



# JUDICIAL COUNCIL OF CALIFORNIA

COURT TECHNOLOGY  
ADVISORY COMMITTEE

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## JOINT APPELLATE TECHNOLOGY SUBCOMMITTEE

### MINUTES OF OPEN MEETING

February 9, 2015  
3:00 PM – 5:00 PM

Teleconference

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**Advisory Body Members Present:** Hon. Louis Mauro, Chair; Hon. Peter Siggins; Mr. Kevin Green; Mr. Joseph Lane; Mr. Frank McGuire; Ms. Kimberly Stewart.

**Advisory Body Members Absent:** Mr. Don Willenburg

**Others Present:** Ms. Heather Anderson; Mr. Patrick O'Donnell, Ms. Tara Lundstrom; and Ms. Julie Bagoye

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#### OPEN SESSION

##### Call to Order and Roll Call

Justice Mauro called the meeting to order at 3:00 PM, and roll call was taken. He noted there were no public comments received prior to this meeting.

##### Approval of Minutes

The subcommittee reviewed and approved the minutes of the January 26, 2015, Joint Appellate Technology Subcommittee (JATS) meeting.

##### Item 1

##### Public Access to Electronic Appellate Court Records

**Discussion:** Heather Anderson, Supervising Attorney, Judicial Council staff, Legal Services

Ms. Anderson led the continued discussion regarding the proposal, picking up on page 11 of the second draft.

**Rule 8.83(e)** - Rule 8.83(e) in the second draft addressed remote access to electronic records in extraordinary criminal cases. The subcommittee discussed whether it would be helpful to the appellate courts to include a provision such as this, which would be similar to the trial court rules. The subcommittee decided to keep the provision, to expand it to include extraordinary civil cases, and to recommend that the invitation to comment seek specific input on whether this provision would be helpful. The subcommittee also decided to make the following changes to this draft provision:

- 
- Modify the language of subdivision (2) to remove the reference to the court redacting information; and
- Clarify some of the internal cross-references.

With these changes, the subcommittee recommended approval of this provision.

**8.83(f)** – The subcommittee recommended approval of this provision without change.

**8.83(g)** - The subcommittee recommended approval of this provision without change.

**8.83(h)** - The subcommittee modified this provision to read, in relevant part “made by a member of the public.” With this change, the subcommittee recommended approval of this provision.

**8.83(i)** - The subcommittee recommended moving the content of this provision into the advisory committee comment.

**Rule 8.84** - The subcommittee recommended approval of this rule without change.

**Rule 8.85** - The subcommittee recommended deleting this rule from the draft, but noting this deletion in the invitation to comment.

**Rule 8.86** - The subcommittee recommended approval of this rule without change.

**Future action:**

- Ms. Anderson will prepare a final version of the draft rules incorporating all of the revisions agreed to by the subcommittee. It will be circulated among the group via email for comment and if follow-up discussion is required, this draft will be placed on the agenda for the February 26, 2015 meeting. A final proposal will be submitted to CTAC and the Appellate Advisory Committee (AAC). If approved by CTAC and AAC, the proposal would be submitted to the Judicial Council Rules & Projects Committee with a recommendation that it be circulated for public comment during the regular spring 2015 annual comment period.
- The subcommittee will meet again on February 26, 2015, to commence its work on a new project, Rule Modernization, draft materials to be distributed.

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**A D J O U R N M E N T**

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The meeting was adjourned at 4:10 PM.

**NOTE: This is a draft of possible rules on public access to electronic appellate court records. These rules reflect the following general premises:**

- **The level of electronic access currently being provided to appellate court records should not be reduced by these rules;**
- **If electronic access to particular appellate court records is not currently being provided, the rules should treat those records in the same way as they are treated under the trial court rules on access to electronic records;**
- **Electronic access to appellate court records will generally be provided through a centralized mechanism, such as the California courts website, rather than being provided by each individual appellate court.**

**This draft uses as its base the trial court rules on public access to electronic trial court records (California Rules of Court, rules 2.500-2.507). In this draft, underlining shows additions to those trial court rules and strikeouts show deletions from trial court rules. Following some sections are notes describing particular issues or proposed modifications to the trial court rules.**

## **Article 6. Public Access to Electronic Appellate Court Records**

**Rule 8.80. Statement of purpose**

**Rule 8.81. Application and scope**

**Rule 8.82. Definitions**

**Rule 8.83. Public access**

**Rule 8.84. Limitations and conditions**

**Rule 8.85. Fees for electronic access**

### **Rule ~~2.500~~, 8.80. Statement of purpose**

#### **(a) Intent**

The rules in this ~~chapter~~ article are intended to provide the public with reasonable access to ~~trial~~ appellate court records that are maintained in electronic form, while protecting privacy interests.

**(b) Benefits of electronic access**

Improved technologies provide courts with many alternatives to the historical paper-based record receipt and retention process, including the creation and use of court records maintained in electronic form. Providing public access to ~~trial~~ appellate court records that are maintained in electronic form may save the courts and the public time, money, and effort and encourage courts to be more efficient in their operations. Improved access to ~~trial~~ appellate court records may also foster in the public a more comprehensive understanding of the ~~trial~~ appellate court system.

**(c) No creation of rights**

The rules in this ~~chapter~~ article are not intended to give the public a right of access to any record that they are not otherwise entitled to access. The rules do not create any right of access to ~~records that are sealed by court order~~ or confidential ~~as a matter of law~~ records.

**Advisory Committee Comment**

The rules in this ~~chapter~~ article acknowledge the benefits that electronic court records provide but attempt to limit the potential for unjustified intrusions into the privacy of individuals involved in litigation that can occur as a result of remote access to electronic court records. The proposed rules take into account the limited resources currently available in the ~~trial~~ appellate courts. It is contemplated that the rules may be modified to provide greater electronic access as the courts' technical capabilities improve and with the knowledge gained from the experience of the courts in providing electronic access under these rules.

**Subdivision (c).** Rules 8.45-8.47 govern sealed and confidential records in the appellate courts.

**Rule ~~2.501~~ 8.81. Application and scope**

**(a) Application**

The rules in this ~~chapter~~ article apply only to ~~trial-court~~ records of the Supreme Court and Court of Appeal.

**(b) Access by parties and attorneys**

The rules in this ~~chapter~~ article apply only to access to court records by the public. They do not limit access to court records by a party to an action or proceeding, by the attorney of a party, or by other persons or entities that are entitled to access by statute or rule.

## **Rule ~~2.502~~ 8.82. Definitions**

As used in this ~~chapter~~ article, the following definitions apply:

- (1) “Court record” is any document, paper, ~~or~~ exhibit, transcript, or other thing filed by the parties to in an action or proceeding; any order, ~~or~~ judgment, or opinion of the court; and any ~~item listed in Government Code section 68151(a), excluding any reporter’s transcript for which the reporter is entitled to receive a fee for any copy~~ court minutes, index, register of actions or docket. The term does not include the personal notes or preliminary memoranda of justices, judges or other judicial branch personnel.
- (2) “Electronic record” is a ~~computerized~~ court record, ~~regardless of the manner in which it has been computerized~~ that requires the use of an electronic device to read. The term includes both a ~~document~~ record that has been filed electronically and an electronic copy or version of a record that was filed in paper form. ~~The term does not include a court record that is maintained only on microfiche, paper, or any other medium that can be read without the use of an electronic device.~~
- (3) “The public” means an individual, a group, or an entity, including print or electronic media, or the representative of an individual, a group, or an entity.
- (4) “Electronic access” means computer access to court records available to the public through both public terminals at the courthouse and remotely, unless otherwise specified in the rules in this ~~chapter~~ article.
- (5) Providing electronic access to electronic records “to the extent it is feasible to do so” means that electronic access must be provided to the extent the court determines it has the resources and technical capacity to do so.
- (6) “Bulk distribution” means distribution of multiple electronic records that is not done on a case-by-case basis.

### **NOTES:**

**Subdivision (5): This definition is moved here from rule 2.503/8.83(d) below.**

**Subdivision (6): This definition is different from the definition of “bulk distribution in rule 2.503/8.83(g) below.**

**Rule ~~2.503~~, 8.83. Public access**

**(a) General right of access**

All electronic records must be made reasonably available to the public in some form, whether in electronic or in paper form, except ~~those that are sealed by court order or made confidential by law~~ records.

**(b) Electronic access required to extent feasible**

(1) Electronic access, both remote and at the courthouse, will be provided to the following court records, except sealed or confidential records, to the extent it is feasible to do so:

(A) Dockets or registers of actions;

(B) Calendars;

(C) Opinions; and

(D) The following Supreme Court records:

i. Results from the most recent Supreme Court weekly conference;

ii. Party briefs in cases argued in the Supreme Court for at least the preceding 3 years;

iii. Supreme Court minutes from at least the preceding 3 years.

(2) If a court that maintains the following records in civil cases in addition to those listed in (1) in electronic form, must provide electronic access to them these records, except those listed in (c), must be provided both remotely and at the courthouse, to the extent it is feasible to do so:

~~(1) Registers of actions (as defined in Gov. Code, § 69845), calendars, and indexes in all cases; and~~

~~(2) all records in civil cases, except those listed in (c)(1)-(9).~~

(c) **Courthouse electronic access only**

If a court that maintains the following records in electronic form, must provide electronic access to them these records must be provided at the courthouse, to the extent it is feasible to do so, but may provide remote electronic access only may not be provided to these records governed by (b):

- (1) Any reporter's transcript for which the reporter is entitled to receive a fee; and
- (2) Records in addition to those listed in (b)(1) in the following proceedings:
  - (1A) Records in a Proceedings under the Family Code, including proceedings for dissolution, legal separation, and nullity of marriage; child and spousal support proceedings; child custody proceedings; and domestic violence prevention proceedings;
  - (2B) Records in Juvenile court proceedings;
  - (3C) Records in Guardianship or conservatorship proceedings;
  - (4D) Records in Mental health proceedings;
  - (5E) Records in Criminal proceedings;
  - (6F) Records in Civil harassment proceedings under Code of Civil Procedure section 527.6;
  - (7G) Records in Workplace violence prevention proceedings under Code of Civil Procedure section 527.8;
  - (8H) Records in Private postsecondary school violence prevention proceedings under Code of Civil Procedure section 527.85;
  - (9I) Records in Elder or dependent adult abuse prevention proceedings under Welfare and Institutions Code section 15657.03; and
  - (10J) Records in a Proceedings to compromise the claims of a minor or a person with a disability.

~~(d)~~ **“Feasible” defined**

~~As used in this rule, the requirement that a court provide electronic access to its electronic records “to the extent it is feasible to do so” means that a court is required to provide electronic access to the extent it determines it has the resources and technical capacity to do so.~~

**NOTE**

**To consolidate all of the definitions in this article, the definition of “feasible” has been moved up into the rule containing other definitions, rule 8.82.**

~~(e)~~**(d) Remote electronic access allowed in extraordinary eriminal-cases**

Notwithstanding ~~(c)(52)(E)~~, the presiding ~~judge~~justice of the court, or a ~~judge~~justice assigned by the presiding ~~judge~~justice, may exercise discretion, subject to ~~(e)(1)~~, to permit remote electronic access by the public to all or a portion of the public court records in an individual criminal case if (1) the number of requests for access to documents in the case is extraordinarily high and (2) responding to those requests would significantly burden the operations of the court. An individualized determination must be made in each case in which such remote electronic access is provided.

- (1) In exercising discretion under ~~(e)(d)~~, the ~~judge~~justice should consider the relevant factors, such as:
  - (A) The privacy interests of parties, victims, witnesses, and court personnel, and the ability of the court to redact sensitive personal information;
  - (B) The benefits to and burdens on the parties in allowing remote electronic access, ~~including possible impacts on jury selection;~~ and
  - (C) The burdens on the court in responding to an extraordinarily high number of requests for access to documents.
- (2) ~~The court should, to the extent feasible, redact the~~ following information must be redacted from records to which it allows remote access under ~~(e)(d)~~: driver license numbers; dates of birth; social security numbers; Criminal Identification and Information and National Crime Information numbers; addresses and phone numbers of parties,



victims, witnesses, and court personnel; medical or psychiatric information; financial information; account numbers; and other personal identifying information. The court may order any party who files a document containing such information to provide the court with both an original unredacted version of the document for filing in the court file and a redacted version of the document for remote electronic access. No juror names or other juror identifying information may be provided by remote electronic access. ~~This Subdivision (d)(2)~~ does not apply to any document in the original court file; it applies only to documents that are made available by remote electronic access.

- (3) Five days' notice must be provided to the parties and the public before the court makes a determination to provide remote electronic access under this rule. Notice to the public may be accomplished by posting notice on the court's Web site. Any person may file comments with the court for consideration, but no hearing is required.
- (4) The court's order permitting remote electronic access must specify which court records will be available by remote electronic access and what categories of information are to be redacted. The court is not required to make findings of fact. The court's order must be posted on the court's Web site and a copy sent to the Judicial Council.

**~~(f)~~(e) Access only on a case-by-case basis**

~~With the exception of the records covered by (b)(1), the court may only grant~~ electronic access to an electronic record may be granted only when the record is identified by the number of the case, the caption of the case, ~~or~~ the name of a party, the name of the attorney, or the date of oral argument, and only on a case-by-case basis. ~~This case-by-case limitation does not apply to the court's electronic records of a calendar, register of actions, or index opinions.~~

**~~(g)~~(f) Bulk distribution**

~~The court may provide~~ Bulk distribution of ~~only its~~ electronic records may be provided only of the records covered by (b)(1). a calendar, register of actions, and index opinions. "Bulk distribution" means distribution of all, or a significant subset, ~~of the court's electronic records.~~

## ~~(h)~~(g) Records that become inaccessible

If an electronic record to which ~~the court has provided~~ electronic access has been provided is made inaccessible to the public by court order or by operation of law, the court is not required to take action with respect to any copy of the record that was made by a member of the public before the record became inaccessible.

## ~~(i)~~—Off-site access

~~Courts should encourage availability of electronic access to court records at public off-site locations.~~

### Advisory Committee Comment

The rule allows a level of access by the public to all electronic records that is at least equivalent to the access that is available for paper records and, for some types of records, is much greater. At the same time, it seeks to protect legitimate privacy concerns.

**Subdivision (b).** Courts should encourage availability of electronic access to court records at public off-site locations.

**Subdivision (c).** This subdivision excludes certain records (those other than the register, calendar, and indexes-opinions, and certain Supreme Court records) in specified types of cases (notably criminal, juvenile, and family court matters) from remote electronic access. The committees recognized that while these case records are public records and should remain available at the courthouse, either in paper or electronic form, they often contain sensitive personal information. The court should not publish that information over the Internet. However, the committees also recognized that the use of the Internet may be appropriate in certain criminal cases of extraordinary public interest where information regarding a case will be widely disseminated through the media. In such cases, posting of selected nonconfidential court records, redacted where necessary to protect the privacy of the participants, may provide more timely and accurate information regarding the court proceedings, and may relieve substantial burdens on court staff in responding to individual requests for documents and information. Thus, under subdivision (e), if the presiding ~~judge~~ justice makes individualized determinations in a specific case, certain records in criminal cases may be made available over the Internet.

**Subdivisions ~~(e)~~(f) ~~(g)~~.** These subdivisions limit electronic access to records (other than the register, calendars, or indexes-opinions, and certain Supreme Court records) to a case-by-case basis and prohibit bulk distribution of those records. These limitations are based on the qualitative difference between obtaining information from a specific case file and obtaining bulk information that may be manipulated to compile personal information culled from any document, paper, or exhibit filed in a lawsuit. This type of aggregate information may be exploited for commercial or other purposes unrelated to the operations of the courts, at the expense of privacy rights of individuals.

Courts must send a copy of the order permitting remote electronic access in extraordinary criminal cases to: Secretariat, Executive Office Programs Division, ~~Administrative Office of the~~

**Rule ~~2.504~~ 8.84. Limitations and conditions**

**(a) Means of access**

~~A court that maintains records in electronic form must provide~~ Electronic access to ~~those~~ records required under this article must be provided by means of a network or software that is based on industry standards or is in the public domain.

**(b) Official record**

Unless electronically certified by the court, a ~~trial-court~~ record available by electronic access is not the official record of the court.

**(c) Conditions of use by persons accessing records**

~~A court may condition~~ Electronic access to its court records may be conditioned on:

- (1) The user's consent to access the records only as instructed ~~by the court;~~ and
- (2) The user's consent to ~~the court's~~ monitoring of access to its records.

The court must give notice of these conditions, in any manner it deems appropriate. ~~The court may deny~~ Access may be denied to a member of the public for failure to comply with either of these conditions of use.

