JUDICIAL COUNCIL
OF CALIFORNIA

APPELLATE ADVISORY
COMMITTEE

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APPELLATE ADVISORY COMMITTEE

MINUTES OF OPEN MEETING WITH CLOSED SESSION

March 5, 2020
10:00 a.m.
455 Golden Gate Avenue, San Francisco, CA 94102

Advisory Body Members Present:	Hon. Louis R. Mauro, Chair; Hon. Kathleen M. Banke, Vice-Chair; Mr. Michael G. Colantuono, Mr. Kevin Green, Mr. Jonathan D. Grossman, Hon. Adrienne M. Grover, Hon. Joan K. Irion, Mr. Joshua A. Knight, Hon. Leondra R. Kruger, Mr. Jeffrey Lawrence, Ms. Heather J. MacKay, Ms. Mary K. McComb, Ms. Milica Novakovic, Ms. Beth Robbins, Hon. Laurence D. Rubin, Mr. Timothy M. Schooley, Hon. Stephen D. Schuett, Hon. M. Bruce Smith, and Hon. Helen E. Williams
Advisory Body Members Absent:	Mr. Jorge Navarrete and Ms. Mary-Christine Sungaila
Others Present:	Ms. Christy Simons, Ms. Sarah Abbott, Ms. Adetunji Olude, Ms. Andi Liebenbaum, Mr. Eric Long, Mr. Daniel Richardson, and Mr. Jay Harrell

OPEN MEETING

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

Chair's Report
Justice Mauro thanked the committee and staff for their work. We have a strong group of attorneys and staff supporting our committee and subcommittees.

He updated the committee on the leadership meeting for internal committee and advisory committee chairs and vice chairs held in Sacramento in February. Justice Slough emphasized communication, liaisons, and succession planning. They received a presentation on data analytics for finding efficiencies and supporting funding requests.

Approval of Minutes
The advisory body reviewed and approved the minutes of the November 14, 2019, Appellate Advisory Committee meeting.

Public Comment
No public comments were received.

I. Discussion and Action Items (Items 1–10)

Item 1

Legislative Update (No Action Required)

Ms. Liebenbaum explained the JCC's purview with respect to legislation; that the council only takes positions on legislation that will impact the courts. She also updated the committee on legislative activity of interest to the appellate courts, including AB 3070 regarding jurors and peremptory challenges. Mr. Colantuono asked about SB 991, the bill to increase compensation for court reporters providing reporters' transcripts. Ms. Liebenbaum will keep us posted.

Item 2

Liaison Reports

- Hon. Michael Sachs, Trial Court Presiding Judges Advisory Committee

No update provided.

- Ms. Adetunji Olude, Center for Judicial Education and Research

Ms. Olude updated the committee on the recent Appellate Judicial Attorneys Institute, the upcoming institute for appellate justices, and three webinars that will be available: ADA access in appellate courts, self-represented litigants in appellate courts, and one for appellate division judges and attorneys. She also mentioned distance education via CJER online. Mr. Green and Judge Williams mentioned a webinar in June on self-represented litigants that is being sponsored by CLA.

Winter Proposals

Item 3

Access to Juvenile Case Files in Appellate Court Proceedings (Action required-recommend Judicial Council action)

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 proposed 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 proposed 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. The committee reviewed the public comments and discussed the working group's recommendations. For rule 5.552, these included the modification to (c)(3) requiring some diligence by the petitioner before the burden of service shifts to the clerk. The committee questioned whether form JV-574, which includes use of terms "access,"

"disclosure," and "dissemination," should be clarified. The committee agreed that this be raised with the Family and Juvenile Law Advisory Committee and that they determine whether any further revisions should be made.

Action: The committee approved recommending that the Judicial Council amend rules and revise forms as presented.

Item 4

Appointment of Counsel in Misdemeanor Cases (Action required-recommend Judicial Council action)

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 proposed 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 includes revising two forms to be consistent with the rule amendments. The committee reviewed the comments and the subcommittee's recommendations. The committee questioned the use of the term "proceeding" in the rule, rather than "appeal." Because this rule is in a chapter on appeals, there is a separate chapter on writs, and the committee received comments supporting a separate rule for writs, the committee agreed to change "proceeding" to "appeal." The committee also agreed to replace "qualifies as" with "is" in the rule language. On the information sheet, the committee agreed to clarify in item 6 that, although the defendant is usually the appellant, sometimes the government is the appellant and the defendant is the respondent, and to narrow the example used in item 5, "difficulty getting a job." The committee agreed to replace this example with "inability to get or keep a license or permit."

Action: The committee approved recommending that the Judicial Council amend the rule and revise the forms as modified during the meeting.

Appellate Division Subcommittee (Hon. Stephen Schuett, Chair)

Item 5

Finality of Appellate Division Opinions Certified for Publication (Action required-recommend RUPRO action)

To address the problem of access to appellate division opinions that are certified for publication before they are final, the committee considered two options. The first was 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. The committee agreed with the recommendation of the appellate division subcommittee to reject this option but pursue the other one, an operational change to the way appellate division decisions certified for publication are posted to the California Courts website. These opinions could be posted on a separate page of the website while the Court of Appeal considers transfer. Committee members discussed several issues, including whether

opinions should remain available on the website if transfer is granted and whether, as a future project, rule 8.1115 should be amended to include appellate division opinions.

Action: The committee rejected proposing to amend rule 8.888, approved moving forward with an operational change to the website for posting appellate division opinions certified for publication, and recommended future consideration of amendments to rule 8.1115.

Item 6

Use of an appendix in limited civil cases (Action required-recommend RUPRO action**)**

The committee considered the proposal to adopt a new rule, a new form, and to revise two more forms 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 proposed rule is modeled on the existing rule for use of an appendix in unlimited civil appeals, and closely follows its structure and content, including numerous cross-references to other rules. The committee noted a gap in the proposed rule: if the parties use a joint appendix and no reporter's transcript, then no record is filed with the appellate division, and there is no trigger to file the appellant's opening brief. This issue is addressed by rule 8.212 for unlimited civil cases. The committee agreed to modify the proposal by amending rule 8.882 to add language regarding the time to file appellant's opening brief if there is an election to use an appendix.

Action: The proposal as modified during the meeting was approved to circulate for comment.

Rules Subcommittee (Hon. Louis Mauro, Chair)

Item 7

Method of Notice to the Court Reporter (Action Required-recommend RUPRO action**)**

The committee considered a proposal to amend 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 to make them more consistent with other appellate rules governing notice to court reporters.

Action: The proposal was approved as proposed to circulate for public comment.

Item 8

Clarifying Filing Date of an Electronically Filed Document (Action Required-recommend RUPRO action**)**

The committee discussed the proposal to amend rule 8.77 (the rule regarding confirmation of receipt and filing of electronically submitted documents) to clarify the date and time of filing. The rule 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 proposal is to amend 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. The committee agreed with deleting one sentence in the rule as unnecessary.

Action: The proposal as modified was approved to circulate for comment.

Item 9

Record Retention in Criminal Appeals (Action Required-recommend RUPRO action**)**

The committee discussed the proposal to amend rule 10.1028 for two reasons: (1) to conform to recently amended Code of Civil Procedure section 271, subdivision (a), which now provides that the default original reporter's transcript is in electronic form, and (2) to extend from 20 years to 100 years the time the Court of Appeal must keep the original reporter's transcript in a felony case affirming the conviction. The committee expressed concern about having to keep so much paper for such a long time. However, courts may keep electronic transcripts, including scanning paper into electronic form, to reduce the amount of paper being stored. Also, there is an effort underway to provide funding for courts for digitizing their records. This rule does not apply to clerks' transcripts; their retention is controlled by the Government Code.

Action: The proposal was approved to circulate for comment.

Item 10

Revision of Judicial Council Forms with Gender Neutral Terms (Action Required-recommend RUPRO action**)**

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, and that the revisions proceed as technical changes that do not need to circulate for public comment.

Action: The proposal was approved to move forward as a group of technical changes.

II. ADJOURNMENT

Adjourn to Closed Session

III. CLOSED SESSION (CAL. RULES OF COURT, RULE 10.75(C)(3))

Item 1

Consent to Electronic Service (Action Required-recommend RUPRO action

ADJOURNMENT

There being no further business, the meeting was adjourned at 3:00 PM.

Approved by the advisory body on enter date.

Attachment C –
Draft – Rule 10.492

Rule 10.492. Extension of time for judicial branch education requirements

(a) Application

This rule applies to the requirements and expectations in the California Rules of Court relating to judicial branch education, except rule 10.491 on minimum education requirements for Judicial Council employees.

(b) Definitions

As used in this rule:

(1) "Content-based education requirement" means a requirement or expectation of:

(A) Attendance at any specific program;

(B) A course of study on any specific topic or topics; or

(C) A course of study limited to a specific delivery method, such as traditional (live, face-to-face) education.

(2) "Hours-based education requirement" means a requirement or expectation of a specified number of hours of education to be completed within a specified time period.

(c) Content-based education requirement

Notwithstanding any other rule, any deadline for completion of a content-based education requirement or expectation is extended for 12 months from that deadline, even if the deadline has passed.

(d) Hours-based education requirement

Notwithstanding any other rule, the months of April 2020 through March 2021 are excluded from the education cycles in which those months fall, and the number of hours of education to complete hours-based education requirements or expectations is prorated accordingly.

(e) Sunset

This rule remains in effect until December 31, 2022, or until amended or repealed.

Advisory Committee Comment

Various rules in Title 10, Chapter 7 of the California Rules of Court, authorize, for good cause, the granting of an extension of time to complete content-based and hours-based education requirements and expectations. Nothing in this rule modifies that authority.

Subdivision (c). This subsection applies to all rules of court containing content-based education requirements. Below are examples of this subsection in practice.

Rule 10.462(c)(1) contains education requirements for new trial court judges and subordinate judicial officers. Based on the date an individual took his or her oath of office, a judge has 6 months to attend the New Judge Orientation (NJO) Program, 1 year to attend an orientation course in his or her primary assignment, and 2 years to attend the B. E. Witkin Judicial College of California.

Under 10.462(c)(1), a judge who took her oath of office on January 1, 2020, would need to complete these programs by June 30, 2020 (NJO), December 31, 2020 (primary assignment), and December 31, 2021 (Judicial College), respectively. With the 12-month extension under rule 10.492(c), this same judge would now need to complete these programs by June 30, 2021 (NJO), December 31, 2021 (primary assignment), and December 31, 2022 (Judicial College).

As another example of the 12-month extension under rule 10.492(c), a judge who took his oath of office on December 1, 2018, would need to complete NJO by April 30, 2020 (within 18 months), a primary assignment by November 30, 2020 (within 2 years), and the Judicial College by November 30, 2021 (within 3 years).

Using a different rule as an additional example, rule 10.478(b)(1) requires court investigators to complete 18 hours of education within 1 year of their start date on specified topics. Rule 10.492(c) would allow a court investigator up to 2 years to complete this education.

Subdivision (d). This subsection applies to all rules of court containing hours-based education requirements. Below are examples of this subsection in practice.

Rule 10.461(c)(1) contains education requirements for Supreme Court and appellate justices. Each justice must complete 30 hours of education every three years.

Under rule 10.492(d), a justice's hours requirements are prorated for the education cycle that runs from January 1, 2019, through December 31, 2021. For justices who were confirmed for appointment before January 1, 2019, they must complete 20 hours of education by December 31, 2021.

Education requirements for justices who were confirmed for appointment on or after January 1, 2019, would also be prorated by rule 10.492(d) and prorated additionally based on the number of years remaining in the three-year educational cycle. For example, a justice confirmed for appointment on October 1, 2020, would ordinarily have 10 hours of hours-based education requirements to complete for the last year of the three-year cycle. Under 10.492(d), the months of January 2021 through March 2021 would be excluded, and the justice must complete 7.5 hours rather than 10 hours of hours-based education.

As an additional example, rule 10.464(c)(2) requires 8 hours of continuing education every 2 years for non-management court staff. For a court employee hired on or before January 1, 2019, rule 10.492(d) prorates the number of hours for the cycles that run from January 1, 2019, through December 31, 2020, and the cycle that runs from January 1, 2021, through December 31, 2022. For the cycle that runs from January 1, 2019, through December 31, 2020, the number of hours required would be prorated for 3 quarters, April 1, 2020, through December 31, 2020. This results in a reduced hours-based requirement of 5 hours. For the following cycle, the hours-based requirement is reduced by 1 quarter, January 1, 2021, through March 30, 2022. For this cycle, the hours-based requirement is reduced to 7 hours.

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 20-??
For business meeting on: September 24–25, 2020

Title
Appellate Procedure: Use of an Appendix in Limited Civil Cases

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Rules of Court, rule 8.845; amend rules 8.830, 8.840, 8.843, and 8.882; approve form APP-111; revise forms APP-101-INFO and APP-103

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

Agenda Item Type
Action Required

Effective Date
January 1, 2021

Date of Report
July 16, 2020

Contact
Christy Simons, 415-865-7694
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Executive Summary

The Appellate Advisory Committee recommends adopting a new rule and amending four 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 the Court of Appeal 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.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2021:

1. Adopt California Rules of Court, rule 8.845 to allow litigants in limited civil appeals to use an appendix in lieu of a clerk's transcript as the record of documents in the trial court;
2. Amend rules 8.830, 8.840, 8.843, and 8.882 to add provisions and procedures related to use of an appendix;
3. Approve *Respondent's Notice Electing to Use an Appendix (Limited Civil Case)* (form APP-111) to facilitate the respondent's choosing an appendix as the form of the documents filed in the trial court; and
4. Revise *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to include information on an appendix and *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) to include an appendix as a form of the record of documents the appellant may designate.

The text of the new and amended rules and the new and revised forms are attached at pages 7 through 39.

Relevant Previous Council Action

Rule 8.124 of the California Rules of Court, governing the use of an appendix in unlimited civil appeals, was adopted as rule 5.1 in 2002, renumbered in 2007, and has been amended several times, but the amendments are not relevant to this proposal. Rules 8.830, 8.840, 8.843, and 8.882, governing the record and briefs in limited civil cases, were adopted in 2009 as part of a large project to comprehensively review and update the rules for appellate division proceedings.[1] None of the amendments is relevant to this proposal.

Analysis/Rationale

Background

As noted above, under rule 8.124, litigants in unlimited civil appeals have long had the option of choosing to use an appendix. The appellant may elect to use an appendix when designating the record on appeal. Even if the appellant does not elect to use an appendix, the respondent may be able to do so 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).)

Rule 8.124(b) 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. 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).)

[1] See Judicial Council of Cal., Appellate Advisory Com. Rep., *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).

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.

New rule 8.845

The new rule would allow litigants in limited civil appeals to elect to use an appendix in lieu of a clerk's transcript as the record of documents in the trial court. 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, adoption of this rule would help litigants 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 rule 8.124 governing 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.

As in unlimited civil appeals, the new rule would allow the appellant in a limited civil appeal to elect to use an appendix when designating the record on appeal. It would also allow the respondent to elect an appendix 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 8.845(a).)

