



JUDICIAL COUNCIL OF CALIFORNIA

COURT TECHNOLOGY
ADVISORY COMMITTEE

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JOINT APPELLATE TECHNOLOGY SUBCOMMITTEE

MINUTES OF OPEN MEETING

February 26, 2015
3:00 PM – 5:00 PM

Teleconference

Advisory Body Members Present: Hon. Louis Mauro, Chair; Hon. Peter Siggins; Mr. Kevin Green; Mr. Joseph Lane; Mr. Frank McGuire; Mr. Don Willenburg

Advisory Body Members Absent: Ms. Kimberly Stewart

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

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 February 9, 2015, Joint Appellate Technology Subcommittee (JATS) meeting.

Item 1

Appellate Court E-Filing Project Update

Discussion: Edmund Herbert, Project Manager, Judicial Council staff, IT

Mr. Herbert provided an update on the e-filing project in the Fifth District Court of Appeal. He said the Fifth District implemented mandatory e-filing for civil cases on February 17, 2015, and mandatory e-filing in criminal and juvenile cases will follow in mid-March 2015. There were several application enhancements requested by the Fifth District; some were implemented prior to February 17, and one will follow within the next month. The Third District Court of Appeal is scheduled to implement full e-filing mid-year 2015, followed by the Sixth District Court of Appeal by year end.

Item 2

Public Access to Electronic Appellate Court Records

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

Ms. Anderson provided the members with a revised draft of the proposed amendments to rules 8.80 through 8.85 regarding public access to electronic appellate court records. Justice Mauro asked if there were any concerns regarding the revised draft. Joseph Lane proposed deleting the amendment to rule 8.83(c)(1). After much discussion, the subcommittee declined to delete

that amendment. The proposed rule amendments were approved by JATS with a recommendation that they be circulated for public comment. The proposed rules have been forwarded to the Appellate Advisory Committee (AAC) and the Court Technology Advisory Committee (CTAC).

Item 3

Rules Modernization Project

Discussion: Patrick O'Donnell and Katherine Sher, Judicial Council staff, Legal Services

Mr. O'Donnell provided general background information about the overall rules modernization project. Ms. Sher reviewed Part I of the specific proposed amendments to Title 8 of the California Rules of Court (the appellate rules). Part I pertains to chapters 1 and 2. The subcommittee approved the proposed amendments in Part I with the modifications identified below with a recommendation that they be circulated for public comment. The proposed rules have been forwarded to the AAC and CTAC.

The subcommittee modified the proposals in Part I as follows:

1. JATS changed “not filed electronically” to “filed in paper form” throughout the draft.
2. In rule 8.44(c), JATS changed language referring to “an electronic copy of a document in a case not utilizing electronic filing” to “an electronic copy of a document that is not electronically filed”.
3. JATS deleted rule 8.50(c).
4. In rule 8.100(b), JATS added language to clarify that the filing fee required with a notice of appeal may be paid by any method permitted under superior court and appellate court rules.
5. In rule 8.100(e), JATS added e-mail addresses for attorneys and unrepresented parties as information to be included, when available, by the superior court clerk in the notification of the notice of appeal.
6. In rule 8.112(a)(4)(C), JATS deleted proposed language that would have required cover pages with index numbers or letters for certain documents when filed electronically.
7. In rule 8.123(c), JATS added the words “or electronic administrative record” to the first sentence.
8. In rule 8.144(a)(2)(E), JATS specified that the margin is measured from the left edge.
9. In rule 8.204(b)(4), JATS deleted proposed language specifying that the rule allowing both sides of the paper could be used when a document is not filed electronically.
10. In rule 8.224(b)(1), JATS rejected proposed changes that would have eliminated the requirement for the superior court clerk to send two copies of a list of exhibits when the list is sent in electronic form.
11. In rule 8.264(d), JATS deleted the proposed amendment that if the consent is not filed electronically, two copies must be filed.

Future action:

- The subcommittee will meet again on March 16, 2015, to work on Part II of the Rules Modernization project. Draft materials will be distributed.

A D J O U R N M E N T

The meeting was adjourned at 5:00 PM.

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

Please note: Proposed changes to Division 1, Chapters 1 and 2 are set out in a separate document.

Chapter 3. Criminal Appeals

Article 1. Taking the Appeal

Rule 8.300. Appointment of appellate counsel by the Court of Appeal

Rule 8.304. Filing the appeal; certificate of probable cause

Rule 8.308. Time to appeal

Rule 8.312. Stay of execution and release on appeal

Rule 8.316. Abandoning the appeal

Rule 8.300. Appointment of appellate counsel by the Court of Appeal * * *

Rule 8.304. Filing the appeal; certificate of probable cause

(a) Notice of appeal * * *

(b) Appeal after plea of guilty or nolo contendere or after admission of probation violation * * *

(c) Notification of the appeal

(1) When a notice of appeal is filed, the superior court clerk must promptly ~~send~~mail a notification of the filing to the attorney of record for each party, to any unrepresented defendant, to the reviewing court clerk, to each court reporter, and to any primary reporter or reporting supervisor. If the defendant also files a statement under (b)(1), the clerk must not ~~send~~ mail the notification unless the superior court files a certificate under (b)(2).

(2) The notification must show the date it was ~~sent~~mailed, the number and title of the case, and the dates the notice of appeal and any certificate under (b)(2) were filed. If the information is available, the notification must also include:

(A) The name, address, telephone number, e-mail address, and California State Bar number of each attorney of record in the case;

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

(C) The name, address, e-mail address, and telephone number of any unrepresented defendant.

- 1
2 (3) The notification to the reviewing court clerk must also include a copy of the notice of
3 appeal, any certificate filed under (b), and the sequential list of reporters made under
4 rule 2.950.
5
6 (4) A copy of the notice of appeal is sufficient notification under (1) if the required
7 information is on the copy or is added by the superior court clerk.
8
9 (5) The sending~~mailing~~ of a notification under (1) is a sufficient performance of the
10 clerk's duty despite the discharge, disqualification, suspension, disbarment, or death
11 of the attorney.
12
13 (6) Failure to comply with any provision of this subdivision does not affect the validity
14 of the notice of appeal.
15

16 **Advisory Committee Comment * * ***
17

18
19 **Rule 8.308. Time to appeal**
20

21 **(a) Normal time * * ***
22

23 **(b) Cross-appeal**
24

25 If the defendant or the People timely appeals from a judgment or appealable order, the time
26 for any other party to appeal from the same judgment or order is either the time specified
27 in (a) or 30 days after the superior court clerk sends ~~mails~~ notification of the first appeal,
28 whichever is later.
29

30 **(c) Premature notice of appeal * * ***
31

32 **(d) Late notice of appeal * * ***
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34 **Advisory Committee Comment * * ***
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36 * * *
37

38 **Article 2. Record on Appeal**
39

40 *Rule 8.320. Normal record; exhibits*

41 *Rule 8.324. Application in superior court for addition to normal record*

42 *Rule 8.328. Confidential records [Repealed]*

43 *Rule 8.332. Juror-identifying information*

44 *Rule 8.336. Preparing, certifying, and sending the record*

45 *Rule 8.340. Augmenting or correcting the record in the Court of Appeal*

46 *Rule 8.344. Agreed statement*

47 *Rule 8.346. Settled statement*

1
2 **Rule 8.320. Normal record; exhibits * * ***

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4 **Rule 8.324. Application in superior court for addition to normal record * * ***

5
6 **Rule 8.328. Confidential records [Repealed]**

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8 **Rule 8.332. Juror-identifying information * * ***

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11 **Rule 8.336. Preparing, certifying, and sending the record**

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13 **(a) Immediate preparation when appeal is likely * * ***

14
15 **(b) Appeal after plea of guilty or nolo contendere or after admission of probation**
16 **violation * * ***

17
18 **(c) Clerk's transcript * * ***

19
20 **(d) Reporter's transcript**

21
22 (1) Except as provided in (a) or (b), the reporter must begin preparing the reporter's
23 transcript immediately on being notified by the clerk under rule 8.304(c)(1) that the
24 notice of appeal has been filed.

25
26 (2) The reporter must prepare an original and the same number of copies of the
27 reporter's transcript as (c) requires of the clerk's transcript, and must certify each as
28 correct. On request, and unless the trial court orders otherwise, the reporter must
29 provide the Court of Appeal and any party with a copy of the reporter's transcript in
30 computer-readable format. Each computer-readable copy must comply with the
31 format, labeling, content, and numbering requirements of Code of Civil Procedure
32 section 271(b).

33
34 (3) The reporter must deliver the original and all copies to the superior court clerk as
35 soon as they are certified, but no later than 20 days after the notice of appeal is filed.

36
37 (4) Any portion of the transcript transcribed during trial must not be retyped unless
38 necessary to correct errors, but must be repaginated and combined ~~bound~~ with any
39 portion of the transcript not previously transcribed. Any additional copies needed
40 must not be retyped but, if the transcript is in paper form, must be prepared by
41 photocopying or an equivalent process.

42
43 (5) In a multireporter case, the clerk must accept any completed portion of the transcript
44 from the primary reporter one week after the time prescribed by (3) even if other
45 portions are uncompleted. The clerk must promptly pay each reporter who certifies
46 that all portions of the transcript assigned to that reporter are completed.

1
2 (e) Extension of time * * *

3
4 (f) Form of record * * *

5
6 (g) Sending the transcripts * * *

7
8 (h) Supervision of preparation of record * * *

9
10 **Advisory Committee Comment * * ***

11
12 Drafter's Note: Subdivision (c) refers to copies of the clerk's transcript. Under the
13 definition of copy proposed to be added to rule 8.10, this would include electronic
14 copies. Thus, as with Rule 8.122 regarding the clerk's transcript in civil appeals, I have
15 not specified here that copies of the clerk's transcript may be electronic. Similarly, in
16 subdivision (d), the language regarding copies of the reporter's transcript is left
17 unchanged, as with rule 8.130 regarding reporter's transcripts in civil appeals.
18 However, in subdivision (d) some language specific to paper copies has been changed
19 to allow for the possibility of electronic copies.

20
21 Subdivision (f), regarding the form of the record, provides that the clerk's and reporter's
22 transcripts must comply with rule 8.144 (regarding the form of the record in civil
23 appeals). Rule 8.144 is proposed to be amended to state that where the local rules of
24 the reviewing court allow, all or part of the record may be in electronic format. Under
25 subdivision (f) this will also be true in criminal appeals.

26
27 Subdivision (g) requires the superior court clerk to prepare an original and two copies of
28 the transcripts. Under the proposed amendments to Rule 8.10, adding a definition of
29 copy that includes electronic copies, and 8.144, allowing all or part of the record on
30 appeal to be in electronic form when allowed under the local rules of the reviewing
31 court, the copies may be electronic; no change is proposed here.

32
33 As noted with regard to rule 8.130, JATS may wish to consider additional rule changes
34 to accommodate the use of electronic versions of a reporter's transcript if Code of Civil
35 Procedure section 271 is amended to allow use of an electronic original of a reporter's
36 transcript.

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38
39 **Rule 8.340. Augmenting or correcting the record in the Court of Appeal * * ***

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41
42 **Rule 8.344. Agreed statement**

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44 If the parties present the appeal on an agreed statement, they must comply with the relevant
45 provisions of rule 8.134, but the appellant must file an original and, **if the statement is filed in**
46 **paper form,** three copies of the statement in superior court within 25 days after filing the notice
47 of appeal.

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2 **Rule 8.346. Settled statement**

3
4 (a) **Application * * ***

5
6 (b) **Order and proposed statement * * ***

7
8 (c) **Serving and filing the settled statement**

9
10 The applicant must prepare, serve, and file in superior court an original and, **if the**
11 **statement is filed in paper form**, three copies of the settled statement.
12

13
14 **Article 3. Briefs, Hearing, and Decision**

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16 *Rule 8.360. Briefs by parties and amici curiae*

17 *Rule 8.361. Certificate of interested entities or persons*

18 *Rule 8.366. Hearing and decision in the Court of Appeal*

19 *Rule 8.368. Hearing and decision in the Supreme Court*

20
21 **Rule 8.360. Briefs by parties and amici curiae**

22
23 (a) **Contents and form * * ***

24
25 (b) **Length * * ***

26
27 (c) **Time to file**

28
29 (1) The appellant's opening brief must be served and filed within 40 days after the
30 record is filed in the reviewing court.

31
32 (2) The respondent's brief must be served and filed within 30 days after the appellant's
33 opening brief is filed.

34
35 (3) The appellant must serve and file a reply brief, if any, within 20 days after the
36 respondent files its brief.

37
38 (4) The time to serve and file a brief may not be extended by stipulation, but only by
39 order of the presiding justice under rule 8.60.

40
41 (5) If a party fails to timely file an appellant's opening brief or a respondent's brief, the
42 reviewing court clerk must promptly notify the party in writing ~~by mail~~ that the brief
43 must be filed within 30 days after the notice is sent ~~mailed~~, and that failure to comply
44 may result in one of the following sanctions:

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46 (A) If the brief is an appellant's opening brief:

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- (i) If the appellant is the People, the court will dismiss the appeal;
- (ii) If the appellant is the defendant and is represented by appointed counsel on appeal, the court will relieve that appointed counsel and appoint new counsel;
- (iii) If the appellant is the defendant and is not represented by appointed counsel, the court will dismiss the appeal; or

(B) If the brief is a respondent’s brief, the court will decide the appeal on the record, the opening brief, and any oral argument by the appellant.

(6) If a party fails to comply with a notice under (5), the court may impose the sanction specified in the notice.

- (d) Service * * ***
- (e) When a defendant and the People appeal * * ***
- (f) Amicus curiae briefs * * ***

Advisory Committee Comment * * *

- Rule 8.361. Certificate of interested entities or persons * * ***
- Rule 8.366. Hearing and decision in the Court of Appeal * * ***
- Rule 8.368. Hearing and decision in the Supreme Court * * ***

Chapter 4. Habeas Corpus Appeals and Writs

- Rule 8.380. Petition for writ of habeas corpus filed by petitioner not represented by an attorney*
- Rule 8.384. Petition for writ of habeas corpus filed by an attorney for a party*
- Rule 8.385. Proceedings after the petition is filed*
- Rule 8.386. Proceedings if the return is ordered to be filed in the reviewing court*
- Rule 8.387. Decision in habeas corpus proceedings*
- Rule 8.388. Appeal from order granting relief by writ of habeas corpus*

Rule 8.380. Petition for writ of habeas corpus filed by petitioner not represented by an attorney

- (a) Required Judicial Council form * * ***

1 (b) **Form and content * * ***

2
3 (c) **Number of copies**

4
5 In the Court of Appeal, the petitioner must file the original of the petition under (a) and
6 one set of any supporting documents. In the Supreme Court the petitioner must file an
7 original and, if the petition is filed in paper form, 10 copies of the petition and an original
8 and, if the document is filed in paper form, 2 copies of any supporting document
9 accompanying the petition unless the court orders otherwise.

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11 **Advisory Committee Comment * * ***

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14 **Rule 8.384. Petition for writ of habeas corpus filed by an attorney for a party**

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16 (a) **Form and content of petition and memorandum**

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18 (1) A petition for habeas corpus filed by an attorney need not be filed on *Petition for*
19 *Writ of Habeas Corpus* (form MC-275) but must contain the information requested
20 in that form. All petitions filed by attorneys, whether or not on form MC-275, must
21 be either typewritten or produced on a computer, and must comply with this rule and
22 rules 8.40(b)–(c) relating to document covers and 8.204(a)(1)(A) relating to tables of
23 contents and authorities. A petition that is not on form MC-275 must also comply
24 with the remainder of rule 8.204(a) and 8.204(b).
25
26 (2) Any memorandum accompanying the petition must comply with rule 8.204(a)–(b).
27 Except in habeas corpus proceedings related to sentences of death, any memorandum
28 must also comply with the length limits in rule 8.204(c).
29
30 (3) The petition and any memorandum must support any reference to a matter in the
31 supporting documents by a citation to its index number or letter ~~tab~~ and page.
32

33 (b) **Supporting documents * * ***

34
35 (c) **Number of copies * * ***

36
37 (d) **Noncomplying petitions * * ***

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39 **Advisory Committee Comment * * ***

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41
42 **Rule 8.385. Proceedings after the petition is filed**

43
44 (a) **Production of record * * ***

45
46 (b) **Informal response**

- 1 (1) Before ruling on the petition, the court may request an informal written response
2 from the respondent, the real party in interest, or an interested person. The court must
3 send a copy of any request to the petitioner.
4
- 5 (2) The response must be served and filed within 15 days or as the court specifies. If the
6 petitioner is not represented by counsel in the habeas corpus proceeding, one copy of
7 the informal response and any supporting documents must be served on the
8 petitioner. If the petitioner is represented by counsel in the habeas corpus
9 proceeding, two copies the response must be served on the petitioner's counsel. If the
10 response is served in paper form, two copies must be served on the petitioner's
11 counsel. If the petitioner is represented by court-appointed counsel other than the
12 State Public Defender's Office or Habeas Corpus Resource Center, one copy must
13 also be served on the applicable appellate project.
14
- 15 (3) If a response is filed, the court must notify the petitioner that a reply may be served
16 and filed within 15 days or as the court specifies. The court may not deny the petition
17 until that time has expired.
18

19 (c) **Petition filed in an inappropriate court * * ***

20
21 (d) **Order to show cause * * ***

22
23 (e) **Return to the superior court * * ***

24
25 (f) **Return to the reviewing court * * ***

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27 **Advisory Committee Comment * * ***
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30 **Rule 8.386. Proceedings if the return is ordered to be filed in the reviewing court**

31
32 (a) **Application * * ***

33
34 (b) **Serving and filing return**

- 35
36 (1) Unless the court orders otherwise, any return must be served and filed within 30 days
37 after the court issues the order to show cause.
38
- 39 (2) If the return is filed in the Supreme Court, the respondent must file the number of
40 copies of the return and any supporting documents required by rule 8.44(a). If the
41 return is filed in the Court of Appeal, the respondent must file the number of copies
42 of the return and any supporting documents required by rule 8.44(b).
43
- 44 (3) Two copies of the ~~The~~ return and any supporting documents must be served on the
45 petitioner's counsel. If the return is served in paper form, two copies must be served
46 on the petitioner's counsel. If the petitioner is represented by court-appointed
47 counsel other than the State Public Defender's Office or Habeas Corpus Resource

Center, one copy must, and if the petitioner is represented for the habeas corpus proceeding by court-appointed counsel other than the State Public Defender's Office or Habeas Corpus Resource Center, one copy must be served on the applicable appellate project.

(c) Form and content of return

- (1) The return must be either typewritten or produced on a computer and must comply with Penal Code section 1480 and rules 8.40(b)–(c) and 8.204(a)–(b). Except in habeas corpus proceedings related to sentences of death, any memorandum accompanying a return must also comply with the length limits in rule 8.204(c).
- (2) Rule 8.486(c)(1) and (2) govern the form of any supporting documents accompanying the return. The return must support any reference to a matter in the supporting documents by a citation to its index ~~tab~~ number or letter and page.
- (3) Any material allegation of the petition not controverted by the return is deemed admitted for purposes of the proceeding.

(d) Traverse * * *

(e) Judicial notice * * *

(f) Evidentiary hearing ordered by the reviewing court * * *

(g) Oral argument and submission of the cause * * *

Rule 8.387. Decision in habeas corpus proceedings * * *

Rule 8.388. Appeal from order granting relief by writ of habeas corpus * * *

Chapter 5. Juvenile Appeals and Writs

Article 1. General provisions

Rule 8.400. Application

Rule 8.401. Confidentiality

* * *

Rule 8.401. Confidentiality * * *

Article 2. Appeals

Rule 8.403 Right to appointment of appellate counsel and prerequisites for appeal

Rule 8.404. Stay pending appeal

Rule 8.405. Filing the appeal

- 1 *Rule 8.406. Time to appeal*
- 2 *Rule 8.407. Record on appeal*
- 3 *Rule 8.408. Record in multiple appeals in the same case*
- 4 *Rule 8.409. Preparing and sending the record*
- 5 *Rule 8.410. Augmenting and correcting the record in the reviewing court*
- 6 *Rule 8.411. Abandoning the appeal*
- 7 *Rule 8.412. Briefs by parties and amici curiae*
- 8 *Rule 8.416. Appeals from all terminations of parental rights; dependency appeals in*
- 9 *Orange, Imperial, and San Diego Counties and in other counties by local rule*

10
11 **Rule 8.403. Right to appointment of appellate counsel and prerequisites for appeal * * ***

12
13 **Rule 8.404. Stay pending appeal * * ***

14
15
16 **Rule 8.405. Filing the appeal**

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18 **(a) Notice of appeal * * ***

19
20 **(b) Superior court clerk's duties**

21
22 (1) When a notice of appeal is filed, the superior court clerk must immediately:

23
24 (A) ~~Mail~~Send a notification of the filing to:

25
26 (i) Each party other than the appellant, including the child if the child is 10

27 years of age or older;

28
29 (ii) The attorney of record for each party;

30
31 (iii) Any person currently awarded by the juvenile court the status of the

32 child's de facto parent;

33
34 (iv) Any Court Appointed Special Advocate (CASA) volunteer;

35
36 (v) If the court knows or has reason to know that an Indian child is involved,

37 the Indian custodian, if any, and tribe of the child or the Bureau of Indian

38 Affairs, as required under Welfare and Institutions Code section 224.2;

39 and

40
41 (vi) The reviewing court clerk; and

42
43 (B) Notify the reporter by telephone and in writing to prepare a reporter's

44 transcript and deliver it to the clerk within 20 days after the notice of appeal is

45 filed.

