



JUDICIAL COUNCIL OF CALIFORNIA

APPELLATE ADVISORY
COMMITTEE

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APPELLATE ADVISORY COMMITTEE 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: October 28, 2022
Time: 1:30 PM
Public Livestream: <https://jcc.granicus.com/player/event/2049> (Audio/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 October 27 at 1:30 p.m. will be provided to advisory body members prior to the start of the meeting.

III. DISCUSSION AND POSSIBLE ACTION ITEMS (ITEMS 1-2)

Item 1

Costs on Appeal (Action Required)

Consider draft invitation to comment on proposal to clarify rules 8.278 and 8.891.

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

Item 2

Reporter's Transcripts (Action Required)

Consider draft invitation to comment on proposal to amend rules regarding the format of reporter's transcripts and borrowing the record on appeal.

Presenters: Hon. Louis R. Mauro, Ms. Heather Anderson

IV. ADJOURNMENT

Adjourn

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INVITATION TO COMMENT

W22-__

Title	Action Requested
Appellate Procedure: Costs on Appeal	Review and submit comments by January 20, 2023
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rules 8.278 and 8.891	September 1, 2023
Proposed by	Contact
Appellate Advisory Committee Hon. Louis R. Mauro, Chair	Christy Simons, 415-865-7694 christy.simons@jud.ca.gov

Executive Summary and Origin

The Appellate Advisory Committee proposes amending the rules governing costs on appeal in civil actions to clarify that the general rule for awarding costs to the prevailing party is subject to exception for statutes requiring a different or additional finding, determination, or analysis. The proposal is responsive to a recent Supreme Court decision and the constitutional principle that rules of court may not be inconsistent with statute.

Background

Rule 8.278 regarding costs on appeal in unlimited civil cases was adopted effective January 1, 2008. It was amended in 2013, 2016, and 2018, but none of those amendments has bearing on this proposal. The award-of-costs provisions in subdivision (a) have not been amended since adoption.

Similarly, rule 8.891 regarding costs on appeal in limited civil cases was adopted effective January 1, 2009. It was amended in 2011 and 2013, but these amendments are not relevant to this proposal. The rule's right-to-costs provisions in subdivision (a) have not been amended since adoption.

The Proposal

Under rule 8.278, in a civil case other than a juvenile case, the prevailing party in the Court of Appeal is entitled to costs: "Except as provided in this rule, the party prevailing in the Court of Appeal in a civil case other than a juvenile case is entitled to costs on appeal." (Rule

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

8.278(a)(1).) The rule also defines prevailing party and allows the court to award costs in its discretion. (Rule 8.278(a).)

However, the rule does not account for statutes that require a different or additional finding, determination, or analysis before awarding costs on appeal. For example, in *Pollock v. Tri-Modal Distribution Services* (2021) 11 Cal.5th 918 (*Pollock*), the Supreme Court addressed whether costs on appeal in a case under the Fair Employment and Housing Act (Gov. Code, § 12900 et seq.) (FEHA) were governed by rule 8.278(a) or by section 12965(c), the FEHA provision that authorizes the recovery of fees and costs. Under the statute, the court, in its discretion, may award reasonable fees and costs “to the prevailing party ... except that ... a prevailing defendant shall not be awarded fees and costs unless the court finds the action was frivolous, unreasonable, or groundless when brought, or the plaintiff continued to litigate after it clearly became so.” (*Id.*, § 12965(c)(6).) In *Pollock*, the lower court awarded fees and costs on appeal under rule 8.278 to the prevailing defendant under rule 8.278; it made no additional findings.

In reversing the award of fees and costs, the Supreme Court found the statute was not limited to proceedings in the trial court, either by its terms or its legislative intent to encourage litigation of potentially meritorious claims. The court also rejected the argument that rule 8.278 should control because it “does not include the phrase ‘except as otherwise expressly provided by statute.’” (*Ibid.*) “[E]ven without such language,” the court stated, “a rule of court must yield to an applicable statute when it conflicts with either the statute’s express language or its underlying legislative intent.” (*Ibid.*, citations omitted; Cal. Const., art. VI, § 6, subd. (d) [rules adopted by the Judicial Council “shall not be inconsistent with statute”].) “Section 12965(b) expressly governs ‘the court’ in FEHA actions without limitation, and allowing an award of costs on appeal to a prevailing defendant without a finding that the plaintiff’s action was objectively groundless would undermine the statute’s purpose.” (*Ibid.*)

The Appellate Advisory Committee proposes amending rule 8.278 to clarify that the general rule for awarding costs on appeal to the prevailing party is subject to exception for statutory provisions that require the court to conduct a different or additional finding, determination, or analysis.

The parallel rule regarding entitlement to costs in limited civil actions in the appellate division provides: “Except as provided in this rule, the prevailing party in a civil appeal is entitled to costs on appeal.” (Rule 8.891(a)(1).) The committee proposes similar amendments to this rule and requests comments on whether such amendments to this or other appellate rules regarding costs would be helpful.

Alternatives Considered

The committee considered taking no action, but rejected this option in favor of clarifying the rule to provide additional guidance to appellate courts in addressing claims for costs.

Fiscal and Operational Impacts

This proposal would impose no implementation requirements on the courts, including no possible fiscal or operational impacts, other than making judicial officers aware of the changes. It is not expected to result in any costs to the courts.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Should the proposal include amending rule 8.891?
- Are there any other appellate rules pertaining to costs that should be similarly amended?

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

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

Attachments and Links

1. Cal. Rules of Court, rules 8.278 and 8.891, at pages 4-5

Rules 8.278 and 8.891 of the California Rules of Court would be amended, effective September 1, 2023, to read:

1 **Rule 8.278. Costs on appeal**

2
3 **(a) Award of costs**

- 4
5 (1) Except as provided in this rule or [as otherwise expressly provided] by
6 statute, the party prevailing in the Court of Appeal in a civil case other than a
7 juvenile case is entitled to costs on appeal.
8
9 (2) The prevailing party is the respondent if the Court of Appeal affirms the
10 judgment without modification or dismisses the appeal. The prevailing party
11 is the appellant if the court reverses the judgment in its entirety.
12
13 (3) If the Court of Appeal reverses the judgment in part or modifies it, or if there
14 is more than one notice of appeal, the opinion must specify the award or
15 denial of costs.
16
17 (4) In probate cases, the prevailing party must be awarded costs unless the Court
18 of Appeal orders otherwise, but the superior court must decide who will pay
19 the award.
20
21 (5) In the interests of justice, the Court of Appeal may also award or deny costs
22 as it deems proper.
23

24 **(b)–(d) * * ***

25
26 **Advisory Committee Comment**

27
28 This rule is not intended to expand the categories of appeals subject to the award of costs. See
29 rule 8.493 for provisions addressing costs in writ proceedings.
30

31 **Subdivision (a).** The subdivision (a)(1) exception to the general rule of awarding costs to the
32 prevailing party for statutes that require further analysis or findings reflects the holding of *Pollock*
33 *v. Tri-Modal Distribution Services, Inc.* 11 Cal.5th 918 (2021) (regarding costs on appeal in a
34 FEHA action) and the constitutional mandate that rules of court “shall not be inconsistent with
35 statute” (Cal. Const., art. VI, § 6, subd. (d)).
36

37 **Subdivision (c).** Subdivision (c)(2) provides the procedure for a party to move in the trial court to
38 strike or tax costs that another party has claimed under subdivision (c)(1). It is not intended that
39 the trial court’s authority to strike or tax unreasonable costs be limited by any failure of the
40 moving party to move for sanctions in the Court of Appeal under rule 8.276; a party may seek to
41 strike or tax costs on the ground that an opponent included unnecessary materials in the record
42 even if the party did not move the Court of Appeal to sanction the opponent under that rule.

1 **Subdivision (d).** Subdivision (d)(1)(B) is intended to refer not only to a normal record prepared
2 by the clerk and the reporter under rules 8.122 and 8.130 but also, for example, to an appendix
3 prepared by a party under rule 8.124 and to a superior court file to which the parties stipulate
4 under rule 8.128.

5
6 Subdivision (d)(1)(D), allowing recovery of the “costs to notarize, serve, mail, and file the record,
7 briefs, and other papers,” is intended to include fees charged by electronic filing service providers
8 for electronic filing and service of documents.

9
10 “Net interest expenses” in subdivisions (d)(1)(F) and (G) means the interest expenses incurred to
11 borrow the funds that are deposited minus any interest earned by the borrower on those funds
12 while they are on deposit.

13 14 **Rule 8.891. Costs and sanctions in civil appeals**

15 16 **(a) Right to costs**

- 17
18 (1) Except as provided in this rule or [as otherwise expressly provided] by
19 statute, the prevailing party in a civil appeal is entitled to costs on appeal.
20
21 (2) The prevailing party is the respondent if the appellate division affirms the
22 judgment without modification or dismisses the appeal. The prevailing party
23 is the appellant if the appellate division reverses the judgment in its entirety.
24
25 (3) If the appellate division reverses the judgment in part or modifies it, or if
26 there is more than one notice of appeal, the appellate division must specify
27 the award or denial of costs in its decision.
28
29 (4) In the interests of justice, the appellate division may also award or deny costs
30 as it deems proper.

31
32 **(b)–(e) * * ***

33 34 **Advisory Committee Comment**

35
36 **Subdivision (d).** “Net interest expenses” in subdivisions (d)(1)(F) and (G) means the interest
37 expenses incurred to borrow the funds that are deposited minus any interest earned by the
38 borrower on those funds while they are on deposit.

39
40 Subdivision (d)(1)(D), allowing recovery of the “costs to notarize, serve, mail, and file the record,
41 briefs, and other papers,” is intended to include fees charged by electronic filing service providers
42 for electronic filing and service of documents.