**(d) Notices to persons accessing records**

The court must give notice of the following information to members of the public accessing its records electronically, in any manner it deems appropriate:

- (1) The identity of the court staff member to be contacted about the requirements for accessing the court's records electronically.
- (2) That copyright and other proprietary rights may apply to information in a case file, absent an express grant of additional rights by the holder of

the copyright or other proprietary right. This notice must advise the public that:

- (A) Use of such information in a case file is permissible only to the extent permitted by law or court order; and
  - (B) Any use inconsistent with proprietary rights is prohibited.
- (3) Whether electronic records are the official records of the court. The notice must describe the procedure and any fee required for obtaining a certified copy of an official record of the court.
- (4) That any person who willfully destroys or alters any court record maintained in electronic form is subject to the penalties imposed by Government Code section 6201.

**(e) Access policy**

~~The court must post~~ A privacy policy must be posted on the California Courts public-access Web site to inform members of the public accessing its electronic records of the information ~~it collected~~ed regarding access transactions and the uses that ~~the court may make~~ be made of the collected information.

**~~Rule 2.505. Contracts with vendors~~**

**~~(a) Contract must provide access consistent with rules~~**

~~The court's contract with a vendor to provide public access to its electronic records must be consistent with the rules in this chapter and must require the vendor to provide public access to court records and to protect the confidentiality of court records as required by law or by court order.~~

**~~(b) Contract must provide that court owns the records~~**

~~Any contract between the court and a vendor to provide public access to the court's electronic records must provide that the court is the owner of these records and has the exclusive right to control their use.~~

**Rule ~~2.506~~ 8.85. Fees for electronic access**

**(a) Court may impose fees**

The court may impose fees for the costs of providing ~~public access to copies~~ of its electronic records, under Government Code section ~~68150(f)~~ 68928. ~~On request, the court must provide the public with a statement of the costs on which these fees are based.~~

**(b) Fees of vendor must be reasonable**

To the extent that public access to a court's electronic records is provided exclusively through a vendor, the ~~court~~ contract with the vendor must ensure that any fees the vendor imposes for the costs of providing access are reasonable.

**Rule ~~2.507~~. Electronic access to court calendars, indexes, and registers of actions**

**~~(a) Intent~~**

~~This rule specifies information to be included in and excluded from the court calendars, indexes, and registers of actions to which public access is available by electronic means under rule 2.503. To the extent it is feasible to do so, the court must maintain court calendars, indexes, and registers of actions available to the public by electronic means in accordance with this rule.~~

**~~(b) Minimum contents for electronically accessible court calendars, indexes, and registers of actions~~**

~~(1) The electronic court calendar must include:~~

~~(A) Date of court calendar;~~

~~(B) Time of calendared event;~~

~~(C) Court department number;~~

~~(D) Case number; and~~

~~(E) Case title (unless made confidential by law).~~

~~(2) — The electronic index must include:~~

~~(A) — Case title (unless made confidential by law);~~

~~(B) — Party names (unless made confidential by law);~~

~~(C) — Party type;~~

~~(D) — Date on which the case was filed; and~~

~~(E) — Case number.~~

~~(3) — The register of actions must be a summary of every proceeding in a case, in compliance with Government Code section 69845, and must include:~~

~~(A) — Date case commenced;~~

~~(B) — Case number;~~

~~(C) — Case type;~~

~~(D) — Case title (unless made confidential by law);~~

~~(E) — Party names (unless made confidential by law);~~

~~(F) — Party type;~~

~~(G) — Date of each activity; and~~

~~(H) — Description of each activity.~~

~~**(c) — Information that must be excluded from court calendars, indexes, and registers of actions**~~

~~The following information must be excluded from a court's electronic calendar, index, and register of actions:~~

~~(1) — Social security number;~~

~~(2) — Any financial information;~~

~~(3) — Arrest warrant information;~~

~~(4) — Search warrant information;~~

~~(5) — Victim information;~~

~~(6) — Witness information;~~

~~(7) — Ethnicity;~~

~~(8) — Age;~~

~~(9) — Gender;~~

~~(10) — Government issued identification card numbers (i.e., military);~~

~~(11) — Driver's license number; and~~

~~(12) — Date of birth.~~

DRAFT

Members of the Joint Appellate Technology Subcommittee

February 23, 2015

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Date	Action Requested
February 23, 2015	Please review for February 26 meeting
To	Deadline
Members of the Joint Appellate Technology Subcommittee	N/A
From	Contact
Heather Anderson	Heather Anderson
Supervising Attorney, Legal Services	(415) 865-7691 heather.anderson@jud.ca.gov
Katherine Sher	Katherine Sher
Attorney, Legal Services	(415) 865-8031 katherine.sher@jud.ca.gov
Subject	
Rules Modernization Project: Amendments to Title 8 of the California Rules of Court	

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### Introduction

The Court Technology Advisory Committee (CTAC) is leading the Rules Modernization Project, a collaborative effort to comprehensively review and modernize the California Rules of Court so that they will be consistent with and foster modern e-business practices. To ensure that each title is revised in view of any statutory requirements and policy concerns unique to that area of law, CTAC is coordinating with other advisory committees with relevant subject matter expertise, including the Appellate Advisory Committee. The Joint Appellate Technology Subcommittee (JATS) is responsible for revisions to Title 8, the Appellate Rules.

### Background

California's appellate courts are increasingly allowing for electronic filing of documents in the cases before them. E-filing is available for at least some filings in all of the Courts of Appeal. The Supreme Court still requires the filing of paper copies of documents, but for many types of documents will accept submission of an electronic copy in addition to the required paper copies.



Recognizing that courts are swiftly proceeding to a paperless world, CTAC is working with six advisory committees to modernize the California Rules of Court. JATS is charged with the task of revising Title 8 to support e-business in the appellate courts.

The Rules Modernization Project is being carried out in two phases. During phase 1, CTAC will propose an initial round of technical rule amendments to address any language in the rules that is incompatible with the current statutes and rules governing electronic filing and service and with e-business practices in general. Phase 2 will involve a more in-depth examination of any statutes and rules that may hinder e-business practices. During this phase, JATS will be asked to consider pursuing substantive rule and legislative changes to allow for the greater use of technology in appellate proceedings.

In reviewing Title 8 for necessary technical changes, the need for substantive changes to accommodate e-filing, or for legislative changes that are needed, may also be identified. These more substantive matters will be noted and addressed separately in phase 2 of this project.

#### Proposed amendments to title 8, Division 1, Chapters 1 and 2

Attached for the subcommittee's review and consideration during its February 26 meeting are the first set of proposed amendments to title 8 of the California Rules of Court. The proposed amendments are to chapters 1 and 2 of division 1 of title 8, through rule 8.278 (proposed amendments to the remaining title 8 rules will be drafted for consideration by JATS in the near future). These are phase 1 changes, and thus are intended to be technical, nonsubstantive amendments to the rules. The proposed amendments would:

- Add definitions of “attach or attachment,” “copy or copies,” “cover,” and “written or writing” to clarify their application to electronically filed documents (see amended rule 8.10);
- Add a rule clarifying that the rules are intended to apply to documents filed and served electronically (see proposed new rule 8.11)
- Replace references to “mail” with “send” throughout;
- Replace references to “file-stamped” with “file-endorsed” throughout;
- Clarify that requirements for numbers of copies of documents and for the colors of covers of documents apply only to documents not filed electronically (see amended rule 8.40)
- Add language requiring that confidential or sealed documents must be transmitted in a secure manner (see amended rules 8.45(c), 8.46(d), 8.47(b) and (c));
- Add language stating that all or part of the record on appeal in a civil appeal, including a record of administrative proceedings, or a copy of a reporter's transcript may be in electronic format (see amended rules 8.120, 8.123, 8.130);

- Clarify the application of requirements as to the form of the record when all or part of the record is filed electronically (see amended rule 8.144);
- Clarify the application of requirements as to the form of briefs to electronically filed briefs (see amended rule 8.204);
- Replace references to “type,” “typeface,” “type style” and “type size” with “font” “font style” and “font size” (see amended rule 8.204);
- Clarify procedural requirements when exhibits are transmitted electronically (see amended rule 8.224);
- Add an advisory committee comment noting that the recoverable costs to notarize, serve, mail, and file documents are intended to include fees charged by electronic service providers for filing or service (see comment to rule 8. 278)

#### Alternatives considered

An alternative to making technical changes at this time would be to defer action and propose a single rules proposal that includes both substantive and technical changes to title 8 at a later date. One benefit of this approach would be to increase the overall efficiency for JATS. Yet, implementing an initial technical phase offers the opportunity to make changes in a standardized fashion to all titles, which is especially worthwhile in light of the cross-references in other titles to the trial court rules. In addition, dividing the work into technical and substantive phases allows the committee to modernize the rules to the extent possible on a more responsive timeline for those courts that are already implementing electronic filing and service and adopting e-business practices. Further, the work will be enhanced by completing it in tandem with CTAC and the other advisory committees.

#### Subcommittee's task

For the meeting on February 26, 2015, the subcommittee is tasked with analyzing the above proposal to amend certain rules in title 8, and:

- Asking staff or committee members for further information and analysis; or
- Recommending to CTAC and the Appellate Advisory Committee that all or part of the proposal be approved for circulation as drafted or as amended by the committee; or
- Rejecting the proposal.

#### Coordination with the Court Technology Advisory Committee

CTAC has taken the lead on modernizing the rules of court. During phase 1, CTAC will present any rule amendments approved by JATS and the Appellate Advisory Committee, to RUPRO for circulation for comment this rules cycle. CTAC will also be working with the advisory

Members of the Joint Appellate Technology Subcommittee

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committees during phase 2 to develop more substantive rule and legislative proposals to present to the Judicial Council and the Legislature.

#### Attachments

- Proposed amendments to title 8 of the California Rules of Court

Rules 8.\_\_\_\_ of the California Rules of Court would be amended, effective January 1, 2016, to read:

**Title 8. Appellate Rules**

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

**Chapter 1. General Provisions**

**Article 1. In General**

*Rule 8.1. Title*

*Rule 8.4. Application of division*

*Rule 8.7. Construction*

*Rule 8.10. Definitions and use of terms*

*Rule 8.11. Scope of rules*

*Rule 8.13. Amendments to rules*

*Rule 8.16. Amendments to statutes*

*Rule 8.18. Documents violating rules not to be filed*

*Rule 8.20. California Rules of Court prevail*

*Rule 8.23. Sanctions to compel compliance*

\* \* \*

**Rule 8.10. Definitions and use of terms**

Unless the context or subject matter requires otherwise, the definitions and use of terms in rule 1.6 apply to these rules. In addition, the following apply:

- (1) “Appellant” means the appealing party.
- (2) “Respondent” means the adverse party.
- (3) “Party” includes any attorney of record for that party.
- (4) “Judgment” includes any judgment or order that may be appealed.
- (5) “Superior court” means the court from which an appeal is taken.
- (6) “Reviewing court” means the Supreme Court or the Court of Appeal to which an appeal is taken, in which an original proceeding is begun, or to which an appeal or original proceeding is transferred.
- (7) The word “briefs” includes petitions for rehearing, petitions for review, and answers thereto. It does not include petitions for extraordinary relief in original proceedings.
- (8) The words “attach” or “attachment” may refer to either physical attachment or electronic attachment, as appropriate.

- 1 (9) The words “copy” or “copies” may refer to electronic copies, as appropriate.  
2 (10) The word “cover” includes the cover page of a document filed electronically.

- 3  
4 (11) “Written” and “writing” include electronically created written materials, whether or  
5 not those materials are printed on paper.

6  
7 Drafter’s Note:

8 The definition of “attachment” is intended to clarify that where documents are filed or  
9 served electronically, the attachments will also be electronic.

10  
11 “Cover” is used throughout the Appellate Rules, and could be interpreted to mean only  
12 the physical cover of a paper document. The definition is intended to clarify that “cover”  
13 includes a cover page of an electronic document.

14  
15 Similarly, “written” and “writing” are used throughout the Appellate Rules. The definition  
16 is intended to clarify that references to written materials include writings in electronic  
17 form, as well as writings on paper.

18  
19 I have not included definitions of “serving” or “filing” as these terms clearly can refer to  
20 either traditional paper means or electronic means. I hesitated over whether to add a  
21 definition of “copy” but decided that it is adequately clear that this can include  
22 electronic copies (except where reference is made to multiple copies, where I have  
23 added language to clarify). I have not included a definition of “signing” as signature  
24 requirements for e-filed documents are covered in detail in rule 8.77.

25  
26  
27 **Rule 8.11. Scope of rules**

28  
29 These rules apply to documents filed and served electronically as well as in paper form, unless  
30 otherwise provided.

31  
32 Drafter’s Note: This language is the same as is proposed in the modernization  
33 amendments to Title 2, Trial Court Rules, Rule 2.10.

34  
35 \* \* \*

36  
37  
38 **Article 2. Service, Filing, Filing Fees, Form, and Number of Documents**

39  
40 ***Rule 8.25. Service filing, and filing fees***

41 ***Rule 8.26. Waiver of fees and costs***

42 ***Rule 8.29. Service on nonparty public officer or agency***

43 ***Rule 8.32. Address and telephone number of record; notice of change***

44 ***Rule 8.36. Substituting parties; substituting or withdrawing attorneys***

45 ***Rule 8.40. Form of filed documents***

46 ***Rule 8.42. Requirements for signatures of multiple parties on filed documents***

1        **Rule 8.44. Number of copies of filed documents**

2  
3        **Rule 8.25. Service, filing, and filing fees**

4  
5        **(a) Service**

6  
7            (1) Before filing any document, a party must serve, by any method permitted by the  
8            Code of Civil Procedure, one copy of the document on the attorney for each party  
9            separately represented, on each unrepresented party, and on any other person or  
10            entity when required by statute or rule.

11  
12            (2) The party must attach to the document presented for filing a proof of service  
13            showing service on each person or entity required to be served under (1). The proof  
14            must name each party represented by each attorney served.

15  
16        **(b) Filing**

17  
18            (1) A document is deemed filed on the date the clerk receives it.

19  
20            (2) Unless otherwise provided by these rules or other law, a filing is not timely unless  
21            the clerk receives the document before the time to file it expires.

22  
23            (3) A brief, an application to file an amicus curiae brief, an answer to an amicus curiae  
24            brief, a petition for rehearing, an answer to a petition for rehearing, a petition for  
25            transfer of an appellate division case to the Court of Appeal, an answer to such a  
26            petition for transfer, a petition for review, an answer to a petition for review, or a  
27            reply to an answer to a petition for review is timely if the time to file it has not  
28            expired on the date of:

29  
30                    (A) Its mailing by priority or express mail as shown on the postmark or the postal  
31                    receipt; or

32  
33                    (B) Its delivery to a common carrier promising overnight delivery as shown on the  
34                    carrier's receipt.

35  
36  
37            (4) The provisions of (3) do not apply to original proceedings.

38  
39            (5) If the clerk receives a document by mail from an inmate or a patient in a custodial  
40            institution after the period for filing the document has expired but the envelope  
41            shows that the document was mailed or delivered to custodial officials for mailing  
42            within the period for filing the document, the document is deemed timely. The clerk  
43            must retain in the case file the envelope in which the document was received.

