



JUDICIAL COUNCIL OF CALIFORNIA

APPELLATE ADVISORY
COMMITTEE

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APPELLATE ADVISORY COMMITTEE

IN-PERSON OPEN MEETING AGENDA

Open to the Public (Cal. Rules of Court, rule 10.75(c)(1))

THIS MEETING IS BEING RECORDED

Date: February 27, 2023
Time: 10:00 AM - 3:00 PM
Judicial Council of California
Location: 455 Golden Gate Avenue, 3rd Floor
San Francisco, California 94102
Public Link: <https://jcc.granicus.com/player/event/2218> (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 September 12, 2022, and October 28, 2022 Appellate Advisory Committee meeting(s).

II. PUBLIC COMMENT (CAL. RULES OF COURT, RULE 10.75(K)(1)-(2))

In-Person Public Comment

Members of the public requesting to speak during the public comment portion of the meeting must place the speaker's name, the name of the organization that the speaker represents if any, and the agenda item that the public comment will address, on the public comment sign-up sheet. The sign-up sheet will be available at the meeting location at least one hour prior to the meeting start time. The Chair will establish speaking limits at the beginning of the public comment session. While the advisory body welcomes and encourages public comment, time may not permit all persons requesting to speak to be heard at this meeting.

Written Comment

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 February 26 at 10:00 AM 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

Legislative Update

Update on legislation and budget items of interest.

Presenter: Ms. Aviva Simon

Info 3

Liaison Reports

Update on items of interest.

Presenters: Mr. Joseph Ford, CJER Advisory Committee Liaison
Mr. Todd Harshman, Judicial Council CJER Liaison

IV. DISCUSSION AND POSSIBLE ACTION ITEMS

Item 4

Costs on Appeal

Review public comments on the proposal to amend the rule regarding costs on appeal.

Presenters: Hon. Louis Mauro, Ms. Heather Anderson

Item 5

Reporter's Transcripts

Review public comments on the proposal to amend rules regarding reporter's transcripts.

Presenters: Hon. Louis Mauro, Ms. Heather Anderson

Item 6

Oral Argument in Appellate Division

Review draft invitation to comment on proposal to amend the rules regarding oral argument in the appellate division.

Presenters: Hon. Louis Mauro, Ms. Christy Simons

Item 7

Time for Respondent to Elect an Appendix

Review draft invitation to comment on proposal to amend the rules regarding appendixes.

Presenters: Hon. Louis Mauro, Ms. Christy Simons

Item 8

Forms for Extension of Time

Review draft invitation to comment on proposal to revise forms for requesting an extension of time.

Presenters: Hon. Louis Mauro, Ms. Christy Simons

Item 9

Notice of Appeal Form

Review draft invitation to comment on proposal to revise form APP-002.

Presenters: Hon. Louis Mauro, Mr. Kendall Hannon

Item 10

Attachment of Trial Court Order to a Petition for Review

Review draft invitation to comment on proposal to revise the rule 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

Draft Minutes of September 12, 2022 Closed Meeting

Draft Minutes of September 12, 2022 Closed Meeting



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APPELLATE ADVISORY COMMITTEE

MINUTES OF OPEN MEETING

October 28, 2022

1:30 PM

BlueJeans

Advisory Body Members Present: Hon. Louis Mauro; Hon. Kathleen Banke; Mr. David Andreasen; Mr. Michael Colantuono; Hon. Allison Danner; Mr. Kevin Green; Mr. Jonathan Grossman; Hon. Joan Irion; Ms. Mary McComb; Mr. Jorge Navarrete Ms. Milica Novakovic; Ms. Beth Robbins; Mr. Benjamin Shatz; Ms. Robin Urbanski; Hon. Helen Williams

Advisory Body Members Absent: Ms. Marsha Amin; Hon. Leondra Kruger; Ms. Heather MacKay; Hon. Charles Poochigian; Hon. Laurence Rubin; Hon. Stephen Schuett

Others Present: Ms. Christy Simons; Ms. Heather Anderson; Ms. Khayla Salangsang

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 1:32 p.m. and took roll call.

DISCUSSION AND ACTION ITEMS (ITEMS 1-2)

Item 1

Costs on Appeal

The committee reviewed a draft invitation to comment on a proposal to amend the rules governing costs on appeal in civil actions to clarify that the general rule for awarding costs to the prevailing party is subject to exception for statutes requiring a different or additional finding, determination, or analysis.

Action: *The proposal as modified was approved to be sent to the Rules Committee for potential circulation for public comment in the Winter cycle.*

Item 2

Rules Regarding Reporter's Transcripts

The committee reviewed a draft invitation to comment on a proposal to amend several rules related to the format of reporter's transcripts and borrowing the record on appeal.

Action: *The proposal was approved to be sent to the Rules Committee for potential circulation for public comment in the Winter cycle.*

ADJOURNMENT

There being no further business, the meeting was adjourned at 2:30 pm.

Approved by the advisory body on enter date.



Judicial Council of California

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

Telephone 415-865-4200 · Fax 415-865-4205

M E M O R A N D U M

Date

February 21, 2023

Action Requested

Please review for February 27 Committee Meeting

To

Members of the Appellate Advisory Committee

Deadline

February 27, 2023

From

Heather Anderson, Attorney, Legal Services

Contact

Heather Anderson

415-865-7803 phone

heather.anderson@jud.ca.gov

Subject

Draft Report to the Judicial Council Re: Costs on Appeal

Introduction

As you may recall, earlier this fall, the Appellate Advisory Committee recommended circulating for public comment a proposal to amend rules 8.278 and 8.819, relating to costs on appeal in civil cases, to clarify that there are statutory exceptions to the general rule regarding entitlement to costs. The Judicial Council's Rules and Projects Committee approved the recommendation for circulation and the proposal was circulated for public comment from December 9, 2022 to January 20, 2023, as part of the regular winter comment cycle (a copy of the invitation to comment is included in your materials).

Public Comments

Only one comment was received. The Orange County Bar Association submitted a comment agreeing with the proposal. They also supported including amendments to rule 8.891 in the proposal and responded that there are not any other appellate rules pertaining to costs that should be similarly amended. The rules subcommittee reviewed the comment at its February 10 meeting and is recommending that the full committee recommend the rule amendment for adoption as circulated for public comment. A chart with the full text of the comment received and the proposed committee's response is attached to the draft report.

Committee Task

Staff has prepared a draft of the report that could be submitted to the Judicial Council on this proposal. This draft reflects rules subcommittee's recommendation that the proposal be recommended for adoption as circulated for public comment. The committee's task with respect to this proposal is to discuss and approve or modify the draft report and recommendation.

Attachments

1. Draft of report to the Judicial Council
2. Draft comment chart



Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

Item No.:

For business meeting on: May 12, 2023

Title

Appellate Procedure: Costs on Appeal

Agenda Item Type

Action Required

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rules 8.278 and 8.891

Effective Date

September 1, 2023

Recommended by

Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

Date of Report

February 21, 2023

Contact

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

Heather Anderson, 415-865-7803
heather.anderson@jud.ca.gov

Executive Summary

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

Recommendation

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

1. Amend rules 8.278 and 8.891 of the California Rules of Court to state that the general rule for awarding costs to the prevailing party is subject to exceptions established by statutes; and

2. Amend the advisory committee comments accompanying rules 8.278 and 8.891 of the California Rules of Court to indicate that this provision reflects the holding of *Pollock v. Tri-Modal Distribution Services, Inc.* (2021) 11 Cal.5th 918 and the constitutional principle that rules of court may not be inconsistent with statute.

The proposed amended rules are attached at pages 5–6.

Relevant Previous Council Action

The Judicial Council adopted the predecessor to rule 8.278, which addresses costs on appeal in civil appeals in the Court of Appeal, effective September 1, 1928, as part of the original Rules for the Supreme Court and District Courts of Appeal. Since 1928, the council has amended and renumbered the rule on a number of occasions, generally to add or clarify recoverable costs. Most recently, it was amended in 2013, 2016, and 2018, but none of those amendments has bearing on this proposal.

The Judicial Council adopted the predecessor to rule 8.891, regarding costs on appeal in appellate division proceedings, effective September 15, 1945. Effective January 1, 2009, the Judicial Council repealed all of the rules relating to the superior court appellate division and replaced them with new rules. The language of new rule 8.891 was modeled on rule 8.278. Rule 8.891 was amended in 2011 and 2013, but these amendments are not relevant to this proposal.

Analysis/Rationale

Background

Under rule 8.278, “[e]xcept as provided in this rule, the party prevailing in the Court of Appeal in a civil case other than a juvenile case is entitled to costs on appeal.” (Rule 8.278(a)(1).) As noted above, the parallel rule regarding entitlement to costs in limited civil actions in the appellate division was modeled on rule 8.278 and thus similarly provides: “Except as provided in this rule, the prevailing party in a civil appeal is entitled to costs on appeal.” (Rule 8.891(a)(2)-(5).) Both rules also define prevailing party and allows the court to award costs in its discretion. (Rule 8.278(a) and rule 8.891(a)(2)-(4).)

Neither of these rules specifically address statutes that require a different or additional finding, determination, or analysis before awarding costs on appeal. In a recent case, *Pollock v. Tri-Modal Distribution Services, Inc.* (2021) 11 Cal.5th 918 (*Pollock*), the Supreme Court addressed whether costs on appeal in a case under the California Fair Employment and Housing Act (Gov. Code, § 12900 et seq.) (FEHA) were governed by rule 8.278(a) or by section 12965(c), the FEHA provision that authorizes the recovery of fees and costs. Under the statute, the court, in its discretion, may award reasonable fees and costs “to the prevailing party . . . except that . . . a prevailing defendant shall not be awarded fees and costs unless the court finds the action was frivolous, unreasonable, or groundless when brought, or the plaintiff continued to litigate after it clearly became so.” (*Id.*, § 12965(c)(6).) In *Pollock*, the lower court awarded fees and costs on appeal to the prevailing defendant under rule 8.278; it made no additional findings.

In reversing the award of fees and costs, the Supreme Court found that the statute was not limited to proceedings in the trial court, either by its terms or its legislative intent to encourage litigation of potentially meritorious claims. The court also rejected the argument that rule 8.278 should control because it “does not include the phrase ‘except as otherwise expressly provided by statute.’” (*Pollock, supra, 11 Cal.5th at p. 950.*) “[E]ven without such language,” the court stated, “a rule of court must yield to an applicable statute when ‘it conflicts with either the statute’s express language or its underlying legislative intent.’” (*Ibid.*; Cal. Const., art. VI, § 6(d) [rules adopted by the Judicial Council “shall not be inconsistent with statute”].) “Section 12965(b) expressly governs ‘the court’ in FEHA actions without limitation, and allowing an award of costs on appeal to a prevailing defendant without a finding that the plaintiff’s action was objectively groundless would undermine the statute’s purpose.” (*Pollock, supra, 11 Cal.5th at p. 950.*)

To reflect the holding in *Pollock* and the constitutional principle on which it is based, Appellate Advisory Committee recommends amending both rule 8.278 and rule 8.891 to clarify that the general rule for awarding costs on appeal to the prevailing party is subject to exception for statutory provisions that require the court to conduct a different or additional finding, determination, or analysis and amending the accompanying advisory committee comments to these rules to cite to these authorities.

Comments

This proposal was circulated for public comment from December 9, 2022 to January 20, 2023, as part of the regular winter comment cycle. Given that the *Pollock* case only specifically addressed rule 8.278, the invitation to comment specifically asked whether the proposal include amending rule 8.891. The invitation to comment also specifically asked whether there are any other appellate rules pertaining to costs that should be similarly amended.

Only one comment was received. The Orange County Bar Association submitted a comment agreeing with the proposal. They also supported including amendments to rule 8.891 in the proposal and responded that there are not any other appellate rules pertaining to costs that should be similarly amended. A chart with the full text of the comment received and the committee’s response is attached at page 7.

Alternatives considered

Given that the *Pollock* case only specifically addressed rule 8.278, the committee considered whether to recommend amending only that rule. Given that the reasoning in the *Pollock* case appears applicable to both rules and the comment received supported amending rule 8.891 as well, the committee concluded that it was best to recommend amending both rule 8.278 and rule 8.891.

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

Fiscal and Operational Impacts

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

Attachments and Links

1. Cal. Rules of Court, rules 8.278 and 8.891, at pages 5–6
2. Comment Chart, at page 7

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

1 **Rule 8.278. Costs on appeal**

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

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

24 **(b)–(d) * * ***

25
26 **Advisory Committee Comment**

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

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

37 **Subdivision (c).** * * *

38
39 **Subdivision (d).** * * *

40
41

1 **Rule 8.891. Costs and sanctions in civil appeals**

2
3 **(a) Right to costs**

- 4
5 (1) Except as provided in this rule or by statute, the prevailing party in a civil
6 appeal is entitled to costs on appeal.
7
8 (2) The prevailing party is the respondent if the appellate division affirms the
9 judgment without modification or dismisses the appeal. The prevailing party
10 is the appellant if the appellate division reverses the judgment in its entirety.
11
12 (3) If the appellate division reverses the judgment in part or modifies it, or if
13 there is more than one notice of appeal, the appellate division must specify
14 the award or denial of costs in its decision.
15
16 (4) In the interests of justice, the appellate division may also award or deny costs
17 as it deems proper.
18

19 **(b)–(e) * * ***

20
21 **Advisory Committee Comment**

22
23 **Subdivision (a).** The subdivision (a)(1) exception to the general rule of awarding costs to the
24 prevailing party for statutes that require further analysis or findings reflects the holding of *Pollock*
25 *v. Tri-Modal Distribution Services, Inc.* (2021) 11 Cal.5th 918 (regarding costs on appeal in an
26 action under the California Fair Employment and Housing Act) and the constitutional mandate
27 that rules of court “shall not be inconsistent with statute” (Cal. Const., art. VI, § 6(d)).
28

29 **Subdivision (d).** * * *

W23-01

Appellate Procedure: Costs on Appeal (amend Cal. Rules of Court, rules 8.278 and 8.891)

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

	Commenter	Position	Comment	Committee Response
1.	Orange County Bar Association By Michael A. Gregg, President	Agree	<ul style="list-style-type: none">• Does the proposal appropriately address the stated purpose? Yes.• Should the proposal include amending rule 8.891? Yes.• Are there any other appellate rules pertaining to costs that should be similarly amended? No.	No response required.

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



Judicial Council of California

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M E M O R A N D U M

Date

February 20, 2023

Action Requested

Please review for February 27 Committee Meeting

To

Members of the Appellate Advisory Committee

Deadline

February 27, 2023

From

Heather Anderson, Attorney, Legal Services

Contact

Heather Anderson

415-865-7803 phone

heather.anderson@jud.ca.gov

Subject

Draft Report to the Judicial Council Re:
Reporter's Transcripts

Introduction

As you may recall, earlier this fall, the Appellate Advisory Committee recommended circulating for public comment a proposal to amend several rules relating to the format of reporter's transcripts and borrowing the record on appeal. These proposed amendments were primarily based on suggestions received from the California Court Reporters Association. The Judicial Council's Rules and Projects Committee approved the recommendation for circulation and the proposal was circulated for public comment from December 9, 2022 to January 20, 2023, as part of the regular winter comment cycle (a copy of the invitation to comment is included in your materials).

Public Comments

Six comments related to this proposal were received: three from superior courts, one from the Appellate Court Clerk Executive Officers, one from the California Court Reporter's Association, and one from the Orange County Bar Association. Two commentors indicated that they agreed with the proposal, two indicated that they did not agree with the proposal, one indicated that they agreed with the proposal if amended, and one did not indicate an overall position on the proposal. The invitation to comment asked for specific input on several questions. Most of the

comments received were in response to these questions. A chart with the full text of the comments received and the staff's proposed committee's responses is attached to the draft report at page 28.

Staff Suggestions, Rules Subcommittee Review, and Question for the Committee

Based on the public comments that were received, staff has suggested several changes to the rule amendments that were circulated for public comment. In the attached draft report, recommended rules, and comment chart, these suggested changes are shown **highlighted in yellow**.

The comments received also raise some timing questions for the full committee's consideration:

- The California Court Reporters Association (CCRA) has suggested different language for rule 8.153, relating to lending the record on appeal, than was circulated for public comment. As explained in the comment chart in response to this suggestion, under the rule that governs the Judicial Council rule-making process, California Rules of Court, rule 10.22, only a nonsubstantive technical change or correction or a minor substantive change that is unlikely to create controversy may be recommended for adoption by the Judicial Council without first being circulating it for comment. Therefore, the committee cannot recommend adoption of this alternative rule language at this time; any such proposal must first be circulated for public comment. The timing question for the committee is whether to:
 - Recommend that the Judicial Council amend rule 8.153 now as was proposed in the invitation to comment and consider recommending further amendments to this rule based on CCRA's suggestion at a later date (possible language to this effect is included in the draft report and comment chart); or
 - Defer recommending any amendments to rule 8.153 until after considering and potentially circulating for public comment further amendments to this rule based on CCRA's suggestion.
- Two commentors, the Appellate Court Clerk Executive Officers and the Superior Court of Los Angeles County, responded that the approximately four months from Judicial Council's potential approval of this proposal (at the council's May 12, 2023 meeting) until its proposed effective date (September 1, 2023) does provide sufficient time for implementation. The timing question for the committee is whether to recommend that the rule amendments being proposed take effect:
 - September 1, 2023, which would give courts slightly less than four months implementation time; or

- January 1, 2024, which would give courts almost seven months implementation time.

Staff is also raising one additional question for the full committee's consideration. As discussed in the draft report to the Judicial Council, several changes are being recommended to the advisory committee comments to the rules that authorize the filing of certified transcripts in lieu of making a deposit for a reporter's transcript. However, one of the rules that authorizes this procedure, rule 8.834, does not currently have an advisory committee comment. The question for the committee is whether to recommend adding an advisory committee comment to rule 8.834, modeled on language from the advisory committee comments accompanying the other rules authorizing this procedure.

In the attached draft report to the Judicial Council and comment chart, language related to the above questions is **highlighted in blue**.

Subcommittee Task

Staff has prepared a draft of the report, text of recommended rule amendments, and comment chart that could be submitted to the Judicial Council on this proposal. This draft reflects modifications to the proposal that was circulated for public comment, which are shown in **yellow highlighting** and the questions for the full committee **highlighted in blue**. The committee's task with respect to this proposal is to:

- Discuss the comments received on the proposal and approve or modify the suggestions for responding to these comments, as reflected in the draft comment chart and draft report to the Judicial Council;
- Discuss and approve or modify the recommendations regarding adoption of the proposed rule amendments reflected in the draft report to the Judicial Council;
- Discuss when to recommend that the rule amendments the committee proposes for adoption should take effect.

Attachments

1. Draft of report to the Judicial Council
2. Draft comment chart



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REPORT TO THE JUDICIAL COUNCIL

Item No.:

For business meeting on: May 12, 2023

Title

Appellate Procedure: Reporter's Transcripts

Agenda Item Type

Action Required

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rules 8.130, 8.144, 8.153, 8.204, 8.452, 8.456, 8.622, 8.834, 8.838, 8.866, and 8.919

Effective Date

September 1, 2023

Date of Report

February 21, 2023

Recommended by

Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

Contact

Heather Anderson, 415-865-7803
heather.anderson@jud.ca.gov

Executive Summary

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

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective **September 1, 2023 [January 1, 2024]**:

1. Amend rules 8.130, 8.834, 8.866, and 8.919 to state that a certified transcript submitted by a party in lieu of depositing the cost of preparing a reporter's transcript must not be accepted unless it complies with the applicable format requirements;
2. Amend the advisory committee comments accompanying rules 8.130, 8.866, and 8.919 to:
 - a. Provide examples of the types of changes that would need to be made to comply with the applicable the applicable format requirements;
 - b. State that parties submitting certified transcripts in lieu of a deposit are responsible for ensuring that such transcripts are in the proper format; and
 - c. Indicate that the parties may arrange with a court reporter to do the necessary formatting of the transcript or may do the formatting themselves.
3. Add an advisory committee comment to rule 8.834 to address the use of certified transcripts in lieu of a deposit for a reporter's transcript.
4. Amend rule 8.144 to:
 - a. Provide that, if a clerk's or reporter's transcript is being delivered in electronic form to all courts, parties, and persons entitled to the transcript, it may be produced in a single volume but must comply with the requirements of rule 8.74(a)(5);
 - b. Provide an exception for reporter's transcripts in multiple reporter cases in which a segment of the reporter's transcript is either longer or shorter than the number of pages assigned by the primary reporter from the requirement that, in transcripts in electronic form, the electronic page counter in the PDF file viewer must match the transcript page numbering.
5. Further amend rule 8.144 and amend rules 8.204 and 8.622 to replace references to reporter's transcripts or the record on appeal being in "electronic format" with "electronic form."
6. Amend rule 8.153 to give a party who has been asked to lend its copy of the appellate record to another party the option of asking the court reporter to provide the borrowing party with a read-only electronic copy of the reporter's transcript;
7. Amend rules 8.452 and 8.456 to modify the requirements for augmentation motions in the juvenile proceedings addressed by these rules by:

- a. Providing an exception for reporter’s transcripts in multiple reporter cases from the requirement that documents attached to such motions be consecutively paginated; and
 - b. Adding references to the specific subdivisions of rules 8.122 and 8.130 that explain how to identify documents or transcripts that are not attached to such motions.
8. Further amend rule 8.838 to:
- a. Add a cross-reference to rule 8.144(a); and
 - b. Replace the provision relating to the 300-page volume limit with a cross-reference to the relevant subdivision of rule 8.144.
9. Amend rule 8.866 and further amend rule 8.919 to replace references to the format requirements of rule 8.144 with references to the format requirements of rule 8.834.

