Appellate Advisory Committee Meeting

JUNE 29, 2023
12:00 P.M.

BLUE JEANS LINK:
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Judicial Council of California
Appellate Advisory Committee

www.courts.ca.gov/aac.htm
aac@jud.ca.gov

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:	June 29, 2023
Time:	12:00 PM
Public Livestream:	https://jcc.granicus.com/player/event/2764 (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

Approval of Minutes
Approve minutes of the February 27, 2023, Appellate Advisory Committee meeting.

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 12:00 p.m. on June 28, 2023, will be provided to advisory body members prior to the start of the meeting.

III. INFORMATION ONLY ITEMS (NO ACTION REQUIRED)

Info 1

Chair's Report
Update on items of interest.

Presenter: Hon. Louis Mauro

Info 2

CJER Education Update
Update on items of interest.

Presenters: Karene Alvarado, Director, Center for Judicial Education and Research

Info 3

Remote Appearances at Oral Argument in the Appellate Division
Status report on the post-comment proposal to update the rules regarding oral argument in the appellate division to reflect modern videoconferencing technology and facilitate remote appearances.

Presenter: Mr. Kendall Hannon

IV. Discussion and Possible Action Items

Item 4

Time for Electing and Filing an Appendix
Review public comments on proposal to amend the rules regarding appendixes.

Presenters: Hon. Louis Mauro, Mr. Kendall Hannon

Item 5

Forms for Extension of Time
Review public comments on proposal to revise forms for requesting an extension of time.

Presenters: Hon. Louis Mauro, Mr. Kendall Hannon

Item 6

Notice of Appeal Form
Review public comments on proposal to revise the civil notice of appeal forms.

Presenters: Hon. Louis Mauro, Mr. Kendall Hannon

Item 7

Attachment of Trial Court's Order to a Petition for Review
Review public comments on proposal to revise the rules regarding petitions for review to allow attachment of the entire trial court order following summary denial of a writ petition.

Presenters: Hon. Louis Mauro, Ms. Heather Anderson

V. Adjournment

Adjourn

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February 27, 2023
10:00 AM
Hybrid In-Person and Videoconference
Malcolm M. Lucas Boardroom and BlueJeans

Advisory Body Members Present:	Hon. Louis R. Mauro, Chair; Hon. Kathleen M. Banke, Vice-Chair; Ms. Marsha Amin; Mr. David Andreasen; Mr. Michael G. Colantuono; Hon. Allison M. Danner; Mr. Kevin K. Green; Mr. Jonathan D. Grossman; Hon. Leondra R. Kruger; Ms. Heather J. McKay, Ms. Mary K. McComb; Mr. Jorge Navarrete; Ms. Milica Novakovic; Hon. Charles S. Poochigian; Ms. Beth Robbins; Hon. Laurence D. Rubin; Mr. Benjamin G. Shatz; Ms. Robin H. Urbanski; Hon. Helen E. Williams; Mr. Joseph Ford; Hon. Tracie L. Brown
Advisory Body Members Absent:	Hon. Joan K. Irion, Hon. Stephen D. Schuett; Hon. Victoria Wood
Others Present:	Mr. Todd Harshman; Ms. Aviva Simon; Ms. Heather Anderson; Mr. Kendall Hannon; Ms. Christy Simons; Ms. Khayla Salangsang

OPEN MEETING

Call to Order and Roll Call
The chair called the meeting to order at 10:05AM, and roll was called.

Approval of Minutes
The advisory body reviewed and approved the minutes of the September 12 and October 28, 2022 Appellate Advisory Committee meetings.

INFORMATION ONLY ITEMS (NO ACTION REQUIRED)

Info 1
Chair's Report
Presenter: Hon. Louis Mauro

Justice Mauro thanked staff for their work supporting the committee. He provided an update on referrals the committee had received from the Appellate Caseflow Workgroup, and proposed that the subcommittee on appellate efficiency work on this referral as time and resources allow. He provided an update on the work of the Workgroup on Post-Pandemic Initiatives to develop an umbrella policy to guide committees regarding remote access to court records. He also updated the committee on the status of the pilot project within the third district court of appeal to provide electronic delivery of inmate filings from Folsom State Prison and California State Prison, Sacramento. Finally, he provided a report on the recent work of the Information Technology Advisory Committee and the Appellate Court Security Committee.

Info 2
Legislative Update
Presenter: Ms. Aviva Simon

Ms. Simon provided an update on legislation. She reported that a record 2,700 bills had been introduced in the Legislature over the past two-and-a-half months. She noted there are currently two bills relating to civil court proceedings. SB 21 addresses civil remote proceedings generally, and would extend the sunset authorization for remote proceedings for three years. SB 22 specifically addresses remote appearances in civil commitment proceedings and juvenile justice proceedings. SB 22 was recently amended to address criminal remote proceedings as well. Additionally, she noted that a spot bill has been introduced that would allow for electronic court reporting when a court reporter is not available.

Info 3
Liaison Reports
Presenter: Mr. Joseph Ford, CJER Advisory Committee Liaison

Mr. Ford described that, in light of the pandemic, CJER had begun diversifying how training is delivered, with training being provided both remotely and in person. He noted that the CJER Advisory Committee has proposed amending Rule 10.493 to provide expanded definitions for delivery methods for training. Finally, he provided an update on the courts' compliance rate with the minimum education requirements contained at rule 10.461 and 10.462. Justice Mauro also introduced Justice Tracie Brown as a new liaison to the committee from the CJER Advisory Committee.

Presenter, Mr. Todd Harshman, Judicial Council CJER Liaison

Mr. Harshman updated the committee on three upcoming live CJER education programs: (1) appellate justice orientation in April 2023, (2) the Appellate Judicial Attorney Institute in June 2023, and (3) the Appellate Justice Institute in October 2023. He further described two new distance learning products: (1) a video on anti-SLAPP, and (2) a webinar on trial court appellate division best practices.

DISCUSSION AND ACTION ITEMS (ITEMS 4–10)

Item 4
Appellate Procedure: Costs on Appeal
Presenters: Hon. Louis Mauro, Ms. Heather Anderson

Justice Mauro and Heather Anderson provided a description of the proposal to amend rules 8.278 and 8.891 relating to costs on appeal and the committee reviewed the one comment received.

Action: The committee voted to recommend that the proposal as presented go to the Rules Committee for consideration.

Item 5
Appellate Procedure: Reporters' Transcripts
Presenters: Hon. Louis Mauro, Ms. Heather Anderson

The committee reviewed the comments received on the proposal to amend several rules relating to the format of reporters' transcripts and borrowing of the record on appeal. The committee agreed with commenters that the proposal to amend the advisory committee comments accompanying rules 8.130, 8.866, and 8.919 should be further revised to: (1) state that parties submitting certified transcripts in lieu of a deposit are responsible for ensuring that the certified transcripts are in the proper format, and (2) indicate that the parties may either do the necessary formatting themselves or arrange to have a court reporter do the formatting. The committee further agreed that an advisory committee comment should be added to Rule 8.834 which addresses the use of certified transcripts in lieu of a deposit for a reporter's transcript. Regarding the proposed amendment to rule 8.153 to permit a lending party to ask a court reporter to provide the borrowing party a read-only electronic copy of the reporter's transcript, Ms. Anderson noted that the California Court Reporters Association provided in its comments on the proposal an alternative rule proposal. For electronic records, the CCRA's proposed rule would require the lending party to reach out to the court reporter to obtain a read-only electronic copy of the record and would give the court reporter the option of setting an expiration date on the document. In light of this substantive suggestion, the committee voted to not recommend amendment of rule 8.153 at this time to allow for further consideration of this issue. The committee agreed with commenters that the proposal to amend rule 8.144 should be revised to provide that clerk's transcripts delivered in electronic format can be produced in a single volume. As circulated for comment, the proposal included amendments to rule 8.144(f)(2) and (3)'s provisions regarding pagination of the reporter's transcript in cases with multiple reporters. Ms. Anderson reported that comments on this proposal were mixed, and that further research had demonstrated that the proposed amendments (as well as an alternative suggested by the CCRA) did not rectify the printing or page location issues which gave rise to the proposed amendments. The committee decided to not recommend amendment of Rule 8.144(f) at this time to allow for further research into this issue. The committee, however, agreed that rules 8.144(d)(1)(C), 8.452(e), and 8.456(e) should be revised to acknowledge that, under existing rules, page numbers on a transcript may not match the page numbers shown in the PDF viewer.

Action: The committee voted to recommend that the proposal as modified go to the Rules Committee and be circulated for public comment.

Item 6
Appellate Procedure: Oral Argument in Appellate Division
Presenters: Hon. Louis Mauro, Ms. Christy Simons

Justice Mauro and Ms. Simons described the invitation to comment on the proposal to update the rules regarding oral argument in the appellate division to provide for broader authorization for remote appearances. The committee discussed whether the proposal should include the proposed provisions relating to remote appearance fees which parallel those in rule 3.672(k). The committee voted to include the fee provisions as presented, with addition of the words "or otherwise" following the citation to Government code section 70630.

Action: The committee voted to recommend that the proposal as modified go to the Rules Committee and be circulated for public comment.

Item 7
Appellate Procedure: Time for Respondent to Elect an Appendix
Presenters: Hon. Louis Mauro, Ms. Christy Simons

Justice Mauro and Ms. Simons described the invitation to comment on the proposal to amend the rules regarding appendixes to allow appellants to file an appendix before the opening brief and to give respondents more time to elect an appendix by moving this deadline to when other record designations are due. Ms. Simons also described the proposed revisions to the forms related to designation of the record on appeal in civil cases. The committee made further revisions to the relevant information sheets to make clear that if a respondent elects an appendix the appeal will proceed by an appendix. The committee further revised the item on each form where the applicant states the reasons the extension is needed to specifically reference the prejudice factor contained in rule 8.63 and 8.811(b).

Action: The committee voted to recommend that the proposal as modified go to the Rules Committee and be circulated for public comment.

Item 8
Appellate Procedure: Forms for Extension of Time
Presenters: Hon. Louis Mauro, Ms. Christy Simons

Justice Mauro and Ms. Simons described the invitation to comment on the proposal to revise the forms used to request an extension of time to file a brief in the Court of Appeal and the appellate division of the superior court. The committee discussed whether the forms should include the proposed item for an applicant to list what work has been done on the appeal. The committee opted to include the item in the proposal and seek comments on this proposed item. The committee further revised item 4 on form APP-006 to indicate that the maximum stipulated time had already been used.

Action: The committee voted to recommend that the proposal as modified go to the Rules Committee and be circulated for public comment.

Item 9
Appellate Procedure: Notice of Appeal Form
Presenters: Hon. Louis Mauro, Mr. Kendall Hannon

Justice Mauro and Mr. Hannon described the invitation to comment on the proposal to revise the unlimited civil notice of appeal form to make the item for listing the date of the order being appealed more clear and to add an item by which attorneys could expressly indicate their intention to appeal an order or judgment requiring the attorney to pay sanctions. The committee discussed whether the attorney-appeal item was useful or necessary. The committee revised the wording of this item to read that the attorney was appealing the sanction order, rather than "joining" an underlying appeal. The committee further revised the form to add an optional item by which an appellant can indicate that the order or judgment being appealed is attached to the notice of appeal. The committee decided to expand the proposal to include the limited civil notice of appeal form (form APP-102) and to propose the above items be added to that form.

Action: The committee voted to recommend that the proposal as modified go to the Rules Committee and be circulated for public comment.

Item 10
Appellate Procedure: Attachment of Trial Court Order to a Petition for Review

Presenters: Hon. Louis Mauro, Ms. Heather Anderson

Justice Mauro and Ms. Anderson described the invitation to comment on the proposal to amend rule 8.504 to provide for the attachment of the entire trial court order where a petitioner seeks review of a Court of Appeal summary denial of a writ petition.

Action: The committee voted to recommend that the proposal as presented go to the Rules Committee and be circulated for public comment.

ADJOURNMENT

There being no further business, the meeting was adjourned at 1:40 p.m.

Approved by the advisory body on enter date.

Judicial Council Appellate Education Programming

Updated June 2023

Live Education for Justices

Preventing and Responding to Sexual Harassment For Judicial Officers, Managers, and Supervisors

- September 7, 2023 (remote)
- December 5, 2023 (remote)

Appellate Justice Institute

- October 18–20, 2023 (Costa Mesa)

Live Education for Judicial Attorneys

Experienced Assignment Courses—CEQA Overview

- October 12–13, 2023 (San Francisco)

Newer Distance Education Products for Justices and Judicial Attorneys

The Digital Judge Podcast: ChatGPT

Science of Water Law Podcasts

Live Education Available to Appellate Court Personnel

Leadership courses

Institute of Court Management (ICM)

- Workforce Management, July 25-27, 2023 (Sacramento)

Preventing and Responding to Sexual Harassment For Judicial Officers, Managers, and Supervisors

- September 7, 2023 (remote)
- December 5, 2023 (remote)

Core 40: Fundamental Skills for Supervisors

- August 1–4, 2023 (San Diego)
- December 4–8, 2023 (remote)
- May 14–17, 2024 (Sacramento)

Advanced Core 40
- September 12–14, 2023 (Sacramento)
- February 6–8, 2024 (remote)

Staff (non-judicial, non-attorney audiences) courses

Appellate Staff Regionals

Regional 1
- August 31, 2023 (San Francisco)
- September 28, 2023 (Los Angeles)

Regional 2
- November 6, 2023 (Los Angeles)
- December 14, 2023 (San Francisco)

Preparing for Leadership
- December 5, 2023 (Sacramento)
- April 11, 2024 (remote)

Core Leadership and Training Skills
- September 12–14, 2023 (San Diego)
- February 27–29, 2024 (remote)

Distance Education Products Available to Appellate Court Personnel

All Personnel

GC § 68088 Compliance
5 options (4 individual self-study options, 1 facilitated group study) are available on *CJER Online* for complying with GC § 68088.

Leadership

Actionable Insights From Data
This video focuses on how to effectively and efficiently use data and data analysis to make truly informed decisions that can have a positive impact on your court.

There are more than 75 courses and resources available for Appellate and Trial court leaders in our Leadership Toolkit. These resources are organized by the following leadership competencies:

- Leading in the Courts/Leading Change
- Leading People
- Results Driven
- Building Coalitions/Communication
- Professional Growth and Development
- Business Acumen

Staff (non-judicial, non-attorney audiences)

Our Appellate Toolkit provides various resources and courses for clerks and judicial assistants who work in an appellate court.

Judicial Council *of* California

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

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REPORT TO THE JUDICIAL COUNCIL

Item No.:
For business meeting on September 18–19, 2023

Title
Appellate Procedure: Time for Electing and Filing an Appendix

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 8.124 and 8.845; revise forms APP-001-INFO, APP-010, APP-101-INFO, and APP-110; revoke forms APP-011 and APP-111

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

Agenda Item Type
Action Required

Effective Date
January 1, 2024

Date of Report
June 23, 2023

Contact
Kendall W. Hannon, 415-865-7653
kendall.hannon@jud.ca.gov

Executive Summary

The Appellate Advisory Committee recommends amending the rules regarding appendixes to allow appellants to file an appendix before filing an opening brief and to allow respondents to elect an appendix when their other record designations are due. These amendments are intended to assist courts and litigants by permitting earlier filing of an appendix and to provide respondents the opportunity to elect an appendix after receiving notice that the appellant has designated a clerk's transcript. The committee also recommends revising four forms to reflect the rule changes and revoking two forms that would no longer be necessary.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2024:

1. Amend California Rules of Court, rules 8.124 and 8.845 to change the deadline for a respondent to elect an appendix and to allow an appellant to file an appendix before filing the opening brief.

2. Revise the following forms to reflect the above rule changes:

   - *Information on Appeal Procedures for Unlimited Civil Cases* (form APP-001-INFO)
   - *Respondent's Notice Designating Record on Appeal* (form APP-010)
   - *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO)
   - *Respondent's Notice Designating Record on Appeal* (form APP-110)

3. Revoke the following forms as no longer necessary:

   - *Respondent's Notice Electing to Use an Appendix (Unlimited Civil Case)* (form APP-011)
   - *Respondent's Notice Electing to Use an Appendix (Limited Civil Case)* (form APP-111)

The proposed amended rules and revised forms are attached at pages 7–52.

Relevant Previous Council Action

Rule 8.124 of the California Rules of Court,[1] governing the use of an appendix in unlimited civil appeals, was adopted as rule 5.1 in 2002 and renumbered in 2007. The council adopted rule 8.845, which authorizes the use of an appendix in lieu of a clerk's transcript in limited civil appeals, effective January 1, 2021; this rule has never been amended. Rule 8.124 has been amended several times, including effective January 1, 2010, to provide that a respondent may not elect an appendix when the appellant has a fee waiver. No other amendments to rule 8.124 are relevant to the instant proposal.

The council approved form APP-101-INFO effective January 1, 2009; forms APP-010, APP-011 and APP-110 effective January 1, 2010; form APP-001-INFO effective January 1, 2019; and form APP-111 effective January 1, 2021. All of these forms except APP-001-INFO and APP-111 have been previously amended, but none of these amendments are relevant to the instant proposal.

Analysis/Rationale

Respondent's election of an appendix

Currently, rule 8.124(a)(1)(B) allows a respondent in a civil appeal to elect to use an appendix instead of a clerk's transcript if (1) the respondent serves and files the notice of election "within 10 days after the notice of appeal is filed" and (2) the appellant is not granted a fee waiver for a clerk's transcript. The respondent's election governs—even if the appellant chooses a clerk's transcript—unless the superior court orders otherwise. The respondent's notice electing an appendix is due the same day as the appellant's notice designating the record on appeal. Rule 8.845(a)(1)(B) contains identical provisions for limited civil appeals.[2] For the respondent's other

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

[2] See rules 8.121(a), 8.124(a)(1)(B), and 8.845(a)(1)(B).

record designations—such as requesting additional proceedings in the reporter's transcript—the respondent's designation is due 10 days after the appellant's designation is filed.[3]

Under these rules, there is a risk that a respondent may miss the opportunity to elect an appendix. Some respondents may be unaware that they must elect an appendix at the same time as the appellants. They may be surprised when an appellant elects a clerk's transcript and then they discover that it is too late for them to elect an appendix. Still other respondents may be unable to secure appellate counsel to advise them during this short time period immediately after the notice of appeal has been filed. A missed opportunity to elect an appendix can have a significant impact on the length of the appeals process, given the amount of time it can take superior courts to compile the clerk's transcript.

To ensure that respondents have a sufficient opportunity to elect an appendix, this proposal amends rule 8.124(a)(1)(B) and rule 8.845(a)(1)(B) to allow respondents additional time to elect an appendix. It changes the deadline for respondents to elect an appendix to "within 10 days after the appellant's notice designating the record on appeal is filed." This is the same deadline for filing the respondent's notice designating the record on appeal.

The committee believes these amendments will reduce the workload of superior court clerks by relieving them of the burden of preparing clerk's transcripts in certain cases. This, in turn, will help expedite these appeals by eliminating the time needed to compile and transmit the clerk's transcript.

Timing of filing appellant's appendix or joint appendix

Rules 8.124(e)(2) and 8.845(e)(2) require appellant's appendix or a joint appendix to be filed "with the appellant's opening brief." The advisory committee comments to both rules explain that the requirement that the appendix be filed "with" the brief means that any extension of time to file the brief includes the same extension of time to file the appendix.

This proposal amends rules 8.124(e)(2) and 8.845(e)(2) to allow the filing of the appellant's appendix or joint appendix "before or together with the appellant's opening brief."

A clerk's transcript is always filed before the appellant's opening brief.[4] Similarly allowing an appendix to be filed before the appellant's opening brief would facilitate the preparation of the parties' briefs in complex civil cases and would assist the courts' consideration of petitions for writ of supersedeas. These amendments would not affect the automatic extension of time for filing an appendix if the appellant receives an extension of time to file the opening brief.

Forms for respondents to designate the record

Respondents in the Court of Appeal can use *Respondent's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-010) to request that additional documents be included in a

[3] Rules 8.122(a)(2), 8.130(a)(3), 8.832(b)(1), and 8.834(a)(3).

[4] Rules 8.212(a) and 8.882(a).

clerk's transcript or additional oral proceedings be included in a reporter's transcript. To elect an appendix, respondents can use *Respondent's Notice Electing to Use an Appendix (Unlimited Civil Case*) (form APP-011).

In light of the rule change (discussed above) allowing respondents more time to elect an appendix, respondents' choices regarding the record on appeal would all be due at the same time. Accordingly, the committee believes that a separate form for the respondent to elect an appendix is no longer needed.

This proposal revises item 1 on form APP-010 to add a check box for respondents to indicate that they are electing to proceed by an appendix. The revised item advises the respondent that if the appellant obtains a fee waiver, respondents cannot elect an appendix. The item further prompts the respondent to designate any additional documents and exhibits for the clerk's transcript in the event that their election of an appendix is not given effect. This proposal makes the same revisions to the form used for respondents to designate the record in limited civil appeals, *Respondent's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-110).[5]

The committee recommends form APP-011 and *Respondent's Notice Electing to Use an Appendix (Limited Civil Case)* (form APP-111) be revoked as no longer necessary.

Information sheet revisions

To reflect the above rule changes, this proposal revises *Information on Appeal Procedures for Unlimited Civil Cases* (form APP-001-INFO) at items 14a and 16 to indicate that a joint appendix or an appellant's appendix may be filed "before or together" with the appellant's opening brief. Additionally, a paragraph has been added to item 25a to advise the respondent that if appellant chooses a clerk's transcript but does not have a fee waiver for a clerk's transcript, the respondent can choose an appendix or a clerk's transcript. This item further advises the respondent that to make this election, the respondent must fill out and file APP-010 within 10 days after the appellant's notice designating the record is filed.

The same revisions have been made to *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) in items 13b, 15, and 24d, but with form APP-110 referenced.

Policy implications

The above rule changes and form revisions will simplify the record designation process and help expedite the appellate process in those cases in which respondents elect to proceed by an appendix. These revisions are therefore consistent with *The Strategic Plan for California's*

[5] In addition, the titles of forms APP-010 and APP-110 have been revised to set apart the "Unlimited Civil Case" and "Limited Civil Case" phrases with an em dash, as opposed to parentheticals rather than placing them in parentheses, to make the titles clearer and consistent with other council forms.

Judicial Branch, specifically the goals of Modernization of Management and Administration (Goal III) and Quality of Justice and Service to the Public (Goal IV).[6]

Comments

This proposal circulated for public comment between March 30 and May 12, 2023. The committee received nine comments, from the California Academy of Appellate Lawyers, the California Lawyers Association Committee on Appellate Courts (CAC), the Family Violence Appellate Project (FVAP), the Los Angeles County Bar Association Appellate Court Section, the Orange County Bar Association, the Sacramento County Bar Association Appellate Law Section, the San Diego County Bar Association Appellate Practice Section, the Superior Court of Orange County, and the Superior Court of San Diego County. All comments agreed with the proposed changes. The principal comments are summarized below. A chart with the full text of the comments received and the committee's responses is attached at pages 53–64.

The CAC commented that the proposal addresses the problem in which respondents may inadvertently miss the deadline to elect an appendix, and that encouraging greater use of appendixes "would speed up appeals and save court resources." The Appellate Court Section of the Los Angeles County Bar Association stated that the proposal "will potentially eliminate an unnecessary filing by the respondent, and reduce the workload of superior court clerks in compiling clerk's transcripts where the respondent would prefer to elect an appendix, thereby expediting appeals." Regarding the rule change to allow early filing of appendixes, the commenter felt the change would be "unlikely to change actual practice," but acknowledged there may be instances (such as with the filing of a writ of supersedeas), where early filing of the appendix would be helpful.

The invitation to comment specifically asked for comment on the rule changes' potential impact on the deadline for an appellant's opening brief. Under rule 8.212(a), if an appendix is being used and a reporter's transcript has not been designated, the appellant must serve the opening brief within 70 days after the filing of the election to use an appendix.[7] Under the rule change, the respondent's election would be due 10 days later than under current practice, and the appellant's time to file its opening brief would run from this later date. The invitation to comment asked whether this would be problematic.

FVAP, the Orange County Bar Association, the San Diego County Bar Association Appellate Practice Section, and the Superior Court of San Diego County responded to this request for specific comment, and stated this potential impact on the briefing deadlines was not problematic. FVAP stated that it "rarely proceeds without a reporter's transcript, and even if that occurred, a 10-day extension would have minimal impact on the total duration of the appeal." It further stated that the appellate courts retain discretion to expedite briefing where necessary.

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[6] Available at *www.courts.ca.gov/3045.htm*.

[7] Similarly, in limited civil appeals, rule 8.882(a) provides that if an appendix is being used and a reporter's transcript has not been designated, the appellant must serve the opening brief within 60 days after the filing of the election to use an appendix.

Additionally, the Orange County Bar Association noted that the appellate process would still be faster where a respondent elects an appendix, even where no reporter's transcript is designated, because of the length of time normally needed to compile the clerk's transcript.

The invitation to comment also asked whether a separate form for the respondent to elect an appendix should be retained. The commenters who addressed this request for comment uniformly supported moving the respondent's election of an appendix into the form for the respondent's other record designations.

Finally, the commenters did not identify any other record preparation or briefing procedures that would be affected by allowing respondents more time to elect an appendix.

Alternatives considered

The committee considered the alternative of not taking any action but concluded that the amendments would benefit courts and litigants by saving time and expense. The committee also considered retaining separate forms for the respondent to elect an appendix but concluded that consolidating that form into the respondent's record designation form would make the process more efficient.

Fiscal and Operational Impacts

The committee expects that fiscal and operational impacts would be minimal. The Superior Court of San Diego County noted the need for minimal training for staff, but also noted that the proposal could possibly save 1.5–3 hours of clerk time in cases where a respondent elects an appendix over a clerk's transcript.

Attachments and Links

1. Cal. Rules of Court, rules 8.124 and 8.845, at pages 7–10
2. Forms APP-001-INFO, APP-010, APP-011, APP-101-INFO, APP-110, and APP-111, at pages 11–52
3. Chart of comments, at pages 53–64

Rules 8.124 and 8.845 of the California Rules of Court are 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 8.124. Appendixes

(a) Notice of election

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

(A) The appellant elects to use an appendix under this rule in the notice designating the record on appeal under rule 8.121; or

(B) The respondent serves and files a notice in the superior court electing to use an appendix under this rule within 10 days after the appellant's notice ~~of appeal~~ designating the record on appeal is filed and no waiver of the fee for a clerk's transcript is granted to the appellant. If the appellant has a fee waiver, the respondent cannot elect an appendix instead of a clerk's transcript.

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

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

(b)–(d) * * *

(e) Service and filing

(1) A party preparing an appendix must:

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

(B) File the appendix in the reviewing court.

Rules 8.124 and 8.845 of the California Rules of Court are amended, effective January 1, 2024, to read:

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

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

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

(f)–(g) * * *

Advisory Committee Comment

Subdivision (a). * * *

Subdivision (b). * * *

Subdivision (d). * * *

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

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

Subdivision (g). * * *

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

Rules 8.124 and 8.845 of the California Rules of Court are amended, effective January 1, 2024, to read:

Rule 8.845. Appendixes

(a) Notice of election

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

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

(B) The respondent serves and files a notice in the superior court electing to use an appendix under this rule within 10 days after the appellant's notice ~~of appeal~~ designating the record on appeal is filed, and no waiver of the fee for a clerk's transcript is granted to the appellant. If the appellant has a fee waiver, the respondent cannot elect an appendix instead of a clerk's transcript.

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

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

(b)–(d) * * *

(e) Service and filing

(1) A party preparing an appendix must:

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

(B) File the appendix in the reviewing court.