44  
45        **(c) Filing fees**

1 \* \* \*

2 **Advisory Committee Comment**

3 \* \* \*

4  
5 Drafter’s Note: I have left unchanged the references in rule 8.25 (a) to “one copy” and  
6 “attach[ing]” a proof of service; these are not inconsistent with e-filing and service  
7

8  
9 \* \* \*

10  
11 **Rule 8.40. Form of filed documents**

12  
13 **(a) Form**

14  
15 Except as these rules provide otherwise, documents filed in a reviewing court may be  
16 either produced on a computer or typewritten and must comply with the relevant  
17 provisions of rule 8.204(b).  
18

19 **(b) Cover color**

20  
21 (1) As far as practicable, the covers of briefs and petitions not filed electronically must  
22 be in the following colors:  
23

Appellant’s opening brief or appendix	green
Respondent’s brief or appendix	yellow
Appellant’s reply brief or appendix	tan
Joint appendix	white
Amicus curiae brief	gray
Answer to amicus curiae brief	blue
Petition for rehearing	orange
Answer to petition for rehearing	blue
Petition for original writ	red
Answer (or opposition) to petition for original writ	red
Reply to answer (or opposition) to petition for original writ	red
Petition for transfer of appellate division case to Court of Appeal	white
Answer to petition for transfer of appellate division case to Court of Appeal	blue
Petition for review	white
Answer to petition for review	blue
Reply to answer to petition for review	white
Opening brief on the merits	white
Answer brief on the merits	blue
Reply brief on the merits	white

24

- 1 (2) In appeals under rule 8.216, the cover of a combined respondent’s brief and  
2 appellant’s opening brief, if not filed electronically, must be yellow, and the cover of  
3 a combined reply brief and respondent’s brief, if not filed electronically, must be tan.  
4
- 5 (3) A brief or petition not conforming to (1) or (2) must be accepted for filing, but in  
6 case of repeated violations by an attorney or party the court may proceed as provided  
7 in rule 8.204(e)(2).  
8

9 **(c) Cover information**

- 10
- 11 (1) Except as provided in (2), the cover—or first page if there is no cover—of every  
12 document filed in a reviewing court must include the name, mailing address,  
13 telephone number, fax number (if available), e-mail address (if available), and  
14 California State Bar number of each attorney filing or joining in the document, or of  
15 the party if he or she is unrepresented. The inclusion of a fax number or e-mail  
16 address on any document does not constitute consent to service by fax or e-mail  
17 unless otherwise provided by law.  
18
- 19 (2) If more than one attorney from a law firm, corporation, or public law office is  
20 representing one party and is joining in the document, the name and State Bar  
21 number of each attorney joining in the document must be provided on the cover. The  
22 law firm, corporation, or public law office representing each party must designate  
23 one attorney to receive notices and other communication in the case from the court  
24 by placing an asterisk before that attorney’s name on the cover and must provide the  
25 contact information specified under (1) for that attorney. Contact information for the  
26 other attorneys from the same law firm, corporation, or public law office is not  
27 required but may be provided.  
28

29 Drafter’s Note: A definition of cover has been added to Rule 8.10. Language is added  
30 to Rule 8.40 to clarify that the requirements for colors of covers apply only to paper-filed  
31 documents.  
32  
33

34 **Rule 8.42. Requirements for signatures of multiple parties on filed documents**

35

36 When a document to be filed, not electronically, such as a stipulation, requires the signatures of  
37 multiple parties, the original signature of at least one party must appear on the document filed in  
38 the reviewing court; the other signatures may be in the form of copies of the signed signature  
39 page of the document. Electronically filed documents must comply with the relevant provisions  
40 of rule 8.77.  
41

42 ~~**Advisory Committee Comment**~~

43

44 ~~Please note that rule 8.77 establishes different requirements for documents that are electronically filed.~~  
45



1 Drafter’s Note: In order to clarify the requirements for multiple signatures applicable to  
2 paper-filed and electronically filed documents, I have added a sentence noting the rule  
3 applicable to e-filings, and deleted the now-redundant Advisory Committee Comment.  
4  
5

6 **Rule 8.44. Number of copies of filed documents**  
7

8 Except as these rules provide otherwise, the number of copies of every brief, petition, motion,  
9 application, or other document that must be filed in a reviewing court and that is not filed  
10 electronically is as follows:  
11

12 **(a) Documents filed in the Supreme Court**  
13

14 (1) An original of a petition for review, an answer, a reply, a brief on the merits, an  
15 amicus curiae brief, an answer to an amicus curiae brief, a petition for rehearing, or  
16 an answer to a petition for rehearing and either  
17

18 (A) 13 paper copies; or  
19

20 (B) 8 paper copies and one electronic copy;  
21

22 (2) Unless the court orders otherwise, an original of a petition for a writ within the  
23 court’s original jurisdiction, an opposition or other response to the petition, or a  
24 reply; and either:  
25

26 (A) 10 paper copies; or  
27

28 (B) 8 paper copies and one electronic copy;  
29

30 (3) Unless the court orders otherwise, an original and 2 copies of any supporting  
31 document accompanying a petition for writ of habeas corpus, an opposition or other  
32 response to the petition, or a reply;  
33

34 (4) An original and 8 copies of a petition for review to exhaust state remedies under rule  
35 8.508, an answer, or a reply, or an amicus curiae letter under rule 8.500(g);  
36

37 (5) An original and 8 copies of a motion or an opposition or other response to a motion;  
38 and  
39

40 (6) An original and 1 copy of an application, including an application to extend time, or  
41 any other document.  
42

43 **(b) Documents filed in a Court of Appeal**  
44

45 (1) An original and 4 paper copies of a brief, an amicus curiae brief, or an answer to an  
46 amicus curiae brief. In civil appeals, for briefs other than petitions for rehearing or

1 answers thereto, 1 electronic copy or, in case of undue hardship, proof of delivery of  
2 4 paper copies to the Supreme Court, as provided in rule 8.212(c) is also required;

- 3  
4 (2) An original of a petition for writ of habeas corpus filed under rule 8.380 by a person  
5 who is not represented by an attorney and 1 set of any supporting documents;  
6  
7 (3) An original and 4 copies of any other petition, an answer, opposition or other  
8 response to a petition, or a reply;  
9  
10 (4) Unless the court orders otherwise, an original and 1 copy of a motion or an  
11 opposition or other response to a motion;  
12  
13 (5) Unless the court provides otherwise by local rule or order, 1 set of any separately  
14 bound supporting documents accompanying a document filed under (3) or (4);  
15  
16 (6) An original and 1 copy of an application, other than an application to extend time, or  
17 any other document; and  
18  
19 (7) An original and 1 copy of an application to extend time. In addition, 1 copy for each  
20 separately represented and unrepresented party must be provided to the court.  
21

22 **(c) Electronic copies**

23  
24 A court that permits electronic filing will specify any requirements regarding copies of  
25 electronically filed documents in the electronic filing requirements published pursuant to  
26 rule 8.74. In addition, A a court may provide by local rule for the submission of an  
27 electronic copy of a document in a case not utilizing electronic filing either in addition to  
28 the copies of a document required to be filed under (a) or (b) or as a substitute for one or  
29 more of these copies. The local rule must specify the format of the electronic copy and  
30 provide for an exception if it would cause undue hardship for a party to submit an  
31 electronic copy.  
32  
33

34 **Advisory Committee Comment**

35  
36 The initial sentence of this rule acknowledges that there are exceptions to this rule's requirements  
37 concerning the number of copies. See, for example, rule 8.150, which specifies the number of copies of  
38 the record that must be filed.  
39

40 Information about electronic submission of copies of documents can be found on the web page for the  
41 Supreme Court at: [www.courts.ca.gov/appellatebriefs](http://www.courts.ca.gov/appellatebriefs) or for the Court of Appeal District in which the  
42 brief is being filed at: [www.courts.ca.gov/courtssofar](http://www.courts.ca.gov/courtssofar).  
43

44 Note that submitting an electronic copy of a document under this rule or under a local rule adopted  
45 pursuant to subdivision (c) does not constitute filing a document electronically under rules 8.70–8.79 and  
46 thus does not substitute for the filing of the original document with the court in paper format.  
47

1 Drafter’s Note: Language has been added to clarify that the requirements as to  
2 numbers of copies only apply in cases not filed electronically. In addition, 8.44 (c) has  
3 language added to make it clear that in e-filed cases, the court’s e-filing requirements  
4 will apply, but the court may also by local rule allow submission of electronic copies in  
5 non-e-filed cases.  
6

7 **Article 3. Sealed and Confidential Records**  
8

9 *Rule 8.45. General provisions*

10 *Rule 8.46. Sealed records*

11 *Rule 8.47. Confidential records*  
12

13 **Rule 8.45. General provisions**  
14

15 **(a) Application**  
16

17 The rules in this article establish general requirements regarding sealed and confidential  
18 records in appeals and original proceedings in the Supreme Court and Courts of Appeal.  
19 Where other laws establish specific requirements for particular types of sealed or  
20 confidential records that differ from the requirements in this article, those specific  
21 requirements supersede the requirements in this article.  
22

23 **(b) Definitions**  
24

25 As used in this article:  
26

- 27 (1) “Record” means all or part of a document, paper, exhibit, transcript, or other thing  
28 filed or lodged with the court by electronic means or otherwise.  
29
- 30 (2) A “lodged” record is a record temporarily deposited with the court but not filed.  
31
- 32 (3) A “sealed” record is a record that is closed to inspection by the public or a party by  
33 order of a court under rules 2.550–2.551 or rule 8.46.  
34
- 35 (4) A “conditionally sealed” record is a record that is filed or lodged subject to a pending  
36 application or motion to file it under seal.  
37
- 38 (5) A “confidential” record is a record that, in court proceedings, is required by statute,  
39 rule of court, or other authority except a court order under rules 2.550–2.551 or rule  
40 8.46 to be closed to inspection by the public or a party.  
41
- 42 (6) A “redacted version” is a version of a filing from which all portions that disclose  
43 material contained in a sealed, conditionally sealed, or confidential record have been  
44 removed.  
45

1 (7) An “unredacted version” is a version of a filing or a portion of a filing that discloses  
2 material contained in a sealed, conditionally sealed, or confidential record.  
3

4 **(c) Format of sealed and confidential records**  
5

6 (1) Unless otherwise provided by law or court order, sealed or confidential records that  
7 are part of the record on appeal or the supporting documents or other records  
8 accompanying a motion, petition for a writ of habeas corpus, other writ petition, or  
9 other filing in the reviewing court must be kept separate from the rest of a clerk’s or  
10 reporter’s transcript, appendix, supporting documents, or other records sent to the  
11 reviewing court and in a secure manner that preserves their confidentiality.  
12

13 (A) If the records are in paper format, they must be placed in a sealed envelope or  
14 other appropriate sealed container. This requirement does not apply to a  
15 juvenile case file but does apply to any record contained within a juvenile case  
16 file that is sealed or confidential under authority other than Welfare and  
17 Institutions Code section 827 et seq.  
18

19 (B) Sealed records, and if applicable the envelope or other container, must be  
20 marked as “Sealed by Order of the Court on (*Date*).”  
21

22 (C) Confidential records, and if applicable the envelope or other container, must be  
23 marked as “Confidential (*Basis*)—May Not Be Examined Without Court  
24 Order.” The basis must be a citation to or other brief description of the statute,  
25 rule of court, case, or other authority that establishes that the record must be  
26 closed to inspection in the court proceeding.  
27

28 (D) The superior court clerk or party transmitting sealed or confidential records to  
29 the reviewing court must prepare a sealed or confidential index of these  
30 materials. If the records include a transcript of any in-camera proceeding, the  
31 index must list the date and the names of all parties present at the hearing and  
32 their counsel. This index must be transmitted and kept with the sealed or  
33 confidential records.  
34

35 (2) Except as provided in (3) or by court order, the alphabetical and chronological  
36 indexes to a clerk’s or reporter’s transcript, appendix, supporting documents, or other  
37 records sent to the reviewing court that are available to the public must list each  
38 sealed or confidential record by title, not disclosing the substance of the record, and  
39 must identify it as “Sealed” or “Confidential”—May Not Be Examined Without  
40 Court Order.”  
41

42 (3) Records relating to a request for funds under Penal Code section 987.9 or other  
43 proceedings the occurrence of which is not to be disclosed under the court order or  
44 applicable law must not be bound together with, or electronically transmitted as a  
45 single document with, other sealed or confidential records and must not be listed in  
46 the index required under (1)(D) or the alphabetical or chronological indexes to a

1 clerk's or reporter's transcript, appendix, supporting documents to a petition, or other  
2 records sent to the reviewing court.

3  
4 **(d) Transmission of and access to sealed and confidential records \* \* \***

5  
6 **Advisory Committee Comment**

7 \* \* \*

8  
9 Drafter's Note: The added language in this rule tracks the language proposed to be  
10 added to rule 2.551 in the Trial Court Rules as part of the rules modernization project.  
11 The reference in 8.45 (c) (3) to not binding records related to Penal Code 987.9  
12 requests together with other sealed or confidential records is clarified in its application to  
13 electronically filed records. The remaining provisions of the rule already accommodate  
14 e-filing.

15  
16  
17 **Rule 8.46. Sealed records**

18  
19 **(a) Application**

20  
21 This rule applies to sealed records and records proposed to be sealed on appeal and in  
22 original proceedings, but does not apply to confidential records.

23  
24 **(b) Record sealed by the trial court**

25  
26 If a record sealed by order of the trial court is part of the record on appeal or the supporting  
27 documents or other records accompanying a motion, petition for a writ of habeas corpus,  
28 other writ petition, or other filing in the reviewing court:

29  
30 (1) The sealed record must remain sealed unless the reviewing court orders otherwise  
31 under (e). Rule 8.45 governs the form and transmission of and access to sealed  
32 records.

33  
34 (2) The record on appeal or supporting documents filed in the reviewing court must also  
35 include:

36  
37 (A) The motion or application to seal filed in the trial court;

38  
39 (B) All documents filed in the trial court supporting or opposing the motion or  
40 application; and

41  
42 (C) The trial court order sealing the record.

43  
44 **(c) Record not sealed by the trial court**

45  
46 A record filed or lodged publicly in the trial court and not ordered sealed by that court  
47 must not be filed under seal in the reviewing court.

1  
2 **(d) Record not filed in the trial court; motion or application to file under seal**  
3

- 4 (1) A record not filed in the trial court may be filed under seal in the reviewing court  
5 only by order of the reviewing court; it must not be filed under seal solely by  
6 stipulation or agreement of the parties.  
7
- 8 (2) To obtain an order under (1), a party must serve and file a motion or application in  
9 the reviewing court, accompanied by a declaration containing facts sufficient to  
10 justify the sealing. At the same time, the party must lodge the record under (3),  
11 unless good cause is shown not to lodge it.  
12
- 13 (3) To lodge a record, the party must transmit the record to the court in a secure manner  
14 that preserves the confidentiality of the record to be lodged. The record must be  
15 transmitted separate from the rest of a clerk’s or reporter’s transcript, appendix,  
16 supporting documents, or other records sent to the reviewing court with a cover sheet  
17 that complies with rule 8.40(c) and labels the contents as “CONDITIONALLY  
18 UNDER SEAL.” If the record is in paper format, it must be placed in a sealed  
19 envelope or other appropriate sealed container.  
20
- 21 (4) If necessary to prevent disclosure of material contained in a conditionally sealed  
22 record, any motion or application, any opposition, and any supporting documents  
23 must be filed in a redacted version and lodged in a complete unredacted version  
24 conditionally under seal. The cover of the redacted version must identify it as  
25 “Public—Redacts material from conditionally sealed record.” In juvenile cases, the  
26 cover of the redacted version must identify it as “Redacted version—Redacts  
27 material from conditionally sealed record.” The cover of the unredacted version must  
28 identify it as “May Not Be Examined Without Court Order—Contains material from  
29 conditionally sealed record.” Unless the court orders otherwise, any party that had  
30 access to the record in the trial court or other proceedings under review must be  
31 served with a complete, unredacted version of all papers as well as a redacted  
32 version.  
33
- 34 (5) On receiving a lodged record, the clerk must note the date of receipt on the cover  
35 sheet and retain but not file the record. The record must remain conditionally under  
36 seal pending determination of the motion or application.  
37
- 38 (6) The court may order a record filed under seal only if it makes the findings required  
39 by rule 2.550(d)–(e).  
40
- 41 (7) If the court denies the motion or application, the clerk must not place the lodged  
42 record in the case file but must return it to the submitting party unless that party  
43 notifies the clerk in writing that the record is to be filed. Unless otherwise ordered by  
44 the court, the submitting party must notify the clerk within 10 days after the order  
45 denying the motion or application.  
46

- 1 (8) An order sealing the record must direct the sealing of only those documents and  
2 pages or, if reasonably practical, portions of those documents and pages, that contain  
3 the material that needs to be placed under seal. All other portions of each document  
4 or page must be included in the public file.  
5
- 6 (9) Unless the sealing order provides otherwise, it prohibits the parties from disclosing  
7 the contents of any materials that have been sealed in anything that is subsequently  
8 publicly filed.  
9

10 **(e) Unsealing a record in the reviewing court**  
11

- 12 (1) A sealed record must not be unsealed except on order of the reviewing court.  
13
- 14 (2) Any person or entity may serve and file a motion, application, or petition in the  
15 reviewing court to unseal a record.  
16
- 17 (3) If the reviewing court proposes to order a record unsealed on its own motion, the  
18 court must ~~send~~mail notice to the parties. Unless otherwise ordered by the court, any  
19 party may serve and file an opposition within 10 days after the notice is ~~sent~~mailed,  
20 and any other party may file a response within 5 days after an opposition is filed.  
21
- 22 (4) If necessary to prevent disclosure of material contained in a sealed record, the  
23 motion, application, or petition under (2) and any opposition, response, and  
24 supporting documents under (2) or (3) must be filed in both a redacted version and a  
25 complete unredacted version. The cover of the redacted version must identify it as  
26 “Public—Redacts material from sealed record.” In juvenile cases, the cover of the  
27 redacted version must identify it as “Redacted version—Redacts material from  
28 sealed record.” The cover of the unredacted version must identify it as “May Not Be  
29 Examined Without Court Order—Contains material from sealed record.” Unless the  
30 court orders otherwise, any party that had access to the sealed record in the trial court  
31 or other proceedings under review must be served with a complete, unredacted  
32 version of all papers as well as a redacted version. If a party’s attorney but not the  
33 party had access to the record in the trial court or other proceedings under review,  
34 only the party’s attorney may be served with the complete, unredacted version.  
35
- 36 (5) In determining whether to unseal a record, the court must consider the matters  
37 addressed in rule 2.550(c)–(e).  
38
- 39 (6) The order unsealing a record must state whether the record is unsealed entirely or in  
40 part. If the order unseals only part of the record or unseals the record only as to  
41 certain persons, the order must specify the particular records that are unsealed, the  
42 particular persons who may have access to the record, or both.  
43
- 44 (7) If, in addition to the record that is the subject of the sealing order, a court has  
45 previously ordered the sealing order itself, the register of actions, or any other court

1 records relating to the case to be sealed, the unsealing order must state whether these  
2 additional records are unsealed.

