



# JUDICIAL COUNCIL OF CALIFORNIA

INFORMATION TECHNOLOGY  
ADVISORY COMMITTEE

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## JOINT APPELLATE TECHNOLOGY SUBCOMMITTEE

### MINUTES OF OPEN MEETING

December 16, 2015

4:00 PM – 5:00 PM

Teleconference

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**Advisory Body Members Present:** Hon. Louis Mauro, Chair; Hon. Peter Siggins; Ms. Kimberly Stewart, Mr. Joseph Lane; Mr. Don Willenburg

**Advisory Body Members Absent:** Mr. Frank McGuire and Mr. Kevin Green

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

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### OPEN SESSION

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#### **Call to Order and Roll Call**

Justice Mauro called the meeting to order at 4:00 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 November 20, 2015, Joint Appellate Technology Subcommittee (JATS) meeting.

#### **Item 1**

##### **Proposals to Modernize Rules for E-Filing/E-Business**

**Justice Mauro began the discussion by proposing certain distinctions between the Rules Consistency project and the Rules Modernization Phase II project.**

**JATS members agreed that the Rules Consistency project would encompass bookmarking, indexing, tabbing, volumes, pagination, sealed and confidential records, and a review of rules 8.70-8.79.**

With those distinctions in mind, JATS members considered the specific changes proposed for inclusion in Phase II of the Rules Modernization project as discussed in Katherine Sher's memorandum to JATS dated December 11, 2016, and the proposed language for rule amendments attached to that memorandum.

With regard to item 1 in the Sher memorandum (the proposed change allowing all or part of the record on appeal to be in electronic format), JATS members raised concerns as to how this might affect parties who do not want their copy of the record to be in electronic form. JATS

members asked that Ms. Sher review the issue in light of the discussion and present draft changes to specific rules at the next meeting.

Item 2 (regarding bookmarking, indexing, tabbing and volumes), item 3 (regarding amendment of rule 8.73), and item 6 (sealed and confidential records) were moved to the Rules Consistency project. Justice Mauro suggested that JATS members could conduct a more comprehensive review of the e-filing rules, including rule 8.73. In 2016, changes would be proposed as part of the Rules Consistency project to ensure consistency between the rules and current appellate e-filing practices. A second phase could consider whether uniform e-filing rules might be desirable and whether new rules are needed to support current practices. JATS members expressed their agreement with this approach.

Item 4 (regarding standards for digital format of transcripts) and items 5 and 7 (which are not prioritized) were not discussed at the meeting.

Item 8 (amendment of rule 10.1028(d)(2)) was approved.

With regard to the technical changes proposed in Ms. Sher's December 11<sup>th</sup> memorandum, JATS approved for inclusion in the 2016 Appellate Rules Modernization rules proposal the draft changes proposed in item 1 (rule 8.104(c)) and item 2 (rules 8.452, 8.456 and 8.489). Item 3 (return of records) was not discussed at the meeting.

Items 1, 2 and 3 in the Sher memorandum, regarding form changes, were not discussed at the meeting.

## **Item 2**

### **Proposals to Ensure Consistency Between Rules and Practices for Appellate E-Filing**

On this agenda item, consistent with the prior discussion, JATS agreed that the issues of bookmarking, volumes, pagination, and how to handle sealed or confidential electronic records, as discussed in Ms. Sher's December 11<sup>th</sup>, 2016 memorandum to JATS members on rules-practice consistency, should all be considered as part of the project of ensuring that the appellate e-filing rules are consistent with the e-filing practices of the appellate courts. JATS members also agreed with Justice Mauro's suggestion that JATS address the pagination issue in a rules proposal to be moved forward in 2016, but that JATS hold off on consideration of the remaining issues until the appellate courts have had more practical experience with e-filing.

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

The meeting was adjourned at 5:00 PM.



## JUDICIAL COUNCIL OF CALIFORNIA

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# MEMORANDUM

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Date	Action Requested
January 19, 2016	Please read before January 22nd subcommittee conference call
To	Deadline
Members of the Joint Appellate Technology Subcommittee	January 22nd, 2015
From	Contact
Katherine Sher, Attorney, Legal Services	Katherine Sher 415-865-8031 katherine.sher@jud.ca.gov
Subject	
Further detail on Phase 2 Rules Modernization proposal, Rules-Practice Consistency proposal, and possible changes to appellate e-filing rules	

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### Introduction

In the December 16th, 2015 JATS conference call, the subcommittee further refined its priorities for issues to be addressed in the two JATS rules proposals moving forward this year, the Phase 2 Appellate Rules Modernization proposal and the Rules-Practice Consistency Proposal. This memorandum discusses, as to those items prioritized, possible approaches to how the rules might be changed to accomplish the goals of modernization and eliminating conflicts between the existing appellate rules and the e-filing practices of the appellate courts. In addition, this memorandum discusses possible revisions to rules 8.70 through 8.79, the appellate e-filing rules. As determined by JATS at the December 16<sup>th</sup> meeting, any proposed changes to rules 8.70 through 8.79 that JATS decides to put forward this year will be included in the Rules-Practice Consistency proposal, with the understanding that JATS's review of these rules may result in further changes to be proposed in the future.

Proposed language for the changes to the rules, and proposed amended forms, are attached. Please note that the proposed Rules Modernization changes are in one document that includes 1)

newly drafted proposed changes, and 2) the proposed changes already approved by JATS at the December 16<sup>th</sup> meeting. Proposed amended forms are in a separate attachment. The proposed Rules-Practice Consistency changes are in a third document (after the rules modernization rules amendments, and the forms), as these proposed changes will be circulated separately for comment. For ease of review, the proposed changes to the appellate e-filing rules are in a fourth, separate, document. These proposed changes will eventually be combined with the other Rules-Practice consistency changes to be circulated for comment.

## Rules Modernization Project Proposed Changes

### **Substantive Changes**

#### 1. Changes to allow use of an electronic record on appeal.

This proposal would add language to the appellate rules expressly allowing the record on appeal to be in electronic form in rule 8.144 and other rules governing the form of the record on appeal in various types of appeals. JATS members may recall that the initial version of this proposal was included in the Phase 1 Rules Modernization changes to the appellate rules as publicly circulated. Changes were proposed to the rules 8.144 and 8.838 expressly stating that all or part of the record could be in electronic format. In response, the State Bar Committee on the Administration of Justice commented “CAJ urges consideration regarding the potential impact of these proposed changes on indigent appellate litigants, including, in particular, incarcerated appellants and individuals who do not have access to computers.”

The response to this comments was to remove the proposed change from the appellate Rules Modernization amendments as they moved forward for approval last year, with the intent of developing a new proposal that would protect appellants who might have difficulty accessing a record if it were solely available in electronic form. In the materials for the JATS meeting held on December 16<sup>th</sup>, 2015, staff included proposed revised language to be added in rule 8.144 and elsewhere that would have allowed the record to be in electronic format, but also would have given self-represented and indigent parties the opportunity to object to use of an electronic record.

The revised proposal was discussed at length at the December 16<sup>th</sup> meeting, with discussion focused largely on how best to protect parties who need paper copies and whether such protections are needed given the existing rules governing how parties receive the record. Staff was directed to reconsider the issue and present a new proposal at the next meeting, with the proposed language placed into the specific rules proposed to be amended so that JATS could consider how the changes would work within the existing framework for preparation of the record and for its transmission to the reviewing court and the parties.

Upon review of the rules regarding preparation and transmission of the record on appeal in various case types in the appellate courts and in the appellate division, staff notes that the

rules, in their current form, already allow the record to be sent to the reviewing court in electronic form. Rule 8.72 (a) states that “[t]he court may permit electronic filing of a document by a party or trial court in any appeal or original proceeding unless the rules in this article or other legal authority expressly prohibit electronic filing.” “Document,” as used in rule 8.72, is defined in rule 8.70 (d)(2)(b) to include “[a]ny document transmitted by a trial court to the reviewing court, including a notice or a clerk's or reporter's transcript.” The language of these rules already accomplishes what was intended by the proposed change: it authorizes a trial court to file the record with an appellate court in electronic form, if the reviewing court so permits.

