putting the limitations on access to the record in appellate matters in Rule 8.401, without also amending the appellate rules and the rules applicable to statutory writs, will create confusion and delays because of the apparent inconsistencies between those rules and rule 8.401.</p>	<p>The committees appreciate this feedback on the proposal.</p> <p>The committees considered extensive amendments to appellate rules to implement the requirements of section 827(a)(6), as reflected in the proposal that circulated for public comment in spring 2019. This approach however resulted in an increasingly complex system of rules that, in the committees' view, was impractical and unwieldy. The committees concluded that, in attempting to provide detailed procedures and information for litigants and courts, and to account for various situations that could arise, the proposal's scope and complexity expanded beyond what was necessary to implement the legislation, which was narrow in scope and aimed at a situation that</p>

**W20-02**

**Appellate Procedure, Juvenile Law: Access to Juvenile Case Files in Appellate Court Proceedings** (Amend Cal. Rules of Court, rules 5.552 and 8.401; approve form JV-291-INFO; revise forms JV-285, JV-290, JV-295, JV-321, JV-325, JV-569, JV-570, JV-571, JV-572, JV-573, JV-574, JV-800, JV-820, and JV-822)

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

	Commenter	Position	Comment	DRAFT Committees Response
			<p>For example, section 366.28 prescribes the process for prospective adoptive parents to seek appellate court review of a juvenile court’s removal decision. The statute itself contemplates that parties to the removal proceedings will be parties to the statutory writ proceedings. (See, 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].) The implementing Rule of Court, rule 8.454 requires the clerk to prepare the record and to send it to “counsel of record and any unrepresented party and unrepresented custodian of the dependent child.” There is nothing in the rule that requires anyone who is entitled to be served with a copy of the record under the rule to have first filed a section 827 petition. (Rule 8.454(i)(2).) The use of the word “parties” in the rule clearly refers to the persons who participated in the juvenile court removal proceedings, not just the parties to the underlying juvenile court case. Stealth</p>	<p>arises relatively infrequently. Accordingly, the committees determined that the best way to move forward would be a more focused rules proposal to add the juvenile court petition process to the appellate rule on access to records in a juvenile case.</p> <p>The committees agree that the commenter raises legitimate concerns. However, the scope of this project is to implement section 827(a)(6). Section 827 governs access to the juvenile case file and the Legislature has clarified in section 827(a)(6) that the petition process for access to confidential records applies to appellate court proceedings. A prospective adoptive parent is not listed in section 827(a)(1)(A)-(P), and therefore must obtain a court order for access to records in the juvenile case file. The committees understand that prospective adoptive parents could be considered “parties” in the appellate court under rule 8.454, but this does not change the fundamental statutory mandate that individuals who are not described in section 827(a)(1)(A)-(P) must petition the juvenile court for access to records.</p>

## W20-02

**Appellate Procedure, Juvenile Law: Access to Juvenile Case Files in Appellate Court Proceedings** (Amend Cal. Rules of Court, rules 5.552 and 8.401; approve form JV-291-INFO; revise forms JV-285, JV-290, JV-295, JV-321, JV-325, JV-569, JV-570, JV-571, JV-572, JV-573, JV-574, JV-800, JV-820, and JV-822)

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

	Commenter	Position	Comment	DRAFT Committees Response
			<p>amendment of the appellate rules, without reference to the rule that amends the rules being consulted, is unfair to litigants, especially those who are not already familiar with the appellate rules in dependency cases.</p> <p>The proposal also does not adequately address the stated purpose because there are no time limits on how long a juvenile court may take to act on a section 827 petition nor is there any remedy available when the juvenile court wrongfully denies a section 827 petition or fails to act at all, thereby effectively preventing the appeal or writ from being considered.</p> <p>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 at the same time the Notice of Appeal is filed. Many of those section 827 petitions then languish for months before they are acted upon. It is also not unheard of for those petitions to be sent for a ruling to the very bench officer whose order is being appealed, even though the procedure 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 thwarted by</p>	<p>The committees agree that delay is a significant concern. Although 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 considered including time limits on the petition process, but juvenile courts are already struggling to meet the demands of processing these petitions. The committees concluded that, without additional resources for the juvenile courts, imposing deadlines is simply not feasible. In addition, adding deadlines would be a substantive change to the proposal that, under rule 10.22, would require circulation for public comment.</p>

**W20-02**

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>DRAFT Committees Response</b>
			<p>the court’s failure to make a timely decision on the section 827 petition.</p> <p>The absence of time limits on when the juvenile court must act on the section 827 petition must be addressed. The time for filing a valid Notice of Intent is very short. Even if a section 827 petition is filed before the notice of intent, it is likely that it will not have been acted upon before the notice of intent must be filed to preserve the right to file a writ petition. No record will be prepared within the time limits set forth in the rules 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 those writ petitions to be re- solved 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 petition and no remedy when such petitions are wrongfully denied, then the purpose of the writ procedures will be completely thwarted by the failure of a juvenile court to make a prompt decision on the section 827 petition.</p> <p>Imposition of the section 827 process as a prerequisite for preparation of the appellate record builds unconscionable delays into the process of getting issues concerning the safety or stability of a child before an appellate court.</p>	<p>See response above.</p> <p>As mentioned above, section 827 requires that certain persons file a petition for access to records in the juvenile case file. The committees cannot recommend, and the Judicial Council cannot adopt, rules that are inconsistent with statute. (Cal.</p>

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			<p>For example, while the rule provides for the clerk to serve the petition if the petitioner does not know the identity or address of any of the parties, many clerks’ offices routinely refuse to comply with this provision and refuse to file the petition at all because there is no proof of prior service. If a person seeking to file such a petition asks the clerk to supply name and address information so that the petitioner may accomplish the required service, clerks’ offices often refuse to supply that information on the ground that it is “confidential.”</p> <p>An additional problem with the proposal is that it does not address the situation where one of the affected persons is a respondent in the appellate court, rather than the appellant or writ petitioner. For example, if the county agency appeals an order granting de facto parent status or files a writ petition when the juvenile court rules against the agency’s attempt to remove a child from an adoptive placement, the de facto parent or prospective adoptive parent should have the right to respond to the agency’s claims. It is probable that these individuals will not even be served with the opening brief or writ petition if that person has not already filed a section 827 because rule 8.401(b)(1) does not permit service of “filed documents” on persons who are not “parties” or attorneys for “parties.”</p>	<p>Const., art. VI, section 6.) The committees acknowledge the concerns raised and agree that there will be difficulties in many instances, but the issues are based in section 827 provisions regarding the confidentiality of juvenile case files.</p> <p>The committees acknowledge that several rules appear to have been written without consideration of persons who must petition for access to records in the juvenile case file. In this example, the de facto parent or prospective adoptive parent clearly has the right to respond to the agency’s claims. Section 827(a)(6) recognizes this. The committees do not agree that it is “probable” that these persons would not be served with the opening brief or writ petition, but the rule is not entirely clear in this situation.</p>

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			<p><i>Suggested alternative.</i> The proposed procedures provide too many ways in which appellate review to which aggrieved relatives, caregivers, de facto parents, or other interested persons would be otherwise entitled can and will be impeded or prevented by these amendments. A possible and more efficient solution would be to add an item to the JV-180, JV-285, JV-321 and JV-325 forms that requests an order granting access to the juvenile court records relevant to that proceeding pursuant to section 827(a)(1)(Q). The form order for each of these petitions could also be amended include an item for the court to rule on the section 827 request. These additions would streamline the process of giving prior notice of the request for access to interested parties, address the extent of discovery, etc. available to the petitioner in that proceeding, make the relevant documents available for any appeal or statutory writ proceeding, and obviate most of the due process problems presented by the present proposal.</p> <p><b>Should the definition of “records in the juvenile case file” in rule 8.401(b) more closely track the definition of “juvenile case file” in rule 5.552(a) or Welfare and Institutions Code section 827(e)?</b></p> <p><b>No.</b> The definitions of “juvenile case file” in the rule and the statute are broader than the documents that may properly be included in an</p>	<p>The committees appreciate this suggestion. However, 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 keep the suggestion for consideration in a future cycle.</p> <p>The committees agree with this comment and have modified the definition to include records</p>

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			<p>appellate record or record on a statutory writ petition. For example, records in possession of the social worker or probation officer that were never filed with the juvenile court or offered or entered into evidence in a contested juvenile court proceeding would not be a proper part of the appellate record.</p> <p><b>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?</b></p> <p><b>No.</b> The list of people who might have the right to seek review, includes this language:</p> <p>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, <i>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;</i></p> <p>The italicized language is misleading. An agency’s failure to assess or place, in the absence of judicial review by the juvenile court, would not give rise to the right to appellate review.</p>	<p>from the juvenile case file that would be in the court record and thus part of the appellate record.</p> <p>The committees agree that the language should be amended to clarify that a court order is required for there to be a right to appeal. The change has been made.</p>

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			<p>The first full paragraph in column two states that the petitioner’s request can include documents in the possession of the social worker or the probation officer. This is misleading because, as noted above, these documents would not be in the record of the juvenile court proceedings at issue and, therefore, would not be properly part of the appellate record.</p> <p>The reference to this form should not be added to the JV-285 or the JV-290 forms. Including the JV-291-INFO reference on those forms implies that relatives and caregivers may have appellate rights. This is almost never the case for those who have not sought or achieved some kind of party or quasi-party status through other means, such as a 388 petition or a de facto parent re- quest.</p> <p><b>Should other information be included?</b></p> <p><b>Yes.</b> The information sheet should warn people not to wait to file their 827 petition until after the court has ruled on their section 388 petition, de facto parent request, or prospective adoptive parent status request and that any appellate review may be unduly delayed or denied because of the necessity of obtaining an 827 order granting access to the juvenile court file</p>	<p>While a petitioner could request information in the social worker’s or probation officer’s file unrelated to an appeal, the committees agree that this language should be removed because the focus of the form is on accessing the case file purposes of appeal, which, as the commenter correctly points out, would not include documents in the social worker’s or probation officer’s case file.</p> <p>The committees elected to include the notice on these forms because the individuals who use these forms may eventually have a right to appeal or seek writ relief. The committees agree however that most relatives and caregivers will not. The language of the notice and form JV-291-INFO clarifies that these individuals will have a right to appeal or file a writ petition in only very limited circumstances.</p> <p>The committees elected not to include a warning that appellate review may be delayed or denied because of delay in the section 827 petition process. The committees understand that there are no typical time periods for decisions on section 827 petitions, as each court is different in how these petitions are handled. Such a warning could also deter someone from filing the petition.</p>



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			<p>before they may have access to the appellate record.</p> <p><b>Should rule 5.552 require that the parent and county counsel receive notice if a petition for access is filed by an adult who is a former or current dependent and is seeking access to their case file for the purpose of education, employment, immigration, and/or military enlistment?</b></p> <p>No.</p> <p><b>Rule 5.552 does not require that a parent’s attorney of record receive notice when a petition for access is filed. Should the rule require such notice?</b></p> <p>Yes. But there should be an exception in cases where parental rights have been terminated for both parents.</p>	<p>The committees have elected to continue to require notice to the parent and county counsel in these situations because their input on confidential information in the case file is essential.</p> <p>The committees elected not to change the notice requirements of rule 5.552. The committee anticipates that a parent’s or guardian’s attorney will be notified if the parent or guardian cannot be located.</p>
2.	Appellate Defenders, Inc. By Linda Fabian Staff Attorney San Diego, California	NI	<p>1. The Proposed JV-570 Process Causes Undue Delay.</p> <p>The proposed JV-570 procedure for producing a record for the appellant who is not the child, or the child’s parent or guardian will likely result in significant delays in the appellate process. We find a majority of the appellants in these cases in the Fourth Appellate District are</p>	<p>The committees appreciate these comments.</p> <p>The committees acknowledge the concerns regarding delay caused by the petition process and that it is a challenging process for self-represented litigants. The purpose of the notice on a number of forms and the new information sheet is to raise awareness of the process and provide guidance for</p>

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			<p>relatives or de facto parents challenging placement decisions (removal, denial of placement). Almost all of these individuals do not have counsel representing them in the juvenile court. They will likely find the JV-570 process difficult to navigate and may be unable to comply with the deadlines for completing and submitting the petition for filing.</p> <p>All dependency appeals in two of our three Divisions (San Diego, Orange and Imperial Counties) are subject to fast-track rules. (Cal. Rules of Court, rule 8.416(a)(B)(I).) The courts endeavor to decide the appeal in these cases within 250 days. The JV-570 process creates significant delay in preparing the appellate record.</p> <p>The JV-570 process will delay preparation of the appellate record for several months at a minimum. The court must offer notice to the parties and an opportunity to object to the release of the record. (§ 827 (3)(B).) Anybody objecting to the request may do so within 15 days. The petitioning party has another 10 days within which to reply to the objection. The juvenile court must set the matter for hearing no later than 60 days from the date the petition is served. The court then has another 30 days after the hearing within which to render its decision. (§ 827 (2)(E).) The proposed rules do not assign</p>	<p>navigating it. Ideally, litigants will petition for access to records during the proceedings in the juvenile court rather than waiting until an order is challenged on appeal.</p> <p>The committees acknowledge that delay in preparing the appellate record often results from the petition process, but the process is required by the statute.</p>

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			<p>a deadline for the superior court clerk’s preparation of the appellate record.</p> <p>As a result, the process to obtain an appellate record order can take at least four months, likely longer. (See Appendix, time lines for two cases that went through this process). A colleague who works in the Second Appellate District (where a procedure very similar to the proposal as been in effect for a few years) shared that in some cases it took eight months for an order to issue on the JV-570 petition to begin preparation of the appellate record.</p> <p>As noted, most of these appeals are from adverse placement decisions. Meaningful appellate review of placement decisions require prompt review because the juvenile dependency case continues to progress. The child’s circumstances change and they develop attachments to new caretakers. Appellate review of a placement decision that occurred a year ago robs the court of the ability to correct a mistake. “Meaningful redress for past mistakes may not be possible, but we cannot unwind the clock.” (<i>In re R. T.</i> (2015) 232 Cal.App.4th 1284, 1308 [recognizing the court is likely unable to correct the placement mistake made two and one-half years prior, due to the intervening change in the child’s circumstances].) Unless an effort is made in the juvenile court to expedite these appellate related JV-570 petitions, appellants</p>	<p>The committees acknowledge this difficulty for litigants.</p> <p>The committees appreciate this feedback and acknowledge that time is of the essence in juvenile dependency matters.</p>

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			<p>will suffer a true case of “justice delayed is justice denied.”</p> <p>We understand the need to protect the interests of the children in maintaining the confidentiality of their case. But the proposed process treats these appellants the same as a stranger to the case, where the expectation of confidentiality is substantially greater. These relatives and former caretakers are likely very familiar with the circumstances that required intervention, the child’s circumstances pre- and/or post-juvenile court intervention. The proposal should seek to protect only information that is actually confidential. If the appellant has been present at the case hearings, the juvenile court has implicitly granted them access to those proceedings under section 827.</p> <p>2. If Appellate Counsel is Appointed to Represent the Appellant, the Juvenile Court Should Have the Option of Ordering Counsel Be Provided a Full Record With a Protective Order.</p> <p>The concerns outlined above with respect to an adequate record and delay could be resolved by providing a full copy of the record to appellate counsel for the third-party who has been appointed by the Court of Appeal. The Juvenile Court can issue a protective order prohibiting counsel from turning over any portion of the</p>	<p>The statute requires that all parties who are not the parent, guardian or child, or otherwise listed in section 827(a)(1)(A)-(P), must follow the petition process. The committees recognize that these individuals are often relatives and former caretakers who may be very familiar with the circumstances of the case. However, the Judicial Council is not authorized to adopt rules that are inconsistent with statute.</p> <p>It is not clear that such a procedure would be consistent with the language of the statute.</p>

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			<p>record to the client not authorized by an 827 order. The JV-570 petition could include this option for appellate counsel to complete.</p> <p>3. It is Unlikely the JV-570 Process Will Produce an Adequate Record.</p> <p>As noted the majority of these appellants do not have representation in the trial court. Completing the JV-570 petition process will be daunting for the lay person. While they are petitioning for access to the juvenile court record, they are also designating the record on appeal. Unlike the civil litigant, they cannot review the court’s file to determine which documents they will need for their appeal. They are being asked to designate a record without access to the record.</p> <p>Forcing this process on pro-per appellants will result in preparation of an inadequate record to present their claim. These two published cases, <i>Isabella G.</i> (2016) 246 Cal.App.4th 708, and <i>In re R.T., supra</i>, 232 Cal.App.4th 1284, demonstrate a relatively full record is essential to effectively prosecuting relative placement claims in these cases. The <i>Isabella G.</i> court cited evidence the minor missed her grandmother, was happy to be with her, requested more contact with her, and the caregiver thought the minor should be placed with Grandmother, as relevant to show</p>	<p>The committees acknowledge this concern and the difficulty an individual would have in trying to designate the record/request access to records in the juvenile case file without knowing what those records are. The JV-570 form asks the petitioner to describe the records (rather than provide titles, for example), but the committees recognize that this is not easily done and that it has resulted in an inadequate record being prepared.</p> <p>The committees thank the commenter for providing these examples.</p>

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			<p>prejudice from the court’s failure to apply the relative placement criteria. (<i>In re Isabella G.</i>, supra, 246 Cal.App.4th at p.724.)</p> <p>We believe the proposed JV-570 form is too general to assist the lay person in this endeavor. The form serves as the appellant’s only means of designating the appellate record. It makes sense to devote a portion of the form to this purpose. A section of the form could be reserved for appellants and request very specific information that assists them with designating the record on appeal. At a minimum, the JV-570 petition should be modified to ask the petitioner to list the juvenile court hearing dates at which the court allowed them to be present. Not only will this approach assist the appellant, it will likely prove helpful to the juvenile court in eliciting more specificity. It will help insure more uniformity in record preparation. The information we propose be included in this new “appeal” section of the JV-570 form is found on the last page of the Appendix.</p> <p>Appendix Delay in Utilizing the 827 Petition Process: Two Case Examples</p> <p>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</p>	<p>The committees appreciate the specific suggestions for improving the JV-570 form. 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 the petition would therefore lack the specificity required under rule 5.552(b)(1) and encourage requests for access to records that the petitioner does not know exist. 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.</p> <p>The committees appreciate receiving these two case examples.</p> <p>No further response required.</p>

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			<p>attorney who was able to navigate this process much better than a lay person. The 827 process took more than three months:</p> <ul style="list-style-type: none"> <li>– Court of Appeal’s order to seek 827 order issued November 29th 2018;</li> <li>– 827 petition filed in Juvenile Court December 3, 2018;</li> <li>– 827 order rendered by the Juvenile Court February 1, 2019;</li> <li>– Court of Appeal ordered limited record prepared February 27, 2019;</li> <li>– Limited record filed in the Court of Appeal March 11, 2019.</li> </ul> <p>2. D073296: This fast-track case took 10 months to decide, 6 months to order the limited record:</p> <p>Mother – appellant: NOA filed 12/28/17 – appointed counsel 1/9/18            Maternal great aunt &amp; 388 NOA filed 12/28/17 – appointed counsel 2/16/18            Minors W. &amp; J (RB) Counsel appointed on court's own motion – 4/13/18 (apptd. 4/18/18)            Minors M &amp; 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 &amp; aunt 4/2/18            Mother &amp; aunt file AOB 4/4/18</p>	<p>No further response required.</p>

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			<p>County counsel do not oppo release 4/5/18                      (since aunt already has record)                      Oppo to release by minors M &amp; J 5/25/18                      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 &amp; 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 &amp; 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 &amp; J's, agency's, de facto father's                      – supplemental briefs filed 9/14/18                      minors M &amp; 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</p> <p>INFORMATION TO ADD TO JV-570                      For use by appellants who are requesting access to the Juvenile case file as described in Rules</p>	<p>The committees thank the commenter for the specific suggestions for form JV-570. Please response above.</p>



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			<p>5.552 and 8.401(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.)</p> <hr/> <hr/> <hr/> <hr/> <hr/> <p>o The reporter’s transcript from each hearing Petitioner attended. The dates are:</p> <hr/> <hr/> <hr/> <p>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 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.</p>	

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>DRAFT Committees Response</b>
			<p>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.</p> <p>o Other: (Describe in detail any records that are not covered above.)</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>	
3.	California Appellate Project Los Angeles By Stephanie G. Miller Staff Attorney	AM	<p>Reconsider placing burdens for designation of the record, and service of JV-570 Request, on the third party appellant (i.e., a person who is not the parent, child, or guardian) now found in Local Rules Court of Appeal Second District Rule 8 and the proposed changes to Judicial Council Form JV-570.</p> <p>Suggest: Shift burden for both tasks to the judicial officer who heard the dependency case. Direct the juvenile court clerk to file the timely third party appeal and refer it with the JV-570</p>	<p>The committees note the commenter’s agreement with the proposal if modified.</p> <p>Shifting the responsibility for designating the record and serving form JV-570 would be a major departure from the standard practice of parties designating the record. The committees appreciate</p>

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>DRAFT Committees Response</b>
			<p>form to the judicial officer for completion and return to the juvenile court appellate desk within 14 days after the filing of the notice of appeal.</p> <p>CAP/LA's experience with the implementation of Local Rule 8 is that most third party appellants are not represented by counsel in the juvenile court and are laypersons with a limited ability to identify the necessary record for presentation and consideration of the appeal, and with limited means and knowledge to serve notice of the JV-570. It is also CAP/LA's experience that the judicial officer reviewing the JV-570 petition completed by the third party appellant often is not knowledgeable about the necessary content of an appellate record, and his/her designation of the appellate record for the third party appeal is inadequate.</p> <p>The Proposal partially tracks the process in Local Rule 8. But, the local rule, although an improvement, has not resulted in the timely filing of an adequate record for a third party appeal.</p> <p>One example of the persisting substantial delay in deciding the appeal of a third party appellant is <i>In re O.R. et al</i> [B290446; unpub. opn. fld. 11/26/19]. In that case, maternal aunt's notice of appeal from the denial of her Section 388 petition was filed in February 2018, but not decided until approximately 21 months later.</p>	<p>the feedback and suggestions for revising procedures. The suggested changes exceed the scope of the proposal and, under rule 10.22, would need to circulate for public comment. The committees will retain the suggestions for future consideration.</p>

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	Commenter	Position	Comment	DRAFT Committees Response
			<p>Securing an adequate record for presentation and consideration of the appeal delayed decision. In order to obtain an adequate record, appellate counsel turned to the reviewing court and filed a petition for writ of mandate. (<i>R.F. v. Superior Court of Los Angeles County</i> [B296683; rem. to sup. ct. w/directions 4/26/19].)</p> <p>Requiring the judicial officer to timely designate the proposed record for a third party appeal, serve the parties with the proposed designation, consider any objection, and finally designate the appellate record would facilitate the preparation of the record for the third party appeal, now delayed, in part, by the third party's inability to adequately do so on his or her own. Secondly, with the third party notice of appeal in hand identifying the order that is the subject of the appeal, the judicial officer is best able to identify the necessary record, guided by the existing statewide rule defining the normal appellate record for an appeal by a parent, guardian, child or social services agency, the limited scope of the third party appeal, and the goal to protect the child's confidentiality. Those guidelines should produce an adequate appellate record at the outset.</p> <p>To date, the appellate record in most third party appeals is not timely filed or adequate. Although the Proposal contemplates that a</p>	<p>See response above.</p> <p>The committees note the commenter's concerns regarding the adequacy of the appellate record that is produced as a result of the petition process.</p>

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	Commenter	Position	Comment	DRAFT Committees Response
			<p>second JV-570 Request filed in the juvenile court may be necessary in order for a third party appellant to reply to another party's brief, it should also anticipate the likely need to complete the record before briefing begins. Thus far, there is no direction in this area found in the proposed rules implementing Section 827, subdivision (a)(6). That absence of direction led to the filing in the Court of Appeal of the petition for writ of mandate in <i>R.F. v. Superior Court of Los Angeles County, supra</i>.</p> <p>Second Comment Received The Proposal to implement Welfare and Institutions Code section 827, subdivision (a)(6) is similar to existing Local Rules Court of Appeal Second District Rule 8 applicable to a notice of appeal filed by a person who is not the parent, child, or guardian in the dependency case. (Hereafter, third party appeal.) Although now in use for several years, Local Rule 8 has yet to achieve the timely identification, preparation, and filing of the appellate record in a third party appeal. Many third party appeals are not perfected and reach a decision on the merits.</p> <p>In the Second District, the majority of third party appellants are unrepresented lay persons for whom the challenge to complete and serve the JV-570 request for access to the juvenile court file is a daunting one, often not completed,</p>	<p>The committees appreciate these additional comments providing further explanation, and for bringing these issues to the committees' attention. As noted above, the suggestions for improving the section 827 petition process are beyond the scope of the present proposal and would need to circulate for public comment. The committees will retain these suggestions for future consideration.</p> <p>See response above.</p>

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>DRAFT Committees Response</b>
			<p>resulting in default and the dismissal of the appeal. (See Local Rule 8.) Secondly, if the JV-570 request is filed, preparation of the appellate record is further delayed by allowance for objection by the parties to the third party’s access to the record identified in the JV-570, and by the tremendous press of other juvenile court cases. Third, the record approved after judicial review by the juvenile court for distribution to the third party appellant in his or her appeal is rarely adequate for presentation and consideration of the appellate issues. Consideration should be given to including in the Proposal a mechanism for seeking completion of the inadequate record filed in the Court of Appeal, prior to briefing. Filing a second JV-570 in the juvenile court in the quest for an additional record will undoubtedly result in further significant delay.</p> <p>Consideration should also be given to shifting the burden for completion and service of the JV-570 from the third party appellant to the judicial officer who presided over the dependency case; imposing reasonable, mandatory time frames for</p>	<p>The committees appreciate this concern. To address this concern the committees created a preamble to item 5 of JV-570 giving instructions when the petition relates to an appeal or writ. The preamble tells petitioners to include in their request “the transcripts, reports, and any other evidence considered by the juvenile court at hearings related to the subject of the appeal or writ proceeding.” In addition, item 6d requires petitioners to provide the hearing dates of the juvenile court order being challenged. The committees understand there may still be instances where a second JV-570 will need to be filed.</p> <p>See response above.</p>

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>DRAFT Committees Response</b>
			<p>designation of the proposed contents of the juvenile court record for access by the third party appellant and circulation among the parent, guardian, child and social services agency, submission of comments and objections thereto, and finalization of the content of the record designated for the third party appeal. The content of the third party notice of appeal, the judicial officer’s familiarity with the case, statewide rules defining the “normal” record in a dependency appeal, and the statutory protection of the confidentiality of the child are ready guidelines to inform the juvenile court’s timely, noticed, designation of the juvenile court record accessible to the third party appellant.</p>	
4.	<p>California Lawyers Association By Leah Spero, Chair Committee on Appellate Courts and Saul Bercovitch Director of Governmental Affairs</p>	AM	<p>The Committee on Appellate Courts supports this proposal. In response to the Request for Specific Comments, the Committee provides the following:</p> <p>Should the definition of “records in the juvenile case file” in rule 8.401(b) more closely track the definition of “juvenile case file” in rule 5.552(a) or Welfare and Institutions Code section 827(e)?</p> <p>The Committee believes the definition of “records in the juvenile case file” in rule 8.401(b) should more closely track the definition of that term as provided in section</p>	<p>The committees note the commenter’s support for the proposal and appreciate the responses to the requests for specific comments.</p> <p>The committees agree that the definition should not include the items mentioned in rule 5.552. The rule has been amended to reflect this.</p>

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	Commenter	Position	Comment	DRAFT Committees Response
			<p>827(e), rather than the definition as provided in rule 5.552(a). Many of the items contemplated by rule 5.552(a) are never presented to the juvenile court itself (such as “[d]ocuments made available to . . . social workers”). Those items therefore could not properly be presented in connection with the appellate review process, and permitting parties to access such items would only serve to increase the risk of public disclosure or provide access to otherwise irrelevant material.</p> <p>Relatedly, the Committee is concerned that the definition in the proposed amendment to rule 8.401(b) is ambiguous. As presently drafted, “records in the juvenile case file” would only encompass “a document, paper, . . . or other thing filed in the juvenile court.” It is therefore susceptible to an interpretation that a successful petitioner could access only those materials formally “filed” with the juvenile court. However, Welfare &amp; Institutions Code section 827(e) contemplates access to all things “filed in that case or made available to . . . and thereafter retained” by the court. Section 827(a)(6) similarly seems to contemplate access to all “records in a juvenile case file”—regardless of whether they were formally filed, or merely lodged or retained. That is, the statute contemplates access to lodgings or other documents which were reviewed and retained by the court, and which might therefore be made</p>	<p>The committees agree and have modified the definition to include lodged materials.</p>



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	Commenter	Position	Comment	DRAFT Committees Response
			<p>part of the record on appeal, but which were never officially docketed or “filed” with the court. The Committee therefore recommends that the proposed rule be modified to address this ambiguity.</p> <p>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?</p> <p>The Committee believes that JV-291-INFO provides the necessary information regarding appeals by persons who are not children, parents, or legal guardians. For additional clarity, the information sheet could also describe the presumptions applicable to children, parents, or legal guardians. However, the information sheet is relatively clear as drafted, and information for children, parents, and legal guardians is available from other sources. The Committee therefore does not believe this additional guidance is affirmatively necessary.</p> <p>Should rule 5.552 require that the parent and county counsel receive notice if a petition for access is filed by an adult who is a former or current dependent and is seeking access to their case file for the purpose of education,</p>	<p>The committees note this suggestion and agree with the commenter that it could be helpful. However, the information sheet already contains a lot of information. The committees concluded that it would be better not to add non-essential content.</p>

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>DRAFT Committees Response</b>
			<p>employment, immigration, and/or military enlistment?</p> <p>The Committee does not believe that Rule 5.552 should further specify circumstances under which a parent or county counsel must receive notice. Rule 5.552(c)(1) already specifies that parents and county counsel are generally entitled to receive notice whenever a petition for access has been filed. Moreover, while public policy supports notifying a parent or county counsel of documents filed in connection with minor children, public policy does not seem to support notifying parents of their adult children's requests. Rather, it would seem to favor the adult petitioner's right to privacy.</p> <p>Rule 5.552 does not require that a parent's attorney of record receive notice when a petition for access is filed. Should the rule require such notice?</p> <p>The Committee believes that Rule 5.552 should specify that notice must be given to attorneys of record whenever petitions for access are filed. Juvenile proceedings generally require that attorneys be notified of any filing relevant to their client. (See Rule 5.502(27).) The Committee sees no reason to depart from this general rule.</p>	<p>The committees agree that the notice requirements in rule 5.552 should not be changed. The committees have elected to require notice to the parent and county counsel in these situations because their input on confidential information in the case file is essential.</p> <p>The committees elected not to change the notice requirements of rule 5.552. The committee anticipates that a parent's or guardian's attorneys will be notified if the parent or guardian cannot be located.</p>

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>DRAFT Committees Response</b>
5.	California Lawyers Association Executive Committee of the Family Law Section (FLEXCOM) by Justin M. O’Connell FLEXCOM Legislation Chair and Saul Bercovitch Director of Governmental Affairs	A	[No specific comment provided.]	The committees note the commenter’s agreement with the proposal.
6.	Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC)	AM	<p>The JRS notes that the proposal is required to conform to a change of law. The JRS also notes the following impact to court operations:</p> <ul style="list-style-type: none"> <li>• Results in additional training, which requires the commitment of staff time and court resources.</li> <li>• Increases court staff workload.</li> </ul> <p>• JV-569 – Proof of Service-Petition to Access to a Juvenile Case File o The duplicated item #4 should be renumbered to #5. The existing #5 should be renumbered to #6.</p> <p>• JV-574 – Order After Judicial Review on Petition for Access to Juvenile Case File o In section 2d, it is recommended that the sentence be updated to read, “There are no records that can be released in response to the petitioner’s request.” This may make it easier for individuals to understand the reason for the denied request.</p>	<p>The committees note the commenter’s agreement with the proposal if modified.</p> <p>The committees appreciate this feedback on the impact to court operations and the commenter’s responses to specific questions presented in the invitation to comment.</p> <p>Item 4 continues onto page 2 of the form. Repeating the item number at the top of the next page is a form convention.</p> <p>The committees agree that this item should be clarified.</p>

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	Commenter	Position	Comment	DRAFT Committees Response
			<p>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?</p> <ul style="list-style-type: none"> <li>o Yes, the proposed form provides the necessary information to individuals. The proposed information sheet provides sufficient information; however, it could be formatted differently to make it easier for individuals to comprehend. Section #2 is a block of information. It may be more beneficial to provide questions and answers similar to the JV-060-INFO.</li> <li>• Would the proposal provide a cost savings?               <ul style="list-style-type: none"> <li>o The proposal would not provide a cost savings. The approved form, JV-291-INFO, would require additional printing and court time to disseminate to individuals.</li> </ul> </li> <li>• What would the implementation requirements be for courts?               <ul style="list-style-type: none"> <li>o Communication would be needed to judicial officers and staff. Procedures may require revisions and updates would be needed to the case management system.</li> </ul> </li> <li>• Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</li> </ul>	<p>Reformatting the information sheet to a question-and-answer format is beyond the scope of changes that can be made at this time. The committees will retain this suggestion for consideration in a future rules cycle.</p> <p>Noted. No further response required.</p> <p>Noted. No further response required.</p>

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>DRAFT Committees Response</b>
			o Yes, three months would be sufficient time to implement.	Noted. No further response required.
7.	Orange County Bar Association by Scott B. Garner, President Newport Beach, California	A	<p>Does the proposal appropriately address the stated purpose?</p> <p>Yes.</p> <p>Should the definition of “records in the juvenile case file” in rule 8.401(b) more closely track the definition of “juvenile case file” in rule 5.552(a) or Welfare and Institutions Code section 827(e)?</p> <p>The definition of “juvenile case file” in rule 5.552(a) is preferable to the statutory definition. Notably, it clearly states that the rule of confidentiality extends to transcripts of juvenile court proceedings, a point left ambiguous by section 827(e).</p> <p>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?</p> <p>The information provided by the form is clear, easy to understand and complete.</p>	<p>The committees note the commenter’s agreement with the proposal and appreciate the responses to specific questions.</p> <p>The committees have modified the definition in rule 8.401 to include lodged materials.</p> <p>Noted. No further response required.</p>

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>DRAFT Committees Response</b>
			<p>Should rule 5.552 require that the parent and county counsel receive notice if a petition for access is filed by an adult who is a former or current dependent and is seeking access to their case file for the purpose of education, employment, immigration, and/or military history?</p> <p>With respect to records actually in the court file, section 827 would provide the person with access without notice to their own records but for the fact that they have reached the age of majority and in the case of non-minor dependents, they nevertheless retain access under section 362.5. It makes little sense to require notice now that the person is an adult in light of the fact that they are the one whose confidential interest is at stake. However, as a practical matter, especially when the petition for access seeks records covered under Penal Code section 11164 et seq that did not result in a court filing, county counsel may be involved in reviewing the records sought and notice may expedite that process.</p> <p>Rule 5.552 does not require that a parent’s attorney of record receive notice when a petition for access is filed. Should the rule require such notice?</p> <p>The statute requires notice on all “interested parties.” The attorney for a party is not a</p>	<p>The committees elected not to change the notice requirements of rule 5.552. The committees have elected to require notice to the parent and county counsel in these situations because their input on confidential information in the case file is essential.</p> <p>The committees elected not to change the notice requirements of rule 5.552. The committee</p>

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>DRAFT Committees Response</b>
			party. Currently, the rule, along with Form JV-569 require service only on three types of attorneys—County Counsel in a dependency case, the District Attorney in a delinquency or truancy case, and the minor’s attorney, as they are either the petitioner in the proceedings or the attorney representing the interests of the child. Expanding notice to require service on parent’s counsel goes beyond the call of the statute. However, it is not uncommon in dependency proceedings for parents to absent themselves. In that situation, parent’s counsel do their best to protect their clients’ rights and interests. In such a situation, those interests can only be protected by service on the attorney.	anticipates that a parent’s or guardian’s attorneys will be notified if the parent or guardian cannot be located.
8.	San Diego County Bar Association by Helen Irza, Chair Appellate Practice Section	AM	The Appellate Practice Section of the San Diego County Bar Association appreciates the opportunity to review and comment on the proposed amendments to the California Rules of Court that govern access to records in juvenile cases. After canvassing our membership and forming a subcommittee to discuss the proposed changes, we respectfully submit the following comments.  Specific Comments:  The Invitation to Comment requests comments on five specific topics. Our section’s input is provided below.	The committees note the commenter’s agreement with the proposal if modified.