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MEMORANDUM

Date October 20, 2022	Action Requested Please review
To Members of the Appellate Advisory Committee	Deadline October 28, 2022
From Heather Anderson Attorney, Legal Services	Contact Heather Anderson 415-865-7803 phone heather.anderson@jud.ca.gov
Subject Possible amendments to rules relating to reporter's transcripts.	Christy Simons 415-865-7694 phone christy.simons@jud.ca.gov

Introduction

Item 1 on the committee's 2021-2022 annual agenda is a project to update rules regarding reporter's transcripts. This project, which the annual agenda identifies as a priority 1 project, involves considering suggestions for amendments to 12 rules submitted to the committee by the California Court Reporters Association (CCRA). This memo discusses these suggested amendments. A draft invitation to comment for possible circulation in the winter cycle is attached for the committee's consideration.

Background

Code of Civil Procedure section 271

Code of Civil Procedure section 271 (section 271) regarding reporter's transcripts was repealed and replaced effective January 1, 2018. The modifications to this section included changing the

default form for original reporter's transcripts from paper to electronic. As amended, the statute requires a court reporter to "deliver a transcript in electronic form, in compliance with the California Rules of Court, to any court, party, or person entitled to the transcript," unless one of three specified exceptions apply:

- The party or person entitled to the transcript requests the reporter's transcript in paper form;
- Prior to January 1, 2023, a court that lacks the technical ability to use or store a transcript in electronic form and provides notice to the court reporter; and
- Prior to January 1, 2023, a court reporter who lacks the technical ability to deliver a transcript in electronic form and provides advance notice of this fact to the court, party, or person entitled to the transcript. (Section 271(a).)

Based on a suggestion from CCRA, to make the rules consistent with this statutory change, the Appellate Advisory Committee proposed amendments to rule 8.144 regarding the format of the record on appeal to incorporate requirements for reporter's transcripts that are delivered in electronic form. Effective January 1, 2018, the Judicial Council approved these changes to rule 8.144.

CCRA's new suggested rule amendments

In late September 2020, Cara Foster, Secretary/Treasurer of the CCRA, submitted suggested amendments to 12 rules to facilitate the use of electronic reporter's transcripts in accordance with section 271. Since this proposal was received after the committee had submitted its 2020-2021 annual agenda for approval, the proposal was subsequently considered, recommended, and approved for inclusion in the committee's annual agenda for 2021-2022.

Staff Analysis of CCRA's Suggested Amendments

This section of the memo provides staff's analysis and recommendations regarding the rule amendments suggested by CCRA. The draft invitation to comment incorporates either the language suggested by CCRA or staff drafts of alternative rule amendment language for all those rule changes that staff recommends the committee consider. The invitation to comment also includes additional rule changes not suggested by CCRA, but presented by staff for the committee's consideration, shown in blue brackets.

Allowing court reporters to send electronic transcripts to the reviewing court and parties

Summary of CCRA suggestion

CCRA has suggested that 9 rules which require the trial court to send the reporter's transcript to the reviewing court and the parties (rules 8.123, 8.130, 8.150, 8.336, 8.395, 8.456, 8.616, 8.619, and 8.922) be amended to provide that if the trial court lacks the technical ability to send

reporter's transcripts in electronic format, the court reporter is authorized to do so. CCRA provided the following explanation for this suggestion:

Background:

Currently there are courts in California that will not allow electronic transcripts because they state they do not have the ability to accept, file and deliver the transcripts to the reviewing court, appellants and parties. Allowing the reporter to send the transcript directly to the reviewing court or appellants would allow the reviewing court to obtain electronic transcripts now while the courts get up and running with their new DMS systems.

Proposed fixes:

CCRA proposes to add wording to [applicable section] so when the court is unable to send the transcript in compliance with CCP 271 the court reporter may.

Staff analysis and recommendation

Based on the information outlined below, it does not appear that the amendments to these rules suggested by CCRA are necessary at this time and staff does not recommend including them in the committee's proposal.

As noted above, under Code of Civil Procedure 271, the default form for a reporter's transcript is electronic, but an exception allows courts to request a transcript in paper form through the end of 2022. Based on the explanation provided by CCRA, it appears that the amendments suggested by CCRA were intended to provide a mechanism for getting electronic transcripts to the reviewing courts and parties during the period before this exception for the courts expires.

If the committee includes these rule amendments in a proposal for the winter cycle, the amendments would not take effect until September 2023, well after Code of Civil Procedure 271's exception for courts expires. It is also the committee's understanding that trial courts now have tools available to them to handle reporter's transcripts delivered to them in electronic form. Finally, two of the rules CCRA suggests be amended in this way, rules 8.816 and 8.619, relating to the record in death penalty appeals, have required that court reporters deliver transcripts in electronic form since April 25, 2019 and therefore there does not appear to be any need for the suggested amendment to these two rules.

Related issues for the committee's possible consideration

Neither section 271 nor the rules currently address the mechanism/medium for filing/delivery to the trial court of reporter's transcript in electronic form. Rules 8.613, 8.816 and 8.619, relating to the record in death penalty appeals, which all currently require that reporter's transcripts be prepared in electronic form, simply refer to these transcripts being delivered.

There are several possibilities for the mechanism/medium for filing/delivery of reporter's transcripts in electronic form, including:

- It is staff's understanding that the system used by many court reporters to produce transcripts (YesLaw) utilizes a website from which transcripts may be downloaded.
- Court reporters can electronically file transcripts in some courts and some cases.¹
- Transcripts in electronic form could be filed/delivered on CD, thumb drive, or other storage medium.

Given the diversity of mechanism/medium for filing/delivery of reporter's transcripts in electronic form and the potentially different capabilities/preferences of trial courts, this may be an issue that should not be addressed in a statewide rule, but instead be left to each trial court to address. Alternatively, the committee could consider asking a question about this issue in the invitation to comment.

Adding references to section 271 to several rules

Summary of CCRA suggestion

CCRA has suggested that 3 rules that address reporter's transcripts (8.130, 8.336, and 8.456) be amended to add references to section 271. CCRA provided the following explanation for this suggestion:

Proposed fixes:

CCRA proposes to add wording to [applicable section] to follow the requirements of CCP 271 of sending the certified transcript electronically.

Staff analysis and recommendation

Because the rules relating to the format of reporter's transcripts already include a cross-reference to section 271, it does not appear that the amendments to these rules suggested by CCRA are necessary and staff does not recommend including them in the committee's proposal. However, staff does recommend that the committee consider clarifying amendments to rules 8.456, 8.838, 8.866, and 8.919.

Rule 8.144 establishes the general requirements for the format of reporter's transcripts in civil appeals to the Court of Appeal. Through cross-references in rules 8.336(f), 8.395(g), 8.409(b), 8.610(d), 8.838(a), 8.866(b), and 8.919(b), these format requirements also apply to reporter's transcripts in criminal appeals to the Court of Appeal, appeals from superior court decisions in

¹ Under Code of Civil Procedure section 1010.6(b), courts are permitted but not required to implement e-filing. The Judicial Council's last report to the Legislature regarding the status of eservice and e-filing in the trial courts, submitted in December 2021, indicated that 43 percent (25) of the trial courts did not provide public electronic services and several of those that provide such services did not do so in all case types.

death penalty-related habeas corpus proceedings, in juvenile appeals, in capital appeals to the Supreme Court, and in appeals to the appellate division, respectively. Rule 8.144(a) already includes a cross-reference to section 271, stating that: “The provisions of this rule must be applied in a manner consistent with Code of Civil Procedure section 271.” Further additions of references to section 271 in rules 8.130, 8.336, and 8.456 therefore do not seem necessary.

Related issues for the committee’s possible consideration

Subdivision (e)(4) of rules 8.452 and 8.456 addresses how parties making motions to augment the record in certain juvenile writ proceedings are supposed to identify an item that they want included in the record when they do not have a copy of the item to attach to the augmentation motion. The rules require that “the party must identify it as required under rules 8.122 and 8.130.” Rule 8.130 establishes the procedures for designating, paying for, and preparing reporter’s transcripts in civil appeals to the Court of Appeal. Rule 8.130(a)(1) provides that a notice designating a reporter’s transcript “must specify the date of each proceeding to be included in the transcript and may specify portions of designated proceedings that are not to be included.”² Similarly, rule 8.122(a)(1) provides that a notice designating a clerk’s transcript “must identify each designated document by its title and filing date or, if the filing date is not available, the date it was signed.” Because both rules 8.122 and 8.130 are long and complex, it might be less confusing and more helpful to rule users if rules 8.452(e)(4) and 8.456(e)(4) provide cross-references to the specific relevant subdivisions of these rules. Staff therefore recommends that the committee consider proposing amendments to rules 8.452(e)(4) and 8.456(e)(4) to add such pinpoint cross-references. These possible rule amendments are shown in brackets in the attached draft invitation to comment.

Rule 8.838 addresses the format for reporter’s transcripts in appeals to the superior court appellate division in limited civil cases. The bulk of the format requirements are established by cross-referencing rule 8.144, discussed above. However, because there are some differences in the format requirements for transcripts in the Court of Appeal and the appellate division, including that courts may require, by local rule, that transcripts be bound along the top rather than the side, rule 8.838(a) only cross-references certain subdivisions of rule 8.144:

(a) Paper and format

Except as otherwise provided in this rule, clerk's and reporter's transcripts must comply with the requirements of rule 8.144(b)(1)-(4), (c), and (d).

² *Appellant’s Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) includes even more information about how to identify proceedings to be included in a reporter’s transcript : “You must identify each proceeding that you want included by its date, the department in which it took place, a description of the proceedings (for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions), the name of the court reporter who recorded the proceedings (if known)”.

These cross-references currently do not encompass rule 8.144(a), which, as discussed above, requires that “[t]he provisions of this rule must be applied in a manner consistent with Code of Civil Procedure section 271.” There does not appear to be a policy reason that section 271 should not apply to reporter’s transcripts in the appellate division. Note that rules 8.866(b) and 8.919(b), which address the format of reporter’s transcripts in misdemeanor and infraction appeals to the superior court appellate division, simply require that “The reporter's transcript must comply with rule 8.144.” Staff therefore recommends that the committee consider proposing an amendment to rule 8.838 to apply rule 8.144(a) in appeals of limited civil cases, thereby clarifying that section 271 governs reporter’s transcripts in these appeals as well. This possible rule amendment is shown in brackets in the attached draft invitation to comment.