Staff notes that there are no rules expressly addressing when the record may or may not be sent to a party in electronic form. Although there are rules governing electronic service of documents, and providing exemptions under certain circumstances, such as rule 8.73, the rules governing the transmission of the record to the parties do not require the superior court clerk to serve the record on the party, but instead require the superior court clerk to “send” the record. Thus it is not clear when sending the record to a party in electronic form would or would not be permitted.

The attached draft (included in the draft Rules Modernization proposal) takes a conservative approach, adding a new advisory committee comment to the rules governing the superior court clerk’s sending of the record to clarify that the record may be sent to the reviewing court in electronic form, but also stating in the note that this does not necessarily mean the record will also go to the parties in electronic form. The language is added in comments to the following rules: 8.150, civil appeals; 8.336, criminal appeals; 8.409, juvenile appeals; 8.416, appeals from termination of parental rights; 8.450 and 8.454, writ proceedings in juvenile cases; 8.480 and 8.482, conservatorship appeals; and 8.1007, case transferred from appellate division to Court of Appeal. No change is proposed to the rules themselves, either as to sending the record to the reviewing court or sending the record to the parties.

Staff notes that rule 8.72, as part of the e-filing rules located in Division 1 of the Appellate Rules, is applicable only to the Supreme Court and the Courts of Appeal. At present, there are no parallel rules governing e-filing in the appellate division, and the proposed draft language does not address use of an electronic record in appellate division cases.

**JATS may wish to consider the following questions:**

- Should language be added to the rules expressly to require that parties be given the option to receive the record in paper form?
- Should this apply only to self-represented, indigent, and/or incarcerated parties, or should all litigants have the option to receive a paper record?
- If JATS decides that these changes to the rules are needed, where should the language be added? One approach would be to add a provision to the appellate e-filing rules that exempts certain litigants from receiving the record in electronic form. Another would be to include language in the rules pertaining to the superior court clerk’s sending of the record (as listed above).

- Whatever changes are made to the rules for the appellate courts, should parallel changes be made to the appellate division rules? For the appellate division, a new express provision allowing the record to be sent in electronic form would be required, as there is no existing rule that expressly so allows.

2. Creation of standards for the digital format of transcripts, as allowed under Code of Civil Procedure section 271(b).

Code of Civil Procedure section 271(b) provides, as to reporter's transcripts, that "[e]xcept as modified by standards adopted by the Judicial Council, the computer-readable transcript shall be on disks in standard ASCII code, unless otherwise agreed by the reporter and the court, party, or other person requesting the transcript."

The attached draft modernization amendments change the language of rules 8.130 (civil appeals), 8.336 (criminal appeals), 8.409 (juvenile appeals), 8.416 (appeals from termination of parental rights), 8.613 (record of preliminary proceedings in death penalty appeals), 8.619 (death penalty appeals), 8.625 (death penalty appeals in pre-1997 trials), and 8.834 (civil appeals to the appellate division). The change proposed would, where these rules refer to computer-readable copies complying with the format requirements of Code of Civil Procedure section 271(b), instead require that they be in electronic text-searchable PDF format while maintaining original document formatting. The language for the new standard is taken from the local rule regarding electronic format of documents applicable in the Third District Court of Appeal. The rules and guidelines for the other Courts of Appeal also require documents to be in text-searchable PDF format, maintaining original document formatting. Where the Advisory Committee Comments for these rules refer to section 271(b), a sentence has been added to note that the newly proposed language is intended to adopt a format standard pursuant to that section.

In addition, the draft proposes newly added language to rules 8.866 (misdemeanor appeals to the appellate division) and 8.919 (infraction appeals) to apply the same standard for the format of computer-readable copies of reporter's transcripts. The existing language of these rules does not impose a standard for the format for such copies.

**JATS may wish to consider the following questions regarding these proposed changes:**

- Does the proposed language impose a standard for format that conforms to what the appellate courts currently require?
- Should the language be added in the rules applicable to death penalty appeals? These rules already provide that computer-readable copies of reporter's transcripts must, in addition to complying with the requirements of section 271(b), also comply with any additional standards prescribed by the Supreme Court.

- Should the new format standard be added into the rules applicable to reporters' transcripts in appellate division misdemeanor and infraction cases? If so, is the proposed placement of the addition appropriate?
3. Amend Rule 10.1028 (d)(2) to allow retention of a true and correct electronic copy of the reporter's transcript rather than of the original, which must be a paper copy under CCP Section 271 (a). At the December 16<sup>th</sup> meeting, JATS **approved the proposed addition to the language of the rule**. The attached draft **adds an Advisory Committee Comment** to clarify that while subdivision (a) of rule 10.1028 generally allows records to be kept in electronic form, because Code of Civil Procedure Section 271 requires an original of a reporter's transcript to be on paper, it is necessary for the language of subdivision (d) to specify that an electronic copy may be kept in lieu of the paper original.

## Technical Changes

### Rules

1. In Rule 8.104 (c), regarding what constitutes entry of judgment, adding language to say that orders signed electronically have same effect as orders with an original signature. **At the December 22<sup>nd</sup> meeting, JATS approved the proposed addition to the language of the rule.**
2. Allowing e-mail notice from the reviewing court to the trial court under rules 8.452 8.456 and 8.489. **At the December 16<sup>th</sup> meeting, JATS approved the proposed additions to the language of these rules.**
3. Changes where the appellate rules refer to the "return" of records or other documents, where needed to address use of electronic records. JATS, at its November 20<sup>th</sup>, 2015 meeting determined that these changes should be included in the Phase 2 Rules Modernization proposal as a technical change. However, this is an issue that those committees working on Rules Modernization for the trial courts have begun to address, and have found to be more than a technical question. Under at least some circumstances, for example when a document containing confidential information is lodged with the court, new substantive requirements may be necessary in the rules for the "return" of an electronic document.

Staff has not yet been able to complete the necessary review of the rules to develop proposed changes. Although proposed changes could be developed for JATS's consideration at its next meeting, **JATS may wish to consider** whether this issue might be better addressed next year, with the benefit of seeing how the issue is addressed in changes to the trial court rules.

## Forms

1. Change to proofs of service on the Notice of Appeal form and other appellate forms to allow for electronic proof of service. Staff has begun review of these forms but has not yet prepared proposed revised forms. (The forms that will be affected are included, for reference, in the attached packet of forms. The proof of service issue is relevant to forms APP 002, APP 005, APP 007, APP 009 (the general appellate POS), APP 009 INFO, APP 101 INFO, APP 109 (POS for superior court appellate division cases), APP 109 INFO, and APP 150 INFO. )

At the next JATS meeting, staff will present proposed revised forms. The revisions will:

- Create a stand-alone Proof of Electronic Service form, similar to form POS-050 used in the trial courts;
  - Remove the integrated Proof of Service that is included as part several existing appellate forms, instead adding a note regarding the separate POS forms that may be used for proof of service. However, it has been suggested that an integrated Proof of Service be added to form APP-004, the Civil Case Information Sheet, as at least one District has had problems with this form being submitted without a proof of service.
  - Revise the language of informational forms as needed to include information on electronic service and proof of electronic service.
2. Change to Notice of Appeal form and other appellate forms so that they no longer state that providing the email address of the attorney (or party without attorney) is optional. **Marked up forms are included in the attached packet**, changing the word “optional” to “if available,” or adding a line requesting e-mail, on forms APP 002, APP 005, APP 007, APP 008, APP 011, APP 106, APP 107, CR 120, CR 137, CR 145, JV 810, JV 822, and JV 825. (Please note that the markups to forms JV 810, JV 822 and JV 825 will also be reviewed by the Family and Juvenile Law Advisory Committee at its next meeting.)
  3. Change to form MC 275 (Petition for Writ of Habeas Corpus) to modify instructions to reflect possibility of e-filing (where instructions dictate the number of copies to be filed). **A marked up form MC 275 is included in the attached packet.**

## Rules-Practice Consistency Project Proposed Changes

At the December 16<sup>th</sup> meeting, JATS decided to proceed in 2016 with proposed rule changes intended to ensure consistency between the Rules of Court and current appellate e-filing practices in two areas. First, JATS determined that it was necessary to move forward on changes to the Rules of Court to eliminate inconsistencies between those rules and the local rules of some



Courts of Appeal regarding how e-filed briefs should be paginated. Second, Justice Mauro and other JATS members agreed to undertake a comprehensive review of rules 8.70 to 8.79, the appellate e-filing rules, to determine whether changes to those rules are necessary given the experiences of the Courts of Appeal in implementing e-filing.