- 1 (2) The notification must show the name of the appellant, the date it was ~~mailed~~sent, the
2 number and title of the case, and the date the notice of appeal was filed. If the
3 information is available, the notification must also include:
4
5 (A) The name, address, telephone number, e-mail address, and California State Bar
6 number of each attorney of record in the case;
7
8 (B) The name of the party that each attorney represented in the superior court; and
9
10 (C) The name, address, e-mail address, and telephone number of any unrepresented
11 party.
12
13 (3) The notification to the reviewing court clerk must also include a copy of the notice of
14 appeal and any sequential list of reporters made under rule 2.950.
15
16 (4) A copy of the notice of appeal is sufficient notification if the required information is
17 on the copy or is added by the superior court clerk.
18
19 (5) The ~~sending~~mailing of a notification is a sufficient performance of the clerk's duty
20 despite the discharge, disqualification, suspension, disbarment, or death of the
21 attorney.
22
23 (6) Failure to comply with any provision of this subdivision does not affect the validity
24 of the notice of appeal.
25

26 **Advisory Committee Comment * * ***
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28

29 **Rule 8.406. Time to appeal**
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31 **(a) Normal time * * ***
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33 **(b) Cross-appeal**
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35 If an appellant timely appeals from a judgment or appealable order, the time for any other
36 party to appeal from the same judgment or order is either the time specified in (a) or 20
37 days after the superior court clerk ~~sends~~mails notification of the first appeal, whichever is
38 later.
39

40 **(c) No extension of time; late notice of appeal * * ***
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42 **(d) Premature notice of appeal * * ***
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44 **Advisory Committee Comment * * ***
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2 **Rule 8.407. Record on appeal * * ***

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4 **Rule 8.408. Record in multiple appeals in the same case * * ***

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7 **Rule 8.409. Preparing and sending the record**

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9 **(a) Application * * ***

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11 **(b) Form of record**

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13 The clerk’s and reporter’s transcripts must comply with rules 8.45–8.47, relating to sealed
14 and confidential records, and with rule 8.144.

15
16 **(c) Preparing and certifying the transcripts * * ***

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18 **(d) Extension of time * * ***

19
20 **(e) Sending the record * * ***

21
22 **Advisory Committee Comment * * ***

23
24 Drafter’s Note: Rule 8.409 remains unchanged. Like rules 8.122 and 8.130 regarding
25 the clerk’s transcript and reporter’s transcript in civil cases, and rule 8.336 regarding
26 preparation of the record in criminal cases, rule 8.409 makes provision for copies of the
27 clerk’s transcript and the reporter’s transcript to be sent to various persons. Under the
28 definition of “copy” proposed to be added to rule 8.10, this would include electronic
29 copies. As with those rules, I have not proposed any changes here.

30
31 Subdivision (b), regarding the form of the record, provides that the clerk’s and reporter’s
32 transcripts must comply with rule 8.144 (regarding the form of the record in civil
33 appeals). Rule 8.144 is proposed to be amended to state that where the local rules of
34 the reviewing court allow, all or part of the record may be in electronic format. Under
35 subdivision (b) this will also be true in juvenile appeals.

36
37 As noted with regard to rules 8.130 and 8.336, JATS may wish to consider additional
38 rule changes to accommodate the use of electronic versions of a reporter’s transcript if
39 Code of Civil Procedure section 271 is amended to allow use of an electronic original of
40 a reporter’s transcript.

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42
43 **Rule 8.410. Augmenting and correcting the record in the reviewing court * * ***

1 **Rule 8.411. Abandoning the appeal**

2
3 **(a) How to abandon * * ***

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5 **(b) Where to file; effect of filing * * ***

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7 **(c) Clerk's duties**

8
9 (1) If the abandonment is filed in the superior court, the clerk must immediately
10 ~~sendmail~~ a notification of the abandonment to:

11 (A) Every other party;

12 (B) The reviewing court; and

13
14 (C) The reporter if the appeal is abandoned before the reporter has filed the
15 transcript.

16
17 (2) If the abandonment is filed in the reviewing court and the reviewing court orders the
18 appeal dismissed, the clerk must immediately ~~sendmail~~ a notification of the order of
19 dismissal to every party.
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23 **Advisory Committee Comment * * ***

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26 **Rule 8.412. Briefs by parties and amici curiae**

27
28 **(a) Contents, form, and length * * ***

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30 **(b) Time to file * * ***

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32 **(c) Extensions of time * * ***

33
34 **(d) Failure to file a brief**

35
36 (1) Except in appeals governed by rule 8.416, if a party fails to timely file an appellant's
37 opening brief or a respondent's brief, the reviewing court clerk must promptly notify
38 the party's counsel or the party, if not represented, ~~in writing~~~~by mail~~ that the brief
39 must be filed within 30 days after the notice is ~~sentmailed~~ and that failure to comply
40 may result in one of the following sanctions:

41 (A) If the brief is an appellant's opening brief:

42 (i) If the appellant is the county, the court will dismiss the appeal;

1 (ii) If the appellant is other than the county and is represented by appointed
2 counsel on appeal, the court will relieve that appointed counsel and
3 appoint new counsel;
4

5 (iii) If the appellant is other than the county and is not represented by
6 appointed counsel, the court will dismiss the appeal.
7

8 (B) If the brief is a respondent's brief, the court will decide the appeal on the
9 record, the opening brief, and any oral argument by the appellant.
10

11 (2) If a party fails to comply with a notice under (1), the court may impose the sanction
12 specified in the notice.
13

14 (3) Within the period specified in the notice under (1), a party may apply to the
15 presiding justice for an extension of that period for good cause. If an extension is
16 granted beyond the 30-day period and the brief is not filed within the extended
17 period, the court may impose the sanction under (2) without further notice.
18

19 (e) **Additional service requirements * * ***
20

21 **Advisory Committee Comment * * ***
22
23

24 **Rule 8.416. Appeals from all terminations of parental rights; dependency appeals in**
25 **Orange, Imperial, and San Diego Counties and in other counties by local rule * * ***
26

27 Drafter's Note: Rule 8.416 remains unchanged. Like rules 8.122 and 8.130 regarding
28 the clerk's transcript and reporter's transcript in civil cases, rule 8.336 regarding
29 preparation of the record in criminal cases, and rule 8.409 in some juvenile cases, rule
30 8.416 makes provision for copies of the clerk's transcript and the reporter's transcript to
31 be sent to various persons. Under the definition of "copy" proposed to be added to rule
32 8.10, this would include electronic copies. As with the referenced rules, I have not
33 proposed any changes here.
34

35 Subdivision (b), regarding the form of the record, provides that the clerk's and reporter's
36 transcripts must comply with rule 8.144 (regarding the form of the record in civil
37 appeals). Rule 8.144 is proposed to be amended to state that where the local rules of
38 the reviewing court allow, all or part of the record may be in electronic format. Under
39 subdivision (b) this will also be true in juvenile appeals subject to rule 8.416.
40

41 As noted with regard to rules 8.130, 8.336, and 8.409, JATS may wish to consider
42 additional rule changes to accommodate the use of electronic versions of a reporter's
43 transcript if Code of Civil Procedure section 271 is amended to allow use of an
44 electronic original of a reporter's transcript.
45

1 **Article 3. Writs**

2 *Rule 8.450. Notice of intent to file writ petition to review order setting hearing under*
3 *Welfare and Institutions Code section 366.26*

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

6 *Rule 8.454. Notice of intent to file writ petition under Welfare and Institutions Code*
7 *section 366.28 to review order designating specific placement of a dependent child after*
8 *termination of parental rights*

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

12
13 **Rule 8.450. Notice of intent to file writ petition to review order setting hearing under**
14 **Welfare and Institutions Code section 366.26**

15
16 **(a) Application * * ***

17
18 **(b) Purpose * * ***

19
20 **(c) Who may file * * ***

21
22 **(d) Extensions of time * * ***

23
24 **(e) Notice of intent**

25
26 (1) A party seeking writ review under rules 8.450–8.452 must file in the superior court a
27 notice of intent to file a writ petition and a request for the record.

28
29 (2) The notice must include all known dates of the hearing that resulted in the order
30 under review.

31
32 (3) The notice must be authorized by the party intending to file the petition and must be
33 signed by that party or by the attorney of record for that party.

34
35 (4) The date of the order setting the hearing is the date on which the court states the
36 order on the record orally, or issues an order in writing, whichever occurs first. The
37 notice of intent must be filed according to the following timeline requirements:

38
39 (A) If the party was present at the hearing when the court ordered a hearing under
40 Welfare and Institutions Code section 366.26, the notice of intent must be filed
41 within 7 days after the date of the order setting the hearing.

42
43 (B) If the party was notified of the order setting the hearing only by mail, the
44 notice of intent must be filed within 12 days after the date the clerk mailed the
45 notification.
46

1 (C) If the party was notified of the order setting the hearing by mail, and the notice
2 was mailed to an address outside California but within the United States, the
3 notice of intent must be filed within 17 days after the date the clerk mailed the
4 notification.

5
6 (D) If the party was notified of the order setting the hearing by mail, and the notice
7 was mailed to an address outside the United States, the notice of intent must be
8 filed within 27 days after the date the clerk mailed the notification.

9
10 (E) If the order was made by a referee not acting as a temporary judge, the party
11 has an additional 10 days to file the notice of intent as provided in rule
12 5.540(c).

13
14 **(f) Premature or late notice of intent to file writ petition * * ***

15
16 **(g) Sending the notice of intent**

17
18 (1) When the notice of intent is filed, the superior court clerk must immediately
19 send ~~mail~~ a copy of the notice to:

20
21 (A) The attorney of record for each party;

22
23 (B) Each party, including the child if the child is 10 years of age or older;

24
25 (C) Any known sibling of the child who is the subject of the hearing if that sibling
26 either is the subject of a dependency proceeding or has been adjudged to be a
27 dependent child of the juvenile court as follows:

28
29 (i) If the sibling is under 10 years of age, on the sibling's attorney;

30
31 (ii) If the sibling is 10 years of age or over, on the sibling and the sibling's
32 attorney.

33
34 (D) The mother, the father, and any presumed and alleged parents;

35
36 (E) The child's legal guardian, if any;

37
38 (F) Any person currently awarded by the juvenile court the status of the child's de
39 facto parent;

40
41 (G) The probation officer or social worker;

42
43 (H) Any Court Appointed Special Advocate (CASA) volunteer;

44
45 (I) The grandparents of the child, if their address is known and if the parents'
46 whereabouts are unknown; and

1
2 (J) If the court knows or has reason to know that an Indian child is involved, the
3 Indian custodian, if any, and tribe of the child or the Bureau of Indian Affairs
4 as required under Welfare and Institutions Code section 224.2.
5

6 (2) The clerk must promptly send by **first-class mail, e-mail, or fax** a copy of the notice
7 of intent and a list of those to whom the notice of intent was sent to:
8

9 (A) The reviewing court; and
10

11 (B) The petitioner if the clerk ~~mailed~~ sent the notice of intent to the Indian
12 custodian, tribe of the child, or the Bureau of Indian Affairs.
13

14 (3) If the party was notified of the order setting the hearing only by mail, the clerk must
15 include the date that the notification was mailed.
16

17 **(h) Preparing the record * * ***
18

19 **(i) Sending the record * * ***
20

21 **(j) Reviewing court clerk's duties * * ***
22

23 **Advisory Committee Comment * * ***
24

25 Drafter's Note: Subdivision (e) sets the deadlines for filing a notice of intent to file a writ
26 petition depending on whether the party was present at the hearing when the court
27 ordered a hearing, or was notified of the order by mail (with varying deadlines
28 depending on whether the party is in California, in the U.S. but outside California, or
29 outside the U.S.). JATS may at a later date wish to consider a substantive amendment
30 to set an appropriate deadline when a party is notified of the order electronically.
31

32 Subdivision (g) requires the superior court clerk to send by first-class mail or fax a copy
33 of the notice of intent and list of those to whom the notice of intent was sent to the
34 reviewing court, and to the petitioner under certain circumstances. I have added e-mail
35 as a permissible means of sending this copy.
36
37

38 **Rule 8.452. Writ petition to review order setting hearing under Welfare and Institutions**
39 **Code section 366.26**
40

41 **(a) Petition * * ***
42

43 **(b) Contents of the memorandum * * ***
44

45 **(c) Serving and filing the petition and response * * ***
46

1 (d) **Order to show cause or alternative writ * * ***

2
3 (e) **Augmenting or correcting the record in the reviewing court * * ***

4
5 (f) **Stay * * ***

6
7 (g) **Oral argument * * ***

8
9 (h) **Decision**

10
11 (1) Absent exceptional circumstances, the reviewing court must decide the petition on
12 the merits by written opinion.

13
14 (2) The reviewing court clerk must promptly notify the parties of any decision and must
15 promptly send a certified copy of any writ or order to the court named as respondent.

16
17 (3) If the writ or order stays or prohibits proceedings set to occur within 7 days or
18 requires action within 7 days—or in any other urgent situation—the reviewing court
19 clerk must make a reasonable effort to notify the clerk of the respondent court by
20 telephone. The clerk of the respondent court must then notify the judge or officer
21 most directly concerned.

22
23 (4) The reviewing court clerk need not give telephonic notice of the summary denial of a
24 writ, unless a stay previously issued will be dissolved.

25
26 (i) **Filing, modification, finality of decision, and remittitur* * ***

27
28
29 **Advisory Committee Comment * * ***

30
31 Drafter's Note: Subdivision (h) requires the reviewing court to give telephonic notice of
32 its decision to the respondent court under certain circumstances. At a later date, JATS
33 may wish to consider substantive amendment of the rule to allow electronic notification.

34
35
36 **Rule 8.454. Notice of intent to file writ petition under Welfare and Institutions Code**
37 **section 366.28 to review order designating specific placement of a dependent child**
38 **after termination of parental rights**

39
40 (a) **Application * * ***

41
42 (b) **Purpose * * ***

43
44 (c) **Who may file * * ***

45
46 (d) **Extensions of time * * ***

1 (e) **Notice of intent * * ***

2
3 (f) **Premature or late notice of intent to file writ petition * * ***

4
5 (g) **Sending the notice of intent**

6
7 (1) When the notice of intent is filed, the superior court clerk must immediately
8 ~~send~~mail a copy of the notice to:

9
10 (A) The attorney of record for each party;

11
12 (B) Each party, including the child if the child is 10 years of age or older;

13
14 (C) Any known sibling of the child who is the subject of the hearing if that sibling
15 either is the subject of a dependency proceeding or has been adjudged to be a
16 dependent child of the juvenile court as follows:

17
18 (i) If the sibling is under 10 years of age, on the sibling's attorney;

19
20 (ii) If the sibling is 10 years of age or over, on the sibling and the sibling's
21 attorney;

22
23 (D) Any prospective adoptive parent;

24
25 (E) The child's legal guardian if any;

26
27 (F) Any person currently awarded by the juvenile court the status of the child's de
28 facto parent;

29
30 (G) The probation officer or social worker;

31
32 (H) The child's Court Appointed Special Advocate (CASA) volunteer, if any; and

33
34 (I) If the court knows or has reason to know that an Indian child is involved, the
35 Indian custodian, if any, and tribe of the child or the Bureau of Indian Affairs
36 as required under Welfare and Institutions Code section 224.2.

37
38 (2) The clerk must promptly send by first-class mail, e-mail, or fax a copy of the notice
39 of intent and a list of those to whom the notice of intent was sent to:

40
41 (A) The reviewing court; and

42
43 (B) The petitioner if the clerk ~~mailed~~ sent a copy of the notice of intent to the
44 Indian custodian, tribe of the child, or the Bureau of Indian Affairs.

1 (3) If the party was notified of the post placement order only by mail, the clerk must
2 include the date that the notification was mailed.
3

4 **(h) Preparing the record * * ***

5
6 **(i) Sending the record * * ***

7
8 **(j) Reviewing court clerk's duties * * ***

9
10 **Advisory Committee Comment * * ***

11
12 Drafter's Note: Subdivision (g) requires the superior court clerk to send by first-class
13 mail or fax a copy of the notice of intent and list of those to whom the notice of intent
14 was sent to the reviewing court, and to the petitioner under certain circumstances. I
15 have added e-mail as a permissible means of sending this copy.
16
17

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

21
22 **(a) Petition * * ***

23
24 **(b) Contents of memorandum * * ***

25
26 **(c) Serving and filing the petition and response * * ***

27
28 **(d) Order to show cause or alternative writ * * ***

29
30 **(e) Augmenting or correcting the record in the reviewing court * * ***

31
32 **(f) Stay * * ***

33
34 **(g) Oral argument * * ***

35
36 **(h) Decision**

37
38 (1) Absent exceptional circumstances, the reviewing court must review the petition and
39 decide it on the merits by written opinion.
40

41 (2) The reviewing court clerk must promptly notify the parties of any decision and must
42 promptly send a certified copy of any writ or order to the court named as respondent.
43

44 (3) If the writ or order stays or requires action within 7 days—or in any other urgent
45 situation—the reviewing court clerk must make a reasonable effort to notify the clerk
46 of the respondent court by telephone. The clerk of the respondent court must then
47 notify the judge or officer most directly concerned.

1
2 (4) The reviewing court clerk need not give telephonic notice of the summary denial of a
3 writ, unless a stay previously issued and will be dissolved.
4

5 (5) Rule 8.490 governs the filing, modification, finality of decisions, and remittitur in
6 writ proceedings under this rule.
7

8 **(i) Right to appeal other orders * * ***
9

10 Drafter's Note: Subdivision (h) requires the reviewing court to give telephonic notice of
11 its decision to the respondent court under certain circumstances. At a later date, JATS
12 may wish to consider substantive amendment of the rule to allow electronic notification.
13

14
15 **Article 4. Hearing and Decision**
16

17 *Rule 8.470. Hearing and decision in the Court of Appeal*

18 *Rule 8.472. Hearing and decision in the Supreme Court*

19 *Rule 8.474. Procedures and data*
20

21 **Rule 8.470. Hearing and decision in the Court of Appeal * * ***
22

23 **Rule 8.472. Hearing and decision in the Supreme Court * * ***
24

25
26 **Rule 8.474. Procedures and data**
27

28 **(a) Procedures * * ***
29

30 **(b) Data**
31

32 The clerks of the superior courts and the reviewing courts must ~~the~~ provide the data
33 required to assist the Judicial Council in evaluating the effectiveness of the rules governing
34 appeals and writs in juvenile cases.
35

36 Drafter's Note: The change to subdivision (b) corrects a typographical error.
37
38

39 **Chapter 6. Conservatorship Appeals**
40

41 *Rule 8.480. Appeal from order establishing conservatorship*

42 *Rule 8.482. Appeal from judgment authorizing conservator to consent to sterilization of*
43 *conservatee*
44

45 **Rule 8.480. Appeal from order establishing conservatorship * * ***
46

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

3
4 **(a) Application * * ***

5
6 **(b) When appeal is taken automatically * * ***

7
8 **(c) Superior court clerk's duties**

9
10 After entering the judgment, the clerk must immediately:

11
12 (1) Begin preparing a clerk's transcript and notify the reporter to prepare a reporter's
13 transcript; and

14
15 (2) SendMail certified copies of the judgment to the Court of Appeal and the Attorney
16 General.

17
18 **(d) Clerk's transcript * * ***

19
20 **(e) Reporter's transcript * * ***

21
22 **(f) Preparing and sending transcripts**

23
24 (1) The clerk and the reporter must prepare and send an original and two copies of each
25 of the transcripts as provided in rule 8.336.

26
27 (2) Probate Code section 1963 governs the cost of preparing the record on appeal.

28
29 **(g) Confidential material**

30
31 (1) Written reports of physicians, psychologists, and clinical social workers, and any
32 other matter marked confidential by the court, may be inspected only by court
33 personnel, the parties and their counsel, the district appellate project, and other
34 persons designated by the court.

35
36 (2) Material under (1) must be sent to the reviewing court in a secure manner that
37 preserves its confidentiality. If the material is in paper format, it must be sent to the
38 reviewing court in a sealed envelope marked "CONFIDENTIAL—MAY NOT BE
39 EXAMINED WITHOUT A COURT ORDER."

40
41 **(h) Trial counsel's continuing representation * * ***

42
43 **(i) Appointment of appellate counsel * * ***

44
45 Drafter's Note: Subdivision (f) requires the clerk to prepare and send two copies of the
46 transcripts as provided in Rule 8.336. Rule 8.336 requires (in a criminal appeal) the

1 superior court clerk to prepare an original and two copies of the clerk’s transcript, one
2 for defendant’s counsel and one for the Attorney General. Pursuant to the amendments
3 proposed to rules 8.10 (defining “copy” as including an electronic copy) and 8.144
4 (stating that all or part of the record in a civil appeal may be in electronic format; rule
5 8.144 is then referenced in rule 8.336 (f) regarding the form of the record in a criminal
6 appeal), these copies may be electronic where allowable under the local rules of the
7 reviewing court.