As noted above, 8.866(b) and 8.919(b), which address the format of reporter’s transcripts in misdemeanor and infraction appeals to the superior court appellate division, simply apply all of the format requirements in rule 8.144. This means that these rules do not currently incorporate the exceptions to the format requirements of rule 8.144 that are embodied in rule 8.838, such as the authorization for courts to require, by local rule, that transcripts in misdemeanor and infraction appeals to be bound at the top. If courts want the format variations in rule 8.838 to apply in misdemeanor and infraction appeals, the committee may want to consider proposing amendments to rules 8.866(b) and 8.919(b) to replace the reference to rule 8.144 with a reference to rule 8.838. These possible rule amendments are shown in brackets in the attached draft invitation to comment.

Format requirements for certified transcripts submitted in lieu of a deposit for a reporter’s transcript

Summary of CCRA suggestion

CCRA has suggested that rule 8.130, which, as noted above, establishes procedures relating to designating, paying for, and preparing reporter’s transcripts in civil appeals to the Court of Appeal, be amended to require that the trial court reject a certified transcript that a party submits in lieu of making a deposit for a reporter’s transcript if the format of the certified transcript submitted does not conform with the requirements of rule 8.144. CCRA provided the following explanation for this suggestion:

Currently some courts in California accept a certified transcript from a party knowing that the transcript does not comply with CRC 8.144. When the court accepts a transcript that does not comply, the court places the burden to fix such transcripts on the reporter even though that reporter did not certify all included transcripts.

CCRA proposes to add wording to (b)(3)(C) to clear up the confusion that when a party files a certified transcript that it must comply with CRC 8.144 upon receipt of the court and if requirements have not been met that the court must reject the transcript.

Staff analysis and recommendation

CCRA is correct that the intent of rule 8.130 is that the party submitting a transcript in lieu of a deposit for a reporter's transcript is responsible for ensuring that the transcript complies with the format requirements of rule 8.144. Staff therefore recommends that the committee consider proposing amendments to rule 8.130, and several other rules that include similar provisions, to clarify this intent. The language of the amendments included in the attached draft invitation to comment is different from that suggested by CCRA, but is intended to accomplish CCRA's stated goal.

Under rule 8.130, appellants who wish to use a reporter's transcript must designate which of the oral proceedings from the trial court they want included in the reporter's transcript. Respondents may then designate additional proceedings to be included in the transcript. Rule 8.130(b) requires that, with its notice designating proceedings to be included in a reporter's transcript, each designating party must deposit with the superior court clerk the approximate cost of transcribing the proceedings it designates or one of the substitutes for this deposit permitted by 8.130(b)(3).

In recognition of the fact that, during the trial court proceedings, parties may already have purchased the transcripts that they need for an appeal, under rule 8.130(b)(3)(C), one of the permissible substitutes for a deposit of the cost of transcribing the designated proceeding is the deposit of a certified transcript of all the proceedings designated by the party. Similar provisions also appear in rules 8.834, 8.866, and 8.919, relating to reporter's transcripts in appeals to the superior court appellate division in civil, misdemeanor, and infraction cases, respectively.

Rules 8.130, 8.834, 8.866, and 8.919 all require that a certified reporter's transcript submitted in lieu of depositing the cost for transcribing designated proceedings must comply with the formatting requirements of rule 8.144. Among other things, rule 8.144 requires that:

- The pages in reporter's transcripts be consecutively numbered;
- The cover of each volume identify the page numbers within that volume and the case name, number, and appellate counsel contact information; and
- The transcript include chronological and alphabetical indexes to the entire reporter's transcript.

Transcripts prepared during the trial court proceedings cannot not comply with some or all of these format requirements. For example, the appellate counsel contact information will not be known during the trial and so will not be on the cover of a transcript produced during the trial. In addition, anytime there is more than one transcript produced during the trial, these transcripts

will be separately paginated and indexed. To comply with rules 8.130, 8.834, 8.866, and 8.919, therefore, such certified transcripts submitted in lieu of a deposit must typically be re-paginated and new covers and indexes created.

The advisory committee comment to rule 8.130 makes clear that the intent of subdivision (b) is that certified transcripts submitted by a party only be accepted by a court as a substitute for a deposit if these transcripts meet the format requirements of rule 8.144:

[S]ubdivision (b) makes clear that the certified transcript may be filed in lieu of a deposit for the transcript only where the certified transcript contains all of the proceedings identified in the notice of designation and the transcript complies with the format requirements of rule 8.144.

Furthermore, the committee’s 2013 report to the Judicial Council that recommended adoption of this requirement states that this requirement would “clearly place responsibility on the designating party for ensuring that such transcripts are in the proper format.”³

Parties who wish to utilize this exception to the deposit procedure can choose to enter into an agreement with a court reporter to make the necessary changes to bring transcripts produced during a trial into compliance with rule 8.144. However, absent such an agreement, when a party uses certified transcripts in lieu of making a deposit for a transcript, the court reporters receive no compensation beyond what they were previously paid for the preparation of the original certified transcripts during the trial. Court reporters should therefore not be asked to undertake the work of modifying the transcripts submitted by a party in lieu of making a deposit absent such an agreement.

To avoid problems in the use of this procedure and make the original intent of these provisions clearer, staff recommends that the committee consider proposing amendments rules 8.130, 8.834, 8.866, and 8.919 stating that a certified transcript submitted by a party must not be accepted as a substitute for a deposit under these rules unless it complies with the applicable format requirements. Staff also recommends that the committee consider proposing amendments to the advisory committee comments accompanying these rules to provide examples of the types of formatting changes that would be needed to comply with the rules – consecutive pagination, required appellate cover information, and indexes.

³ Report to the Judicial Council *Appellate Procedure: Reporter’s Transcripts in Civil Appeals*, August 2, 2013, p. 7 (available at: [Appellate Procedure: Reporter’s Transcripts \(ca.gov\)](https://www.courts.ca.gov/appellate-procedure-reporter-transcripts)). See also discussion on page 14 of this report (“The committees note that while the proposed amendments would require that transcripts that a party deposits in lieu of depositing funds for a reporter’s transcript be in the format required by rule 8.144,”).

Note that a party whose certified transcripts are not accepted by the court because of formatting errors will not necessarily lose the opportunity to utilize this exception to the deposit procedure. Under rules 8.130(d)(3), 8.140, 8.842, 8.874, and 8.924, if a party fails to submit an authorized substitute for a deposit, the clerk will send the party notice of this default and the party will have an opportunity to correct the problem.

Encouraging single-volume transcripts

Summary of CCRA suggestion

CCRA has suggested that rule 8.144(d), which establishes additional requirements for reporter's transcripts delivered in electronic form, be amended to provide that "[c]onsolidation of all reporter transcripts into one volume is encouraged but not mandatory." CCRA provided the following explanation for this suggestion:

CCRA proposes to add wording to (d)(1)(H) to encourage reporters to file one-volume reporter's transcripts on appeal that contain the transcripts from all reporters in the case that would contain bookmarks, a master index hyperlinked to the entire transcript instead of individual volumes.

CCRA has also suggested that a cross-reference to the suggested amendment to 8.144(d)(1)(H) be added to rule 5.532(c), which addresses reporter's transcripts in juvenile law proceedings in the trial court. CCRA provided the following explanation for this suggestion:

CCRA proposes to add wording to (c) to follow Rules of Court 8.144. Form of the record.

Staff analysis and recommendation

Because a single-volume electronic transcript would likely be more efficient for courts and parties to use, staff recommends that the committee consider proposing amendments to rule 8.144 to permit this. However, to ensure that such transcripts can easily be used by the appellate courts and to maintain consistency in formatting and citation, staff recommends that a single volume reporter's transcript comply with the size limitations set by rule 8.74 and only be permitted when all copies of the transcript are being delivered in electronic form. Possible rule language intended to accomplish this is included in the draft invitation to comment. Staff also recommend that the committee consider adding a cross-reference in rule 8.838 to this new provision in rule 8.144 so that single-volume transcripts can also be used in superior court appellate division cases as well. Possible rule language intended to accomplish this is shown in brackets in the draft invitation to comment. Staff does not recommend adding a reference to rule 8.144 in rule 5.532.

Rule 8.144(b)(6) currently requires that clerk's and reporter's transcripts must be produced in volumes of no more than 300 pages. As noted above, most reporter's transcripts will now be in electronic form. As suggested by CCRA, a single electronic volume would have one set of indexes and may be easier for courts and parties to navigate and cite. The 300-page volume limit does not appear to be necessary for transcripts in electronic form. Note that rule 8.74(a)(5), relating to the format of electronic documents for purposes of e-filing, already allows merging of such volumes:

Although certain provisions in the California Rules of Court require volumes of no more than 300 pages (see, e.g., rules 8.124(d)(1), 8.144(b)(6), 8.144(g)), an electronic filing may exceed 300 pages so long as its individual components comply with the 300-page volume requirement and the electronic filing does not exceed 25 megabytes. If a document exceeds the 25-megabyte file-size limitation, the electronic filer must submit the document in more than one file, with each file 25 megabytes or less."

Rule 8.74 does require, however, that electronic documents may not be larger than 25 megabytes. This megabyte limit is important for functionality of documents within the appellate case management system and the appellate courts. For this reason, staff recommends that the committee consider proposing that reporter's transcripts in a single volume be required to comply with rule 8.74(a)(5).

