

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR21-__

Title	Action Requested
Appellate Procedure: Electronic Signatures	Review and submit comments by May 21, 2021
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rules 8.70 and 8.75	January 1, 2022
Proposed by	Contact
Appellate Advisory Committee Hon. Louis R. Mauro, Chair	Christy Simons, 415-865-7694 christy.simons@jud.ca.gov

Executive Summary and Origin

The Appellate Advisory Committee proposes amending two rules of court governing electronic filing in the appellate courts to permit the use of electronic signatures and make other updates. The trial court electronic filing rules have been amended several times recently, including to allow electronic signatures. Several similar amendments for the parallel appellate rules are now being proposed to foster modern e-business practices, promote consistency in the rules and efficiency among stipulating parties, and reduce unnecessary transmission of paper documents. The amendments to rule 8.70 add a definition for electronic signature and update several other definitions. The amendments to rule 8.75 authorize the use of electronic signatures on electronic documents filed with the court and reorganize parts of the rule to improve clarity and eliminate redundancies. This proposal is based on a suggestion from an attorney in private practice.

Background

Rule 8.70(c) sets forth definitions of terms used in the electronic filing rules. Rule 8.75 governs the requirements for signatures on documents to be filed electronically. Under rule 8.75(a), electronic filers of a document signed under penalty of perjury must use and retain a printed form of the document with the original signature. Subdivision (c) requires electronic filers of documents with multiple signatures such as stipulations to either use and retain a printed copy with the original signature or copies of the signed signature page of the document.

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 It is circulated for comment purposes only.

Effective January 1, 2019, the Judicial Council amended rule 2.257, the parallel trial court rule governing requirements for signatures on documents, to add a definition of “electronic signature” and authorize the use of electronic signatures on documents signed under penalty of perjury.

One year later, effective January 1, 2020, rule 2.257 was amended again to authorize using an electronic signature for a document signed under penalty of perjury when the declarant is not the filer. The option of electronic signatures was also added for documents not signed under penalty of perjury including stipulations and other documents requiring multiple signatures.

Many private law firms and government agencies now use secure electronic signature internet services as frequently as possible to sign contracts and agreements. These services avoid the inefficiency of printing, physically signing, and then either scanning or mailing a document back to the originator—the latter especially important to minimize during the current pandemic.

Rule 8.75 has not been updated and does not provide an electronic signature option. Thus, for example, an opposing counsel’s stipulation in an appellate court still requires that the filer obtain “an original signature on a printed form of the document or in the form of a copy of the signed signature page of the document” and “maintain the original signed document and any copies of signed signature pages and . . . make them available for inspection and copying” if requested (rule 8.75(c)).

The Proposal

This proposal would add the option of using electronic signatures on documents being filed electronically in the appellate courts, including documents requiring multiple signatures, by including a definition of “electronic signature” in rule 8.70 and including procedures for electronic signatures in rule 8.75. It would also update several other definitions in rule 8.70 for additional clarity and consistency with the trial court rules.

Rule 8.70

The proposal would add a new definition of electronic signature and amend several other definitions in rule 8.70(c). The new definition is identical to that used in the trial court rules.

Unlike the trial court rules, which include the definition of electronic signature in the rule on requirements for signatures on documents (rule 2.257(a)), this proposal would place the definition in rule 8.70(c) which contains definitions of terms used in the electronic filing rules. The other proposed amendments largely mirror the parallel trial court rule providing definitions of electronic filing terms, rule 2.250(c). The proposal would:

- Amend and reorganize the definition of “document” to avoid using the word “document” in the definition and to maintain parallel structure with the rest of the subdivision.

- Amend the definition of “electronic filing” to clarify that it refers to the action of filing by the filer and does not include the steps taken by the court upon receipt of the document.
- Amend definitions for “electronic service,” “electronic filer,” and “electronic filing service provider” to add provisions related to electronic filing and service by or on a nonparty. Specifically, the definitions would reference “other person[s]” in addition to parties to include others who may be involved in a case without being parties.
- Amend several definitions to improve clarity and accuracy.