The proposed amended rules are attached at pages 17–27.

Relevant Previous Council Action

The predecessor to rule 8.130, relating to reporter’s transcripts in civil appeals to the Court of Appeal, was adopted by the Judicial Council as part of the Rules on Appeal effective July 1, 1943. The predecessor to rule 8.834, relating to reporter’s transcripts in civil appeals to the superior court appellate division, was adopted by the Judicial Council effective September 15, 1945. As adopted, both rules required appellants who wished to use a reporter’s transcript to file a notice with the trial court designating the oral proceedings to be included in the transcript, allowed respondents to designate additional proceedings for inclusion in the transcript, and required appellants to deposit with the trial court either the estimated cost of transcribing the designated proceedings or a waiver of this deposit signed by the court reporter. These rules have been amended and renumbered many times since their adoption. Effective January 1, 1993, the Judicial Council amended rule 8.130 to permit as substitute for a required deposit an original transcript of proceedings specified in the designation notice. Effective January 1, 2014, the Judicial Council amended rule 8.130 to, among other things, limit the use of transcripts in lieu of a deposit to situations in which the transcripts include all of the designated proceedings and to require that these transcripts meet the format requirements for reporter’s transcripts under rule 8.144. The council also amended rules 8.834, 8.866, and 8.919 effective January 1, 2014 to, among other things, allow the same procedure for submitting certified transcripts in lieu of a deposit for a reporter’s transcript as permitted under rule 8.130.

The Judicial Council adopted the predecessor to rule 8.144, regarding the format of the record on appeal, effective July 1, 1943. This rule has been amended and renumbered many times since its adoption. Effective January 1, 2018, to make the rules regarding reporter’s transcripts consistent

with amendments to Code of Civil Procedure section 271¹ taking effect on that date, the Judicial Council amended rule 8.144 to incorporate format requirements for transcripts that are delivered in electronic form, including the requirement that the pagination of a transcript be the same as the pagination that appears in the PDF viewer. At the same time, the council also amended rules 8.130, 8.834, 8.838, 8.866 and 8.919 (among others) to make them consistent with the amended section 271.

The Judicial Council adopted the predecessor to rule 8.153, regarding lending the record on appeal, effective July 1, 1972. This rule was revised and renumbered by the council effective January 1, 2002 to, among other things, clarify that respondents as well as appellants could lend the record. This rule, although renumbered, has not been substantively changed since 2002.

Analysis/Rationale

Background

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

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

Thus, effective January 1, 2023, court reporters must deliver reporter's transcripts in electronic form unless a party or person entitled to the transcript requests it in paper format. Based primarily on suggestions received from the California Court Reporters Association, the committee is recommending rule amendments that reflect the fact that most reporter's transcripts will now be delivered in electronic form, as well as other changes to the rules regarding the format of transcripts

Transcript volume page limit

Rule 8.144 of the California Rules of Court establishes the general requirements for the format of clerk's and reporter's transcripts in civil appeals to the Court of Appeal. Through cross-references in rules 8.336(f), 8.395(g), 8.409(b), 8.610(d), 8.838(a), 8.862(b), 8.866(b), 8.913(b), and 8.919(b), these format requirements also apply to transcripts in criminal appeals to the Court

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

of Appeal, appeals from superior court decisions in death penalty–related habeas corpus proceedings, in juvenile appeals, in capital appeals to the Supreme Court, and in superior court appellate division appeals, respectively.

Rule 8.144(b)(6) currently requires that clerk’s and reporter’s transcripts must be produced in volumes of no more than 300 pages. As noted above, most reporter’s transcripts will now be in electronic form. Rule 8.74, relating to format of electronic documents filed in the appellate courts, also acknowledges that clerk’s transcripts may be in electronic form.² The current 300-page volume limit does not appear to be necessary for transcripts in electronic form. A single electronic volume would also have one set of indexes and may be easier for courts and parties to navigate and cite. The committee is therefore recommending that rule 8.144 be amended to allow clerk’s and reporter’s transcripts that are in electronic form be produced in a single volume, with two limitations.

First, to avoid the potential confusion that would be caused by differences in page numbering and citation if a transcript in a case were delivered in both paper and electronic form, the committee recommends the amendments to rule 8.144 provide that a single-volume transcript only be permitted when that transcript is being delivered in electronic form to all courts, parties, and persons entitled to the transcript. Thus the 300-page volume limit would be retained in cases in which a party or person entitled to a reporter’s transcript requests that the transcript be provided in paper form.

Second, the committee recommends that the amendments to rule 8.144 require that electronic transcripts produced in a single volume comply with the requirements of rule 8.74(a)(5). Rule 8.74(a)(5), relating to the format of electronic documents for purposes of e-filing in the appellate courts, provides that electronic documents may not be larger than 25 megabytes and specifies what must be done if documents exceed this size. This megabyte limit is important for functionality of documents within the appellate case management system and the appellate courts.

References to “electronic format”

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

Pagination of reporter’s transcripts in cases in which there are multiple reporters

Background

Rule 8.144(f) addresses the pagination of reporter’s transcripts in cases in which more than one court reporter reported portions of the proceedings. Subdivision (1) of this provision requires that

² Rule 8.74(c)(5) states “The format for an electronic clerk's transcript must comply with this rule and rule 8.144.”

each reporter estimate the number of pages in each segment reported and inform the designated primary reporter of the estimate. The primary reporter must then assign beginning and ending page numbers for each segment of the transcript.

Current rule 8.144(f)(2) and (3) address what a court reporter in a multiple-reporter case should do if a segment is either longer or shorter than the assigned number of pages. If the segment exceeds the assigned number of pages, the rule currently requires that the reporter number the additional pages with the ending page number, a hyphen, and a new number, starting with 1 and continuing consecutively. For example, if the last page number assigned to a segment was 300, additional pages in this segment would be numbered 300-1, 300-2, 300-3, etc. If a segment has fewer than the assigned number of pages, the rule currently requires that on the certificate page, the reporter must add a hyphen to the last page number used, followed by the segment's assigned ending page number. For example, if the last page number assigned to a segment was 300, but only 256 pages were used, the certificate would identify the last page in the segment as 256-300. Note that when the pagination methods authorized under rule 8.144(f)(2) and (3) are used, the transcript will not be consecutively paginated and the page numbers on the transcript will not match the page numbers that appear in the PDF viewer.

As discussed further below in the Comments section of this report, courts, court reporters, and attorneys have various concerns about the existing rules relating to pagination of transcripts in multiple-reporter cases. These concerns include delay in the preparation of transcripts when court reporters are unavailable to provide page estimates for their segments and difficulties in navigating within transcripts that are not consecutively paginated and in which the page numbers on the transcript do not match those in the PDF viewer. The committee believes that further research and work should be done to try to address these concerns and develop an overall improved approach to pagination of transcripts in these situations. In the meantime, the committee is recommending rule amendments intended to provide some internal consistency within the rules about transcripts paginated as currently authorized.

Recognizing that transcripts in multiple-reporter cases may not be consecutively numbered

Rule 8.144(b)(2)(D), which generally requires that the pages of clerk's and reporter's transcripts be consecutively numbered, includes an exception for the multiple reporter situations described above: "The pages must be consecutively numbered, except as provided in (f)." This existing exception recognizes that, because of the possibility of segments being longer or shorter than the assigned number of pages in multiple-reporter cases, the pages of the reporter's transcripts in such cases may not be consecutively numbered. However, there are other rules that do not recognize this. Rules 8.452(e) and 8.456(e), relating to augmenting the record in certain writ proceedings juvenile dependency cases, both require that copies of items to be added to the record, including transcripts, be consecutively numbered. To make these provisions consistent with rule 8.144(f), the committee recommends amending rules 8.452(e)(3) and 8.456(e)(3) to provide an exception to the consecutive pagination requirement, modeled on the language of rule 8.144(b)(2)(D), for reporter's transcripts in multiple reporter situations.

The committee also recommends additional, clarifying amendments to rules 8.452 and 8.456. Rules 8.452(e)(4) and 8.456(e)(4) use cross-references to rule 8.122 (relating to clerk’s transcripts) and rule 8.130 (relating to reporter’s transcripts) to explain how parties must identify documents and transcripts that they are unable to attach to their augmentation motion. Rules 8.122 and 8.130 both contain many subdivisions, so readers of rules 8.452 and 8.456 may have difficulty identifying the provisions relevant to identifying items for an augmentation motion. The committee therefore recommends that rules 8.452 and 8.456 be amended to provide more specific citations to the particular subdivisions of rules 8.122 and 8.130 that explain how to identify documents to be included in a clerk’s transcript and proceedings to be included in a reporter’s transcript.

Recognizing that the page numbers on transcripts in electronic form in multiple-reporter cases may not match the page numbers in the PDF viewer

Rule 8.144(d)(1)(C) requires that transcripts in electronic form ensure that the electronic page counter in the PDF file viewer matches the transcript page numbering. Having the pagination match that in the PDF viewer generally makes it easier to navigate to or print particular pages. However, if, as recognized by rule 8.144(f), a segment of a reporter’s transcript in a multiple-reporter case is longer or shorter than the number of pages assigned, then the page numbers on the transcript will not match the electronic page counter in the PDF file viewer. In recognition of this existing discrepancy, the committee recommends amending rule 8.144(d)(1)(C) to add an exception to the requirement that the electronic page counter in the PDF file viewer match the transcript page numbering in the circumstance covered by rule 8.144(f)(2) or (3).

Requirement that certified transcripts comply with formatting requirements when submitted in lieu of making a deposit for a reporter’s transcript

Background

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

The last of these authorized substitutes is included in recognition of the fact that parties may already have purchased the transcripts that they need for an appeal. Sometimes a party in a trial court proceeding will purchase reporter’s transcripts of the proceedings before any appeal is filed, such as when a party needs a transcript as part of a writ petition during the trial court proceedings. Similar provisions allowing the filing a certified transcript of all the designated

proceedings in lieu of a deposit for a reporter’s transcript also appear in rules 8.834, 8.866, and 8.919 relating to reporter’s transcripts in appeals to the superior court appellate division in civil, misdemeanor, and infraction cases, respectively.

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

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

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

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

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

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

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

³ Judicial Council of Cal., Advisory Com. Rep., *Appellate Procedure: Reporter’s Transcripts in Civil Appeals* (Aug. 2, 2013), p. 7, www.courts.ca.gov/documents/jc-20131025-itemA7.pdf. See also discussion on page 14 of this report: “The committees note that . . . the proposed amendments would require that transcripts that a party deposits in lieu of depositing funds for a reporter’s transcript be in the format required by rule 8.144.”

Clarifying responsibility for compliance with formatting requirements

To further clarify and implement the policy reflected in the 2013 report to the Judicial Council, the committee recommends amending rules 8.130, 8.834, 8.866, and 8.919 to state that a certified transcript submitted by a party must not be accepted as a substitute for a deposit under these rules unless it complies with the applicable format requirements. The committee also recommends amending the advisory committee comments accompanying these rules to:

- Provide examples of the types of formatting changes that would need to be made to comply with the rules—consecutive pagination, required appellate cover information, and indexes;
- State that parties using this alternative to a deposit are responsible for ensuring that such transcripts are in the proper format; and
- Indicate that parties may arrange with a court reporter to do the necessary formatting of the transcript or may do the formatting themselves.

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

Other clarifications to transcript format requirements in appellate division proceedings

The committee is also recommending several additional clarifying amendments to rules 8.834, 8.838, 8.866, and 8.919 relating to the format of transcripts in appellate division proceedings:

- Amending rule 8.838 to add a cross-reference to rule 8.144(a) to specify section 271's application in limited civil appeals and to replace a provision relating to the 300-page volume limit with a cross-reference to the relevant subdivision of rule 8.144.
- Amending rules 8.834, 8.866 and 8.919 to replace cross-references to rule 8.144 with references to rule 8.834 to ensure consistency of transcript format in appellate division proceedings.

Lending the record on appeal

Rule 8.153 permits a party that has not purchased its own copy of the record on appeal to request another party, in writing, to lend it that party's copy of the record. Under this existing rule, after it has prepared its brief, the lending party must send its copy of the record, including any electronic or paper reporter's transcript, to the borrowing party. Based on a suggestion from the California Court Reporters Association, the committee recommends amending rule 8.153(a) to provide lending parties with the additional option of asking the court reporter to provide a read-only electronic copy of the reporter's transcript to the borrowing party. The committee's view is that procedure will reduce the time and costs for parties associated with lending reporter's transcripts, particularly if those transcripts are in paper form. To ensure that the borrowing party receives the reporter's transcript in time to prepare its brief, the recommended amendment would

also set a time frame for the lending party to make this request of the court reporter and would require the court reporter to promptly send the copy to the borrowing party.

Comments

This proposal was circulated for public comment from December 9, 2022 to January 20, 2023, as part of the regular winter comment cycle. Six comments related to this proposal were received: three from superior courts, one from the Appellate Court Clerk Executive Officers, one from the California Court Reporters Association, and one from the Orange County Bar Association. Two commentors indicated that they agreed with the proposal, two indicated that they did not agree with the proposal, one indicated that they agreed with the proposal if amended, and one did not indicate an overall position on the proposal. The invitation to comment asked for specific input on several questions. Most of the comments received were in response to these questions. A chart with the full text of the comments received and the committee's responses is attached at page 28.

Rules 8.130(b)(3)(C), 8.834(b)(2)(D), 8.866(a)(2)(C) and (D), and 8.919(a)(2)(C) and (D) – Use of certified transcripts as substitute for deposit for reporter's transcript

One commentor, the California Court Reporters Association, expressed support for these proposed amendments. Another, the Appellate Court Clerk Executive Officers, expressed concern about amending these rules to clarify that certified transcripts submitted by a party may not be accepted as a substitute for a deposit for the cost of preparing a reporter's transcript unless they are in the required appellate format for transcripts on appeal. This second commentor's main concern appears to be that pro per appellants and smaller firms may not be able to make the necessary format changes themselves and therefore might end up not being able to use a reporter's transcript in the appeal.

The committee's view is that it is appropriate to amend this rule to clarify and further implement the policy, reflected in the 2014 amendments adopted by the Judicial Council, that a party wishing to use this substitute is responsible for putting the certified transcripts it submits in the appropriate format. However, the committee notes, as discussed above, that this does not mean that such parties must make the necessary format changes themselves. They can engage a court reporter to make these format changes. **To clarify this, the committee has revised its proposed amendments to the advisory committee comments to state that such parties can engage a court reporter to make the changes or make the changes themselves. The committee also recommends that a similar advisory committee comment addressing the filing of certified transcripts in lieu of a deposit be added for rule 8.834, which did not previously have any advisory committee comment.**

Thus, appellants who have previously purchased all the necessary transcripts for an appeal (note that this is likely to be a very small proportion of appellants) have options – they can attempt to put these transcripts in the necessary format themselves, they can engage a court reporter to put the transcripts in the necessary format, or they can deposit funds with the court to cover the costs of a court reporter preparing a new transcript containing all of the required proceedings (at a reduced per page rate that recognizes that the proceedings were previously transcribed by the

court reporter). In addition, as noted in the invitation to comment, if an appellant attempts to use the first option and fails to put the transcript in the required format, this does not mean that the litigant will be forced to go forward with an appeal without a reporter's transcript. The appellant will receive a default notice from the court and be given an opportunity to correct the problem.

Rule 8.144(b)(6) – Allowing a Reporter's Transcripts in Electronic Form to Be in a Single Volume

One commentor, the California Court Reporters Association, expressed support for these proposed amendments. Another commentor, the Superior Court of San Diego County, raised concerns about allowing transcripts in multiple reporter cases to be produced in a single volume. To the extent that this latter comment addressed the proposed amendments to rule 8.144(b)(6), rather than the existing procedures relating specifically to multiple reporter cases, the committee notes that amendments to rule 8.144(b)(6) would permit, not require, that transcripts in electronic form be in a single volume. Thus, if producing a transcript in a single volume would be problematic for a court reporter, the reporter could choose to produce the transcript in the historic 300-page volume format.

The invitation to comment asked for comments about whether the 300-page volume limit should also be changed for clerk's transcripts that are in electronic form. Four commentors responded to this question. All four supported changing this limit for clerk's transcripts as well as reporter's transcripts. **In response to these comments, the committee is recommending that the changes to rule 8.144(b)(6) allowing single-volume transcripts be applied to both clerk's and reporter's transcripts.**

Rule 8.144(f) - Pagination of reporter's transcripts in multiple reporter cases

Overall summary of comments - The invitation to comment included several questions regarding pagination of reporter's transcripts in multiple reporter cases, the specific responses to which are summarized below. Taken as a whole, however, the comments received, as well as the reasons given for the original suggestion that the rule be amended to allow the primary reporter to assign beginning and ending page numbers to each segment of a transcript without getting estimates from the court reporters (block numbering) all point to ongoing difficulties with pagination in multiple reporter cases. This input indicates that:

- Waiting to assign page numbers until estimates for the pages in individual segments have been received from all court reporters in a case, as required by the current rule, can cause delay in the preparation of transcripts because reporters may not be readily accessible due to illness, vacation, or other reasons.
- The current pagination format required by the rules when a segment has either more or fewer pages than assigned by the primary reporter is problematic for several reasons. However, commentors had mixed views about whether the alternative proposed in the invitation to comment would be preferable.

- Allowing any non-consecutive pagination, regardless of the format used for the non-consecutive page numbers, creates problems in navigating within transcripts and thus finding and printing specific pages in transcripts. When pages are not consecutively numbered, the page numbers used in the transcript will not match the page number shown in the PDF viewer and thus a user cannot easily use the Adobe reader to navigate to a specific page number.
- Allowing block numbering might address some of the potential delay in the preparation of reporter's transcripts in multiple reporter cases, although it seems likely that there would still be some delay if individual court reporters were late in submitting their segments of a transcript. However, authorizing block numbering without establishing some method of ensuring consecutive pagination would likely increase the number of cases in which courts and litigants would experience the above-described difficulties in navigating within transcripts.
- Block-numbering might also create problems in accurately identifying the size of the record on appeal because it may inflate the apparent number of pages in the reporter's transcript. This, in turn, may impact the appellate projects' ability to identify appointed counsel for such cases.
- There is not consensus among the commentators about whether, given existing software, transcript segments can easily be re-paginated or a single, consecutive pagination applied over the top of existing pagination.

Based on this input, the committee believes that this issue would benefit from further study and is therefore not recommending that the rules be amended either to authorize block numbering or to alter the current numbering format when a segment has either more or fewer pages than assigned by the primary reporter at this time.

In the meantime, the committee concluded that it would be appropriate to recommend the amendments to rules 8.144(d)(1)(C), 8.452(e), and 8.456(e) that were circulated for public comment. These amendments do not authorize any expansion in the situations, identified as problematic by several commentators, in which the page numbers on the transcript will not match the page numbers shown in the PDF viewer. Instead, these recommended amendments are intended to provide internal consistency within the existing rules by acknowledging that, under these existing rules, the page numbers on a transcript may not match the page numbers shown in the PDF viewer.

Summary of responses to the specific questions in the invitation to comment - The invitation to comment asked three specific questions about the pagination of reporter's transcripts in multiple reporter cases:

- *Whether transcript users anticipated any difficulties printing, or navigating to, pages numbered using the plus-sign format* - Five commentators responded to this question: two

commentors indicated they did not anticipate any problems, one responded that it was unknown whether there would be problems, and two said that they anticipated problems in navigating to pages with this format. The latter two commentors, the Appellate Court Clerk Executive Officers and the Orange County Bar Association, both expressed concern about any non-consecutive pagination that would result in the page numbers not matching the page counter in the PDF file viewer. Both of these commentors recommended that there be a requirement for repaginating transcripts consecutively, perhaps using the pagination function in Adobe Acrobat.