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

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

Rules 8.124 and 8.845 of the California Rules of Court are amended, effective January 1, 2024, to read:

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

(f)–(g) * * *

Advisory Committee Comment

Subdivision (a). * * *

Subdivision (b). * * *

Subdivision (d). * * *

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

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

Subdivision (g). * * *

GENERAL INFORMATION

1 What does this information sheet cover?

This information sheet tells you about appeals in unlimited civil cases. These are civil cases in which the amount of money claimed is more than $25,000, as well as other types of cases, such as those filed in family court, probate court, and juvenile court.

If you are the party who is appealing (asking for the trial court's decision to be reviewed), you are called the APPELLANT, and you should read "Information for the Appellant," starting on page 3. If you received notice that another party in your case is appealing, you are called the RESPONDENT and you should read "Information for the Respondent," starting on page 13.

This information sheet does not cover everything you may need to know about appeals in unlimited civil cases. It gives you a general idea of the appeal process. To learn more:

- Read rules 8.100–8.278 of the California Rules of Court, which set out the procedures for unlimited civil appeals. You can get these rules at any courthouse or county law library or online at *www.courts.ca.gov/rules*.
- Read the local rules and find out about self-help resources for the district in which you filed your appeal at *www.courts.ca.gov/courtsofappeal.htm*.
- Visit the Self-Help Guide to the California Courts at *https://selfhelp.courts.ca.gov/.*
- Review the counties included in each appellate district at *www.courts.ca.gov/documents/appdistmap.pdf.*

2 What is an appeal?

An appeal is a request to a higher court to review a decision made by a judge or jury in the superior court. In an unlimited civil case, the court hearing the appeal is the Court of Appeal for the district in which the superior court is located. The lower court—called the "trial court" in this information sheet—is the superior court.

It is important to understand that **an appeal is NOT a new trial**. The Court of Appeal will not consider new evidence, such as the testimony of new witnesses or new exhibits.

The appellate court's job is to review a record of what happened in the trial court and the trial court's decision to see if certain kinds of legal errors were made.

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

- *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO)
- *Information on Appeal Procedures for Infractions* (form CR-141-INFO)
- *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO)

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

3 Who can appeal?

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

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

No. Generally, you can only appeal the final judgment—the decision at the end that decides the whole case. Other rulings made by the trial court before the final judgment generally cannot be separately appealed but can be reviewed only later as part of an appeal of the final judgment. There are a few exceptions to this general rule. Code of Civil Procedure section 904.1 lists a few types of orders in an unlimited civil case that can be appealed right away. These include orders that:

- Grant a motion to quash service of summons or grant a motion to stay or dismiss the action on the ground of inconvenient forum.
- Grant a new trial or deny a motion for judgment notwithstanding the verdict.
- Discharge or refuse to discharge an attachment or grant a right to attach.
- Grant or dissolve an injunction or refuse to grant or dissolve an injunction. Note: Injunctions include restraining orders.
- Appoint a receiver.
- Are made after final judgment in the case.

- Are made appealable by the Family Code or the Probate Code.

You should consult with a lawyer or a court self-help center to determine if your order is final and appealable. Go to *www.courts.ca.gov/selfhelp-selfhelpcenters.htm* to find information about the self-help center in your county.

(You can view Code of Civil Procedure section 904.1 using the link below: http://leginfo.legislature.ca.gov/faces/codes.xhtml.)

5 What does the appellant need to prove to win on appeal?

The appellant must prove that an error in the trial court proceedings was made and that the error affected the outcome of the court's or jury's decision. An error that affected the outcome of the case is called a "prejudicial error."

An error can include things like errors made by the judge about the law, errors or misconduct by the lawyers or by the jury, incorrect instructions given to the jury, or insufficient evidence to support the judgment, order, or other decision being appealed. Note: This is not a complete list of all possible errors.

When the appellant argues that the error was based on insufficient evidence to support the judgment or other decision being appealed, the Court of Appeal will determine whether there was "substantial evidence" to support the judgment, order, or other decision being appealed. But in conducting its review, the Court of Appeal only looks to see if there was evidence that reasonably supports the decision.

The Court of Appeal generally will not reconsider the jury's or the trial court's conclusions about which side had more or stronger evidence or whether witnesses were believable. It only determines whether the evidence is sufficient to support the judgment, order, or other decision.

The Court of Appeal will generally not overturn the judgment, order, or other decision being appealed unless the record shows a prejudicial error was made. The winning party does not have to prove that the judgment, order, or other decision was correct. Instead, it is up to the appellant to prove that the error was made and that the error affected the outcome of the case.

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

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

If you decide not to use a lawyer, you must put your address, telephone number, fax number (if available), and email address (if available) on the first page of every document you file with the court.

However, if you need to keep your contact information private (for instance, in an appeal involving a domestic violence restraining order), you may give a different mailing address instead. But if you use a different address, be sure to check it regularly to stay informed about your case and about your obligations regarding your case.

You must keep the Court of Appeal, the trial court (if the trial court proceedings continue or are expected to continue), and the other parties in your case informed of any change in your contact information for service of notices and other documents relating to the appeal.

For your trial court case, you may complete *Notice of Change of Address or Other Contact Information* (form MC-040), file it in the trial court, and have it served on the parties in the case.

For your case in the Court of Appeal, you may refer to form MC-040 as an example of the information that you need to include in a notice regarding the change in your contact information. That notice must be filed in the Court of Appeal and served on the parties in the appellate case.

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

You have to hire your own lawyer if you want one. You can get information about finding a lawyer on the Self-Help Guide to the California Courts at *https://selfhelp.courts.ca.gov/get-free-or-low-cost-legal-help*.

INFORMATION FOR THE APPELLANT

This part of the information sheet is written for the appellant—the party who is appealing the trial court's decision. It explains some of the rules and procedures relating to appealing a decision in an unlimited civil case. The information may also be helpful to the respondent. Additional information for respondents can be found starting on page 13 of this information sheet.

8 How do I start my appeal?

First, you must serve and file a notice of appeal. The notice of appeal tells the other party or parties in the case and the trial court that you are appealing the trial court's decision. You may use *Notice of Appeal/Cross-Appeal—Unlimited Civil Case* (form APP-002) to prepare a notice of appeal in an unlimited civil case. You can get form APP-002 at any courthouse or county law library or online at *www.courts.ca.gov/forms.htm*.

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

"Serve and file" means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send ("serve") the notice of appeal to the other party or parties in the way required by law. If the notice of appeal is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the notice of appeal has been served. This record is called a "proof of service." *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) can be used to make this record. The proof of service must show who served the notice of appeal, who was served with the notice of appeal, how the notice of appeal was served (by mail, in person, or electronically), and the date the notice of appeal was served.
- Bring or send (by mail or electronically) the original notice of appeal and the proof of service to the trial court that issued the judgment, order, or other decision you are appealing. You should make a copy of the notice of appeal you are planning to file for your own records before you file it with the court.

Unless you are filing electronically, it is a good idea to bring or mail an extra copy of the notice of appeal to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) and on the Self-Help Guide to the California Courts at *www.courts.ca.gov/selfhelp-serving.htm*.

10 Is there a deadline to serve and file my notice of appeal?

Yes. Generally, in an unlimited civil case, the notice of appeal must be served on the other party or parties in the case and filed with the clerk of the superior court within **60 days** after the trial court clerk or a party serves either (1) a document called a "Notice of Entry" of the trial court judgment or appealable order or (2) a file-stamped copy of the judgment or appealable order.

If the clerk or a party served neither of these documents, the notice of appeal must be filed within 180 days after entry of judgment or appealable order (generally, the date the judgment or appeable order is file-stamped).

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

If a notice of appeal has been filed in a case, any other party to the case may file its own appeal from the same judgment or order. This is called a "cross-appeal."

To cross-appeal, a party must file a notice of appeal within either the regular time for filing a notice of appeal or within 20 days after the clerk of the superior court mails notice of the first appeal, whichever is later. A party that wishes to cross-appeal may use *Notice of Appeal/Cross-Appeal—Unlimited Civil Case* (form APP-002) to file this notice in an unlimited civil case.

11 Do I have to pay a fee to file a notice of appeal?

Yes. Unless the court waives this fee, you must pay a fee for filing your notice of appeal. You can ask the clerk of the court where you are filing the notice of appeal what the fee is or look up the fee for an appeal in an unlimited civil case in the current Statewide Civil Fee Schedule at *www.courts.ca.gov/7646.htm* (see the "Appeal and Writ Related Fees" section near the end of the schedule).

If you cannot afford to pay the fee, you can ask the court to waive it. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at *www.courts.ca.gov/forms*. You can file this application either before you file your notice of appeal or with your notice of appeal. The court will review this application to determine if you are eligible for a fee waiver.

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

Filing a notice of appeal does NOT automatically postpone most judgments or orders, such as those requiring you to pay another party money, deliver property to another party, or comply with child custody or visitation orders (see Code of Civil Procedure sections 917.1–917.9 and 1176; you can get a copy of these laws at *www.leginfo.legislature.ca.gov/faces/codes.xhtml*). These kinds of judgments or orders will be postponed, or "stayed," only if you request a stay and the court grants your request or some other procedure authorizes a stay (such as filing a bond in appropriate cases).

In most cases, if the trial court denies your request for a stay, you can apply to the Court of Appeal for a stay. If you do not get a stay and you do not do what the trial court ordered you to do, court proceedings to collect the money or otherwise enforce the judgment or order may be started against you.

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

Within 15 days after the trial court clerk mails a notice that a notice of appeal has been filed in an unlimited civil case, the appellant must serve and file in the Court of Appeal a completed *Civil Case Information Statement* (form APP-004), attaching a copy of the judgment or appealed order that shows the date it was entered. See rules 8.100 and 8.104 of the California Rules of Court.

In addition, since the Court of Appeal justices were not there to see what happened in the trial court, an official record of what happened must be prepared and sent to the Court of Appeal for its review.

Within 10 days of filing the notice of appeal, the appellant must tell the trial court in writing (designate) what documents and oral proceedings, if any, to include in the record that will be sent to the Court of Appeal. You will need to designate all parts of the record that the Court of Appeal will need to decide the issues you raised in the appeal.

You can use *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) to designate the record in an unlimited civil case. You can get form APP-003 at any courthouse or county law library or online at *www.courts.ca.gov/forms.htm*.

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

- Have somebody over 18 years old mail, deliver, or electronically send (serve) the notice to the other party or parties in the way required by law. If the notice is mailed or personally delivered, it must be by someone who is not a party to the case—-so not you.
- Make a record that the notice has been served. This record is called a "proof of service." *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) can be used to make this record. The proof of service must show who served the notice, who was served with the notice, how the notice was served (by mail, in person, or electronically), and the date the notice was served.
- Bring or send (by mail or electronically) the original notice and the proof of service to the trial court that issued the judgment, order, or other decision you are appealing. You should make a copy of the notice you are planning to file for your own records before you file it with the court. Unless you are filing electronically, it is a good idea to bring or mail an extra copy of the notice to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *Information Sheet for Proof of Service* (form APP-009-INFO) and on the Self-Help Guide to the California Courts at www.courts.ca.gov/selfhelp-serving.htm.

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

There are three parts of the official record:

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

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

a. Record of the documents filed in the trial court

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

- A *clerk's transcript* or an *appendix,*
- The original *trial court file,* or
- An *agreed statement.*

Read below for more information about these options.

(1) Clerk's transcript or appendix

Description: A clerk's transcript is a compilation of the documents filed in the trial court that is prepared by the trial court clerk. An appendix is a compilation of these documents prepared by a party. (Cal. Rules of Court, rule 8.124.)

Contents: Certain documents, such as the notice of appeal and the trial court judgment or order being appealed, must be included in the clerk's transcript or appendix. These documents are listed in rule 8.122(b) and rule 8.124(b) of the California Rules of Court and in *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003).

Clerk's transcript. If you want any documents other than those listed in rule 8.122(b) to be included in the clerk's transcript, you must tell the trial court in your notice designating the record on appeal. You can use form APP-003 to do this. You will need to identify each document you want included in the clerk's transcript by its title and filing date or, if you do not know the filing date, the date the document was signed.

If you (the appellant) request a clerk's transcript, the respondent also has the right to ask the clerk to include additional documents in the clerk's transcript. If this happens, you will be served with a notice saying what other documents the respondent wants included in the clerk's transcript.

Cost: The appellant is responsible for paying for preparing a clerk's transcript. The trial court clerk will send you a bill for the cost of preparing an original and one copy of the clerk's transcript.

You must do one of the following three things within 10 days after the clerk sends this bill or the Court of Appeal may dismiss your appeal:

- Pay the bill.
- Ask the trial court to waive the cost because you cannot afford to pay. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at *www.courts.ca.gov/forms.htm.* The trial court will review this application to determine if you are eligible for a fee waiver.
- Give the trial court a copy of a court order showing that your fees in this case have already been waived by the court.

Completion and delivery: After the cost of preparing the clerk's transcript has been paid or waived, the trial court clerk will compile the requested documents into a transcript format and, when the record on appeal is complete, will forward the original clerk's transcript to the Court of Appeal for filing. The trial court clerk will send you a copy of the transcript. If the respondent bought a copy, the clerk will also send a copy of the transcript to the respondent.

Appendix: If you choose to prepare an appendix of the documents filed in the superior court, rather than designating a clerk's transcript, that appendix must include all of the documents and be prepared in the form required by rule 8.124 of the California Rules of Court. The parties may prepare separate appendixes or stipulate (agree) to a joint appendix. If separate appendixes are prepared, each party must pay for its own appendix. If a joint appendix is prepared, the parties can agree on how the cost of preparing the appendix will be paid or the appellant will pay the cost.

The party preparing the appendix must serve the appendix on each other party (unless the parties have agreed or the Court of Appeal has ordered otherwise) and file the appendix in the Court of Appeal. The appellant's appendix or a joint appendix must be served and filed before or together with the appellant's opening brief. See (16) for information about the brief.

(2) Trial court file

When available: If the Court of Appeal has a local rule allowing this, and the parties agree, the clerk can send the Court of Appeal the original trial court file instead of a clerk's transcript as a record of documents filed in the trial court (see rule 8.128 of the California Rules of Court).

Cost: As with a clerk's transcript, the appellant is responsible for paying for preparing the trial court file. The trial court clerk will send you a bill for this preparation cost.

You must do one of the following things within 10 days after the clerk sends this bill or the Court of Appeal may dismiss your appeal:

- Pay the bill.
- Ask the trial court to waive the cost because you cannot afford to pay. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at www.court.ca.gov/forms. The trial court will review this application to determine if you are eligible for a fee waiver.
- Give the trial court a copy of a court order showing that your fees in this case have already been waived by the court.

Completion and delivery: After the cost of preparing the trial court file has been paid or waived and the record on appeal is complete, the trial court clerk will number the pages and send the file and a list of the documents in the file to the Court of Appeal. The trial court clerk will also send a copy of the list of documents to the appellant and respondent so that you can put your own files of documents from the trial court in the correct order and number the pages.

(3) Agreed statement

Description: An agreed statement is a summary of the trial court proceedings agreed to by the parties. (See rule 8.134 of the California Rules of Court.)

When available: If the trial court proceedings were not recorded by a court reporter or if you do not want to use that option, you can choose (elect) to use an agreed statement as the record of the oral proceedings. Please note that it may take more of your time to prepare an agreed statement than to use a reporter's transcript, if it is available.

Contents: An agreed statement must explain what the trial court case was about, describe why the Court of Appeal is the right court to consider an appeal in this case (why the Court of Appeal has "jurisdiction"), and describe the rulings of the trial court relating to the points to be raised on appeal.

The statement should include only those facts that you and the other parties think are needed to decide the appeal.

Preparation: If you elect to use this option, you must file either (1) an agreed statement or (2) a written agreement (called a "stipulation") that the parties are trying to agree on a statement, along with your notice designating the record on appeal. If you file the stipulation and the parties agree on a statement, you must file the statement within 40 days after filing the notice of appeal. If you file the stipulation and the parties cannot agree on the statement, you must file a new notice designating the record within 50 days after filing the notice of appeal.

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

Important! **The type of record of the oral proceedings that you choose, including a reporter's transcript or a settled statement, should be carefully considered, as it may affect your appeal. You should consult with a lawyer to determine the best option in your case.**

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

You are responsible for deciding how the record of the oral proceedings will be provided and, depending on what option you select and your circumstances, you may also be responsible for paying for preparing this record or for preparing an initial draft of the record. If you do not take care of these responsibilities, a record of the oral proceedings in the trial court will not be prepared and sent to the Court of Appeal. **If the Court of Appeal does not receive this record, you may forfeit your arguments on appeal, or the Court of Appeal may make presumptions in favor of the judgment or order.**

In an unlimited civil case, you can use *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) to tell the trial court whether you want a record of the oral proceedings and, if so, the form of the record that you want to use. You can get form APP-003 at any courthouse or county law library or online at www.courts.ca.gov/forms.

There are three ways in which a record of the oral proceedings can be prepared for the Court of Appeal:

- If you or the other party arranged to have a court reporter present during the trial court proceedings, the reporter can prepare a record, called a *"reporter's transcript."*
- You can use an *agreed statement.*
- You can use a *settled statement.*

Read below for more information about these options.

(1) Reporter's transcript

Description: A reporter's transcript is a written record (sometimes called a "verbatim" record) of the oral proceedings in the trial court prepared by a court reporter. Rule 8.130 of the California Rules of Court establishes the requirements for reporter's transcripts.

When available: If a court reporter was present in the trial court and made a record of the oral proceedings, you can choose (elect) to have the court reporter prepare a reporter's transcript for the Court of Appeal. But a court reporter might not have been present unless you or another party in your case had made specific arrangements to have a court reporter present. If you are unsure, check with the trial court to see if a court reporter made a record of the oral proceedings in your case before choosing this option.

Contents: If you elect to use a reporter's transcript, you must identify by date (this is called "designating") what proceedings you want to be included in the reporter's transcript. You can use the same form you used to tell the court you wanted to use a reporter's transcript—*Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003)—to do this.

If you elect to use a reporter's transcript, the respondent also has the right to designate additional proceedings to be included in the reporter's transcript. If you elect to proceed

without a reporter's transcript, however, the respondent may not designate a reporter's transcript without first getting an order from the Court of Appeal.

Cost: The appellant is responsible for paying for preparing a reporter's transcript. The trial court clerk or the court reporter will notify you of the cost of preparing an original and one copy of the reporter's transcript. You must deposit payment for this cost (and a fee for the trial court) or one of the substitutes allowed by rule 8.130 with the trial court clerk within 10 days after this notice is sent. (See rule 8.130 for more information about this deposit and the permissible substitutes, such as a waiver of this deposit signed by the court reporter.)

Unlike the fee for filing the notice of appeal and the costs for preparing a clerk's transcript, the court cannot waive the fee for preparing a reporter's transcript. Money from a special fund, called the Transcript Reimbursement Fund, may be available to help you pay for the transcript. You can get information about this fund at *www.courtreportersboard.ca.gov/consumers/index.shtml#rtf*.

If you are unable to pay the cost of a reporter's transcript, a record of the oral proceedings can be prepared in other ways, by using an agreed statement or a settled statement, which are described below.

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

(2) Agreed statement

Description: An agreed statement is a written summary of the trial court proceedings agreed to by all the parties. See rule 8.134 of the California Rules of Court.

When available: If the trial court proceedings were not recorded by a court reporter or if you do not want to use that option, you can choose (elect) to use an agreed statement as the record of the oral proceedings. Please note that it may take more of your time to prepare an agreed statement than to use a reporter's transcript, if it is available.

Contents: An agreed statement must explain what the trial court case was about, describe why the Court of Appeal is the right court to consider an appeal in this case (why the Court of Appeal has "jurisdiction"), and describe the rulings of the trial court relating to the points to be raised on appeal.

The statement should include only those facts that you and the other parties think are needed to decide the appeal.

Preparation: If you elect to use this option, you must file either (1) an agreed statement or (2) a written agreement (called a "stipulation") that the parties are trying to agree on a statement, along with your notice designating the record on appeal. If you file the stipulation and the parties agree on a statement, you must file the statement within 40 days after filing the notice of appeal. If you file the stipulation and the parties cannot agree on the statement, you must file a new notice designating the record within 50 days after filing the notice of appeal.

(3) Settled statement

Description: A settled statement is a summary of the trial court proceedings that is approved by the trial court judge who conducted those proceedings (the term "judge" includes commissioners, referees, hearing officers, and temporary judges).

When available: Under rule 8.137 of the California Rules of Court, you can choose (elect) to use a settled statement as the record of the oral

proceedings if (1) the trial court proceedings were not recorded by a court reporter or (2) if you have an order waiving your court fees and costs. Please note that it may take more of your time to prepare a settled statement than to use a reporter's transcript, if it is available.

If you want to use a settled statement as the record of the oral proceedings for reasons other than the two previously mentioned, you must file a motion to ask the trial court for an order. You may use *Appellant's Motion to Use a Settled Statement (Unlimited Civil Case)* (form APP-025) for this purpose. Read rule 8.137 about the requirements of your motion or request for order.

Contents: A settled statement must include:

- A statement of the points you (the appellant) are raising on appeal;
- A condensed narrative of the oral proceedings that you specified in the notice designating the record on appeal or motion. The condensed narrative is a summary of the testimony of each witness and other evidence that is relevant to the issues you are raising on appeal; and
- A copy of the judgment or order you are appealing attached to the settled statement.

Preparing a proposed settled statement: If you elect to use a settled statement, you must prepare a proposed settled statement. You may use *Appellant's Proposed Settled Statement (Unlimited Civil Case)* (form APP-014) to prepare your proposed statement. You can get the form at any courthouse or county law library or online at *www.courts.ca.gov/forms*.

(See rule 8.137 of the California Rules of Court for more information about what must be included in a settled statement and the procedures for preparing a statement. You can get a copy of this rule at any courthouse or county law library or online at *www.courts.ca.gov/rules*.)

Serving and filing a proposed settled statement: You must serve and file the proposed statement within 30 days after filing your notice electing to use a settled statement or within 30 days after the trial court clerk sends, or a party serves, the order granting the motion to use a settled statement. "Serve and file" means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (serve) the proposed settled statement to the respondent in the way required by law. If the proposed statement is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the proposed settled statement has been served. This record is called a "proof of service." *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) can be used to make this record. The proof of service must show who served the proposed statement, who was served with the proposed statement, how the proposed statement was served (by mail, in person, or electronically), and the date the proposed statement was served.
- File the original proposed settled statement and the proof of service with the trial court. You should make a copy of the proposed statement you are planning to file for your own records before you file it with the court. Unless you are filing electronically, it is a good idea to bring or mail an extra copy of the proposed statement to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *Information Sheet for Proof of Service* (form APP-009-INFO) and on the Self-Help Guide to the California Courts at *www.courts.ca.gov/selfhelp-serving.htm*.

Respondent's review: The respondent has 20 days from the date you serve your proposed settled statement to serve and file either:

- Proposed changes (called "amendments") to the proposed statement; or
- If the oral proceedings in the trial court were reported by a court reporter, a notice indicating that the respondent is electing to provide a reporter's transcript instead of proceeding with a settled statement.

Review of appellant's proposed settled statement: If the respondent proposes changes, the trial court judge then reviews both your proposed statement and the respondent's proposed amendments. The trial judge will either make or order you (the appellant) to make any corrections or modifications to the statement that are needed to make sure that the statement provides an accurate summary of the testimony and other evidence relevant to the issues you indicated you are raising on appeal. For more information, see rule 8.137(f) of the California Rules of Court. See also rule 8.140, which explains the consequences for a party's failure to make corrections that are ordered to be made to the proposed statement.

Request for hearing to review proposed settled statement: No later than 10 days after the respondent files proposed amendments, or the time to do so has expired, a party may request a hearing to review and correct the proposed statement. No hearing will be held unless ordered by the trial court judge. A judge will not ordinarily order a hearing unless there is a factual dispute about a material aspect of the trial court proceeding. If there is a hearing, see rule 8.137 for more information.

Additional review procedures: If there is no hearing after the respondent proposes changes to the settled statement, and if the judge makes any corrections or modifications to the proposed statement, the corrected or modified statement will be sent to you and the respondent for your review.

If the judge orders you to make any corrections or modifications to the proposed statement, you must serve and file the corrected or modified statement within the time ordered by the judge. See rule 8.140, which explains the consequences for a party's failure to make corrections to the proposed statement.

If you or the respondent disagree with anything in the modified or corrected statement, you have 10 days from the date the modified or corrected statement is sent to you to serve and file proposed amendments or objections to the statement. The judge then reviews the modified or corrected statement and any proposed modifications. If the judge decides that further corrections or modifications are necessary, the review process described above takes place again.

Completion and certification: If the judge does not order any corrections or modifications to the proposed statement, the judge must promptly certify the statement as an accurate summary of the evidence and testimony of each witness relevant to the issues you indicated you are raising on appeal.

Alternatively, the parties may serve and file a stipulation (agreement) that the statement as originally served or corrected or modified is correct. Such a stipulation is equivalent to the judge's certification of the statement.

Sending settled statement to the Court of Appeal: Once the trial court judge certifies the statement or the trial court receives the parties' stipulation, the trial court clerk will send the statement to the Court of Appeal as required under rule 8.150 of the California Rules of Court.

c. Exhibits

The third part of the official record of the trial court proceeding is the exhibits, such as photographs, documents, or other items that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court. Exhibits are considered part of the record on appeal, but the clerk will not include any exhibits in the clerk's transcript unless you ask that they be included in your notice designating the record on appeal. *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) includes a space for you to make this request.

You also can ask the trial court to send original exhibits to the Court of Appeal at the time briefs are filed. (See rule 8.224 for more information about this procedure and see below for information about briefs.)

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

15 What happens after the official record has been prepared?

As soon as the record on appeal is complete, the clerk of the trial court will send it to the Court of Appeal for the district in which the trial court is located. When the Court of Appeal receives the record, it will send you a notice telling you when you must file your brief in the Court of Appeal.

16 What is a brief?

Description: A "brief" is a party's written description of the facts in the case, the law that applies, and the party's argument about the issues being appealed. If you are represented by a lawyer in your appeal, your lawyer will prepare your brief. If you are not represented by a lawyer, you will have to prepare your brief yourself.

You should read rules 8.200–8.224 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in unlimited civil appeals, including requirements for the format and length of these briefs. You can get copies of these rules at any courthouse or county law library or online at *www.courts.ca.gov/rules.htm*.

Contents and format of briefs: If you are the appellant, your brief, called an "appellant's opening brief," must clearly explain the legal errors you believe were made in the trial court. Your brief must refer to the exact places in the clerk's transcript and the reporter's transcript (or the other forms of the record you are using) that support your argument. Each brief must be no longer than 14,000 words if produced on a computer, including footnotes. A brief produced on a typewriter must not be longer than 50 pages. The brief must contain a table of contents and a table of authorities. The cover of appellant's opening brief filed in paper form must be green. For other content and formatting requirements for the brief, read rules 8.40 and 8.204 of the California Rules of Court.

Remember that an appeal is not a new trial. The Court of Appeal will not consider new evidence, such as new exhibits or the testimony of new witnesses, so do not include any new evidence in your brief.

Serving and filing: You must serve and file your opening brief within 40 days after the record is filed in the Court of Appeal or 70 days from the date the appellant chooses to proceed with no reporter's transcript under rule 8.124. "Serve and file" means that you must:

- Have somebody over 18 years old mail, personally deliver, or electronically send (serve) the brief to the other parties in the way required by law. If the brief is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the brief has been served. This record is called a "proof of service." *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) can be used to make this record. The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail, in person, or electronically), and the date the brief was served.

- File the original brief and the proof of service with the Court of Appeal. You should make a copy of the brief you are planning to file for your own records before you file it with the court. Unless you are filing electronically, it is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.
- Note: If a party chooses to prepare an appendix of the documents filed in the trial court instead of designating a clerk's transcript, the appellant's appendix or a joint appendix must be served and filed before or together with the appellant's opening brief.