8
9 Language is proposed to be added to subdivision (g) parallel to that proposed to be
10 added in rules 8.45 and 8.46 regarding maintaining the confidentiality of documents
11 which may be transmitted not in paper format.

12
13
14 **Chapter 7. Writs of Mandate, Certiorari, and Prohibition in the Supreme Court and**
15 **Court of Appeal**

16 *Rule 8.485 Application*

17 *Rule 8.486. Petitions*

18 *Rule 8.487. Opposition and Attorney General amicus briefs*

19 *Rule 8.488. Certificate of Interested Entities or Persons*

20 *Rule 8.489. Notice to trial court*

21 *Rule 8.490. Filing, finality, and modification of decisions; rehearing; remittitur*

22 *Rule 8.491. Responsive pleading under Code of Civil Procedure section 418.10*

23 *Rule 8.492. Sanctions*

24 *Rule 8.493. Costs*

25
26 **Rule 8.485 Application * * ***

27
28 **Rule 8.486. Petitions**

29
30 **(a) Contents of petition * * ***

31
32 **(b) Contents of supporting documents * * ***

33
34 **(c) Form of supporting documents**

35
36 (1) Documents submitted under (b) must comply with the following requirements:

37
38 (A) **If submitted in paper form.** They must be bound together at the end of the
39 petition or in separate volumes not exceeding 300 pages each. The pages must
40 be consecutively numbered.

41
42 (B) **If submitted in paper form.** They must be index-tabbed by number or letter.

43
44 (C) They must begin with a table of contents listing each document by its title and
45 its index-tab number or letter. If a document has attachments, the table of

1 contents must give the title of each attachment and a brief description of its
2 contents.

3
4 (2) The clerk must file any supporting documents not complying with (1), but the court
5 may notify the petitioner that it may strike or summarily deny the petition if the
6 documents are not brought into compliance within a stated reasonable time of not
7 less than 5 days.

8
9 (3) Rule 8.44(a) governs the number of copies of supporting documents to be filed in the
10 Supreme Court. Rule 8.44(b) governs the number of supporting documents to be
11 filed in the Court of Appeal.

12
13 **(d) Sealed and confidential records * * ***

14
15 **(e) Service * * ***

16
17 **Advisory Committee Comment * * ***

18
19 Drafter's Note: JATS may wish to consider at a later date substantive amendments
20 here and elsewhere in the rules creating a standard for the equivalent of index-tabling
21 for electronically transmitted documents.

22
23
24 **Rule 8.487. Opposition and Attorney General amicus briefs * * ***

25
26
27 **Rule 8.488. Certificate of Interested Entities or Persons**

28
29 **(a) Application * * ***

30
31 **(b) Compliance with rule 8.208 * * ***

32
33 **(c) Placement of certificates * * ***

34
35 **(d) Failure to file a certificate**

36
37 (1) If a party fails to file a certificate as required under (b) and (c), the clerk must notify
38 the party in writing ~~by mail~~ that the party must file the certificate within 10 days
39 after the clerk's notice is sent ~~mailed~~ and that if the party fails to comply, the court
40 may impose one of the following sanctions:

41
42 (A) If the party is the petitioner, the court may strike the petition; or

43
44 (B) If the party is the respondent or the real party in interest, the court may strike
45 that party's document.

- 1 (2) If the party fails to file the certificate as specified in the notice under (1), the court
2 may impose the sanctions specified in the notice.
3

4 **Advisory Committee Comment * * ***
5

6 **Rule 8.489. Notice to trial court**
7

8 **(a) Notice if writ issues * * ***
9

10 **(b) Notice by telephone**
11

- 12 (1) If the writ or order stays or prohibits proceedings set to occur within 7 days or
13 requires action within 7 days—or in any other urgent situation—the reviewing court
14 clerk must make a reasonable effort to notify the clerk of the respondent court by
15 telephone. The clerk of the respondent court must then notify the judge or officer
16 most directly concerned.
17
18 (2) The clerk need not give telephonic notice of the summary denial of a writ, whether
19 or not a stay previously issued.
20

21 Drafter’s Note: Subdivision (b) requires telephonic notice of a writ or order staying or
22 prohibiting proceedings set to occur within 7 days. JATS may wish to consider in the
23 future as a substantive amendment whether to allow e-mail notification as an
24 alternative.
25

26
27 **Rule 8.490. Filing, finality, and modification of decisions; rehearing; remittitur * * ***
28

29 **Rule 8.491. Responsive pleading under code of Civil Procedure section 418.10 * * ***
30

31 **Rule 8.492. Sanctions * * ***
32

33 **Rule 8.493. Costs * * ***
34

35 **Chapter 8. Miscellaneous Writs**
36

37 *Rule 8.495. Review of Workers’ Compensation Appeals Board cases*

38 *Rule 8.496. Review of Public Utilities Commission cases*

39 *Rule 8.497. Review of California Environmental Quality Act cases under Public Resources*
40 *Code sections 21178–21189.3 [Repealed]*

41 *Rule 8.498. Review of Agricultural Labor Relations Board and Public Employment*
42 *Relations Board cases*

43 *Rule 8.499. Filing, modification, and finality of decision; remittitur*
44
45

1 **Rule 8.495. Review of Workers' Compensation Appeals Board cases**

2
3 **(a) Petition**

- 4
5 (1) A petition to review an order, award, or decision of the Workers' Compensation
6 Appeals Board must include:
7
8 (A) The order, award, or decision to be reviewed; and
9
10 (B) The workers' compensation judge's minutes of hearing and summary of
11 evidence, findings and opinion on decision, and report and recommendation on
12 the petition for reconsideration.
13
14 (2) If the petition claims that the board's ruling is not supported by substantial evidence,
15 it must fairly state and attach copies of all the relevant material evidence.
16
17 (3) **The petition must be accompanied by proof of service of two copies a copy of the**
18 **petition on the Secretary of the Workers' Compensation Appeals Board in San**
19 **Francisco, or two copies if the petition is served in paper form,** and one copy on each
20 party who appeared in the action and whose interest is adverse to the petitioner.
21 Service on the board's local district office is not required.
22

23 **(b) Answer and reply * * ***

24
25 **(c) Certificate of Interested Entities or Persons**

- 26
27 (1) Each party other than the board must comply with the requirements of rule 8.208
28 concerning serving and filing a Certificate of Interested Entities or Persons.
29
30 (2) The petitioner's certificate must be included in the petition and the real party in
31 interest's certificate must be included in the answer. The certificate must appear after
32 the cover and before the tables.
33
34 (3) If a party fails to file a certificate as required under (1) and (2), the clerk must notify
35 the party in writing ~~by mail~~ that the party must file the certificate within 10 days
36 after the clerk's notice is ~~mailed~~ sent and that failure to comply will result in one of
37 the following sanctions:
38
39 (A) If the party is the petitioner, the court will strike the petition; or
40
41 (B) If the party is the real party in interest, the court will strike the document.
42
43 (4) If the party fails to comply with the notice under (3), the court may impose the
44 sanctions specified in the notice.
45

46 **Advisory Committee Comment * * ***

1 **Subdivision (a).** Subdivision (a)(3) specifies that the petition must be served on the Secretary of the
2 Workers' Compensation Appeals Board in San Francisco. Neither the petition nor a courtesy copy should
3 be served on the local district office of the board.
4

5 **Subdivision (b).** To clarify that a respondent may rely on exhibits filed with the petition without
6 duplicating them in the answer, (b)(1) specifies that exhibits filed with an answer must be limited to
7 exhibits "not included in the petition."
8
9

10 **Rule 8.496. Review of Public Utilities Commission cases**
11

12 **(a) Petition * * ***
13

14 **(b) Answer and reply * * ***
15

16 **(c) Certificate of Interested Entities or Persons**
17

18 (1) Each party other than the commission must comply with the requirements of rule
19 8.208 concerning serving and filing a Certificate of Interested Entities or Persons.
20

21 (2) The petitioner's certificate must be included in the petition and the real party in
22 interest's certificate must be included in the answer. The certificate must appear after
23 the cover and before the tables.
24

25 (3) If a party fails to file a certificate as required under (1) and (2), the clerk must notify
26 the party ~~by mail~~ in writing that the party must file the certificate within 10 days
27 after the clerk's notice is ~~mailed~~ sent and that failure to comply will result in one of
28 the following sanctions:
29

30 (A) If the party is the petitioner, the court will strike the petition; or
31

32 (B) If the party is the real party in interest, the court will strike the document.
33

34 (4) If the party fails to comply with the notice under (3), the court may impose the
35 sanctions specified in the notice.
36

37 **Advisory Committee Comment * * ***
38
39

40 **Rule 8.497. Review of California Environmental Quality Act cases under Public Resources**
41 **Code sections 21178–21189.3 [Repealed] * * ***
42

43 **Rule 8.498. Review of Agricultural Labor Relations Board and Public Employment**
44 **Relations Board cases**
45

46 **(a) Petition * * ***
47

1 (b) **Record * * ***

2
3 (c) **Briefs * * ***

4
5 (d) **Certificate of Interested Entities or Persons**

6
7 (1) Each party other than the board must comply with the requirements of rule 8.208
8 concerning serving and filing a Certificate of Interested Entities or Persons.

9
10 (2) The petitioner's certificate must be included in the petition and the real party in
11 interest's certificate must be included in the answer. The certificate must appear after
12 the cover and before the tables.

13
14 (3) If a party fails to file a certificate as required under (1) and (2), the clerk must notify
15 the party ~~by mail~~ in writing that the party must file the certificate within 10 days
16 after the clerk's notice is ~~mailed~~ sent and that failure to comply will result in one of
17 the following sanctions:

18 (A) If the party is the petitioner, the court will strike the petition; or

19 (B) If the party is the real party in interest, the court will strike the document.

20
21 (4) If the party fails to comply with the notice under (3), the court may impose the
22 sanctions specified in the notice.

23
24
25 **Advisory Committee Comment * * ***

26
27
28
29 **Rule 8.499. Filing, modification, and finality of decision; remittitur * * ***

30
31
32 **Chapter 9. Proceedings in the Supreme Court**

33 *Rule 8.500. Petition for review*

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

35 *Rule 8.508. Petition for review to exhaust state remedies*

36 *Rule 8.512. Ordering review*

37 *Rule 8.516. Issues on review*

38 *Rule 8.520. Briefs by parties and amici curiae; judicial notice*

39 *Rule 8.524. Oral argument and submission of the cause*

40 *Rule 8.528. Disposition*

41 *Rule 8.532. Filing, finality, and modification of decision*

42 *Rule 8.536. Rehearing*

43 *Rule 8.540. Remittitur*

44 *Rule 8.544. Costs and sanctions*

45 *Rule 8.548. Decision on request of a court of another jurisdiction*

46 *Rule 8.552. Transfer for decision*

47

1 **Rule 8.500. Petition for review * * ***

2
3
4 **Rule 8.504. Form and contents of petition, answer, and reply**

5
6 **(a) In general * * ***

7
8 **(b) Contents of a petition**

- 9
10 (1) The body of the petition must begin with a concise, nonargumentative statement of
11 the issues presented for review, framing them in terms of the facts of the case but
12 without unnecessary detail.
13
14 (2) The petition must explain how the case presents a ground for review under rule
15 8.500(b).
16
17 (3) If a petition for rehearing could have been filed in the Court of Appeal, the petition
18 for review must state whether it was filed and, if so, how the court ruled.
19
20 (4) If the petition seeks review of a Court of Appeal opinion, a copy of the opinion
21 showing its filing date and a copy of any order modifying the opinion or directing its
22 publication must be **bound or, if the petition is not filed in paper form, attached,** at
23 the back of the original petition and each copy filed in the Supreme Court.
24
25 (5) If the petition seeks review of a Court of Appeal order, a copy of the order showing
26 the date it was entered must be **bound, or, if the petition is not filed in paper form,**
27 **attached,** at the back of the original petition and each copy filed in the Supreme
28 Court.
29
30 (6) The title of the case and designation of the parties on the cover of the petition must
31 be identical to the title and designation in the Court of Appeal opinion or order that is
32 the subject of the petition.
33
34 (7) Rule 8.508 governs the form and content of a petition for review filed by the
35 defendant in a criminal case for the sole purpose of exhausting state remedies before
36 seeking federal habeas corpus review.

37
38 **(c) Contents of an answer * * ***

39
40 **(d) Length * * ***

41
42 **(e) Attachments and incorporation by reference * * ***

43
44
45 **Advisory Committee Comment * * ***

1 **Rule 8.508. Petition for review to exhaust state remedies * * ***

2
3
4 **Rule 8.512. Ordering review**

5
6 **(a) Transmittal of record**

7
8 On receiving a copy of a petition for review or on request of the Supreme Court, whichever
9 is earlier, the Court of Appeal clerk must promptly send the record to the Supreme Court.
10 If the petition is denied, the Supreme Court clerk must promptly return the record to the
11 Court of Appeal if the record was transmitted in paper form.

12
13 **(b) Determination of petition * * ***

14
15 **(c) Review on the court’s own motion * * ***

16
17 **(d) Order; grant and hold * * ***

18
19 **Advisory Committee Comment * * ***

20
21
22 * * *

23
24 **Rule 8.520. Briefs by parties and amici curiae; judicial notice * * ***

25
26 **Rule 8.524. Oral argument and submission of the cause * * ***

27
28 **Rule 8.528. Disposition * * ***

29
30 **Rule 8.532. Filing, finality, and modification of decision * * ***

31
32 **Rule 8.536. Rehearing * * ***

33
34
35 **Rule 8.540. Remittitur**

36
37 **(a) Proceedings requiring issuance of remittitur * * ***

38
39 **(b) Clerk’s duties**

40
41 (1) The clerk must issue a remittitur when a decision of the court is final. The remittitur
42 is deemed issued when the clerk enters it in the record.

43
44 (2) After review of a Court of Appeal decision, the Supreme Court clerk must address
45 the remittitur to the Court of Appeal and send that court ~~two copies~~ a copy of the
46 remittitur and ~~two~~ a file-stamped endorsed copies copy of the Supreme Court

1 opinion or order. The clerk must send two copies of any document sent in paper
2 form.

3
4 (3) After a decision in an appeal from a judgment of death or in a cause transferred to
5 the court under rule 8.552, the clerk must send the remittitur and a file-stamped
6 endorsed copy of the Supreme Court opinion or order to the lower court or tribunal.

7
8 (4) The clerk must comply with the requirements of rule 8.272(d).

9
10 **(c) Immediate issuance, stay, and recall * * ***

11
12
13 **Rule 8.544. Costs and sanctions * * ***

14
15
16 **Rule 8.548. Decision on request of a court of another jurisdiction**

17
18 **(a) Request for decision * * ***

19
20 **(b) Form and contents of request * * ***

21
22 **(c) Supporting materials * * ***

23
24 **(d) Serving and filing the request**

25
26 The requesting court clerk must file an original and, if the request is filed in paper form,
27 10 copies, of the request in the Supreme Court with a certificate of service on the parties.

28
29 **(e) Letters in support or opposition * * ***

30
31 **(f) Proceedings in the Supreme Court**

32
33 (1) In exercising its discretion to grant or deny the request, the Supreme Court may
34 consider whether resolution of the question is necessary to secure uniformity of
35 decision or to settle an important question of law, and any other factor the court
36 deems appropriate.

37
38 (2) An order granting the request must be signed by at least four justices; an order
39 denying the request may be signed by the Chief Justice alone.

40
41 (3) If the court grants the request, the rules on review and decision in the Supreme Court
42 govern further proceedings in that court.

43
44 (4) If, after granting the request, the court determines that a decision on the question
45 may require an interpretation of the California Constitution or a decision on the
46 validity or meaning of a California law affecting the public interest, the court must

1 direct the clerk to send to the Attorney General—unless the Attorney General
2 represents a party to the litigation—a copy of the request and the order granting it.

- 3
4 (5) At any time, the Supreme Court may restate the question or ask the requesting court
5 to clarify the question.
6
7 (6) After filing the opinion, the clerk must promptly send file-stamped endorsed copies
8 to the requesting court and the parties and must notify that court and the parties when
9 the decision is final.
10
11 (7) Supreme Court decisions pursuant to this rule are published in the Official Reports
12 and have the same precedential effect as the court’s other decisions.
13

14
15 **Rule 8.552. Transfer for decision * * ***
16

17
18 **Chapter 10. Appeals From Judgments of Death**
19

20 **Article 1. General Provisions**
21

22 *Rule 8.600. In general*

23 *Rule 8.605. Qualifications of counsel in death penalty appeals and habeas corpus*
24 *proceedings*
25

26 **Rule 8.600. In general * * ***
27

28 **Rule 8.605. Qualifications of counsel in death penalty appeals and habeas corpus**
29 **proceedings * * ***
30

31 **Article 2. Record on Appeal**
32

33 *Rule 8.610. Contents and form of the record*

34 *Rule 8.613. Preparing and certifying the record of preliminary proceedings*

35 *Rule 8.616. Preparing the trial record*

36 *Rule 8.619. Certifying the trial record for completeness*

37 *Rule 8.622. Certifying the trial record for accuracy*

38 *Rule 8.625. Certifying the record in pre-1997 trials*
39

40 **Rule 8.610. Contents and form of the record**
41

42 **(a) Contents of the record * * ***
43

44 **(b) Confidential records * * ***
45

1 (c) **Juror-identifying information**

2
3 Any document in the record containing juror-identifying information must be edited in
4 compliance with rule 8.332. Unedited copies of all such documents and a copy of the table
5 required by the rule, under seal and **bound together, if filed in paper form,** must be
6 included in the record sent to the Supreme Court.
7

8 (d) **Form of record * * ***

9
10 **Advisory Committee Comment * * ***
11
12

13 **Rule 8.613. Preparing and certifying the record of preliminary proceedings**

14
15 (a) **Definitions * * ***

16
17 (b) **Notice of intent to seek death penalty * * ***

18
19 (c) **Assignment of judge designated to supervise preparation of record of preliminary**
20 **proceedings * * ***

21
22 (d) **Notice to prepare transcript * * ***

23
24 (e) **Reporter's duties**

25
26 (1) The reporter must prepare an original and five copies of the reporter's transcript and
27 two additional copies for each codefendant against whom the death penalty is sought.
28 The transcript must include the preliminary examination or grand jury proceeding
29 unless a transcript of that examination or proceeding has already been filed in
30 superior court for inclusion in the clerk's transcript.
31

32 (2) The reporter must certify the original and all copies of the reporter's transcript as
33 correct.
34

35 (3) Within 20 days after receiving the notice to prepare the reporter's transcript, the
36 reporter must deliver the original and all copies of the transcript to the clerk.
37

38 (f) **Review by counsel**

39
40 (1) Within five days after the reporter delivers the transcript, the clerk must deliver the
41 original to the designated judge and one copy to each trial counsel. If a different
42 attorney represented the defendant or the People in the preliminary proceedings, both
43 attorneys must perform the tasks required by (2).
44

45 (2) Each trial counsel must promptly:

46 (A) Review the reporter's transcript for errors or omissions;
47

- 1
2 (B) Review the docket sheets and minute orders to determine whether all
3 preliminary proceedings have been transcribed;
4
5 (C) Consult with opposing counsel to determine whether any other proceedings or
6 discussions should have been transcribed; and
7
8 (D) Review the court file to determine whether it is complete.
9

10 **(g) Declaration and request for corrections or additions * * ***

11
12 **(h) Corrections or additions to the record of preliminary proceedings**

13
14 If any counsel files a request for corrections or additions:

- 15
16 (1) Within 15 days after the last request is filed, the designated judge must hold a
17 hearing and order any necessary corrections or additions.
18
19 (2) If any portion of the proceedings cannot be transcribed, the judge may order
20 preparation of a settled statement under rule 8.346.
21
22 (3) Within 20 days after the hearing under (1), the original reporter's transcript and court
23 file must be corrected or augmented to reflect all corrections or additions ordered.
24 The clerk must promptly send copies of the corrected or additional pages to trial
25 counsel.
26
27 (4) The judge may order any further proceedings to correct or complete the record of the
28 preliminary proceedings.
29
30 (5) When the judge is satisfied that all corrections and additions ordered have been made
31 and copies of all corrected or additional pages have been sent to the parties, the judge
32 must certify the record of the preliminary proceedings as complete and accurate.
33
34 (6) The record of the preliminary proceedings must be certified as complete and accurate
35 within 120 days after the presiding judge orders preparation of the record.
36

37 **(i) Computer-readable copies**

- 38
39 (1) When the record of the preliminary proceedings is certified as complete and
40 accurate, the clerk must promptly notify the reporter to prepare five computer-
41 readable copies of the transcript and two additional computer-readable copies for
42 each codefendant against whom the death penalty is sought.
43
44 (2) Each computer-readable copy must comply with the format, labeling, content, and
45 numbering requirements of Code of Civil Procedure section 271(b) and any

1 additional requirements prescribed by the Supreme Court, and must be further
2 labeled to show the date it was made.