In addition, while most transcripts will be in electronic form, even after January 1, 2023, section 271 will permit a party or other person entitled to a transcript to request that the transcript be provided in paper form. The 300-page volume limit still makes sense for paper transcripts. If a transcript is produced in both paper and electronic form, the pagination of both versions of the transcript needs to be the same to avoid confusion in navigating to, identifying, and citing to specific pages. For this reason, staff recommends that the committee proposal retain the 300-page volume limit in cases where a party or person entitled to a transcript requests that the transcript be provided in paper form. Staff also recommends that the changes be incorporated into rule 8.144(b)(6), which addresses the current 300-page volume limit, rather than adding a new provision to 8.144(d), which addresses additional requirements for reporter's transcript delivered in electronic form.

As noted above, CCRA has also suggested amending rule 5.532, which addresses reporter's transcripts in juvenile law proceedings in the trial court, to add a cross-reference to the proposed new provision in rule 8.144 allowing a single-volume electronic reporter's transcript in appeals. Staff does not recommend that the committee propose an amendment to rule 5.532. This is a trial court rule, not an appellate rule; it does not seem appropriate to apply the requirements for transcripts used for the purpose of an appeal in this setting. Furthermore, any amendment to this rule would most appropriately be considered by the Family and Juvenile Law Advisory Committee.

Related issues for the committee's possible consideration

The 300-page limit on volume size in rule 8.144(b)(6) applies to both reporter's transcripts and clerk's transcripts. Although not required, clerk's transcripts may also be produced in electronic form. As with electronic reporter's transcripts, a single-volume electronic clerk's transcript would likely be more efficient for courts and parties to use than a multi-volume transcript. Staff therefore suggest that the committee consider asking a question in the invitation to comment about whether the 300-page volume limit should also be changed for clerk's transcripts that are in electronic form.

Staff also suggests that the committee consider replacing the reference to a 300-page limit on the size of transcript volumes in rule 8.838, which addresses the format of reporter's transcripts in limited civil appeals to the superior court appellate division, with a cross-reference to rule 8.144(b)(6). Using this cross-reference would incorporate the proposed changes to rule 8.144(b)(6) allowing the use of a single volume transcript. This possible rule amendment is shown in brackets in the attached draft invitation to comment.

Pagination of reporter's transcripts in cases where there are multiple reporters

CCRA has suggested several rule amendments that relate to the pagination of reporter's transcripts in cases where there are multiple court reporters.

Block numbering

Summary of CCRA suggestions - CCRA has suggested that rule 8.144(f)(1) be amended to permit the use of "block numbering" by the primary court reporter. CCRA provided the following explanation for this suggestion:

Background:

Current CRC 8.144(f)(1) requires reporters in multiple reporter cases to estimate the number of pages in their transcripts and then the primary reporter assigns beginning and ending page numbers for each segment. Reporters for decades in many counties have been using block numbering to expedite the assignment of page and volume numbers because many times reporters on appeals are out sick, on leave, on vacation, retired or a per diem and are not readily accessible. Block numbering allows reporters to begin and finish their portion of the appeal long before estimates are ever received by the lead reporter, known to reporters as "block numbering." It has become an issue in a few counties that the practice of block numbering by reporters is not accepted

Proposed fixes:

CCRA proposes to change the wording in (f)(1) to allow block numbering.

Staff analysis and recommendation – Staff does not recommend that the committee consider proposing an amendment to rule 8.144(f)(1) that would permit the primary reporter to use block numbering in multiple-reporter cases.

Rule 8.144(f) addresses the pagination of reporter’s transcripts in cases where more than one court reporter reported portions of the proceedings. Currently, subdivision (1) of this provision requires that each reporter estimate the number of pages in each segment reported and inform the designated primary reporter of the estimate. The primary reporter must then assign beginning and ending page numbers for each segment of the transcript. CCRA indicates that waiting to assign page numbers until estimates have been received from all court reporters in a case can cause delay in the preparation of transcripts and have proposed amending this rule to permit the primary reporter to use block numbering - assigning beginning and ending page numbers to each segment of a transcript without getting estimates from the court reporters.

Although rule 8.144 permits the use of estimates of the number of pages in each segment, as discussed above, this method of pagination requires an exception to the rule provisions requiring that the pdf page counter and transcript numbering be the same. Transcripts that are paginated using estimates are more challenging to navigate and print. Adding another page-numbering method that would likely result in more reporter’s transcripts that are not consecutively paginated may not be sufficiently beneficial to merit the change.

However, because using block numbering may be more efficient and reduce delay in the preparation of reporter’s transcripts in at least some multiple-reporter cases, staff suggests that the committee consider seeking specific comments about whether block numbering should be adopted.

Eliminating the use of a hyphen in page numbering

Summary of CCRA suggestions - CCRA has also suggested that rule 8.144(f)(2) and (3) be amended to require the use of a plus sign, rather than a hyphen, in the numbering of transcript segments that are either longer or shorter than the number of pages assigned by the primary reporter. CCRA provided the following explanation for this suggestion:

Background:

Current CRC 8.144(f)(3) requires if a segment has fewer than the assigned number of pages, on the last page of the segment, before the certificate page, the reporter must state in parentheses (next volume and page number is ____),” and on the certificate page, the reporter must add a hyphen to the last page number used, followed by the segment’s assigned ending page number. So, for example, a reporter might be assigned a page range of 1 through 300 for Volume 1, but the reporter only uses 256 pages. The last page (certificate page) would be labeled 256-300. The problem arises when users try to print

page 256-300 or print a range of pages within the document when the range includes a dashed page label. So to print Volume 1, a user might select print the page range: 1-256-300. Adobe always interprets the dash as a page range, so it would print pages 256 through 300. The dash page numbering can lead to counterintuitive behavior when attempting to print a page range that includes a dashed page number as a boundary for the range.

Proposed fixes:

CCRA proposes to change the use of the hyphen in (f)(3) to a plus sign so that users will not be confused and able to print the pages of their choosing without difficulty

Staff analysis and recommendation – Staff recommends that the committee consider proposing the amendments to 8.144(f)(2) and (3) suggested by CCRA.

Current rule 8.144(f)(2) and (3) address what a court reporter in a multiple reporter case should do if a segment is either longer or shorter than the assigned number of pages. As noted by CCRA, if a segment has fewer than the assigned number of pages, 8.144(f)(3) currently requires that on the certificate page, the reporter must add a hyphen to the last page number used, followed by the segment's assigned ending page number. For example, if the last page number assigned to a segment was 300, but only 256 pages were used, the certificate would identify the last page in the segment as 256-300.

Rule 8.144(f)(2) requires a similar pagination format if the segment exceeds the assigned number of pages. This subdivision currently requires that the reporter must number the additional pages with the ending page number, a hyphen, and a new number, starting with 1 and continuing consecutively. For example, if the last page number assigned to a segment was 300, additional pages in this segment would be numbered 300-1, 300-2, 300-3, etc.

CCRA indicates that the use of a hyphen as required by rule 8.144(f)(2) and (3) can cause difficulty printing sections of the transcript because the hyphen format is interpreted by Adobe software as designating a range of pages to be printed. To address these difficulties, staff recommends that the committee consider proposing the amendments to rule 8.144(f)(2) and (3) suggested by CCRA - replacing the requirement to use a hyphen with a requirement to use a plus sign in these situations. So, for example, if the last page number assigned to a segment was 300 and the segment was longer than 300 pages, additional pages in this segment would be numbered 300+1, 300+2, 300+3, etc. Similarly, if the last page number assigned to a segment was 300, but only 256 pages were used, the certificate would identify the last page in the segment as 256+300.

Staff does not know how all software systems/prINTER drivers will react to the use of a plus sign in pagination. Staff therefore suggest that the committee consider seeking specific comments

about whether transcript users anticipate any difficulties printing pages numbered using this plus-sign format.

Exception to requirement that PDF viewer match transcript page numbering

Summary of CCRA suggestions - CCRA has suggested that rule 8.144(d)(1) be amended to provide an exception to the requirement that the page number shown in PDF viewer must match the transcript page numbering for transcripts in multiple reporter cases in which a segment is shorter than the number of pages assigned. CCRA provided the following explanation for this suggestion:

Background:

Current CRC 8.144(d)(1)(C) requires reporters to ensure that the electronic page counter in the PDF file matches the transcript page numbering. This is important for transcripts with excerpted confidential or sealed content, such as Marsden motions. The page counter should match the page number even with missing pages.

Staff analysis and recommendation – Staff recommends that the committee consider proposing an amendment to rule 8.144(d)(1) providing an exception to the requirement that the page number shown in PDF viewer must match the transcript page numbering for transcripts in multiple-reporter cases in which a segment is either longer or shorter than the number of pages assigned for that segment.

Rule 8.144(d)(1)(C) requires that transcripts in electronic form ensure that the electronic page counter in the PDF file viewer matches the transcript page numbering. However, it appears that requirement in 8.144(d)(1)(C) is inconsistent with the requirements for pagination in multiple reporter cases either when a reporter uses more pages or when the reporter uses fewer pages than were assigned for a segment of the transcript. Under rule 8.144(f)(2), in a multiple reporter case, if a reporter's segment exceeds the assigned number of pages, there will be transcript pages numbered with the ending page number assigned for that segment, a hyphen, and a new number, starting with 1 and continuing consecutively (e.g. 300-1, 300-2, 300-3, etc.). However, the electronic page counter in the PDF file viewer for these pages will, I believe, be 301, 302, 303, (note that this will also throw off the electronic page counter in the PDF file viewer for all subsequent segments). Similarly, under rule 8.144(f)(3), if a reporter does not use all of the pages assigned for a segment, the last page of the segment will be numbered with the last actual page of that segment, a hyphen, and the last page number assigned for that segment (e.g. 256-300). However, the electronic page counter in the PDF file viewer for this page will, I believe, be 256.

Assuming that the above is correct, staff recommends that rule 8.144(d)(1)(C) be amended to recognize the disjunct between the current rules by adding an exception to the requirement that the electronic page counter in the PDF file viewer match the transcript page numbering for situations covered by either rule 8.144(f)(2) or (3).