New rule 8.845 would mirror rule 8.124 in specifying the contents of an appendix in subdivision (b) and procedures for including 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 in subdivision (c). Rule 8.845 would also include provisions regarding form, service and filing, cost, and sanctions for an inaccurate or noncomplying appendix in subdivisions (d) through (g), as well as advisory committee comments explaining and clarifying various subdivisions of the rule.

The only provision that is not retained in the new limited civil rule 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 requested comments on whether there should be rules regarding administrative records in the appellate division; based on the responses, such rules do not appear to be necessary. These comments are discussed below in the Comments section.

Amend rules 8.830, 8.840, 8.843, and 8.882

To implement the new rule, the committee recommends amending four existing rules of procedure in the appellate division. 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. Rule 8.843, which governs transmitting exhibits, would be amended to add an appendix as a form of the record of written documents. Finally, provisions would be added to rule 8.882 regarding the time to file an appellant's opening brief if there is an election under rule 8.845 to use an appendix; the proposed language is similar to existing language in rule 8.212(a)(1)(A) for unlimited civil appeals.

New form APP-111

The committee recommends 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 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 existing rule 8.124(a) and proposed new rule 8.845(a), the respondent may be able to elect to have the appeal proceed by way of an appendix even if the appellant has designated a different form of the record of documents filed in the trial court. Unless the superior court orders otherwise, and if the appellant does not have a waiver of the fee for a clerk's transcript, the respondent may serve and file a timely notice electing to use an appendix. 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 recommends revising *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to include information on an appendix as another form of the record of the documents in the trial court. These revisions are based on the parallel information sheet for litigants in unlimited civil appeals, *Information on Appeal Procedures for Unlimited Civil Cases* (form APP-001-INFO).

The recommended 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.

Policy implications

The committee did not identify any significant policy implications related to providing for use of an appendix in limited civil appeals.

Comments

The proposed new and amended rules and new and revised forms were circulated for public comment between April 10 and June 9, 2020, as part of the regular spring comment cycle. The committee received five comments on this proposal. Four commenters, the Superior Court of Los Angeles County, the Superior Court of San Diego County, the Committee on Appellate Courts, Litigation Section, of the California Lawyers Association (CLA), and the Orange County Bar Association (OCBA), agreed with the proposal. The fifth commenter, the Superior Court of Orange County, did not take a position but responded to questions in the invitation to comment. A chart with the full text of the comments received and the committee's responses is attached at pages 40 through 43.

The committee requested comments on whether the new rule on appendixes should address administrative records and whether a rule on administrative records in the appellate division should be developed. Both the Los Angeles court and the Orange County court supported addressing administrative records in the limited civil rules to maintain consistency with the unlimited civil rules. Taking the opposite position, in support of not addressing administrative records in either the proposed rule or any other new rule, CLA opined, "Designating an appendix saves money and streamlines the appellate process, especially for pro se litigants. Requiring the separate transmittal of an administrative record would undercut these goals."

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 can save money in the record preparation process, and courts can 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 fewer provisions. With the exception of provisions for an administrative record, the committee concluded that all provisions in rule 8.124 should be retained in new rule 8.845 because the procedures are similar and the same information and requirements would be helpful in the context of limited civil appeals.

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. Feedback received in the comments indicates that implementation requirements would include

training for court staff, adding the new form to the case management system, and updating appeal procedures and any local forms, and that this would require two to three hours of staff time. With respect to cost, the same commenter indicated that the proposal would provide some savings for the court in staff time, paper, copying, and binding. The committee believes that the benefits of the proposal, including savings of money for litigants and time for the courts, outweigh the implementation cost.

Attachments and Links

1. Cal. Rules of Court, rules 8.830, 8.840, 8.843, 8.845, and 8.882, at pages 7–15
2. Forms APP-101-INFO, APP-103, and APP-111, at pages 16–39
3. Chart of comments, at pages 40–43

Rule 8.845 of the California Rules of Court would be adopted, and rules 8.830, 8.840, 8.843, and 8.882 would be amended, effective January 1, 2021, to read:

Rule 8.830. Record on appeal

(a) Normal record

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

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

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

(B) An appendix under rule 8.845;

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

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

(2) * * *

(b) * * *

Advisory Committee Comment

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

Rule 8.840. Completion and filing of the record

(a) When the record is complete

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

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

(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

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

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

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

(b)–(e) * * *

Rule 8.845. Appendixes

(a) Notice of election

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

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

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

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

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

(b) Contents of appendix

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

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

(B) Any item listed in rule 8.832(a)(3) that is necessary for proper consideration of the issues, including, for an appellant's appendix, any item that the appellant should reasonably assume the respondent will rely on;

(C) The notice of election; and

(D) For a joint appendix, the stipulation designating its contents.

(2) An appendix may incorporate by reference all or part of the record on appeal in another case pending in the reviewing court or in a prior appeal in the same case.

(A) The other appeal must be identified by its case name and number. If only part of a record is being incorporated by reference, that part must be identified by citation to the volume and page numbers of the record where it appears and either the title of the document or documents or the date of the oral proceedings to be incorporated. The parts of any record incorporated by reference must be identified both in the body of the appendix and in a separate section at the end of the index.

(B) If the appendix incorporates by reference any such record, the cover of the appendix must prominently display the notice "Record in case number:____ incorporated by reference," identifying the number of the case from which the record is incorporated.

(C) On request of the reviewing court or any party, the designating party must provide a copy of the materials incorporated by reference to the court or another party or lend them for copying as provided in (c).

(3) An appendix must not:

(A) Contain documents or portions of documents filed in superior court that are unnecessary for proper consideration of the issues.

(B) Contain transcripts of oral proceedings that may be designated under rule 8.834.

(C) Incorporate any document by reference except as provided in (2).

(4) All exhibits admitted in evidence, refused, or lodged are deemed part of the record, whether or not the appendix contains copies of them.

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

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

(c) Document or exhibit held by other party

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

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

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

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

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

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

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

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

(d) Form of appendix

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

(2) In addition to the information required on the cover of a brief by rule 8.883(c)(8), the cover of an appendix must prominently display the title "Joint Appendix" or "Appellant's Appendix" or "Respondent's Appendix" or "Appellant's Reply Appendix."

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

(e) Service and filing

(1) A party preparing an appendix must:

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

(B) File the appendix in the reviewing court.

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

(3) A respondent's appendix, if any, must be served and filed with the respondent's brief.

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

(f) Cost of appendix

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

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

(A) By the appellant;

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

(C) As the parties may agree.

(g) Inaccurate or noncomplying appendix

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

Advisory Committee Comment

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

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

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

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

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

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

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

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

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

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

Rule 8.882. Briefs by parties and amici curiae

(a) Briefs by parties

(1) The appellant must serve and file an appellant's opening brief within:

(A) 30 days after the record—or the reporter's transcript, after a rule 8.845 election in a civil case—is filed in the appellate division; or

(B) 60 days after the filing of a rule 8.845 election in a civil case, if the appeal proceeds without a reporter's transcript.

(2)–(5) * * *

**(b)–(e) * * *

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

GENERAL INFORMATION

1 What does this information sheet cover?

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

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

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

2 What is an appeal?

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

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

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

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

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

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

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

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

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

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

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

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

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

INFORMATION FOR THE APPELLANT

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

5 Who can appeal?

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

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

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

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

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

7 How do I start my appeal?

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

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

"Serve and file" means that you must:

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

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

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

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

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

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

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

10 Do I have to pay to file an appeal?

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

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

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

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

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

Since the appellate division judges were not there to see what happened in the trial court, an official record of what happened must be prepared and sent to the

appellate division for its review. You can use *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) to ask the trial court to prepare this record. You can get form APP-103 at any courthouse or county law library or online at *www.courts.ca.gov/forms.*

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

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

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

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

There are three parts of the official record:

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

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

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

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

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

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

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

- If you or the other party arranged to have a court reporter there during the trial court proceedings, the

reporter can prepare a record, called a "reporter's transcript."

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

Read below for more information about these options.

(1) Reporter's transcript

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

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

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

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

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

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

(2) Official electronic recording or transcript

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

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

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

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

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

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

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

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

(3) Agreed statement

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

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

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

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

file it with the court. It is a good idea to bring or mail an extra copy of the proposed statement to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

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

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

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

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

b. Record of the documents filed in the trial court

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

- *A clerk's transcript 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.* 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*. The court will review this application to determine if you are eligible for a fee waiver.
- Give the court a copy of a court order showing that your fees in this case have already been waived by the court.

Completion and delivery: After the cost of preparing the trial court file has been paid or waived and the record on appeal is complete, the trial court clerk will send the file and a list of the documents in the file to the appellate division. The trial court clerk will also send a copy of the

list of documents to the appellant and respondent so that you can put your own files of documents from the trial court in the correct order.

(3) Agreed statement

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

c. Exhibits

The third part of the official record of the trial court proceeding is the exhibits, such as photographs, documents, or other items that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court. Exhibits are considered part of the record on appeal, but the clerk will not include any exhibits in the clerk's transcript unless you ask that they be included in your notice designating the record on appeal. *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103), includes a space for you to make this request. You also can ask the trial court to send original exhibits to the appellate division at the time briefs are filed (see rule 8.843 for more information about this procedure and see below for information about briefs).

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

14 What happens after the official record has been prepared?

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

15 What is a brief?

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

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

Serving and filing: You must serve and file your brief in the appellate division by the deadline the court set in the notice it sent you, which is usually 30 days after the record is filed in the appellate division or 60 days from the date the appellant chooses to proceed with no reporter's transcript under rule 8.845. "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.*

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

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

16 What happens after I file my brief?

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

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

17 What happens after all the briefs have been filed?

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

18 What is "oral argument"?

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

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

19 What happens after oral argument?

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

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

If you decide you do not want to continue with your appeal, you must file a written document with the appellate division notifying it that you are giving up (this is called "abandoning") your appeal. You can use *Abandonment of Appeal (Limited Civil Case)* (form APP-107) to file this notice in a limited civil case. You

can get form APP-107 at any courthouse or county law library or online at *www.courts.ca.gov/forms.*

INFORMATION FOR THE RESPONDENT

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

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

You do not *have* to do anything. The notice of appeal simply tells you that another party is appealing the trial court's decision. However, this would be a good time to get advice from a lawyer, if you want it. You do not *have* to have a lawyer; if you are an individual (not a corporation, for example), you are allowed to represent yourself in an appeal in a limited civil case. But appeals can be complicated and you will have to follow the same rules that lawyers have to follow.

If you have any questions about the appeal procedures, you should talk to a lawyer. You must hire your own lawyer if you want one. You can get information about finding a lawyer on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-lowcosthelp.htm*.

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

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

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

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

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

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

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

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

(a) Reporter's transcript

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

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

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

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

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

(b) Agreed statement

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

(c) Statement on appeal

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

(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.* 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.*

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

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

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

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

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

26 What happens after all the briefs have been filed?

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

"Oral argument" is the parties' chance to explain their arguments to appellate division judges in person. You do not have to participate in oral argument if you do not want to; you can notify the appellate division that you want to "waive" oral argument. 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.

APP-103 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*.
- 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.*
- 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*) _____ (*Zip*)

Mailing 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*) _____ (*Zip*)

Mailing 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.

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)				☐ Yes ☐ No
(b)				☐ Yes ☐ No
(c)				☐ Yes ☐ No
(d)				☐ Yes ☐ No
(e)				☐ Yes ☐ No
(f)				☐ Yes ☐ No
(g)				☐ Yes ☐ 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."*

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 transcipt. 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 reimbusement 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."*

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 clerks 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.)

(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
		☐ Yes ☐ No
		☐ Yes ☐ No
		☐ Yes ☐ No
		☐ Yes ☐ No
		☐ Yes ☐ 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*

APP-111 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*.
- 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.*
- 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*) _____ (*Zip*)

Mailing 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*) _____ (*Zip*)

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

Phone: _____ E-mail: _____

Fax: _____

Trial Court Case Name: _____

Trial Court Case Number:

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

SPR20-02

Appellate Procedure: Use of an Appendix in Limited Civil Cases (Adopt Cal. Rules of Court, rule 8.845; amend rules 8.830, 8.840, 8.843, and 8.882; approve form APP-111; revise forms APP101-INFO and APP-103)

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

	Commenter	Position	Comment	DRAFT Committee Response
1.	California Lawyers Association Committee on Appellate Courts, Litigation Section By Saul Bercovitch Director of Governmental Affairs, California Lawyers Association Leah Spero, Chair Committee on Appellate Courts	A	The Committee on Appellate Courts supports the entirety of this proposal. The proposal appropriately addresses the stated purpose, and the proposed modifications to Forms APP-101-INFO and APP-103, as well as the addition of Form APP-111, appropriately reflect the rule changes. The Committee on Appellate Courts further supports the decision not to address administrative records in either the proposed rule or any other new rule. Designating an appendix saves money and streamlines the appellate process, especially for pro se litigants. Requiring the separate transmittal of an administrative record would undercut these goals.	The committee notes the commenter's agreement with the proposal. The committee agrees with this approach.
2.	Orange County Bar Association By Scott B. Garner, President	A	No specific comment provided.	The committee notes the commenter's agreement with the proposal. No further response required.
3.	Superior Court of Los Angeles County	A	1. 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))? Yes, consistency in how the rule is executed across jurisdictions will be helpful to litigants and staff.	The committee notes the commenter's agreement with the proposal and appreciates the responses to questions asked in the invitation to comment. The committee decided not to address administrative records in this rule because it does not appear to be necessary. Limited civil appeals only rarely, if ever, involve administrative records. The added complexity and potential for confusion outweigh any benefit from maintaining

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

	Commenter	Position	Comment	DRAFT Committee Response
				consistency on this point with the rules on unlimited civil appeals.
			2. 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?	
			Yes.	See response above.
			NOTE: This process will likely result in confusion for pro per litigants who will feel compelled to file the appendix as well as requesting a clerk's transcript.	The committee appreciates the difficulties self represented litigants face in navigating the appeals process. This is one reason the committee opted not to include a rule on administrative records in the appellate division.
4.	Superior Court of Orange County Training and Analyst Group (TAG) Team	NI	Similar to existing unlimited civil rules, this rule allows litigants with limited appeals to also use appendices in lieu of transcripts thus saving litigants money and streamlining the process. This will require trial courts to review local rules to ensure local rules are consistent with these revisions.	The committee appreciates receiving these comments.
			1. Does the proposal appropriately address the stated purpose? Yes	No further response required.
			2. 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	

	Commenter	Position	Comment	DRAFT Committee Response
			limited civil appeals include a rule on the record of administrative proceedings, similar to rule 8.123 for unlimited civil appeals? Yes, mirroring the current rule regarding unlimited civil appeals would provide consistency and make implementation easier. 3. Should any provisions in the proposed new and amended rules or forms be changed or eliminated to better reflect appellate division practice and procedure? No 4. Would the proposal provide cost savings? If so, please quantify. Yes, the proposal would provide some cost savings for the court in staff time, paper, copying and binding. It would also benefit litigants. 5. What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? The appeal procedure would need to be updated to reflect the option of an appendix as well as references to the new and revised forms. The case management system would need to be configured to add the new form. Local forms would also require similar updates. Staff will	See response to Superior Court of Los Angeles County, above. For the same reasons, the committee does not recommend a rule on administrative records for limited civil appeals. No further response required. The committee appreciates this feedback. The committee appreciates this feedback.