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>DRAFT Committees Response</b>
			<p>1. Does the proposal adequately address the stated purpose?</p> <p>The Executive Summary of the Invitation to Comment states that the purpose of the proposed rule and form changes is to implement the recent Judicial Council-sponsored legislation that amends the statute that governs access to records in juvenile cases. Our understanding is that the changes are intended to help expedite the review process and to provide notice about the requirements for accessing confidential records to individuals who seek review. Our section supports the proposed changes to the rules and the proposed new forms. Below we offer specific feedback and a few suggestions to increase awareness and make the forms easier for laypersons to understand.</p> <p>Rule amendments: Rule 5.552</p> <p>Our section strongly supports the proposed replacement of the terms “disclosure” and “disclosed” with “access to” and “released.” We agree that the proposed changes will further the purpose of the new legislation by clarifying the scope and limits of a petitioner’s access to confidential juvenile court records.</p> <p>New and revised forms: Notice on JV forms</p>	<p>The committees note the commenter’s support for the proposed rule and form changes and appreciate the additional comments and suggestions.</p> <p>Noted. No further response required.</p>



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	Commenter	Position	Comment	DRAFT Committees Response
			<p>Our section supports the addition of the proposed notice on the forms specified in the Invitation to Comment, namely JV-285, JV-290, JV-295, JV-321, JV-325, JV-800, JV-820 and JV-822, and we agree that the proposed change will help foster awareness that petitioners and appellants must file a petition in order to access confidential records in a juvenile case file.</p> <p>We propose, however, that the notice should also be included on these additional forms: Request To Change Court Order (form JV-180); Court Order on Form JV-180 (form JV-183); and Order After Hearing On Form JV-180 (form JV-184).</p> <p>As noted in the background section of the Invitation to Comment, one purpose of the proposed changes is to provide notice about the petition process to litigants who are authorized to participate in juvenile proceedings and who either have a right to seek review of certain orders or to respond to an appeal of such orders. This group of litigants includes individuals who file a petition under Welfare and Institutions Code, section 388, to change, modify, or set aside a juvenile court order. The form created for filing such a petition under section 388 is form JV-180.</p> <p>Forms JV-183 and JV-184 are typically used by the court for orders served on the appellant after</p>	<p>Noted. No further response required.</p> <p>Modifying additional forms exceeds the scope of the present proposal, but the Family and Juvenile Law Advisory Committee will retain this suggestion for future consideration.</p> <p>The committees appreciate this discussion of the benefit of adding the notice to these three additional forms.</p> <p>No further response required.</p>

**W20-02**

**Appellate Procedure, Juvenile Law: Access to Juvenile Case Files in Appellate Court Proceedings** (Amend Cal. Rules of Court, rules 5.552 and 8.401; approve form JV-291-INFO; revise forms JV-285, JV-290, JV-295, JV-321, JV-325, JV-569, JV-570, JV-571, JV-572, JV-573, JV-574, JV-800, JV-820, and JV-822)

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>DRAFT Committees Response</b>
			<p>the Request to Change Court Order has been denied. It is our understanding that most appeals occur after a denial, For this reason, including the notice on these forms in addition to the JV-180 would further the purpose of informing appellants about the need to request a record to prepare for an appeal.</p> <p>Our section submits that adding the proposed notice to forms JV-180, JV-183 and JV-184 would expedite the process of creating an appellate record that includes confidential documents for those individuals who subsequently need to access them for an appeal. We believe this will assist in preventing delays in creating the record in juvenile dependency appeals which, under rule 8.416(e), must be determined within 250 days after the notice of appeal is filed.</p> <p>New and revised forms: Revisions to notice of appeal and notice of intent to file writ petition forms</p> <p>Our section supports the proposed revisions to the notice of appeal and notice of intent to file writ petition forms that will allow litigants who have been granted access to confidential records by the juvenile court to attach the authorizing order to these forms. The proposal, in our view, furthers the stated goal of implementing the new legislation and preventing delay in cases</p>	<p>No further response required.</p> <p>The committees appreciate this feedback.</p>

**W20-02**

**Appellate Procedure, Juvenile Law: Access to Juvenile Case Files in Appellate Court Proceedings** (Amend Cal. Rules of Court, rules 5.552 and 8.401; approve form JV-291-INFO; revise forms JV-285, JV-290, JV-295, JV-321, JV-325, JV-569, JV-570, JV-571, JV-572, JV-573, JV-574, JV-800, JV-820, and JV-822)

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>DRAFT Committees Response</b>
			<p>governed by rule 8.416(e). We anticipate that the ability to provide notice of an existing order in this simple and straightforward manner to the court clerks who prepare appellate records will reduce delays in the preparation of the appellate record.</p> <p>2. Should the definition of “records in the juvenile case file” in rule 8.401(b) more closely track the definition of “juvenile case file” in rule 5.552(a) or Welfare and Institutions Code section 827, subd. (e)?</p> <p>After reviewing both rules, in our view, the definition of “records in the juvenile case file” should more closely track rule 5.552(a). We suggest that rule 5.552(a) is more appropriate because it includes documents that are typically used in both juvenile delinquency and dependency appeals.</p> <p>Section 827, subdivision (e), defines a “juvenile case file” to mean documents filed by or used by the probation officer in making a probation officer’s report. (§ 827, subd. (e).) By contrast, rule 5.552(a) defines a “juvenile case file” to include all documents filed in a juvenile court case, including reports by probation officers, social workers of child welfare services programs and CASA volunteers, transcripts, and documents submitted as evidence. (Rule 5.552(a).) Notably, probation officer reports are</p>	<p>The committees agree and have modified the definition to include lodged materials.</p>

**W20-02**

**Appellate Procedure, Juvenile Law: Access to Juvenile Case Files in Appellate Court Proceedings** (Amend Cal. Rules of Court, rules 5.552 and 8.401; approve form JV-291-INFO; revise forms JV-285, JV-290, JV-295, JV-321, JV-325, JV-569, JV-570, JV-571, JV-572, JV-573, JV-574, JV-800, JV-820, and JV-822)

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	Commenter	Position	Comment	DRAFT Committees Response
			<p>typical in delinquency cases, but are only rarely prepared in dependency cases, which most often rely on social worker reports. Also, juvenile case files frequently include other confidential documents (e.g., <i>Marsden</i> hearing transcripts) in addition to the probation and social worker reports.</p> <p>For these reasons, we believe the definition in rule 5.552(a) is the better one to track as it will make it clear to individuals who request access to confidential records that all confidential documents, including those typically used in dependency appeals, are subject to the new legislation.</p> <p>3. 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?</p> <p>In our view, the proposed information sheet provides the information that is necessary for an individual to understand the process for requesting access to confidential records with one caveat. We suggest that it would be helpful to tell petitioners that the typical processing time for a petition may be weeks or months. The provision of this information would increase awareness of the need to file petitions</p>	<p>The committees elected not to include a warning that the section 827 petition process can be delayed or denied based on the venue. The committees do not believe that there are typical time periods for decisions on section 827 petitions, as each venue is different in how these petitions are handled, and such a warning could have the potential of deterring someone from filing the petition.</p>

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**Appellate Procedure, Juvenile Law: Access to Juvenile Case Files in Appellate Court Proceedings** (Amend Cal. Rules of Court, rules 5.552 and 8.401; approve form JV-291-INFO; revise forms JV-285, JV-290, JV-295, JV-321, JV-325, JV-569, JV-570, JV-571, JV-572, JV-573, JV-574, JV-800, JV-820, and JV-822)

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>DRAFT Committees Response</b>
			<p>at the very beginning of the appellate process, and it would be especially helpful for unrepresented parties who do not have an attorney to advise them that they must make a timely request for access.</p> <p>4. Should rule 5.552 require that the parent and county counsel receive notice if a petition for access is filed by an adult who is a former or current dependent and is seeking access to their case file for the purpose of education, employment, immigration and/or military enlistment?</p> <p>In our view, rule 5.552 should require notice to the parent and county counsel for the purpose of allowing those parties to advocate for redactions to the requested records.</p> <p>In dependency cases, it is important for parents and county counsel to be notified about a request for access even if the case is final. Juvenile dependency case files often include confidential information about the parent and parties other than the subject dependent, such as psychological evaluations and social security numbers. In the typical appellate record from a dependency case, such documents are sealed and labeled “confidential.” They are not provided to counsel for the dependent minor on appeal. After an appellate case has closed, the former or current dependent (including non-</p>	<p>The committees elected not to change the notice requirements of rule 5.552. The committees have elected to require notice to the parent and county counsel in these situations because their input on confidential information in the case file is essential.</p>

**W20-02**

**Appellate Procedure, Juvenile Law: Access to Juvenile Case Files in Appellate Court Proceedings** (Amend Cal. Rules of Court, rules 5.552 and 8.401; approve form JV-291-INFO; revise forms JV-285, JV-290, JV-295, JV-321, JV-325, JV-569, JV-570, JV-571, JV-572, JV-573, JV-574, JV-800, JV-820, and JV-822)

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>DRAFT Committees Response</b>
			<p>minor dependents) should still be prohibited from accessing this type of private and sensitive information. Requiring notification to the parent and county counsel that a petition for access has been filed would provide an opportunity for affected parties to notify the juvenile court of the need to redact confidential information that should remain protected.</p> <p>Our section is aware that the judge who reviews a petition to access confidential records has the ability restrict access to a redacted copy. However, it is the parent and county counsel who are familiar with the case file and what needs to be protected. A rule that requires notice of a request for access will allow the parent and county counsel to assist the court with locating information that should be redacted or otherwise protected from disclosure. Such a rule would accordingly assist with the protection of the parties’ private information and also save judicial resources.</p> <p>5. Rule 5.552 does not require that a parent’s attorney of record receive notice when a petition for access is filed. Should the rule require such notice?</p> <p>It is the position of our section that the rule should require notice to a parent’s attorney of record when a petition for access is filed. The current rule provides that a parent must be</p>	<p>The committees elected not to change the notice requirements of rule 5.552. The committee anticipates that a parent’s or guardian’s attorneys</p>

**W20-02**

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>DRAFT Committees Response</b>
			notified. However, it is often difficult to locate parents who may have moved or become homeless. Requiring notification to parent’s counsel would enhance the likelihood that such parents will be located and provided with an opportunity to advocate for redaction to the requested files. In addition, for those parents whose whereabouts are known, the attorney of record may nevertheless be the person who is most informed about the existence of confidential information that needs to be protected.	will be notified if the parent or guardian cannot be located.
9.	Superior Court of California, County of Los Angeles	AM	<p>See attached recommended changes to proposed forms.</p> <p>Does the proposal adequately address the stated purpose?</p> <p>No. Consider these circumstances: A non-party petitioner previously requested access to the juvenile records by filing a JV570. Court granted access to records with redactions. If the petitioner later files an appeal or writ, are they required to file a new JV570 outlining the records/documents needed for the appeal or writ or do they have access to the prior records requested as previously redacted? This is currently not clear. Records requested should only be related to hearing or petition appealing.</p>	<p>The committees note the commenter’s support for the proposal if modified and have made several of the suggested modifications to the forms.</p> <p>The non-party petitioner in this example would not have to file a new JV-570 form. The amendment to section 827 provides that the person would be entitled to the same access to records in the appellate court as was granted in the superior court.</p>

**W20-02**

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	Commenter	Position	Comment	DRAFT Committees Response
			<p>Rules should clearly reflect that whenever there is an appeal or writ filed by a non-party participant that a JV570 be required at the time of the filing of the appeal or writ.</p> <p>Updates to JV569 and 570 need to be made for further clarification to non-party appellants/petitions.</p> <ul style="list-style-type: none"> <li>• Should the definition of “records in the juvenile case file” in rule 8.401(b) more closely track the definition of “juvenile case file” in rule 5.552(a) or Welfare and Institutions Code section 827(e)?</li> </ul> <p>Juvenile Case File in rule 5.552 (a).</p> <ul style="list-style-type: none"> <li>• 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?</li> </ul> <p>Yes. This is very helpful.</p> <p>Should other information be included?</p> <p>Yes. Notice requirement for party to give notice to “interested parties.” How is this possible when non-party appellants do not have access to</p>	<p>The non-party participant may have already filed the form JV-570 petition during juvenile court proceedings. Based on feedback that filing a form JV-570 should not be a prerequisite for filing a notice of appeal or petition for writ, the committees decline to make this change.</p> <p>The committees thank the commenter for providing specific suggestions for these forms.</p> <p>The committees have modified the definition to include lodged materials.</p> <p>Noted. No further response required.</p> <p>Rule 5.552(c)(3) requires the clerk to provide service if the petitioner does not know the identify</p>



**W20-02**

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	Commenter	Position	Comment	DRAFT Committees Response
			<p>case information, party names or mailing addresses? Must the Court be responsible for giving notice on all non-party petitions? These petitioners are not represented. They do not have access to party names, types and addresses. (See recommendations for changes to form JV569 and 570) Court will have to fill out form JV569.</p> <p>Forms should be fillable.</p> <ul style="list-style-type: none"> <li>• Should rule 5.552 require that the parent and county counsel receive notice if a petition for access is filed by an adult who is a former or current dependent and is seeking access to their case file for the purpose of education, employment, immigration, and/or military enlistment?</li> </ul> <p>No. If parent’s rights have been terminated they should not receive notice. If youth is 18 years old or older, no notice to parents should be required unless court orders notice to child/adult.</p> <ul style="list-style-type: none"> <li>• Rule 5.552 does not require that a parent’s attorney of record receive notice when a petition for access is filed. Should the rule require such notice?</li> </ul> <p>Yes, for children under 18 years.</p>	<p>or address of any of the parties required to receive notice.</p> <p>The forms will be fillable.</p> <p>The committees elected not to change the notice requirements of rule 5.552. The committees have elected to require notice to the parent and county counsel in these situations because their input on confidential information in the case file is essential. The committees agree that the rule should clarify that notice is not required if parental rights have been terminated. The suggested change has been made.</p> <p>The committees elected not to change the notice requirements of rule 5.552. The committee</p>

**W20-02**

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			<p>The advisory committees also seek comments from courts on the following cost and implementation matters:</p> <ul style="list-style-type: none"> <li>• Would the proposal provide cost savings? If so, please quantify.</li> </ul> <p>No. Non-party appeals or writs require a lot of additional resources to review, notice and process the appeals/writs. Redactions of the record are required for both the Clerk’s and Reporter’s record on appeal. Costly to order reporter’s transcripts, original after review. Order to redact must require the court reporter to file a new original transcript with redacted information.</p> <ul style="list-style-type: none"> <li>• 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?</li> </ul> <p>Training on the process, redaction software and training, new forms would require the addition of event codes in CMS.</p> <ul style="list-style-type: none"> <li>• Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</li> </ul>	<p>anticipates that a parent’s or guardian’s attorneys will be notified if the parent or guardian cannot be located.</p> <p>The committees acknowledge the additional court resources required for these appeals and writs, and appreciate this insight.</p> <p>The committees appreciate this information on the implementation requirements.</p>

**W20-02**

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			<p>Los Angeles already has implemented a similar process. Besides the new forms, the required noticing of the petition and the time consuming redactions of records, the changes could be implemented within 3 months. Proposed changes to the forms must be completed prior to implementation.</p>	<p>Noted. No further response required.</p>
10.	<p>Superior Court of California, County of Orange Family Law and Juvenile Court</p>	NI	<p>Comments</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> JV-569 – Proof of Service-Petition to Access to a Juvenile Case File</li> <li><input type="checkbox"/> The duplicated item #4 should be renumbered to #5. The existing #5 should be renumbered to #6.</li> <li><input type="checkbox"/> JV – 571 - Notice of Petition for Access to Juvenile Case File</li> <li><input type="checkbox"/> It is recommended to revise the top portion “TO: (names)” to “TO (names of parties being served)”</li> <li><input type="checkbox"/> JV-574 – Order After Judicial Review on Petition for Access to Juvenile Case File</li> <li><input type="checkbox"/> In section 2d, it is recommended that the sentence be updated to read, “There are no records that can be released in response to the petitioner’s request.” This may make it easier for individuals to understand the reason for the denied request.</li> </ul> <p>Request for Specific Comments</p>	<p>The committees appreciate the comments and responses to the requests for specific comments.</p> <p>See response to JRS.</p> <p>Because notice under rule 5.552 is required for a CASA volunteer who is not considered a party, the committees have elected not to make this change.</p> <p>See response to JRS.</p>

**W20-02**

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			<p><input type="checkbox"/> 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?</p> <p><input type="checkbox"/> Yes, the proposed form provides the necessary information to individuals.</p> <p><input type="checkbox"/> 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?</p> <p><input type="checkbox"/> The proposed information sheet provides sufficient information; however, it could be formatted differently to make it easier for individuals to comprehend. Section #2 is a block of information. It may be more beneficial to provide questions and answers similar to the JV-060-INFO.</p> <p><input type="checkbox"/> Would the proposal provide a cost savings?</p> <p><input type="checkbox"/> The proposal would not provide a cost savings. The approved form, JV-291-INFO, would require additional printing and court time to disseminate to individuals.</p> <p><input type="checkbox"/> What would the implementation requirements be for courts?</p>	<p>Noted.</p> <p>See response to JRS.</p> <p>See response to JRS.</p> <p>See response to JRS.</p>

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			<ul style="list-style-type: none"> <li><input type="checkbox"/> Communication would be needed to judicial officers and staff. Procedures may require revisions and updates would be needed to the case management system.</li> <li><input type="checkbox"/> Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</li> <li><input type="checkbox"/> Yes, three months would be sufficient time to implement.</li> </ul>	See response to JRS.
11.	Superior Court of California, County of San Diego by Mike Roddy Executive Officer	AM	<ul style="list-style-type: none"> <li>• Does the proposal adequately address the stated purpose? Yes.</li> <li>• Should the definition of “records in the juvenile case file” in rule 8.401(b) more closely track the definition of “juvenile case file” in rule 5.552(a) or Welfare and Institutions Code section 827(e)? No.</li> <li>• 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?</li> </ul> <p>Please see suggested revisions below.</p> <ul style="list-style-type: none"> <li>• Should rule 5.552 require that the parent and county counsel receive notice if a petition for</li> </ul>	<p>The committees note the commenter’s support for the proposal if modified.</p> <p>The committees have modified the definition to include lodged materials.</p> <p>Noted.</p>

**W20-02**

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			<p>access is filed by an adult who is a former or current dependent and is seeking access to their case file for the purpose of education, employment, immigration, and/or military enlistment?</p> <p>No. An “adult who is a former or current dependent” need not file a petition for access in the first place (see WIC § 827(a)(1)(C)) unless he or she seeks to disseminate the juvenile case file, or any portion thereof, to a person or agency not authorized to receive documents under WIC § 827 (see § 827(a)(4)). Assuming the adult former or current dependent is filing a petition solely for the purpose of further dissemination, there is no underlying policy reason to protect the confidentiality of the parent(s), the county child welfare agency, or the county probation department. As noted in the proposal, the confidentiality provided by WIC § 827 “is intended to protect the privacy rights of the child who is the subject of the juvenile court proceedings,” (Invitation to Comment W20-02, p. 2), not the privacy rights of other adults involved in the child’s case. (See also WIC § 300.2 [“the provisions of this chapter ensuring the confidentiality of proceedings and records are intended to protect the privacy rights of the child”].) On the other hand, if the juvenile court file contains information identifying other former or current dependents (e.g., the</p>	<p>The committees elected not to change the notice requirements of rule 5.552. The committees have elected to require notice to the parent and county counsel in these situations because their input on confidential information in the case file is essential.</p>

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			<p>petitioner’s sibling(s)), they or their counsel should receive notice.</p> <ul style="list-style-type: none"> <li>• Rule 5.552 does not require that a parent’s attorney of record receive notice when a petition for access is filed. Should the rule require such notice?</li> </ul> <p>San Diego has a local rule that requires notice to the parent’s attorney if there is an open dependency case.</p> <ul style="list-style-type: none"> <li>• Would the proposal provide cost savings?</li> </ul> <p>Probably, to the extent the workload of court clerks is reduced by the proposed procedures for providing the record on appeal to nonparty appellants and the new item 3 proposed for form JV-569.</p> <ul style="list-style-type: none"> <li>• 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?</li> </ul> <p>Training of clerks (and their supervisors) who process appeals and writ petitions and clerks</p>	<p>The committees elected not to change the notice requirements of rule 5.552. The committees anticipate that in some venues parent’s and guardian’s attorneys will still be noticed, as is the case in San Diego.</p> <p>Noted. No further response required.</p> <p>The committees appreciate this information regarding implementation requirements for the court.</p>

**W20-02**

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	Commenter	Position	Comment	DRAFT Committees Response
			<p>who process WIC § 827 petitions. Revision of local rules, local forms, local protocols and procedures. Possible need to collaborate with Fourth District, Division One, Court of Appeal to ensure efficiency and compliance with new rules.</p> <ul style="list-style-type: none"> <li>• Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</li> </ul> <p>Three months probably is insufficient for larger counties who process a large number of appeals/writ petitions and WIC § 827 petitions. Revision of our local rules is a long process that only happens once each year, so that might not happen within three months.</p> <p>General comments</p> <p>This is an issue we have already been addressing here in San Diego. It will be helpful to have more clarity in the rules and forms. Overall, this proposal makes more sense than the one circulated last spring.</p> <p>Change to names of forms: "Access" is more accurate than "disclosure" but this change will require us to update our local policy document, local rules, and web site with the new names of the forms.</p>	<p>The committees acknowledge that three months may not be enough time to have local rules and procedures fully in place, but are proceeding with the September 1, 2020, effective date because the statute has been in effect since January 2019.</p> <p>The committees appreciate this feedback.</p> <p>The committees acknowledge the effort required to implement this change.</p>



**W20-02**

**Appellate Procedure, Juvenile Law: Access to Juvenile Case Files in Appellate Court Proceedings** (Amend Cal. Rules of Court, rules 5.552 and 8.401; approve form JV-291-INFO; revise forms JV-285, JV-290, JV-295, JV-321, JV-325, JV-569, JV-570, JV-571, JV-572, JV-573, JV-574, JV-800, JV-820, and JV-822)

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

	Commenter	Position	Comment	DRAFT Committees Response
			<p>CRC 8.401(b)(2)</p> <p>Access to records in the juvenile case file, including any such records made part of the record on appeal or the record on a writ petition, is governed by Welfare and Institutions Code section 827. Persons who are not described in subdivision (a)(1)(A)-(P) <del>and have petitioned the juvenile court under subdivision (a)(1)(Q)</del> may <u>not inspect and or receive copies of copy</u> <del>only those records from in</del> the juvenile case file <u>unless to which</u> that person <del>and have has</del> <u>petitioned the juvenile court under subdivision (a)(1)(Q) and</u> was granted access by order of the juvenile court.</p> <p>JV-291-INFO, paragraph 1</p> <p>Under very limited circumstances, a person who is not the child, parent, or legal guardian in a dependency or <del>delinquency</del> <u>juvenile justice</u> 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. Such an <del>an</del> <u>individual person</u>, however, is typically not entitled to access records <u>from the juvenile court case file</u> that will be considered <u>by the Court of Appeal on appeal from the juvenile court case file for purposes of an appeal or writ proceeding</u> unless the person gets approval from the juvenile court. The purpose of this information sheet is to inform those <del>individuals</del> <u>persons</u> who</p>	<p>The committees agree and have made these edits to the rule.</p> <p>The committees agree and have made these changes to the form.</p>

**W20-02**

**Appellate Procedure, Juvenile Law: Access to Juvenile Case Files in Appellate Court Proceedings** (Amend Cal. Rules of Court, rules 5.552 and 8.401; approve form JV-291-INFO; revise forms JV-285, JV-290, JV-295, JV-321, JV-325, JV-569, JV-570, JV-571, JV-572, JV-573, JV-574, JV-800, JV-820, and JV-822)

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

	Commenter	Position	Comment	DRAFT Committees Response
			<p>are not the child, parent, or legal guardian, and who may have the right to seek appellate review, of the requirement to file a Petition for Access to Juvenile Case File (form JV-570) to have access to <u>certain records</u> in the juvenile case file during an appeal or writ.</p> <p>JV-291-INFO, item 2</p> <p>Comment: In certain cases, a non-party appellant or petitioner might already be authorized to access certain documents in the juvenile case file before they file a notice of appeal or notice of intent to file a writ petition, e.g., where the trial court granted the non-party access under WIC § 827 during the proceedings below which are being challenged. Perhaps the first sentence in this item can be revised to read:</p> <p><u>“If the juvenile court has not already authorized you to access records in the juvenile case file, to</u>  <del>To</del> have access to <u>such</u> records <del>in the juvenile case file</del> for an appeal or writ proceeding, you must request access from the juvenile court.”</p> <p>Suggested addition to first paragraph:</p> <p>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.</p>	<p>The committees agree and have made these changes.</p> <p>The committees agree with calling the reader’s attention to this mandatory form and have made changes to this paragraph.</p>

**W20-02**

**Appellate Procedure, Juvenile Law: Access to Juvenile Case Files in Appellate Court Proceedings** (Amend Cal. Rules of Court, rules 5.552 and 8.401; approve form JV-291-INFO; revise forms JV-285, JV-290, JV-295, JV-321, JV-325, JV-569, JV-570, JV-571, JV-572, JV-573, JV-574, JV-800, JV-820, and JV-822)

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

	Commenter	Position	Comment	DRAFT Committees Response
			<p><u>(See Notice of Petition for Access to Juvenile Case File (form JV-571).</u></p> <p>Query: In the second paragraph, should “request” be replaced with “petition” to be consistent with the proposed change in the title of the JV-570?</p> <p>Suggested revision to third paragraph (unless the original of the JV-574 order is desired):</p> <p>When you file a notice of appeal or a notice of intent to file a writ petition, you should attach <u>a copy of the court’s order on the JV-574</u>, 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.</p> <p>JV-321, item 8i.</p> <p>Attended any of the classes required of <u>a</u> prospective adoptive parent.</p> <p>JV-569, item 3</p> <p>Comment: Is there a reason to limit that to attorneys? In San Diego, we publish those addresses in our local policy on the court web site and expect even unrepresented litigants to serve those agencies.</p>	<p>The committees agree with replacing several instances of “request” with “petition” to be consistent.</p> <p>The committees agree and have made this change.</p> <p>The correction has been made.</p> <p>The committees agree that this item should not be limited to only attorneys and have modified the language.</p>

**W20-02**

**Appellate Procedure, Juvenile Law: Access to Juvenile Case Files in Appellate Court Proceedings** (Amend Cal. Rules of Court, rules 5.552 and 8.401; approve form JV-291-INFO; revise forms JV-285, JV-290, JV-295, JV-321, JV-325, JV-569, JV-570, JV-571, JV-572, JV-573, JV-574, JV-800, JV-820, and JV-822)

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

	Commenter	Position	Comment	DRAFT Committees Response
			<p>JV-570, item 5</p> <p>If you are <del>an individual</del> involved in a pending proceeding in an appellate court or you are preparing to participate in such a proceeding, you should describe <del>here in this Petition for Access</del> the transcripts, reports, and any other evidence considered by the juvenile court at hearings related to the subject of the appeal or writ proceeding. For example, you should describe a report by providing its title (such as, “status review report,” “jurisdiction/disposition report,” or “CASA report”) and the date of the hearing when the document was considered.)</p> <p>JV-570, item 6d</p> <p>Insert blank line after “(name of district): _____”</p> <p>JV-572, item 3</p> <p>I object to the release of information and records relating to the child named <u>in</u> item 1.</p> <p>JV-573 and JV-574, left footer</p> <p>Delete “828” from statutes cited.</p> <p>JV-574, item 2c</p>	<p>The committees have made these edits.</p> <p>The correction has been made.</p> <p>The correction has been made.</p> <p>This correction has been made on both forms.</p>

**W20-02**

**Appellate Procedure, Juvenile Law: Access to Juvenile Case Files in Appellate Court Proceedings** (Amend Cal. Rules of Court, rules 5.552 and 8.401; approve form JV-291-INFO; revise forms JV-285, JV-290, JV-295, JV-321, JV-325, JV-569, JV-570, JV-571, JV-572, JV-573, JV-574, JV-800, JV-820, and JV-822)

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

	Commenter	Position	Comment	DRAFT Committees Response
			<p>Change for consistency with language in CRC 5.552(d)(6):</p> <p>Petitioner has not shown by a preponderance of the evidence that the records requested are necessary and have a substantial relevance to the legitimate need of the petitioner.</p> <p>JV-574, item 3</p> <p>Move checkbox after “noticed” to after “objections”:</p> <p>After a review of the juvenile case file and review of any filed objections <input type="checkbox"/> and a noticed <input type="checkbox"/> hearing, the court grants the request.</p> <p>JV-800, item 2e (unless the original of the JV-574 order is desired)</p> <p>Appellant has been granted access to specified records in the juvenile case file, and <u>a copy of</u> the court's order under Welfare and Institutions Code section 827(a)(1)(Q), on Order After Judicial Review on Petition for Access to Juvenile Case File (form JV-574) if available, is attached.</p> <p>JV-800, item 7</p> <p>Insert colon after “(check all that apply).”</p>	<p>The edit has been made.</p> <p>The committees have made this correction.</p> <p>The committees have made this correction.</p> <p>This correction has been made.</p>

**W20-02**

**Appellate Procedure, Juvenile Law: Access to Juvenile Case Files in Appellate Court Proceedings** (Amend Cal. Rules of Court, rules 5.552 and 8.401; approve form JV-291-INFO; revise forms JV-285, JV-290, JV-295, JV-321, JV-325, JV-569, JV-570, JV-571, JV-572, JV-573, JV-574, JV-800, JV-820, and JV-822)

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	Commenter	Position	Comment	DRAFT Committees Response
			<p>JV-800, item 7a</p> <p>Query: Should a check box be added for “<b>Denying</b> transfer to tribal court”?</p> <p>JV-820, page 2, last box section, WHO MUST SIGN THE NOTICE OF INTENT?</p> <p><del>Must be signed by the</del> <u>The person who intends to file the writ petition, or</u>  <del>By the</del> <u>The attorney of record for the person who intends to file the writ petition</u></p> <p>JV-822, item 7 (unless the original of the JV-574 order is desired)</p> <p>Petitioner has been granted access to specified records in the juvenile case file, and <u>a copy of</u> the court's order under Welfare and Institutions Code section 827(a)(1)(Q), on Order After Judicial Review on Petition for Access to Juvenile Case File (form JV-574) if available, is attached.</p> <p>JV-822, page 2, second boxed section</p> <p>The <i>Notice of Intent to File Writ Petition</i> must be signed by the person intending to file the writ petition or, by the attorney of record <u>for that person</u>. See below for more information.</p>	<p>The suggested change has been made.</p> <p>The committees agree and have made this change.</p> <p>The committees have made this change.</p> <p>The committees have made this change.</p>

**W20-02**

**Appellate Procedure, Juvenile Law: Access to Juvenile Case Files in Appellate Court Proceedings** (Amend Cal. Rules of Court, rules 5.552 and 8.401; approve form JV-291-INFO; revise forms JV-285, JV-290, JV-295, JV-321, JV-325, JV-569, JV-570, JV-571, JV-572, JV-573, JV-574, JV-800, JV-820, and JV-822)

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

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>DRAFT Committees Response</b>
			<p>JV-822, page 2, last box section, WHO MUST SIGN THE NOTICE OF INTENT?</p> <p><del>Must be signed:</del></p> <p><del>By the</del> The person who intends to file the writ petition, or  <del>By the</del> <u>The attorney of record for the person who intends to file the writ petition</u></p>	<p>The committees agree and have made these changes.</p>



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: May 14–15, 2020

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**Title**

Appellate Procedure: Appointment of Counsel in Misdemeanor Appeals

**Agenda Item Type**

Action Required

**Rules, Forms, Standards, or Statutes Affected**

Amend Cal. Rules of Court, rule 8.851;  
revise forms CR-131-INFO and CR-133

**Effective Date**

September 1, 2020

**Date of Report**

February 26, 2020

**Recommended by**

Appellate Advisory Committee  
Hon. Louis R. Mauro, Chair

**Contact**

Christy Simons, Attorney, 415-865-7694  
[christy.simons@jud.ca.gov](mailto:christy.simons@jud.ca.gov)

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### Executive Summary

To implement the California Supreme Court's decision in *Gardner v. Appellate Division of Superior Court* (2019) 6 Cal.5th 998, the Appellate Advisory Committee recommends amending the rule regarding appointment of counsel in misdemeanor appeals to expand the circumstances under which the appellate division is authorized to appoint counsel for an indigent defendant. The proposal would also revise two forms to be consistent with the rule amendments.

### Recommendation

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

1. Amend California Rules of Court, rule 8.851 to require the appellate division to appoint counsel for an indigent defendant who has been charged with a misdemeanor and the appellate proceeding qualifies as a critical stage of the criminal process; allow the appellate division to appoint counsel for any other indigent defendant charged with a misdemeanor; add an advisory committee comment describing *Gardner v. Appellate Division of Superior Court* (2019) 6 Cal.5th 998; and make other conforming changes and corrections;
2. Revise form CR-131-INFO to reflect the amendments to rule 8.851 and to clarify language explaining that a misdemeanor defendant does not have a right of self-representation; and



3. Revise form CR-133 to reflect the amendments to rule 8.851.

The text of the amended rule and the revised forms is attached at pages 6–18.

### **Relevant Previous Council Action**

In 1991, the Judicial Council adopted former rule 185.5 regarding appointment of counsel. The rule provided in part: “On application of an indigent defendant-appellant, the appellate department shall appoint counsel on appeal for a 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.” (Former Cal. Rules of Court, rule 185.5(a).) In the years since, the rule has been amended and renumbered, but the portion of the rule that is relevant to this proposal has not substantively changed.

Similarly, both of the forms have been revised at various times, but the council has not taken action relevant to this report.

### **Analysis/Rationale**

Currently, rule 8.851 of the California Rules of Court provides for the appointment of counsel on appeal only for convicted defendants. On application, the appellate division must appoint appellate counsel for a defendant convicted of a misdemeanor who was represented by appointed counsel in the trial court or establishes indigency and who either “is subject to incarceration or a fine of more than \$500,” or “is likely to suffer significant adverse collateral consequences as a result of the conviction.” (Cal. Rules of Court, rule 8.851(a)(1).) The appellate division “may appoint counsel for any other indigent defendant convicted of a misdemeanor.” (*Id.*, rule 8.851(a)(2).) The rule does not authorize the appointment of counsel for defendants who have not been convicted.

In *Gardner v. Appellate Division of Superior Court* (2019) 6 Cal.5th 998 (*Gardner*), the Supreme Court addressed the question of whether a defendant facing misdemeanor charges, who filed a successful motion to suppress evidence with the help of court-appointed counsel, was entitled to appointed counsel’s assistance in responding to a pretrial prosecution appeal of the suppression order. The court explained that, under the California Constitution, a criminal defendant’s right to counsel is not limited to trial; rather, it “extends to other, ‘critical’ stages of the criminal process.” (*Gardner*, 6 Cal.5th at p. 1004 (citations omitted).) Further, “critical stages can be understood as those events or proceedings in which the accused is brought in confrontation with the state, where potential substantial prejudice to the accused’s rights inheres in the confrontation, and where counsel’s assistance can help to avoid that prejudice.” (*Id.*, at pp. 1004–1005.) In light of the consequences to the defendant if she lost the appeal and the difficulty of defending a suppression order without the assistance of counsel, the court held that the pretrial prosecution appeal of an order granting the defendant’s motion to suppress evidence was a “critical stage” of the proceedings at which the defendant had a right to appointed counsel as a matter of state constitutional law. (*Id.*, at p. 1005.)

### **Rule 8.851**

To implement the *Gardner* decision, the Appellate Advisory Committee recommends amending rule 8.851(a) to require the appellate division to appoint counsel for defendants charged with a misdemeanor in circumstances that qualify as “critical stages” of the proceedings. A pretrial prosecution appeal of a suppression order is a critical stage for which counsel must be appointed, but, as noted above, the *Gardner* court’s holding was not limited to this one situation.

Accordingly, the recommended rule language is intended to be broad enough to encompass other possible critical stages in the proceedings for a defendant who has been charged with, but not convicted of, a misdemeanor. For clarity and to avoid repetitiveness, the committee recommends reorganizing paragraph (1) of subdivision (a) to include the indigency requirement, keeping the provisions regarding defendants convicted of a misdemeanor in subdivision (a)(1)(A), and drafting new language for subdivision (a)(1)(B) regarding defendants charged with a misdemeanor who are entitled to appointed counsel.

The committee also recommends amending rule 8.851(a)(2), which currently allows the appellate division to appoint counsel “for any other indigent defendant convicted of a misdemeanor,” to allow the appellate division, in its discretion, to appoint counsel for any other defendant charged with a misdemeanor. This amendment would maintain the parallel structure of *requiring* the appointment of counsel in certain situations for those charged with *or* convicted of misdemeanors, and *permitting* the appointment of counsel in other situations for those charged with *or* convicted of misdemeanors. A situation warranting the discretionary appointment of appellate counsel for a defendant charged with a misdemeanor would be relatively rare, but authorizing the appellate division to appoint counsel should the circumstances support it is consistent with the Supreme Court’s reasoning in *Gardner* and with the Judicial Council’s goal of improving access to impartial justice.

The rule amendments also include minor conforming changes to other parts of subdivisions (a) and (b) and the existing advisory committee comment, as well as a new advisory committee comment for subdivision (a)(1)(B) to provide information on the *Gardner* decision.

#### ***Information on Appeal Procedures for Misdemeanors (form CR-131-INFO)***

The committee recommends revisions to this information sheet that conform to the proposed rule amendments. Item 5 (“How do I get a lawyer to represent me?”), which describes the circumstances in which the appellate division is required to appoint counsel, would be revised to include proceedings involving a defendant who has been charged with a misdemeanor and faces potential substantial prejudice (i.e., a *Gardner* situation). A reference to rule 8.851 would also be added to item 5.

In addition, the committee recommends revising item 4 (“Do I need a lawyer to appeal?”) to clarify that a defendant does not have a right of self-representation and to add language advising a defendant whose request for self-representation was denied of the need to either hire an attorney or request that an attorney be appointed.

### ***Request for Court-Appointed Lawyer in Misdemeanor Appeal (form CR-133)***

The committee recommends a number of changes to this form for requesting a court-appointed lawyer, to be consistent with *Gardner*. Currently, the form is addressed exclusively to an appellant who has filed a notice of appeal, and the instructions refer only to a convicted defendant as eligible for appointed counsel. References to “appellant” and “your notice of appeal” in various places on the form would be replaced with “defendant” and “the notice of appeal.” The instructions would be revised to include defendants in *Gardner* situations by adding the same new language proposed for item 5 on form CR-131-INFO. Current item 4 would be renumbered as item 3f to group together all questions regarding a convicted defendant’s sentence and other negative consequences resulting from the conviction. A new item 4 would be added for defendants who have not been convicted to describe the order being challenged so the appellate division can determine whether the appeal is a “critical stage” of the criminal process under *Gardner*.

### **Policy implications**

The committee has identified no significant policy implications associated with the recommended changes to the rule and forms.

### **Comments**

The proposed amendments to rule 8.851 and revisions to the two forms were circulated for public comment between December 13, 2019, and February 11, 2020, as part of the winter comment cycle. Eight individuals or organizations submitted comments on this proposal. Four commenters agreed with the proposal, two agreed with the proposal if modified, and two did not state a position on the proposal but provided positive comments. A chart with the full text of the comments received and the committee’s responses is attached at pages 19–34.

The committee sought specific comments on whether subdivision (a)(2) of rule 8.851, which allows the appellate division to make a discretionary appointment counsel “for any other indigent defendant convicted of a misdemeanor,” should be amended to authorize such an appointment for any other defendant charged with a misdemeanor. Four commenters responded to this question: three indicated support for this amendment, one recommended against it. For the reasons described above, the committee recommends this amendment.

The committee also requested comments on whether there should be a separate rule regarding appointment of counsel in appellate division writ proceedings. Four commenters responded; all were in favor. The committee will consider developing such a rule as a future project.

In its comments, a bar association suggested adding specific examples of “significant adverse collateral consequences” (rule 8.851(a)(1)(A)) to clarify the information being sought on form CR-133 in requesting appointment of counsel. The committee recommends clarifying language regarding the different requirements for entitlement to appellate counsel on both forms and the corresponding questions asked on form CR-133, and agrees with the commenter that specific examples would be helpful. The committee has made these modifications to item 5 on the information sheet, and to the instructions and items 3f and 4 on the request form.

### **Alternatives considered**

In the wake of *Gardner*, the rule and forms were no longer correct. Thus, the committee did not consider the alternative of taking no action.

The committee considered narrower language in rule 8.851 to implement *Gardner*, but concluded that the Supreme Court's analysis of the right to counsel was broad enough potentially to include proceedings other than a pretrial prosecution appeal of an order granting a motion to suppress evidence that take place before the trial court issues a final judgment.

The committee also considered a new subdivision (d) of rule 8.851 regarding appointment of counsel for a defendant whose request for self-representation was denied. The committee does not recommend a new subdivision because self-representation on appeal is not sufficiently related to the content of rule 8.851 and would be better addressed, if at all in the rules of court, in a separate rule. The proposed revisions to item 4 on form CR-131-INFO, described above, are intended to clarify that a misdemeanor defendant does not have a right of self-representation on appeal.

### **Fiscal and Operational Impacts**

Based on feedback in the comments, the committee anticipates that impacts on the courts will include some education and training, updates to procedures, and changes to case management systems. The Civil and Appellate Division of the Superior Court of Orange County estimates that 16 hours by a Program Coordinator Specialist over the course of one month will be required to revise procedures, train staff, and implement the changes.

JRS notes there will be cost impacts to the county indigent defense fund and potential issues with implementation and payment since current contracts likely do not address the expected additional appointments. Communication with justice partners will be important.