Exception to consecutive pagination requirement

Summary of CCRA suggestions - CCRA has suggested that rule 8.456(e)(3) be amended to provide that transcripts attached to an augmentation request under this rule can be block-numbered. CCRA provided the following explanation for this suggestion:

Background:

Current CRC 8.144(f)(1) requires reporters in multiple reporter cases to estimate the number of pages in their transcripts and then the primary reporter assigns beginning and ending page numbers for each segment. Reporters for decades in many counties have been using block numbering to expedite the assignment of page and volume numbers because many times reporters on appeals are out sick, on leave, on vacation, retired or a per diem and are not readily accessible. Block numbering allows reporters to begin and finish their portion of the appeal long before estimates are ever received by the lead reporter. It has become an issue in a few counties that the practice of block numbering by reporters is not accepted.

Proposed fixes:

CCRA proposes to change the wording in (f)(1) to allow block numbering.

Staff analysis and recommendation – Staff does not recommend proposing the amendment suggested by CCRA. Instead, staff recommends that the committee consider amending rule 8.456(e)(3) to provide for an exception, modeled on language from rule 8.144(b)(2)(D), to the consecutive pagination requirement when a reporter’s transcript is from a multiple-reporter case.

Rule 8.456(e), which, as noted above, relates to augmenting the record in specified juvenile writ proceedings, generally requires that copies of items to be added to the record be attached to the augmentation motion and that these attachments, including transcripts, be consecutively numbered. CCRA has suggested amending this provision to provide that the attachments may, in the alternative, be block numbered. The intent appears to be to recognize that, under rule 8.144(f) (both in its current form and as it would be amended in the draft invitation to comment), some reporter’s transcripts in multiple reporter cases may not be consecutively numbered. To achieve this intent, staff recommends that, rather than adding a reference to block numbering, the committee consider proposing an amendment to 8.456 that is modeled on language in rule 8.144. Rule 8.144(b)(2)(D) provides that “[t]he pages [of a reporter’s transcript] must be consecutively numbered, except as provided in (f).” As discussed above, 8.144(f) addresses transcripts in multiple reporter cases. This exception in 8.144(b)(2)(D) thus recognizes that, in multiple reporter cases, because of the possibility of segments being longer or shorter than the assigned number of pages, the pages of the reporter’s transcripts in such cases may not be consecutively numbered. Staff recommends adding similar exception language to rule 8.456(e). In addition,

staff recommends adding identical language to rule 8.452(e), which also relates to augmenting the record in specified juvenile writ proceedings.

Lending reporter's transcripts

Summary of CCRA suggestion

CCRA has suggested that rule 8.153, relating to lending of the record, be amended to allow lending parties to ask the court reporter to provide a read-only electronic copy of the reporter's transcript to borrowing parties instead of sending their copy of the reporter's transcript to the borrowing parties. CCRA provided the following explanation for this suggestion:

Proposed fixes:

CCRA proposes to add wording to (a) because reporters are now delivering their transcripts electronically to all parties. The purchasing lawyer does not have a hard copy to loan to the opposing side. This language will enable the purchasing party the ability to comply with rule 8.153 by requesting the court reporter send an electronic read-only copy to the opposing side so they are able to file their brief.

Staff analysis and recommendation

Staff's view is that the amendment suggested by CCRA may be a helpful alternative in some cases to reduce the time and costs associated with sending the reporter's transcript to the borrowing party. For this reason, staff has included a proposed amendment in the draft invitation to comment for the committee's consideration. Staff also recommends that the committee consider including language in this proposed amendment to establish timeframes for this procedure and that the committee consider asking several specific questions about this proposal in the invitation to comment.

Rule 8.153 permits a party that has not purchased its own copy of the record to request another party, in writing, to lend it that party's copy of the record. Under this existing rule, after it has prepared its brief, the lending party must send the record, including its electronic or paper copy of a reporter's transcript, to the borrowing party. The borrowing party is then required to return the lent record when it has completed its briefing.

For those parties that have a reporter's transcript in electronic form, it seems likely that it would be relatively easy to lend an electronic copy of that transcript to the requesting party. However, as discussed above, section 271 authorizes parties and other persons entitled to receive reporter's transcripts to request that these transcripts be delivered in paper form, so some parties who are asked to lend their record to another party will still have their copy of the reporter's transcript in paper form. For these parties in particular, the alternative of asking the court reporter to send the borrowing party an electronic copy of the transcript would save them the time and costs for sending the reporter's transcript to the borrowing party. Given that the benefits of this potential

alternative appear to be greatest when the reporter's transcript is in paper form, staff recommends that the committee consider including a question in the invitation to comment about whether this option should be available in all cases or only when the lending party's copy of the reporter's transcript is in paper form.

As you know, there are deadlines for filing briefs (see rule 8.212). Under existing rule 8.153, the lending party must lend the record when it serves its brief. This allows the lending party to have the record while it is preparing its brief and ensures that the borrowing party gets the record as soon as possible after that. To ensure that under the alternative being proposed, the borrowing party similarly receives the reporter's transcript in time to prepare its brief, staff suggests that the committee consider including in the proposed amendment a timeframe for the lending party to make the request of the court reporter and require the court reporter to promptly send the copy to the borrowing party.

CCRA has suggested that the copy of the reporter's transcript provided by a court reporter under this alternative be a read-only electronic copy and this language is included in the draft invitation to comment for the committee's consideration. It is important to note, however, that a read-only copy of a reporter's transcript will not have all the functionality of a reporter's transcript purchased in electronic form. Staff therefore recommends that the committee seek specific comments in the invitation to comment about what format requirements should be applied to a transcript sent by a court reporter under this amendment.

A draft of possible amendments to rule 8.153 is included in the invitation to comment for the committee's consideration.

Related issues for the committee's possible consideration

Rule 8.153(b) requires that the borrowing party return the copy of the record it borrowed when it serves its brief or the time to file its brief has expired. This requirement makes sense when the lending party has a paper version of the record or has purchased a reporter's transcript in electronic form and is lending that electronic reporter's transcript.⁴ However, it may not make sense for other portions of the record that are in electronic form. Clerk's transcripts and administrative records that are part of the record on appeal may be in electronic form and a lending party who provides a borrowing party with an electronic copy of these items may not want or need that copy to be returned. Similarly, if rule 8.153 is amended as proposed by the committee to permit a court reporter to provide a borrowing party with a copy of an electronic reporter's transcript, the court reporter may not want or need that copy to be returned.

⁴ Government Code section 69954(d) generally prohibits anyone who has purchased a reporter's transcript from providing it to anyone else.

To gather feedback on these issues, staff recommends that the committee seek specific comments on whether it is necessary for the borrowing party to return an electronic copy of either the clerk's transcript or an administrative record provided by the lending party or a read-only electronic copy of the reporter's transcript provided by the court reporter. The draft invitation to comment includes such a question for the committee's consideration.

Committee Task

The subcommittee's task is to analyze this proposal and take one of the following actions:

- Approve the invitation as presented and seek approval from RUPRO to circulate the proposal for public comment;
- Modify the invitation to comment and seek approval from RUPRO to circulate the modified proposal for public comment;
- Reject the proposal; or
- Ask staff or committee members for further information/analysis.

Attachments

Draft invitation to comment

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688

www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

SPR 23-__

Title

Appellate Procedure: Reporter’s Transcripts

Proposed Rules, Forms, Standards, or Statutes

Amend rules 8.130, 8.144, 8.153, 8.204, 8.452, 8.456, 8.834, [8.838], 8.622, 8.866, and 8.919

Proposed by

Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

Action Requested

Review and submit comments by January 20, 2023

Proposed Effective Date

September 1, 2023

Contact

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Executive Summary and Origin

The Appellate Advisory Committee proposes amending several rules relating to the format of reporter’s transcripts and borrowing the record on appeal. Code of Civil Procedure section 271 requires that as of January 1, 2023, a reporter’s transcript must be delivered in electronic form unless a party or person entitled to the transcript requests it in paper format. In recognition that most reporter’s transcripts will be in electronic form, this proposal would allow the transcripts to be in a single volume in most cases and would allow a party lending the record to another party to ask the court reporter to provide a read-only electronic copy of the reporter’s transcript to the borrowing party rather than sending its copy of the reporter’s transcript to the borrowing party. In addition, the proposal would clarify that a certified transcript must comply with specified format requirements even when it is submitted by a party in lieu of depositing the estimated cost of the transcript with the court. This proposal originated with suggestions from the California Court Reporters Association.

The committee is aware that the Appellate Caseflow Workgroup is currently considering ways to make more efficient the preparation of an appellate record. Further proposals may flow from the recommendations of the Workgroup.

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

Background

Effective January 1, 2018, Code of Civil Procedure section 271¹ was amended to change the default format for reporter's transcripts from paper to electronic. The statute generally requires a court reporter to "deliver a transcript in electronic form, in compliance with the California Rules of Court, to any court, party, or person entitled to the transcript." (§ 271(a).) As amended, the statute contains three exceptions allowing for paper transcripts, two of which expire at the end of 2022:

- The party or person entitled to the transcript requests the reporter's transcript in paper form;
- Prior to January 1, 2023, the court lacks the technical ability to use or store a transcript in electronic form and provides advance notice to the court reporter; and
- Prior to January 1, 2023, the court reporter lacks the technical ability to deliver a transcript in electronic form and provides advance notice of this fact to the court, party, or person entitled to the transcript. (*Ibid.*)

Thus, effective January 1, 2023, court reporters must deliver reporter's transcripts in electronic form unless a party or person entitled to the transcript requests it in paper format.

The committee is aware that the Appellate Caseflow Workgroup is currently considering ways to make more efficient the preparation of an appellate record. Further proposals may flow from the recommendations of the Workgroup.