- *Whether the rules should permit block numbering* - Five commentors responded to this question: two commentators supported allowing block numbering⁴ and three opposed allowing block numbering. One of the commentors who opposed allowing block numbering, the Appellate Court Clerk Executive Officers, related how this method, whether used for transcripts in paper or electronic form, can inflate the apparent number of pages in the record and cause difficulties in finding appointed counsel. This commentor suggested that block numbering not be permitted unless the lead reporter is required to repaginate the transcript consecutively.
- *Whether transcripts in multiple reporter cases can easily include the equivalent of Bates-stamped page numbers or easily be repaginated to avoid the navigational problems that occur when the pagination of such transcripts is not consecutive and does not match the page number shown in the PDF viewer* – Six commentors responded to this question:
 - Two commentors, the Appellate Court Clerk Executive Officers and the Superior Court of Orange County, responded that, yes, this repagination could easily be done;
 - The Orange County Bar Association also expressed support for repagination;
 - The California Court Reporter’s Association indicated that can an electronic Bates-stamp cannot be placed in the transcript by the primary reporter in addition to the page numbering system.
 - The Superior Court of Los Angeles County indicated that it did not believe the navigational issues can be resolved via repagination or by including a Bates stamped page equivalent; and
 - The Superior Court of San Diego County indicated that repagination would not be easy.

⁴ Note that other input from one of these commentors, the Superior Court of San Diego County, indicates that block numbering is already being used by court reporters in that court.

Rule 8.153. Lending the record

Overall summary of comments - The invitation to comment included several questions regarding lending the record, the specific responses to which are summarized below. In addition to these responses, the California Court Reporters Association submitted a suggestion for different language for rule 8.153. This suggested language included three main substantive changes from the language circulated for public comment:

- It would establish separate procedures for lending parties who received their reporter's transcripts in electronic form and paper form:
 - Those with reporter's transcripts in electronic form would be required to ask the court reporter to send the borrowing party a read-only electronic transcript. In contrast, the rule proposed in the invitation to comment would have allowed, but not required, lending parties to do this.
 - Those with reporter's transcripts in paper form would be required to send their copy of the transcript to the borrowing party. In contrast, the rule proposed in the invitation to comment would have also allowed lending parties with transcripts in paper format to ask the court reporter to send the borrowing party a read-only electronic transcript.
- It would authorize a court reporter sending a transcript to a borrowing party to put an expiration date on the transcript.

These would be important substantive changes to the proposal that was circulated for public comment that must first be circulated for public comment before being recommend for adoption. **The committee will therefore consider this suggestion for potential development in a later rules cycle.**

Summary of responses to the specific questions in the invitation to comment - The invitation to comment asked three specific questions about the lending the record:

- *Whether the option of asking a court reporter to send the borrowing party a copy of the reporter's transcript in read-only electronic form should be available in all cases or only when the lending party's copy of the reporter's transcript is in paper form* – Four commentors responded to this question. Two, the Appellate Court Clerk Executive Officers and the Orange County Bar Association, supported making this option available in all cases. As discussed above, one commentor, the California Court Reporters Association, suggested that this option be mandatory if the lending party received its transcript in electronic form and unavailable if the lending party received its transcript in paper form. One commentor objected to the having this option in any cases, as well as to the concept of lending reporter's transcripts that are in electronic format. **The committee's view is that this option may help reduce the time and cost of lending**

reporter's transcripts and, given the two supportive comments, recommends making this option available in all cases, as was proposed in the invitation to comment.

- *What format requirements should be applied to a transcript sent by a court reporter to a borrowing party* – Three commentors responded to this question. One commentor, the Orange County Bar Association, recommended that the borrowing party should receive the same format as the appellant, not just a read-only copy. As discussed above, one commentor, the California Court Reporters Association, suggested that the borrowing party should receive a transcript in read-only format and that the court reporter should have the option of setting an expiration date for the transcript. One commentor, the Superior Court of San Diego County, suggested that the transcript should be read-only; no ability to print, comment, or Draft. Based on these comments, the committee recommends that a transcript sent to a borrowing party by a court reporter be in read-only format, as was proposed in the invitation to comment.
- *Whether it is necessary for a party borrowing the record from another party to return an electronic copy of either the clerk's transcript or an administrative record provided by the lending party or a read-only electronic copy of the reporter's transcript provided by the court reporter.* Three commentors responded to this question. One commentor, the California Court Reporters Association, indicated that it would not be necessary to return a reporter's transcript provided to a borrowing party by a court reporter given its suggestion that the court reporter be permitted to give the transcript an expiration date. One commentor, the Orange County Bar Association, expressed the view that the borrowing party should not be required to return the items identified in this question. The final commentor, the Superior Court of San Diego County, did not comment on the items identified in the question, but expressed doubt about how/whether an electronic copy of a reporter's transcript would be returned. Because none of the commentors who responded to this question agreed on this issue, the committee is not recommending any changes to the rule regarding returning a borrowed record at this time.

Alternatives considered

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

The committee also considered suggestions to amend several rules that address sending the record to, or filing it with, the reviewing court, to provide that if the trial court lacks the technical ability to deliver the reporter's transcript in electronic form to the reviewing court and all the

parties, the court reporter may send the reporter's transcript. The stated purpose of these suggested amendments was to allow reviewing courts to receive electronic transcripts while trial courts were working on changes to their document management systems that would allow them to receive, use, store, and transmit a transcript in electronic form. It is the committee's understanding that trial courts now have tools available to them to handle reporter's transcripts delivered to them in electronic form. Given this, the committee determined that these suggested rule amendments were not necessary at this time.

The committee considered the alternative of not taking any action but concluded that the proposed amendments relating to the use of a single volume for reporter's transcripts in electronic form and format requirements for certified transcripts submitted in lieu of a deposit for a reporter's transcript would be helpful to courts, litigants, and court reporters.

Fiscal and Operational Impacts

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

Two commentors suggested that four months would not be sufficient time to implement these rule amendments. One of these commentors, the Superior Court of Los Angeles County, suggested that the rule amendments not take effect until January 1, 2024.

Attachments and Links

1. Cal. Rules of Court, rules 8.130, 8.144, 8.153, 8.204, 8.452, 8.456, 8.622, 8.834, 8.838, 8.866, and 8.919, at pages 17–27
2. Comment Chart, at pages 28 - 50

Rules 8.130, 8.144, 8.153, 8.204, 8.452, 8.456, 8.622, 8.834, 8.838, 8.866, and 8.919 of the California Rules of Court are amended, effective September 1, 2023, to read:

1 **Rule 8.130. Reporter’s transcript**

2
3 (a) * * *

4
5 (b) **Deposit or substitute for cost of transcript**

6
7 (1)–(2) * * *

8
9 (3) Instead of a deposit under (1), the party may substitute:

10
11 (A) The reporter’s written waiver of a deposit. A reporter may waive the
12 deposit for a part of the designated proceedings, but such a waiver
13 replaces the deposit for only that part.

14
15 (B) A copy of a Transcript Reimbursement Fund application filed under
16 (c)(1).

17
18 (C) A certified transcript of all of the proceedings designated by the party.
19 The transcript submitted by the party must not be accepted as a
20 substitute for a deposit under (1) unless it complies ~~must comply~~ with
21 the format requirements of rule 8.144.

22
23 (c)–(h) * * *

24
25 **Advisory Committee Comment**

26
27 **Subdivision (a).** * * *

28
29 **Subdivision (b).** Where a certified transcript has been previously prepared, subdivision (b) makes
30 clear that the certified transcript may be filed in lieu of a deposit for the transcript only where the
31 certified transcript contains all of the proceedings identified in the notice of designation and the
32 transcript complies with the format requirements of rule 8.144 (e.g., cover information,
33 renumbered pages, required indexes). Parties using this alternative to a deposit are responsible for
34 ensuring that such transcripts are in the proper format. Parties may arrange with a court reporter
35 to do the necessary formatting of the transcript or may do the formatting themselves. Otherwise,
36 where a certified transcript has been previously prepared for only some of the designated
37 proceedings, subdivision (b)(1) authorizes a reduced fee to be deposited for those proceedings.
38 This reduced deposit amount was established in recognition of the holding in *Hendrix v. Superior*
39 *Court of San Bernardino County* (2011) 191 Cal.App.4th 889 that the statutory rate for an
40 original transcript only applies to the first transcription of the reporter’s notes. The amount of the
41 deposit is based on the rate established by Government Code section 69950(b) for a first copy of

1 a reporter's transcript purchased by any court, party, or other person who does not simultaneously
2 purchase the original.

3
4 * * *

5
6
7 **Rule 8.144. Form of the record**

8
9 (a) * * *

10
11 (b) **Format**

12
13 (1)–(5) * * *

14
15 (6) *Volumes*

16
17 (A) **Except as provided in (B), clerks' and reporters' transcripts must be**
18 **produced in volumes of no more than 300 pages.**

19
20 (B) **If a clerk's or reporter's transcript is being delivered in electronic form**
21 **to all courts, parties, and persons entitled to the transcript, it may be**
22 **produced in a single volume but must comply with the requirements of**
23 **rule 8.74(a)(5).**

24
25 (7) * * *

26
27 (c) * * *

28
29 (d) **Additional requirements for reporter's transcript delivered in electronic form**

30
31 (1) *General*

32
33 In addition to complying with (b), a reporter's transcript delivered in
34 electronic ~~format~~ form must:

35
36 (A)–(B) * * *

37
38 (C) Ensure that the electronic page counter in the PDF file viewer matches
39 the transcript page numbering except as provided in (f)(2) or (3).

40
41 (D)–(H) * * *

42

1 (2) *Multivolume or multireporter transcripts*

2
3 In addition to the requirements in (1), for multivolume or multireporter
4 transcripts delivered in electronic ~~format~~ form, each individual reporter must
5 provide a digitally and electronically signed certificate with his or her
6 respective portion of the transcript. If the court reporter lacks the technical
7 ability to provide a digital signature, then only an electronic signature is
8 required.

9
10 (3) * * *

11
12 (e) * * *

13
14 (f) **Pagination in multiple reporter cases**

15
16 (1) In a multiple reporter case, each reporter must promptly estimate the number
17 of pages in each segment reported and inform the designated primary reporter
18 of the estimate. The primary reporter must then assign beginning and ending
19 page numbers for each segment.

20
21 (2) If a segment exceeds the assigned number of pages, the reporter must number
22 the additional pages with the ending page number, a hyphen, and a new
23 number, starting with 1 and continuing consecutively.

24
25 (3) If a segment has fewer than the assigned number of pages, on the last page of
26 the segment, before the certificate page, the reporter must state in parentheses
27 “(next volume and page number is ____),” and on the certificate page, the
28 reporter must add a hyphen to the last page number used, followed by the
29 segment’s assigned ending page number.

30
31 (g) * * *

32
33
34 **Rule 8.153. Lending the record**

35
36 (a) **Request**

37
38 Within 20 days after the record is filed in the reviewing court, a party that has not
39 purchased its own copy of the record may request another party, in writing, to lend
40 it that party’s copy of the record. The other party must then lend its copy of the
41 record when it serves its brief. In lieu of lending its copy of the reporter’s transcript
42 to the requesting party, within 5 days of receiving a request to borrow the record,
43 the lending party may ask the court reporter, in writing, to send an electronic read-

1 only copy of the reporter's transcript to the requesting party. The court reporter
2 must promptly send the copy to the requesting party.

3
4 (b) * * *

5
6
7 **Rule 8.204. Contents and format of briefs**

8
9 (a) **Contents**

10
11 (1) Each brief must:

12
13 (A)–(B) * * *

14
15 (C) Support any reference to a matter in the record by a citation to the
16 volume and page number of the record where the matter appears. If any
17 part of the record is submitted in an electronic ~~format~~ form, citations to
18 that part must identify, with the same specificity required for the
19 printed record, the place in the record where the matter appears.

20
21 (2) * * *

22
23 (b)–(e) * * *

24
25
26 **Rule 8.452. Writ petition to review order setting hearing under Welfare and**
27 **Institutions Code section 366.26**

28
29 (a)–(d) * * *

30
31 (e) **Augmenting or correcting the record in the reviewing court**

32
33 (1)–(2) * * *

34
35 (3) A party must attach to its motion a copy, if available, of any document or
36 transcript that it wants added to the record. Except as provided in rule
37 8.144(f) for reporter's transcripts in multiple reporter cases, the pages of the
38 attachment must be consecutively numbered, beginning with the number one.
39 If the reviewing court grants the motion, it may augment the record with the
40 copy.

41
42 (4) If the party cannot attach a copy of the matter to be added, the party must
43 identify it as required under rules 8.122(a)(1) and 8.130(a)(1).

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(5)–(6) * * *

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

(a)–(d) * * *

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

(1)–(2) * * *

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

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

(5)–(6) * * *

Rule 8.622. Certifying the trial record for accuracy

(a) **Request for corrections or additions**

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

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

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(B) * * *

(2)–(4) * * *

(b)–(e) * * *

Rule 8.834. Reporter’s transcript

(a) * * *

(b) Deposit or substitute for cost of transcript

(1) * * *

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

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

(B)–(C) * * *

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

(E) * * *

(3) * * *

(c)–(f) * * *

Advisory Committee Comment

Subdivision (b). Sometimes a party in a trial court proceeding will purchase reporter’s transcripts of all or part of the proceedings before any appeal is filed. In recognition of the fact that such transcripts may already have been purchased, this rule allows an appellant, in lieu of depositing funds for a reporter’s transcript, to deposit with the trial court a certified transcript of the proceedings necessary for the appeal. Subdivision (b)(2)(D) makes clear that the certified

1 transcript may be filed in lieu of a deposit for a reporter's transcript only where the certified
2 transcript contains all of the proceedings designated and the transcript complies with the format
3 requirements of rule 8.838 (e.g., cover information, renumbered pages, required indexes). Parties
4 using this alternative to a deposit are responsible for ensuring that such transcripts are in the
5 proper format. Parties may arrange with a court reporter to do the necessary formatting of the
6 transcript or may do the formatting themselves.

7
8
9 **Rule 8.838. Form of the record**

10
11 **(a) Paper and format**

12
13 Except as otherwise provided in this rule, clerk's and reporter's transcripts must
14 comply with the requirements of rule 8.144(a), (b)(1)–(4) and (6), (c), and (d).

15
16 **(b) * * ***

17
18 **(c) Binding and cover**

19
20 (1) If filed in paper form, clerk's and reporter's transcripts must be bound on the
21 left margin ~~in volumes of no more than 300 sheets~~, except that transcripts
22 may be bound at the top if required by a local rule of the appellate division.

23
24 (2)–(3) * * *

25
26
27 **Rule 8.866. Preparation of reporter's transcript**

28
29 **(a) When preparation begins**

30
31 (1) * * *

32
33 (2) If the notice sent to the reporter by the clerk under rule 8.864(a)(1) indicates
34 that the appellant is the defendant and that the defendant was not represented
35 by appointed counsel at trial:

36
37 (A) * * *

38
39 (B) The clerk must promptly notify the appellant and his or her counsel of
40 the estimated cost of preparing the reporter's transcript. The
41 notification must show the date it was sent.

- 1 (C) Within 10 days after the date the clerk sent the notice under (B), the
2 appellant must do one of the following:
3
4 (i) Deposit with the clerk an amount equal to the estimated cost of
5 preparing the transcript;
6
7 (ii)–(iii) * * *
8
9 (iv) File a certified transcript of all of the proceedings required to be
10 included in the reporter’s transcript under rule 8.865. The
11 transcript submitted by the appellant must not be accepted as a
12 substitute for a deposit under (i) unless it complies ~~must comply~~
13 with the format requirements of rule ~~8.144~~ 8.838;
14
15 (v)–(vii) * * *
16
17 (D) If the trial court determines that the appellant is not indigent, within 10
18 days after the date the clerk sends notice of this determination to the
19 appellant, the appellant must do one of the following:
20
21 (i) Deposit with the clerk an amount equal to the estimated cost of
22 preparing the transcript;
23
24 (ii) * * *
25
26 (iii) File a certified transcript of all of the proceedings required to be
27 included in the reporter’s transcript under rule 8.865. The
28 transcript submitted by the appellant must not be accepted as a
29 substitute for a deposit under (i) unless it complies ~~must comply~~
30 with the format requirements of rule ~~8.144~~ 8.838;
31
32 (iv)–(vi) * * *
33
34 (E) * * *

35
36 **(b) Format of transcript**

37
38 The reporter’s transcript must comply with rule ~~8.144~~ 8.838.

39
40 **(c)–(f) * * ***
41

1 **Advisory Committee Comment**

2
3 **Subdivision (a).** If the appellant was not represented by the public defender or other appointed
4 counsel in the trial court, the appellant must use *Defendant's Financial Statement on Eligibility*
5 *for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form
6 CR-105) to show indigency. This form is available at any courthouse or county law library or
7 online at www.courts.ca.gov/forms.

8
9 **Subdivisions (a)(2)(C)(iv) and (a)(2)(D)(iii).** Sometimes a party in a trial court proceeding will
10 purchase reporter's transcripts of all or part of the proceedings before any appeal is filed. In
11 recognition of the fact that such transcripts may already have been purchased, this rule allows an
12 appellant, in lieu of depositing funds for a reporter's transcript, to deposit with the trial court a
13 certified transcript of the proceedings necessary for the appeal. Subdivisions (a)(2)(C)(iv) and
14 (a)(2)(D)(iii) make clear that the certified transcript may be filed in lieu of a deposit for a
15 reporter's transcript only where the certified transcript contains all of the proceedings required
16 under rule 8.865 and the transcript complies with the format requirements of rule ~~8.144~~ 8.838
17 (e.g., cover information, renumbered pages, required indexes). **Parties using this alternative to a**
18 **deposit are responsible for ensuring that such transcripts are in the proper format. Parties may**
19 **arrange with a court reporter to do the necessary formatting of the transcript or may do the**
20 **formatting themselves.**

21
22
23 **Rule 8.919. Preparation of reporter's transcript**

24
25 **(a) When preparation begins**

26
27 (1) * * *

28
29 (2) If the notice sent to the reporter by the clerk under rule 8.915(a)(3) indicates
30 that the appellant is the defendant:

31
32 (A) * * *

33
34 (B) The clerk must promptly notify the appellant and his or her counsel of
35 the estimated cost of preparing the reporter's transcript. The
36 notification must show the date it was sent.

37
38 (C) Within 10 days after the date the clerk sent the notice under (B), the
39 appellant must do one of the following:

40
41 (i) Deposit with the clerk an amount equal to the estimated cost of
42 preparing the transcript;

43

1 (ii)–(iii) * * *

2
3 (iv) File a certified transcript of all of the proceedings required to be
4 included in the reporter’s transcript under rule 8.918. The
5 transcript submitted by the appellant must not be accepted as a
6 substitute for a deposit under (i) unless it complies ~~must comply~~
7 with the format requirements of rule ~~8.144~~ 8.838;

8
9 (v)–(vii) * * *

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

14
15 (i) Deposit with the clerk an amount equal to the estimated cost of
16 preparing the transcript;

17
18 (ii) * * *

19
20 (iii) File a certified transcript of all of the proceedings required to be
21 included in the reporter’s transcript under rule 8.918. The
22 transcript submitted by the appellant must not be accepted as a
23 substitute for a deposit under (i) unless it complies ~~must comply~~
24 with the format requirements of rule ~~8.144~~ 8.838;

25
26 (iv)–(vi) * * *

27
28 (E) * * *

29
30 **(b) Format of transcript**

31
32 The reporter’s transcript must comply with rule ~~8.144~~ 8.838.

33
34 **(c)–(f)** * * *

35
36 **Advisory Committee Comment**

37
38 **Subdivision (a).** The appellant must use *Defendant’s Financial Statement on Eligibility for*
39 *Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form CR-
40 105) to show indigency. This form is available at any courthouse or county law library or online
41 at www.courts.ca.gov/forms.
42

1 **Subdivisions (a)(2)(C)(iv) and (a)(2)(D)(iii).** Sometimes a party in a trial court proceeding will
2 purchase a reporter's transcripts of all or part of the proceedings before any appeal is filed. In
3 recognition of the fact that such transcripts may already have been purchased, this rule allows an
4 appellant, in lieu of depositing funds for a reporter's transcript, to deposit with the trial court a
5 certified transcript of the proceedings necessary for the appeal. Subdivisions (a)(2)(C)(iv) and
6 (a)(2)(D)(iii) make clear that the certified transcript may be filed in lieu of a deposit for a
7 reporter's transcript only where the certified transcript contains all of the proceedings required
8 under rule 8.865 and the transcript complies with the format requirements of rule ~~8.144~~ 8.838
9 (e.g. cover information, renumbered pages, required indexes). Parties using this alternative to a
10 deposit are responsible for ensuring that such transcripts are in the proper format. Parties may
11 arrange with a court reporter to do the necessary formatting of the transcript or may do the
12 formatting themselves.