### **Pagination**

Proposed changes to rule 8.204 (c)(7) for the pagination of briefs are included in the attached draft. These changes are intended to create a uniform statewide rule for pagination that is consistent with the local rules and guidelines applicable in all of the Courts of Appeal which require, for electronically filed briefs, that document pages must be consecutively numbered using only the arabic numbering system beginning with the number 1 on the cover page of the document.

The existing language of rule 8.204 (b)(7), part of the rule setting requirements for the form and content of briefs in civil appeals in the Courts of Appeal, states: “The pages must be consecutively numbered. The tables and the body of the brief may have different numbering systems.” The requirements of rule 8.204 are applied, by reference to rule 8.204, in numerous other rules regarding the form of briefs and other documents. These include rule 8.40 (generally applying the form requirements of rule 8.204 to documents filed in the Supreme Court and Courts of Appeal), rule 8.360 (briefs filed in criminal appeals in the Courts of Appeal), rule 8.384 (applying the form requirements of rule 8.204 (a) and (b) to a petition for a writ of habeas corpus that is filed by an attorney and not on form MC-275), rule 8.386 (form of a return or traverse filed in habeas corpus proceedings), rule 8.412 (briefs in juvenile appeals), rule 8.485 (documents filed in writ proceedings in the Supreme Court and Courts of Appeal), rule 8.504 (petitions for review, answers, and replies filed in the Supreme Court), rule 8.520 (briefs filed in the Supreme Court), rule 8.630 (briefs in appeals from judgments of death), rule 8.702 (appeals in certain CEQA cases), rule 8.1006 (petitions for transfer of a case from the appellate division to the Court of Appeal), and rule 8.1012 (briefs in cases transferred from the appellate division).

Although there are several other rules that set requirements for the page numbering of documents without reference to rule 8.204, these rules do not include language allowing for different parts of a document to have different number systems, but simply require consecutive numbering of pages. They are rule 8.112 (documents filed with a petition for writ of supersedeas), rule 8.144 (consecutive numbering of pages in the clerk’s and reporter’s transcripts), rule 8.155 (documents attached to a motion to augment the record), rule 8.252 (copies of matters for which judicial notice is sought), rules 8.452 and 8.456 (document or transcript sought to be added to the record in writ proceedings in certain juvenile cases), rule 8.486 (supporting documents in writ proceedings in the Supreme Court and Courts of Appeal), rule 8.809 (copies of matters for which judicial notice is sought in appellate division proceedings), rule 8.824 (supporting documents for a petition for writ of supersedeas filed in the appellate division), 8.841 (documents attached to a motion to augment the record in the appellate division), 8.883 (form of briefs filed in the appellate division in limited civil and misdemeanor appeals) and 8.928 (briefs filed in the appellate division in infraction appeals). The attached draft does not propose changing these rules, as they are not inconsistent with requirements that electronically filed documents be paginated using consecutive arabic numerals starting with the cover page.

The attached draft proposes deleting the language in rule 8.204 (b)(7) that allows separate numbering of tables, and adding language requiring that document pages be consecutively numbered using only the arabic numbering system beginning with the number 1 on the cover page. This change, if adopted, would apply to all documents to which 8.204 applies, including paper filed documents. This approach is suggested to ensure uniformity across all the Courts of Appeal. Another alternative, which would also eliminate the conflict, but would allow a different approach for paper filed documents and generally allow more flexibility for local rules regarding pagination, would be to delete the provision allowing the tables to be numbered using a different numbering system, and not add language requiring consecutive arabic numbering starting at the cover page. **JATS may wish to consider** which of these approaches best suits the needs of the appellate courts.

### **Changes to Rules 8.70 to 8.79**

At the December 16<sup>th</sup> meeting, Justice Mauro suggested that JATS review the appellate e-filing rules, rules 8.70 to 8.79, to assess how these rules may need to be changed to reflect the fact that e-filing has now been implemented in the Courts of Appeal and to ensure that the rules are consistent with the actual e-filing practices of the appellate courts. Justice Mauro has suggested some possible changes, shown in the attached draft.

Key aspects of the draft changes:

- Eliminates outdated language referring to e-filing as a project to be tested in the appellate courts;
- Eliminates electronic notification as a potential means of e-service;
- Clarifies that e-service on parties other than self-represented litigants is mandatory in cases where it is provided for under law, rule, or court order;
- Requires that proof of electronic service be in electronic form and removes the requirement that a printed copy with an original signature be kept.
- Requires appellate courts to permit parties to file documents electronically.
- Suggests deletion of rule 8.73, regarding court orders for electronic filing or service, as possibly no longer needed.
- Changes provisions regarding contracts with electronic service providers so that each court would be required to contract with a single electronic service provider, to require electronic filers to file through that provider, and to mandate that the court allow the provider to charge filers a reasonable fee.
- Raises the question of how rule 8.77, regarding requirements for signatures on documents, might need to be changed to conform to current practices.
- Raises the question of whether rule 8.78, regarding payment of filing fees, is still needed.

JATS may wish to consider the specific issues and proposed changes raised in the attached draft with certain questions in mind: First, where the existing appellate e-filing rule tracks a similar provision in the trial court e-filing rules, what will be the effect of creating a different rule for the appellate courts? Second, where should the rules reflect existing practices, and where should they allow flexibility, recognizing that over time the practices may change?

### Subcommittee Task

The subcommittee's tasks at the January 22nd meeting are to:

- Review the attached draft rule modernization amendments and determine whether to recommend their inclusion in the subcommittee's rules modernization proposal, as drafted or as modified by the subcommittee. (For some of the proposed changes, as noted in this memo and the draft, JATS has already considered the changes and recommended their inclusion.)
- Review the proposed changes marked on the attached set of forms and determine whether to recommend their inclusion in the subcommittee's rules modernization proposal, as drafted or as modified by the subcommittee.
- Review the attached draft rules-practice consistency amendments and determine whether to recommend their inclusion in the subcommittee's rules-practice consistency proposal, as drafted or as modified by the subcommittee.
- Review the attached draft amendments to rules 8.70 to 8.79 and determine whether to recommend their inclusion in the subcommittee's rules-practice consistency proposal, as drafted or as modified by the subcommittee.

Appellate Rules Modernization, Phase 2

**Rule 8.104. Time to appeal [Proposed change approved by JATS at 12/16/15 Meeting]**

**(a)-(b) \* \* \***

**(c) What constitutes entry**

For purposes of this rule:

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

**(5) An order signed electronically has the same effect as an order signed on paper.**

**(d)-(e) \* \* \***

**Rule 8.130. Reporter's transcript**

**(a)-(e) \* \* \***

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

**(1)-(3) \* \* \***

- (4) On request, and unless the superior court orders otherwise, the reporter must provide the Court of Appeal or any party with a copy of the reporter's transcript in computer-readable format. **Each computer-readable copy must comply with the format, labeling, content, and numbering requirements of Code of Civil Procedure section 271(b) be in electronic text-searchable PDF (portable document format) while maintaining original document formatting.**

*(Subd (f) amended effective January 1, 2016; previously amended effective January 1, 2007, July 1, 2008, and January 1, 2014.)*

**(g)-(h) \* \* \***

*Rule 8.130 amended effective January 1, 2016; repealed and adopted as rule 4 effective January 1, 2002; previously amended and renumbered as rule 8.130 effective January 1, 2007; previously amended effective January 1, 2005, January 1, 2008, July 1, 2008, January 1, 2010, and January 1, 2014.*

### **Advisory Committee Comment**

**Subdivision (a). – Subdivision (e) \* \* \***

**Subdivision (f).** Subdivision (f)(1) requires the reporter to prepare and file additional copies of the record “if multiple appellants equally share the cost of preparing the record. . . .” The reason for the requirement is explained in the comment to rule 8.147(a)(2).