### **Attachments and Links**

1. Cal. Rules of Court, rule 8.851, at pages 6–7
2. Forms CR-131-INFO and CR-133, at pages 8–18
3. Chart of comments, at pages 19–34

Rule 8.851 of the California Rules of Court would be amended, effective September 1, 2020, to read:

1 **Rule 8.851. Appointment of appellate counsel**

2  
3 **(a) Standards for appointment**

4  
5 (1) On application, the appellate division must appoint appellate counsel for a  
6 defendant ~~convicted of a misdemeanor~~ who was represented by appointed  
7 counsel in the trial court or establishes indigency and who:

8  
9 (A) Was convicted of a misdemeanor and is subject to incarceration or a  
10 fine of more than \$500 (including penalty and other assessments), or  
11 who is likely to suffer significant adverse collateral consequences as a  
12 result of the conviction; ~~and or~~ or

13  
14 (B) ~~Was represented by appointed counsel in the trial court or establishes~~  
15 ~~indigency.~~ Is charged with a misdemeanor and the proceeding qualifies  
16 as a critical stage of the criminal process.

17  
18 (2) On application, the appellate division may appoint counsel for any other  
19 indigent defendant charged with or convicted of a misdemeanor.

20  
21 (3) For applications under (1)(A), a defendant is subject to incarceration or a fine  
22 if the incarceration or fine is in a sentence, is a condition of probation, or may  
23 be ordered if the defendant violates probation.

24  
25 **(b) Application; duties of trial counsel and clerk**

26  
27 (1) If defense trial counsel has reason to believe that the client is indigent and  
28 will file an appeal or is a party in a proceeding described in (a)(1)(B), counsel  
29 must prepare and file in the trial court an application to the appellate division  
30 for appointment of counsel.

31  
32 (2) If the defendant was represented by appointed counsel in the trial court, the  
33 application must include trial counsel's declaration to that effect. If the  
34 defendant was not represented by appointed counsel in the trial court, the  
35 application must include a declaration of indigency in the form required by  
36 the Judicial Council.

37  
38 (3) Within 15 court days after an application is filed in the trial court, the clerk  
39 must send it to the appellate division. A defendant may, however, apply  
40 directly to the appellate division for appointment of counsel at any time after  
41 ~~filing~~ the notice of appeal is filed.

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(4) The appellate division must grant or deny a defendant’s application for appointment of counsel within 30 days after the application is filed.

(c) \* \* \*

**Advisory Committee Comment**

*Request for Court-Appointed Lawyer in Misdemeanor Appeal* (form CR-133) may be used to request that appellate counsel be appointed in a misdemeanor case. If the ~~appellant~~ defendant was not represented by the public defender or other appointed counsel in the trial court, the ~~appellant~~ defendant must use *Defendant’s Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form ~~MC-210~~CR-105) to show indigency. These forms are available at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).

**Subdivision (a)(1)(B).** In *Gardner v. Appellate Division of Superior Court* (2019) 6 Cal.5th 998, the California Supreme Court addressed what constitutes a critical stage of the criminal process. The court provided the analysis for determining whether a defendant has a right to counsel in confrontational proceedings other than trial, and held that the pretrial prosecution appeal of an order granting the defendant’s motion to suppress evidence was a critical stage of the process at which the defendant, who was represented by appointed counsel in the trial court, had a right to appointed counsel as a matter of state constitutional law.

### 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](http://www.courts.ca.gov/rules).

### 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 <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

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](http://www.courts.ca.gov/forms).

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 **not** allowed to represent yourself in an appeal in a misdemeanor case **unless** 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 email 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.

If the appellate division does not permit you to represent yourself, you must hire a lawyer at your own expense or ask the court to appoint a lawyer to represent you.

### 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:

- You were convicted 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 negative consequences from the conviction (for example, immigration problems or difficulty getting a job); or
- You have not been convicted but you are likely to suffer significant harm if you lose the appeal.

See rule 8.851 of the California Rules of Court for more information about when the court is required to appoint a lawyer to represent you.

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](http://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](http://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](http://www.courts.ca.gov/forms).

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.

### 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](http://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?

### 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](http://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).

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*

### 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:

- If a court reporter was 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



*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](http://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](http://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](http://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](http://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](http://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 to 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](http://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](http://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](http://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](http://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](http://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.

*Clerk stamps date here when form is filed.*

**DRAFT**

**02-21-20**

**Not approved by the Judicial Council**

**Instructions**

- This form is only for requesting that the court appoint a lawyer to represent a defendant in a **misdemeanor** appeal.
- 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](http://www.courts.ca.gov/forms).
- The court is required to appoint a lawyer to represent you if you are indigent (you cannot afford to pay for a lawyer) and:
  - (1) You were convicted and your punishment includes going to jail or paying a fine of more than \$500 (including penalty and other assessments); or
  - (2) You are likely to suffer other negative consequences from the conviction (for example, immigration problems or difficulty getting a job); or
  - (3) You have not been convicted but you are likely to suffer significant harm if you lose the appeal.
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk’s office for the same trial court where the notice of appeal was filed. 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:**

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

**Appellate Division Case Number:**

**1 Your Information**

a. Name of Defendant (the party who is filing this request):

Name: \_\_\_\_\_

Street address: \_\_\_\_\_  
*Street City State Zip*

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

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

b. Defendant’s lawyer (skip this if the defendant is filling out this form):

Name: \_\_\_\_\_ State Bar number: \_\_\_\_\_

Street address: \_\_\_\_\_  
*Street City State Zip*

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

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Fax: \_\_\_\_\_





**Information About Your Case**

2 Were you/was your client represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case? (Check a or b.)

a.  Yes

b.  No (Complete and attach Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense (form MC-210) showing that you/your client cannot afford to hire a lawyer. You can get form MC-210 at any courthouse or county law library or online at www.courts.ca.gov/forms.)

3 If you have been convicted, describe the punishment the trial court gave you/your client in this case (check all that apply and fill in any required information):

a.  Jail time

b.  A fine (including penalty and other assessments) (fill in the amount of the fine): \$ \_\_\_\_\_

c.  Restitution (fill in the amount of the restitution): \$ \_\_\_\_\_

d.  Probation (fill in the amount of time on probation): \_\_\_\_\_

e.  Other punishment (describe any other punishment that the trial court gave you/your client in this case):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

f.  Describe any other negative consequences that you are/your client is likely to suffer because of this conviction:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4 If you have not been convicted, describe the order being challenged on appeal:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Notice to Defendant:** If you were represented by appointed counsel in the trial court and the trial court finds that you are able to pay all or part of the cost of that counsel, at the conclusion of the proceedings, the court may also determine after a hearing whether you are able to pay all or a portion of the cost of any attorney appointed to represent you in this appeal. If the court determines that you are at that time able to pay, the court will order you to pay all or part of such cost. Such orders will have the same force and effect as a judgment in a civil action and will be subject to enforcement.

Date: \_\_\_\_\_

\_\_\_\_\_  
Type or print name

▶ \_\_\_\_\_  
Signature of defendant or attorney

**W20-01****Appellate Procedure: Appointment of Counsel in Misdemeanor Appeals** (Amend Cal. Rules of Court, rule 8.851; revise forms CR-131-INFO and CR-133)

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

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>DRAFT Committee Response</b>
1.	California Lawyers Association By Leah Spero, Chair Committee on Appellate Courts and Saul Bercovitch, Director of Governmental Affairs	A	<p>The Committee on Appellate Courts supports this proposal. The proposed amendments to Rule 8.851 sufficiently implement the ruling in <i>Gardner v. Appellate Division of Superior Court</i> (2019) 6 Cal.5th 998, by requiring the appellate division to appoint counsel for an indigent defendant facing a misdemeanor charge when an appeal is taken by either party before judgment, if the appeal arises from a “critical stage” of the criminal proceedings.</p> <p>The Request for Specific Comment asks whether subdivision (a)(2) of the rule should be amended to specifically authorize the appellate division to appoint counsel even if the proceedings are not at a critical stage, and the Committee supports that further amendment. The Committee does not anticipate that this provision would be invoked often, and the appellate division would have the discretion to decline any unwarranted request for appointment of counsel at a non-critical stage. In the Committee’s view, the appellate division is in the best position to determine whether an individual request for counsel is unwarranted, and its discretionary authority should not be limited as a whole based on theoretical concerns that the rule could have unintended consequences.</p> <p>The Committee suggests the following amendment to Rule 8.851, subdivision (a)(2): “On application, the appellate division may</p>	<p>The committee notes the commenter’s support for the proposal.</p> <p>The committee appreciates this feedback and agrees with allowing the appellate division the discretion to make this determination.</p> <p>The committee thanks the commenter for suggesting specific language and has included this language in the proposal.</p>

**W20-01****Appellate Procedure: Appointment of Counsel in Misdemeanor Appeals** (Amend Cal. Rules of Court, rule 8.851; revise forms CR-131-INFO and CR-133)

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>DRAFT Committee Response</b>
			appoint counsel for any other indigent defendant charged with or convicted of a misdemeanor.”	
2.	Jayce Hottenroth Cypress, California	NI	<p>My name is Jayce Hottenroth. I am currently a student at Oxford Academy in Cypress California, and am writing in regard to the proposals open to public comment. Specifically this email is directed towards the Appellate Procedure, and the Appointment of Counsel in Misdemeanor Appeals. The judicial system plays such an important role in the image of our nation, as well as a massive role in people’s lives, those innocent and guilty.</p> <p>The judicial system is far from perfect as all things are, and I believe such action towards the Appellate Procedure is a step in the right direction. More outlets for those who are placed on trial will not only benefit the individual, it would benefit the government as each individual prisoner requires an estimated \$31,000 dollars a year. A more open minded judicial system when it comes to those who are attempting to appeal their cases would also be beneficial. The Judicial system can make mistakes whether it be due to false forms of evidence, such as false testimony. This lack of certainty in the conviction process as well as the cost of financing a prisoner makes it all the more reasonable to hear more cases. In a nation where an immense number of individuals are convicted yearly, the introduction of such action</p>	<p>The committee notes the commenter’s support of efforts to improve the justice system and appreciates the thoughtful comments and participation in this process.</p> <p>The committee appreciates the commenter’s thoughts on the judicial system. The committee works to improve the administration of justice in appellate proceedings (see Cal. Rules of Court, rule 10.40), and welcomes feedback and suggestions for how it may best serve the interests of the public.</p>

**W20-01**

**Appellate Procedure: Appointment of Counsel in Misdemeanor Appeals** (Amend Cal. Rules of Court, rule 8.851; revise forms CR-131-INFO and CR-133)

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	Commenter	Position	Comment	DRAFT Committee Response
			<p>towards the Appellate procedure is a step towards the right direction.</p> <p>As humans we are imperfect which suggests faulty systems all throughout the globe, however steps such as the inclusion of such proposal to the Appellate Procedure is a major step in the right direction. Directing our judicial system in this manner will only yield positivity for our nation and I hope for further advocating for actions which may benefit all citizens equally in court. Thank you for your time in reading this email.</p>	<p>The committee thanks the commenter for taking an interest in this proposal and the time to respond.</p>
3.	<p>Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC)</p>	AM	<p>The JRS notes the following impact to court operations:</p> <ul style="list-style-type: none"> <li>• Impact on existing automated systems (e.g., case management system, accounting system, technology infrastructure or security equipment, Jury Plus/ACS, etc.)</li> <li>• Results in additional training, which requires the commitment of staff time and court resources.</li> <li>• Impact on local or statewide justice partners.</li> </ul> <p>The JRS notes that training would not create a major impact given the straight-forward nature of the change and that the forms will be updated within the same implementation timeframe as the rule change. Changes to CMS systems may present delays given time to develop, test and implement. Costs should be within the cost for</p>	<p>The committee notes the commenter’s support for the proposal if modified and appreciates the feedback regarding impact to court operations.</p> <p>The committee appreciates this information, and acknowledges the commenter’s concern regarding the time for implementation.</p>

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**Appellate Procedure: Appointment of Counsel in Misdemeanor Appeals** (Amend Cal. Rules of Court, rule 8.851; revise forms CR-131-INFO and CR-133)

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	Commenter	Position	Comment	DRAFT Committee Response
			<p>maintenance and changes due to change in law and under the purview of the vendor.</p> <p>There will be cost impacts to the county indigent defense fund as appointments increase with this proposed change. Current contracts likely do not address this additional appointment which may lead to delayed implementation and appointment/payment challenges. Communications to Justice Partners will be vital.</p> <p>Request for Specific Comments:</p> <p>1. Does the proposal appropriately address the stated purpose?</p> <ul style="list-style-type: none"> <li>• Yes</li> </ul> <p>2. Should subdivision (a)(2) of the rule be amended to authorize the appellate division, in its discretion, to appoint counsel for any other indigent defendant accused of a misdemeanor?</p> <ul style="list-style-type: none"> <li>• Including the term “accused” may be an expansion of the rule beyond the intent of <i>Gardner v. Appellate Division of Superior Court</i>. It is difficult to see how the appellate division will be hearing a matter that does not follow a conviction or responding to an appeal from the prosecution following a suppression motion or a motion to dismiss. This idea may have flowed from language in <i>Gardner</i> that</li> </ul>	<p>The committee notes this feedback and appreciates the commenter’s raising these points.</p> <p>The committee thanks the commenter for responding to the request for specific comments.</p> <p>No further response required.</p> <p>The committee agrees that the situation warranting a discretionary appointment of appellate counsel for a defendant charged with a misdemeanor would be relatively rare. However, defendants may appeal under both Penal Code section 1510 and 1538.5(j). The committee concluded that amending the rule to provide the appellate division with discretion to appoint counsel if warranted is consistent with <i>Gardner</i></p>

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	Commenter	Position	Comment	DRAFT Committee Response
			<p>identified a right to counsel during pre-indictment lineups, citing <i>Bustamante</i>. The appellate department would not appoint counsel until there was some trial court decision to appeal.</p> <p>3. Should the committee consider developing a separate rule regarding appointment of counsel in writ proceedings in the appellate division?</p> <ul style="list-style-type: none"> <li>• Yes. Suggest amending Rule 8.931 and the APP-151 form to include a right to counsel in misdemeanor writ proceedings.</li> </ul> <p>4. Would the proposal provide a cost savings? If so, please quantify.</p> <ul style="list-style-type: none"> <li>• No. However, there may be a time-saving advantage to the court to have attorneys, rather than self-represented litigants, file and process the misdemeanor appeals. The clerks often spend a great deal of time working with self-represented litigants when processing appeals, and documents are routinely returned multiple times due to errors.</li> </ul> <p>5. What would the implementation requirements be for courts - for example, training staff, revising processes and procedures, changing docket codes in case management systems, or modifying case management systems?</p>	<p>and could improve access to justice if the situation did arise.</p> <p>The committee appreciates this feedback and specific suggestion for a future proposal.</p> <p>The committee appreciates this feedback.</p>

**W20-01**

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>DRAFT Committee Response</b>
			<ul style="list-style-type: none"> <li>• Training on forms changes and minute order entries would likely be minimal in time and cost and would likely be part of meetings or updates incorporating other law or procedural changes. Cost would be negligible. The change may or may not include a required change to the CMS system, but costs would likely be covered by ongoing maintenance by vendor which includes revisions required due to change in law.</li> </ul> <p>6. Would three months for Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p> <ul style="list-style-type: none"> <li>• Changes to CMS systems routinely take time to develop, test and implement. Six months would be a necessary minimum although courts with manual processes could begin within the three-month time period. An effective date of January 1, 2021 should provide sufficient time for implementation.</li> </ul> <p>7. How well would this proposal work in courts of different sizes?</p> <ul style="list-style-type: none"> <li>• Resultant procedures will vary depending on automation maturity of each court and there will be a larger impact on public defenders in larger courts which may increase delays in case flow.</li> </ul> <p>Other Comments:</p>	<p>The committee thanks the commenter for this information on implementation requirements for courts.</p> <p>The committee notes the commenter’s recommendation that the amended rule and revised forms take effect on January 1, 2021 rather than September 1, 2020. However, it is important that they take effect as soon as possible. The current version of the rule is incorrect and the forms are incomplete.</p> <p>The committee appreciates this insight.</p>

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			<p>In looking at the language proposed in rule 8.551(1) (B), consider using the language in the proposed CR-133 form: The appeal is before a final judgment, and the defendant is likely to suffer significant harm if the defendant loses the appeal.</p> <p>Also, it would seem consistent that an appeal of a pre-conviction ruling would also be limited by the same penalty provision in 8.551(a)(1)(A), i.e., when the conviction would subject the defendant to incarceration, fine of more than \$500, or likely result in significant collateral consequences.</p> <p>This language would cover all of the situations raised in <i>Gardner</i> and would also cover pre-final judgment writ proceedings. The judgment is final when the time to appeal any proceeding within the case has lapsed, or when all appellate remedies have been exhausted. This would also apply to retroactivity issues when new statutes are enacted, and conviction is not final (i.e., suspended sentence). (See, for example, <i>People v. McKenzie</i> (2018) 25 Cal.App.5th 1207.)</p> <p>Right to self-representation.</p> <p>There is a suggestion on the bottom of page two that item 4 of the CR-131 INFO form be modified to clarify that a defendant does not have a right of self-representation and to add language advising a defendant whose request</p>	<p>The committee appreciates this suggestion. In drafting the amendments for rule 8.851(a)(1), the committee sought to maintain the current structure of the rule and to use language that closely tracks <i>Gardner</i>. Since <i>Gardner</i> did not limit the appointment of counsel for a pre-conviction defendant to the same penalty provisions that apply for a defendant who has been convicted of a misdemeanor, the committee did not include that language.</p> <p>The committee will consider developing a rule for appointment of counsel in misdemeanor writ proceedings.</p> <p>The point about retroactivity issues and a judgment that is not final is an interesting one. The committee has removed reference to final judgment from the forms and would welcome further input if there are any ambiguities in the language.</p>



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			<p>for self-representation was denied of the need to either hire an attorney or request that an attorney be appointed.</p> <p>This raises two questions:</p> <ol style="list-style-type: none"> <li>1. Should Rule 8.851(a) (1) be amended to provide that an attorney will be appointed, rather than include the language “on application”? If there is no right to self-representation for an appeal, then why is an application necessary?</li> <li>2. Does the limitation on the right to self-representation apply to all types of appeal, including the appeal at issue in <i>Gardner</i> that was an appeal that occurred prior to a conviction?</li> </ol> <p>The California Supreme Court, <i>In Re Barnett</i> (2003) 31 Cal.4th 466, a capital case, held that a criminal defendant’s rights regarding legal representation are more limited on appeal than at trial. This is because the Sixth Amendment does not include a right to appeal. California has conferred a right to appeal in a criminal case. The court held that “Notably, however, there is no right—constitutional, statutory, or otherwise—to self-representation in a criminal appeal in California.” As the United States Supreme Court recently explained [<i>Martinez v. Court of Appeal</i> (2000) 528 US 152] , the sole constitutional right to self-representation derives</p>	<p>An application is required in order for the court to determine whether the defendant is requesting appointed counsel and entitled to appointed counsel.</p> <p>The committee’s understanding of the case law is that a misdemeanor defendant has no right of self-representation on appeal, including a pre-conviction appeal.</p>

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			<p>from the Sixth Amendment, which pertains strictly to the basic rights that an accused enjoys in defending against a criminal prosecution and does not extend beyond the point of conviction.</p> <p>Emphasizing that the change in one's position from “defendant” to “appellant” is a significant one, the high court found that the balance between a criminal defendant's interest in acting as his or her own lawyer and a state's interest in ensuring the fair and efficient administration of justice “surely tips in favor of the [s]tate” once the defendant is no longer presumed innocent but found guilty beyond a reasonable doubt. Consequently, the court concluded, states may exercise broad discretion when considering what representation to allow and may require an indigent inmate “to accept against his will a state-appointed attorney” for representation on a direct appeal without violating the federal Constitution. (emphasis added.)</p> <p><i>People v Johnson</i> (2012) 53 Cal.4th 519 held “California law is subject to the United States Constitution, including the Sixth Amendment right to self-representation as established in <i>Faretta</i>. Thus, a criminal defendant's right of self-representation in California is rooted in the federal constitution only, and a court in California may deny self-representation to the extent permitted by <i>Faretta</i> and its progeny. (<i>Johnson</i>, at p. 528.)</p>	

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>DRAFT Committee Response</b>
			<p>Opposing an appeal from the People following a successful suppression motion occurs prior to conviction (the person remains a defendant and not an appellant) and appears to fall within the scope of “defending against a criminal prosecution.”</p> <p>If a self-represented litigant can argue a suppression motion, then it is not clear why they would not have the right to represent themselves in an appeal from a ruling on that motion by the People.</p>	<p>The committee appreciates the commenter’s observations. No further response required.</p>
4.	Office of the Marin County Public Defender by Jose H. Varela Public Defender	A	<p>At the Marin County Office of the Public Defender we do not have a writs and appeals attorney as do other larger counties. This proposal ensures that our misdemeanor clients, the vast majority of our clients, have equal access to appellate review.</p> <p>The changes are doable and clear.</p>	<p>The committee notes the commenter’s agreement with the proposal and appreciates the feedback.</p>
5.	Orange County Bar Association by Scott B. Garner, President Newport Beach, California	A	<p>Does the proposal appropriately address the stated purpose?</p> <p>Yes.</p> <p>Should subdivision (a)(2) of the rule be amended to authorize the appellate division, in its discretion, to appoint counsel for any other indigent defendant accused of a misdemeanor?</p> <p>Yes. Currently subdivision (a)(2) permits the discretionary appointment of counsel when a defendant has been convicted of a crime that</p>	<p>The committee notes the commenter’s agreement with the proposal and thanks the commenter for responding to specific questions.</p> <p>The committee agrees with the commenter that this subdivision should be amended, but to clarify, the amendment would <i>add</i> the category of</p>

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>DRAFT Committee Response</b>
			<p>does not meet the criteria delineated in subdivision (a)(1). Historically, this has meant individuals who were convicted of misdemeanors not punishable by incarceration or a fine of more than \$500 or were not likely to suffer adverse collateral consequences, such as violations of Health and Safety Code section 11357(b) [possession of less than an ounce of marijuana], prior to the statute being amended by Proposition 64. Amending the subdivision by replacing “convicted” with “accused of” will presumably only impact self-represented defendants who find themselves as real party in interest when opposing counsel seeks review of pre-trial orders (primarily orders related to discovery) in the appellate division by way of extraordinary writ petitions. Gardner explains that appointment of counsel to assist in the appellate phase of a misdemeanor criminal case is required because appellate “rules are forbidding for any layperson, but all the more so for criminal defendants who come to court with a wide range of educational backgrounds and linguistic and other abilities.” (Id. at p. 1006.) The same could be said of extraordinary writs.</p> <p>Should the committee consider developing a separate rule regarding appointment of counsel in writ proceedings in the appellate division?</p> <p>Yes, assuming the subdivision (a)(2) is changed as contemplated above. If that change</p>	<p>defendants accused of/charged with a misdemeanor to those for whom the appellate division is authorized to appoint counsel, i.e., defendants convicted of a misdemeanor, rather than replace “convicted of” with “accused of.”</p> <p>The committee notes the commenter’s support for a rule regarding appointment of counsel in misdemeanor writ proceedings.</p>

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			does not occur, there would be no authority for the appellate division appointing counsel, absent a determination that a writ is a critical stage of the proceedings.	
6.	Orange County Superior Court Civil and Appellate Division Management and Analyst Team	NI	<p>Does the proposal appropriately address the stated purpose?</p> <p>Yes, the proposal addresses the stated purpose.</p> <p>Should subdivision (a)(2) of the rule be amended to authorize the appellate division, in its discretion, to appoint counsel for any other indigent defendant accused of a misdemeanor?</p> <p>Yes, subdivision (a)(2) should be amended to read “convicted or accused of a misdemeanor”. Ensuring the appellate division has broad discretion to appoint is in the spirit of the purpose of the proposed revisions.</p> <p>Should the committee consider developing a separate rule regarding appointment of counsel in writ proceedings in the appellate division?</p> <p>Likewise, since the purpose of this revision is to remove any constraints on the appellate division’s authority and discretion to appoint, management agrees that proposing a separate rule regarding appointment of counsel in writ proceedings in the appellate division would be appropriate.</p>	<p>The committee thanks the commenter for responding to specific questions presented.</p> <p>No further response required.</p> <p>The committee agrees with the commenter, and has amended this subdivision of the rule, modifying “accused of” to “charged with.”</p> <p>The committee notes the commenter’s support for a rule regarding appointment of counsel in misdemeanor writ proceedings.</p>

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			<p>Would the proposal provide cost savings? If so, please quantify?</p> <p>Costs would increase commensurate with the increased number of appointments and appellate division hearings. However, this might be offset by a reduced number of criminal proceedings in the superior court.</p> <p>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?</p> <p>For implementation, court operations would need to update procedures to include the revisions to form CR-133. Information would need to be provided to the Judicial Officers. Courtroom clerks and case processing staff would need training. Training materials would need to be updated and/or created. The approximate level of effort is estimated at 16 hours FTE by a Program Coordinator Specialist over approximately one month to revise procedures, approve through workflow, train staff and implement.</p>	<p>The committee appreciates this feedback.</p> <p>The committee thanks the commenter for this input regarding specific implementation requirements.</p>
7.	San Diego County Bar Association Appellate Practice Section by Helen Irza, Chair	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	The committee notes the commenter’s support for the proposal if modified.

**W20-01**

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	Commenter	Position	Comment	DRAFT Committee Response
			<p>Invitation to Comment W20-01. After canvassing its membership and forming a subcommittee to discuss them, our section has the following comments about the proposal:</p> <p>General Comments</p> <p>The Invitation to Comment requested comments on these general topics.</p> <p>1. Does the proposal appropriately address the stated purpose?</p> <p>The Executive Summary of the Invitation to Comment states the purpose of the proposed rule change and form change is to implement the California Supreme Court’s decision in <i>Gardner v. Appellate Division of Superior Court</i> (2019) 6 Cal.5th 998 by expanding the circumstances under which the superior court appellate division in misdemeanor appeals must appoint counsel for an indigent defendant. Our section agrees that the proposal as a whole appropriately gives flexibility for the appellate division to appoint counsel for indigent defendants in misdemeanor appeals at critical stages of a criminal proceeding other than a People’s pretrial appeal of the grant of a motion to suppress evidence.</p> <p>Regarding the specific changes that are proposed for the forms, we suggest adding language to the information sheet on form CR-</p>	<p>The committee notes this feedback.</p> <p>The committee appreciates the suggestion that the information sheet provide more assistance and specific examples of significant adverse</p>

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>DRAFT Committee Response</b>
			<p>131-INFO in section 5 (“How do I get a lawyer”) to provide more directed guidance to the defense about potential adverse collateral consequences. Questions 3-f and 4 of CR-133 ask defendants to describe any significant harm they are likely to suffer because of the conviction or if they lose the appeal. Presumably, these questions relate to rule 8.851(a)(1)(A)’s language directing that defendants be appointed counsel if they are “likely to suffer significant adverse collateral consequences as a result of the conviction.” Based on experience, our members believe that absent a concrete list of specific examples of potential adverse collateral consequences, defendants will not tailor their responses in questions 3-f and 4 of CR-133 appropriately and will give generic or unhelpful responses that the vast majority of criminal defendants would otherwise state (e.g., if they are not appointed counsel they may lose on appeal and the risk of conviction increases). The information sheet gives examples in section 7 (“Can I appeal any decision that the trial court made?”) of what types of rulings can be appealed. The Appellate Practice Section suggests section 5 of CR-131-INFO provide a nonexhaustive list of examples of adverse collateral consequences that may follow a conviction that would correspond to the significant harm that is referenced in questions 3-f and 4 of CR-133. For example, such harm could include, but not be limited to, immigration consequences, professional or vocational</p>	<p>collateral consequences to assist the defense in answering questions on the request for counsel form. The committee agrees and has revised language in several sections of the forms.</p>



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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>DRAFT Committee Response</b>
			<p>licensing consequences, or student loan eligibility.</p> <p>2. Should subdivision (a)(2) of the rule be amended to authorize the appellate division, in its discretion, to appoint counsel for any other indigent defendant accused of a misdemeanor</p> <p>No comment.</p> <p>3. Should the committee consider developing a separate rule regarding appointment of counsel in writ proceedings in the appellate division</p> <p>Our section supports developing a separate rule to address the appointment of counsel in writ proceedings in the appellate division. In general, the rules distinguish between direct appeals and writ proceedings. (Compare Cal. Rules of Court, rules 8.252, 8.366 with rules 8.368, 8.384.) Without a rule addressing appointment of counsel in misdemeanor writ proceedings, defendants in such proceedings may be confused as to whether they can or should rely on the rules that relate to appointment of counsel in appeals. Clarity would be helpful.</p>	<p>No response required.</p> <p>The committee appreciates the feedback on this question and will consider developing a rule for appointment of counsel in writ proceedings in a future rules cycle.</p>
8.	Superior Court of San Diego County by Mike Roddy Executive Officer	A	No specific comments provided.	The committee notes the commenter's support for the proposal and appreciates the response.



## JUDICIAL COUNCIL OF CALIFORNIA

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# MEMORANDUM

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**Date**

February 3, 2020

**To**

Members of the Appellate Advisory  
Committee  
Hon. Louis R. Mauro, Chair

**From**

Members of the Appellate Division  
Subcommittee  
Hon. Stephen D. Schuett, Chair

**Subject**

Finality of appellate division opinions  
certified for publication

**Action Requested**

Please read before March 5, 2020 committee  
meeting

**Deadline**

March 5, 2020

**Contact**

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

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### Introduction

Item 9 on the Appellate Advisory Committee's annual agenda this committee year is to consider whether to recommend amending rule 8.888 so that the 30-day finality period for appellate division decisions certified for publication runs from the date the opinion is posted on the "Published Opinions" page of the California Courts website rather than the date the order for publication is sent by the court clerk to the parties. This is a priority 2(b) project with a proposed January 1, 2021 completion date. The committee may recall that a similar recommendation was considered during the Spring 2018 rules cycle as part of a broader proposal to evaluate the rules governing finality in the appellate division more generally. During that cycle, the committee agreed with the appellate division subcommittee's recommendation to reject the portion of the previous proposal that would have tethered the finality of appellate division opinions to the date they are posted on the website. During its January 30, 2020 meeting, the appellate division subcommittee considered the suggestion anew, and for similar reasons does not recommend this proposal to the Appellate Advisory Committee.

However, to provide the committee with complete information so it may consider whether it agrees with the subcommittee's recommendation to reject the proposal, attached are draft

amendments to California Rules of Court, rules 8.888(a)(2), 8.889(b)(1)(B), and 8.1005(b)(1)(B) that would tether the finality of appellate division decisions certified for publication to the date they are posted on the California Courts website. This memo discusses the proposed amendments, the practical impediments associated with them, and an option that the subcommittee recommends in lieu of these amendments. In particular, the subcommittee recommends that the committee pursue a potential operational change to the way appellate division opinions are posted to the California Courts website that would seem to address the timing issue identified by the proponent without the need to amend any rules of court.

## **Background**

Proceedings in the appellate division of the superior courts are governed by rules 8.800 through 8.936. Transfer of appellate division cases to the Court of Appeal is governed by rules 8.1000 through 8.1018. Rules 8.1100 through 8.1125 govern the publication of appellate opinions of both the appellate division and the Court of Appeal.<sup>1</sup> In the appellate division, most decisions become final 30 days after they are sent by the court clerk to the parties, and litigants have 15 days from the date the decision is sent to file a petition for rehearing or an application to certify the case for transfer to the Court of Appeal for review.<sup>2</sup> With respect to an appellate division decision certified for publication after the opinion is filed but before it becomes final in that court, the 30-day finality period runs from the date the order for publication is sent by the court clerk to the parties.<sup>3</sup> An appellate division may modify its decision until the decision is final in that court.<sup>4</sup>

Many of the rules governing the finality of decisions in the appellate division were recently amended, effective January 1, 2019.<sup>5</sup> Specifically, rules 8.888(a)(2) and (b)(2), 8.889(b)(1), 8.935(b)(2), 8.976(b)(2), and 8.1005(b)(1) were amended so that the date of finality for appellate division decisions is now triggered by the date on which the court clerk sends the decision to the parties, as opposed to the date on which the decision is filed; and rules 8.887(b), 8.935(a)(1), and 8.976(a)(1) now require court clerks to send appellate division decisions to the parties, electronically when permissible, on the same day they are filed. This divergence from the Court of Appeal finality rules was justified on the basis that, unlike the Court of Appeal which has immediate electronic notification when a decision is filed, most superior court appellate divisions do not provide electronic notification and notices are sent by mail. The 2019 amendments to the appellate division finality rules were intended to ensure that parties are not prejudiced by delays in mailing and have sufficient time after receiving notice of appellate division decisions to

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<sup>1</sup> Rules governing the publication of appellate opinions are adopted by the Supreme Court under section 14 of article VI of the California Constitution and published in the California Rules of Court at the direction of the Judicial Council. (Rule 8.1100.)

<sup>2</sup> See rules 8.888(a)(1), 8.889(b)(1), 8.1005(b).

<sup>3</sup> See rule 8.888(a)(2); see also rule 8.264(b)(3) (in Courts of Appeal, the 30-day finality period for an opinion certified for publication after filing and before becoming final runs from the filing date of the order for publication).

<sup>4</sup> See rule 8.888(b)(1).

<sup>5</sup> See Jud. Council of Cal., App. Advisory Com. Rep., *Appellate Procedure: Finality of Appellate Division Decisions* (Aug. 2, 2018).

prepare and file applications for certification for transfer and petitions for rehearing before the appellate division loses jurisdiction.<sup>6</sup>

As part of the broader proposal examining finality in the appellate division, the appellate division subcommittee and this committee also considered whether to amend rules 8.888, 8.889 and 8.1005 to change the trigger for finality of appellate division opinions certified for publication from the date of the publication order to the date that such decisions are posted on the California Courts website to remedy a timing issue with respect to public notice of published appellate division opinions. However, this committee agreed with the appellate division subcommittee's recommendation to reject that additional set of amendments at that time because of practical problems the amendments could cause and because the issue might be resolved by an operational change. Those amendments were not included in the Invitation to Comment during the Spring 2018 rules cycle.<sup>7</sup>

### **Suggestion**

The Honorable Helen E. Williams of the Superior Court of Santa Clara County, Presiding Judge of the appellate division and a current member of the Appellate Advisory Committee, has again raised the issue of timing with respect to the finality of appellate division opinions certified for publication. As noted above, rule 8.888(a)(2) provides that if an appellate division opinion is filed and subsequently certified for publication, the decision becomes final 30 days after the date the publication order was sent by the court clerk to the parties. This rule is similar but not identical to corresponding rule 8.264(b)(3), governing the Court of Appeal, which provides that a decision of that court that is certified for publication becomes final 30 days after the filing date of the publication order. In both the appellate division and Court of Appeal, delaying finality and tethering it to the filing or sending of the publication order, rather than the filing or sending of the underlying opinion, may be justified by a recognition that people are more likely to scrutinize and suggest changes for opinions ordered to be published, and courts should retain jurisdiction to modify their opinions after they are certified for publication.

In the Court of Appeal, basing finality on the filing date of the publication order seems appropriate because published decisions are posted online immediately, and 30 days after the publication order is sufficient time for interested parties to review the opinion online and propose modifications before the decision becomes final and the court loses jurisdiction. In contrast, however, an appellate division opinion certified for publication is often not posted on the "Published Opinions" page of the California Court's website, or anywhere else, for several weeks or more.<sup>8</sup> And because the 30-day finality period for appellate division opinions certified

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<sup>6</sup> *Id.* at pp. 1-4.

<sup>7</sup> *Id.* at p. 4.

<sup>8</sup> Compare <https://www.courts.ca.gov/opinions-slip.htm?Courts=J> (California Courts website linking published appellate division opinions and reflecting a delay of several weeks between filing and posting) to <https://www.courts.ca.gov/opinions-slip.htm?Courts=A> (California Courts website linking published opinions of the Court of Appeal for the First Appellate District and reflecting same day filing and posting).

for publication runs from the date the publication order is sent to the parties—regardless of when the decision is actually published—the decision may become final and the appellate division divested of jurisdiction to address any modification requests before the public receives notice of it through posting on the “Published Opinions” page of the California Courts website.<sup>9</sup>

To remedy this timing issue, the proposal is to amend rule 8.888 so the 30-day finality period for appellate division opinions certified for publication runs from the date the opinion is publicly posted on the California Courts website, rather than the date the publication order is sent to the parties.

### **Draft Rule Amendments**

#### **Rule 8.888(a)(2), 8.889(b)(1) and 8.1005(b)(1)**

Attached is a draft of a possible amendment to rule 8.888(a)(2) to make an appellate division opinion certified for publication final 30 days after it is posted on the California Courts website, rather than 30 days after the date the publication order is sent to the parties. Rules 8.889(b)(1) and 8.1005(b)(1), governing requests for rehearing and applications to certify a case for transfer and cross-referencing rule 8.888(a)(2), would likewise need to be amended to refer to the date a published decision is posted on the website, rather than the date a publication order is sent by the court clerk to the parties under rule 8.888(a)(2). Draft amendments to these rules are also included in the materials.<sup>10</sup>

Significantly, however, it is unclear how this proposal would work from a practical perspective, and it does not appear that any recent change in practice or procedure would alleviate the concerns which led the subcommittee to reject a proposal to similarly amend the rules two years ago. For several reasons, the subcommittee once again does not recommend that the rules be amended to tether the date of finality of published appellate division decisions to the date of posting on the court’s website.

First, no other rules appear to contain a filing deadline triggered by a website posting.<sup>11</sup> There may be concerns relating to whether mere posting on a website would constitute proper notice to the parties regarding the deadline for finality, and due process concerns could thus be implicated if these amendments were implemented.

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<sup>9</sup> See rule 8.888(b)(1).

<sup>10</sup> If the committee is inclined to recommend amendments to rules 8.888, 8.889 and 8.1005 governing appellate division decisions in limited civil and misdemeanor cases, the committee may wish to consider whether similar rules governing finality for other types of appellate division decisions—in particular rule 8.925 governing infraction cases, 8.935 governing writ proceedings in infraction cases, and rule 8.976 governing writ petitions in small claims proceedings—would also need to be amended to conform to these changes. None of these rules separately address the finality of opinions certified for publication or partial publication in these types of matters, and thus conforming amendments are likely unnecessary. However, if other amendments are recommended, the committee should confirm that it agrees with this conclusion.

<sup>11</sup> Cf., rules 8.83; 2.503 (notice to parties and the public of court’s determination to provide remote electronic access in extraordinary cases may be accomplished by posting on the court’s website, but this does not trigger a filing deadline).

Second, amending the rules to tether the finality of published appellate division decisions to the date they are posted on the California Courts website could implicitly negate the existing deadline by which the Court of Appeal must decide whether to transfer a case on its own motion. More specifically, if: (1) published appellate division decisions do not become final until 30 days after being posted on the website, as proposed; (2) under existing rule 8.1008(a)(1)(B) the Court of Appeal has 30 days after appellate division decisions become final to decide whether to transfer; and (3) it remains the Reporter of Decisions' practice to not post appellate division opinions certified for publication on the California Courts website until after the Court of Appeal has considered transfer,<sup>12</sup> then the Court of Appeal could have an indefinite amount of time to decide whether to transfer an appellate division case that had been previously certified for publication because the decision might never become final.