SPR20-02

Appellate Procedure: Use of an Appendix in Limited Civil Cases (Adopt Cal. Rules of Court, rule 8.845; amend rules 8.830, 8.840, 8.843, and 8.882; approve form APP-111; revise forms APP101-INFO and APP-103)

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

	Commenter	Position	Comment	DRAFT Committee Response
			need to be informed and/or trained. But this would require only 2-3 hours of training staff time to make the needed procedural updates and to configure the case management system. 6. Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes 7. How well would this proposal work in courts of different sizes? The proposal should work well in all courts regardless of the size.	 No further response required. No further response required.
5.	Superior Court of San Diego County By Mike Roddy Court Executive Officer	A	No specific comment provided.	The committee notes the commenter's agreement with the proposal. No further response required.

JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
June 30, 2020

To
Members of the Appellate Advisory Committee

From
Rules Subcommittee
Hon. Louis R. Mauro, Chair

Subject
Appellate Procedure: Method of Notice to Court Reporter

Action Requested
Please read before July 22 committee meeting

Deadline
July 22, 2020

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

Introduction

As you may recall, earlier this spring the Appellate Advisory Committee recommended circulating for public comment a proposal to amend California Rules of Court, rules 8.405, 8.450, and 8.454[1] to remove the requirement that court clerks notify court reporters "by telephone and in writing" to prepare a reporter's transcript.[2]

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

[2] 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.[2] Subdivision (h)(1) of each of these rules currently 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.) The proposal circulated for comment was to simply delete the italicized phrases from each of these rules.

The proposed amendments were intended to more closely align these rules with other appellate rules governing notice to court reporters and provide greater flexibility for clerks. The Judicial Council's Rules Committee approved the recommendation for circulation and the proposal was circulated for public comment from April 10, 2020 through June 9, 2020 as part of the regular spring cycle. A copy of the invitation to comment is included in your meeting materials.

This memorandum and the attached materials discuss the public comments received on the proposal and the Rules Subcommittee's recommendations regarding these comments. Prior to the committee meeting, members should review the attached draft Report to the Judicial Council, comment chart, and modified draft amended rules. Proposed amendments circulated during the comment period are highlighted in yellow; modifications proposed by the subcommittee based on comments received, and subject to the committee's review, are highlighted in blue.

Public Comments

The committee received six comments on this proposal. Two commenters, the Superior Court of San Diego County and the Litigation Section of the Committee on Appellate Courts of the California Lawyers Association (CLA), agreed with the proposal. Four commenters—the Court of Appeal for the Third Appellate District, the California Court Reporters Association (CCRA), the Orange County Bar Association (OCB), and the Service Employees International Union (SEIU)—disagreed with the proposal. The full text of the comments received and staff's proposed committee responses are set out in the attached draft comment chart. Based on comments received, the subcommittee recommends modifying the proposal for the reasons discussed below and at pages 4–5 of the draft Report to the Judicial Council.

Of the two commenters who agreed with the proposal, San Diego Superior Court provided no substantive comment, while CLA agreed that removal of the phrase "by telephone and in writing" would bring the rules more in line with other appellate rules and provide clerks with greater flexibility.

In contrast, the four commenters that disagreed with the proposal expressed concern that, if the phrase "by telephone and in writing" is removed from the rules, court reporters and appellate courts will be negatively impacted. In particular, the Court of Appeal for the Third District emphasized that juvenile writs and appeals are "priority" cases with very short deadlines.[3] The court opined that if the rules were amended as proposed, a trial court clerk might provide notice to the reporter by paper mail only, which—even if mailed "immediately"—could delay the reporter's actual notice of the need to prepare a transcript, which in turn could delay a court of appeal's receipt of the transcript and hinder its ability to conduct a timely review. The appellate court suggested that, if the rules are amended to remove the telephonic notice requirement, that they instead be amended to require notice "by the most expedient method available."

[3] See, e.g., 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].

CCRA similarly disagreed with the proposal, opining that the existing notice requirements are "imperative" because juvenile writs and appeals are time-sensitive and take precedence over all other court reporter work and changing the rules would hinder appellate courts' timely receipt of transcripts in juvenile cases. CCRA commented that immediate notice by telephone is needed to inform reporters that a notice of writ or appeal has been filed while written notice gives the reporter other necessary information to complete the transcript. OCB expressed a similar opinion that immediate notice both by telephone and in writing is useful in juvenile writs and appeals. SEIU, a union representing court reporters in 37 counties, also disagreed with eliminating required telephonic notice to court reporters in juvenile writs and appeals, noting that notice often goes to an office of court reporter services before the relevant individual reporter receives the notice which results in a loss of time for the individual reporter. SEIU suggested that, if the proposal is not rejected, then email notice should be provided directly to the individual reporter.

In light of the comments received, the majority of which disagreed with the proposal and contended that the rules should not be amended due to concerns about timely notice under the unique time constraints of juvenile writs and appeals, the subcommittee considered the alternative of not moving forward with the proposal. Because the requirement that court clerks notify court reporters "by telephone and in writing" does not directly conflict with another rule, no amendment is necessary.

However, withdrawing the proposal would not address one of the reasons that initially prompted the proposal—to allow greater flexibility in how court clerks provide notice to court reporters in these cases. Therefore, the subcommittee determined that a preferable alternative would be to revise the proposal to—rather than simply omit the phrase "by telephone and in writing"—insert a more general phrase intended to address timing concerns while still providing court clerks with greater flexibility in how they accomplish the required immediate notice to court reporters. The subcommittee considered the Court of Appeal's suggestion to insert the phrase "by the most expedient method available," as well as other phrasing variations, but ultimately decided that inserting the phrase "in a manner providing immediate notice" would best accomplish the goals of the proposal. To avoid repeated use of the terms "immediate" and "immediately" as well as "notify" and "notice" in a single phrase, the subcommittee recommends also revising the proposal to substitute the word "inform" for "notify" and "immediately notify" at the beginning of the relevant rule provisions. The revisions recommended by the subcommittee are as follows:

Rule 8.405. Filing the appeal

(a) Notice of appeal

***

(b) Superior court clerk's duties

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

***

(B) ~~Notify~~Inform the reporter, in a manner providing immediate notice,~~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~~Inform each court reporter, in a manner providing immediate notice,~~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

***

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~~Inform each court reporter, in a manner providing immediate notice,~~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

***

The committee should consider whether it agrees with the subcommittee's recommendation to move forward with the proposal as modified, and if so whether it agrees with the suggested modifications or believes a different phrasing would be more appropriate.

The only other substantive comment, made by the Court of Appeal for the Third Appellate District, addressed the potential implementation requirements for courts. The appellate court commented that, while there would be no cost savings as a result of the proposal, there would also be no implementation requirements and no different impact based on the size of the court, and three months would be sufficient time for implementation. It appears from these comments that implementation requirements do not present a barrier to amendment of the rules.

Committee Task

The subcommittee recommendation is that the committee move forward with the proposal as modified based on public comments received, and recommend the amendments for Judicial Council adoption at the September 2020 meeting. Staff has prepared a draft of the report to the Judicial Council on this proposal. The committee's task with respect to this proposal is to:

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

- Review and be prepared to discuss and approve or modify the subcommittee's recommendation regarding adoption of the proposal, with additional revisions, as reflected in the draft report to the Judicial Council.

Attachments:
1. Draft Report to the Judicial Council
2. Draft amended rules 8.405, 8.450, and 8.454
3. Comment chart with draft committee responses
4. Invitation to comment

JUDICIAL COUNCIL OF CALIFORNIA

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

REPORT TO THE JUDICIAL COUNCIL

Item No.: 20-??
For business meeting on: September 24–25, 2020

Title
Appellate Procedure: Method of Notice to Court Reporter

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 8.405, 8.450, and 8.454

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

Agenda Item Type
Action Required

Effective Date
January 1, 2021

Date of Report
July 9, 2020

Contact
Sarah Abbott, 415-865-7687
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Executive Summary

The Appellate Advisory Committee recommends amending three appellate court–related California Rules of Court governing juvenile appeals and writs to replace the requirement that the clerk notify the court reporter to prepare the reporter's transcript "by telephone and in writing" with a requirement that the reporter be informed "in a manner providing immediate notice" to the reporter. The existing "by telephone and in writing" requirement is not found in other appellate rules governing notice to court reporters, and the change would provide clerks more flexibility in how they provide notice while retaining the requirement that the notice be immediate.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2021, amend rules 8.405, 8.450, and 8.454 of the California Rules of Court to:

1. Omit the requirement that the court clerk notify the court reporter "by telephone and in writing" to prepare the reporter's transcript to more closely align these rules with other

appellate rules, and provide clerks with more flexibility in how they provide notice to court reporters; and
2. Add a requirement that the clerk inform the reporter "in a manner providing immediate notice."

The text of the amended rules is attached at pages 6–8.

Relevant Previous Council Action

Rule 4.450 of the California Rules of Court, governing juvenile appeals, was adopted in 2010 and amended in 2016, but the amendments are not relevant to this proposal. Rules 8.450 and 8.454—governing notice of intent to file a writ petition to review orders under Welfare and Institutions Code sections 366.26 and 366.28—were adopted in 2005, renumbered in 2007, and amended in 2007, 2008, 2009, 2010, 2013, and 2017, but the amendments are not relevant to this proposal.

Analysis/Rationale

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 . . ." (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.[1] 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. . ." (Italics added.)

No other appellate rule requires a court clerk to immediately notify a court reporter "by telephone and in writing" to prepare a transcript. Some appellate rules 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 time frame.[2] 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

[1] 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.

[2] See, e.g., rules 8.452(h)(3), requiring the 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 Welf. & Inst. Code, § 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).

for oral argument.[3] However, none of these rules requires immediate telephonic and written notification for court reporters. Instead, the rules addressing notice to court reporters in other types of appeals generally require court clerks to "promptly" send notice of an appeal to court reporters without specifying the method of notification.[4] Notably, however, by statute juvenile appeals have priority over most other appeals.[5]

This proposal would replace the requirement in rules 8.405, 8.450, and 8.454 that court clerks notify court reporters "by telephone and in writing" with a requirement that the superior court clerk inform reporters "in a manner providing immediate notice." The committee believes that the amendments will more closely align these rules with other appellate rules and provide clerks with additional flexibility in how they provide notice, while retaining the requirement that notice of the need to prepare a transcript in juvenile writs and appeals be immediate.

Policy implications

The committee did not identify any significant policy implications relating to the proposed amendments.

Comments

The proposed amended rules were circulated for public comment between April 10 and June 9, 2020, as part of the regular spring comment cycle. As circulated, the proposal was to omit—rather than replace—the phrase "by telephone and in writing." The committee received six comments on this proposal. Two commenters, the Superior Court of San Diego County and the Litigation Section of the Committee on Appellate Courts of the California Lawyers Association (CLA), agreed with the proposal. Four commenters—the Court of Appeal for the Third Appellate District, the California Court Reporters Association (CCRA), the Orange County Bar Association (OCB), and the Service Employees International Union (SEIU)—disagreed with the

[3] See, e.g., rules 8.256(b), requiring the appellate clerk to "immediately notify the parties by telephone or other expeditious method" if the 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).

[4] 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).

[5] See Welf. & Inst. Code, §§ 800(a) [delinquency], 395(a)(1) [dependency]; Code Civ. Proc., § 45 [appeals from orders freeing a minor from parent's custody/control].

proposal. A chart with the full text of the comments received and the committee's responses is attached at pages 9 through 14.

Of the two commenters who agreed with the proposal, the Superior Court of San Diego County provided no substantive comment, while CLA agreed that removal of the phrase "by telephone and in writing" would bring the rules more in line with other appellate rules and provide clerks with greater flexibility.

In contrast, the four commenters that disagreed with the proposal expressed concern that, if the phrase "by telephone and in writing" were removed from the rules, court reporters and appellate courts would be negatively impacted due to the unique time constraints of juvenile writs and appeals. In particular, the Court of Appeal for the Third Appellate District emphasized that juvenile writs and appeals are "priority" cases with very short deadlines. The appellate court opined that if the rules were amended as proposed, a trial court clerk might provide notice to the reporter by paper mail only, which—even if mailed "immediately"—could delay the reporter's actual notice of the need to prepare a transcript, which in turn could delay the Court of Appeal's receipt of the transcript and hinder its ability to conduct a timely review. The appellate court suggested that, if the rules are amended to remove the telephonic notice requirement, they also be amended to require notice "by the most expedient method available."

CCRA similarly disagreed with the proposal, opining that the existing notice requirements are "imperative" because (1) juvenile writs and appeals are time-sensitive and take precedence over all other court reporter work, and (2) changing the rules would hinder appellate courts' timely receipt of transcripts in juvenile cases. CCRA commented that immediate notice by telephone is needed to inform reporters that a notice of writ or appeal has been filed while written notice gives the reporter other necessary information to complete the transcript.

OCB expressed a similar opinion that immediate notice both by telephone and in writing is useful in juvenile writs and appeals. SEIU, a union representing court reporters in 37 counties, also disagreed with eliminating required telephonic notice to court reporters in juvenile writs and appeals, noting that notice often goes to an office of court reporter services before the relevant individual reporter receives the notice, which results in a loss of time for the individual reporter. SEIU suggested that if the proposal is not rejected, then email notice be provided directly to the individual reporter.

In response to the comments received, and to address timing concerns while still providing court clerks with greater flexibility in how they accomplish the required immediate notice to court reporters, the committee modified the proposal. Rather than merely omitting the "by telephone and in writing" requirement, the committee decided to also replace it with a requirement that the clerk be informed of the need to prepare a transcript "in a manner providing immediate notice." This modification is intended to reiterate the need for immediate notice and foreclose the possibility of notice only by paper mail or of notice being directed to an office as opposed to court reporters themselves, without dictating the manner in which such immediate notice must be given. Additionally, to avoid repeated use of the terms "immediate" and "immediately" as well

as “notify” and “notice” in a single phrase, the subcommittee also modified the proposal to substitute the word “inform” for “notify” and “immediately notify” at the beginning of the relevant rule provisions.

The only other substantive comment made by the Court of Appeal, Third Appellate District, addressed the potential implementation requirements for courts. The appellate court commented that, while there would be no cost savings as a result of the proposal, there would also be no implementation requirements and no different impact based on the size of the court, and three months would be sufficient time for implementation.

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. Following public comment, the committee further considered this alternative, but determined that withdrawing the proposal would not address one of the reasons that initially prompted it: to allow greater flexibility in how court clerks provide notice to court reporters in these cases.

The committee also considered simply omitting the phrase “by telephone and in writing” from each rule without replacement. However, based on public comments received, the committee modified the proposal as discussed above.