You can get more information about how to serve court papers and proof of service from *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) and on the Self-Help Guide to the California Courts at www.courts.ca.gov/selfhelp-serving.htm.

You and the other parties can agree (stipulate) to extend the time for filing this brief by up to 60 days (see rule 8.212(b) for requirements for these agreements). You can also apply to the presiding justice of the Court of Appeal to extend the time for filing this brief if you can show good cause for an extension (see rule 8.63 for information about extensions of time). You can use *Application for Extension of Time to File Brief—Unlimited Civil Case* (form APP-006) to ask the court for an extension.

If you do not file your brief by the deadline set by the Court of Appeal, the court may dismiss your appeal.

17 What happens after I file my brief?

Within 30 days after you serve and file your brief, the respondent must respond by serving and filing a respondent's brief. Within 20 days after the respondent's brief was filed, you may, but are not required to, file another brief replying to the respondent's brief. This is called a "reply brief."

18 What happens after all the briefs have been filed?

After all the briefs have been filed or the time to file them has passed, the Court of Appeal will contact you to tell you the date for oral argument in your case or ask if you want to participate in oral argument.

19 What is "oral argument"?

"Oral argument" is not a chance to present new evidence. Instead, it is a chance to orally explain the arguments you made in your brief to the Court of Appeal justices. You do not have to participate in oral argument if you do not want to; you can notify the Court of Appeal that you want to "waive" oral argument. If all parties waive oral argument, the justices will decide your appeal based on the briefs and the appellate record. But if any party requests oral argument, the Court of Appeal will hold oral argument.

If you choose to participate in oral argument, you will have a limited amount of time as set by the court.

Remember that the justices will have already read the briefs, so you do not need to read your brief to the justices or merely repeat the information in it. It is more helpful to tell the justices what you think is most important in your appeal or ask the justices if they have any questions you could answer.

You can find more information about oral argument in appeals cases in rule 8.256 of the California Rules of Court and online at *www.courts.ca.gov/12421.htm*.

20 What happens after oral argument?

After oral argument is held or waived, the justices of the Court of Appeal will make a decision about your appeal. The clerk of the court will mail you a notice of the Court of Appeal's decision.

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

If you do not want to continue with your appeal, you must notify the court. If the record has not yet been filed in the Court of Appeal, file *Abandonment of Appeal (Unlimited Civil Case)* (form APP-005) in the superior court.

If the record has already been filed in the Court of Appeal, file *Request for Dismissal of Appeal (Civil Case)* (form APP-007) in the Court of Appeal.

INFORMATION FOR THE RESPONDENT

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

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

You do not *have* to do anything, but there may be consequences if you do nothing. The notice of appeal simply tells you that another party is appealing the trial court's decision. However, this would be a good time to get advice from a lawyer, if you want it. You do not *have* to have a lawyer; if you are an individual (not a corporation, for example), you are allowed to represent yourself in an appeal in an unlimited civil case. But appeals can be complicated and you will have to follow the same rules that lawyers have to follow.

If you have any questions about the appeal procedures, you should talk to a lawyer. You must hire your own lawyer if you want one. You can get information about finding a lawyer on the Self-Help Guide to the California Courts at https://selfhelp.courts.ca.gov/get-free-or-low-cost-legal-help.

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

Yes. Even if another party has already appealed, you may still appeal the same judgment or order. This is called a "cross-appeal." To cross-appeal, you must serve and file a notice of appeal. You can use *Notice of Appeal/Cross-Appeal—Unlimited Civil Case* (form APP-002) to file this notice in an unlimited civil case. Please read the information for appellants about filing a notice of appeal, starting on page 3 of this information sheet, if you are considering filing a cross-appeal.

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

Yes. You must serve and file your notice of appeal within either the regular time for filing a notice of appeal (generally 60 days after service of Notice of Entry of the judgment or a file-stamped copy of the judgment) or within 20 days after the clerk of the trial court serves notice of the first appeal, whichever is later.

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

You do not *have* to do anything, but there may be consequences if you do nothing. A notice designating the record on appeal lets you know what kind of official record the appellant has asked to be sent to the Court of Appeal. Depending on the kind of record chosen by the appellant, however, you may have the option to:

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

Look at the appellant's notice designating the record on appeal to see what kind of record the appellant has chosen and read about that form of the record in the response to question 14 above. Then read below for what your options are when the appellant has chosen that form of the record.

a. Clerk's transcript or appendix

Clerk's transcript: If the appellant is using a clerk's transcript, you have the option of asking the clerk to include additional documents in the clerk's transcript. To do this, within 10 days after the appellant serves its notice designating the record on appeal, you must serve and file a notice designating additional documents to be included in the clerk's transcript. You may use *Respondent's Notice Designating Record on Appeal—Unlimited Civil Case* (form APP-010) for this purpose.

Whether or not you ask for additional documents to be included in the clerk's transcript, you must pay a fee if you want a copy of the clerk's transcript. The trial court clerk will send you a notice indicating the cost for a copy of the clerk's transcript. If you want a copy, you must deposit this amount with the court within 10 days after the clerk's notice was sent.

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

Appendix: If the appellant is using an appendix, and you and the appellant have not agreed to a joint appendix, you may prepare a separate respondent's appendix. See pages 5–6 for more information about preparing an appendix.

If the appellant chooses a clerk's transcript but does not have a waiver of the fee for a clerk's transcript, you can choose an appendix instead of a clerk's transcript, and the appeal will proceed by appendix. To choose an appendix, you can fill out and file *Respondent's Notice Designating Record on Appeal —Unlimited Civil Case* (form APP-010) within 10 days after the appellant's notice designating the record on appeal is filed.

b. Reporter's transcript

If the appellant is using a reporter's transcript, you have the option of asking for additional proceedings to be included in the reporter's transcript. To do this, within 10 days after the appellant files its notice designating the record on appeal, you must serve and file a notice designating additional proceedings to be included in the reporter's transcript. You may use *Respondent's Notice Designating Record on Appeal —Unlimited Civil Case* (form APP-010) for this purpose.

Whether or not you ask for additional proceedings to be included in the reporter's transcript, you must generally pay a fee if you want a copy of the reporter's transcript. The trial court clerk or reporter will send you a notice indicating the cost of preparing a copy of the reporter's transcript. If you want a copy of the reporter's transcript, you must deposit payment for this cost (and a fee for the trial court) or one of the substitutes allowed by rule 8.130 with the trial court clerk within 10 calendar days after this notice is sent. (See rule 8.130 for more information about this deposit and the permissible substitutes, such as a waiver of this deposit signed by the court reporter.)

Unlike the fee for preparing a clerk's transcript, the court cannot waive the fee for preparing a reporter's transcript. Money from a special fund, called the Transcript Reimbursement Fund, may be available to help you pay for the transcript. You can get information about this fund at *www.courtreportersboard.ca.gov/consumers/index.shtml#trf*.

The reporter will not prepare a copy of the reporter's transcript for you unless you deposit the cost of the transcript, or provide one of the permissible substitutes, or your application for payment by the Transcript Reimbursement Fund is approved.

c. Agreed statement

If you and the appellant agree to prepare an agreed statement (a summary of the trial court proceedings that is agreed to by the parties), you and the appellant will need to reach an agreement on that statement within 40 days after the appellant files its notice of appeal. See rule 8.134 of the California Rules of Court.

d. Settled statement

If the appellant elects to use a settled statement (a summary of the trial court proceedings that is approved by the trial court), the appellant will send you a proposed settled statement to review. You will have 20 days from the date the appellant served you this proposed statement to serve and file either:

- Suggested changes (called "amendments") that you think are needed to make sure that the settled statement provides an accurate summary of the evidence and testimony of each witness relevant to the issues the appellant is raising on appeal (see page 10 of this form and rule 8.137(e)–(h) for more information about the amendment process); or
- If the oral proceedings in the trial court were reported by a court reporter, a notice indicating that you are choosing to provide a reporter's transcript, at your expense, instead of proceeding with a settled statement (see rule 8.137(e)(2) for the requirements for choosing to provide a reporter's transcript).

Have somebody over 18 years old mail, personally deliver, or electronically send (serve) the proposed amendments to the appellant in the way required by law. If the proposed amendments are mailed or personally delivered, it must be by someone who is not a party to the case—so not you.

- Make a record that the proposed amendments have been served. This record is called a "proof of service." *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) can be used to make this record. The proof of service must show who served the proposed amendments, who was served with the proposed amendments, how the proposed amendments were served (by mail, in person, or electronically), and the date the proposed amendments were served.
- File the original proposed amendments and the proof of service with the trial court. You should make a copy of the proposed amendments you are planning to file for your own records before you file them with the court. Unless you are filing electronically, it is a good idea to bring or mail an extra copy of the proposed amendments to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *Information Sheet for Proof of Service (Court of Appeal* (form APP-009-INFO) and on the Self-Help Guide to the California Courts at *www.courts.ca.gov/selfhelp-serving.htm*.

26 What happens after the official record has been prepared?

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

A brief is a party's written description of the facts in the case, the law that applies, and the party's argument about the issues being appealed. If you are represented by a lawyer, your lawyer will prepare your brief. If you are not represented by a lawyer in your appeal, you will have to prepare your brief yourself.

You should read rules 8.200–8.224 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in unlimited civil appeals, including requirements for the format and length of these briefs. You can get these rules at any courthouse or county law library or online at *www.courts.ca.gov/rules.htm*.

The appellant serves and files the first brief, called an "appellant's opening brief." You must respond by serving and filing a "respondent's brief" within 30 days after the appellant's opening brief is filed. "Serve and file" means that you must:

- Have somebody over 18 years old mail, personally deliver, or electronically send (serve) the brief to the other parties in the way required by law. If the brief is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the brief has been served. This record is called a "proof of service." *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) can be used to make this record.

The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail, in person, or electronically), and the date the brief was served.

- File the original brief and the proof of service with the Court of Appeal. You should make a copy of the brief you are planning to file for your own records before you file it with the court. Unless you are filing electronically, it is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) and on the Self-Help Guide to the California Courts at www.courts.ca.gov/selfhelp-serving.htm.

You and the other parties can agree (stipulate) to extend the time for filing this brief by up to 60 days (see rule 8.212(b) for requirements for these agreements). You can also apply to the presiding justice of the Court of Appeal to extend the time for filing this brief if you can show good cause for an extension. You can use *Application for Extension of Time to File Brief—Unlimited Civil Case* (form APP-006) to ask the court for an extension.

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

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

27 What happens after all the briefs have been filed?

After all the briefs have been filed or the time to file them has passed, the Court of Appeal will contact you to tell you the date for oral argument in your case or ask if you want to participate in oral argument.

28 What is "oral argument"?

"Oral argument" is not a chance to present new evidence. Instead, it is a chance to orally explain the arguments you made in your brief to the Court of Appeal justices. You do not have to participate in oral argument if you do not want to; you can notify the Court of Appeal that you want to "waive" oral argument. If all parties waive oral argument, the justices will decide your appeal based on the briefs and the appellate record. But if any party requests oral argument, the Court of Appeal will hold oral argument.

If you choose to participate in oral argument, you will have a limited amount of time as set by the court.

Remember that the justices will have already read the briefs, so you do not need to read your brief to the justices or merely repeat the information in it. It is more helpful to tell the justices what you think is most important in your appeal or ask the justices if they have any questions you could answer.

You can find more information about oral argument in appeals cases in rule 8.256 of the California Rules of Court and online at *www.courts.ca.gov/12421.htm*.

29 What happens after oral argument?

After oral argument is held or waived, the justices of the Court of Appeal will make a decision about your appeal. The clerk of the court will mail you a notice of the Court of Appeal's decision.

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*name*):		**DRAFT** **06/22/2023** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:		
RESPONDENT'S NOTICE DESIGNATING RECORD ON APPEAL—UNLIMITED CIVIL CASE		SUPERIOR COURT CASE NUMBER:
Re: Appeal filed on *(date):*		COURT OF APPEAL CASE NUMBER *(if known)*:

Notice: Please read *Information on Appeal Procedures for Unlimited Civil Cases* (form APP-001-INFO) before completing this form. This form must be filed in the superior court, not in the Court of Appeal.

1. **RECORD OF THE DOCUMENTS FILED IN THE SUPERIOR COURT**
   The appellant has chosen to use a clerk's transcript under Cal. Rules of Court, rule 8.122. *(You must check a or b):*
   a. ☐ I agree to a clerk's transcript. (*If you want any documents from the superior court proceedings in addition to the documents designated by the appellant to be included in the clerk's transcript, you must identify those documents in item 2.*)
   b. ☐ If the appellant has not been granted a waiver of the fee for a clerk's transcript, I choose an appendix as the record of documents under Cal. Rules of Court, rule 8.124 instead of a clerk's transcript. (*If the appellant has been granted a waiver of the fee for a clerk's transcript, you may not choose an appendix; a clerk's transcript will be used. If a clerk's transcript is used and you want any documents from the superior court proceedings in addition to the documents designated by the appellant to be included in the clerk's transcript, you must identify those documents in item 2.*)
2. **CLERK'S TRANSCRIPT**
   The parties will use a clerk's transcript under Cal. Rules of Court, rule 8.122.
   a. ☐ **Additional documents.** In addition to the documents designated by the appellant, I request that the clerk include in the transcript the following documents from the superior court proceedings. *(You must identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed.)*

	Document Title and Description	Date of Filing
(1)		
(2)		
(3)		
(4)		
(5)		
(6)		
(7)		

☐ See additional pages. *(Check here if you need more space to list additional documents. List these documents on a separate page or pages labeled "Attachment 2(a)," and start with number (8).)*

CASE NAME:	SUPERIOR COURT CASE NUMBER:

2. b. ☐ **Additional exhibits.** In addition to the exhibits designated by the appellant, I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the superior court. *(For each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit. Indicate whether or not the court admitted the exhibit into evidence. If the superior court has returned a designated exhibit to a party, the party in possession of the exhibit must deliver it to the superior court clerk within 10 days after service of this notice designating the record. (Cal. Rules of Court, rule 8.122(a)(3).))*

Exhibit Number	Description	Admitted (Yes/No)
(1)		
(2)		
(3)		
(4)		

☐ See additional pages. *(Check here if you need more space to list additional exhibits. List these exhibits on a separate page or pages labeled "Attachment 2b," and start with number (5).)*

c. ☐ **Copy of clerk's transcript.** I request a copy of the clerk's transcript. *(Check (1) or (2).)*

(1) ☐ I will pay the superior court clerk for this transcript when I receive the clerk's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, I will not receive a copy.

(2) ☐ I request that the clerk's transcript be provided to me at no cost because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record *(check (a) or (b)):*

(a) ☐ An order granting a waiver of court fees and costs under Cal. Rules of Court, rules 3.50–3.58; or

(b) ☐ An application for a waiver of court fees and costs under Cal. Rules of Court, rules 3.50–3.58. (*Use* Request to Waive Court Fees *(form FW-001) to prepare and file this application.*)

3. RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT

The appellant has chosen to use a reporter's transcript under Cal. Rules of Court, rule 8.130.

a. ☐ **Designation of additional proceedings.** *(If you want any oral proceedings in addition to the proceedings designated by the appellant to be included in the reporter's transcript, you must identify those proceedings here.)*

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

CASE NAME:	SUPERIOR COURT CASE NUMBER:

3. a. (1) *(continued)*

	Date	Department	Full/Partial Day	Description	Reporter's Name	Prev. prepared?
(a)						☐ Yes ☐ No
(b)						☐ Yes ☐ No
(c)						☐ Yes ☐ No
(d)						☐ Yes ☐ No
(e)						☐ Yes ☐ No
(f)						☐ Yes ☐ No
(g)						☐ Yes ☐ No

☐ See additional pages. *(Check here if you need more space to list additional proceedings. List these proceedings on a separate page or pages labeled "Attachment 3a(1)," and start with letter (h).)*

(2) **Deposit for additional proceedings.**

I have *(check a, b, c, or d):*

(a) ☐ Deposited with the superior court clerk the approximate cost of preparing the additional proceedings by including the deposit with this notice as provided in Cal. Rules of Court, rule 8.130(b)(1).

(b) ☐ Attached a copy of a Transcript Reimbursement Fund application filed under Cal. Rules of Court, rule 8.130(c)(1)

(c) ☐ Attached the reporter's written waiver of a deposit under Cal. Rules of Court, rule 8.130(b)(3)(A) for *(check either (i) or (ii)):*

(i) ☐ All of the designated proceedings.

(ii) ☐ Part of the designated proceedings.

(d) ☐ Attached a certified transcript under Cal. Rules of Court, rule 8.130(b)(3)(C).

b. **Copy of reporter's transcript.**

(1) ☐ I request a copy of the reporter's transcript.

(2) ☐ I request that the reporters provide *(check (a), (b), or (c))* :

(a) ☐ My copy of the reporter's transcript in electronic format.

(b) ☐ My copy of the reporter's transcript in paper format.

(c) ☐ My copy of the reporter's transcript in electronic format and a second copy of the reporter's transcript in paper format.

(*Code Civ. Proc., § 271.)*

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF RESPONDENT OR ATTORNEY)

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

GENERAL INFORMATION

1 What does this information sheet cover?

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

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

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

2 What is an appeal?

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

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

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

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

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

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

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

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

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

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

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

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

You have to hire your own attorney if you want one. You can get information about finding an attorney on the Self-Help Guide to the California Courts at *https://selfhelp.courts.ca.gov/get-free-or-low-cost-legal-help*.

INFORMATION FOR THE APPELLANT

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

5 Who can appeal?

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

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

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

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

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

7 How do I start my appeal?

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

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

"Serve and file" means that you must:

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

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

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

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

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

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

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

10 Do I have to pay to file an appeal?

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

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

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

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

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

Since the appellate division judges were not there to see what happened in the trial court, an official record of what happened must be prepared and sent to the appellate division for its review. You can use *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) to ask the trial court to prepare this record. You can get form APP-103 at any courthouse or county law library or online at *www.courts.ca.gov/forms*.

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

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

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

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

There are three parts of the official record:

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

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

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

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

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

In a limited civil case, you can use *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) to tell the court whether you want a record of the oral proceedings and, if so, the form of the record that you want to use. You can get form APP-103

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

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

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

Read below for more information about these options.

(1) Reporter's transcript

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

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

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

If you elect to use a reporter's transcript, the respondent also has the right to designate additional proceedings to be included in the reporter's transcript. If you elect to proceed without a reporter's transcript, however, the respondent may not designate a reporter's transcript without first getting an order from the appellate division.

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

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

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

(2) Official electronic recording or transcript

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

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

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

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

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

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

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

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

(3) Agreed statement

Description: An agreed statement is a written summary of the trial court proceedings agreed to by all the parties. (See rule 8.836 of the California Rules of Court.)

When available: If the trial court proceedings were not recorded either by a court reporter or by official electronic recording equipment or if you do not want to use one of these options, you can choose ("elect") to use an agreed statement as the record of the oral proceedings (please note that it

may take more of your time to prepare an agreed statement than to use either a reporter's transcript or official electronic recording, if they are available).

Contents: An agreed statement must explain what the trial court case was about, describe why the appellate division is the right court to consider an appeal in this case (why the appellate division has "jurisdiction"), and describe the rulings of the trial court relating to the points to be raised on appeal.

The statement should include only those facts that you and the other parties think are needed to decide the appeal.

Preparation: If you elect to use this option, you must file the agreed statement with your notice designating the record on appeal or, if you and the other parties need more time to work on the statement, you can file a written agreement with the other parties (called a "stipulation") stating that you are trying to agree on a statement. If you file this stipulation, within the next 30 days you must either file the agreed statement or tell the court that you and the other parties were unable to agree on a statement and file a new notice designating the record.

(4) Statement on appeal

Description: A statement on appeal is a summary of the trial court proceedings that is approved by the trial court judge who conducted those proceedings (the term "judge" includes commissioners and temporary judges).

When available: If the trial court proceedings were not recorded either by a court reporter or by official electronic recording equipment or if you do not want to use one of these options, you can choose ("elect") to use a statement on appeal as the record of the oral proceedings (please note that it may take more of your time to prepare a statement on appeal than to use either a reporter's transcript or official electronic recording, if they are available).

Contents: A statement on appeal must include:

- A statement of the points you (the appellant) are raising on appeal;
- A summary of the trial court's rulings and judgment; and
- A summary of the testimony of each witness and other evidence that is relevant to the issues you are raising on appeal.

(See rule 8.837 of the California Rules of Court for more information about what must be included in a statement on appeal and the procedures for preparing a statement. You can get a copy of this rule at any courthouse or county law library or online at *www.courts.ca.gov/rules*.)

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

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

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

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

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

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

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

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

b. Record of the documents filed in the trial court

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

- *A clerk's transcript or an appendix*
- The original *trial court file* or
- An *agreed statement*

Read below for more information about these options.

(1) Clerk's transcript or appendix

Description: A clerk's transcript is a record of the documents filed in the trial court prepared by the clerk of the trial court. An appendix is a record of these documents prepared by a party. (See rule 8.845 of the California Rules of Court.)

Contents: Certain documents, such as the notice of appeal and the trial court judgment or order being appealed, must be included in the clerk's transcript or appendix. These documents are listed in rule 8.832(a) and rule 8.845(b) of the California Rules of Court and in *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103).

Clerk's transcript: If you want any documents other than those listed in rule 8.832(a) to be included in the clerk's transcript, you must tell the trial court in your notice designating the record on appeal. You can use form APP-103 to do this. You will need to identify each document you want included in the clerk's transcript by its title and filing date or, if you do not know the filing date, the date the document was signed.

If you—the appellant—request a clerk's transcript, the respondent also has the right to ask the clerk to include additional documents in the clerk's transcript. If this happens, you will be served with a notice saying what other

documents the respondent wants included in the clerk's transcript.

Cost: The appellant is responsible for paying for preparing a clerk's transcript. The trial court clerk will send you a bill for the cost of preparing an original and one copy of the clerk's transcript. You must do one of the following things within 10 days after the clerk sends this bill or the appellate division may dismiss your appeal:

- Pay the bill.
- Ask the court to waive the cost because you cannot afford to pay. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at *www.courts.ca.gov/forms.* The court will review this application to determine if you are eligible for a fee waiver.
- Give the court a copy of a court order showing that your fees in this case have already been waived by the court.

Completion and delivery: After the cost of preparing the clerk's transcript has been paid or waived, the trial court clerk will compile the requested documents into a transcript format and, when the record on appeal is complete, will forward the original clerk's transcript to the appellate division for filing. The trial court clerk will send you a copy of the transcript. If the respondent bought a copy, the clerk will also send a copy of the transcript to the respondent.

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

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

(2) Trial court file

When available: If the court has a local rule allowing this, the clerk can send the appellate division the original trial court file instead of a clerk's transcript (see rule 8.833 of the California Rules of Court).

Cost: As with a clerk's transcript, the appellant is responsible for paying for preparing the trial court file. The trial court clerk will send you a bill for this preparation cost. You must do one of the following things within 10 days after the clerk sends this bill or the appellate division may dismiss your appeal:

- Pay the bill.
- Ask the court to waive the cost because you cannot afford to pay. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at *www.courts.ca.gov/forms*. The court will review this application to determine if you are eligible for a fee waiver.
- Give the court a copy of a court order showing that your fees in this case have already been waived by the court.

Completion and delivery: After the cost of preparing the trial court file has been paid or waived and the record on appeal is complete, the trial court clerk will send the file and a list of the documents in the file to the appellate division. The trial court clerk will also send a copy of the list of documents to the appellant and respondent so that you can put your own files of documents from the trial court in the correct order.

(3) Agreed statement

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

c. Exhibits

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

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

14 What happens after the official record has been prepared?

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

15 What is a brief?

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

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

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

- Have somebody over 18 years old mail, deliver, or electronically send ("serve") the brief to the other parties in the way required by law. If the brief is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the brief has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail, in person, or electronically), and the date the brief was served.

- File the original brief and the proof of service with the appellate division. You should make a copy of the brief you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.
- Note: If a party chooses to prepare an appendix of the documents filed in the trial court instead of designating a clerk's transcript, the appellant's appendix or a joint appendix must be served and filed before or together with the appellant's opening brief.

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

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

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

16 What happens after I file my brief?

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

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

17 What happens after all the briefs have been filed?

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

18 What is "oral argument"?

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

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

19 What happens after oral argument?

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

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

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

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

INFORMATION FOR THE RESPONDENT

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

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

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

If you have any questions about the appeal procedures, you should talk to a lawyer. You must hire your own lawyer if you want one. You can get information about finding a lawyer on the Self-Help Guide to the California Courts at *https://selfhelp.courts.ca.gov/get-free-or-low-cost-legal-help*.

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

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

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

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

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

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

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

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

(a) Reporter's transcript

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

Whether or not you ask for additional proceedings to be included in the reporter's transcript, you must generally pay a fee if you want a copy of the reporter's transcript. The trial court clerk or reporter will send you a notice indicating the cost of preparing a copy of the reporter's transcript. If you want a copy of the reporter's transcript, you must deposit this

amount (and a fee for the trial court) or one of the substitutes allowed by rule 8.834 with the trial court clerk within 10 days after this notice is sent. (See rule 8.834 for more information about this deposit and the permissible substitutes, such as a waiver of this deposit signed by the court reporter.)

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

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

(b) Agreed statement

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

(c) Statement on appeal

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

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

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

(d) Clerk's transcript or appendix

Clerk's transcript: If the appellant is using a clerk's transcript, you have the option of asking the clerk to include additional documents in the clerk's transcript.

To do this, within 10 days after the appellant serves its notice designating the record on appeal, you must serve and file a notice designating additional documents to be included in the clerk's transcript. You may use *Respondent's Notice Designating Record on*

Appeal—Limited Civil Case (form APP-110) for this purpose.

Whether or not you ask for additional documents to be included in the clerk's transcript, you must pay a fee if you want a copy of the clerk's transcript. The trial court clerk will send you a notice indicating the cost for a copy of the clerk's transcript. If you want a copy, you must deposit this amount with the court within 10 days after the clerk's notice was sent.

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

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

If the appellant chooses a clerk's transcript but does not have a waiver of the fee for a clerk's transcript, you can choose an appendix instead of a clerk's transcript, and the appeal will proceed by appendix. To choose an appendix, you can fill out and file *Respondent's Notice Designating Record on Appeal—Limited Civil Case* (form APP-110) within 10 days after the appellant's notice designating the record on appeal is filed.

25 What happens after the official record has been prepared?

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

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

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

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

You and the other parties can agree (stipulate) to extend the time for filing this brief by up to 30 days (see rule 8.882(b) for requirements for these agreements). You can also ask the court to extend the time for filing this brief if you can show good cause for an extension (see rule 8.811(b) for a list of the factors the court will consider in deciding whether there is good cause for an

extension). You can use *Application for Extension of Time to File Brief—Limited Civil Case* (form APP-106) to ask the court for an extension.

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

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

26 What happens after all the briefs have been filed?

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

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

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

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

APP-110 Respondent's Notice Designating Record on Appeal—Limited Civil Case

Clerk stamps date here when form is filed.

DRAFT

06/22/2023

Not approved by the Judicial Council

Instructions

- This form is only for choosing ("designating") the record on appeal in a **limited civil case.** Note that any rules referenced in this form are to the California Rules of Court.
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) or on the Self-Help Guide to the California Courts at *www.courts.ca.gov/selfhelp-serving.htm.*
- Take or mail the original completed form and proof of service on the other parties to the clerk's office for the same court that issued the judgment or order that is being appealed. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

Superior Court of California, County of

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

Trial Court Case Number:

Trial Court Case Name:

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

Appellate Division Case Number:

1 Your Information

a. Name of respondent (the party who is responding to an appeal filed by another party):

Name: _____

b. Respondent's contact information *(skip this if the respondent has a lawyer for this appeal):*

Street address: _____ (*Street*) _____ (*City*) _____ (*State*) _____ (*Zip*)

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

Phone: _____ Email: _____

c. Respondent's lawyer *(skip this if the respondent does not have a lawyer for this appeal):*

Name: _____ State Bar number: _____

Street address: _____ (*Street*) _____ (*City*) _____ (*State*) _____ (*Zip*)

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

Phone: _____ Email: _____

Fax: _____

Information About the Appeal

2 On *(fill in the date):* _____ another party filed a notice of appeal in the trial court case identified in the box on page 1 of this form.

