JUDICIAL COUNCIL
OF CALIFORNIA

APPELLATE ADVISORY
COMMITTEE

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APPELLATE ADVISORY COMMITTEE
RULES SUBCOMMITTEE
OPEN MEETING AGENDA

Open to the Public (Cal. Rules of Court, rule 10.75(c)(1))
THIS MEETING IS BEING CONDUCTED BY ELECTRONIC MEANS
THIS MEETING IS BEING RECORDED

Date:	June 10, 2022
Time:	1:00 PM
Public Livestream Link:	https://jcc.granicus.com/player/event/1802 (Listen Only)

Meeting materials will be posted on the advisory body web page on the California Courts website at least three business days before the meeting.

Agenda items are numbered for identification purposes only and will not necessarily be considered in the indicated order.

I. OPEN MEETING (CAL. RULES OF COURT, RULE 10.75(C)(1))

Call to Order and Roll Call

II. PUBLIC COMMENT (CAL. RULES OF COURT, RULE 10.75(K)(1))

Written Comment

This meeting will be conducted by electronic means with a listen only conference line available for the public. As such, the public may submit comments for this meeting in writing. In accordance with California Rules of Court, rule 10.75(k)(1), written comments pertaining to any agenda item of a regularly noticed open meeting can be submitted up to one complete business day before the meeting. For this specific meeting, comments should be e-mailed to aac@jud.ca.gov. Only written comments received by June 9 at 1:00 p.m. will be provided to advisory body members prior to the start of the meeting.

III. DISCUSSION AND POSSIBLE ACTION ITEMS (ITEMS X–X)

Item 1

CEQA Actions: New Projects and Fees for Expedited Review (Action Required)

Review comments on proposal for amended rules to implement legislation adding projects for streamlined CEQA review and requiring the council to establish fees to be paid to the courts.

Presenters: Hon. Louis R. Mauro, Ms. Christy Simons

Item 2

Update Language Referring to Persons with Disabilities (Action Required)

Review comments on proposed rule amendments and form revisions to use preferred language regarding disability.

Presenters: Hon. Louis R. Mauro, Ms. Christy Simons

Item 3

Transfer of Jurisdiction from Juvenile Court to Criminal Court and Review of Orders Granting Transfer (Action Required)

Review comments on proposed rule amendments and form revisions to implement legislative changes to the statutes governing transfer of jurisdiction from the juvenile court to the criminal court and review of orders granting transfer.

Presenters: Hon. Louis R. Mauro, Ms. Christy Simons

Item 4

Court Records: Retention of Reporters' Transcripts in Criminal Appeals (Action Required)

Review comments on proposed amendments to the rule regarding preservation and destruction of Court of Appeal records to extend the time the court must keep the reporter's transcript in cases affirming a felony conviction and to revise an outdated provision to conform to Code of Civil Procedure section 271, subdivision (a).

Presenters: Hon. Louis R. Mauro, Ms. Christy Simons

IV. ADJOURNMENT

Adjourn

JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
June 7, 2022

To
Members of the Rules Subcommittee

From
Christy Simons
Attorney, Legal Services

Subject
Comments on CEQA proposal

Action Requested
Please review

Deadline
June 10, 2022

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

Introduction

This is the latest proposal mandated by the Legislature in which the Judicial Council seeks to adopt rules to implement statutes providing for the expedited resolution of actions and proceedings brought under CEQA to challenge certain projects that qualified for streamlined procedures. The proposal will implement two bills: (1) Senate Bill 7 reenacts with certain changes the Jobs and Economic Improvement Through Environmental Leadership Act of 2011 which provides for certification and expedited CEQA review of certain large projects that replace old facilities, reduce pollution, and generate jobs; and (2) Senate Bill 44 adds sustainable public transit projects in Los Angeles in preparation for the 2028 Summer Olympic and Paralympic Games to the list of projects to receive expedited CEQA review. The proposal will also implement new and reenacted statutory provisions requiring that the council, by rule of court, establish fees to be paid by those project applicants to the trial court and Court of Appeal for the costs of streamlined CEQA review.

Comments

The proposal circulated for public comment between April 1 and May 13, 2022. The committees received one comment. See comment chart attached. The Orange County Bar Association indicated agreement with the rule amendments and did not suggest modifications or provide further comments.

Rules Subcommittee Task

Due to time constraints, the Judicial Council report for this proposal has not yet been drafted. It will be based on the invitation to comment, which is attached for your reference. The subcommittee's task is to analyze this proposal and:

- Approve the proposal as presented and recommend to the full committee that it seek approval from RUPRO to circulate the proposal for public comment;
- Modify the proposal and recommend to the full committee that it seek approval from RUPRO to circulate the modified proposal for public comment;
- Recommend to the full committee that it reject the proposal; or
- Ask staff or committee members for further information/analysis.

Attachment

1. Comment chart
2. Invitation to comment

SPR22-01

CEQA Actions: New Projects and Fees for Expedited Review (Amend Cal. Rules of Court, rules 3.2200, 3.2220, 3.2221, 3.2223, 3.2240, 8.700, 8.702, 8.703, and 8.705)

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

	Commenter	Position	Comment	Committee Response
1.	Orange County Bar Association by Daniel S. Robinson President	A	*No specific comment.*	

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

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INVITATION TO COMMENT

SPR22-01

Title
CEQA Actions: New Projects and Fees for Expedited Review

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rules 3.2200, 3.2220, 3.2221, 3.2223, 3.2240, 8.700, 8.702, 8.703, and 8.705

Proposed by
Appellate Advisory Committee
Hon. Louis R. Mauro, Chair
Civil and Small Claims Advisory Committee
Hon. Tamara L. Wood, Chair

Action Requested
Review and submit comments by May 13, 2022

Proposed Effective Date
January 1, 2023

Contact
Christy Simons, 415-865-7694
christy.simons@jud.ca.gov
James Barolo, 415-865-8928
james.barolo@jud.ca.gov

Executive Summary and Origin

As mandated by the Legislature, the Judicial Council previously adopted rules and established procedures that implemented a statutory scheme for the expedited resolution of actions and proceedings brought under the California Environmental Quality Act (CEQA) challenging certain projects that qualified for such streamlined procedures. This proposal will implement additional legislation requiring that the Judicial Council amend these rules to include additional projects for streamlined review. The proposal will also implement new and reenacted statutory provisions requiring that, in cases under two of the statutes, the council, by rule of court, establish fees to be paid by those project applicants to the trial court and Court of Appeal for the costs of streamlined CEQA review.

Background

Since 2011 the Legislature has enacted numerous bills providing expedited judicial review for legal challenges brought under the California Environmental Quality Act (CEQA) for specified projects. Initially, the Legislature enacted the Jobs and Economic Improvement Through Environmental Leadership Act of 2011, which provided that CEQA challenges to so-called environmental leadership projects would be brought directly to the Court of Appeal and that project applicants would pay the costs of adjudicating the case. (See Assem. Bill 900; Stats. 2011, ch. 354.) To implement the required appellate court fees in AB 900, the council adopted the predecessor to rule 8.705.

In 2013, the Legislature required the Judicial Council to adopt rules[1] requiring that actions or proceedings, including any appeals, be resolved within 270 days of certification of the record of proceedings. (See Sen. Bill 743; Stats. 2013, ch. 386.) SB 743 also provided that CEQA challenges to an additional project (the Sacramento basketball arena) would receive expedited judicial review. To implement SB 743, the council adopted rules 3.2220–3.2231 and 8.700–8.705, which in addition to providing expedited review for the specified projects also set out certain pleading and service requirements and incentives to help streamline judicial review.

In 2016, Senate Bill 836 (Stats. 2016, ch. 31) added another set of projects to receive expedited CEQA review, "capitol building annex projects." Thereafter, the council amended the trial court and appellate rules governing expedited CEQA review to include such projects.

In 2018 and 2020, the Legislature enacted four bills relating to CEQA review. Each of those bills added additional projects to receive expedited CEQA review: Assembly Bill 734 (Stats. 2018, ch. 959) (Oakland ballpark projects); Assembly Bill 987 (Stats. 2018, ch. 961) (Inglewood arena projects); Assembly Bill 1826 (Stats. 2018, ch. 40) (expanded capitol building annex projects); and Assembly Bill 2731 (Stats. 2020, ch. 291) (San Diego Old Town Center projects). AB 734 and AB 987 also provided that the person or entity that applied for certification of an Oakland ballpark or an Inglewood arena project must pay for "any additional costs incurred by the courts in hearing and deciding any [CEQA] case." (Pub. Resources Code, §§ 21168.6.7(d)(6), 21168.6.8(b)(6).) Accordingly, earlier this year the council amended rules governing expedited CEQA review to (1) include the four new projects to receive expedited CEQA review, (2) require applicants of Oakland ballpark and Inglewood arena projects to pay trial and appellate court fees based on "additional" court costs, and (3) make other conforming changes.[2]

The Proposal

This proposal seeks to implement two additional bills enacted by the Legislature related to expedited CEQA review. Senate Bill 7 (Stats. 2021, ch. 19)[3] reenacts with certain changes the Jobs and Economic Improvement Through Environmental Leadership Act of 2011 (initially enacted by AB 900), which was repealed by its own terms January 1, 2021. Both the prior and reenacted law provide for certification and expedited CEQA review of certain large projects that replace old facilities, reduce pollution, and generate jobs. (See Pub. Resources Code, § 21178 et seq.) Such projects are referred to as "environmental leadership development projects." Senate Bill 44 (Stats. 2021, ch. 633)[4] adds sustainable public transit projects in Los Angeles in preparation for the 2028 Summer Olympic and Paralympic Games to the list of projects to receive expedited CEQA review. (See Pub. Resources Code, § 21168.6.9.) These projects are referred to as "environmental leadership

[1] All rules references are to the California Rules of Court.

[2] Judicial Council of Cal., Advisory Com. Rep., *CEQA Actions: New Projects and Fees for Expedited Review* (Mar. 2, 2022), *https://jcc.legistar.com/View.ashx?M=F&ID=10565631&GUID=6D8B30CC-D416-44C2-A4F0-D857024D2730*.

[3] Available at *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB7*.

[4] Available at *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB44*.

transit projects." Both bills require project applicants to pay trial and appellate court costs for adjudication of CEQA challenges.

Accordingly, the proposed rule amendments would conform the rules to recent legislative changes adding environmental leadership transit projects as a type of project that receives expedited judicial review and setting trial and appellate court fees for both types of projects.

Amendments to add environmental leadership transit projects

Several of the proposed rule amendments simply add statutory citations or add "environmental leadership transit project" to an existing rule to implement SB 44's provision that such projects receive expedited CEQA review. (See, e.g., proposed rules 3.2200, 3.2220, 8.700.) No amendments are needed to include environmental leadership development projects (SB 7) in the type of projects that receive expedited CEQA review. Such projects were added to the rules in 2012 to implement the original environmental leadership act, AB 900.

New fees for trial and appellate courts

Existing rule 8.705(1) requires the person or entity that applied for certification of a project as an environmental leadership development project to pay a fee to the Court of Appeal. The rule is based on previous Public Resources Code section 21183(e) (in effect until December 31, 2020), which provided that such persons or entities agree to "pay the costs of the Court of Appeal in hearing and deciding any [CEQA] case" and did not provide any such fee for trial courts.

Amended Public Resources Code section 21183(f) now provides that the person or entity that applied for certification of a project as an environmental leadership development must "pay the costs of the *trial court and the court of appeal* in hearing and deciding any case challenging" the project under CEQA (italics added). Similarly, newly added section 21168.6.9 provides an identical requirement for environmental leadership transit project applicants.

Accordingly, the proposal amends rule 8.705 to require environmental leadership transit project applicants to pay a fee to the Court of Appeal. This proposal also amends rule 3.2240 to require the payment of a fee to the trial court by the person or entity that applied for certification of a project as an environmental leadership development project and to require the payment of a fee to the trial court by the project applicant of an environmental leadership transit project.

New and amended fee amounts

Existing fee amounts

To implement former Public Resources Code section 21183(e), which required a person or entity that applied for certification of the project as an environmental leadership project "to pay the costs of the Court of Appeal," rule 8.705(1) requires payment of a fee of $100,000 to the Court of Appeal for

streamlined review of a CEQA case.[5] The $100,000 amount was set in 2012 and was based on an estimate that the amount of time to adjudicate a CEQA case at the Court of Appeal would be 108 hours by the justice assigned to prepare a draft decision, 10 hours by each of the other two justices on the panel, 230 hours by research attorneys, and 31 hours by judicial assistants. In addition to those hours, estimates for other staff time, benefits, and overhead were included in calculating the total fee.[6]

The fees in current rules 3.2240(1) and 8.705(2) for Oakland ballpark and Inglewood arena projects were adopted by the council this year and require payments of $120,000 to the trial court and $140,000 to the Court of Appeal.[7] The statutes for both such projects require the person or entity that applied for certification to pay a fee for the "additional costs" to the courts providing expedited review. "Additional costs," as opposed to "costs," were determined based on the cost to the courts of taking these cases out of normal processing and devoting one full-time judicial officer and one research attorney in each court to reach disposition within the statutorily prescribed time. The council did not include other staff time, other judicial officer time, benefits, or overhead when it used the hours estimate to determine the applicable fees. In setting those amounts, the council considered the 2012 report that adopted the current fee in rule 8.705(1), a report to the Legislature on the amount of time to adjudicate a CEQA challenge to the Warriors' Mission Bay project,[8] and anecdotal evidence from a CEQA challenge to the Sunset Boulevard project in Los Angeles.[9] As described in the March 2022 report to the council, the 2012 estimate of time to adjudicate a CEQA case in the Court of Appeal fell far short of reality. Rather, the data collected regarding the time required to complete expedited review of CEQA challenges to the Warriors' Mission Bay and Sunset Boulevard projects suggest that a more accurate estimate of the required time for adjudication in both trial court and the Court of Appeals is 91 full-time working days for each of the following positions: trial court judge, trial court research attorney, appellate justice, and appellate court research attorney.[10] The $120,000 and $140,000 fee amounts are based on these time estimates.

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[5] Rule 8.705 also requires that the person or entity that applied for certification of a project as an environmental leadership development, an Oakland ballpark, or an Inglewood arena project to pay the costs of any special master or contract personnel retained to work on the case.

[6] See Judicial Council of Cal., Advisory Com. Rep., *Appellate Procedure: Review of California Environmental Quality Act Cases Under Public Resources Code Sections 21178–21189.3* (Apr. 11, 2012), p. 8, *http://www.courts.ca.gov/documents/jc-20120424-itemA1.pdf*.

[7] Similar to rule 8.705, rule 3.2240 also requires the payment of the costs of any special master or contract personnel retained to work on the case.

[8] Judicial Council of Cal., *Jobs and Economic Improvement Through Environmental Leadership Act: Report to the Legislature Under Assembly Bill 900, Public Resources Code Section 21189.2* (Dec. 1, 2016), p. 6, *https://www.courts.ca.gov/documents/lr-2016-jobs-and-economic-improvement.pdf*.

[9] *L.A. Conservancy v. City of L.A.; Fix the City, Inc. v. City of Los Angeles* (Mar. 23, 2018, B284093) [nonpub. opn.].

[10] Judicial Council of Cal., Advisory Com. Rep., *CEQA Actions: New Projects and Fees for Expedited Review* (Mar. 2, 2022), pp. 7–10, *https://jcc.legistar.com/View.ashx?M=F&ID=10565631&GUID=6D8B30CC-D416-44C2-A4F0-D857024D2730*.

Proposed fees amounts

New Public Resources Code sections 21183(f) and 21168.6.9(b)(3) require the person or entity that applied for certification of an environmental leadership development project and environmental leadership transit project applicants, respectively, to pay the costs of the trial court *and* the Court of Appeal in "a form and manner specified by the Judicial Council, as provided in the California Rules of Court." To implement these statutory requirements, the committees propose a new fee for trial court costs and an updated fee for appellate court costs.

The committees used the time estimates in the March 2022 council report as the basis for the new and updated fee amounts in this proposal. Specifically, the proposed fee amounts are derived from the estimate that the amount of time to adjudicate expedited CEQA cases is 91 full-time working days of a judicial officer and a research attorney in each of the courts. Additionally, since Public Resources Code sections 21168.6.9(b)(3) and 21183(f) require project applicants to pay the cost to the courts without any limitation of such costs to "additional costs," estimates for benefits, overhead, clerical time, and the time of other appellate justices assigned to the panel (none of which were included in the fees set for Oakland ballpark and Inglewood arena projects) were included in determining the proposed court fees.

The estimated cost to trial courts for expedited review of a CEQA case is $180,000, which was calculated with the following components:

- The estimated cost of salary and benefits for 91 full-time working days for a trial court judge;
- The estimated cost of salary and benefits for 91 full-time working days for a trial court research attorney; and
- An estimate for overhead and clerical time in the trial court.