Rule 8.75

The proposal would amend this rule to mirror trial court rule 2.257(b) and (c), both in its organization and its substance. The proposal would:

- Add the option of using electronic signatures.
- Require that the electronic signature must be (1) unique to the declarant, (2) capable of verification, (3) under the sole control of the declarant, and (4) linked to data in such a manner that if the data are changed, the electronic signature is invalid. These requirements are designed to ensure that the application of the signatures is the act of the person signing, can be proven as such, and is invalidated if the document appears to have been altered after being electronically signed.
- Strike the subdivision (c) heading, “Documents requiring signatures of opposing parties,” and instead incorporate the requirements from subdivision (c) into subdivision (b), which governs documents not signed under penalty of perjury. Subdivision (c) is no longer necessary for signatures of opposing parties under penalty of perjury as those requirements are captured in subdivision (a). Therefore, the only remaining requirements would be for signatures not under penalty of perjury.
- Include “other persons” in addition to parties within the scope of the rule to account for others who may be involved in a case without being parties.

Because electronic signatures do not require the physical presence of the signer or an exchange of mailed paper documents, the option to use them will provide litigants a potentially faster and more convenient option for obtaining needed signatures. These issues are even more important and relevant during the coronavirus pandemic, as social distancing measures lead more litigants and attorneys to work from home and to communicate digitally to avoid transmission of germs on paper documents.

Alternatives Considered

The committee considered taking no action, but concluded that permitting electronic signatures and updating the rules would assist litigants with obtaining signatures, simplify procedures, and reduce the use of paper and exchange of documents by mail.

The committee also considered adding provisions regarding electronic signatures without making other changes to the rules. However, these rules are intended to be consistent with the parallel trial court rules, which have been updated several times in the last three years. Delaying the other updates would be inefficient and would preserve inconsistencies, redundancies, and outdated terminology and procedures, and thus the committee rejected this alternative.

The committee also considered placing the definition of “electronic signature” in rule 8.75 as new subdivision (a), to mirror trial court rule 2.257(a), rather than in rule 8.70(c), which defines terms used in the electronic filing rules. The committee found good reasons for both alternatives but decided to include the new definition with other definitions for internal consistency. The committee requests comments on this issue.

Fiscal and Operational Impacts

Because electronic signatures do not require the physical presence of the signer or an exchange of mailed paper documents, the option to use them should offer litigants a potentially faster and more convenient option for obtaining needed signatures. The committee expects that the rule proposal will provide greater clarity in the rules for parties, attorneys, courts, and other court users, and improved consistency between the appellate rules and the trial court rules. The proposal is not expected to result in any costs for 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 the definition of “electronic signature” be added to rule 8.70(c) as presented, or to rule 8.75 as new subdivision (a)?

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 8.70 and 8.75, at pages 6-10

1 Title 8. Appellate Rules

2
3 Division 1. Rules Relating to the Supreme Court and Courts of Appeal

4
5 Chapter 1. General Provisions

6
7 Article 5. E-filing

8
9
10 Rule 8.70. Application, construction, and definitions

11
12 (a) Application

13
14 Notwithstanding any other rules to the contrary, the rules in this article govern
15 filing and service by electronic means in the Supreme Court and the Courts of
16 Appeal.

17
18 (b) Construction

19
20 The rules in this article must be construed to authorize and permit filing and service
21 by electronic means to the extent feasible.

22
23 (c) Definitions

24
25 As used in this article, unless the context otherwise requires:

26
27 (1) “The court” means the Supreme Court or a Court of Appeal.

28
29 (2) A “document” is:

30
31 ~~(A) Any filing any writing~~ submitted to the reviewing court by a party or
32 other person, including a brief, a petition, an appendix, or a motion;

33
34 ~~(B) Any A document is also any writing~~ transmitted by a trial court to the
35 reviewing court, including a notice or a clerk’s or reporter’s transcript,
36 and

37
38 ~~(C) Any any writing~~ prepared by the reviewing court, including an opinion,
39 an order, or a notice.