3 On *(fill in the date):* _____ the appellant filed an appellant's notice designating the record on appeal.

Record of the Documents Filed in the Trial Court

4 The appellant elected (chose) to use a clerk's transcript under rule 8.832 as the record of the documents filed in the trial court. *(You must check a or b):*

a. ☐ I agree to a clerk's transcript. *(If you want any documents from the superior court proceedings in addition to the documents designated by the appellant to be included in the clerk's transcript, you must identify those documents in item 5.)*

b. ☐ If the appellant has not been granted a waiver of the fee for a clerk's transcript, I elect (choose) to use an appendix as the record of documents under rule 8.845 instead of a clerk's transcript. (*If the appellant has been granted a waiver of the fee for a clerk's transcript, you may not choose an appendix; a clerk's transcript will be used. If a clerk's transcript is used and you want any documents from the superior court proceedings in addition to the documents designated by the appellant to be included in the clerk's transcript, you must identify those documents in item 5.*)

Clerk's Transcript

5 The parties will use a clerk's transcript.

a. **Additional documents and exhibits.**

☐ I understand that if I do not identify any additional documents or exhibits below, only the documents and exhibits designated by the appellant will be included in the clerk's transcript.

(1) **Documents**

☐ In addition to the documents designated by the appellant, I request that the clerk include in the transcript the following documents that were filed in the trial court. *(Identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed.)*

Document Title and Description	Date of Filing
(a)	
(b)	
(c)	
(d)	

☐ *Check here if you need more space to list other documents and attach a separate page or pages listing those documents. At the top of each page, write "APP-110, item 5a(1)."*

(2) **Exhibits**

☐ In addition to the exhibits designated by the appellant, I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the trial court. *(For each exhibit, give the exhibit number (such as Plaintiff's #1 or Defendant's A) and a brief description of the exhibit and indicate whether or not the court admitted the exhibit into evidence. If the trial court has returned a designated exhibit to a party, the party who has that exhibit must deliver it to the trial court clerk as soon as possible.)*

5 a. (2) *(continued)*

Exhibit Number	Description	Admitted Into Evidence
		☐ Yes ☐ No
		☐ Yes ☐ No
		☐ Yes ☐ No
		☐ Yes ☐ No

☐ *Check here if you need more space to list other exhibits and attach a separate page or pages listing those exhibits. At the top of each page, write "APP-110, item 5a(2)."*

b. ☐ **Copy of clerk's transcript.** I request a copy of the clerk's transcript. *(Check and complete (1) or (2).)*

(1) ☐ I will pay the trial court clerk for this transcript myself when I receive the clerk's estimate of the costs of the transcript.

(2) ☐ I am asking that a copy of the clerk's transcript be provided at no cost to me because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record *(check (a) or (b) and submit the checked document):*

(a) ☐ An order granting a waiver of the cost under rules 3.50–3.58 and 8.818(d).

(b) ☐ An application for a waiver of court fees and costs under rules 3.50–3.58 and 8.818(d). (*Use* Request to Waive Court Fees *(form FW-001). The court will review this form to decide if you are eligible for a fee waiver.)*

Record of Oral Proceedings in the Trial Court

6 The appellant elected to use the following record of what was said in the trial court proceedings *(check and complete **only one** of the following below—a, b, or c):*

a. ☐ **Reporter's Transcript.** The appellant elected to use a reporter's transcript under rule 8.834 as the record of the oral proceedings in the trial court.

(1) ☐ **Designation of additional proceedings to be included in the reporter's transcript.** *(If you want any proceedings in addition to the proceedings designated by the appellant to be included in the reporter's transcript, you must identify those proceedings here.)*

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

Date	Department	Description	Reporter's Name	Prev. prepared?
(a)				☐ Yes ☐ No
(b)				☐ Yes ☐ No
(c)				☐ Yes ☐ No
(d)				☐ Yes ☐ No
(e)				☐ Yes ☐ No
(f)				☐ Yes ☐ No
(g)				☐ Yes ☐ No

☐ *Check here if you need more space to list other proceedings and attach a separate page or pages listing those proceedings. At the top of each page, write "APP-110, item 6a(1)."*

6 a. *(continued)* **Copy of reporter's transcript.** I request a copy of the reporter's transcript.

(2) ☐ **Certified transcripts.** I have attached to this *Respondent's Notice Designating Record on Appeal* an original certified transcript of all the proceedings I have designated in (1). The transcript complies with the format requirements in rule 8.144 of the California Rules of Court.

(3) ☐ **Copy of reporter's transcript.** I request a copy of the reporter's transcript. *(Check and complete (a) or (b).)*

(a) ☐ I will pay for the reporter's transcript. Within 10 days of receiving the reporter's estimate of the cost of the transcript, I will *(check and complete (i) or (ii)):*

(i) ☐ Deposit an amount equal to the estimated cost of the transcript with the trial court, and a fee of $50 for the trial court to hold this deposit in trust. I understand that if I do not comply with this requirement, I will not receive a copy of the transcript.

(ii) ☐ Pay the reporter directly and file with the trial court a copy of the written waiver of deposit signed by the reporter. I understand that if I do not comply with this requirement, I will not receive a copy of the transcript.

(b) ☐ I am unable to afford the cost of the reporter's transcript and am therefore applying to the Transcript Reimbursement Fund to pay for this transcript. Within 10 days of receiving the reporter's estimate of the cost of the transcript, I will file with the trial court a copy of my application to the Court Reporters Board for payment or reimbursement from the Transcript Reimbursement Fund. I understand that within 90 days of filing my application, I must file with the trial court a copy of the provisional approval of my application or pay for the reporter's transcript as provided in (a). I understand that if I do not comply, I will not receive a copy of the transcript.

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

(a) ☐ Electronic format only.

(b) ☐ Paper format only.

(c) ☐ Electronic format and a second copy of the reporter's transcript in paper format.

OR

b. ☐ **Transcript From Official Electronic Recording.** The appellant elected to use the transcript from an official electronic recording as the record of the oral proceedings in the trial court under rule 8.835(b).

(1) ☐ **Designation of additional proceedings to be included in the transcript.** *(If you want any proceedings in addition to the proceedings designated by the appellant to be included in the transcript, you must identify those proceedings here.)*

In addition to the proceedings designated by the appellant, I request that the following proceedings in the trial court be included in the transcript. (*You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings, and if you know it, the name of the electronic recording monitor who recorded the proceedings.)*

6 b. (1) *(continued)*

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

☐ *Check here if you need more space to describe any proceeding or to list other proceedings and attach a separate page describing or listing those proceedings. At the top of each page, write "APP-110, item 6b(1)."*

(2) **Copy of the transcript from an official electronic recording.** I request a copy of this transcript. *(Check and complete (a) or (b).)*

(a) ☐ I will pay the trial court clerk for this transcript myself when I receive the clerk's estimate of the cost of the transcript. I understand that if I do not pay for the transcript, I will not receive a copy.

(b) ☐ I am asking that the transcript be provided at no cost to me because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record. *(Check (i) or (ii) and submit the appropriate document):*

(i) ☐ An order granting a waiver of the cost under rules 3.50–3.58 and 8.818(d).

(ii) ☐ An application for a waiver of court fees and costs under rules 3.50–3.58 and 8.818(d). *(Use* Request to Waive Court Fees *(form FW-001). The court will review this form to decide if you are eligible for a fee waiver.)*

OR

c. ☐ **Copy of Official Electronic Recording.** The appellant and I have agreed to use the official electronic recording itself as the record of the oral proceedings in the trial court under rule 8.835(a). I request a copy of this recording. *(Check and complete (1) or (2).)*

(1) ☐ I will pay the trial court clerk for this copy of the recording myself when I receive the clerk's estimate of the costs of this copy.

(2) ☐ I am asking that the transcript be provided at no cost to me because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record. *(Check (a) or (b) and submit the appropriate document):*

(a) ☐ An order granting a waiver of the cost under rules 3.50–3.58 and 8.818(d).

(b) ☐ An application for a waiver of court fees and costs under rules 3.50–3.58 and 8.818(d). *(Use* Request to Waive Court Fees *(form FW-001). The court will review this form to decide if you are eligible for a fee waiver.)*

Date: _____

_____ ▶ _____

Type or print your name *Signature of respondent or attorney*

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:
NAME:
FIRM NAME:
STREET ADDRESS:
CITY: STATE: ZIP CODE:
TELEPHONE NO.: FAX NO.:
E-MAIL ADDRESS:
ATTORNEY FOR (*name*):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
STREET ADDRESS:
MAILING ADDRESS:
CITY AND ZIP CODE:
BRANCH NAME:

PLAINTIFF/PETITIONER:

DEFENDANT/RESPONDENT:

SUPERIOR COURT CASE NUMBER:

RESPONDENT'S NOTICE ELECTING TO USE AN APPENDIX (UNLIMITED CIVIL CASE)

RE: Appeal filed on *(date)*:

COURT OF APPEAL CASE NUMBER *(if known)*:

Notice: Please read Judicial Council form APP-001 before completing this form. This form must be filed within 10 days after the notice of appeal is filed. It must be filed in the superior court, not in the Court of Appeal.

The appellant in this case has not been granted a waiver of the fees for preparing a clerk's transcript. I elect under rule 8.124(a) to use an appendix in lieu of a clerk's transcript.

Date: _____

_____
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF RESPONDENT OR ATTORNEY)

APP-111 Respondent's Notice Electing to Use an Appendix (Limited Civil Case)

Clerk stamps date here when form is filed.

Instructions

- This form is only for choosing ("electing") to use an appendix as the record of the documents filed in the trial court on appeal in a **limited civil case.**
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms.*
- You must serve and file this form **no later than 10 days** after the notice of appeal is filed.
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) or on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-serving.htm.*
- Take or mail the original completed form and proof of service on the other parties to the clerk's office for the same court that issued the judgment or order that is being appealed. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

Superior Court of California, County of

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

Trial Court Case Number:

Trial Court Case Name:

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

Appellate Division Case Number:

1 Your Information

a. Name of respondent (the party who is responding to an appeal filed by another party):

Name: _____

b. Respondent's contact information *(skip this if the respondent has a lawyer for this appeal):*

Street address: _____ (*Street*) _____ (*City*) _____ (*State*) _____ (*Zip*)

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

Phone: _____ E-mail: _____

c. Respondent's lawyer *(skip this if the respondent does not have a lawyer for this appeal):*

Name: _____ State Bar number: _____

Street address: _____ (*Street*) _____ (*City*) _____ (*State*) _____ (*Zip*)

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

Phone: _____ E-mail: _____

Fax: _____

Trial Court Case Name: _____

Trial Court Case Number:

Information About the Appeal

2 On *(fill in the date):* _____ another party filed a notice of appeal in the trial court case identified in the box on page 1 of this form.

3 On *(fill in the date):* _____ the appellant filed an appellant's notice designating the record on appeal.

Record of the Documents Filed in the Trial Court

4 The appellant has not been granted a waiver of the fees for a clerk's transcript. I elect under rule 8.845(a) to use an appendix instead of a clerk's transcript under rule 8.832 as the record of the documents filed in the trial court.

Date: _____

_____
Type or print your name

_____
Signature of respondent or attorney

SPR23-03
Appellate Procedure: Time for Electing and Filing an Appendix (Amend Cal. Rules of Court, rules 8.124 and 8.845; revise forms APP-001-INFO, APP-010, APP-101-INFO, and APP-110; revoke forms APP-011 and APP-111)
All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Position	Comment	Committee Response
1.	California Academy of Appellate Lawyers by Wendy Cole Lascher Rule Commentary Chair	A	No specific comment.	The committee notes the commenter's support for the proposal.
2.	California Lawyers Association by Kelly Woodruff, Chair Litigation Section, Committee on Appellate Courts	A	In Invitation to Comment SPR23-03, the Appellate Advisory Committee (AAC) proposes several changes to rules and forms regarding the Respondent's Election of Appendix, which will require amending California Rules of Court, rules 8.124 and 8.845, revising forms APP-001-INFO, APP010, APP-101-INFO, and APP-110, and revoking forms APP-011 and APP-111.	No response required.
			Most importantly, the AAC proposes to move the deadline for submitting the Respondent's Election of Appendix from 10 days after notice of appeal to 10 days after appellant files and serves its notice of designation of record. A member of the CAC had first made this recommendation to the AAC, and other members concur with the recommendation.	
			As noted in the Invitation to Comment, this rule change "is intended to reduce the likelihood that respondents miss their opportunity to elect an appendix; relieve superior court clerks of the burden of compiling some clerk's transcripts, reducing their workload; and expedite appeals by eliminating the time it takes for superior court clerks to compile the clerk's transcript." The AAC also observed that some attorneys may not be aware of the deadline and be	

	Commenter	Position	Comment	Committee Response
			unpleasantly surprised that they can no longer elect an appendix after the appellant serves a notice designating the election of a clerk's transcript.	
			The CAC agrees that facilitating the greater use of the appendix would speed up appeals and save court resources. The CAC also agrees that, in the experience of its members, too many respondents miss the deadline to elect an appendix under the current rule. These objectives would be furthered by the proposal to move the deadline for the respondent's election of an appendix to 10 days after appellant's notice of designation of record (with the election of an appendix superseding the appellant's election of a clerk's transcript), and various minor rule changes to ensure consistency with the new deadline. The CAC also supports the proposal to combine two current forms—(1) respondent's notice to designate the record to add additional items to the clerk's transcript or reporter's transcript, and (2) respondent's notice to designate election of an appendix—into one form.	The committee appreciates the commenter's feedback on this proposal and notes the commenter's support for the proposal.
3.	Family Violence Appellate Project by Shuray Ghorishi Senior Managing Attorney	NI	On behalf of the Family Violence Appellate Project (FVAP), I write to offer comments on ITC SPR23-03. FVAP is a legal support center and the only nonprofit organization in California dedicated to	See responses to specific comments below.

	Commenter	Position	Comment	Committee Response
			providing free appellate representation to low-income survivors of domestic violence and other gender-based abuse in civil appeals. FVAP's goal is to empower survivors of abuse through the court system and ensure that they and their children can live in safe and healthy environments. In addition to providing legal representation to survivors who need to appeal dangerous trial court decisions that leave them or their children at risk of ongoing abuse, FVAP also provides trainings, technical assistance, and legal information to pro bono attorneys, domestic violence advocates, and self-represented survivors on the appellate process, including how to perfect an appeal.	
			Does the proposal appropriately address the stated purpose? Yes, the proposal appropriately addresses the stated purpose of reducing the likelihood that respondents miss their opportunity to elect an appendix, reducing the burden of superior court clerks to compile clerk's transcripts, and expediting the appellate process in general.	The committee appreciates the commenter's feedback on this proposal and notes the commenter's support for the proposal.
			Allowing the respondent more time to elect an appendix can extend the time for filing the appellant's opening brief if no reporter's transcript is being used. Is this problematic? No, the extension of the appellant's opening	The committee appreciates the response.

	Commenter	Position	Comment	Committee Response
			brief would not be problematic for the low-income and self-represented litigants that FVAP serves. In our practice, FVAP rarely proceeds without a reporter's transcript, and even if that occurred, a 10-day extension would have minimal impact on the total duration of an appeal. Moreover, if an appeal necessitated urgent resolution such that this extension would become problematic, then the appellate court would still have discretion to grant expedited briefing under California Rules of Court, rule 8.240. (See Advisory Com. com, Cal. Rules of Court, rule 8.240 [explaining that calendar preference may be granted when a statute permits trial preference or on other nonstatutory grounds].)	
			With that said, FVAP has an additional suggestion for the Council to consider for rule 8.240. We have recently observed more and more appellate courts denying calendar preference in appeals involving abuse, even when trial preference is mandated by statute. For example, Family Code section 244 provides that an application for a restraining order under the Domestic Violence Prevention Act (Fam. Code, § 6200 et seq.) is afforded calendar preference in the trial court. (*In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1500.) Yet appellate courts still deny calendar preference motions in such cases. As such, we recommend this Committee consider adding to	This suggestion is outside the scope of the instant proposal. The committee will consider the issue in the future as time and resources allow.

	Commenter	Position	Comment	Committee Response
			the Advisory Committee Comment of California Rules of Court, rule 8.420 (emphasis added): The rule is broad in scope: it includes motions for preference on the grounds (1) that a statute provides for preference in the reviewing court (e.g., Code Civ. Proc., §§ 44 [probate proceedings, contested elections, libel by public official), 45 [judgment freeing minor from parental custody]); (2) that the reviewing court should exercise its discretion to grant preference when a statute provides for trial preference (e.g., *id*., §§ 35 [certain election matters], 36 [party over 70 and in poor health; party with terminal illness; minor in wrongful death action]; ***Fam. Code, § 244 [domestic violence restraining order matter];*** see *Warren v. Schecter* (1997) 57 Cal.App.4th 1189, 1198-1199); and (3) that the reviewing court should exercise its discretion to grant preference on a nonstatutory ground (e.g., economic hardship).	
			Should separate forms for the respondent to elect an appendix be retained? No. FVAP supports the proposed change to integrate the Respondent's selection of an appendix into the Respondent's Notice	The committee appreciates the response.

	Commenter	Position	Comment	Committee Response
			Designating Record on Appeal form, in both unlimited and limited cases. In FVAP's experience, many, if not most, low-income and self-represented litigants already struggle to navigate the appellate process and find the number of forms to perfect an appeal daunting. This is especially true for litigants who have a language barrier. Consolidating these requests into one form would make the process less cumbersome for these litigants, especially since the proposal suggests adding only one check box and instructions on when that box cannot be selected. It would also eliminate the additional hurdle for this demographic of having to effectuate service on two occasions.	
			In conclusion, FVAP supports this proposal.	No response required.
4.	Los Angeles County Bar Association Appellate Courts Section by John A. Taylor, Jr. Executive Committee Member	A	The Appellate Courts Section of the Los Angeles County Bar Association (LACBA-ACS) supports SPR23-03. Under the existing rule, a respondent may not know within the current 10-day period following the filing of the notice of appeal whether the appellant is going to elect an appendix, because the designation often is not filed that soon. An appellant may file on the 10th day, or may go into the default period, and it is inefficient to require a respondent to file an election while the status of the appellant's designation is in flux. Extending the deadline until after the respondent learns whether the appellant has designated a clerk's	The committee appreciates the commenter's feedback on this proposal and notes the commenter's support for the proposal.

	Commenter	Position	Comment	Committee Response
			transcript will potentially eliminate an unnecessary filing by the respondent, and reduce the workload of superior court clerks in compiling clerk's transcripts where the respondent would prefer to elect an appendix, thereby expediting appeals. In addition, with recent bookmarking and electronic filing requirements that are lacking with clerk's transcripts, efficiencies in the brief and opinion writing processes will be promoted with greater use of appendices.	
			The LACBA-ACS also support amending form APP-010 to add a check box for respondents to indicate their election of an appendix, eliminating the need for APP-011.	The committee appreciates the response.
			As for the proposed change allowing for the early filing of an appendix, that seems unlikely to change actual practice; the appellant generally cannot be sure exactly what to include in the appendix until the opening brief is all but final. However, the LACBA-ACS agrees that there may be instances—e.g., when a writ of supersedeas is necessary—that the early filing of an appendix would be advantageous, so LACBA-ACS does not object to the proposal.	The committee appreciates the response.
5.	Orange County Bar Association by Michael A. Gregg President	A	1. The proposal adequately addresses the stated purpose. It is a welcome change.	The committee notes the commenter's support for the proposal.
			2. The fact that allowing the respondent to	The committee appreciates the response.

	Commenter	Position	Comment	Committee Response
			designate the appendix at the normal time for respondent to designate the record will potentially allow an extension of time for appellant to file the opening brief (in cases where no reporter's transcript is designated) is not a problem. If a respondent does not want to give appellant that extra time, the respondent does not have to designate the appendix method but can allow appellant's designation of the clerk's transcript to stand. And because the clerk's transcript is generally slower anyway, a respondent who designates the appendix under these new rules will still likely speed up the process even when there is no reporter's transcript.	
			3. We do not see the need for separate forms, so long as trial court clerks know to look to the respondent's designation and not prepare the clerk's transcript.	The committee appreciates the response.
6.	Sacramento County Bar Association, Appellate Law Section by Brendan J. Begley Co-Chair	A	In addition to the proposed changes, the Sacramento County Bar Association's Appellate Law Section suggests that you consider amending rule 8.140(a)(2) of the California Rules of Court to confirm whether the trial court must send a default notice to the respondent if the respondent does not counter-designate the record within the time specified by the amended rules 8.124 and 8.845 of the California Rules of Court. Currently rule 8.140(a) expressly applies to a default by both the appellant in designating	This suggestion is outside the scope of the instant proposal. The committee will consider the issue in the future as time and resources allow.

	Commenter	Position	Comment	Committee Response
			the record and the respondent in counter-designating the record (albeit with different sanctions depending on which party defaulted). We do NOT advocate for any alteration of that even-handed approach, but prefer to keep it intact. Still, we believe it is in need of more clarification -- especially if the other rules are amended in this fashion -- since we have met some resistance from certain trial courts when we have tried to elect an appendix for a respondent after the ten-day period had expired where no default notice had been previously issued to the respondent.	
7.	San Diego County Bar Association, Appellate Practice Section by John T. Sylvester, Certified Legal Specialist – Family Law	A	The Appellate Practice Section of the San Diego County Bar Association (APS) strongly supports the proposed amendment to Rules of Court, rule 8.124(e)(2), which it proposed to the Judicial Council by letter on August 10, 2020. Permitting the filing of a party-prepared appendix before the filing of the appellant's opening brief would be a salutary change for the reasons described in the invitation to comment.	The committee notes the commenter's support for the proposal.
			The APS also supports the extension of time for a respondent to elect to use an appendix, and the related form changes, for the reasons stated in the invitation to comment. The proposal appropriately addresses the stated purpose. It is beneficial, not problematic, to allow the respondent more time to elect an appendix and to extend the time for filing the appellant's opening brief if no reporter's transcript is being	The committee appreciates the response.

	Commenter	Position	Comment	Committee Response
			used. There are no record preparation or briefing procedures affected by allowing respondents more time to elect an appendix.	
			Separate forms for the respondent to elect an appendix do not appear to be necessary if item 1 of the Respondent's Notice Designating Record on Appeal (APP-010) were appropriately revised, as suggested, to permit such an election by the respondent. A separate, respondent's notice to elect an appendix filed before the timely filing of the Respondent's Notice Designating Record on Appeal would be unnecessary. And a separate, respondent's notice to elect an appendix filed after the Respondent's Notice Designating Record on Appeal might well be untimely. Use of the Judicial Council form (APP-010) to elect an appendix, rather than a separate form, would serve to remind respondents of the possible need to augment the reporter's transcript designated by the appellant.	The committee appreciates the response.
			In keeping with the views expressed above, it is APS's position that the Judicial Council's proposal appropriately addresses the stated purpose of the proposed rule.	The committee appreciates the response.
			Thank you for considering our feedback. If you have any further questions, you may contact Lisa Cannon, Appellate Practice Section Chair, at: ecannon@sandiego.edu	No response required.

SPR23-03
Appellate Procedure: Time for Electing and Filing an Appendix (Amend Cal. Rules of Court, rules 8.124 and 8.845; revise forms APP-001-INFO, APP-010, APP-101-INFO, and APP-110; revoke forms APP-011 and APP-111)
All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Position	Comment	Committee Response
8.	Superior Court of California, County of Orange by Iyana Doherty Courtroom Operations Supervisor	A	The proposed changes are to forms that are filed and processed in the appellate court. No impact to us.	The committee appreciates the response.
9.	Superior Court of California, County of San Diego by Mike Roddy Executive Officer	A	• Does the proposal appropriately address the stated purpose? **Yes.**	The committee appreciates the response and information.
			• Allowing the respondent more time to elect an appendix can extend the time for filing the appellant's opening brief if no reporter's transcript is being used. Is this problematic? **No.**	
			• Are any other record preparation or briefing procedures affected by allowing respondents more time to elect an appendix? **No.**	
			• Should separate forms for the respondent to elect an appendix be retained? **No.**	
			• Would the proposal provide cost savings? If so, please quantify. **Possibly. This court estimates 1.5-3 hours of clerk time would be saved when not producing a clerk's transcript.**	
			• 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	

SPR23-03
Appellate Procedure: Time for Electing and Filing an Appendix (Amend Cal. Rules of Court, rules 8.124 and 8.845; revise forms APP-001-INFO, APP-010, APP-101-INFO, and APP-110; revoke forms APP-011 and APP-111)
All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Position	Comment	Committee Response
			management systems? **Minimal training for staff (e.g., notice and an internal processing "tip sheet" update).**	
			• Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? **Yes.**	
			• How well would this proposal work in courts of different sizes? **This proposal would work fine in the San Diego Superior Court (a large court).**	

Judicial Council *of* California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 23-
For business meeting on September 18-19, 2023

Title
Appellate Procedure: Forms for Extension of Time

Rules, Forms, Standards, or Statutes Affected
Revise forms APP-006, APP-106, CR-126, JV-816, and JV-817

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

Agenda Item Type
Action Required

Effective Date
January 1, 2024

Date of Report
June 22, 2023

Contact
Kendall W. Hannon, 415-865-7653
kendall.hannon@jud.ca.gov

Executive Summary

The Appellate Advisory Committee recommends revising the forms used to request an extension of time to file a brief in the Court of Appeal and the appellate division of the superior court to ensure that courts receive sufficient information to determine whether good cause exists for an extension. The recommended revisions would (1) add an item on the civil forms to indicate that the case is entitled to, or has been granted, calendar preference or priority; and (2) revise the item where the applicant explains why good cause exists for an extension to direct the applicant to address the relevant factors a court will use in ruling on the motion. Additionally, minor additions or corrections are being recommended to each form.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2024, revise the following forms:

- *Application for Extension of Time to File Brief (Civil Case)* (form APP-006)
- *Application for Extension of Time to File Brief (Limited Civil Case)* (form APP-106)
- *Application for Extension of Time to File Brief (Criminal Case)* (form CR-126)

- *Application for Extension of Time to File Brief (Juvenile Delinquency Case)* (form JV-816)
- *Application for Extension of Time to File Brief (Juvenile Dependency Case)* (form JV-817)

The proposed revised forms are attached at pages 9–18.

Relevant Previous Council Action

Form APP-006, for unlimited civil cases, was adopted effective January 1, 2004. It has been revised previously, most recently effective January 1, 2017, but these prior revisions are not relevant to this proposal. Form APP-106, for limited civil cases, was adopted effective January 1, 2010. Minor, nonsubstantive revisions were made to this form, effective January 1, 2017. Form CR-126, for criminal cases; form JV-816, for juvenile delinquency cases; and form JV-817, for juvenile dependency cases, were adopted effective January 1, 2015. Form CR-126 has never been revised. Minor, nonsubstantive revisions were made to forms JV-816 and JV-817, effective January 1, 2017.

Analysis/Rationale

California Rules of Court,[1] rules 8.212, 8.360, 8.412, 8.416, 8.417, and 8.810 permit parties to apply to the Court of Appeal for an extension of time to file a brief in civil, criminal, and juvenile appeals. Extensions of time to file a brief in the appellate division are permitted by rule 8.882. This proposal revises the optional forms a party may use to request an extension of time to file a brief.