The estimated costs to the Court of Appeal for expedited review of a CEQA case is $215,000, which was calculated with the following components:

- The estimated cost of salary and benefits for 91 full-time working days for the appellate justice primarily assigned to the case;
- The estimated cost of salary and benefits for 20 hours[11] for each of the other two appellate justices assigned to the case;
- The estimated cost of salary and benefits for 91 full-time working days for an appellate court research attorney; and
- An estimate for overhead and clerical time in the Court of Appeal.

The committees thus propose that the above amounts be charged for the expedited review by the trial court and the Court of Appeal, respectively. (See proposed rules 3.2240 and 8.705.) As permitted by the statutes, the proposed rules also allow for costs for any special master required for the matter to

[11] The fee set in 2012 included an estimate of 10 hours of time for each of the other two justices on the panel. The committees concluded that, in cases of this size and complexity, a more realistic estimate would be 20 hours by each of the non-authoring justices.

be charged directly to the project developer, as is currently provided in the environmental leadership development cases as well as those concerning Oakland ballpark or Inglewood arena projects.

Alternatives Considered

Because the new rules and fees are mandated by the Legislature, the committees did not consider the alternative of no rules.

Fiscal and Operational Impacts

Implementing the new legislation requiring expedited review of CEQA challenges to new project types may generate costs and operational impacts for both the trial court and the Court of Appeal in which the proceedings governed by these statutes are filed. This is a policy decision made by the Legislature, not the result of the proposed rule amendments. The committees do not anticipate that this rule proposal will result in any additional costs to other courts.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?

The advisory committees also seek comments from *courts* on the following cost and implementation matters:

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

Attachments and Links

1. Cal. Rules of Court, rules 3.2200, 3.2220, 3.2221, 3.2223, 3.2240, 8.700, 8.702, 8.703, and 8.705
2. Link A: Senate Bill 7, *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB7*
3. Link B: Senate Bill 44, *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB44*

Rules 3.2200, 3.2220, 3.2221, 3.2223, 3.2240, 8.700, 8.702, 8.703, and 8.705 of the California Rules of Court would be amended, effective January 1, 2023, to read:

Rule 3.2200. Application

Except as otherwise provided in chapter 2 of the rules in this division, which govern actions under Public Resources Code sections 21168.6.6–21168.6.~~8~~9, 21178–21189.3, 21189.50–21189.57, and 21189.70–21189.70.10, the rules in this chapter apply to all actions brought under the California Environmental Quality Act (CEQA) as stated in division 13 of the Public Resources Code.

Chapter 2. California Environmental Quality Act Proceedings Involving Streamlined CEQA Projects

Article 1. General Provisions

Rule 3.2220. Definitions and application

(a) Definitions

As used in this chapter:

(1) A "streamlined CEQA project" means any project within the definitions stated in (2) through ~~(7)~~(8).

(2) An "environmental leadership development project" or "leadership project" means a project certified by the Governor under Public Resources Code sections 21182–21184.

(3) The "Sacramento entertainment and sports center project" or "Sacramento arena project" means an entertainment and sports center project as defined by Public Resources Code section 21168.6.6, for which the proponent provided notice of election to proceed under that statute described in section 21168.6.6(j)(1).

(4) An "Oakland sports and mixed-use project" or "Oakland ballpark project" means a project as defined in Public Resources Code section 21168.6.7 and certified by the Governor under that section.

(5) An "Inglewood arena project" means a project as defined in Public Resources Code section 21168.6.8 and certified by the Governor under that section.

(6) An "expanded capitol building annex project" means a state capitol building annex project, annex project–related work, or state office building project as defined by Public Resources Code section 21189.50.

(7) An "Old Town Center transit and transportation facilities project" or "Old Town Center project" means a project as defined in Public Resources Code section 21189.70.

(8) An "environmental leadership transit project" means a project as defined in Public Resources Code section 21168.6.9.

(b) Proceedings governed

The rules in this chapter govern actions or proceedings brought to attack, review, set aside, void, or annul the certification of the environmental impact report or the grant of any project approvals for a streamlined CEQA project. Except as otherwise provided in Public Resources Code sections 21168.6.6–21168.6.~~8~~9, 21178–21189.3, 21189.50–21189.57, and 21189.70–21189.70.10 and these rules, the provisions of the Public Resources Code and the CEQA Guidelines adopted by the Natural Resources Agency (Cal. Code Regs., tit. 14, § 15000 et seq.) governing judicial actions or proceedings to attack, review, set aside, void, or annul acts or decisions of a public agency on the grounds of noncompliance with the California Environmental Quality Act and the rules of court generally apply in proceedings governed by this rule.

(c) Complex case rules

* * *

Rule 3.2221. Time

(a) Extensions of time

* * *

(b) Extensions of time by parties

If the parties stipulate to extend the time for performing any acts in actions governed by these rules, they are deemed to have agreed that the statutorily prescribed time for resolving the action may be extended by the stipulated number of days ~~by which the performance of the act has been stipulated to be extended~~ of the extension, and to that extent to have waived any objection to noncompliance with the deadlines for completing review stated in Public Resources Code sections 21168.6.6–21168.6.~~8~~9, 21185, 21189.51, and 21189.70.3. Any such stipulation must be approved by the court.

(c) Sanctions for failure to comply with rules

If a party fails to comply with any time requirements provided in these rules or ordered by the court, the court may issue an order to show cause as to why one of the following sanctions should not be imposed:

(1)–(2) * * *

(3) If the failure to comply is by respondent or a real party in interest, removal of the action from the expedited procedures provided under Public Resources Code sections 21168.6.6–21168.6.~~8~~9, 21185, 21189.51, and 21189.70.3, and these rules; or

(4) * * *

Rule 3.2223. Petition

In addition to any other applicable requirements, the petition must:

(1) On the first page, directly below the case number, indicate that the matter is a "Streamlined CEQA Project";

(2) State one of the following:

(A) The proponent of the project at issue provided notice to the lead agency that it was proceeding under Public Resources Code section 21168.6.6, 21168.6.7, ~~or~~ 21168.6.8, or 21168.6.9 (whichever is applicable) and is subject to this rule; or

(B) The project at issue was certified by the Governor as an environmental leadership development project under Public Resources Code sections 21182–21184 and is subject to this rule; or

(C) The project at issue is an expanded capitol building annex project as defined by Public Resources Code section 21189.50 and is subject to this rule; or

(D) The project at issue is an Old Town Center project as defined by Public Resources Code section 21189.70 and is subject to this rule;

(3) If an environmental leadership development, Oakland ballpark, or Inglewood arena project, provide notice that the person or entity that applied for certification of the project as such a ~~leadership~~ project must make the

payments required by rule 3.2240 and, if the matter goes to the Court of Appeal, ~~make~~ the payments required by rule 8.705;

(4) If an ~~Oakland ballpark or Inglewood arena project~~ environmental leadership transit project, provide notice that the ~~person or entity that applied for certification of the project as an Oakland ballpark or Inglewood arena~~ project applicant must make the payments required by rule 3.2240 and, if the matter goes to the Court of Appeal, the payments required by rule 8.705; and

(5) * * *

Rule 3.2240. Trial court costs in ~~Oakland Ballpark and Inglewood Arena~~ certain streamlined CEQA projects

In fulfillment of the provisions in Public Resources Code sections 21168.6.7, ~~and~~ 21168.6.8, 21168.6.9, and 21183 regarding payment of trial court costs with respect to cases concerning ~~certain streamlined CEQA~~ environmental leadership development, environmental leadership transit, Oakland ballpark, and Inglewood arena projects:

(1) Within 10 days after service of the petition or complaint in a case concerning an environmental leadership development project, the person or entity that applied for certification of the project as an environmental leadership development project must pay a fee of $180,000 to the court.

(2) Within 10 days after service of the petition or complaint in a case concerning an environmental leadership transit project, the project applicant must pay a fee of $180,000 to the court.

~~(1)~~(3) Within 10 days after service of the petition or complaint in a case concerning an Oakland ballpark project or an Inglewood arena project, the person or entity that applied for certification of the project as a streamlined CEQA project must pay a fee of $120,000 to the court.

~~(2)~~(4) If the court incurs the costs of any special master appointed by the court in the case or of any contract personnel retained by the court to work on the case, the person or entity that applied for certification of the project or the project applicant must also pay, within 10 days of being ordered by the court, those incurred or estimated costs.

~~(3)~~(5) If the party fails to timely pay the fee or costs specified in this rule, the court may impose sanctions that the court finds appropriate after notifying the party and providing the party with an opportunity to pay the required fee or costs.

~~(4)~~(6) Any fee or cost paid under this rule is not recoverable.

Chapter 1. Review of California Environmental Quality Act Cases Involving Streamlined CEQA Projects

Rule 8.700. Definitions and application

(a) Definitions

As used in this chapter:

(1) A "streamlined CEQA project" means any project within the definitions stated in (2) through ~~(7)~~(8).

(2) An "environmental leadership development project" or "leadership project" means a project certified by the Governor under Public Resources Code sections 21182–21184.

(3) The "Sacramento entertainment and sports center project" or "Sacramento arena project" means an entertainment and sports center project as defined by Public Resources Code section 21168.6.6, for which the proponent provided notice of election to proceed under that statute described in section 21168.6.6(j)(1).

(4) An "Oakland sports and mixed-use project" or "Oakland ballpark project" means a project as defined in Public Resources Code section 21168.6.7 and certified by the Governor under that section.

(5) An "Inglewood arena project" means a project as defined in Public Resources Code section 21168.6.8 and certified by the Governor under that section.

(6) An "expanded capitol building annex project" means a state capitol building annex project, annex project–related work, or state office building project as defined by Public Resources Code section 21189.50.

(7) An "Old Town Center transit and transportation facilities project" or "Old Town Center project" means a project as defined in Public Resources Code section 21189.70.

(8) An "environmental leadership transit project" means a project as defined in Public Resources Code section 21168.6.9.

(b) * * *

Rule 8.702. Appeals

(a) * * *

(b) Notice of appeal

(1) * * *

(2) *Contents of notice of appeal*

The notice of appeal must:

(A) State that the superior court judgment or order being appealed is governed by the rules in this chapter;

(B) Indicate whether the judgment or order pertains to a streamlined CEQA project; ~~and~~

(C) If the judgment or order being appealed pertains to an environmental leadership development project, an Oakland ballpark project, or an Inglewood arena project, provide notice that the person or entity that applied for certification or approval of the project as such a project must make the payments required by rule 8.705~~.~~; and

(D) If the judgment or order being appealed pertains to an environmental leadership transit project, provide notice that the project applicant must make the payments required by rule 8.705.

(c)–(e) * * *

(f) Briefing

(1)–(3) * * *

(4) *Extensions of time to file briefs*

If the parties stipulate to extend the time to file a brief under rule 8.212(b), they are deemed to have agreed that the statutorily prescribed time for resolving the action may be extended by the stipulated number of days ~~by which the parties stipulated to extend the time~~ of the extension for filing the brief and, to that extent, to have waived any objection to noncompliance with

the deadlines for completing review stated in Public Resources Code sections 21168.6.6–21168.6.~~8~~9, 21185, 21189.51, and 21189.70.3 for the duration of the stipulated extension.

(5) * * *

(g) * * *

Advisory Committee Comment

Subdivision (b). It is very important to note that the time period to file a notice of appeal under this rule is the same time period for filing most postjudgment motions in a case regarding the Sacramento arena project, and in a case regarding any other streamlined CEQA project, the deadline for filing a notice of appeal may be earlier than the deadline for filing a motion for a new trial, a motion for reconsideration, or a motion to vacate the judgment.

Rule 8.703. Writ proceedings

(a) * * *

(b) Petition

(1) * * *

(2) *Contents of petition*

In addition to any other applicable requirements, the petition must:

(A) State that the superior court judgment or order being challenged is governed by the rules in this chapter;

(B) Indicate whether the judgment or order pertains to a streamlined CEQA project; ~~and~~

(C) If the judgment or order pertains to an environmental leadership development project, an Oakland ballpark project, or an Inglewood arena project, provide notice that the person or entity that applied for certification of the project as such a project must make the payments required by rule 8.705~~.~~; and

(D) If the judgment or order pertains to an environmental leadership transit project, provide notice that the project applicant must make the payments required by rule 8.705.

Rule 8.705. Court of Appeal costs in certain streamlined CEQA projects

In fulfillment of the provisions in Public Resources Code sections 21168.6.7, 21168.6.8, 21168.6.9, and 21183 regarding payment of the Court of Appeal's costs with respect to cases concerning environmental leadership development, environmental leadership transit, Oakland ballpark, and Inglewood arena projects:

(1) Within 10 days after service of the notice of appeal or petition in a case concerning an environmental leadership development project, the person or entity that applied for certification of the project as an environmental leadership development project must pay a fee of $215,000 to the Court of Appeal.

(2) Within 10 days after service of the notice of appeal or petition in a case concerning an environmental leadership transit project, the project applicant must pay a fee of $215,000 to the Court of Appeal.

~~(2)~~(3) Within 10 days after service of the notice of appeal or petition in a case concerning an Oakland ballpark project or Inglewood arena project, the person or entity that applied for certification of the project as an Oakland ballpark project or Inglewood arena project must pay a fee of $140,000 to the Court of Appeal.

~~(3)~~(4) If the Court of Appeal incurs the costs of any special master appointed by the Court of Appeal in the case or of any contract personnel retained by the Court of Appeal to work on the case, the person or entity that applied for certification of the project or the project applicant ~~as a leadership project, an Oakland ballpark project, or an Inglewood arena project~~ must also pay, within 10 days of being ordered by the court, those incurred or estimated costs.

~~(4)~~(5) If the party fails to timely pay the fee or costs specified in this rule, the court may impose sanctions that the court finds appropriate after notifying the party and providing the party with an opportunity to pay the required fee or costs.

~~(5)~~(6) Any fee or cost paid under this rule is not a recoverable cost.

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.:
For business meeting on: October __, 2022

Title
Rules and Forms: Update Language Referring to Persons with Disabilities

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 8.482, 8.483, and 8.631; revise form APP-060

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

Agenda Item Type
Action Required

Effective Date
January 1, 2023

Date of Report
June 7, 2022

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

Executive Summary

The Appellate Advisory Committee recommends updating language in several rules and a form to reflect guidelines for referring to persons with disabilities, preferences within the disability community, and terminology changes in California statutes. The committee also recommends correcting several subdivision headings in one of the rule's advisory committee comments.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2023:

1. Amend California Rules of Court, rules 8.482, 8.483, and 8.631, to replace outdated language describing persons with disabilities with updated "person first" language; and

2. Revise form APP-060, *Notice of Appeal—Civil Commitment/Mental Health Proceedings*, to update the language describing persons in civil commitment proceedings, reflecting the amendments to rule 8.483.

The proposed amended rules and revised form are attached at pages 6–9.

Relevant Previous Council Action

Rule 8.482, Appeal from judgment authorizing conservator to consent to sterilization of conservatee, was adopted in 2005 as rule 39.1. It was amended and renumbered as rule 8.482 in 2007. It was amended again effective January 1, 2016, as part of a rules modernization project. The amendments have no bearing on this proposal.

Rule 8.483, Appeal from an order of civil commitment, was adopted, and form APP-060, *Notice of Appeal—Civil Commitment/Mental Health Proceedings*, was approved for optional use, effective January 1, 2020, to assist litigants and the courts in civil commitment appeals. The rule and form have not been modified since their effective date.

Rule 8.631, Applications to file overlength briefs in appeals from a judgment of death, was adopted in 2008. It has not previously been amended.

Analysis/Rationale

In 1990, the federal government passed the Americans with Disabilities Act (ADA),[1] which prohibits discrimination against individuals with disabilities in all areas of public life. The ADA National Network (ADANN) consists of 10 regional centers that provide information, guidance, and training on implementing the ADA.[2] The ADANN has published *Guidelines for Writing About People With Disabilities* (Guidelines),[3] which encourages the use of language consistent with the principles of the ADA, including "portraying individuals with disabilities in a respectful and balanced way by using language that is accurate, neutral and objective."[4]

The Guidelines provide that, generally, the person should be referred to first and the disability second: "People with disabilities are, first and foremost, people. Labeling a person equates the person with a condition and can be disrespectful and dehumanizing. A person isn't a disability, condition or diagnosis; a person *has* a disability, condition or diagnosis. This is called Person-First Language."[5] For example, instead of writing that a person is "mentally ill," write that a person "has a mental health condition"; instead of "[t]he disabled," write "[p]eople with disabilities."[6] The committee notes that "person first" language is not the only approach, as discussed in the Comments section, but is appropriate for the proposed updates herein.

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[1] 42 U.S.C. § 12101 et seq.

[2] See ADA National Network, https://adata.org/national-network.

[3] The Guidelines may be accessed at https://adata.org/factsheet/ADANN-writing.

[4] Guidelines.

[5] *Ibid*.