W23-02

Appellate Procedure: Reporter’s transcripts (amend Cal. Rules of Court, rules 8.130, 8.144, 8.153, 8.204, 8.452, 8.456, 8.622, 8.834, 8.838, 8.866, and 8.919)

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

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	Position	Comment	Committee Response
1.	Appellate Court Clerk Executive Officers By Colette M. Bruggman Sacramento	N	Does the proposal appropriately address the stated purpose? It shifts much of the burden relating to the format of electronic transcripts from Court Reporters to courts or filers. See comments on specific issues below	
2.	California Court Reporters Association	NI	Does the proposal appropriately address the stated purpose? Yes. See comments on specific issues below	
3.	Orange County Bar Association By Michael A. Gregg, President Newport Beach	A	Does the proposal appropriately address the stated purpose? Yes. See comments on specific issues below	
4.	Susan L. Rocha		Comments not related to proposal.	
5.	Superior Court of Los Angeles County By Bryan Borys, Director of Research and Data Management	A	See comments on specific issues below	
6.	Superior Court of Orange County By Elizabeth Flores, Operations Analyst	AM	Does the proposal appropriately address the stated purpose? Yes. See comments on specific issues below	
7.	Superior Court of San Diego County By Michael Roddy, Executive Officer	N	Does the proposal appropriately address the stated purpose? No See comments on specific issues below	

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

W23-02

Appellate Procedure: Reporter’s transcripts (amend Cal. Rules of Court, rules 8.130, 8.144, 8.153, 8.204, 8.452, 8.456, 8.622, 8.834, 8.838, 8.866, and 8.919)

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

Rules 8.130(b)(3)(C), 8.834(b)(2)(D), 8.866(a)(2)(C) and (D), and 8.919(a)(2)(C) and (D) – Use of Transcripts as Substitute for Deposit for Reporter’s Transcript		
Commenter	Comment	Committee Response
<p>Appellate Court Clerk Executive Officers By Colette M. Bruggman Sacramento</p>	<p>The other area of concern is with the change to the requirement that certified transcripts submitted in lieu of making a deposit for the reporter’s transcript must not be filed by the trial court unless they are in the proper format. Currently, rule 8.144(e) allows daily or other certified transcripts to be used for all or part of the reporter’s transcript, but the pages must be renumbered consecutively, and the required indexes and covers must be added. The amendment makes it clear that the trial court is not to accept these transcripts unless they comply with rule 8.144. These are civil transcripts, and besides the training the trial court appeals clerks would be required to have to assess whether a transcript complies with the rules, there is potentially an access to justice component that needs to be considered. Up to 25% of civil filers are in pro. per., and their ability to comply with this rule is limited. A large law firm with a well-trained staff may be able to reformat a daily transcript so it contains a proper cover sheet, indexes that comply with the formatting rules, and consecutive pagination beginning with page one and ending with the page certifying the daily transcript. However, a pro. per. litigant or even a solo practitioner with limited legal staff will have difficulty complying. An appeal may proceed without the reporter’s transcript, but at the appellant’s risk of failure to provide an adequate record. A professional court reporter is in the best position to provide a properly formatted transcript to the appellate courts.</p> <p>In addition, determining whether to accept a reporter’s transcript not in compliance with the appellate rules is best</p>	<p>The committee appreciates this comment. The committee’s view is that the recommended amendments to rule 8.130(b)(3)(C) (and similar rules) are clarifying and implementing the intent of amendments to this rule that were adopted by the Judicial Council effective January 1, 2014. In response to this comment, the committee has revised its recommended amendment to the advisory committee comments to these rules to make this existing intent clearer and to further clarify that parties who wish to use this substitute for a deposit may either arrange with a court reporter to put the previously purchased transcripts in the required format or may reformat the transcripts themselves. The committee also recommends that a similar advisory committee comment addressing the filing of certified transcripts in lieu of a deposit be added for rule 8.834, which did not previously have any advisory committee comment.</p> <p>As recognized by both the commentator and the organization that suggested amending this rule, the California Court Reporters Association, there are challenges associated with using previously purchased certified transcripts as a substitute for depositing funds to purchase a new transcript. This provision is designed to benefit litigants by giving them a way to use already purchased transcripts and thus lowering their litigation costs. But the appellate courts and litigants need transcripts to be formatted so that they are navigable and contain necessary information and court reporters (who</p>

W23-02

Appellate Procedure: Reporter’s transcripts (amend Cal. Rules of Court, rules 8.130, 8.144, 8.153, 8.204, 8.452, 8.456, 8.622, 8.834, 8.838, 8.866, and 8.919)

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

Rules 8.130(b)(3)(C), 8.834(b)(2)(D), 8.866(a)(2)(C) and (D), and 8.919(a)(2)(C) and (D) – Use of Transcripts as Substitute for Deposit for Reporter’s Transcript		
Commenter	Comment	Committee Response
	<p>left to the discretion of the appellate court. The reporter’s transcript is an appellate court filing, but if the trial court is not to accept a noncompliant transcript, then the appellate court is deprived of its discretion to determine whether it will accept a noncompliant daily reporter’s transcript in the interests of justice.</p>	<p>are acting as independent contractors when preparing transcripts) should not be asked to work on transcripts without appropriate compensation. When the committee recommended adoption of the existing rule language in 2013, it tried to find the appropriate balance for all of these interests. As noted in this invitation to comment, the 2013 report to the Judicial Council that recommended the current rule language specifically stated that this rule language is intended to “clearly place responsibility on the designating party for ensuring that such transcripts are in the proper format.” The amendments to rule 8.130 and related rules and advisory committee comments now being recommended by the committee are meant to further implement this existing policy in light of continuing challenges with this procedure. As noted above, the committee has revised its recommended amendment to the advisory committee comments accompanying these rules to more clearly state the original intent with respect to the parties’ responsibility for the format of a transcript used in lieu of a deposit.</p> <p>The committee agrees with the commentator that some parties who have previously purchased all of the necessary transcripts for an appeal (note that this is likely to be a very small proportion of litigants) will have difficulty putting these transcripts in the appropriate format themselves. But these parties have options beyond reformatting the transcripts themselves. In addressing public comments suggesting, as does this</p>

W23-02

Appellate Procedure: Reporter’s transcripts (amend Cal. Rules of Court, rules 8.130, 8.144, 8.153, 8.204, 8.452, 8.456, 8.622, 8.834, 8.838, 8.866, and 8.919)

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

Rules 8.130(b)(3)(C), 8.834(b)(2)(D), 8.866(a)(2)(C) and (D), and 8.919(a)(2)(C) and (D) – Use of Transcripts as Substitute for Deposit for Reporter’s Transcript		
Commenter	Comment	Committee Response
		<p>commentator, that court reporters are in the best position to ensure that such transcripts are in the proper format, the 2013 report to the Judicial Council notes that depositing parties who wish to use this procedure can either engage court reporters to do the necessary reformatting or reformat the transcripts themselves: “the proposed amendments do not specify how a depositing party ensures that the transcripts are in this required format. Parties may work with court reporters to accomplish this. However, it is the committees’ understanding that under the current rules some parties have successfully repaginated and prepared indices for previously purchased transcripts and submitted these in lieu of a deposit for a reporter’s transcript. The committees’ view is that the amendments to these rules should not take this option away from parties, particularly since this is the lowest-cost option available to parties who have the necessary transcripts for the appeal.” As noted above, the committee has revised its recommended amendment to the advisory committee comments accompanying these rules to state that parties have the option of engaging a court reporter to make necessary format changes.</p> <p>Thus, litigants who have previously purchased all the necessary transcripts for an appeal have options – they can attempt to put these transcripts in the necessary format themselves, they can engage a court reporter to put the transcripts in the necessary format, or they can deposit funds with the court to cover the costs of a court</p>

W23-02

Appellate Procedure: Reporter’s transcripts (amend Cal. Rules of Court, rules 8.130, 8.144, 8.153, 8.204, 8.452, 8.456, 8.622, 8.834, 8.838, 8.866, and 8.919)

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

Rules 8.130(b)(3)(C), 8.834(b)(2)(D), 8.866(a)(2)(C) and (D), and 8.919(a)(2)(C) and (D) – Use of Transcripts as Substitute for Deposit for Reporter’s Transcript		
Commenter	Comment	Committee Response
		reporter preparing a new transcript containing all of the required proceedings (at a reduced per page rate that recognizes that the proceedings were previously transcribed by the court reporter). As noted in this invitation to comment, if a litigant attempts to use the first option and fails to put the transcript in the required format, this does not mean that the litigant will be forced to go forward with an appeal without a reporter’s transcript. The litigant will receive a default notice from the trial court (as they do with other errors relating to deposits for reporter’s transcripts) and will have an opportunity to correct the formatting issues using any of the three options identified above.
California Court Reporters Association	<p>Rule 8.130 - CCRA concurs with the changes proposed by the committee.</p> <p>Rule 8.834 - CCRA concurs with the changes proposed by the committee.</p> <p>Rule 8.866 - CCRA concurs with the changes proposed by the committee.</p> <p>Rule 8.919 - CCRA concurs with the changes proposed by the committee.</p>	The committee appreciates these comments.

W23-02

Appellate Procedure: Reporter’s transcripts (amend Cal. Rules of Court, rules 8.130, 8.144, 8.153, 8.204, 8.452, 8.456, 8.622, 8.834, 8.838, 8.866, and 8.919)

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

Rule 8.144(b)(6) – Allowing a Reporter’s Transcripts in Electronic Form to Be in a Single Volume		
Commenter	Comment	Committee Response
California Court Reporters Association	CCRA concurs with the changes proposed by the committee.	The committee appreciates this comment.
Superior Court of San Diego County By Michael Roddy, Executive Officer	<p>Other Comments: Having multiple reporters merge their transcripts into one single electronic volume is concerning because, in this court, a primary reporter is able to “block number,” meaning the primary reporter can assign each reporter a certain number of pages and a volume number. All of the reporters are then able to work on their transcripts immediately. In the proposal, if block numbering is not allowed, the primary reporter needs to contact every reporter on the case to find out how many pages each reporter has. Some reporters are quick to respond; for a variety of reasons, some aren’t. This will delay reporters in being able to get their transcripts out timely.</p> <p>In addition, under a one-volume rule, if one reporter requested and received an extension of time from the Court of Appeal, every reporter involved would then be delayed. Extensions are requested for a variety of reasons, such as workload, illness, or computer issues.</p> <p>Extensions of time would also then raise questions as to who is responsible for the master index and merging of all transcripts. Similarly, some reporters start working on appeal transcripts immediately after receiving a Notice to Prepare and turn them in well before the due date. Other reporters consistently turn their transcripts in on the due date. The primary reporter needs time to comply with the requirements, whatever they may be. Which reporter will be responsible in these situations for the merging?</p>	To the extent that this comment is addressing the proposal to amend rule 8.144(b)(6) allow reporter’s transcripts in electronic form to be in a single volume, rather than in volumes of 300 pages, the committee notes that amendment being recommended would make use of a single volume optional; a court reporter could choose to produce the transcript in separate volumes not exceeding 300 pages.

W23-02

Appellate Procedure: Reporter’s transcripts (amend Cal. Rules of Court, rules 8.130, 8.144, 8.153, 8.204, 8.452, 8.456, 8.622, 8.834, 8.838, 8.866, and 8.919)

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

Rule 8.144(b)(6) – Allowing a Reporter’s Transcripts in Electronic Form to Be in a Single Volume		
Commenter	Comment	Committee Response
	<p>Another issue is that reporters use many different software systems which will make it difficult, if not impossible, to run an index once all transcripts are merged.</p> <p>Finally (on having one volume), if a reporter makes a mistake in his/her portion, every reporter would possibly have to redo page numbering on their volume. If that were to happen, it may cause delay and it is unclear who is responsible for paying for all of the other reporters’ time.</p>	

Should the 300-page volume limit be changed for clerk’s transcripts that are in electronic form?		
Commenter	Comment	Committee Response
<p>Appellate Court Clerk Executive Officers By Colette M. Bruggman Sacramento</p>	<p>We currently get many transcripts containing multiple volumes combined in a single filing as long as it meets the requirement of less than 25 MB and 300 pages. Lifting the 300-page volume limit while keeping the 25 MB limit for a filing would not pose a problem. However, if the filing contains more than one volume, the separate volumes must be electronically bookmarked accordingly.</p>	<p>The committee appreciates this comment. The recommended amendment does not alter requirements regarding bookmarking.</p>
<p>California Court Reporters Association</p>	<p>Does not pertain to reporter’s transcripts; no comment.</p>	<p>No response required.</p>
<p>Orange County Bar Association By Michael A. Gregg, President</p>	<p>Yes</p>	<p>In response to this and other comments, the committee is recommending that the 300-page volume limit be changed for clerk’s, as well as reporter’s, transcripts that are in electronic form.</p>

W23-02

Appellate Procedure: Reporter’s transcripts (amend Cal. Rules of Court, rules 8.130, 8.144, 8.153, 8.204, 8.452, 8.456, 8.622, 8.834, 8.838, 8.866, and 8.919)

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

Should the 300-page volume limit be changed for clerk’s transcripts that are in electronic form?		
Commenter	Comment	Committee Response
Superior Court of Los Angeles County By Bryan Borys, Director of Research and Data Management	The Court agrees that the 300-page volume limit should also be eliminated for electronic clerk’s transcripts, to conform with the proposed rule change for electronic reporter’s transcripts.	Please see response to the comments of the Orange County Bar Association above.
Superior Court of Orange County By Elizabeth Flores, Operations Analyst	Yes, to comply with rule stating that electronic transcripts should be in a single electronic volume that may not be larger than 25 megabytes.	Please see response to the comments of the Orange County Bar Association above.
Superior Court of San Diego County By Michael Roddy, Executive Officer	No opinion	No response required.

Rule 8.144(d) and (f) – Pagination of transcripts in multiple reporter cases		
Commenter	Comment	Committee Response
California Court Reporters Association	<p>(d) - CCRA concurs with the changes proposed by the committee so long as CCRA’s proposed change to (f)(3) is accepted by the committee, as described below:</p> <p>(f)(1) - CCRA concurs with the changes proposed by the committee</p> <p>(f)(2) - CCRA concurs with the changes proposed by the committee</p> <p>(f)(3) CCRA concurs with the changes proposed by the committee except that in (f)(3), instead of again using the “plus” sign here, a “greater than sign” (>) should be used.</p>	Based on the totality of the comments received regarding pagination of transcripts in multiple reporter cases, the committee concluded that additional study of this topic is needed and is therefore not recommending changes to rule 8.144(f)(2) and (3).

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Appellate Procedure: Reporter’s transcripts (amend Cal. Rules of Court, rules 8.130, 8.144, 8.153, 8.204, 8.452, 8.456, 8.622, 8.834, 8.838, 8.866, and 8.919)

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

Rule 8.144(d) and (f) – Pagination of transcripts in multiple reporter cases		
Commenter	Comment	Committee Response
	<p>CCRA has determined that the a “greater than sign” (>) is best compatible with submitting transcripts in electronic form when a segment of a transcript has fewer than the assigned number of pages.</p> <p>For example, as the committee proposes in (f)(2), if a segment is assigned through page 300 and exceeds that range, the following page numbers would read 300+1, 300+2, etc., and the next page would start on page 301. In CCRA’s proposal, if the segment is assigned through pages 300 and the last page actually ended on page 296, the last page number would be 296>300, and the next page would be 301. CCRA anticipates that PDF viewer would be able to “jump” to either symbol for purposes of viewing or printing pages.</p>	

Do transcript users anticipate any difficulties printing, or navigating to, pages numbered using the plus-sign format?		
Commenter	Comment	Committee Response
<p>Appellate Court Clerk Executive Officers By Colette M. Bruggman Sacramento</p>	<p>Yes. Of particular import to the appellate courts is the issue of pagination in multiple-reporter transcripts. For an electronic reporters’ transcript to be fully navigable by the court, the first page must begin with the number one and pages numbered consecutively to the end. This allows the court to use the Adobe page finder to easily navigate to the transcript page cited by the attorney. The transcript filed with the court should neither have a hyphen nor a plus sign in the pagination. Rather, the lead reporter should repaginate the transcript, so it is numbered consecutively from page one to the end.</p>	<p>The comments received regarding pagination in multiple reporter cases suggest that there are ongoing concerns about how best to address these situations in general and commentors had mixed views about whether the alternative pagination format proposed in the invitation to comment when a segment has either more or fewer pages than assigned by the primary reporter would be preferable to the current format. The committee believes that this issue would benefit from further study and is</p>

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Appellate Procedure: Reporter’s transcripts (amend Cal. Rules of Court, rules 8.130, 8.144, 8.153, 8.204, 8.452, 8.456, 8.622, 8.834, 8.838, 8.866, and 8.919)

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

Do transcript users anticipate any difficulties printing, or navigating to, pages numbered using the plus-sign format?		
Commenter	Comment	Committee Response
	<p>The Adobe page counter converts both the hyphen and the plus sign to the beginning number, so 4-1 becomes 4 and 4+1 becomes 4. If an attorney cites to a record with a page number using either a hyphen or a plus sign, e.g., 4+1, the page finder will take you to page four, when, the page number is 5. This leads to the page finder being obsolete, resulting in additional scrolling to find the actual page the cite is on. In other words, if the cite is to page 4+10, the page finder would take you to page 4 but you would have to continue searching for the citation until you got to the actual page of the citation, which in this instance is page 14. This then puts the remainder of the pages out of order as well. Our recommendation is that you change rule 8.144(b)(2)(D) to remove “except as provided in (f),” and have the transcript repaginated by the lead reporter, which is easily done in Adobe by using the Bates stamp functionality. The original page numbers submitted by the certifying reporter remains, and a Bates number is applied, allowing the filer to cite to the Bates number and the Adobe page finder to work correctly.</p>	<p>therefore not recommending that the rules be amended to alter the current page numbering format at this time.</p> <p>In the meantime, the committee concluded that it would be appropriate to recommend the amendments to rules 8.144(d)(1)(C), 8.452(e), and 8.456(e) that were circulated for public comment. These amendments do not authorize any expansion in the situations, identified as problematic by several commentors, in which the page numbers on the transcript will not match the page numbers shown in the PDF viewer. Instead, these recommended amendments are intended to provide internal consistency within the existing rules by acknowledging when, under these existing rules, the page numbers on a transcript may not match the page numbers shown in the PDF viewer.</p>
California Court Reporters Association	CCRA anticipates that the PDF viewer will detect the usage of the plus sign (+) and the greater than sign (>) and allow the PDF viewer to “jump” to a page containing those symbols for viewing and/or printing and therefore anticipates no difficulties with the use of such symbols.	Please see response to the comments of the Appellate Court Clerk Executive Officers above.
Orange County Bar Association By Michael A. Gregg, President	Yes, it will be more difficult to navigate within a PDF if the page numbers don’t match the page counter in the PDF file viewer. We would encourage the reporters and rules committee	Please see response to the comments of the Appellate Court Clerk Executive Officers above.

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Appellate Procedure: Reporter’s transcripts (amend Cal. Rules of Court, rules 8.130, 8.144, 8.153, 8.204, 8.452, 8.456, 8.622, 8.834, 8.838, 8.866, and 8.919)

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

Do transcript users anticipate any difficulties printing, or navigating to, pages numbered using the plus-sign format?		
Commenter	Comment	Committee Response
	come up with a more creative solution to this problem. E.g., perhaps the reporter on the first hearing can be designated to renumber all the pages so that they are consecutive.	
Superior Court of Orange County By Elizabeth Flores, Operations Analyst	No	Please see response to the comments of the Appellate Court Clerk Executive Officers above.
Superior Court of San Diego County By Michael Roddy, Executive	Unknown. It is untested in this court whether using the plus sign will cause problems with any of the different software programs used by the reporters. However, some might find it confusing for the plus sign to mean one thing for additional pages, yet mean another thing for a remaining block of pages.	Please see response to the comments of the Appellate Court Clerk Executive Officers above.

Should the rules permit block numbering?		
Commenter	Comment	Committee Response
Appellate Court Clerk Executive Officers By Colette M. Bruggman Sacramento	No. The Court Reporter in a multi-reporter transcript has sufficient technology to provide an accurate estimate to the lead reporter about the number of pages needed to transcribe their portion of the transcript. Block numbering wreaks havoc on the navigability of electronic transcripts. For example, using the 300-page volume limit as an example, block numbering allows the lead reporter to assign pages 1-300 to reporter one, 301-600 to reporter two, 601-900 to reporter three and so on. None of the reporters is required to estimate the number of pages they actually need for their portion of the transcript, and reporter one may only need 25 pages. Thus, this transcript, which may only	The comments received regarding pagination in multiple reporter cases suggest that there are ongoing concerns about how best to address these situations. The committee believes that this issue would benefit from further study and is therefore not recommending that the rules be amended to authorize block numbering at this time.