3  
4 **(f) Disclosure of nonpublic material in public filings prohibited**

- 5  
6 (1) Nothing filed publicly in the reviewing court—including any application, brief,  
7 petition, or memorandum—may disclose material contained in a record that is  
8 sealed, lodged conditionally under seal, or otherwise subject to a pending motion to  
9 file under seal.
- 10  
11 (2) If it is necessary to disclose material contained in a sealed record in a filing in the  
12 reviewing court, two versions must be filed:
- 13  
14 (A) A public redacted version. The cover of this version must identify it as  
15 “Public—Redacts material from sealed record.” In juvenile cases, the cover of  
16 the redacted version must identify it as “Redacted Version—Redacts material  
17 from sealed record.”
- 18  
19 (B) An unredacted version. If this version is in paper format, it must be placed in a  
20 sealed envelope or other appropriate sealed container. The cover of this  
21 version, and if applicable the envelope or other container, must identify it as  
22 “May Not Be Examined Without Court Order—Contains material from sealed  
23 record.” Sealed material disclosed in this version must be identified and  
24 accompanied by a citation to the court order sealing that material.
- 25  
26 (C) Unless the court orders otherwise, any party who had access to the sealed  
27 record in the trial court or other proceedings under review must be served with  
28 both the unredacted version of all papers as well as the redacted version. Other  
29 parties must be served with only the public redacted version. If a party’s  
30 attorney but not the party had access to the record in the trial court or other  
31 proceedings under review, only the party’s attorney may be served with the  
32 unredacted version.
- 33  
34 (3) If it is necessary to disclose material contained in a conditionally sealed record in a  
35 filing in the reviewing court:
- 36  
37 (A) A public redacted version must be filed. The cover of this version must  
38 identify it as “Public—Redacts material from conditionally sealed record.” In  
39 juvenile cases, the cover of the redacted version must identify it as “Redacted  
40 version—Redacts material from conditionally sealed record.”
- 41  
42 (B) An unredacted version must be lodged. If this version is in paper format, it  
43 must be placed in a sealed envelope or other appropriate sealed container. The  
44 cover of this version, and if applicable the envelope or other container, must  
45 identify it as “May Not Be Examined Without Court Order—Contains material



1 from conditionally sealed record.” Conditionally sealed material disclosed in  
2 this version must be identified.

3  
4 (C) Unless the court orders otherwise, any party who had access to the  
5 conditionally sealed record in the trial court or other proceedings under review  
6 must be served with both the unredacted version of all papers as well as the  
7 redacted version. Other parties must be served with only the public redacted  
8 version.

9  
10 (D) If the court denies the motion or application to seal the record, the clerk must  
11 not place the unredacted version lodged under (B) in the case file but must  
12 return it to the party who filed the application or motion to seal unless that  
13 party notifies the clerk that the record is to be publicly filed, as provided in  
14 (d)(7).

15  
16 **Advisory Committee Comment**

17  
18 \* \* \*

19  
20 Drafter’s Note: The language of rule 8.46 already accommodates e-filing; language has  
21 been added tracking the proposed new language of rule 2.551 of the Trial Court Rules  
22 regarding secure transmission of records when they are electronically lodged.

23  
24  
25  
26 **Rule 8.47. Confidential records**

27  
28 (a) **Application** \* \* \*

29  
30 (b) **Records of *Marsden* hearings and other in-camera proceedings**

31  
32 (1) This subdivision applies to reporter’s transcripts of and documents filed or lodged by  
33 a defendant in connection with:

34  
35 (A) An in-camera hearing conducted by the superior court under *People v.*  
36 *Marsden* (1970) 2 Cal.3d 118; or

37  
38 (B) Another in-camera hearing at which the defendant was present but from which  
39 the People were excluded in order to prevent disclosure of information about  
40 defense strategy or other information to which the prosecution was not allowed  
41 access at the time of the hearing.

42  
43 (2) Except as provided in (3), if the defendant raises a *Marsden* issue or an issue related  
44 to another in-camera hearing covered by this rule in a brief, petition, or other filing in  
45 the reviewing court, the following procedures apply:  
46

- 1 (A) The brief, including any portion that discloses matters contained in the  
2 transcript of the in-camera hearing and other documents filed or lodged in  
3 connection with the hearing, must be filed publicly. The requirement to  
4 publicly file this brief does not apply in juvenile cases; rule 8.401 governs the  
5 format of and access to such briefs in juvenile cases.  
6
- 7 (B) The People may serve and file an application requesting a copy of the  
8 reporter’s transcript of and documents filed or lodged by a defendant in  
9 connection with the in-camera hearing.  
10
- 11 (C) Within 10 days after the application is filed, the defendant may serve and file  
12 opposition to this application on the basis that the transcript or documents  
13 contain confidential material not relevant to the issues raised by the defendant  
14 in the reviewing court. Any such opposition must identify the page and line  
15 numbers of the transcript or documents containing this irrelevant material.  
16
- 17 (D) If the defendant does not timely serve and file opposition to the application, the  
18 reviewing court clerk must send to the People a copy of the reporter’s  
19 transcript of and documents filed or lodged by a defendant in connection with  
20 the in-camera hearing.  
21
- 22 (3) A defendant may serve and file a motion or application in the reviewing court  
23 requesting permission to file under seal a brief, petition, or other filing that raises a  
24 *Marsden* issue or an issue related to another in-camera hearing covered by this  
25 subdivision and requesting an order maintaining the confidentiality of the relevant  
26 material from the reporter’s transcript of or documents filed or lodged in connection  
27 with the in-camera hearing.  
28
- 29 (A) Except as otherwise provided in this rule, rule 8.46(d) governs a motion or  
30 application under this subdivision.  
31
- 32 (B) The declaration accompanying the motion or application must contain facts  
33 sufficient to justify an order maintaining the confidentiality of the relevant  
34 material from the reporter’s transcript of or documents filed or lodged in  
35 connection with the in-camera hearing and sealing of the brief, petition, or  
36 other filing.  
37
- 38 (C) At the time the motion or application is filed, the defendant must:  
39
- 40 (i) File a public redacted version of the brief, petition, or other filing that he  
41 or she is requesting be filed under seal. The cover of this version must  
42 identify it as “Public—Redacts material from conditionally sealed  
43 record.” The requirement to publicly file the redacted version does not  
44 apply in juvenile cases; rule 8.401 generally governs access to filings in  
45 juvenile cases. In juvenile cases, the cover of the redacted version must

1 identify it as “Redacted version—Redacts material from conditionally  
2 sealed record.”

3  
4 (ii) Lodge an unredacted version of the brief, petition, or other filing that he  
5 or she is requesting be filed under seal. The filing must be transmitted in  
6 a secure manner that preserves the confidentiality of the filing being  
7 lodged. If this version is in paper format, it must be placed in a sealed  
8 envelope or other appropriate sealed container. The cover of the  
9 unredacted version of the document, and if applicable the envelope or  
10 other container, must identify it as “May Not Be Examined Without  
11 Court Order—Contains material from conditionally sealed record.”  
12

13 (D) If the court denies the motion or application to file the brief, petition, or other  
14 filing under seal, the clerk must not place the unredacted brief, petition, or  
15 other filing lodged under (C)(ii) in the case file but must return it to the  
16 defendant unless the defendant notifies the clerk in writing that it is to be filed.  
17 Unless otherwise ordered by the court, the defendant must notify the clerk  
18 within 10 days after the order denying the motion or application.  
19

20 **(c) Other confidential records**  
21

22 Except as otherwise provided by law or order of the reviewing court:  
23

24 (1) Nothing filed publicly in the reviewing court—including any application, brief,  
25 petition, or memorandum—may disclose material contained in a confidential record,  
26 including a record that, by law, a party may choose be kept confidential in reviewing  
27 court proceedings and that the party has chosen to keep confidential.  
28

29 (2) To maintain the confidentiality of material contained in a confidential record, if it is  
30 necessary to disclose such material in a filing in the reviewing court, a party may  
31 serve and file a motion or application in the reviewing court requesting permission  
32 for the filing to be under seal.  
33

34 (A) Except as otherwise provided in this rule, rule 8.46(d) governs a motion or  
35 application under this subdivision.  
36

37 (B) The declaration accompanying the motion or application must contain facts  
38 sufficient to establish that the record is required by law to be closed to  
39 inspection in the reviewing court and to justify sealing of the brief, petition, or  
40 other filing.  
41

42 (C) At the time the motion or application is filed, the party must:  
43

44 (i) File a redacted version of the brief, petition, or other filing that he or she  
45 is requesting be filed under seal. The cover of this version must identify  
46 it as “Public—Redacts material from conditionally sealed record.” In

1 juvenile cases, the cover of this version must identify it as “Redacted  
2 version—Redacts material from conditionally sealed record.”  
3

- 4 (ii) Lodge an unredacted version of the brief, petition, or other filing that he  
5 or she is requesting be filed under seal. The filing must be transmitted in  
6 a secure manner that preserves the confidentiality of the filing being  
7 lodged. If this version is in paper format, it must be placed in a sealed  
8 envelope or other appropriate sealed container. The cover of the  
9 unredacted version of the document, and if applicable the envelope or  
10 other container, must identify it as “May Not Be Examined Without  
11 Court Order—Contains material from conditionally sealed record.”  
12 Material from a confidential record disclosed in this version must be  
13 identified and accompanied by a citation to the statute, Rule of Court,  
14 case, or other authority establishing that the record is required by law to  
15 be closed to inspection in the reviewing court.  
16

- 17 (D) If the court denies the motion or application to file the brief, petition, or other  
18 filing under seal, the clerk must not place the unredacted brief, petition, or  
19 other filing lodged under (C)(ii) in the case file but must return it to the lodging  
20 party unless the party notifies the clerk in writing that it is to be filed. Unless  
21 otherwise ordered by the court, the party must notify the clerk within 10 days  
22 after the order denying the motion or application.  
23

#### 24 **Advisory Committee Comment**

25 \* \* \*

26  
27 Drafter’s Note: As with rule 8.46, the language of rule 8.47 already accommodates e-  
28 filing; language has been added tracking the proposed new language of rule 2.551 of  
29 the Trial Court Rules regarding secure transmission of records when they are  
30 electronically lodged.  
31  
32

### 33 **Article 4. Applications and Motions; Extending and Shortening Time**

34 ***Rule 8.50. Applications***

35 ***Rule 8.54. Motions***

36 ***Rule 8.57. Motions before the record is filed***

37 ***Rule 8.60. Extending time***

38 ***Rule 8.63. Policies and factors governing extensions of time***

39 ***Rule 8.66. Extending time because of public emergency***

40 ***Rule 8.68. Shortening time***  
41

#### 42 **Rule 8.50. Applications**

43  
44 (a) **Service and filing \* \* \***

45  
46 (b) **Contents \* \* \***  
47

1 (c) **Envelopes**

2  
3 An application to a Court of Appeal in a case in which electronic service is not in effect as  
4 to all parties must be accompanied by addressed, postage-prepaid envelopes for the clerk's  
5 use in mailing copies of the order on the application to all parties not receiving service by  
6 electronic means.

7  
8 (d) **Disposition \* \* \***

9  
10 **Advisory Committee Comment**

11 \* \* \*

12  
13 Drafter's Note: Electronic service may be used for some or all parties; the added  
14 language requires envelopes to be provided for those parties not receiving service  
15 electronically.

16  
17  
18 \* \* \*

19  
20 **Article 5. E-filing**

21 *Rule 8.70. Purpose, application, construction, and definitions*

22 *Rule 8.71. Electronic service*

23 *Rule 8.72. Documents that may be filed electronically*

24 *Rule 8.73. Court order requiring electronic service or filing*

25 *Rule 8.74. Responsibilities of court*

26 *Rule 8.75. Contracts with electronic filing service providers*

27 *Rule 8.76. Responsibilities of electronic filer*

28 *Rule 8.77. Requirements for signatures on documents*

29 *Rule 8.78. Payment of filing fees*

30 *Rule 8.79. Actions by court on receipt of electronic filing*

31  
32 \* \* \*

33 Drafter's Note: Rules 8.70 through 8.79 are intended to facilitate the use of electronic  
34 filing and service in the Courts of Appeal and the Supreme Court. As electronic filing  
35 and service become more prevalent, the Committee may wish to consider substantive  
36 amendments to this article to ensure that the rules allow for these practices wherever  
37 possible. In addition, I note that this Article applies only to the Supreme Court and  
38 Courts of Appeal and there is no parallel article (in Division 2) applicable to the  
39 Appellate Divisions of Superior Courts.

40  
41 **Chapter 2. Civil Appeals**

42  
43 **Article 1. Taking the Appeal**

44  
45 *Rule 8.100. Filing the appeal*

46 *Rule 8.104. Time to appeal*

47 *Rule 8.108. Extending the time to appeal*

1 *Rule 8.112. Petition for writ of supersedeas*

2 *Rule 8.116. Request for writ of supersedeas or temporary stay*

3  
4 **Rule 8.100. Filing the appeal**

5  
6 **(a) Notice of appeal \* \* \***

7  
8 **(b) Fee and deposit**

9  
10 (1) Unless otherwise provided by law, the notice of appeal must be accompanied by the  
11 \$775 filing fee under Government Code sections 68926 and 68926.1(b), an  
12 application for a waiver of court fees and costs on appeal under rule 8.26, or an order  
13 granting such an application. If the notice is not filed electronically, tThe fee should  
14 be paid by check or money order payable to “Clerk, Court of Appeal”; if the fee is  
15 paid in cash, the clerk must give a receipt. If the notice is filed electronically,  
16 payment may be by any method permitted by the court pursuant to rules 2.258 and  
17 8.78.

18  
19 (2) The appellant must also deposit \$100 with the superior court clerk as required under  
20 Government Code section 68926.1, unless otherwise provided by law or the superior  
21 court waives the deposit.

22  
23 (3) The clerk must file the notice of appeal even if the appellant does not present the  
24 filing fee, the deposit, or an application for, or order granting, a waiver of fees and  
25 costs.

26  
27 **(c) Failure to pay filing fee \* \* \***

28  
29 **(d) Failure to pay deposit \* \* \***

30  
31 **(e) Superior court clerk’s duties**

32  
33 (1) The superior court clerk must promptly ~~mail~~ send a notification of the filing of the  
34 notice of appeal to the attorney of record for each party, to any unrepresented party,  
35 and to the reviewing court clerk.

36  
37 (2) The notification must show the date it was ~~mailed~~ sent and must state the number  
38 and title of the case and the date the notice of appeal was filed. If the information is  
39 available, the notification must include:

40  
41 (A) The name, address, telephone number, and California State Bar number of  
42 each attorney of record in the case;

43  
44 (B) The name of the party each attorney represented in the superior court; and

45  
46 (C) The name, address, and telephone number of any unrepresented party.