Calendar preference

Forms APP-006 and APP-106 have been revised to add new items by which an applicant can indicate whether an appeal is eligible for, or has previously been granted, calendar preference or priority. The items then direct the applicant to either cite authority (such as a statute that gives the appeal preference or priority) or otherwise explain why the appeal should be given preference or priority.

For civil cases in the Court of Appeal, rule 8.240 governs calendar preference: "A party seeking calendar preference must promptly serve and file a motion for preference in the reviewing court. As used in this rule, 'calendar preference' means an expedited appeal schedule, which may include expedited briefing and preference in setting the date of oral argument." The advisory committee comment states that this rule is "broad in scope" and that the Court of Appeal can order calendar preference on the motion of a party or, where the ground is apparent on the face of the appeal, on its own without a motion. Additionally, the note recognizes that the rule covers motions for preference on the following grounds:

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

> (1) [T]hat a statute provides for preference in the reviewing court (e.g., Code Civ. Proc., §§ 44 [probate proceedings, contested elections, libel by public official), 45 [judgment freeing minor from parental custody]); (2) that the reviewing court should exercise its discretion to grant preference when a statute provides for trial preference (e.g., id., §§ 35 [certain election matters], 36 [party over 70 and in poor health; party with terminal illness; minor in wrongful death action]; see Warren v. Schecter (1997) 57 Cal.App.4th 1189, 1198-99); and (3) that the reviewing court should exercise its discretion to grant preference on a nonstatutory ground (e.g., economic hardship).[2]

In its December 2022 report, the Chief Justice's Appellate Caseflow Workgroup recommended that the Judicial Council consider whether form APP-006 should "require additional information such as whether the appeal is a priority case."[3] The committee believes requiring this information on the civil extension of time forms will aid the reviewing court in determining whether good cause exists for an extension and, if so, the appropriate length of the extension.[4]

Statement of reasons for extension

On each extension of time form, the item directing the applicant to state the reasons why the extension of time is needed has been revised. The instructional parenthetical has been revised to direct the appellant to (1) address the relevant factors contained in the applicable rules of court (rule 8.63 for APP-006, CR-126, JV-816, and JV-817; rule 8.811(b) for APP-106), and (2) specifically address possible prejudice to the parties, defendant, or juvenile. Additionally, the parenthetical on form JV-816 has been further revised to advise the applicant that an "exceptional showing of good cause is required" in cases subject to rule 8.417.[5]

Currently, the extension of time forms provide an open prompt for the applicant to list the reasons why an extension is needed and direct the applicant to the relevant rule for the "factors used in determining whether to grant extensions." The committee has determined that instead directing the applicants to address these factors (as opposed to simply referring the applicant to them) will increase the likelihood that the applicant will provide sufficient information for the reviewing court to assess whether good cause exists for an extension.

Additionally, directing the applicant to address the prejudice factor in particular would be beneficial to reviewing courts given the potential importance of this factor. The committee notes that, like the calendar preference item discussed above, the Appellate Caseflow Workgroup's report recommended that the Judicial Council consider whether the civil and criminal extension

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[2] Advisory Committee comment, Cal. Rules of Court, rule 8.240.

[3] Appellate Caseflow Workgroup, *Report to the Chief Justice* (Dec. 6, 2022), p.24, newsroom.courts.ca.gov/sites/default/files/newsroom/2022-12/Appellate Caseflow Workgroup Report_Final.pdf.

[4] See, e.g., Rule 8.63(b)(6) (listing "[w]hether the case is entitled to priority" as one of the factors to be considered in determining whether good cause for an extension exists); *id.*, rule 8.811(b)(6) (same).

[5] See Rule 8.417(g).

of time forms should be revised to require additional information about whether an extension would prejudice the client, opponent, or criminal defendant.[6]

Proof of service items

The proof of service statement on form CR-126 has been revised to match the other applications for extensions of time. Currently, item 11 on form CR-126 provides: "A proof of service of this application on all those entitled to receive a copy of the brief under rule 8.360(d)(1), (2), and (3) is attached (see rule 8.360(d).)"

However, the rule regarding extensions of time does not require service on "all those entitled to receive a copy of the brief." Rather, it requires service on "all parties."[7] For this reason, the forms for requesting an extension of time in unlimited civil, juvenile dependency, and juvenile justice appeals all require service on "all other parties," not those entitled to receive a copy of the brief.

In addition, the proof of service statements on APP-006, JV-816, and JV-817 have been revised to cite to rule 8.60(c). Currently, the unlimited civil and juvenile extension of time forms cite to rules that relate to applications in general, permit a court to order an extension of time to file a brief, or require service of briefs.[8] The committee believes that rule 8.60(c), which requires an that extension of time application be served on all parties, is better authority for this item.

Additional revisions or corrections

The notice at the top of form APP-006 has been revised to correct the reference to form APP-001-INFO.

Item 4 on form APP-106 has been revised to correctly reflect the 15-day window for filing a brief on receipt of a default notice under rule 8.882(c).

Item 1 on forms APP-006, CR-126, JV-816, and JV-817 and item 2 on form APP-106 have been revised to add an option for the party to seek an extension of time to file a "supplemental or other brief." Because an extension could be sought for such a brief after the filing of a reply brief or supplemental brief, options have been added for "ARB" and "Other" to item 5 on form APP-006; item 9 on form APP-106; and item 4 on forms CR-126, JV-816, and JV-817.

In response to a comment, item 1 on forms APP-006, CR-126, JV-816, and JV-817 has been reformatted to add subdivisions to ensure that the information regarding the current due date and requested extension date are provided.

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[6] Appellate Caseflow Workgroup, *supra*, at p. 24.

[7] See Cal. Rules of Court, rule 8.60(c)(1).

[8] See, e.g., *id.*, rule 8.50; rule 8.360(d); rule 8.412(c) and (e).

Item 2 on forms APP-006, CR-126, JV-816, and JV-817 and item 4 on APP-106 have been revised to add the word "default" before "notice." The committee believes that identifying the notice as a "default notice" would clarify the item.

Item 4 on form APP-006 and item 6 on APP-106 have been revised to add a check box for the applicant to indicate that "the maximum stipulated time has already been used" in explaining why the parties are unable to stipulate to an extension of time.

Item 7 on form CR-126 has been revised to change "jury verdict" to "jury or court trial" to include convictions resulting from a court trial.

In response to a comment, hyperlinks to the applicable rules listing the factors a reviewing court will use in assessing whether good cause exists for an extension of time have been added to item 9 on form APP-006, item 8 on form APP-106, item 10 on form CR-126, item 9 on form JV-816, and item 7 on form JV-817.

Nonsubstantive revisions to each form title have been made to conform with Judicial Council style guidelines. First, the parentheticals in the titles have been replaced with an em dash followed by a description of the case for which the form may be used. Second, the phrase "Civil Case" in the title of form APP-006 has been replaced with "Unlimited Civil Case" to clarify the cases for which that form is to be used. Third, the term "juvenile delinquency case" has been replaced with "juvenile justice case" on form JV-816.

Policy implications

These revisions will help ensure that the extension of time forms submitted in appeals provide the reviewing court with sufficient information to determine whether good cause exists for an extension. These revisions are therefore consistent with the *Strategic Plan for California's Judicial Branch*, specifically the goals of Modernization of Management and Administration (Goal III) and Quality of Justice and Service to the Public (Goal IV).

Comments

This proposal circulated for public comment between March 30 and May 12, 2023. Eight comments were received, from the California Academy of Appellate Lawyers, the California Lawyers Association Committee on Appellate Courts (CAC), the Complex Appellate Litigation Group LLP, the Family Violence Appellate Project (FVAP), the Orange County Bar Association, the Sacramento County Bar Association Appellate Law Section, the San Diego County Bar Association Appellate Practice Section, and the Superior Court of San Diego County. The comments largely agreed with the proposed changes stated above but disagreed with one of the proposed revisions circulated for comment. The principal comments are summarized below. A chart with the full text of the comments received and the committee's responses is attached at pages 19–52.

Item for listing amount of work completed on the appeal
The proposal as circulated included an item on each extension of time form for the applicant to state the amount of work that had been completed on the appeal at the time of the extension request. It had been suggested that the item would assist the courts in evaluating the extension of time request and would aid the appellate projects in supervising the work of panel attorneys. The committee sought specific comment on this item. In response, the commenters expressed their disagreement with the inclusion of this item.

CAC and FVAP noted that the rules require a reviewing court to consider eleven factors in determining whether an applicant seeking an extension of time has shown good cause.[9] CAC and FVAP stated that an item requiring an applicant to list the amount of work done on the appeal would inject a new factor, not contained in the rules, into the inquiry. These commenters recommended keeping the inquiry focused on the factors contained in the rule. The San Diego County Bar Association Appellate Practice Section expressed its belief that the new item is unnecessary in light of the item on the forms requiring the applicant to explain why an extension of time is required. These commenters thus expressed their view that the factors contained in the rule are sufficient for a reviewing court to determine whether good cause exists for an extension of time.

Commenters also raised a variety of practical concerns with this proposed new item. The California Academy of Appellate Lawyers, CAC, Complex Appellate Litigation Group LLP, FVAP, and the San Diego County Bar Association Appellate Practice Section expressed a concern that this item could be read as requiring an attorney to divulge information protected by the attorney-client privilege or work product doctrine. FVAP further stated that the item may confuse self-represented litigants who may struggle to determine the level of detail, or nature of the disclosures, the item requires. Similarly, the Superior Court of San Diego County stated that the proposed item as worded was vague and overbroad. FVAP also expressed the concern that the new item would further complicate the extension of time applications, requiring an attorney to expend additional time to draft the application—time the attorneys may not have if they are seeking an extension.

Finally, the Sacramento County Bar Association Appellate Law Section disagreed with the proposed new item on two grounds. First, it stated that the item could suggest that an attorney must have completed some work on an appeal to be eligible for an extension of time. The commenter noted there may be situations in which an attorney has not yet begun work on an appeal but still requires an extension of time—for instance if the attorney is diligently working to settle the appeal. Second, it stated that the item could make obtaining extensions harder, thus leading to a situation where the hasty filing of briefs is given priority over other public policy considerations.

[9] See Rules 8.63(b) and 8.811(b).

In light of these comments, the committee has modified the proposal to remove this item from each of the extension of time forms. The committee believes that the current item where applicants list the reasons for the extension of time (revised, as stated above, to direct the applicant to address the relevant factors) will provide reviewing courts with sufficient information to determine whether the requested extension is warranted by good cause. Further, to the extent that applicants believe that the work they have done on the appeals is relevant to one of the enumerated factors, they will be free to so indicate in that item. Finally, the committee concluded that, as noted by a commenter, the presence of the item may create the erroneous impression that some work must have been completed on an appeal before an extension of time could be received.

The committee recognizes that the proposal, as circulated with this item, was intended, in part, to aid the appellate projects in supervising the work of the panel attorneys. The committee concludes, however, that the proposal's other revisions, including the requirement that an attorney specifically address the relevant factors in the application when explaining why the extension is needed, will still aid the project's supervision of the panel attorneys.

Requesting information on prejudice to the parties

FVAP opposed revising the item where the applicant states the reasons an extension of time is needed to the extent the revision directs the applicant to address possible prejudice. It indicated that if a party is not claiming prejudice, it should not need to discuss the factor at all in the application. It relies on the fact that although the applicable rules require a court to consider certain factors, they do not require the parties to address them all.

The committee disagrees. Often, the presence or absence of prejudice will be an important consideration for a reviewing court, such as in a criminal case in which a criminal defendant's liberty is at issue. As FVAP recognizes, a court is required to consider the factors included in rule 8.63(b), and the degree of prejudice to any party from a grant or denial of an extension is one of the factors that must be considered. The parties are in the best position to articulate whether and, if so, to what extent there is a risk of prejudice should an extension of time be granted or denied. The committee believes that requiring the party to discuss possible prejudice in the application will aid the reviewing court in determining whether an extension is warranted. To the extent a party does not believe there is a risk of prejudice should an extension of time be granted or denied, the party may simply state that belief.

Whether the committee should consider making the application forms mandatory

In the invitation to comment, the committee sought specific comment on whether the committee should explore making the extension of time application forms mandatory in a future proposal.

FVAP stated that the application forms should be made mandatory, so long as they do not contain an item requiring the applicant to state the work that has been done on the appeal. FVAP noted that local forms are stylized differently and may seek different information. It stated that if a party used their own form, or a less-informative local form, important information including the relevant factors contained in the rules of court may be missed.

By contrast, the Orange County Bar Association and Sacramento County Bar Association Appellate Law Section stated the forms should not be made mandatory because a party may need to provide a more thorough explanation for why an extension of time is needed. The committee notes that the application forms allow an applicant to state the reasons an extension of time is needed either directly on the form or on an attached declaration.

The committee may address whether these forms should be made mandatory in a future proposal as time and resources allow. In any such proposal, the committee will consider whether any revisions are needed to ensure that applicants have sufficient space to state the reasons the extensions are needed.

Alternatives considered

As discussed above, the committee considered adding to the extension of time forms an item that would require the applicant to state what work the applicant has completed on the appeal. In light of the comments received, the committee has revised the proposal to remove this item.

The committee also considered the alternative of taking no action but concluded that the proposed revisions will improve the extension of time forms, making them more usable and more likely to provide reviewing courts with the information needed to assess extension of time requests.

Fiscal and Operational Impacts

Fiscal or operational impacts, if any, are expected to be minimal, and there are no apparent barriers to implementation.

Attachments and Links

1. Forms APP-006, APP-106, CR-126, JV-816, and JV-817, at pages 9–18
2. Chart of comments, at pages 19–52

TO BE FILED IN THE COURT OF APPEAL

APP-006

COURT OF APPEAL APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*name*):	SUPERIOR COURT CASE NUMBER:
APPELLANT: RESPONDENT:	**DRAFT 06.21.2023 Not approved by Judicial Council**
APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF—UNLIMITED CIVIL CASE	

Notice: Please read Judicial Council form APP-001-INFO before completing this form.

1. a. I *(name):* request that the time to file *(check one)*
   - ☐ appellant's opening brief (AOB)
   - ☐ respondent's brief (RB)
   - ☐ combined respondent's brief (RB) and appellant's opening brief (AOB) (see Cal. Rules of Court, rule 8.216)
   - ☐ combined appellant's reply brief (ARB) and respondent's brief (RB) (see Cal. Rules of Court, rule 8.216)
   - ☐ appellant's reply brief (ARB)
   - ☐ supplemental or other brief

   b. now due on *(date):*

   c. be extended to *(date):*
2. I ☐ have ☐ have not received a Cal. Rules of Court, rule 8.220 default notice.
3. I have received
   - ☐ no previous extensions to file this brief.
   - ☐ the following previous extensions:

   (number of extensions): extensions by stipulation totaling *(total number of days):*

   (number of extensions): extensions from the court totaling *(total number of days):*

   Did the court mark any previous extension "no further"? ☐ Yes ☐ No
4. I am unable to file a stipulation to an extension because
   - ☐ the other party is unwilling to stipulate to an extension.
   - ☐ the maximum stipulated time has already been used.
   - ☐ other reason *(please specify):*
5. The last brief filed by any party was ☐ AOB ☐ RB ☐ RB and AOB ☐ ARB and RB ☐ ARB ☐ Other filed on *(date):*
6. The record in this case is

	Volumes (#)	Pages (#)	Date filed
Appendix/Clerk's Transcript:			
Reporter's Transcript:			
Augmentation/Other:			

Form Approved for Optional Use
Judicial Council of California
APP-006 [Rev. January 1, 2024]

Cal. Rules of Court, rules 8.50, 8.60, 8.63, 8.212, 8.220
www.courts.ca.gov

APPELLANT: RESPONDENT:	COURT OF APPEAL CASE NUMBER:

7. ☐ The trial court has ordered the proceedings in this case stayed until this appeal is decided.

8. ☐ This appeal is eligible for, or has been granted, calendar preference/priority *(cite authority or explain):*

9. The reasons that I need an extension to file this brief are stated
   ☐ below
   ☐ on a separate declaration. You may use *Attached Declaration (Court of Appeal)* (form APP-031A) for this purpose.
   (Please address the Cal. Rules of Court, rule 8.63 factors, including possible prejudice to the parties):

10. For attorneys filing application on behalf of client, I certify that I have delivered a copy of this application to my client (Cal. Rules of Court, rule 8.60).

11. A proof of service of this application on all other parties is attached (see Cal. Rules of Court, rule 8.60(c)). You may use *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) for this purpose.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF PARTY OR ATTORNEY)

Order on Application is ☐ below ☐ on a separate document

ORDER

EXTENSION OF TIME IS

☐ granted to *(date)*:

☐ denied

Date:

▶ (SIGNATURE OF PRESIDING JUSTICE)

APP-106 Application for Extension of Time to File Brief—Limited Civil Case

Clerk stamps date here when form is filed.

DRAFT 06.21.2023 Not approved by Judicial Council

Instructions

- This form is only for requesting an extension of time to file a brief in an appeal in **a limited civil case.** Note that any rules referenced in this form are from the California Rules of Court.
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the Self-Help Guide to the California Courts at *www.courts.ca.gov/selfhelp-serving.htm*.
- Take or mail the completed form and proof of service on the other parties to the appellate division clerk's office. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order that is being appealed:

Superior Court of California, County of

You fill in the number and name of the trial court case in which the judgment or order is being appealed:

Trial Court Case Number:

Trial Court Case Name:

You fill in the appellate division case number:

Appellate Division Case Number:

1 Your Information

a. Name of party requesting extension of time to file brief: _____

b. Party's contact information *(skip this if the appellant has a lawyer for this appeal):*

Street address: _____ (*Street*) _____ (*City*) _____ (*State*) _____ (*Zip*)

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

Phone: _____ Email: _____

c. Party's lawyer *(skip this if the appellant does not have a lawyer for this appeal):*

Name: _____ State Bar number: _____

Street address: _____ (*Street*) _____ (*City*) _____ (*State*) _____ (*Zip*)

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

Phone: _____ Email: _____

Fax: _____

2 I am requesting an extension on the time to file:

- ☐ Appellant's opening brief, which is now due on *(date):* _____
- ☐ Respondent's brief, which is now due on *(date):* _____
- ☐ Appellant's reply brief, which is now due on *(date):* _____
- ☐ Supplemental or other brief, which is now due on *(date):* _____

3 I am requesting that the time to file the brief identified in **2** be extended to *(date):* _____

4 I ☐ have ☐ have not received a default notice under rule 8.882(c) from the clerk that this brief must be filed within 15 days.

5 The time to file the brief *(check all that apply):*

- ☐ Has not been extended before.
- ☐ Has been extended before by the stipulation of the parties. The parties stipulated to *(number of extensions)* _____ totaling *(number of days)* _____
- ☐ Has been extended before by the court. The court granted *(number of extensions)* ____ totaling *(number of days)* _____

6 I am not able to stipulate to an extension to file this brief because *(check one):*

- ☐ The other party is not willing to stipulate to an extension.
- ☐ The maximum stipulated time has already been used.
- ☐ Other reason *(please describe the reason):*

_____

_____

7 ☐ This appeal is eligible for calendar preference/priority because *(cite authority or explain):*

_____

8 The reason I need an extension to file this brief is *(describe the reason you need an extension; please address the rule 8.811(b) factors, including possible prejudice to the parties):*

_____

_____

9 The last brief filed by any party in this case was:

- ☐ The appellant's opening brief, filed on *(date):* _____
- ☐ The respondent's brief, filed on *(date):* _____
- ☐ The appellant's reply brief, filed on *(date):* _____
- ☐ A supplemental or other brief, filed on *(date):* _____

10 If this extension is being requested by a lawyer on behalf of a client, the lawyer must complete this item.

- ☐ I certify that I have delivered a copy of this application to my client (rule 8.810(e)). I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

_____
Type or print your name

▶ _____
Signature of party or attorney

TO BE FILED IN THE COURT OF APPEAL

CR-126

COURT OF APPEAL APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*name*):	SUPERIOR COURT CASE NUMBER:
APPELLANT: RESPONDENT:	**DRAFT 06.21.2023 Not approved by Judicial Council**

APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF—CRIMINAL CASE

1. a. I *(name):* request that the time to file *(check one)*
   - ☐ appellant's opening brief (AOB)
   - ☐ respondent's brief (RB)
   - ☐ combined respondent's brief (RB) and appellant's opening brief (AOB) (see Cal. Rules of Court, rule 8.216)
   - ☐ combined appellant's reply brief (ARB) and respondent's brief (RB) (see Cal. Rules of Court, rule 8.216)
   - ☐ appellant's reply brief (ARB)
   - ☐ supplemental or other brief

   b. now due on *(date):*

   c. be extended to *(date):*

2. I ☐ have ☐ have not received a Cal. Rules of Court, rule 8.360(c)(5) default notice.

3. I have received
   - ☐ no previous extensions to file this brief.
   - ☐ the following previous extensions:

   (number of extensions): extensions from the court totaling *(total number of days):*

   Did the court mark any previous extension "no further"? ☐ Yes ☐ No

4. The last brief filed by any party was ☐ AOB ☐ RB ☐ RB and AOB ☐ ARB and RB ☐ ARB ☐ Other filed on *(date):*

5. The record in this case is

	Volumes (#)	Pages (#)	Date filed
Clerk's Transcript:			
Reporter's Transcript:			
Augmentation/Other:			

6. Defendant was convicted of *(specify):*

7. The conviction is based on a *(check one)*
   - ☐ jury or court trial.
   - ☐ plea of guilty or no contest.

Form Approved for Optional Use
Judicial Council of California
CR-126 [Rev. January 1, 2024]

Cal. Rules of Court, rules 8.50, 8.60, 8.63, 8.360
www.courts.ca.gov

APPELLANT: RESPONDENT	COURT OF APPEAL CASE NUMBER:

8. The court imposed the following punishment:

9. The defendant ☐ is ☐ is not on bail pending appeal.

10. The reasons that I need an extension to file this brief are stated
   ☐ below.
   ☐ on a separate declaration. You may use *Attached Declaration (Court of Appeal)* (form APP-031A) for this purpose.
   (Please address the Cal. Rules of Court, rule 8.63 factors, including possible prejudice to the defendant):

11. A proof of service of this application on all other parties is attached (see Cal. Rules of Court, rule 8.60(c)). You may use *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) for this purpose.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF PARTY OR ATTORNEY)

Order on Application is ☐ below ☐ on a separate document

ORDER

EXTENSION OF TIME IS

☐ granted
☐ denied

to *(date)*:

Date:

(SIGNATURE OF PRESIDING JUSTICE)

COURT OF APPEAL APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*name*):	SUPERIOR COURT CASE NUMBER(S):
Case Name: In re , person(s), coming under the juvenile court law	**DRAFT 06.21.2023 Not approved by Judicial Council**
APPELLANT: RESPONDENT:	

APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF—JUVENILE JUSTICE CASE

1. a. I *(name):* request that the time to file *(check one)*
   - ☐ appellant's opening brief (AOB)
   - ☐ respondent's brief (RB)
   - ☐ combined respondent's brief (RB) and appellant's opening brief (AOB) (see Cal. Rules of Court, rule 8.216)
   - ☐ combined appellant's reply brief (ARB) and respondent's brief (RB) (see Cal. Rules of Court, rule 8.216)
   - ☐ appellant's reply brief (ARB)
   - ☐ supplemental or other brief

   b. now due on *(date):*

   c. be extended to *(date):*

2. I ☐ have ☐ have not received a Cal. Rules of Court, rule 8.412(d)(1) default notice.

3. I have received
   - ☐ no previous extensions to file this brief.
   - ☐ the following previous extensions:

   (number of extensions): extensions from the court totaling *(total number of days):*

   Did the court mark any previous extension "no further"? ☐ Yes ☐ No

4. The last brief filed by any party was ☐ AOB ☐ RB ☐ RB and AOB ☐ ARB and RB ☐ ARB ☐ Other filed on *(date):*

5. The record in this case is

	Volumes (#)	Pages (#)	Date filed
Clerk's Transcript:			
Reporter's Transcript:			
Augmentation/Other:			

6. The juvenile was adjudicated a ward of the court based on commission of the following offense(s):

7. The disposition followed *(check one)*
   - ☐ a contested hearing.
   - ☐ an admission.

Form Approved for Optional Use
Judicial Council of California
JV-816 [Rev. January 1, 2024]

APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF—JUVENILE JUSTICE CASE
(Appellate)

Cal. Rules of Court, rules 8.50, 8.60, 8.63, 8.412
www.courts.ca.gov

APPELLANT: RESPONDENT:	COURT OF APPEAL CASE NUMBER:

8. The court imposed the following disposition:

9. The reasons that I need an extension to file this brief are stated
   ☐ below.
   ☐ on a separate declaration. You may use *Attached Declaration (Court of Appeal)* (form APP-031A) for this purpose.
   (Please address the Cal. Rules of Court, rule 8.63 factors, including possible prejudice to the juvenile. Note that an exceptional showing of good cause is required in cases subject to Cal. Rules of Court, rule 8.417.)

10. A proof of service of this application on all other parties is attached (see Cal. Rules of Court, rule 8.60(c)). You may use *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) for this purpose.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF PARTY OR ATTORNEY)

Order on Application is ☐ below ☐ on a separate document

ORDER

EXTENSION OF TIME IS

☐ granted
☐ denied

to *(date)*:

Date:

(SIGNATURE OF PRESIDING JUSTICE)

COURT OF APPEAL APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*name*):	SUPERIOR COURT CASE NUMBER(S):
Case Name: In re , person(s), coming under the juvenile court law	**DRAFT 06.21.2023 Not approved by Judicial Council**
APPELLANT: RESPONDENT:	

APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF—JUVENILE DEPENDENCY CASE

1. a. I *(name):* request that the time to file *(check one)*
   - ☐ appellant's opening brief (AOB)
   - ☐ respondent's brief (RB)
   - ☐ combined respondent's brief (RB) and appellant's opening brief (AOB) (see Cal. Rules of Court, rule 8.216)
   - ☐ combined appellant's reply brief (ARB) and respondent's brief (RB) (see Cal. Rules of Court, rule 8.216)
   - ☐ appellant's reply brief (ARB)
   - ☐ supplemental or other brief

   b. now due on *(date):*

   c. be extended to *(date):*

2. I ☐ have ☐ have not received a Cal. Rules of Court, rule 8.412(d)(1) default notice.

3. I have received
   - ☐ no previous extensions to file this brief.
   - ☐ the following previous extensions:

     (number of extensions): extensions from the court totaling *(total number of days):*

     Did the court mark any previous extension "no further"? ☐ Yes ☐ No

4. The last brief filed by any party was ☐ AOB ☐ RB ☐ RB and AOB ☐ ARB and RB ☐ ARB ☐ Other filed on *(date):*

5. The record in this case is

	Volumes (#)	Pages (#)	Date filed
Clerk's Transcript:			
Reporter's Transcript:			
Augmentation/Other:			

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

   a. ☐ section 360 (declaration of dependency) ☐ removal of custody from parent or guardian ☐ other orders ☐ with review of section 300 jurisdictional findings

   b. ☐ section 366.26

   ☐ termination of parental rights ☐ appointment of guardian ☐ planned permanent living arrangement

Form Approved for Optional Use
Judicial Council of California
JV-817 [Rev. January 1, 2024]

Cal. Rules of Court, rules 8.50, 8.60, 8.63, 8.412, 8.416
www.courts.ca.gov

APPELLANT: RESPONDENT:	COURT OF APPEAL CASE NUMBER:

6. c. ☐ section 366.28
   d. ☐ other appealable orders relating to dependency *(specify):*

7. The reasons that I need an extension to file this brief are stated
   ☐ below.
   ☐ on a separate declaration. You may use *Attached Declaration (Court of Appeal)* (form APP-031A) for this purpose.
   (Please address the Cal. Rules of Court, rule 8.63(b) factors, including possible prejudice to the parties. Note that an exceptional showing of good cause is required in cases subject to Cal. Rules of Court, rule 8.416.)