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Appellate Procedure: Reporter’s transcripts (amend Cal. Rules of Court, rules 8.130, 8.144, 8.153, 8.204, 8.452, 8.456, 8.622, 8.834, 8.838, 8.866, and 8.919)

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

Should the rules permit block numbering?		
Commenter	Comment	Committee Response
	have 100 pages of actual transcript, is filed as three volumes, 900 pages, when the actual transcript is three volumes, 100 pages. The Clerk’s Office is required to put the page numbers of the record on the docket for purposes of assignment. A 100-page transcript is a small record, while a 900-page transcript along with the size of the clerk’s transcript may be either a medium or large record. In some districts, court appointed counsel may be willing to accept a small-record case but not a large-record case, so this type of transcript is misleading. In addition, block number eliminates the usefulness of the Adobe page finder. If court reporters want to use block number, the lead reporter must be required to renumber the pages to maintain the navigability of the transcript. Programs such as YesLaw already have this functionality. Adobe also would allow renumbering using the Bates numbering functionality.	
California Court Reporters Association	If by “block numbering,” the committee means that the primary reporter will assign each reporter in a multiple reporter case a block of numbers (for example, 1-300) even before the individual reporter has replied to the primary reporter with their estimated page count, then, yes, this should be allowed for in the rules. There are some circumstances where block numbering is necessary because a reporter has moved or retired or is otherwise unavailable in a timely manner and the primary may need to “block” that reporter.	Please see response to the comments of the Appellate Court Clerk Executive Officers above.
Orange County Bar Association By Michael A. Gregg, President	A single numbering system should be chosen and used consistently.	Please see response to the comments of the Appellate Court Clerk Executive Officers above.
Superior Court of Orange County	No	Please see response to the comments of the Appellate Court Clerk Executive Officers above.

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Appellate Procedure: Reporter's transcripts (amend Cal. Rules of Court, rules 8.130, 8.144, 8.153, 8.204, 8.452, 8.456, 8.622, 8.834, 8.838, 8.866, and 8.919)

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

Should the rules permit block numbering?		
Commenter	Comment	Committee Response
By Elizabeth Flores, Operations Analyst		
Superior Court of San Diego County By Michael Roddy, Executive	Yes.	Please see response to the comments of the Appellate Court Clerk Executive Officers above.

Can transcripts in multiple reporter cases easily include the equivalent of Bates-stamped page numbers or easily be repaginated to avoid the navigational problems that occur when the pagination of such transcripts is not consecutive and does not match the page number shown in the PDF viewer?		
Commenter	Comment	Committee Response
Appellate Court Clerk Executive Officers By Colette M. Bruggman Sacramento	Yes, and this is preferable to either the hyphen or plus sign or block numbering.	The comments received regarding pagination in multiple reporter cases suggest that there are ongoing concerns about how best to address these situations. The committee believes that this issue would benefit from further study.
California Court Reporters Association	If CCRA understands this question correctly, i.e., can an electronic Bates-stamp be placed in the transcript by the primary reporter in addition to the page numbering system described and proposed in item 3 above, then the answer is no. CCRA welcomes clarification to the question if we have misunderstood the intent of this question.	Please see response to the comments of the Appellate Court Clerk Executive Officers above. Please see response to the comments of the Appellate Court Clerk Executive Officers above.
Orange County Bar Association By Michael A. Gregg, President	See comment above [A single numbering system should be chosen and used consistently]	Please see response to the comments of the Appellate Court Clerk Executive Officers above.

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Appellate Procedure: Reporter’s transcripts (amend Cal. Rules of Court, rules 8.130, 8.144, 8.153, 8.204, 8.452, 8.456, 8.622, 8.834, 8.838, 8.866, and 8.919)

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

Can transcripts in multiple reporter cases easily include the equivalent of Bates-stamped page numbers or easily be repaginated to avoid the navigational problems that occur when the pagination of such transcripts is not consecutive and does not match the page number shown in the PDF viewer?		
Commenter	Comment	Committee Response
Superior Court of Los Angeles County By Bryan Borys, Director of Research and Data Management	Regarding the discrepancies in consecutive paginations exhibited across multiple-reporter cases and PDF viewer, the Court does not believe these navigational issues can be resolved via repagination or by including a Bates stamped page equivalent.	Please see response to the comments of the Appellate Court Clerk Executive Officers above.
Superior Court of Orange County By Elizabeth Flores, Operations Analyst	Yes	Please see response to the comments of the Appellate Court Clerk Executive Officers above.
Superior Court of San Diego County By Michael Roddy, Executive	Repagination would not be easy.	Please see response to the comments of the Appellate Court Clerk Executive Officers above.

Rules 8.144(d), 8.204(a), and 8.622(a) - Changing references to reporter’s transcripts or the record on appeal being in “electronic format.”		
Commenter	Comment	Committee Response
California Court Reporters Association	<p>Rule 8.204 - CCRA concurs with the changes proposed by the committee.</p> <p>Rule 8.622 - CCRA concurs with the changes proposed by the committee.</p>	The committee appreciates these comments.

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Appellate Procedure: Reporter’s transcripts (amend Cal. Rules of Court, rules 8.130, 8.144, 8.153, 8.204, 8.452, 8.456, 8.622, 8.834, 8.838, 8.866, and 8.919)

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

Rule 8.153 - Lending the Record - General		
Commenter	Comment	Committee Response
California Court Reporters Association	<p>Alternative rule language suggested:</p> <p>Rule 8.153. Lending the Record</p> <p>(a) Request</p> <p style="padding-left: 40px;">Within 20 days after the record is filed in the reviewing court, a party that has not purchased its own copy of the record may request another party, in writing, to lend it that party’s copy of the record.</p> <p style="padding-left: 40px;">(1) If the lending party has received their copy of the reporter’s transcript in electronic form, in lieu of lending its copy of the reporter’s transcript to the borrowing party, within 5 days of receiving a request to borrow the record, the lending party shall ask the court reporter, in writing, to send an electronic read-only copy of the reporter’s transcript to the borrowing party. The court reporter must promptly send the copy to the borrowing party. The court reporter may set an expiration date to the viewing of the read-only copy to a time after the borrowing party serves its brief or the time to file its brief has expired.</p> <p style="padding-left: 40px;">(2) If the lending party has received their copy of the reporter’s transcript in paper form, the lending party must then lend its copy of the reporter’s transcript when it serves its brief to the borrowing party. The borrowing party must return the copy of the record to the lending party when it serves its</p>	<p>This alternative rule proposal includes important substantive changes to the proposal that was circulated for public comment. Under the rule that governs the Judicial Council rule-making process, California Rules of Court, rule 10.22, only a nonsubstantive technical change or correction or a minor substantive change that is unlikely to create controversy may be recommended for adoption by the Judicial Council without first being circulating it for comment. Therefore, the committee cannot recommend adoption of this alternative rule regarding lending the record at this time; any such proposal must first be circulated for public comment. The committee will therefore consider this suggestion for potential development in a later rules cycle.</p>

W23-02

Appellate Procedure: Reporter’s transcripts (amend Cal. Rules of Court, rules 8.130, 8.144, 8.153, 8.204, 8.452, 8.456, 8.622, 8.834, 8.838, 8.866, and 8.919)

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

Rule 8.153 - Lending the Record - General		
Commenter	Comment	Committee Response
	<p>brief or the time to file its brief has expired. The borrowing party must bear the cost of sending the copy of the record to and from the borrowing party.</p> <p>CCRA believes that the above proposal addresses the committee’s concern about whether the lend/borrow option should be available in all cases or only when the lending party’s copy of the reporter’s transcript is in paper form (by proposing options for both paper and electronic transcripts) and the committee’s concern about what format requirements should be applied to a transcript sent to a borrowing party in read-only format. CCRA offers the above proposal as clear direction to the reporter and clear direction to the lending and borrowing party in such instances where this rule is utilized.</p> <p>The above proposal also addresses the committee’s concern regarding whether it is necessary for the borrowing party to return an electronic copy of the reporter’s transcript by allowing for an expiration date, which is currently common practice for reporter’s transcripts for depositions when the deponent does not wish to purchase a copy of the transcript, but receives an electronic read-only copy to view and sign their deposition without retaining a copy they did not pay for. CCRA believes the above proposal encourages compliance with Government Code section 69954(d) regarding not providing copies of reporter’s transcripts to those who have not paid for a copy while balancing the need for a party to reference a reporter’s transcript in order to serve a responsive brief.</p>	

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Appellate Procedure: Reporter’s transcripts (amend Cal. Rules of Court, rules 8.130, 8.144, 8.153, 8.204, 8.452, 8.456, 8.622, 8.834, 8.838, 8.866, and 8.919)

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

Rule 8.153 - Lending the Record - General		
Commenter	Comment	Committee Response
Superior Court of San Diego County By Michael Roddy, Executive Officer	On lending copies generally, Government Code section 69954(d) states: “Any court, party, or person who has purchased a transcript may, without paying a further fee to the reporter, reproduce a copy or portion thereof as an exhibit pursuant to court order or rule, or for internal use, <i>but shall not otherwise provide</i> or sell a copy or copies to any other party or person.” (Emphasis added.)	Under the recommended amendment to rule 8.153, the court reporter, not a party, would be providing a copy of the transcript to the borrowing party.

Lending the Record - Should the option of asking a court reporter to send the borrowing party a copy of the reporter’s transcript in electronic form be available in all cases or only when the lending party’s copy of the reporter’s transcript is in paper form?		
Commenter	Comment	Committee Response
Appellate Court Clerk Executive Officers By Colette M. Bruggman Sacramento	It makes sense to have it available in all cases.	Based on this comment and that of the Orange County Bar Association below, the committee is recommending that this option be available in all cases, as was proposed in the invitation to comment.
California Court Reporters Association	In all cases, both electronic and paper, as proposed in item 3 above [please see comments in preceding table “Rule 8.153 - Lending the Record – General”]	Please see response to comments in preceding table “Rule 8.153 - Lending the Record – General”
Orange County Bar Association By Michael A. Gregg, President	All cases	Please see the response to the comments of the Appellate Court Clerk Executive Officers above.
Superior Court of Orange County By Elizabeth Flores, Operations Analyst	Case Processing does not believe we have the jurisdiction to request this.	No response required.

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Appellate Procedure: Reporter’s transcripts (amend Cal. Rules of Court, rules 8.130, 8.144, 8.153, 8.204, 8.452, 8.456, 8.622, 8.834, 8.838, 8.866, and 8.919)

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

Lending the Record - Should the option of asking a court reporter to send the borrowing party a copy of the reporter’s transcript in electronic form be available in all cases or only when the lending party’s copy of the reporter’s transcript is in paper form?		
Commenter	Comment	Committee Response
Superior Court of San Diego County By Michael Roddy, Executive Officer	No, the additional option should not be added, and lending of electronic copies should not be allowed at all. Once an electronic copy is sent, the receiver could keep it in perpetuity. In addition, requiring court reporters to respond “promptly,” or to respond at all, to requests for electronic copies would place an additional burden on an already strained workpool.	The committee believes that adding the option of requesting that the court reporter send a copy of the transcript to the borrowing party, which was proposed by the California Court Reporters Association, is appropriate.

Lending the Record – What format requirements should be applied to a transcript sent by a court reporter to a borrowing party?		
Commenter	Comment	Committee Response
Appellate Court Clerk Executive Officers By Colette M. Bruggman Sacramento	No comment.	No response required.
California Court Reporters Association	Read-only format with expiration date, as proposed in item 3 above [please see comments in preceding table “Rule 8.153 - Lending the Record – General”]	Please see response to comments in preceding table “Rule 8.153 - Lending the Record – General”. Based on this and other comments, the committee is recommending, as in the proposal circulated for public comment, that a transcript provided to a borrowing party by a court reporter be in read-only format.
Orange County Bar Association By Michael A. Gregg, President	The borrowing respondent should receive the same format as the appellant, not just a read-only copy.	Please see response to comments of the California Court Reporters Association above.
Superior Court of Orange County	N/A	No response required.

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Appellate Procedure: Reporter’s transcripts (amend Cal. Rules of Court, rules 8.130, 8.144, 8.153, 8.204, 8.452, 8.456, 8.622, 8.834, 8.838, 8.866, and 8.919)

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

Lending the Record – What format requirements should be applied to a transcript sent by a court reporter to a borrowing party?		
Commenter	Comment	Committee Response
By Elizabeth Flores, Operations Analyst		
Superior Court of San Diego County By Michael Roddy, Executive	Read-only; no ability to print, comment, or highlight.	Please see response to comments of the California Court Reporters Association above.

Lending the Record – Is it necessary for a party borrowing the record from another party to return an electronic copy of either the clerk’s transcript or an administrative record provided by the lending party or a read-only electronic copy of the reporter’s transcript provided by the court reporter?		
Commenter	Comment	Committee Response
Appellate Court Clerk Executive Officers By Colette M. Bruggman Sacramento	No comment.	No response required.
California Court Reporters Association	No, because the read-only format with expiration date, as proposed in item 3, addresses this issue [please see comments in preceding table “Rule 8.153 - Lending the Record – General”]	Please see response to comments in preceding table “Rule 8.153 - Lending the Record – General.” Because none of the commentors who responded to this question agreed on this issue, the committee is not recommending any changes to the rule regarding returning a borrowed record at this time.
Orange County Bar Association By Michael A. Gregg, President	No.	Please see response to comments of the California Court Reporters Association above.

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Appellate Procedure: Reporter’s transcripts (amend Cal. Rules of Court, rules 8.130, 8.144, 8.153, 8.204, 8.452, 8.456, 8.622, 8.834, 8.838, 8.866, and 8.919)

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

Lending the Record – Is it necessary for a party borrowing the record from another party to return an electronic copy of either the clerk’s transcript or an administrative record provided by the lending party or a read-only electronic copy of the reporter’s transcript provided by the court reporter?		
Commenter	Comment	Committee Response
Superior Court of Orange County By Elizabeth Flores, Operations Analyst	Case Processing does not believe we have the jurisdiction to request this.	No response required.
Superior Court San Diego County By Michael Roddy, Executive	It is unclear how “returning” an electronic copy would be accomplished. If it is allowed to be lent, there’s nothing preventing the borrower from keeping the email with the electronic copy.	Please see response to comments of the California Court Reporters Association above.

Rules 8.452 and 8.456		
Commenter	Comment	Committee Response
California Court Reporters Association	Rule 8.452 - CCRA concurs with the changes proposed by the committee. Rule 8.456 - CCRA concurs with the changes proposed by the committee.	The committee appreciates these comments.

Rules 8.834, 8.838, 8.866 and 8.919		
Commenter	Comment	Committee Response
California Court Reporters Association	Rule 8.834 - CCRA concurs with the changes proposed by the committee	The committee appreciates these comments.

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Appellate Procedure: Reporter’s transcripts (amend Cal. Rules of Court, rules 8.130, 8.144, 8.153, 8.204, 8.452, 8.456, 8.622, 8.834, 8.838, 8.866, and 8.919)

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

Rules 8.834, 8.838, 8.866 and 8.919		
Commenter	Comment	Committee Response
	<p>Rule 8.838 - CCRA concurs with the changes proposed by the committee.</p> <p>Rule 8.866 - CCRA concurs with the changes proposed by the committee.</p> <p>Rule 8.919 - CCRA concurs with the changes proposed by the committee.</p>	

Would the proposal provide cost savings?		
Commenter	Comment	Committee Response
Appellate Court Clerk Executive Officers By Colette M. Bruggman Sacramento	No	The committee appreciates this input.
Superior Court of Los Angeles County By Bryan Borys, Director of Research and Data Management	With respect to implementation, the Court does not see any cost savings from this proposal.	The committee appreciates this input.
Superior Court of Orange County By Elizabeth Flores, Operations Analyst	Yes, the process would be more efficient as it has the potential to reduce errors and processing time for staff.	The committee appreciates this input.

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Appellate Procedure: Reporter’s transcripts (amend Cal. Rules of Court, rules 8.130, 8.144, 8.153, 8.204, 8.452, 8.456, 8.622, 8.834, 8.838, 8.866, and 8.919)

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

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?		
Commenter	Comment	Committee Response
Appellate Court Clerk Executive Officers By Colette M. Bruggman Sacramento	If the trial court clerk is not to accept a daily transcript that does not comply with the formatting requirements of rule 8.144, it would require training for the trial courts.	The committee appreciates this input.
Superior Court of Los Angeles County By Bryan Borys, Director of Research and Data Management	Instead, it anticipates there will be implementation costs associated with staff training and with resources required to update reference materials.	The committee appreciates this input.
Superior Court of Orange County By Elizabeth Flores, Operations Analyst	Minimal training for staff on updated procedures.	The committee appreciates this input.
Superior Court of San Diego County By Michael Roddy, Executive	Fiscal impact: while the fiscal impact on the court may be minimal, the impact on the reporters may be more substantive.	The committee appreciates this input.

Would 4 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?		
Commenter	Comment	Committee Response
Appellate Court Clerk Executive Officers By Colette M. Bruggman	No, it would depend on the ability to get proper training developed and out to the trial courts, and the trial courts’ ability	<i>Question for the committee – given that two of the commentors suggest that 4 month is not sufficient, should the committee recommend a January 1, 2024</i>

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Appellate Procedure: Reporter’s transcripts (amend Cal. Rules of Court, rules 8.130, 8.144, 8.153, 8.204, 8.452, 8.456, 8.622, 8.834, 8.838, 8.866, and 8.919)

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

Would 4 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?		
Commenter	Comment	Committee Response
Sacramento	to have staff attend training and the technology and resources to implement the changes.	<i>effective date rather than a September 1, 2023 effective date?</i>
Superior Court of Los Angeles County By Bryan Borys, Director of Research and Data Management	For those reasons [in the previous two charts], the Court requests an effective date of January 1, 2024 to allow for staff training and to allow eCART time to implement the proposed changes.	
Superior Court of Orange County By Elizabeth Flores, Operations Analyst	Yes	

How well would this proposal work in courts of different sizes?		
Commenter	Comment	Committee Response
Appellate Court Clerk Executive Officers By Colette M. Bruggman Sacramento	It is less about the size of the court and more about the size of the staff assigned to appeals and the quality of their training.	The committee appreciates this input.
Superior Court of Orange County By Elizabeth Flores, Operations Analyst	The proposal will have minimal impact to courts of different sizes.	The committee appreciates this input.

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR23-__

Title	Action Requested
Appellate Procedure: Remote Appearances at Oral Argument in the Appellate Division	Review and submit comments by May 12, 2023
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise Cal. Rules of Court, rules 8.885 and 8.929	January 1, 2024
Proposed by	Contact
Appellate Advisory Committee Hon. Louis R. Mauro, chair	Christy Simons, 415-865-7694 christy.simons@jud.ca.gov

Executive Summary and Origin

The Appellate Advisory Committee proposes updating the rules regarding oral argument in the appellate division to reflect modern videoconferencing technology and facilitate remote appearances. The current rules narrowly provide for videoconferencing at different courts to accommodate appellate division judges who would have to travel to attend oral argument in the same location. Parties are required to appear in-person at the court that issued the order or judgment being appealed unless a local rule or appellate division order permits otherwise. This proposal would replace the videoconferencing provisions with broader authorization for remote appearances. The proposal originated with a suggestion from a committee member.

Background

Rule 8.885 governs oral argument in misdemeanor and limited civil appeals. The corresponding rule for infraction appeals is rule 9.929. Effective January 1, 2010, rules 8.885 and 8.929 were amended to authorize oral argument by videoconference. The proposal followed a successful program involving the Superior Courts of Lassen, Modoc, Plumas, and Sierra Counties in which one judge was selected from each county to sit on a regional appellate division. When a matter came before the regional appellate division, it was heard by a panel of the judges from the other three counties. The program utilized videoconferencing to enable the judges to participate from their home courts rather than drive long distances to one courthouse and spend the time traveling. This innovation saved travel costs for the courts and facilitated scheduling, reducing delay for the parties.

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

The 2010 amendments authorize appellate divisions to provide videoconferencing on order of the court's presiding judge or the presiding judge's designee or if permitted by a local rule. If oral argument will be conducted by videoconference, each judge must participate at either the court that issued the order or judgment being appealed or from another court. Unless otherwise allowed, all parties must participate from the court that issued the order or judgment being appealed. The oral argument must be open to the public at the court that issued the judgment or order being appealed; public attendance may also be allowed at a court from which a judge is participating. The rules contain provisions requiring individuals who speak to be visible, audible, and identified by name, and prohibiting participation by unauthorized persons. Parties may not be charged a fee to attend oral argument by videoconference in the court that issued the judgment or order or another court from which a judge is participating.