Fiscal and Operational Impacts

The proposal replaces the requirement that the court clerk immediately notify court reporters “by telephone and in writing” to prepare a reporter’s transcript in juvenile appeals and writs with a requirement that court reporters be informed “in a manner providing immediate notice.” This will likely result in minimal or no implementation costs.

Attachments and Links

1. Cal. Rules of Court, rules 8.405, 8.450, and 8.454, at pages 6–8
2. Chart of comments, at pages 9–14

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~~Inform the reporter, in a manner providing immediate notice, ~~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) * * *

Article 3. Writs

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

(a)–(g) * * *

(h) Preparing the record

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

(1) ~~Immediately notify~~Inform each court reporter, in a manner providing immediate notice, ~~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).

(i)–(j) * * *

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

(a)–(g) * * *

(h) Preparing the record

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

(1) ~~Immediately notify~~Inform each court reporter, in a manner providing immediate notice, ~~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).

(i)–(j) * * *

SPR20-05

Appellate Procedure: Method of Notice to Court Reporter (Amend Cal. Rules of Court, rules 8.405, 8.450, and 8.454)

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

	Commenter	Position	Comment	Committee Response
1.	California Court Reporters Association by Joshua Thubei Sacramento, CA	N	The California Court Reporters Association (CCRA) a statewide organization whose membership includes freelance court reporters, CART/captioning, official and student communities, opposes deleting or changing the duties of the clerk to notify court reporters. The specific duty of the clerk to notify the reporter by telephone and in writing is imperative. Juvenile appeals take precedence over all other work. They are also time sensitive. Reporters must be notified timely with both a telephonic and written notification, their time runs before receiving a written notice of appeal and the phone call is to give the reporter a heads up that an appeal has been filed. Written notice gives the reporter all the pertinent information they need to complete the transcript, such as dates, appealing parties, and what is to be contained within the reporter's transcript. Changing this rule would be detrimental to appellate courts receiving timely reporters' transcripts on juvenile appeals.	The committee appreciates the commenter's perspective on the benefit of both telephonic and written notice to court reporters and the appellate courts. The committee has considered this comment and modified the proposal to reiterate the need for immediate notice to the court reporter, while providing some flexibility for clerks in how they provide immediate notice.
2.	California Lawyers Association by Committee on Appellate Courts, Litigation Section Sacramento, CA	A	The Committee on Appellate Courts supports this proposal, which omits anomalous wording from the rules governing notices from court clerks to court reporters (regarding transcript preparation) in juvenile appeals and writs. Rules 8.405, 8.450, and 8.454 currently require court clerks to notify court reporters "by telephone and in writing" to direct	The committee notes the commenter's support for the proposal; no further response is required.

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

SPR20-05

Appellate Procedure: Method of Notice to Court Reporter (Amend Cal. Rules of Court, rules 8.405, 8.450, and 8.454)

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

	Commenter	Position	Comment	Committee Response
			transcript preparation. This language is unique: No other appellate rules require telephonic and written notice. The proposal merely removes this phrase and instead provides clerks with greater flexibility in how to provide notice. The proposal originated with a superior court clerk in charge of juvenile appeals. This proposal appropriately resolves the problem and should be adopted.	
3.	Court of Appeal, Third Appellate District by Colette M. Bruggmann, Assistant Clerk/Executive Officer Sacramento, CA	N	The proposed rule change is likely to cause delay in providing notice to the court reporter of the need to prepare reporter's transcripts for these expedited writs and appeals. The proposed rule change would permit notice to the reporter to be provided "immediately" by mail only, potentially resulting in several days of delay. The requirement of immediate telephonic and written notice in these cases is not an "anomaly" but, rather, a necessity for these unusual cases with priority and short timelines. In notice of intent cases, the reporter has only 12 calendar days within which to lodge their transcripts with the superior court clerk. Any extension of time requires an "exceptional showing of good cause." (Cal. Rules of Court, rule 8.450(d).) Accordingly, any delay (even a day or two) in getting notice to the reporter of the need to prepare transcripts is significant and puts a strain on both the reporter and the appellate court.	The committee appreciates the commenter's perspective on the impact that elimination of the telephonic notice requirement could have, and the delay that could result, if only "paper mail" is used. The committee has considered this comment and modified the proposal to reiterate the need for immediate notice to the court reporter, while providing some flexibility for clerks in how they provide immediate notice. The committee appreciates that juvenile appeals and writs are subject to unique priority and timing, and has modified the proposal to further account for this.

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

SPR20-05

Appellate Procedure: Method of Notice to Court Reporter (Amend Cal. Rules of Court, rules 8.405, 8.450, and 8.454)

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

	Commenter	Position	Comment	Committee Response
			Compliance with the time limits, including those for preparation and submission of the record, is especially crucial to implementing the Legislature's stated intent that reasonable efforts be made to complete appellate review of extraordinary writ petitions within the applicable time periods for conducting the selection and implementation hearing (Welf. & Inst. Code, § 366.26, subd. (l)(3)(B) and (4)(A)); In re Albert A. (2016) 243 Cal.App.4th 1220, 1241–1242.) Any delay in transmitting the record to the appellate court makes it difficult, if not impossible, for the appellate court to do so. Even with the current rule requiring immediate telephonic notice to the court reporters, this court has had ongoing and substantial difficulty getting reporters' transcripts in time to process extraordinary writ petitions prior to the selection and implementation hearings. Juvenile appeals are also priority proceedings. In appeals, the reporter must lodge the transcripts within 20 calendar days. While time constraints are not as restrictive in appeals, delays in obtaining records due to requests for extension of time to prepare transcripts in appeals from a termination of parental rights, especially adversely affect the appellate court's ability to timely process the appeal. In order to minimize delays in providing permanency to minors, the appellate court is charged with	The committee appreciates that juvenile appeals and writs are subject to unique priority and timing, and has modified the proposal to further account for this. The committee appreciates that juvenile appeals and writs are subject to unique priority and timing, and has modified the proposal to further account for this.

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

SPR20-05

Appellate Procedure: Method of Notice to Court Reporter (Amend Cal. Rules of Court, rules 8.405, 8.450, and 8.454)

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

	Commenter	Position	Comment	Committee Response
			making reasonable efforts to complete such appeals within 250 days of the filing of the notice of appeal. Does the proposal appropriately address the stated purpose? The only stated purpose provided for the rule change is to more closely align these rules with other appellate rules and to provide flexibility to the superior court clerks in how they might choose to provide notice to reporters. While the proposal may address these goals, it does so at the expense of implementing the purpose of the rules and the ability of the appellate court to timely obtain the record in these priority cases. If it is determined that the requirement of telephonic notice is burdensome to the superior court clerks, perhaps a modification to delete "by telephone and in writing" and replace with "by the most expedient method available" would be more advisable. This would eliminate the option of providing notification only by mail, but permit immediate, instant electronic notification, which would be equally expedient as telephone notification. Would the proposal provide cost savings? If so, please quantify. There is no cost savings.	The committee appreciates the commenter's responses to the specific questions presented in the invitation to comment; no further response is required. The committee appreciates the commenter's suggestion to revise the proposal to reiterate that immediate notice is required and has modified the proposal accordingly.

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

SPR20-05

Appellate Procedure: Method of Notice to Court Reporter (Amend Cal. Rules of Court, rules 8.405, 8.450, and 8.454)

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

	Commenter	Position	Comment	Committee Response
			What would the implementation requirements be for courts? None. Although the proposal affects the courts, it would not require implementation by the appellate court. Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes. How well would this proposal work in courts of different sizes? It does not appear to have any different impact to court based on the size of the court.	The committee has considered the stated implementation requirements; no further response is required. The committee has considered the stated implementation requirements; no further response is required. The committee has considered the stated implementation requirements; no further response is required. The committee has considered the stated implementation requirements; no further response is required.
4.	Orange County Bar Association by Scott B. Garner, President Newport Beach, CA	N	The proposal notes that juvenile appeals have priority over most other appeals. What is the impetus to remove the belt and suspenders approach with respect to juvi cases? Is it that burdensome to place a call to the reporter? Sounds like the recommendation was made by a	The committee appreciates the commenter's perspective on the utility of the proposed amendments. No further response is required.

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

SPR20-05

Appellate Procedure: Method of Notice to Court Reporter (Amend Cal. Rules of Court, rules 8.405, 8.450, and 8.454)

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

	Commenter	Position	Comment	Committee Response
			director of juvenile operations at one court but not otherwise considered.	
5.	Service Employees International Union by Michelle Castro, Director of Government Relations Sacramento, CA	N	The proposed rule would eliminate telephone notice to court reporters. With only 10 days to submit a juvenile writ and 20 days for an appeal, time is of the essence with regard to notice. The reporter must prepare and submit the transcript within that time frame and not from when the notice is provided. The original telephone notice was instituted because of these tight timelines. Oftentimes, notice goes to the office of court reporter services THEN to the reporter and precious time is lost. If the proposed rule is not rejected then we request email notice be provided directly to the affected court reporter. If not, the telephone notice remains essential to ensure court reporters have adequate time to file transcripts. Thank you for your consideration.	The committee appreciates that juvenile appeals and writs are subject to unique priority and timing, and has modified the proposal to further account for this.
6.	Superior Court of San Diego By Michael M. Roddy, Court Executive Officer	A	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.	The committee notes the commenter's support for the proposal; no further response is required.

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

JUDICIAL COUNCIL OF CALIFORNIA

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

INVITATION TO COMMENT

SPR20-08

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

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.[1] Subdivision (h)(1) of each of these rules requires the following:

[1] 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.

> 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 time frame.[2] 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.[3] However, none of these rules requires 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.[4]

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[2] 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).

[3] 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).

[4] 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 committee proposes removing 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 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.[5] 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.

[5] See Welf. & Inst. Code, §§ 800(a) (delinquency), 395(a)(1) (dependency); Code 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) * * *

Article 3. Writs

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

(a)–(g) * * *

(h) Preparing the record

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

(1) Immediately notify each court reporter ~~by telephone and in writing~~ to prepare a reporter's transcript of the oral proceedings at each session of the hearing that resulted in the order under review and 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).

(i)–(j) * * *

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

(a)–(g) * * *

(h) Preparing the record

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

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

(2) 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).

(i)–(j) * * *

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REPORT TO THE JUDICIAL COUNCIL

Item No.:
For business meeting on: September 24–25, 2020

Title
Appellate Procedure: Date and Time of Filing for Electronically Submitted Documents

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 8.77

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

Agenda Item Type
Action Required

Effective Date
January 1, 2021

Date of Report
July 14, 2020

Contact
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Executive Summary

The Appellate Advisory Committee recommends amending the rule regarding confirmation of receipt and filing of electronically submitted documents to clarify the date and time of filing. Among other things, rule 8.77 of the California Rules of Court currently addresses the receipt date of submissions received electronically 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.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council amend rule 8.77, to clarify the date and time of filing for documents submitted electronically, effective January 1, 2021.

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

Relevant Previous Council Action

Rules 8.70 to 8.79, the appellate e-filing rules, were adopted effective July 1, 2010. Some provisions have been amended and renumbered since that time. Effective January 1, 2017, rule 8.77 was renumbered and amended to state the requirements for a court to give notice to the filer when a document is received by the court and when a document is accepted or rejected for filing.

Analysis/Rationale

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 after 11:59 p.m., it is considered received on the next court day.[1] 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.[2]

The California Lawyers Association, Committee on Appellate Courts, Litigation Section, suggested that the committee consider clarifying rule 8.77 to resolve any ambiguity about when an electronic document is filed. A member of the association reported that appellate courts have been 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

[1] "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).)

[2] Some California appellate courts also address this topic by local rule. The local rules for the Courts of Appeal, 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 12(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.

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 amended rule would alleviate concerns of litigants and practitioners that their timely, compliant submissions may be deemed untimely solely because they were e-filed after a clerk's office's hours. The proposal is of particular importance when an appellate due date is jurisdictional (e.g., a statutory writ).

Policy implications

A uniform time-of-filing provision will assist with the consistent handling of electronically submitted documents and is 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." (Cal. Rules of Court, rule 1.20.) Rule 8.77(a)(2) will now provide that an electronically submitted document that complies with filing requirements is deemed filed on the date and time it was received by the court as stated in the confirmation of receipt.

Comments

This proposal was circulated for public comment from April 10 to June 9, 2020, as part of the spring rules cycle. The committee received comments from five bar associations and courts, including the Superior Court of San Diego County and the Superior Court of Orange County, Family Law Division. One court commenter answered the questions posed in the proposal and indicated that the proposal appropriately addressed the stated purpose; three commenters agreed with the proposal; and one commenter agreed with the proposal if modified. The committee considered all comments; discussed below is the primary issue raised by the comments.

Receipt by the court versus submission to the electronic filing service provider

The proposed rule circulated using the date and time of receipt by a court of an electronic submission from an electronic filing service provider (EFSP) as the date and time of filing. Under current practice, a document to be filed electronically reaches an appellate court through an EFSP. Although courts generally receive e-filers' submissions from the EFSP almost instantaneously, the committee recognized the possibility that transmission delays could occur. For example, an e-filer might submit a document just before midnight, but the court might not receive the document from the EFSP until after midnight because of a transmission delay between the EFSP and the court. Given the possibility of delay, 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 that a court will receive a submission before midnight.

With possible transmission delays in mind, the Invitation to Comment asked commenters to document any transmission delays between (1) the date and time of submission to an EFSP, and (2) the date and time of receipt by a court. Only one commenter, the San Diego Bar Association, Appellate Practice Section, addressed the potential for delays. The commenter canvased its members but did not document any of its members' experiences with transmission delays using

TrueFiling. Instead, the commenter urged the committee to use the date and time of submission by the e-filer to the EFSP as the date and time of filing—one of the two alternatives considered—based on the EFSP's User Guide publication showing an example from 2013. The committee is not persuaded to change the proposal as suggested without additional information. Absent real-world examples of transmission delays, the committee understands that transmission is almost instantaneous, and recommends using receipt by the court, over receipt by the EFSP, as proposed. The committee notes that the rule also allows an e-filer to file a motion to accept a document as timely filed if a deadline is not met because of delayed delivery. (Cal. Rules of Ct., rule 8.77(d).) If the committee becomes aware of delays that cause deadlines to be impacted, the committee will reconsider the issue in a future rulemaking cycle.

A chart with the full text of the comments received and the committee's responses is attached at pages 6–10.

Alternatives considered

The committee considered no action but determined that the experience of litigants and practitioners warrants the change proposed. As discussed above, the committee considered using the date and time of submission to the EFSP as the date and time of filing. The committee also considered imposing an after-hours deadline (such as 11:45 p.m.) for submission of documents to an EFSP to make it more likely that a court will receive a submission before midnight.

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.

Attachments and Links

1. Cal. Rules of Court, rule 8.77, at page 5
2. Chart of comments, at pages 6–10

Rule 8.77 of the California Rules of Court would be amended, effective January 1, 2021, to read:

Rule 8.77. Actions by court on receipt of ~~electronic filing~~ electronically submitted document; date and time of filing

(a) Confirmation of receipt and filing of document

(1) *Confirmation of receipt*

When the court receives an electronically submitted document, the court must arrange to promptly send the electronic filer confirmation of the court's receipt of the document, indicating the date and time of receipt by the court. ~~A document is considered received at the date and time the confirmation of receipt is created.~~

(2) *Filing*

If the electronically submitted document received by the court complies with filing requirements, the document is deemed filed on the date and time it was received by the court as stated in the confirmation of receipt.