8. A proof of service of this application on all other parties is attached (see Cal. Rules of Court, rule 8.60(c)). You may use *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) for this purpose.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF PARTY OR ATTORNEY)

Order on Application is ☐ below ☐ on a separate document

ORDER

EXTENSION OF TIME IS

☐ granted to *(date)*:
☐ denied

Date:

(SIGNATURE OF PRESIDING JUSTICE)

SPR23-06
Appellate Procedure: Forms for Extension of Time (revise forms APP-006, APP-106, CR-126, JV-816, JV-817)
All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Position	Comment	Committee Response
1.	California Academy of Appellate Lawyers by Wendy Cole Lascher Rules Commentary Chair	N	The California Academy of Appellate Lawyers ("CAAL") is devoted to promoting and encouraging reforms in appellate practice that ensure effective representation of litigants and more efficient administration of justice.	No response necessary.
			CAAL could not reach consensus on the proposal concerning Forms for Extension of Time, Item Number SPR23-06. The debate centered around the part of the proposal adding space to indicate the work done to date on the appeal. Two main competing views emerged:	The committee appreciates the feedback. In light of this and other comments received on this point, the committee has modified the proposal to remove the item where an applicant would list the work done to date on the appeal. The committee concluded that including this item would not be appropriate as the work an attorney has done on the appeal is not a factor listed in the applicable rules governing extensions of time. The committee also concludes that the factors stated in the rules will permit applicants to discuss the work they have completed on appeal to the extent they feel it is relevant. Similarly, the committee believes that the item where the applicant lists the reasons an extension of time is required, as revised, will provide the courts with sufficient information to assess whether the requested extension is supported by good cause. Finally, the committee believed that the item may imply that some work must have been completed on the appeal before an extension of time could be received.
			1. That the proposal should be supported because it places accountability for appellate delay on attorneys in tandem with the courts; and	See above response.

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

	Commenter	Position	Comment	Committee Response
			2. That the proposal should be opposed because in some situations, disclosure of the work done to date on the appeal would invade attorney-client privilege and/or work-product privileged information. For example, work on a brief may occasionally be delayed because of tension in the attorney-client relationship, material and substantive disagreements about the case that are being discussed but are not yet resolved, or a client who is not meeting an obligation to the lawyer, such as paying fees.	See above response.
2.	California Lawyers Association, Litigation Section, Committee on Appellate Courts (CAC) by Kelly Woodruff Chair	NI	**1. Space for Applicant to Provide Facts Regarding Amount of Work Completed on Appeal** In SPR23-06, the AAC proposes to revise Judicial Council forms used by parties to request an extension of time to file a brief. Among the proposed revisions are: (1) adding space for the applicant to indicate the amount of work done to date on the appeal; (2) providing that service of the extension of time request is to "all parties" for Form CR-126 to conform to the forms for civil and juvenile appeals; (3) adding a calendar preference entry to have a party indicate whether the appeal is eligible for an expedited appeal; and (4) several minor typographical changes to the form for clarity.	No response required.
			The CAC disagrees with the proposal to have an applicant provide details regarding the amount	The committee appreciates the feedback. In light of this and other comments received on this point,

	Commenter	Position	Comment	Committee Response
			of work on the appeal completed to date on the form to request for extension of time to file a brief. First, under California Rules of Court, rule 8.63, the applicant must show good cause to obtain an extension of time. The Rule expressly recognizes that, "'[f]or a variety of legitimate reasons, counsel may not always be able to prepare briefs or other documents within the time specified in the rules of court. (Cal. Rules of Ct., rule 8.63, subs.(a)(2).) The Rule's multi-factor test for "good cause" seeks to "balance the competing policies" of accommodating applicants with legitimate grounds for needing more time with the need for "expeditious conduct for appellate business." (Cal. Rules of Ct., rule 8.63, subd. (a)(3).) To that end, the existing rule—which the Appellate Advisory Committee does not propose to amend—sets forth ten non-exclusive specific factors, along with a "catch-all" provision, for the court to consider in granting an extension. (Cal. Rules of Ct., rule 8.63, subd. (b)(1)-(11).)	the committee has modified the proposal to remove the item where an applicant would list the work done to date on the appeal. The committee concluded that including this item would not be appropriate as the work an attorney has done on the appeal is not a factor listed in the applicable rules governing extensions of time. The committee also concludes that the factors stated in the rules will permit applicants to discuss the work they have completed on appeal to the extent they feel it is relevant. Similarly, the committee believes that the item where the applicant lists the reasons an extension of time is required, as revised, will provide the courts with sufficient information to assess whether the requested extension is supported by good cause. Finally, the committee believed that the item may imply that some work must have been completed on the appeal before an extension of time could be received.
			The "good cause" multi-factor test would be undermined by the current proposal. Currently (and consistent with Rule 8.63), applicants are free to identify the factor(s) most applicable to their situation in requesting an extension of time. But the proposal highlights a single factor, the time that counsel has already spent on the case, for special consideration, which necessarily places more weight on this factor than others. [FN 1 Notably, the work already	See above response.

	Commenter	Position	Comment	Committee Response
			performed on the case is not even a specific factor for "good cause" enumerated under Rule 8.63, subdivision (b).] Applicants would likely be compelled to provide this information on the space provided, even if not required to do so. And courts may be more tempted to reject a well-supported application because they are not satisfied that the applicant has sufficiently progressed on the appellate work—even though "good cause" does not require that the applicant make any specific showing as to the work done on appeal. In short, this would upset the multi-factor balancing test for good cause. For this reason alone, the proposal should be reconsidered and abandoned.	
			Second, given the "good cause" requirement, the additional space for progression of the appeal is superfluous.	See above response.
			Third, there are numerous practical reasons for rejecting this proposal. Attorneys are concerned that providing facts concerning what work has been done could reveal confidential work product or attorney-client privilege. In addition, the proposal may also inadvertently lead to a power imbalance between the applicant, who must divulge work details, and the opposing party, who does not. It may give the opposing party an unfair litigation advantage and potentially undermine the applicant's settlement position.	See above response.

	Commenter	Position	Comment	Committee Response
			Finally, the CAC, which is composed of criminal and civil attorneys (including several who focus on family law), believes that none of the forms should include the proposed item on work progress. The reasons set forth above apply to attorneys in all fields, including criminal panel attorneys.	See above response.
			2. Other Proposals The CAC supports the other proposals set forth in SPR23-06. The CAC supports the proposal to "revise the parenthetical on these forms to direct the applicant to address the factors contained in the relevant rule, including prejudice to the parties (forms APP-006, APP106, and JV-817), defendant (form CR-126), or juvenile (form JV-816)." Indeed, the CAC believes this revision, which focuses the applicant on the specific "good cause" factors, comports with its stance above. The CAC believes that the extension form should focus on the "good cause" factors and not overweigh a factor that would be not required to be demonstrated for good cause, such as showing how much work was already done on the appeal. The proposed revisions to the extension request forms would do exactly that.	The committee appreciates the feedback.
			The CAC also supports the rule adding space for the applicant to indicate whether the item may be entitled to calendar preference. The CAC recognizes that attorneys practicing in	The committee appreciates the feedback.

	Commenter	Position	Comment	Committee Response
			appellate courts may not always be aware of the rules regarding the types of appeals eligible for calendar preference. This prompt may facilitate parties to research and seek calendar preference. The proposal will also assist the Court of Appeal in determining whether to grant an extension if appeal is eligible for calendar preference.	
			The CAC has no objections to changing Form CR-126 to have parties in criminal appeals serve the request for extension of time on "all parties."	The committee appreciates the feedback.
			Finally, the CAC supports the minor typographical revisions and changes indicated in SPR23-06.	The committee appreciates the feedback.
3.	Complex Appellate Litigation Group LLP by Ben Feuer, Chairman	AM	The proposed revised extension of time forms ask lawyers to report what work they have completed on an appeal when requesting an extension of time.	No response necessary.
			This type of information would appear to be privileged in most situations. The amount of work performed, what type of work has been performed, and the status of an ongoing unfiled brief is all confidential under Rule of Professional Conduct 3-100 and the Business & Profession 6068, at least for private client civil appellate litigation.	The committee appreciates the feedback. In light of this and other comments received on this point, the committee has modified the proposal to remove the item where an applicant would list the work done to date on the appeal. The committee concluded that including this item would not be appropriate as the work an attorney has done on the appeal is not a factor listed in the applicable rules governing extensions of time. The committee also concludes that the factors stated in

	Commenter	Position	Comment	Committee Response
				the rules will permit applicants to discuss the work they have completed on appeal to the extent they feel it is relevant. Further, the committee believed that the item may imply that some work must have been completed on the appeal before an extension of time could be received.
			There are many reasons a party may not wish to disclose this kind of information to the opposing party, particularly if settlement remains a possibility. In particular clients hoping to settle before expending financial resources on a brief, or having trouble coming up with attorney fees, could be placed in a problematic position by this rule change.	See above response.
			Accordingly, I suggest the committee remove the requirement that attorneys disclose what work they have performed on a brief when requesting an extension of time for an appeal.	See above response.
4.	Family Violence Appellate Project by Cory Hernandez Senior Staff Attorney	NI	The following comments are submitted by Family Violence Appellate Project (FVAP) regarding the Judicial Council's Invitation to Comment number SPR23-06. We support the recommendation **except for item 9 on form APP-006, and have additional recommendations discussed below.**	The committee appreciates the feedback and notes the commenters support for the proposal with the exception noted.
			FVAP is a State Bar-funded legal services support center and the only nonprofit organization in California dedicated to representing survivors of domestic violence and other forms of gender-based abuse in civil	No response necessary.

	Commenter	Position	Comment	Committee Response
			appeals for free. We are also funded by the California Office of Emergency Services to support domestic violence, sexual assault and human trafficking advocates who work directly with self-represented litigants seeking protection or other relief from the court system. FVAP is devoted to ensuring survivors can live in healthy, safe environments, free from abuse. This includes ensuring appellate procedures and rules are straightforward enough to follow for parties without representation, which includes most survivors.	
			I. OPTIONAL V. MANDATORY The forms should be mandatory, ***unless the Council adds item 9 to APP-006, because as discussed below, we think that item is likely to require disclosure of privileged and confidential material, and so if that item were included, the forms should remain optional because we would not want to use APP-006***. Local forms are stylized differently and sometimes request different information. The Council's forms are not long and do not require too much information, but they do ask for targeted information and point to California Rules of Court, rule 8.63, which is important and may be missed if a party files their request on their own pleading form, or a less-informative local form.	The committee appreciates the feedback. In light of this and other comments received on this point, the committee has modified the proposal to remove the item where an applicant would list the work done to date on the appeal. The committee concluded that including this item would not be appropriate as the work an attorney has done on the appeal is not a factor listed in the applicable rules governing extensions of time. The committee also concludes that the factors stated in the rules will permit applicants to discuss the work they have completed on appeal to the extent they feel it is relevant. Similarly, the committee believes that the item where the applicant lists the reasons an extension of time is required, as revised, will provide the courts with sufficient information to assess whether the requested extension is supported by good cause. Finally, the committee believed that the item may imply that

	Commenter	Position	Comment	Committee Response
				some work must have been completed on the appeal before an extension of time could be granted. The committee may consider the question of whether the extension of time forms should be made mandatory at a future date, as time and resources allow.
			Our recommendation extends to forms for stipulation of extending time—which should be addressed by the Council in a future proposal. For instance, the Second District has a local form 2DCA-01 for stipulating to an extension, and there is no apparent reason why a local form is needed. Indeed, the form is formatted in a way that can cause confusion. The items say the brief is extended "by a period of [x] days, so that the time to file the [brief] is extended to [y] days from the filing of the [brief]." Having these two numbers (x and y) so close to each other, and no clear date of when the extended deadline would be, we have seen courts and parties misunderstand which number, x or y, applies to the extension itself.	This recommendation is outside the scope of the instant proposal. The committee may consider this recommendation in the future as time and resources allow.
			II. FORM APP-006 *Item 1* We would recommend adding amicus briefs here, as amici may need to request an extension. (Cal. Rules of Court, rule 8.200(c)(1).) We	Amicus briefs are covered by the "supplemental or other brief" option already contained on the form.

	Commenter	Position	Comment	Committee Response
			recommend this for item 2 on form APP- 106 as well.	
			We would also recommend adding a line break to separate "now due on *(date)*:" and "be extended to *(date)*:" because we have seen parties forget to complete both items, and having both items so close together causes confusion.	The committee has made the suggested revision.
			Further, we would recommend dividing item 1 into separate subparts, as we have seen many parties, especially those without counsel, forget to complete the "now due on" and "be extended to" parts. We would suggest having item 1(a) be the name, item 1(b) be the "request that the time to file" with the list of types of briefs, item 1(c) be "now due on," and item 1(d) be "be extended to."	The committee has revised item 1 on form APP-006 as well as form CR-126, JV-816, and JV-817 so that these items are divided into sub parts.
			Item 8 There are some cases where the court has already granted calendar preference. There are others where the court has not yet granted preference, but the party may want to file that motion. We would thus suggest dividing item 8 into two subparts with checkboxes for the litigant to select one or the other: 8(a) "The Court granted this appeal calendar preference on [ ]"; and 8(b) "This appeal is eligible for calendar "	Item 8 has been revised to read "This appeal is eligible for, or has been granted, calendar preference/priority *(cite authority or explain)*:" Item 7 on form APP-106 has been similarly revised.
			Item 9	

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

	Commenter	Position	Comment	Committee Response
			We STRONGLY OPPOSE adding item 9 on form APP-006, requiring the party to state the work they've completed so far. We oppose for many reasons. We oppose this item 8 on form APP-106 as well.	The committee appreciates the feedback. In light of this and other comments received on this point, the committee has modified the proposal to remove the item where an applicant would list the work done to date on the appeal. The committee concluded that including this item would not be appropriate as the work an attorney has done on the appeal is not a factor listed in the applicable rules governing extensions of time. The committee also concludes that the factors stated in the rules will permit applicants to discuss the work they have completed on appeal to the extent they feel it is relevant. Similarly, the committee believes that the item where the applicant lists the reasons an extension of time is required, as revised, will provide the courts with sufficient information to assess whether the requested extension is supported by good cause. Finally, the committee believed that the item may imply that some work must have been completed on the appeal before an extension of time could be received.
			First, this item goes beyond what is required in rule 8.60 or 8.63 of the California Rules of Court; if the Council wants to do rulemaking and amend either rule 8.60 or 8.63, then we suggest going that route instead of doing rulemaking by amending forms. There is already a lot that has to be discussed before requesting an extension of time to file a brief. This means, while a party is trying to prepare	See above response.

	Commenter	Position	Comment	Committee Response
			their brief and do all their other work, they have to take additional time to write up this application. Adding in more required information just means they must take even more time to write up the application, when they're already asking for additional time for the brief. The application should be as simple as possible, to reduce the workload required on parties.	
			Second, adding this item is likely to cause confusion for self-represented litigants. They may justifiably think they have to recount every entry on the appellate docket, and then go into even more detail on how much research they have done, how much they have written, to whom they have spoken for any guidance or advice (e.g., law library), and maybe even attach a copy of their draft brief so far to show what they have done. Indeed, some may think it would be simpler to write in item 9 "See attached" and just attach dozens or more of pages of cases they've read, their draft brief, and so on, thereby adding to the Court's and parties' workloads. The Council likely has better numbers available, but from what I could find, a 2008 study found that about one-third of appellate parties were self-represented. (Cordova, *Services for Self-Represented Litigants: What Can Be Done in California's Appellate Courts?* (Master's thesis, California State University, Sacramento, 2009) p. 4, tbl. 1.1.) We need to keep self-represented	See above response.

	Commenter	Position	Comment	Committee Response
			parties in mind for all court forms and rules, including appellate forms and rules.	
			Third, adding this item is, simply, unnecessary. The factors and requirements in rules 8.60 and 8.63 are more than sufficient to allow the Court to make a determination whether to grant an application. If a request for extension is denied and a party wants to try asking again, they can add in more information if needed, but asking for much more information upfront, compared to what is in the rules, should not be required of every party.	See above response.
			Fourth, this item is likely to lead to ethical issues. Since this item is added in addition to item 10, it must be asking for different information not already covered by item 10. That is likely to lead people to feel they have to disclose even more information about what they have been doing, and could lead to serious ethical issues. The phrase "work on this appeal" done so far may, and likely will, require disclosing attorney work-product, or other privileged or confidential material. If this item 9 were added, I would strongly suspect that many more attorneys will be filing their own pleading forms to request an extension, using rules 8.60 and 8.63, and not use this form APP-006. Indeed, I do not know if I would feel comfortable using this form APP-006, as I do not fully understand what this item 9 is asking about, and my reading of that item is basically	See above response.

	Commenter	Position	Comment	Committee Response
			asking me to divulge privileged and confidential information, which I would be unwilling and unable to do. (As such, if item 9 were added, the Council should not make this form APP-006 mandatory.)	
			Item 10 **We oppose adding "including possible prejudice to the parties"** to the parenthetical directions. We oppose this on item 9 for APP-106 as well. Again, rulemaking should be done through the rules and not court forms. Rule 8.63(b) says that these factors must be considered by the court, but not necessarily addressed by the parties. Rule 8.63(b)(1) does say that, "A party claiming prejudice must support the claim in detail," but then, by its plain language, that provision suggests if a party is *not* claiming prejudice, they need not discuss it at all. As such, the directions in item 10 of this form add requirements beyond which are stated in the rule, which seems unnecessary and unduly burdensome.	The committee declines to revise item 9 on form APP-106. Prejudice to the parties if an extension is granted or denied is an important factor that should be addressed. Parties are in the best position to discuss potential prejudice to any party resulting from the grant or denial of an extension. The committee also notes that the Chief Justice's Appellate Caseflow Workgroup specifically encouraged the council to consider whether the extension of time forms "should require additional information such as . . . the degree to which any extension might prejudice the client or opponent." The committee believes that directing the applicant to address the any prejudice to the parties will aid the court in determining whether good cause for the extension exists. To the extent an applicant is not claiming prejudice, or does not believe that the other side will be prejudiced by the grant of an extension, the party can simply state that belief.
			Furthermore, we strongly suggest adding a hyperlink to where the California Rules of Court can be found. Self-represented litigants	The committee agrees and has added a hyperlink to the applicable rules at item 10 on form APP-006, item 9 on form APP-106, item 11 on form

	Commenter	Position	Comment	Committee Response
			will likely not know how or where to find these rules. And Googling may lead to confusion because they may find outdated rules, or local rules for specific districts or divisions.	CR-126, item 10 on form JV-816, and item 8 on form JV-817.
			Item 12 **We oppose the Council's decision not to allow for space to say service is done through TrueFiling.** This item cites to rule 8.60(c), but that rule just says the application has to be served on all parties, not that the application has to have a proof of service attached. It would be much simpler to have a checkbox on item 12 that allows parties and attorneys to state they are using the automatically produced proof of service generated by Truefiling. While paper filings may be used by some—and so the other options can be maintained in item 12 for parties attaching a proof of service—we would venture to guess (the Council likely has more accurate and precise numbers) most of these applications are submitted through TrueFiling. Requiring an additional proof of service just adds to the time and work needed to file this application—which is itself already about needing more time for other work on the appeal.	The committee declines to further revise item 12 at this time. It would not be appropriate to reference a specific vendor on a Judicial Council form. Further, the committee believes the form in its current state allows a party to use their own proof of service form or a form automatically generated and attached by an e-filing service. While item 12 (and the related items on the other extension of time forms) states that the applicant "may use *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) for this purpose," these are optional forms and an applicant is not required to use them.
			III. ADDITIONAL SUGGESTION Since this proposal is about extending time to file briefs, we suggest the Council also consider amending rule 8.200(c)(1)—and/or the advisory	This recommendation is outside the scope of the instant proposal. The committee may consider this recommendation at a later date as time and

	Commenter	Position	Comment	Committee Response
			committee comments to that rule—to clarify the deadline to file an amicus brief in an appeal where a respondent's brief has not been filed.	resources allow.
			Rule 8.200(c)(1) currently says the amicus brief is due "[w]ithin 14 days after the last appellant's reply brief is filed or could have been filed under rule 8.212, whichever is earlier." The advisory committee comment clarifies that the latter time "includes any authorized extension of the deadline specified in rule 8.212." To us, this means, if no respondent's brief is filed, the amicus brief would be due after the reply brief could've been filed, if the respondent's brief were filed. But we have encountered differing interpretations depending on the division or district we are filing in. Discussing a hypothetical may help elucidate the issue.	See above response.
			Say the appellant files their opening brief on date A. The respondent's brief would be due within 30 days, so by date B (A+30=B). (Rule 8.212(a)(2); while also taking into account whether that last day falls on a holiday or weekend, per rule 1.10.) If no respondent's brief is filed, the Court would issue a 15-day default notice, setting the deadline at date C (B+15=C). (Rule 8.220.) Then, to us, the reply brief "could have been filed" by date D (C+20=D). (Rule 8.212(a)(3).) Then the amicus would be due 14 days after that, so by date E (D+14=E). (Rule 8.200(c)(1).)	See above response.

	Commenter	Position	Comment	Committee Response
			However, we have seen differences with at least the Third and Fourth Districts. For them, in appeals where no respondent's brief has been filed, the amicus brief deadline is either *right after* the respondent's brief was due (Third District) or within 14 days after the *respondent's brief* could've been filed (Fourth District), even though rule 8.200(c)(1) makes no mention of the respondent's brief. We have received no explanation for how either Court interprets the rule in this way. Perhaps, though, it is because when no respondent's brief is filed, no reply brief "could have been filed," so perhaps they think rule 8.200(c)(1) simply makes no mention of when amicus briefs are due in appeals without respondent's briefs, so they think they need to craft a rule for themselves. (Also, arguably, under this type of interpretation, a Court could say, if no respondent's brief is filed, no amicus brief could be filed, because rule 8.200(c)(1) only mentions amicus briefs when reply briefs were or could have been filed.)	See above response.
			So for these (and perhaps other) Courts, if the opening brief is filed on date A, the respondent's brief would be due still by date B, as stated above. Then there would be the 15-day default notice, so the date C would be the same. And at this point, our views differ. For these other courts, if no respondent's brief is filed by date C, the amicus would be due immediately (Third District) or within C+14 days (Fourth	See above response.

	Commenter	Position	Comment	Committee Response
			District), instead of our reading of the rule, essentially, C+34 days (reaching date E, as noted above). This effectively removes at least 20 days for amicus to prepare and file their brief.	
			We respectfully request the Council clarify in rule 8.200(c)(1), in the text itself and/or in the advisory committee comments, how the amicus brief deadline is supposed to work with appeals where no respondent's brief is filed. And if the deadline is different/earlier than appeals where a respondent's brief is filed, it could be helpful to explain why that difference exists, in the advisory committee comments.	See above response.
			This ambiguity and confusion make it more difficult to secure amicus support. Even without a respondent's brief on appeal, the heavy burden for demonstrating prejudicial legal error or abuse of discretion is difficult and with the appellant, so having amicus support can be quite useful.	See above response.
			In conclusion, we support much of this proposal but have major disagreements as noted above, and additional suggestions. Should you wish to discuss these comments further, please contact me.	The committee appreciates the feedback.
5.	Orange County Bar Association by Michael A. Gregg	A	The changes to the forms address the stated purpose and allow a party to say what they have	The committee appreciates the feedback.

	Commenter	Position	Comment	Committee Response
	President		already done to further the appeal.	
			The forms should not be mandatory because counsel for a party may need to provide a more thorough explanation.	The committee may address whether these forms should be mandatory, or remain optional, at a later date as time and resources allow. If the committee addresses this question in the future, it will consider whether revisions are needed to ensure that applicants have sufficient space to state the reasons the extensions are needed.
6.	Sacramento County Bar Association, Appellate Law Section by Brendan J. Begley Co-Chair	N	We, the Sacramento County Bar Association's Appellate Law Section and its members, wish to comment on the revision that would add an item on the application an extension of time to file a brief where the applicant would state the amount of work that has been completed on the appeal at the time of the request for a continuance. As we understand it, there are two stated purposes of this proposed revision; one is to assist the appellate projects in supervising the work of panel attorneys, and the other is to assist the courts in considering these applications.	The committee appreciates the feedback. In light of this and other comments received on this point, the committee has modified the proposal to remove the item where an applicant would list the work done to date on the appeal. The committee concluded that including this item would not be appropriate as the work an attorney has done on the appeal is not a factor listed in the applicable rules governing extensions of time. The committee also concludes that the factors stated in the rules will permit applicants to discuss the work they have completed on appeal to the extent they feel it is relevant. Similarly, the committee believes that the item where the applicant lists the reasons an extension of time is required, as revised, will provide the courts with sufficient information to assess whether the requested extension is supported by good cause. Finally, the committee believed that the item may imply that some work must have been completed on the appeal before an extension of time could be received.

	Commenter	Position	Comment	Committee Response
			We have no comment on how this revision might assist the appellate projects. However, we are very concerned that this well-intended revision – as it stands without more clarification on the form – will undermine rather than appropriately address this other stated purpose of assisting the courts in considering these applications. There are two reasons for this concern.	See above response.
			First, this revision runs a significant risk of misleading appellate justices who rule on these applications into believing that some amount of work must have been done on an appellate brief in order for a continuance to be warranted; in truth, such a factor is neither paramount nor even listed as an appropriate consideration in the applicable California Rules of Court. Second, this revision runs the risk of reinforcing a widespread and incorrect notion that the hasty filing of an appellate brief is a primary goal while other considerations are somehow secondary or subordinate to that aim.	See above response.
			Accordingly, if the application is to be revised to include this inquiry, we believe it should include more than just this bare question. For example, it could include a parenthetical statement acknowledging that there may be instances when it would be improper to have performed any work up to that point. Similarly, it may include a prompt for the applicant to explain why it would have been inappropriate to	See above response.

	Commenter	Position	Comment	Committee Response
			have performed such work by that point. Alternatively, rule 8.63 of the California Rules of Court could be revised to include a subdivision expressly clarifying the reality that no amount of previous work is actually required (so that applicants may point appellate justices to that rule when answering this inquiry).	
			The Prosed Revision Risks Undermining Vital Public Policies To elaborate, there are many instances where it would be against both a client's best interest and public policy to perform work on a brief. The most obvious (but far from the only) example of when such work should be postponed is when the parties are striving to or have become engaged in settlement discussions. Any requirement (even an implicit one) that work on a brief must be performed leading up to or during settlement negotiations will drive up the cost of settlement while reducing the time counsel can devote to negotiating or achieving preliminary objectives to facilitate settlement; consequently, it will diminish the likelihood of a voluntary resolution.	See above response.
			Of course, the public policy of promoting settlement has been firmly established in California for well over a century. (See McClure v. McClure (1893) 100 Cal. 339, 343 [affirming that that settlement agreements "'are highly favored as productive of peace and good will in the community'" because they reduce	See above response.

	Commenter	Position	Comment	Committee Response
			"'the expense and persistency of litigation'"].) This public policy covers both pre-trial settlements and post-judgment settlements. (See Neary v. Regents of Univ. of California (1992) 3 Cal. 4th 273, 278 [explaining that "appellate courts have enough to do without deciding cases the parties no longer wish to litigate"].)	
			Adopting this revision without appropriate clarification also runs the significant risk of further cementing the existing and growing problem of having an excessive number of appellate justices operating under the mistaken impression that the expedient preparation of appellate briefs is the paramount goal. Well-established public policies confirm that such expediency should not be mistaken as a primary objective.	See above response.
			For example, public policy acknowledges that "[t]he effective assistance of counsel to which a party is entitled" requires providing "adequate time for counsel to prepare briefs or other documents that fully advance the party's interests." (Cal. Rules of Court, rule 8.63(a)(2).) Honoring this public policy benefits not only appellate litigants but also appellate courts by facilitating "the preparation of accurate, clear, concise, and complete submissions that assist the courts." (Ibid.)	See above response.
			Public policy also demands that a "client's	See above response.