Subdivision (f)(4) is intended to implement Code of Civil Procedure section 271, which allows any court, party, or other person entitled to a reporter’s transcript to request that it be delivered in computer-readable format (except that an original transcript must be on paper) and requires the reporter to provide the transcript in that format upon request if the proceedings were produced utilizing computer-aided transcription equipment. This subdivision establishes procedures relating to such requests and procedures for court reporters to apply to the superior court for relief from this requirement if the proceedings were not produced utilizing computer-aided transcription equipment. Government Code section 69954 establishes the fees for reporter’s transcripts in computer-readable format. Pursuant to Code of Civil Procedure section 271(b), which allows the Judicial Council to adopt format requirements for such a computer-readable copy, this subdivision requires the computer-readable transcript to be in text-searchable PDF format.

### **Rule 8.150. Filing the record**

#### **(a) Superior court clerk’s duties**

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

*(Subd (a) amended effective January 1, 2007.)*

#### **(b) Reviewing court clerk’s duties**

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

*(Subd (b) amended effective January 1, 2016; adopted as part of subd (a) effective January 1, 2002; previously amended and lettered as subd (b) effective January 1, 2007.)*

### **Advisory Committee Comment**

**Subdivision (a).** Under rule 8.72 (a), the superior court clerk may send the record to the reviewing court in electronic form where permitted by the reviewing court and not otherwise prohibited. Rule 8.72 (a) does not address whether and when the record may be sent to the parties in electronic form. In some cases where the reviewing court receives the record in electronic form, one or more parties may wish to

receive their copies in paper form, for example, when the party is self-represented or otherwise exempt from electronic filing and electronic service requirements.

**Rule 8.336. Preparing, certifying, and sending the record [Note: has proposed changes on issue of format of computer-readable reporter's transcript and on issue of use of electronic record.]**

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

\* \* \*

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

\* \* \*

**(c) Clerk's transcript**

\* \* \*

**(d) Reporter's transcript**

(1) \* \* \*

(2) The reporter must prepare an original and the same number of copies of the reporter's transcript as (c) requires of the clerk's transcript, and must certify each as correct. On request, and unless the trial court orders otherwise, the reporter must provide the Court of Appeal and any party with a copy of the reporter's transcript in computer-readable format. Each computer-readable copy must comply with the format, labeling, content, and numbering requirements of Code of Civil Procedure section 271(b) be in electronic text-searchable PDF (portable document format) while maintaining original document formatting.

(3)-(5) \* \* \*

*(Subd (d) amended effective January 1, 2016; previously amended effective January 1, 2007, and January 1, 2014.)*

**(e) Extension of time**

\* \* \*

**(f) Form of record**

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

*(Subd (f) adopted effective January 1, 2014.)*

**(g) Sending the transcripts**

- (1) When the clerk and reporter's transcripts are certified as correct, the clerk must promptly send:
  - (A) The original transcripts to the reviewing court, noting the sending date on each original;
  - (B) One copy of each transcript to appellate counsel for each defendant represented by separate counsel and to the Attorney General or the district attorney, whichever is counsel for the People on appeal; and
  - (C) One copy of each transcript to the district attorney or Attorney General if requested under (c)(3).
- (2) If the defendant is not represented by appellate counsel when the transcripts are certified as correct, the clerk must send that defendant's counsel's copy of the transcripts to the district appellate project.

*(Subd (g) relettered effective January 1, 2014; adopted as subd (f); previously amended effective January 1, 2007.)*

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

Each Court of Appeal clerk, under the supervision of the administrative presiding justice or the presiding justice, must take all appropriate steps to ensure that superior court clerks and reporters promptly perform their duties under this rule. This provision does not affect the superior courts' responsibility for the prompt preparation of appellate records.

*Rule 8.336 amended effective January 1, 2016; repealed and adopted as rule 32 effective January 1, 2004; previously amended and renumbered as rule 8.336 effective January 1, 2007; previously amended effective January 1, 2010, and January 1, 2014.*

**Advisory Committee Comment**

**Subdivision (a).** Subdivision (a) implements Code of Civil Procedure section 269(b).

**Subdivision (d).** This subdivision is intended to implement Code of Civil Procedure section 271, which allows any court, party, or other person entitled to a reporter's transcript to request that it be delivered in computer-readable format (except that an original transcript must be on paper) and requires the reporter to provide the transcript in that format upon request if the proceedings were produced using computer-aided

transcription equipment. This subdivision establishes procedures relating to such requests and procedures for court reporters to apply to the superior court for relief from this requirement if the proceedings were not produced using computer-aided transcription equipment. Government Code section 69954 establishes the fees for reporter's transcripts in computer-readable format. Pursuant to Code of Civil Procedure section 271(b), which allows the Judicial Council to adopt format requirements for such a computer-readable copy, this subdivision requires the computer-readable transcript to be in text-searchable PDF format.

**Subdivision (f).** Examples of confidential records include Penal Code section 1203.03 diagnostic reports, records closed to inspection by court order under *People v. Marsden* (1970) 2 Cal.3d 118 or *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, in-camera proceedings on a confidential informant, and defense expert funding requests (Pen. Code, § 987.9; *Keenan v. Superior Court* (1982) 31 Cal.3d 424, 430).

**Subdivision (g).** Under rule 8.72 (a), the superior court clerk may send the record to the reviewing court in electronic form where permitted by the reviewing court and not otherwise prohibited. Rule 8.72 (a) does not address whether and when the record may be sent to the parties in electronic form. In some cases where the reviewing court receives the record in electronic form, one or more parties may wish to receive their copies in paper form, for example, when the party is self-represented or otherwise exempt from electronic filing and electronic service requirements.

**Rule 8.409. Preparing and sending the record [Note: has proposed changes on issue of format of computer-readable reporter's transcript and on issue of use of electronic record.]**

- (a) **Application \* \* \***
- (b) **Form of record \* \* \***
- (c) **Preparing and certifying the transcripts**

Within 20 days after the notice of appeal is filed:

- (1) The clerk must prepare and certify as correct an original of the clerk's transcript and one copy each for the appellant, the respondent, the child's Indian tribe if the tribe has intervened, and the child if the child is represented by counsel on appeal or if a recommendation has been made to the Court of Appeal for appointment of counsel for the child under rule 8.403(b)(2) and that recommendation is either pending with or has been approved by the Court of Appeal but counsel has not yet been appointed; and
- (2) The reporter must prepare, certify as correct, and deliver to the clerk an original of the reporter's transcript and the same number of copies as (1) requires of the clerk's transcript. On request, and unless the trial court orders otherwise, the reporter must provide the Court of Appeal and any party with a copy of the reporter's transcript in computer-readable format. Each computer-readable copy must comply with the format, labeling, content, and numbering requirements of Code of Civil Procedure



section 271(b) be in electronic text-searchable PDF (portable document format) while maintaining original document formatting.

*(Subd (c) amended effective January 1, 2015; adopted as subd (b); previously amended effective January 1, 2007; previously amended and relettered as subd (c) effective January 1, 2014.)*

**(d) Extension of time \* \* \***

**(e) Sending the record**

(1) When the transcripts are certified as correct, the court clerk must immediately send:

(A) The original transcripts to the reviewing court, noting the sending date on each original; and

(B) One copy of each transcript to the appellate counsel for the following, if they have appellate counsel:

(i) The appellant;

(ii) The respondent;

(iii) The child's Indian tribe if the tribe has intervened; and

(iv) The child.