Third, staff has consulted with the council's Information Technology staff and identified a potential operational change that can likely be accomplished in coordination with the Reporter of Decisions to remedy the timing issue without the need to amend the rules. Specifically, the current delay in posting appellate division opinions to the California Courts website is designed to accommodate possible transfer to the Court of Appeal. Under rule 8.887(c)(2), a copy of all appellate division decisions certified for publication must immediately be sent to the Court of Appeal "to assist the Court of Appeal in deciding whether to order the case transferred to the court on the court's own motion under rules 8.100-8.1018." The Court of Appeal has 30 days from the date the appellate division decision becomes final to decide whether to transfer the case on its own motion.<sup>13</sup> If the Court of Appeal decides not to transfer the case or the time for decision lapses, transfer is deemed denied and the denial is final immediately.<sup>14</sup> Because published decisions become final 30 days after the date the publication order is sent to the parties, conceivably the Court of Appeal has up to 60 days (extendable for another 20 days) to decide whether to transfer an appellate division decision certified for publication.

During the time that the Court of Appeal is considering transfer, the Reporter of Decisions does not post appellate division decisions certified for publication on the "Published Opinions" page of the California Courts website. This is because the *California Style Manual: A Handbook of Legal Style for California Courts and Lawyers* (4th ed. 2000) § 5.54, pp. 204-205) (CSM) provides that the Reporter of Decisions will only "proceed with publication procedures" after receiving a letter from the clerk of the appellate division indicating that the opinion was appropriately submitted to and received by the Court of Appeal and that the Court of Appeal either declined to transfer or did not transfer within the jurisdictional time.<sup>15</sup> Because posting an opinion to the "Published Opinions" page begins the "publication procedures" referenced in the

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<sup>12</sup> See rules 8.887(c); 8.888(a)(2); 8.1008(a)(1)(B).

<sup>13</sup> See rule 8.1008(a)(1)(B); see also rule 8.1008(a)(2) (allowing for the Court of Appeal to extend its time to decide on transfer for up to 20 additional days).

<sup>14</sup> See rules 8.1008(a)(3), 8.1018(a).

<sup>15</sup> "Publication procedures" refers to editing and submission to the court for examination, correction, and final approval. See *California Style Manual: A Handbook of Legal Style for California Courts and Lawyers* (4th ed. 2000) §§ 5.52-5.53, pp. 203-204.

CSM, the Reporter of Decisions does not post appellate division opinions on the “Published Opinions” page until *after* the transfer issue has been decided (either by a Court of Appeal decision not to transfer or lapse).<sup>16</sup>

As a result, appellate division decisions certified for publication currently only appear on the California Courts website—and thus the public only receives notice of them—after they are final *and if* they are not transferred to the Court of Appeal. If the Court of Appeal accepts transfer, these decisions *never* appear on the website and the public has no opportunity to review them. The proponent of this proposal noted that this result is especially problematic because law is being developed on issues that arise primarily in the appellate division (examples include questions relating to Code of Civil Procedure section 98 on the civil side and DNA blood draws on the criminal side), and it is helpful for both litigants and other courts to understand percolating issues in the appellate division and learn what courts have said in published opinions, even if the case is subsequently transferred to the Court of Appeal.

To provide access without triggering the “publication procedures,” it may be possible to post appellate division opinions certified for publication while transfer is still being considered by the Court of Appeal—not to the “Published Opinions” page—but instead to a separate, new “transfer pending” page of the California Courts website that would have to be created.<sup>17</sup> Appellate division opinions could be posted to the new “transfer pending” page as soon as the Reporter of Decisions receives a copy (which should be “immediate” pursuant to rule 8.887(c)(2)) and remain there until either (1) the Court of Appeal denies transfer or the time to decide lapses, in which case the opinion would be moved to the Published Opinions page and the Reporter of Decisions could proceed with publication procedures; or (2) the Court of Appeal agrees to transfer the case.<sup>18</sup>

If this option is to be pursued, the committee should also consider the most appropriate treatment of a published appellate division decision if the Court of Appeal decides to transfer it.<sup>19</sup> As noted

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<sup>16</sup> *Id.*; see also rules 8.887(c) (appellate division opinion certified for publication “must comply to the extent practicable with the *California Style Manual*” and a copy must be sent immediately to the Reporter of Decisions and the Court of Appeal), 8.1105(f) (Reporter of Decisions must edit opinions and submit them to the court for examination, correction and approval before they are finalized for Official Reports).

<sup>17</sup> Judicial Council IT staff envisions something similar to that which is currently used for unpublished Court of Appeal decisions. See “Unpublished Opinions” page at <https://www.courts.ca.gov/opinions-nonpub.htm>. Consideration would have to be given to how to appropriately name the new web page, as well as naming convention for this category of cases.

<sup>18</sup> Staff understands that appellate division opinions are currently archived after 120 days, and not accessible via the “Appellate Courts Case Information” page, <https://appellatecases.courtinfo.ca.gov/>.

<sup>19</sup> The rules regarding the publication status of published Court of Appeal opinions were amended in 2016. Rule 8.1005(e)(1) provides that “[g]rant of review by the Supreme Court of a decision by the Court of Appeal does not affect the appellate court’s certification of the opinion for full or partial publication” (though the opinion must be accompanied by a notation that review has been granted) but the rule is silent as to whether the publication status of an appellate division decision certified for publication changes if the Court of Appeal agrees to transfer a case. Likewise, rule 8.1115(e) addresses case citation when review of a published Court of Appeal opinion has been granted by the Supreme Court, but the rule is silent as to the citation of published appellate division opinions where transfer has been granted.

above, currently an appellate division opinion that is certified for publication and then transferred to the Court of Appeal is effectively “depublished” and not *ever* posted or available on the California Courts website. However, if the operational change suggested by the subcommittee is adopted, then these opinions would appear on a new “transfer pending” page going forward. The committee should consider whether published opinions that are transferred should thereafter be removed from the website entirely, or if they might instead be moved to another newly-created “transfer granted” webpage (where they would remain until archived pursuant to the archiving policy for the website as a whole). The appellate division subcommittee recommends that the committee pursue a change to the website that would allow appellate division opinions certified for publication to remain on the website even if the Court of Appeal transfers the case.

For all of the reasons explained above, the subcommittee does not recommend that the proposal to amend the rules to tether finality of appellate division opinions certified for publication to their posting on the California Courts website move forward. However, the subcommittee does recommend that the committee pursue the operational changes discussed above, that would allow such decisions to be posted on a separate, new “transfer pending” page of the California Courts website after they have been certified for publication and while the Court of Appeal is deciding on transfer. Additionally, consideration should be given to what should happen to such opinions if the Court of Appeal agrees to transfer them, and in particular if they should then be removed from the website or instead moved to another new “transfer granted” page of the website that would have to be created for this specific purpose.

### **Issues for the committee’s consideration**

1. Does the committee wish to recommend circulating amendments to rules 8.888, 8.889, and 8.1005 that change the trigger for finality of appellate division opinions certified for publication from the date the order for publication is sent by the court clerk to the parties to the date the opinion is posted on the California Courts website?
  - a. The committee should consider practical issues that could arise from tethering finality to the date that a decision is posted on the website, such as whether this would give appropriate formal notice to litigants and whether any due process considerations might be implicated.
  - b. The committee should also consider the potential impact that this would have on the deadline for Court of Appeal decisions to transfer appellate division cases on the court’s own motion, and whether it might unintentionally negate any such deadline.
  - c. If the committee decides to move forward with circulating the amendments, does the committee also wish to recommend moving forward with any additional amendments to rules 8.935 and 8.976 that may be necessary to harmonize the finality deadlines and procedure in all types of cases before the appellate division?
2. Does the committee instead wish to reject the proposal and work with the council’s Information Technology staff and the Reporter of Decisions to implement operational



changes to the California Courts website that could remedy the timing and notice issue without the need to amend any rules? Specifically:

- a. Does the committee wish to recommend pursuing the operational change of creating a new “transfer pending” page of the California Courts website for appellate division opinions certified for publication and pending a transfer decision from the Court of Appeal?
- b. If the committee wishes to recommend pursuing the operational change of creating a new “transfer pending” page for appellate division opinions certified for publication and pending a transfer decision from the Court of Appeal, should those opinions remain posted or available on the website (perhaps on another new page of the website dedicated to “transfer granted” decisions) if the Court of Appeal decides to transfer the case?

### **Committee Task**

The committee’s task is to analyze this proposal and:

- Approve the proposal to amend the rules and seek approval from RUPRO to circulate the proposal for public comment;
- Modify the proposal and recommend to the full committee that it seek approval from RUPRO to circulate the modified proposal for public comment;
- Decline to move forward with rule amendments and instead pursue the operational changes to the California Courts website discussed above; or
- Ask staff or committee members for further information/analysis.

### **Attachment**

Draft amended rules 8.888, 8.889, 8.1005

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**Title 8. Appellate Rules**

**Division 2. Rules Relating to the Superior Court Appellate Division**

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

**Rule 8.888. Finality and modification of decision**

**(a) Finality of decision**

- (1) Except as otherwise provided in this rule, an appellate division decision, including an order dismissing an appeal involuntarily, is final 30 days after the decision is sent by the court clerk to the parties.
- (2) If the appellate division certifies a written opinion for publication or partial publication after its decision is filed and before its decision becomes final in that court, the finality period runs from the date the opinion is published on the "Published Opinions" page of the California Courts website. ~~order for publication is sent by the court clerk to the parties.~~
- (3) The following appellate division decisions are final in that court when filed:
  - (A) The denial of a petition for writ of supersedeas;
  - (B) The denial of an application for bail or to reduce bail pending appeal; and
  - (C) The dismissal of an appeal on request or stipulation.

*(Subd (a) amended effective January 1, 2019.)*

**(b) Modification of judgment**

- (1) The appellate division may modify its decision until the decision is final in that court. If the clerk's office is closed on the date of finality, the court may modify the decision on the next day the clerk's office is open.
- (2) An order modifying a decision must state whether it changes the appellate judgment. A modification that does not change the appellate judgment does not extend the finality date of the decision. If a modification changes the

1           appellate judgment, the finality period runs from the date the modification  
2           order is sent by the court clerk to the parties.

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4           *(Subd (b) amended effective January 1, 2019.)*

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6           **(c) Consent to increase or decrease in amount of judgment**

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8           If an appellate division decision conditions the affirmance of a money judgment on  
9           a party’s consent to an increase or decrease in the amount, the judgment is reversed  
10          unless, before the decision is final under (a), the party serves and files a copy of a  
11          consent in the appellate division. If a consent is filed, the finality period runs from  
12          the filing date of the consent. The clerk must send one filed-endorsed copy of the  
13          consent to the trial court with the remittitur.

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15          *(Subd (c) amended effective January 1, 2016.)*

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17          *Rule 8.888 amended effective January 1, 2019; adopted effective January 1, 2009; previously*  
18          *amended effective January 1, 2016.*

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21          **Rule 8.889. Rehearing**

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23          **(a) Power to order rehearing**

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25                  (1) On petition of a party or on its own motion, the appellate division may order  
26                  rehearing of any decision that is not final in that court on filing.  
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28                  (2) An order for rehearing must be filed before the decision is final. If the clerk’s  
29                  office is closed on the date of finality, the court may file the order on the next  
30                  day the clerk’s office is open.

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32          **(b) Petition and answer**

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34                  (1) A party may serve and file a petition for rehearing within 15 days after the  
35                  following, whichever is later:  
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37                          (A) The decision is sent by the court clerk to the parties;  
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39                          (B) An opinion certified for publication or partial publication is published  
40                          on the “Published Opinions” page of the California Courts website. A  
41                          publication order restarting the finality period under rule 8.888(a)(2), if  
42                          the party has not already filed a petition for rehearing, is sent by the  
43                          court clerk to the parties;

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2 (C) A modification order changing the appellate judgment under rule  
3 8.888(b) is sent by the court clerk to the parties; or  
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5 (D) A consent is filed under rule 8.888(c).  
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7 (2) A party must not file an answer to a petition for rehearing unless the court  
8 requests an answer. The clerk must promptly send to the parties copies of any  
9 order requesting an answer and immediately notify the parties by telephone  
10 or another expeditious method. Any answer must be served and filed within 8  
11 days after the order is filed unless the court orders otherwise. A petition for  
12 rehearing normally will not be granted unless the court has requested an  
13 answer.  
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15 (3) The petition and answer must comply with the relevant provisions of rule  
16 8.883.  
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18 (4) Before the decision is final and for good cause, the presiding judge may  
19 relieve a party from a failure to file a timely petition or answer.  
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21 *(Subd (b) amended effective January 1, 2019.)*  
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23 **(c) No extensions of time**  
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25 The time for granting or denying a petition for rehearing in the appellate division  
26 may not be extended. If the court does not rule on the petition before the decision is  
27 final, the petition is deemed denied.  
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29 **(d) Effect of granting rehearing**  
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31 An order granting a rehearing vacates the decision and any opinion filed in the  
32 case. If the appellate division orders rehearing, it may place the case on calendar for  
33 further argument or submit it for decision.  
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35 *Rule 8.889 amended effective January 1, 2019; adopted effective January 1, 2009.*  
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38 **Division 6. Transfer of Appellate Division Cases to the Court of Appeal**  
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40 **Rule 8.1005. Certification for transfer by the appellate division**  
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42 **(a) Authority to certify**  
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- 1 (1) The appellate division may certify a case for transfer to the Court of Appeal  
2 on its own motion or on a party's application if it determines that transfer is  
3 necessary to secure uniformity of decision or to settle an important question  
4 of law.  
5  
6 (2) Except as provided in (3), a case may be certified for transfer by a majority of  
7 the appellate division judges to whom the case has been assigned or who  
8 decided the appeal or, if the case has not yet been assigned, by any two  
9 appellate division judges.  
10  
11 (3) If an appeal from a conviction of a traffic infraction is assigned to a single  
12 appellate division judge under Code of Civil Procedure section 77, the case  
13 may be certified for transfer by that judge.  
14  
15 (4) If an assigned or deciding judge is unable to act on the certification for  
16 transfer, a judge designated or assigned to the appellate division by the chair  
17 of the Judicial Council may act in that judge's place.  
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19 *(Subd (a) amended effective January 1, 2011; previously amended effective January 1,*  
20 *2007.)*

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22 **(b) Application for certification**

- 23  
24 (1) A party may serve and file an application asking the appellate division to  
25 certify a case for transfer at any time after the record on appeal is filed in the  
26 appellate division but no later than 15 days after:  
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28 (A) The decision is sent by the court clerk to the parties;  
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30 (B) An opinion certified for publication or partial publication is published  
31 on the "Published Opinions" page of the California Courts website. A  
32 publication order restarting the finality period under rule 8.888(a)(2) is  
33 sent by the court clerk to the parties;  
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35 (C) A modification order changing the appellate judgment under rule  
36 8.888(b) is sent by the court clerk to the parties; or  
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38 (D) A consent is filed under rule 8.888(c).  
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40 (2) The party may include the application in a petition for rehearing.  
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42 (3) The application must explain why transfer is necessary to secure uniformity  
43 of decision or to settle an important question of law.

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- (4) Within five days after the application is filed, any other party may serve and file an answer.
  
- (5) No hearing will be held on the application. Failure to certify the case within the time specified in (c) is deemed a denial of the application.

*(Subd (b) amended effective January 1, 2019; previously amended effective January 1, 2011.)*

**(c) Time to certify**

The appellate division may certify a case for transfer at any time after the record on appeal is filed in the appellate division and before the appellate division decision is final in that court.

*(Subd (c) amended and relettered effective January 1, 2011; adopted as subd (d).)*

**(d) Contents of order certifying case for transfer**

An order certifying a case for transfer must:

- (1) Clearly state that the appellate division is certifying the case for transfer to the Court of Appeal;
- (2) Briefly describe why transfer is necessary to secure uniformity of decision or to settle an important question of law; and
- (3) State whether there was a decision on appeal and, if so, its date and disposition.

*(Subd (d) amended and relettered effective January 1, 2011; adopted as subd (e); previously amended effective January 1, 2007.)*

**(e) Superior court clerk’s duties**

- (1) If the appellate division orders a case certified for transfer, the clerk must promptly send a copy of the certification order to the clerk/executive officer of the Court of Appeal, the parties, and, in a criminal case, the Attorney General.
- (2) If the appellate division denies a certification application by order, the clerk must promptly send a copy of the order to the parties.

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*(Subd (e) amended effective January 1, 2018; adopted as subd (f); previously amended and relettered effective January 1, 2011.)*

*Rule 8.1005 amended effective January 1, 2019; repealed and adopted as rule 63 effective January 1, 2003; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2010, January 1, 2011, and January 1, 2018.*

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

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**Title**

Appellate Procedure: Use of an Appendix in Limited Civil Cases

**Action Requested**

Review and submit comments by June 9, 2020

**Proposed Rules, Forms, Standards, or Statutes**

Adopt Cal. Rules of Court, rule 8.845; amend rules 8.830, 8.840, and 8.843; approve form APP-111; revise forms APP-101-INFO and APP-103

**Proposed Effective Date**

January 1, 2021

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**Proposed by**

Appellate Advisory Committee  
Hon. Louis R. Mauro, Chair

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### Executive Summary and Origin

The Appellate Advisory Committee proposes adopting a new rule and amending three current rules to allow litigants in limited civil appeals to use an appendix in lieu of a clerk's transcript as the record of documents filed in the trial court. The California Rules of Court contain a rule for use of an appendix in unlimited civil appeals but do not include such a rule for civil appeals in the appellate division. The proposed rule is based on the existing rule and closely follows its structure and content. To assist litigants in using an appendix, the committee also proposes approving a new form and revising an information sheet and a form for designating the record in limited civil cases. This proposal originated with a suggestion from a judge of the superior court who serves on the appellate division and is a current committee member.

### Background

**Rule 8.124**

Rule 8.124 establishes a procedure for using an appendix in lieu of a clerk's transcript. The appellant may elect to use an appendix when designating the record on appeal. If the appellant does not elect to use an appendix, the respondent may do so but only if the appellant has not been granted a fee waiver for the cost of a clerk's transcript. The parties may prepare separate appendixes or may stipulate to a joint appendix. (Cal. Rules of Court, rule 8.124(a).)

*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.*



Rule 8.124 specifies the contents of an appendix, including items that must be included, items that may be included, and items that must *not* be included. Much of the content is specified by cross-references to other rules. (See rule 8.124(b).) The rule also sets forth a procedure for including in an appendix a copy of a document or exhibit in the possession of another party and returning documents or exhibits that were sent nonelectronically when the remittitur issues. (See rule 8.124(c).)

In addition, the rule includes provisions regarding the form of an appendix, service and filing, the cost of an appendix, and sanctions for an inaccurate or noncomplying appendix. (See rule 8.124(d)–(g).) There are several detailed advisory committee comments explaining and clarifying various subdivisions of the rule.

### **Appellate division rules**

In 2008, the appellate rules for limited civil cases were expanded and renumbered as part of a large project to comprehensively review and update the rules for appellate division proceedings.<sup>1</sup> One of the goals of the project was to make the rules for limited civil appeals as consistent as practicable with the rules for unlimited civil appeals, both in organization and content. As the starting point and guide for the appellate division rules project, the committee used the recently amended and reorganized rules for the Court of Appeal and the Supreme Court. Another goal was to fill in gaps in the appellate division rules, but there is no indication that a rule for use of appendixes in the appellate division was considered as a part of that project, or at any other time.

### **The Proposal**

#### **New rule 8.845**

The proposed new rule would allow litigants in appeals of limited civil cases to elect to use an appendix in lieu of a clerk’s transcript as the record of documents in the trial court. This option is available to litigants in unlimited civil appeals; the proposal would fill a gap by providing the same option in the appellate division. A principal benefit of electing to use an appendix is saving the cost of paying the court to prepare and copy the clerk’s transcript. Thus, the proposal would promote access to justice by providing a way for litigants to reduce the cost of appeals in cases involving \$25,000 or less. It would also benefit the superior courts by reducing staff time in preparing the record.

The new rule is modeled on current rule 8.124, the rule for appendixes in unlimited civil appeals. Where that rule contains cross-references to other rules of court for unlimited civil appeals, the new rule cross-references the parallel rules for limited civil appeals, thus maintaining the same structure as the existing rule and consistency between the rules for the Court of Appeal and the appellate division.

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<sup>1</sup> See Judicial Council of Cal., Appellate Advisory Committee report, *Appellate Procedure: Rules and Forms for the Superior Court Appellate Divisions* (Dec. 21, 2007, date of report) (Feb. 22, 2008, date of council meeting) (Judicial Council of Cal. binder, Feb. 22, 2008, tab 7).

The only provision in the current rule that is not retained in the proposed new one is subdivision (b)(3)(C) of rule 8.124, which states that an appendix must not contain the record of an administrative proceeding and that any such administrative record must be transmitted to the reviewing court as specified in a separate rule (rule 8.123). The appellate division rules do not contain a rule regarding administrative records, and thus there is no rule for such a provision to cross-reference. The committee is interested in comments on whether the rules for limited civil appeals should include a rule regarding administrative records and whether the new rule on appendixes should address administrative records.

### **Amend rules 8.830, 8.840, and 8.843**

To implement the option of using an appendix in limited civil appeals and to maintain consistency with the rules for unlimited civil appeals, the committee proposes amending three existing rules. Rule 8.830 would be amended to add an appendix under rule 8.845 as a form of the record of written documents that must be included in the record on appeal. Rule 8.840, which governs completion and filing of the record, would be amended to add clarifying language and a provision on when the record is complete if the parties are using an appendix and a record of the oral proceedings. Finally, an appendix as a form of the record of written documents would be added to rule 8.843, which governs transmitting exhibits.

### **New form APP-111**

The committee proposes a new optional form—*Respondent’s Notice Electing to Use an Appendix (Limited Civil Case)* (form APP-111)—for respondents electing to use an appendix. The form’s content is based on the existing form for respondents in unlimited civil appeals, *Respondent’s Notice Electing to Use an Appendix (Unlimited Civil Case)* (form APP-011).

The election procedure for use of an appendix differs from all other appellate rules governing designation of the record on appeal. Under the other rules, the appellant designates, or the parties stipulate, to the form of the record. By contrast, under subdivision (a) of rule 8.124 (and subdivision (a) of proposed new rule 8.845), either party may elect to have the appeal proceed by way of an appendix. Unless the superior court orders otherwise, the respondent may serve and file a timely notice electing to use an appendix if the appellant does not have a waiver of the fee for a clerk’s transcript. New form APP-111 would provide instructions and information for respondents to assist them in making this election.

### **Revise forms APP-101-INFO and APP-103**

The committee proposes revisions to *Information on Appeal Procedures (Limited Civil Case)* (form APP-101-INFO), to include information on an appendix as another form of the record of the documents in the trial court. These proposed revisions are based on the parallel information sheet for litigants in unlimited civil appeals, *Information on Appeal Procedures (Unlimited Civil Case)* (form APP-001-INFO).

The proposed changes to *Appellant’s Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) add the option of choosing an appendix as the form of the documents filed in the trial court.

## **Alternatives Considered**

The committee considered not proposing a rule for the use of an appendix in limited civil cases, but decided to move forward with the proposal because there is no apparent reason for not allowing litigants this option. Litigants could save money in the record preparation process, and courts could save time if litigants opt to prepare appendixes rather than request clerks' transcripts.

The committee also considered the complexity of the current rule on use of an appendix in unlimited civil cases and examined whether a parallel rule for limited civil cases should contain all of the same provisions. With the exception of provisions for an administrative record, the committee concluded that all provisions in the current rule should be retained in the new one because the procedures would be similar and the same information and requirements would be helpful in the context of limited civil appeals. As noted above, the committee seeks comments on whether the new rule should include provisions regarding administrative records.

In addition, the committee considered additional revisions to the forms in both unlimited civil and limited civil appeals to provide more information regarding a respondent's option to elect to use an appendix as the record of the documents in the trial court. The committee decided against more revisions to the forms because this option is rarely used, and the committee has received no feedback that the current process for electing to use an appendix in unlimited civil appeals is confusing or otherwise not working well.

## **Fiscal and Operational Impacts**

The committee anticipates no significant fiscal or operational impacts from this proposal. Implementation requirements, such as training for court staff and any changes to case management systems, are expected to be minor. The committee believes that the benefits of the proposal, including savings of money for litigants and time for the courts, outweigh the implementation cost.

### **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?
- Should the proposed new rule specify that an appendix should not contain the record of an administrative proceeding (see current rule 8.124(b)(3)(C))? If so, should the rules for limited civil appeals include a rule on the record of administrative proceedings, similar to rule 8.123 for unlimited civil appeals?
- Should any provisions in the proposed new and amended rules or forms be changed or eliminated to better reflect appellate division practice and procedure?

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

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

### **Attachments and Links**

1. Cal. Rules of Court, rules 8.830, 8.840, 8.843, and 8.845, at pages 6–13
2. Forms APP-101-INFO, APP-103, and APP-111, at pages 14–31

Rule 8.845 of the California Rules of Court would be adopted, and rules 8.830, 8.840, and 8.843 would be amended, effective January 1, 2021, to read:

1 **Rule 8.830. Record on appeal**

2  
3 **(a) Normal record**

4  
5 Except as otherwise provided in this chapter, the record on an appeal to the  
6 appellate division in a civil case must contain the following, which constitute the  
7 normal record on appeal:

8  
9 (1) A record of the written documents from the trial court proceedings in the  
10 form of one of the following:

11  
12 (A) A clerk's transcript under rule 8.832;

13  
14 (B) An appendix under rule 8.845;

15  
16 ~~(B)(C)~~ If the court has a local rule for the appellate division electing to  
17 use this form of the record, the original trial court file under rule 8.833;  
18 or

19  
20 ~~(C)(D)~~ An agreed statement under rule 8.836.

21  
22 (2) \* \* \*

23  
24 **(b) \* \* \***

25  
26 **Advisory Committee Comment**

27  
28 **Subdivision (a).** The options of using the original trial court file instead of a clerk's transcript  
29 under (1)~~(B)(C)~~ or an electronic recording itself, rather than a transcript, under (2)(B) are  
30 available only if the court has local rules for the appellate division authorizing these options.

31  
32 **Rule 8.840. Completion and filing of the record**

33  
34 **(a) When the record is complete**

35  
36 (1) If the appellant elected under rule 8.831 or 8.834(b) to proceed without a  
37 record of the oral proceedings in the trial court and the parties are not  
38 proceeding by appendix under rule 8.845, the record is complete:

39  
40 (A) If a clerk's transcript will be used, when the clerk's transcript is  
41 certified under rule 8.832(d);

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(B) If the original trial court file will be used instead of the clerk’s transcript, when that original file is ready for transmission as provided under rule 8.833(b); or

(C) If an agreed statement will be used instead of the clerk’s transcript, when the appellant files the agreed statement under rule 8.836(b).

(2) If the parties are not proceeding by appendix under rule 8.845 and the appellant elected under rule 8.831 to proceed with a record of the oral proceedings in the trial court, the record is complete when the clerk’s transcript or other record of the documents from the trial court is complete as provided in (1) and:

(A) If the appellant elected to use a reporter’s transcript, when the certified reporter’s transcript is delivered to the court under rule 8.834(d);

(B) If the appellant elected to use a transcript prepared from an official electronic recording, when the transcript has been prepared under rule 8.835;

(C) If the parties stipulated to the use of an official electronic recording of the proceedings, when the electronic recording has been prepared under rule 8.835; or

(D) If the appellant elected to use a statement on appeal, when the statement on appeal has been certified by the trial court or a transcript or an official electronic recording has been prepared under rule 8.827(d)(6).

(3) If the parties are proceeding by appendix under rule 8.845 and the appellant elected under rule 8.831 to proceed with a record of the oral proceedings in the trial court, the record is complete when the record of the oral proceedings is complete as provided in (2)(A), (B), (C), or (D).

(b) \* \* \*

**Rule 8.843. Transmitting exhibits**

**(a) Notice of designation**

(1) If a party wants the appellate division to consider any original exhibits that were admitted in evidence, refused, or lodged but that were not copied in the

1 clerk's transcript under rule 8.832 or the appendix under rule 8.845 or  
2 included in the original file under rule 8.833, within 10 days after the last  
3 respondent's brief is filed or could be filed under rule 8.882 the party must  
4 serve and file a notice in the trial court designating such exhibits.

5  
6 (2) Within 10 days after a notice under (1) is served, any other party wanting the  
7 appellate division to consider additional exhibits must serve and file a notice  
8 in the trial court designating such exhibits.

9  
10 (3) A party filing a notice under (1) or (2) must serve a copy on the appellate  
11 division.

12  
13 (b)–(e) \* \* \*

14  
15 **Rule 8.845. Appendixes**

16  
17 **(a) Notice of election**

18  
19 (1) Unless the superior court orders otherwise on a motion served and filed  
20 within 10 days after the notice of election is served, this rule governs if:

21  
22 (A) The appellant elects to use an appendix under this rule in the notice  
23 designating the record on appeal under rule 8.831; or

24  
25 (B) The respondent serves and files a notice in the superior court electing to  
26 use an appendix under this rule within 10 days after the notice of appeal  
27 is filed, and no waiver of the fee for a clerk's transcript is granted to the  
28 appellant.

29  
30 (2) When a party files a notice electing to use an appendix under this rule, the  
31 superior court clerk must promptly send a copy of the register of actions, if  
32 any, to the attorney of record for each party and to any unrepresented party.

33  
34 (3) The parties may prepare separate appendixes or they may stipulate to a joint  
35 appendix.

36  
37 **(b) Contents of appendix**

38  
39 (1) A joint appendix or an appellant's appendix must contain:

40  
41 (A) All items required by rule 8.832(a)(1), showing the dates required by  
42 rule 8.832(a)(2);

- 1                   (B) Any item listed in rule 8.832(a)(3) that is necessary for proper  
2                   consideration of the issues, including, for an appellant’s appendix, any  
3                   item that the appellant should reasonably assume the respondent will  
4                   rely on;  
5  
6                   (C) The notice of election; and  
7  
8                   (D) For a joint appendix, the stipulation designating its contents.  
9  
10                  (2) An appendix may incorporate by reference all or part of the record on appeal  
11                  in another case pending in the reviewing court or in a prior appeal in the same  
12                  case.  
13  
14                  (A) The other appeal must be identified by its case name and number. If  
15                  only part of a record is being incorporated by reference, that part must  
16                  be identified by citation to the volume and page numbers of the record  
17                  where it appears and either the title of the document or documents or  
18                  the date of the oral proceedings to be incorporated. The parts of any  
19                  record incorporated by reference must be identified both in the body of  
20                  the appendix and in a separate section at the end of the index.  
21  
22                  (B) If the appendix incorporates by reference any such record, the cover of  
23                  the appendix must prominently display the notice “Record in case  
24                  number: \_\_\_\_\_ incorporated by reference,” identifying the number of the  
25                  case from which the record is incorporated.  
26  
27                  (C) On request of the reviewing court or any party, the designating party  
28                  must provide a copy of the materials incorporated by reference to the  
29                  court or another party or lend them for copying as provided in (c).  
30  
31                  (3) An appendix must not:  
32  
33                  (A) Contain documents or portions of documents filed in superior court that  
34                  are unnecessary for proper consideration of the issues.  
35  
36                  (B) Contain transcripts of oral proceedings that may be designated under  
37                  rule 8.834.  
38  
39                  (C) Incorporate any document by reference except as provided in (2).  
40  
41                  (4) All exhibits admitted in evidence, refused, or lodged are deemed part of the  
42                  record, whether or not the appendix contains copies of them.  
43



1           (5) A respondent’s appendix may contain any document that could have been  
2           included in the appellant’s appendix or a joint appendix.

3  
4           (6) An appellant’s reply appendix may contain any document that could have  
5           been included in the respondent’s appendix.

6  
7           **(c) Document or exhibit held by other party**

8  
9           If a party preparing an appendix wants it to contain a copy of a document or an  
10          exhibit in the possession of another party:

11  
12          (1) The party must first ask the party possessing the document or exhibit to  
13          provide a copy or lend it for copying. All parties should reasonably cooperate  
14          with such requests.

15  
16          (2) If the attempt under (1) is unsuccessful, the party may serve and file in the  
17          reviewing court a notice identifying the document or specifying the exhibit’s  
18          trial court designation and requesting the party possessing the document or  
19          exhibit to deliver it to the requesting party or, if the possessing party prefers,  
20          to the reviewing court. The possessing party must comply with the request  
21          within 10 days after the notice was served.

22  
23          (3) If the party possessing the document or exhibit sends it to the requesting  
24          party nonelectronically, that party must copy and return it to the possessing  
25          party within 10 days after receiving it.

26  
27          (4) If the party possessing the document or exhibit sends it to the reviewing  
28          court, that party must:

29  
30                  (A) Accompany the document or exhibit with a copy of the notice served  
31                  by the requesting party; and

32  
33                  (B) Immediately notify the requesting party that it has sent the document or  
34                  exhibit to the reviewing court.

35  
36          (5) On request, the reviewing court may return a document or an exhibit to the  
37          party that sent it nonelectronically. When the remittitur issues, the reviewing  
38          court must return all documents or exhibits to the party that sent them, if they  
39          were sent nonelectronically.

40  
41          **(d) Form of appendix**

1           (1) An appendix must comply with the requirements of rule 8.838 for a clerk’s  
2           transcript.

3  
4           (2) In addition to the information required on the cover of a brief by rule  
5           8.883(c)(8), the cover of an appendix must prominently display the title  
6           “Joint Appendix” or “Appellant’s Appendix” or “Respondent’s Appendix” or  
7           “Appellant’s Reply Appendix.”

8  
9           (3) An appendix must not be bound or transmitted electronically as one  
10          document with a brief.

11  
12   **(e) Service and filing**

13  
14          (1) A party preparing an appendix must:

15  
16                (A) Serve the appendix on each party, unless otherwise agreed by the  
17                parties or ordered by the reviewing court; and

18  
19                (B) File the appendix in the reviewing court.

20  
21          (2) A joint appendix or an appellant’s appendix must be served and filed with the  
22          appellant’s opening brief.

23  
24          (3) A respondent’s appendix, if any, must be served and filed with the  
25          respondent’s brief.

26  
27          (4) An appellant’s reply appendix, if any, must be served and filed with the  
28          appellant’s reply brief.

29  
30   **(f) Cost of appendix**

31  
32          (1) Each party must pay for its own appendix.

33  
34          (2) The cost of a joint appendix must be paid:

35  
36                (A) By the appellant;

37  
38                (B) If there is more than one appellant, by the appellants equally; or

39  
40                (C) As the parties may agree.

41  
42   **(g) Inaccurate or noncomplying appendix**

43

1 Filing an appendix constitutes a representation that the appendix consists of  
2 accurate copies of documents in the superior court file. The reviewing court may  
3 impose monetary or other sanctions for filing an appendix that contains inaccurate  
4 copies or otherwise violates this rule.

5  
6 **Advisory Committee Comment**

7  
8 **Subdivision (a).** Under this provision, either party may elect to have the appeal proceed by way  
9 of an appendix. If the appellant’s fees for a clerk’s transcript are not waived and the respondent  
10 timely elects to use an appendix, that election will govern unless the superior court orders  
11 otherwise. This election procedure differs from all other appellate rules governing designation of  
12 a record on appeal. In those rules, the appellant’s designation, or the stipulation of the parties,  
13 determines the type of record on appeal. Before making this election, respondents should check  
14 whether the appellant has been granted a fee waiver that is still in effect. If the trial court has  
15 granted the appellant a fee waiver for the clerk’s transcript, or grants such a waiver after the  
16 notice of appeal is filed, the respondent cannot elect to proceed by way of an appendix.

17  
18 Subdivision (a)(2) is intended to assist appellate counsel in preparing an appendix by providing  
19 them with the list of pleadings and other filings found in the register of actions or “docket sheet”  
20 in those counties that maintain such registers. (See Gov. Code, § 69845.) The provision is derived  
21 from rule 10-1 of the United States Circuit Rules (9th Cir.).

22  
23 **Subdivision (b).** Under subdivision (b)(1)(A), a joint appendix or an appellant’s appendix must  
24 contain any register of actions that the clerk sent to the parties under subdivision (a)(2). This  
25 provision is intended to assist the reviewing court in determining the accuracy of the appendix.  
26 The provision is derived from rule 30-1.3(a)(ii) of the United States Circuit Rules (9th Cir.).

27  
28 In support of or opposition to pleadings or motions, the parties may have filed a number of  
29 lengthy documents in the proceedings in superior court, including, for example, declarations,  
30 memorandums, trial briefs, documentary exhibits (e.g., insurance policies, contracts, deeds), and  
31 photocopies of judicial opinions or other publications. Subdivision (b)(3)(A) prohibits the  
32 inclusion of such documents in an appendix when they are not necessary for proper consideration  
33 of the issues raised in the appeal. Even if a document is otherwise includable in an appendix, the  
34 rule prohibits the inclusion of any substantial *portion* of the document that is not necessary for  
35 proper consideration of the issues raised in the appeal. The prohibition is intended to simplify and  
36 therefore expedite the preparation of the appendix, to reduce its cost to the parties, and to relieve  
37 the courts of the burden of reviewing a record containing redundant, irrelevant, or immaterial  
38 documents. The provision is adapted from rule 30-1.4 of the United States Circuit Rules (9th  
39 Cir.).

40  
41 Subdivision (b)(3)(B) prohibits the inclusion in an appendix of transcripts of oral proceedings that  
42 may be made part of a reporter’s transcript. (Compare rule 8.834(c)(4) [the reporter must not  
43 copy into the reporter’s transcript any document includable in the clerk’s transcript under rule

1 8.832].) The prohibition is intended to prevent a party filing an appendix from evading the  
2 requirements and safeguards imposed by rule 8.834 on the process of designating and preparing a  
3 reporter’s transcript. In addition, if an appellant were to include in its appendix a transcript of less  
4 than all the proceedings, the respondent would not learn of any need to designate additional  
5 proceedings (under rule 8.834(a)(3)) until the appellant had served its appendix with its brief,  
6 when it would be too late to designate them. Note also that a party may file a certified transcript  
7 of designated proceedings instead of a deposit for the reporter’s fee (Cal. Rules of Court, rule  
8 8.834(b)(2)(D).

9  
10 **Subdivision (d).** In current practice, served copies of filed documents often bear no clerk’s date  
11 stamp and are not conformed by the parties serving them. Consistent with this practice,  
12 subdivision (d) does not require such documents to be conformed. The provision thereby relieves  
13 the parties of the burden of obtaining conformed copies at the cost of considerable time and  
14 expense, and expedites the preparation of the appendix and the processing of the appeal. It is to  
15 be noted, however, that under subdivision (b)(1)(A) each document necessary to determine the  
16 timeliness of the appeal must show the date required under rule 8.822 or 8.823. Note also that  
17 subdivision (g) of rule 8.845 provides that a party filing an appendix represents under penalty of  
18 sanctions that its copies of documents are accurate.

19  
20 **Subdivision (e).** Subdivision (e)(2) requires a joint appendix to be filed with the appellant’s  
21 opening brief. The provision is intended to improve the briefing process by enabling the  
22 appellant’s opening brief to include citations to the record. To provide for the case in which a  
23 respondent concludes in light of the appellant’s opening brief that the joint appendix should have  
24 included additional documents, subdivision (b)(5) permits such a respondent to present in an  
25 appendix filed with its respondent’s brief (see subd. (e)(3)) any document that could have been  
26 included in the joint appendix.

27  
28 Under subdivision (e)(2)–(4), an appendix is required to be filed “with” the associated brief. This  
29 provision is intended to clarify that an extension of a briefing period ipso facto extends the filing  
30 period of an appendix associated with the brief.

31  
32 **Subdivision (g).** Under subdivision (g), sanctions do not depend on the degree of culpability of  
33 the filing party—i.e., on whether the party’s conduct was willful or negligent—but on the nature  
34 of the inaccuracies and the importance of the documents they affect.