40
41 ~~(D)~~—A document may be in paper or electronic form.
42

- 1 (3) “Electronic service” is service of a document on a party or other person by
2 either electronic transmission or electronic notification. Electronic service
3 may be performed directly by a party or other person, by an agent of a party
4 or other person including the party’s or other person’s attorney, through an
5 electronic filing service provider, or by a court.
6
- 7 (4) “Electronic transmission” means the ~~transmission~~ sending of a document by
8 electronic means.
9
- 10 (5) “Electronic notification” means the notification of a party or other person that
11 a document is served by sending an electronic message to the electronic
12 service address at or through which the party or other person has authorized
13 electronic service, specifying the exact name of the document served and
14 providing a hyperlink at which the served document can be viewed and
15 downloaded.
16
- 17 (6) “Electronic service address” of a party means the electronic address at or
18 through which the party has authorized electronic service.
19
- 20 (7) An “electronic filer” is a party or other person filing a document in electronic
21 form directly with the court, by an agent, or through an electronic filing
22 service provider.
23
- 24 (8) “Electronic filing” is the electronic transmission to a court of a document in
25 electronic form for filing. For purposes of this article, electronic filing
26 concerns the activity of filing by the electronic filer and does not include the
27 processing and review of the document and its entry into the court’s records,
28 which are necessary for a document to be officially **[formally filed] [filed**
29 **formally][filed with the court]**.

31 OR

- 32
- 33 (8) “Electronic filing” is the electronic transmission to a court of a document in
34 electronic form for filing. For purposes of this article, electronic filing
35 concerns the activity of filing by the electronic filer and does not include **the**
36 **court’s actions upon receipt of the document for filing, including** processing
37 and review of the document and its entry into the court’s records, ~~which are~~
38 ~~necessary for a document to be officially filed.~~
39
- 40 (9) An “electronic filing service provider” is a person or entity that receives an
41 electronic ~~filing~~ document from a party or other person for retransmission to
42 the court for filing or for electronic service on other parties, or both. In

1 submission of filings, the electronic filing service provider does so on behalf
2 of the electronic filer and not as an agent of the court.

3
4 (10) An “electronic signature” is an electronic sound, symbol, or process attached
5 to or logically associated with an electronic record and executed or adopted
6 by a person with the intent to sign a document or record created, generated,
7 sent, communicated, received, or stored by electronic means.

8 9 **Advisory Committee Comment**

10
11 The definition of “electronic service” has been amended to provide that a party may effectuate
12 service not only by the electronic transmission of a document, but also by providing electronic
13 notification of where a document served electronically may be located and downloaded. This
14 amendment is intended to modify the rules on electronic service to expressly authorize electronic
15 notification as a legally effective alternative means of service to electronic transmission. This
16 rules amendment is consistent with the amendment of Code of Civil Procedure section 1010.6,
17 effective January 1, 2011, to authorize service by electronic notification. (See Stats. 2010, ch. 156
18 (Sen. Bill 1274).) The amendments change the law on electronic service as understood by the
19 appellate court in *Insyst, Ltd. v. Applied Materials, Inc.* (2009) 170 Cal.App.4th 1129, which
20 interpreted the rules as authorizing electronic transmission as the only effective means of
21 electronic service.

22 23 **Rule 8.75. Requirements for signatures on documents**

24 25 **(a) Documents signed under penalty of perjury**

26
27 ~~If~~ When a document to be filed electronically must be signed under penalty of
28 perjury, ~~the following procedure applies~~ document is deemed to have been signed
29 by the declarant if filed electronically provided that either of the following
30 conditions is satisfied:

- 31
- 32 (1) ~~The document is deemed signed by the declarant if, before filing, the~~
33 ~~declarant has signed a printed form of the document.~~ The declarant has
34 signed the document using an electronic signature and declares under penalty
35 of perjury under the laws of the state of California that the information
36 submitted is true and correct. If the declarant is not the electronic filer, the
37 electronic signature must be unique to the declarant, capable of verification,
38 under the sole control of the declarant, and linked to data in such a manner
39 that if the data are changed, the electronic signature is invalidated; or
- 40
- 41 (2) The declarant, before filing, has physically signed a printed form of the
42 document. By electronically filing the document, the electronic filer certifies
43 that ~~(1) has been complied with and that~~ the original signed document is

1 available for inspection and copying at the request of the court or any other
2 party. In the event this second method of submitting documents electronically
3 under penalty of perjury is used, the following conditions apply:

4
5 ~~(3)~~(A) At any time after the electronic version of the document is filed,
6 any other party may serve a demand for production of the original
7 signed document. The demand must be served on all other parties but
8 need not be filed with the court.

9
10 ~~(4)~~(B) Within five days of service of the demand under ~~(3)~~(A), the party
11 or other person on whom the demand is made must make the original
12 signed document available for inspection and copying by all other
13 parties.

14
15 ~~(5)~~(C) At any time after the electronic version of the document is filed,
16 the court may order the filing party or other person to produce the
17 original signed document in court for inspection and copying by the
18 court. The order must specify the date, time, and place for the
19 production and must be served on all parties.

20
21 **(b) Documents not signed under penalty of perjury**

22
23 (1) If a document does not require a signature under penalty of perjury, the
24 document is deemed signed by the ~~party if the document is filed~~ person who
25 filed it electronically.

26
27 ~~(c) Documents requiring signatures of multiple parties~~

28
29 (2) When a document to be filed electronically, such as a stipulation, requires the
30 signatures of multiple parties or persons, the document is deemed to have
31 been signed by those parties or persons if filed electronically provided that
32 either of the following procedures is satisfied:

33
34 ~~(4)~~(A) The party filing the document must obtain the signatures of all
35 parties either in the form of an original signature on a printed form of
36 the document or in the form of a copy of the signed signature page of
37 the document. The electronic filer must maintain the original signed
38 document and any copies of signature pages and must make them
39 available for inspection and copying as provided in (a)(2)(B). The court
40 and any other party may demand production of the original signed
41 document and any copies of signed signature pages in the manner
42 provided in (a)(3)–(5). By electronically filing the document, the
43 electronic filer indicates that all parties have signed the document and

1 that the filer has possession of the signatures of all parties in a form
2 permitted by this rule ~~in his or her possession;~~ or
3

4 ~~(2)(B) The party filing the document must maintain the original signed~~
5 ~~document and any copies of signed signature pages and must make~~
6 ~~them available for inspection and copying as provided in (a)(2). The~~
7 ~~court and any other party may demand production of the original signed~~
8 ~~document and any copies of signed signature pages in the manner~~
9 ~~provided in (a)(3)–(5). The party or other person has signed the~~
10 ~~document using an electronic signature and that electronic signature is~~
11 ~~unique to the persons using it, capable of verification, under the sole~~
12 ~~control of the person using it, and linked to data in such a manner that~~
13 ~~if the data are changed, the electronic signature is invalidated.~~
14

15 **(d) Digital signature**
16

17 A party or other person is not required to use a digital signature on an electronically
18 filed document.
19

20 **(e) Judicial signatures**
21

22 If a document requires a signature by a court or a judicial officer, the document
23 may be electronically signed in any manner permitted by law.
24

25 **Advisory Committee Comment**
26

27 The requirements for electronic signatures that are compliant with the rule do not impair the
28 power of the courts to resolve disputes about the validity of a signature.
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INVITATION TO COMMENT

SPR21-__

Title

Appellate Procedure: Notice of Appeal
Following Plea of Guilty or Nolo Contendere
or Admission of Probation Violation

Action Requested

Review and submit comments by May 21,
2021

Proposed Rules, Forms, Standards, or Statutes

Amend Cal. Rules of Court, rule 8.304

Proposed Effective Date

January 1, 2022

Proposed by

Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

Contact

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Executive Summary and Origin