[6] See Kathie Snow, *To Ensure Inclusion, Freedom, and Respect for All, It's Time to Embrace People First Language* (2009), p. 4, http://www.inclusioncollaborative.org/docs/Person-First-Language-Article_Kathie_Snow.pdf.

Over time, the California Legislature has updated the state's codes to remove "offensive or stigmatizing language referring to mental health disorders."[7] In 2019, the Legislature replaced terms used in the Penal Code to describe mental health conditions and individuals with mental health conditions.[8] Specifically, references to a person as a "mentally disordered offender"[9] were changed to "offender with a mental health disorder."[10] Also, the phrase "a person who is incompetent as a result of a mental disorder, but is also developmentally disabled," was changed to "a person who is incompetent as a result of a mental disorder, but also has a developmental disability."[11] In 2012, references to "a mentally retarded person" were replaced with "a person with an intellectual disability."[12]

The committee recommends removing outdated and disfavored terms in several rules and a form and replacing them with current and more respectful terms. Modernizing the language of these rules and the form is also consistent with *The Strategic Plan for California's Judicial Branch*, specifically the goals of Access, Fairness, and Diversity (Goal I) and Quality of Justice and Service to the Public (Goal IV).[13]

Rule 8.482, which governs appeals from a judgment authorizing a conservator to consent to sterilization of a conservatee, contains the term "developmentally disabled adult conservatee." This would be replaced with "adult conservatee with a developmental disability."

Rule 8.483, regarding appeals from an order of civil commitment, contains the term "mentally disordered offenders." This would be replaced with "offenders with mental health disorders." The rule also refers to "developmentally disabled persons," citing Welfare and Institutions Code section 6500. The committee proposes replacing this term with "dangerous persons with developmental disabilities" to update the language and track the statutory commitment criteria.[14] The same changes would be made to form APP-060, *Notice of Appeal—Civil Commitment/Mental Health Proceedings*.

An advisory committee comment to rule 8.631, which addresses applications to file overlength briefs in appeals from a judgment of death, includes "whether the defendant is mentally retarded" as an example of unusual, factually intensive, or legally complex hearings. The

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[7] Assem. Jud. Com., Analysis of Assem. Bill No. 46 (2019–2020 Reg. Sess.) as amended Mar. 21, 2019, p. 1.

[8] See Sen. Rules Com., Off. of Sen. Floor Analyses, Analysis of Assem. Bill No. 46 (2019–2020 Reg. Sess.) as amended Apr. 24, 2019, p. 1.

[9] See former Pen. Code, § 2960 et seq.

[10] Pen. Code, § 2962(d)(3), eff. Jan. 1, 2020 (Stats. 2019, ch. 9, § 7).

[11] Pen. Code, § 1367(b), eff. Jan. 1, 2020 (Stats. 2019, ch. 9, § 4).

[12] Pen. Code, § 2962(a)(2) (Stats. 2012, ch. 448, § 43); Welf. & Inst. Code, § 6513 (Stats. 2012, ch. 457, § 55).

[13] The strategic plan may be accessed at https://www.courts.ca.gov/3045.htm.

[14] See Welf. & Inst. Code, § 6500(b)(1).

committee proposes replacing this language with "whether the defendant has an intellectual disability."[15]

In addition, the committee proposes correcting several subdivision headings in the advisory committee comment to rule 8.631 that are labeled incorrectly:

- "Subdivision (c)(1)(A)" would be corrected to "Subdivision (c)(1)."
- "Subdivision (c)(1)(E)" would be corrected to "Subdivision (c)(5)."
- "Subdivision (c)(1)(E)–(I)" would be corrected to "Subdivision (c)(5)–(8)."
- "Subdivision (c)(1)(I)" would be corrected to "Subdivision (c)(7)."

Policy implications

As noted above, removing outdated and disfavored terms in several rules and a form and replacing them with current and more respectful terms is consistent with *The Strategic Plan for California's Judicial Branch*, specifically the goals of Access, Fairness, and Diversity (Goal I) and Quality of Justice and Service to the Public (Goal IV). The proposed changes were not controversial or the subject of debate within the committee.

Comments

This proposal circulated for public comment between April 1 and May 13, 2022, as part of the regular spring comment cycle. The committee received three comments from the Superior Court of Orange County, the California Lawyers Association Committee on Appellate Courts, Litigation Section (CAC), and the Disability Rights Education & Defense Fund (DREDF), all in support of the proposed changes. A chart with the full text of the comments received and the committee's responses is attached at pages 10–13.

The CAC agreed that the proposal "appropriately addresse[d] its stated purpose of portraying individuals with disabilities in a more respectful way by using 'Person First Language' that recognizes a person is not a disability, condition, or diagnosis."

In its comments supporting the proposal, DREDF noted that, although generally preferred, "person first" disability language is not universally preferred by the individuals and disability groups comprising the disability community. Rather, "identity first" language is an increasingly popular alternative, particularly for certain disability groups. For example, these disability communities prefer "identity first" language: blind people (not "individuals with blindness" or "individuals with visual impairments"); Deaf people or D/deaf and hard of hearing people; and autistic and neurodivergent people. DREDF also pointed out that "many emerging and younger

[15] As noted above, "intellectual disability" replaced the outdated term "mental retardation." (Stats. 2012, ch. 457, § 1 (2012).) This is distinguished from a developmental disability which is both broader, in that it includes other disabilities, such as autism spectrum disorders and epilepsy, and narrower, in that it must have begun before the person reached 18 years of age. (Welf. & Inst. Code, § 4512(a)(1).)

leaders in the disability movement prefer the identity-first 'disabled person' over the person-first 'person with a disability.'" In addition to providing information on current language trends and alternatives, DREDF agreed that the amended language is appropriate and meets the goals of the proposal.

Alternatives considered

The committee did not consider taking no action because the language in these rules and the form is outdated and inconsistent with the Guidelines, statutory language, and judicial branch goals.

The committee noted that the Legislature has not updated or revised the term "mentally disordered sex offender" and decided not to propose changing it because it is used in the Penal Code and other laws.

Fiscal and Operational Impacts

Fiscal or operational impacts, if any, are expected to be minimal. There are no apparent barriers to implementation. The benefits of the proposal, including using respectful language in rules and forms, likely outweigh any potential cost.

Attachments and Links

1. Cal. Rules of Court, rules 8.482, 8.483, and 8.631
2. Form APP-060
3. Chart of comments

Rules 8.482, 8.483, and 8.631 of the California Rules of Court would be amended, effective January 1, 2023, to read:

Rule 8.482. Appeal from judgment authorizing conservator to consent to sterilization of conservatee

(a) Application

Except as otherwise provided in this rule, rules 8.304–8.368 and 8.508 govern appeals from judgments authorizing a conservator to consent to the sterilization of ~~a developmentally disabled~~ an adult conservatee with a developmental disability.

(b) When appeal is taken automatically

An appeal from a judgment authorizing a conservator to consent to the sterilization of ~~a developmentally disabled~~ an adult conservatee with a developmental disability is taken automatically, without any action by the conservatee, when the judgment is rendered.

(c)–(i) * * *

Rule 8.483. Appeal from order of civil commitment

(a) Application and contents

(1) *Application*

Except as otherwise provided in this rule, rules 8.300–8.368 and 8.508 govern appeals from civil commitment orders under Penal Code sections 1026 et seq. (not guilty by reason of insanity), 1370 et seq. (incompetent to stand trial), 1600 et seq. (outpatient placement and revocation), and 2962 et seq. (~~mentally disordered~~ offenders with mental health disorders); Welfare and Institutions Code sections 1800 et seq. (extended detention of dangerous persons), 6500 et seq. (~~developmentally disabled~~ dangerous persons with developmental disabilities), and 6600 et seq. (sexually violent predators); and former Welfare and Institutions Code section 6300 et seq. (mentally disordered sex offenders).

(2) *Contents*

* * *

(b)–(e) * * *

Rule 8.631. Applications to file overlength briefs in appeals from a judgment of death

(a)–(b) * * *

(c) Factors considered

The court will consider the following factors in determining whether good cause exists to grant an application to file a brief that exceeds the limit set by rule 8.630:

(1) The unusual length of the record. A party relying on this factor must specify the length of each of the following components of the record:

(A) The reporter's transcript;

(B) The clerk's transcript; and

(C) The portion of the clerk's transcript that is made up of juror questionnaires.

(2) The number of codefendants in the case and whether they were tried separately from the appellant;

(3) The number of homicide victims in the case and whether the homicides occurred in more than one incident;

(4) The number of other crimes in the case and whether they occurred in more than one incident;

(5) The number of rulings by the trial court on unusual, factually intensive, or legally complex motions that the party may assert are erroneous and prejudicial. A party relying on this factor must briefly describe the nature of these motions;

(6) The number of rulings on objections by the trial court that the party may assert are erroneous and prejudicial;

(7) The number and nature of unusual, factually intensive, or legally complex hearings held in the trial court that the party may assert raise issues on appeal; and

(8) Any other factor that is likely to contribute to an unusually high number of issues or unusually complex issues on appeal. A party relying on this factor must briefly specify those issues.

(d) * * *

Advisory Committee Comment

Subdivision (a). * * *

Subdivision (c)(1)~~(A)~~. As in guideline 8 of the Supreme Court's Guidelines for Fixed Fee Appointments, juror questionnaires generally will not be taken into account in considering whether the length of the record is unusual unless these questionnaires are relevant to an issue on appeal. A record of 10,000 pages or less, excluding juror questionnaires, is not considered a record of unusual length; 70 percent of the records in capital appeals filed between 2001 and 2004 were 10,000 pages or less, excluding juror questionnaires.

Subdivision ~~(e)(1)(E)~~(c)(5). Examples of unusual, factually intensive, or legally complex motions include motions to change venue, admit scientific evidence, or determine competency.

Subdivisions ~~(e)(1)(E)–(I)~~(c)(5)–(8). Because an application must be filed before briefing is completed, the issues identified in the application will be those that the party anticipates *may* be raised on appeal. If the party does not ultimately raise all of these issues on appeal, the party is expected to have reduced the length of the brief accordingly.

Subdivision ~~(e)(1)(I)~~(c)(7). Examples of unusual, factually intensive, or legally complex hearings include jury composition proceedings and hearings to determine the defendant's competency or sanity, whether the defendant ~~is mentally retarded~~ has an intellectual disability, and whether the defendant may ~~represent himself or herself~~be self-represented.

Subdivision (d)(1)(A)(ii). To allow the deadline for an application to file an overlength brief to be appropriately tied to the deadline for filing that brief, if counsel requests an extension of time to file a brief, the court will specify in its order regarding the request to extend the time to file the brief, when any application to file an overlength brief is due. Although the order will specify the deadline by which an application must be filed, counsel are encouraged to file such applications sooner, if possible.

Subdivision (d)(3). * * *

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:	FOR COURT USE ONLY
NAME:	DRAFT
FIRM NAME:	
STREET ADDRESS:	03/08/2022
CITY: STATE: ZIP CODE:	
TELEPHONE NO.: FAX NO.:	Not Approved by the Judicial Council
EMAIL ADDRESS:	
ATTORNEY FOR (*name*):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF	
CASE NAME:	
DEFENDANT/RESPONDENT:	
NOTICE OF APPEAL—CIVIL COMMITMENT/ MENTAL HEALTH PROCEEDINGS	CASE NUMBER:

NOTICE

You must file this form in the SUPERIOR COURT WITHIN 60 DAYS after the court rendered the judgment or made the order you are appealing.

1. Defendant/Respondent (the person subject to the civil commitment) appeals from a judgment rendered or an order of commitment or conservatorship made by the superior court.

   NAME of Defendant/Respondent:
   DATE of the order or judgment:

2. This appeal is (*check one*):
   a. ☐ after a jury or court trial.
   b. ☐ after a contested hearing.
   c. ☐ after an admission, stipulation, or submission.
   d. ☐ other (*specify*):

3. Defendant/Respondent is currently being held under:
   - ☐ Penal Code, § 1026 et seq. (not guilty by reason of insanity)
   - ☐ Penal Code, § 1370 et seq. (incompetent to stand trial)
   - ☐ Penal Code, § 1600 et seq. (return to confinement)
   - ☐ Penal Code, § 2962 et seq. (offenders with mental health disorders)
   - ☐ Welfare & Institutions Code, § 1800 et seq. (extended detention of dangerous persons)
   - ☐ Welfare & Institutions Code, § 5300 et seq. (LPS Act commitments)
   - ☐ Welfare & Institutions Code, § 5350 et seq. (LPS Act conservatorships)
   - ☐ Former Welfare & Institutions Code, § 6300 et seq. (MDSO)
   - ☐ Welfare & Institutions Code, § 6500 et seq. (dangerous persons with developmental disabilities)
   - ☐ Welfare & Institutions Code, § 6600 et seq. (sexually violent predators)
   - ☐ Other *(specify):* _____

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

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

Date:

_____ ▶ _____

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

SPR22-02

Rules and Forms: Update Language Referring to Persons with Disabilities (Amend Cal. Rules of Court, rules 8.482, 8.483, and 8.631; revise form APP-060)

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

	Commenter	Position	Comment	Committee Response
1.	California Lawyers Association by Dean A. Bochner, Chair Committee on Appellate Courts	NI	I write on behalf of the Committee on Appellate Courts of the California Lawyers Association's Litigation Section ("CAC") to offer the following comments on the Appellate Advisory Committee's recent proposals (1) to update language referring to persons with disabilities in several court rules and in a form (SPR22–02) and (2) to extend the time the Court of Appeal must retain the reporter's transcript in cases affirming a felony conviction from 20 years to 75 years (SPR22–03). CAC consists of appellate practitioners and court staff, drawn from a wide range of practice areas, from across the state. As part of its mission, CAC frequently shares its views regarding proposals to change rules that govern appellate practice. CAC supports SPR22-02, which would remove from several court rules and a Judicial Council form outdated and disfavored terms that refer to persons with disabilities and replace them with more respectful terms. We believe that this proposal appropriately addresses its stated purpose of portraying individuals with disabilities in a more respectful way by using "Person First Language" that recognizes a person is not a disability, condition, or diagnosis. [See comment on proposal SPR22-03.]	The committee appreciates these comments and notes the commenter's support for the proposal. The committee thanks the commenter for this feedback confirming that the amended language is appropriate and respectful.

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

SPR22-02

Rules and Forms: Update Language Referring to Persons with Disabilities (Amend Cal. Rules of Court, rules 8.482, 8.483, and 8.631; revise form APP-060)

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

	Commenter	Position	Comment	Committee Response
			Thank you for giving us the opportunity to comment on these proposals.	
2.	Disability Rights Education & Defense Fund by Claudia Center Legal Director	A	The Disability Rights Education & Defense Fund (DREDF), based in Berkeley, California, is a national nonprofit law and policy center dedicated to advancing and protecting the civil and human rights of people with disabilities. Founded in 1979 by people with disabilities and parents of children with disabilities, DREDF remains board- and staff-led by members of the communities for whom we advocate. DREDF pursues its mission through education, advocacy and law reform efforts, and is nationally recognized for its expertise in the interpretation of federal civil rights laws protecting persons with disabilities. DREDF has extensive experience with the portrayal of disability, including the use of language regarding disability. In 2008, DREDF launched the Disability & Media Alliance Project (DMAP). The goal of DMAP is to change the focus from sensational, cloying and misinformed disability coverage that undermines the public policy and legal advances of the last 25 years to coverage that raises public awareness and helps to end disability discrimination. DMAP monitors and informs disability coverage in news reports, dramatic representations, and the Internet with the goal to advance accurate reporting of disability issues	The committee notes the commenter's support for the proposal and appreciates receiving feedback from an organization with legal and policy expertise in advocating for and protecting the right of people with disabilities. The committee appreciates the commenter's perspective and experience in this area.

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

	Commenter	Position	Comment	Committee Response
			and promote positive images of people with disabilities.	
			DREDF supports the proposed changes to Cal. Rules of Court, rules 8.482, 8.483, and 8.631, and to form APP-060. The proposed changes are consistent with the generally preferred "person first" terminology for people with intellectual, developmental, and mental health disabilities.	The committee appreciates the support for the proposal and feedback that the amended language is appropriate and respectful.
			However, DREDF writes to provide additional important context. Contrary to the explanation set out in the background material to the proposed language changes, the "person first" approach to disability language is ***not*** universally preferred by the individuals and disability groups comprising the disability community. Rather, "identity first" language is an increasingly popular alternative, particularly for certain disability groups. The style guide cited is on this point incomplete and outdated (as are several other prominent style guides on this point).	This information the "identity first" approach to disability language is very helpful. The committee has included this information in the Judicial Council report to avoid suggesting that "person first" language is universally preferred.
			To provide some examples, the following disability groups currently prefer "identity first" language: blind people (not "individuals with blindness" or "individuals with visual impairments"); Deaf people or D/deaf and hard of hearing people; and autistic and neurodivergent people. Similarly, many emerging and younger leaders in the disability	The committee thanks the commenter for these examples and how to access more information.