- 3
- 4 (3) A computer-readable copy of a sealed transcript must be placed on a separate disk
5 and clearly labeled as confidential.
- 6
- 7 (4) The reporter is to be compensated for computer-readable copies as provided in
8 Government Code section 69954(b).
- 9
- 10 (5) Within 20 days after the clerk notifies the reporter under (1), the reporter must
11 deliver the computer-readable copies to the clerk.
- 12

13 **(j) Delivery to the superior court**

14

15 Within five days after the reporter delivers the computer-readable copies, the clerk must
16 deliver to the responsible judge, for inclusion in the record:

17

- 18 (1) The certified original reporter's transcript of the preliminary proceedings and the
19 copies that have not been distributed to counsel, including the computer-readable
20 copies; and
- 21
- 22 (2) The complete court file of the preliminary proceedings or a certified copy of that file.
- 23

24 **(k) Extension of time * * ***

25

26 **(l) Notice that the death penalty is no longer sought * * ***

27

28 **Advisory Committee Comment * * ***

29

30 Drafter's Note: Because rule 8.613 sets out procedures for the distribution of both
31 paper copies and computer-readable copies of the reporter's transcript of preliminary
32 proceedings, any change to accommodate use of electronic copies (perhaps by
33 eliminating the requirement of multiple paper copies) would be substantive. (I have left
34 the relevant provisions of the rule shown here, although they are not proposed to be
35 changed, to allow review of the current requirements.) JATS may wish to consider at a
36 later time a substantive revision of this rule to allow the use of electronic copies when
37 paper copies are now used.

38

39 In addition, under Code of Civil Procedure section 271, the original of the reporter's
40 transcript is required to be on paper, and computer-readable copies are required to be
41 in a particular format (unless those requirements are modified by standards adopted by
42 the Judicial Council). If section 271 is amended to allow use of an electronic original,
43 and/or to change the requirements applicable to computer-readable copies, JATS may
44 at a later time wish to consider substantive amendments to this rule.

45

46

1 **Rule 8.616. Preparing the trial record**

2
3 **(a) Clerk’s duties**

- 4
5 (1) The clerk must promptly—and no later than five days after the judgment of death is
6 rendered—notify the reporter to prepare the reporter’s transcript.
7
8 (2) The clerk must prepare an original and eight copies of the clerk’s transcript.
9
10 (3) The clerk must certify the original and all copies of the clerk’s transcript as correct.

11
12 **(b) Reporter’s duties**

- 13
14 (1) The reporter must prepare an original and five copies of the reporter’s transcript and
15 two additional copies for each codefendant sentenced to death.
16
17 (2) Any portion of the transcript transcribed during trial must not be retyped unless
18 necessary to correct errors, but must be repaginated and **bound combined** with any
19 portion of the transcript **not previously transcribed**. Any additional copies needed
20 must not be retyped **but, if the transcript is in paper form**, must be prepared by
21 photocopying or an equivalent process.
22
23 (3) The reporter must certify the original and all copies of the reporter’s transcript as
24 correct and deliver them to the clerk.

25
26 **(c) Sending the record to trial counsel * * ***

27
28 **(d) Extension of time * * ***

29
30 **Advisory Committee Comment * * ***

31
32 Like rule 8.613, rules 8.616 through 8.622 specify procedures for preparation of the trial
33 record that require preparation of both paper and computer-readable copies. As with
34 rule 8.613, I have not proposed changes here but JATS may wish to consider in the
35 future revising these rules to better accommodate the use of electronic forms of the
36 record. (As with rule 8.613, I have included the unchanged subdivisions of rules 8.616
37 8.619 and 8.622 that are relevant to the requirements for paper and electronic copies, to
38 allow for review of the existing requirements.)

39
40 The changes proposed in subdivision (b)(2) track the proposed changes in rule 8.336
41 (d) (4).

42
43
44 **Rule 8.619. Certifying the trial record for completeness**

45
46 **(a) Review by counsel during trial * * ***

1 **(b) Review by counsel after trial * * ***

2
3 **(c) Declaration and request for additions or corrections * * ***

4
5 **(d) Completion of the record**

6
7 If any counsel files a request for additions or corrections:

- 8
9 (1) The clerk must promptly deliver the original transcripts to the judge who presided at
10 the trial.
11
12 (2) Within 15 days after the last request is filed, the judge must hold a hearing and order
13 any necessary additions or corrections. The order must require that any additions or
14 corrections be made within 10 days of its date.
15
16 (3) The clerk must promptly—and in any event within five days—notify the reporter of
17 an order under (2). If any portion of the proceedings cannot be transcribed, the judge
18 may order preparation of a settled statement under rule 8.346.
19
20 (4) The original transcripts must be augmented or corrected to reflect all additions or
21 corrections ordered. The clerk must promptly send copies of the additional or
22 corrected pages to trial counsel.
23
24 (5) Within five days after the augmented or corrected transcripts are filed, the judge
25 must set another hearing to determine whether the record has been completed or
26 corrected as ordered. The judge may order further proceedings to complete or correct
27 the record.
28
29 (6) When the judge is satisfied that all additions or corrections ordered have been made
30 and copies of all additional or corrected pages have been sent to trial counsel, the
31 judge must certify the record as complete and redeliver the original transcripts to the
32 clerk.
33
34 (7) The judge must certify the record as complete within 90 days after the judgment of
35 death is rendered.

36
37 **(e) Computer-readable copies**

- 38
39 (1) When the record is certified as complete, the clerk must promptly notify the reporter
40 to prepare five computer-readable copies of the transcript and two additional
41 computer-readable copies for each codefendant sentenced to death.
42
43 (2) Each computer-readable copy must comply with the format, labeling, content, and
44 numbering requirements of Code of Civil Procedure section 271(b) and any
45 additional requirements prescribed by the Supreme Court, and must be further
46 labeled to show the date it was made.

- 1
2 (3) A computer-readable copy of a sealed transcript must be placed on a separate disk
3 and clearly labeled as confidential.
4
5 (4) The reporter is to be compensated for computer-readable copies as provided in
6 Government Code section 69954(b).
7
8 (5) Within 10 days after the clerk notifies the reporter under (1), the reporter must
9 deliver the computer-readable copies to the clerk.

10
11 **(f) Extension of time * * ***

12
13 **(g) Sending the certified record**

14
15 When the record is certified as complete, the clerk must promptly send:

- 16
17 (1) To each defendant's appellate counsel and each defendant's habeas corpus counsel:
18 one paper copy of the entire record and one computer-readable copy of the reporter's
19 transcript. If either counsel has not been retained or appointed, the clerk must keep
20 that counsel's copies until counsel is retained or appointed.
21
22 (2) To the Attorney General, the Habeas Corpus Resource Center, and the California
23 Appellate Project in San Francisco: one paper copy of the clerk's transcript and one
24 computer-readable copy of the reporter's transcript.
25

26 **(h) Notice of delivery * * ***

27
28 **Advisory Committee Comment * * ***
29
30

31 **Rule 8.622. Certifying the trial record for accuracy**

32
33 **(a) Request for corrections or additions * * ***

34
35 **(b) Correction of the record * * ***

36
37 **(c) Computer-readable copies**

- 38
39 (1) When the record is certified as accurate, the clerk must promptly notify the reporter
40 to prepare six computer-readable copies of the reporter's transcript and two
41 additional computer-readable copies for each codefendant sentenced to death.
42
43 (2) In preparing the computer-readable copies, the procedures and time limits of rule
44 8.619(e)(2)–(5) must be followed.
45

46 **(d) Extension of time * * ***
47

1 **(e) Sending the certified record**

2
3 When the record is certified as accurate, the clerk must promptly send:

- 4
- 5 (1) To the Supreme Court: the corrected original record, including the judge's certificate
6 of accuracy, and a computer-readable copy of the reporter's transcript.
7
 - 8 (2) To each defendant's appellate counsel, each defendant's habeas corpus counsel, the
9 Attorney General, the Habeas Corpus Resource Center, and the California Appellate
10 Project in San Francisco: a copy of the order certifying the record and a computer-
11 readable copy of the reporter's transcript.
12
 - 13 (3) To the Governor: the copies of the transcripts required by Penal Code section 1218,
14 with copies of any corrected or augmented pages inserted.
15

16 **Advisory Committee Comment * * ***

17
18
19 **Rule 8.625. Certifying the record in pre-1997 trials**

20
21 **(a) Application * * ***

22
23 **(b) Sending the transcripts to counsel for review**

- 24
- 25 (1) When the clerk and the reporter certify that their respective transcripts are correct,
26 the clerk must promptly send a copy of each transcript to each defendant's trial
27 counsel, to the Attorney General, to the district attorney, to the California Appellate
28 Project in San Francisco, and to the Habeas Corpus Resource Center, noting the
29 sending date on the originals.
30
 - 31 (2) The copies of the reporter's transcript sent to the California Appellate Project and the
32 Habeas Corpus Resource Center must be computer-readable copies complying with
33 the format, labeling, content, and numbering requirements of Code of Civil
34 Procedure section 271(b) and any additional requirements prescribed by the Supreme
35 Court, and must be further labeled to show the date they were made.
36
 - 37 (3) When the clerk is notified of the appointment or retention of each defendant's
38 appellate counsel, the clerk must promptly send that counsel copies of the clerk's
39 transcript and the reporter's transcript, noting the sending date on the originals. The
40 clerk must notify the Supreme Court, the Attorney General, and each defendant's
41 appellate counsel in writing of the date the transcripts were sent to appellate counsel.
42

43 **(c) Correcting, augmenting, and certifying the record * * ***

44
45 **(d) Sending the certified record * * ***

1 (e) **Subsequent trial court orders; omissions * * ***

2
3 Drafter's Note: Rule 8.625 applies to certification of the record in a death penalty case
4 in which trial began before January 1, 1997. It requires certain copies of the reporter's
5 transcript to be sent in computer-readable form in accordance with Code of Civil
6 Procedure section 271 (b). I have not proposed changes here, but JATS may wish at a
7 later time to consider amendments, particularly if the relevant provisions of CCP section
8 271 are changed.

9
10
11 **Article 3. Briefs, Hearing, and Decision**

12
13 *Rule 8.630. Briefs by parties and amici curiae*

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

15 *Rule 8.634. Transmitting exhibits; augmenting the record in the Supreme Court*

16 *Rule 8.638. Oral argument and submission of the cause*

17 *Rule 8.642. Filing, finality, and modification of decision; rehearing; remittitur*

18
19 **Rule 8.630. Briefs by parties and amicus curiae**

20
21 (a) **Contents and form * * ***

22
23 (b) **Length * * ***

24
25 (c) **Time to file * * ***

26
27 (d) **Supplemental briefs * * ***

28
29 (e) **Amicus curiae briefs * * ***

30
31 (f) **Briefs on the court's request * * ***

32
33 (g) **Service**

34
35 (1) The Supreme Court Policy on Service of Process by Counsel for Defendant governs
36 service of the defendant's briefs.

37
38 (2) The Attorney General must serve two paper copies or one electronic copy of the
39 respondent's brief on each defendant's appellate counsel and, for each defendant
40 sentenced to death, one copy on the California Appellate Project in San Francisco.

41
42 (3) A copy of each brief must be served on the superior court clerk for delivery to the
43 trial judge.

44
45 (h) **Judicial notice * * ***

46
47 **Advisory Committee Comment * * ***

1
2 **Rule 8.631. Applications to file overlength briefs in appeals from a judgment of death**

3
4 **Rule 8.634. Transmitting exhibits; augmenting the record in the Supreme Court * * ***

5
6 **Rule 8.638. Oral argument and submission of the cause * * ***

7
8 **Rule 8.642. Filing, finality, and modification of decision; rehearing; remittitur * * ***

9
10
11 **Chapter 11. Review of California Environmental Quality Act Cases Under Public**
12 **Resources Code Sections 21168.6.6 and 21178–21189.3**

13
14 *Rule 8.700. Definitions and application*

15 *Rule 8.701. Filing and service*

16 *Rule 8.702. Appeals*

17 *Rule 8.703. Writ proceedings*

18 *Rule 8.705. Court of Appeal costs in leadership projects*

19
20 **Rule 8.700. Definitions and application * * ***

21
22 **Rule 8.701. Filing and service * ***

23
24
25 **Rule 8.702. Appeals**

26
27 **(a) Application of general rules for civil appeals * * ***

28
29 **(b) Notice of appeal**

30
31 **(1) *Time to appeal***

32
33 The notice of appeal must be served and filed on or before the earlier of:

34
35 **(A)** Five court days after the superior court clerk serves on the party filing the
36 notice of appeal a document entitled “Notice of Entry” of judgment or a file-
37 ~~stamped~~ endorsed copy of the judgment, showing the date either was served; or

38
39 **(B)** Five court days after the party filing the notice of appeal serves or is served by
40 a party with a document entitled “Notice of Entry” of judgment or a file-
41 ~~stamped~~ endorsed copy of the judgment, accompanied by proof of service.

42
43 **(2) *Contents of notice of appeal***

44
45 The notice of appeal must:

- 1 (A) State that the superior court judgment or order being appealed is governed by
2 the rules in this chapter;
3
4 (B) Indicate whether the judgment or order pertains to the Sacramento arena
5 project or a leadership project; and
6
7 (C) If the judgment or order being appealed pertains to a leadership project,
8 provide notice that the person or entity that applied for certification of the
9 project as a leadership project must make the payments required by rule 8.705.

10
11 (c) **Extending the time to appeal * * ***

12
13 (d) **Record on appeal * * ***

14
15 (e) **Superior court clerk duties * * ***

16
17 (f) **Briefing * * ***

18
19 (g) **Oral argument * * ***

20
21 **Advisory Committee Comment * * ***
22
23

24 **Rule 8.703. Writ proceedings**

25
26 (a) **Application of general rules for writ proceedings * * ***

27
28 (b) **Petition**

29
30 (1) *Time for filing petition*

31
32 A petition for a writ challenging a superior court judgment or order governed by the
33 rules in this chapter must be served and filed on or before the earliest of:
34

35 (A) Thirty days after the superior court clerk serves on the party filing the petition
36 a document entitled "Notice of Entry" of judgment or order, or a file-stamped
37 endorsed copy of the judgment or order, showing the date either was served; or

38
39 (B) Thirty days after the party filing the petition serves or is served by a party with
40 a document entitled "Notice of Entry" of judgment or order, or a file-stamped
41 endorsed copy of the judgment or order, accompanied by proof of service.
42

43 (2) *Contents of petition*

44
45 In addition to any other applicable requirements, the petition must:
46

- 1 (A) State that the superior court judgment or order being challenged is governed by
2 the rules in this chapter;
3
4 (B) Indicate whether the judgment or order pertains to the Sacramento arena
5 project or a leadership project; and
6
7 (C) If the judgment or order pertains to a leadership project, provide notice that the
8 person or entity that applied for certification of the project as a leadership
9 project must make the payments required by 8.705.
10

11
12 **Rule 8.705. Court of Appeal costs in leadership projects * * ***
13

14
15 **Division 2. Rules Relating to the Superior Court Appellate Division**
16

17 **Advisory Committee Comment**
18

19 **Chapter 1. General Rules Applicable to Appellate Division Proceedings**
20

21 ***Rule 8.800. Application of division and scope of rules***

22 ***Rule 8.802. Construction***

23 ***Rule 8.804. Definitions***

24 ***Rule 8.805. Amendments to rules and statutes***

25 ***Rule 8.806. Applications***

26 ***Rule 8.808. Motions***

27 ***Rule 8.809. Judicial notice***

28 ***Rule 8.810. Extending time***

29 ***Rule 8.811. Policies and factors governing extensions of time***

30 ***Rule 8.812. Relief from default***

31 ***Rule 8.813. Shortening time***

32 ***Rule 8.814. Substituting parties; substituting or withdrawing attorneys***

33 ***Rule 8.816. Address and telephone number of record; notice of change***

34 ***Rule 8.817. Service and filing***

35 ***Rule 8.818. Waiver of fees and costs***

36 ***Rule 8.819. Sealed records***
37

38 **Rule 8.800. Application of Division and scope of rules**
39

40 **(a) Application**
41

42 The rules in this division apply to:
43

- 44 (1) Appeals in the appellate division of the superior court; and
45
46 (2) Writ proceedings, motions, applications, and petitions in the appellate division of the
47 superior court.

1 **(b) Scope of rules**

2
3 **These rules in this division apply to documents filed and served electronically as well as in paper**
4 **form, unless otherwise provided.**

5
6
7 **Rule 8.802. Construction * * ***

8
9
10 **Rule 8.8048.803. Definitions**

11 As used in this division, unless the context or subject matter otherwise requires:

- 12
13
14 (1) “Action” includes special proceeding.
15
16 (2) “Case” includes action or proceeding.
17
18 (3) “Civil case” means a case prosecuted by one party against another for the declaration,
19 enforcement, or protection of a right or the redress or prevention of a wrong. Civil cases
20 include all cases except criminal cases.
21
22 (4) “Unlimited civil cases” and “limited civil cases” are defined in Code of Civil Procedure
23 section 85 et seq.
24
25 (5) “Criminal case” means a proceeding by which a party charged with a public offense is
26 accused and brought to trial and punishment.
27
28 (6) “Rule” means a rule of the California Rules of Court.
29
30 (7) “Local rule” means every rule, regulation, order, policy, form, or standard of general
31 application adopted by a court to govern practice and procedure in that court or by a judge
32 of the court to govern practice or procedure in that judge’s courtroom.
33
34 (8) “Presiding judge” includes the acting presiding judge or the judge designated by the
35 presiding judge.
36
37 (9) “Judge” includes, as applicable, a judge of the superior court, a commissioner, or a
38 temporary judge.
39
40 (10) “Person” includes a corporation or other legal entity as well as a natural person.
41
42 (11) “Appellant” means the appealing party.
43
44 (12) “Respondent” means the adverse party.
45

1 (13) “Party” is a person appearing in an action. Parties include both self-represented persons
2 and persons represented by an attorney of record. “Party,” “applicant,” “petitioner,” or any
3 other designation of a party includes the party’s attorney of record.
4

5 (14) “Attorney” means a member of the State Bar of California.
6

7 (15) “Counsel” means an attorney.
8

9 (16) “Prosecuting attorney” means the city attorney, county counsel, or district attorney
10 prosecuting an infraction or misdemeanor case.
11

12 (17) “Complaint” includes a citation.
13

14 (18) “Service” means service in the manner prescribed by a statute or rule.
15

16 (19) “Declaration” includes “affidavit.”
17

18 (20) “Trial court” means the superior court from which an appeal is taken.
19

20 (21) “Reviewing court” means the appellate division of the superior court.
21

22 (22) “Judgment” includes any judgment or order that may be appealed.
23

24 (23) The words “attach” or “attachment” may refer to either physical attachment or electronic
25 attachment, as appropriate.
26

27 (24) The words “copy” or “copies” may refer to electronic copies, as appropriate.
28

29 (25) The word “cover” includes the cover page of a document filed electronically.
30

31 (26) “Written” and “writing” include electronically created written materials, whether or not
32 those materials are printed on paper.
33

34 **Advisory Committee Comment * * ***
35
36

37 **Rule 8.804. Requirements for signatures on documents**
38

39 Except as otherwise provided, or required by order of the court, signatures on electronically filed
40 documents must comply with the requirements of rule 8.77.
41

42 Drafter’s Note: Proposed new rule 8.800(b) copies the “scope of rules” provision of
43 proposed rule 8.11 to apply to the Superior Court Appellate Division. The definitions
44 added to Rule 8.10, pertaining to appeals to the Courts of Appeal and the Supreme
45 Court, have been added to rule 8.804 (which is proposed to be renumbered as rule
46 8.803), to the definitions applicable to rules pertaining to the Superior Court Appellate
47 Division.

1
2 Division 1, Chapter 1, Article 5 of Title 8 (rules 8.70 to 8.79) govern e-filing in the Courts
3 of Appeal and the Supreme Court. There is no parallel article applying to the Superior
4 Court Appellate Division. I have added proposed new rule 8.804 here to clarify that the
5 requirements for signatures on e-filed documents set forth in rule 8.77 also apply in the
6 Superior Court Appellate Division, as this issue recurs throughout the Appellate Division
7 rules. JATS may wish to consider at a later date whether the trial court rules on e-filing
8 should apply in the superior court appellate division or if a set a e-filing rules specific to
9 the appellate division should be adopted.