The Appellate Advisory Committee proposes amending the rule that governs initiating an appeal after a plea of guilty or nolo contendere or after an admission of probation violation. In these cases, a certificate of probable cause is required if the defendant seeks to appeal an issue that challenges the validity of the plea. Currently, the rule requires the trial court clerk to mark a notice of appeal “inoperative” if the defendant did not file the statement requesting a certificate of probable cause or the trial court denied a certificate. However, because an appeal can be based on grounds that do not require a certificate, the clerk must review the notice of appeal and decide whether it should be filed. The amendments would reorganize the rule, simplify procedures, and eliminate the onus on the clerk to make a legal decision. The proposal is based on a suggestion from a member of another advisory committee.

Background

Rule 8.304 of the California Rules of Court governs filing an appeal in a felony case. Subdivision (b) addresses notices of appeal filed after a plea of guilty or nolo contendere or an admission of probation violation. The defendant in such an appeal must request a certificate of probable cause for any challenge to the validity of the plea. If the superior court does not issue a certificate, either because the defendant did not request one or the court denied the request, the rule sets forth the procedure for clerks to follow:

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“If the defendant does not file the statement required [to request a certificate of probable cause] or if the superior court denies a certificate of probable cause, the superior court clerk must mark the notice of appeal ‘Inoperative,’ notify the defendant, and send a copy of the marked notice of appeal to the district appellate project.” (Rule 8.304(b)(3).)

However, in a later paragraph, the rule also provides that a defendant need not request a certificate of probable cause if the notice of appeal states that the appeal is based on the denial of a motion to suppress evidence under Penal Code section 1538.5 or grounds arising after the plea, such as sentencing issues, that do not attack the validity of the plea. (Rule 8.304(b)(4).)

As a result, a superior court clerk in receipt of a notice of appeal that is not accompanied by a request for a certificate of probable cause or the certificate itself must decide whether to mark it “inoperative” or file it and allow the appeal to proceed. While the notice of appeal forms often contain check boxes that allow the defendant to specify that the appeal is from denial of a motion to suppress evidence or sentencing only and is not designed to attack the plea, it is not uncommon for both self-represented defendants and attorneys to check the wrong box or boxes, check no boxes, or otherwise submit a notice of appeal that does not alert the clerk that no certificate of probable cause is required. Incorrect decisions to mark a notice of appeal inoperative or to file it result in delay and additional work for litigants, appellate projects, and the courts.

The Proposal

This proposal would clarify the rule and eliminate a procedure that inappropriately requires clerks to make legal decisions. It would save time and reduce work for the courts, and avoid causing delays in filing felony appeals following a plea or admission of probation violation.

Currently, rule 8.304(b)(1) indicates that, “except as provided in (4),” a notice of appeal must be filed with a certificate of probable cause or the statement requesting a certificate. Under subdivision (b)(2), if a certificate is requested, the court must issue it or deny the request within 20 days. Subdivision (b)(3) requires the clerk to mark a notice of appeal filed without a certificate or a request for a certificate “inoperative.” Subdivision (b)(4) states that a defendant “need not comply with (1)” if the notice of appeal states grounds that do not require a certificate. Thus, the rule suggests that a notice of appeal filed without a certificate or a request for one is improper and the clerk is expected to reject the filing and take other steps unless exceptions apply. To more accurately reflect the law and clarify that the distinction to be drawn is whether the grounds for the appeal require a certificate, not whether a certificate is requested or attached to the notice of appeal, subdivision (b)(1) and (2) would be reorganized to separate provisions addressing appeals requiring a certificate of probable cause from appeals not requiring a certificate.

New subdivision (b)(3) would address an appeal with no certificate of probable cause. Rather than requiring clerks to mark a notice of appeal inoperative, notify the defendant, and send a copy of the marked notice of appeal to the district appellate project, the rule would simply

provide that appeals initiated by notices of appeal filed without a certificate of probable cause or the statement requesting a certificate are limited to issues that do not require a certificate of probable cause.