Rules 8.885 and 8.929 were amended again in 2020 to allow parties to waive oral argument and to provide that oral argument will not be set in cases appealed under *People v. Wende* (1979) 25 Cal.3d 436.

The Proposal

This proposal would authorize remote appearances in the appellate division. As noted, the current rules were primarily intended to address the challenges of regional appellate divisions with judges having to travel long distances to appear together in person at one court; the rules provide similar benefits in large counties with appellate division judges located in distant courthouses. However, in the years since the 2010 amendments took effect, videoconferencing technology has advanced to the point that remote video appearances are now possible from wherever one is located with a computer, smart phone, or tablet, and need not be limited to courthouses. Videoconferencing also need no longer be limited to the panel judges.

Under the proposed amendments, the videoconferencing provisions would be replaced by a subdivision regarding remote appearances at oral argument using remote technology. This term is defined as "technology that provides for the transmission of video and audio signals or audio signals alone. This phrase is meant to be interpreted broadly and includes a computer, tablet, telephone, cellphone, or other electronic or communications device." These definitions mirror those in rule 3.672, the rule regarding remote appearances in civil cases.

Consistent with the current rules authorizing videoconferencing, this proposal would allow appellate divisions to conduct oral argument in whole or in part through the use of remote technology if either (1) a local rule authorizes it, or (2) a court orders it on the court's own motion or on application of a party. An application from a party requesting to appear remotely at oral argument must be filed within 10 days after the court sends notice of oral argument.

Provisions regarding fees mirror those in rule 3.672, the rule regarding remote appearances in civil proceedings. Parties who by statute are not charged court fees may not be charged a videoconference fee under Government Code section 70630. Parties with a fee waiver may not be charged a fee for remote appearances.

Updating the rules for oral argument in the appellate division would provide significant cost savings and efficiencies. Remote appearances expand access to justice by allowing parties and their attorneys to appear remotely from locations of their choosing, saving travel time and costs. During times of public emergencies, they also enable courts to perform their required functions and keep their calendars moving while protecting the health and safety of court users, court staff, and judicial officers.

Alternatives Considered

The committee considered simply deleting the outdated videoconferencing provisions that were added to the rules in 2010, but decided that expanding and updating them was a better approach. The proposed amendments would continue to authorize oral argument by videoconference, but more broadly would authorize remote appearances by remote technology, consistent with modern business and court practices.

The committee also considered taking no action to amend the videoconferencing rules but concluded that the rules are not only outdated, but also could hinder remote appearances by parties and their attorneys. The rules regarding videoconferencing currently require parties to appear in-person at the court that issued the judgment or order that is being appealed unless otherwise allowed by court order or local rule. This default to in-person appearances, with remote appearances only available by exception, no longer makes sense within the current technological landscape.

Fiscal and Operational Impacts

The rule amendments would not impose any fiscal impacts on the courts. They do not require courts to allow videoconferencing and do not require the purchase of any equipment or provider platform. Courts may choose to incur costs related to videoconferencing service providers or platforms (and may charge some parties a videoconference fee as provided by statute), or remote appearances more generally, but the committee expects that any costs would be offset by the time and cost savings and efficiencies discussed above.

Implementation impacts on courts may include the need for training, changes to case management systems, and changes to procedures for oral argument. The committee believes these operational impacts are outweighed by the benefits to courts and court users of facilitating remote appearances.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Should the rules regarding remote appearances at oral argument in the appellate division include any other provisions or procedures? If so, please specify.

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

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

Attachments and Links

1. Cal. Rules of Court, rules 8.885 and 8.929, at pages 5–12

Rules 8.885 and 8.929 of the California Rules of Court would be amended, effective January 1, 2024, to read:

1 Title 8. Appellate Rules

2
3 Division 4. Rules Relating to the Superior Court Appellate Division

4
5 Chapter 4. Briefs, Hearing, and Decision in Limited Civil and Misdemeanor
6 Appeals

7
8
9 Rule 8.885. Oral argument

10
11 (a) Calendaring and sessions

- 12
13 (1) Unless otherwise ordered, and except as provided in (2), all appeals in which
14 the last reply brief was filed or the time for filing this brief expired 45 or
15 more days before the date of a regular appellate division session must be
16 placed on the calendar for that session by the appellate division clerk. By
17 order of the presiding judge or the division, any appeal may be placed on the
18 calendar for oral argument at any session.
19
20 (2) Oral argument will not be set in appeals under *People v. Wende* (1979) 25
21 Cal.3d 436 where no arguable issue is raised.
22

23 ~~(b) Oral argument by videoconference~~

24
25 ~~(1) Oral argument may be conducted by videoconference if:~~

26
27 ~~(A) It is ordered by the presiding judge of the appellate division or the~~
28 ~~presiding judge's designee on application of any party or on the court's~~
29 ~~own motion. An application from a party requesting that oral argument~~
30 ~~be conducted by videoconference must be filed within 10 days after the~~
31 ~~court sends notice of oral argument under (c)(1); or~~

32
33 ~~(B) A local rule authorizes oral argument to be conducted by~~
34 ~~videoconference consistent with these rules.~~

35
36 ~~(2) If oral argument is conducted by videoconference:~~

37
38 ~~(A) Each judge of the appellate division panel assigned to the case must~~
39 ~~participate in the entire oral argument either in person at the superior~~
40 ~~court that issued the judgment or order that is being appealed or by~~
41 ~~videoconference from another court.~~
42

1 (B) Unless otherwise allowed by local rule or ordered by the presiding
2 judge of the appellate division or the presiding judge's designee, all the
3 parties must appear at oral argument in person at the superior court that
4 issued the judgment or order that is being appealed.

5
6 (C) The oral argument must be open to the public at the superior court that
7 issued the judgment or order that is being appealed. If provided by local
8 rule or ordered by the presiding judge of the appellate division or the
9 presiding judge's designee, oral argument may also be open to the
10 public at any of the locations from which a judge of the appellate
11 division is participating in oral argument.

12
13 (D) The appellate division must ensure that:

14
15 (i) During oral argument, the participants in oral argument are
16 visible and their statements are audible to all other participants,
17 court staff, and any members of the public attending the oral
18 argument;

19
20 (ii) Participants are identified when they speak; and

21
22 (iii) Only persons who are authorized to participate in the proceedings
23 speak.

24
25 (E) A party must not be charged any fee to participate in oral argument by
26 videoconference if the party participates from the superior court that
27 issued the judgment or order that is being appealed or from a location
28 from which a judge of the appellate division panel is participating in
29 oral argument.

30
31 **(b) Remote appearance**

32
33 **(1) Definitions**

34
35 (A) "Remote appearance" or "appear remotely" means the appearance of a
36 party at oral argument through the use of remote technology.

37
38 (B) "Remote technology" means technology that provides for the
39 transmission of video and audio signals or audio signals alone. This
40 phrase is meant to be interpreted broadly and includes a computer,
41 tablet, telephone, cellphone, or other electronic or communications
42 device.

1 (2) Oral argument may be conducted in whole or in part through the use of
2 remote technology if:

3
4 (A) It is ordered by the presiding judge of the appellate division or the
5 presiding judge's designee on application of any party or on the court's
6 own motion. An application from a party requesting to appear remotely
7 at oral argument must be filed within 10 days after the court sends
8 notice of oral argument under (c)(1); or

9
10 (B) A local rule authorizes remote appearances consistent with these rules.

11
12 (3) Remote appearance fees

13
14 (A) Parties who, by statute, are not charged filing fees or fees for court
15 services may not be charged a videoconference fee under Government
16 Code section 70630.

17
18 (B) Parties with a fee waiver may not be charged fees for remote
19 appearances.

20
21 (i) To obtain remote appearance services without payment of a fee
22 from a vendor or a court that provides such services, a party must
23 advise the vendor or the court that they have received a fee
24 waiver from the court. If a vendor requests, the party must
25 transmit a copy of the order granting the fee waiver to the vendor.

26
27 (ii) If a party, based on a fee waiver, receives remote appearance
28 services under this rule without payment of a fee, the vendor or
29 court that provides the remote appearance services has a lien on
30 any judgment, including a judgment for costs, that the party may
31 receive, in the amount of the fee that the party would have paid
32 for the remote appearance. There is no charge for filing the lien.

33
34 (c) Notice of argument

35
36 (1) Except for appeals covered by (a)(2), as soon as all parties' briefs are filed or
37 the time for filing these briefs has expired, the appellate division clerk must
38 send a notice of the time and place of oral argument to all parties. The notice
39 must be sent at least 20 days before the date for oral argument. The presiding
40 judge may shorten the notice period for good cause; in that event, the clerk
41 must immediately notify the parties by telephone or other expeditious
42 method.
43

1 ~~(2) If oral argument will be conducted by videoconference under (b), the clerk~~
2 ~~must specify, either in the notice required under (1) or in a supplemental~~
3 ~~notice sent to all parties at least 5 days before the date for oral argument, the~~
4 ~~location from which each judge of the appellate division panel assigned to the~~
5 ~~case will participate in oral argument.~~

6
7 **(d) Waiver of argument**

- 8
9 (1) Parties may waive oral argument in advance by filing a notice of waiver of
10 oral argument within 7 days after the notice of oral argument is sent.
11
12 (2) The court may vacate oral argument if all parties waive oral argument.
13
14 (3) If the court vacates oral argument, the court must notify the parties that no
15 oral argument will be held.
16
17 (4) If all parties do not waive oral argument, or if the court rejects a waiver
18 request, the matter will remain on the oral argument calendar. Any party who
19 previously filed a notice of waiver may participate in the oral argument.
20

21 **(e) Conduct of argument**

22 Unless the court provides otherwise:

- 23
24
25 (1) The appellant, petitioner, or moving party has the right to open and close. If
26 there are two or more such parties, the court must set the sequence of
27 argument.
28
29 (2) Each side is allowed 10 minutes for argument. The appellant may reserve part
30 of this time for reply argument. If multiple parties are represented by separate
31 counsel, or if an amicus curiae—on written request—is granted permission to
32 argue, the court may apportion or expand the time.
33
34 (3) Only one counsel may argue for each separately represented party.
35

36 **Advisory Committee Comment**

37
38 **Subdivision (a).** Under rule 10.1108, the appellate division must hold a session at least once each
39 quarter, unless no matters are set for oral argument that quarter, but may choose to hold sessions
40 more frequently.

41
42 **Subdivision (b)(3).** Statutes currently provide that courts are not to charge fees to certain types of
43 parties, such as governmental entities; representatives of tribes in cases covered by the Indian

1 Child Welfare Act; and parties in certain types of cases, such as juvenile cases or actions to
2 prevent domestic violence. This rule would preclude courts from charging videoconference fees
3 to such parties as well.

4
5
6 **Title 8. Appellate Rules**

7
8 **Division 4. Rules Relating to the Superior Court Appellate Division**

9
10 **Chapter 5. Appeals in Infraction Cases**

11
12 **Article 3. Briefs, Hearing, and Decision in Infraction Appeals**

13
14
15 **Rule 8.929. Oral argument**

16
17 **(a) Calendaring and sessions**

18
19 Unless otherwise ordered, all appeals in which the last reply brief was filed or the
20 time for filing this brief expired 45 or more days before the date of a regular
21 appellate division session must be placed on the calendar for that session by the
22 appellate division clerk. By order of the presiding judge or the appellate division,
23 any appeal may be placed on the calendar for oral argument at any session.

24
25 **~~(b) Oral argument by videoconference~~**

26
27 **~~(1) Oral argument may be conducted by videoconference if:~~**

28
29 **~~(A) It is ordered by the presiding judge of the appellate division or the~~**
30 **~~presiding judge's designee on application of any party or on the court's~~**
31 **~~own motion. An application from a party requesting that oral argument~~**
32 **~~be conducted by videoconference must be filed within 10 days after the~~**
33 **~~court sends notice of oral argument under (c)(1); or~~**

34
35 **~~(B) A local rule authorizes oral argument to be conducted by~~**
36 **~~videoconference consistent with these rules.~~**

37
38 **~~(2) If oral argument is conducted by videoconference:~~**

39
40 **~~(A) Each judge of the appellate division panel assigned to the case must~~**
41 **~~participate in the entire oral argument either in person at the superior~~**
42 **~~court that issued the judgment or order that is being appealed or by~~**
43 **~~videoconference from another court.~~**

1
2 (B) — Unless otherwise allowed by local rule or ordered by the presiding
3 judge of the appellate division or the presiding judge’s designee, all of
4 the parties must appear at oral argument in person at the superior court
5 that issued the judgment or order that is being appealed.

6
7 (C) — The oral argument must be open to the public at the superior court that
8 issued the judgment or order that is being appealed. If provided by local
9 rule or ordered by the presiding judge of the appellate division or the
10 presiding judge’s designee, oral argument may also be open to the
11 public at any of the locations from which a judge of the appellate
12 division is participating in oral argument.

13
14 (D) — The appellate division must ensure that:

15
16 (i) — During oral argument, the participants in oral argument are
17 visible and their statements are audible to all other participants,
18 court staff, and any members of the public attending the oral
19 argument;

20
21 (ii) — Participants are identified when they speak; and

22
23 (iii) — Only persons who are authorized to participate in the proceedings
24 speak.

25
26 (E) — A party must not be charged any fee to participate in oral argument by
27 videoconference if the party participates from the superior court that
28 issued the judgment or order that is being appealed or from a location
29 from which a judge of the appellate division panel is participating in
30 oral argument.

31
32 **(b) Remote appearance**

33
34 **(1) Definitions**

35
36 (A) “Remote appearance” or “appear remotely” means the appearance of a
37 party at oral argument through the use of remote technology.

38
39 (B) “Remote technology” means technology that provides for the
40 transmission of video and audio signals or audio signals alone. This
41 phrase is meant to be interpreted broadly and includes a computer,
42 tablet, telephone, cellphone, or other electronic or communications
43 device.

1
2 (2) Oral argument may be conducted in whole or in part through the use of
3 remote technology if:

4
5 (A) It is ordered by the presiding judge of the appellate division or the
6 presiding judge's designee on application of any party or on the court's
7 own motion. An application from a party requesting to appear remotely
8 at oral argument must be filed within 10 days after the court sends
9 notice of oral argument under (c)(1); or

10
11 (B) A local rule authorizes remote appearances consistent with these rules.

12
13 (3) Remote appearance fees

14
15 (A) Parties who, by statute, are not charged filing fees or fees for court
16 services may not be charged a videoconference fee under Government
17 Code section 70630.

18
19 (B) Parties with a fee waiver may not be charged fees for remote
20 appearances.

21
22 (i) To obtain remote appearance services without payment of a fee
23 from a vendor or a court that provides such services, a party
24 must advise the vendor or the court that they have received a fee
25 waiver from the court. If a vendor requests, the party must
26 transmit a copy of the order granting the fee waiver to the
27 vendor.

28
29 (ii) If a party, based on a fee waiver, receives remote appearance
30 services under this rule without payment of a fee, the vendor or
31 court that provides the remote appearance services has a lien on
32 any judgment, including a judgment for costs, that the party may
33 receive, in the amount of the fee that the party would have paid
34 for the remote appearance. There is no charge for filing the lien.

35
36 **(c) Notice of argument**

37
38 (1)—As soon as all parties' briefs are filed or the time for filing these briefs has
39 expired, the appellate division clerk must send a notice of the time and place
40 of oral argument to all parties. The notice must be sent at least 20 days before
41 the date for oral argument. The presiding judge may shorten the notice period
42 for good cause; in that event, the clerk must immediately notify the parties by
43 telephone or other expeditious method.

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~~(2) If oral argument will be conducted by videoconference under (b), the clerk must specify, either in the notice required under (1) or in a supplemental notice sent to all parties at least 5 days before the date for oral argument, the location from which each judge of the appellate division panel assigned to the case will participate in oral argument.~~

(d) Waiver of argument

Parties may waive oral argument.

(e) Conduct of argument

Unless the court provides otherwise:

- (1) The appellant, petitioner, or moving party has the right to open and close. If there are two or more such parties, the court must set the sequence of argument.
- (2) Each side is allowed 5 minutes for argument. The appellant may reserve part of this time for reply argument. If multiple parties are represented by separate counsel, or if an amicus curiae—on written request—is granted permission to argue, the court may apportion or expand the time.
- (3) Only one counsel may argue for each separately represented party.

Advisory Committee Comment

Subdivision (a). Under rule 10.1108, the appellate division must hold a session at least once each quarter, unless no matters are set for oral argument that quarter, but may choose to hold sessions more frequently.

Subdivision (b)(3). Statutes currently provide that courts are not to charge fees to certain types of parties, such as governmental entities; representatives of tribes in cases covered by the Indian Child Welfare Act; and parties in certain types of cases, such as juvenile cases or actions to prevent domestic violence. This rule would preclude courts from charging videoconference fees to such parties as well.

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR23-__

Title

Appellate Procedure: Time for Electing and Filing an Appendix

Action Requested

Review and submit comments by May 12, 2023

Proposed Rules, Forms, Standards, or Statutes

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

Proposed Effective Date

January 1, 2024

Contact

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

Proposed by

Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

Executive Summary and Origin

The Appellate Advisory Committee proposes amending the rules regarding appendixes to allow appellants to file an appendix before filing the opening brief and to allow respondents to elect an appendix when their other record designations are due. The changes are intended to assist courts and litigants by permitting earlier filing of an appendix, which could assist with briefing and courts' consideration of petitions for writ of supersedeas, and to provide respondents the opportunity to elect an appendix after receiving notice that the appellant has designated a clerk's transcript. The committee proposes revising several forms to reflect the rule changes and revoking two forms that would no longer be necessary. The proposal originated with suggestions from an appellate attorney in Berkeley and a bar association in San Diego.

Background

California Rules of Court, rules 8.124 and 8.845,¹ authorize the use of an appendix as the record of documents from the trial court in the Court of Appeal and the superior court appellate division, respectively.² The respondent may elect an appendix as the record of documents if the appellant does not have a fee waiver for a clerk's transcript and if the respondent's election is timely. The rules currently require the respondent to elect an appendix within 10 days of the

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

² Rule 8.845 was adopted by the Judicial Council and took effect January 1, 2021. It is modeled on rule 8.124 and mirrors it closely.

filing of the notice of appeal, the same time within which the appellant must file its designation of the record. For other 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.

Rules 8.124 and 8.845 also provide that an appendix must be filed with the appellant's opening brief. The advisory committee comments to both rules explain that an extension of time to file the opening brief automatically includes the same extension of time to file the appendix.

The Proposal

Respondent's election of an appendix

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.

This proposal would amend the rules to allow respondents additional time to elect an appendix. Specifically, the deadline for respondents to elect an appendix would be changed 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. Under the rule change, the respondent would learn whether the appellant has designated a clerk's transcript and would then have the opportunity to elect an appendix instead.

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. It is also consistent with the Judicial Council's interest in finding ways to reduce appellate delays.

Respondents may prefer to proceed by an appendix rather than clerk's transcript, particularly when they would like the appellate process to move faster. Respondents may want an appeal to proceed more quickly if, for example, the appeal was taken early in the litigation (e.g., from an order denying a petition to compel arbitration) or if they want the litigation to end sooner (e.g., they were awarded damages at trial). Respondents may also prefer to use an appendix if the record is large and they do not yet know what documents to include in the clerk's transcript or if they do not want to incur the cost of a clerk's transcript.

Some attorneys, however, may be unaware that respondents must elect an appendix by the same deadline that appellants must file their designation notice—just 10 days after the notice of appeal is filed and 10 days earlier than respondents' other record designations. They may be surprised

when an appellant elects a clerk's transcript and then they learn that it is too late to elect an appendix instead. Some respondents may be unable to secure appellate counsel to be properly advised during this short time period. As a result, respondents may miss their opportunity to elect an appendix. This 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.

This rule change would impact the briefing schedule in some cases where an appendix has been elected and no reporter's transcript is designated. Under rule 8.212(a), if an appendix is being used and a reporter's transcript has not been designated, an appellant in the Court of Appeal must file and serve its opening brief within 70 days after the filing of the election to use an appendix. Similarly, under rule 8.882(a), if an appendix is being used and a reporter's transcript has not been designated, an appellant in the appellate division must file and serve its opening brief within 60 days after the filing of the election to use an appendix. Currently the rules require both parties to elect an appendix within 10 days of the filing of the notice of appeal. Under the rule change, the respondent's election would be due 10 days later and the appellant's time to file its opening brief would run from this later date. The committee requests feedback on this effect, or any others, of the proposed rule changes.