10
11
12 **Rule 8.805. Amendments to rules and statutes * * ***

13
14 **Rule 8.806. Applications**

15
16 **(a) Service and filing * * ***

17
18 **(b) Contents * * ***

19
20 **(c) Envelopes**

21
22 **If any party or parties in the case are served in paper form, an application must be**
23 **accompanied by addressed, postage-prepaid envelopes for the clerk's use in mailing copies**
24 **of the order on the application to all those parties.**

25
26 **(d) Disposition * * ***

27 **Advisory Committee Comment * * ***

28
29 Drafter's Note: Note that the subcommittee recommended deleting the equivalent
30 provision in the rules for the Court of Appeal and Supreme Court based on the
31 conclusion that it did not save court resources to receive these envelopes. JATS may
32 want to consider if this is also the case in the superior court appellate division.
33

34
35 **Rule 8.808. Motions * * ***

36
37 **Rule 8.809. Judicial notice * * ***

38
39 **Rule 8.810. Extending time * * ***

40
41 **Rule 8.811. Policies and factors governing extensions of time * * ***

42
43 **Rule 8.812. Relief from default * * ***

44
45 **Rule 8.813. Shortening time * * ***

1 **Rule 8.814. Substituting parties; substituting or withdrawing attorneys**

2
3 **(a) Substituting parties * * ***

4
5 **(b) Substituting attorneys * * ***

6
7 **(c) Withdrawing attorney**

- 8
9 (1) An attorney may request withdrawal by filing a motion to withdraw. Unless the court
10 orders otherwise, the motion need be served only on the party represented and the
11 attorneys directly affected.
12
13 (2) The proof of service need not include the address of the party represented. But if the
14 court grants the motion, the withdrawing attorney must promptly provide the court
15 and the opposing party with the party's current or last known address, e-mail
16 address, and telephone number.
17
18 (3) In all appeals and in original proceedings related to a trial court proceeding, the
19 appellate division clerk must notify the trial court of any ruling on the motion.
20
21

22 **Rule 8.816. Address and other contact information of record; notice of change * * ***

23
24 **Rule 8.817. Service and filing * * ***

25
26 Drafter's Note: Rule 8.817 mirrors the provisions of rule 8.25. No changes are
27 proposed to either rule at this time.
28
29

30 **Rule 8.818. Waiver of fees and costs * * ***

31
32 **Rule 8.819. Sealed records * * ***

33
34
35 **Chapter 2. Appeals and Records in Limited Civil Cases**
36 **Article 1. Taking Civil Appeals**

37 *Rule 8.820. Application of chapter*

38 *Rule 8.821. Notice of appeal*

39 *Rule 8.822. Time to appeal*

40 *Rule 8.823. Extending the time to appeal*

41 *Rule 8.824. Writ of supersedeas*

42 *Rule 8.825. Abandonment, voluntary dismissal, and compromise*

43
44 Drafter's Note: This Article generally mirrors the provisions of Division 1, Chapter 2,
45 Article 1 (rules 8.100 to 8.116) and the changes proposed here are the same as are
46 proposed for that Article.

1
2 **Rule 8.820. Application of chapter * * ***

3
4
5 **Rule 8.821. Notice of appeal**

6
7 **(a) Notice of appeal * * ***

8
9 **(b) Filing fee * * ***

10
11 **(c) Failure to pay filing fee * * ***

12
13 **(d) Notification of the appeal**

14
15 (1) When the notice of appeal is filed, the trial court clerk must promptly ~~mail~~ send a
16 notification of the filing of the notice of appeal to the attorney of record for each
17 party and to any unrepresented party. The clerk must also ~~mail~~ send or deliver this
18 notification to the appellate division clerk.

19
20 (2) The notification must show the date it was ~~mailed~~ sent and must state the number
21 and title of the case and the date the notice of appeal was filed.

22
23 (3) A copy of the notice of appeal is sufficient notification under (1) if the required
24 information is on the copy or is added by the trial court clerk.

25
26 (4) The ~~mailing~~ sending of a notification under (1) is a sufficient performance of the
27 clerk's duty despite the death of the party or the discharge, disqualification,
28 suspension, disbarment, or death of the attorney.

29
30 (5) Failure to comply with any provision of this subdivision does not affect the validity
31 of the notice of appeal.

32
33 **(e) Notice of cross-appeal * * ***

34
35 **Advisory Committee Comment * * ***

36
37
38 **Rule 8.822. Time to appeal**

39
40 **(a) Normal time**

41
42 (1) Unless a statute or rule 8.823 provides otherwise, a notice of appeal must be filed on
43 or before the earliest of:

44
45 (A) 30 days after the trial court clerk serves the party filing the notice of appeal a
46 document entitled "Notice of Entry" of judgment or a ~~file-stamped~~ endorsed
47 copy of the judgment, showing the date it was served;

1
2 (B) 30 days after the party filing the notice of appeal serves or is served by a party
3 with a document entitled “Notice of Entry” of judgment or a file-~~stamped~~
4 endorsed copy of the judgment, accompanied by proof of service; or

5
6 (C) 90 days after the entry of judgment.
7

8 (2) Service under (1)(A) and (B) may be by any method permitted by the Code of Civil
9 Procedure, including electronic service when permitted under Code of Civil
10 Procedure section 1010.6 and rules 2.250-2.261.

11
12 (3) If the parties stipulated in the trial court under Code of Civil Procedure section
13 1019.5 to waive notice of the court order being appealed, the time to appeal under
14 (1)(C) applies unless the court or a party serves notice of entry of judgment or a file-
15 ~~stamped~~ endorsed copy of the judgment to start the time period under (1)(A) or (B).
16

17 (b) **What constitutes entry * * ***

18
19 (c) **Premature notice of appeal * * ***

20
21 (d) **Late notice of appeal * * ***

22
23 **Advisory Committee Comment * * ***
24
25

26 **Rule 8.823. Extending the time to appeal**

27
28 (a) **Extension of time * * ***

29
30 (b) **Motion for a new trial * * ***

31
32 (c) **Motion to vacate judgment * * ***

33
34 (d) **Motion for judgment notwithstanding the verdict * * ***

35
36 (e) **Motion to reconsider appealable order * * ***

37
38 (f) **Public entity actions under Government Code section 962, 984, or 985**

39
40 If a public entity defendant serves and files a valid request for a mandatory settlement
41 conference on methods of satisfying a judgment under Government Code section 962, an
42 election to pay a judgment in periodic payments under Government Code section 984 and
43 rule 3.1804, or a motion for a posttrial hearing on reducing a judgment under Government
44 Code section 985, the time to appeal from the judgment is extended for all parties until the
45 earliest of:
46

- 1 (1) 60 days after the superior court clerk serves the party filing the notice of appeal with
2 a document entitled “Notice of Entry” of judgment or a file-stamped endorsed copy
3 of the judgment, showing the date either was served;
4
5 (2) 60 days after the party filing the notice of appeal serves or is served by a party with a
6 document entitled “Notice of Entry” of judgment or a file-stamped endorsed copy of
7 the judgment, accompanied by proof of service; or
8
9 (3) 90 days after entry of judgment.

10
11 **(g) Cross-appeal * * ***

12
13 **(h) Proof of service* * ***

14
15
16 **Rule 8.824. Writ of supersedeas**

17
18 **(a) Petition**

- 19
20 (1) A party seeking a stay of the enforcement of a judgment or order pending appeal
21 may serve and file a petition for writ of supersedeas in the appellate division.
22
23 (2) The petition must bear the same title as the appeal.
24
25 (3) The petition must explain the necessity for the writ and include a memorandum.
26
27 (4) If the record has not been filed in the reviewing court:
28
29 (A) The petition must include a statement of the case sufficient to show that the
30 petitioner will raise substantial issues on appeal, including a fair summary of
31 the material facts and the issues that are likely to be raised on appeal.
32
33 (B) The petitioner must file the following documents with the petition:
34
35 (i) The judgment or order, showing its date of entry;
36
37 (ii) The notice of appeal, showing its date of filing;
38
39 (iii) A reporter’s transcript of any oral statement by the court supporting its
40 rulings related to the issues that are likely to be raised on appeal, or, if a
41 transcript is unavailable, a declaration fairly summarizing any such
42 statements;
43
44 (iv) Any application for a stay filed in the trial court, any opposition to that
45 application, and a reporter’s transcript of the oral proceedings concerning
46 the stay or, if a transcript is unavailable, a declaration fairly summarizing

1 the proceedings, including the parties' arguments and any statement by
2 the court supporting its ruling; and

3
4 (v) Any other document from the trial court proceeding that is necessary for
5 proper consideration of the petition.

6
7 (C) The documents listed in (B) must comply with the following requirements:

8
9 (i) **If filed in paper form, tThey** must be bound together at the end of the
10 petition or in separate volumes not exceeding 300 pages each. The pages
11 must be consecutively numbered;

12
13 (ii) **If filed in paper form, tThey** must be index-tabbed by number or letter;
14 and

15
16 (iii) They must begin with a table of contents listing each document by its
17 title and its index-~~tab~~ number or letter.

18
19 (5) The petition must be verified.

20
21 **(b) Opposition * * ***

22
23 **(c) Temporary stay * * ***

24
25 **(d) Issuing the writ * * ***

26
27 **Advisory Committee Comment * * ***

28
29
30 **Rule 8.825. Abandonment, voluntary dismissal, and compromise * * ***

31
32 **Article 2. Record in Civil Appeals**

33
34 ***Rule 8.830. Record on appeal***

35 ***Rule 8.831. Notice designating the record on appeal***

36 ***Rule 8.832. Clerk's transcript***

37 ***Rule 8.833. Trial court file instead of clerk's transcript***

38 ***Rule 8.834. Reporter's transcript***

39 ***Rule 8.835. Record when trial proceedings were officially electronically recorded***

40 ***Rule 8.836. Agreed statement***

41 ***Rule 8.837. Statement on appeal***

42 ***Rule 8.838. Form of the record***

43 ***Rule 8.839. Record in multiple appeals***

44 ***Rule 8.840. Completion and filing of the record***

45 ***Rule 8.841. Augmenting and correcting the record in the appellate division***

46 ***Rule 8.842. Failure to procure the record***

47 ***Rule 8.843. Transmitting exhibits***

1
2 Drafter's Note: This Article generally mirrors the provisions of Division 1, Chapter 2,
3 Article 2 (rules 8.120 to 8.163) and the changes proposed here are nearly identical to
4 those proposed for that Article.

5
6 **Rule 8.830. Record on appeal * * ***

7
8 **Rule 8.831. Notice designating the record on appeal * * ***

9
10
11 **Rule 8.832. Clerk's transcript * * ***

12
13 **Advisory Committee Comment**

14
15 Under rule 8.838, the clerk's transcript may be in electronic form, when permitted under the reviewing
16 court's local rules.

17
18 **Subdivision (a).** The supporting and opposing memoranda and attachments to any motion to vacate the
19 judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order are not
20 required to be included in the clerk's transcript under subdivision (a)(1)(D) but may be included by
21 designation of a party under (a)(3) or on motion of a party or the reviewing court under rule 8.841.

22
23 **Subdivision (d).** The different timelines for preparing a clerk's transcript under subdivision (d)(2)(A) and
24 (B) recognize that an appellant may apply for and receive a waiver of fees at different points during the
25 appellate process. Some appellants may have applied for and obtained an order waiving fees before
26 receiving the estimate of the cost of the clerk's transcript and thus may be able to provide that order to the
27 court in lieu of making a deposit for the clerk's transcript. Other appellants may not apply for a waiver
28 until after they receive the estimate of the cost for the clerk's transcript, in which case the time for
29 preparing the transcript runs from the granting of that waiver.

30
31 In cases in which a reporter's transcript has been designated, subdivision (d)(3) gives the clerk the option
32 of waiting until the deposit for the reporter's transcript has been made before beginning preparation of the
33 clerk's transcript.

34
35 Drafter's Note: As with rule 8.122, the rule is unchanged, but a sentence is added to
36 the Advisory Committee Comment to note that the clerk's transcript may be in electronic
37 form.

38
39
40 **Rule 8.833. Trial court file instead of clerk's transcript**

41
42 **(a) Application * * ***

43
44 **(b) Cost estimate; preparation of file; transmittal**

- 45
46 (1) Within 10 days after the appellant serves a notice under rule 8.831 indicating that the
47 appellant elects to use a clerk's transcript, the trial court clerk may ~~mail~~ send the
48 appellant a notice indicating that the appellate division for that court has elected by

1 local court rule to use the original trial court file instead of a clerk’s transcript and
2 providing the appellant with an estimate of the cost to prepare the file, including the
3 cost of sending the index under (4).
4

- 5 (2) Within 10 days after the clerk ~~mails~~ sends the estimate under (1), the appellant must
6 deposit the estimated cost with the clerk, unless otherwise provided by law or the
7 party submits an application for a waiver of the cost under rule 8.818 or an order
8 granting a waiver of this cost.
9
- 10 (3) Within 10 days after the appellant deposits the cost or the court files an order
11 waiving that cost, the trial court clerk must put the trial court file in chronological
12 order, number the pages, and attach a chronological index and a list of all attorneys
13 of record, the parties they represent, and any unrepresented parties.
14
- 15 (4) The clerk must send copies of the index to all attorneys of record and any
16 unrepresented parties for their use in paginating their copies of the file to conform to
17 the index.
18
- 19 (5) If the appellant elected to proceed with a reporter’s transcript, the clerk must send the
20 prepared file to the appellate division with the reporter’s transcript. If the appellant
21 elected to proceed without a reporter’s transcript, the clerk must immediately send
22 the prepared file to the appellate division.
23

24 Drafter’s Note: As with rule 8.128 (applying to use of the superior court file instead of
25 clerk’s transcript in civil appeals to the Courts of Appeal), JATS may wish in the future to
26 consider substantive amendments to address the use of an electronic superior court file
27 in lieu of a clerk’s transcript.
28
29

30 **Rule 8.834. Reporter’s transcript**

31 (a) **Notice**

- 32 (1) A notice designating a reporter’s transcript under rule 8.831 must specify the date of
33 each proceeding to be included in the transcript and may specify portions of the
34 designated proceedings that are not to be included. The notice must identify any
35 proceeding for which a certified transcript has previously been prepared by checking
36 the appropriate box on *Appellant’s Notice Designating Record on Appeal (Limited
37 Civil Case)* (form APP-103) or, if that form is not used, placing an asterisk before
38 that proceeding.
39
40
- 41 (2) If the appellant designates less than all the testimony, the notice must state the points
42 to be raised on the appeal; the appeal is then limited to those points unless, on
43 motion, the appellate division permits otherwise.
44
45

1 (3) If the appellant serves and files a notice under rule 8.831 designating a reporter's
2 transcript, the respondent may, within 10 days after such service, serve and file a
3 notice in the trial court designating any additional proceedings the respondent wants
4 included in the reporter's transcript. The notice must identify any proceeding for
5 which a certified transcript has previously been prepared by checking the appropriate
6 box on *Respondent's Notice Designating Record on Appeal (Limited Civil Case)*
7 (form APP-110) or, if that form is not used, placing an asterisk before that
8 proceeding.

9
10 (4) Except when a party deposits a certified transcript of all the designated proceedings
11 under (b)(2)(D) with the notice of designation, the clerk must promptly ~~mail~~ send a
12 copy of each notice to the reporter. The copy must show the date it was ~~mailed~~ sent.

13
14 **(b) Deposit or substitute for cost of transcript**

15
16 (1) Within 10 days after the clerk ~~mails~~ sends a notice under (a)(4), the reporter must file
17 the estimate with the clerk—or notify the clerk in writing of the date that he or she
18 notified the appellant directly—of the estimated cost of preparing the reporter's
19 transcript at the statutory rate.

20
21 (2) Within 10 days after the clerk notifies the appellant of the estimated cost of
22 preparing the reporter's transcript—or within 10 days after the reporter notifies the
23 appellant directly—the appellant must do one of the following:

24
25 (A) Deposit with the clerk an amount equal to the estimated cost and a fee of \$50
26 for the superior court to hold this deposit in trust;

27
28 (B) File with the clerk a written waiver of the deposit signed by the reporter;

29
30 (C) File a copy of a Transcript Reimbursement Fund application filed under (3);

31
32 (D) File a certified transcript of all of the designated proceedings. The transcript
33 must comply with the format requirements of rule 8.144; or

34
35 (E) Notify the clerk that:

36
37 (i) He or she now elects to use a statement on appeal instead of a reporter's
38 transcript. The appellant must prepare, serve, and file a proposed
39 statement on appeal within 20 days after serving and filing the notice and
40 must otherwise comply with the requirements for statements on appeal
41 under rule 8.837;

42
43 (ii) He or she now elects to proceed without a record of the oral proceedings
44 in the trial court; or

- 1 (iii) He or she is abandoning the appeal by filing an abandonment in the
2 reviewing court under rule 8.825.
3
- 4 (3) With its notice of designation, a party may serve and file a copy of its application to
5 the Court Reporters Board for payment or reimbursement from the Transcript
6 Reimbursement Fund under Business and Professions Code section 8030.2 et seq.
7
- 8 (A) Within 90 days after the appellant serves and files a copy of its application to
9 the Court Reporters Board, the appellant must either file with the court a copy
10 of the Court Reporters Board's provisional approval of the application or take
11 one of the following actions:
12
- 13 (i) Deposit the amount required under (2) or the reporter's written waiver of
14 this deposit;
15
- 16 (ii) Notify the superior court that he or she now elects to use a statement on
17 appeal instead of a reporter's transcript. The appellant must prepare,
18 serve, and file a proposed statement on appeal within 20 days after
19 serving and filing the notice and must otherwise comply with the
20 requirements for statements on appeal under rule 8.837;
21
- 22 (iii) Notify the superior court that that he or she elects to proceed without a
23 record of the oral proceedings; or
24
- 25 (iv) Notify the superior court that he or she is abandoning the appeal by filing
26 an abandonment in the reviewing court under rule 8.825.
27
- 28 (B) Within 90 days after the respondent serves and files a copy of its application to
29 the Court Reporters Board, the respondent must either file with the court a
30 copy of the Court Reporters Board's provisional approval of the application or
31 take one of the following actions:
32
- 33 (i) Deposit the amount required under (2) or the reporter's written waiver of
34 this deposit; or
35
- 36 (ii) Notify the superior court that the respondent no longer wants the
37 additional proceedings it designated for inclusion in the reporter's
38 transcript.
39
- 40 (C) If the appellant fails to timely take one of the actions specified in (A) or the
41 respondent fails to timely make the deposit or send the notice under (B), the
42 clerk must promptly issue a notice of default under rule 8.842.
43
- 44 (D) If the Court Reporters Board provisionally approves the application, the
45 reporter's time to prepare the transcript under (d)(1) begins when the clerk
46 ~~mails~~ sends notice of the provisional approval under (4).

1
2 (4) The clerk must promptly notify the reporter to prepare the transcript when the court
3 receives:

4
5 (A) The required deposit under (2)(A);

6
7 (B) A waiver of the deposit signed by the reporter under (2)(B); or

8
9 (C) A copy of the Court Reporters Board's provisional approval of the party's
10 application for payment from the Transcript Reimbursement Fund under (3).

11
12 **(c) Contents of reporter's transcript * * ***

13
14 **(d) Filing the reporter's transcript; copies; payment * * ***

15
16 **(e) Disputes over transcript costs * * ***

17
18 **(f) Notice when proceedings cannot be transcribed**

19
20 (1) If any portion of the designated proceedings were not reported or cannot be
21 transcribed, the trial court clerk must so notify the designating party ~~by mail~~ in
22 writing; the notice must:

23
24 (A) Indicate whether the identified proceedings were officially electronically
25 recorded under Government Code section 69957; and

26
27 (B) Show the date it was ~~mailed~~ sent.

28
29 (2) Within 10 days after the notice under (1) is ~~mailed~~ sent, the designating party must
30 file a new election notifying the court whether the party elects to proceed with or
31 without a record of the identified oral proceedings. If the party elects to proceed with
32 a record of these oral proceedings, the notice must specify which form of the record
33 listed in rule 8.830(a)(2) the party elects to use.

34
35 (A) The party may not elect to use a reporter's transcript.

36
37 (B) The party may not elect to use an official electronic recording or a transcript
38 prepared from an official electronic recording under rule 8.835 unless the
39 clerk's notice under (1) indicates that proceedings were officially electronically
40 recorded under Government Code section 69957.

41
42 (C) The party must comply with the requirements applicable to the form of the
43 record elected.

44
45 (3) This remedy supplements any other available remedies.

46
47 **Advisory Committee Comment * * ***

1
2 Drafter's Note: Subdivision (d)(4) requires the reporter to provide to the court or any
3 party, upon request, a computer-readable copy of the transcript in the format prescribed
4 by Code of Civil Procedure section 271 (b). JATS may wish to consider in the future
5 substantive amendment of this provision to clarify when an electronic version of the
6 reporter's transcript may be used and what the format of such a computer readable
7 version should be. Such amendment may in particular be needed if CCP section 271 is
8 amended to allow use of an electronic reporter's transcript as the original, or to change
9 the format requirements applicable to computer readable copies.

10
11
12 **Rule 8.835. Record when trial proceedings were officially electronically recorded**

13
14 **(a) Application * * ***

15
16 **(b) Transcripts from official electronic recording * * ***

17
18 **(c) Use of official recording as record of oral proceedings * * ***

19
20 **(d) Notice when proceedings were not officially electronically recorded or cannot be**
21 **transcribed**

22
23 (1) If the appellant elects under rule 8.831 to use a transcript prepared from an official
24 electronic recording or the recording itself, the trial court clerk must notify the
25 appellant ~~by mail~~ in writing if any portion of the designated proceedings was not
26 officially electronically recorded or cannot be transcribed. The notice must:

27
28 (A) Indicate whether the identified proceedings were reported by a court reporter;
29 and

30
31 (B) Show the date it was ~~mailed~~ sent.

32
33 (2) Within 10 days after the notice under (1) is ~~mailed~~ sent, the appellant must file a new
34 election notifying the court whether the appellant elects to proceed with or without a
35 record of the oral proceedings that were not recorded or cannot be transcribed. If the
36 appellant elects to proceed with a record of these oral proceedings, the notice must
37 specify which form of the record listed in rule 8.830(a)(2) the appellant elects to use.