~~(2)~~ (3) *Confirmation of filing*

~~If the document received by the court under (1) complies with filing requirements,~~ When the court files an electronically submitted document, the court must arrange to promptly send the electronic filer confirmation that the document has been filed. The filing confirmation must indicate the date and time of filing as specified in the confirmation of receipt, and ~~is proof that the document was filed on the date and at the time specified. The filing confirmation~~ must also specify:

(A) Any transaction number associated with the filing; and

(B) The titles of the documents as filed by the court.

~~(3)~~ (4)– ~~(4)~~ (5) * * *

(b)–(e) * * *

SPR20-04

Appellate Procedure: Date and Time of Filing for Electronically Submitted Documents (Amend Cal. Rules of Court, rule 8.77)

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

	Commenter	Position	Comment	Committee Response
1.	California Lawyers Association Committee on Appellate Courts, Litigation Section By Saul Bercovitch Director of Governmental Affairs Leah Spero, Chair Committee on Appellate Courts California Lawyers Association Sacramento	A	The Committee supports the proposal to amend rule 8.77 to state that an electronic document that complies with filing requirements is deemed filed on the date the document was received by the court. This proposal recognizes the importance of establishing a uniform practice among the Courts of Appeal in filing electronically submitted documents, and in providing practitioners with certainty as to when their electronically submitted documents will be deemed filed by the courts.	The committee thanks the commenter and notes its support for the proposal.
2.	Orange County Bar Association By Scott B. Garner, President	A	No specific comment provided.	The committee notes the commenter's support for the proposal.
3.	San Diego Bar Association Appellate Practice Section By Helen Izra, Chair	AM	The Appellate Practice Section of the San Diego County Bar Association ("APS") appreciates the opportunity to review and comment on the proposed amendments SPR20-04 to the California Rules of Court that relate to the filing date for electronically filed documents. After canvassing our membership and forming a subcommittee to discuss the proposed changes, we respectfully submit the following comments. The APS urges that a document be deemed filed on the date and time a party submitted it to an Electronic Filing Service Provider ("EFSP"). Currently, the proposed amendment would change 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." Invitation to Comment SPR20-04 p. 1, at < https://www.courts.ca.gov/documents/spr20-04.pdf> Problems may arise,	The committee thanks the commenter and notes its support for the proposal if modified. The committees appreciate the commenter's concerns relating to a possible delay between a filer's submission to an Electronic Filing Service Provider ("EFSP") and the EFSP's transmission of that submission to the court. Despite the example set out in the TrueFiling User Manual, which is a 2015 publication that reflects a 2013 example, the committee understands that the transmission between the two is virtually instantaneous. If delays like those described in the example are occurring in practice, the committee

	Commenter	Position	Comment	Committee Response
			however, if there is a delay between when the filer submits to the EFSP and when the EFSP submits to the court. The EFSP utilized by most California courts, TrueFiling, often imposes a delay between when the filer submits to the system and when the system transmits the document to the court. For example, the TrueFiling User Manual shows an example of the Filing Detail in a hypothetical case. That Filing Detail indicates that the system received a filing at 8:07 p.m. That document was conditionally accepted by TrueFiling at 8:19 p.m. It was not until 8:27 p.m. that the system reflects "Payment received. Filing officially accepted and filed." (TrueFiling User Guide, Release 1.0.36 p. 90, at <http://www.truefiling.com/documentation/UserGuide.pdf>)	is not aware of them. However, if e-filers do experience any issues like the one described in the comment, the committee is interested in hearing about them and with that information, the committee would consider further revisions to the rule's language in a future rulemaking cycle.
			A problem, therefore, could arise if a filer submits to an EFSP close to midnight. For example, if that filer submits to the EFSP at 11:30 p.m. on May 20, 2020 but the EFSP does not submit to the court until 12:01 am on May 21, 2020, the court will deem that document filed on May 21, 2020. If the filer had a deadline of May 20, 2020, the document would be late even though the filer submitted it to the EFSP before the deadline.	The committee is especially interested in hearing from any e-filers who experience delays of this duration, and any issues with deadlines being impacted.
			Due to the problems caused by this delay, the APS therefore recommends that the proposed rule 8.77, subdivision (a)(1) instead read as	The committee will reconsider in a future rulemaking cycle the proposed language if users bring examples of transmission delays in practice.

	Commenter	Position	Comment	Committee Response
			follows: "When the court receives an electronically submitted document, the court must arrange to promptly send the electronic filer confirmation of the court's receipt of the document, indicating the date and time of receipt by the court. A document is considered received at the date and time the filer submitted it to the Electronic Filing Service Provider."	
4.	Superior Court of Orange County Family Law Division	NI	No comments on this proposal as a whole. Request for Specific Comments **Does the Proposal appropriately address the stated purpose?** Yes **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 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.** The proposed rule is appropriate, since transmission is instantaneous for most filings. There have been a few instances where the submission gets stuck, but it's rare. For those that do get delayed, once the issue is resolved,	The committee thanks the commenter for the responses to the questions posed in the Invitation to Comment. No further response required. The committee thanks the commenter for this information.

	Commenter	Position	Comment	Committee Response
			the court is able to retrieve the original date and time of submission. **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 would the deadline be?** Yes, but it doesn't happen often. **Would the proposal provide cost savings? If so, please quantify.** No foreseeable savings or costs to implement. **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 CMS's, or modifying CMS's?** In Orange County, appeals are not handled via eFiling. Implementing this as a new process would require a revision of procedures and minimal training hours. **Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?** Yes	No further response required. No further response required. The committee thanks the commenter for the input, but notes that this rule applies to the appellate courts, not the superior courts. No further response required.

SPR20-04

Appellate Procedure: Date and Time of Filing for Electronically Submitted Documents (Amend Cal. Rules of Court, rule 8.77)

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

	Commenter	Position	Comment	Committee Response
			How well would this proposal work in courts of different sizes? For those courts that process appeals via eFiling this should work well for courts of any size.	No further response required.
5.	Superior Court of San Diego County By Mike Roddy Court Executive Officer	A	No specific comment provided.	The committee notes the commenter's support for the proposal.

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REPORT TO THE JUDICIAL COUNCIL

Item No.:
For business meeting on: September 24–25, 2020

Title
Appellate Procedure: Consent to Electronic Service

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 8.25, 8.72, and 8.78; revise form APP-009-INFO

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

Agenda Item Type
Action Required

Effective Date
January 1, 2021

Date of Report
July 14, 2020

Contact
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Executive Summary

To clarify the procedures for electronic service in the Supreme Court and the Courts of Appeal, the Appellate Advisory Committee recommends amending certain service and e-filing rules and revising an information sheet. Rules 8.25, 8.72, and 8.78 of the California Rules of Court would be amended, and form APP-009-INFO would be revised, to reflect the procedures for e-service in these reviewing courts, and to distinguish appellate procedure under these rules in light of recent amendments to the Code of Civil Procedure that address e-service in the trial courts.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2021:

1. Amend rule 8.25 to reflect actual practice for delivery of electronic proofs of service, and amend the accompanying advisory committee comment to clarify e-service consent procedure in the Supreme Court and Courts of Appeal;

2. Amend rule 8.72 to acknowledge that furnishing an email address does not necessarily mean that a party has authorized e-service because a party may opt out of e-service under rule 8.78(a)(2)(B);

3. Amend rule 8.78 and its accompanying advisory committee comment to reflect existing appellate practice concerning agreement to e-service through an electronic filing service provider (EFSP), and to exempt courts from the e-service rules applicable to parties; and

4. Revise APP-009-INFO to clarify that Code of Civil Procedure section 1010.6(a)(2)(A)(ii) addresses e-service in the trial courts, and rule 8.78 addresses e-service in the Courts of Appeal.

The text of the amended rules and the revised form is attached at pages 7–12.

Relevant Previous Council Action

Rule 8.25, adopted as rule 40.1, addresses service, filing, and filing fees. There are no relevant previous amendments to the rule.

Rules 8.70 to 8.79, the appellate e-filing rules, were adopted effective July 1, 2010. Some provisions have been amended and renumbered since that time. Effective January 1, 2017, rule 8.72 was revised to state additional responsibilities of the court, and rule 8.78 was renumbered from rule 8.71, and amended to (1) allow a party who files a document electronically to indicate that the party prefers to be served paper copies, by filing a notice with the court and serving it on the other parties; (2) apply the rule to nonparties who agree to or otherwise are required to accept electronic service or to electronically serve documents; (3) state that a proof of electronic service need not state that the person making service is not a party; and (4) delete the requirement that a proof of electronic service state time of service.

Analysis/Rationale

Effective January 1, 2018, the Legislature amended Code of Civil Procedure section 1010.6 to require all persons to provide express consent to electronic service in each specific action in the trial courts.[1] The trial court and appellate court rules had allowed the act of electronically filing alone to evidence consent to receive electronic service, but the 2018 amendments to section 1010.6 eliminated this option for trial courts. As amended, subdivision (a)(2)(A)(ii) states:

> For cases filed on or after January 1, 2019, if a document may be served by mail, express mail, overnight delivery, or facsimile transmission, electronic service of the document is not authorized unless a party or other person has expressly consented to receive electronic service in that specific action or the court has ordered electronic service on a represented party or other represented person under subdivision (c) or (d). Express consent to electronic service may be

[1] All further unspecified statutory references are to the Code of Civil Procedure.

> accomplished either by (I) serving a notice on all the parties and filing the notice with the court, or (II) manifesting affirmative consent through electronic means with the court or the court's electronic filing service provider, and concurrently providing the party's electronic address with that consent for the purpose of receiving electronic service. The act of electronic filing shall not be construed as express consent.

(Code Civ. Proc., § 1010.6(a)(2)(A)(ii).) Subdivision (e) directs the Judicial Council to "adopt uniform rules for electronic filing and service of documents *in the trial courts of the state*, which shall include statewide policies on vendor contracts, privacy, and access to public records, and rules relating to the integrity of electronic service." (§ 1010.6(e) (emphasis added).) There are no provisions in section 1010.6 that expressly speak to appellate court proceedings or to the adoption of rules for electronic service in the appellate courts.

It appears that the 2018 amendment to section 1010.6 only applies to the trial courts, not to the appellate courts, and that because section 1010.6 and its legislative history are silent about e-service in the appellate courts, the procedures in the Supreme Court and the Courts of Appeal do not need to change. The committee therefore proposes amending rules 8.25, 8.72, and 8.78 and revising form APP-009-INFO to reflect that express consent to electronic service is not required from every party in each specific appellate proceeding.

The committee recommends making the following clarifying changes to the rules:

Proof of service
Rule 8.25 establishes general requirements relating to serving and filing documents in reviewing courts, including requirements relating to proof of service. Currently, however, this rule does not reflect that a proof of service may be generated by an electronic filing service provider (EFSP). This amendment clarifies that, if a document is to be served electronically, a proof of service may be not be attached to the document presented for filing if it is generated by the EFSP.

Responsibilities of e-filers
Rule 8.72 presently requires e-filers to furnish an email address at which they agree to accept service. The proposal acknowledges that furnishing an email address does not necessarily mean a party has authorized e-service because a party may opt out of e-service under rule 8.78(a)(2)(B).

Electronic service
Proposed rule 8.78(a)(2)(B) would be clarified to reflect existing appellate practice. Although the rule has long provided that the act of electronically filing any document with the court is deemed to show a party's agreement to e-service, the appellate practice has been to rely on a party's registration with the court's EFSP and concurrent provision of an email address—prerequisites to electronically filing any document with the court—as a basis for showing agreement to e-service. This proposed change maintains the status quo with respect to e-filing and e-service in the Supreme Court and the Courts of Appeal and more accurately reflects how parties authorize e-service in these courts.

The proposal also amends the advisory committee notes to rules 8.25 and 8.78, and revises form APP-009-INFO, to clarify that e-service consent procedures in the Supreme Court and the Courts of Appeal are governed by these appellate rules, not section 1010.6(a)(2)(A)(ii).

Finally, the proposal exempts courts from the e-service rules applicable to parties, reflecting that courts send notifications and transmit documents rather than serving documents on parties. No changes are proposed with respect to e-service on courts.

Policy implications

In the appellate courts, e-filing and e-service are cost effective and convenient options for most individuals. With access to the internet, individuals may participate in appellate proceedings even if they do not have access to transportation or a permanent mailing address. E-filing and e-service eliminate the need and associated costs of paper, printers, copiers and fax machines, and obviate barriers like having to take paper documents to a post office or other courier to effect service and to a courthouse for filing.

Although e-filing and e-service are conveniences for most, it has been reported that they could disadvantage others, including those in rural and low-income households who do not have regular or reliable internet access. The committee acknowledges that internet access is not universally available in California, and is committed to providing equal access to courts. The e-filing and e-service rules exempt self-represented litigants from the requirement to file documents electronically (Cal. Rules Ct., rule 8.71(a)), and include an option allowing individuals to choose to be served paper copies at a specified address (Cal. Rules Ct., rule 8.78(a)(2)(B)). This proposal makes no changes to these options and, in the committee's view, does not impose any additional burdens on self-represented litigants.

Experience and other practicalities support maintaining existing appellate procedures. E-filing and e-service in the appellate courts and the trial courts are in different stages of implementation. The Judicial Council first adopted rules for e-filing and e-service in the appellate courts in 2010 as a pilot project in the Court of Appeal, Second Appellate District, and then in 2012 for all appellate courts. Last year, the Appellate Advisory Committee proposed instituting mandatory e-filing with statewide formatting requirements (subject to certain exceptions), effective January 1, 2020, which the council approved. Consistent with mandatory e-filing in the appellate courts, the appellate rules treat e-filing as agreement to receive e-service unless a party opts out of e-service. (Cal. Rules of Court, rule 8.78(a)(2)(B).) As for the trial courts, e-filing was authorized in 2012, when the Legislature enacted Assembly Bill 2073 (Stats. 2012, ch. 320). A pilot project on mandatory e-filing in the Superior Court of Orange County from 2013 was a success,[2] and as of 2019, 29 of the 58 trial courts provide e-filing and e-service to the public.[3] Although the trial

[2] See Judicial Council of Cal., *Report on the Superior Court of Orange County's Mandatory E-Filing Pilot Project* (Sept. 30, 2014), www.courts.ca.gov/documents/lr-SC-of-Orange-e-file-pilot-proj.pdf.

[3] See Judicial Council of Cal., *Report to the Legislature: State Trial Court Electronic Filing and Document Service Accessibility Compliance* (Dec. 23, 2019), https://jcc.legistar.com/View.ashx?M=F&ID=7977274&GUID=AE037AC0-DC91-496B-83D9-CDCDE8D0674A.

courts are making commendable progress in implementing e-filing, it nevertheless remains true that while the appellate courts uniformly rely on e-filing and e-service, about half of the trial courts have standardized the practice.