The proposed amendments would also lessen the reliance on the notice of appeal document that is currently written into the rule. For example, the rule provides that a defendant need not request a certificate of probable cause “if the notice of appeal states that the appeal is based on” grounds not requiring a certificate. (Rule 8.304(b)(4).) If the “notice of appeal contains [such] a statement, the reviewing court will not consider any issue affecting the validity of the plea unless the defendant also” requests a certificate. (Rule 8.304(b)(5).) The proposed amended language would shift the focus from what is stated on the notice of appeal to the underlying basis for the appeal.

The proposal also includes conforming changes to subdivision (c) regarding notification of the appeal and the advisory committee comment to subdivision (b).

Alternatives Considered

The committee considered taking no action, but determined that the proposed changes would provide a substantial benefit to litigants and the superior courts by simplifying procedures and avoiding delay caused by the incorrect rejection of notices of appeal presented for filing.

The committee also considered a more limited option of amending only the provision requiring the clerk to mark the notice of appeal inoperative. That option would still have required action by the clerk to indicate that the appeal would be limited to issues that do not require a certificate of probable cause. The committee rejected this option in favor of clarifying the rule and eliminating the need for the clerk to review and evaluate the sufficiency of the notice of appeal and take action based on that evaluation.

Fiscal and Operational Impacts

Implementation requirements include providing training for superior court staff and publicizing the change in procedure to the criminal defense bar and the appellate projects. There should be minimal implementation costs, if any. The operational impacts would include time savings for superior court clerks filing notices of appeal in these cases.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Would the proposed changes have an impact on preparation of the record on appeal? If so, please describe.

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

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

Attachments and Links

1. Cal. Rules of Court, rule 8.304, at pages 5-9

1 Title 8. Appellate Rules

2
3 Division 1. Rules Relating to the Supreme Court and Courts of Appeal

4
5 Chapter 3. Criminal Appeals

6
7 Article 1. Taking the Appeal

8
9
10 Rule 8.304. Filing the appeal; certificate of probable cause

11
12 (a) Notice of appeal

- 13
14 (1) To appeal from a judgment or an appealable order of the superior court in a
15 felony case—other than a judgment imposing a sentence of death—the
16 defendant or the People must file a notice of appeal in that superior court. To
17 appeal after a plea of guilty or nolo contendere or after an admission of
18 probation violation, the defendant must also comply with (b).
19
- 20 (2) As used in (1), “felony case” means any criminal action in which a felony is
21 charged, regardless of the outcome. A felony is “charged” when an
22 information or indictment accusing the defendant of a felony is filed or a
23 complaint accusing the defendant of a felony is certified to the superior court
24 under Penal Code section 859a. A felony case includes an action in which
25 the defendant is charged with:
26
- 27 (A) A felony and a misdemeanor or infraction, but is convicted of only the
28 misdemeanor or infraction;
29
- 30 (B) A felony, but is convicted of only a lesser offense; or
31
- 32 (C) An offense filed as a felony but punishable as either a felony or a
33 misdemeanor, and the offense is thereafter deemed a misdemeanor
34 under Penal Code section 17(b).
35
- 36 (3) If the defendant appeals, the defendant or the defendant’s attorney must sign
37 the notice of appeal. If the People appeal, the attorney for the People must
38 sign the notice.
39
- 40 (4) The notice of appeal must be liberally construed. Except as provided in (b),
41 the notice is sufficient if it identifies the particular judgment or order being
42 appealed. The notice need not specify the court to which the appeal is taken;

1 the appeal will be treated as taken to the Court of Appeal for the district in
2 which the superior court is located.