	Commenter	Position	Comment	Committee Response
			right to [be represented by her] chosen counsel" should be facilitated whenever possible. (People ex rel. Dept. of Corporations v. SpeeDee Oil Change Systems, Inc. (1999) 20 Cal.4th 1135, 1145.) Attorneys who focus on appeals often (and quite sensibly) are the top choice of an existing or prospective client to handle an appeal, but many of those appellate attorneys are stretched thin (e.g., by settlement negotiations in the existing case or obligations in other cases or illness or other personal circumstances). Those lawyers will be stretched too thin to accept a new appeal or to continue handling an existing one if briefing deadlines become too immovable or needless work on an appellate brief is implicitly required but cannot be performed due to other valid constraints. Thus, prioritizing the hasty preparation of briefs harms rather than facilitates the right to be represented by chosen counsel, and it does so without any compelling reason.	
			Promoting the Needless or Hasty Preparation of Briefs is Unadvisable Indeed, there is no compelling public policy served by demanding the hasty (and frequently needless and counter-productive) preparation of appellate briefs. Instead, public policy expressly mandates that that briefing deadlines "should generally be met to ensure expeditious conduct of appellate business and public confidence in the efficient administration of appellate justice." (Cal. Rules of Court, rule	See above response.

	Commenter	Position	Comment	Committee Response
			8.63(a)(1).)	
			The proper metric should be used to measure whether appellate business is being carried out in an appropriately expeditious fashion; at the same time, the expeditious conduct of appellate business should not be confused with arbitrarily rushed conduct. In the vast majority of cases, the expeditious conduct of appellate business should be measured from when briefing concludes to when the matter is decided, rather than from when the notice of appeal is filed to when the matter is decided. Of course, some cases that have unusual urgency should be measured differently given their unique circumstances, but that is not the norm.	See above response.
			Requiring more cases to become fully briefed more quickly indisputably adds to the Court of Appeal's existing caseload and, in some courts, backlog. With more and more fully briefed cases awaiting decision and no more justices to decide them, it obviously will take longer for appellate courts to render a decision in many of those fully briefed cases that await decision. Thus, adopting an approach that will result in more briefs being filed sooner and fewer settlements being reached will negatively impact the metric of measuring the time from when a given case is fully briefed to when it is decided. In other words, this approach will measurably diminish the expeditious conduct of appellate business.	See above response.

	Commenter	Position	Comment	Committee Response
			The alternative is unthinkable; i.e., compromising the quality of the decisions in those burgeoning cases that are fully briefed and awaiting decision in order to improve the stats of both the improper and the proper metric. In this regard, "the expeditious conduct of appellate business" should not be confused with arbitrarily rushed conduct in connection with appellate business. (Cal. Rules of Court, rule 8.63(a)(1).) That is especially true when the rush to serve an inapplicable metric (i.e., the time between the notice of appeal and the decision) creates tension with meeting the aim of the proper metric (i.e., the time from when a case is fully briefed to the decision).	See above response.
			Public confidence in our appellate courts will be greatly damaged if those courts proclaim (or are forced to admit) that they sped up the average time between the fling of the notices of appeal and the resulting decisions while either 1) lengthening the average span of time between the cases being fully briefed and decided or 2) maintaining or even shortening that average timespan without taking any step to maintain (much less improve) the quality of the decisions in those rushed cases. The aim of being expeditious does not require imposing arbitrary conditions that create the reality of being rushed.	See above response.

	Commenter	Position	Comment	Committee Response
			The Existing Applicable Rules Should be Honored In sum, the top two considerations to determine whether an application for an extension of time should be granted are 1) the degree of prejudice to the parties and 2) whether the established factors demonstrate good cause for the requested continuance. (Cal. Rules of Court, rule 8.63(b).) The amount of work already done on a brief is simply not an express factor; in many cases it is not a highly significant factor, and often it is not even an appropriate factor. Public confidence in the efficient administration of appellate justice is diminished, rather than bolstered, by reinforcing misguided notions that a hasty brief is the main objective while other well-established considerations (especially those that are mandated by the applicable rule or advance public policies) are subordinate.	See above response.
			Finally, because some situations require more elaborate explanation than the space on the application form (or even the related declaration form) provides, we do not believe the committee should explore making these application forms mandatory in a future proposal. The controlling rule already expressly requires any party who seeks a continuance to address the appropriate factors. (Cal. Rules of Court, rule 8.60(c)(2).) It is difficult for us to see what purpose would be served by forcing a party who needs a continuance to use a form	The committee may address whether these forms should be mandatory, or remain optional, at a later date as time and resources allow. If the committee addresses this question in the future, it will consider whether revisions are needed to ensure that applicants have sufficient space to state the reasons the extensions are needed.

	Commenter	Position	Comment	Committee Response
			that may well diminish that party's ability to address the pertinent factors adequately.	
			Thank you for considering our comments on this important question and for your efforts to improve the quality and efficiency of appellate justice.	The committee appreciates the feedback.
7.	San Diego County Bar Association, Appellate Practice Section by John T. Sylvester, Certified Legal Specialist – Family Law	NI	The Appellate Practice Section of the San Diego County Bar Association (APS) supports some but not all of the proposed changes to Judicial Council forms regarding extensions of time to file briefs. After canvassing our membership and forming a subcommittee to discuss the proposed changes, we submit the following comments.	The committee appreciates the feedback.
			1. APS does not agree with adding an item to state the amount of work completed on the appeal. APS's main comment addresses the proposed requirement of having the attorney-applicant specifying the work done to date on the appeal. Adding this as a requirement could require the attorney applicant to either divulge information that is protected attorney work product or violates client confidentiality. Thus, the attorney would be left with a Hobson's choice: (1) decline to file an extension request to protect these duties but in doing so violate their duty of reasonable diligence, or (2) file an extension request without this required information and risk denial of the extension request, also violating their duty of reasonable diligence.	In light of this and other comments received on this point, the committee has modified the proposal to remove the item where an applicant would list the work done to date on the appeal. The committee concluded that including this item would not be appropriate as the work an attorney has done on the appeal is not a factor listed in the applicable rules governing extensions of time. The committee also concludes that the factors stated in the rules will permit applicants to discuss the work they have completed on appeal to the extent they feel it is relevant. Further, the committee believed that the item may imply that some work must have been completed on the appeal before an extension of time could be received.

	Commenter	Position	Comment	Committee Response
			An extension request may be necessary to allow for further communication, research, and other legal purposes, making the request an act of reasonable diligence dedicated to the interest of the client. (Rules Prof. Conduct, rule 1.3.) Such requests are often considered reasonably standard by professional norms. (See *Strickland v. Washington* (1984) 466 U.S. 668, 688 ["proper measure of attorney performance remains simply reasonableness under prevailing professional norms."].)	See above response.
			Currently, the extension request forms contain a section that allows the applicant to explain his or her need for additional time to file a brief. Attorneys should use this box already to identify and explain the "good cause" for an extension when appropriate. (See Rules of Court, rule 8.63(b) [addressing factors for good cause to grant an extension of time].) Thus, requiring a separate box for "work already completed" is unnecessary.	See above response.
			As proposed, item 9 reads: "I have completed the following work on this appeal." Addressing work done could require reference to an attorney's impressions, conclusions, opinions, legal research, or theories, which is protected by the attorney work product privilege under Code of Civil Procedure, section 2018.030. Further, an attorney is statutorily required to maintain inviolate the confidence of his or her client. (Bus. & Prof. Code, § 6068, subd. (e)(1).) Rule	See above response.

	Commenter	Position	Comment	Committee Response
			1.6 of the Rules of Professional Conduct similarly prohibits an attorney from revealing information under Business and Professions Code section 6068, subdivision (e)(1).	
			The proposed change could be read to suggest that the attorney should expose information protected by the work-product privilege and violate the duty of client confidentiality. Therefore, a problem could arise if the attorney must communicate with a client before deciding whether there are issues that merit an appeal or if the client wants to abandon the appeal. Providing this information in an extension request could present the case to the court and opposing counsel as having a weak argument or otherwise potentially expose a weakness in the case.	See above response.
			For example, an attorney may need additional time to communicate with a client or trial counsel while deciding whether to file a brief under *Anders v. California* (1976) 386 U.S. 738, *People v. Wende* (1979) 25 Cal.3d 436, *In re Phoenix H.* (2010) 47 Cal.4th 835, *In re Sade C.* (1996) 13 Cal.4th 952, or *Conservatorship of Ben C.* (2007) 40 Cal.4th 529. Communications regarding grounds for filing one of the above briefs *necessarily* implicates client confidentiality. "As codified in Evidence Code section 954, the attorney-client privilege protects from disclosure confidential communications between lawyer and client."	See above response.

	Commenter	Position	Comment	Committee Response
			(*City of San Diego v. Superior Court* (2018) 30 Cal.App.5th 457, 466.)	
			Additional information from such communication may bring to light an issue that should be briefed or give rise to whether a habeas writ petition must be filed in conjunction with a brief. Such communication could be required to obtain authorization from a client as to whether to proceed with an appeal at all, depending on whether it is in the best interest of the client. Requiring the attorney applicant to indicate specifically what work product was completed would place the attorney in the unfair position of either not filing a necessary extension request, filing an extension request that may be perceived to be inadequate, or violating duties related to client confidentiality and work product.	See above response.
			Moreover, should such statements be required, and if an attorney chooses not to request an extension to avoid disclosure of work product and to protect client confidentiality, this could lead to undue delays in the case and related appellate court procedures. This is because such extension requests prevent further delays later in the case such when additional information comes to light that requires a brief to later be stricken or an entire appeal withdrawn. Therefore, an extension request may prevent unnecessary work, time, and expense by the court or opposing counsel.	See above response.

	Commenter	Position	Comment	Committee Response
			APS recognizes that additional time requested may seem more than warranted but highlights how there may be underlying reasons for which an attorney is precluded by statute, rule, and general standards of professional conduct to divulge to the court or opposing counsel. Thus, information about work done should not be required as reasons needed for additional time. Moreover, sometimes an extension is sought because no work has been able to be done due to illness, press of business, or other reasons, and making progress on the brief is not a requirement of the good cause showing per rule 8.63.	See above response.
			Due to the problems caused by these reasons for needing an extension, APS recommends the Council decline to add the item regarding work already completed to the civil, criminal, and juvenile extension request forms.	See above response.
			2. APS agrees with amending the proof of service statement. APS agrees that the proof of service statement on form CR-126 should be revised to match the other applications for extension of time. This would make this form consistent with the other forms for requesting an extension of time to file a brief and prevent confusion as to which parties must be served.	The committee appreciates the feedback.
			3. APS's suggested corrections and additions.	

	Commenter	Position	Comment	Committee Response
			The APS suggests two additional technical amendments: a. In its present format, in the address box of the caption, the fillable field for the attorney applicant' State Bar Number automatically enters a comma in the middle of the state bar number. APS recommends reformatting the State Bar Number field to stop adding a comma.	The State Bar Number field has been corrected on APP-006, APP-106, CR-126, JV-816, and JV-817.
			b. Currently, there is a section described as "last brief filed by any party." Often this form is used prior to filing any briefs. For this reason, the APS proposes these boxes either be "un-clickable" or to add a box indicating something to the effect of: "no brief has been filed yet."	The committee declines to revise the items. In cases where an appellant is seeking an extension of time before any brief has been filed, the committee envisions that this item would simply not be filled out.
			Other than objecting to the including of "work completed" on the extension form, and the additional suggestions highlighted above, it is APS's position that the Judicial Council's proposal appropriately addresses the stated purpose of the proposed rule. Thank you for considering our feedback. If you have any further questions, you may contact Lisa Cannon, Appellate Practice Section Chair, at: ecannon@sandiego.edu	The committee appreciates the feedback.
8.	Superior Court of California, County of San Diego by Mike Roddy Executive Officer	A	**Request for Specific Comments** • Does the proposal appropriately address the stated purpose? **Yes.**	The committee appreciates the feedback.

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

	Commenter	Position	Comment	Committee Response
			• Should the committee explore making the extension of time application forms mandatory in a future proposal? **No.**	The committee appreciates the feedback. The committee may address this question in the future as time and resources allow.
			• Regarding the proposed new item on each form for the applicant to describe the work that has been completed on the appeal: o Should this item be worded differently? **Yes. The language is vague and overbroad.** o Should this item be included on the civil forms as well as the criminal and juvenile forms? **No.** o Should it be combined with the following item on the forms in which the applicant describes the reasons for needing an extension? **Yes.**	In light of this and other comments received on this point, the committee has modified the proposal to remove the item where an applicant would list the work done to date on the appeal. The committee concluded that including this item would not be appropriate as the work an attorney has done on the appeal is not a factor listed in the applicable rules governing extensions of time. The committee also concludes that the factors stated in the rules will permit applicants to discuss the work they have completed on appeal to the extent they feel it is relevant. Further, the committee believed that the item may imply that some work must have been completed on the appeal before an extension of time could be received.
			• Should the application forms in criminal, juvenile, and limited civil cases include an item regarding calendar priority/preference? **Yes.**	The committee appreciates the feedback.
			• Would the proposal provide cost savings? If so, please quantify. **No.**	The committee appreciates the feedback.
			• 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	The committee appreciates the feedback.

	Commenter	Position	Comment	Committee Response
			management systems? **Minimal or none.**	
			• Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? **Yes.**	The committee appreciates the feedback.
			• How well would this proposal work in courts of different sizes? **This proposal would work well in the San Diego Superior Court (a large court).**	The committee appreciates the feedback.

Judicial Council *of* California

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REPORT TO THE JUDICIAL COUNCIL

Item No.:
For business meeting on: September 18–19, 2023

Title
Appellate Procedure: Notice of Appeal

Rules, Forms, Standards, or Statutes Affected
Revise forms APP-002 and APP-102

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

Agenda Item Type
Action Required

Effective Date
January 1, 2024

Date of Report
June 22, 2023

Contact
Kendall W. Hannon, 415-865-7653
kendall.hannon@jud.ca.gov

Executive Summary

The Appellate Advisory Committee recommends revising *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)* (form APP-002) and *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (form APP-102) to (1) include an item by which an attorney can join the appeal to challenge an order directing payment of sanctions by the attorney; (2) add an optional item by which the appellant can attach a copy of the judgment or order being appealed; and (3) on form APP-002, reorganize item 1 to ensure that the item requesting the date of the judgment or order being appealed was entered is not overlooked.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2024, revise the following forms:

- *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)* (form APP-002)
- *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (form APP-102)

The proposed revised forms are attached at pages 6–9.

Relevant Previous Council Action

Notice of Appeal/Cross-Appeal (Unlimited Civil Case) (form APP-002) was adopted by the Judicial Council effective January 1, 2004. *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (form APP-102) was adopted by the Judicial Council effective January 1, 2009. Both forms have been revised since adoption (most recently in 2017 for form APP-002 and 2019 for form APP-102), but these prior revisions are not relevant for the council's consideration of this proposal.

Analysis/Rationale

Addition of item for attorneys to indicate they are appealing a sanction order

In 2020, the Supreme Court in *K.J. v. Los Angeles Unified School District*[1] addressed whether a Court of Appeal has jurisdiction to review an order directing an attorney to pay sanctions when the notice of appeal only identifies the attorney's client as appellant. Relying on the rule of liberal construction of the notice of appeal,[2] the Supreme Court held that the Court of Appeal has appellate jurisdiction over the sanctions order, even if the attorney omitted themselves as an appellant on the notice of appeal, so long as it is "clear from the record that the omitted attorney intended to participate in the appeal and the respondent was not misled or prejudiced by the omission."[3] The court noted, however, that to avoid any unnecessary litigation on this question, the "better practice is for the attorney to file a notice of appeal that expressly identifies himself or herself as an appealing party."[4]

To encourage the "better practice" identified by the Supreme Court, item 1d on *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)* (form APP-002) and item 3c on *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (form APP-102)[5] have been added for the attorney to indicate that the judgment or order being appealed directed the attorney to pay sanctions and that the attorney is appealing that order.

Optional item for appellant to attach the judgment or order being appealed

Items 3 and 3d have been added to forms APP-002 and APP-102, respectively, to allow the appellant to indicate that they are attaching a copy of the judgment or order being appealed. The committee believes that allowing an appellant to attach the judgment or order to the notice of appeal would aid a litigant who was uncertain about how to classify the order or judgment in item 2c (on form APP-002) or item 3b (on form APP-102) and would, in such cases, help the court determine the proper scope of the appeal.

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[1] *K.J. v. Los Angeles Unified School District* (2020) 8 Cal.5th 875.

[2] Cal. Rules of Court, rule 8.100(a)(2).

[3] *K.J. v. Los Angeles Unified School District*, *supra*, 8 Cal.5th 878.

[4] *Id.* at p. 889.

[5] To comply with Judicial Council form style guidelines, the titles of the forms have been revised to *Notice of Appeal/Cross-Appeal—Unlimited Civil Case* (form APP-002) and *Notice of Appeal/Cross-Appeal—Limited Civil Case* (form APP-102).

Reformatting of item 1 on form APP-002
Currently item 1 on form APP-002 contains no subitems and requires appellants to list their name, provide the date on which the judgment or order being appealed was entered, and then specify which judgment or order is being appealed. The committee received feedback from the Family Violence Appellate Project that a significant number of self-represented litigants with whom they interact overlook the "date" portion of this item, making it more difficult to determine if an appeal is timely.

Under rule 8.104(a)(1) of the California Rules of Court, a notice of appeal must be filed on or before the earliest of "(A) 60 days after the superior court clerk serves on the party filing the notice of appeal a document entitled 'Notice of Entry' of judgment or a filed-endorsed copy of the judgment, showing the date either was served; [¶] (B) 60 days after the party filing the notice of appeal serves or is served by a party with a document entitled 'Notice of Entry' of judgment or a filed-endorsed copy of the judgment, accompanied by proof of service; or [¶] (C) 180 days after entry of the judgment." A timely filed notice of appeal is a jurisdictional prerequisite to an appeal.[6]

To ensure that an appellant fills out all required information, item 1 on form APP-002 has been reformatted to provide subitems, each with its own line. In subitem a, an appellant provides their name. Subitem b asks for the date on which the judgment and each order being appealed was entered. Subitem c is a list of judgments or orders, with check boxes for the appellant to indicate the type of order or judgment being appealed. Finally, item 1d, as discussed above, would permit an attorney to indicate they are also appealing a judgment or order directing them to pay sanctions.

Policy implications
The above revisions to forms APP-002 and APP-102 will make these notice of appeal forms clearer and will help avoid unnecessary litigation over the scope or jurisdiction of the appeal. These revisions are therefore consistent with *The Strategic Plan for California's Judicial Branch*, specifically the goals of Modernization of Management and Administration (Goal III) and Quality of Justice and Service to the Public (Goal IV).

Comments
This proposal circulated for public comment between March 30 and May 12, 2023. The committee received six comments from the California Academy of Appellate Lawyers, the California Lawyers Association Committee on Appellate Courts (CAC), the Family Violence Appellate Project, the Los Angeles County Bar Association Appellate Courts Section, the Orange County Bar Association, and the Superior Court of San Diego County. All comments agreed with the proposed changes, with one exception. The principal comments are summarized below. A chart with the full text of the comments received and the committee's responses is attached at pages 10–18.

[6] See, e.g., *Silverbrand v. County of Los Angeles* (2009) 46 Cal.4th 106, 113.

The Family Violence Appellate Project and Los Angeles County Bar Association Appellate Courts Section recommended further revisions to reflect the fact that an appellant may be appealing from multiple orders. To account for this possibility, form APP-002 has been further revised as follows: (1) the parenthetical in item 1b has been revised to read "*(list the date or dates the judgment and each order being appealed was entered)*"; and (2) item 1c has been revised to add the parenthetical "*(check all that apply)*." Similarly, the parenthetical at item 3 on form APP-102 has been revised to read "*(check a, b, or both*)," and the parenthetical at item 3b has been revised to include the parenthetical "*(check all that apply)*."

The Los Angeles County Bar Association Appellate Courts Section also recommended that a box be added to item 1c for the appellant to specify that the appeal is from a collateral order. The committee believes that an appeal from a collateral order would fit within the "other" box (item 1c in form APP-002 and item 3(b)(9) in form APP-102) and that a specific box for collateral orders is unnecessary. To make clear that the "other" box can be used where a nonstatutory basis for appellate jurisdiction over an order exists, however, the parenthetical on the "other" box on form APP-002 has been revised to read "*(describe and specify the code section or other authority that authorizes this appeal)*."

The Orange County Bar Association stated that it did not believe it is necessary to add an option by which an appellant could indicate that the judgment or order being appealed is attached. The committee agrees with the commenter that attaching a copy of the judgment or order being appealed is not necessary for the notice of appeal to be effective. However, for the reasons stated above, the committee believes it may be useful to self-represented appellants and the court in certain cases.

Alternatives considered

The committee considered taking no action, but ultimately concluded that the revisions would aid both appellants in filling out the civil notice of appeal forms and courts in processing the notices.

Because an appellant may seek to appeal from multiple orders, the committee considered using the plural "orders" throughout forms APP-002 and APP-102. However, the committee concluded that using "orders" may be confusing in those cases where only a single order or judgment is being appealed. The committee believes that the revisions discussed above sufficiently account for cases where an appellant is appealing from multiple orders.

The committee considered adding items to the criminal and juvenile notice of appeal forms similar to the new item 1c on form APP-002 and item 3c on form APP-102 relating to sanctions orders. In response to a request for specific comment on this point, the Superior Court for San Diego County stated that the other notice of appeal forms should be revised. However, in the absence of any indication that attorney appeals from sanction orders in criminal or juvenile cases have created jurisdictional issues similar to those addressed in *K.J. v. Los Angeles Unified School District*, the committee declines to revise the criminal or juvenile notices of appeal at this time.

Fiscal and Operational Impacts

Fiscal or operational impacts, if any, are expected to be minimal and there are no apparent barriers to implementation.

Attachments and Links

1. Forms APP-002 and APP-102, at pages 6–9
2. Chart of comments, at pages 10–18

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*name*):	*FOR COURT USE ONLY* **DRAFT 06.22.2023 Not approved by Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
☐ **NOTICE OF APPEAL** ☐ **CROSS-APPEAL** **(UNLIMITED CIVIL CASE)**	CASE NUMBER:

Notice: Please read *Information on Appeal Procedures for Unlimited Civil Cases* (Judicial Council form APP-001-INFO) before completing this form. This form must be filed in the superior court, not in the Court of Appeal. A copy of this form must also be served on the other party or parties to this appeal. You may use an applicable Judicial Council form (such as APP-009 or APP-009E) for the proof of service. When this document has been completed and a copy served, the original may then be filed with the court with proof of service.

1. NOTICE IS HEREBY GIVEN that:
   a. *(Name)*: appeals from a judgment or order in this case.
   b. The judgment or order was entered on *(list the date or dates the judgment and each order being appealed were entered)*:
   c. The appeal is from the following order or judgment *(check all that apply)*:
      - ☐ Judgment after jury trial
      - ☐ Judgment after court trial
      - ☐ Default judgment
      - ☐ Judgment after an order granting a summary judgment motion
      - ☐ Judgment of dismissal under Code of Civil Procedure, §§ 581d, 583.250, 583.360, or 583.430
      - ☐ Judgment of dismissal after an order sustaining a demurrer
      - ☐ An order after judgment under Code of Civil Procedure, § 904.1(a)(2)
      - ☐ An order or judgment under Code of Civil Procedure, § 904.1(a)(3)–(13)
      - ☐ Other *(describe and specify the code section or other authority that authorizes this appeal)*:
   d. ☐ The judgment or order being appealed directs payment of sanctions by an attorney for a party. The attorney *(name)*: appeals.
2. For cross-appeals only:
   a. Date notice of appeal was filed in original appeal:
   b. Date superior court clerk mailed notice of original appeal:
   c. Court of Appeal case number *(if known)*:
3. ☐ The judgment or order being appealed is attached *(optional)*.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

Form Approved for Optional Use
Judicial Council of California
APP-002 [Rev. January 1, 2024]

NOTICE OF APPEAL/CROSS-APPEAL—UNLIMITED CIVIL CASE (Appellate)

Cal. Rules of Court, rule 8.100
www.courts.ca.gov

APP-102 Notice of Appeal/Cross-Appeal—Limited Civil Case

Clerk stamps date here when form is filed.

DRAFT 06.22.2023 Not approved by Judicial Council

Instructions

- This form is only for appealing in a **limited civil case.** You can get other forms for appealing in unlimited civil cases at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- You must serve and file this form **no later than 30 days** after the trial court or a party serves a document called a Notice of Entry of the trial court judgment or a file-stamped copy of the judgment or 90 days after entry of judgment, whichever is earlier (see rule 8.823 of the California Rules of Court for very limited exceptions). **If your notice of appeal is late, your appeal will be dismissed.**
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the Self-Help Guide to the California Courts at *https://selfhelp.courts.ca.gov/*.
- Take or mail the original completed form and proof of service on the other parties to the clerk's office for the same court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

Superior Court of California, County of

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

Trial Court Case Number:

Trial Court Case Name:

The clerk will fill in the number below

Appellate Division Case Number:

1 Your Information

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

☐ *Check here if more than one appellant and attach a separate page or pages listing the other appellants and their contact information. At the top of each page, write "APP-102, item 1a."*

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

Street address: _____ _____ _____ _____
Street *City* *State* *Zip*

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

Phone: _____ Email: _____

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

Name: _____ State Bar number: _____

Street address: _____ _____ _____ _____
Street *City* *State* *Zip*

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

Phone: _____ Email: _____

Fax: _____

2 This is *(check a or b)*:

a. ☐ The first appeal in this case.

b. ☐ A cross-appeal (an appeal filed after the first appeal in this case *(complete (1), (2), and (3))*.

(1) The notice of appeal in the first appeal was filed on *(fill in the date that the other party filed its notice of appeal in this case)*: _____

(2) The trial court clerk served notice of the first appeal on *(fill in the date that the clerk served the notice of the other party's appeal in this case)*: _____

(3) The appellate division case number for the first appeal is *(fill in the appellate division case number of the other party's appeal, if you know it)*: _____

3 Judgment or Order You Are Appealing

I am/My client is appealing *(check a, b, or both)*:

a. ☐ The final judgment in the trial court case identified in the box on page 1 of this form.
The date the trial court entered this judgment was *(fill in the date)*: _____

b. ☐ Other *(check all that apply)*:

(1) ☐ An order made after final judgment in the case.
The date the trial court entered this order was *(fill in the date)*: _____

(2) ☐ An order changing or refusing to change the place of trial (venue).
The date the trial court entered this order was *(fill in the date)*: _____

(3) ☐ An order granting a motion to quash service of summons.
The date the trial court entered this order was *(fill in the date)*: _____

(4) ☐ An order granting a motion to stay or dismiss the action on the ground of inconvenient forum.
The date the trial court entered this order was *(fill in the date)*: _____

(5) ☐ An order granting a new trial.
The date the trial court entered this order was *(fill in the date)*: _____

(6) ☐ An order denying a motion for judgment notwithstanding the verdict.
The date the trial court entered this order was *(fill in the date)*: _____

(7) ☐ An order granting or dissolving an injunction or refusing to grant or dissolve an injunction.
The date the trial court entered this order was *(fill in the date)*: _____

(8) ☐ An order appointing a receiver.
The date the trial court entered this order was *(fill in the date)*: _____

3 *(continued)*

(9) ☐ Other action *(please describe and indicate the date the trial court took the action you are appealing):*

_____

_____

_____

_____

_____

_____

c. ☐ The judgment or order being appealed directs payment of sanctions by an attorney for a party. The attorney *(name)*: appeals.

d. ☐ The order or judgment being appealed is attached *(optional)*.