Comments

These proposed amendments were circulated for public comment as part of the spring 2020 comment cycle. Four organizations and one court submitted comments on this proposal. Two commenters agreed with the proposal, and two agreed with the proposal only if modified. One commenter did not indicate a position but suggested language changes to rule 8.25. The committee has modified its proposal to address suggestions regarding the language of rule 8.25.

Aderant CompuLaw, a court-rules publisher who provides information to firms practicing before the California Supreme Court and Courts of Appeal, urged retaining the phrase "by any method permitted by the Code of Civil Procedure" in rule 8.25(a)(1), suggesting that removing the phrase may cause confusion about how service may be accomplished. The committee recommends removing this phrase because it is too broad. Both the accompanying advisory committee comment and the information sheet referenced therein (*Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO)) provide guidance on how to serve documents in these reviewing courts. Aderant CompuLaw also suggested adding a statement to the advisory committee comment to explain that section 1010.6(a)(2)(A)(ii)'s consent requirement is inapplicable in matters before the Supreme Court and Courts of Appeal. The committee believes that the proposed new language for the advisory committee comments to rules 8.25 and 8.78 adequately explain that the appellate e-filing rules, not the title 2 trial court rules (which are derived from section 1010.6(a)(2)(A)(ii)), govern electronic service consent procedures in the Supreme Court and Courts of Appeal.

The Appellate Practice Section of the San Diego Bar Association agreed with the proposal, but suggested language for rule 8.25(a)(2) to address how e-service works with the EFSP. When an e-filer uses the EFSP to automatically generate a proof of service, the filer does not attach a proof of service to the document presented for filing, as the rule currently provides. To bring the proof-of-service provision into conformity with current practices, the committee recommends adding alternative language similar to that proposed by the commenter to subdivision (a)(2), "or, if using an electronic filing service provider's automatic electronic document service, the party may have the electronic filing service provider generate a proof of service."

A chart with the full text of the comments received and the committee's responses is attached at pages 13–18.

Alternatives considered

The committee considered proposing rules that would implement section 1010.6's express consent requirements in the appellate courts. The committee concluded that such a significant change in procedure was not supported for at least three reasons. First, there could be significant costs associated with directing the courts' EFSPs to develop an opt-in option at case initiation. Second, case filings might be delayed due to unexpected service requirements where the parties

have been relying on e-service in the appellate courts for several years. Third, the Legislature did not address the appellate courts when it amended section 1010.6. The committee believes that e-filing and e-service has proved to be successful in the appellate courts, and that their benefits outweigh any potential disadvantages. The committee also was not independently aware of any compelling reasons to adopt the trial court's practices at this time. The committee, therefore, proposes clarifying and maintaining existing appellate procedures for e-service.

The committee also considered leaving the appellate rules and form unchanged at this time. Considering the trial court's e-service procedures, however, the committee was concerned that preexisting references to the Code of Civil Procedure in the appellate rules and form could cause confusion for practitioners and litigants. The committee also recognized that the appellate rules did not fully reflect current practice and wanted the rules to be clearer about when e-service is permissible in the Supreme Court and the Courts of Appeal.

Fiscal and Operational Impacts

Implementation of this proposal should not have significant fiscal or operational impacts. This proposal is intended to create efficiencies and to assist parties and courts in understanding the existing appellate procedures. Unlike the alternative considered, which could burden the courts and litigants with additional service and filing requirements, no costs of implementation are anticipated other than informing courts and litigants of the new rule amendments and form revisions.

Attachments and Links

1. Cal. Rules of Court, rules 8.25, 8.77, and 8.78, at pages 7–9
2. Form APP-009-INFO, at pages 10–12
3. Chart of comments, at pages 13–18
4. Link A: Code Civ. Proc., § 1010.6, https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1010.6.&lawCode=CCP

Rules 8.25, 8.72, and 8.78 of the California Rules of Court would be amended, effective January 1, 2021, to read:

Rule 8.25. Service, filing, and filing fees

(a) Service

(1) Before filing any document, a party must serve~~, by any method permitted by the Code of Civil Procedure,~~ one copy of the document on the attorney for each party separately represented, on each unrepresented party, and on any other person or entity when required by statute or rule.

(2) The party must attach to the document presented for filing a proof of service showing service on each person or entity required to be served under (1), or, if using an electronic filing service provider's automatic electronic document service, the party may have the electronic filing service provider generate a proof of service. The proof must name each party represented by each attorney served.

(b)–(c) * * *

Advisory Committee Comment

Subdivision (a). ~~Subdivision (a)(1) requires service "by any method permitted by the Code of Civil Procedure." The reference is to the several permissible methods of service provided in~~ Code of Civil Procedure sections 1010.6– ~~1020~~ 1013a describe generally permissible methods of service. *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) provides additional information about how to serve documents and how to provide proof of service. ~~Note that~~ i In the Supreme Court and the Courts of Appeal, registration with the court's electronic filing servicer provider is deemed to show agreement to accept service electronically at the email address provided, unless a party affirmatively opts out of electronic service under rule 8.78(a)(2)(B). This procedure differs from the procedure for electronic service in the trial courts (including the appellate division of the superior court). See rules 2.250–2.261.

* * *

Rule 8.72. Responsibilities of court and electronic filer

(a) * * *

(b) Responsibilities of electronic filer

Each electronic filer must:

(1) Take all reasonable steps to ensure that the filing does not contain computer code, including viruses, that might be harmful to the court's electronic filing system and to other users of that system;

(2) Furnish one or more electronic service addresses, in the manner specified by the court, at which the electronic filer agrees to accept ~~service~~ receipt and filing confirmations under rule 8.77 and, if applicable, at which the electronic filer agrees to receive electronic service; and

(3) Immediately provide the court and all parties with any change to the electronic filer's electronic service address.

Rule 8.78. Electronic service

(a) Authorization for electronic service; exceptions

(1) A document may be electronically served under these rules:

(A) If electronic service is provided for by law or court order; or

(B) If the recipient agrees to accept electronic services as provided by these rules and the document is otherwise authorized to be served by mail, express mail, overnight delivery, or fax transmission.

(2) A party indicates that the party agrees to accept electronic service by:

(A) Serving a notice on all parties that the party accepts electronic service and filing the notice with the court. The notice must include the electronic service address at which the party agrees to accept service; or

(B) ~~Electronically filing any document with the court~~ Registering with the court's electronic filing service provider and providing the party's electronic service address. ~~The act of electronic filing shall be~~ Registration with the court's electronic filing service provider is deemed to show that the party agrees to accept service at the electronic service address that the party has ~~furnished to the court under rule 8.72(b)(2)~~ provided, unless the party serves a notice on all parties and files the notice with the court that the party does not accept electronic service and chooses instead to be served paper copies at an address specified in the notice.

(3) A document may be electronically served on a nonparty if the nonparty consents to electronic service or electronic service is otherwise provided for

by law or court order. All provisions of this rule that apply or relate to a party also apply to any nonparty who has agreed to or is otherwise required by law or court order to accept electronic service or to electronically serve documents.

(b)–(f) * * *

(g) Electronic ~~service~~ delivery by court and electronic service ~~or~~ on court

(1) The court may ~~electronically serve~~ deliver any notice, order, opinion, or other document issued by the court ~~in the same manner that parties may serve documents~~ by electronic ~~service~~ means.

(2) * * *

Advisory Committee Comment

In the Supreme Court and the Courts of Appeal, registration with the court's electronic filing servicer provider is deemed to show agreement to accept service electronically at the email address provided, unless a party affirmatively opts out of electronic service under rule 8.78(a)(2)(B). This procedure differs from the procedure for electronic service in the trial courts (including the appellate division of the superior court). See rules 2.250–2.261.

INFORMATION SHEET FOR PROOF OF SERVICE
(COURT OF APPEAL)

GENERAL INFORMATION ABOUT SERVICE AND PROOF OF SERVICE

This information sheet provides instructions for completing *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E). This information sheet is not part of the proof of service and does not need to be copied, served, or filed.

Rule 8.25 of the California Rules of Court provides that before filing any document in court in a case in the Court of Appeal, a party must serve, one copy of the document on the attorney for each party separately represented, on each unrepresented party, and on any other person or entity when required by statute or rule. Other rules specifically require that certain documents be served, including the notice of appeal and notice designating the record on appeal in civil appeals and briefs in both civil and criminal appeals.

To "serve" a document on a person means to have that document delivered to the person. The general requirements concerning service are set out in Code of Civil Procedure sections 1010.6–1013a. Section 1010.6(a)(2)(ii) addresses electronic service in the trial courts. Rule 8.78 of the California Rules of Court addresses electronic service in the Courts of Appeal. There are three main ways to serve documents: (1) by mail, (2) by personal delivery, or (3) by electronic service. Regardless of what method of service is used, the Code of Civil Procedure provides that a document in a court case can only be served by a person who is over 18 years of age. Service by mail or personal delivery must be by someone who is not a party in the case; electronic service may be performed directly by a party. Electronic service may be by (1) electronic transmission, transmitting a document to the electronic service address of a person; or by (2) electronic notification, sending a message to the electronic service address specifying the exact name of the document served and providing a hyperlink at which the served document may be viewed and downloaded.

If you are a party to the case and wish to serve documents by mail or personal delivery, you must therefore have someone else who is over 18 and who is not a party to the case serve any documents in your case. You will need to give the person doing the serving (the server) the names and addresses of all those who must be served. You will also need to give the server one copy of each document that needs to be served for each person or entity that is being served.

If you are serving documents electronically, you can do this 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 all those who must be served, and the document to be served in a form that allows it to be electronically transmitted or made available by hyperlink.

Rule 8.25 also requires the party filing a document in the court to attach to the document presented for filing a proof of service showing the required service. *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) may be used to provide this required proof of service in any proceeding in the Court of Appeal. The server should follow the instructions below for completing the *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E). 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 completed. You will need to attach this original proof of service to the document you are filing.

INSTRUCTIONS FOR THE SERVER (THE PERSON WHO IS SERVING THE DOCUMENTS) IF SERVING BY MAIL OR PERSONAL DELIVERY

If you are serving a document for a party in a court case, it is your responsibility to prepare the proof of service. You can use *Proof of Service (Court of Appeal)* (form APP-009) to prepare this proof of service in any case in the Court of Appeal. The proof of service should be printed or typed. If you have internet access, a fillable version of form APP-009 is available at *www.courts.ca.gov/forms*. You can fill out most of the form before you serve the document, but you should sign and date the form only after you have finished serving the document.

Complete the top section of *Proof of Service (Court of Appeal)* (form APP-009) as follows:

1. *First box, left side*: Check whether the document is being served by mail or by personal delivery.
2. *Third box, left side*: Print the name of the case in which the document is being filed, the Court of Appeal case number, and the superior court case number. Use the same case name and numbers as are on the top of the document that you are serving.
3. *Box, top of form, right side*: Leave this box blank for the court's use.

Complete items 1–3 as follows:

1. You are stating that you are over the age of 18 and that you are not a party to this action.
2. Check one of the boxes and provide your home or business address.

Form Approved for Optional Use
Judicial Council of California
APP-009-INFO [Rev. January 1, 2021]

3. Fill in the name of the document that you are serving.

   a. If you are serving the document by mail, check the box in item 3a and BEFORE YOU SEAL AND MAIL THE ENVELOPE, fill in the following information:

      (1) Check the box in item 3a(1)(a) if you will personally deposit the document with the U.S. Postal Service such as at a U.S. Postal Service Office or U.S. Postal Service mailbox. Check the box in item 3a(1)(b) if you will put the document in the mail at your place of business.

      (2) Provide the date the documents are being mailed.

      (3) Provide the name and address of each person to whom you are mailing the document. If you need more space to list additional names and addresses, check the box after item (3)(c) and attach a page listing them. At the top of the page, write "APP-009, Item 3a."

      (4) You are stating that you live or work in the county in which the document is being mailed. Provide the city and state from which the document is being mailed.

      Once you have finished filling out these parts of the form, make one copy of *Proof of Service (Court of Appeal)* (form APP-009) with this information filled in for each person you are serving by mail and put this copy in the envelope with the document you are serving. Seal the envelope and mail the document as you have indicated on the proof of service.

   b. If you personally delivered the document, check the box in item 3b. For a party represented by an attorney, delivery needs to be made by giving the document directly to the party's attorney or by leaving the document in an envelope or package clearly labeled to identify the attorney being served with a receptionist at the attorney's office or an individual in charge of the office. For a party who is not represented by an attorney, delivery needs to be made by giving the document directly to the party or by leaving the document at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening. Under item 3b, for each person to whom you delivered the document, you need to provide:

      (1) The name of the person;

      (2) The address at which you delivered the document;

      (3) The date on which you delivered the document; and

      (4) The time at which you delivered the document.

      If you need more space to list additional names, addresses, and delivery dates and times, check the box under item 3b and attach a page listing this information. At the top of the page, write "APP-009, Item 3b."

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 Service (Court of Appeal)* is true and correct.**

Give the original completed *Proof of Service* to the party for whom you served the document.

INSTRUCTIONS FOR THE SERVER (THE PERSON WHO IS SERVING THE DOCUMENTS) IF SERVING ELECTRONICALLY

If you are serving a document for a party in a court case, it is your responsibility to prepare the proof of service. If you are serving a document electronically, you can use *Proof of Electronic Service (Court of Appeal)* (form APP-009E) to prepare this proof of service in any case in the Court of Appeal. The proof of service should be printed or typed. A fillable version of form APP-009E is available at *www.courts.ca.gov/forms*. You can fill out most of the form before you serve the document, but you should sign and date the form only after you have finished serving the document.

Complete the top section of *Proof of Electronic Service (Court of Appeal)* (form APP-009E) as follows:

1. *Third box, left side*: Print the name of the case in which the document is being filed, the Court of Appeal case number, and the superior court case number. Use the same case name and numbers as are on the top of the document that you are serving.
2. *Box, top of form, right side*: Leave this box blank for the court's use.

Complete items 1–4 as follows:

1. You are stating that you are over the age of 18.
2. a. Check one of the boxes and provide your home or business address.

   b. Provide your electronic service address. This is the address at which you have agreed to accept electronic service.

Continued on the reverse

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 4c 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.