- 1  
2 (3) A copy of the notice of appeal is sufficient notification under (1) if the required  
3 information is on the copy or is added by the superior court clerk.  
4  
5 (4) The ~~mailing~~ sending of a notification under (1) is a sufficient performance of the  
6 clerk’s duty despite the death of the party or the discharge, disqualification,  
7 suspension, disbarment, or death of the attorney.  
8  
9 (5) With the notification of the appeal, the superior court clerk must send the reviewing  
10 court the filing fee or an application for, or order granting, a waiver of that fee. If the  
11 fee was paid in cash, the clerk must send the reviewing court a certificate of payment  
12 and thereafter a check for the amount of the fee.  
13  
14 (6) Failure to comply with any provision of this subdivision does not affect the validity  
15 of the notice of appeal.  
16

17 **(f) Notice of cross-appeal \* \* \***

18  
19 **(g) Civil case information statement**

- 20  
21 (1) Within 15 days after the superior court clerk ~~mails~~ sends the notification of the filing  
22 of the notice of appeal required by (e)(1), the appellant must serve and file in the  
23 reviewing court a completed *Civil Case Information Statement* (form APP-004),  
24 attaching a copy of the judgment or appealed order that shows the date it was  
25 entered.  
26  
27 (2) If the appellant fails to timely file a case information statement under (1), the  
28 reviewing court clerk must notify the appellant ~~by mail~~ in writing that the appellant  
29 must file the statement within 15 days after the clerk’s notice is ~~mailed~~ sent and that  
30 if the appellant fails to comply, the court may either impose monetary sanctions or  
31 dismiss the appeal. If the appellant fails to file the statement as specified in the  
32 notice, the court may impose the sanctions specified in the notice.  
33

34 **Advisory Committee Comment**

35  
36 **Subdivision (a).** In subdivision (a)(1), the reference to “judgment” is intended to include part of a  
37 judgment. Subdivision (a)(1) includes an explicit reference to “appealable order” to ensure that litigants  
38 do not overlook the applicability of this rule to such orders.  
39

40 **Subdivision (b).** In the interest of consistency, subdivision (b)(1) recommends a preferred wording—  
41 “Clerk, Court of Appeal”—for the name of the payee of checks or money orders for the filing fee. The  
42 provision is not mandatory.  
43

44 **Subdivision (c)(2).** This subdivision addresses the content of a clerk’s notice that a check for the filing  
45 fee has been dishonored or that the reviewing court has received a notice of appeal without the filing fee,  
46 a certificate of cash payment, or an application for, or order granting, a fee waiver. Rule 8.26(f) addresses  
47 what an appellant must do when a fee waiver application is denied.

1  
2 **Subdivision (e).** Under subdivision (e)(2), a notification of the filing of a notice of appeal must show the  
3 date that the clerk ~~mailed~~ sent the document. This provision is intended to establish the date when the 20-  
4 day extension of the time to file a cross-appeal under rule 8.108(e) begins to run.

5  
6 Subdivision (e)(1) requires the clerk to ~~mail~~ send a notification of the filing of the notice of appeal to the  
7 appellant’s attorney or to the appellant if unrepresented. Knowledge of the date of that notification allows  
8 the appellant’s attorney or the appellant to track the running of the 20-day extension of time to file a  
9 cross-appeal under rule 8.108(e).

10  
11 **Drafter’s Note:** The filing fee paid with the Notice of Appeal is collected by the Superior  
12 Court but transmitted to the Court of Appeal. Both Superior Courts and Courts of  
13 Appeal may allow payments by credit cards, electronic funds transfers or debit  
14 accounts. The proposed amendment allows such payments where the Notice of Appeal  
15 is filed electronically and references both relevant rules. Special procedures may be  
16 needed for such payments in this situation where the payment is collected by the  
17 Superior Court but the funds go to the Court of Appeal..

18  
19 **Rule 8.104. Time to appeal**

20  
21 **(a) Normal time**

- 22  
23 (1) Unless a statute, rule 8.108, or rule 8.702 provides otherwise, a notice of appeal must  
24 be filed on or before the earliest of:  
25  
26 (A) 60 days after the superior court clerk serves on the party filing the notice of  
27 appeal a document entitled “Notice of Entry” of judgment or a file-  
28 ~~stamped~~ endorsed copy of the judgment, showing the date either was served;  
29  
30 (B) 60 days after the party filing the notice of appeal serves or is served by a party  
31 with a document entitled “Notice of Entry” of judgment or a file-  
32 ~~stamped~~ endorsed copy of the judgment, accompanied by proof of service; or  
33  
34 (C) 180 days after entry of judgment.  
35  
36 (2) Service under (1)(A) and (B) may be by any method permitted by the Code of Civil  
37 Procedure, including electronic service when permitted under Code of Civil  
38 Procedure section 1010.6 and rules 2.250–2.261.  
39  
40 (3) If the parties stipulated in the trial court under Code of Civil Procedure section  
41 1019.5 to waive notice of the court order being appealed, the time to appeal under  
42 (1)(C) applies unless the court or a party serves notice of entry of judgment or a file-  
43 ~~stamped~~ endorsed copy of the judgment to start the time period under (1)(A) or (B).  
44

45 **b) No extension of time; late notice of appeal \* \* \***  
46



1 **(c) What constitutes entry**

2  
3 For purposes of this rule:

- 4  
5 (1) The entry date of a judgment is the date the judgment is filed under Code of Civil  
6 Procedure section 668.5, or the date it is entered in the judgment book.  
7  
8 (2) The entry date of an appealable order that is entered in the minutes is the date it is  
9 entered in the permanent minutes. But if the minute order directs that a written order  
10 be prepared, the entry date is the date the signed order is filed; a written order  
11 prepared under rule 3.1312 or similar local rule is not such an order prepared by  
12 direction of a minute order.  
13  
14 (3) The entry date of an appealable order that is not entered in the minutes is the date the  
15 signed order is filed.  
16  
17 (4) The entry date of a decree of distribution in a probate proceeding is the date it is  
18 entered at length in the judgment book or other permanent court record.  
19

20 **(d) Premature notice of appeal \* \* \***

21  
22 **(e) Appealable order \* \* \***

23  
24 **Advisory Committee Comment**

25 \* \* \*

26 Drafter's Note: "File-stamped" is changed to "file-endorsed" in rule 8.104 (a) to clarify  
27 that the language includes e-filed judgments. References in rule 8.104 (c) to the signing  
28 and entry of judgments and orders are left unchanged. Signing and entry may be  
29 electronic.  
30

31  
32  
33 **Rule 8.108. Extending the time to appeal**

34  
35 **(a) Extension of time \* \* \***

36  
37 **(b) Motion for new trial \* \* \***

38  
39 **(c) Motion to vacate judgment \* \* \***

40  
41 **(d) Motion for judgment notwithstanding the verdict \* \* \***

42  
43 **(e) Motion to reconsider appealable order \* \* \***

44  
45 **(f) Public entity actions under Government Code section 962, 984, or 985**  
46

1 If a public entity defendant serves and files a valid request for a mandatory settlement  
2 conference on methods of satisfying a judgment under Government Code section 962, an  
3 election to pay a judgment in periodic payments under Government Code section 984 and  
4 rule 3.1804, or a motion for a posttrial hearing on reducing a judgment under Government  
5 Code section 985, the time to appeal from the judgment is extended for all parties until the  
6 earliest of:

- 7
- 8 (1) 90 days after the superior court clerk serves the party filing the notice of appeal with  
9 a document entitled “Notice of Entry” of judgment, or a file-~~stamped~~endorsed copy  
10 of the judgment, showing the date either was served;
- 11
- 12 (2) 90 days after the party filing the notice of appeal serves or is served by a party with a  
13 document entitled “Notice of Entry” of judgment or a file-~~stamped~~endorsed copy of  
14 the judgment, accompanied by proof of service; or
- 15
- 16 (3) 180 days after entry of judgment.
- 17

18 **(g) Cross-appeal \* \* \***

19

20 **(h) Service; proof of service**

21

22 Service under this rule may be by any method permitted by the Code of Civil Procedure,  
23 including electronic service when permitted under Code of Civil Procedure section 1010.6  
24 and rules 2.250–2.261. An order or notice that is served must be accompanied by proof of  
25 service.

26

27 **Advisory Committee Comment**

28

29 \* \* \*

30

31 **Rule 8.112. Petition for writ of supersedeas**

32

33 **(a) Petition**

- 34
- 35 (1) A party seeking a stay of the enforcement of a judgment or order pending appeal  
36 may serve and file a petition for writ of supersedeas in the reviewing court.
- 37
- 38 (2) The petition must bear the same title as the appeal and, if known, the appeal’s docket  
39 number.
- 40
- 41 (3) The petition must explain the necessity for the writ and include a memorandum.
- 42
- 43 (4) If the record has not been filed in the reviewing court:  
44
  - 45 (A) The petition must include a statement of the case sufficient to show that the  
46 petitioner will raise substantial issues on appeal, including a fair summary of  
47 the material facts and the issues that are likely to be raised on appeal.

- 1  
2 (B) The petitioner must file the following documents with the petition:  
3  
4 (i) The judgment or order, showing its date of entry;  
5  
6 (ii) The notice of appeal, showing its date of filing;  
7  
8 (iii) A reporter’s transcript of any oral statement by the court supporting its  
9 rulings related to the issues that are likely to be raised on appeal, or, if a  
10 transcript is unavailable, a declaration fairly summarizing any such  
11 statements;  
12  
13 (iv) Any application for a stay filed in the trial court, any opposition to that  
14 application, and a reporter’s transcript of the oral proceedings concerning  
15 the stay or, if a transcript is unavailable, a declaration fairly summarizing  
16 the proceedings, including the parties’ arguments and any statement by  
17 the court supporting its ruling; and  
18  
19 (v) Any other document from the trial court proceeding that is necessary for  
20 proper consideration of the petition.  
21

22 (C) The documents listed in (B) must comply with the following requirements:

- 23  
24 (i) If they are not filed electronically, they must be bound together at the  
25 end of the petition or in separate volumes not exceeding 300 pages each.  
26 The pages must be consecutively numbered;  
27  
28 (ii) If they are not filed electronically, they must be index-tabbed by  
29 number or letter. If filed electronically, each document must have a  
30 cover page giving an index number or letter for the document, and  
31  
32 (iii) They must begin with a table of contents listing each document by its  
33 title and its index-~~tab~~ number or letter.  
34

35 (5) The petition must be verified.  
36

37 **(b) Opposition \* \* \***

38  
39 **(c) Temporary stay \* \* \***

40  
41 **(d) Issuing the writ \* \* \***  
42

#### 43 **Advisory Committee Comment**

44  
45 **Subdivision (a).** If the preparation of a reporter’s transcript has not yet been completed at that time a  
46 petition for a writ of supersedeas is filed, that transcript is “unavailable” within the meaning of (a)(4)(B).  
47

**Article 2. Record on Appeal**

- Rule 8.120. Record on appeal*
- Rule 8.121. Notice designating the record on appeal*
- Rule 8.122. Clerk’s transcript*
- Rule 8.123. Record of administrative proceedings*
- Rule 8.124. Appendixes*
- Rule 8.128. Superior court file instead of clerk’s transcript*
- Rule 8.130. Reporter’s transcript*
- Rule 8.134. Agreed statement*
- Rule 8.137. Settled statement*
- Rule 8.140. Failure to procure the record*
- Rule 8.144. Form of the record*
- Rule 8.147. Record in multiple or later appeals in same case*
- Rule 8.149. When the record is complete*
- Rule 8.150. Filing the record*
- Rule 8.153. Lending the record*
- Rule 8.155. Augmenting and correcting the record*
- Rule 8.163. Presumption from the record*

**Rule 8.120. Record on appeal \*\*\***

**Rule 8.121. Notice designating the record on appeal \*\*\***

**Rule 8.122. Clerk’s transcript**

**(a) Designation**

- (1) A notice designating documents to be included in a clerk’s transcript must identify each designated document by its title and filing date or, if the filing date is not available, the date it was signed. The notice may specify portions of designated documents that are not to be included in the transcript. For minute orders or instructions, it is sufficient to collectively designate all minute orders or all minute orders entered between specified dates, or all written jury instructions given, refused, or withdrawn.
- (2) Within 10 days after the appellant serves its notice designating a clerk’s transcript, the respondent may serve and file a notice in superior court designating any additional documents the respondent wants included in the transcript.

1 (3) Except as provided in (b)(4), all exhibits admitted in evidence, refused, or lodged are  
2 deemed part of the record, but a party wanting a copy of an exhibit included in the  
3 transcript must specify that exhibit by number or letter in its notice of designation. If  
4 the superior court has returned a designated exhibit to a party, the party in possession  
5 of the exhibit must deliver it to the superior court clerk within 10 days after the  
6 notice designating the exhibit is served.  
7

8 **(b) Contents of transcript \* \* \***  
9

10 **(c) Deposit for cost of transcript**

11  
12 (1) Within 30 days after the respondent files a designation under (a)(2) or the time for  
13 filing it expires, whichever first occurs, the superior court clerk must send:

14  
15 (A) To the appellant, notice of the estimated cost to prepare an original and one  
16 copy of the clerk's transcript; and

17  
18 (B) To each party other than the appellant, notice of the estimated cost to prepare a  
19 copy of the clerk's transcript for that party's use.  
20

21 (2) A notice under (1) must show the date it was sent.  
22

23 (3) Unless otherwise provided by law, within 10 days after the clerk sends a notice under  
24 (1), the appellant and any party wanting to purchase a copy of the clerk's transcript  
25 must either deposit the estimated cost specified in the notice under (1) with the clerk  
26 or submit an application for, or an order granting, a waiver of the cost.  
27

28 (4) If the appellant does not submit a required deposit or an application for, or an order  
29 granting, a waiver of the cost within the required period, the clerk must promptly  
30 issue a notice of default under rule 8.140.  
31

32 **(d) Preparation of transcript**  
33

34 (1) Within the time specified in (2), the clerk must:

35  
36 (A) Prepare and certify the original transcript;

37  
38 (B) Prepare one copy of the transcript for the appellant; and

39  
40 (C) Prepare additional copies for parties that have requested a copy of the clerk's  
41 transcript and have made deposits as provided in (c)(3) or received an order  
42 waiving the cost.  
43

44 (2) Except as provided in (3), the clerk must complete preparation of the transcripts  
45 required under (1) within 30 days after either:  
46

1 (A) The appellant deposits either the estimated cost of the clerk’s transcript or a  
2 preexisting order granting a waiver of that cost; or  
3

4 (B) The court grants an application submitted under (c)(3) to waive that cost.  
5

6 (3) If the appellant elects under rule 8.121 to proceed with a reporter’s transcript, the  
7 clerk need not complete preparation of the transcripts required under (1) until 30  
8 days after the appellant deposits the estimated cost of the reporter’s transcript or one  
9 of the substitutes under rule 8.130(b).  
10

11 (4) If the appeal is abandoned or dismissed before the clerk has completed preparation of  
12 the transcript, the clerk must refund any portion of the deposit under (c) exceeding  
13 the preparation cost actually incurred.  
14

15 **Advisory Committee Comment**

16  
17 **Subdivision (a).** \* \* \*

18  
19 **Subdivision (b).** \* \* \*

20  
21 **Subdivision (c).** The provisions of subdivision (c), together with rule 8.144, allow the clerk’s transcript to  
22 be in electronic form, when permitted under the reviewing court’s local rules.  
23

24 Under subdivision (c)(2), a clerk who sends a notice under subdivision (c)(1) must include a certificate  
25 stating the date on which the clerk sent it. This provision is intended to establish the date when the 10-day  
26 period for depositing the cost of the clerk’s transcript under this rule begins to run.  
27

28 The superior court will make the determination on any application to waive the fees for preparing,  
29 certifying, copying, and transmitting the clerk’s transcript.  
30

31 **Subdivision (d).** \* \* \*

32  
33 **Drafter’s Note:** Rule 8.122 (a) (3) makes reference to a party’s obligation to deliver an  
34 exhibit returned to that party by the court. Because it is clear this would only apply to  
35 non-electronic exhibits, I have left it unchanged. Rule 8.122 (c) (1) and (2) requires the  
36 clerk to give notice to parties of the estimated cost to prepare the original clerk’s  
37 transcript and copies. Although the cost of preparing a copy of an electronic transcript  
38 for a party will likely be minimal, the rule would still apply to make the parties  
39 responsible for the costs of transcript copies, and I have left the rule unchanged. I have  
40 added a comment to reflect that the clerk’s transcript may be in electronic form.  
41  
42

43 **Rule 8.123. Record of administrative proceedings**

44  
45 **(a) Application**  
46

1 This rule applies if the record of an administrative proceeding was admitted in evidence,  
2 refused, or lodged in the superior court.  
3

4 **(b) Designation**  
5

6 (1) An appellant's notice designating the record on appeal under rule 8.121 that requests  
7 a record of an administrative proceeding be transmitted to the reviewing court must  
8 identify the administrative record by the title and date or dates of the administrative  
9 proceedings.  
10

11 (2) If an appellant does not request that an administrative record admitted in evidence,  
12 refused, or lodged in the superior court be transmitted to the reviewing court, the  
13 respondent, within 10 days after the appellant serves its notice designating the record  
14 on appeal, may serve and file in the superior court a notice requesting that this  
15 administrative record be transmitted to the reviewing court.  
16

17 **(c) Transmittal to the reviewing court**  
18

19 Except as provided in (d), if any administrative record is designated by a party, the  
20 superior court clerk must transmit the original administrative record, or electronic  
21 administrative record when an electronic administrative record has been admitted in  
22 evidence, refused, or lodged in the superior court, with any clerk's or reporter's transcript  
23 sent to the reviewing court under rule 8.150. If the appellant has elected under rule 8.121 to  
24 use neither a clerk's transcript nor a reporter's transcript, the superior court clerk must  
25 transmit any administrative record designated by a party to the reviewing court no later  
26 than 45 days after the respondent files a designation under (b)(2) or the time for filing it  
27 expires, whichever first occurs.  
28

29 **(d) Administrative records returned to parties**  
30

31 (1) If the superior court has returned a designated administrative record to a party, the  
32 party in possession of the administrative record must make that record available to  
33 the other parties in the case for copying within 15 days after the notice designating  
34 the record on appeal is served and lodge the record with the clerk of the reviewing  
35 court at the time the last respondent's brief is due.  
36

37 (2) A party seeking an administrative record that was returned to another party must first  
38 ask the possessing party to provide a copy or lend it for copying. The possessing  
39 party should reasonably cooperate with such requests.  
40

41 (3) If the request under (2) is unsuccessful, the requesting party may serve and file in the  
42 reviewing court a notice identifying the administrative record and requesting that the  
43 possessing party deliver the administrative record to the requesting party or, if the  
44 possessing party prefers, to the reviewing court. The possessing party must comply  
45 with the request within 10 days after the notice was served.  
46

1 (4) If the possessing party sends the administrative record to the requesting party, that  
2 party must copy and return it to the possessing party within 10 days after receiving it.