4 Record Preparation Election

Complete this section only if you are filing the first appeal in this case. If you are filing a cross-appeal, skip this section and go to the signature line.

If you are filing the first appeal in this case, you must serve and file a notice in the trial court designating the record on appeal. You may use Appellant's Notice Designating Record on Appeal (Limited Civil Case) *(form APP-103). Check a or b:*

a. ☐ I will serve and file a notice designating the record on appeal together with this notice of appeal.

b. ☐ I will serve and file a notice designating the record on appeal later. I understand that I must file this notice in the trial court within 10 days of the date I file this notice of appeal, and that if I do not file the notice designating the record on time, the court may dismiss my appeal.

REMINDER: Except in the very limited circumstances listed in California Rules of Court, rule 8.823, you must serve and file this form no later than (1) 30 days after the trial court clerk or a party serves either a document called a Notice of Entry of the trial court judgment or a file-stamped copy of the judgment, or (2) within 90 days after entry of judgment, whichever is earlier. If your notice of appeal is late, your appeal will be dismissed.

Date: _____

_____ ▶ _____

Type or print your name *Signature of appellant/cross-appellant or attorney*

Date: _____

_____ ▶ _____

Type or print your name *Signature of appellant/cross-appellant or attorney*

Date: _____

_____ ▶ _____

Type or print your name *Signature of appellant/cross-appellant or attorney*

SPR23-07
Appellate Procedure: Notice of Appeal Forms (Revise forms APP-002 and APP-102)
All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Position	Comment	Committee Response
1.	California Academy of Appellate Lawyers by Wendy Cole Lascher Rules Commentary Chair	A	The California Academy of Appellate Lawyers ("CAAL") is devoted to promoting and encouraging reforms in appellate practice that ensure effective representation of litigants and more efficient administration of justice.	The committee notes the commenter's support for the proposal.
2.	California Lawyers Association by Kelly Woodruff, Chair Litigation Section, Committee on Appellate Courts	A	In Invitation to Comment SPR23-07, the AAC proposed three changes to the notice of appeal (NOA) form. First, it adds an item by which an attorney can join the appeal to challenge an order directing payment of sanctions by the attorney. Second, it adds an optional item by which the appellant can attach a copy of the judgment or order being appealed. Third, the form will be reformatted to break out the request for the date of the order or judgment being appealed. The CAC supports all three recommendations. Members of the CAC, especially those who practice in family law, can attest to mistakes on the NOA committed primarily by pro se litigants. In particular, the date of the order or judgment being appealed is often overlooked, which creates additional work for court staff. Both the reformatting of the NOA and the option to attach a copy of the order or judgment being appealed will assist the court in determining whether the NOA was timely filed.	The committee appreciates the commenter's feedback on this proposal and notes the commenter's support for the proposal.
3.	Family Violence Appellate Project by Cory Hernandez Senior Staff Attorney	A	The following comments are submitted by Family Violence Appellate Project (FVAP) regarding the Judicial Council's Invitation to	The committee notes the commenter's support for the proposal and addresses the individual points below.

	Commenter	Position	Comment	Committee Response
			Comment number SPR23-07. We support the recommendations, and wanted to make three more recommendations below, for the benefit of courts and parties, whether represented or not. FVAP is a State Bar-funded legal services support center and the only nonprofit organization in California dedicated to representing survivors of domestic violence and other forms of gender-based abuse in civil appeals for free. We are also funded by the California Office of Emergency Services to support domestic violence, sexual assault and human trafficking advocates who work directly with self-represented litigants seeking protection or other relief from the court system. FVAP is devoted to ensuring survivors can live in healthy, safe environments, free from abuse. This includes ensuring appellate procedures and rules are straightforward enough to follow for parties without representation, which includes most survivors. We first want to express our appreciation for the Council in responding to our suggestion for amending form APP-002 to make it clearer for parties that they need to include the date of the order being appealed from. The proposed changes to item 1, and elsewhere, on form APP-002, responded well to our suggestion and, we think, will make it easier for parties and courts to understand the exact order(s) being appealed.	No response necessary. The committee notes the commenter's support for the proposal.

	Commenter	Position	Comment	Committee Response
			We also have three additional suggestions outlined below.	
			I. FORM APP-002 We think the changes on APP-002 in the proposal look great. One additional suggestion for new item 1(c) is to add a parenthetical saying, emphasis added for our suggestion: "The appeal is from the following order or judgment ***(check all that apply)***:" We suggest this addition because often more than one box would apply in any given appeal. Plus, some appeals are from multiple orders. And in particular with self-represented litigants, those parties are less likely to know exactly which one statute applies, or may know a statute applies but be confused between, say "Judgment after court trial" and "order . . . under [CCP], § 904.1(a)(2)," because both boxes could apply in, e.g., child custody cases.	The committee agrees with the proposed revision. The parenthetical has been added to item 1c.
			II. CITING NONPUBLISHED OPINIONS Currently, rule 8.1115(b) of the California Rules of Court disallows citation of nonpublished state court opinions, except in two limited	This suggestion is outside the scope of the instant proposal. The committee will consider the issue in the future as time and resources allow.

	Commenter	Position	Comment	Committee Response
			circumstances, (b)(1) (law of case or estoppel) and (b)(2) (same defendant, reasons from prior opinion). We respectfully request the Council consider adding two more limited circumstances, which, from our experience, are already effectively allowed in practice in most courts. These two additional circumstances could be added in (b)(3) and (b)(4), described below. This (b)(3) could say: "When the opinion is relevant to a request for publication, partial publication, or depublication, or opposition thereto." Citing nonpublished cases can be useful to show the rule 8.1105(c) factors are (or are not) met—e.g., that publication of a specific opinion would be helpful for settling or creating a conflict of law, to show the opinion involves an issue of widespread public importance (e.g., many nonpublished opinions on this issue, but nothing precedential), or to show the sparsity of case law on the issue. And this (b)(4) could say: "When the opinion is relevant for seeking review in the Supreme Court." Nonpublished opinions can be helpful to show why review should be granted pursuant to rule 8.500(b)—e.g., a split of authority, differences in legal reasoning, or the statewide importance of an issue.	

	Commenter	Position	Comment	Committee Response
			We have seen nonpublished opinions cited in both fashions discussed above, and thus adding these (b)(3) and (b)(4) to rule 8.1115(b) would not drastically change the law or current practice, but basically codify and clarify current procedures. These suggested (b)(3) and (b)(4) are narrowly tailored to avoid unduly expanding the use of nonpublished cases as precedential authority, and since they essentially codify extant practice, adding them will not open the floodgates to start adding in even more exceptions to rule 8.1115(b).	
			III. MEDIATION ON APPEAL The Third District has a local rule 1 that suspends the typical rules of appellate procedure, for a time, until it rules on whether to send particular appeals to mediation. The local rule automatically exempts only certain types of cases: conservatorships, guardianships, and sterilization matters. No explanation is provided in the rule for why these cases are exempted, and others are not. Notably, civil restraining orders, including domestic violence restraining orders, are not automatically exempted—but they should be. In our experience, appeals from civil restraining order cases are never selected for this mediation program. As such, this local rule 1 just adds	This suggestion is outside the scope of the instant proposal. The committee will consider the issue in the future as time and resources allow.

	Commenter	Position	Comment	Committee Response
			extra steps to an already lengthy, detailed appellate process. And from a policy perspective, these cases should not be selected for mediation. Civil restraining order appeals necessarily involve a power imbalance between the restrained party (abuser) and protected party (survivor). Mediation serves only to give the abuser another opportunity to exert their power and control, coerce the survivor into dropping their case or defense. Indeed, even before mediation happens, just knowing that mediation with their abuser may happen is likely to discourage survivors from seeking appeals at all, or continuing their appeal after learning of the possibility of mediation. Having to mediate with their abuser can be traumatizing for survivors. This understanding is reflected in the policy behind, e.g., rule 5.215 of the California Rules of Court, which forbids forcing survivors of domestic violence into joint child custody mediation with their abuser. We thus recommend adding a rule in Title 8 of the California Rules of Court—maybe in Article 1 of Chapter 1 of Division 1, perhaps a new rule 8.21 or something—that forbids local appellate	

	Commenter	Position	Comment	Committee Response
			courts, districts and divisions, from adopting local rules that require parties in civil restraining order cases (or at least domestic violence restraining order cases) to participate in mediation programs. Alternatively stated, the rule could require local appellate courts to automatically exempt civil restraining order appeals (or at least domestic violence restraining order appeals) from mediation, if the court has a mediation program.	
4.	Los Angeles County Bar Association, Appellate Courts Section by John A. Taylor, Jr. Executive Committee Member	A	The Appellate Courts Section of the Los Angeles County Bar Association (LACBA-ACS) supports SPR23-07 for the reasons stated in the proposal, with additional proposed modifications to forms APP-002 and APP-102. The LACBA-ACS suggests that in section 1, a box be added for an appeal from a collateral order, such as an order awarding attorney fees. (See, e.g., Madrigal v. Hyundai Motor America (Cal. Ct. App., Apr. 11, 2023, No. C090463) 2023 WL 2883009; Apex LLC v. Korusfood.com (2013) 222 Cal.App.4th 1010, 1015.) In addition, we suggest adding "(s)" to the term "order" in section 1.a.-c., and enough blank space to accommodate multiple dates when an appeal challenges not only the judgment but also other appealable orders (e.g., denial of JNOV, an attorney fees award, etc.)	The committee believes that appeals from collateral orders would properly fit within item 1c's "Other" box on form APP-002. However, the committee has revised the parenthetical after the "Other" box to make clear that nonstatutory authority (such as the collateral order doctrine) can authorize the appeal. The parenthetical has been revised to read "*(describe and specify code section or other authority that authorizes this appeal)*." The committee agrees that an appellant may be appealing multiple orders. The committee, however, declines to replace "order" with "order(s)" as such construction can be ambiguous to self-represented parties and therefore inconsistent with the Judicial Council form format. Instead, to address this point, the committee has made the following revisions to form APP-002: (1) the parenthetical in item 1b

	Commenter	Position	Comment	Committee Response
				now reads"*(list the date or dates the judgment and each order being appealed was entered)*"; and (2) item 1c now includes the parenthetical "*(check all that apply)*." Similarly, item 3b on form APP-102 has been revised to include the parenthetical "*(check all that apply)*."
5.	Orange County Bar Association by Michael A. Gregg President	AM	1. We agree with the modification that allows the attorney to more clearly appeal a sanctions order.	The committee appreciates the feedback.
			2. We do not think it is necessary to modify the forms to add the "d." option for attaching the order or judgment being appealed. Attaching the order/judgment is not necessary for the notice of appeal to be effective, and adding an explicitly option for attachments could lead to more confusion.	The committee agrees that attaching an order or judgment being appealed is not necessary in order for the notice of appeal to be effective. However, the committee believes the item will be useful to self-represented appellants and the courts in cases where the appellant is uncertain how to describe the order being appealed.
6.	Superior Court of California, County of San Diego by Mike Roddy Executive Officer	A	• Does the proposal appropriately address the stated purpose? **Yes.** • Should similar changes be made to other notice of appeal forms? **Yes.** • Would the proposal provide cost savings? If so, please quantify. **No.** • What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? **Minimal or none.**	The committee appreciates the information.

SPR23-07
Appellate Procedure: Notice of Appeal Forms (Revise forms APP-002 and APP-102)
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	Commenter	Position	Comment	Committee Response
			• Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? **Yes.** • How well would this proposal work in courts of different sizes? **This proposal would work well in the San Diego Superior Court (a large court).**	

Judicial Council *of* California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 23-
For business meeting on September 19, 2023

Title
Appellate Procedure: Attachment of Trial Court Order to Petition for Review of Summary Denial of Writ Petition

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 8.504

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

Agenda Item Type
Action Required

Effective Date
January 1, 2024

Date of Report
June 23, 2023

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Executive Summary

The Appellate Advisory Committee recommends amending the rule governing petitions for review in the Supreme Court to provide for attachment of the entire trial court order when the petitioner seeks review of a Court of Appeal summary denial of a writ petition. This change will facilitate review on the merits and streamline procedures. When the Court of Appeal summarily denies a writ petition, the underlying trial court order is necessary to identify the issues in dispute. Under the current rule, however, a petitioner cannot attach a trial court order that exceeds 10 pages to a petition for review without first requesting and obtaining the permission of the Chief Justice.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2024, amend rule 8.504 of the California Rules of Court to require that if a petition for review seeks review of a Court of Appeal order summarily denying a writ petition, a copy of the

underlying trial court order challenged in the Court of Appeal writ proceeding must be attached to the petition for review.

The proposed amended rule is attached at page 5.

Relevant Previous Council Action

Rule 8.504[1] addresses the contents of petitions for review. The Judicial Council adopted the predecessor to rule 8.504 effective September 1, 1928, as part of the original Rules for the Supreme Court and District Courts of Appeal. The original rule required that a petition be accompanied by a copy of the relevant Court of Appeal opinion. Since 1928, the council has amended and renumbered the rule on numerous occasions. As of July 1, 1988, permissible attachments included the Court of Appeal opinion, any trial court order as to which relief was sought, and any evidentiary exhibit or order of a trial court that counsel considered of unusual significance and that did not exceed 10 pages. Effective January 1, 2003, as part of an overall revision to the appellate rules, these provisions were consolidated into a single sentence providing: "No attachments are permitted except an opinion or order from which the party seeks relief and exhibits or orders of a trial court or Court of Appeal that the party considers unusually significant and do not exceed a total of 10 pages."

The January 2003 amendment was interpreted as applying the 10-page limitation to all attachments to petitions for review. Effective January 1, 2009, the Judicial Council amended the rule to require that, if the petition for review challenges an order of the Court of Appeal, that order must be attached to the petition. The council also amended the rule to make clear that a Court of Appeal opinion or order required to be attached to the petition is not subject to the 10-page limit on attachments. The most recent amendments, in 2011 and 2016, have no bearing on this proposal.

Analysis/Rationale

If a petition seeks review of a Court of Appeal opinion or order, that opinion or order must be attached to the petition. (Rule 8.504(b)(4), (5) & (e)(1)(A).)[2] In addition, rule 8.504 permits attachment of "[e]xhibits or orders of a trial court or Court of Appeal that the party considers unusually significant." (Rule 8.504(e)(1)(B).) However, the permissible attachments other than the Court of Appeal opinion or order "must not exceed a combined total of 10 pages." (Rule 8.504(e)(2).) "On application and for good cause, the Chief Justice may permit a longer . . . attachment." (Rule 8.504(d)(4).)

The Appellate Advisory Committee recommends amending rule 8.504 to provide for the attachment of the trial court order, regardless of its length, to a petition for review of a Court of

[1] This and all subsequent rule references are to the California Rules of Court.

[2] The rule also provides for attaching "[c]opies of relevant . . . regulations or rules, out-of-state statutes, or other similar citable materials that are not readily accessible" and an unpublished opinion that is "required to be attached under rule 8.1115(c)." (Rule 8.504(e)(1)(C), (D).)

Appeal order summarily denying a writ petition. When a Court of Appeal summarily denies a writ petition, it does not issue an opinion or address the merits of the trial court's order. Rather, a summary denial is just that—a brief order indicating that the petition is denied. Currently, the rule requires a party seeking Supreme Court review of a summary denial to attach the Court of Appeal order and permits attachment of the trial court's order only if it does not exceed 10 pages. However, the Supreme Court's review of the matter would focus on the trial court's reasoning and decision. Attachment of the complete trial court order would assist the Supreme Court in addressing the merits of the petition for review. It would also assist both the court and parties in expediting the matter, eliminating the need for an application to the Chief Justice to allow attachment of a trial court order exceeding 10 pages.

Specifically, the committee proposes a new subdivision (b)(6):

> If the petition seeks review of a Court of Appeal order summarily denying a writ petition, a copy of the underlying trial court order that was the subject of the writ proceeding in the Court of Appeal showing the date it was entered must be bound at the back of the original petition and each copy filed in the Supreme Court or, if the petition is not filed in paper form, attached.

This language mirrors the provisions of subdivisions (b)(4) and (5) providing for attachment of the Court of Appeal opinion or order that is the subject of the petition.

Policy Implications

There are no direct policy implications. These revisions will help ensure that the Supreme Court has easy access to sufficient information to assess petitions for review where the Court of Appeal has summarily denied a writ petition. These revisions are therefore consistent with the *Strategic Plan for California's Judicial Branch*, specifically the goals of Modernization of Management and Administration (Goal III) and Quality of Justice and Service to the Public (Goal IV).

Comments

This proposal was circulated for public comment from March 31 to May 12, 2023, as part of the regular spring comment cycle. Six comments were received: one from the California Attorney General's Office and five from organizations of appellate attorneys. All six of the commentors indicated that they agreed with the proposal. A chart with the full text of the comments received, organized by issue, and the committee's responses is attached at pages 6–13.

A member of the committee also suggested some possible changes to the proposal as circulated for public comment. In response to these suggestions, the committee has made one change to the proposed amendment to clarify that it is the underlying trial court order *that was the subject of the writ proceeding in the Court of Appeal* that must be attached to the petition for review (italics added for emphasis).

Alternatives considered

The committee considered whether the rule should *require* attachment of the trial court's order or merely permit it. Based on the benefits of including the complete order, including facilitating the Supreme Court's review and streamlining procedures for the court and litigants, the committee concluded that requiring attachment was the better option. Requiring attachment of the trial court order is consistent with the rule's requirement that the Court of Appeal opinion or order under review be attached. In circumstances other than a summary denial of a writ petition, that Court of Appeal opinion or order may contain the trial court's analysis and reasoning; review of a summary denial instead requires the Supreme Court to consider the trial court's order.

The committee also considered taking no action but concluded there were clear benefits to amending the rule.

Fiscal and Operational Impacts

Other than training for court staff to advise them of the rule change, the committee anticipates no fiscal or operational impacts. Several commentors expressed the view that the proposed amendment will save time and resources for both the court and practitioners by ensuring that the trial court order at issue is attached without the need for the petitioner to file or the court to consider an application.

Attachments and Links

1. Cal. Rules of Court, rule 8.504, at page 5
2. Chart of comments, at pages 6–13

Rule 8.504 of the California Rules of Court is amended, effective January 1, 2024, to read:

Rule 8.504. Form and contents of petition, answer, and reply

(a) * * *

(b) Contents of a petition

(1)–(5) * * *

(6) If the petition seeks review of a Court of Appeal order summarily denying a writ petition, a copy of the underlying trial court order that was the subject of the writ proceeding in the Court of Appeal showing the date it was entered must be bound at the back of the original petition and each copy filed in the Supreme Court or, if the petition is not filed in paper form, attached.

~~(6)~~(7) The title of the case and designation of the parties on the cover of the petition must be identical to the title and designation in the Court of Appeal opinion or order that is the subject of the petition.

~~(7)~~(8) Rule 8.508 governs the form and content of a petition for review filed by the defendant in a criminal case for the sole purpose of exhausting state remedies before seeking federal habeas corpus review.

(c)–(d) * * *

(e) Attachments and incorporation by reference

(1) No attachments are permitted except:

(A) An opinion or order required to be attached under (b)~~(4) or (5)~~(4)–(6);

(B)–(D) * * *

(2) The attachments under (1)~~(B)–(C)~~(B) and (C) must not exceed a combined total of 10 pages.

(3) * * *

SPR23-05

Appellate Procedure: Attachment of Trial Court's Order to Petition for Review of Summary Denial of Writ Petition

(Amend Cal. Rules of Court, rule 8.504)

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

	Commenter	Position	Comment	Committee Response
1.	California Academy of Appellate Lawyers by Wendy Cole Lascher Rules Commentary Chair	A	The California Academy of Appellate Lawyers ("CAAL") is devoted to promoting and encouraging reforms in appellate practice that ensure effective representation of litigants and more efficient administration of justice.	The committee appreciates this comment.
2.	California Appellate Defense Counsel (CADC) by Rebecca P. Jones Vice President	A	On behalf of California Appellate Defense Counsel (CADC), I would like to submit the following comment in support of the proposed change to Rule 8.504, which would require litigants to attach a copy of a trial court ruling on a writ to a petition for review of an appellate court order summarily denying the petition. CADC is a voluntary statewide professional association of attorneys who handle indigent appeals by court appointment in criminal and dependency matters. Our members regularly litigate petitions for writs of habeas corpus and petitions for writs of mandamus in the Courts of Appeal and, less frequently, in the superior courts. In our experience, it is not at all uncommon that a superior court addressing a petition will issue a reasoned order on the petition but the Court of Appeal will summarily deny any "appeal" of that order, pursued through a newly filed petition. Once the Court of Appeal denies the petition, counsel has two options for seeking review in the Supreme Court: They may file a petition for review, as relevant to this rule, or they may file a new petition in the Supreme Court. We have been	The committee appreciates this comment.

	Commenter	Position	Comment	Committee Response
			told that the preferred mechanism is a petition for review. As this proposed new rule implicitly recognizes, when a petition for review is filed challenging a Court of Appeal summary denial of a petition, the Supreme Court would have some difficulty discerning the basis for a summary denial or the issues presented by petition. By requiring the petitioner to attach a reasoned superior court order to the petition for review, the amendment to this rule would give the Supreme Court much more context for understanding the basis for the petition for review. Furthermore, by making attachment of the superior court order mandatory rather than optional, the rule provides helpful clarity to practitioners who might otherwise feel like they need to guess at the best way to make their case to the Supreme Court. Because this rule provides helpful clarity for our practice, and because it will make writ practice in the Supreme Court more efficient, CADC urges adoption of this proposed amendment.	
3.	California Department of Justice by Michael J. Mongan, Solicitor General San Francisco	A	On behalf of the Office of the Attorney General at the California Department of Justice, I submit the following comment regarding Item Number SPR23-05, "Appellate Procedure: Attachment of Trial Court's Order to Petition for Review of Summary Denial of Writ Petition":	The committee appreciates this comment.

	Commenter	Position	Comment	Committee Response
			The Office of the Attorney General supports this proposed rule change. We further agree that attachment of the underlying trial court order should be mandatory rather than permissive. The Attorney General is frequently in the position of responding to petitions for review under extremely tight deadlines. Often, when the petition for review challenges a Court of Appeal's summary denial of a writ, we have made no appearance in the lower courts and lack immediate access to relevant records. We anticipate that attachment of the underlying trial court order to the petition for review in such cases would save valuable time and resources and improve our ability to prepare a response that would be of most assistance to the Court. Please let me know if you need any additional information or if there is anything else we can do to be of assistance.	
4.	California Lawyers Association by Kelly Woodruff, Chair Litigation Section, Committee on Appellate Courts	A	Invitation to Comment SPR23-05 sets forth a proposal allowing for a full trial court order to be attached to a petition for review of a summary denial of a writ petition. The new California Rule of Court, rule 8.504(b)(6) is meant to patch a hole in the current rule, which permits the petitioner to attach only the applicable appellate court order and attachments up to 10 pages, unless the presiding justice permits additional pages to be attached upon	The committee appreciates this comment.

	Commenter	Position	Comment	Committee Response
			good cause. The CAC agrees with this proposal. When the appellate court summarily denies a writ petition, it does not issue any orders addressing the underlying issues. In that case, the order on review would be the underlying trial court order. But under the current rule, if the trial court order exceeds 10 pages, the petitioning party must apply to the presiding justice for leave to file additional page attachments. This additional step would waste the court's (and the petitioner's) time and resources. The proposed amendment would eliminate this unnecessary procedure. Under amended Rule 8.504(b), when a writ petition is summarily denied, the underlying trial court order would be treated the same as an appellate court order—as a required attachment. Because amended Rule 8.504(b) would ease administrative burdens and eliminate an unnecessary procedure, the CAC urges its adoption.	
5.	The Los Angeles County Bar Association Appellate Courts Section by John A. Taylor, Jr. Executive Committee Member	A	The Appellate Courts Section of the Los Angeles County Bar Association (LACBA-ACS) supports SPR23-05. The proposed rule requires the attachment of trial court order when the petitioner seeks review of a Court of Appeal summary denial of a writ petition, even when the underlying trial court order exceeds 10 pages. The practice would roughly parallel the	The committee appreciates this comment.

	Commenter	Position	Comment	Committee Response
			rule requiring that a Court of Appeal opinion be attached to a petition for review, and LACBA-ACS agrees with this statement in the Invitation to Comment: "Attachment of the complete trial court order would assist the Supreme Court in addressing the merits of the petition for review. It would also assist both the court and parties in expediting the matter, eliminating the need for an application or motion to allow attachment of a trial court order exceeding 10 pages."	
6.	San Diego County Bar Association Appellate Practice Section	A	The Appellate Practice Section of the San Diego County Bar Association (APS) supports a requirement that trial courts' orders be attached to petitions for review of Court of Appeal orders summarily denying writ petitions. Such a requirement would facilitate the work of the central staff of the Supreme Court in preparing conference memoranda and the consideration of such petitions by the justices. Proposed rule 8.504(b)(6) should be adopted as drafted. The Supreme Court has recognized that upon occasion certain cases involve "instances of such grave nature or of such significant legal impact" that the Court is "compelled to intervene through issuance of an extraordinary writ." (Babb v. Superior Court (1971) 3 Cal.3d 841, 851 [rulings on pleadings].) For example, the writs of mandate are properly used in discovery matters "to review questions of first impression that are of general importance to the	The committee appreciates this comment.

	Commenter	Position	Comment	Committee Response
			trial courts and to the profession, and where general guidelines can be laid down for future cases." (Daly v. Superior Court (1977) 19 Cal.3d 132, 140 (superseded by statute on unrelated grounds) [discovery matters].) Indeed, "the need for the availability of prerogative writs in discovery cases where an order of the trial court granting discovery allegedly violates a privilege of the party against whom discovery is granted, is obvious." (Roberts v. Superior Court (1973) 9 Cal.3d 330, 336.) In such cases, mandate is appropriate for "immediate review of a question of statewide importance so that lower decisions in other cases will be uniform." (Hogya v. Superior Court (1977) 75 Cal.App.3d 122, 129.) Appellate courts have broad discretion in deciding whether to intervene by writ. (Hogya v. Superior Court (1977) 75 Cal.App.3d 122, 128–130.) Whether writ review should have been granted cannot be known without understanding how the trial court adjudicated the disputed issue. The Court of Appeal may have acted well within its discretion in determining that appeal from a final judgment would be an adequate legal remedy. (Ibid.) On the other hand, its discretion may have been abused if the petitioner waw seeking review of a trial court order compelling discovery over a legitimate and important claim of privilege or confidentiality. (Roberts, supra, 9 Cal.3d at p.	

	Commenter	Position	Comment	Committee Response
			336.) Petitions seeking Supreme Court review of orders summarily denying writ petitions may often be denied and may rarely result in plenary Supreme Court review. However, these petitions sometimes result in grant and transfer orders directing the Court of Appeal to issue an order to show cause or alternative writ. "This practice commonly occurs when the court of appeal summarily denied a writ petition, but the supreme court feels an opinion by the court of appeal is warranted—either for the benefit of the parties or so that the supreme court may have the benefit of the court of appeal's reasoning." (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2021) ¶ 13:125.1, p. 13-32.) As a practical matter, determining the merits of such petitions always requires analyses of the underlying issues and the trial court's adjudications, which the mandatory attachment of trial court orders would facilitate. With electronic filing, the burden of attaching the trial court's order to a petition for review is very minimal. And any ethical petitioner should want to assist the Supreme Court's consideration of the petition by attachment of the underlying trial court order. It is APS's position that the Judicial Council's	

SPR23-05
Appellate Procedure: Attachment of Trial Court's Order to Petition for Review of Summary Denial of Writ Petition
(Amend Cal. Rules of Court, rule 8.504)
All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Position	Comment	Committee Response
			proposal appropriately addresses the stated purpose of the proposed rule. There are clear administrative benefits to proposed rule 8.504(b)(6). And those administrative benefits would only be diminished if the attachment of trial court orders were optional.	