SPR22-02

Rules and Forms: Update Language Referring to Persons with Disabilities (Amend Cal. Rules of Court, rules 8.482, 8.483, and 8.631; revise form APP-060)

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

	Commenter	Position	Comment	Committee Response
			movement prefer the identity-first "disabled person" over the person-first "person with a disability." You can read about this on social media, including under the hashtag #SayTheWord. Again, the proposed changes are appropriate, and DREDF supports them. However, we urge you not to adopt a blanket "person first" approach to disability language, as this will not be appropriate in all contexts. See article written by several disability and legal scholars that review the language preferences at issue in the proposed rule. Citation: E.E. Andrews, R.M. Powell and K. Ayers, The evolution of disability language: Choosing terms to describe disability, Disability and Health Journal, https://doi.org/10.1016/j.dhjo.2022.101328.	The committee agrees with this approach. The committee appreciates this additional source on language preferences.
3.	Superior Court of Orange County by Iyana Doherty Courtroom Operations Supervisor	A	No specific comment.	The committee notes the commenter's support for the proposal.

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

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.:
For business meeting on: September 19-20, 2022

Title
Appellate Procedure and Juvenile Law: Transfer of Jurisdiction to Criminal Court and Appeal from Transfer Orders

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Rules of Court, rule 8.417; amend rules 5.766, 5.768, 5.770, 8.50, 8.60, 8.63, 8.404, 8.406, 8.409, and 8.412; and revise forms JV-710 and JV-800

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

Family and Juvenile Law Advisory Committee
Hon. Stephanie E. Hulsey, Cochair
Hon. Amy M. Pellman, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2023

Date of Report
June 7, 2022

Contact
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Tracy Kenny, 916-263-2838
tracy.kenny@jud.ca.gov

Executive Summary

In 2018 the Legislature passed Senate Bill 1391 (Lara; Stats. 2018, ch. 1012), which amended Welfare and Institutions Code section 707 to provide that a minor must be at least 16 years of age to be considered for transfer of jurisdiction to criminal court unless the individual for whom transfer is sought was 14 or 15 at the time of the offense, the offense is listed in section 707(b), and the individual was not apprehended until after the end of juvenile court jurisdiction. The Judicial Council took action to implement these age-related changes in the jurisdiction of the juvenile court in 2019 but revoked that action when a split of authority within the California Courts of Appeal arose as to whether these changes were enacted in a constitutional manner.

That split was resolved by the California Supreme Court in 2021 in favor of the constitutionality of the legislation. Additionally, legislation was enacted in 2021 to provide an expedited review on the merits from an order granting a motion to transfer. The Appellate Advisory Committee and the Family and Juvenile Law Advisory Committee propose adopting a new rule of court, amending several other rules, and revising two forms pertaining to the transfer-of-jurisdiction process and juvenile appeals to reflect both legislative changes to the transfer statutes.

Recommendation

The Appellate Advisory Committee and the Family and Juvenile Law Advisory Committee recommend that the Judicial Council, effective January 1, 2023:

1. Adopt California Rules of Court, rule 8.417 to govern the appeal of orders transferring jurisdiction from juvenile to criminal court;

2. Amend California Rules of Court, rules 5.766, 5.768, and 5.770 to implement statutory and recent case law changes pertaining to the transfer-of-jurisdiction process;

3. Amend California Rules of Court, rules 5.770, 8.50, 8.60, 8.63, 8.404, 8.406, 8.409, and 8.412 to clarify and implement new statutory provisions pertaining to appeals of orders transferring jurisdiction from juvenile to criminal court;

4. Revise *Order to Transfer Juvenile to Criminal Court Jurisdiction* (form JV-710) to reflect recent changes in the transfer statute and case law and update terminology; and

5. Revise *Notice of Appeal – Juvenile* (form JV-800) to include the specific provisions concerning appeals of transfer of jurisdiction orders.

The proposed new and amended rules and revised forms are attached at pages 9-21.

Relevant Previous Council Action

The Judicial Council adopted California Rules of Court, rules 5.766, 5.768, and 5.770 effective January 1, 1991, as rules 1480, 1481, 1482, and 1483 respectively, and they were renumbered effective January 1, 2007. These rules have been amended numerous times, most recently effective May 22, 2017, to implement the changes enacted by Proposition 57.

Juvenile Fitness Hearing Order (Welfare and Institutions Code, § 707) (form JV-710) was adopted by the council effective January 1, 2006, and made optional effective January 1, 2012. It was significantly revised effective May 22, 2017, to implement the changes enacted by Prop. 57. *Notice of Appeal – Juvenile* (form JV-800) was adopted effective January 1, 1993, and revised numerous times, most recently effective September 1, 2020 to implement council sponsored legislation clarifying procedures for accessing juvenile court records during an appeal of the matter.

The Judicial Council adopted a rules and forms proposal to implement the provisions of SB 1391 on September 24, 2019, with an effective date of January 2, 2020. The council then revoked that action on November 25, 2019, after the Court of Appeal, Second Appellate District, filed an opinion on September 30, 2019, finding that the provisions of SB 1391 were not consistent with the voters' intent in enacting Proposition 57 and thus holding that the amendments to section 707 were an unconstitutional exercise of legislative authority.[1]

Analysis/Rationale

Background

On November 8, 2016, the people of the State of California enacted Proposition 57, the Public Safety and Rehabilitation Act of 2016, effective November 9, 2016. Proposition 57 amended existing law to require that the juvenile court consider a motion by the district attorney or other appropriate prosecuting officer to transfer the minor to the jurisdiction of the criminal court before a juvenile can be prosecuted in a criminal court. To that end, the proposition repealed Welfare and Institutions Code section 602(b),[2] which had provided that certain serious and violent felonies were to be prosecuted in criminal court, as well as section 707(d), which had authorized the district attorney to directly file an accusatory pleading involving certain minors in criminal court. In addition, the proposition eliminated a set of presumptions that applied in determining whether a case should be transferred and instead provided the court with broad discretion to determine whether the minor should be transferred to a court of criminal jurisdiction, taking into account numerous factors and criteria.

SB 1391 further amended these provisions to limit the transfer of cases involving 14 and 15 year olds to those in which the alleged offender is not apprehended until after reaching adulthood and the offense is one listed in section 707(b). On February 25, 2021, the California Supreme Court resolved a split of opinion within the Courts of Appeal and upheld the constitutionality of SB 1391 in *O.G. v. Superior Court*, 11 Cal.5th 82, making clear that the legislation's age limitations on transfer of youth to criminal court jurisdiction were permissible amendments to Proposition 57.

In 2021, the Legislature enacted section 801 to provide a right to an immediate appeal for youth subject to an order for transfer of jurisdiction from juvenile court to criminal court provided that the notice of appeal is filed within 30 days of the transfer order.[3] That legislation requires the council to adopt rules of court to ensure that the youth is advised of their appellate rights, the record is promptly prepared and transmitted after a notice of appeal is filed, and adequate time requirements allow counsel and court personnel to comply with the objectives of the section. Subdivision (e) of section 801 states: "It is the intent of the Legislature that this section provides

[1] *O.G. v. Superior Court* (2019) 40 Cal.App.5th 626.

[2] All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

[3] Assem. Bill 624 (Bauer-Kahan; Stats. 2021, ch. 195).

for an expedited review on the merits by the appellate court of an order transferring the minor from the juvenile court to a court of criminal jurisdiction."

Transfer rules 5.766, 5.768, and 5.770

The current rules of court governing the process for transfer of jurisdiction from juvenile to criminal court provide that transfer can occur when the subject of the petition is age 14 or 15 and is alleged to have committed an offense listed in Welfare and Institutions Code section 707(b), or is 16 years of age or older and is alleged to have committed a felony. These rules must be amended to state that a transfer petition may be considered only for those who were 14 or 15 years of age at the time of the offense when the individual who is the subject of the petition was apprehended after the end of juvenile court jurisdiction. In addition, the changes to section 707 require that code references be updated to reflect the new structure of the statute. The proposal would also update rule 5.770 to include the requirement that the court make specific findings for each of the transfer criteria in section 707(a)(3) as provided in *C.S. v. Superior Court* (2018) 29 Cal.App.5th 1009. All three rules are also proposed to be amended to use the term "youth" instead of "child," consistent with rule 5.502(46). Finally, the committee recommends revising rule 5.776 to correct a typographical error in the most recent version approved by the council.

Transfer order form JV-710

Order to Transfer Juvenile to Criminal Court Jurisdiction (form JV-710), for optional use, would be revised to update item 3 to include the limitation on transferring individuals who were age 14 or 15 at the time of the offense to those situations in which apprehension of the subject of the petition occurred after the end of juvenile court jurisdiction; and to update item 4 to correct the statutory reference to 707(a)(2) and make it 707(a)(3), consistent with the changes enacted by SB 1391. In addition, the form is recommended to be revised to use the term "youth" instead of "child."

Amendments to rule 5.770 to implement new appellate rights

Section 801 provides youth subject to an order transferring jurisdiction with the right to an immediate appeal if a notice of appeal is filed within 30 days of the transfer order and requires that the juvenile court grant a stay of the criminal court proceedings upon request of the youth if an appeal is filed. In addition, it requires the court to advise the youth of their appellate rights, the steps and time for taking an appeal, and the right to appointed counsel. Based on the comments this advisement now also includes information about the right to a stay of the proceedings pending the appeal. Finally, it requires that the court prepare the record and transmit it to the Court of Appeal in a timely manner so that the appeal can be heard expeditiously. The committees recommend amending rule 5.770 to reflect these new requirements and provisions.

Juvenile Notice of Appeal Form (JV-800)

Notice of Appeal – Juvenile (form JV-800), for optional use, would be revised to allow it to be used for the appeal of orders transferring jurisdiction from the juvenile court to the criminal court. To accomplish this the form includes a new notice alerting appellants that they must file within 30 days of the order, as well as a new item 7(h) to indicate that the appeal is from a transfer order under section 707. The form was also revised to delete a generic "other" checkbox,

and to convert the item for "other appealable orders relating to wardship," to "other appealable orders relating to juvenile justice". Because the form already has an item for "other appealable orders relating to dependency," it should, as proposed, be usable for all appealable juvenile matters without requiring a nonspecific "other" item.

Appellate rules

New rule 8.417

To ensure that appeals from transfer orders are resolved expeditiously, the committees propose a new rule that would govern these proceedings. New rule 8.417 is modeled on rule 8.416, the rule governing fast-track dependency appeals. The new rule would require that the cover of the record on appeal be labeled to identify the appeal as entitled to preference and would specify the items to be included in the record. (Rule 8.417(b), (c).) Subdivision (d) would require the record to be prepared within 20 days and sent immediately. The rule would also contain requirements for augmenting and correcting the record, the time to file briefs, the showing a party must make to support a request for an extension of time, and the length of the grace period following a notice of failure to file a brief. (Rule 8.417(e), (f), (g), (h).) Finally, the rule would provide time periods for requesting and holding oral argument and submission if argument is waived.

Amended rules 8.50, 8.60, 8.63, 8.404, 8.406, 8.409, and 8.412

Section 801 provides for an appeal from an order granting transfer if the notice of appeal is filed within 30 days. This is different from the normal time of 60 days in juvenile appeals. Rule 8.406 would be amended to add the 30-day time limit for filing a notice of appeal from a transfer order. The proposed amendments specify when the 30-day time begins to run if the matter is heard by a referee not acting as a temporary judge and if an application for rehearing of an order of a referee not acting as a temporary judge is denied. The committees requested comments on whether these matters are heard by referees and whether rule 8.406(a)(4) should include these provisions.

The committees also propose adding an advisory committee comment to rule 8.404. The rule provides: "The court must not stay an order or judgment pending an appeal unless suitable provision is made for the maintenance, care, and custody of the child." For clarification and to avoid any confusion with the rules in title 5, a new comment would read: "This rule does not apply to a court's order under rule 5.770(e)(2) staying the criminal court proceedings during the pendency of an appeal of an order transferring the minor from juvenile court to a court of criminal jurisdiction." The committees requested comments on this proposed new advisory committee comment.

The other rules included in this proposal, rules 8.50, 8.60, 8.63, 8.409, and 8.412, would be amended to add cross-references to new rule 8.417 to the text of the rule or to the advisory committee comments and to make minor style and punctuation changes.

Policy implications

While juvenile transfer proceedings are relatively uncommon (data from the Department of Justice suggests that fewer than 80 motions were heard in 2020[4]), they have significant consequences for the youth who are subject to them, and it is critical that the rules of court set forth clear, accurate, and comprehensive procedures to ensure that these proceedings provide due process and allow for appropriate appellate review. The changes proposed by the committees seek to provide that structure and guidance so that these proceedings can conclude in a just and timely manner.

Comments

This proposal was circulated for public comment from April 1 to May 13, 2019, as part of the regular spring comment cycle. Seven organizations submitted comments on this proposal. Five commenters agreed with the proposal. Two organizations agreed if the proposal was modified. A chart with the full text of the comments received and the committee's responses is attached at pages 22-39.

Maintain timing provisions for review of transfer decisions by juvenile referees

The committees sought specific comment on the necessity of including provisions in the rules to take into account the possibility that a juvenile referee heard a transfer motion in a subordinate judicial officer capacity, rather than as a temporary judge. Two commenters indicated that in at least one court, there are transfer cases heard by referees who do not obtain stipulations from the parties to allow them to serve as temporary judges. In those cases, there would be a right to request a rehearing by a juvenile court judge. Although it appears that it is unusual and perhaps unintended that referees would hear transfer motions sitting as referees, the committees determined that the rule should continue to take this possibility into account to ensure that youth have an opportunity to seek a juvenile court rehearing before seeking appellate review in these cases.

Language to incorporate the holding of* C.S. v. Superior Court *into rule 5.770

When the proposal to implement SB 1391 was circulated for comment in 2019, the Family and Juvenile Law Advisory Committee sought specific comment on whether rule 5.770 should articulate the holding in *C.S. v. Superior Court* that a trial court judge considering a motion to transfer must make detailed findings and fully explain its reasoning for granting or denying the motion. The comments in that cycle generally favored such amendment to the rule, and the amended rule initially approved by the council in 2019 included the following language:

> The court must document on the record the basis for its decision, detailing how it weighed the evidence and identifying the specific facts that persuaded the court to reach its decision, notwithstanding that the decision must be based on the totality of the circumstances and the child need not be found amenable on each of the five criteria in order to remain in juvenile court.

[4] *Juvenile Justice in California, 2020, California Department of Justice, p. 38.*

In this cycle, the committee opted to truncate this language somewhat in the version which circulated for comment to read:

> The court must state on the record the basis for its decision, detailing how it weighed the evidence and identifying the specific factors on which the court relied to reach its decision.

Two commenters supported including this language, but suggested that it be augmented to read:

> The court must state on the record the basis for its decision, by explicitly articulating its evaluative process, detailing how it weighed the evidence, and identifying the specific factors on which the court relied to reach its decision.

The Family and Juvenile Law Advisory Committee opted to accept some of this language, but to avoid redundancy, redrafted the sentence to read: "The court must state on the record the basis for its decision by explicitly articulating how it weighed the evidence and identifying the specific factors on which the court relied to reach its decision."

In addition, the committees adopted changes to the proposal suggested by commenters to change the word delinquency to juvenile justice on Form JV-800 to reflect the current council preference, and to require the juvenile court to include the right to a stay of the proceedings in its advisement about appellate review in a transfer proceeding.

Alternatives considered

The Family and Juvenile Law Advisory Committee considered not including the requirements of *C.S. v. Superior Court* in rule 5.770(b) but determined that the holding was important to ensuring that the record in a transfer matter is sufficiently detailed and indicates how the court weighed each factor.

The Appellate Advisory Committee considered a narrow approach that would have involved amending only the rule regarding the time for filing a notice of appeal, rule 8.406. The committee concluded that a broader approach, including a new rule with expedited timing at several steps of the appeal, would better reflect the legislative intent that these appeals be determined as soon as reasonably practicable after the notice of appeal is filed.

The committees did not consider the alternative of proposing no rule amendments because section 801 creates a new right of appeal and requires the Judicial Council to adopt implementing rules.

Fiscal and Operational Impacts

The restrictions on transfers to criminal court for juvenile offenders ages 14 and 15 will result in the filing of fewer transfer petitions for these youth and, thus, fewer hearings on those petitions. These impacts are the result of legislative changes. Similarly, the new appellate rights in section 801 will likely result in more appeals being filed in the Courts of Appeal, also the result of the legislative change rather than the provisions of this proposal. Courts noted during the comment

period that implementation of these changes would require training for staff and judicial officers, changes to case management systems, and workload impacts on clerks who prepare the records on appeal. As noted above these cases are relatively few in number so the statewide impact should be modest.