**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](http://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](http://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](http://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](http://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](http://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](http://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](http://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](http://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](http://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](http://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](http://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](http://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 your 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](http://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. (See rule 8.836 of the California Rules of Court.)

**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](http://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](http://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](http://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 or an appendix
- The original trial court file or
- An agreed statement

Read below for more information about these options.

### (1) Clerk’s transcript or appendix

**Description:** A clerk’s transcript is a record of the documents filed in the trial court prepared by the clerk of the trial court. An appendix is a record of these documents prepared by a party. (See rule 8.845 of the California Rules of 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 or appendix. These documents are listed in rule 8.832(a) and rule 8.845(b) of the California Rules of Court and in *Appellant’s Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103).

**Clerk’s transcript:** 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](http://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.

**Appendix:** If you choose to prepare an appendix of the documents filed in the superior court, rather than designating a clerk's transcript, that appendix must include all of the documents and be prepared in the form required by rule 8.845 of the California Rules of Court. The parties may prepare separate appendixes or stipulate (agree) to a joint appendix. If separate appendixes are prepared, each party must pay for its own appendix. If a joint appendix is prepared, the

parties can agree on how the cost of preparing the appendix will be paid or the appellant will pay the cost.

The party preparing the appendix must serve the appendix on each other party (unless the parties have agreed or the appellate division has ordered otherwise) and file the appendix in the appellate division. The appellant's appendix or a joint appendix must be served and filed with the appellant's opening brief. See **15** for information about the brief.

## (2) Trial court file

**When available:** If the court 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](http://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](http://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.
- Note: If a party chooses to prepare an appendix of the documents filed in the trial court instead of designating a clerk's transcript, the appellant's appendix or a joint appendix must be served and filed with the appellant's opening brief.

You can get more information about how to serve court papers and proof of service from *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](http://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](http://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](http://www.courts.ca.gov/selfhelp-lowcosthelp.htm).

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

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

#### 23 Is there a deadline to file a cross-appeal?

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

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

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

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

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

##### (a) Reporter’s transcript

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

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



about this deposit and the permissible substitutes, such as a waiver of this deposit signed by the court reporter.)

Unlike the fee for preparing a clerk's transcript, the court cannot waive the fee for preparing a reporter's transcript. A special fund, called the Transcript Reimbursement Fund, may be able to help pay for the transcript. You can get information about this fund at [www.courtreportersboard.ca.gov/consumers/index.shtml#trf](http://www.courtreportersboard.ca.gov/consumers/index.shtml#trf). The reporter will not prepare a copy of the reporter's transcript for you unless you deposit the cost of the transcript, or 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 **the appellant** 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](http://www.courts.ca.gov/selfhelp-serving.htm).

### (d) Clerk's transcript or appendix

**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. You may use *Respondent's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-110) for this purpose.

Whether or not you ask for additional documents to be included in the clerk's transcript, you must pay a fee if you want a copy of the clerk's

transcript. The trial court clerk will send you a notice indicating the cost for a copy of the clerk's transcript. If you want a copy, you must deposit this amount with the court within 10 days after the clerk's notice was sent.

If you cannot afford to pay this cost, you can ask the court to waive it. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). The court will review this application and determine if you are eligible for a fee waiver. The clerk will not prepare a copy of the clerk's transcript for you unless you deposit payment for the cost or obtain a fee waiver.

**Appendix:** If the appellant is using an appendix, and you and the appellant have not agreed to a joint appendix, you may prepare a separate respondent's appendix. See pages 8-9 for more information about preparing an appendix.

## 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](http://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](http://www.courts.ca.gov/selfhelp-serving.htm).

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

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

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

**26 What happens after all the briefs have been filed?**

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

“Oral argument” is the parties’ chance to explain their arguments to appellate division judges in person. You do not have to participate in oral argument if you do not want to; you can notify the appellate division that you want to “waive” oral argument. If all parties waive oral argument, the judges will decide the appeal based on the briefs and the record that were submitted. But if one party waives oral argument and another party or parties 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 the appeal or ask the judges if they have any questions you could answer.

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

**Appellant's Notice Designating  
Record on Appeal  
(Limited Civil Case)**

Clerk stamps date here when form is filed.

**DRAFT****01-24-20****Not approved by  
the Judicial Council****Instructions**

- This form is only for choosing (“designating”) the record on 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](http://www.courts.ca.gov/forms).
- This form can be attached to your notice of appeal. If it is not attached to your notice of appeal, you must serve and file this form within 10 days after you file your notice of appeal. **If you do not file this form on time, the court may dismiss your appeal.**
- 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 on the California Courts Online Self-Help Center site at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).
- Take or mail the original completed form and proof of service on the other parties to the clerk’s office for the same court that issued the judgment or order you are appealing. 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:**

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

**Appellate Division Case Number:****1 Your Information**

- a. Name of Appellant (the party who is filing this appeal):

Name: \_\_\_\_\_

- b. Appellant’s contact information (
- skip this if the appellant has a lawyer for this appeal*
- ):

Street address: \_\_\_\_\_  
Street City State ZipMailing address (*if different*): \_\_\_\_\_  
Street City State Zip

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

- c. Appellant’s lawyer (
- skip this if the appellant does not have a lawyer for this appeal*
- ):

Name: \_\_\_\_\_ State Bar number: \_\_\_\_\_

Street address: \_\_\_\_\_  
Street City State ZipMailing address (*if different*): \_\_\_\_\_  
Street City State Zip

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

Fax: \_\_\_\_\_



Trial Court Case Name: \_\_\_\_\_

### Information About Your Appeal

② On (fill in the date): \_\_\_\_\_ I/my client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.

### Record of Oral Proceedings in the Trial Court

*You do not have to provide the appellate division with a record of what was said in the trial court (this is called 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, you will need to provide the appellate division with 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, you will need to provide a record of the oral proceedings.*

③ I elect (choose)/My client elects to proceed (check a or b):

a.  WITHOUT a record of the oral proceedings in the trial court (skip item ④; go to item ⑤). I understand that if I elect to proceed without providing a record of the oral proceedings, the appellate division will not be able to review any issues I might want to raise about what was said in the trial court during those proceedings or any claim that there was not evidence to support the judgment, order, or decision I am appealing.  
(Write initials here): \_\_\_\_\_

b.  WITH a record of the oral proceedings in the trial court (complete item ④ below). I understand that if I elect (choose) to proceed WITH a record of the oral proceedings in the trial court, I have to choose the record I want to use and take the actions described below to make sure this record is provided to the appellate division. I understand that if I do not take the actions described below and the appellate division does not receive this record, I am not likely to succeed in my appeal. (Write initials here): \_\_\_\_\_

④ I want to use the following record of what was said in the trial court proceedings in my case (check and complete only one of the following below—a, b, c, d, or e):

a.  **Reporter’s Transcript.** This option is available only if there was a court reporter in the trial court who made a record of what was said in court. Check with the trial court to see if there was a court reporter in your case before choosing this option. Complete (1) and (2).

(1) **Designation of proceedings to be included in reporter’s transcript.** I request that the following proceedings in the trial court be included in the reporter’s transcript. (You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings [for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions], the name of the court reporter who recorded the proceedings, and whether a certified transcript of the designated proceeding was previously prepared.)

Date	Department	Description	Reporter’s Name	Prev. prepared?
(a)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(b)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(c)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(d)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(e)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(f)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(g)				<input type="checkbox"/> Yes <input type="checkbox"/> No

Check here if you need to list other proceedings and attach a separate page or pages listing those proceedings. At the top of each page, write “APP-103, item 4a.”



Trial Court Case Name: \_\_\_\_\_

4 a. (continued)

(2) The proceedings designated in (1)  include  do not include all of the testimony in the trial court. If the designated proceedings DO NOT include all of the testimony, state the points that you intend to raise on appeal. (Rule 8.834(a)(2) provides that your appeal will be limited to these points unless, on a motion, the appellate division permits otherwise.)

\_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to list other points and attach a separate page or pages listing those points. At the top of each page, write "APP-103, item 4a(2)."

(3)  **Certified transcripts.** I have attached to this Appellant's Notice Designating Record on Appeal an original certified transcript of *all the proceedings I have designated* in (1). The transcript complies with the format requirements in rule 8.144 of the California Rules of Court. Under rule 8.834, no payment is due for this transcript (skip the rest of 4 and go to 5).

(4) **Payment for reporter's transcript.**

(a)  I will pay for the reporter's transcript I have designated in (1). Within 10 days of getting the reporter's estimate of the cost of the transcript, I will:

Deposit an amount equal to the estimated cost of the transcript with the trial court, and a fee of \$50 for the superior court to hold this deposit in trust. I understand that if I do not comply with this requirement, my appeal may be dismissed.

File with the trial court a copy of the written waiver of deposit signed by the reporter. I understand that if I do not comply with this, my appeal may be dismissed.

(b)  I am unable to afford the cost of the reporter's transcript I have designated in (1) and am therefore applying to the Transcript Reimbursement Fund to pay for this transcript. Within 10 days of receipt of the court reporter's estimate of the costs for this transcript, I will file with the trial court a copy of my application to the Court Reporters Board for payment or reimbursement from the Transcript Reimbursement Fund.

(5) **Format of reporter's transcript.** I request that the reporter provide my copy of the transcript in:

(a)  Paper format only.

(b)  Electronic format only.

(c)  Both paper and electronic format.

**OR**

b.  **Transcript From Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. Identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings, and if you know it, the name of the electronic recording monitor who recorded the proceedings:*

Date	Department	Description	Electronic Monitor's Name
(a)			
(b)			
(c)			

Check here if you need more space to describe any proceeding or to list more proceedings and attach a separate page describing or listing those proceedings. At the top of each page, write "APP-103, item 4b."



Trial Court Case Name: \_\_\_\_\_

4 b. (continued)

*Check and complete (1) or (2).*

- (1)  I will pay the trial court clerk for this transcript myself. I understand that if I do not pay for the transcript, my appeal may be dismissed.
- (a)  With this notice designating the record on appeal, I have deposited with the trial court clerk the approximate cost of transcribing the proceedings I designated above, calculated as provided in rule 8.130(b)(1)(B).
- (b)  Within 10 days of receipt of the clerk's estimate of the cost of the transcript, I will deposit that amount with the trial court clerk.
- (2)  I am asking that the transcript be provided at no cost to me because I cannot afford to pay this cost. I have attached (*check (a) or (b) and attach the appropriate document*):
- (a)  An order granting a waiver of the cost under rules 3.50–3.58 and 8.818(d).
- (b)  An application for a waiver of court fees and costs under rules 3.50–3.58 and 8.818(d). (*Use Request to Waive Court Fees (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.*)

**OR**

- c.  **Copy of Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court, the court has a local rule for the appellate division permitting the use of the official electronic recording itself as the record of the proceedings, and all of the parties have agreed (stipulated) that they want to use the recording itself as the record of what was said in the case. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. You must attach a copy of your agreement (stipulation) with the other parties to this notice. Check and complete (1) or (2).*
- (1)  I will pay the trial court clerk for this copy of the recording myself when I receive the clerk's estimate of the cost of this copy. I understand that if I do not pay for this copy of the recording, it will not be prepared and provided to the appellate division.
- (2)  I am asking that a copy of the recording be provided at no cost to me because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record (*check (a) or (b) and submit the appropriate document*):
- (a)  An order granting a waiver of the cost under rules 3.50–3.58 and 8.818(d).
- (b)  An application for a waiver of court fees and costs under rules 3.50–3.58 and 8.818(d). (*Use Request to Waive Court Fees (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.*)

**OR**

- d.  **Agreed Statement.** *An agreed statement is a summary of the trial court proceedings agreed to by the parties. See form APP-101-INFO for information about preparing an agreed statement. Check (1) or (2).*
- (1)  I have attached an agreed statement to this notice.
- (2)  All the parties have agreed in writing (stipulated) to try to agree on a statement (*you must attach a copy of this agreement (stipulation) to this notice*). I understand that, within 30 days after I file this notice, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal, and if I do not, the court may dismiss my appeal.



④ (continued)

OR

- e.  **Statement on Appeal.** *A statement on appeal is a summary of the trial court proceedings approved by the trial court. See form APP-101-INFO for information about preparing a proposed statement. Check (1) or (2).*
- (1)  I have attached my proposed statement on appeal to this notice. *(If you are not represented by a lawyer in this appeal, you must use Proposed Statement on Appeal (Limited Civil Case) (form APP-104) to prepare and file this proposed statement. You can get a copy of form APP-104 at any courthouse or county law library or online at [www.courts.ca.gov/forms.htm](http://www.courts.ca.gov/forms.htm).)*
- (2)  I have NOT attached my proposed statement on appeal to this notice. I understand that I must serve and file this proposed statement in the trial court within 20 days of the date I file this notice and that if I do not file the proposed statement on time, the court may dismiss my appeal.

**Record of the Documents Filed in the Trial Court**

- ⑤ I elect (choose)/My client elects to use the following record of the documents filed in the trial court (*check a, b, or c and fill in any required information*):
- a.  **Clerk's Transcript.** *(Fill out (1)–(4).) Note that, if the appellate division has adopted a local rule permitting this, the clerk may prepare and send the original court file to the appellate division instead of a clerk's transcript.*
- (1) **Required documents.** *The clerk will automatically include the following items in the clerk's transcript, but you must provide the date each document was filed or, if that is not available, the date the document was signed.*

Document Title and Description	Date of Filing
(a) Notice of appeal	
(b) Notice designating record on appeal (this document)	
(c) Judgment or order appealed from	
(d) Notice of entry of judgment (if any)	
(e) Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order (if any)	
(f) Ruling on any item included under (e)	
(g) Register of actions or docket	





**5** a. (continued)

(2) **Additional documents.** *If you want any documents in addition to the required documents listed in (1) above to be included in the clerk’s transcript, you must identify those documents here.*

I request that the clerk include in the transcript the following documents that were filed in the trial court. *(Identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed.)*

Document Title and Description	Date of Filing
(a)	
(b)	
(c)	
(d)	
(e)	

*Check here if you need to list other documents and attach a separate page or pages listing those documents. At the top of each page, write “APP-103, item 5a(2).”*

(3) **Exhibits.**

I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the trial court. *(For each exhibit, give the exhibit number (such as Plaintiff’s #1 or Defendant’s A) and a brief description of the exhibit, and indicate whether or not the court admitted the exhibit into evidence. If the trial court has returned a designated exhibit to a party, the party who has that exhibit must deliver it to the trial court clerk as soon as possible.)*

Exhibit Number	Description	Admitted Into Evidence	
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No

*Check here if you need to list other exhibits and attach a separate page or pages listing those exhibits. At the top of each page, write “APP-103, item 5a(3).”*



5 a. (continued)

(4) **Payment for clerk’s transcript.** *(Check a or b.)*

- (a)  I will pay the trial court clerk for this transcript myself when I receive the clerk’s estimate of the costs of the transcript. I understand that if I do not pay for the transcript, it will not be prepared and provided to the appellate division.
- (b)  I am asking that the clerk’s transcript be provided at no cost to me because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record *(check (i) or (ii) and submit the checked document)*:
  - (i)  An order granting a waiver of the cost under rules 3.50–3.58 and 8.818(d).
  - (ii)  An application for a waiver of court fees and costs under rules 3.50–3.58 and 8.818(d). *(Use Request to Waive Court Fees (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.)*

**OR**

b.  **An appendix under rule 8.845.**

**OR**

c.  **Agreed statement.** *(This option is only available if you have chosen to use an agreed statement as the record of the oral proceedings under item 4 above and you attach to your agreed statement copies of all the documents that are required to be included in the clerk’s transcript. These documents are listed in 5a(1) above and in rule 8.832 of the California Rules of Court.)*

Date: \_\_\_\_\_

\_\_\_\_\_  
*Type or print your name*

▶ \_\_\_\_\_  
*Signature of appellant or attorney*

**Respondent's Notice Electing to Use an Appendix (Limited Civil Case)**

Clerk stamps date here when form is filed.

**DRAFT****01-28-2020****Not approved by the Judicial Council****Instructions**

- This form is only for choosing (“electing”) to use an appendix as the record of the documents filed in the trial court on 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](http://www.courts.ca.gov/forms).
- You must serve and file this form **no later than 10 days** after the notice of appeal is filed.
- 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) or on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).
- Take or mail the original completed form and proof of service on the other parties to the clerk’s office for the same court that issued the judgment or order that is being appealed. 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:**

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

**Appellate Division Case Number:****1 Your Information**

- a. Name of respondent (the party who is responding to an appeal filed by another party):

Name: \_\_\_\_\_

- b. Respondent’s contact information (*skip this if the respondent has a lawyer for this appeal*):

Street address: \_\_\_\_\_  
Street City State ZipMailing address (*if different*): \_\_\_\_\_  
Street City State Zip

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

- c. Respondent’s lawyer (*skip this if the respondent does not have a lawyer for this appeal*):

Name: \_\_\_\_\_ State Bar number: \_\_\_\_\_

Street address: \_\_\_\_\_  
Street City State ZipMailing address (*if different*): \_\_\_\_\_  
Street City State Zip

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

Fax: \_\_\_\_\_



Trial Court Case Number: \_\_\_\_\_

Trial Court Case Name: \_\_\_\_\_

**Information About the Appeal**

- ② On *(fill in the date)*: \_\_\_\_\_ another party filed a notice of appeal in the trial court case identified in the box on page 1 of this form.
- ③ On *(fill in the date)*: \_\_\_\_\_ the appellant filed an appellant’s notice designating the record on appeal.

**Record of the Documents Filed in the Trial Court**

- ④ The appellant has not been granted a waiver of the fees for a clerk’s transcript. I elect under rule 8.845(a) to use an appendix instead of a clerk’s transcript under rule 8.832 as the record of the documents filed in the trial court.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Type or print your name*

\_\_\_\_\_  
*Signature of respondent or attorney*





## JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688  
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# MEMORANDUM

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**Date**

February 27, 2020

**Action Requested**

Please read before March 5 meeting

**To**

Members of the Appellate Advisory  
Committee  
Hon. Louis R. Mauro, Chair

**Deadline**

March 5, 2020

**From**

Rules Subcommittee  
Hon. Louis R. Mauro, Chair

**Contact**

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

**Subject**

Method of notice to the court reporter

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### Introduction

Item 11 on the Appellate Advisory Committee's annual agenda this year is to consider whether to recommend amending California Rules of Court,<sup>1</sup> rules 8.405, 8.450, and 8.454, to remove or modify the requirement that the clerk notify the court reporter "by telephone and in writing" to prepare a transcript in juvenile appeals and writs. This is a priority 2(b) project with a proposed January 1, 2021 completion date. At its February 3, 2020 meeting, the Rules subcommittee reviewed the draft amended rules.

The subcommittee recommends that the committee move forward with circulating for public comment proposed amended rules 8.405, 8.450, and 8.454 that would remove the requirement that court clerks notify court reporters "by telephone and in writing" to prepare a reporter's transcript to make them more consistent with other appellate rules governing notice to court reporters. This memorandum discusses the proposed amendments as well as alternatives that the subcommittee considered. Attached for the committee's review is a draft invitation to comment addressing the amended rules.

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<sup>1</sup> All further references to "rule" or "rules" are to the California Rules of Court.

## Background

Rules 8.400 through 8.474 of the appellate rules govern juvenile appeals and writs.<sup>2</sup> Rule 8.405(b)(1) provides that when a notice of appeal is filed in a juvenile case, the superior court clerk “must immediately . . . [n]otify the reporter *by telephone and in writing* to prepare a reporter’s transcript and deliver it to the clerk within 20 days after the notice of appeal is filed.” (Italics added.)<sup>3</sup> Rules 8.450 and 8.454 address the filing of a notice of intent to file a writ petition to review orders under Welfare and Institutions Code sections 366.26 and 366.28, respectively.<sup>4</sup> Subdivision (h)(1) of each of these rules requires that:

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 deliver the transcript to the clerk within 12 calendar days after the notice of intent is filed.

(Italics added.) No other appellate rule requires a court clerk to notify a court reporter “by telephone and in writing” to prepare a transcript. Some appellate rules do require that the reviewing court clerk “make a reasonable effort to notify the clerk of the respondent court by telephone or e-mail” of an urgent situation such as an appellate decision to grant a writ or issue an order staying or prohibiting a proceeding to occur in the lower court within a short timeframe.<sup>5</sup> Other appellate rules require the clerk to notify the parties “by telephone or another expeditious method” of events that would seem to require immediate attention, such as shortening the time for oral argument.<sup>6</sup> However, none of these rules require immediate telephonic and written notification for court reporters simply because an appeal or writ is filed.

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<sup>2</sup> Rule 5.585 of the juvenile rules specifies that “[t]he rules in title 8, chapter 5 [i.e., rules 8.400–8.474 governing juvenile appeals and writs] govern appellate review of judgments and orders in cases under Welfare and Institutions Code section 300, 601, or 602.” Rule 8.400 also specifies the types of proceedings to which the juvenile appellate rules apply.

<sup>3</sup> Under rule 8.409(c), the reporter typically has 20 days from the date the notice of appeal is filed to prepare the transcript. Rule 8.407(c)(7) and 8.411(c)(1)(C) require that the clerk “must immediately” notify the reporter if additions to the reporter’s transcript are required or the appeal is abandoned before the reporter has filed the transcript.

<sup>4</sup> Welfare and Institutions Code section 366.26 governs hearings terminating parental rights or establishing guardianship of children adjudged dependent children of court, and section 366.28 governs the appeal of decisions involving placement or removal orders following the termination of parental rights.

<sup>5</sup> See, e.g., rules 8.452(h)(3) (requiring appellate court clerk to make “reasonable effort to notify the clerk of the respondent court by telephone or e-mail” if a writ under Welfare and Institutions Code section 366.26 staying or prohibiting a proceeding to occur within seven days or requiring action within seven days is granted); 8.456(h)(3) (same for writ or order under juvenile writ under Welfare and Institutions Code section 366.28); 8.489(b)(1) (same for writ or order in Supreme Court and Court of Appeal); 8.975(b)(1) (same for small claims writ in appellate division).

<sup>6</sup> See, e.g., rules 8.256(b) (requiring appellate clerk to “immediately notify the parties by telephone or other expeditious method” if notice period for oral argument in court of appeal is shortened); 8.392(b)(5) (same if court of appeal requires an answer to a request for certificate of appealability to review superior court decision denying relief on successive habeas corpus petition in death penalty-related proceeding); 8.524(c) (same if notice period for oral argument in Supreme Court is shortened); 8.702(g) (same if notice period for oral argument in CEQA appeals is

Instead, the rules addressing the notice that a court clerk must give to court reporters in other types of appeals use more general language, and generally require court clerks to promptly or immediately send notice of an appeal to court reporters, *without specifying the method of notification*. For example:

- Rule 8.130(d)(2), governing the superior court clerk’s duties with respect to the reporter’s transcript in **civil appeals**, provides that: “The clerk must *promptly send the reporter notice* of the designation [of the reporter’s transcript] and of the deposit or substitute and notice to prepare the transcript, showing the date the notice was sent to the reporter” when the clerk receives specified items.<sup>7</sup>
- Rule 8.304(c)(1), governing **criminal appeals**, provides that: “When a notice of appeal is filed, the superior court clerk must *promptly send a notification* of the filing . . . to each court reporter, and to any primary reporter or reporting supervisor.”<sup>8</sup>
- Rule 8.392(c)(1), governing **appeals from superior court decisions in death penalty-related habeas corpus proceedings**, provides that in most cases, “when a notice of appeal is filed, the superior court clerk must *promptly--and no later than five days after the notice of appeal is filed--send a notification* of the filing to . . . (G) Each court reporter; and (H) Any primary reporter or reporting supervisor.”
- Rule 8.482(c)(1), governing **appeals from an order authorizing a conservator to consent to sterilization of a conservatee**, requires that after entering judgment, the superior court clerk “must *immediately . . . notify* the reporter to prepare a reporter’s transcript . . .”
- Rule 8.613, governing the **record of preliminary proceedings in automatic death penalty appeals**, contains the following requirements relating to court reporter notification:

(d) Notice to prepare transcript and lists

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shortened); 8.716 (same if notice period for oral argument in appeal of decision to compel arbitration is shortened); 8.885(c)(1) (same if notice period for oral argument in misdemeanor appeal is shortened); 8.889(b)(2) (same if court decides to require answer to request for rehearing in misdemeanor appeal); 8.929(c)(1) (same if notice period for oral argument in infraction appeal is shortened).

<sup>7</sup> The advisory committee comment to subdivision (d)(2) explains that the requirement that the clerk’s notice to the reporter show the date on which the clerk sent the notice is intended to establish the date when the period for preparing the reporter’s transcript begins to run. Additionally, under rule 8.130(d)(5), the clerk must also “promptly notify the reporter if a check for a deposit is dishonored or an appeal is abandoned or is dismissed before the reporter has filed the transcript.”

<sup>8</sup> See also rule 8.316(c)(3) (clerk “must immediately notify the reporter” if the appeal is abandoned before the reporter has filed the transcript); 8.324(d)(3) (clerk “must immediately notify the reporter if additions to the reporter’s transcript are required . . .”); 8.336(d)(1) (reporter must begin preparing the reporter’s transcript immediately on being notified by the clerk under rule 8.304(c)(1).)

*Within five days* after receiving notice under (b)(1) or notifying the judge under (b)(2), the clerk must do the following:

(1) *Notify* each reporter who reported a preliminary proceeding to prepare a transcript of the proceeding. If there is more than one reporter, the designated judge may assign a reporter or another designee to perform the functions of the primary reporter.

...

(i) Transcript delivered in electronic form

(1) When the record of the preliminary proceedings is certified as complete and accurate, the clerk must *promptly notify* the reporter to prepare five copies of the transcript in electronic form and two additional copies in electronic form for each codefendant against whom the death penalty is sought.<sup>9</sup>

- Rule 8.616(a)(1), governing the **trial record in automatic death penalty appeals**, provides that the clerk “*must promptly--and no later than five days after the judgment of death is rendered*” *notify* the reporter to prepare the reporter’s transcript;<sup>10</sup>
- Rule 8.834(b)(4) governing the reporter’s transcript in **limited civil appeals** to the appellate division of the superior court, provides that “[t]he clerk must *promptly notify* the reporter to prepare the transcript when the court receives” the deposit or substitute for the cost. Likewise, subdivision (a)(4) of this rule requires that the clerk “*must promptly send* a copy of each notice [designating a reporter’s transcript] to the reporter” showing the date it was sent.
- Rules 8.864(a)(1) and 8.915(a)(1) governing the record of oral proceedings in **misdemeanor and infraction appeals**, both provide that: “If the appellant elects to use a reporter’s transcript, the clerk must *promptly send* a copy of appellant’s notice making this election and the notice of appeal to each court reporter.”<sup>11</sup>

(Italics added.)

The rules governing writ proceedings in the Supreme Court and Court of Appeal (rules 8.116 (supersedeas), 8.380 and 8.384 (habeas corpus) and 8.485–8.493 (mandate, certiorari and

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<sup>9</sup> See also rule 8.613(l) (“After the clerk has notified the court reporter to prepare the pretrial record, if the death penalty is no longer sought, the clerk must *promptly notify* the reporter that this rule does not apply.”).

<sup>10</sup> Rule 8.619(d)(1) further provides that when the record in a death penalty appeal is certified for completeness, “the clerk must promptly notify the reporter to prepare five copies of the transcript in electronic form and two additional copies in electronic form for each codefendant sentenced to death.” And when the record is certified for accuracy, rule 8.622(c)(1) requires the clerk to “promptly notify the reporter to prepare six copies of the reporter’s transcript in electronic form and two additional copies in electronic form for each codefendant sentenced to death.”

<sup>11</sup> Also governing misdemeanor appeals, rule 8.866(a)(2)(E) provides that the “clerk must promptly notify the reporter to begin preparing the transcript when it receives a deposit, waiver, or order that the appellant receive the transcript without cost.” Moreover, under rules 8.855(c)(3), 8.867(e)(6), and 8.904(c)(3), the “clerk must immediately notify the reporter” if an appeal is abandoned before the reporter has filed the transcript or additions to the reporter’s transcript are required.



prohibition) and in the superior court appellate division (rules 8.824 (supersedeas) and 8.930–8.936 (mandate, certiorari and prohibition) do not contain any additional requirement that the reviewing court clerk notify the court reporter that a writ has been filed.

### **Draft Amendments to Rules 8.405(b)(1)(B), 8.450(h)(1), 8.454(h)(1)**

In 2016, Tricia Penrose, Director of Juvenile Operations for the Los Angeles Superior Court (Region 4), originally suggested removing the requirement that court reporters in juvenile appeals be notified “by telephone and in writing,” presumably in response to other amendments around that time that substituted the word “send” for “mail” (and variations of those words) throughout the appellate rules to account for electronic transmission. However, there is no indication that those prior amendments were also intended to remove reference to telephonic or written notification. Nevertheless, the subcommittee believes that, because the requirement for immediate telephonic and written notice appears to be an anomaly, it is advisable to amend rules 8.405, 8.450, and 8.454 to more closely align them with other appellate rules and provide greater flexibility for clerks by removing the phrase “by telephone and in writing” from each of them.

The attached invitation to comment includes draft amendments to rules 8.405(b)(1)(B), 8.450(h)(1), and 8.454(h)(1) to make the notice that court clerks are required to give court reporters more consistent with other appellate rules by removing the requirement that the notice be “by telephone and in writing.” The recommended amendments are as follows:

#### **Rule 8.405. Filing the appeal**

##### **(a) Notice of appeal**

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##### **(b) Superior court clerk’s duties**

- (1) When a notice of appeal is filed, the superior court clerk must immediately:
  - (A) Send a notification of the filing to:
    - (i) Each party other than the appellant, including the child if the child is 10 years of age or older;
    - (ii) The attorney of record for each party;
    - (iii) Any person currently awarded by the juvenile court the status of the child’s de facto parent;
    - (iv) Any Court Appointed Special Advocate (CASA) volunteer;
    - (v) If the court knows or has reason to know that an Indian child is involved, the Indian custodian, if any, and tribe of the child or the Bureau of Indian Affairs, as required under Welfare and Institutions Code section 224.2; and
    - (vi) The reviewing court clerk; and

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

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

\*\*\*

**(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 deliver the transcript to the clerk within 12 calendar days after the notice of intent is filed; and
- (2) Within 20 days after the notice of intent is filed, prepare a clerk's transcript that includes the notice of intent, proof of service, and all items listed in rule 8.407(a).

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**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**

\*\*\*

**(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) 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).

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### **Alternatives Considered**

Because the requirement that court clerks notify court reporters “by telephone and in writing” does not directly conflict with another rule, the subcommittee considered not recommending any amendment to these rules, but decided that the proposed amendments would be beneficial.

The subcommittee also considered whether the existing requirement in each of these rules that notification to the court reporter be “immediate” should be modified. As set forth above, most of the other appellate rules addressing the notice that a court clerk is required to give to a court reporter require “prompt” notice. However, the subcommittee decided not to recommend this additional modification because, by statute, juvenile appeals have priority over most other appeals<sup>12</sup> and for the appeal to be processed quickly, the appellate court must receive the reporter’s transcript as soon as possible. This priority justifies the requirement for “immediate” rather than “prompt” note to the reporter in the three rules under consideration.

### **Committee Task**

Attached for the committee’s review is a draft invitation to comment reflecting the rules subcommittee’s recommendation that this proposal be circulated for public comment. **Please note** that the rules subcommittee reviewed the draft amended rules but did not review the draft invitation to comment or this cover memo.

The committee’s task is to review this invitation to comment and:

- (1) ask staff or committee members for further information/analysis;
- (2) recommend to RUPRO that the invitation to comment, as proposed or as further revised by the committee, be approved for circulation; or
- (3) reject the proposal.

### **Attachment**

Invitation to comment

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<sup>12</sup> See Welf. & Inst. Code, §§ 800(a) (delinquency), 395(a)(1) (dependency); Code of Civ. Proc. § 45 (appeals from orders freeing a minor from parent’s custody/control).

# JUDICIAL COUNCIL OF CALIFORNIA

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[www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

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## INVITATION TO COMMENT

### SP20-

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**Title**

Appellate Procedure: Method of Notice to Court Reporter

**Proposed Rules, Forms, Standards, or Statutes**

Amend Cal. Rules of Court, rules 8.405, 8.450, and 8.454

**Proposed by**

Appellate Advisory Committee  
Hon. Louis R. Mauro, Chair

**Action Requested**

Review and submit comments by June 9, 2020

**Proposed Effective Date**

January 1, 2021

**Contact**

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

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### Executive Summary and Origin

The Appellate Advisory Committee proposes amending three appellate rules of court for juvenile appeals and writs to update the language regarding the notice the clerk must give to the court reporter to prepare the reporter’s transcript. The requirement that the notice must be “by telephone and in writing” is not found in other appellate rules governing notice to court reporters and the change would provide clerks with more flexibility in how they provide notice. This proposal is based on a suggestion received from the director of juvenile operations at a superior court.

### Background

Rules 8.400 through 8.474 of the appellate rules govern juvenile appeals and writs. Rule 8.405(b)(1) currently requires that when a notice of appeal is filed in a juvenile case, the superior court clerk “must immediately . . . [n]otify the reporter *by telephone and in writing* to prepare a reporter’s transcript and deliver it to the clerk within 20 days after the notice of appeal is filed.” (Italics added.) Rules 8.450 and 8.454 address the filing of a notice of intent to file a writ petition to review orders under Welfare and Institutions Code sections 366.26 and 366.28, respectively.<sup>1</sup> Subdivision (h)(1) of each of these rules requires that:

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<sup>1</sup> Welfare and Institutions Code section 366.26 governs hearings terminating parental rights or establishing guardianship of children adjudged dependent children of court, and section 366.28 governs the appeal of decisions involving placement or removal orders following the termination of parental rights.

*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.*

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 deliver the transcript to the clerk within 12 calendar days after the notice of intent is filed.

(Italics added.) No other appellate rule requires a court clerk to notify a court reporter “by telephone and in writing” to prepare a transcript. Some appellate rules do require that the reviewing court clerk “make a reasonable effort to notify the clerk of the respondent court by telephone or e-mail” of an urgent situation such as an appellate decision to grant a writ or issue an order staying or prohibiting a proceeding to occur in the lower court within a short timeframe.<sup>2</sup> Other appellate rules require the clerk to notify the parties “by telephone or another expeditious method” of events that would seem to require immediate attention, such as shortening the time for oral argument.<sup>3</sup> However, none of these rules require immediate telephonic and written notification for court reporters.

Instead, the rules addressing the notice that the court clerk must give to court reporters in other types of appeals use more general language, and generally require court clerks to “promptly” send notice of an appeal to court reporters, without specifying the method of notification.<sup>4</sup>

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<sup>2</sup> See, e.g., rules 8.452(h)(3) (requiring appellate court clerk to make “reasonable effort to notify the clerk of the respondent court by telephone or e-mail” if a writ under Welfare and Institutions Code section 366.26 staying or prohibiting a proceeding to occur within seven days or requiring action within seven days is granted); 8.456(h)(3) (same for writ or order under juvenile writ under Welfare and Institutions Code section 366.28); 8.489(b)(1) (same for writ or order in Supreme Court and Court of Appeal); 8.975(b)(1) (same for small claims writ in appellate division).

<sup>3</sup> See, e.g., rules 8.256(b) (requiring appellate clerk to “immediately notify the parties by telephone or other expeditious method” if notice period for oral argument in court of appeal is shortened); 8.392(b)(5) (same if court of appeal requires an answer to a request for certificate of appealability to review superior court decision denying relief on successive habeas corpus petition in death penalty-related proceeding); 8.524(c) (same if notice period for oral argument in Supreme Court is shortened); 8.702(g) (same if notice period for oral argument in CEQA appeals is shortened); 8.716 (same if notice period for oral argument in appeal of decision to compel arbitration is shortened); 8.885(c)(1) (same if notice period for oral argument in misdemeanor appeal is shortened); 8.889(b)(2) (same if court decides to require answer to request for rehearing in misdemeanor appeal); 8.929(c)(1) (same if notice period for oral argument in infraction appeal is shortened).

<sup>4</sup> See, e.g., rules 8.130(d)(2) (in civil appeals, “clerk must promptly send the reporter notice of the designation [of the reporter's transcript] and of the deposit or substitute and notice to prepare the transcript, showing the date the notice was sent to the reporter” when the clerk receives specified items); 8.304(c)(1) (in criminal appeals, “[w]hen a notice of appeal is filed, the superior court clerk must promptly send a notification of the filing . . . to each court reporter, and to any primary reporter or reporting supervisor”); 8.834(b)(4) (in limited civil appeals to the appellate division of the superior court, “clerk must promptly notify the reporter to prepare the transcript when the court receives” the deposit or substitute for the cost); 8.864(a)(1) (in misdemeanor appeals, “[i]f the appellant elects to use a reporter's transcript, the clerk must promptly send a copy of appellant's notice making this election and the notice of appeal to each court reporter”); 8.915(a)(1) (same for infraction appeals).

## **The Proposal**

The proposal is to remove the requirement that court clerks notify court reporters “by telephone and in writing” from rules 8.405, 8.450, and 8.454 governing juvenile appeals and writs. The committee believes that, because the requirement for immediate telephonic and written notice is an anomaly among the appellate rules, it is advisable to amend these rules to more closely align them with other appellate rules by removing the phrase “by telephone and in writing” from each of them. This change would also provide clerks with more with more flexibility in how they provide notice, while retaining the requirement that the notice be immediate.

## **Alternatives Considered**

Because the requirement that court clerks notify court reporters “by telephone and in writing” does not directly conflict with another rule, the committee considered not recommending any amendment to these rules, but decided that the proposed amendments would be beneficial.

The committee also considered whether the existing requirement in each of these rules that notification to the court reporter be “immediate” should be modified to instead require “prompt” (or some other temporal descriptor) notification. However, the committee does not recommend this additional modification because, by statute, juvenile appeals have priority over most other appeals.<sup>5</sup> The committee determined that this priority justifies the requirement for “immediate” rather than “prompt” notice to the reporter in the rules under consideration.

## **Fiscal and Operational Impacts**

The proposal removes the requirement that the court clerk immediately notify court reporters “by telephone and in writing” to prepare a reporters transcript in juvenile appeals and writs. This will likely result in minimal or no implementation costs, and should result in a slight decrease in workload for the clerk providing the notice.

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<sup>5</sup> See Welf. & Inst. Code, §§ 800(a) (delinquency), 395(a)(1) (dependency); Code of Civ. Proc. § 45 (appeals from orders freeing a minor from parent’s custody/control).

## **Request for Specific Comments**

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

- Does the proposal appropriately address the stated purpose?