(2) If appellate counsel has not yet been retained or appointed for the appellant or the respondent, or if a recommendation has been made to the Court of Appeal for appointment of counsel for the child under rule 8.403(b)(2) and that recommendation is either pending with or has been approved by the Court of Appeal but counsel has not yet been appointed, when the transcripts are certified as correct, the clerk must send that counsel's copy of the transcripts to the district appellate project. If a tribe that has intervened is not represented by counsel when the transcripts are certified as correct, the clerk must send that counsel's copy of the transcripts to the tribe.

(3) The clerk must not send a copy of the transcripts to the Attorney General or the district attorney unless that office represents a party.

*(Subd (e) amended effective January 1, 2015; adopted as subd (d); previously amended effective January 1, 2007, and January 1, 2013; previously relettered as subd (e) effective January 1, 2014.)*

*Rule 8.409 amended effective January 1, 2015; adopted as rule 37.2 effective January 1, 2005; previously amended and renumbered as rule 8.408 effective January 1, 2007, and as rule 8.409 effective July 1, 2010; previously amended effective January 1, 2013, and January 1, 2014.*

**Advisory Committee Comment**

**Subdivision (a)-Subdivision (b). \* \* \***

**Subdivision (c)(2).** This subdivision is intended to implement Code of Civil Procedure section 271, which allows any court, party, or other person entitled to a reporter’s transcript to request that it be delivered in computer-readable format (except that an original transcript must be on paper) and requires the reporter to provide the transcript in that format upon request if the proceedings were produced using computer-aided transcription equipment. This subdivision establishes procedures relating to such requests and procedures for court reporters to apply to the superior court for relief from this requirement if the proceedings were not produced using computer-aided transcription equipment. Government Code section 69954 establishes the fees for reporters’ transcripts in computer-readable format. Pursuant to Code of Civil Procedure section 271(b), which allows the Judicial Council to adopt format requirements for such a computer-readable copy, this subdivision requires the computer-readable transcript to be in text-searchable PDF format.

**Subdivision (e).** Under rule 8.72 (a), the superior court clerk may send the record to the reviewing court in electronic form where permitted by the reviewing court and not otherwise prohibited. Rule 8.72 (a) does not address whether and when the record may be sent to the parties in electronic form. In some cases where the reviewing court receives the record in electronic form, one or more parties may wish to receive their copies in paper form, for example, when the party is self-represented or otherwise exempt from electronic filing and electronic service requirements. Subsection (1)(B) clarifies that when a child’s Indian tribe has intervened in the proceedings, the tribe is a party who must receive a copy of the appellate record. The statutes that require notices to be sent to a tribe by registered or certified mail return receipt requested and generally be addressed to the tribal chairperson (25 U.S.C. § 1912 (a), 25 C.F.R. § 23.11, and Welf. & Inst. Code, § 224.2) do not apply to the sending of the appellate record.

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

**(a) Application \* \* \***

**(b) Form of record**

- (1) The clerk’s and reporter’s transcripts must comply with rules 8.45–8.467, relating to sealed and confidential records, and, except as provided in (2) and (3), with rule 8.144.
- (2) In appeals under (a)(1)(A), the cover of the record must prominently display the title “Appeal From [Judgment or Order] Terminating Parental Rights Under [Welfare and Institutions Code Section 366.26 or Family Code Section 7800 et seq.],” whichever is appropriate.
- (3) In appeals under (a)(1)(B), the cover of the record must prominently display the title “Appeal From [Judgment or Order] Under [Welfare and Institutions Code Section 300 et seq. or Family Code Section 7800 et seq.],” whichever is appropriate.

*(Subd (b) amended effective January 1, 2015; previously amended effective July 1, 2010.)*

**(c) Preparing, certifying, and sending the record**

(1) Within 20 days after the notice of appeal is filed:

(A) The clerk must prepare and certify as correct an original of the clerk's transcript and one copy each for the appellant, the respondent, the district appellate project, the child's Indian tribe if the tribe has intervened, and the child if the child is represented by counsel on appeal or if a recommendation has been made to the Court of Appeal for appointment of counsel for the child under rule 8.403(b)(2) and that recommendation is either pending with or has been approved by the Court of Appeal but counsel has not yet been appointed; and

(B) The reporter must prepare, certify as correct, and deliver to the clerk an original of the reporter's transcript and the same number of copies as (A) requires of the clerk's transcript. On request, and unless the trial court orders otherwise, the reporter must provide the Court of Appeal and any party with a copy of the reporter's transcript in computer-readable format. Each computer-readable copy must comply with the format, labeling, content, and numbering requirements of Code of Civil Procedure section 271(b) be in electronic text-searchable PDF (portable document format) while maintaining original document formatting.

(2) When the clerk's and reporter's transcripts are certified as correct, the clerk must immediately send:

(A) The original transcripts to the reviewing court by the most expeditious method, noting the sending date on each original; and

(B) One copy of each transcript to the district appellate project and to the appellate counsel for the following, if they have appellate counsel, by any method as fast as United States Postal Service express mail:

(i) The appellant;

(ii) The respondent;

(iii) The child's Indian tribe if the tribe has intervened; and

(iv) The child.

(3) If appellate counsel has not yet been retained or appointed for the appellant or the respondent or if a recommendation has been made to the Court of Appeal for appointment of counsel for the child under rule 8.403(b)(2) and that recommendation is either pending with or has been approved by the Court of Appeal but counsel has not yet been appointed, when the transcripts are certified as correct, the clerk must send that counsel's copies of the transcripts to the district appellate project. If a tribe

that has intervened is not represented by counsel when the transcripts are certified as correct, the clerk must send that counsel's copy of the transcripts to the tribe.

*(Subd (c) amended effective January 1, 2015; previously amended effective January 1, 2007, and July 1, 2010.)*

- (d) Augmenting or correcting the record \* \* \***
- (e) Time to file briefs \* \* \***
- (f) Extensions of time \* \* \***
- (g) Failure to file a brief \* \* \***
- (h) Oral argument and submission of the cause \* \* \***

*Rule 8.416 amended effective January 1, 2015; adopted as rule 37.4 effective January 1, 2005; previously amended and renumbered effective January 1, 2007; previously amended effective July 1, 2010.*

#### **Advisory Committee Comment**

**Subdivision (c).** Under rule 8.72 (a), the superior court clerk may send the record to the reviewing court in electronic form where permitted by the reviewing court and not otherwise prohibited. Rule 8.72 (a) does not address whether and when the record may be sent to the parties in electronic form. In some cases where the reviewing court receives the record in electronic form, one or more parties may wish to receive their copies in paper form, for example, when the party is self-represented or otherwise exempt from electronic filing and electronic service requirements.

**Subdivision (g).** Effective January 1, 2007, revised rule 8.416 incorporates a new subdivision (g) to address a failure to timely file a brief in all termination of parental rights cases and in dependency appeals in Orange, Imperial, and San Diego Counties. Under the new subdivision, appellants would not have the full 30-day grace period given in rule 8.412(d) in which to file a late brief, but instead would have the standard 15-day grace period that is given in civil cases. The intent of this revision is to balance the need to determine the appeal within 250 days with the need to protect appellants' rights in this most serious of appeals.

**Subdivision (h).** Subdivision (h)(1) recognizes certain reviewing courts' practice of requiring counsel to file any request for oral argument within a time period other than 15 days after the appellant's reply brief is filed or due to be filed. The reviewing court is still expected to determine the appeal "within 250 days after the notice of appeal is filed." (*Id.*, Subd 8.416(e).)