Attachments and Links

1. Cal. Rules of Court, rules 5.766, 5.768, 5.770, 8.50, 8.60, 8.63, 8.404, 8.406, 8.409, 8.412, and 8.417
2. Forms JV-710 and JV-800
3. Chart of comments
4. Link A: Senate Bill 1391, http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB1391
5. Link B: Assembly Bill 624, *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB624*

Rule 8.417 of the California Rules of Court would be adopted, and rules 5.766, 5.768, 5.770, 8.50, 8.60, 8.63, 8.404, 8.406, 8.409, and 8.412 would be amended, effective January 1, 2023, to read:

Rule 5.766. General provisions

(a) Hearing on transfer of jurisdiction to criminal court (§ 707)

A ~~child~~ youth who is the subject of a petition under section 602 and who was 14 years or older at the time of the alleged felony offense may be considered for prosecution under the general law in a court of criminal jurisdiction. The district attorney or other appropriate prosecuting officer may make a motion to transfer the ~~child~~ youth from juvenile court to a court of criminal jurisdiction, in one of the following circumstances:

(1) The ~~child~~ individual was 14 or 15 years ~~or older~~ of age at the time of the alleged offense listed in section 707(b) and was not apprehended before the end of juvenile court jurisdiction.

(2) The ~~child~~ youth was 16 years or older at the time of the alleged felony offense.

(b) * * *

(c) Prima facie showing

On the ~~child~~ youth's motion, the court must determine whether a prima facie showing has been made that the offense alleged is an offense that makes the ~~child~~ youth subject to transfer as set forth in subdivision (a).

(d) Time of transfer hearing—rules 5.774, 5.776

The transfer of jurisdiction hearing must be held and the court must rule on the request to transfer jurisdiction before the jurisdiction hearing begins. Absent a continuance under rule 5.776 or the ~~child~~ youth's waiver of the statutory time period to commence the jurisdiction hearing, the jurisdiction hearing must begin within the time limits under rule 5.774.

Rule 5.768. Report of probation officer

(a) Contents of report (§ 707)

The probation officer must prepare and submit to the court a report on the behavioral patterns and social history of the ~~child~~ youth being considered. The report must include information relevant to the determination of whether the ~~child~~ youth should be retained under the jurisdiction of the juvenile court or transferred to the jurisdiction of the criminal court, including information regarding all of the criteria in section 707(a)~~(2)~~(3). The report

must also include any written or oral statement offered by the victim pursuant to section 656.2.

(b) Recommendation of probation officer (§§ 281, 707)

If the court, under section 281, orders the probation officer to include a recommendation, the probation officer must make a recommendation to the court as to whether the ~~child~~ youth should be retained under the jurisdiction of the juvenile court or transferred to the jurisdiction of the criminal court.

(c) Copies furnished

The probation officer's report on the behavioral patterns and social history of the ~~child~~ youth must be furnished to the ~~child~~ youth, the parent or guardian, and all counsel at least two court days before commencement of the hearing on the motion. A continuance of at least 24 hours must be granted on the request of any party who has not been furnished the probation officer's report in accordance with this rule.

Rule 5.770. Conduct of transfer of jurisdiction hearing under section 707

(a) * * *

(b) Criteria to consider (§ 707)

Following receipt of the probation officer's report and any other relevant evidence, the court may order that the ~~child~~ youth be transferred to the jurisdiction of the criminal court if the court finds:

(1) The ~~child~~ youth was 16 years or older at the time of any alleged felony offense, or the ~~child~~ individual was 14 or 15 years of age at the time of an alleged felony offense listed in section 707(b) and was not apprehended prior to the end of juvenile court jurisdiction; and

(2) The ~~child~~ youth should be transferred to the jurisdiction of the criminal court based on an evaluation of all the criteria in section 707(a)~~(2)~~(3) as provided in that section. The court must state on the record the basis for its decision~~.~~ by explicitly articulating how it weighed the evidence and identifying the specific factors on which the court relied to reach its decision.

(c) * * *

(d) Procedure following findings

(1) If the court finds the ~~child~~ youth should be retained within the jurisdiction of the juvenile court, the court must proceed to jurisdiction hearing under rule 5.774.

(2) If the court finds the ~~child~~ youth should be transferred to the jurisdiction of the criminal court, the court must make orders under section 707.1 relating to bail and to the appropriate facility for the custody of the ~~child~~ youth, or release on own recognizance pending prosecution. The court must set a date for the ~~child~~ youth to appear in criminal court and dismiss the petition without prejudice upon the date of that appearance.

(3) When the court rules on the request to transfer the ~~child~~ youth to the jurisdiction of the criminal court, the court must advise all parties present ~~that~~ regarding appellate review of the order ~~must be by petition for extraordinary writ~~ as provided in subdivision (g) of this rule. The advisement may be given orally or in writing when the court makes the ruling. The advisement must include the time for filing the notice of appeal or the petition for extraordinary writ as set forth in subdivision (g) of this rule. The court must advise the youth of the right to appeal, of the necessary steps and time for taking an appeal, ~~and~~ of the right to the appointment of counsel if the youth is unable to retain counsel, and the right to a stay.

(e) Continuance ~~to seek~~ or stay pending review

(1) If the prosecuting attorney informs the court orally or in writing that a review of the court's decision not to transfer jurisdiction to the criminal court will be sought and requests a continuance of the jurisdiction hearing, the court must grant a continuance for not less than two judicial days to allow time within which to obtain a stay of further proceedings from the reviewing judge or appellate court.

(2) If the youth informs the court orally or in writing that a notice of appeal of the court's decision to transfer jurisdiction to the criminal court will be filed and requests a stay, the court must issue a stay of the criminal court proceedings until a final determination of the appeal. The court retains jurisdiction to modify or lift the stay upon request of the youth.

(f) Subsequent role of judicial officer

Unless the ~~child~~ youth objects, the judicial officer who has conducted a hearing on a motion to transfer jurisdiction may participate in any subsequent contested jurisdiction hearing relating to the same offense.

(g) Review of determination on a motion to transfer jurisdiction to criminal court

(1) An order granting a motion to transfer jurisdiction of a youth to the criminal court is an appealable order subject to immediate review. A notice of appeal must be filed within 30 days of the order transferring jurisdiction or 30 days after the referee's order becomes final under rule 5.540(c) or after the denial of an application for rehearing of the referee's decision to transfer jurisdiction of the youth to the criminal court. If a notice of appeal is timely filed, the court must prepare and submit the record to the Court of Appeal within 20 days.

(2) An order ~~granting or~~ denying a motion to transfer jurisdiction of a ~~child~~ youth to the criminal court is not an appealable order. Appellate review of the order is by petition for extraordinary writ. Any petition for review of a judge's order denying a motion to transfer jurisdiction of the child to the criminal court, or denying an application for rehearing of the referee's determination not to transfer jurisdiction of the child to the criminal court, must be filed no later than 20 days after ~~the child's first arraignment on an accusatory pleading based on the allegations that led to the transfer of jurisdiction order~~ the judge's order is entered, or the referee's order becomes final under rule 5.540(c).

(h) ***

Rule 8.50. Applications

(a) * * *

(b) Contents

The application must state facts showing good cause—or making an exceptional showing of good cause, when required by these rules—for granting the application and must identify any previous application filed by any party.

(c) * * *

Advisory Committee Comment

Subdivision (a). * * *

Subdivision (b). An exceptional showing of good cause is required in applications in certain juvenile proceedings under rules 8.416, 8.417, 8.450, 8.452, and 8.454.

Rule 8.60. Extending time

(a) * * *

(b) Extending time

Except as these rules provide otherwise, for good cause—or on an exceptional showing of good cause, when required by these rules—the Chief Justice or presiding justice may extend the time to do any act required or permitted under these rules.

(c) Application for extension

(1) * * *

(2) The application must state:

(A)–(C) * * *

(D) Good cause—or an exceptional showing of good cause, when required by these rules—for granting the extension, consistent with the factors in rule 8.63(b).

(d)–(f) * * *

Advisory Committee Comment

Subdivisions (b) and (c): An exceptional showing of good cause is required in applications in certain juvenile proceedings under rules 8.416, 8.417, 8.450, 8.452, and 8.454.

Rule 8.63. Policies and factors governing extensions of time

(a) Policies

(1) The time limits prescribed by these rules should generally be met to ensure expeditious conduct of appellate business and public confidence in the efficient administration of appellate justice.

(2) The effective assistance of counsel to which a party is entitled includes adequate time for counsel to prepare briefs or other documents that fully advance the party's interests. Adequate time also allows the preparation of accurate, clear, concise, and complete submissions that assist the courts.

(3) For a variety of legitimate reasons, counsel may not always be able to prepare briefs or other documents within the time specified in the rules of court. To balance the competing policies stated in (1) and (2), applications to extend time in the reviewing courts must demonstrate good cause ~~—~~ or an exceptional showing of good cause, when required by these rules ~~–~~ under (b). If good cause is shown, the court must extend the time.

(b) Factors considered

In determining good cause ~~–~~ or an exceptional showing of good cause, when required by these rules ~~–~~ the court must consider the following factors when applicable:

(1)–(11) * * *

Advisory Committee Comment

An exceptional showing of good cause is required in applications in certain juvenile proceedings under rules 8.416, 8.417, 8.450, 8.452, and 8.454.

Rule 8.404. Stay pending appeal

The court must not stay an order or judgment pending an appeal unless suitable provision is made for the maintenance, care, and custody of the child.

Advisory Committee Comment

This rule does not apply to a court's order under rule 5.770(e)(2) staying the criminal court proceedings during the pendency of an appeal of an order transferring the minor from juvenile court to a court of criminal jurisdiction.

Rule 8.406. Time to appeal

(a) Normal time

(1) Except as provided in (2) ~~and,~~ (3), and (4), a notice of appeal must be filed within 60 days after the rendition of the judgment or the making of the order being appealed.

(2) In matters heard by a referee not acting as a temporary judge, a notice of appeal must be filed within 60 days after the referee's order becomes final under rule 5.540(c).

(3) When an application for rehearing of an order of a referee not acting as a temporary judge is denied under rule 5.542, a notice of appeal from the referee's order must be

filed within 60 days after that order is served under rule 5.538(b)(3) or 30 days after entry of the order denying rehearing, whichever is later.

(4) To appeal from an order transferring a minor to a court of criminal jurisdiction:

(A) Except as provided in (B) and (C), a notice of appeal must be filed within 30 days of the making of the order.

(B) If the matter is heard by a referee not acting as a temporary judge, a notice of appeal must be filed within 30 days after the referee's order becomes final under rule 5.540(c).

(C) When an application for rehearing of an order of a referee not acting as a temporary judge is denied under rule 5.542, a notice of appeal from the referee's order must be filed within 30 days after entry of the order denying rehearing.

(b)–(d) * * *

Rule 8.409. Preparing and sending the record

(a) Application

This rule applies to appeals in juvenile cases except cases governed by rules 8.416 and 8.417.

(b) * * *

(c) Preparing and certifying the transcripts

Except in cases governed by rule 8.417, within 20 days after the notice of appeal is filed:

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

(2) The reporter must prepare, certify as correct, and deliver to the clerk an original of the reporter's transcript and the same number of copies as (1) requires of the clerk's transcript.

(d)–(e) * * *

Advisory Committee Comment

Subdivision (a). Subdivision (a) calls litigants' attention to the fact that ~~a~~ different rules ~~(rule 8.416)~~ governs the record in appeals from judgments or orders terminating parental rights and in dependency appeals in certain counties (rule 8.416), and in appeals from orders granting a motion to transfer a minor from juvenile court to a court of criminal jurisdiction (rule 8.417).

Subdivision (b). * * *

Subdivision (c). Subdivision (c) calls litigants' attention to the fact that a different rule (rule 8.417) governs the record in appeals from orders granting a motion to transfer a minor from juvenile court to a court of criminal jurisdiction.

Subdivision (e). * * *

Rule 8.412. Briefs by parties and amici curiae

(a) * * *

(b) Time to file

(1) Except in appeals governed by rules 8.416 and 8.417, the appellant must serve and file the appellant's opening brief within 40 days after the record is filed in the reviewing court.

(2) The respondent must serve and file the respondent's brief within 30 days after the appellant's opening brief is filed.

(3) The appellant must serve and file any reply brief within 20 days after the respondent's brief is filed.

(4) In dependency cases in which the child is not an appellant but has appellate counsel, the child must serve and file any brief within 10 days after the respondent's brief is filed.

(5) Rule 8.220 applies if a party fails to timely file an appellant's opening brief or a respondent's brief, but the period specified in the notice required by that rule must be 30 days.

(c) Extensions of time

The superior court may not order any extensions of time to file briefs. Except in appeals governed by rules 8.416 and 8.417, the reviewing court may order extensions of time for good cause.

(d) Failure to file a brief

(1) Except in appeals governed by rules 8.416 and 8.417, if a party fails to timely file an appellant's opening brief or a respondent's brief, the reviewing court clerk must promptly notify the party's counsel or the party, if not represented, in writing that the brief must be filed within 30 days after the notice is sent and that failure to comply may result in one of the following sanctions:

(A)–(B) * * *

(2)–(3) * * *

(e) * * *

Advisory Committee Comment

Subdivision (b). Subdivision (b)(1) calls litigants' attention to the fact that ~~a~~ different rules ~~(rule 8.416(e))~~ govern~~s~~ the time to file an appellant's opening brief in appeals from judgments or orders terminating parental rights and in dependency appeals in certain counties (rule 8.416(e)), and in appeals from orders granting a motion to transfer a minor from juvenile court to a court of criminal jurisdiction (rule 8.417(f)).

Subdivision (c). Subdivision (c) calls litigants' attention to the fact that ~~a~~ different rules ~~(rule 8.416(f))~~ govern~~s~~ the showing required for extensions of time to file briefs in appeals from judgments or orders terminating parental rights and in dependency appeals in certain counties (rule 8.416(f)), and in appeals from orders granting a motion to transfer a minor from juvenile court to a court of criminal jurisdiction (rule 8.417(g)).

Subdivision (d). Subdivision (d) calls litigants' attention to the fact that different rules govern the time period specified in the notice of failure to timely file an appellant's opening brief or a respondent's brief in appeals from judgments or orders terminating parental rights and in dependency appeals in certain counties (rule 8.416(g)), and in appeals from orders granting a motion to transfer a minor from juvenile court to a court of criminal jurisdiction (rule 8.417(h)).

Rule 8.417. Appeals from orders transferring a minor from juvenile court to a court of criminal jurisdiction

(a) Application

This rule governs appeals from orders of the juvenile court granting a motion to transfer a minor from juvenile court to a court of criminal jurisdiction.

(b) Form of record

(1) The clerk's and reporter's transcripts must comply with rules 8.45–8.47, relating to sealed and confidential records, and, except as provided in (2), with rule 8.144.

(2) The cover of the record must prominently display the title "Appeal from Order Transferring a Minor from Juvenile Court to a Court of Criminal Jurisdiction Under Welfare and Institutions Code Section 801."

(c) Record on appeal

(1) In addition to the items listed in rule 8.407(a), the clerk's transcript must contain:

(A) Any report by the probation officer on the behavioral patterns and social history of the minor, including any oral or written statement offered by the victim under Welfare and Institutions Code section 656.2;

(B) Any other probation report or document filed with the court on the petition under Welfare and Institutions Code section 602; and

(C) Any document in written or electronic form submitted to the court in connection with the prima facie showing under rule 5.766(c) or the motion to transfer jurisdiction.

(2) In addition to the items listed in rule 8.407(b), any reporter's transcript must contain the oral proceedings at any hearings on the prima facie showing under rule 5.766(c) and the motion to transfer jurisdiction.

(d) Preparing, certifying, and sending the record

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

(A) The clerk must prepare and certify as correct an original of the clerk's transcript and one copy each for the appellant, the respondent, and the district appellate project; and

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

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

(A) The original transcripts to the reviewing court by the most expeditious method, noting the sending date on each original; and

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

(i) The appellant; and

(ii) The respondent.

(3) If appellate counsel has not yet been retained or appointed for the minor, when the transcripts are certified as correct, the clerk must send that counsel's copies of the transcripts to the district appellate project.

(e) Augmenting or correcting the record

(1) Except as provided in (2) and (3), rule 8.410 governs any augmentation or correction of the record.

(2) An appellant must serve and file any motion for augmentation or correction within 15 days after receiving the record. A respondent must serve and file any such motion within 15 days after the appellant's opening brief is filed.

(3) The clerk and the reporter must prepare any supplemental transcripts within 20 days, giving them the highest priority.

(4) The clerk must certify and send any supplemental transcripts as required by (d).

(f) Time to file briefs

(1) The appellant must serve and file the appellant's opening brief within 30 days after the record is filed in the reviewing court.

(2) Rule 8.412(b) governs the time for filing other briefs.

(g) Extensions of time

The superior court may not order any extensions of time to prepare the record or to file briefs; the reviewing court may order extensions of time but must require an exceptional showing of good cause.