38
39 (A) The appellant may not elect to use an official electronic recording or a
40 transcript prepared from an official electronic recording.

41
42 (B) The appellant may not elect to use a reporter's transcript unless the clerk's
43 notice under (1) indicates that proceedings were reported by a court reporter.

44
45 (C) The appellant must comply with the requirements applicable to the form of the
46 record elected.

1
2 **Rule 8.836. Agreed statement * * ***

3
4 **Rule 8.837. Statement on appeal * * ***

5
6
7 **Rule 8.838. Form of the record**

8
9 **(a) Paper and format**

10
11 (1) Where the local rules for the appellate division so allow, all or part of the record may
12 be in electronic format.

13
14 (2) Except as otherwise provided in this rule, clerk's and reporter's transcripts must
15 comply with the paper and format requirements of rule 8.144(a).

16
17 **(b) Indexes**

18
19 At the beginning of the first volume of each:

20
21 (1) The clerk's transcript must contain alphabetical and chronological indexes listing
22 each document and the volume, where applicable, and page where it first appears;

23
24 (2) The reporter's transcript must contain alphabetical and chronological indexes listing
25 the volume, where applicable, and page where each witness's direct, cross, and any
26 other examination, begins; and

27
28 (3) The reporter's transcript must contain an index listing the volume and page where
29 any exhibit is marked for identification and where it is admitted or refused.

30
31 **(c) Binding and cover**

32
33 (1) If filed in paper form, Clerk's and reporter's transcripts must be bound on the left
34 margin in volumes of no more than 300 sheets, except that transcripts may be bound
35 at the top if required by a local rule of the appellate division.

36
37 (2) Each volume's cover must state the title and trial court number of the case, the
38 names of the trial court and each participating trial judge, the names and addresses of
39 appellate counsel for each party, the volume number, and the inclusive page numbers
40 of that volume.

41
42 (3) In addition to the information required by (2), the cover of each volume of the
43 reporter's transcript must state the dates of the proceedings reported in that volume.

44
45 **Rule 8.839. Record in multiple appeals * * ***

1 **Rule 8.840. Completion and filing of the record**

2
3 (a) **When the record is complete * * * ***

4
5 (b) **Filing the record**

6
7 When the record is complete, the trial court clerk must promptly send the original to the
8 appellate division and send to the appellant and respondent copies of any certified
9 statement on appeal and any copies of transcripts or official electronic recordings that they
10 have purchased. The appellate division clerk must promptly file the original and ~~mail~~ send
11 notice of the filing date to the parties.
12

13
14 **Rule 8.841. Augmenting and correcting the record in the appellate division * * ***

15
16
17 **Rule 8.842. Failure to procure the record**

18
19 (a) **Notice of default**

20
21 Except as otherwise provided by these rules, if a party fails to do any act required to
22 procure the record, the trial court clerk must promptly notify that party ~~by mail~~ in writing
23 that it must do the act specified in the notice within 15 days after the notice is ~~mailed~~ sent
24 and that, if it fails to comply, the reviewing court may impose the following sanctions:
25

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

27
28 (2) If the defaulting party is the respondent, the court may proceed with the appeal on
29 the record designated by the appellant.
30

31 (b) **Sanctions * * ***

32
33
34 **Rule 8.843. Transmitting exhibits**

35
36 (a) **Notice of designation * * ***

37
38 (b) **Application for later transmittal * * ***

39
40 (c) **Request by appellate division * * ***

41
42 (d) **Transmittal**

43
44 Unless the appellate division orders otherwise, within 20 days after notice under (a) is filed
45 or after the appellate division directs that an exhibit be sent:
46

1 (1) The trial court clerk must put any designated exhibits in the clerk’s possession into
2 numerical or alphabetical order and send them to the appellate division with two
3 copies of a list of the exhibits sent. If the appellate division clerk finds the list
4 correct, the clerk must sign and return one copy to the trial court clerk.
5

6 (2) Any party in possession of designated exhibits returned by the trial court must put
7 them into numerical or alphabetical order and send them to the appellate division
8 with two copies of a list of the exhibits sent. If the appellate division clerk finds the
9 list correct, the clerk must sign and return one copy to the party.
10

11 **(e) Return by appellate division**
12

13 On request, the appellate division may return an exhibit to the trial court or to the party that
14 sent it. When the remittitur issues, the appellate division must return all **exhibits not**
15 **transmitted electronically** to the trial court or to the party that sent them.
16

17 Drafter’s Note: Rule 8.843 is closely similar to rule 8.224, regarding civil appeals to the
18 Courts of Appeal. At the February 26, 2015 meeting, JATS considered and rejected
19 changes to subdivision (d) of rule 8.224 that would have made a distinction between
20 exhibits sent electronically, in which case the superior court or sending party would
21 need only send one copy of the list of exhibits, and exhibits sent in paper form, as to
22 which the requirement for two copies of the list would still apply. I have left rule 8.843
23 (d) unchanged, in accordance with the decision regarding rule 8.224 (d).
24

25 The proposed change in rule 8.843 (e) corresponds to the proposed change in rule
26 8.224 (e) approved by JATS at the February 26th meeting.
27
28

29 **Chapter 3. Appeals and Records in Misdemeanor Cases**
30

31 **Article 1. Taking Appeals in Misdemeanor Cases**
32

33 *Rule 8.850. Application of chapter*

34 *Rule 8.851. Appointment of appellate counsel*

35 *Rule 8.852. Notice of appeal*

36 *Rule 8.853. Time to appeal*

37 *Rule 8.854. Stay of execution and release on appeal*

38 *Rule 8.855. Abandoning the appeal*
39

40 **Rule 8.850. Application of chapter * * ***

41
42 **Rule 8.851. Appointment of appellate counsel * * ***
43
44
45

1 **Rule 8.852. Notice of appeal**

2
3 **(a) Notice of appeal * * ***

4
5 **(b) Notification of the appeal**

- 6
7 (1) When a notice of appeal is filed, the trial court clerk must promptly ~~mail~~ send a
8 notification of the filing to the attorney of record for each party and to any
9 unrepresented defendant. The clerk must also ~~mail~~ send or deliver this notification to
10 the appellate division clerk.
11
12 (2) The notification must show the date it was ~~mailed~~ sent or delivered, the number and
13 title of the case, the date the notice of appeal was filed, and whether the defendant
14 was represented by appointed counsel.
15
16 (3) The notification to the appellate division clerk must also include a copy of the notice
17 of appeal.
18
19 (4) A copy of the notice of appeal is sufficient notification under (1) if the required
20 information is on the copy or is added by the trial court clerk.
21
22 (5) The ~~mailing~~ sending of a notification under (1) is a sufficient performance of the
23 clerk's duty despite the discharge, disqualification, suspension, disbarment, or death
24 of the attorney.
25
26 (6) Failure to comply with any provision of this subdivision does not affect the validity
27 of the notice of appeal.
28

29 **Advisory Committee Comment * * ***

30
31
32 **Rule 8.853. Time to appeal**

33
34 **(a) Normal time * * ***

35
36 **(b) Cross-appeal**

37
38 If the defendant or the People timely appeal from a judgment or appealable order, the time
39 for any other party to appeal from the same judgment or order is either the time specified
40 in (a) or 15 days after the trial court clerk ~~mails~~ sends notification of the first appeal,
41 whichever is later.
42

43 **(c) Premature notice of appeal * * ***

44
45 **(d) Late notice of appeal * * ***

46
47 **Advisory Committee Comment * * ***

1
2 **Rule 8.854. Stay of execution and release on appeal * * ***

3
4 **Rule 8.855. Abandoning the appeal * * ***

5
6
7 **Article 2. Record in Misdemeanor Appeals**

8
9 *Rule 8.860. Normal record on appeal*

10 *Rule 8.861. Contents of clerk's transcript*

11 *Rule 8.862. Preparation of clerk's transcript*

12 *Rule 8.863. Trial court file instead of clerk's transcript*

13 *Rule 8.864. Record of oral proceedings*

14 *Rule 8.865. Contents of reporter's transcript*

15 *Rule 8.866. Preparation of reporter's transcript*

16 *Rule 8.867. Limited normal record in certain appeals*

17 *Rule 8.868. Record when trial proceedings were officially electronically recorded*

18 *Rule 8.869. Statement on appeal*

19 *Rule 8.870. Exhibits*

20 *Rule 8.871. Juror-identifying information*

21 *Rule 8.872. Sending and filing the record in the appellate division*

22 *Rule 8.873. Augmenting or correcting the record in the appellate division*

23 *Rule 8.874. Failure to procure the record*

24
25 Drafter's Note: Proposed changes here are consistent with the proposed changes to
26 rules 8.320-8.346 (record in criminal appeals to Courts of Appeal) and 8.830 to
27 8.843 (record in civil appeals to the Superior Court Appellate Division).
28

29 **Rule 8.860. Normal record on appeal * * ***

30
31 **Rule 8.861. Contents of clerk's transcript * * ***

32
33
34 **Rule 8.862. Preparation of clerk's transcript**

35
36 **(a) When preparation begins * * ***

37
38 **(b) Format of transcript * * ***

39
40 **(c) Probation officer's reports**

41
42 A probation officer's report included in the clerk's transcript under rule 8.861(12)(D) must
43 appear in only the copies of the appellate record that are sent to the reviewing court, to
44 appellate counsel for the People, and to appellate counsel for the defendant who was the
45 subject of the report or to the defendant if he or she is self-represented. If the report is in
46 paper form, it must be placed in a sealed envelope. The reviewing court's copy of the report,
47 and if applicable, the envelope, must be placed in a sealed envelope marked

1 **“CONFIDENTIAL—MAY NOT BE EXAMINED WITHOUT COURT ORDER—**
2 **PROBATION OFFICER REPORT.”**

3
4 **(d) When preparation must be completed * * ***

5
6 **(e) Certification * * ***

7
8 Drafter’s Note: I used the provisions of rule 8.45, pertaining to sealed and confidential
9 records, as a model for this language.

10
11 **Advisory Committee Comment * * ***

12
13
14 **Rule 8.863. Trial court file instead of clerk’s transcript * * ***

15
16
17 **Rule 8.864. Record of oral proceedings**

18
19 **(a) Appellant’s election**

20
21 The appellant must notify the trial court whether he or she elects to proceed with or
22 without a record of the oral proceedings in the trial court. If the appellant elects to proceed
23 with a record of the oral proceedings in the trial court, the notice must specify which form
24 of the record of the oral proceedings in the trial court the appellant elects to use:

25
26 (1) A reporter’s transcript under rules 8.865–8.867 or a transcript prepared from an
27 official electronic recording of the proceedings under rule 8.868(b). If the appellant
28 elects to use a reporter’s transcript, the clerk must promptly ~~mail~~ send a copy of
29 appellant’s notice making this election and the notice of appeal to each court
30 reporter;

31
32 (2) An official electronic recording of the proceedings under rule 8.868(c). If the
33 appellant elects to use the official electronic recording itself, rather than a transcript
34 prepared from that recording, the appellant must attach a copy of the stipulation
35 required under rule 8.868(c); or

36
37 (3) A statement on appeal under rule 8.869.

38
39 **(b) Time for filing election * * ***

40
41 **(c) Failure to file election * * ***

42
43 **Advisory Committee Comment * * ***

44
45
46 **Rule 8.865. Contents of reporter’s transcript * * ***

1 **Rule 8.866. Preparation of reporter’s transcript**

2
3 **(a) When preparation begins**

4
5 (1) Unless the court has adopted a local rule under rule 8.865(b) that provides otherwise,
6 the reporter must immediately begin preparing the reporter’s transcript if the notice
7 sent to the reporter by the clerk under rule 8.864(a)(1) indicates either:

8
9 (A) That the defendant was represented by appointed counsel at trial; or

10
11 (B) That the appellant is the People.

12
13 (2) If the notice sent to the reporter by the clerk under rule 8.864(a)(1) indicates that the
14 appellant is the defendant and that the defendant was not represented by appointed
15 counsel at trial:

16
17 (A) Within 10 days after the date the clerk ~~mailed~~ sent the notice under rule
18 8.864(a)(1), the reporter must file with the clerk the estimated cost of preparing
19 the reporter’s transcript.

20
21 (B) The clerk must promptly notify the appellant and his or her counsel of the
22 estimated cost of preparing the reporter’s transcript. The notification must
23 show the date it was ~~mailed~~ sent.

24
25 (C) Within 10 days after the date the clerk ~~mailed~~ sent the notice under (B), the
26 appellant must do one of the following:

27
28 (i) Deposit with the clerk an amount equal to the estimated cost of preparing
29 the transcript;

30
31 (ii) File a waiver of the deposit signed by the reporter;

32
33 (iii) File a declaration of indigency supported by evidence in the form required
34 by the Judicial Council;

35
36 (iv) File a certified transcript of all of the proceedings required to be included
37 in the reporter’s transcript under rule 8.865. The transcript must comply
38 with the format requirements of rule 8.144;

39
40 (v) Notify the clerk by filing a new election that he or she will be using a
41 statement on appeal instead of a reporter’s transcript. The appellant must
42 prepare, serve, and file a proposed statement on appeal within 20 days
43 after serving and filing the notice and must otherwise comply with the
44 requirements for statements on appeal under rule 8.869; or

1 (vi) Notify the clerk by filing a new election that he or she now elects to
2 proceed without a record of the oral proceedings in the trial court; or
3

4 (vii) Notify the clerk that he or she is abandoning the appeal by filing an
5 abandonment in the reviewing court under rule 8.855.
6

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

11 (i) Deposit with the clerk an amount equal to the estimated cost of preparing
12 the transcript;
13

14 (ii) File with the clerk a waiver of the deposit signed by the reporter;
15

16 (iii) File a certified transcript of all of the proceedings required to be included
17 in the reporter's transcript under rule 8.865. The transcript must comply
18 with the format requirements of rule 8.144;
19

20 (iv) Notify the clerk by filing a new election that he or she will be using a
21 statement on appeal instead of a reporter's transcript. The appellant must
22 prepare, serve, and file a proposed statement on appeal within 20 days
23 after serving and filing the notice and must otherwise comply with the
24 requirements for statements on appeal under rule 8.869;
25

26 (v) Notify the clerk by filing a new election that he or she now elects to
27 proceed without a record of the oral proceedings in the trial court; or
28

29 (vi) Notify the clerk that he or she is abandoning the appeal by filing an
30 abandonment in the reviewing court under rule 8.855.
31

32 (E) The clerk must promptly notify the reporter to begin preparing the transcript
33 when:
34

35 (i) The clerk receives the required deposit under (C)(i) or (D)(i);
36

37 (ii) The clerk receives a waiver of the deposit signed by the reporter under
38 (C)(ii) or (D)(ii); or
39

40 (iii) The trial court determines that the appellant is indigent and orders that the
41 appellant receive the transcript without cost.
42

43 **(b) Format of transcript * * ***
44

45 **(c) Copies and certification * * ***
46

1 (d) **When preparation must be completed * * ***

2
3 (e) **Multi-reporter cases * * ***

4
5 (f) **Notice when proceedings were not reported or cannot be transcribed**

6
7 (1) If any portion of the oral proceedings to be included in the reporter's transcript was
8 not reported or cannot be transcribed, the trial court clerk must so notify the parties
9 by mail in writing. The notice must:

10
11 (A) Indicate whether the identified proceedings were officially electronically
12 recorded under Government Code section 69957; and

13
14 (B) Show the date it was ~~mailed~~ sent.

15
16 (2) Within 15 days after this notice is ~~mailed~~ sent by the clerk, the appellant must serve
17 and file a notice with the court stating whether the appellant elects to proceed with or
18 without a record of the identified proceedings. When the party elects to proceed with
19 a record of these oral proceedings:

20
21 (A) If the clerk's notice under (1) indicates that the proceedings were officially
22 electronically recorded under Government Code section 69957, the appellant's
23 notice must specify which form of the record listed in rule 8.864(a) other than
24 a reporter's transcript the appellant elects to use. The appellant must comply
25 with the requirements applicable to the form of the record elected.

26
27 (B) If the clerk's notice under (1) indicates that the proceedings were not officially
28 electronically recorded under Government Code section 69957, the appellant
29 must prepare, serve, and file a proposed statement on appeal within 20 days
30 after serving and filing the notice.

31
32 **Advisory Committee Comment * * ***

33
34 Drafter's Note: Subdivisions (c) and (d) require the reporter to prepare an original and
35 copies of the reporter's transcript and deliver these to the trial court clerk. JATS may in
36 the future wish to consider substantive amendment to these requirements, particularly if
37 Code of Civil Procedure section 271 is amended such that the original of a reporter's
38 transcript is no longer required to be in paper form, or changing the format requirements
39 for computer-readable copies of a reporter's transcript.

40
41
42 **Rule 8.867. Limited normal record in certain appeals * * ***

1 **Rule 8.868. Record when trial proceedings were officially electronically recorded**

2
3 **(a) Application * * ***

4
5 **(b) Transcripts from official electronic recording * * ***

6
7 **(c) Use of official recording as record of oral proceedings * * ***

8
9 **(d) Contents * * ***

10
11 **(e) When preparation begins**

12
13 (1) If the appellant files an election under rule 8.864 to use a transcript of an official
14 electronic recording or a copy of the official electronic recording as the record of the
15 oral proceedings, unless the trial court has a local rule providing otherwise,
16 preparation of a transcript or a copy of the recording must begin immediately if
17 either:

18
19 (A) The defendant was represented by appointed counsel at trial; or

20
21 (B) The appellant is the People.

22
23 (2) If the appellant is the defendant and the defendant was not represented by appointed
24 counsel at trial:

25
26 (A) Within 10 days after the date the defendant files the election under rule
27 8.864(a)(1), the clerk must notify the appellant and his or her counsel of the
28 estimated cost of preparing the transcript or the copy of the recording. The
29 notification must show the date it was ~~mailed~~ sent.

30
31 (B) Within 10 days after the date the clerk ~~mailed~~ sent the notice under (A), the
32 appellant must do one of the following:

33
34 (i) Deposit with the clerk an amount equal to the estimated cost of preparing
35 the transcript or the copy of the recording;

36
37 (ii) File a declaration of indigency supported by evidence in the form
38 required by the Judicial Council;

39
40 (iii) Notify the clerk by filing a new election that he or she will be using a
41 statement on appeal instead of a transcript or copy of the recording. The
42 appellant must prepare, serve, and file a proposed statement on appeal
43 within 20 days after serving and filing the notice and must otherwise
44 comply with the requirements for statements on appeal under rule 8.869;

1 (iv) Notify the clerk by filing a new election that he or she now elects to
2 proceed without a record of the oral proceedings in the trial court; or
3

4 (v) Notify the clerk that he or she is abandoning the appeal by filing an
5 abandonment in the reviewing court under rule 8.855.
6

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

11 (i) Deposit with the clerk an amount equal to the estimated cost of preparing
12 the transcript or the copy of the recording;
13

14 (ii) Notify the clerk by filing a new election that he or she will be using a
15 statement on appeal instead of a reporter's transcript. The appellant must
16 prepare, serve, and file a proposed statement on appeal within 20 days
17 after serving and filing the notice and must otherwise comply with the
18 requirements for statements on appeal under rule 8.869;
19

20 (iii) Notify the clerk by filing a new election that he or she now elects to
21 proceed without a record of the oral proceedings in the trial court; or
22

23 (iv) Notify the clerk that he or she is abandoning the appeal by filing an
24 abandonment in the reviewing court under rule 8.855.
25

26 (D) Preparation of the transcript or the copy of the recording must begin when:
27

28 (i) The clerk receives the required deposit under (B)(i) or (C)(i); or
29

30 (ii) The trial court determines that the defendant is indigent and orders that
31 the defendant receive the transcript or the copy of the recording without
32 cost.
33

34 **(f) Notice when proceedings were not officially electronically recorded or cannot be**
35 **transcribed**
36

37 (1) If any portion of the oral proceedings to be included in the transcript was not
38 officially electronically recorded under Government Code section 69957 or cannot
39 be transcribed, the trial court clerk must so notify the parties by mail in writing. The
40 notice must:
41

42 (A) Indicate whether the identified proceedings were reported by a court reporter;
43 and
44

45 (B) Show the date it was ~~mailed~~ sent.
46

1 (2) Within 15 days after this notice is ~~mailed~~ sent by the clerk, the appellant must serve
2 and file a notice with the court stating whether the appellant elects to proceed with or
3 without a record of the identified oral proceedings. When the party elects to proceed
4 with a record of these oral proceedings:

5
6 (A) If the clerk's notice under (1) indicates that the proceedings were reported by a
7 court reporter, the appellant's notice must specify which form of the record
8 listed in rule 8.864(a) other than an official electronic recording or a transcript
9 prepared from an official electronic recording the appellant elects to use. The
10 appellant must comply with the requirements applicable to the form of the
11 record elected.

12
13 (B) If the clerk's notice under (1) indicates that the proceedings were not reported
14 by a court reporter, the appellant must prepare, serve, and file a proposed
15 statement on appeal within 20 days after serving and filing the notice.