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

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

## **Attachments and Links**

1. Cal. Rules of Court, rules 8.405, 8.450, and 8.454, at pages 5-7.

Rules 8.405, 8.450, and 8.454 of the California Rules of Court would be amended, effective January 1, 2021, to read:

**Title 8. Appellate Rules**

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

**Chapter 5. Juvenile Appeals and Writs**

**Article 2. Appeals**

**Rule 8.405. Filing the appeal**

**(a) \* \* \***

**(b) Superior court clerk's duties**

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

(A) Send a notification of the filing to:

- (i) Each party other than the appellant, including the child if the child is 10 years of age or older;
- (ii) The attorney of record for each party;
- (iii) Any person currently awarded by the juvenile court the status of the child's de facto parent;
- (iv) Any Court Appointed Special Advocate (CASA) volunteer;
- (v) If the court knows or has reason to know that an Indian child is involved, the Indian custodian, if any, and tribe of the child or the Bureau of Indian Affairs, as required under Welfare and Institutions Code section 224.2; and
- (vi) The reviewing court clerk; and

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

**(2)–(6) \* \* \***



1  
2  
3 **Article 3. Writs**

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

6 **(a)–(g) \* \* \***

7  
8 **(h) Preparing the record**

9  
10 When the notice of intent is filed, the superior court clerk must:

- 11  
12 (1) Immediately notify each court reporter ~~by telephone and in writing~~ to prepare  
13 a reporter’s transcript of the oral proceedings at each session of the hearing  
14 that resulted in the order under review and deliver the transcript to the clerk  
15 within 12 calendar days after the notice of intent is filed; and  
16  
17 (2) Within 20 days after the notice of intent is filed, prepare a clerk’s transcript  
18 that includes the notice of intent, proof of service, and all items listed in rule  
19 8.407(a).  
20

21 **(i)–(j) \* \* \***

22  
23  
24 **Rule 8.454. Notice of intent to file writ petition under Welfare and Institutions Code**  
25 **section 366.28 to review order designating specific placement of a dependent**  
26 **child after termination of parental rights**

27  
28 **(a)–(g) \* \* \***

29  
30 **(h) Preparing the record**

31  
32 When the notice of intent is filed, the superior court clerk must:

- 33  
34 (1) Immediately notify each court reporter ~~by telephone and in writing~~ to prepare  
35 a reporter’s transcript of the oral proceedings at each session of the hearing  
36 that resulted in the order under review and to deliver the transcript to the  
37 clerk within 12 calendar days after the notice of intent is filed; and  
38  
39 (2) Within 20 days after the notice of intent is filed, prepare a clerk’s transcript  
40 that includes the notice of intent, proof of service, and all items listed in rule  
41 8.407(a).  
42

43 **(i)–(j) \* \* \***

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## INVITATION TO COMMENT

**SPR20-[# as assigned]**

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**Title**

Appellate Procedure: Date and Time of Filing for Electronically Submitted Documents

**Action Requested**

Review and submit comments by June 9, 2020

**Proposed Rules, Forms, Standards, or Statutes**

Amend Cal. Rules of Court, rule 8.77

**Proposed Effective Date**

January 1, 2021

**Proposed by**

Appellate Advisory Committee  
Hon. Louis R. Mauro, Chair

**Contact**

Eric Long, Attorney  
415-865-7691  
eric.long@jud.ca.gov

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### Executive Summary and Origin

The Appellate Advisory Committee proposes amending the rule regarding confirmation of receipt and filing of electronically submitted documents to clarify the date and time of filing. Among other things, California Rules of Court, rule 8.77 currently addresses the receipt date of submissions received after the close of business but is silent as to when a received document is deemed filed. The committee proposes amending rule 8.77 to state that an electronic document that complies with filing requirements is deemed filed on the date and time it was received by the court. Such an amendment would be consistent with California Rules of Court, rule 1.20, which states: “Unless otherwise provided, a document is deemed filed on the date it is received by the court clerk.” This proposal is based on a suggestion from the California Lawyers Association, Committee on Appellate Courts, Litigation Section.

### Background

Electronic filing allows for submission of documents at any time, even after a clerk’s office is closed. Regardless of the date and time a document is submitted and received, however, the clerk’s office needs time to confirm that the document complies with filing requirements. Such review by the clerk’s office must be prompt, but it is not instantaneous for an electronically submitted document. Moreover, when a document is submitted after court business hours, the document will not be reviewed by the clerk’s office before the next business day.

Under rule 8.77(a)(1), an electronically submitted document is initially “received” by the court, and a confirmation of receipt is generated. Rule 8.77(c) instructs that if a document is received

*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.*

after 11:59 p.m., it is considered received on the next court day.<sup>1</sup> Then, once a court clerk confirms that the document complies with filing requirements, a confirmation of “filing” indicating the date and time of filing is generated under rule 8.77(a)(2). However, rule 8.77 does not specify when the document is deemed filed.<sup>2</sup>

It has been reported that appellate courts are determining the date and time of filing in different ways. Some courts deem compliant documents filed on the day they were received, but other courts deem them filed on the day the clerk approves the document for filing.

A practitioner reported electronically submitting a writ petition for filing in an appellate district on Day 1 at 5:30 p.m. A court clerk reviewed the materials on Day 2 and determined that the filing requirements had been satisfied. The clerk filed the document on Day 2 even though it was received by the court on Day 1. If the litigant’s writ petition had been due on Day 1, it would have been untimely.

## **The Proposal**

This proposal would clarify that the date and time of filing is the date and time a compliant document is received by the court.

The committee also proposes revising the title of rule 8.77 to reflect electronic submission and to encompass date and time of filing.

The proposal would alleviate concerns of litigants and practitioners that their submissions may be deemed untimely. The proposal is of particular importance when an appellate due date is jurisdictional (e.g., a statutory writ). A uniform time-of-filing provision will assist with the consistent handling of electronically submitted documents.

## **Alternatives Considered**

The committee considered no action but determined that the experience of litigants and practitioners warrants action.

A submission from an electronic filer reaches the court through an electronic filing service provider (EFSP). Although the court generally receives a submission almost instantaneously, the committee recognizes the possibility that transmission delays could occur. For example, it is possible an electronic filer might submit a document before midnight, but the court might not

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<sup>1</sup> “A document that is received electronically by the court after 11:59 p.m. is deemed to have been received on the next court day.” (Cal. Rules of Court, rule 8.77(c).)

<sup>2</sup> Some California appellate courts also address this topic by local rule. The local rules for the First and Fifth Appellate Districts state: “Filing documents electronically does not alter any filing deadlines. In order to be timely filed on the day they are due, all electronic transmissions of documents must be completed (i.e., received completely by the Clerk of the Court) prior to midnight.” (Ct. App., First Dist. and Fifth Dist., Local Rules, rules 16(f) and 8(g), respectively, Electronic Filing.) Additionally, the Third Appellate District provides: “Electronic filing does not alter any filing deadlines. An electronic filing not completely received by the court by 11:59 p.m. will be deemed to have been received on the next court day.” (Ct. App., Third Dist., Local Rules, rule 5(j), Electronic Filing.) The local rules for the Second, Fourth, and Sixth Districts do not address the topic.

receive the document until after midnight due to a transmission delay between the EFSP and the court. Given such a possibility, the committee considered two alternatives to using the date and time of receipt as the date and time of filing: (1) using the date and time of submission to the EFSP as the date and time of filing, or (2) imposing an after-hours deadline (such as 11:45 p.m.) for submission of documents to an EFSP to make it more likely a court will receive a submission before midnight. The committee seeks comments on these alternatives.

## **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.

### **Request for Specific Comments**

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

- Does the proposal appropriately address the stated purpose?
- The proposed rule uses the court's receipt date and time as the date and time of filing because transmission from the electronic filing service provider (EFSP) to the court is generally instantaneous. Would it be more appropriate, however, to use the date and time of submission to the EFSP as the date and time of filing? Or would another alternative prove more workable? If an alternative is appropriate, describe the alternative and explain why it would be preferable to the instant proposal.
- Can you document one or more transmission delays between (1) the date and time of submission to an EFSP, and (2) the date and time of receipt by a court? If so, would an after-hours submission deadline adequately address such a transmission delay, and if so, what should the deadline be?

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 8.77, at p. 4

Rule 8.77 of the California Rules of Court would be amended, effective January 1, 2021, to read:

1 **Title 8. Appellate Rules**

2  
3 **Division 1. Rules Relating to the Supreme Court and Courts of Appeal**

4  
5 **Chapter 1. General Provisions**

6 **Rule 8.77. Actions by court on receipt of ~~electronic filing~~ electronically submitted**  
7 **document; date and time of filing**

8  
9 **(a) Confirmation of receipt and filing of document**

10  
11 (1) *Confirmation of receipt*

12  
13 When the court receives an electronically submitted document, the court must  
14 arrange to promptly send the electronic filer confirmation of the court's receipt of the  
15 document, indicating the date and time of receipt. A document is considered received  
16 at the date and time the confirmation of receipt is created.

17  
18 (2) *Confirmation of filing*

19  
20 If the document received by the court under (1) complies with filing requirements,  
21 the document is deemed filed on the date and time it was received by the court, as  
22 indicated on the confirmation of receipt in (1). † The court must arrange to promptly  
23 send the electronic filer confirmation that the document has been filed. The filing  
24 confirmation must indicate the date and time of filing. ~~and~~ The filing confirmation is  
25 proof that the document was filed on the date and at the time specified. The filing  
26 confirmation must also specify:

27  
28 (A) Any transaction number associated with the filing; and

29  
30 (B) The titles of the documents as filed by the court.

31  
32 (3)–(4) \* \* \*

33  
34 **(b)–(e) \* \* \***

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## INVITATION TO COMMENT

**SPR20-[# as assigned]**

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<b>Title</b>	<b>Action Requested</b>
Court Records: Retention of Reporters’ Transcripts in Criminal Appeals	Review and submit comments by June 9, 2020
<b>Proposed Rules, Forms, Standards, or Statutes</b>	<b>Proposed Effective Date</b>
Amend Cal. Rules of Court, rule 10.1028	January 1, 2021
<b>Proposed by</b>	<b>Contact</b>
Appellate Advisory Committee Hon. Louis R. Mauro, Chair	Christy Simons, Attorney 415-865-7694 christy.simons@jud.ca.gov

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### Executive Summary and Origin

To conform to a recent statutory change and to better align the length of time reporters’ transcripts must be kept with the length of time they may be needed, the Appellate Advisory Committee proposes amending the rule regarding preservation and destruction of Court of Appeal records. Based on recent amendments to Code of Civil Procedure section 271, subdivision (a), a provision in rule 10.1028 permitting the court to keep an electronic copy in lieu of an original paper reporter’s transcript should be revised. This proposal would also extend the time the court must keep the original or an electronic copy of the reporter’s transcript in certain criminal cases from 20 years to 100 years. The rule’s current requirement to keep the reporter’s transcript for 20 years in any case affirming a criminal conviction is not long enough to account for longer sentences imposed in serious felony cases and changes in felony sentencing laws. This proposal originated with suggestions from a clerk/executive officer of a Court of Appeal and an attorney at the Supreme Court.

### The Proposal

Former Code of Civil Procedure section 271 authorized courts and parties to receive, on request, copies of reporters’ transcripts in “computer-readable form.” Subdivision (a) of the statute required that “an original transcript shall be on paper.” Legislation repealing and replacing section 271 took effect January 1, 2018. Among other changes, new section 271 requires that the reporter’s transcript be delivered in electronic form unless any of the specified exceptions apply. New section 271(d) now provides that an electronic transcript is deemed to be an original for all purposes unless a paper transcript is delivered under any of the specified exceptions.

*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.*

Also effective January 1, 2018, rule 10.1028 was amended based on former section 271 to allow the Court of Appeal to keep an electronic copy of the reporter's transcript in lieu of the original on paper. In light of the amendments to the statute, which now provides that the default format for an original reporter's transcript is electronic, the language that was added to rule 10.1028(d) and an advisory committee comment explaining the added language should be modified. The proposed amendments to subdivision (d) and the advisory committee comment include language allowing the court to keep a true and correct electronic copy of a reporter's transcript if the original is in paper.

Rule 10.1028(d) governs the time the Court of Appeal is required to keep records. Under subdivision (c), the court must permanently keep the court's minutes and a register of appeals and original proceedings. Under subdivision (d), all other records, with one exception, may be destroyed 10 years after the decision becomes final. The exception is for original reporters' transcripts in cases affirming a criminal conviction; these must be kept for 20 years after the decision becomes final. This retention time has not changed since the adoption of the initial version of the rule in 1975. (See former rule 55, adopted effective July 1, 1975; renumbered as rule 70 effective January 1, 2005; and renumbered as rule 10.1028 effective January 1, 2007.)

The individuals who suggested amending this rule noted that sentences for the most serious felony convictions often exceed 20 years, and it is not unusual for the actual time served under these sentences to exceed 20 years. Capital appeals routinely take longer than 20 years, and certain writ proceedings may be filed at any time during service of a prison sentence. In addition, changes in felony sentencing laws, such as Proposition 47,<sup>1</sup> necessitate keeping reporters' transcripts in felony cases longer than 20 years so defendants can avail themselves of opportunities for resentencing or other relief.

Accordingly, the committee proposes adding a provision to rule 10.1028(d) to extend the time for keeping the original or an electronic copy of the reporter's transcript in felony cases. New paragraph (d)(3) would state: "In a felony case in which the court affirms a judgment of conviction, the clerk/executive officer must keep the original reporter's transcript or, if the original is in paper, either the original or a true and correct electronic copy, for 100 years after the decision becomes final."

This proposal is both required to conform to statute and responsive to an identified concern. It would improve access to justice by ensuring that the original reporter's transcript is available during the time it may be needed by an individual whose felony conviction is affirmed on appeal.

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<sup>1</sup> Voters passed Prop. 47, "The Safe Neighborhoods and Schools Act," on November 14, 2014; it went into effect the next day.

## **Alternatives Considered**

The committee considered taking no action, but rejected this option because the rule is inconsistent with statute and because the rule that a reporter's transcript in any case affirming a criminal conviction need only be kept for 20 years is inadequate.

The committee also considered amending the rule to extend the time for keeping the reporter's transcript in only the most serious cases affirming felony convictions, specifically in capital felony cases in which the defendant is sentenced to death and in any felony convictions resulting in a sentence of life or life without the possibility of parole. The committee rejected this option because it is too narrow and would not include many cases in which a defendant might need a reporter's transcript long after the conviction is affirmed.

The committee also considered extending the time to 50 years rather than 100. The committee declined this option because 50 years would not be long enough in all cases.

In addition, the committee considered a graduated retention schedule, such as the retention schedule adopted by the California Department of Justice, in which documents are retained for different time periods depending on the type of document or the circumstances. Moreover, the committee considered other possible amendments, including whether any reporters' transcripts should be retained permanently and whether the rule should provide that the reporter's transcript must be kept for a certain number of years or for a certain number of years (such as 10) following the death of the defendant. The committee rejected these options in favor of a rule that is simple and straightforward and with which it is easy for the courts to comply, but welcomes comments on these and other options.

## **Fiscal and Operational Impacts**

This proposal would require the Courts of Appeal to change their record retention policies and procedures with respect to reporters' transcripts in the identified cases. Education and training of staff would also be required. Despite the implementation requirements, the committee believes that the benefit of the proposal—making certain reporters' transcripts available to defendants for a more realistic amount of time within which they may be needed, and thereby improving access to justice—outweighs its potential cost to the courts.



### **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?
- Should reporters' transcripts in any type of case be retained permanently?
- Should any other provisions regarding retention of an original reporter's transcript be considered?

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

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

### **Attachments and Links**

1. Cal. Rules of Court, rule 10.1028, at pages 5–6

Rule 10.1028 of the California Rules of Court would be amended, effective January 1, 2021, to read:

1 **Title 10. Judicial Administration Rules**

2  
3 **Division 5. Appellate Court Administration**

4  
5 **Chapter 1. Rules Relating to the Supreme Court and Courts of Appeal**

6  
7  
8 **Rule 10.1028. Preservation and destruction of Court of Appeal records**

9  
10 **(a) Form or forms in which records may be preserved**

11  
12 (1) Court of Appeal records may be created, maintained, and preserved in any  
13 form or forms of communication or representation, including paper or  
14 optical, electronic, magnetic, micrographic, or photographic media or other  
15 technology, if the form or forms of representation or communication satisfy  
16 the standards or guidelines for the creation, maintenance, reproduction, and  
17 preservation of court records established under rule 10.854.

18  
19 (2) If records are preserved in a medium other than paper, the following  
20 provisions of Government Code section 68150 apply: subdivisions (c)–(l),  
21 excluding subdivision (i)(1).

22  
23 **(b) Methods for signing, subscribing, or verifying documents**

24  
25 Any notice, order, ruling, decision, opinion, memorandum, certificate of service, or  
26 similar document issued by an appellate court or by a judicial officer of an  
27 appellate court may be signed, subscribed, or verified using a computer or other  
28 technology in accordance with procedures, standards, and guidelines established by  
29 the Judicial Council. Notwithstanding any other provision of law, all notices,  
30 orders, rulings, decisions, opinions, memoranda, certificates of service, or similar  
31 documents that are signed, subscribed, or verified by computer or other  
32 technological means under this subdivision shall have the same validity, and the  
33 same legal force and effect, as paper documents signed, subscribed, or verified by  
34 an appellate court or a judicial officer of the court.

35  
36 **(c) Permanent records**

37  
38 The clerk/executive officer of the Court of Appeal must permanently keep the  
39 court's minutes and a register of appeals and original proceedings.

1 **(d) Time to keep other records**  
2

- 3 (1) Except as provided in (2) and (3), the clerk/executive officer may destroy all  
4 other records in a case 10 years after the decision becomes final, as ordered  
5 by the administrative presiding justice or, in a court with only one division,  
6 by the presiding justice.  
7
- 8 (2) Except as provided in (3), in a criminal case in which the court affirms a  
9 judgment of conviction, the clerk/executive officer must keep the original  
10 reporter's transcript or, if the original is in paper, either the original or a true  
11 and correct electronic copy of the transcript, for 20 years after the decision  
12 becomes final.  
13
- 14 (3) In a felony case in which the court affirms a judgment of conviction, the  
15 clerk/executive officer must keep the original reporter's transcript or, if the  
16 original is in paper, either the original or a true and correct electronic copy,  
17 for 100 years after the decision becomes final.  
18

19 **Advisory Committee Comment**  
20

21 **Subdivision (d).** Subdivision (d) permits the Court of Appeal to keep an electronic copy of the  
22 reporter's transcript in lieu of keeping the original if the original transcript is in paper. Although  
23 subdivision (a) allows the Court of Appeal to maintain its records in any format that satisfies the  
24 otherwise applicable standards for maintenance of court records, including electronic formats, ~~the~~  
25 ~~original of a reporter's transcript is required to be on paper under Code of Civil Procedure section~~  
26 ~~271(a).~~ Code of Civil Procedure section 271 provides that an original reporter's transcript must be  
27 in electronic form unless a specified exception allows for an original paper transcript. Subdivision  
28 (d) therefore specifies that an electronic copy may be kept if the original transcript is in paper, to  
29 clarify that the paper original need not be kept by the court.  
30



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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 25, 2020

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**Title**

Appellate Procedure: Technical Revisions to Forms to Use Gender-Neutral Language

**Rules, Forms, Standards, or Statutes Affected**

Revise forms APP-004, APP-014, APP-016-GC/FW-016-GC, APP-104, APP-109-INFO, APP-150-INFO, CR-135, CR-143, JV-810

**Recommended by**

Appellate Advisory Committee  
Hon. Louis R. Mauro, Chair

**Agenda Item Type**

Action Required

**Effective Date**

January 1, 2021

**Date of Report**

February 28, 2020

**Contact**

Christy Simons, 415-865-7694  
[christy.simons@jud.ca.gov](mailto:christy.simons@jud.ca.gov)

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### Executive Summary

As requested by the Rules Committee, the Appellate Advisory Committee reviewed the Judicial Council forms within its purview to identify any containing gender identity questions or gender terms. The committee identified several forms containing gender terms and recommends that they be revised to use gender-neutral language.

### Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2021:

1. Revise *Civil Case Information Statement (Appellate)* (form APP-004), the box at the top of page 4, to replace “a party to the appeal may not perform the mailing or delivery himself or herself” with “the mailing or delivery must be performed by someone who is not a party to the appeal;”
2. Revise *Appellant’s Proposed Settled Statement (Unlimited Civil Case)* (form APP-014), item 3, to replace “his or her” with “the party’s,” and item 5a, to replace “he or she” with “the judge;”

3. Revise *Order on Court Fee Waiver (Court of Appeal or Supreme Court) (Ward or Conservatee)* (form APP-016-GC/FW-016-GC), item 6b(2), to replace “he or she” with “the (proposed) ward or conservatee;”
4. Revise *Proposed Statement on Appeal (Limited Civil Case)* (form APP-104), item 7d, to replace “what that witness said in his or her testimony” with “the witness’s testimony;”
5. Revise *What Is Proof of Service?* (form APP-109-INFO), item 4, to replace “he or she” with “the party;”
6. Revise *Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases* (form APP-150-INFO), item 6, to replace “he or she” with “the person” and item 18c, to replace “he or she” with “the petitioner;”
7. Revise *Proposed Statement on Appeal (Misdemeanor)* (form CR-135), item 7e, to replace “what that witness said in his or her testimony” with “the witness’s testimony;”
8. Revise *Proposed Statement on Appeal (Infraction)* (form CR-143), item 6e, to replace “what that witness said in his or her testimony” with “the witness’s testimony;” and
9. Revise *Recommendation for Appointment of Appellate Attorney for Child (California Rules of Court, Rule 5.661)* (form JV-810) to replace “his or her” with “the child’s” in items 3b, 3c(2), and 3d, and “he or she” with “the child” in item 3c.

The revised forms are attached at pages 4–55.

### **Relevant Previous Council Action**

Although the Judicial Council has acted on these forms previously, this proposal recommends minor language updates unrelated to any prior action.

### **Analysis/Rationale**

In a March 26, 2019, letter to advisory committee lead staff regarding this project, Hon. Harry E. Hull, Jr., chair of the Rules Committee, provided the following background:

“The Advisory Committee on Providing Access and Fairness (PAF) has made the Rules and Projects Committee aware of its work on assessing best practices for addressing gender expression and identity in Judicial Council court forms and in education and training. A PAF working group began its assessment, in part, as a result of Senate Bill 179, the Gender Recognition Act. That bill, among other things, establishes nonbinary as a new option for gender recognition on birth certificates, driver licenses, and state-issued identification cards issued by the Department of Motor Vehicles. In addition, in 2018, the Assembly passed Concurrent Resolution No. 260 to encourage the Legislature ‘to revise existing statutes and introduce new legislation with inclusive language by using gender-neutral pronouns or reusing nouns to avoid the use of gendered pronouns.’ The resolution also encourages ‘state agencies to engage in

similar efforts to use gender-neutral pronouns and avoid the use of gendered pronouns when drafting policies, regulations, and other guidance.’ ”

### **Policy implications**

The revisions are noncontroversial and technical in nature. They do not raise policy issues.

### **Comments**

This proposal has not been circulated for public comment because the updates to language on the forms are technical revisions and therefore within the Judicial Council’s purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

### **Alternatives considered**

The committee considered the alternative of making these modifications as and when each form is revised as part of a separate proposal.<sup>1</sup> However, there is no way to know when revisions to all of these forms would take place as part of other projects. Therefore, the committee is recommending that the forms be revised now replace all outdated language in a timely manner.

### **Fiscal and Operational Impacts**

The committee expects operational impacts to be minor. The proposed revisions may result in reproduction costs if courts provide hard copies of any of these forms. Because the proposed changes are technical corrections, it is unlikely that case management systems would need updating for implementation.

### **Attachments**

1. Forms APP-004, APP-014, APP-016-GC/FW-016-GC, APP-104, APP-109-INFO, APP-150-INFO, CR-135, CR-143, and JV-810, at pages 4–55

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<sup>1</sup> This alternative is being followed in one instance. One of the forms the committee identified, *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO), is part of a spring proposal: Appellate Procedure: Use of an Appendix in Limited Civil Appeals. In addition to substantive changes regarding the use of an appendix, the committee is proposing that a reference to “he or she” be replaced with “the appellant” in item 24(c) of that form. If approved, that revised form would take effect January 1, 2021.

<p><b>COURT OF APPEAL, _____ APPELLATE DISTRICT, DIVISION _____</b></p>	<p>COURT OF APPEAL CASE NUMBER (if known):</p>
<p>ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NUMBER: _____</p> <p>NAME: _____</p> <p>FIRM NAME: _____</p> <p>STREET ADDRESS: _____</p> <p>CITY: _____ STATE: _____ ZIP CODE: _____</p> <p>TELEPHONE NO.: _____ FAX NO.: _____</p> <p>E-MAIL ADDRESS: _____</p> <p>ATTORNEY FOR (name): _____</p>	<p><i>FOR COURT USE ONLY</i></p> <p><b>DRAFT</b></p> <p><b>02-04-2020</b></p> <p><b>Not approved by the Judicial Council</b></p>
<p>APPELLANT: _____</p> <p>RESPONDENT: _____</p>	
<p><b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____</b></p> <p>STREET ADDRESS: _____</p> <p>MAILING ADDRESS: _____</p> <p>CITY AND ZIP CODE: _____</p> <p>BRANCH NAME: _____</p>	
<p>JUDGES (all who participated in case): _____</p>	<p>SUPERIOR COURT CASE NUMBER: _____</p>
<p><b>CIVIL CASE INFORMATION STATEMENT</b></p>	
<p><b>NOTE TO APPELLANT:</b> You must file this form with the clerk of the Court of Appeal within 15 days after the clerk mails you the notification of the filing of the notice of appeal required under rule 8.100(e)(1). You must attach to this form a copy of the judgment or order being appealed that shows the date it was entered (see Cal. Rules of Court, rule 8.104 for definition of "entered"). A copy of this form must also be served on the other party or parties to this appeal. (CAUTION: An appeal in a limited civil case (Code Civ. Proc., § 85) may be taken ONLY to the appellate division of the superior court (Code Civ. Proc., § 904.2) or to the superior court (Code Civ. Proc., § 116.710 [small claims cases]).</p>	

**PART I – APPEAL INFORMATION**

**A. APPEALABILITY**

1. Appeal is from:

- Judgment after jury trial
- Judgment after court trial
- Default judgment
- Judgment after an order granting a summary judgment motion
- Judgment of dismissal under Code Civ. Proc., § 581d, 583.250, 583.360, or 583.430
- Judgment of dismissal after an order sustaining a demurrer
- An order after judgment under Code Civ. Proc., § 904.1(a)(2)
- An order or judgment under Code Civ. Proc., § 904.1(a)(3)–(13)
- Other (describe and specify code section that authorizes this appeal):

2. Does the judgment appealed from dispose of all causes of action, including all cross-actions between the parties?

- Yes  No (If no, please explain why the judgment is appealable):

**B. TIMELINESS OF APPEAL (Provide all applicable dates.)**

1. Date of entry of judgment or order appealed from:
2. Date that notice of entry of judgment or a copy of the judgment was served by the clerk or by a party under California Rules of Court, rule 8.104:
3. Was a motion for new trial, for judgment notwithstanding the verdict, for reconsideration, or to vacate the judgment made and denied?

- Yes  No (If yes, please specify the type of motion):

Date notice of intention to move for new trial (if any) filed:

Date motion filed:

Date motion denied:

Date denial served:

4. Date notice of  appeal or  cross-appeal filed:

**C. BANKRUPTCY OR OTHER STAY**

Is there a related bankruptcy case or a court-ordered stay that affects this appeal?  Yes  No

(If yes, please attach a copy of the bankruptcy petition [without attachments] and any stay order.)

APPELLATE CASE TITLE:	APPELLATE COURT CASE NUMBER:
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D. APPELLATE CASE HISTORY (*Provide additional information, if necessary, on attachment I.D.*) Is there now, or has there previously been, any appeal, writ, or other proceeding related to this case pending in any California appellate court?

Yes  No (If yes, insert name of appellate court):

Appellate court case no.:

Title of case:

Name of trial court:

Trial court case no.:

E. SERVICE REQUIREMENTS

Is service of documents in this matter, including a notice of appeal, petition, or brief, required on the Attorney General or other nonparty public officer or agency under California Rules of Court, rule 8.29 or a statute?

Yes  No (*If yes, please indicate the rule or statute that applies*)

- |  |  |
|--|--|
| <input type="checkbox"/> Rule 8.29 (e.g., constitutional challenge; state or county party)   | <input type="checkbox"/> Code Civ. Proc., § 1355 (Escheat)   |
| <input type="checkbox"/> Bus. & Prof. Code, §16750.2 (Antitrust)   | <input type="checkbox"/> Gov. Code, § 946.6(d) (Actions against public entities)                                   |
| <input type="checkbox"/> Bus. & Prof. Code, § 17209 (Unfair Competition Act)   | <input type="checkbox"/> Gov. Code, § 4461 (Disabled access to public buildings)                                   |
| <input type="checkbox"/> Bus. & Prof. Code, § 17536.5 (False advertising)  | <input type="checkbox"/> Gov. Code, § 12656(a) (False Claims Act)  |
| <input type="checkbox"/> Civ. Code, § 51.1 (Unruh, Ralph, or Bane Civil Rights Acts; antiboycott cause of action; sexual harassment in business or professional relations; civil rights action by district attorney) | <input type="checkbox"/> Health & Saf. Code, § 19954.5 (Accessible seating and accommodations)                     |
| <input type="checkbox"/> Civ. Code, § 55.2 (Disabled access to public conveyances, accommodations, and housing)  | <input type="checkbox"/> Health & Saf. Code, § 19959.5 (Disabled access to privately funded public accommodations) |
|  | <input type="checkbox"/> Pub. Resources Code, § 21167.7 (CEQA)   |
|  | <input type="checkbox"/> Other (specify statute):  |

**NOTE: The rule and statutory provisions listed above require service of a copy of a party's notice of appeal, petition, or brief on the Attorney General or other public officer or agency. Other statutes requiring service on the Attorney General or other public officers or agencies may also apply.**

**PART II – NATURE OF ACTION**

A. Nature of action (*check all that apply*):

1.  Conservatorship
2.  Contract
3.  Eminent domain
4.  Equitable action    a.  Declaratory relief    b.  Other (*describe*):
5.  Family law
6.  Guardianship
7.  Probate
8.  Real property rights    a.  Title of real property    b.  Other (*describe*):
9.  Tort
  - a.  Medical malpractice
  - b.  Product liability
  - c.  Other personal injury
  - d.  Personal property
  - e.  Other tort (*describe*):
10.  Trust proceedings
11.  Writ proceedings in superior court
  - a.  Mandate (Code Civ. Proc., § 1085)
  - b.  Administrative mandate (Code Civ. Proc., § 1094.5)
  - c.  Prohibition (Code Civ. Proc., § 1102)
  - d.  Other (*describe*):
12.  Other action (*describe*):

B.  This appeal is entitled to calendar preference/priority on appeal (*cite authority*):





APPELLATE CASE TITLE:	APPELLATE COURT CASE NUMBER:
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NOTICE TO PARTIES: A copy of this form must be served on the other party or parties to this appeal. If served by mail or personal delivery, THE MAILING OR DELIVERY **MUST BE PERFORMED BY SOMEONE WHO IS NOT A PARTY TO THE APPEAL.** Electronic service is authorized only if ordered by the court or if the party served has agreed to accept electronic service. A person who is at least 18 years old must complete the information below and serve all pages of this document. When all pages of this document have been completed and a copy served, the original may then be filed with the court.

### PROOF OF SERVICE

Mail       Personal Service       Electronic Service

1. At the time of service I was at least 18 years of age.
2. My residence or business address is (*specify*):
  
3. I mailed, personally delivered, or electronically served a copy of the *Civil Case Information Statement (Appellate)* as follows (*complete a, b, or c*):
  - a.  **Mail.** I am a resident of or employed in the county where the mailing occurred and am not a party to this legal action.
    - (1) I enclosed a copy in an envelope **and**
      - (a)  deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
      - (b)  **placed** the envelope for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
    - (2) The envelope was addressed and mailed as follows:
      - (a) Name of person served:
      - (b) Address on envelope:
  
      - (c) Date of mailing:
      - (d) Place of mailing (*city and state*):
  - b.  **Personal delivery.** I am not a party to this legal action. I personally delivered a copy as follows:
    - (1) Name of person served:
    - (2) Address where delivered:
  
    - (3) Date delivered:
    - (4) Time delivered:
  - c.  **Electronic service.** My electronic service address is (*specify*):  
I electronically served a copy as follows:
    - (1) Name of person served:
    - (2) Electronic service address of person served:
    - (3) On (*date*):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)



\_\_\_\_\_  
(SIGNATURE OF DECLARANT)

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY  <b>DRAFT</b>  <b>02-04-2020</b>  <b>Not approved by the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER:
<b>APPELLANT'S PROPOSED SETTLED STATEMENT (UNLIMITED CIVIL CASE)</b>	COURT OF APPEAL CASE NUMBER (if known):
Re: Appeal filed on (date):	
<b>Notice: Please read <i>Information Sheet for Proposed Settled Statement</i> (form APP-014-INFO) before completing this form. You must file this form in the superior court, not in the Court of Appeal.</b>	

**1. PRELIMINARY INFORMATION**

- a. I am appealing (check one):  an order filed on  a judgment entered on (date): \_\_\_\_\_
- b. On (date): \_\_\_\_\_, I filed a notice of appeal. A copy of the judgment or order I am appealing is attached.
- c. On (date): \_\_\_\_\_, (check the one that applies):
  - (1)  I filed a notice designating the record on appeal, choosing to use a settled statement.
  - (2)  The court sent me  I was served with an order granting my request to use a settled statement.
- d.  On (date): \_\_\_\_\_, the court ordered me to modify or correct my proposed settled statement.

**2. REASONS FOR YOUR APPEAL**

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

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

[Attachment 2a](#)

- b.  **Errors.** The following error or errors about either the law or court procedure affected the outcome of the case (Describe each error.)

[Attachment 2b](#)

PLAINTIFF/PETITIONER:	SUPERIOR COURT CASE NUMBER:
DEFENDANT/RESPONDENT:	
OTHER PARENT/PARTY:	COURT OF APPEAL CASE NUMBER (if known):

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

a. Did any of the parties testify at the trial or hearing?  No  Yes

*(Specify the name of the party who testified and the date on which the party testified. Then, write a complete and accurate summary of what each party said that is relevant to the reasons you gave in item 2 for this appeal (for example, what the party said in response to questions asked by the party's own attorney, the other party (or the attorney), and/or the court). Include only what was actually said; do not comment or give your opinion about what was said.)*

(1) Name of party: \_\_\_\_\_ testified on (date): \_\_\_\_\_.

Summary:

[Attachment 3a\(1\)](#)

- (a) Did a party (or attorney) make an objection to this party's testimony?  No  Yes *(Specify in item 3b.)*
- (b) During this party's testimony, were any exhibits (documents, records, or other materials) relevant to the appeal presented that the judge allowed to be used as evidence to support or disprove this party's testimony?  No  Yes *(Specify in item 3c.)*
- (c) During this party's testimony, were any exhibits (documents, records, or other materials) relevant to the appeal presented that the judge *did not* allow to be used as evidence to support or disprove this party's testimony?  No  Yes *(Specify in item 3d.)*

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER:
	COURT OF APPEAL CASE NUMBER (if known):

3. a. (2) Name of party: \_\_\_\_\_ testified on (date): \_\_\_\_\_.

Summary:

[Attachment 3a\(2\)](#)

(a) Did a party (or attorney) make an objection to this party's testimony?  No  Yes (Specify in item 3b.)

(b) During this party's testimony, were any exhibits (documents, records, or other materials) relevant to the appeal presented that the judge allowed to be used as evidence to support or disprove this party's testimony?  No  Yes (Specify in item 3c.)

(c) During this party's testimony, were any exhibits (documents, records, or other materials) relevant to the appeal presented that the judge *did not* allow to be used as evidence to support or disprove this party's testimony?  No  Yes (Specify in item 3d.)

(3) Was there testimony from other parties?  No  Yes

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

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER: <hr/> COURT OF APPEAL CASE NUMBER (if known):
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3. b. **Objections to a party's testimony relevant to the appeal**  
*(Indicate which party's testimony was objected to and specify the objection. Also indicate whether the court "sustained the objection" (prevented the party from saying something) or "overruled the objection" (allowed the party to make a statement) and include any explanation given by the court.)*

[Attachment 3b](#)

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

[Attachment 3c](#)

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

[Attachment 3d](#)

PLAINTIFF/PETITIONER:	SUPERIOR COURT CASE NUMBER:
DEFENDANT/RESPONDENT:	COURT OF APPEAL CASE NUMBER (if known):
OTHER PARENT/PARTY:	

**4. SUMMARY OF NONPARTY WITNESS TESTIMONY AND OTHER EVIDENCE**

Was there testimony from another party or nonparty witnesses that is relevant to the reasons for the appeal?

- No (skip to Item 5)       Yes (Fill out and attach to this form Other Party and Nonparty Witness Testimony and Evidence Attachment (form APP-014A.)

**5. TRIAL COURT'S FINDINGS**

a. Did the judge make findings at the hearing or trial in the case?       No       Yes (Complete item 5b.)  
 (A judge makes a "finding" when **the judge** decides that something is a fact, is true, or is relevant.)

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

[Attachment 5](#)

**6. SUMMARY OF MOTIONS**

a. Are any of your reasons for appeal based on your disagreement with the court's ruling on a motion or motions?

- Yes (Fill out b.)       No (Skip to item 7.)

b. Describe the motion. (State which party made the motion. Then, write a complete and accurate summary of what was said (any testimony and arguments) and what the court decided (whether the court granted or denied the motion).)

[Attachment 6](#)

**7. SUMMARY OF JURY INSTRUCTIONS**

a. Are any of your reasons for appeal based on your disagreement with the court's ruling on a jury instruction or instructions?

- Yes (Fill out b.)       No (Skip to item 8.)

b. Identify the jury instruction and the party that requested it. (Summarize what the parties said (arguments or objections) and what the court decided (whether the court gave the instruction to the jury, refused to give the instruction to the jury, or modified it before giving it to the jury). Describe any modifications the court made to the instruction.)

[Attachment 7](#)

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

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

Date:

\_\_\_\_\_  
 (TYPE OR PRINT NAME)



\_\_\_\_\_  
 (SIGNATURE OF PARTY OR ATTORNEY)

**APP-016-GC/FW-016-GC** **Order on Court Fee Waiver**  
**(Court of Appeal or Supreme Court)**  
**(Ward or Conservatee)**

Clerk stamps date here when form is filed.

**DRAFT**

**02-04-2020**

**Not approved by  
the Judicial Council**

**1 (Proposed) guardian or conservator who asked the court to waive court fees for (proposed) ward or conservatee:**  
 Name: \_\_\_\_\_  
 Street or mailing address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Telephone: \_\_\_\_\_

**2 Lawyer, if person in 1 has one:**  
 Name: \_\_\_\_\_ State Bar No.: \_\_\_\_\_  
 Firm or Affiliation: \_\_\_\_\_  
 Street or mailing address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 E-mail: \_\_\_\_\_ Telephone: \_\_\_\_\_

Fill in court name and street address:  
 \_\_\_\_\_  
 \_\_\_\_\_

**3 (Proposed) ward or conservatee:**  
 Name: \_\_\_\_\_  
 Street or mailing address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Telephone: \_\_\_\_\_

**Court of Appeal or Supreme Court  
Case Number:**  
 \_\_\_\_\_

**4 Ward's or Conservatee's Lawyer, if any:** Name: \_\_\_\_\_  
 Firm or Affiliation: \_\_\_\_\_ State Bar No.: \_\_\_\_\_  
 Address: \_\_\_\_\_ Telephone: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ E-mail: \_\_\_\_\_

**5** On (date): \_\_\_\_\_, you filed a *Request to Waive Court Fees* (form FW-001-GC).

**6** The court reviewed your request and makes the following order:  
 a.  The court **grants** your request and waives the (proposed) ward's or conservatee's court fees and costs listed below. You do not have to pay fees for the following:  
     • Filing notice of appeal, petition for writ, or petition for review  
      Other (*specify*): \_\_\_\_\_  
     \_\_\_\_\_

b.  The court **denies** your request for the following reasons:  
 (1)  Your request is incomplete. You have **10 days** from the date this notice was sent to:  
     • Pay the (proposed) ward's or conservatee's fees and costs, or  
     • File a new revised request that includes the items listed below (*specify incomplete items*): \_\_\_\_\_  
     \_\_\_\_\_  
     \_\_\_\_\_  
     \_\_\_\_\_

**Warning!** If you miss the deadline for paying the (proposed) ward's or conservatee's fees and costs or providing the additional items required by the court and you are the appellant, your appeal may be dismissed.