**Rule 8.452. Writ petition to review order setting hearing under Welfare and Institutions Code section 366.26 [Proposed change approved by JATS at 12/16/15 Meeting]**

**(a)-(g) \* \* \***

**(h) Decision**

- (1) Absent exceptional circumstances, the reviewing court must decide the petition on the merits by written opinion.
- (2) The reviewing court clerk must promptly notify the parties of any decision and must promptly send a certified copy of any writ or order to the court named as respondent.
- (3) If the writ or order stays or prohibits proceedings set to occur within 7 days or requires action within 7 days—or in any other urgent situation—the reviewing court clerk must make a reasonable effort to notify the clerk of the respondent court by telephone or e-mail. The clerk of the respondent court must then notify the judge or officer most directly concerned.
- (4) The reviewing court clerk need not give telephonic or e-mail notice of the summary denial of a writ, unless a stay previously issued will be dissolved.

**(i) \* \* \***

**Advisory Committee Comment**

\* \* \*

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

**(a) Application \* \* \***

**(b) Purpose \* \* \***

**(c) Who may file \* \* \***

**(d) Extensions of time \* \* \***

**(e) Notice of intent**

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

(2)-(4) \* \* \*

*(Subd (e) amended effective July 1, 2010; previously amended effective January 1, 2007, and July 1, 2010.)*

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

**(g) Sending the notice of intent \* \* \***

**(h) Preparing the record**

When the notice of intent is filed, the superior court clerk must:

- (1) Immediately notify each court reporter by telephone and in writing to prepare a reporter's transcript of the oral proceedings at each session of the hearing that resulted in the order under review and deliver the transcript to the clerk within 12 calendar days after the notice of intent is filed; and
- (2) Within 20 days after the notice of intent is filed, prepare a clerk's transcript that includes the notice of intent, proof of service, and all items listed in rule 8.407(a).

*(Subd (h) amended and relettered effective January 1, 2013; adopted as subd (g); previously amended effective January 1, 2006, January 1, 2007, January 1, 2008, and July 1, 2010.)*

**(i) Sending the record**

When the transcripts are certified as correct, the superior court clerk must immediately send:

- (1) The original transcripts to the reviewing court by the most expeditious method, noting the sending date on each original, and
- (2) One copy of each transcript to each counsel of record and any unrepresented party by any means as fast as United States Postal Service express mail.

*(Subd (i) relettered effective January 1, 2013; adopted as subd (h); previously amended effective January 1, 2007.)*

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

- (1) The reviewing court clerk must immediately lodge the notice of intent. When the notice is lodged, the reviewing court has jurisdiction of the writ proceedings.
- (2) When the record is filed in the reviewing court, that court's clerk must immediately notify the parties, stating the date on which the 10-day period for filing the writ petition under rule 8.452(c)(1) will expire.

*(Subd (j) relettered effective January 1, 2013; adopted as subd (i); previously amended effective January 1, 2007.)*

*Rule 8.450 amended effective January 1, 2013; adopted as rule 38 effective January 1, 2005; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2006, July 1, 2006, January 1, 2008, January 1, 2009, and July 1, 2010.*

### **Advisory Committee Comment**

**Subdivision (d).** The case law generally recognizes that the reviewing courts may grant extensions of time under these rules for exceptional good cause. (See, e.g., *Jonathan M. v. Superior Court* (1995) 39 Cal.App.4th 1826, and *In re Cathina W.* (1998) 68 Cal.App.4th 716 [recognizing that a late notice of intent may be filed on a showing of exceptional circumstances not under the petitioner's control].) It may constitute exceptional good cause for an extension of the time to file a notice of intent if a premature notice of intent is returned to a party shortly before the issuance of an order setting a hearing under Welfare and Institutions Code section 366.26.

**Subdivision (e)(4).** See rule 8.25(b)(5) for provisions concerning the timeliness of documents mailed by inmates or patients from custodial institutions.

**Subdivision (f)(1).** A party who prematurely attempts to file a notice of intent to file a writ petition under Welfare and Institutions Code section 366.26 is not precluded from later filing such a notice after the issuance of an order setting a hearing under Welfare and Institutions Code section 366.26.

**Subdivision (i).** Under rule 8.72 (a), the superior court clerk may send the record to the reviewing court in electronic form where permitted by the reviewing court and not otherwise prohibited. Rule 8.72 (a) does not address whether and when the record may be sent to the parties in electronic form. In some cases where the reviewing court receives the record in electronic form, one or more parties may wish to receive their copies in paper form, for example, when the party is self-represented or otherwise exempt from electronic filing and electronic service requirements.

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

- (a) Application \* \* \***
- (b) Purpose \* \* \***
- (c) Who may file \* \* \***
- (d) Extensions of time \* \* \***
- (e) Notice of intent \* \* \***
- (f) Premature or late notice of intent to file writ petition \* \* \***
- (g) Sending the notice of intent \* \* \***
- (h) Preparing the record**

When the notice of intent is filed, the superior court clerk must:

- (1) Immediately notify each court reporter by telephone and in writing to prepare a reporter's transcript of the oral proceedings at each session of the hearing that resulted in the order under review and to deliver the transcript to the clerk within 12 calendar days after the notice of intent is filed; and
- (2) Within 20 days after the notice of intent is filed, prepare a clerk's transcript that includes the notice of intent, proof of service, and all items listed in rule 8.407(a).

*(Subd (h) amended effective July 1, 2013; adopted as subd (g) effective January 1, 2005; previously amended and relettered effective January 1, 2006; previously amended effective July 1, 2006, January 1, 2007, January 1, 2008, and July 1, 2010.)*

**(i) Sending the record**

When the transcripts are certified as correct, the superior court clerk must immediately send:

- (1) The original transcripts to the reviewing court by the most expeditious method, noting the sending date on each original; and
- (2) One copy of each transcript to each counsel of record and any unrepresented party and unrepresented custodian of the dependent child by any means as fast as United States Postal Service express mail.

*(Subd (i) amended effective January 1, 2007; adopted as subd (h) effective January 1, 2005; previously relettered effective January 1, 2006.)*

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

- (1) The reviewing court clerk must promptly lodge the notice of intent. When the notice is lodged, the reviewing court has jurisdiction over the writ proceedings.
- (2) When the record is filed in the reviewing court, that court's clerk must immediately notify the parties, stating the date on which the 10-day period for filing the writ petition under rule 8.456(c)(1) will expire.

*(Subd (j) amended effective January 1, 2007; adopted as subd (i) effective January 1, 2005; previously relettered effective January 1, 2006.)*

*Rule 8.454 amended effective July 1, 2013; adopted as rule 38.2 effective January 1, 2005; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2006, July 1, 2006, January 1, 2008, January 1, 2009, and July 1, 2010.*

**Advisory Committee Comment**



**Subdivision (f)(2).** See rule 8.25(b)(5) for provisions concerning the timeliness of documents mailed by inmates or patients from custodial institutions.

**Subdivision (i).** Under rule 8.72 (a), the superior court clerk may send the record to the reviewing court in electronic form where permitted by the reviewing court and not otherwise prohibited. Rule 8.72 (a) does not address whether and when the record may be sent to the parties in electronic form. In some cases where the reviewing court receives the record in electronic form, one or more parties may wish to receive their copies in paper form, for example, when the party is self-represented or otherwise exempt from electronic filing and electronic service requirements.

**Rule 8.456. Writ petition under Welfare and Institutions Code section 366.28 to review order designating or denying specific placement of a dependent child after termination of parental rights [Proposed change approved by JATS at 12/16/15 Meeting]**

(a)-(g) \* \* \*

**(h) Decision**

- (1) Absent exceptional circumstances, the reviewing court must review the petition and decide it on the merits by written opinion.
- (2) The reviewing court clerk must promptly notify the parties of any decision and must promptly send a certified copy of any writ or order to the court named as respondent.
- (3) If the writ or order stays or requires action within 7 days—or in any other urgent situation—the reviewing court clerk must make a reasonable effort to notify the clerk of the respondent court by telephone or e-mail. The clerk of the respondent court must then notify the judge or officer most directly concerned.
- (4) The reviewing court clerk need not give telephonic or e-mail notice of the summary denial of a writ, unless a stay previously issued and will be dissolved.
- (5) Rule 8.490 governs the filing, modification, finality of decisions, and remittitur in writ proceedings under this rule.