(h) Failure to file a brief

Rule 8.412(d) applies if a party fails to timely file an appellant's opening brief or a respondent's brief, but the period specified in the notice required by that rule must be 15 days.

(i) Oral argument and submission of the cause

(1) Unless the reviewing court orders otherwise, counsel must serve and file any request for oral argument no later than 15 days after the appellant's reply brief is filed or due to be filed. Failure to file a timely request will be deemed a waiver.

(2) The court must hear oral argument within 60 days after the appellant's last reply brief is filed or due to be filed, unless the court extends the time for good cause or counsel waive argument.

(3) If counsel waive argument, the cause is deemed submitted no later than 60 days after the appellant's reply brief is filed or due to be filed.

Advisory Committee Comment

Subdivision (d). Under rule 8.71(c), the superior court clerk may send the record to the reviewing court in electronic form.

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*name*):	*FOR COURT USE ONLY* **DRAFT** **Not approved by the Judicial Council** **JV-710.V7.030722.ja**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
Case Name:	
ORDER TO TRANSFER JUVENILE TO CRIMINAL COURT JURISDICTION (Welfare and Institutions Code, § 707)	CASE NUMBER:

1. a. Date of hearing: Dept.: Room:
   b. Judicial officer *(name):*
   c. Persons present:
   ☐ Youth ☐ Youth's attorney *(name):*
   ☐ Deputy District Attorney *(name):* ☐ Other:

2. ☐ The court has read and considered ☐ the petition and report of the probation officer ☐ other relevant evidence.

3. **THE COURT FINDS** *(check one)*
   Welfare and Institutions Code section 707
   a. ☐ The youth was 16 years old or older at the time of the alleged felony offense; or
   b. ☐ The individual was 14 or 15 years of age at the time of the alleged offense, the alleged offense is an offense listed in Welfare and Institutions Code section 707(b), and the individual was not apprehended before the end of juvenile court jurisdiction.

4. **AFTER CONSIDERING EACH OF THE TRANSFER OF JURISDICTION CRITERIA, THE COURT ALSO FINDS AND ORDERS:**
   The court has considered each of the criteria in section 707(a)(3) and has documented its findings on each of the criteria on the record, and based on those findings makes the following orders:
   a. ☐ The transfer motion is denied. The youth is retained under the jurisdiction of the juvenile court.
   The next hearing is on *(date):* at *(time):*
   for *(specify):*

   b. ☐ The transfer motion is granted. The prosecutor has shown by a preponderance of the evidence that the youth should be transferred to the jurisdiction of the criminal court.
   (1) ☐ The matter is referred to the District Attorney for prosecution under the general law.
   (2) ☐ The youth is ordered to appear in criminal court on *(date):* at *(time):*
   in Department:
   (3) ☐ The petition filed on *(date):* is dismissed without prejudice on the appearance date in (2).
   (4) ☐ The youth is to be detained in ☐ juvenile hall ☐ county jail (section 207.1).
   (5) ☐ Bail is set in the amount of: $
   (6) ☐ The youth is released ☐ on own recognizance ☐ to the custody of:

Date:

JUDICIAL OFFICER

Form Approved for Optional Use
Judicial Council of California
JV-710 [Rev. January 1, 2023]

ORDER TO TRANSFER JUVENILE TO CRIMINAL COURT JURISDICTION
(Welfare and Institutions Code, § 707)

Welfare and Institutions Code, §§ 207.1, 389(c), 707, 781(d);
Cal. Rules of Court, rules 5.504, 5.770
www.courts.ca.gov

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **Not approved by** **the Judicial Council** **JV-800.v5.052422.ja**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
NOTICE OF APPEAL—JUVENILE	CASE NUMBER:

— INSTRUCTIONS —

- You or your attorney **must** fill in items 1 and 2 and sign this form at the bottom of the page. If possible, to help process your appeal, fill in items 5-7 on the reverse of this form.
- For most appeals, you must file a written notice of appeal within **60** days after rendition of the judgment or the making of the order being appealed or, in matters heard by a referee, within **60** days after the order of the referee becomes final. Read rule 8.406.
- To appeal an order transferring jurisdiction to the criminal court, you must file the notice of appeal within **30** days. Read rules 5.770(g) and 8.406(a)(4).
- To file an appeal of an order for transfer to a tribal court, you (1) may ask the juvenile court to stay (delay the effective date of) the transfer order and (2) must file the appeal before the transfer to tribal jurisdiction is finalized. Read rule 5.483 and the advisory committee comment.
- If you are not the county welfare department, district attorney, child, child's parent, or child's legal guardian, you may have a right to challenge a decision by the juvenile court, but only in very limited circumstances. You may need a court order granting you access to records in the juvenile case file. For more information, please see *Information on Requesting Access to Records for Persons With a Limited Right to Appeal* (form JV-291- INFO). You can get form JV-291-INFO at any courthouse or county law library or online at www.courts.ca.g/forms.

1. I appeal from the findings and orders of the court *(specify date of order or describe order):*

2. This appeal is filed by
   a. Appellant *(name):*
   b. Address: c. Phone number:
   d. Name, address, and phone number of person to be contacted *(if different from appellant):*

   e. ☐ Appellant has been granted access to specified records in the juvenile case file, and a copy of the court's order under Welfare and Institutions Code section 827(a)(1)(Q), on *Order After Judicial Review on Petition for Access to Juvenile Case File* (form JV-574), if available, is attached.

3. ☐ I request that the court appoint an attorney on appeal. I ☐ was ☐ was not represented by an appointed attorney in the superior court.

4. Items 5–7 on the reverse are ☐ completed ☐ not completed.

Date:

TYPE OR PRINT NAME

SIGNATURE OF ☐ APPELLANT ☐ ATTORNEY

Form Approved for Optional Use
Judicial Council of California
JV-800 [Rev. January 1, 2023]

Cal. Rules of Court, rules 5.770. 8.400, 8.401, 8.405, 8.406
Welfare and Institutions Code, §§ 395, 800, 801
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

5. Appellant is the
   a. ☐ child.
   b. ☐ mother.
   c. ☐ father.
   d. ☐ legal guardian.
   e. ☐ de facto parent.
   f. ☐ county welfare department.
   g. ☐ district attorney.
   h. ☐ child's tribe.
   i. ☐ other *(state relationship to child or interest in the case):*

6. This notice of appeal pertains to the following child or children *(specify number of children included):*
   a. Name of child:
      Child's date of birth:
   b. Name of child:
      Child's date of birth:
   c. Name of child:
      Child's date of birth:
   d. Name of child:
      Child's date of birth:
   ☐ Continued in Attachment 6.

7. The order appealed from was made under Welfare and Institutions Code *(check all that apply):*
   a. ☐ **Section 305.5** (transfer to tribal court)
      ☐ Granting transfer to tribal court ☐ Denying transfer to tribal court
      Dates of hearing *(specify):*
   b. ☐ **Section 360** (declaration of dependency) ☐ Removal of custody from parent or guardian ☐ Other orders
      ☐ with review of section 300 jurisdictional findings
      Dates of hearing *(specify):*
   c. ☐ **Section 366.26** (selection and implementation of permanent plan)
      ☐ Termination of parental rights ☐ Appointment of guardian ☐ Planned permanent living arrangement
      Dates of hearing *(specify):*
   d. ☐ **Section 366.28** (order designating a specific placement after termination of parental rights in which a petition for extraordinary writ review that substantively addressed the specific issues to be challenged was timely filed and summarily denied or otherwise not decided on the merits)
      Dates of hearing *(specify):*
   e. ☐ **Section 388** (request to change court order)
      Dates of hearing *(specify):*
   f. ☐ Other appealable orders relating to dependency *(specify):*
      Dates of hearing *(specify):*
   g. ☐ **Section 725** (declaration of wardship and other orders)
      ☐ with review of section 601 jurisdictional findings
      ☐ with review of section 602 jurisdictional findings
      Dates of hearing *(specify):*
   h. ☐ **Section 707** (order transferring jurisdiction to criminal court)
      Dates of hearing *(specify):*
   i. ☐ Other appealable orders relating to juvenile justice *(specify):*
      Dates of hearing *(specify):*

SPR 22-14

Appellate Procedure and Juvenile Law: Transfer of Jurisdiction to Criminal Court and Appeal from Transfer Orders

(Adopt Cal. Rules of Court, rule 8.417; amend rules 5.766, 5.768, 5.770, 8.50, 8.60, 8.63, 8.404, 8.406, 8.409, and 8.412; and revise forms JV-710 and JV-800)

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

	Commenter	Position	Comment	Committee Response
1	First District Appellate Project by Jonathan Soglin, Executive Director On Behalf of: Lynelle Hee, Executive Director, Appellate Defenders, Inc. Patrick McKenna, Executive Director Sixth District Appellate Program Rick Lennon, Executive Director California Appellate Project, Los Angeles Laurel Thorpe, Executive Director Central California Appellate Program	AM	**Appellate Projects' Interest in Item SPR22-14** The Court of Appeal projects are non-profit corporations created pursuant to California Rules of Court, rule 8.300(e), which contract with the Courts of Appeal through the Judicial Council of California, Appellate Court Services, to oversee the system of court-appointed counsel on appeal in their respective districts. The central goal of the offices is to improve the quality of indigent representation on appeal, assist the Court of Appeal in administering criminal, juvenile, and limited civil appeals by indigents who are entitled to the appointment of counsel at public expense. Their caseload covers criminal, juvenile delinquency and dependency, and civil commitment appeals, certain writs, and other proceedings requiring appointed counsel in the appellate courts.[FN 1: The Court of Appeal projects include the First District Appellate Project (FDAP), located in Oakland; California Appellate Project, Los Angeles (CAP-LA), serving the Second District; Central California Appellate Program (CCAP), located in Sacramento and serving the Third and Fifth Districts; Appellate Defenders, Inc. (ADI), located in San Diego and serving the Fourth District; and the Sixth District Appellate Program (SDAP), in San Jose.] These comments begin with responses to the Request for Specific Comments on page 6 of the Invitation to	The committees note the commenter's support for the proposal and appreciates the information on the role and perspective of the appellate projects.

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

	Commenter	Position	Comment	Committee Response
			Comment, followed by our suggestions for changes in the proposed language in specific rules.	
			• **Does the proposal appropriately address the stated purpose?** Yes. The proposal appropriately addresses the stated twofold purpose of the proposed rules: (1) to amend transfer rules implementing Senate Bill 1391; and (2) to adopt rules of court implementing newly-enacted Welfare and Institutions Code [FN 2: All further statutory references are to the Welfare and Institutions Code unless otherwise noted.] section 801 which provides for appeal of transfer orders.	The committees appreciate this response to its request for specific comments.
			Rules amending transfer rules implementing Senate Bill 1391.	
			We agree with the Committees' proposed amendment of rules implementing Senate Bill 1391. The modifications to rules 5.766 and 5.770 closely track the language of the new law, permitting a transfer petition for a person who was 14 or 15 years of age at the time of a section 707(b) offense only when that person was not apprehended until after the end of juvenile court jurisdiction.	The committees appreciate this response to its request for specific comments.
			We are also in agreement with amending all three rules to employ the term "youth" instead of "child," rendering them consistent with rule 5.502(46) which already defines "youth" as "a	The committees note the commenters' support for the change in terminology.

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

	Commenter	Position	Comment	Committee Response
			person who is at least 14 years of age and not yet 21 years of age."	
			We are in favor of the proposed new language in rule 5.770(b) to incorporate the holding in *C.S. v. Superior Court* (2018) 29 Cal.App.5th 1009 that a trial court considering a motion to transfer must make detailed findings and fully explain its reasoning for granting or denying the motion. Incorporating the *C.S.* holding will helpfully remind the bench to make adequate rulings. (We do, however, recommend changes below to more accurately reflect the language of the holding in that case.)	The committees concur that language incorporating the holding in *C.S. v. Superior Court* (2018) 29 Cal.App.5th 1009 is of value and address the specific suggestion below.
			Adoption of rules implementing section 801.	
			The Committees' proposed rules faithfully implement section 801 providing for an appeal of an order transferring jurisdiction if a notice of appeal is filed within 30 days and requiring that the juvenile court grant a stay of the criminal court proceedings upon request.	The committees appreciate this feedback.
			Is the new advisory committee comment to rule 8.404 regarding stays helpful? **Yes.** Rule 8.404, governing stays in ordinary juvenile cases, prohibits a court from staying an order pending an appeal unless suitable provision is made for the maintenance, care, and custody of the child. The advisory comment states: "This rule does not apply to a court's order under rule	The committees appreciate this feedback and recommend adding the new advisory committee comment.

SPR 22-14

Appellate Procedure and Juvenile Law: Transfer of Jurisdiction to Criminal Court and Appeal from Transfer Orders

(Adopt Cal. Rules of Court, rule 8.417; amend rules 5.766, 5.768, 5.770, 8.50, 8.60, 8.63, 8.404, 8.406, 8.409, and 8.412; and revise forms JV-710 and JV-800)

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

	Commenter	Position	Comment	Committee Response
			5.770(e)(2) staying the criminal court proceedings during the pendency of an appeal of an order transferring the minor from juvenile court to a court of criminal jurisdiction." The comment is helpful to prevent confusion with newly-enacted rule 5.770(e)(2) governing stays in transfer proceedings.	
			Does proposed new rule 8.417(c) appropriately specify the items to be included in the record on appeal? **Yes.** We believe the proposed rule is broad enough to capture all items which should be included in the record on appeal. We are particularly pleased with the all-encompassing language of 8.417(c)(1)(C), which specifies "[a]ny document in written or electronic form." Transfer hearings often involve a wide variety of documentary evidence (i.e. reports by experts, doctor evaluations/assessments; PowerPoint presentations, and emails to or from the court related to the case, etc.) which justifies such a broad rule	The committees appreciate this feedback and information regarding the types of documentary evidence that may be involved.
			Do juvenile referees hear transfer motions in a capacity other than as a temporary judge such that the rules need to include timing for review of their orders by a superior court judge, or can those provisions be removed from the rules? (See rules 5.770(g) and 8.406(a).)	The committees note that there appear to be differences in practice among the courts regarding whether referees hear these motions in a capacity other than as temporary judges, but have concluded that it is preferable to accommodate this possibility in the rule.

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

	Commenter	Position	Comment	Committee Response
			Yes, juvenile referees do hear transfer motions in a capacity other than as a temporary judge such that the rules need to include timing for review of their orders by a superior court judge. We conducted an informal email survey of defenders in counties across California. Of those defenders who responded, most reported that their counties do not have juvenile referees at all. Of those counties that use referees, only one county—Los Angeles County—reported that juvenile referees hear transfer motions in a capacity other than as a temporary judge. That apparently one county reportedly has referees hearing transfer motions in a non-temporary judge capacity is ample reason for retaining proposed rules 5.770(g)(1) and 8.406(a). Another reason is that counties that do not currently employ referees at transfer hearings in a capacity other than as a temporary judge could do so in the future.	
			A. Implementation of the new jurisdictional provisions of Senate Bill 1391, amending rules 5.766, 5.768, and 5.770.	
			We agree with the Committees' proposed rule amendments implementing SB 1391. The modifications to rules 5.766 and 5.770 closely track the language of the new law, permitting a transfer petition for a person who was 14 or 15 years of age at the time of a Welfare and Institutions Code section 707(b) offense only	The committees note the commenters' support for the implementation of the limits on transfer eligibility.

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

	Commenter	Position	Comment	Committee Response
			when that person was not apprehended until after the end of juvenile court jurisdiction.	
			For the sake of precision, we are also in agreement with amending all three rules to employ the term "youth" instead of "child." As noted, rule 5.502(46) defines "youth" as "a person who is at least 14 years of age and not yet 21 years of age."	The committees note the commenters' support for the change in terminology.
			We are grateful that the committees have included new language in rule 5.770(b)(2) incorporating the holding in *C.S. v. Superior Court(2018) 29 Cal.App.5th 1009 (C.S.). This amendment will helpfully remind the bench that in deciding a motion to transfer, it must make detailed findings and fully explain its reasoning for granting or denying the motion.* *However, we recommend using the language of C.S.*[FN 4*:* "[W]e hold that the foregoing principles require a juvenile court to clearly and explicitly 'articulate its evaluative process' by detailing 'how it weighed the evidence' and by 'identify[ing] the specific facts which persuaded the court' to reach its decision. ([In re] Pipinos [(1982)] 33 Cal.3d [189,]198.)" (C.S. v. Superior Court (2018) 29 Cal.App.5th at p. 1029.)] which is more exacting, and recommend modifying the proposed language, as follows: The court must state on the record the basis for its decision. It must clearly and explicitly articulate its evaluative process, by detailing how it weighed	The committees appreciate this suggestion and have adopted it in a modified form to reflect the language of the holding without redundancy to read: "The court must state on the record the basis for its decision, by explicitly articulating its evaluative process, detailing how it weighed the evidence, and identifying the specific factors on which the court relied to reach its decision."