3  
4 (5) If the possessing party sends the administrative record to the reviewing court, that  
5 party must:

6  
7 (A) Include with the administrative record a copy of the notice served by the  
8 requesting party; and

9  
10 (B) Immediately notify the requesting party that it has sent the administrative  
11 record to the reviewing court.

12  
13 **(e) Return by reviewing court**

14  
15 On request, the reviewing court may return an administrative record to the superior court  
16 or, if the record was lodged by a party under (d), to the lodging party. When the remittitur  
17 issues, the reviewing court must return any administrative record to the superior court or, if  
18 the record was lodged by a party under (d), to the lodging party.

19  
20 **Drafter's Note:** Many of the provisions of Rule 8.123 regarding administrative records in  
21 possession of a party, being copied and returned, or returned to the superior court or to  
22 a party, clearly refer only to paper administrative records; I have left these provisions  
23 unchanged. Where rule 8.123 (c) requires transmission of the original administrative  
24 record from the superior court to the reviewing court, I have added language to clarify  
25 the application of this rule where the record is electronic, to avoid confusion over what it  
26 means to transmit an "original" electronic record.

27  
28  
29 **Rule 8.124. Appendixes**

30  
31 **(a) Notice of election \* \* \***

32  
33  
34  
35 **(b) Contents of appendix \* \* \***

36  
37  
38 **(c) Document or exhibit held by other party**

39  
40 If a party preparing an appendix wants it to contain a copy of a document or an exhibit in  
41 the possession of another party:

42  
43 (1) The party must first ask the party possessing the document or exhibit to provide a  
44 copy or lend it for copying. All parties should reasonably cooperate with such  
45 requests.  
46



- 1 (2) If the attempt under (1) is unsuccessful, the party may serve and file in the reviewing  
2 court a notice identifying the document or specifying the exhibit’s trial court  
3 designation and requesting the party possessing the document or exhibit to deliver it  
4 to the requesting party or, if the possessing party prefers, to the reviewing court. The  
5 possessing party must comply with the request within 10 days after the notice was  
6 served.  
7
- 8 (3) If the party possessing the document or exhibit sends it to the requesting party non-  
9 electronically, that party must copy and return it to the possessing party within 10  
10 days after receiving it.  
11
- 12 (4) If the party possessing the document or exhibit sends it to the reviewing court, that  
13 party must:  
14
- 15 (A) Accompany the document or exhibit with a copy of the notice served by the  
16 requesting party; and  
17
- 18 (B) Immediately notify the requesting party that it has sent the document or exhibit  
19 to the reviewing court.  
20
- 21 (5) On request, the reviewing court may return a document or an exhibit to the party that  
22 sent it non-electronically. When the remittitur issues, the reviewing court must return  
23 all documents or exhibits to the party that sent them, if they were sent non-  
24 electronically.  
25

26 **(d) Form of appendix**  
27

- 28 (1) An appendix must comply with the requirements of rule 8.144(ab)–(ed) for a clerk’s  
29 transcript.  
30
- 31 (2) In addition to the information required on the cover of a brief by rule 8.204(b)(10),  
32 the cover of an appendix must prominently display the title “Joint Appendix” or  
33 “Appellant’s Appendix” or “Respondent’s Appendix” or “Appellant’s Reply  
34 Appendix.”  
35
- 36 (3) An appendix must not be bound or transmitted electronically as one document with a  
37 brief.  
38

39 **(e) Service and filing \* \* \***  
40

41  
42 **(f) Cost of appendix \* \* \***  
43

44  
45 **(g) Inaccurate or noncomplying appendix \* \* \***  
46

1  
2 **Advisory Committee Comment**  
3

4 \* \* \*  
5  
6

7 **Rule 8.128. Superior court file instead of clerk's transcript**  
8

9 **(a) Stipulation; time to file**  
10

- 11 (1) If a local rule of the reviewing court permits, the parties may stipulate to use the  
12 original superior court file instead of a clerk's transcript under rule 8.122. This rule  
13 and any supplemental provisions of the local rule then govern unless the superior  
14 court orders otherwise after notice to the parties.  
15  
16 (2) Parties intending to proceed under this rule must file their stipulation in superior  
17 court with the appellant's notice designating the record on appeal under rule 8.121.  
18 The parties must serve the reviewing court with a copy of the stipulation.  
19

20 **(b) Cost estimate; preparation of file; transmittal**  
21

- 22 (1) Within 10 days after a stipulation under (a) is filed, the superior court clerk must  
23 send mail the appellant an estimate of the cost to prepare the file, including the cost  
24 of sending the index under (3). The appellant must deposit the cost or file an  
25 application for, or an order granting, a waiver of the cost within 10 days after the  
26 clerk sends mails the estimate.  
27  
28 (2) Within 10 days after the appellant deposits the cost or the court files an order  
29 waiving that cost, the superior court clerk must put the superior court file in  
30 chronological order, number the pages, and attach a chronological index and a list of  
31 all attorneys of record, the parties they represent, and any unrepresented parties.  
32  
33 (3) The clerk must send copies of the index to all attorneys of record and any  
34 unrepresented parties for their use in paginating their copies of the file to conform to  
35 the index.  
36  
37 (4) The clerk must send the prepared file to the reviewing court with the reporter's  
38 transcript. If the appellant elected to proceed without a reporter's transcript, the clerk  
39 must immediately send the prepared file to the reviewing court.  
40

41 **Advisory Committee Comment**  
42

43 **Subdivision (b).** The superior court will make the determination on any application to waive the fees for  
44 preparing and transmitting the trial court file.  
45

46 **Drafter's Note:** The committee may wish to consider substantive amendments in the  
47 future to address how the superior court file might be used in lieu of a clerk's transcript

1 where the superior court file is electronic. The rule as it stands assumes a paper file,  
2 and determining how to apply the procedures set forth in the rule might be difficult  
3 where the file is electronic.  
4  
5

6 **Rule 8.130. Reporter's transcript**  
7

8 **(a) Notice \* \* \***  
9

10 **(b) Deposit or substitute for cost of transcript**  
11

12 (1) With its notice of designation, a party must deposit with the superior court clerk the  
13 approximate cost of transcribing the proceedings it designates and a fee of \$50 for  
14 the superior court to hold this deposit in trust. The deposit must be either:  
15

16 (A) The amount specified in the reporter's written estimate; or  
17

18 (B) An amount calculated as follows:  
19

20 (i) For proceedings that have not previously been transcribed: \$325 per  
21 fraction of the day's proceedings that did not exceed three hours, or \$650  
22 per day or fraction that exceeded three hours.  
23

24 (ii) For proceedings that have previously been transcribed: \$80 per fraction  
25 of the day's proceedings that did not exceed three hours, or \$160 per day  
26 or fraction that exceeded three hours.  
27

28 (2) If the reporter believes the deposit is inadequate, within 15 days after the clerk ~~mails~~  
29 sends the notice under (d)(1) the reporter may file with the clerk and send mail to the  
30 designating party an estimate of the transcript's total cost at the statutory rate,  
31 showing the additional deposit required. The party must deposit the additional sum  
32 within 10 days after the reporter ~~mails~~ sends the estimate.  
33

34 (3) Instead of a deposit under (1), the party may substitute:  
35

36 (A) The reporter's written waiver of a deposit. A reporter may waive the deposit  
37 for a part of the designated proceedings, but such a waiver replaces the deposit  
38 for only that part.  
39

40 (B) A copy of a Transcript Reimbursement Fund application filed under (c)(1).  
41

42 (C) A certified transcript of all of the proceedings designated by the party. The  
43 transcript must comply with the format requirements of rule 8.144.  
44

45 **(c) Transcript Reimbursement Fund application \* \* \***  
46

1 **(d) Superior court clerk's duties**

- 2
- 3 (1) The clerk must file a party's notice of designation even if the party does not present
- 4 the required deposit under (b)(1) or a substitute under (b)(3) with its notice of
- 5 designation.
- 6
- 7 (2) The clerk must promptly ~~mail~~ send the reporter notice of the designation and of the
- 8 deposit or substitute and notice to prepare the transcript, showing the date the notice
- 9 was sent ~~mailed~~ to the reporter, when the court receives:
- 10
- 11 (A) The required deposit under (b)(1);
- 12
- 13 (B) A reporter's written waiver of a deposit under (b)(3); or
- 14
- 15 (C) A copy of the Court Reporters Board's provisional approval of the party's
- 16 application for payment from the Transcript Reimbursement Fund under (c).
- 17
- 18 (3) If the appellant does not present the deposit under (b)(1) or a substitute under (b)(3)
- 19 with its notice of designation or does not present an additional deposit required under
- 20 (b)(2):
- 21
- 22 (A) The clerk must promptly notify the appellant ~~in writing by mail~~ that, within 15
- 23 days after the notice is sent ~~mailed~~, the appellant must take one of the
- 24 following actions or the court may dismiss the appeal:
- 25
- 26 (i) Deposit the amount required or a substitute permitted under (b);
- 27
- 28 (ii) File an agreed statement or a stipulation that the parties are attempting to
- 29 agree on a statement under rule 8.134;
- 30
- 31 (iii) File a motion to use a settled statement instead of a reporter's transcript
- 32 under rule 8.137;
- 33
- 34 (iv) Notify the superior court clerk that it elects to proceed without a record
- 35 of the oral proceedings; or
- 36
- 37 (v) Serve and file an abandonment under rule 8.244.
- 38
- 39 (B) If the appellant elects to use a reporter's transcript and fails to take one of the
- 40 actions specified in the notice under (A), rule 8.140(b) and (c) apply.
- 41
- 42 (4) If the respondent does not present the deposit under (b)(1) or a substitute under
- 43 (b)(3) with its notice of designation or does not present an additional deposit required
- 44 under (b)(2), the clerk must file the notice of designation and promptly issue a notice
- 45 of default under rule 8.140.
- 46

1 (5) The clerk must promptly notify the reporter if a check for a deposit is dishonored or  
2 an appeal is abandoned or is dismissed before the reporter has filed the transcript.  
3

4 **(e) Contents of transcript \* \* \***  
5

6 **(f) Filing the transcript; copies; payment**  
7

8 (1) Within 30 days after notice is ~~mailed~~ sent under (d)(2), the reporter must prepare and  
9 certify an original of the transcript and file it in superior court. The reporter must  
10 also file one copy of the original transcript, or more than one copy if multiple  
11 appellants equally share the cost of preparing the record (see rule 8.147(a)(2)). Only  
12 the reviewing court can extend the time to prepare the reporter's transcript (see rule  
13 8.60).  
14

15 (2) When the transcript is completed, the reporter must notify all parties to the appeal  
16 that the transcript is complete, bill each designating party at the statutory rate, and  
17 send a copy of the bill to the superior court clerk. The clerk must pay the reporter  
18 from that party's deposited funds and refund any excess deposit or notify the party of  
19 any additional funds needed. In a multiple reporter case, the clerk must pay each  
20 reporter who certifies under penalty of perjury that his or her transcript portion is  
21 completed.  
22

23 (3) If the appeal is abandoned or is dismissed before the reporter has filed the transcript,  
24 the reporter must inform the superior court clerk of the cost of the portion of the  
25 transcript that the reporter has completed. The clerk must pay that amount to the  
26 reporter from the appellant's deposited funds and refund any excess deposit.  
27

28 (4) On request, and unless the superior court orders otherwise, the reporter must provide  
29 the Court of Appeal or any party with a copy of the reporter's transcript in computer-  
30 readable format. Each computer-readable copy must comply with the format,  
31 labeling, content, and numbering requirements of Code of Civil Procedure section  
32 271(b).  
33

34 **(g) Disputes over transcript costs \* \* \***  
35

36 **(h) Agreed or settled statement when proceedings cannot be transcribed**  
37

38 (1) If any portion of the designated proceedings cannot be transcribed, the superior court  
39 clerk must so notify the designating party in writing~~by mail~~; the notice must show  
40 the date it was sent ~~mailed~~. The party may then substitute an agreed or settled  
41 statement for that portion of the designated proceedings by complying with either  
42 (A) or (B):  
43

44 (A) Within 10 days after the notice is ~~sent~~ ~~mailed~~, the party may file in superior  
45 court, under rule 8.134, an agreed statement or a stipulation that the parties are  
46 attempting to agree on a statement. If the party files a stipulation, within 30

1 days thereafter the party must file the agreed statement, move to use a settled  
2 statement under rule 8.137, or proceed without such a statement; or

3  
4 (B) Within 10 days after the notice is ~~sentmailed~~, the party may move in superior  
5 court to use a settled statement. If the court grants the motion, the statement  
6 must be served, filed, and settled as rule 8.137 provides, but the order granting  
7 the motion must fix the times for doing so.

8  
9 (2) If the agreed or settled statement contains all the oral proceedings, it will substitute  
10 for the reporter's transcript; if it contains a portion of the proceedings, it will be  
11 incorporated into that transcript.

12  
13 (3) This remedy supplements any other available remedies.

14  
15  
16  
17 **Advisory Committee Comment**

18  
19 **Subdivision (a).** \* \* \*

20  
21 **Subdivision (b).** \* \* \*

22  
23 **Subdivision (c).** \* \* \*

24  
25 **Subdivision (d).** Under subdivision (d)(2), the clerk's notice to the reporter must show the date on which  
26 the clerk ~~sentmailed~~ the notice. This provision is intended to establish the date when the period for  
27 preparing the reporter's transcript under subdivision (f)(1) begins to run.

28  
29 **Subdivision (e).** Subdivision (e)(1) clarifies that: (1) when a certified transcript containing all of the  
30 proceedings identified in the notice of designation is submitted in lieu of a deposit, the court reporter will  
31 not prepare a reporter's transcript; and (2) that the court reporter will only transcribe those proceedings  
32 that have not previously been transcribed and will include a copy of those proceedings that have  
33 previously been transcribed in the reporter's transcript. Under rule 8.144, the full transcript, including the  
34 previously transcribed material, must meet the format requirements for a reporter's transcript.

35  
36 Subdivision (e)(3) is not intended to relieve the reporter of the duty to report all oral proceedings,  
37 including the reading of instructions or other documents.

38  
39 **Subdivision (f).** \* \* \*

40  
41 **Drafter's Note:** Under Code of Civil Procedure section 271, the original of the reporter's  
42 transcript is required to be on paper. If this statute is modified, JATS can consider  
43 additional rule changes to address the potential electronic version of the original  
44 transcript.