(i) \* \* \*

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

(a) **Application** \* \* \*

(b) **Clerk's transcript** \* \* \*

**(c) Reporter's transcript**

The reporter's transcript must contain all oral proceedings, excluding the voir dire examination of jurors and any opening statement.

**(d) Sending the record**

The clerk must not send a copy of the record to the Attorney General or the district attorney unless that office represents a party.

**(e) Briefs \* \* \***

**Advisory Committee Comment**

**Subdivision (a).** Under rule 8.72 (a), the superior court clerk may send the record to the reviewing court in electronic form where permitted by the reviewing court and not otherwise prohibited. Rule 8.72 (a) does not address whether and when the record may be sent to the parties in electronic form. In some cases where the reviewing court receives the record in electronic form, one or more parties may wish to receive their copies in paper form, for example, when the party is self-represented or otherwise exempt from electronic filing and electronic service requirements.

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

**(a) Application \* \* \***

**(b) When appeal is taken automatically \* \* \***

**(c) Superior court clerk's duties \* \* \***

**(d) Clerk's transcript \* \* \***

**(e) Reporter's transcript \* \* \***

**(f) Preparing and sending transcripts**

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

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

*(Subd (f) amended effective January 1, 2007.)*

**(g) Confidential material \* \* \***

**(h) Trial counsel's continuing representation \* \* \***

**(i) Appointment of appellate counsel \* \* \***

*Rule 8.482 amended effective January 1, 2016; repealed and adopted as rule 39.1 effective January 1, 2005; previously amended and renumbered as rule 8.482 effective January 1, 2007.*

**Advisory Committee Comment**

**Subdivision (a).** Under rule 8.72 (a), the superior court clerk may send the record to the reviewing court in electronic form where permitted by the reviewing court and not otherwise prohibited. Rule 8.72 (a) does not address whether and when the record may be sent to the parties in electronic form. In some cases where the reviewing court receives the record in electronic form, one or more parties may wish to receive their copies in paper form, for example, when the party is self-represented or otherwise exempt from electronic filing and electronic service requirements.

**Rule 8.489. Notice to trial court [Proposed change approved by JATS at 12/16/15 Meeting]**

**(a) Notice if writ issues**

If a writ or order issues directed to any judge, court, board, or other officer, the reviewing court clerk must promptly send a certified copy of the writ or order to the person or entity to whom it is addressed.

**(b) Notice by telephone**

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

**Drafter's Note:** Rule 8.489 applies in writ proceedings in the Supreme Court or Courts of Appeal.

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

**(a)-(h) \* \* \***

**(i) Computer-readable copies**

- (1) When the record of the preliminary proceedings is certified as complete and accurate, the clerk must promptly notify the reporter to prepare five computer-readable copies of the transcript and two additional computer-readable copies for each codefendant against whom the death penalty is sought.

- (2) Each computer-readable copy ~~must comply with the format, labeling, content, and numbering requirements of Code of Civil Procedure section 271(b) be in electronic text-searchable PDF (portable document format) while maintaining original document formatting, and must comply with~~ any additional requirements prescribed by the Supreme Court, and must be further labeled to show the date it was made.
- (3) A computer-readable copy of a sealed transcript must be placed on a separate disk and clearly labeled as confidential.
- (4) The reporter is to be compensated for computer-readable copies as provided in Government Code section 69954(b).
- (5) Within 20 days after the clerk notifies the reporter under (1), the reporter must deliver the computer-readable copies to the clerk.

*(Subd (i) amended effective January 1, 2007.)*

**(j)-(l) \* \* \***

#### **Advisory Committee Comment**

**\* \* \***

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

**(a)-(d) \* \* \***

#### **(e) Computer-readable copies**

- (1) When the record is certified as complete, the clerk must promptly notify the reporter to prepare five computer-readable copies of the transcript and two additional computer-readable copies for each codefendant sentenced to death.
- (2) Each computer-readable copy ~~must comply with the format, labeling, content, and numbering requirements of Code of Civil Procedure section 271(b) be in electronic text-searchable PDF (portable document format) while maintaining original document formatting, and must comply with~~ any additional requirements prescribed by the Supreme Court, and must be further labeled to show the date it was made.
- (3) A computer-readable copy of a sealed transcript must be placed on a separate disk and clearly labeled as confidential.
- (4) The reporter is to be compensated for computer-readable copies as provided in Government Code section 69954(b).

- (5) Within 10 days after the clerk notifies the reporter under (1), the reporter must deliver the computer-readable copies to the clerk.

**(f)-(h) \* \* \***

**Advisory Committee Comment**

**\* \* \***

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

**(a) \* \* \***

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

- (1) When the clerk and the reporter certify that their respective transcripts are correct, the clerk must promptly send a copy of each transcript to each defendant's trial counsel, to the Attorney General, to the district attorney, to the California Appellate Project in San Francisco, and to the Habeas Corpus Resource Center, noting the sending date on the originals.
- (2) The copies of the reporter's transcript sent to the California Appellate Project and the Habeas Corpus Resource Center must be computer-readable copies complying with the format, labeling, content, and numbering requirements of Code of Civil Procedure section 271(b) in electronic text-searchable PDF (portable document format) while maintaining original document formatting, and must comply with any additional requirements prescribed by the Supreme Court, and must be further labeled to show the date it was made.
- (3) When the clerk is notified of the appointment or retention of each defendant's appellate counsel, the clerk must promptly send that counsel copies of the clerk's transcript and the reporter's transcript, noting the sending date on the originals. The clerk must notify the Supreme Court, the Attorney General, and each defendant's appellate counsel in writing of the date the transcripts were sent to appellate counsel.

**(c)-(e) \* \* \***

**Rule 8.834. Reporter's transcript**

**(a)-(c) \* \* \***

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

**(1)-(3) \* \* \***

- (4) On request, and unless the trial court orders otherwise, the reporter must provide the reviewing court or any party with a copy of the reporter's transcript in computer-

readable format. Each computer-readable copy must comply with the format, labeling, content, and numbering requirements of Code of Civil Procedure section 271(b) be in electronic text-searchable PDF (portable document format) while maintaining original document formatting.

*(Subd (d) amended effective March 1, 2014.)*

**(e)-(f) \* \* \***

### **Advisory Committee Comment**

**Subdivision (d)(4).** This subdivision is intended to implement Code of Civil Procedure section 271, which allows any court, party, or other person entitled to a reporter's transcript to request that it be delivered in computer-readable format (except that an original transcript must be on paper) and requires the reporter to provide the transcript in that format upon request if the proceedings were produced utilizing computer-aided transcription equipment. This subdivision establishes procedures relating to such requests and procedures for court reporters to apply to the superior court for relief from this requirement if the proceedings were not produced utilizing computer-aided transcription equipment. Government Code section 69954 establishes the fees for reporter's transcripts in computer-readable format. Pursuant to Code of Civil Procedure section 271(b), which allows the Judicial Council to adopt format requirements for such a computer-readable copy, this subdivision requires the computer-readable transcript to be in text-searchable PDF format.

### **Rule 8.866. Preparation of reporter's transcript**

#### **(a) When preparation begins**

- (1) Unless the court has adopted a local rule under rule 8.865(b) that provides otherwise, the reporter must immediately begin preparing the reporter's transcript if the notice sent to the reporter by the clerk under rule 8.864(a)(1) indicates either:
  - (A) That the defendant was represented by appointed counsel at trial; or
  - (B) That the appellant is the People.
- (2) If the notice sent to the reporter by the clerk under rule 8.864(a)(1) indicates that the appellant is the defendant and that the defendant was not represented by appointed counsel at trial:
  - (A) Within 10 days after the date the clerk sent the notice under rule 8.864(a)(1), the reporter must file with the clerk the estimated cost of preparing the reporter's transcript.
  - (B) The clerk must promptly notify the appellant and his or her counsel of the estimated cost of preparing the reporter's transcript. The notification must show the date it was sent.