16
17 **Advisory Committee Comment * * ***

18
19
20 **Rule 8.869. Statement on appeal * * ***

21
22
23 **Rule 8.870. Exhibits**

24
25 **(a) Exhibits deemed part of record * * ***

26
27 **(b) Notice of designation * * ***

28
29 **(c) Request by appellate division * * ***

30
31 **(d) Transmittal**

32
33 Unless the appellate division orders otherwise, within 20 days after the first notice under
34 (b) is filed or after the appellate division directs that an exhibit be sent:

35
36 (1) The trial court clerk must put any designated exhibits in the clerk's possession into
37 numerical or alphabetical order and send them to the appellate division with two
38 copies of a list of the exhibits. If the appellate division clerk finds the list correct, the
39 clerk must sign and return one copy to the trial court clerk.

40
41 (2) Any party in possession of designated exhibits returned by the trial court must put
42 them into numerical or alphabetical order and send them to the appellate division
43 with two copies of a list of the exhibits sent. If the appellate division clerk finds the
44 list correct, the clerk must sign and return one copy to the party.

45
46 **(e) Return by appellate division**

1 On request, the appellate division may return an exhibit to the trial court or to the party that
2 sent it. When the remittitur issues, the appellate division must return all exhibits **not**
3 **transmitted electronically** to the trial court or to the party that sent them.
4

5 Drafter's Note: The proposed changes here, and the unchanged requirements of
6 subdivision (d) regarding multiple copies of the list of exhibits, track what has been
7 proposed for rules 8.224 (already considered by JATS) and 8.843 (included in this
8 installment of changes).
9

10
11 **Rule 8.871. Juror-identifying information * * ***

12 **Advisory Committee Comment**
13
14
15

16 **Rule 8.872. Sending and filing the record in the appellate division**
17

18 (a) **When the record is complete * * ***
19

20 (b) **Sending the record * * ***
21

22 (c) **Filing the record**
23

24 On receipt, the appellate division clerk must promptly file the original record and ~~mail~~
25 send notice of the filing date to the parties.
26
27

28 **Rule 8.873. Augmenting or correcting the record in the appellate division * * ***
29
30

31 **Rule 8.874. Failure to procure the record**
32

33 (a) **Notice of default**
34

35 If a party fails to do any act required to procure the record, the trial court clerk must
36 promptly notify that party ~~by mail~~ in writing that it must do the act specified in the notice
37 within 15 days after the notice is ~~mailed~~ sent and that, if it fails to comply, the appellate
38 division may impose the following sanctions:
39

40 (1) When the defaulting party is the appellant:
41

- 42 (A) If the appellant is the defendant and is represented by appointed counsel on
43 appeal, the appellate division may relieve that appointed counsel and appoint
44 new counsel; or
45

1 (B) If the appellant is the People or the appellant is the defendant and is not
2 represented by appointed counsel, the appellate division may dismiss the
3 appeal.
4

5 (2) When the defaulting party is the respondent:
6

7 (A) If the respondent is the defendant and is represented by appointed counsel on
8 appeal, the appellate division may relieve that appointed counsel and appoint
9 new counsel; or
10

11 (B) If the respondent is the People or the respondent is the defendant and is not
12 represented by appointed counsel, the appellate division may proceed with the
13 appeal on the record designated by the appellant.
14

15 (b) **Sanctions * * ***
16
17

18 **Chapter 4. Briefs, Hearing, and Decision in Limited Civil and Misdemeanor Appeals**
19

20 *Rule 8.880. Application*

21 *Rule 8.881. Notice of briefing schedule*

22 *Rule 8.882. Briefs by parties and amici curiae*

23 *Rule 8.883. Contents and form of briefs*

24 *Rule 8.884. Appeals in which a party is both appellant and respondent*

25 *Rule 8.885. Oral argument*

26 *Rule 8.886. Submission of the cause*

27 *Rule 8.887. Decisions*

28 *Rule 8.888. Finality and modification of decision*

29 *Rule 8.889. Rehearing*

30 *Rule 8.890. Remittitur*

31 *Rule 8.891. Costs and sanctions in civil appeals*
32

33 **Rule 8.880. Application * * ***
34
35

36 **Rule 8.881. Notice of briefing schedule**
37

38 When the record is filed, the clerk of the appellate division must promptly ~~mail~~ send a notice to
39 each appellate counsel or unrepresented party giving the dates the briefs are due.
40
41

42 **Rule 8.882. Briefs by parties and amici curiae**
43

44 (a) **Briefs by parties * * ***
45

1 **(b) Extensions of time**

- 2
- 3 (1) Except as otherwise provided by statute, in a civil case, the parties may extend each
- 4 period under (a) by up to 30 days by filing one or more stipulations in the appellate
- 5 division before the brief is due. Stipulations must be signed by and served on all
- 6 parties. If the stipulation is filed in paper form, the original signature of at least one
- 7 party must appear on the stipulation filed in the appellate division; the signatures of
- 8 the other parties may be in the form of fax copies of the signed signature page of the
- 9 stipulation. If the stipulation is electronically filed, the signatures must comply with
- 10 the requirements of rule 8.77.
- 11
- 12 (2) A stipulation under (1) is effective on filing. The appellate division may not shorten
- 13 such a stipulated extension.
- 14
- 15 (3) Before the brief is due, a party may apply to the presiding judge of the appellate
- 16 division for an extension of the time period for filing a brief under (a). The
- 17 application must show that there is good cause to grant an extension under rule
- 18 8.811(b). In civil appeals, the application must also show that:
- 19
- 20 (A) The applicant was unable to obtain—or it would have been futile to seek—the
- 21 extension by stipulation; or
- 22
- 23 (B) The parties have stipulated to the maximum extension permitted under (1) and
- 24 the applicant seeks a further extension.
- 25
- 26 (4) A party need not apply for an extension or relief from default if it can file its brief
- 27 within the time prescribed by (c). The clerk must file a brief submitted within that
- 28 time if it otherwise complies with these rules.
- 29

30 **(c) Failure to file a brief**

- 31
- 32 (1) If a party in a civil appeal fails to timely file an appellant's opening brief or a
- 33 respondent's brief, the appellate division clerk must promptly notify the party by
- 34 mail in writing that the brief must be filed within 15 days after the notice is ~~mailed~~
- 35 and that if the party fails to comply, the court may impose one of the following
- 36 sanctions:
- 37
- 38 (A) If the brief is an appellant's opening brief, the court may dismiss the appeal; or
- 39
- 40 (B) If the brief is a respondent's brief, the court may decide the appeal on the
- 41 record, the appellant's opening brief, and any oral argument by the appellant.
- 42
- 43 (2) If the appellant in a misdemeanor appeal fails to timely file an opening brief, the
- 44 appellate division clerk must promptly notify the appellant by mail in writing that the
- 45 brief must be filed within 30 days after the notice is ~~mailed~~ sent and that if the
- 46 appellant fails to comply, the court may impose one of the following sanctions:

1
2 (A) If the appellant is the defendant and is represented by appointed counsel on
3 appeal, the court may relieve that appointed counsel and appoint new counsel;
4 or

5
6 (B) In all other cases, the court may dismiss the appeal.
7

8 (3) If the respondent in a misdemeanor appeal fails to timely file a brief, the appellate
9 division clerk must promptly notify the respondent ~~by mail~~ in writing that the brief
10 must be filed within 30 days after the notice is ~~mailed~~ sent and that if the respondent
11 fails to comply, the court may impose one of the following sanctions:
12

13 (A) If the respondent is the defendant and is represented by appointed counsel on
14 appeal, the court may relieve that appointed counsel and appoint new counsel;
15 or

16
17 (B) In all other cases, the court may decide the appeal on the record, the
18 appellant's opening brief, and any oral argument by the appellant.
19

20 (4) If a party fails to comply with a notice under (1), (2), or (3), the court may impose
21 the sanction specified in the notice.
22

23 **(d) Amicus curiae briefs * * ***

24
25 **(e) Service and filing * * ***

26
27 **Advisory Committee Comment * * ***
28
29

30 **Rule 8.883. Contents and form of briefs**

31
32 **(a) Contents * * ***

33
34 **(b) Length * * ***

35
36 **(c) Form**

37
38 (1) A brief may be reproduced by any process that produces a clear, black image of
39 letter quality. All documents filed must have a page size of 8 1/2 by 11 inches. If
40 filed in paper form, the paper must be white or unbleached, 8 1/2 by 11 inches, and
41 of at least 20-pound weight. Both sides of the paper may be used if the brief is not
42 bound at the top.
43

44 (2) Any conventional ~~typeface~~ font may be used. The ~~typeface~~ font may be either
45 proportionally spaced or monospaced.
46

- 1 (3) The ~~type~~ font style must be roman; but for emphasis, italics or boldface may be used
2 or the text may be underscored. Case names must be italicized or underscored.
3 Headings may be in uppercase letters.
4
- 5 (4) Except as provided in (11), the ~~type~~ font size, including footnotes, must not be
6 smaller than 13-point.
7
- 8 (5) The lines of text must be at least one-and-a-half-spaced. Headings and footnotes may
9 be single-spaced. Quotations may be block-indented and single-spaced. Single-
10 spaced means six lines to a vertical inch.
11
- 12 (6) The margins must be at least 1½ inches on the left and right and 1 inch on the top
13 and bottom.
14
- 15 (7) The pages must be consecutively numbered.
16
- 17 (8) The cover—or first page if there is no cover—must include the information required
18 by rule 8.816(a)(1).
19
- 20 (9) **If filed in paper form, t**The brief must be bound on the left margin, except that briefs
21 may be bound at the top if required by a local rule of the appellate division. If the
22 brief is stapled, the bound edge and staples must be covered with tape.
23
- 24 (10) The brief need not be signed.
25
- 26 (11) If the brief is produced on a typewriter:
27
- 28 (A) A typewritten original and carbon copies may be filed only with the presiding
29 judge’s permission, which will ordinarily be given only to unrepresented
30 parties proceeding in forma pauperis. All other typewritten briefs must be filed
31 as photocopies.
32
- 33 (B) Both sides of the paper may be used if a photocopy is filed; only one side may
34 be used if a typewritten original and carbon copies are filed.
35
- 36 (C) The type size, including footnotes, must not be smaller than standard pica, 10
37 characters per inch. Unrepresented incarcerated litigants may use elite type, 12
38 characters per inch, if they lack access to a typewriter with larger characters.
39

40 **(d) Noncomplying briefs * * ***
41
42

43 **Advisory Committee Comment * * ***
44

45 Drafter’s Note: The proposed changes to rule 8.883 track the proposed changes to rule
46 8.204.
47

1 **Rule 8.884. Appeals in which a party is both appellant and respondent * * ***

2
3 **Rule 8.885. Oral argument * * ***

4
5 **Rule 8.886. Submission of the cause * * ***

6
7
8 **Rule 8.887. Decisions * * ***

9
10 Drafter's Note: Rule 8.887 is not proposed to be amended at this time. JATS may at a
11 later date wish to consider substantive amendment to subdivision (c), which sets forth
12 the procedural requirements when an appellate division opinion is certified for
13 publication. Subdivision (c) requires that two paper copies and an electronic copy be
14 sent to the Reporter of Decisions.

15
16
17 **Rule 8.888. Finality and modification of decision**

18
19 **(a) Finality of decision * * ***

20
21 **(b) Modification of judgment * * ***

22
23 **(c) Consent to increase or decrease in amount of judgment**

24
25 If an appellate division decision conditions the affirmance of a money judgment on a
26 party's consent to an increase or decrease in the amount, the judgment is reversed unless,
27 before the decision is final under (a), the party serves and files ~~two copies~~ a copy of a
28 consent in the appellate division. If a consent is filed, the finality period runs from the
29 filing date of the consent. The clerk must send one ~~file-stamped~~ endorsed copy of the
30 consent to the trial court with the remittitur.

31
32 Drafter's Note: The proposed changes here track the proposed changes to rule 8.264
33 (c), as approved by JATS at the February 26, 2015 meeting.

34
35
36 **Rule 8.889. Rehearing * * ***

37
38
39 **Rule 8.890. Remittitur**

40
41 **(a) Proceedings requiring issuance of remittitur * * ***

42
43 **(b) Clerk's duties**

44
45 (1) If an appellate division case is not transferred to the Court of Appeal under rule
46 8.1000 et seq., the appellate division clerk must:

- 1
2 (A) Issue a remittitur immediately after the Court of Appeal denies transfer or the
3 period for granting transfer under rule 8.1008(a) expires if there will be no
4 further proceedings in the appellate division;
5
6 (B) Send the remittitur to the trial court with a file-stamped endorsed copy of the
7 opinion or order; and
8
9 (C) Return to the trial court with the remittitur all original records, exhibits, and
10 documents sent, non-electronically, to the appellate division in connection with
11 the appeal, except any certification for transfer under rule 8.1005, the
12 transcripts or statement on appeal, briefs, and the notice of appeal.
13
14 (2) If an appellate division case is transferred to a Court of Appeal under rule 8.1000 et
15 seq., on receiving the Court of Appeal remittitur, the appellate division clerk must
16 issue a remittitur and return documents to the trial court as provided in rule 8.1018.
17

18 (c) **Immediate issuance, stay, and recall * * ***

19
20 (d) **Notice * * ***

21
22 Drafter's Note: The proposed change to subdivision (b) (1) (C) is intended to clarify that
23 records, exhibits and documents that have been transmitted electronically need not be
24 returned. "Non-electronically" is used instead of "in paper form" in consideration of the
25 possibility that there may be non-paper, physical items transmitted as exhibits.
26
27

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

29
30 (a) **Right to costs * * ***

31
32 (b) **Judgment for costs * * ***

33
34 (c) **Procedure for claiming or opposing costs * * ***

35
36 (d) **Recoverable costs**

37
38 (1) A party may recover only the costs of the following, if reasonable:

39
40 (A) Filing fees;

41
42 (B) The amount the party paid for any portion of the record, whether an original or
43 a copy or both, subject to reduction by the appellate division under subdivision
44 (e);

45
46 (C) The cost to produce additional evidence on appeal;

- 1
2 (D) The costs to notarize, serve, mail, and file the record, briefs, and other papers;
3
4 (E) The cost to print and reproduce any brief, including any petition for rehearing
5 or review, answer, or reply;
6
7 (F) The cost to procure a surety bond, including the premium, the cost to obtain a
8 letter of credit as collateral, and the fees and net interest expenses incurred to
9 borrow funds to provide security for the bond or to obtain a letter of credit,
10 unless the trial court determines the bond was unnecessary; and
11
12 (G) The fees and net interest expenses incurred to borrow funds to deposit with the
13 superior court in lieu of a bond or undertaking, unless the trial court determines
14 the deposit was unnecessary.

- 15
16 (2) Unless the court orders otherwise, an award of costs neither includes attorney’s fees
17 on appeal nor precludes a party from seeking them under rule 3.1702.
18

19 (e) **Sanctions * * ***

20
21 **Advisory Committee Comment**

22
23 **Subdivision (d).** “Net interest expenses” in subdivisions (d)(1)(F) and (G) means the interest expenses
24 incurred to borrow the funds that are deposited minus any interest earned by the borrower on those funds
25 while they are on deposit.

26
27 Subdivision (d)(1)(D), allowing recovery of the “costs to notarize, serve, mail, and file the record, briefs,
28 and other papers,” is intended to include fees charged by electronic filing service providers for electronic
29 filing and service of documents.

30
31 Drafter’s Note: The addition to the Advisory Committee Comment to rule 8.891 is the
32 same as the addition to the comment to rule 8.278.

33
34
35 **Chapter 5. Appeals in Infraction Cases**

36
37 **Article 1. Taking Appeals in Infraction Cases**

38
39 ***Rule 8.900. Application of chapter***

40 ***Rule 8.901. Notice of appeal***

41 ***Rule 8.902. Time to appeal***

42 ***Rule 8.903. Stay of execution on appeal***

43 ***Rule 8.904. Abandoning the appeal***

44
45 **Rule 8.900. Application of chapter * * ***

1 **Rule 8.901. Notice of appeal**

2
3 **(a) Notice of appeal * * ***

4
5 **(b) Notification of the appeal**

- 6
7 (1) When a notice of appeal is filed, the trial court clerk must promptly ~~mail~~ send a
8 notification of the filing to the attorney of record for each party and to any
9 unrepresented defendant. The clerk must also ~~mail~~send or deliver this notification to
10 the appellate division clerk.
11
12 (2) The notification must show the date it was ~~mailed~~ sent or delivered, the number and
13 title of the case, and the date the notice of appeal was filed.
14
15 (3) The notification to the appellate division clerk must also include a copy of the notice
16 of appeal.
17
18 (4) A copy of the notice of appeal is sufficient notification under (1) if the required
19 information is on the copy or is added by the trial court clerk.
20
21 (5) The ~~mailing~~ sending of a notification under (1) is a sufficient performance of the
22 clerk's duty despite the discharge, disqualification, suspension, disbarment, or death
23 of the attorney.
24
25 (6) Failure to comply with any provision of this subdivision does not affect the validity
26 of the notice of appeal.
27

28 **Advisory Committee Comment * * ***

29
30
31 **Rule 8.902. Time to appeal**

32
33 **(a) Normal time * * ***

34
35 **(b) Cross-appeal**

36
37 If the defendant or the People timely appeals from a judgment or appealable order, the time
38 for any other party to appeal from the same judgment or order is either the time specified
39 in (a) or 30 days after the trial court clerk ~~mails~~ sends notification of the first appeal,
40 whichever is later.
41

42 **(c) Premature notice of appeal * * ***

43
44 **(d) Late notice of appeal * * ***

45
46 **Advisory Committee Comment * * ***

1 **Rule 8.903. Stay of execution on appeal * * ***

2
3 **Rule 8.904. Abandoning the appeal * * ***

4
5
6 **Article 2. Record in Infraction Appeals**

7
8 ***Rule 8.910. Normal record on appeal***

9 ***Rule 8.911. Prosecuting attorney's notice regarding the record***

10 ***Rule 8.912. Contents of clerk's transcript***

11 ***Rule 8.913. Preparation of clerk's transcript***

12 ***Rule 8.914. Trial court file instead of clerk's transcript***

13 ***Rule 8.915. Record of oral proceedings***

14 ***Rule 8.916. Statement on appeal***

15 ***Rule 8.917. Record when trial proceedings were officially electronically recorded***

16 ***Rule 8.918. Contents of reporter's transcript***

17 ***Rule 8.919. Preparation of reporter's transcript***

18 ***Rule 8.920. Limited normal record in certain appeals***

19 ***Rule 8.921. Exhibits***

20 ***Rule 8.922. Sending and filing the record in the appellate division***

21 ***Rule 8.923. Augmenting or correcting the record in the appellate division***

22 ***Rule 8.924. Failure to procure the record***

23
24 **Rule 8.910. Normal record on appeal * * ***

25
26
27 **Rule 8.911. Prosecuting attorney's notice regarding the record**

28
29 If the prosecuting attorney does not want to receive a copy of the record on appeal, within 10
30 days after the notification of the appeal under rule 8.901(b) is ~~mailed~~ sent to the prosecuting
31 attorney, the prosecuting attorney must serve and file a notice indicating that he or she does not
32 want to receive the record.

33
34
35 **Rule 8.912. Contents of clerk's transcript * * ***

36
37 **Rule 8.913. Preparation of clerk's transcript * * ***

38
39 **Rule 8.914. Trial court file instead of clerk's transcript * * ***

40
41
42 **Rule 8.915. Record of oral proceedings**

43
44 **(a) Appellant's election**

45
46 The appellant must notify the trial court whether he or she elects to proceed with or
47 without a record of the oral proceedings in the trial court. If the appellant elects to proceed

1 with a record of the oral proceedings in the trial court, the notice must specify which form
2 of the record of the oral proceedings in the trial court the appellant elects to use:
3

- 4 (1) A statement on appeal under rule 8.916;
5
6 (2) If the court has a local rule for the appellate division permitting this, an official
7 electronic recording of the proceedings under rule 8.917(c). The appellant must
8 attach to the notice a copy of the stipulation required under rule 8.917(c); or
9
10 (3) A reporter's transcript under rules 8.918–8.920 or a transcript prepared from an
11 official electronic recording of the proceedings under rule 8.917(b). If the appellant
12 elects to use a reporter's transcript, the clerk must promptly ~~mail~~ send a copy of
13 appellant's notice making this election and the notice of appeal to each court
14 reporter.
15

16 **(b) Time for filing election * * ***

17
18 **(c) Failure to file election * * ***

19
20 **Advisory Committee Comment * * ***

21
22
23 **Rule 8.916. Statement on appeal * * ***

24
25
26 **Rule 8.917. Record when trial proceedings were officially electronically recorded**

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

29
30 **(b) Transcripts from official electronic recording**

31
32 **(c) Use of official recording as record of oral proceedings**

33
34 **(d) Contents**

35
36 **(e) When preparation begins**

37
38 (1) If the appellant is the People, preparation of a transcript or a copy of the recording
39 must begin immediately after the appellant files an election under rule 8.915(a) to
40 use a transcript of an official electronic recording or a copy of the official electronic
41 recording as the record of the oral proceedings.
42

43 (2) If the appellant is the defendant:

44
45 (A) Within 10 days after the date the appellant files the election under rule
46 8.915(a), the clerk must notify the appellant and his or her counsel of the

1 estimated cost of preparing the transcript or the copy of the recording. The
2 notification must show the date it was ~~mailed~~ sent.