- 6 b. (2) [ ] The information you provided on the request shows that the (proposed) ward or conservatee is not eligible for the fee waiver you requested for the following reasons (specify):

\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_

You have 10 days from the date this notice was sent to:

- Pay the (proposed) ward's or conservatee's fees and costs, or
• File more information that shows that the (proposed) ward or conservatee is eligible for a fee waiver.

- (3) [ ] The court finds there is substantial question regarding the (proposed) ward's or conservatee's eligibility (describe issue(s) regarding eligibility):

\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_

You have 10 days from the date this notice was sent to:

- Pay the (proposed) ward's or conservatee's fees and costs, or
• File the following additional documents to support your request:

\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_

- c. [ ] The court needs more information. You must go to court on the date below.

Hearing Date

→ Date: \_\_\_\_\_ Time: \_\_\_\_\_ Dept.: \_\_\_\_\_

Name and address of court if different from page 1:

\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_

- [ ] Bring the following proof to support your request, if it is reasonably available:

\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_

Warning! If item 6 c. is checked and you do not go to court on the hearing date, the court will deny your request to waive court fees for the (proposed) ward or conservatee and you will have 10 days to pay those fees. If you are the appellant and you do not pay the filing fees, your appeal may be dismissed.

Date: \_\_\_\_\_

Signature of (check one): [ ] Judicial Officer [ ] Clerk, Deputy

Clerk stamps date here when form is filed.

**DRAFT****02-04-2020****Not approved by  
the Judicial Council****Instructions**

- This form is only for preparing a proposed statement on 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](http://www.courts.ca.gov/forms).
- This form can be attached to your *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103). If it is not attached to that notice, this form must be filed **no later than 20 days after you file that notice. If you have chosen to prepare a statement on appeal and do not file this form on time, the court may dismiss your appeal.**
- 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](http://www.courts.ca.gov/selfhelp-serving.htm).
- Take or mail the original completed form and proof of service on the other parties to the clerk's office for the same court that issued the judgment or order you are appealing. 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:**

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

**Appellate Division Case Number:****1 Your Information**

- a. Name of Appellant (
- the party who is filing this appeal*
- ):

Name: \_\_\_\_\_

- b. Appellant's contact information (
- skip this if the appellant has a lawyer for this appeal*
- ):

Street address: \_\_\_\_\_  
Street City State ZipMailing address (*if different*): \_\_\_\_\_  
Street City State Zip

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

- c. Appellant's lawyer (
- skip this if the appellant does not have a lawyer for this appeal*
- ):

Name: \_\_\_\_\_ State Bar number: \_\_\_\_\_

Street address: \_\_\_\_\_  
Street City State ZipMailing address (*if different*): \_\_\_\_\_  
Street City State Zip

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

Fax: \_\_\_\_\_



**Information About Your Appeal**

- 2 On (fill in the date): \_\_\_\_\_, I/my client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.
- 3 On (fill in the date): \_\_\_\_\_, I/my client filed a notice designating the record on appeal, electing to use a statement on appeal.

**Proposed Statement**

**4 Reasons for Your Appeal**

Remember, in an appeal, the appellate division can only review a case for whether certain kinds of legal errors were made (read form APP-101-INFO to learn about these legal errors):

- There was not “substantial evidence” supporting the judgment, order, or other decision you are appealing.
- A “prejudicial error” was made during the trial court proceedings.

The appellate division:

- Cannot retry your case or take new evidence.
- Cannot consider whether witnesses were telling the truth or lying.
- Cannot consider whether there was more or stronger evidence supporting your position than there was supporting the trial court’s decision.

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

a.  There was not substantial evidence that supported the judgment, order, or other decision that I/my client indicated in the notice of appeal is being appealed in this case. (Explain why you think the judgment, order, or other decision was not supported by substantial evidence): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

b.  The following error or errors about either the law or court procedure was/were made that caused substantial harm to me/my client. (Describe each error and how you were/your client was harmed by that error.)

(1) Describe the error: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Describe how you were/your client was harmed by the error: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(2) Describe the error: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Describe how you were/your client was harmed by the error: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(3) Describe the error: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Describe how you were/your client was harmed by the error: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to describe these or other errors and attach a separate page or pages describing the errors. At the top of each page, write "APP-104, item 4."

**5 The Dispute**

a. In the trial court, I/my client was the (check one):

- plaintiff (the party who filed the complaint in the case).
- defendant (the party against whom the complaint was filed).

b. The plaintiff's complaint in this case was about (briefly describe what was claimed in the complaint filed with the trial court): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

c. The defendant's response to this complaint was (briefly describe how the defendant responded to the complaint filed with the trial court): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to describe the dispute and attach a separate page or pages describing it. At the top of each page, write "APP-104, Item 5."

**6 Summary of Any Motions and the Court's Order on the Motion**

a. Were any motions (requests for the trial court to issue an order) made in this case that are relevant to the reasons you gave in 4 for this appeal?

Yes (fill out b)     No (skip to 7)

b. In the spaces below, describe any motions (requests for orders) that were made in the trial court that are relevant to the reasons you gave in 4 for this appeal. Write a complete and accurate summary of what was said at any hearings on these motions and indicate how the trial court ruled on these motions.

(1) Describe the first motion: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The motion was filed by the  plaintiff.     defendant.

There  was  was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The trial court  granted this motion.     did not grant this motion.

Other (describe any other action the trial court took concerning this motion): \_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to describe this motion and attach a separate page or pages describing this motion. At the top of each page, write "APP-104, Item 6b(1)."

(2) Describe the second motion: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The motion was filed by the  plaintiff.     defendant.

There  was  was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The trial court  granted this motion.     did not grant this motion.

Trial Court Case Name: \_\_\_\_\_

Other (describe any other action the trial court took concerning this motion): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Check here if you need more space to describe this motion and attach a separate page or pages describing this motion. At the top of each page, write “APP-104, item 6b(2).”

(3)  Check here if any other motions were filed that are relevant to the reasons you gave in (4) for this appeal and attach a separate page describing each motion, identifying who made the motion and whether there was a hearing on the motion, summarizing what was said at the hearing on the motion, and indicating whether the trial court granted or denied the motion. At the top of each page, write “APP-104, item 6b(3).”

**(7) Summary of Testimony and Other Evidence**

a. Was there a trial in your case?

- No (skip items b, c, d, and e and go to item (8))
- Yes (check (1) or (2) and complete items b, c, d, and e)
  - (1)  Jury trial
  - (2)  Trial by judge only

b. Did you/your client testify at the trial?

- No
- Yes (Write a complete and accurate summary of the testimony you/your client gave that is relevant to the reasons you gave in (4) for this appeal. Include only what you actually said; do not comment or give your opinion about what was said. Please indicate whether any objections were made concerning your/your client’s testimony or any exhibits you/your client asked to present and whether these objections were sustained.): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Check here if you need more space to summarize your/your client’s testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write “APP-104, Item 7b.”

c. Were there any other witnesses at the trial whose testimony is relevant to the reasons you gave in (4) for this appeal?

- No
- Yes (complete items (1), (2), and (3)):
  - (1) The witness’s name is (fill in the witness’s name): \_\_\_\_\_
  - (2) The witness testified on behalf of the (check one):  plaintiff.  defendant.



(3) This witness testified that *(Write a complete and accurate summary of the witness’s testimony that is relevant to the reasons you gave in ④ for this appeal. Include only what the witness actually said; do not comment on or give your opinion about what the witness said. Please indicate whether any objections were made concerning this witness’s testimony or any exhibits this witness asked to present and whether these objections were sustained.)*: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to summarize this witness’s testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write “APP-104, Item 7c.”

d.  Check here if any other witnesses gave testimony at the trial that is relevant to the reasons you gave in ④ for this appeal. Attach a separate page or pages identifying each witness and who the witness testified for, summarizing the witness's testimony that is relevant to the reasons you gave in ④ for this appeal, and indicating whether any objections were made concerning this witness’s testimony or any exhibits the witness asked to present and whether these objections were sustained. At the top of each page, write “APP-104, Item 7d.”

e. Summarize the evidence, other than testimony, that was given during the trial that is relevant to the reasons you gave in ④ for this appeal. *(Write a complete and accurate summary of the evidence given by both you and the respondent. Include only the evidence given; do not comment on or give your opinion about this evidence.)*:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to describe the evidence and attach a separate page or pages describing the evidence. At the top of each page, write “APP-104, Item 7e.”

**⑧ The Trial Court's Findings**

Did the trial court make findings in the case?

No

Yes *(describe the findings made by the trial court)*: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to describe the trial court’s findings and attach a separate page or pages describing these findings. At the top of each page, write “APP-104, Item 8.”

Trial Court Case Name: \_\_\_\_\_

Trial Court Case Number: \_\_\_\_\_

**9 The Trial Court's Final Judgment**

The trial court issued the following final judgment in this case (*check all that apply and fill in any required information*):

a. I/My client was required to:

pay the other party damages of (*fill in the amount of the damages*): \$ \_\_\_\_\_

do the following (*describe what you were ordered to do*): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. The other party was required to:

pay me/my client damages of (*fill in the amount of the damages*): \$ \_\_\_\_\_

do the following (*describe what the other party was ordered to do*): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

c.  Other(*describe*): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Check here if you need more space to describe the trial court's judgment or order and attach a separate page or pages describing this judgment or order. At the top of each page, write "APP-104, Item 9."*

Date: \_\_\_\_\_

\_\_\_\_\_  
*Type or print your name*



\_\_\_\_\_  
*Signature of appellant or attorney*



## GENERAL INFORMATION

**What does this information sheet cover?**

This information sheet tells you how to fill out *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E). This information sheet is not part of the proof of service and does not need to be copied, served, or filed.

**① What is “serving” a document?**

“Serving” a document on a person means having the document delivered to that person. The general requirements for serving documents are set out in California Code of Civil Procedure sections 1010.6–1013a (you can get a copy of these laws at any county law library or online at [www.leginfo.ca.gov/calaw.html](http://www.leginfo.ca.gov/calaw.html)). There are three main ways to serve documents: (1) by mail, (2) by personal delivery, or (3) by electronic service.

When a document is served by mail, it must be put in a sealed envelope or package that is addressed to the person who is being served and that has the postage fully prepaid. The envelope then has to be deposited with the U.S. Postal Service by leaving it at a U.S. Postal Service office or mail drop or at an office or business mail drop where the person serving the document knows the mail is picked up every day and deposited with the U.S. Postal Service.

When a document is personally delivered to a party who is represented by an attorney, the document must either be given directly to the attorney representing that party or the document can be placed in an envelope or package addressed to the attorney and left with the receptionist at the attorney’s office or with a person who is in charge of the attorney’s office. When a document is personally served on a party who is not represented by an attorney, the document must either be given directly to the party or the document can be given to someone who is at least 18 years old at the party’s residence between the hours of eight in the morning and six in the evening.

You may be able to serve a document electronically if the person being served has agreed to accept electronic service or if the court has ordered the person to accept electronic service. The requirements for electronic service are set out in California Code of Civil Procedure section 1010.6.

When a document is electronically served, it must be served either by electronic transmission or by electronic notification. “Electronic transmission” means sending the document to the person’s electronic service address, an e-mail address the person has given the court and the other parties to the case for this purpose. “Electronic notification” means sending a notice to the person with the exact name of the document and a hyperlink—a link to a web address—at which the document may be viewed and downloaded.

**② What documents have to be served?**

Rule 8.817 of the California Rules of Court requires that before you file any document with the court in a case in the appellate division of the superior court, you must serve one copy of the document on each of the other parties in the case and on anyone else when required by law (statute or rule of court). Other rules require that certain documents in cases in the appellate division be served, including the notice of appeal and the notice designating the record on appeal in appeals in limited civil cases and briefs in all appeals. (For more information about appeals in general and about these documents, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO), *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO), and *Information on Appeal Procedures for Infractions* (form CR-141-INFO).)

**③ Who can serve a document?**

State law (the Code of Civil Procedure) says that a document in a court case can only be served by a person who is over 18 years old. Service by mail or by personal delivery must be by someone who is not a party in the case; electronic service may be performed directly by a party.

If you are a party in a case and wish to serve documents by mail or by personal delivery, **you must have someone else who is over 18 and who is not a party in your case serve any documents in your case for you.** You will need to give the person who is serving the document for you (the server) the names and addresses of all the people who need to be served with that document. You will also need to give the server one copy of each document that needs to be served for each person who is being served.

If you are serving documents electronically, you can do so yourself or have another person over 18 do it for you. The person doing the serving (the server) will need the names and electronic service addresses of everyone who must be served, as well as the document to be served in a form that allows it to be electronically transmitted or made available by hyperlink.

#### 4 What is proof of service?

A “proof of service” shows the court that a document was served as required by the law. Rule 8.817 also requires a party who is filing a document with the court in a case in the appellate division to attach a proof of service to the document the party wants to file. You can use *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) to give the court this proof of service in any case in the appellate division of the superior court. The server should follow the instructions below for completing the *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E). If another person is serving the documents for you—as is required if the document will be served by mail or personal delivery—tell the server to give you the original form when it is filled out and signed. You will need to attach the original proof of service to the document you want to file.

If you are electronically filing the document, the proof of service may also be filed electronically. However, the original signed proof of service must be kept by the party filing the document and produced upon request.

#### INFORMATION FOR THE SERVER

#### 5 Who fills out the *Proof of Service* or *Proof of Electronic Service*?

If you are the server (the person who serves a document for a party in a court case), you must prepare and sign the proof of service. If you served the document by mail or personal delivery, you can use *Proof of Service (Appellate Division)* (form APP-109) to prepare this proof of service in any case in the appellate division. If you served the document electronically, you can use *Proof of Electronic Service (Appellate Division)* (form APP-109E) to prepare the proof of service.

#### 6 How do I fill out the *Proof of Service*?

These instructions are for *Proof of Service (Appellate Division)* (form APP-109), if you are serving the document by mail or personal delivery. If you are serving the document electronically, please see 7 below, for instructions on how to fill out *Proof of Electronic Service (Appellate Division)* (form APP-109E).

You can fill out most of the information on *Proof of Service (Appellate Division)* (form APP-109) by copying the information from the document you are serving before you serve that document. However, you should not sign and date the form until after you have finished serving the document. **By signing form APP-109, you are swearing, under penalty of perjury, that the information that you put in the form is true and correct.**

When you fill out the *Proof of Service (Appellate Division)* (form APP-109), you should print neatly or use a typewriter. If you have Internet access, you can fill out the form online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms) (use the “fillable” version of the form).

#### Filling in the top section of form APP-109:

First box, right side of form: Leave this box blank for the court’s use.

Second box, right side of form: Fill in the name of the county in which the case is filed and the street address of the court. You can copy this information from the first page of the document that you are serving. If the document you are serving is another Judicial Council form, this information will be in the second box on the right-hand side of the form.

Third box, right side of form: Fill in the trial court case name and number. You can copy this information from the first page of the document that you are serving. If the document you are serving is another Judicial Council form, this information will be in the third box on the right-hand side of the form.

Fourth box, right side of form: Fill in the appellate division case number, if you know it. If this number is available, it will be on the first page of the document that you are serving. If the document you are serving is

another Judicial Council form, this number will be in the fourth box on the right-hand side of the form.

**Filling in items 1–5:**

Items ① and ②: You are stating, under penalty of perjury, that you are over the age of 18 and that you are not a party in this court case.

Item ③: Check one of the boxes and provide your home or business address. This information is important because, if you serve the document by mail, you must live or work in the county from which the document was mailed.

Item ④: Check or fill in the name of the document that you are serving. If the document you are serving is another Judicial Council form, the name of the document is located on both the top and the bottom of the first page of the form. If the document you are serving is not a Judicial Council form, the name of the document should be on the top of the first page of the document.

a. Check box 4a. if you are serving the document by mail. **BEFORE YOU SEAL AND MAIL THE ENVELOPE WITH THE DOCUMENT YOU ARE SERVING**, fill in the following parts of the form.

- (1) You are stating, under penalty of perjury, that you are putting one copy of the document you identified in item 4 in an envelope addressed to each person listed in 4a.(2), sealing the envelope, and putting first-class postage on the envelope.
- (2) Fill in the name and address of each person to whom you are mailing the document. You can copy this information from the list of people to be served or the envelopes provided by the party for whom you are serving the document. If you need more space to list names and addresses, check the box under item 4a.(2) and attach a page listing them. At the top of the page, write “APP-109, Item 4a.”
- (3) Fill in the date you are mailing the document and the city and state from which you are mailing it. **REMEMBER:** You must live or work in the county from which the document is mailed.

(a) Check box 4a.(3)(a) if you are personally depositing the document with the U.S. Postal Service, such as at a U.S. Post Office or U.S. Postal Service mailbox.

(b) Check box 4a.(3)(b) if you are putting the document in the mail at your place of business.

Once you have finished filling out these parts of the form, make one copy of *Proof of Service (Appellate Division)* (form APP-109) with this information filled in for each person you are serving by mail. Put this copy of *Proof of Service (Appellate Division)* (form APP-109) in the envelope with the document you are serving. Seal the envelope and mail it as you have indicated on the *Proof of Service*.

- b. Check box 4b. If you personally delivered the documents. Remember, when a document is personally delivered to a party who is represented by an attorney, the document must either be given directly to the party’s attorney or the document can be placed in an envelope or package addressed to the attorney and left with the receptionist at the attorney’s office or with a person who is in charge of the attorney’s office. When a document is personally served on a party who is not represented by an attorney, the document must either be given directly to the party or the document can be given to someone who is at least 18 years old at the party’s residence between the hours of eight in the morning and six in the evening.

For each person to whom you personally delivered the document, fill in:

- (a) The person’s name.
- (b) The address at which you delivered the document to this person.
- (c) The date on which you delivered the document to this person.
- (d) The time at which you delivered the document.

If you need space to list more names, addresses, and delivery dates and times, check the box

under 4b. and attach a page listing this information. At the top of the page, write “APP-109, Item 4b.”

Item ⑤: At the bottom of the form, type or print your name, sign the form, and fill in the date that you signed the form. **By signing this form, you are stating under penalty of perjury that all the information you filled in on *Proof of Service (Appellate Division)* (form APP-109) is true and correct.**

After you have finished serving the document and filled in, signed, and dated *Proof of Service (Appellate Division)* (form APP-109), give the original completed form to the party for whom you served the document.

## ⑦ How do I fill out the *Proof of Electronic Service*?

You can fill out most of the information on *Proof of Electronic Service (Appellate Division)* (form APP-109E) by copying the information from the document you are serving before you serve that document. However, you should not sign and date the form until after you have finished serving the document. **By signing form APP-109E you are swearing under penalty of perjury that the information you have put in the form is true and correct.**

You can fill out the *Proof of Electronic Service (Appellate Division)* (form APP-109E) online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms) (use the “fillable” version of the form), or you can print it out and fill it in, printing neatly or using a typewriter.

### Filling in the top section of form APP-109E:

First box, right side of form: Leave this box blank for the court’s use.

Second box, right side of form: Fill in the name of the county in which the case is filed and the street address of the court. You can copy this information from the first page of the document that you are serving. If the document you are serving is another Judicial Council form, this information will be in the second box on the right-hand side of that form.

Third box, right side of form: Fill in the trial court case number and name. You can copy this information from the first page of the document that you are serving. If the document you are serving is another Judicial Council form, this information will be in the third box on the right-hand side of that form.

Fourth box, right side of form: Fill in the appellate division case number, if you know it. If this number is available, it will be on the first page of the document that you are serving. If the document you are serving is another Judicial Council form, this information will be in the fourth box on the right-hand side of that form.

### Filling in items 1–5:

Item ①: You are stating, under penalty of perjury, that you are over the age of 18.

Item ②:  
a. Check one of the boxes and provide your home or business address.

b. Fill in your electronic service address. This is the address at which you have agreed to accept electronic service, usually an e-mail address.

Item ③: Check or fill in the name of the document that you are serving. If the document you are serving is another Judicial Council form, the name of the document is located on both the top and the bottom of the first page of the form. If the document you are serving is not a Judicial Council form, the name of the document should be on the top of the first page of the document.

Item ④: Fill in the name of each person served, and the name or names of the parties represented, if the person served is an attorney. For each person served, fill in that person’s electronic service address and the date you served the person. If you need more space to list additional persons served, check the box under item ④ b. and attach a page listing them, with their electronic service addresses and the date each person was served. At the top of the page, write “APP-109E, Item 4.”

When you have filled in the information in items 1–4, create an electronic copy of the *Proof of Electronic Service (Appellate Division)* (form APP-109E) with this

information filled in. Transmit the filled-in form with the document you are serving to each person served.

Item ⑤: At the bottom of the form, type or print your name, sign the form, and fill in the date that you signed the form. **By signing this form, you are stating under penalty of perjury that all the information you filled in on the *Proof of Electronic Service (Appellate Division)* (form APP-109E) is true and correct.** If you are not the party for whom the documents are served, give the original completed *Proof of Electronic Service (Appellate Division)* (form APP-109E) to the party for whom you served the document.

If you are electronically filing the document that is served, the proof of service may also be filed electronically. However, the original signed proof of service must be kept by the party filing it and produced upon request.

## GENERAL INFORMATION

## ① What does this information sheet cover?

This information sheet tells you about **writ proceedings**—proceedings in which a person is asking for a writ of mandate, prohibition, or review—in misdemeanor, infraction, and limited civil cases, and in certain small claims cases. Please read this information sheet before you fill out *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151). This information sheet does not cover everything you may need to know about writ proceedings. It is only meant to give you a general idea of the writ process. To learn more, you should read rules 8.930–8.936 of the California Rules of Court, which set out the procedures for writ proceedings in the appellate division. You can get these rules at any courthouse or county law library or online at [www.courts.ca.gov/rules](http://www.courts.ca.gov/rules).

This information sheet does NOT provide information about appeals or proceedings for writs of supersedeas or habeas corpus, or for writs in certain small claims cases.

- For information about appeals, please see the box on the right side of this page.
- For information about writs of habeas corpus, please see rules 4.550–4.552 of the California Rules of Court and *Petition for Writ of Habeas Corpus* (form MC-275).
- For information about writs of supersedeas, please see rule 8.824 of the California Rules of Court. This information sheet applies to writs relating to *postjudgment enforcement actions* of the small claims division. For information about writs relating to other actions by the small claims division, see rules 8.930–8.936 of the California Rules of Court and *Petition for Writ (Small Claims)* (form SC-300).
- For information about writs relating to actions of the superior court on small claims appeals, see rules 8.485–8.493 of the California Rules of Court.

You can get these rules and forms at any courthouse or county law library or online at [www.courts.ca.gov/rules](http://www.courts.ca.gov/rules) for the rules or [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms) for the forms.

## ② What is a writ?

A writ is an order from a higher court telling a lower court to do something the law says the lower court must do or not to do something the law says the lower court does not have the power to do. In writ proceedings in the appellate division, the lower court is the superior court that took the action or issued the order being challenged.

For information about appeal procedures, see:

- *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO)
- *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](http://www.courts.ca.gov/forms).

In this information sheet, we call the lower court the “trial court.”

## ③ Are there different kinds of writs?

Yes. There are three main kinds of writs:

- Writs of mandate (sometimes called “mandamus”), which are orders telling the trial court to do something.
- Writs of prohibition, which are orders telling the trial court not to do something.
- Writs of review (sometimes called “certiorari”), which are orders telling the trial court that the appellate division will review certain kinds of actions already taken by the trial court.

There are laws (statutes) that you should read concerning each type of writ: see California Code of Civil Procedure sections 1084–1097 about writs of mandate, sections 1102–1105 about writs of prohibition, and sections 1067–1077 about writs of review. You can get copies of these statutes at any county law library or online at [leginfo.legislature.ca.gov/faces/codes.xhtml](http://leginfo.legislature.ca.gov/faces/codes.xhtml).



#### 4 Is a writ proceeding the same as an appeal?

No. In an **appeal**, the appellate division *must* consider the parties' arguments and decide whether the trial court made the legal error claimed by the appealing party and whether the trial court's decision should be overturned based on that error (this is called a "decision on the merits"). In a **writ proceeding**, the appellate division is *not* required to make a decision on the merits; even if the trial court made a legal error, the appellate division can decide not to consider that error now, but to wait and consider the error as part of any appeal from the final judgment. Most requests for writs are denied without a decision on the merits (this is called a "summary denial"). Because of this, appeals are the ordinary way that decisions made by a trial court are reviewed and writ proceedings are often called proceedings for "extraordinary" relief.

Appeals and writ proceedings are also used to review different kinds of decisions by the trial court. Appeals can be used only to review a trial court's final judgment and a few kinds of orders. Most rulings made by a trial court before it issues its final judgment cannot be appealed right away; they can only be appealed after the trial court case is over, as part of an appeal of the final judgment. Unlike appeals, writ proceedings can be used to ask for review of certain kinds of important rulings made by a trial court before it issues its final judgment.

#### 5 Is a writ proceeding a new trial?

No. A **writ proceeding is NOT a new trial**. The appellate division will not consider new evidence, such as the testimony of new witnesses. Instead, if it does not summarily deny the request for a writ, the appellate division reviews a record of what happened in the trial court and the trial court's ruling to see if the trial court made the legal error claimed by the person asking for the writ. When it conducts its review, the appellate division presumes that the trial court's ruling is correct; the person who requests the writ must show the appellate division that the trial court made the legal error the person is claiming.

#### 6 Can a writ be used to address any errors made by a trial court?

No.

**Writs can only address certain legal errors.** Writs can only address the following types of legal errors made by a trial court:

- The trial court has a legal duty to act but:
  - Refuses to act
  - Has not done what the law says it must do
  - Has acted in a way the law says it does not have the power to act
- The trial court has performed or says it is going to perform a judicial function (like deciding a person's rights under law in a particular case) in a way that the court does not have the legal power to do.

**There must be no other adequate remedy.** The trial court's error must also be something that can be fixed only with a writ. The person asking for the writ must show the appellate division that there is no adequate way to address the trial court's error other than with the writ (this is called having "no adequate remedy at law"). As mentioned above, appeals are the ordinary way that trial court decisions are reviewed. If the trial court's ruling can be appealed, the appellate division will generally consider an appeal to be good enough (an "adequate remedy") unless the person asking for the writ can show the appellate division that **the person** will be harmed in a way that cannot be fixed by the appeal if the appellate division does not issue the writ (this is called "irreparable" injury or harm).

**Statutory writs:** There are laws (statutes) that provide that certain kinds of rulings can or must be challenged using a writ proceeding. These are called "statutory writs." Here is a list of some of the most common rulings that a statute says can or must be challenged using a writ:

- A ruling on a motion to disqualify a judge (see California Code of Civil Procedure section 170.3(d))
- Denial of a motion for summary judgment (see California Code of Civil Procedure section 437c(m)(1))
- A ruling on a motion for summary adjudication of issues (see California Code of Civil Procedure section 437c(m)(1))

- Denial of a stay in an unlawful detainer matter (see California Code of Civil Procedure section 1176)
- An order disqualifying the prosecuting attorney (see California Penal Code section 1424)

You can get copies of these statutes at any county law library or online at [leginfo.legislature.ca.gov/faces/codes.xhtml](http://leginfo.legislature.ca.gov/faces/codes.xhtml). You will need to check whether there is a statute providing that the specific ruling you want to challenge can or must be reviewed using a writ proceeding. (Note that just because there is a statute requiring or allowing you to ask for a writ to challenge a ruling does not mean that the court must grant your request; the appellate division can still deny a request for a statutory writ.)

**Common law writs:** Even if there is not a statute specifically providing for a writ proceeding to challenge a particular ruling, most trial court rulings other than the final judgment can potentially be challenged using a writ proceeding if the trial court made the type of legal error described above and the petitioner has no other adequate remedy at law. These writs are called “common law” writs.

### 7 Can the appellate division consider a request for a writ in *any* case?

No. Different courts have the power (called “jurisdiction”) to consider requests for writs in different types of cases. The appellate division can only consider requests for writs in limited civil, misdemeanor, and infraction cases, and certain small claims cases. A limited civil case is a civil case in which the amount claimed is \$25,000 or less (see California Code of Civil Procedure sections 85 and 88). Misdemeanor cases are cases in which a person has been charged with or convicted of a crime for which the punishment can include jail time of up to one year but not time in state prison (see California Penal Code sections 17 and 19.2). (If the person was also charged with or convicted of a felony in the same case, it is considered a felony case, not a misdemeanor case.) Infraction cases are cases in which a person has been charged with or convicted of a crime for which the punishment can be a fine, traffic school, or some form of community service but cannot include any time in jail or prison (see California Penal Code sections 17 and 19.8). Examples of infractions include traffic tickets or citations for violations of some

city or county ordinances. (If a person was also charged with or convicted of a misdemeanor in the same case, it is considered a misdemeanor case, not an infraction case.) You can get copies of these statutes at any county law library or online at [leginfo.legislature.ca.gov/faces/codes.xhtml](http://leginfo.legislature.ca.gov/faces/codes.xhtml). The appellate division can consider requests for writs in small claims actions relating to postjudgment enforcement orders.

The appellate division does NOT have jurisdiction to consider requests for writs in either unlimited civil cases (civil cases in which the amount claimed is more than \$25,000) or felony cases (cases in which a person has been charged with or convicted of a crime for which the punishment can include time in state prison). Requests for writs in these cases can be made in the Court of Appeal. The appellate division also does NOT have jurisdiction to consider requests for writs of habeas corpus; requests for these writs can be made in the superior court.

Requests for writs relating to actions of the small claims division *other* than postjudgment enforcement orders are considered by a single judge in the appellate division. (See form SC-300-INFO.) Requests for writs relating to superior court actions in small claims cases on appeal may be made to the Court of Appeal.

### 8 Who are the parties in a writ proceeding?

If you are asking for the writ, you are called the PETITIONER. You should read “Information for the Petitioner,” beginning on page 4.

The court the petitioner is asking to be ordered to do or not to do something is called the RESPONDENT. In appellate division writ proceedings, the trial court is the respondent.

Any other party in the trial court case who would be affected by a ruling regarding the request for a writ is a REAL PARTY IN INTEREST. If you are a real party in interest, you should read “Information for a Real Party in Interest,” beginning on page 10.

### 9 Do I need a lawyer to represent me in a writ proceeding?

You do not *have* to have a lawyer; you are allowed to represent yourself in a writ proceeding in the appellate division. But writ proceedings can be very complicated





and you will have to follow the same rules that lawyers have to follow. If you have any questions about the writ procedures, you should talk to a lawyer. In limited civil cases and infraction cases, you must hire a lawyer at your own expense if you want one (the court cannot provide 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](http://www.courts.ca.gov/selfhelp-lowcosthelp.htm).

### INFORMATION FOR THE PETITIONER

This part of the information sheet is written for the petitioner—the party asking for the writ. It explains some of the rules and procedures relating to asking for a writ. The information may also be helpful to a real party in interest. There is more information for a real party in interest starting on page 10 of this information sheet.

#### 10 Who can ask for a writ?

Only a party in the trial court proceeding—the plaintiff or defendant in a civil case or the defendant or prosecuting agency in a misdemeanor or infraction case—can ask for a writ challenging a ruling on a motion to disqualify a judge (see California Code of Civil Procedure section 170.3(d)). Parties are also usually the only ones that ask for writs challenging other kinds of trial court rulings. However, in most cases, a person who was not a party does have the legal right to ask for a writ if that person has a “beneficial interest” in the trial court’s ruling. A “beneficial interest” means that the person has a specific right or interest affected by the ruling that goes beyond the general rights or interests the public may have in the ruling.

#### 11 How do I ask for a writ?

To ask for a writ you must serve and file a petition for a writ (see below for an explanation of how to “serve and file” a petition). A petition is a formal request that the appellate division issue a writ. A petition for a writ explains to the appellate division what happened in the trial court, what legal error you (the petitioner) believe the trial court made, why you have no other adequate

remedy at law, and what order you are requesting the appellate division to make.

#### 12 How do I prepare a writ petition?

If you are represented by a lawyer, your lawyer will prepare your petition for a writ. If you are not represented by a lawyer, you must use *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151) to prepare your petition. You can get form APP-151 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). This form asks you to fill in the information that needs to be in a writ petition.

##### a. Description of your interest in the trial court’s ruling

Your petition needs to tell the appellate division why you have a right to ask for a writ in the case. As discussed above, usually only a person who was a party in the trial court case—the plaintiff or defendant in a civil case or the defendant or prosecuting agency in a misdemeanor or infraction case—asks for a writ challenging a ruling in that case. If you were a party in the trial court case, say that in your petition. If you were not a party, you will need to describe what “beneficial interest” you have in the trial court’s ruling. A “beneficial interest” means that you have a specific right or interest affected by the ruling that goes beyond the general rights or interests the public may have in the ruling. To show the appellate division that you have a beneficial interest in the ruling you want to challenge, you must describe how the ruling will affect you in a direct and negative way.

##### b. Description of the legal error you believe the trial court made

Your petition will need to tell the appellate division what legal error you believe the trial court made. Not every mistake a trial court might make can be addressed by a writ. You must show that the trial court made one of the following types of legal errors:

- The trial court has a legal duty to act but:
  - Refuses to act
  - Has not done what the law says it must do

- Has acted in a way the law says it does not have the power to act
- The trial court has performed or says it is going to perform a judicial function (like deciding a person's rights under law in a particular case) in a way that the court does not have the legal power to do.

To show the appellate division that the trial court made one of these legal errors, you will need to:

- Show that the trial court has the legal duty or the power to act or not act in a particular way. You will need to tell the appellate division what legal authority—what constitutional provision, statute, rule, or published court decision—establishes the trial court's legal duty or power to act or not act in that way.
- Show the appellate division that the trial court has not acted in the way that this legal authority says the court is required to act. You will need to tell the appellate division exactly where in the record of what happened in the trial court it shows that the trial court did not act in the way it was required to.

### c. Description of why you need the writ

One of the most important parts of your petition is explaining to the appellate division why you need the writ you have requested. Remember, the appellate division does not have to grant your petition just because the trial court made an error. You must convince the appellate division that it is important for it to issue the writ.

***Your petition needs to show that a writ is the only way to fix the trial court's error.*** To convince the court you need the writ, you will need to show the appellate division that you have no way to fix the trial court's error other than through a writ (this is called having “no adequate remedy at law”).

***This will be hard if the trial court's ruling can be appealed.*** If the ruling you are challenging can be appealed, either immediately or as part of an appeal of the final judgment in your case, the appellate division will generally consider this appeal to be a good enough way to fix the trial court's ruling (an “adequate remedy”). To be able to explain to the appellate division why you do not have an adequate remedy at law, you will need to find out if the ruling you want to challenge

can be appealed, either immediately or as part of an appeal of the final judgment.

### ***Here are some trial court rulings that can be appealed.***

There are laws (statutes) that say that certain kinds of trial court rulings (“orders”) can be appealed immediately. In limited civil cases, California Code of Civil Procedure section 904.2 lists orders that can be appealed immediately, including orders:

- Changing or refusing to change the place of trial (venue)
- Granting a motion to quash service of summons
- Granting a motion to stay or dismiss the action on the ground of inconvenient forum
- Granting a new trial
- Denying a motion for judgment notwithstanding the verdict
- Granting or dissolving an injunction or refusing to grant or dissolve an injunction
- Appointing a receiver
- Made after final judgment in the case

In misdemeanor and infraction cases, orders made after the final judgment that affect the substantial rights of the defendant can be appealed immediately (California Penal Code section 1466).

In misdemeanor cases, orders granting or denying a motion to suppress evidence can also be appealed immediately (California Penal Code section 1538.5(j)).

You can get copies of these statutes at any county law library or online at [leginfo.legislature.ca.gov/faces/codes.xhtml](http://leginfo.legislature.ca.gov/faces/codes.xhtml). You should also check to see if there are published court decisions that indicate whether you can or must use an appeal or a writ petition to challenge the type of ruling you want to challenge in your case.

***If the ruling can be appealed, you will need to show that an appeal will not fix the trial court's error.*** If the trial court ruling you want to challenge can be appealed, you will need to show the appellate division why that appeal is not good enough to fix the trial court's error. To do that, you will need to show the appellate division how you will be harmed by the trial court's error in a way that cannot be fixed by the appeal if the appellate division does not issue the writ (this is called “irreparable” injury or harm). For example, because of



the time it takes for an appeal, the harm you want to prevent may happen before an appeal can be finished.

#### d. Description of the order you want the appellate division to make

Your petition needs to describe what you are asking the appellate division to order the trial court to do or not do. Writ petitions usually ask that the trial court be ordered to cancel (“vacate”) its ruling, issue a new ruling, or not take any steps to enforce its ruling.

If you want the appellate division to order the trial court not to do anything more until the appellate division decides whether to grant the writ you are requesting, you must ask for a “stay.” If you want a stay, you should first ask the trial court for a stay. You should tell the appellate division whether you asked the trial court for a stay. If you did not ask the trial court for a stay, you should tell the appellate division why you did not do this.

If you ask the appellate division for a stay, make sure you also fill out the “Stay requested” box on the first page of the *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151).

#### e. Verifying the petition

Petitions for writs must be “verified.” This means that either the petitioner or the petitioner’s attorney must declare under penalty of perjury that the facts stated in the petition are true and correct, must sign the petition, and must indicate the date that the petition was signed. On the last page of the *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151), there is a place for you to verify your petition.

### 13 Is there anything else that I need to serve and file with my petition?

Yes. Along with the petition, you must serve and file a record of what happened in the trial court (see below for an explanation of how to serve and file the petition). Since the appellate division judges were not there in the trial court, a record of what happened must be sent to the appellate division for its review. The materials that make up this record are called “supporting documents.”

**What needs to be in the supporting documents.** The supporting documents must include:

- A record of what was said in the trial court about the ruling that you are challenging (this is called the “oral proceedings”) and
- Copies of certain important documents from the trial court.

Read below for more information about these two parts of the supporting documents.

**Record of the oral proceedings.** There are several ways a record of what was said in the trial court may be provided to the appellate division:

- **A transcript**—A transcript is a written record (often called the “verbatim” record) of the oral proceedings in the trial court. If a court reporter was in the trial court and made a record of the oral proceedings, you can have the court reporter prepare a transcript of those oral proceedings, called a “reporter’s transcript,” for the appellate division. If a reporter was not there, but the oral proceedings were officially recorded on approved electronic recording equipment, you can have a transcript prepared for the appellate division from the official electronic recording of these proceedings. You (the petitioner) must pay for preparing a transcript, unless the court orders otherwise.
- **A copy of an electronic recording**—If the oral proceedings were officially recorded on approved electronic recording equipment, the court has a local rule for the appellate division permitting this recording to be used as the record of the oral proceedings, 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 a transcript. You (the petitioner) must pay for preparing a copy of the official electronic recording, unless the court orders otherwise.
- **A summary**—If a transcript or official electronic recording of what was said in the trial court is not available, your petition must include a declaration (a statement signed by the petitioner under penalty of perjury) either:
  - Explaining why the transcript or official electronic recording is not available and providing a fair summary of the proceedings, including the petitioner’s arguments and any statement by the court supporting its ruling or

- o Stating that the transcript or electronic recording has been ordered, the date it was ordered, and the date it is expected to be filed.