Time to file an appendix

Rule 8.124(e)(2) and rule 8.845(e)(2) require a joint appendix or an appellant's appendix to be served and filed "with the appellant's opening brief." The corresponding advisory committee comments to both rules explain that this 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 would amend the rules to allow the filing of an appendix "before or together with the appellant's opening brief." A clerk's transcript is always filed before the appellant's opening brief. 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 assist the courts' consideration of petitions for writ of supersedeas. The rule change would not affect the automatic extension of time for filing an appendix if the appellant has 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 clerk's transcript or additional oral proceedings be included in a reporter's transcript. To elect an appendix, respondents can use *Respondent's Notice of Election to Use an Appendix (Unlimited Civil Case)*, form APP-011. Under the proposed rule change to allow respondents more time to elect an appendix, respondents' choices regarding the record on appeal would all be due at the same time, obviating the need for a separate form to elect an appendix. The committee proposes revising item 1 on form APP-010 to add a box for respondents to indicate their election of an appendix and add content advising respondents that if the appellant obtains a fee waiver they cannot elect an appendix and prompting them, should their election of an appendix not be given

effect, to designate any additional documents and exhibits for the clerk’s transcript. Form APP-011 would be revoked.

The corresponding forms for limited civil cases are *Respondent’s Notice Designating Record on Appeal (Limited Civil Case)*, form APP-110, and *Respondent’s Notice of Election to Use an Appendix (Limited Civil Case)*, form APP-111. The committee proposes making the same changes to form APP-110 and revoking for APP-111.

Information Sheets

The committee also proposes revisions to two information sheets to reflect the rule changes. *Information on Appeal Procedures for Unlimited Civil Cases*, form APP-001-INFO, would be revised to indicate that a joint appendix or an appellant’s appendix may be filed “before or together with” the appellant’s opening brief. The form would also be revised to add a paragraph advising the respondent that if the appellant chooses a clerk’s transcript but does not have a waiver of the fee for a clerk’s transcript, the respondent can choose an appendix instead of a clerk’s transcript; and to choose an appendix, the respondent 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.

The same changes, but with reference to *Respondent’s Notice Designating Record on Appeal (Limited Civil Case)* (form APP-110), are proposed for *Information on Appeal Procedures for Limited Civil Cases*, form APP-101-INFO.

The committee would appreciate feedback on the proposed revisions to forms and whether separate forms to elect an appendix should be retained.

Alternatives Considered

The committee considered the alternative of not taking any action but concluded that the amendments would benefit both courts, by saving time, and litigants, by saving time and expense.

The committee also considered retaining separate forms for respondent to elect an appendix and is requesting feedback on this alternative.

Fiscal and Operational Impacts

The committee expects that fiscal and operational impacts would be minimal, but, as noted above, would like feedback on the impact of allowing respondents more time to elect an appendix. Training for court staff and changes to case management systems would likely be necessary.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- 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?
- Are any other record preparation or briefing procedures affected by allowing respondents more time to elect an appendix?
- Should separate forms for the respondent to elect an appendix be retained?

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

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

Attachments and Links

1. Cal. Rules of Court, rules 8.124 and 8.845, at pages 6–10
2. Forms APP-001-INFO, APP-010, APP-011, APP-101-INFO, APP-110, and APP-111, at pages 11–52

Rules 8.124 and 8.885 of the California Rules of Court would be amended, effective January 1, 2024, to read:

1 Title 8. Appellate Rules

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

4
5 Chapter 2. Civil Appeals

6
7 Article 2. Record on Appeal

8
9 Rule 8.124. Appendixes

10
11 (a) Notice of election

- 12
13 (1) Unless the superior court orders otherwise on a motion served and filed
14 within 10 days after the notice of election is served, this rule governs if:
15
16 (A) The appellant elects to use an appendix under this rule in the notice
17 designating the record on appeal under rule 8.121; or
18
19 (B) The respondent serves and files a notice in the superior court electing to
20 use an appendix under this rule within 10 days after the appellant's
21 notice of appeal designating the record on appeal is filed and no waiver
22 of the fee for a clerk's transcript is granted to the appellant. If the
23 appellant has a fee waiver, the respondent cannot elect an appendix
24 instead of a clerk's transcript.
25
26 (2) When a party files a notice electing to use an appendix under this rule, the
27 superior court clerk must promptly send a copy of the register of actions, if
28 any, to the attorney of record for each party and to any unrepresented party.
29
30 (3) The parties may prepare separate appendixes or they may stipulate to a joint
31 appendix.

32
33 (b)–(d) * * *

34
35 (e) Service and filing

- 36
37 (1) A party preparing an appendix must:
38
39 (A) Serve the appendix on each party, unless otherwise agreed by the
40 parties or ordered by the reviewing court; and
41
42 (B) File the appendix in the reviewing court.

Rules 8.124 and 8.885 of the California Rules of Court would be amended, effective January 1, 2024, to read:

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

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

Subdivision (b). * * *

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.

Rules 8.124 and 8.885 of the California Rules of Court would be amended, effective January 1, 2024, to read:

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

5 **Subdivision (g).** * * *

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8 **Division 4. Rules Relating to the Superior Court Appellate Division**

9
10 **Chapter 2. Appeals and Records in Limited Civil Cases**

11
12 **Article 2. Record in Civil Appeal**

13
14 **Rule 8.845. Appendixes**

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16 **(a) Notice of election**

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

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

23
24 (B) The respondent serves and files a notice in the superior court electing to
25 use an appendix under this rule within 10 days after the **appellant’s**
26 notice **of appeal designating the record on appeal** is filed no waiver of
27 the fee for a clerk’s transcript is granted to the appellant. **If the**
28 **appellant has a fee waiver, the respondent cannot elect an appendix**
29 **instead of a clerk’s transcript.**
30

31 (2) When a party files a notice electing to use an appendix under this rule, the
32 superior court clerk must promptly send a copy of the register of actions, if
33 any, to the attorney of record for each party and to any unrepresented party.
34

35 (3) The parties may prepare separate appendixes or they may stipulate to a joint
36 appendix.
37

38 **(b)–(d)** * * *

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40 **(e) Service and filing**

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42 (1) A party preparing an appendix must:

Rules 8.124 and 8.885 of the California Rules of Court would be amended, effective January 1, 2024, to read:

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(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.

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

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

Subdivision (b). * * *

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**

Rules 8.124 and 8.885 of the California Rules of Court would be amended, effective January 1, 2024, to read:

1 **supersedeas**. To provide for the case in which a respondent concludes in light of the appellant's
2 opening brief that the joint appendix should have included additional documents, subdivision
3 (b)(5) permits such a respondent to present in an appendix filed with its respondent's brief (see
4 subd. (e)(3)) any document that could have been included in the joint appendix.

5
6 Under subdivision (e)(2)–(4) an appendix is required to be filed **at the latest**, “with” the
7 associated brief. This provision is intended to clarify that an extension of a briefing period ipso
8 facto extends the filing period of an appendix associated with the brief.

9
10 **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 California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-appeals.htm.
- 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 e-mail 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 California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-lowcosthelp.htm in the Getting Started section.



INFORMATION FOR THE APPELLANT

This part of the information sheet is written for the appellant—the party who is appealing the trial court’s decision. It explains some of the rules and procedures relating to appealing a decision in 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 California Courts Online Self-Help Center 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 appealable 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 California Courts Online Self-Help Center 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 California Courts Online Self-Help Center 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 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 California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-serving.htm.

You and the other parties can agree (stipulate) to extend the time for filing this brief by up to 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 (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 California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-lowcosthelp.htm.

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. 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 California Courts Online Self-Help Center 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 California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-serving.htm.

You and the other parties can agree (stipulate) to extend the time for filing this brief by up to 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 NAME: FIRM NAME: STREET ADDRESS: CITY: TELEPHONE NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	STATE BAR NUMBER: STATE: ZIP CODE: FAX NO.:	FOR COURT USE ONLY DRAFT 02/17/2023 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)		
Re: Appeal filed on (date):		SUPERIOR COURT CASE NUMBER: 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 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 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 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:
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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. (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 2(b)," 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 rules 3.50–3.58; or
 - (b) An application for a waiver of court fees and costs under 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 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:
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3. a. (1) *(continued)*

	Date	Department	Full/Partial Day	Description	Reporter's Name	Prev. prepared?
(a)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(b)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(c)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(d)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(e)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(f)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(g)						<input type="checkbox"/> Yes <input type="checkbox"/> 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 rule 8.130(b)(1).
- (b) Attached a copy of a Transcript Reimbursement Fund application filed under rule 8.130(c)(1).
- (c) Attached the reporter's written waiver of a deposit under 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 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)
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ATTORNEY OR PARTY WITHOUT ATTORNEY: NAME: FIRM NAME: STREET ADDRESS: CITY: TELEPHONE NO.: E-MAIL ADDRESS: ATTORNEY FOR (<i>name</i>):	STATE BAR NO.: STATE: ZIP CODE: FAX NO.:	
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SUPERIOR COURT OF CALIFORNIA, COUNTY OF
STREET ADDRESS:
MAILING ADDRESS:
CITY AND ZIP CODE:
BRANCH NAME:

PLAINTIFF/PETITIONER:
DEFENDANT/RESPONDENT:

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

SUPERIOR COURT CASE NUMBER:

RE: Appeal filed on (*date*):

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

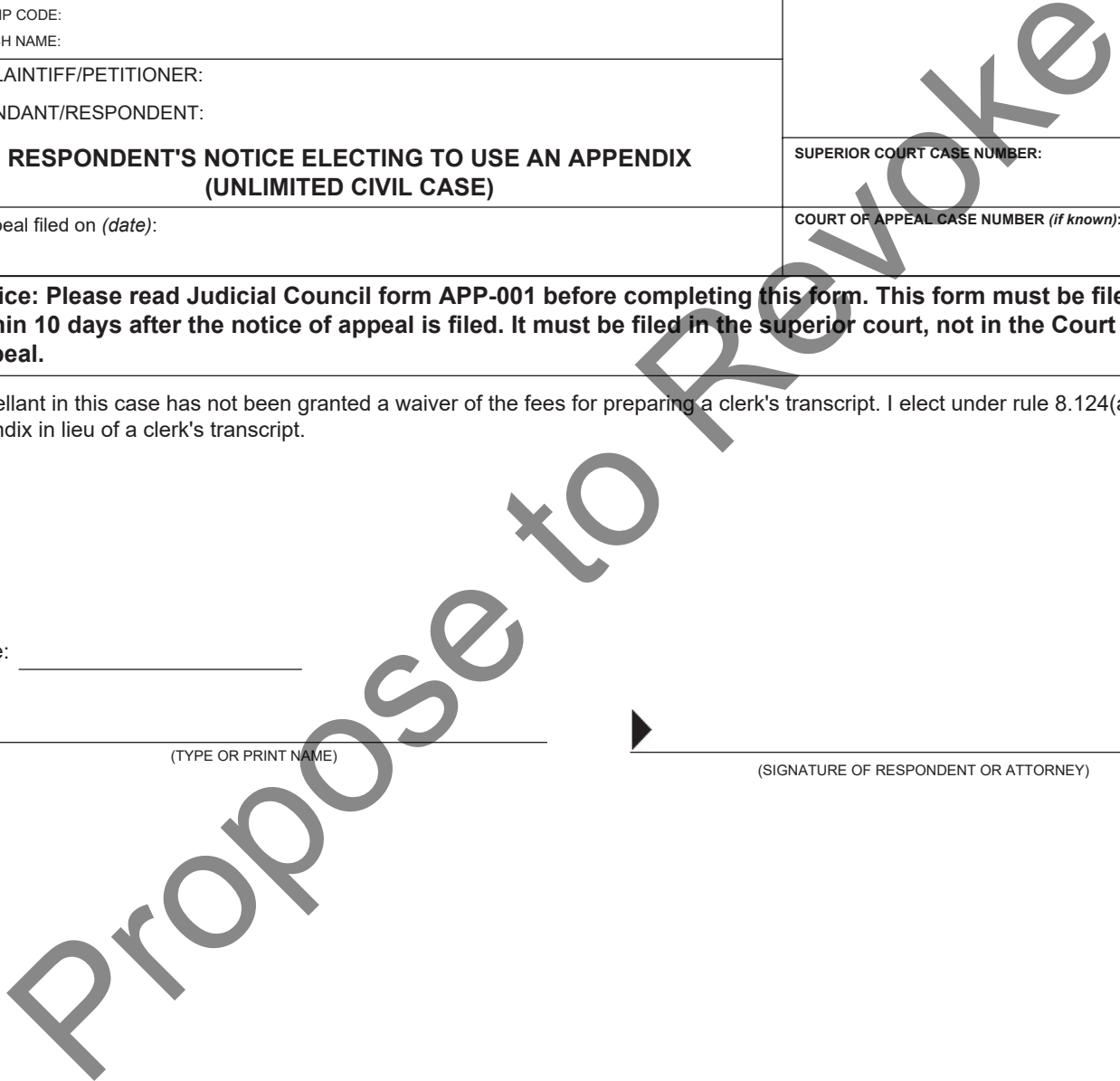
Notice: Please read Judicial Council form APP-001 before completing this form. This form must be filed within 10 days after the notice of appeal is filed. It must be filed in the superior court, not in the Court of Appeal.

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)



GENERAL INFORMATION**1 What does this information sheet cover?**

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

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

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

2 What is an appeal?

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

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

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

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

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

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

Prejudicial error can include things like errors made by the judge about the law, errors or misconduct by the lawyers, incorrect instructions given to the jury, and misconduct by the jury that harmed the appellant. When it conducts its review, the appellate division presumes that the judgment, order, or other decision being appealed is correct. It is the responsibility of the appellant to show the appellate division that an error was made and that the error was harmful.

- **No substantial evidence:** The appellant may also ask the appellate division to determine if there was substantial evidence supporting the judgment, order, or other decision being appealed. When it conducts its review, the appellate division only looks to see if there was evidence that reasonably supports the decision. The appellate division generally will not reconsider the jury’s or trial court’s conclusion about which side had more or stronger evidence or whether witnesses were telling the truth or lying.

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



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

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

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

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

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

INFORMATION FOR THE APPELLANT

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

5 Who can appeal?

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

6 Can I appeal any decision the trial court made?

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

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

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

7 How do I start my appeal?

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

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

“Serve and file” means that you must:

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

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

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

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

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

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

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

10 Do I have to pay to file an appeal?

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

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

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

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

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

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



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

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

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

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

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

There are three parts of the official record:

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

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

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

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

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

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

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

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

Read below for more information about these options.

(1) Reporter’s transcript

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

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

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

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

reporter’s transcript. If you elect to proceed without a reporter’s transcript, however, the respondent may not designate a reporter’s transcript without first getting an order from the appellate division.

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

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

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

(2) Official electronic recording or transcript

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

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

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

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

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

- You can ask the trial court clerk for an estimate of the cost of preparing a transcript of the proceedings you have designated in your notice designating the record on appeal. You must deposit this amount and the \$50 fee with the trial court within 10 days of receiving the estimate from the clerk.

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

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

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

(3) Agreed statement

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

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

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

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

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

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

(4) Statement on appeal

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

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

Contents: A statement on appeal must include:

- A statement of the points you (the appellant) are raising on appeal;

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

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

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

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

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



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

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

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

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

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

b. Record of the documents filed in the trial court

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

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

Read below for more information about these options.

(1) Clerk’s transcript or appendix

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

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

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

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



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

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

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

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

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

parties can agree on how the cost of preparing the appendix will be paid or the appellant will pay the cost.

The party preparing the appendix must serve the appendix on each other party (unless the parties have agreed or the appellate division has ordered otherwise) and file the appendix in the appellate division. The appellant's appendix or a joint appendix must be served and filed **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 California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-serving.htm.

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

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

16 What happens after I file my brief?

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

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

17 What happens after all the briefs have been filed?

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

18 What is "oral argument"?

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

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

19 What happens after oral argument?

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

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

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



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

INFORMATION FOR THE RESPONDENT

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

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

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

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

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

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

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

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

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

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

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

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

(a) Reporter’s transcript

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

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



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

Unlike the fee for preparing a clerk's transcript, the court cannot waive the fee for preparing a reporter's transcript. A special fund, called the Transcript Reimbursement Fund, may be able to help pay for the transcript. You can get information about this fund at 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 California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-serving.htm.

(d) Clerk's transcript or appendix

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

To do this, within 10 days after the appellant serves its notice designating the record on appeal, you must serve and file a notice designating additional documents to be included in the clerk's transcript. You may use *Respondent's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-110) for this purpose.

Whether or not you ask for additional documents to be included in the clerk's transcript, you must pay a fee if you want a copy of the clerk's

transcript. The trial court clerk will send you a notice indicating the cost for a copy of the clerk's transcript. If you want a copy, you must deposit this amount with the court within 10 days after the clerk's notice was sent.

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

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

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. 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.

25 What happens after the official record has been prepared?

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

A brief is a party's written description of the facts in the case, the law that applies, and the party's argument about the issues being appealed. If you are represented by a lawyer, your lawyer will prepare your brief. If you are not represented by a lawyer in your appeal, you will have to prepare your brief yourself. You should read rules 8.882–8.884 of the California Rules of Court, which set out the requirements for preparing, serving,

and filing briefs in limited civil appeals, including requirements for the format and length of these briefs. You can get these rules at any courthouse or county law library or online at www.courts.ca.gov/rules.htm.

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

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

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

If you do not file a respondent's brief, the appellant does not automatically win the appeal. The court will decide



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

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

26 What happens after all the briefs have been filed?

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

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

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

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

Respondent's Notice Designating Record on Appeal (Limited Civil Case)*Clerk stamps date here when form is filed.***DRAFT****02/17/2023****Not approved by the Judicial Council****Instructions**

- This form is only for choosing (“designating”) the record on appeal in a **limited civil case**.
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.
- 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 ZipMailing 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 ZipMailing address (*if different*): _____
Street City State Zip

Phone: _____ E-mail: _____

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).

Table with 2 columns: Document Title and Description, Date of Filing. Rows (a) through (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 4a(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 (continued)

Exhibit Number	Description	Admitted Into Evidence	
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> 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 4a(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)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(b)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(c)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(d)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(e)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(f)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(g)				<input type="checkbox"/> Yes <input type="checkbox"/> 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 5a(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 5b(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

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 Number: _____

Trial Court Case Name: _____

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.

Propose to Revoke

Date: _____

Type or print your name

▶ _____
Signature of respondent or attorney

JUDICIAL COUNCIL OF CALIFORNIA

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

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

INVITATION TO COMMENT

SPR23-__

Title

Appellate Procedure: Forms for Extension of Time

Action Requested

Review and submit comments by May 12, 2023

Proposed Rules, Forms, Standards, or Statutes

Revise forms APP-006, APP-106, CR-126, JV-816, JV-817

Proposed Effective Date

January 1, 2024

Proposed by

Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

Contact

Christy Simons, 415-865-7694
christy.simons@jud.ca.gov
Kendall W. Hannon 415-865-7653
kendall.hannon@jud.ca.gov

Executive Summary and Origin

The Appellate Advisory Committee proposes 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. The revisions would add space for the applicant to indicate the work done to date on the appeal and would correct the item on one form regarding who must be served with the application. On the civil form for use in the Court of Appeal, an item indicating that the case has calendar preference would be added. Finally, the item on the forms for the applicant to explain why an extension of time should be granted has been revised to require the applicant to address the relevant factors a court will use to determine whether good cause exists. The proposal originated with suggestions from the Chief Justice's Appellate Caseflow Workgroup, an appellate project, a county bar association, and a member of the Judicial Council.

Background

California Rules of Court, rules 8.212, 8.360, 8.412, 8.416, and 8.417, 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 would revise five forms:

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

- *Application for Extension of Time to File Brief (Civil Case) (Appellate)*, form APP-006, is the optional form that may be used to request an extension of time in unlimited civil cases in the Court of Appeal.
- *Application for Extension of Time to File Brief (Limited Civil Case)*, form APP-106, is the optional form that may be used to request an extension of time in limited civil cases in the appellate division.
- *Application for Extension of Time to File Brief (Criminal Case) (Appellate)*, form CR-126, is the optional form that may be used to request an extension of time in criminal cases.
- *Application for Extension of Time to File Brief (Juvenile Delinquency Case) (Appellate)*, form JV-816, is the optional form that may be used to request an extension of time in juvenile justice cases.
- *Application for Extension of Time to File Brief (Juvenile Dependency Case) (Appellate)*, form JV-817, is the optional form that may be used to request an extension of time in juvenile dependency cases.