3
4 *(Subd (a) amended effective January 1, 2007.)*
5

6 **(b) Appeal after plea of guilty or nolo contendere or after admission of probation**
7 **violation**

8
9 (1) Appeal based on grounds requiring a certificate of probable cause

10
11 ~~(1)(A)~~ Except as provided in (4), To appeal from a superior court
12 judgment after a plea of guilty or nolo contendere or after an admission
13 of probation violation on grounds that attack the validity of the plea or
14 admission, the defendant must file in that superior court—with the
15 notice of appeal required by (a)—the statement required by Penal Code
16 section 1237.5 for issuance of a certificate of probable cause.

17
18 ~~(2)(B)~~ Within 20 days after the defendant files a statement under (1), the
19 superior court must sign and file either a certificate of probable cause
20 or an order denying the certificate.

21
22 ~~(4) The defendant need not comply with (1) if the notice of appeal states that the~~
23 ~~appeal is based on:~~

24
25 (2) Appeal that does not require a certificate of probable cause

26
27 To appeal from a superior court judgment after a plea of guilty or nolo
28 contendere or after an admission of probation violation on grounds that do
29 not attack the validity of the plea or admission, the defendant need not file the
30 statement required by Penal Code section 1237.5 for issuance of a certificate
31 of probable cause. No certificate of probable cause is required for an appeal
32 based on:

33
34 (A) The denial of a motion to suppress evidence under Penal Code section
35 1538.5; or

36
37 (B) Grounds that arose after entry of the plea or admission and do not affect
38 the validity of the plea or admission.

39
40 ~~(3) If the defendant does not file the statement required by (1) or if the superior~~
41 ~~court denies a certificate of probable cause, the superior court clerk must~~
42 ~~mark the notice of appeal “Inoperative,” notify the defendant, and send a~~
43 ~~copy of the marked notice of appeal to the district appellate project.~~

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(3) Appeal with no certificate of probable cause

If the defendant does not file the statement required by (1) or if the superior court denies a certificate of probable cause, the appeal is limited to issues that do not require a certificate of probable cause.

~~(4) The defendant need not comply with (1) if the notice of appeal states that the appeal is based on:~~

~~(A) The denial of a motion to suppress evidence under Penal Code section 1538.5; or~~

~~(B) Grounds that arose after entry of the plea and do not affect the plea's validity.~~

~~(5)(4) If the defendant's notice of appeal contains a statement under appeal is based on grounds stated in (2), the reviewing court will not consider any issue affecting the validity of the plea unless the defendant also complies with (1) and the court issues a certificate of probable cause.~~

(c) Notification of the appeal

(1) When a notice of appeal is filed, the superior court clerk must promptly send a notification of the filing to the attorney of record for each party, to any unrepresented defendant, to the reviewing court clerk, to each court reporter, and to any primary reporter or reporting supervisor. ~~If the defendant also files a statement under (b)(1), the clerk must not send the notification unless the superior court files a certificate under (b)(2).~~

(2) The notification must show the date it was sent, the number and title of the case, and the dates the notice of appeal and any certificate under (b)(2) were filed. If the information is available, the notification must also include:

(A) The name, address, telephone number, e-mail address, and California State Bar number of each attorney of record in the case;

(B) The name of the party each attorney represented in the superior court; and

1 (C) The name, address, telephone number and e-mail address of any
2 unrepresented defendant.

3
4 (3) The notification to the reviewing court clerk must also include a copy of the
5 notice of appeal, any certificate filed under (b)(1) and the sequential list of
6 reporters made under rule 2.950.

7
8 (4) A copy of the notice of appeal is sufficient notification under (1) if the
9 required information is on the copy or is added by the superior court clerk.

10
11 (5) The sending of a notification under (1) is a sufficient performance of the
12 clerk’s duty despite the discharge, disqualification, suspension, disbarment,
13 or death of the attorney.

14
15 (6) Failure to comply with any provision of this subdivision does not affect the
16 validity of the notice of appeal.