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

	Commenter	Position	Comment	Committee Response
			the evidence and by identifying the specific facts which persuaded the court to reach its decision.	
			B. Implementation of the appellate provisions of section 801, creating rule 8.417 and amending rule 5.770 and several appellate rules. We agree with the Committees' proposed amendment of rules creating rule 8.417 and amending rule 5.770 and several appellate rules. We recommend a slight change to rule 5.770(d)(3) regarding advisement of rights after a finding that a youth should be transferred to criminal court jurisdiction. As now proposed, the rule does not advise of the right under rule 5.770(e)(2) to a stay of a transfer order pending appeal. We suggest adding that advisement, as follows: […] The court must advise the youth of the right to appeal, of the necessary steps and time for taking an appeal, the right to a stay, and of the right to the appointment of counsel if the youth is unable to retain counsel. We believe that adding this advisement would helpfully inform litigants at the earliest opportunity of the availability of a stay of a transfer order pending appeal.	The committees agree that the advisement should include the right to a stay and have modified the rule accordingly.
			C. Notice of Appeal—Juvenile We agree with the Committee's proposed modifications to the form JV-800 notice of appeal.	The committees appreciate the concern for comprehensive instructions but given that use of a referee is very uncommon and that all parties to

SPR 22-14

Appellate Procedure and Juvenile Law: Transfer of Jurisdiction to Criminal Court and Appeal from Transfer Orders

(Adopt Cal. Rules of Court, rule 8.417; amend rules 5.766, 5.768, 5.770, 8.50, 8.60, 8.63, 8.404, 8.406, 8.409, and 8.412; and revise forms JV-710 and JV-800)

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

	Commenter	Position	Comment	Committee Response
			We suggest modifications to the proposed instructions on page 20, specifying deadlines governing appeals from a referee's decision to transfer jurisdiction to the criminal court. We also suggest adding information about the availability of a stay of transfer orders. To appeal an order transferring jurisdiction to the criminal court, you must file the notice of appeal within 30 days. Read rules 5.770(g) and 8.406(a)(4). If the matter is heard by a referee not acting as a temporary judge, a notice of appeal must be filed within 30 days after the referee's order becomes final or after the denial of an application for rehearing of the referee's decision to transfer jurisdiction to the criminal court. Read rules 5.770(g) and 8.406(a)(4). You may ask for a stay of transfer proceedings pending the appeal. Read rule 5.770(e)(2). Specifying deadlines governing appeals from a referee's decision to transfer jurisdiction would avert filing errors and be consistent with the immediately-preceding section on ordinary appeals which specifies deadlines for matters heard by a referee. We believe that an advisement of the availability of a stay during the pendency of a transfer appeal would be helpful to litigants in light of the recentness of this rule.	these cases are represented by counsel the committees are not adding in this specific language on the timing when the case is heard by a referee because it will rarely apply and would make the instructions unnecessarily long. The committees concur that adding in the ability to request a stay is of value in most cases and have made this change to the form.
2	Orange County Bar Association	A	[No specific comment provided.]	No response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

SPR 22-14

Appellate Procedure and Juvenile Law: Transfer of Jurisdiction to Criminal Court and Appeal from Transfer Orders

(Adopt Cal. Rules of Court, rule 8.417; amend rules 5.766, 5.768, 5.770, 8.50, 8.60, 8.63, 8.404, 8.406, 8.409, and 8.412; and revise forms JV-710 and JV-800)

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

	Commenter	Position	Comment	Committee Response
	by Daniel S. Robinson, President			
3	Pacific Juvenile Defender Center by Marketa Sims, Executive Board Member	A	PJDC's Interest PJDC is a regional affiliate of the Washington, D.C. -based National Juvenile Defender Center (NJDC) (Recently renamed "the Gault Center.") PJDC provides support to more than 1600 juvenile trial lawyers, appellate counsel, law school clinical programs and non-profit law centers throughout California and across the country. PJDC works to improve the quality of legal representation for youth and promote the development of law and policies that increase the success of system involved youth and that reduce unnecessary confinement. PJDC is active in the Legislature and as amicus counsel before the California Courts of Appeal and the California Supreme Court.	The committees appreciate the expertise that PJDC brings to bear on this proposal.
			In response to the Judicial Council's Request for Specific Comments, PJDC comments as follows.	
			1. The proposal does appropriately address the stated purpose.	The committees appreciate the support for the proposal meeting its objectives.
			2. The new advisory committee comment to rule 8.404 is helpful because it clarifies that pursuant to Welfare & Institutions Code section 801(b), the minor has the right to a stay upon request and without further inquiry.	The committees appreciate this feedback.
			3. Proposed new rule 8.417(c) does appropriately specify the items to be included in the record on	The committees appreciate this insight and feedback.

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

	Commenter	Position	Comment	Committee Response
			appeal and does so broadly enough to make it clear that exhibits are to be included in the record, which is important given the often informal procedures in juvenile court.	
			4. Yes, in Los Angeles County, juvenile referees hear transfer motions in a capacity other than as a temporary judge. That is, juvenile referees routinely hear transfer motions without an express stipulation by the minor that the juvenile referee is acting as a temporary judge. Roughly a third of the juvenile bench officers are referees, who require a stipulation to act as a temporary judge. Since these bench officers in Los Angeles are "cross-designated" as both referees and temporary judges by blanket order, confusion often arises as to whether referees have purported to act as temporary judges without a proper stipulation. In Los Angeles, there is no regular procedure by the juvenile referees to obtain a stipulation to act as a temporary judge and the referees do not comply with Cal. Rule of Court, rule 2.816, requiring notice to the minor that the referee is acting as a temporary judge and notice that the minor has the right to have the transfer motion heard by a judge of the superior court. Further, juvenile referees have refused to respond when asked by minor's counsel to put on the record whether they are purporting to act as referees or temporary judges. Many referees also do not comply with Welfare & Institutions Code section 248(a), requiring a	The committees note that there appear to be some differences among the courts as to the use of referees in these proceedings, and agree that the rule should include the time for trial court review of a decision by a referee.

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

	Commenter	Position	Comment	Committee Response
			juvenile referee to provide the minor with written findings on the transfer order. As a result of this noncompliance with Cal. Rules of Court, rule 2.816 and Welfare & Institutions Code 248(a), whether the referee has acted as a referee or a temporary judge may, itself, be a contested issue, which should be resolved in the first instance by a superior court judge. Indeed, prior to the enactment of AB 624 the issue of the adequacy of notice by a juvenile referee of his intent to act as a temporary judge at a transfer hearing was raised by petition for writ of mandate in the court of appeal, but not resolved. Accordingly, in light of the widespread practice in Los Angeles County of referees hearing transfer motions, it is necessary to build in time for the minor to seek review of the transfer decision by a superior court judge pursuant to Welfare & Institutions Code section 252 in proposed rules of court 5.770(g) and 8.406(a.)	
			Additional Comments	
			1. PJDC suggests that Rule 5.770(b)(2) be further amended to clearly state the holding of C.S. v. Superior Court (2018) 29 Cal.App.5th that a trial judge considering a motion to transfer must make detailed findings and fully explain its reasoning for granting or denying the motion, as stated at p. 3 of the Invitation of the Comment. Specifically, PJDC suggests that the rule read:	The committees appreciate this suggestion and have adopted it in a modified form to reflect the language of the holding without redundancy to read: "The court must state on the record the basis for its decision, by explicitly articulating its evaluative process, detailing how it weighed the evidence, and identifying the specific factors on which the court relied to reach its decision."

SPR 22-14

Appellate Procedure and Juvenile Law: Transfer of Jurisdiction to Criminal Court and Appeal from Transfer Orders

(Adopt Cal. Rules of Court, rule 8.417; amend rules 5.766, 5.768, 5.770, 8.50, 8.60, 8.63, 8.404, 8.406, 8.409, and 8.412; and revise forms JV-710 and JV-800)

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

	Commenter	Position	Comment	Committee Response
			The youth should be transferred to the jurisdiction of the criminal court based on an evaluation of all of the criteria in section 707(a)(3) as provided in that section. The court must state on the record the basis for its decision, by explicitly articulating its evaluative process, detailing how it weighed the evidence, and identifying the specific factors on which the court relied to reach its decision.	
			2. PJDC further suggests that rule 5.770(d)(3) be amended to add "and the right to a stay" to the advisement the juvenile court gives to the youth upon a decision to transfer the youth's case for prosecution in adult court. This would ensure that both the youth and counsel are apprised that the youth has a right to a stay upon request. Thus the last line of the rule would read: The court must advise the youth of the right to appeal, of the necessary steps and time for taking an appeal, of the right to the appointment of counsel if the youth is unable to retain counsel, and the right to a stay.	The committees agree that it would be beneficial to include the right to a stay in the advisement and have modified the rule accordingly.
4	Superior Court of Los Angeles County by Bryan Borys,	A	Is the new advisory committee comment to rule 8.404 regarding stays helpful? Yes.	The committees appreciate this feedback.

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

SPR 22-14

Appellate Procedure and Juvenile Law: Transfer of Jurisdiction to Criminal Court and Appeal from Transfer Orders

(Adopt Cal. Rules of Court, rule 8.417; amend rules 5.766, 5.768, 5.770, 8.50, 8.60, 8.63, 8.404, 8.406, 8.409, and 8.412; and revise forms JV-710 and JV-800)

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

	Commenter	Position	Comment	Committee Response
			Does proposed new rule 8.417(c) appropriately specify the items to be included in the record on appeal? Yes.	The committees appreciate this feedback.
			Do juvenile referees hear transfer motions in a capacity other than as a temporary judge such that the rules need to include timing for review of their orders by a superior court judge, or can those provisions be removed from the rules? (See rules 5.770(g) and 8.406(a).) No, a referee does not hear transfer motions in a capacity other than a temporary judge.	The committees appreciate this information, but note that there are differences in practice among the courts as to whether referees always sit as temporary judges when hearing transfer motions. Therefore, the committees have kept the rule timing explicit on this point to ensure that there is enough time to seek a review by a judge of a referee's decision before filing a notice of appeal.
5	Superior Court Riverside County by Susan Ryan, Chief Deputy of Legal Services	A	Does the proposal appropriately address the stated purpose? Yes, the proposal seems to address the jurisdictional provisions of SB 1391 and the appellate issues from Section 801.	The committees appreciate the support for the proposal meeting its objectives.
			Is the new advisory committee comment to rule 8.404 regarding stays helpful? Yes, the comment is helpful.	The committees appreciate this feedback.
			Does the proposed new rule 8.417(c) appropriately specify the items to be included in the record on appeal? Yes, the new rule is helpful and provides specific items.	The committees appreciate this feedback.
			Do juvenile referees hear transfer motions in a capacity other than as a temporary	The committees appreciate this feedback and note that, while it does appear uncommon to have

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

	Commenter	Position	Comment	Committee Response
			judge such that the rules need to include timing for review of their orders by a superior court judge, or can those provisions be removed from the rules? (See rules 5.770(g) and 8.406(a)). This is not applicable to our court, as we do not have juvenile referees.	referees hear transfer motions, it may be the practice in some jurisdictions. Thus it would be unwise to remove the referee specific provisions of the rules.
			Would the proposal provide cost savings? If so, please quantify. No.	The committees note that no cost savings are likely.
			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? Some training for appeals staff would be necessary. New codes for the new JV-800 form would be needed. Court staff and judges would need to be made aware of the changes.	The committees have noted these likely impacts on the courts in their report to the council and note that they are largely a result of the change in the statute rather than the proposal itself.
			Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes	The committees note that the timing appears to be sufficient to allow for implementation of the proposal.
			How will would this proposal work in courts of different sizes? The changes seem minimal and should work for courts of any size.	The committees appreciate that the changes in the proposal which are designed to comply with the new appellate rights are not overly burdensome on courts of any size.

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

SPR 22-14

Appellate Procedure and Juvenile Law: Transfer of Jurisdiction to Criminal Court and Appeal from Transfer Orders

(Adopt Cal. Rules of Court, rule 8.417; amend rules 5.766, 5.768, 5.770, 8.50, 8.60, 8.63, 8.404, 8.406, 8.409, and 8.412; and revise forms JV-710 and JV-800)

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

	Commenter	Position	Comment	Committee Response
6	Superior Court of San Diego County by Mike Roddy, Court Executive Officer	AM	Does the proposal appropriately address the stated purpose? **Yes.**	The committees appreciate the support for the proposal meeting its objectives.
			Is the new advisory committee comment to rule 8.404 regarding stays helpful? **Yes. WIC 801 requires the stay if requested by the youth.**	The committees appreciate this feedback.
			Does proposed new rule 8.417(c) appropriately specify the items to be included in the record on appeal? **Yes.**	The committees appreciate this feedback.
			Do juvenile referees hear transfer motions in a capacity other than as a temporary judge such that the rules need to include timing for review of their orders by a superior court judge, or can those provisions be removed from the rules? (See rules 5.770(g) and 8.406(a).) **Referees do not hear transfer motions in San Diego County.**	The committees appreciate this feedback and note that while it does appear uncommon to have referees hear transfer motions, it may be the practice in some jurisdiction and thus it would be unwise to remove the referee specific provisions of the rules.
			Would the proposal provide cost savings? If so, please quantify. **No, but it is required to implement the new law.**	The committees note that no cost savings are likely and appreciate the recognition that the proposal is required to implement the law.
			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	The committees have noted these likely impacts on the courts in their report to the council.

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

SPR 22-14

Appellate Procedure and Juvenile Law: Transfer of Jurisdiction to Criminal Court and Appeal from Transfer Orders

(Adopt Cal. Rules of Court, rule 8.417; amend rules 5.766, 5.768, 5.770, 8.50, 8.60, 8.63, 8.404, 8.406, 8.409, and 8.412; and revise forms JV-710 and JV-800)

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

	Commenter	Position	Comment	Committee Response
			management systems, or modifying case management systems? **Train judicial officers and clerks, particularly the appeals clerks, on the new timelines and requirements. We may need some new minute order codes.**	
			Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? **Yes.**	The committees note that the timing appears to be sufficient to allow for implementation of the proposal.
			How well would this proposal work in courts of different sizes? **It should work in San Diego County.**	The committees appreciate that the changes in the proposal which are designed to comply with the new appellate rights are not overly burdensome on courts of any size.
			Other Comments **JV-800, item 7i:** It should read "juvenile justice" instead of "juvenile delinquency."	The committees appreciate this suggestion to update the terminology to reflect the preferred language of the council and have made this revision.
7	Superior Court of Stanislaus County by Sandy Almansa, Court Supervisor, Juvenile Dependency Division	A	Does the proposal appropriately address the stated purpose? Yes	The committees appreciate the support for the proposal meeting its objectives.
			Does proposed new rule 8.417(c) appropriately specify the items to be included in the record on appeal? Yes	The committees appreciate this feedback.
			Do juvenile referees hear transfer motions in a capacity other than as a temporary judge such that the rules need to include timing for review of their orders by a superior court judge, or can those	The committees appreciate this feedback and note that while it does appear uncommon to have referees hear transfer motions, it may be the practice in some jurisdictions and thus it would be

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

	Commenter	Position	Comment	Committee Response
			provisions be removed from the rules? (See rules 5.770(g) and 8.406(a).) Referees do not hear juvenile cases in this court.	unwise to remove the referee specific provisions of the rules.
			Would the proposal provide cost savings? If so, please quantify. No	The committees note that no cost savings are likely.
			What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? There will need to be significant procedural rewrites in the juvenile justice clerk's office and in the juvenile appellate clerk's assignments. Staffing for appellate clerks may need to be increased due to the expedited timeline (20 days for clerks/reporters transcripts) and expectation that the new rights will likely result in more appeals being filed, per page 5-"Fiscal and Operational Impacts." Both the expedited timeline and the new rights will increase the number of filings and decrease the time for the record to be filed in the Appellate Court. We will need to assign additional staff to be trained on juvenile delinquency appeals to be able to absorb the	The committees have noted these likely impacts on the courts in their report to the council. The committees also note that in terms of the workload for the expedited timeline the impact on any specific court is likely to be small as in 2020, only 25 transfer motions were granted statewide, and this is the pool of youth who would be eligible to seek appellate review under the new rule provisions.

	Commenter	Position	Comment	Committee Response
			increase in filings and the shortened time for filing.	
			Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Possibly	The committees have taken note of the uncertainty about the time required to implement the proposal and note that these cases are relatively uncommon statewide which should provide courts with some breathing room to implement without undue burden.
			How well would this proposal work in courts of different sizes? Unknown. In a court with limited resources, it could be difficult to manage the increased workload under expedited so it may impact staffing levels depending on the number of appeals filed.	The commitees appreciate that there is always uncertainty around the impact of procedural change, but as noted above, there were only 25 of these motions granted in 2020. Thus small courts are likely to have few if any of these appeals to manage.