45  
46 \* \* \*

1 **Rule 8.137. Settled statement**

2  
3 **(a) Motion to use settled statement**

- 4  
5  
6 (1) An appellant intending to proceed under this rule must serve and file in superior  
7 court with its notice designating the record on appeal under rule 8.121 a motion to  
8 use a settled statement instead of a reporter's transcript or both reporter's and clerk's  
9 transcripts.
- 10  
11 (2) The motion must be supported by a showing that:
- 12  
13 (A) A substantial cost saving will result and the statement can be settled without  
14 significantly burdening opposing parties or the court;
- 15  
16 (B) The designated oral proceedings were not reported or cannot be transcribed; or
- 17  
18 (C) The appellant is unable to pay for a reporter's transcript and funds are not  
19 available from the Transcript Reimbursement Fund (see rule 8.130(c)). A party  
20 proceeding in forma pauperis is deemed unable to pay for a transcript.
- 21  
22 (3) If the court denies the motion, the appellant must file a new notice designating the  
23 record on appeal under rule 8.121 within 10 days after the superior court clerk  
24 sends~~mails~~, or a party serves, the order of denial.

25  
26 **(b) Time to file; contents of statement**

- 27  
28 (1) Within 30 days after the superior court clerk sends~~mails~~, or a party serves, an order  
29 granting a motion to use a settled statement, the appellant must serve and file in  
30 superior court a condensed narrative of the oral proceedings that the appellant  
31 believes necessary for the appeal. Subject to the court's approval in settling the  
32 statement, the appellant may present some or all of the evidence by question and  
33 answer.
- 34  
35 (2) If the condensed narrative describes less than all the testimony, the appellant must  
36 state the points to be raised on appeal; the appeal is then limited to those points  
37 unless, on motion, the reviewing court permits otherwise.
- 38  
39 (3) An appellant intending to use a settled statement instead of both reporter's and  
40 clerk's transcripts must accompany the condensed narrative with copies of all items  
41 required by rule 8.122(b)(1), showing the dates required by rule 8.122(b)(2).
- 42  
43 (4) Within 20 days after the appellant serves the condensed narrative, the respondent  
44 may serve and file proposed amendments.
- 45

1 (5) The proposed statement and proposed amendments may be accompanied by copies  
2 of any document includable in the clerk’s transcript under rule 8.122(b)(3) and (4).  
3

4 **(c) Settlement, preparation, and certification \* \* \***  
5  
6

7 **Rule 8.140. Failure to procure the record**  
8

9 **(a) Notice of default**

10  
11 Except as otherwise provided by these rules, if a party fails to timely do an act required to  
12 procure the record, the superior court clerk must promptly notify the party in writing by  
13 ~~mail~~ that it must do the act specified in the notice within 15 days after the notice is sent  
14 ~~mailed~~, and that if it fails to comply, the reviewing court may impose one of the following  
15 sanctions:  
16

17 (1) If the defaulting party is the appellant, the court may dismiss the appeal; or

18  
19 (2) If the defaulting party is the respondent, the court may proceed with the appeal on  
20 the record designated by the appellant.  
21

22 **(b) Sanctions \* \* \***

23  
24 **(c) Motion for sanctions \* \* \***  
25

26 **Advisory Committee Comment**  
27

28 **Subdivision (a).** In subdivision (a), the reference to a failure to “timely” do a required act is intended to  
29 include any valid extension of that time.  
30

31  
32 **Rule 8.144. Form of the record**  
33

34 **(a) Paper and format**  
35

36 (1) Where the local rules of the reviewing court so allow, all or part of the record may be  
37 in electronic format.  
38

39 ~~(1)~~(2) In the clerk’s and reporter’s transcripts:  
40

41 (A) All documents filed must have a page size of 8½ by 11 inches. If not filed  
42 electronically, tThe paper must be white or unbleached, ~~8 1/2 by 11 inches,~~ and  
43 of at least 20-pound weight;  
44

45 (B) The text must be reproduced as legibly as printed matter;

46  
47 (C) The contents must be arranged chronologically;



1  
2 (D) The pages must be consecutively numbered, except as provided in (e);

3  
4 (E) If not filed electronically, the margin must be at least 1¼ inches on the  
5 bound edge of the page; if electronically filed, the margin must be at least 1¼  
6 inches from the left side of the page.

7  
8 ~~(2)~~(3) If not filed electronically, in the clerk's transcript only one side of the paper may be  
9 used; in the reporter's transcript both sides may be used, but the margins must then  
10 be 1¼ inches on each edge.

11  
12 ~~(3)~~(4) In the reporter's transcript the lines on each page must be consecutively numbered,  
13 and must be double-spaced or one-and-a-half-spaced; double-spaced means three  
14 lines to a vertical inch.

15  
16 ~~(4)~~(5) The clerk's and reporter's transcripts must comply with rules 8.45–8.47 relating to  
17 sealed and confidential records.

18  
19 **(b) Indexes**

20  
21 Except as provided in rule 8.45, at the beginning of the first volume of each:

22  
23 (1) The clerk's transcript must contain alphabetical and chronological indexes listing  
24 each document and the volume, where applicable, and page where it first appears;

25  
26 (2) The reporter's transcript must contain alphabetical and chronological indexes listing  
27 the volume, where applicable, and page where each witness's direct, cross, and any  
28 other examination, begins; and

29  
30 (3) The reporter's transcript must contain an index listing the volume, where applicable,  
31 and page where any exhibit is marked for identification and where it is admitted or  
32 refused. The index must identify each exhibit by number or letter and a brief  
33 description of the exhibit.

34  
35 **(c) Binding and cover**

36  
37 (1) If not filed electronically, clerk's and reporter's transcripts must be bound on the  
38 left margin in volumes of no more than 300 sheets.

39  
40 (2) Each volume's cover must state the title and trial court number of the case, the  
41 names of the trial court and each participating trial judge, the names and addresses of  
42 appellate counsel for each party, the volume number, and the inclusive page numbers  
43 of that volume.

44  
45 (3) In addition to the information required by (2), the cover of each volume of the  
46 reporter's transcript must state the dates of the proceedings reported in that volume.

1  
2 **(d) Daily transcripts \* \* \***

3  
4 **(e) Pagination in multiple reporter cases \* \* \***

5  
6 **(f) Agreed or settled statements \* \* \***

7  
8 **Advisory Committee Comment**

9  
10 **Subdivisions (a) and (b).** Subdivisions (a)(1) and (b)(1) refer to special requirements concerning sealed  
11 and confidential records established by rules 8.45–8.47. Rule 8.45(c)(2) and (3) establish special  
12 requirements regarding references to sealed and confidential records in the alphabetical and chronological  
13 indexes to clerk’s and reporter’s transcripts.

14  
15  
16 **Rule 8.147. Record in multiple or later appeals in same case**

17  
18 **(a) Multiple appeals \* \* \***

19  
20 **(b) Later appeal**

21  
22 In an appeal in which the parties are using either a clerk’s transcript under rule 8.122 or a  
23 reporter’s transcript under rule 8.130:

24  
25 (1) A party wanting to incorporate by reference all or parts of a record in a prior appeal  
26 in the same case must specify those parts in its designation of the record.

27  
28 (A) The prior appeal must be identified by its case name and number. If only part  
29 of a record is being incorporated by reference, that part must be identified by  
30 citation to the volume, where applicable, and page numbers of the record  
31 where it appears and either the title of the document or documents or the date  
32 of the oral proceedings to be incorporated. The parts of any record  
33 incorporated by reference must be identified in a separate section at the end of  
34 the designation of the record.

35  
36 (B) If the transcript incorporates by reference any such record, the cover of the  
37 transcript must prominently display the notice “Record in case number: \_\_\_\_  
38 incorporated by reference,” identifying the number of the case from which the  
39 record is incorporated.

40  
41 (C) On request of the reviewing court or any party, the designating party must  
42 provide a copy of the materials incorporated by reference to the reviewing  
43 court or another party or lend them as provided in rule 8.153.

44  
45 (2) A party wanting any parts of a clerk’s transcript or other record of the written  
46 documents from a prior appeal in the same case to be copied into the clerk’s  
47 transcript in a later appeal must specify those parts in its designation of the record as

1 provided in (1). The estimated cost of copying these materials must be included in  
2 the clerk's estimate of the cost of preparing the transcript under rule 8.122(c)(1). On  
3 request of the trial court clerk, the designating party must provide a copy of or lend  
4 the materials to be copied to the clerk. The parts of any record from a prior appeal  
5 that are copied into a clerk's transcript under this rule must be placed in a separate  
6 section at the end of the transcript and identified in a separate section at the end of  
7 the indexes.

8  
9 **Advisory Committee Comment**

10  
11 \* \* \*

12  
13  
14 **Rule 8.149. When the record is complete \* \* \***

15  
16 Drafter's Note: Rule 8.149 makes multiple references to other rules in this article which  
17 are proposed to be amended as needed to allow for e-filing; Rule 8.149 itself contains  
18 no language inconsistent with e-filing.

19  
20  
21 **Rule 8.150. Filing the record**

22  
23 **(a) Superior court clerk's duties**

24  
25 When the record is complete, the superior court clerk must promptly send the original to  
26 the reviewing court and the copy to the appellant.

27  
28 **(b) Reviewing court clerk's duties**

29  
30 On receiving the record, the reviewing court clerk must promptly file the original and send  
31 ~~mail~~ notice of the filing date to the parties.

32  
33 Drafter's Note: Although reference is made to an original and a copy, it is clear without  
34 changes here that these may be electronic.

35  
36  
37 **Rule 8.153. Lending the record**

38  
39 **(a) Request**

40  
41 Within 20 days after the record is filed in the reviewing court, a party that has not  
42 purchased its own copy of the record may request another party, in writing, to lend it that  
43 party's copy of the record. The other party must then lend its copy of the record when it  
44 serves its brief.

45  
46 **(b) Time to return**

1 The borrowing party must return the copy of the record when it serves its brief or the time  
2 to file its brief has expired.

3  
4 **(c) Cost**

5  
6 The borrowing party must bear the cost of sending the copy of the record to and from the  
7 borrowing party.

8  
9 Drafter's Note: This rule is likely only relevant where the record is on paper, and simply  
10 will not apply where the record is electronic.

11  
12  
13 \* \* \*

14  
15 **Article 3. Briefs in the Court of Appeal**

16  
17 *Rule 8.200. Briefs by parties and amici curiae*

18 *Rule 8.204. Contents and form of briefs*

19 *Rule 8.208. Certificate of Interested Entities or Persons*

20 *Rule 8.212. Service and filing of briefs*

21 *Rule 8.216. Appeals in which a party is both appellant and respondent*

22 *Rule 8.220. Failure to file a brief*

23 *Rule 8.224. Transmitting exhibits*

24  
25 **Rule 8.200. Briefs by parties and amici curiae \* \* \***

26  
27 **Rule 8.204. Contents and form of briefs**

28  
29 **(a) Contents \* \* \***

30  
31 **(b) Form**

32  
33 (1) A brief may be reproduced by any process that produces a clear, black image of  
34 letter quality. All documents filed must have a page size of 8½ by 11 inches. If not  
35 filed electronically, the paper must be white or unbleached, 8½ by 11 inches, and  
36 of at least 20-pound weight.

37  
38 (2) Any conventional fonttypeface may be used. The fonttypeface may be either  
39 proportionally spaced or monospaced.

40  
41 (3) The fonttype style must be roman; but for emphasis, italics or boldface may be used  
42 or the text may be underscored. Case names must be italicized or underscored.  
43 Headings may be in uppercase letters.

44  
45 (4) Except as provided in (1), the font type size, including footnotes, must not be  
46 smaller than 13-point, and If not filed electronically, both sides of the paper may be  
47 used.

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- (5) The lines of text must be unnumbered and at least one-and-a-half-spaced. Headings and footnotes may be single-spaced. Quotations may be block-indented and single-spaced. Single-spaced means six lines to a vertical inch.
- (6) The margins must be at least 1½ inches on the left and right and 1 inch on the top and bottom.
- (7) The pages must be consecutively numbered. The tables and the body of the brief may have different numbering systems.
- (8) If not electronically filed, ~~t~~The brief must be bound on the left margin. If the brief is stapled, the bound edge and staples must be covered with tape.
- (9) The brief need not be signed.
- (10) If the brief is not filed electronically, ~~t~~The cover must be in the color prescribed by rule 8.40(b). ~~and, in~~ In addition to providing the cover information required by rule 8.40(c), the cover must state:
  - (A) The title of the brief;
  - (B) The title, trial court number, and Court of Appeal number of the case;
  - (C) The names of the trial court and each participating trial judge;
  - (D) The name of the party that each attorney on the brief represents.
- (11) If the brief is produced on a typewriter:
  - (A) A typewritten original and carbon copies may be filed only with the presiding justice’s permission, which will ordinarily be given only to unrepresented parties proceeding in forma pauperis. All other typewritten briefs must be filed as photocopies.
  - (B) Both sides of the paper may be used if a photocopy is filed; only one side may be used if a typewritten original and carbon copies are filed.
  - (C) The type size, including footnotes, must not be smaller than standard pica, 10 characters per inch. Unrepresented incarcerated litigants may use elite type, 12 characters per inch, if they lack access to a typewriter with larger characters.

- (c) **Length \* \* \***
- (d) **Attachments to briefs \* \* \***

1 (e) **Noncomplying briefs \* \* \***

2  
3  
4 **Advisory Committee Comment**

5  
6 **Subdivision (b).** The first sentence of subdivision (b)(1) confirms that any method of reproduction is  
7 acceptable provided it results in a clear black image of letter quality. The provision is derived from  
8 subdivision (a)(1) of rule 32 of the Federal Rules of Appellate Procedure (28 U.S.C.) (FRAP 32).

9  
10 Paragraphs (2), (3), and (4) of subdivision (b) state requirements of *font typeface*, *font type style*, and  
11 *font type size* (see also subd. (b)(11)(C)). ~~The first two terms are defined in *The Chicago Manual of Style*~~  
12 ~~(15th ed., 2003) p. 839. Note that computer programs often refer to typeface as “font.”~~

13  
14 Subdivision (b)(2) allows the use of any conventional *font typeface*—e.g., Times New Roman, Courier,  
15 Arial, Helvetica, etc.—and permits the *font typeface* to be either proportionally spaced or monospaced.

16  
17 Subdivision (b)(3) requires the *font type* style to be roman, but permits the use of italics, boldface, or  
18 underscoring for emphasis; it also requires case names to be italicized or underscored. These provisions  
19 are derived from FRAP 32(a)(6).

20  
21 Subdivision (b)(5) allows headings to be single-spaced; it is derived from FRAP 32(a)(4). The provision  
22 also permits quotations of any length to be block-indented and single-spaced at the discretion of the brief  
23 writer.

24  
25 See also rule 1.200 concerning the format of citations. Brief writers are encouraged to follow the citation  
26 form of the *California Style Manual* (4th ed., 2000).

27  
28 **Subdivision (c). \* \* \***

29  
30 **Subdivision (d). \* \* \***

31  
32 **Subdivision (e). \* \* \***

33  
34 Drafter’s Note: The proposed changes reflect that not all briefs will be filed on paper. I  
35 have substituted “font” for “type,” “typeface” and “type style” as reflecting current usage,  
36 except for that portion of the rule specifically applicable to typewritten briefs.

37  
38 I have left rule 8.204 (b) (11), regarding typewritten briefs, unchanged. It is not  
39 inconsistent with more modern methods of processing and transmitting briefs, and may  
40 have some continuing relevance as to incarcerated litigants.

41  
42  
43 **Rule 8.208. Certificate of Interested Entities or Persons**

44  
45 **(a) Purpose and intent \* \* \***

46  
47 **(b) Application \* \* \***

1 (c) **Definitions \* \* \***

2  
3 (d) **Serving and filing a certificate**

- 4  
5 (1) Except as otherwise provided in this rule, if a party files a motion, an application, or  
6 an opposition to such motion or application in the Court of Appeal before filing its  
7 principal brief, the party must serve and file its certificate at the time it files the first  
8 such motion, application, or opposition and must include a copy of this certificate in  
9 the party's principal brief. If no motion, application, or opposition to such motion or  
10 application is filed before the parties file their principal briefs, each party must  
11 include its certificate in its principal brief. The certificate must appear after the cover  
12 and before the tables.  
13  
14 (2) If the identity of any party or any entity or person subject to disclosure under this  
15 rule has not been publicly disclosed in the proceedings and a party wants to keep that  
16 identity confidential, the party may serve and file an application for permission to  
17 file its certificate under seal separately from its principal brief, motion, application,  
18 or opposition. If the application is granted, the party must file the certificate under  
19 seal and without service within 10 days of the court's order granting the application.  
20  
21 (3) If a party fails to file a certificate as required under (1), the clerk must notify the  
22 party in writing ~~by mail~~ that the party must file the certificate within 15 days after  
23 the clerk's notice is sentmailed ~~and~~ and that if the party fails to comply, the court may  
24 impose one of the following sanctions:  
25  
26 (A) If the party is the appellant, the court may strike the document or dismiss the  
27 appeal; or  
28  
29 (B) If the party is the respondent, the court may strike the document or decide the  
30 appeal on the record, the opening brief, and any oral argument by the  
31 appellant.  
32  
33 (4) If the party fails to file the certificate as specified in the notice under (2), the court  
34 may impose the sanctions specified in the notice.  
35

36 (e) **Contents of certificate \* \* \***

37  
38 (f) **Supplemental information \* \* \***

39  
40 **Advisory Committee Comment**

41  
42 The Judicial Council has adopted an optional form, *Certificate of Interested Entities or Persons* (form  
43 APP-008), that can be used to file the certificate required by this rule.  
44

45 **Subdivision (e).** This subdivision requires a party to list on its certificate entities or persons that the party  
46 *knows* have specified interests. This subdivision does not impose a duty on a party to gather information  
47 not already known by that party.