SPR20-03

Appellate Procedure: Consent to Electronic Service (Amend Cal. Rules of Court, rule 8.25, 8.72, and 8.78; revise form APP-009-INFO)

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

	Commenter	Position	Comment	Committee Response
1.	Aderant CompuLaw By Miri K. Wakuta Rules Attorney Culver City	NI	Aderant CompuLaw respectfully submits the following comments to the proposed amendments set forth in SPR 20-03. We are concerned that the proposed amendment to CRC 8.25 is too broad for the stated purpose and may raise confusion as to the general applicability of CCP 1010.6 to appellate cases. Invitation to Comment SPR20-03 points out that the e-service consent procedure set forth in CCP 1010.6(a)(2)(A)(ii) does not apply to appellate court proceedings since subdivision (e) only directs the adoption of uniform rules for "electronic filing and service of documents in the trial courts of the state." (SPR 20-03, 2.) The Committee states that the purpose of the proposed amendments is to clarify e-service consent procedures in the Supreme Court and the Courts of Appeal. Removing the phrase, "by any method permitted by the Code of Civil Procedure," from Rule 8.25(a)(1) seems unnecessary. Despite differing e-service consent procedures, it would remain accurate that a party may serve a document "by any method permitted by the Code of Civil Procedure." Even the proposed amendment to CRC 8.25 Advisory Committee Comment states, "Code of Civil Procedure sections 1010.6, 1013a describe generally permissible methods of service." The need for clarification is not with the permissible method of service but with the inapplicability of CCP	The committee thanks the commenter for this input. No further response required. The committee chose to remove the phrase, "by any method permitted by the Code of Civil Procedure," because it is too broad. For example, section 1017 provides for service by telegraph, which is not a permissible method of service in these reviewing courts. The accompanying advisory committee comment and related information sheet (form APP-009-INFO) advise that Code of Civil Procedure sections 1010.6–1013a describe generally permissible methods of service.

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

SPR20-03

Appellate Procedure: Consent to Electronic Service (Amend Cal. Rules of Court, rule 8.25, 8.72, and 8.78; revise form APP-009-INFO)

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

	Commenter	Position	Comment	Committee Response
			1010.6(a)(2)(A)(ii) in the Supreme Court and the Courts of Appeal. We recommend the language of Rule 8.25 not be amended. Rather, the Advisory Committee Comment should specifically comment to the inapplicability of CCP 1010.6(a)(2)(A)(ii). We suggest the Advisory Committee Comment to CRC 8.25 be revised to include the following statement: "The express consent requirement set forth in CCP 1010.6(a)(2)(A)(ii) for electronic service does not apply to matters before the Supreme Court and Courts of Appeal. Rather, CRC 8.78(a)(2) governs electronic service consent procedures in the Supreme Court and Courts of Appeal." Aderant CompuLaw is a software-based court rules publisher providing deadline information to many firms practicing before the California Supreme Court and Courts of Appeal. We expect this issue to be important to our users. Thank you for your consideration of these comments.	The committee declines to make these changes. With respect to rule 8.25(a), see discussion above. With respect to the advisory committee comment, the language in the proposal makes clear that rule 8.78, not California Code of Civil Procedure section 1010.6(a)(2)(A)(ii), governs electronic service consent procedures in the Supreme Court and Courts of Appeal. The language also includes (1) a reference to the existing opt-out provision in the appellate e-filing rules, and (2) a reference to the rules in title 2, trial court rules, that do not apply in these reviewing courts. No further response required.
2.	California Lawyers Association Committee on Appellate Courts, Litigation Section By Saul Bercovitch Director of Governmental Affairs, Leah Spero, Chair Committee on Appellate Courts California Lawyers Association Sacramento	AM	The Committee on Appellate Courts supports this proposal so long as parties are given notice at the time they register with the court's electronic filing service provider (EFSP) that by registering and providing an electronic service address, they consent to electronic service for all purposes during their case, including service by the court and the opposing party, unless they opt out.	The committee notes the commenter's support for the proposal if modified.

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

	Commenter	Position	Comment	Committee Response
			The Committee on Appellate Courts is mindful that digital inclusion is still a work in progress in California. We celebrate the appellate courts' transition to e-filing and eservice, but we do not want the resulting convenience to some to disadvantage others, including those in rural and low-income households. As the Advisory Committee and the Judicial Council are already aware, many Californians do not have household internet access (or have only a cellphone, or an extremely slow connection). Although they may be able to access WiFi for a limited time at a public location, or use their cellphone data plan, to successfully register with an EFSP and initiate an appeal, they will be seriously disadvantaged if, by doing so, they inadvertently relinquish paper/mail service of notice and filings if they do not have regular, reliable internet access. Only a third of rural California households have internet access, compared to 78% of urban households, according to an EdSource analysis of California Public Utilities Commission data in December 2019. (EdSource, Disconnected: Internet Stops Once School Ends for Many Rural California Students, available at <https://edsource.org/2019/disconnected-internet-stops-once-school-ends-for-manyrural-california-students/620825>.) The Public Policy Institute of California has noted:	The committee appreciates the commenter supplying this information about access to the internet. No further response required.

	Commenter	Position	Comment	Committee Response
			"Though most demographic groups have seen significant increases in broadband subscriptions at home, gaps persist for low-income, less educated, rural, African American, and Latino households. Between 54% and 67% of these households had broadband subscriptions in 2017, compared to 74% for all households. Among low income households without broadband, 53% cited lack of interest and 25% cited affordability as key barriers. Notably, these households were more likely to rely on cellphones to access the internet." (California's Digital Divide, available at <https://www.ppic.org/publication/californias-digital-divide/>.) It is also a practical reality that many households are sharing a single device with children who are engaged in distance schoolwork during the COVD-19 pandemic, fire evacuations, and other periodic disruptions. In those households, inadvertent relinquishment of paper/mail service carries privacy and parenting implications. (See EdSource, More California Students Are Online, But Digital Divide Runs Deep with Distance Learning, available at <https://edsource.org/2020/more-california-students-areonline-but-digital-divide-runs-deep-with-distance-learning/630456>; see also California Emerging Technology Fund, Annual Report, available at <http://www.cetfund.org/progress/annualsurvey>.)	No further response required.

	Commenter	Position	Comment	Committee Response
			Thus, we recommend that a clear, plain-language advisory regarding the practical implications of registration, and the opt out alternative, should be required to be prominently displayed by EFSPs at the time of registration.	The committee appreciates this suggestion and shares the commenter's focus on providing equal access to the courts. The committee also acknowledges that internet access is not universally available in California. For this and other reasons, the existing appellate rules include an opt-out provision. Making changes to EFSPs' systems is beyond the scope of this rules proposal, but the committee will convey the recommendation to staff who work with these providers.
3.	Orange County Bar Association By Scott B. Garner, President Newport Beach	A	No specific comment provided.	The committee notes the commenter's support for the proposal.
4.	San Diego Bar Association Appellate Practice Section By Helen Izra, Chair	AM	The Appellate Practice Section of the San Diego County Bar Association ("APS") appreciates the opportunity to review and comment on the proposed amendments SPR20-03 to the California Rules of Court that relate to electronic service of documents. After canvassing our membership and forming a subcommittee to discuss the proposed changes, we respectfully submit the following comments. The APS supports the changes proposed by SPR20-03 but suggests that the Council further amend the rules to reflect better how electronic service works with Electronic Filing Service Providers ("EFSP"). As worded, rule 8.25, subdivision (a)(2) states that "[t]he party must attach to the document presented for filing a proof of service." EFSPs, however, can automatically generate a proof of service when a filer utilizes the service for electronic filing and	The committee thanks the commenter and notes its support for the proposal if modified. The committee appreciates the commenter supplying this information about current e-filing practices.

	Commenter	Position	Comment	Committee Response
			service. Such a proof of service is therefore not attached to the actual document that the filer submits but is rather generated by the EFSP itself. For example, the TrueFiling system, which most California appellate courts utilize, says this about how the system generates a proof of service: "Auto-Servicing: Through auto-servicing you can choose to automatically e-serve filings and send a system-generated Proof of Service filing to the Court. When auto servicing is indicated, you no longer need to file a Proof of Service for the filing – one will be automatically created when you submit a filing to the Court." (TrueFiling User Guide, Release 1.0.36 p. 85, at <http://www.truefiling.com/documentation/UserGuide.pdf>). Such a system generated proof of service is therefore not attached to the document that the filer filed. The APS therefore proposes that the Judicial Council further amend rule 8.25, subdivision (a)(2) to add language such as "[t]he party must attach to the document presented for filing a proof of service **or, if filing electronically, the party may have the Electronic Filing Service Provider generate a proof of service."** Such language would better reflect how the EFSP system works and also allow filers to take advantage of the EFSP's full functionality.	The committee agrees and has revised the language of rule 8.25(a)(2) to bring the proof of service provision into conformity with current e-filing practices, which includes automatic electronic service via the EFSP.
5.	Superior Court of San Diego County By Mike Roddy Court Executive Officer	A	No specific comment provided.	The committee notes the commenter's support for the proposal.

JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
July 14, 2020

To
Members of the Appellate Advisory Committee

From
Christy Simons
Attorney, Legal Services

Subject
Proposal re Retention of Reporters' Transcripts in Criminal Appeals

Action Requested
Please review before the committee meeting on July 22, 2020

Deadline
July 22, 2020

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

Introduction

As you may recall, earlier this spring, the Appellate Advisory Committee recommended circulation for public comment of a proposal to amend California Rules of Court, rule 10.1028, to conform the rule to recent changes to Code of Civil Procedure section 271[1] and to extend the length of time the Court of Appeal must keep reporters' transcripts in cases affirming a felony conviction from 20 years to 100 years.

The proposed amendments to extend the retention time were intended to more closely align the length of time the reporters' transcripts are kept with the length of time they may be needed. Sentences for the most serious felony offenses often exceed 20 years, and changes in the law, for which individuals may seek relief, may occur at any time. The Judicial Council's Rules Committee approved the recommendation and the proposal was circulated for public comment

[1] The amendments to conform to statute are not controversial and the committee received no comments suggesting modifications. This aspect of the proposal is not further discussed in this memo.

from April 10, 2020 through June 9, 2020 as part of the regular spring cycle. A copy of the invitation to comment is included in your meeting materials.

The rules subcommittee considered the comments, both formal and informal, at its meeting on June 30. In response to concerns raised by the Courts of Appeal, the subcommittee recommends deferring the proposal to gather more information and further explore alternatives, and moving forward with reconsidered rule amendments in the near future.

This memorandum discusses the comments received on the proposal. Prior to the committee meeting, members should review the attached comment chart with draft responses and the attached text of rule 10.1028. There are no recommended modifications to the rule based on the comments at this time. If the committee recommends moving forward with the proposal rather than deferring it, staff will draft a Judicial Council report.

Public comments

The committee received eight comments on the proposal. Four commenters (the Committee on Appellate Courts, Litigation Section, of the California Lawyers Association (CLA), the First District Appellate Project (FDAP), the Orange County Bar Association (OCBA), and the Superior Court of San Diego County) agreed with the proposal. Three commenters (the California Court Reporters Association (CCRA), the Fourth Appellate District of the Court of Appeal (Fourth District Court of Appeal), and the Loyola Law School Project for the Innocent (Loyola)) agreed with the proposal if modified. Finally, one commenter, the Superior Court of Orange County, submitted positive comments but did not state a position. The full text of the comments and staff's proposed committee responses are set out in the attached draft comment chart.

Length of retention period and cost

CLA, FDAP, Loyola, and OCBA support the proposed 100 year retention schedule. The OCBA commented, "Given the need to review the underlying basis of previously affirmed felony convictions brought on by changes in the law or other circumstances years later, the current 20 year period is clearly insufficient. The increased proposed mandated retention period of 100 years should accommodate any foreseeable need for review of such transcripts." FDAP stated, "One hundred years ensures new laws can be fairly applied to anyone affected." Regarding cost, the Superior Court of Orange County noted that keeping electronic copies of reporters' transcripts rather than hard copies would save the cost of physical storage space.

In contrast, the Fourth District Court of Appeal commented that extending the time "to 100 years is [neither] reasonable nor financially responsible." The court noted that it is a minority of cases in which the reporter's transcript may be needed beyond 20 years, and urged the committee to determine how many cases this would be and reconsider the alternative of a tiered retention

schedule in which the length of retention is based on the length of the sentence. The court also expressed concern about the increased cost of longer storage, stating that specific funds would need to be set aside for both file conversion and hard copy storage. The chair and another member were advised informally that the other District Courts of Appeal have concerns regarding the cost of the proposal and whether a 100-year policy for all reporters' transcripts in cases affirming a felony conviction is the best approach. The courts suggested deferring the proposal to allow more time to consider the issues.

Other comments

CCRA suggested modifying the text of the rule to reflect current practice by court reporters, which is to mark electronic reporters' transcripts "certified" rather than "original" and "copy." Staff recommends that the suggestion be considered as a potential future project. Any such amendment would be a substantive change that should circulate for public comment under rule 10.22(d). In addition, there are appellate rules that refer to an original and copies of reporters' transcripts. To maintain consistency, all of these rules should be reviewed if a change in terms is considered.

Two commenters, CLA and Loyola, expressed concern that, if paper versions of reporters' transcripts are converted to electronic format before storage, there be safeguards in place to ensure that the electronic versions are correct, complete, and accessible before hard copies are destroyed.

Subcommittee recommendation

In light of the concerns expressed by the Courts of Appeal, the subcommittee recommends deferring action on the proposal to seek additional input from the courts on cost issues related to storage of paper records and digitization, implementation requirements, and alternatives including a retention time shorter than 100 years and a tiered system based on the length of the sentence. Such alternatives would reduce the burden on courts but should be balanced against the interests of defendants in accessing transcripts made relevant by legal reforms years after the appeal or after the sentence is served. The subcommittee also recommends advising courts informally not to destroy records during the time the proposal is deferred.

Committee task

The committee's task with respect to this proposal is to discuss the comments received and:

- Decide whether to recommend moving forward with the proposal as circulated or modified, including proceeding with only the amendments to conform to Code of Civil Procedure section 271, or deferring the proposal for some amount of time; and

• If the recommendation is to move forward, approve or modify staff suggestions for responding to the comments; or
• If the recommendation is to defer, discuss what information the committee wishes to gather and how best to do that.

Attachments

1. Comment chart with draft committee responses, at pp. 5-12
2. Rule 10.1028, at pp. 13-14
3. Invitation to Comment, at pp. 15-18

SPR20-01

Court Records: Retention of Reporters' Transcripts in Criminal Appeals (Amend Cal. Rules of Court, rule 10.1028)

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

	Commenter	Position	Comment	DRAFT Committee Response
1.	California Court Reporters Association By Joshua Thubei	AM	The California Court Reporters Association (CCRA), a statewide organization whose membership includes freelance court reporters, CART/captioning, official and student communities; recommends amending this section to state, "the clerk/executive officer must keep the 'certified' reporter's transcript" instead of the original reporter's transcript. CCRA believes this amendment is necessary to reflect the current practice of reporters electronically filing reporters' transcripts. Court Reporters e-filing transcripts no longer mark the electronic transcript with "Original" and "Copy", they mark all e-filed transcripts with "Certified Transcript".	The committee notes the commenter's agreement with the proposal if modified and appreciates this feedback on current practice. The suggested modification to the rule text would be a substantive change that must circulate for public comment. (See rule 10.22(d).) The committee will retain the suggestion for consideration as a future rules project.
2.	California Lawyers Association Committee on Appellate Courts, Litigation Section By Saul Bercovitch Director of Governmental Affairs, California Lawyers Association Leah Spero, Chair Committee on Appellate Courts	A	In general, the Committee on Appellate Courts supports the entirety of this proposal. The proposal appropriately addresses the stated purpose. The Committee on Appellate Courts further supports the conclusion that the current requirement to keep the reporter's transcript for only 20 years in any case affirming a criminal conviction is insufficient. Requiring the court to keep a copy of the reporter's transcript in felony appeals for 100 years would cure the current deficiency. However, the Committee has potential concerns about the reliability of retention of electronic copies based on its experiences. It would be helpful to know the process(es) at the trial courts with regard to retaining electronic copies of reporter's transcripts. Without knowing how such records will be maintained, there is some	The committee notes the commenter's agreement with the proposal. Rule 10.1028 governs retention of court reporters' transcripts in the Court of Appeal, not the trial courts.