The Proposal

Proposed changes to reflect the general use of electronic transcripts

Rule 8.144 establishes the general requirements for the format of reporter's transcripts in civil appeals to the Court of Appeal. Through cross-references in rules 8.336(f), 8.395(g), 8.409(b), 8.610(d), 8.838(a), 8.866(b), and 8.919(b), these format requirements also apply in criminal appeals to the Court of Appeal, appeals from superior court decisions in death penalty-related habeas corpus proceedings, in juvenile appeals, in capital appeals to the Supreme Court, and in superior court appellate division appeals, respectively.

Rule 8.144(b)(6) currently requires that clerk's and reporter's transcripts must be produced in volumes of no more than 300 pages. As noted above, most reporter's transcripts will now be in electronic form. A single electronic volume would have one set of indexes and may be easier for courts and parties to navigate and cite. The current 300-page volume limit does not appear to be necessary for transcripts in electronic form. However, rule 8.74(a)(5), relating the format of electronic documents for purposes of e-filing in the appellate courts, provides that electronic documents may not be larger than 25 megabytes. This megabyte limit is important for

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

functionality of documents within the appellate case management system and the appellate courts. This proposal would therefore amend rule 8.144 to allow reporter's transcripts to be in a single volume but would require that such transcripts comply with rule 8.74(a)(5)'s size limitations. In addition, to avoid the potential confusion that would be caused by differences in page numbering and citation if a reporter's transcript in a case was delivered in both paper and electronic form, this proposal would retain the 300-page volume limit in cases where a party or person entitled to a transcript requests that the transcript be provided in paper form. The committee would appreciate comments on whether the 300-page volume limit should also be changed for clerk's transcripts that are in electronic form.

Rule 8.153 permits a party that has not purchased its own copy of the record to request another party, in writing, to lend it that party's copy of the record. Under this existing rule, after it has prepared its brief, the lending party must send its electronic or paper copy of a reporter's transcript to the borrowing party. To reduce the time and costs for parties associated with sending reporter's transcripts, this proposal would amend rule 8.153(a) to provide lending parties with the additional option of asking the court reporter to provide a read-only electronic copy of the reporter's transcript to the borrowing party. To ensure that the borrowing party receives the reporter's transcript in time to prepare its brief, the proposed amendment would also set a timeframe for the lending party to make this request of the court reporter and would require the court reporter to promptly send the copy to the borrowing party. The committee would particularly appreciate comments about whether this option should be available in all cases or only when the lending party's copy of the reporter's transcript is in paper form, given that party costs associated with lending a reporter's transcript in electronic form are likely to be low. The committee would also appreciate comments on what format requirements should be applied to a transcript sent by a court reporter under this amendment.

Rule 8.153(b) requires that the borrowing party return the copy of the record it borrowed when it serves its brief or the time to file its brief has expired. This requirement makes sense when the lending party has a paper version of the record or has purchased a reporter's transcript in electronic form and is lending that electronic reporter's transcript.² However, it may not make sense for other portions of the record that are in electronic form. Clerk's transcripts and administrative records that are part of the record on appeal may be in electronic form and a lending party who provides a borrowing party with an electronic copy of these items may not want or need that copy to be returned. Similarly, if rule 8.153 is amended as proposed by the committee to permit a court reporter to provide a borrowing party with a read-only copy of an electronic reporter's transcript, the court reporter may not want or need that copy to be returned. The committee would therefore appreciate comments on whether it is necessary for the borrowing party to return an electronic copy of either the clerk's transcript or an administrative record provided by the lending party or a read-only electronic copy of the reporter's transcript provided by the court reporter.

² Government Code section 69954(d) generally prohibits anyone who has purchased a reporter's transcript from providing it to anyone else.

Proposed changes relating to the pagination of reporter's transcripts in cases where there are multiple reporters

Rule 8.144(f) addresses the pagination of reporter's transcripts in cases where more than one court reporter reported portions of the proceedings. Subdivision (1) of this provision requires that each reporter estimate the number of pages in each segment reported and inform the designated primary reporter of the estimate. The primary reporter must then assign beginning and ending page numbers for each segment of the transcript.

Current rule 8.144(f)(2) and (3) address what a court reporter in a multiple-reporter case should do if a segment is either longer or shorter than the assigned number of pages. If the segment exceeds the assigned number of pages, the rule currently requires that the reporter must number the additional pages with the ending page number, a hyphen, and a new number, starting with 1 and continuing consecutively. For example, if the last page number assigned to a segment was 300, additional pages in this segment would be numbered 300-1, 300-2, 300-3, etc. If a segment has fewer than the assigned number of pages, the rule currently requires that on the certificate page, the reporter must add a hyphen to the last page number used, followed by the segment's assigned ending page number. For example, if the last page number assigned to a segment was 300, but only 256 pages were used, the certificate would identify the last page in the segment as 256-300.

The California Court Reporters Association indicates that the use of hyphens on these pages of a reporter's transcript can create problems in correctly printing sections of the transcript. According to the association, the hyphen format is interpreted by Adobe software as designating a range of pages to be printed. To correct this problem, this proposal would amend rule 8.144(f)(2) and (3) to replace the requirement to use a hyphen with a requirement to use a plus sign in these situations. So, for example, if the last page number assigned to a segment was 300 and the segment was longer than 300 pages, additional pages in this segment would be numbered 300+1, 300+2, 300+3, etc. Similarly, if the last page number assigned to a segment was 300, but only 256 pages were used, the certificate would identify the last page in the segment as 256+300. The committee would particularly appreciate comments about whether transcript users anticipate any difficulties printing, or navigating to, pages numbered using this plus-sign format.

Rule 8.144(b)(2)(D) recognizes that, because of the possibility of segments being longer or shorter than the assigned number of pages in multiple reporter cases, the pages of the reporter's transcripts in such cases may not be consecutively numbered. Rule 8.456(e), relating to augmenting the record in writ proceedings to review an order designating or denying specific placement of a dependent child after termination of parental rights, requires that copies of items to be added to the record, including transcripts, be consecutively numbered. To make this provision consistent with rule 8.144(b)(2)(D), which articulates an exception to consecutive pagination in multiple reporter cases, this proposal would amend rule 8.456(e)(3) to provide a similar exception. In addition, rule 8.456(e)(4), which uses cross-references to rules 8.122

(relating to clerk's transcripts) and rule 8.130 (relating to reporter's transcripts) to explain how parties must identify documents and transcripts that they are unable to attach to their augmentation motion, would be amended to provide more specific citations to the particular subdivisions of rules 8.122 and 8.130 that explain how to identify documents to be included in a clerk's transcript and proceedings to be included in a reporter's transcript. The committee proposes identical amendments to rule 8.452(e), which parallels rule 8.456(e) and relates to augmenting the record in writ proceedings to review an order setting a hearing under Welfare and Institutions Code section 366.26.

Rule 8.144(d)(1)(C) requires that transcripts in electronic form ensure that the electronic page counter in the PDF file viewer matches the transcript page numbering. This generally makes it easier to navigate to or print particular pages. However, if, as recognized by rule 8.144(f), a segment of a reporter's transcript in a multiple reporter case is longer or shorter than the number of pages assigned, then the page numbers on the transcript will not match the electronic page counter in the PDF file viewer. In recognition of this existing discrepancy, this proposal would amend 8.144(d)(1)(C) to add an exception to the requirement that the electronic page counter in the PDF file viewer match the transcript page numbering in multiple reporter cases where a transcript segment is either longer or shorter than the assigned number of pages.

Proposed changes to clarify the requirement that certified transcripts comply with formatting requirements when submitted in lieu of making a deposit for a reporter's transcript

Rule 8.130 establishes procedures relating to reporter's transcripts in civil appeals to the Court of Appeal. Under this rule, appellants who wish to use a reporter's transcript must file a notice with the trial court that designates which of the oral proceedings from the trial court they want included in the reporter's transcript. Respondents may then designate additional proceedings to be included in the transcript. Rule 8.130(b) requires that, with its notice designating proceedings to be included in a reporter's transcript, each designating party must deposit with the superior court clerk the approximate cost of transcribing the proceedings, or it may substitute one of the items permitted by 8.130(b)(3): (A) a reporter's written waiver of deposit, (B) a copy of a Transcript Reimbursement Fund application, or (C) a certified transcript of all the proceedings designated by the party.

Sometimes a party in a trial court proceeding will purchase reporter's transcripts of the proceedings before any appeal is filed, such as when a party needs a transcript as part of a writ petition during the trial court proceedings. In recognition of the fact that parties may already have purchased the transcripts that they need for an appeal, rule 8.130(b)(3)(C) allows the deposit of a certified transcript of all the proceedings designated by the party as a permissible substitute for a deposit of the cost of transcribing the designated proceedings. Similar provisions also appear in rules 8.834, 8.866, and 8.919, relating to reporter's transcripts in appeals to the superior court appellate division in civil, misdemeanor, and infraction cases, respectively.

As discussed above, under rule 8.144, there are format requirements for reporter’s transcripts used as part of the record on appeal. Rules 8.130, 8.834, 8.866, and 8.919 all require that a certified reporter’s transcript submitted in lieu of depositing the cost for transcribing designated proceedings must comply with these format requirements. Among other things, rule 8.144 requires that:

- The pages in reporter’s transcripts be consecutively numbered;
- The cover of each volume identify the page numbers within that volume and the case name, number, and appellate counsel contact information; and
- The transcript include chronological and alphabetical indexes to the entire reporter’s transcript.

However, transcripts prepared during the trial court proceedings do not comply with some or all of these format requirements. To comply with rules 8.130, 8.834, 8.866, and 8.919, such certified transcripts must typically be re-paginated and new covers and indexes created.

The California Court Reporters Association indicates that, despite the requirement in these rules that the transcript comply with the format requirements of rule 8.144, in some cases some courts have accepted as a substitute for a deposit transcripts that are not in the appropriate format. The association further indicates that when this happens, court reporters have sometimes been tasked with fixing these transcripts to comply with the rule requirements.