1  
2  
3 **Rule 8.212. Service and filing of briefs \* \* \***  
4

5 **Advisory Committee Comment**  
6

7 **Subdivision (a).** Note that the sequence and timing of briefing in appeals in which a party is both  
8 appellant and respondent (cross-appeals) are governed by rule 8.216. Typically, a cross-appellant’s  
9 combined respondent’s brief and opening brief must be filed within the time specified in (a)(2) for the  
10 respondent’s brief.  
11

12 **Subdivision (b).** Extensions of briefing time are limited by statute in some cases. For example, under  
13 Public Resources Code section 21167.6(h) in cases under section 21167, extensions are limited to one 30-  
14 day extension for the opening brief and one 30-day extension for “preparation of responding brief.”  
15

16 Under rule 8.42, the original signature of only one party is required on the stipulation filed with the court;  
17 the signatures of the other parties may be in the form of copies of the signed signature page of the  
18 document. Signatures on electronically filed documents are subject to the requirements of rule 8.77.  
19

20 Subdivision (b)(2) clarifies that a party seeking an extension of time from the presiding justice must  
21 proceed by application under rule 8.50 rather than by motion under rule 8.54.  
22

23 **Subdivision (c).** In subdivision (c)(2) the word “brief” means only (1) an appellant’s opening brief, (2) a  
24 respondent’s brief, (3) an appellant’s reply brief, (4) an amicus curiae brief, or (5) an answer thereto. It  
25 follows that no other documents or papers filed in the Court of Appeal, whatever their nature, should be  
26 served on the Supreme Court. Further, only briefs filed in the Court of Appeal “in a civil appeal” must be  
27 served on the Supreme Court. It follows that no briefs filed in the Court of Appeal in criminal appeals or  
28 in original proceedings should be served on the Supreme Court.  
29

30 Information about electronic submission of copies of briefs to the Court of Appeal can be found on the  
31 web page for the Court of Appeal district in which the brief is being filed on the California Courts website  
32 at [www.courts.ca.gov/courtsofappeal](http://www.courts.ca.gov/courtsofappeal).  
33

34 Examples of “undue hardship” under (2)(C) include but are not limited to when a party does not have  
35 access to a computer or the software necessary to prepare an electronic copy of a brief or does not have e-  
36 mail access to electronically submit a brief to the Court of Appeal.  
37

38 \* \* \*  
39

40 **Rule 8.220. Failure to file a brief**  
41

42 **(a) Notice to file**  
43

44 If a party fails to timely file an appellant’s opening brief or a respondent’s brief, the  
45 reviewing court clerk must promptly notify the party in writing by mail that the brief must  
46 be filed within 15 days after the notice is ~~sentmailed~~ and that if the party fails to comply,  
47 the court may impose one of the following sanctions:  
48

- 49 (1) If the brief is an appellant’s opening brief, the court may dismiss the appeal;



1  
2 (2) If the brief is a respondent's brief, the court may decide the appeal on the record, the  
3 opening brief, and any oral argument by the appellant.  
4

5 **(b) Combined brief**  
6

7 A party that is both an appellant and a respondent under rule 8.216 may file its combined  
8 respondent's brief and appellant's reply brief within the period specified in the notice  
9 under (a).  
10

11 **(c) Sanction**  
12

13 If a party fails to file the brief as specified in a notice under (a), the court may impose the  
14 sanction specified in the notice.  
15

16 **(d) Extension of time**  
17

18 Within the period specified in the notice under (a), a party may apply to the presiding  
19 justice for an extension of that period for good cause. If the extension is granted and the  
20 brief is not filed within the extended period, the court may impose the sanction under (c)  
21 without further notice.  
22  
23

24 **Rule 8.224. Transmitting exhibits**  
25

26 **(a) Notice of designation \* \* \***  
27

28 **(b) Transmittal**  
29

30 Unless the reviewing court orders otherwise, within 20 days after the first notice under (a)  
31 is filed:  
32

33 (1) The superior court clerk must put any designated exhibits in the clerk's possession  
34 into numerical or alphabetical order and send them to the reviewing court. The  
35 superior court clerk must also send a list of the exhibits sent. If the exhibits are not  
36 electronically transmitted, the superior court clerk must send two copies of the list,  
37 ~~with two copies of a list of the exhibits sent.~~ If the reviewing court clerk finds the list  
38 correct, the clerk must sign and return ~~one~~ a copy to the superior court clerk.  
39

40 (2) Any party in possession of designated exhibits no longer in the possession of  
41 the ~~returned by the~~ superior court must put them into numerical or alphabetical order  
42 and send them to the reviewing court. The party must also send a list of the exhibits  
43 sent. If the exhibits are not electronically transmitted, the party must send two  
44 copies of the list. ~~with two copies of a list of the exhibits sent.~~ If the reviewing court  
45 clerk finds the list correct, the clerk must sign and return ~~one~~ a copy to the party.  
46

1 **(c) Application for later transmittal**

2  
3 After the periods specified in (a) have expired, a party may apply to the reviewing court for  
4 permission to send an exhibit to that court.  
5

6 **(d) Request and return by reviewing court**

7  
8 At any time the reviewing court may direct the superior court or a party to send it an  
9 exhibit. On request, the reviewing court may return an exhibit to the superior court or to  
10 the party that sent it. When the remittitur issues, the reviewing court must return all  
11 exhibits not transmitted electronically to the superior court or to the party that sent them.  
12

13 **Advisory Committee Comment**

14  
15 \* \* \*

16  
17 Drafter's Note: In (b)(2) I have attempted to accommodate the possibility that the court  
18 might no longer have an exhibit even if it was electronically submitted.  
19  
20  
21

22 **Article 4. Hearing and Decision in the Court of Appeal**

23  
24 *Rule 8.240. Calendar preference*

25 *Rule 8.244. Settlement, abandonment, voluntary dismissal, and compromise*

26 *Rule 8.248. Prehearing conference*

27 *Rule 8.252. Judicial notice; findings and evidence on appeal*

28 *Rule 8.254. New Authorities*

29 *Rule 8.256. Oral argument and submission of the cause*

30 *Rule 8.260. Opinions [Reserved]*

31 *Rule 8.264. Filing, finality, and modification of decision*

32 *Rule 8.268. Rehearing*

33 *Rule 8.272. Remittitur*

34 *Rule 8.276. Sanctions*

35 *Rule 8.278. Costs on appeal*  
36

37 \* \* \*

38  
39  
40 **Rule 8.248. Prehearing conference**

41  
42 **(a) Statement and conference \* \* \***

43  
44 **(b) Agreement \* \* \***

45  
46 **(c) Proceedings after conference \* \* \***  
47

- 1 (1) Unless allowed by a filed agreement, no matter recited in a statement under (a)(1) or  
2 discussed in a conference under (a)(2) may be considered in any subsequent  
3 proceeding in the appeal other than in another conference.  
4  
5 (2) Neither the presiding officer nor any court personnel present at a conference may  
6 participate in or influence the determination of the appeal.  
7

8 **(d) Time to file brief**  
9

10 The time to file a party's brief under rule 8.212(a) is tolled from the date the Court of  
11 Appeal ~~sends mails~~ notice of the conference until the date it ~~sends mails~~ notice that the  
12 conference is concluded.  
13

14 **Advisory Committee Comment**  
15

16 **Subdivision (a).** \* \* \*  
17

18 **Subdivision (d).** If a prehearing conference is ordered before the due date of the appellant's opening  
19 brief, the time to file the brief is not *extended* but *tolled*, in order to avoid unwarranted lengthening of the  
20 briefing process. For example, if the conference is ordered 15 days after the start of the normal 30-day  
21 briefing period, the rule simply *suspends* the running of that period; when the period resumes, the party  
22 will not receive an automatic extension of a full 30 days but rather the remaining 15 days of the original  
23 briefing period, unless the period is otherwise extended.  
24

25 Under subdivision (d) the tolling period continues "until the date [the Court of Appeal] ~~sends mails~~ notice  
26 that the conference is *concluded*" (italics added). This provision is intended to accommodate the  
27 possibility that the conference may not conclude on the date it begins.  
28

29 Whether or not the conference concludes on the date it begins, subdivision (d) requires the Court of  
30 Appeal clerk to ~~send mail~~ the parties a notice that the conference is concluded. This provision is intended  
31 to facilitate the calculation of the new briefing due dates.  
32  
33

34 **Rule 8.252. Judicial notice; findings and evidence on appeal**  
35

36 **(a) Judicial notice**  
37

- 38 (1) To obtain judicial notice by a reviewing court under Evidence Code section 459, a  
39 party must serve and file a separate motion with a proposed order.  
40  
41 (2) The motion must state:  
42  
43 (A) Why the matter to be noticed is relevant to the appeal;  
44  
45 (B) Whether the matter to be noticed was presented to the trial court and, if so,  
46 whether judicial notice was taken by that court;  
47

1 (C) If judicial notice of the matter was not taken by the trial court, why the matter  
2 is subject to judicial notice under Evidence Code section 451, 452, or 453; and  
3

4 (D) Whether the matter to be noticed relates to proceedings occurring after the  
5 order or judgment that is the subject of the appeal.  
6

7 (3) If the matter to be noticed is not in the record, the party must serve and file a copy  
8 with the motion or explain why it is not practicable to do so. The pages of the copy  
9 of the matter or matters to be judicially noticed must be consecutively numbered,  
10 beginning with the number 1.  
11

12 **(b) Findings on appeal \* \* \***  
13  
14

15 **(c) Evidence on appeal**  
16

17 (1) A party may move that the reviewing court take evidence.  
18

19 (2) An order granting the motion must:  
20

21 (A) State the issues on which evidence will be taken;  
22

23 (B) Specify whether the court, a justice, or a special master or referee will take the  
24 evidence; and  
25

26 (C) Give notice of the time and place for taking the evidence.  
27

28 (3) For documentary evidence, a party may offer the original, a certified copy, ~~or~~ a  
29 photocopy, or, in a case in which electronic filing is permitted, an electronic copy.  
30 The court may admit the document in evidence without a hearing.  
31

32 **Advisory Committee Comment**  
33

34 Subdivisions (b) and (c). Although appellate courts are authorized to take evidence and make findings of  
35 fact on appeal by Code of Civil Procedure section 909 and this rule, this authority should be exercised  
36 sparingly. (See *In re Zeth S.* (2003) 31 Cal.4th 396.)  
37

38 \* \* \*  
39

40 **Rule 8.264. Filing, finality, and modification of decision**  
41

42 **(a) Filing the decision \* \* \***  
43

44 **(b) Finality of decision \* \* \***  
45

46 **(c) Modification of decision \* \* \***  
47

1 **(d) Consent to increase or decrease in amount of judgment**

2  
3 If a Court of Appeal decision conditions the affirmance of a money judgment on a party's  
4 consent to an increase or decrease in the amount, the judgment is reversed unless, before  
5 the decision is final under (b), the party serves and files ~~two copies~~ a copy of a consent in  
6 the Court of Appeal. If the consent is not filed electronically, two copies must be filed. If a  
7 consent is filed, the finality period runs from the filing date of the consent. The clerk must  
8 send one file-stamped endorsed copy of the consent to the superior court with the remittitur.

9  
10 **Advisory Committee Comment**

11 \* \* \*

12  
13  
14 **Rule 8.268. Rehearing \* \* \***

15  
16 **Rule 8.272. Remittitur**

17  
18 **(a) Issuance of remittitur**

19  
20 A Court of Appeal must issue a remittitur after a decision in an appeal.

21  
22 **(b) Clerk's duties**

23  
24 (1) If a Court of Appeal decision is not reviewed by the Supreme Court:

25  
26 (A) The Court of Appeal clerk must issue a remittitur immediately after the  
27 Supreme Court denies review, or the period for granting review expires, or the  
28 court dismisses review under rule 8.528(b); and

29  
30 (B) The clerk must send the lower court or tribunal the Court of Appeal remittitur  
31 and a file-stamped endorsed copy of the opinion or order.

32  
33 (2) After Supreme Court review of a Court of Appeal decision:

34  
35 (A) On receiving the Supreme Court remittitur, the Court of Appeal clerk must  
36 issue a remittitur immediately if there will be no further proceedings in the  
37 Court of Appeal; and

38  
39 (B) The clerk must send the lower court or tribunal the Court of Appeal remittitur,  
40 a copy of the Supreme Court remittitur, and a file-stamped endorsed copy of the  
41 Supreme Court opinion or order.

42  
43 **(c) Immediate issuance, stay, and recall \* \* \***

44  
45 **(d) Notice \* \* \***

46  
47 **Advisory Committee Comment**

1  
2 See rule 8.386 for provisions addressing remittitur in habeas corpus proceedings and rule 8.490 for  
3 provisions addressing remittitur in other writ proceedings.  
4

5  
6 **Rule 8.276. Sanctions \* \* \***  
7

8  
9 **Rule 8.278. Costs on appeal**  
10

11 **(a) Award of costs \* \* \***  
12

13 **(b) Judgment for costs \* \* \***  
14

15 **(c) Procedure for claiming or opposing costs \* \* \***  
16

17 **(d) Recoverable costs**  
18

19 (1) A party may recover only the following costs, if reasonable:  
20

21 (A) Filing fees;  
22

23 (B) The amount the party paid for any portion of the record, whether an original or  
24 a copy or both. The cost to copy parts of a prior record under rule 8.147(b)(2)  
25 is not recoverable unless the Court of Appeal ordered the copying;  
26

27 (C) The cost to produce additional evidence on appeal;  
28

29 (D) The costs to notarize, serve, mail, and file the record, briefs, and other papers;  
30

31 (E) The cost to print and reproduce any brief, including any petition for rehearing  
32 or review, answer, or reply;  
33

34 (F) The cost to procure a surety bond, including the premium, the cost to obtain a  
35 letter of credit as collateral, and the fees and net interest expenses incurred to  
36 borrow funds to provide security for the bond or to obtain a letter of credit,  
37 unless the trial court determines the bond was unnecessary; and  
38

39 (G) The fees and net interest expenses incurred to borrow funds to deposit with the  
40 superior court in lieu of a bond or undertaking, unless the trial court determines  
41 the deposit was unnecessary.  
42

43 (2) Unless the court orders otherwise, an award of costs neither includes attorney's fees  
44 on appeal nor precludes a party from seeking them under rule 3.1702.  
45

46 **Advisory Committee Comment**  
47

1 This rule is not intended to expand the categories of appeals subject to the award of costs. See rule 8.493  
2 for provisions addressing costs in writ proceedings.

3  
4 **Subdivision (c).** Subdivision (c)(2) provides the procedure for a party to move in the trial court to strike  
5 or tax costs that another party has claimed under subdivision (c)(1). It is not intended that the trial court's  
6 authority to strike or tax unreasonable costs be limited by any failure of the moving party to move for  
7 sanctions in the Court of Appeal under rule 8.276; a party may seek to strike or tax costs on the ground  
8 that an opponent included unnecessary materials in the record even if the party did not move the Court of  
9 Appeal to sanction the opponent under that rule.

10  
11 **Subdivision (d).** Subdivision (d)(1)(B) is intended to refer not only to a normal record prepared by the  
12 clerk and the reporter under rules 8.122 and 8.130 but also, for example, to an appendix prepared by a  
13 party under rule 8.124 and to a superior court file to which the parties stipulate under rule 8.128.

14  
15 Subdivision (d)(1)(D), allowing recovery of the “costs to notarize, serve, mail, and file the  
16 record, briefs, and other papers,” is intended to include fees charged by electronic filing service  
17 providers for electronic filing and service of documents.

18  
19 “Net interest expenses” in subdivisions (d)(1)(F) and (G) means the interest expenses incurred to borrow  
20 the funds that are deposited minus any interest earned by the borrower on those funds while they are on  
21 deposit.  
22