The Proposal

Proof of service

The committee received several requests that the proof of service statement on form CR-126 be revised to match this statement on the other application for extension of time forms. 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).)” Under rule 8.360(d)(1), defendant’s appellate counsel must serve each brief on the People and the district attorney, and must send a copy of each brief to the defendant personally unless the defendant requests otherwise. Rule 8.360(d)(3) requires the People to serve their briefs on the appellate counsel for each defendant who is a party to the appeal and on the district appellate project. If the district attorney is representing the People, the district attorney’s brief must be served on the Attorney General.

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.” (See rule 8.60(c).) The forms for requesting an extension of time in civil, juvenile dependency, and juvenile justice appeals all require service on “all other parties,” not those entitled to receive a copy of the brief. Moreover, there appears to be no reason for this different service provision. The proposed revisions correct this item on the form, making it consistent with the other forms for requesting an extension of time to file a brief and relieving applicants of the burden of service on nonparties.

In addition, the proposal would revise the item requiring that a proof of service on all other parties be attached to the application on the forms used in the Court of Appeal. Forms APP-006, CR-126, JV-816, and JV-817 currently cite the rules permitting a reviewing court to order an extension of time to file a brief. The rule that requires proof of service of an extension request in the Court of Appeal (rule 8.60(c)) is better authority for this item.

Space to indicate work completed on the appeal

The committee also received a suggestion that the forms include an item for the applicant to state the amount of work that has been completed on the appeal at the time of the request for an extension of time to file a brief. Providing this information would assist both the appellate projects in supervising the work of panel attorneys and the courts in considering these applications. The proposal includes adding this item to each of the five forms. The committee seeks specific comment on whether this item should be included on any or all of the forms.

Calendar preference

Adding an item to alert the court when a case has priority was also suggested. 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 to the rule explains:

Rule 8.240 requires a party claiming preference to file a motion for preference in the reviewing court. The motion requirement relieves the reviewing court of the burden of searching the record to determine if preference should be ordered. The requirement is not intended to bar the court from ordering preference without a motion when the ground is apparent on the face of the appeal, e.g., in appeals from judgments of dependency (Welf. & Inst. Code, § 395).

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]; see *Warren v. Schechter* (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).

Thus, the Court of Appeal may order calendar preference on motion of a party or without a motion when the ground is apparent on the face of the appeal.

The committee proposes adding an item to form APP-006, the form that may be used to request an extension of time in unlimited civil cases, to allow the applicant to indicate whether the appeal is eligible for calendar preference or priority. The item directs the applicant to cite authority (such as a statute which gives the appeal preference or priority) or to explain why the

appeal should be given preference or priority. This information would assist courts in considering whether to grant an extension. The committee seeks specific comment on whether a similar item should be included on the extension of time forms applicable to criminal, juvenile, and limited civil cases.

Statement of Reasons for Extension

It was suggested that forms APP-006 and CR-126 be revised to enable courts to better evaluate whether an applicant has demonstrated good cause. Currently, all of the extension of time forms provide the applicant an open-ended prompt to state the reasons that an extension is needed. The prompt is followed by a parenthetical instruction which states that California Rules of Court, rule 8.63 (or rule 8.811(b) on form APP-106) lists the factors used in determining whether an extension should be granted.

The committee proposes revising the parenthetical on these forms to expressly direct the movant to address the factors contained in the relevant rule. Additionally, the committee proposes revising the parenthetical at item 10 on form JV-816 to state that an exceptional showing of good cause is required in cases subject to rule 8.417.

Other corrections and additions

The proposal corrects a typographical error on form APP-106, item 4, to reflect the 15-day window for filing a brief upon receipt of a notice under rule 8.882(c).

The proposal corrects the notice at the top of the form to refer to form APP-001-INFO.

The proposal revises item 1 on forms APP-006, CR-126, JV-816, and JV-817, and item 2 on APP-106 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 the reply brief or a supplemental brief, options were added for “ARB” and “Other” to item 5 on form APP-006; item 4 on forms CR-126, JV-816, and JV-817; and item 9 on form APP-106.

The proposal revises item 2 on forms APP-006, CR-126, JV-816, and JV-817, and item 4 on APP-106 to add the word “default” before “notice.” The committee believes that identifying the notice as a “default notice” would clarify this item.

The proposal revises item 7 on form CR-126 to change “jury verdict” to “jury or court trial” to include convictions resulting from a court trial.

Alternatives Considered

The committee considered a suggestion to increase the amount of space on form CR-126 for the applicant to explain why an extension is needed. The committee declined to propose this change because the item provides for the attachment of a separate declaration if more space is needed. Adding more space would push the form onto 3 pages, which the committee decided was not desirable.

The committee also considered the alternative of removing the item on the forms stating that proof of service is attached. As noted by the organization that submitted the suggestion, this item may no longer be necessary because most of these forms are filed electronically. In these instances, a proof of service is generated by the electronic filing service provider and is not “attached.” The committee declined to propose this change at this time. There is no indication that parties or courts are confused by it, and the forms may still be filed in paper form by some applicants. The committee concluded it would be better practice to look at the appellate forms more broadly in a future rules cycle and decide whether changes to the proof of service provision should be made and, if so, to make the changes at one time.

The committee considered requiring the applicant to address certain specific factors relevant to the good cause determination, rather than directing the applicant to address the factors listed in the rules. For instance, the Chief Justice’s Appellate Caseflow Workgroup suggested that the Council consider whether forms APP-006 and CR-126 should require information regarding the extent to which an extension would prejudice another party.¹ Under Rules 8.63 and 8.811, prejudice is one of several factors a court is to consider in deciding whether to grant an extension. The committee believes that directing the applicant to the relevant factors and requiring the applicant to address those factors will better assist courts in evaluating an extension of time application.

The committee considered making these extension of time forms mandatory. The committee seeks specific comment on whether the committee should explore making this change in a future proposal.

The committee considered not making any changes but rejected this option because the proposed revisions would make the forms more accurate and would be helpful to both appellate projects supervising panel attorneys and courts considering these applications.

Fiscal and Operational Impacts

The committee does not anticipate any fiscal or operational impacts on the courts as a result of the proposed revisions to forms. Applicants requesting an extension of time to file a brief would need to advise the court regarding the status of work completed on the appeal at the time of the request. Implementation requirements for courts would involve making judicial officers aware of the changes.

¹ See Appellate Caseflow Workgroup, Report to the Chief Justice, at p. 24, available at https://newsroom.courts.ca.gov/sites/default/files/newsroom/2022-12/Appellate%20Caseflow%20Workgroup%20Report_Final.pdf

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Should the committee explore making the extension of time application forms mandatory in a future proposal?
- Should the criminal and juvenile extension of time application forms include an item for the party to indicate the work they have completed on the appeal? Should the civil forms include such an item?
- Should the application forms in criminal, juvenile, and limited civil cases include an item regarding calendar priority/preference?

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

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

Attachments and Links

1. Forms APP-006, APP-106, CR-126, JV-816, and JV-817, at pages 6–16.

COURT OF APPEAL	APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER:		SUPERIOR COURT CASE NUMBER:
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):		<h2 style="margin: 0;">DRAFT</h2> <h2 style="margin: 0;">02.21.2023</h2> <h2 style="margin: 0;">Not approved</h2> <h2 style="margin: 0;">by Judicial</h2> <h2 style="margin: 0;">Council</h2>
APPELLANT: RESPONDENT:		
APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF (CIVIL CASE)		
Notice: Please read Judicial Council form APP-001-INFO before completing this form.		

1. 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 rule 8.216)
 - combined appellant's reply brief (ARB) and respondent's brief (RB) (see rule 8.216)
 - appellant's reply brief (ARB)
 - supplemental or other brief
 now due on (date): _____ be extended to (date): _____

2. I have have not received a 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.
 - 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:			

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

APPELLANT: RESPONDENT:	COURT OF APPEAL CASE NUMBER:
---------------------------	------------------------------

8. This appeal is eligible for calendar preference/priority (*cite authority or explain*):

9. I have completed the following work on this 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-031) for this purpose.

(Please address the Cal. Rules of Court, rule 8.63 factors used in determining whether to grant extensions):

11. 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).

12. 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)

Clerk stamps date here when form is filed.

**DRAFT
02.21.2023
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**.
- 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.courtinfo.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 California Courts Online Self-Help Center at www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving.
- 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: _____

E-mail: _____

- 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: _____

E-mail: _____

Fax: _____



Case Name: _____

- 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.
 - Other reason (please describe the reason):

- 7 I have completed the following work on this appeal:

- 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 the court will consider in deciding whether to grant an extension):

- 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

COURT OF APPEAL	APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER:	
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:		SUPERIOR COURT CASE NUMBER:	
NAME:		DRAFT 02.21.2023 Not approved by Judicial Council	
FIRM NAME:			
STREET ADDRESS:			
CITY:	STATE:		ZIP CODE:
TELEPHONE NO.:	FAX NO.:		
E-MAIL ADDRESS:			
ATTORNEY FOR (<i>name</i>):			
APPELLANT:			
RESPONDENT:			
APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF (CRIMINAL CASE)			

1. 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 rule 8.216)
- combined appellant's reply brief (ARB) and respondent's brief (RB) (see rule 8.216)
- appellant's reply brief (ARB)
- supplemental or other brief

now due on (*date*): _____ be extended to (*date*): _____

2. I have have not received a 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

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. I have completed the following work on this appeal:

11. 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-031) for this purpose.

(Please address the Cal. Rules of Court, rule 8.63 factors used in determining whether to grant extensions):

12. A proof of service of this application on all other parties is attached (see 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)

COURT OF APPEAL	APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:		DRAFT 02.21.2023 Not approved by Judicial Council
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
E-MAIL ADDRESS:		
ATTORNEY FOR (<i>name</i>):		
Case Name: In re _____, person(s), coming under the juvenile court law		
APPELLANT:		
RESPONDENT:		
APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF (JUVENILE DELINQUENCY CASE)		

1. 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 rule 8.216)
 - combined appellant's reply brief (ARB) and respondent's brief (RB) (see rule 8.216)
 - appellant's reply brief (ARB)
 - supplemental or other brief**
 now due on (*date*): _____ be extended to (*date*): _____

2. I have have not received a 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

APPELLANT: RESPONDENT:	COURT OF APPEAL CASE NUMBER:
---------------------------	------------------------------

8. The court imposed the following disposition:

9. I have completed the following work on this 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-031) for this purpose.

(Please address the Cal. Rules of Court, rule 8.63 factors used in determining whether to grant extensions. Note that an exceptional showing of good cause is required in cases subject to Rule 8.417):

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)

COURT OF APPEAL	APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:		SUPERIOR COURT CASE NUMBER(S):
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.:		DRAFT 02.21.2023 Not approved by Judicial Council
E-MAIL ADDRESS: ATTORNEY FOR (name):		
Case Name: In re _____, person(s), coming under the juvenile court law		
APPELLANT: RESPONDENT:		
APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF (JUVENILE DEPENDENCY CASE)		

1. 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 rule 8.216)
 - combined appellant's reply brief (ARB) and respondent's brief (RB) (see rule 8.216)
 - appellant's reply brief (ARB)
 - supplemental or other brief
 now due on (date): _____ be extended to (date): _____

2. I have have not received a 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

APPELLANT: RESPONDENT:	COURT OF APPEAL CASE NUMBER:
---------------------------	------------------------------

- 6. c. Section 366.28
- d. Other appealable orders relating to dependency (*specify*):

7. I have completed the following work on this appeal:

8. 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-031) for this purpose.
- (Please address the Cal. Rules of Court, rule 8.63 factors used in determining whether to grant extensions. Note that an exceptional showing of good cause is required in cases subject to Rule 8.416):*

9. 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)

JUDICIAL COUNCIL OF CALIFORNIA

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

INVITATION TO COMMENT

SPR23-__

Title	Action Requested
Appellate Procedure: Notice of Appeal Form	Review and submit comments by May 12, 2023
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise form APP-002	January 1, 2024
Proposed by	Contact
Appellate Advisory Committee Hon. Louis R. Mauro, Chair	Kendall W. Hannon, 415-865-7653 kendall.hannon@jud.ca.gov

Executive Summary and Origin

The Appellate Advisory Committee proposes revising *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)* (form APP-002) to (1) include an item by which an attorney can join the appeal to challenge an order directing payment of sanctions by the attorney, and (2) highlight the item requesting the date the order or judgment being appealed was entered so that it is not overlooked. This proposal originated in response to a recent California Supreme Court decision and a suggestion by the Family Violence Appellate Project.

Background

Recent Supreme Court decision

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,

¹ (2020) 8 Cal.5th 875.

² Cal. Rules of Court, rule 8.100(a)(2).

³ *K.J. v. Los Angeles Unified School Dist.*, *supra*, 8 Cal.5th at p. 878.

the “better practice is for the attorney to file a notice of appeal that expressly identifies himself or herself as an appealing party.”⁴

Date of entry of order or judgment

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.⁵

The current version of form APP-002 has a field for the appellant to enter the date the judgment or order being appealed was entered. The committee has received feedback from the Family Violence Appellate Project that a significant number of pro per litigants with whom they interact overlook this item on the form and do not fill it out, making it more difficult to determine if the appeal is timely.

The Proposal

Addition of item for attorneys to indicate they are joining the appeal

This proposal would revise form APP-002 to add item 1d, by which an attorney could indicate that the judgment or order being appealed directed the attorney to pay sanctions and that the attorney is joining the appeal. The committee believes this item would avoid the problem of an “omitted attorney” by expressly prompting the attorney to indicate whether they are joining the appeal. By encouraging the “better practice” of the attorney expressly identifying themselves as an appealing party, this item would help obviate the need for the Court of Appeal to divine the attorney’s intent from the record.

Reformatting of item regarding date of entry of judgment or order

In its current form, item 1 of form APP-002 begins with a sentence that prompts the appellant to provide their name and the date on which the judgment or order being appealed was entered. The date field is at the end of this sentence and, as discussed above, some appellants may overlook this field.

To highlight the need to provide the date the judgment or order being appealed was entered (thus aiding the courts and parties in determining whether the appeal is timely), this proposal would reformat item 1 into subitems. In subitem a, appellants would provide their name. Subitem b asks for the date the order or judgment was entered. Subitem c is a list of statutes authorizing appeals from various orders and judgments, with check boxes for the appellant to indicate the type of

⁴ *Id.* at p. 889.

⁵ See, e.g., *Silverbrand v. County of Los Angeles* (2009) 46 Cal.4th 106, 113.

order or judgment being appealed. Finally, item 1d, as discussed above, would permit attorneys to indicate that they are joining the appeal to challenge a judgment or order directing them to pay sanctions.

By having a separate subitem for the date of entry of the underlying judgment or order, the committee believes it will be more evident to appellants that this information must be provided.

Alternatives Considered

The committee considered taking no action, but rejected this option as it concluded the proposed revisions to form APP-002 would aid both parties and the courts.

Fiscal and Operational Impacts

The committee anticipates that fiscal and operational impacts of this proposal on courts will be minimal. Brief education of court staff and judicial officers on the revised form may be required.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Should similar changes be made to other notice of appeal forms?

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

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

Attachments and Links

1. Form APP-002, at page 4

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY <h2 style="margin: 0;">DRAFT</h2> <h2 style="margin: 0;">01.23.2023</h2> <h2 style="margin: 0;">Not approved by Judicial Council</h2>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
<input type="checkbox"/> NOTICE OF APPEAL <input type="checkbox"/> CROSS-APPEAL (UNLIMITED CIVIL CASE)	CASE NUMBER:

Notice: Please read *Information on Appeal Procedures for Unlimited Civil Cases* (Judicial Council form APP-001) 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 order or judgment was entered on (date): _____
- c. The appeal is from the following order or judgment:
 - 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 code section that authorizes this appeal): _____
- d. The judgment or order being appealed directs payments of sanctions by an attorney for a party. The attorney (name): _____ joins the appeal.

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):

Date:

 (TYPE OR PRINT NAME) ▶ _____
 (SIGNATURE OF PARTY OR ATTORNEY)



Judicial Council of California

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

Telephone 415-865-4200 · Fax 415-865-4205

M E M O R A N D U M

Date

January 24, 2023

Action Requested

Please review for February 27 Committee Meeting

To

Members of the Appellate Advisory Committee

Deadline

February 27, 2023

From

Heather Anderson, Attorney, Legal Services

Contact

Heather Anderson

415-865-7803 phone

heather.anderson@jud.ca.gov

Subject

Draft Invitation to Comment Re: Attachment of Trial Court's Order to Petition for Review of Summary Denial of Writ Petition

Item 10 on the committee's 2022-2023 annual agenda is a project to consider amending rule 8.504 to allow for attachment of the entire trial court order to a petition for review of a writ petition summarily denied by the Court of Appeal. The suggestion for this rule change was submitted by Appellate Advisory Committee member Benjamin Shatz.

Attached for the committee's review is a draft invitation to comment regarding this rule change for possible circulation in the spring cycle. The rules subcommittee reviewed this draft invitation to comment at its January 30 meeting and recommends that the full committee that seek approval from RUPRO to circulate the modified proposal for public comment.

The committee's task is to analyze the attached proposal and:

- Approve the proposal as presented and seek approval from RUPRO to circulate the proposal for public comment;
- Modify the proposal seek approval from RUPRO to circulate the modified proposal for public comment;

January 24, 2023

Page 2

- Reject the proposal; or
- Ask staff or committee members for further information/analysis.

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

INVITATION TO COMMENT

SPR23-__

Title

Appellate Procedure: Attachment of Trial Court’s Order to Petition for Review of Summary Denial of Writ Petition

Action Requested

Review and submit comments by May 12, 2023

Proposed Rules, Forms, Standards, or Statutes

Amend Cal. Rules of Court, rule 8.504

Proposed Effective Date

January 1, 2023

Proposed by

Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

Contact

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

Heather Anderson, 415-865-7803
heather.anderson@jud.ca.gov

Executive Summary and Origin

To facilitate review on the merits and streamline procedures, the Appellate Advisory Committee proposes amending the rule governing petitions for review in the Supreme Court to provide for attachment of the entire trial court order when petitioner seeks review of a Court of Appeal summary denial of a writ petition. Under the current rule, attachments to petitions for review may not exceed 10 pages. The proposal originated with a suggestion from a committee member.

The Proposal

Rules 8.500–8.552 of the California Rules of Court¹ govern proceedings in the Supreme Court. Rule 8.504 governs the form and contents of petitions for review, answers, and replies, including attachments. If a petition seeks review of a Court of Appeal opinion or order, that opinion or order must be attached. (Rule 8.504(e)(1)(A).)² In addition, the rule permits attachment of “exhibits or orders of a trial court that are unusually significant” and “copies of relevant regulations or rules, out-of-state statutes, or other similar citable materials that are not readily

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

² The rule also provides for attaching an unpublished opinion that is required to be attached under rule 8.1115(c). (Rule 8.504(e)(1)(D).)

accessible.” (Rule 8.504(e)(1)(B), (C).) The permissible attachments must not exceed a combined total of 10 pages. (Rule 8.504(e)(2).)³

Under rule 8.504(a), except as otherwise provided, petitions for review must also comply with format provisions in rule 8.204, the rule addressing the contents and format of briefs in the Court of Appeal. As under rule 8.504, rule 8.204(d) provides that attachments to briefs are limited to 10 pages, but also provides that “on application the presiding justice may permit additional pages of attachments for good cause.”

The Appellate Advisory Committee proposes 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 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 or motion 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 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.

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 opinion or order under review be attached.

³ The committee notes that, under rule 8.504(a), except as otherwise provided, petitions for review must also comply with format provisions in rule 8.204, the rule addressing the contents and format of briefs in the Court of Appeal. As under rule 8.504, rule 8.204(d) provides that attachments to briefs are limited to 10 pages, but also provides that “on application the presiding justice may permit additional pages of attachments for good cause.”

Typically, that opinion or order contains the lower court’s analysis and reasoning; review of a summary denial instead focuses on the trial court’s order.

The committee also considered taking no action but concluded that 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.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Should attachment of the trial court’s order be permitted rather than required?

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

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

Attachments and Links

1. Cal. Rules of Court, rule 8.504, at page 4.

Rule 8.504 of the California Rules of Court would be amended, effective January 1, 2024, to read:

1 **Rule 8.504. Form and contents of petition, answer, and reply**

2
3 (a) * * *

4
5 (b) **Contents of a petition**

6
7 (1)–(5) * * *

8
9 (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 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.

10
11
12
13
14
15 ~~(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.

16
17
18
19 ~~(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.

20
21
22
23 (c)–(d) * * *

24
25 (e) **Attachments and incorporation by reference**

26
27 (1) No attachments are permitted except:

28
29 (A) An opinion or order required to be attached under (b)~~(4) or (5)~~(4)–(6);

30
31 (B)–(D) * * *

32
33 (2) The attachments under (1)~~(B)–(C)~~(B) and (C) must not exceed a combined total of 10 pages.

34
35
36 (3) * * *