The advisory committee comment to rule 8.130 makes clear that the intent of subdivision (b) is that certified transcripts submitted by a party only be accepted by a court as a substitute for a deposit if these transcripts meet the format requirements of rule 8.144:

[S]ubdivision (b) makes clear that the certified transcript may be filed in lieu of a deposit for the transcript only where the certified transcript contains all of the proceedings identified in the notice of designation and the transcript complies with the format requirements of rule 8.144.

Furthermore, the 2013 report to the Judicial Council that recommended adoption of this requirement states that this requirement would “clearly place responsibility on the designating party for ensuring that such transcripts are in the proper format.”³

This proposal would amend rules 8.130, 8.834, 8.866, and 8.919 to state that a certified transcript submitted by a party must not be accepted as a substitute for a deposit under these rules unless it complies with the applicable format requirements. Provisions in the advisory committee comments accompanying these rules that address this requirement would also be amended to provide examples of the types of formatting changes that would need to be made to comply with

³ Report to the Judicial Council *Appellate Procedure: Reporter’s Transcripts in Civil Appeals*, August 2, 2013, p. 7 (available at: [Appellate Procedure: Reporter’s Transcripts \(ca.gov\)](http://www.courts.ca.gov/appellate-procedure-reporter-transcripts)). See also discussion on page 14 of this report (“The committees note that . . . the proposed amendments would require that transcripts that a party deposits in lieu of depositing funds for a reporter’s transcript be in the format required by rule 8.144 . . .”).

the rules – consecutive pagination, required appellate cover information, and indexes. Note that, under rules 8.130(d)(3), 8.140, 8.842, 8.874, and 8.924, if a party fails to submit an authorized substitute for a deposit, the clerk will send the party notice of this default and the party will have an opportunity to correct the problem.

[This proposal would also make several additional clarifying amendments to rules 8.834, 8.866, and 8.919, relating to appellate division proceedings. Rule 8.834 would be amended to add a cross-reference to rule 8.144(a) to specify section 271’s application in limited civil appeals and to replace a provision relating to the 300-page volume limit with a cross-reference to the relevant subdivision of rule 8.144. Rules 8.866 and 8.919 would be amended to replace cross-references to rule 8.144 with references to rule 8.834 to ensure consistency of transcript format in appellate division proceedings.]

Proposed changes to replace references to “electronic format” with “electronic form”

Code of Civil Procedure section 271 refers to reporter’s transcripts being delivered in “electronic form.” Rules 8.144(d), 8.204(a), and 8.622(a) currently have references to reporter’s transcripts or the record on appeal being in “electronic format.” To ensure consistency of language between section 271 and the appellate rules, this proposal would change these references from “electronic format” to “electronic form.”

Alternatives Considered

The committee considered suggestions to add references to Code of Civil Procedure section 271 to several rules that address reporter’s transcripts. The stated purpose of these suggestions was to ensure that court reporters follow the requirements of section 271 to send transcripts electronically. The committee concluded that adding references to the statute in these rules was not necessary. As noted above, rule 8.144 establishes the format requirements for reporter’s transcripts in appellate proceedings, both directly and through cross-references in other rules. Subdivision (a) of this rule already provides that its provisions must be applied in a manner consistent with Code of Civil Procedure section 271.

The committee also considered suggestions to amend several rules that address sending the record to, or filing it with, the reviewing court, to provide that if the trial court lacks the technical ability to deliver the reporter’s transcript in electronic form to the reviewing court and all the parties, the court reporter may send the reporter’s transcript. The stated purpose of these suggested amendments was to allow reviewing courts to receive electronic transcripts while trial courts were working on changes to their document management systems that would allow them to receive, use, store, and transmit a transcript in electronic form. It is the committee’s understanding that trial courts now have tools available to them to handle reporter’s transcripts delivered to them in electronic form. Given this, the committee determined that these suggested rule amendments were not necessary at this time.

The committee considered the alternative of not taking any action but concluded that the proposed amendments relating to the use of a single volume for reporter’s transcripts in

electronic form, pagination in multiple reporter cases, and format requirements for certified transcripts submitted in lieu of a deposit for a reporter's transcript would be helpful to courts, litigants, and court reporters.

In addition, the committee considered a further proposal for pagination in multiple reporter cases. The California Court Reporters Association indicated that waiting to assign page numbers until estimates have been received from all court reporters in a case can cause delay in the preparation of transcripts because reporters may not be readily accessible due to illness, vacation, or other reasons. To expedite the preparation of transcripts in multi-reporter cases, they proposed allowing the primary reporter to assign beginning and ending page numbers to each segment of a transcript without getting estimates from the court reporters. This is known as block numbering. The committee does not recommend such a change because it would make navigation in a transcript more difficult.

Fiscal and Operational Impacts

The committee anticipates that fiscal and operational impacts of this proposal on courts will be minimal. Reviewing courts may find single volume electronic reporter's transcripts more efficient to use and the other proposed changes may reduce errors and questions regarding transcript format. There may be some additional education required for court staff related to not accepting certified transcripts in lieu of a deposit if the transcript is not in the appropriate format.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Should the 300-page volume limit be changed for clerk's transcripts that are in electronic form?
- When a party is lending the record to another party, should the option of asking a court reporter to send the borrowing party a copy of the reporter's transcript in electronic form be available in all cases or only when the lending party's copy of the reporter's transcript is in paper form?
- What format requirements should be applied to a transcript sent by a court reporter to a borrowing party?
- Is it necessary for a party borrowing the record from another party to return an electronic copy of either the clerk's transcript or an administrative record provided by the lending party or a read-only electronic copy of the reporter's transcript provided by the court reporter?
- Do transcript users anticipate any difficulties printing, or navigating to, pages numbered using the plus-sign format?
- Should the rules permit block numbering?

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

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would 4 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rules 8.130, 8.144, 8.153, 8.204, 8.452, 8.456, 8.834, [8.838], 8.622, 8.866, and 8.919, at pages 10–20
2. Link A: Code of Civil Procedure § 271, [Law section \(ca.gov\)](#)
Link B: August 2, 2013 Report to the Judicial Council *Appellate Procedure: Reporter's Transcripts in Civil Appeals*, [Appellate Procedure: Reporter's Transcripts \(ca.gov\)](#).

Rules 8.130, 8.144, 8.153, 8.204, 8.452, 8.456, 8.834, [8.838], 8.622, 8.866, and 8.919 of the California Rules of Court would be amended, effective January 1, 2024, to read:

Title 8. Appellate Rules

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

Chapter 2. Civil Appeals

Article 2. Record on Appeal

Rule 8.130. Reporter's transcript

(a) * * *

(b) Deposit or substitute for cost of transcript

(1) – (2) * * *

(3) Instead of a deposit under (1), the party may substitute:

- (A) The reporter's written waiver of a deposit. A reporter may waive the deposit for a part of the designated proceedings, but such a waiver replaces the deposit for only that part.
- (B) A copy of a Transcript Reimbursement Fund application filed under (c)(1).
- (C) A certified transcript of all of the proceedings designated by the party. The transcript submitted by the party must not be accepted as a substitute for a deposit under (1) unless it complies ~~must comply~~ with the format requirements of rule 8.144.

(c) – (h) * * *

Advisory Committee Comment

Subdivision (a). * * *

Subdivision (b). Where a certified transcript has been previously prepared, subdivision (b) makes clear that the certified transcript may be filed in lieu of a deposit for the transcript only where the certified transcript contains all of the proceedings identified in the notice of designation and the transcript complies with the format requirements of rule 8.144 (e.g., cover information, renumbered pages, required indexes).

Otherwise, where a certified transcript has been previously prepared for only some of the designated proceedings, subdivision (b)(1) authorizes a reduced fee to be deposited for those proceedings. This reduced deposit amount was established in recognition of the holding in *Hendrix v. Superior Court of San Bernardino County* (2011) 191 Cal.App.4th 889 that the statutory rate for an original transcript only applies to the first transcription of the reporter's notes. The amount of the deposit is based on the rate established by Government Code section 69950(b) for a first copy of a reporter's transcript purchased by any court, party, or other person who does not simultaneously purchase the original.

* * *

Rule 8.144. Form of the record

(a) * * *

(b) Format

(1) – (5) * * *

(6) *Volumes*

(A) Clerks' transcripts and, except as provided in (B), reporters' transcripts must be produced in volumes of no more than 300 pages.

(B) If a reporter's transcript is being delivered in electronic form to all courts, parties, and persons entitled to the transcript, it may be produced in a single volume but must comply with the requirements of rule 8.74(a)(5).

(7) * * *

(c) * * *

(d) Additional requirements for reporter's transcript delivered in electronic form

(1) *General*

In addition to complying with (b), a reporter's transcript delivered in electronic format must:

(A) – (B) * * *

(C) Ensure that the electronic page counter in the PDF file viewer matches the transcript page numbering except as provided in (f) (2) or (3).

(D) – (H) * * *

(2) *Multivolume or multireporter transcripts*

In addition to the requirements in (1), for multivolume or multireporter transcripts delivered in electronic ~~format~~form, each individual reporter must provide a digitally and electronically signed certificate with his or her respective portion of the transcript. If the court reporter lacks the technical ability to provide a digital signature, then only an electronic signature is required.

(3) * * *

(e) * * *

(f) Pagination in multiple reporter cases

- (1) In a multiple reporter case, each reporter must promptly estimate the number of pages in each segment reported and inform the designated primary reporter of the estimate. The primary reporter must then assign beginning and ending page numbers for each segment.
- (2) If a segment exceeds the assigned number of pages, the reporter must number the additional pages with the ending page number, a ~~hyphen~~ plus sign, and a new number, starting with 1 and continuing consecutively.
- (3) If a segment has fewer than the assigned number of pages, on the last page of the segment, before the certificate page, the reporter must state in parentheses “(next volume and page number is ____),” and on the certificate page, the reporter must add a ~~hyphen~~ plus sign to the last page number used, followed by the segment’s assigned ending page number.