3
4 (B) Within 10 days after the date the clerk ~~mailed~~ sent the notice under (A), the
5 appellant must do one of the following:

6
7 (i) Deposit with the clerk an amount equal to the estimated cost of preparing
8 the transcript or the copy of the recording;

9
10 (ii) File a declaration of indigency supported by evidence in the form
11 required by the Judicial Council; or

12
13 (iii) Notify the clerk by filing a new election that he or she will be using a
14 statement on appeal instead of a transcript or copy of the recording. The
15 appellant must prepare, serve, and file a proposed statement on appeal
16 within 20 days after serving and filing the notice and must otherwise
17 comply with the requirements for statements on appeal under rule 8.869;

18
19 (iv) Notify the clerk by filing a new election that he or she now elects to
20 proceed without a record of the oral proceedings in the trial court; or

21
22 (v) Notify the clerk that he or she is abandoning the appeal by filing an
23 abandonment in the reviewing court under rule 8.904.

24
25 (C) If the trial court determines that the appellant is not indigent, within 10 days
26 after the date the clerk ~~mails~~ sends notice of this determination to the appellant,
27 the appellant must do one of the following:

28
29 (i) Deposit with the clerk an amount equal to the estimated cost of preparing
30 the transcript or the copy of the recording;

31
32 (ii) Notify the clerk by filing a new election that he or she will be using a
33 statement on appeal instead of a reporter's transcript. The appellant must
34 prepare, serve, and file a proposed statement on appeal within 20 days
35 after serving and filing the notice and must otherwise comply with the
36 requirements for statements on appeal under rule 8.869;

37
38 (iii) Notify the clerk by filing a new election that he or she now elects to
39 proceed without a record of the oral proceedings in the trial court; or

40
41 (iv) Notify the clerk that he or she is abandoning the appeal by filing an
42 abandonment in the reviewing court under rule 8.904.

43
44 (D) Preparation of the transcript or the copy of the recording must begin when:

45
46 (i) The clerk receives the required deposit under (B)(i) or (C)(i); or

1
2 (ii) The trial court determines that the defendant is indigent and orders that
3 the defendant receive the transcript or the copy of the recording without
4 cost.
5

6 **(f) Notice when proceedings were not officially electronically recorded or cannot be**
7 **transcribed**
8

9 (1) If any portion of the oral proceedings to be included in the transcript were not
10 officially electronically recorded under Government Code section 69957 or cannot
11 be transcribed, the trial court clerk must so notify the parties ~~by mail~~ in writing. The
12 notice must:
13

14 (A) Indicate whether the identified proceedings were reported by a court reporter;
15 and
16

17 (B) Show the date it was ~~mailed~~ sent.
18

19 (2) Within 15 days after this notice is ~~mailed~~ sent by the clerk, the appellant must serve
20 and file a notice with the court stating whether the appellant elects to proceed with or
21 without a record of the identified proceedings. When the party elects to proceed with
22 a record of these oral proceedings:
23

24 (A) If the clerk's notice under (1) indicates that the proceedings were reported by a
25 court reporter, the appellant's notice must specify which form of the record
26 listed in rule 8.915(a) other than an official electronic recording or a transcript
27 prepared from an official electronic recording the appellant elects to use. The
28 appellant must comply with the requirements applicable to the form of the
29 record elected.
30

31 (B) If the clerk's notice under (1) indicates that the proceedings were not reported
32 by a court reporter, the appellant must prepare, serve, and file a proposed
33 statement on appeal within 20 days after serving and filing the notice.
34

35 **Advisory Committee Comment * * ***
36
37

38 **Rule 8.918. Contents of reporter's transcript * * ***
39
40

41 **Rule 8.919. Preparation of reporter's transcript**
42

43 **(a) When preparation begins**
44

45 (1) Unless the court has adopted a local rule under rule 8.920(b) that provides otherwise,
46 the reporter must immediately begin preparing the reporter's transcript if the notice

1 sent to the reporter by the clerk under rule 8.915(a)(3) indicates that the appellant is
2 the People.
3

- 4 (2) If the notice sent to the reporter by the clerk under rule 8.915(a)(3) indicates that the
5 appellant is the defendant:
6
- 7 (A) Within 10 days after the date the clerk ~~mailed~~ sent the notice under rule
8 8.915(a)(3), the reporter must file with the clerk the estimated cost of preparing
9 the reporter's transcript; and
10
 - 11 (B) The clerk must promptly notify the appellant and his or her counsel of the
12 estimated cost of preparing the reporter's transcript. The notification must
13 show the date it was ~~mailed~~ sent.
14
 - 15 (C) Within 10 days after the date the clerk ~~mailed~~ sent the notice under (B), the
16 appellant must do one of the following:
17
 - 18 (i) Deposit with the clerk an amount equal to the estimated cost of preparing
19 the transcript;
20
 - 21 (ii) File a waiver of the deposit signed by the reporter;
22
 - 23 (iii) File a declaration of indigency supported by evidence in the form
24 required by the Judicial Council;
25
 - 26 (iv) File a certified transcript of all of the proceedings required to be included
27 in the reporter's transcript under rule 8.918. The transcript must comply
28 with the format requirements of rule 8.144;
29
 - 30 (v) Notify the clerk by filing a new election that he or she will be using a
31 statement on appeal instead of a reporter's transcript. The appellant must
32 prepare, serve, and file a proposed statement on appeal within 20 days
33 after serving and filing the notice and must otherwise comply with the
34 requirements for statements on appeal under rule 8.916;
35
 - 36 (vi) Notify the clerk by filing a new election that he or she now elects to
37 proceed without a record of the oral proceedings in the trial court; or
38
 - 39 (vii) Notify the clerk that he or she is abandoning the appeal by filing an
40 abandonment in the reviewing court under rule 8.904.
41
 - 42 (D) If the trial court determines that the appellant is not indigent, within 10 days
43 after the date the clerk ~~mails~~ sends notice of this determination to the appellant,
44 the appellant must do one of the following:
45

- (i) Deposit with the clerk an amount equal to the estimated cost of preparing the transcript;
 - (ii) File with the clerk a waiver of the deposit signed by the reporter;
 - (iii) File a certified transcript of all of the proceedings required to be included in the reporter's transcript under rule 8.918. The transcript must comply with the format requirements of rule 8.144;
 - (iv) Notify the clerk by filing a new election that he or she will be using a statement on appeal instead of a reporter's transcript. The appellant must prepare, serve, and file a proposed statement on appeal within 20 days after serving and filing the notice and must otherwise comply with the requirements for statements on appeal under rule 8.916;
 - (v) Notify the clerk by filing a new election that he or she now elects to proceed without a record of the oral proceedings in the trial court; or
 - (vi) Notify the clerk that he or she is abandoning the appeal by filing an abandonment in the reviewing court under rule 8.904.
- (E) The clerk must promptly notify the reporter to begin preparing the transcript when:
- (i) The clerk receives the required deposit under (C)(i) or (D)(i); or
 - (ii) The clerk receives a waiver of the deposit signed by the reporter under (C)(ii) or (D)(ii); or
 - (iii) The trial court determines that the defendant is indigent and orders that the defendant receive the transcript without cost.

(b) Format of transcript * * *

(c) Copies and certification * * *

(d) When preparation must be completed * * *

(e) Multi-reporter cases * * *

(f) Notice when proceedings cannot be transcribed

- (1) If any portion of the oral proceedings to be included in the reporter's transcript was not reported or cannot be transcribed, the trial court clerk must so notify the parties by mail in writing. The notice must:

1 (A) Indicate whether the identified proceedings were officially electronically
2 recorded under Government Code section 69957; and

3
4 (B) Show the date it was ~~mailed~~ sent.

5
6 (2) Within 15 days after this notice is ~~mailed~~ sent by the clerk, the appellant must serve
7 and file a notice with the court stating whether the appellant elects to proceed with or
8 without a record of the identified proceedings. When the party elects to proceed with
9 a record of these oral proceedings:

10
11 (A) If the clerk's notice under (1) indicates that the proceedings were officially
12 electronically recorded under Government Code section 69957, the appellant's
13 notice must specify which form of the record listed in rule 8.915(a) other than
14 a reporter's transcript the appellant elects to use. The appellant must comply
15 with the requirements applicable to the form of the record elected.

16
17 (B) If the clerk's notice under (1) indicates that the proceedings were not officially
18 electronically recorded under Government Code section 69957, the appellant
19 must prepare, serve, and file a proposed statement on appeal within 20 days
20 after serving and filing the notice.

21
22 **Advisory Committee Comment * * ***

23
24
25 **Rule 8.920. Limited normal record in certain appeals * * ***

26
27
28 **Rule 8.921. Exhibits**

29
30 (a) **Exhibits deemed part of record * * ***

31
32 (b) **Notice of designation * * ***

33
34 (c) **Request by appellate division * * ***

35
36 (d) **Transmittal**

37
38 Unless the appellate division orders otherwise, within 20 days after notice under (b) is filed
39 or after the appellate division directs that an exhibit be sent:

40
41 (1) The trial court clerk must put any designated exhibits in the clerk's possession into
42 numerical or alphabetical order and send them to the appellate division with two
43 copies of a list of the exhibits sent. If the appellate division clerk finds the list
44 correct, the clerk must sign and return one copy to the trial court clerk.

45
46 (2) Any party in possession of designated exhibits returned by the trial court must put
47 them into numerical or alphabetical order and send them to the appellate division

1 with two copies of a list of the exhibits sent. If the appellate division clerk finds the
2 list correct, the clerk must sign and return one copy to the party.
3

4 **(e) Return by appellate division**
5

6 On request, the appellate division may return an exhibit to the trial court or to the party that
7 sent it. When the remittitur issues, the appellate division must return all **exhibits not**
8 **transmitted electronically** to the trial court or to the party that sent them.
9

10 Drafter's Note: The proposed changes here, and the unchanged requirements of
11 subdivision (d) regarding multiple copies of the list of exhibits, track what has been
12 proposed for rules 8.224 (as approved by JATS on February 26th) , 8.843 (included in
13 this installment of changes) and 8.870 (also in this installment).
14
15

16 **Rule 8.922. Sending and filing the record in the appellate division**
17

18 **(a) When the record is complete * * ***
19

20 **(b) Sending the record * * ***
21

22 **(c) Filing the record**
23

24 On receipt, the appellate division clerk must promptly file the original record and ~~mail~~
25 send notice of the filing date to the parties.
26
27

28 **Rule 8.923. Augmenting or correcting the record in the appellate division * * ***
29

30 **Rule 8.924. Failure to procure the record**
31

32 **(a) Notice of default**
33
34

35 If a party fails to do any act required to procure the record, the trial court clerk must
36 promptly notify that party ~~by mail~~ in writing that it must do the act specified in the notice
37 within 15 days after the notice is ~~mailed~~ sent and that, if it fails to comply, the reviewing
38 court may impose the following sanctions:
39

- 40 (1) If the defaulting party is the appellant, the court may dismiss the appeal or, if the
41 default relates only to procurement of the record of the oral proceedings, may
42 proceed on the clerk's transcript or other record of the written documents from the
43 trial court proceedings; or
44
45 (2) If the defaulting party is the respondent, the court may proceed with the appeal on
46 the record designated by the appellant.

1
2 **(b) Sanctions * * ***
3

4 **Article 3. Briefs, Hearing, and Decision in Infraction Appeals**
5

6 *Rule 8.925. General application of chapter 4*

7 *Rule 8.926. Notice of briefing schedule*

8 *Rule 8.927. Briefs*

9 *Rule 8.928. Contents and form of briefs*

10 *Rule 8.929. Oral argument*
11

12 **Rule 8.925. General application of chapter 4 * * ***
13
14

15 **Rule 8.926. Notice of briefing schedule**
16

17 When the record is filed, the clerk of the appellate division must promptly ~~mail~~send, to each
18 appellate counsel or unrepresented party, a notice giving the dates the briefs are due.
19

20
21 **Rule 8.927. Briefs**
22

23 **(a) Time to file briefs * * ***
24

25 **(b) Failure to file a brief**
26

27 (1) If the appellant fails to timely file an opening brief, the appellate division clerk must
28 promptly notify the appellant ~~by mail~~ in writing that the brief must be filed within 20
29 days after the notice is ~~mailed~~ sent and that if the appellant fails to comply, the court
30 may dismiss the appeal.
31

32 (2) If the respondent fails to timely file a brief, the appellate division clerk must
33 promptly notify the respondent ~~by mail~~ in writing that the brief must be filed within
34 20 days after the notice is ~~mailed~~ sent and that if the respondent fails to comply, the
35 court will decide the appeal on the record, the appellant's opening brief, and any oral
36 argument by the appellant.
37

38 (3) If a party fails to comply with a notice under (1) or (2), the court may impose the
39 sanction specified in the notice.
40

41 **(c) Service and filing * * ***
42
43
44

1 **Rule 8.928. Contents and form of briefs**

2
3 **(a) Contents * * ***

4
5 **(b) Length * * ***

6
7 **(c) Form**

- 8
9 (1) **A brief may be reproduced by any process that produces a clear, black image of**
10 **letter quality. All documents filed must have a page size of 8 1/2 by 11 inches. If**
11 **filed in paper form, the paper must be white or unbleached, 8 1/2 by 11 inches, and**
12 **of at least 20-pound weight. Both sides of the paper may be used if the brief is not**
13 **bound at the top.**
- 14
15 (2) Any conventional ~~typeface~~ font may be used. The ~~typeface~~ font may be either
16 proportionally spaced or monospaced.
- 17
18 (3) The ~~type~~ font style must be roman; but for emphasis, italics or boldface may be used
19 or the text may be underscored. Case names must be italicized or underscored.
20 Headings may be in uppercase letters.
- 21
22 (4) Except as provided in (11), the ~~type~~ font size, including footnotes, must not be
23 smaller than 13-point.
- 24
25 (5) The lines of text must be unnumbered and at least one-and-a-half-spaced. Headings
26 and footnotes may be single-spaced. Quotations may be block-indented and single-
27 spaced. Single-spaced means six lines to a vertical inch.
- 28
29 (6) The margins must be at least 1½ inches on the left and right and 1 inch on the top
30 and bottom.
- 31
32 (7) The pages must be consecutively numbered.
- 33
34 (8) The cover—or first page if there is no cover—must include the information required
35 by rule 8.816(a)(1).
- 36
37 (9) **If filed in paper form, the** brief must be bound on the left margin, except that briefs
38 may be bound at the top if required by a local rule of the appellate division. If the
39 brief is stapled, the bound edge and staples must be covered with tape.
- 40
41 (10) The brief need not be signed.
- 42
43 (11) If the brief is produced on a typewriter:
- 44
45 (A) A typewritten original and carbon copies may be filed only with the presiding
46 justice's permission, which will ordinarily be given only to unrepresented

1 parties proceeding in forma pauperis. All other typewritten briefs must be filed
2 as photocopies.

3
4 (B) Both sides of the paper may be used if a photocopy is filed; only one side may
5 be used if a typewritten original and carbon copies are filed.

6
7 (C) The type size, including footnotes, must not be smaller than standard pica, 10
8 characters per inch. Unrepresented incarcerated litigants may use elite type, 12
9 characters per inch, if they lack access to a typewriter with larger characters.

10
11 **(d) Noncomplying briefs * * ***

12
13 **Advisory Committee Comment * * ***

14
15 Drafter's Note: The proposed changes to rule 8.928 track the proposed changes to
16 rules 8.204 (as approved by JATS at its February 26th meeting) and 8.883 (in this
17 installment)

18
19
20 **Rule 8.929. Oral argument * * ***

21
22
23 **Chapter 6. Writ Proceedings**

24
25 ***Rule 8.930. Application***

26 ***Rule 8.931. Petitions filed by persons not represented by an attorney***

27 ***Rule 8.932. Petitions filed by an attorney for a party***

28 ***Rule 8.933. Opposition***

29 ***Rule 8.934. Notice to trial court***

30 ***Rule 8.935. Filing, finality, and modification of decisions; rehearing; remittitur***

31 ***Rule 8.936. Costs***

32
33 **Rule 8.930. Application * * ***

34
35
36 **Rule 8.931. Petitions filed by persons not represented by an attorney**

37
38 **(a) Petitions * * ***

39
40 **(b) Contents of supporting documents * * ***

41
42 **(c) Form of supporting documents**

43
44 (1) Documents submitted under (b) must comply with the following requirements:
45

1 (A) **If submitted in paper form, t**They must be bound together at the end of the
2 petition or in separate volumes not exceeding 300 pages each. The pages must
3 be consecutively numbered.
4

5 (B) **If submitted in paper form, t**They must be index-tabbed by number or letter.
6

7 (C) They must begin with a table of contents listing each document by its title and
8 its index-~~tab~~ number or letter. If a document has attachments, the table of
9 contents must give the title of each attachment and a brief description of its
10 contents.
11

12 (2) The clerk must file any supporting documents not complying with (1), but the court
13 may notify the petitioner that it may strike or summarily deny the petition if the
14 documents are not brought into compliance within a stated reasonable time of not
15 less than five days.
16

17 (3) **Unless the court provides otherwise by local rule or order, only one set of any**
18 **separately bound the supporting documents needs to be filed in support of a petition,**
19 **an answer, an opposition, or a reply.**
20

21 **(d) Service * * ***
22

23 **Advisory Committee Comment * * ***
24
25

26 **Rule 8.932. Petitions filed by an attorney for a party * * ***
27

28 **Rule 8.933. Opposition * * ***
29
30

31 **Rule 8.934. Notice to trial court**
32

33 **(a) Notice if writ issues * * ***
34

35 **(b) Notice by telephone**
36

37 (1) If the writ or order stays or prohibits proceedings set to occur within seven days or
38 requires action within seven days—or in any other urgent situation—the appellate
39 division clerk must make a reasonable effort to notify the clerk of the respondent
40 court by telephone. The clerk of the respondent court must then notify the judge or
41 officer most directly concerned.
42

43 (2) The clerk need not give notice by telephone of the summary denial of a writ, whether
44 or not a stay previously issued.
45

46 **Drafter's Note:** As for rule 8.489, JATS may later wish to consider substantive
47 amendment to rule 4.934 to allow e-mail notification.

1
2 **Rule 8.935. Filing, finality, and modification of decisions; rehearing; remittitur * * ***

3
4 **Rule 8.936. Costs * * ***

5
6 **Division 3. Trial of Small Claims Cases on Appeal * * ***

7
8
9 **Division 4. Transfer of Appellate Division Cases to the Court of Appeal**

10
11 *Rule 8.1000. Application*

12 *Rule 8.1002. Transfer authority*

13 *Rule 8.1005. Certification for transfer by the appellate division*

14 *Rule 8.1006. Petition for transfer*

15 *Rule 8.1007. Transmitting record to Court of Appeal*

16 *Rule 8.1008. Order for transfer*

17 *Rule 8.1012. Briefs and argument*

18 *Rule 8.1014. Proceedings in the appellate division after certification or transfer*

19 *Rule 8.1016. Disposition of transferred case*

20 *Rule 8.1018. Finality and remittitur*

21
22 * * *

23
24 **Rule 8.1002. Transfer authority * * ***

25
26 **Rule 8.1005. Certification for transfer by the appellate division * * ***

27
28 **Rule 8.1006. Petition for transfer * * ***

29
30 **Rule 8.1007. Transmitting record to Court of Appeal * * ***

31
32 **Rule 8.1008. Order for transfer * * ***

33
34 **Rule 8.1010. Renumbered effective January 1, 2011 * * ***

35
36 **Rule 8.1012. Briefs and argument * * ***

37
38 **Rule 8.1014. Proceedings in the appellate division after certification or transfer * * ***

39
40 **Rule 8.1016. Disposition of transferred case * * ***

1 **Rule 8.1018. Finality and remittitur**

2
3 (a) **When transfer is denied * * ***

4
5 (b) **When transfer order is vacated * * ***

6
7 (c) **When the Court of Appeal issues a decision**

8
9 If the Court of Appeal issues a decision on a case it has ordered transferred from the
10 appellate division of the superior court, filing, finality, and modification of that decision
11 are governed by rule 8.264 and remittitur is governed by rule 8.272, except that the clerk
12 must address the remittitur to the appellate division and send that court ~~two copies~~ a copy
13 of the remittitur and ~~two file-stamped copies~~ a file-endorsed copy of the Court of Appeal
14 opinion or order. If the remittitur and opinion are sent in paper format, two copies must be
15 sent. On receipt of the Court of Appeal remittitur, the appellate division clerk must
16 promptly issue a remittitur if there will be no further proceedings in that court.

17
18 (d) **Documents to be returned**

19
20 When the Court of Appeal denies or vacates transfer or issues a remittitur under (c), the
21 Court of Appeal clerk must return to the appellate division any part of the record sent non-
22 electronically to the Court of Appeal under rule 8.1007 and any exhibits that were sent
23 non-electronically.

24
25 **Advisory Committee Comment * * ***

26
27
28 **Division 5. Publication of Appellate Opinions * ****