17
18 **Advisory Committee Comment**

19
20 **Subdivision (a).** Penal Code section 1235(b) provides that an appeal from a judgment or
21 appealable order in a “felony case” is taken to the Court of Appeal, and Penal Code section 691(f)
22 defines “felony case” to mean “a criminal action in which a felony is charged. . . .” Rule
23 8.304(a)(2) makes it clear that a “felony case” is an action in which a felony is charged *regardless*
24 *of the outcome of the action*. Thus the question whether to file a notice of appeal under this rule or
25 under the rules governing appeals to the appellate division of the superior court (rule 8.800 et
26 seq.) is answered simply by examining the accusatory pleading: if that document charged the
27 defendant with at least one count of felony (as defined in Penal Code, section 17(a)), the Court of
28 Appeal has appellate jurisdiction and the appeal must be taken under this rule *even if the*
29 *prosecution did not result in a punishment of imprisonment in a state prison*.

30
31 It is settled case law that an appeal is taken to the Court of Appeal not only when the defendant is
32 charged with and convicted of a felony, but also when the defendant is charged with both a felony
33 and a misdemeanor (Pen. Code, § 691(f) but is convicted of only the misdemeanor (e.g., *People*
34 *v. Brown* (1970) 10 Cal.App.3d 169); when the defendant is charged with a felony but is
35 convicted of only a lesser offense (Pen. Code, § 1159; e.g., *People v. Spreckels* (1954) 125
36 Cal.App.2d 507); and when the defendant is charged with an offense filed as a felony but
37 punishable as either a felony or a misdemeanor, and the offense is thereafter deemed a
38 misdemeanor under Penal Code section 17(b) (e.g., *People v. Douglas* (1999) 20 Cal.4th 85;
39 *People v. Clark* (1971) 17 Cal.App.3d 890).

40
41 Trial court unification did not change this rule: after as before unification, “Appeals in felony
42 cases lie to the [C]ourt of [A]ppel, regardless of whether the appeal is from the superior court,
43 the municipal court, or the action of a magistrate. *Cf.* Cal. Const. art. VI, § 11(a) [except in death

1 penalty cases, Courts of Appeal have appellate jurisdiction when superior courts have original
2 jurisdiction ‘in causes of a type within the appellate jurisdiction of the [C]ourts of [A]ppeal on
3 June 30, 1995. . . .’.” (“Recommendation on Trial Court Unification” (July 1998) 28 *Cal. Law*
4 *Revision Com. Rep.* 455–56.)

5
6 **Subdivision (b).** Under (b)(1), to raise an issue challenging the validity of the plea, the defendant
7 is required to file both a notice of appeal and the statement required by Penal Code section
8 1237.5(a) for issuance of a certificate of probable cause. ~~Requiring a notice of appeal in all cases~~
9 ~~simplifies the rule, permits compliance with the signature requirement of rule 8.304(a)(3), ensures~~
10 ~~that the defendant’s intent to appeal will not be misunderstood, and makes the provision~~
11 ~~consistent with the rule in civil appeals and with current practice as exemplified in the Judicial~~
12 ~~Council form governing criminal appeals. Subdivision (b)(2) addresses appeals that do not~~
13 ~~require a certificate of probable cause, including the grounds upon which such appeals may be~~
14 ~~based. Under (b)(3), if the defendant does not file the statement in (b)(1) or the superior court~~
15 ~~denies the certificate, the appeal is limited to grounds that do not require a certificate of probable~~
16 ~~cause.~~

17
18 ~~Because of the drastic consequences of failure to file the statement required for issuance of a~~
19 ~~certificate of probable cause in an appeal after a plea of guilty or nolo contendere or after an~~
20 ~~admission of probation violation, Subdivision (b)(5)(4) alerts appellants to a relevant rule of case~~
21 ~~law, i.e., that, although such an appeal may be maintained without a certificate of probable cause~~
22 ~~if the notice of appeal states the appeal is based on the denial of a motion to suppress evidence or~~
23 ~~on grounds arising after entry of the plea and not affecting its validity, no issue challenging the~~
24 ~~validity of the plea is cognizable on that appeal without a certificate of probable cause. (See~~
25 ~~*People v. Mendez* (1999) 19 Cal.4th 1084, 1104.)~~