(g) * * *

Rule 8.153. Lending the record

(a) Request

Within 20 days after the record is filed in the reviewing court, a party that has not purchased its own copy of the record may request another party, in writing, to lend it that party’s copy of the record. The other party must then lend its copy of the record when it serves its brief. In lieu of lending its copy of the reporter’s transcript to the requesting party, within 5 days of receiving a request to borrow the record, the lending party may ask the court reporter, in writing, to send an electronic read-only copy of the reporter’s

transcript to the requesting party. The court reporter must promptly send the copy to the requesting party.

(b) * * *

Article 3. Briefs in the Court of Appeal

Rule 8.204. Contents and format of briefs

(a) Contents

(1) Each brief must:

(A) - (B) * * *

(C) Support any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears. If any part of the record is submitted in an electronic ~~format~~form, citations to that part must identify, with the same specificity required for the printed record, the place in the record where the matter appears.

(2) * * *

(b) – (e) * * *

Chapter 5. Juvenile Appeals and Writs

Article 3. Writs

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

(a) – (d) * * *

(e) Augmenting or correcting the record in the reviewing court

(1) – (2) * * *

(3) A party must attach to its motion a copy, if available, of any document or transcript that it wants added to the record. Except as provided in rule 8.144(f) for reporter's transcripts in multiple reporter cases, ~~t~~he pages of the attachment must be

consecutively numbered, beginning with the number one. If the reviewing court grants the motion, it may augment the record with the copy.

- (4) If the party cannot attach a copy of the matter to be added, the party must identify it as required under rules 8.122(a)(1) and 8.130(a)(1).

(5) – (6) * * *

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

(a) – (d) * * *

(e) Augmenting or correcting the record in the reviewing court

(1) – (2) * * *

- (3) A party must attach to its motion a copy, if available, of any document or transcript that it wants added to the record. Except as provided in rule 8.144(f) for reporter’s transcripts in multiple reporter cases, the pages of the attachment must be consecutively numbered, beginning with the number one. If the reviewing court grants the motion, it may augment the record with the copy.

- (4) If the party cannot attach a copy of the matter to be added, the party must identify it as required under rules 8.122(a)(1) and 8.130(a)(1).

(5) – (6) * * *

Division 2. Rules Relating to Death Penalty Appeals and Habeas Corpus Proceedings

Chapter 2. Automatic Appeals From Judgments of Death

Article 2. Record on Appeal

Rule 8.622. Certifying the trial record for accuracy

(a) Request for corrections or additions

- (1) Within 90 days after the clerk delivers the record to defendant’s appellate counsel:

(A) Any party may serve and file a request for corrections or additions to the record. Immaterial typographical errors that cannot conceivably cause confusion are not required to be brought to the court’s attention. Items that a party may request to be added to the clerk’s transcript include a copy of any exhibit admitted in evidence, refused, or lodged that is a document in paper or electronic ~~format~~form. The requesting party must state the reason that the exhibit needs to be included in the clerk’s transcript. Parties may file a joint request for corrections or additions.

(B) * * *

(2) – (4) * * *

(b) – (e) * * *

Division 4. Rules Relating to the Superior Court Appellate Division

Chapter 2. Appeals and Records in Limited Civil Cases

Article 2. Record in Civil Appeals

Rule 8.834. Reporter’s transcript

(a) * * *

(b) Deposit or substitute for cost of transcript

(1) * * *

(2) Within 10 days after the clerk notifies the appellant of the estimated cost of preparing the reporter’s transcript—or within 10 days after the reporter notifies the appellant directly—the appellant must do one of the following:

(A) Deposit with the clerk an amount equal to the estimated cost and a fee of \$50 for the superior court to hold this deposit in trust;

(B) – (C) * * *

(D) File a certified transcript of all of the designated proceedings. The transcript submitted by the party must not be accepted as a substitute for a deposit under (A) unless it complies ~~must comply~~ with the format requirements of rule ~~8.144~~ 8.838; or

(E) * * *

(3) * * *

(c) – (f) * * *

[Rule 8.838. Form of the record

(a) Paper and format

Except as otherwise provided in this rule, clerk’s and reporter’s transcripts must comply with the requirements of rule 8.144(a), (b)(1)–(4) and (6), (c), and (d).

(b) * * *

(c) Binding and cover

(1) If filed in paper form, clerk’s and reporter’s transcripts must be bound on the left margin ~~in volumes of no more than 300 sheets~~, except that transcripts may be bound at the top if required by a local rule of the appellate division.

(2) – (3) * * *]

Chapter 3. Appeals and Records in Misdemeanor Cases

Article 2. Record in Misdemeanor Appeals

Rule 8.866. Preparation of reporter’s transcript

(a) When preparation begins

(1) * * *

(2) If the notice sent to the reporter by the clerk under rule 8.864(a)(1) indicates that the appellant is the defendant and that the defendant was not represented by appointed counsel at trial:

(A) * * *

- (B) The clerk must promptly notify the appellant and his or her counsel of the estimated cost of preparing the reporter’s transcript. The notification must show the date it was sent.
- (C) Within 10 days after the date the clerk sent the notice under (B), the appellant must do one of the following:
 - (i) Deposit with the clerk an amount equal to the estimated cost of preparing the transcript;
 - (ii) - (iii) * * *
 - (iv) File a certified transcript of all of the proceedings required to be included in the reporter’s transcript under rule 8.865. The transcript submitted by the appellant must not be accepted as a substitute for a deposit under (i) unless it complies ~~must comply~~ with the format requirements of rule ~~8.144~~8.838;
 - (v) – (vii) * * *
- (D) If the trial court determines that the appellant is not indigent, within 10 days after the date the clerk sends notice of this determination to the appellant, the appellant must do one of the following:
 - (i) Deposit with the clerk an amount equal to the estimated cost of preparing the transcript;
 - (ii) * * *
 - (iii) File a certified transcript of all of the proceedings required to be included in the reporter’s transcript under rule 8.865. The transcript submitted by the appellant must not be accepted as a substitute for a deposit under (i) unless it complies ~~must comply~~ with the format requirements of rule ~~8.144~~8.838;
 - (iv) – (vi) * * *
- (E) * * *

Advisory Committee Comment

Subdivision (a). If the appellant was not represented by the public defender or other appointed counsel in the trial court, the appellant must use *Defendant's Financial Statement on Eligibility for Appointment of*

Counsel and Reimbursement and Record on Appeal at Public Expense (form CR-105) to show indigency. This form is available at any courthouse or county law library or online at www.courts.ca.gov/forms.

Subdivisions (a)(2)(C)(iv) and (a)(2)(D)(iii). Sometimes a party in a trial court proceeding will purchase reporter's transcripts of all or part of the proceedings before any appeal is filed. In recognition of the fact that such transcripts may already have been purchased, this rule allows an appellant, in lieu of depositing funds for a reporter's transcript, to deposit with the trial court a certified transcript of the proceedings necessary for the appeal. Subdivisions (a)(2)(C)(iv) and (a)(2)(D)(iii) make clear that the certified transcript may be filed in lieu of a deposit for a reporter's transcript only where the certified transcript contains all of the proceedings required under rule 8.865 and the transcript complies with the format requirements of rule ~~8.144~~ 8.838 (e.g. cover information, renumbered pages, required indexes).

(b) Format of transcript

The reporter's transcript must comply with rule ~~8.144~~ 8.838.

(c) – (f) * * * |

Chapter 5. Appeals in Infraction Cases

Article 2. Record in Infraction Appeals

Rule 8.919. Preparation of reporter's transcript

(a) When preparation begins

(1) * * *

(2) If the notice sent to the reporter by the clerk under rule 8.915(a)(3) indicates that the appellant is the defendant:

(A) * * *

(B) The clerk must promptly notify the appellant and his or her counsel of the estimated cost of preparing the reporter's transcript. The notification must show the date it was sent.

(C) Within 10 days after the date the clerk sent the notice under (B), the appellant must do one of the following:

(i) Deposit with the clerk an amount equal to the estimated cost of preparing the transcript;

(ii) – (iii) * * *

(iv) File a certified transcript of all of the proceedings required to be included in the reporter’s transcript under rule 8.918. The transcript submitted by the appellant must not be accepted as a substitute for a deposit under (i) unless it complies ~~must comply~~ with the format requirements of rule ~~8.144~~ 8.838;

(v) – (vii) * * *

(D) If the trial court determines that the appellant is not indigent, within 10 days after the date the clerk sends notice of this determination to the appellant, the appellant must do one of the following:

(i) Deposit with the clerk an amount equal to the estimated cost of preparing the transcript;

(ii) * * *

(iii) File a certified transcript of all of the proceedings required to be included in the reporter’s transcript under rule 8.918. The transcript submitted by the appellant must not be accepted as a substitute for a deposit under (i) unless it complies ~~must comply~~ with the format requirements of rule ~~8.144~~ 8.838;

(iv) – (vi) * * *

(E) * * *

[(b) Format of transcript

The reporter’s transcript must comply with rule ~~8.144~~ 8.838.

(c) – (f) * * *]

Advisory Committee Comment

Subdivision (a). The appellant must use *Defendant’s Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form CR-105) to show indigency. This form is available at any courthouse or county law library or online at www.courts.ca.gov/forms.

Subdivisions (a)(2)(C)(iv) and (a)(2)(D)(iii). Sometimes a party in a trial court proceeding will purchase a reporter's transcripts of all or part of the proceedings before any appeal is filed. In recognition of the fact that such transcripts may already have been purchased, this rule allows an appellant, in lieu of depositing funds for a reporter's transcript, to deposit with the trial court a certified transcript of the proceedings necessary for the appeal. Subdivisions (a)(2)(C)(iv) and (a)(2)(D)(iii) make clear that the certified transcript may be filed in lieu of a deposit for a reporter's transcript only where the certified transcript contains all of the proceedings required under rule 8.865 and the transcript complies with the format requirements of rule ~~8.144~~8.838 (e.g. cover information, renumbered pages, required indexes).