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

	Commenter	Position	Comment	DRAFT Committee Response
			concern about the practicality and assurances of their maintenance over 100 years. Indeed, some of our members have had experiences where a trial court was unable to locate an electronic copy of a reporter's transcript, but the court had in its possession the hard copy file. Maintaining these records is critical for criminal defendants and thus, before purging hard paper copies, we should ensure that the electronic version is being properly and accurately maintained in an accessible format.	The committee cannot speak to trial court practice or procedures, but rule 8.336(d) requires the court reporter to certify the transcript as correct, and rules 8.74(a) and 8.336(d) require electronic reporters' transcripts to be in text searchable portable document format. The committee agrees that digitization of paper records must ensure the availability of a correct and accessible electronic copy.
3.	Court of Appeal, Fourth Appellate District by Kevin Lane Clerk/Executive Officer	AM	Position: Support but only with modifications This proposal indicates that this proposal was originated from a clerk/executive officer however this committee needs to understand that this is not the position of all of the clerk/executive officers in the courts. This proposal tries to address the minority of cases that may be needed beyond the 20 years but does not specify how many cases that really is. The committee should endeavor to put exact numbers to measure how many cases we are actually evaluating compared to the number of cases that the courts process. The proposal to extend the time to keep reporters transcripts from 20 years to 100 years is not reasonable nor financially responsible. I recommend the committee reevaluate the last	The committee notes the commenter's support for the proposal if modified. The commenter's point is noted. There is no way to determine the number of appeals affirming felony convictions for which a reporter's transcript may be needed beyond 20 years from the date the decision becomes final. In addition to sentences that are longer than 20 years, there may be future changes in the law or circumstances, including changes in the law that take place after a sentence is served. *[For discussion by the committee. The rules subcommittee previously rejected a retention schedule based on the length of the sentence because it would be more complicated to*

	Commenter	Position	Comment	DRAFT Committee Response
			alternative considered. In practice, the record retention at the AG's Office is longer than the current 20 years the courts have in place but is based on the sentence. The shortest time frame is 20 years but that is based on a sentence of 10 years or less and the number of years the file was kept went up with the sentence. For example, if someone is sentenced to 5 years, keeping that record for 100 years is not reasonable. This alternative is significantly better than the proposal even though it is not as simple as the one size fits all approach. Further, the technology of today will not be the technology of 100 years from now. If this proposal were to go forward there will need to be specific money set aside for file conversion as well as hard copy storage. Currently record storage is very expensive for the courts with only the 20 year requirement. Financial assistance will need to be increased significantly to address the additional costs. The committee should evaluate current costs of storage in each court so they have an estimate of the actual cost that will be needed in the future. Specific answers to the committees questions are: • Does the proposal appropriately address the stated purpose? No it does not in a reasonable fashion. • Should reporters' transcripts in any type of case be retained permanently? No, 100 years	*administer and would not ensure that the reporter's transcript would be available to all individuals who may be entitled to seek relief in the future. However, storage costs are an issue. Courts are still receiving a substantial number of reporters' transcripts in paper format and are storing them off-site in boxes rather than digitizing them.]* The committee agrees that technology will continue to advance and that funding for file conversion will be important for reducing the cost of hard copy storage. Efforts to modernize and convert from paper to electronic transcripts should remain a priority. The committee is also acutely aware of the budget challenges facing the state in general and the judicial branch in particular. The committee appreciates the commenter's responses to specific questions asked in the invitation to comment. See response above. The committee appreciates this input.

	Commenter	Position	Comment	DRAFT Committee Response
			for a death penalty case or LWOP would be adequate and outlive the lives of anyone committing a criminal act • Should any other provisions regarding retention of an original reporter's transcript be considered? Yes, see above re procedure at AG's office. • Would the proposal provide cost savings? If so, please quantify. No, quite the opposite. It would increase costs significantly • 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? To implement this we would have to train each deputy clerk on a new procedure (minimal time), revise process and procedures to address how to account for cases that reach the 100 year mark, create new docket codes in our current CMS, publication requirements and destruction procedures. • Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes • How well would this proposal work in courts of different sizes? The proposal itself is a one size fits all approach, so different size courts could adapt equally.	See response above. The committee notes the commenter's concern. The committee appreciates this information on implementation requirements. No further response required. No further response required.

SPR20-01
Court Records: Retention of Reporters' Transcripts in Criminal Appeals (Amend Cal. Rules of Court, rule 10.1028)
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	Commenter	Position	Comment	DRAFT Committee Response
4.	First District Appellate Project by Jonathan Soglin Executive Director	A	We strongly support retention of transcripts for 100 years. Data storage is relatively inexpensive and there is no anticipating what reforms might make the transcripts relevant many years after the appeal. One hundred years ensures new laws can be fairly applied to anyone affected.	The committee notes the commenter's support for the proposal and appreciates the comments explaining their position.
5.	Loyola Law School Project for the Innocent By Paula M. Mitchell, Legal Director	AM	The mandated preservation of RTs in criminal cases is critical to promoting justice and fairness in the system. As an attorney who works to overturn murder convictions and other serious felony convictions for clients who are factually innocent, I can attest to the devastating effect the destruction of criminal trial transcripts has on the system generally, and on individuals who are seeking to prove their innocence, specifically. It is also important that there be a mechanism to ensure that the electronic version being preserved is complete before the hard paper copy is destroyed. It is equally important that the CT also be digitally preserved for 100 years.	The committee thanks the commenter and notes the support for the proposal if modified. The committee agrees that a digitized version of a paper transcript must be complete; see response to California Lawyer's Association, above. Requiring that clerks' transcripts also be retained for 100 years is beyond the scope of this proposal. (See rule 10.22(d).) The committee will retain this comment as a suggestion for a future rules project.
6.	Orange County Bar Association By Scott B. Garner, President	A	Specific Comments: Does the proposal appropriately address the stated purpose? Yes for several reasons. This proposal conforms the rule of court to Code of Civil Procedure section 271(a). In lieu of paper, the true copy of	The committee notes the commenter's agreement with the proposal and appreciates the responses to questions asked in the invitation to comment. The committee appreciates this feedback.

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

	Commenter	Position	Comment	DRAFT Committee Response
			the reporter's transcript in electronic form offers the distinct advantage of ease of digital duplication, minimal storage space required, less possibility of physical deterioration over time and finally, cost saving for the court resulting from all of the foregoing advantages. Given the need to review the underlying basis of previously affirmed felony convictions brought on by changes in the law or other circumstances years later the current 20 year period is clearly insufficient. The increased proposed mandated retention period of 100 years should accommodate any foreseeable need for review of such transcripts. Should reporters' transcripts in any type of case be retained permanently? No. This question appears to call for retention of the reporter's transcript in every case including criminal matters forever. Except for historical purposes, neither inclusion for all cases nor permanent retention is warranted. Should any other provisions regarding retention of an original reporter's transcript be considered? No. Cal. Rules of Court 8.144 ensures uniform accessibility for the reporter's transcript in digital form for future years.	No further response required. No further response required.

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	Commenter	Position	Comment	DRAFT Committee Response
7.	Superior Court of Orange County IMPACT Team- Criminal Operations By Randy Montejano Courtroom Operations Supervisor		• Does the proposal appropriately address the stated purpose? Yes, effective January 1, 2018, rule 10.1028, subdivision (d), was amended to allow the Court of Appeal to keep an electronic copy of the reporter's transcript in lieu of keeping the original unless an exception applies. If an exception applies and the original transcript is on paper, the court may continue to keep either the paper original or a true and correct electronic copy. The proposal also extends the time the court must keep the original or an electronic copy of the reporter's transcript in felony appeals to 100 years. • Should reporters' transcripts in any type of case be retained permanently? I do not see any reason why it would need to be retained permanently. • Should any other provisions regarding retention of an original reporter's transcript be considered? I feel that everything is covered regarding this. • Would the proposal provide cost savings? If so, please quantify. Yes, as currently written, if the court may keep either a paper original or a true and correct electronic copy, it would save the cost of physical storage space in keeping these documents for 100 years.	The committee appreciates the commenter's responses to the questions asked in the invitation to comment. No further response required. No further response required. No further response required. The committee agrees that keeping electronic copies rather than paper copies would save costs.

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

SPR20-01

Court Records: Retention of Reporters' Transcripts in Criminal Appeals (Amend Cal. Rules of Court, rule 10.1028)

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

	Commenter	Position	Comment	DRAFT Committee Response
			• 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? New docket codes may need to be created and staff who handle destruction of these documents would need to be trained. • Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes, in our opinion it would be enough time for Orange County Superior Court. • How well would this proposal work in courts of different sizes? In our opinion it would work well no matter the size of the court.	The committee appreciates this input. No further response required. No further response required.
8.	Superior Court of San Diego County By Mike Roddy Court Executive Officer	A	No specific comment provided.	The committee notes the commenter's agreement with the proposal.

Rule 10.1028 of the California Rules of Court would be amended, effective January 1, 2021, to read:

Title 10. Judicial Administration Rules

Division 5. Appellate Court Administration

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

Rule 10.1028. Preservation and destruction of Court of Appeal records

(a) Form or forms in which records may be preserved

(1) Court of Appeal records may be created, maintained, and preserved in any form or forms of communication or representation, including paper or optical, electronic, magnetic, micrographic, or photographic media or other technology, if the form or forms of representation or communication satisfy the standards or guidelines for the creation, maintenance, reproduction, and preservation of court records established under rule 10.854.

(2) If records are preserved in a medium other than paper, the following provisions of Government Code section 68150 apply: subdivisions (c)–(*l*), excluding subdivision (i)(1).

(b) Methods for signing, subscribing, or verifying documents

Any notice, order, ruling, decision, opinion, memorandum, certificate of service, or similar document issued by an appellate court or by a judicial officer of an appellate court may be signed, subscribed, or verified using a computer or other technology in accordance with procedures, standards, and guidelines established by the Judicial Council. Notwithstanding any other provision of law, all notices, orders, rulings, decisions, opinions, memoranda, certificates of service, or similar documents that are signed, subscribed, or verified by computer or other technological means under this subdivision shall have the same validity, and the same legal force and effect, as paper documents signed, subscribed, or verified by an appellate court or a judicial officer of the court.

(c) Permanent records

The clerk/executive officer of the Court of Appeal must permanently keep the court's minutes and a register of appeals and original proceedings.

(d) Time to keep other records

(1) Except as provided in (2) and (3), the clerk/executive officer may destroy all other records in a case 10 years after the decision becomes final, as ordered by the administrative presiding justice or, in a court with only one division, by the presiding justice.

(2) Except as provided in (3), in a criminal 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 of the transcript, for 20 years after the decision becomes final.

(3) 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.

Advisory Committee Comment

Subdivision (d). Subdivision (d) permits the Court of Appeal to keep an electronic copy of the reporter's transcript in lieu of keeping the original if the original transcript is in paper. Although subdivision (a) allows the Court of Appeal to maintain its records in any format that satisfies the otherwise applicable standards for maintenance of court records, including electronic formats, ~~the original of a reporter's transcript is required to be on paper under Code of Civil Procedure section 271(a).~~ Code of Civil Procedure section 271 provides that an original reporter's transcript must be in electronic form unless a specified exception allows for an original paper transcript. Subdivision (d) therefore specifies that an electronic copy may be kept if the original transcript is in paper, to clarify that the paper original need not be kept by the court.

JUDICIAL COUNCIL OF CALIFORNIA

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

INVITATION TO COMMENT

SPR20-[# as assigned]

Title
Court Records: Retention of Reporters' Transcripts in Criminal Appeals

Action Requested
Review and submit comments by June 9, 2020

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rule 10.1028

Proposed Effective Date
January 1, 2021

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

Contact
Christy Simons, Attorney
415-865-7694
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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. Code of Civil Procedure section 271, subdivision (a), no longer requires that an original reporter's transcript be in paper format. Thus, 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 felony appeals to 100 years. The rule's current requirement to keep the reporter's transcript for 20 years in any case affirming a criminal conviction does not account for longer sentences or 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

Statutory change

Rule 10.1028 governs the preservation and destruction of Court of Appeal records. Prior to 2018, the rule required the court to keep an original reporter's transcript, which, under the version of

Code of Civil Procedure section 271[1] in effect at the time, had to be on paper.[2] Effective January 1, 2018, rule 10.1028, subdivision (d), was amended to allow the Court of Appeal to keep an electronic copy of the reporter's transcript in lieu of keeping the original. An advisory committee comment was added to explain that, "[a]lthough subdivision (a) allows the Court of Appeal to maintain its records in any format that satisfies the otherwise applicable standards for maintenance of court records, including electronic formats, the original of a reporter's transcript is required to be on paper under Code of Civil Procedure section 271(a). Subdivision (d) therefore specifies that an electronic copy may be kept, to clarify that the paper original need not be kept by the court."

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, and provides that an electronic transcript is deemed to be an original for all purposes unless a paper transcript is delivered under any of the exceptions. In light of the new statutory language, rule 10.1028 should be revised to reflect that an original reporter's transcript must be in electronic format unless an exception applies. If an exception applies and the original transcript is on paper, the court may continue to keep either the paper original or a true and correct electronic copy.

Time to keep reporters' transcripts

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.)

This 20-year retention period is insufficient. Sentences for the most serious felony convictions often exceed 20 years, as does the actual time served under these sentences. 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,[3] which reduced penalties for certain offenses and allows for resentencing, warrant keeping reporters' transcripts in cases affirming felony convictions longer than 20 years so defendants can access opportunities for resentencing or other relief. This is not a theoretical problem. The committee has been advised that the California Department of Justice, which has a longer retention schedule, is frequently contacted by litigants

[1] All further statutory references are to the Code of Civil Procedure.
[2] Section 271 authorized courts and parties to receive, on request, copies of reporters' transcripts in "computer-readable form."
[3] Voters passed Prop. 47, "The Safe Neighborhoods and Schools Act," on November 14, 2014; it went into effect the next day.

for copies of reporters' transcripts in cases in which a criminal conviction was affirmed more than 20 years ago.

Accordingly, the committee proposes adding a provision to rule 10.1028(d) to extend the time for keeping 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 required both to conform the rule to statute and to address an identified concern. It would improve access to justice by ensuring that the original reporter's transcript is actually available when needed.

Alternatives Considered

The committee considered taking no action, but rejected this option because portions of the rule are based on a former version of the relevant statute and are inadequate in light of longer sentences and criminal justice reforms.

The committee also considered whether to extend the time for keeping the reporter's transcript only in cases involving 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 reporter's transcript might be needed 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 might 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 (such as 10) following the death of the defendant. The committee rejected these options in favor of a rule that is simple and straightforward for the courts to implement, 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