**Copies of documents from the trial court.** Copies of the following documents from the trial court must also be included in the supporting documents:

- The trial court ruling being challenged in the petition
- All documents and exhibits submitted to the trial court supporting and opposing the petitioner’s position
- Any other documents or portions of documents submitted to the trial court that are necessary for a complete understanding of the case and of the ruling being challenged

**What if I cannot get copies of the documents from the trial court because of an emergency?** Rule 8.931 of the California Rules of Court provides that in extraordinary circumstances the petition may be filed without copies of the documents from the trial court. If the petition is filed without these documents, you must explain in your petition the urgency and the circumstances making the documents available.

**Format of the supporting documents.** Supporting documents must be put in the format required by rule 8.931 of the California Rules of Court. Among other things, there must be a tab for each document and an index listing the documents that are included. You should carefully read rule 8.931. You can get a copy of rule 8.931 at any courthouse or county law library or online at [www.courts.ca.gov/rules](http://www.courts.ca.gov/rules).

**14 Is there a deadline to ask for a writ?**

Yes. For statutory writs, the statute usually sets the deadline for serving and filing the petition. Here is a list of the deadlines for filing petitions for some of the most common statutory writs (you can get copies of these statutes at any county law library or online at [leginfo.legislature.ca.gov/faces/codes.xhtml](http://leginfo.legislature.ca.gov/faces/codes.xhtml)).

Statutory Writ	Filing Deadline
Writ challenging a ruling on a motion to disqualify a judge (see California Code of Civil Procedure section 170.3(d))	10 days after notice to the parties of the decision
Writ challenging the denial of a motion for summary judgment (see California Code of Civil Procedure section 437c(m)(1))	20 days after service of written notice of entry of the order
Writ challenging a ruling on a motion for summary adjudication of issues (see California Code of Civil Procedure section 437c(m)(1))	20 days after service of written notice of entry of the order

For common law writs or statutory writs where the statute does not set a deadline, you should file the petition as soon as possible and not later than 30 days after the court makes the ruling that you are challenging in the petition. While there is no absolute deadline for filing these petitions, writ petitions are usually used when it is urgent that the trial court’s error be fixed. Remember, the court is not required to grant your petition even if the trial court made an error. If you delay in filing your petition, it may make the appellate division think that it is not really urgent that the trial court’s error be fixed and the appellate division may deny your petition. If there are extraordinary circumstances that delayed the filing of your petition, you should explain these circumstances to the appellate division in your petition.

**15 How do I “serve” my petition?**

Rule 8.931(d) requires that the petition and one set of supporting documents be served on any named real party in interest and that just the petition be served on the respondent trial court. “Serving” a petition on a party means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (“serve”) the petition to the real party in interest and the respondent court in the way required by law. If the petition 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 petition 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 petition, who was served with the petition, how the petition was served (by mail, in person, or electronically), and the date the petition was served.

You can get more information about how to serve court documents 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](http://www.courts.ca.gov/selfhelp-serving.htm).

### 16 How do I file my petition?

To file a petition for a writ in the appellate division, you must bring or mail the original petition, including the supporting documents, and the proof of service to the clerk for the appellate division of the superior court that made the ruling you are challenging. If the superior court has more than one courthouse location, you should call the clerk at the courthouse where the ruling you are challenging was made to ask where to file your petition.

You should make a copy of all the documents 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 petition to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

### 17 Do I have to pay to file a petition?

There is no fee to file a petition for a writ in a misdemeanor or infraction case, but there is a fee to file a petition for a writ in a limited civil case. You should ask the clerk for the appellate division where you are filing the petition what this fee is. If you cannot afford to pay this filing fee, you can ask the court to waive this fee. To do this, you must fill out 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](http://www.courts.ca.gov/forms). You can file this application

either before you file your petition or with your petition. The court will review this application and decide whether to waive the filing fee.

### 18 What happens after I file my petition?

Within 10 days after you serve and file your petition, the respondent or any real party in interest can serve and file preliminary opposition to the petition. Within 10 days after an opposition is filed, you may serve and file a reply to that opposition.

The appellate division does not have to wait for an opposition or reply before it can act on a petition for a writ, however. Without waiting, the appellate division can:

- Issue a stay
- Summarily deny the petition
- Issue an alternative writ or order to show cause
- Notify the parties that it is considering issuing a preemptory writ in the first instance
- Issue a preemptory writ in the first instance if such relief was expressly requested in the petition.

Read below for more information about these options.

#### a. Stay of trial court proceedings

A stay is an order from the appellate division telling the trial court not to do anything more until the appellate division decides whether to grant your petition. A stay puts the trial court proceedings on temporary hold.

#### b. Summary denial

A “summary denial” means that the appellate division denies the petition without deciding whether the trial court made the legal error claimed by the petitioner or whether the writ requested by the petitioner should be issued based on that error. Remember, even if the trial court made a legal error, the appellate division can decide not to consider that error now but to wait and consider the error as part of any appeal from the final judgment. No reasons need to be given for a summary denial. Most petitions for writs are denied in this way.



**c. Alternative writ or order to show cause**

An “alternative writ” is an order telling the trial court either to do what the petitioner has requested in the petition (or some modified form of what the petitioner requested) or to show the appellate division why the trial court should not be ordered to do what the petitioner requested. An “order to show cause” is similar; it is an order telling the trial court to show the appellate division why the trial court should not be ordered to do what the petitioner requested in the petition (or some modified form of what the petitioner requested). The appellate division will issue an alternative writ or an order to show cause only if the petitioner has shown that **the petitioner** has no adequate remedy at law and the appellate division has decided that the petitioner may have shown that the trial court made a legal error that needs to be fixed.

If the appellate division issues an alternative writ and the trial court does what the petitioner requested (or a modified form of what the petitioner requested as ordered by the appellate division), then no further action by the appellate division is needed and the appellate division may dismiss the petition.

If the trial court does not comply with an alternative writ, however, or if the appellate division issues an order to show cause, then the respondent court or a real party in interest can file a response to the appellate division’s order (called a “return”) that explains why the trial court should not be ordered to do what the petitioner requested. The return must be served and filed within the time specified by the appellate division or, if no time is specified, within 30 days from the date the alternative writ or order to show cause was issued. The petitioner will then have an opportunity to serve and file a reply within 15 days after the return is filed. The appellate division may set the matter for oral argument. When all the papers have been served and filed (or the time to serve and file them has passed) and oral argument is completed, the appellate division will decide the case.

**d. Peremptory writ in the first instance**

A “peremptory writ in the first instance” is an order telling the trial court to do what the petitioner has requested (or some modified form of what the petitioner requested) that is issued without the appellate division first issuing an alternative writ or order to show cause. It is very rare for the appellate division to issue a peremptory writ in the first instance, and it will not do so

unless the respondent and real parties in interest have received notice that the court might do so, either through the petitioner expressly asking for such relief in the petition, or by the court first notifying the parties and giving the respondent court and any real party in interest a chance to file an opposition.

The respondent court or a real party in interest can file a response to the appellate division’s notice (called an “opposition”) that explains why the trial court should not be ordered to do what the petitioner has requested. The opposition must be served and filed within the time specified by the appellate division or, if no time is specified, within 30 days from the date the notice was issued. The petitioner will then have a chance to serve and file a reply within 15 days after the opposition is filed. The appellate division may then set the matter for oral argument. When all the papers have been served and filed (or the time to serve and file them has passed) and oral argument is completed, the appellate division will decide the case.

**19 What should I do if the court denies my petition?**

If the court denies your petition, it may be helpful to talk to a lawyer. In a limited civil or infraction case, you must hire a lawyer at your own expense if you want one (the court cannot provide 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](http://www.courts.ca.gov/selfhelp-lowcosthelp.htm).

**INFORMATION FOR A REAL PARTY IN INTEREST**

This part of the information sheet is written for a real party in interest—a party from the trial court case other than the petitioner who will be affected by a ruling on a petition for a writ. It explains some of the rules and procedures relating to responding to a petition for a writ. The information may also be helpful to the petitioner.



**20 I have received a copy of a petition for a writ in a case in which I am a party. Do I need to do anything?**

You do not *have* to do anything. The California Rules of Court give you the right to file a preliminary opposition to a petition for a writ within 10 days after the petition is served and filed, but you are not required to do this. The appellate division can take certain actions without waiting for any opposition, including:

- Summarily denying the petition
- Issuing an alternative writ or order to show cause
- Notifying the parties that it is considering issuing a peremptory writ in the first instance
- Issuing a peremptory writ in the first instance if such relief was expressly requested in the petition.

Read the response to question **18** for more information about these options.

Most petitions for writs are summarily denied, often within a few days after they are filed. If you have not already received something from the appellate division saying what action it is taking on the petition, it is a good idea to call the appellate division to see if the petition has been denied before you decide whether and how to respond.

This would be a good time to talk to a lawyer. You do not *have* to have a lawyer; you are allowed to represent yourself in a writ proceeding in the appellate division. But writ proceedings can be very complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about writ proceedings or about whether and how you should respond to a writ petition, you should talk to a lawyer. In a limited civil case or infraction case, you must hire a lawyer at your own expense if you want one (the court cannot provide 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](http://www.courts.ca.gov/selfhelp-lowcosthelp.htm).

If the petition has not already been summarily denied, you may, but are not required to, serve and file a preliminary opposition to the petition within 10 days after the petition was served and filed. In general, it is a good idea to consider filing a preliminary opposition if the petition misstates the facts or if you think the petition shows that the trial court made a legal error that may

need to be fixed. However, the appellate division will seldom grant a writ without first issuing an alternative writ, an order to show cause, or a notice that it is considering issuing a peremptory writ. In all these circumstances, you will get notice from the court and have a chance to file a response. Note that the appellate division may issue a peremptory writ without notice if the petitioner expressly asked the court, in the petition, to issue a peremptory writ in the first instance. If the petitioner did that, you may want to consider whether to file a preliminary opposition, to explain why you believe the small claims court made no legal error and why the petitioner is not entitled to a writ.

If you decide to file a preliminary opposition, you must serve that preliminary opposition on all the other parties to the writ proceeding. “Serving and filing” an opposition means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (“serve”) the preliminary opposition to the other parties in the way required by law. If the preliminary opposition 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 preliminary opposition 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 preliminary opposition, who was served with the preliminary opposition, how the preliminary opposition was served (by mail, in person, or electronically), and the date the preliminary opposition was served.
- File the original preliminary opposition and the proof of service with the appellate division. You should make a copy of the preliminary opposition 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 preliminary opposition 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 documents 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](http://www.courts.ca.gov/selfhelp-serving.htm).

**21 I have received a copy of an alternative writ or an order to show cause issued by the appellate division. Do I need to do anything?**

Yes. Unless the trial court has already done what the alternative writ told it to do, you should serve and file a response called a “return.”

As explained above, the appellate division will issue an alternative writ or an order to show cause if the appellate division has decided that the petitioner may have shown that the trial court made a legal error that needs to be fixed. An “alternative writ” is an order telling the trial court either to do what the petitioner has requested in the petition (or some modified form of what the petitioner requested) or to show the appellate division why the trial court should not be ordered to do what the petitioner requested. An “order to show cause” is similar; it is an order telling the trial court to show the appellate division why the trial court should not be ordered to do what the petitioner requested in the petition (or some modified form of what the petitioner requested).

If the appellate division issues an alternative writ and the trial court does what the petitioner requested (or a modified form of what the petitioner requested as ordered by the appellate division), then no further action by the appellate division is needed and the appellate division may dismiss the petition. If the trial court does not comply with an alternative writ, however, or if the appellate division issues an order to show cause, then the respondent court or the real party in interest may serve and file a response to the appellate division’s order, called a “return.”

A return is your argument to the appellate division about why the trial court should not be ordered to do what the petitioner has requested. If you are represented by a lawyer in the writ proceeding, your lawyer will prepare your return. If you are not represented by a lawyer, you will need to prepare your own return. A return is usually a legal response called an “answer.” An answer is used to admit or deny the facts alleged in the petition, to add to or correct the facts, and to explain any legal defenses to the legal arguments made by the petitioner. You

should read California Code of Civil Procedure sections 430.10–430.80 for more information about answers. You can get copies of these statutes at any county law library or online at [leginfo.legislature.ca.gov/faces/codes.xhtml](http://leginfo.legislature.ca.gov/faces/codes.xhtml). A return can also include additional supporting documents not already filed by the petitioner.

If you do not file a return when the appellate division issues an alternative writ or order to show cause, it does not mean that the appellate division is required to issue the writ requested by the petitioner. However, the appellate division will treat the facts stated by the petitioner in the petition as true, which makes it more likely the appellate division will issue the requested writ.

Unless the appellate division sets a different filing deadline in its alternative writ or order to show cause, you must serve and file your return within 30 days after the appellate division issues the alternative writ or order to show cause. The return must be served on all the other parties to the writ proceeding. “Serving and filing” the return means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (“serve”) the return to the other parties in the way required by law. If the return 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 return 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 return, who was served with the return, how the return was served (by mail, in person, or electronically), and the date the return was served.
- File the original return and the proof of service with the appellate division. You should make a copy of the return 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 return 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 documents 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](http://www.courts.ca.gov/selfhelp-serving.htm).

**22 I have received a copy of a notice from the appellate division indicating it is considering issuing a peremptory writ in the first instance. Do I need to do anything?**

Yes. You should serve and file a response called an “opposition.”

As explained in the answer to question **18**, a “peremptory writ in the first instance” is an order telling the trial court to do what the petitioner has requested (or some form of what the petitioner requested as ordered by the appellate division) that is issued without the appellate division first issuing an alternative writ or order to show cause. The appellate division will not issue a peremptory writ in the first instance without first giving the parties notice and a chance to file an opposition. However, when the appellate division issues such a notice, it means that the appellate division is strongly considering granting the writ requested by the petitioner.

An opposition is your argument to the appellate division about why the trial court should not be ordered to do what the petitioner has requested. If you are represented by a lawyer in the writ proceeding, your lawyer will prepare your opposition. If you are not represented by a lawyer, you will need to prepare your own opposition. Like a return discussed above, an opposition is usually a legal response called an “answer.” An answer is used to admit or deny the facts alleged in the petition, to add to or correct the facts, and to explain any legal defenses to the legal arguments made by the petitioner. You should read California Code of Civil Procedure sections 430.10–430.80 for more information about answers. You can get copies of these statutes at any county law library or online at [leginfo.legislature.ca.gov/faces/codes.xhtml](http://leginfo.legislature.ca.gov/faces/codes.xhtml).

Unless the appellate division sets a different deadline in its notice that it is considering issuing a peremptory writ, you must serve and file your opposition within 30 days after the appellate division issues the notice. The opposition must be served on all the other parties to the writ proceeding. “Serving and filing” the opposition means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (“serve”) the opposition to the

other parties in the way required by law. If the opposition 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 opposition 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 opposition, who was served with the opposition, how the opposition was served (by mail, in person, or electronically), and the date the opposition was served.
- File the original opposition and the proof of service with the appellate division. You should make a copy of the opposition 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 opposition 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 documents 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](http://www.courts.ca.gov/selfhelp-serving.htm).

**23 What happens after I serve and file my return or opposition?**

After you file a return or opposition, the petitioner has 15 days to serve and file a reply. The appellate division may also set the matter for oral argument. When all the papers have been filed (or the time to file them has passed) and oral argument is completed, the appellate division will decide the case.

*Clerk stamps date here when form is filed.*

**DRAFT**

**02-04-2020**

**Not approved by  
the Judicial Council**

*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:**

**Instructions**

- This form is only for preparing a proposed statement on appeal in an **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](http://www.courts.ca.gov/forms).
- This form can be attached to your *Notice Regarding Record on Appeal (Misdemeanor)* (form CR-134). If it is not attached to that notice, this form must be filed **no later than 20 days after you file that notice. If you have chosen to prepare a statement on appeal and do not file this form on time, the court may dismiss your appeal.**
- 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](http://www.courts.ca.gov/selfhelp-serving.htm).
- Take or mail the completed form and proof of service on each of the other parties to the clerk’s office for the same court that issued the judgment or order you are appealing. 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.

**1 Your Information**

a. Appellant (the party who is filing this appeal):

Name: \_\_\_\_\_

Street address: \_\_\_\_\_  
*Street City State Zip*

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

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

b. Appellant’s lawyer (skip this if the appellant is filling out this form):

The lawyer filling out this form (check (1) or (2)):

(1)  was the appellant’s lawyer in the trial court. (2)  is the appellant’s 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: \_\_\_\_\_



Trial Court Case Number: \_\_\_\_\_

Trial Court Case Name: \_\_\_\_\_

**Information About Your Appeal**

- 2 On (fill in the date): \_\_\_\_\_, I/my client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.
- 3 On (fill in the date): \_\_\_\_\_, I/my client filed a Notice Regarding Record on Appeal, choosing to use a statement on appeal as the record of what was said in this case.

**Proposed Statement**

**4 Reasons for Your Appeal**

Remember, in an appeal, the appellate division can only review a case for whether certain kinds of legal errors were made in the trial court proceedings (read form CR-131-INFO to learn about these legal errors):

- There was not “substantial evidence” supporting the judgment, order, or other decision you are appealing.
- A “prejudicial error” was made during the trial court proceedings.

The appellate division:

- Cannot retry your case or take new evidence.
- Cannot consider whether witnesses were telling the truth or lying.
- Cannot consider whether there was more or stronger evidence supporting your position than there was supporting the trial court’s decision.

(Check all that apply and describe in detail the legal error or errors you believe were made that are the reason for this appeal.)

- a.  There was not substantial evidence that supported the judgment, order, or other decision that I/my client indicated in the notice of appeal that is being appealed in this case. (Explain why you think the judgment, order, or other decision was not supported by substantial evidence.): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

- b.  The following error or errors about either the law or court procedure was/were made that caused substantial harm to me/my client. (Describe each error and how you were/your client was harmed by that error.)

- (1) Describe the error: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Describe how this error harmed you/your client: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_



Trial Court Case Name: \_\_\_\_\_

**4** b. (continued)

(2) Describe the error: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Describe how this error harmed you/your client: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(3) Describe the error: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Describe how this error harmed you/your client: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to describe these or other errors and attach a separate page or pages describing the errors. At the top of each page, write "CR-135, item 4."

**5 The Charges Against Me/My Client**

a. The charges against me/my client were (list all of the charges indicated on the citation or complaint filed with the court by the prosecutor): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. I/My client (check (1), (2), or (3))

(1)  pleaded not guilty to all of the charges.

(2)  pleaded guilty to only the following charges: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(3)  pleaded guilty to all of these charges.



**6 Summary of Any Motions and the Court's Order on the Motion**

a. Were any motions (requests for the trial court to issue an order) made in this case that are relevant to the reasons you gave in **4** for this appeal?

Yes (fill out b)       No (skip to item **7**)

b. In the spaces below, describe any motions (requests for orders) that were made in the trial court that are relevant to the reasons you gave in **4** for this appeal. Write a complete and accurate summary of what was said at any hearings on these motions and indicate how the trial court ruled on these motions:

(1) Describe the first motion: \_\_\_\_\_

The motion was filed by the  prosecutor.     defendant.

There  was  was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The trial court  granted this motion.     did not grant this motion.

Other (describe any other action the trial court took concerning this motion): \_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to describe this motion and attach a separate page or pages describing it. At the top of each page, write "CR-135, Item 6b(1)."

(2) Describe the second motion: \_\_\_\_\_

The motion was filed by the  prosecutor.     defendant.

There  was  was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

The trial court  granted this motion.     did not grant this motion.

Other (describe any other action the trial court took concerning this motion): \_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to describe this motion and attach a separate page or pages describing this motion. At the top of each page, write "CR-135, item 6b(2)."



Trial Court Case Name: \_\_\_\_\_

- (3)  Check here if any other motions were filed that are relevant to the reasons you gave in ④ for this appeal, and attach a separate page or pages describing each motion, identifying who made the motion and whether there was a hearing on the motion, summarizing what was said at the hearing on the motion, and indicating whether the trial court granted or denied the motion. At the top of each page, write CR-135, item 6b(3).”

**⑦ Summary of Testimony and Other Evidence**

a. Was there a trial in your case?

No (skip items b, c, d, e, and f, and go to item ⑧)

Yes (complete items b, c, d, e, and f)

(1)  Jury trial

(2)  Trial by judge only

b. Did you/your client testify at the trial?

No

Yes (Write a complete and accurate summary of the testimony you/your client gave that is relevant to the reasons you gave in ④ for this appeal. Include only what you actually said; do not comment on or give your opinion about what you said. Please indicate whether any objections were made concerning your/your client’s testimony or any exhibits you/your client asked to present and whether these objections were sustained.): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to summarize your/your client’s testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write “CR-135, Item 7b.”

c. Did an officer from the police department, sheriff’s office, or other government agency that charged you/your client testify at the trial? (Check one):

No

Yes (complete (1) and (2)):

(1) The name of the officer who testified is (fill in the officer’s name): \_\_\_\_\_

(2) This officer testified that (Write a complete and accurate summary of the officer’s testimony that is relevant to the reasons you gave in ④ for this appeal. Include only what the officer actually said; do not comment on or give your opinion about what the officer said. Please indicate whether any objections were made concerning the officer’s testimony or any exhibits the officer asked to present and whether these objections were sustained.): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to summarize the officer’s testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write “CR-135, Item 7c.”



Trial Court Case Name: \_\_\_\_\_

7 (continued)

d.  Were there any other witnesses at the trial whose testimony is relevant to the reasons you gave in 4 for this appeal?

No

Yes (fill out (1)–(4)):

(1) The witness’s name is (fill in the witness’s name): \_\_\_\_\_

(2) The witness  was  was not an officer from the police department, sheriff’s office, or other government agency that charged me/my client.

(3) The witness testified on behalf of  me/my client.  the prosecution.

(4) This witness testified that (Write a complete and accurate summary of the witness’s testimony that is relevant to the reasons you gave in 4 for this appeal. Include only what the witness actually said; do not comment on or give your opinion about what the witness said. Please indicate whether any objections were made concerning the witness’s testimony or any exhibits the witness asked to present and whether these objections were sustained.): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to summarize this witness’s testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write “CR-135, Item 7d.”

e.  Check here if any other witnesses gave testimony at the trial that is relevant to the reasons you gave in 4 for this appeal. Attach a separate page or pages identifying each witness, whether the witness testified on your/your client’s behalf or the prosecution’s behalf, summarizing the witness’s testimony that is relevant to the reasons you gave in 4 for this appeal, and indicating whether any objections were made concerning the witness’s testimony or any exhibits the witness asked to present and whether these objections were sustained. At the top of each page, write “CR-135, item 7e.”

f. Summarize the evidence, other than the testimony, that was given during the trial that is relevant to the reasons you gave in 3 for this appeal (Write a complete and accurate summary of the evidence given by both you and the respondent. Include only the evidence; do not comment or give your opinion about this evidence.):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to summarize the evidence and attach a separate page or pages summarizing this evidence. At the top of each page, write “CR-135, Item 7f.”



Trial Court Case Number: \_\_\_\_\_

Trial Court Case Name: \_\_\_\_\_

**8 The Trial Court's Findings**

a.  I/My client was found guilty of the following offenses (list all of the offenses for which you were/your client was found guilty): \_\_\_\_\_

\_\_\_\_\_

b.  I/My client was found not guilty of the following offenses (list all of the offenses for which you were/your client was found not guilty): \_\_\_\_\_

\_\_\_\_\_

**9 The Sentence**

The trial court imposed the following fine or other punishment on me/my client (check all that apply and fill in any required information):

a.  Jail time (fill in the amount of time you are/your client is required to spend in jail): \_\_\_\_\_

b.  A fine (including penalty and other assessments) (fill in the amount of the fine): \$ \_\_\_\_\_

c.  Restitution (fill in the amount of the restitution): \$ \_\_\_\_\_

d.  Probation (fill in the amount of time you are/your client is required to be on probation): \_\_\_\_\_

e.  Other punishment (describe any other punishment that the trial court imposed in this case): \_\_\_\_\_

\_\_\_\_\_

**REMINDER: You must serve and file this form no later than 20 days after you file your notice regarding the oral proceedings. If you do not file this form on time, the court may dismiss your appeal.**

Date: \_\_\_\_\_

\_\_\_\_\_  
Type or print name



\_\_\_\_\_  
Signature of appellant or attorney



**Instructions**

- This form is only for preparing a statement on appeal in an **infraction** case, such as a case about a traffic ticket.
- Before you fill out this form, read *Information on Appeal Procedures for Infractions* (form CR-141-INFO) to know your rights and responsibilities. You can get form CR-141-INFO at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).
- This form can be filed at the same time as your notice of appeal. If it is not filed with your notice of appeal, this form must be filed **no later than 20 days after you file your notice of appeal. If you have chosen to use a statement on appeal and do not file this form on time, the court may dismiss your appeal.**
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- You must serve a copy of the completed form on each of the other parties in the case 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](http://www.courts.ca.gov/selfhelp-serving.htm).
- Take or mail the completed form and proof of service on each of the other parties to the clerk’s office for the same trial court that issued the judgment or order you are appealing. 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.

*Clerk stamps date here when form is filed.*

**DRAFT**

**02-04-2020**

**Not approved by  
the Judicial Council**

*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. Appellant (the party who is filing this appeal):

Name: \_\_\_\_\_

Street address: \_\_\_\_\_  
*Street City State Zip*

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

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

b. Appellant’s lawyer (skip this if the appellant is filling out this form):

The lawyer filling out this form (check (1) or (2)):

(1)  was the appellant’s lawyer in the trial court. (2)  is the appellant’s 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: \_\_\_\_\_



Trial Court Case Number: \_\_\_\_\_

Trial Court Case Name: \_\_\_\_\_

**Information About Your Appeal**

2 On (fill in the date): \_\_\_\_\_, I/my client filed a *Notice of Appeal and Record on Appeal (Infraction)*, choosing to use a statement on appeal as the record of what was said in this case.

**Proposed Statement**

3 **Reasons for Your Appeal**

Remember, in an appeal, the appellate division can only review a case for whether certain kinds of legal errors were made in the trial court proceedings (read form CR-141-INFO to learn about these legal errors):

- There was not “substantial evidence” supporting the judgment, order, or other decision you are appealing.
- A “prejudicial error” was made during the trial court proceedings.

The appellate division:

- Cannot retry your case or take new evidence.
- Cannot consider whether witnesses were telling the truth or lying.
- Cannot consider whether there was more or stronger evidence supporting your position than there was supporting the trial court’s decision.

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

a.  There was not substantial evidence that supported the judgment, order, or other decision that I/my client indicated in the notice of appeal is being appealed in this case. (Explain why you think the judgment, order, or other decision was not supported by substantial evidence): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b.  The following error or errors about either the law or court procedure was/were made that caused substantial harm to me/my client. (Describe each error and how you were/your client was harmed by that error.)

(1) Describe the error: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Describe how this error harmed you/your client: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(2) Describe the error: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Describe how this error harmed you/your client: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_



Trial Court Case Name: \_\_\_\_\_

**3** (continued)

(3) Describe the error: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Describe how this error harmed you/your client: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Check here if you need more space to describe these or other errors and attach a separate page or pages describing the errors. At the top of each page, write "CR-143, item 3."

**4 The Charges Against Me/My Client**

a. If the charges against you/your client are based on a citation (ticket) you received, provide the citation number (fill in the citation number from your ticket): \_\_\_\_\_

b. The charges against me/my client were (list all of the charges indicated on the citation or complaint filed by the prosecutor with the court): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

c. I/My client (check (1), (2), or (3))

(1)  pleaded not guilty to all of the charges.

(2)  pleaded guilty to only the following charges: \_\_\_\_\_

\_\_\_\_\_

(3)  pleaded guilty to all of the charges.

**5 Summary of Any Motions and the Court's Order on the Motion**

a. Were any motions (requests for the trial court to issue an order) made in this case that are relevant to the reasons you gave in **3** for this appeal?

Yes (fill out b)     No (skip to item **6**)

b. In the spaces below, describe any motions (requests for orders) that were made in the trial court that are relevant to the reasons you gave in **3** for this appeal. Write a complete and accurate summary of what was said at any hearings on these motions and indicate how the trial court ruled on these motions:

(1)  I/My client made the following requests (motions) in the trial court (check all that apply):

(a)  To submit a photograph or photographs as evidence (describe the photographs):

\_\_\_\_\_

\_\_\_\_\_

There  was  was not a hearing on this motion.



Trial Court Case Name:

5 b.(1)(a) (continued)

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing:

\_\_\_\_\_

The court  did  did not accept the photographs.

Check here if you need more space to describe the motion and attach a separate page or pages describing it. At the top of each page write "CR-143, item 5b(1)(a)."

(b)  To submit a map or maps as evidence (describe the maps):

\_\_\_\_\_

There  was  was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing:

\_\_\_\_\_

The court  did  did not accept the maps.

Check here if you need more space to describe the motion and attach a separate page or pages describing it. At the top of each page write "CR-143, item 5b(1)(b)."

(c)  To submit other material as evidence (describe what you asked to submit as evidence):

\_\_\_\_\_

There  was  was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing:

\_\_\_\_\_

The court  did  did not accept this material.

Check here if you need more space to describe the motion and attach a separate page or pages describing it. At the top of each page write "CR-143, item 5b(1)(c)."

(d)  Other (describe any other request you made in the trial court and whether the court granted or denied this request):

\_\_\_\_\_

Check here if you need more space to describe the motion and attach a separate page or pages describing it. At the top of each page write "CR-143, item 5b(1)(d)."



Trial Court Case Name: \_\_\_\_\_

5 b. (continued)

(2)  The prosecutor made the following request (motion) in the trial court (describe any request the prosecutor made in the trial court and whether the court granted or denied this request):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

There  was  was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

The court  did  did not grant this motion.

Other (describe any other action the trial court took on this motion): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to describe the motion and attach a separate page or pages describing it. At the top of each page write "CR-143, item 5b(2)."

(3)  Check here if other motions were filed that are relevant to the reasons you gave in 3 for this appeal, and attach a separate page or pages describing these other motions, identifying who made them and whether there was a hearing on the motion, summarizing what was said at the hearing on the motion, and indicating whether the trial court granted or denied the motion. At the top of each page, write CR-143, item 5b(3).

6 Summary of Testimony and Other Evidence

a. Was there a trial in your case?

No  (skip items b, c, d, e, and f, and go to item 7)

Yes  (complete items b, c, d, e, and f)

b. Did you/your client testify at the trial?

No

Yes (Write a complete and accurate summary of the testimony you/your client gave that is relevant to the reasons you gave in 3 for this appeal. Include only what you actually said; do not comment on or give your opinion about what you said. Please indicate whether any objections were made concerning your/your client's testimony or any exhibits you/your client asked to present and whether these objections were sustained.): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to summarize your/your client's testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write "CR-143, Item 6b."



Trial Court Case Name: \_\_\_\_\_

**6** (continued)

c. Did an officer from the police department, sheriff’s office, or other government agency that charged you/your client testify at the trial? (Check one):

No

Yes (complete (1) and (2)):

(1) The name of the officer who testified is (fill in the officer’s name): \_\_\_\_\_

(2) This officer testified that (Write a complete and accurate summary of the officer’s testimony that is relevant to the reasons you gave in **3** for this appeal. Include only what the officer actually said; do not comment on or give your opinion about what the officer said. Please indicate whether any objections were made concerning the officer’s testimony or any exhibits the officer asked to present and whether these objections were sustained.): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to summarize the officer’s testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write “CR-143, Item 6c.”

d.  Were there any other witnesses at the trial?

No

Yes (fill out (1)–(4)):

(1) The witness’s name is (fill in the witness’s name): \_\_\_\_\_

(2) The witness  was  was not an officer from the government agency that charged me/my client.

(3) The witness testified on behalf of  me/my client.  the prosecution.

(4) This witness testified that (Write a complete and accurate summary of the witness’s testimony that is relevant to the reasons you gave in **3** for this appeal. Include only what the witness actually said; do not comment on or give your opinion about what the witness said. Please indicate whether any objections were made concerning the witness’s testimony or any exhibits the witness asked to present and whether these objections were sustained.): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

e.  Check here if other witnesses gave testimony at the trial that is relevant to the reasons you gave in **3** for this appeal. Attach a separate page or pages identifying each other witness that testified at your trial, stating whether that witness testified on your/your client’s behalf or the prosecution’s behalf, summarizing the witness’s testimony that is relevant to the reasons you gave in **3** for this appeal, and indicating whether any objections were made concerning the witness’s testimony or any exhibits the witness asked to present and whether these objections were sustained. At the top of each page, write “CR-143, item 6e.”



Trial Court Case Number: \_\_\_\_\_

Trial Court Case Name: \_\_\_\_\_

6 (continued)

f. Summarize the evidence, other than the testimony, that was given during the trial that is relevant to the reasons you gave in 3 for this appeal (Write a complete and accurate summary of the evidence given by both you and the respondent. Include only the evidence; do not comment or give your opinion about this evidence.):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to summarize the evidence and attach a separate page or pages summarizing this evidence. At the top of each page, write "CR-143, Item 6f."

7 The Trial Court's Findings

a. I/My client was found guilty of the following offenses (list all of the offenses for which you were/your client was found guilty): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

b. I/My client was found not guilty of the following offenses (list all of the offenses for which you were/your client was found not guilty): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

c. The following charges were dismissed after proof of correction was shown to the judge (list all of the charges that were dismissed): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

8 The Sentence

The trial court imposed the following fine or other punishment on me/my client (check all that apply and fill in any required information):

a.  A fine of (fill in the amount of the fine): \$ \_\_\_\_\_

b.  Traffic school

c.  Community service (fill in the number of hours): \_\_\_\_\_

d.  Other punishment (describe any other punishment that the court imposed in this case):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**REMINDER: You must serve and file this form no later than 20 days after you file your notice of appeal. If you do not file this form on time, the court may dismiss your appeal.**

Date: \_\_\_\_\_

\_\_\_\_\_  
Type or print name

▲  
\_\_\_\_\_  
Signature of appellant or attorney

<b>COURT OF APPEAL</b>		<b>APPELLATE DISTRICT, DIVISION</b>	COURT OF APPEAL CASE NUMBER:	
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO:		SUPERIOR COURT CASE NUMBER:		
NAME:		<b>FOR COURT USE ONLY</b>  <b>DRAFT</b> <b>02-06-20</b> <b>Not approved by</b> <b>the Judicial Council</b>		
FIRM NAME:				
STREET ADDRESS:				
CITY:	STATE:			ZIP CODE:
TELEPHONE NO.:	FAX NO.:			
E-MAIL ADDRESS:				
ATTORNEY FOR ( <i>name</i> ):				
APPELLANT:				
RESPONDENT:				
<b>RECOMMENDATION FOR APPOINTMENT OF                  APPELLATE ATTORNEY FOR CHILD                  (California Rules of Court, Rule 5.661)</b>				

**INSTRUCTIONS—READ CAREFULLY**

- Read the entire form *before* completing any items.
- This form must be clearly handprinted in ink or typed.
- Complete all applicable items in the proper spaces. If you need additional space, add an extra page and check the "Additional pages attached" box on page 2.
- If you are filing this form in the Court of Appeal, file the original and 4 copies.
- If you are filing this form in the California Supreme Court, file the original and 10 copies.
- A copy must be served on the local district appellate project.
- Notify the clerk of the court in writing if you change your address after filing your form.

Individual Courts of Appeal or the Supreme Court may require documents other than or in addition to this form. Contact the clerk of the reviewing court for local requirements.



APPELLATE CASE TITLE:	COURT OF APPEAL CASE NUMBER:
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1. Trial counsel, court-appointed guardian ad litem for the child under rule 5.662, or the child in the above-captioned case:
  - a. Name:
  - b. I am the  trial counsel  guardian ad litem  child
  - c. Address:
  - d. Telephone number:
  
2. I recommend that an appellate attorney be appointed for the child in this case.
  
3. The child's best interests cannot be protected without the appointment of counsel on appeal for the following reasons (*check all that apply*):
  - a.  An actual or potential conflict exists between the interests of the child and the interests of any respondent.
  - b.  The child did not have an attorney serving as the child's guardian ad litem in the trial court.
  - c.  The child is of a sufficient age or development such that the child is able to understand the nature of the proceedings, and
    - (1)  The child expresses a desire to participate in the appeal; or
    - (2)  The child's wishes differ from the child's trial counsel's position.
  - d.  The child took a legal position in the trial court adverse to that of one of the child's siblings, and an issue has been raised in an appellant's opening brief regarding the siblings' adverse positions.
  - e.  The appeal involves a legal issue regarding a determination of parentage, the child's inheritance rights, educational rights, privileges identified in division 8 of the Evidence Code, consent to treatment, or tribal membership.
  - f.  Postjudgment evidence completely undermines the legal underpinnings of the juvenile court's judgment under review, and all parties recognize this and express a willingness to stipulate to reversal of the juvenile court's judgment.
  - g.  The child's trial counsel or guardian ad litem, after reviewing the appellate briefs, believes that the legal arguments contained in the respondents' briefs do not adequately represent or protect the best interests of the child.
  - h.  The existence of any other factors relevant to the child's best interests (*specify*):

4. State the facts that support your recommendation:

Additional pages attached

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, except for matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: \_\_\_\_\_

\_\_\_\_\_ \_\_\_\_\_

(TYPE OR PRINT NAME) (SIGNATURE OF APPLICANT)

APPELLATE CASE TITLE:

COURT OF APPEAL CASE NUMBER:

**PROOF OF SERVICE**

I served a copy of the foregoing *Recommendation for Appointment of Appellate Attorney for Child* on the following by personally delivering a copy to the person served, OR by delivering a copy to a competent adult at the usual place of residence or business of the person served and thereafter mailing a copy by first-class mail to the person served at the place where the copy was delivered, OR by placing a copy in a sealed envelope and depositing the envelope directly in the United States mail with postage prepaid or at my place of business for same-day collection and mailing with the United States mail, following our ordinary business practices with which I am readily familiar:

## 1. District appellate project

a. Name and address:

b. Date of service:

c. Method of service:

## 2. Other

a. Name and address:

b. Date of service:

c. Method of service:

3. Fill in the names of the documents that you are serving.
4. Fill in the information for the person to whom you are sending the document. If you are serving more than one person, check the box after item (4)(c) and attach a page listing the persons served, with the electronic service address and date and time of service for each person served. At the top of the page, write "APP-009E, Item 4."
  - a. Provide the name of the person being served. If the person being served is an attorney, also fill in the name or names of the parties represented.
  - b. Provide the electronic service address of the person to whom you are sending the document.
  - c. Provide the date on which you transmitted the document.

After you have filled in the information in items 1–4, create an electronic copy of the *Proof of Electronic Service (Court of Appeal)* (form APP-009E). Transmit the filled-in form with the document you are serving to each person served.

At the bottom of the form, print your name, sign the form, and fill in the date on which you signed the form. **By signing, you are stating under penalty of perjury that all the information you have provided on *Proof of Electronic Service (Court of Appeal)* is true and correct.**

If you are not the party for whom the documents are served, give the original completed Proof of Service to the party for whom you served the document.