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.:
For business meeting on: October __, 2022

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

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

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

Agenda Item Type
Action Required

Effective Date
January 1, 2023

Date of Report
June 7, 2022

Contact
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Executive Summary

To better align the length of time reporters' transcripts must be kept with the length of time they may be needed and to conform to a recent statutory change, the Appellate Advisory Committee recommends amending the rule regarding retention of Court of Appeal records. The amendments would extend the time the Court of Appeal must keep the original or an electronic copy of the reporter's transcript in cases affirming a felony conviction from 20 years to 75 years and reflect the statutory presumption that an original reporter's transcript is in electronic form, not paper form.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2023, amend rule 10.1028 of the California Rules of Court to:

1. Require the Court of Appeal to retain the original or an electronic copy of the reporter's transcript in cases affirming a felony conviction for 75 years; and

2. Reflect the statutory requirement that an original reporter's transcript must be in electronic form unless a specified exception allows for an original paper transcript.

The proposed amended rule is attached at pages 7–8.

Relevant Previous Council Action

Rule 10.1028 was originally adopted as rule 55 in 1975. It was renumbered as rule 70 effective January 1, 2005, and renumbered again as rule 10.1028 in 2007. Its provisions have been amended over the years, but none of those changes has bearing on this proposal. The 20-year retention time for reporters' transcripts in criminal cases has not changed since adoption.

Analysis/Rationale

This proposal is intended to achieve two main goals: improving access to justice for defendants who may need to obtain the reporter's transcript in their case more than 20 years after the conviction was upheld, and conforming the rule to Code of Civil Procedure section 271(a),[1] which no longer requires that the original transcript be in paper form.

Background

Rule 10.1028 governs the preservation and destruction of Court of Appeal 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 rule's current 20-year retention period is insufficient because it does not account for longer sentences or changes in felony sentencing laws. 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, and reporter's transcripts may be important to the issues raised. In addition, changes in felony sentencing laws, such as Senate Bill 1437,[2] which changed the law of felony murder and allows for resentencing, and 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 understands from the California Department of Justice, which has a longer retention schedule for reporter's transcripts, that litigants frequently request copies of reporters' transcripts in cases in which a criminal conviction was affirmed more than 20 years ago.

In spring 2020, the committee circulated for public comment a similar proposal that would have extended the retention period for felony appeals from 20 to 100 years. The feedback was

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

[2] Stats. 2018, ch. 1015.

[3] Voters passed Prop. 47, "The Safe Neighborhoods and Schools Act," on November 14, 2014; it went into effect the next day.

overwhelmingly positive but a Court of Appeal suggested modifications based on concerns about the practicality and cost of extending the retention time to 100 years for all felonies. The court noted that it is a minority of cases in which the reporter's transcript may be needed beyond 20 years and recommended that the committee reconsider the alternative of a tiered retention schedule in which the length of retention would be based on the length of the sentence. The court's cost concerns were based on the additional costs of storing paper transcripts for 80 more years. The committee withdrew the proposal to further consider these issues.

Time to keep reporters' transcripts

Having considered the court's concerns, the committee circulated a revised proposal and now recommends adding a provision to rule 10.1028(d) to extend the time for keeping the reporter's transcript in cases affirming a felony conviction from 20 years to 75 years. 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 75 years after the decision becomes final."[4]

This single retention time of 75 years would make transcripts available for the lifetime of most felony defendants and reduce the costs of the original 100-year proposal. The cost of storage, particularly of paper records, is still an area of concern, but the committee understands from the courts that electronic records have become much more common in the last couple of years and that this trend is expected to continue. In addition, courts have expressed interest in converting paper records to electronic format to reduce the amount of off-site storage space that is needed.

Statutory change

Prior to 2018, rule 10.1028 required the court to keep an original reporter's transcript, which, under the version of section 271 in effect at the time, had to be in paper form.[5] Effective January 1, 2018, rule 10.1028(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."

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[4] This invitation to comment also includes a question regarding the language, "in which a court affirms a judgment of conviction." Subdivision (d)(2) has included the language, "[i]n a criminal case in which the court affirms a judgment of conviction," since the rule was adopted. New subdivision (d)(3) narrows "criminal case" to "felony case." In light of the variation in dispositional orders and language, the question seeks comments on whether this language should be modified.

[5] Former section 271 authorized courts and parties to receive, on request, copies of reporters' transcripts in "computer-readable form."

Legislation repealing and replacing section 271 also 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 statutory change, the committee recommends amending rule 10.1028 to reflect the presumption that an original reporter's transcript is in electronic form and, if a statutory exception applies and the original transcript is on paper, to provide that the court may continue to keep either the paper original or a true and correct electronic copy.

Policy implications

This proposal furthers the Judicial Council's constitutional mandate to improve the administration of justice and, more specifically, its mission to increase access to justice, by ensuring that felony defendants can obtain a copy of the reporter's transcript in their case for as long as it might reasonably be required. It also implements a legislative change that reflects the ongoing modernization of the courts.

Comments

This proposal was circulated for public comment from April 1 to May 13, 2022, as part of the regular spring comment cycle. Four organizations and courts submitted comments on this proposal. Two commenters agreed with the proposal; one agreed if the proposal was modified; and one did not take a position but supported the proposal while cautioning that care be taken in storing electronic copies. A chart with the full text of the comments received and the committee's responses is attached at pages 9-14.

The Committee on Appellate Courts of the California Lawyers Association's Litigation Section (CAC) expressed support for extending the current 20-year retention period, but voiced concerns about courts' ability to retain accessible electronic copies of reporters' transcripts for 75 years. CAC described instances in which a trial court was unable to locate an electronic copy of a reporter's transcript, but (fortunately) had retained the paper copy. It also expressed concern about electronic files becoming corrupt over time. CAC recommended that before paper copies of the reporter's transcript are purged, the court should ensure that an electronic copy is being properly and accurately maintained in an accessible format.

The Orange County Bar Association, the Superior Court of Orange County, and the Superior Court of San Diego County responded to requests for specific comments on the proposed text of the rule. In response to whether the rule should use the term "certified" electronic copies rather than "original" and "copy," both superior courts supported that change while the bar association felt there was no need to change the text because the proposed language makes clear that the retained transcript in either form is true and correct. [Note to subcommittee: decision?]

The invitation to comment also requested comments on the language in subdivisions (d)(2) and (d)(3), "in which the court affirms a judgment of conviction." New subdivision (d)(3) is modeled on subdivision (d)(2), which has included the language, "[i]n a criminal case in which the court affirms a judgment of conviction," since the rule was adopted. The new language in (d)(3)

narrows "criminal case" to "felony case." To account for various possible dispositional orders and situations in which the appellate court does not "affirm" a conviction but the defendant may need that reporter's transcript in the future, the committee requested comments on whether this language should be deleted, modified in some way (e.g., to state "in which the court affirms a judgment of conviction, in whole or in part"), or retained as-is.

The bar association responded that no change is necessary; the current language iss sufficient to trigger retention. The Superior Court of San Diego approved of including "in whole or in part," and suggested deleting the word "judgment" as unnecessary. The Superior Court of Orange County opined that the language, whether modified or not, should be the same in (d)(2) and (d)(3). [Note to subcommittee: decision?]

Alternatives considered

The committee considered several alternatives. As in 2020, it rejected the option of taking no action because portions of the rule are based on a former version of section 271, and it is undisputed that a 20-year retention period is insufficient.

Originally, the committee considered proposing a retention time of 50 years rather than 100. The committee declined this option because 50 years might not be long enough in all cases. Upon reconsideration, the committee again concluded that 50 years was not enough time to ensure that all defendants who might need the reporter's transcript in their case would be able to access it.

The committee considered whether to propose extending the time for keeping the reporter's transcript only in cases involving certain sentences, such as 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 more than 20 years after a felony conviction is affirmed.

Also in 2020, 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. In addition, 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 would be simple and straightforward for the courts to implement but welcomed comments on these and other options.

Upon reconsideration of a graduated or tiered retention schedule for this proposal, including obtaining input from the courts, the committee again concluded that a single retention period for reporter's transcripts in all cases affirming a felony conviction would be preferable. A defendant's future need for a reporter's transcript does not necessarily align with the crime committed or the sentence imposed. Administering the retention and destruction of records, particularly paper transcripts, based on such a retention schedule would be complex and might

not yield significant savings. The committee also took into account the courts' interest in digitizing paper records to reduce storage costs.

Finally, the committee would like feedback regarding the proposed language in subdivision (d)(3), "in which the court affirms a judgment of conviction." This new subdivision is modeled on subdivision (d)(2), which has included the language, "[i]n a criminal case in which the court affirms a judgment of conviction," since the rule was adopted. The new language in (d)(3) narrows "criminal case" to "felony case." To account for various possible dispositional orders and situations in which the appellate court does not "affirm" a conviction but the defendant may need that reporter's transcript in the future, the committee is requesting comments on whether this language should be deleted, modified in some way (e.g., to state "in which the court affirms a judgment of conviction, in whole or in part"), or retained as-is.

Fiscal and Operational Impacts

This proposal would require the Courts of Appeal to change their record retention policies and procedures for reporters' transcripts in the identified cases. Education and training of staff would also be required. As of January 1, 2023, all reporter's transcripts are required by Code of Civil Procedure section 271 to be in electronic form unless a party requests paper, and courts report that electronic filing has become much more prevalent in recent years. The cost of storage of electronic records is a fraction of the cost of storing paper, and courts are looking into converting existing paper records to electronic form to reduce storage costs going forward. Despite the fiscal impacts, the committee believes that the benefits of the proposal—safeguarding defendants' rights to avail themselves of changes in the law or other remedies, and thereby improving access to justice—outweigh its potential cost to the courts.

The Superior Court of Orange County addressed implementation issues, observing that the workload would appear to fall primarily certain groups of staff including Records Management. The court also noted that ensuring data storage space, indexing, and auditing of images would be of primary concern if transcripts are to be kept separate from the electronic case file.

Attachments and Links

1. Cal. Rules of Court, rule 10.1028
2. Chart of comments

Rule 10.1028 of the California Rules of Court would be amended, effective January 1, 2023, 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 75 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.

SPR22-03

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

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

	Commenter	Position	Comment	Committee Response
1.	California Lawyers Association by Dean A. Bochner, Chair Committee on Appellate Courts	NI	I write on behalf of the Committee on Appellate Courts of the California Lawyers Association's Litigation Section ("CAC") to offer the following comments on the Appellate Advisory Committee's recent proposals (1) to update language referring to persons with disabilities in several court rules and in a form (SPR22–02) and (2) to extend the time the Court of Appeal must retain the reporter's transcript in cases affirming a felony conviction from 20 years to 75 years (SPR22–03). CAC consists of appellate practitioners and court staff, drawn from a wide range of practice areas, from across the state. As part of its mission, CAC frequently shares its views regarding proposals to change rules that govern appellate practice. …. CAC also supports SPR22-03, which would extend the time the Court of Appeal must retain the reporter's transcript in cases affirming a felony conviction from 20 years to 75 years. We agree that the current 20-year retention period is insufficient in cases involving serious felony convictions and longer sentences, and we believe that this proposal will improve access to justice for those defendants who may need to obtain the reporter's transcript in their case more than 20 years after their conviction was affirmed.	The committee notes the commenter's support for the proposal and appreciates the information on CAC's perspective and role in the legal community. The committee appreciates these comments in support of the rule amendment.

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

SPR22-03

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

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

	Commenter	Position	Comment	Committee Response
			We have concerns, however, about the ability of courts to retain accessible electronic copies of the reporter's transcript for 75 years. Some of our members have seen instances in which a trial court was unable to locate an electronic copy of a reporter's transcript, but fortunately the court had retained the paper copy. We are also concerned that some electronic files could become corrupt over time. Retaining these transcripts in an accessible format is critical for preserving the appellate rights of criminal defendants. Before paper copies of the reporter's transcript are purged, the court should ensure that an electronic copy is being properly and accurately maintained in an accessible format. Thank you for giving us the opportunity to comment on these proposals.	The committee appreciates the commenter's concerns about ensuring that an electronic copy of a transcript is properly maintained and accessible before a paper transcript is purged. This feedback will be noted in the report to the Judicial Council.
2.	Orange County Bar Association by Daniel S. Robinson President	A	**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 proposal does appropriately address the stated purpose. **• Should reporters' transcripts in particular types of cases (e.g., conviction of first- degree murder or sentence of life without the possibility of parole) be retained permanently?** No, the proposed 75 year retention period realistically should be sufficient even for LWOP	The committee notes the commenter's support for the proposal and appreciates the responses to its request for specific comments. No response required. The committee agrees with the commenter.

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

	Commenter	Position	Comment	Committee Response
			cases. Permanent retention makes sense only for future historical review after the death of an individual. **• Should the text of the rule reflect the current practice of court reporters to mark electronic reporters' transcripts "certified" rather than "original" and "copy"?** No need to change the text as the current proffered language makes clear that the retained transcript in either form is true and accurate. **• Should the subdivision (d)(3) language, "in which the court affirms a judgment of conviction," be deleted or modified (e.g., to state "in which the court affirms a judgment of conviction, in whole or in part")? Should the same language in subdivision (d)(2) be modified?** No, the current language is sufficient to trigger retention.	Note to subcommittee: Agree? Note to subcommittee: Agree?
3.	Superior Court of Orange County by Iyana Doherty Courtroom Operations Supervisor	A	Transcripts should be retained permanently on all transcripts. California's laws are constantly revised, and new laws are created. A party should be able to request transcripts to assist them in their motion/petition at any time. The search for transcripts will no longer take countless hours. A certified electronic transcript is an excellent adjective, since court reporters certify that their record is true and accurate copy. For consistency of the procedure and records retention, we suggest both subdivisions (d)(3) and (d)(2) read the same.	The committee notes the commenter's support for the proposal, but disagrees with requiring permanent retention of all transcripts. The committee believes that a 75-year retention time balances defendants' need for a transcript and courts' cost concerns. Response? Response?

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

SPR22-03

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

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

	Commenter	Position	Comment	Committee Response
			The reporters' transcripts in electronic form are cost savings. The average cost of a box of paper is $63.07, and the average price of a USB drive, ten pack, 32GB is $52.78. A reporter's transcript includes copy paper that must not exceed 300 pages, cardstock paper for the front and back of the book, and fastener prongs to hold the volume together. The cost-saving measure will also include less printer ink and wear and tear. Leaving the transcripts in an electronic form instead of making volumes would save time for the reporter. The Court of Appeals would not have to buy or lease storage space to retain the paper record. Resources would not have to be spent storing the transcripts, retrieving the transcripts, and making extra copies of the transcripts.	The committee appreciates this feedback on the savings in cost and time that can be realized from retaining electronic transcripts rather than paper transcripts.
			Implementing the workload would appear to fall primarily on CTS and Records Management staff. Unsure of the Appellate current imaging practices, but ensuring data storage space, indexing, and auditing of images would be of primary concern if transcripts are to be kept separate from the electronic case file.	The committee appreciates the commenter's feedback on implementation issues.
			3 months would be sufficient. It is easier to eliminate processes than to implement new ones.	No response required.
			This might be a bigger challenge for courts that retain paper records.	No response required.

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

SPR22-03

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

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

	Commenter	Position	Comment	Committee Response
4.	Superior Court of San Diego County by Mike Roddy Executive Officer	AM	• Does the proposal appropriately address the stated purpose? **Yes.** • Should reporters' transcripts in particular types of cases (e.g., conviction of first degree murder or sentence of life without the possibility of parole) be retained permanently? **No. It is highly unlikely these would be needed beyond the 75 years.** • Should the text of the rule reflect the current practice of court reporters to mark electronic reporters' transcripts "certified" rather than "original" and "copy"? **Yes.** • Should the subdivision (d)(3) language, "in which the court affirms a judgment of conviction," be deleted or modified (e.g., to state "in which the court affirms a judgment of conviction, in whole or in part")? Should the same language in subdivision (d)(2) be modified? **Yes. Including "in whole or in part" would be helpful. In addition, it may not be necessary to include the term "judgment." Since the terms "judgment" and "sentence" are generally considered "synonymous" "there is no 'judgment of conviction' without a sentence [Citation omitted]." (*People v. McKenzie* (2020) 9 Cal.5th 40, 46.) But, it would seem the rule is intended to apply anytime a conviction is affirmed (even if the sentence is vacated and the case remanded for re-sentencing). It seems unnecessary to include the term "judgment" in the rule.**	The committee notes the commenter's support for the proposal if it is modified and appreciates the responses to the requests for specific comments. The committee agrees with the commenter. Response? Response? Delete the word "judgment"?

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

SPR22-03

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

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	Commenter	Position	Comment	Committee Response
			The advisory committee also seeks comments from courts on the following cost and implementation matters: • Would the proposal provide cost savings? If so, please quantify. **No.** • What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? **Unknown.** • Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? **Unknown.** • How well would this proposal work in courts of different sizes? **Unknown.** No additional Comments.	The committee notes the commenter's opinion that the rule change will not provide cost savings. No response required. No response required. No response required.
5.				
6.				

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