- (C) Within 10 days after the date the clerk sent the notice under (B), the appellant must do one of the following:
- (i) Deposit with the clerk an amount equal to the estimated cost of preparing the transcript;
  - (ii) File a waiver of the deposit signed by the reporter;
  - (iii) File a declaration of indigency supported by evidence in the form required by the Judicial Council;
  - (iv) File a certified transcript of all of the proceedings required to be included in the reporter's transcript under rule 8.865. The transcript must comply with the format requirements of rule 8.144;
  - (v) 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 8.869; or
  - (vi) 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
  - (vii) Notify the clerk that he or she is abandoning the appeal by filing an abandonment in the reviewing court under rule 8.855.
- (D) If the trial court determines that the appellant is not indigent, within 10 days after the date the clerk sends notice of this determination to the appellant, the appellant must do one of the following:
- (i) Deposit with the clerk an amount equal to the estimated cost of preparing the transcript;
  - (ii) 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 8.865. 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 8.869;

- (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 8.855.
- (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);
  - (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 appellant is indigent and orders that the appellant receive the transcript without cost.

*(Subd (a) amended effective January 1, 2016; previously amended effective March 1, 2014.)*

**(b) Format of transcript**

The reporter's transcript must comply with rule 8.144.

**(c) Copies and certification**

The reporter must prepare an original and the same number of copies of the reporter's transcript as rule 8.862 requires of the clerk's transcript and must certify each as correct.

**(d) When preparation must be completed**

- (1) The reporter must deliver the original and all copies to the trial court clerk as soon as they are certified but no later than 20 days after the reporter is required to begin preparing the transcript under (a). Only the presiding judge of the appellate division or his or her designee may extend the time to prepare the reporter's transcript (see rule 8.810).
- (2) On request, and unless the trial court orders otherwise, the reporter must provide the reviewing court or any party with a copy of the reporter's transcript in computer-readable format. Each computer-readable copy must be in electronic text-searchable PDF (portable document format) while maintaining original document formatting.

*(Subd (d) amended effective March 1, 2014.)*

**(e) Multi-reporter cases**

In a multi-reporter case, the clerk must accept any completed portion of the transcript from the primary reporter one week after the time prescribed by (d) even if other portions are



uncompleted. The clerk must promptly pay each reporter who certifies that all portions of the transcript assigned to that reporter are completed.

**(f) Notice when proceedings were not reported or 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 in writing. The notice must:
  - (A) Indicate whether the identified proceedings were officially electronically recorded under Government Code section 69957; and
  - (B) Show the date it was sent.
- (2) Within 15 days after this notice is sent by the clerk, the appellant must serve and file a notice with the court stating whether the appellant elects to proceed with or without a record of the identified proceedings. When the party elects to proceed with a record of these oral proceedings:
  - (A) If the clerk's notice under (1) indicates that the proceedings were officially electronically recorded under Government Code section 69957, the appellant's notice must specify which form of the record listed in rule 8.864(a) other than a reporter's transcript the appellant elects to use. The appellant must comply with the requirements applicable to the form of the record elected.
  - (B) If the clerk's notice under (1) indicates that the proceedings were not officially electronically recorded under Government Code section 69957, the appellant must prepare, serve, and file a proposed statement on appeal within 20 days after serving and filing the notice.

*(Subd (f) amended effective January 1, 2016; adopted effective March 1, 2014.)*

*Rule 8.866 amended effective January 1, 2016; adopted effective January 1, 2009; previously amended effective March 1, 2014.*

**Advisory Committee Comment**

\* \* \*

**Rule 8.919. Preparation of reporter's transcript**

**(a) When preparation begins**

- (1) Unless the court has adopted a local rule under rule 8.920(b) that provides otherwise, the reporter must immediately begin preparing the reporter's transcript if the notice sent to the reporter by the clerk under rule 8.915(a)(3) indicates that the appellant is the People.

- (2) If the notice sent to the reporter by the clerk under rule 8.915(a)(3) indicates that the appellant is the defendant:
  - (A) Within 10 days after the date the clerk sent the notice under rule 8.915(a)(3), the reporter must file with the clerk the estimated cost of preparing the reporter's transcript; and
  - (B) The clerk must promptly notify the appellant and his or her counsel of the estimated cost of preparing the reporter's transcript. The notification must show the date it was sent.
  - (C) Within 10 days after the date the clerk sent the notice under (B), the appellant must do one of the following:
    - (i) Deposit with the clerk an amount equal to the estimated cost of preparing the transcript;
    - (ii) File a waiver of the deposit signed by the reporter;
    - (iii) File a declaration of indigency supported by evidence in the form required by the Judicial Council;
    - (iv) File a certified transcript of all of the proceedings required to be included in the reporter's transcript under rule 8.918. The transcript must comply with the format requirements of rule 8.144;
    - (v) 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;
    - (vi) 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
    - (vii) Notify the clerk that he or she is abandoning the appeal by filing an abandonment in the reviewing court under rule 8.904.
  - (D) If the trial court determines that the appellant is not indigent, within 10 days after the date the clerk sends notice of this determination to the appellant, the appellant must do one of the following:
    - (i) Deposit with the clerk an amount equal to the estimated cost of preparing the transcript;

- (ii) 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.

*(Subd (a) amended effective January 1, 2016; previously amended effective March 1, 2014.)*

**(b) Format of transcript**

The reporter's transcript must comply with rule 8.144.

**(c) Copies and certification**

The reporter must prepare an original and the same number of copies of the reporter's transcript as rule 8.913(c) requires of the clerk's transcript and must certify each as correct.

**(d) When preparation must be completed**

(1) The reporter must deliver the original and all copies to the trial court clerk as soon as they are certified but no later than 20 days after the reporter is required to begin preparing the transcript under (a). Only the presiding judge of the appellate division or his or her designee may extend the time to prepare the reporter's transcript (see rule 8.810).

- (2) On request, and unless the trial court orders otherwise, the reporter must provide the reviewing court or any party with a copy of the reporter's transcript in computer-readable format. Each computer-readable copy must be in electronic text-searchable PDF (portable document format) while maintaining original document formatting.

*(Subd (d) amended effective March 1, 2014.)*

**(e) Multi-reporter cases**

In a multi-reporter case, the clerk must accept any completed portion of the transcript from the primary reporter one week after the time prescribed by (d) even if other portions are uncompleted. The clerk must promptly pay each reporter who certifies that all portions of the transcript assigned to that reporter are completed.

**(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 in writing. The notice must:
- (A) Indicate whether the identified proceedings were officially electronically recorded under Government Code section 69957; and
  - (B) Show the date it was sent.
- (2) Within 15 days after this notice is sent by the clerk, the appellant must serve and file a notice with the court stating whether the appellant elects to proceed with or without a record of the identified proceedings. When the party elects to proceed with a record of these oral proceedings:
- (A) If the clerk's notice under (1) indicates that the proceedings were officially electronically recorded under Government Code section 69957, the appellant's notice must specify which form of the record listed in rule 8.915(a) other than a reporter's transcript the appellant elects to use. The appellant must comply with the requirements applicable to the form of the record elected.
  - (B) If the clerk's notice under (1) indicates that the proceedings were not officially electronically recorded under Government Code section 69957, the appellant must prepare, serve, and file a proposed statement on appeal within 20 days after serving and filing the notice.

*(Subd (f) amended effective January 1, 2016; adopted effective March 1, 2014.)*

*Rule 8.919 amended effective January 1, 2016; adopted effective January 1, 2009; previously amended effective March 1, 2014.*

**Advisory Committee Comment**

\* \* \*

**Rule 8.1007. Transmitting record to Court of Appeal**

**(a) Clerks' duties**

- (1) To assist the Court of Appeal in determining whether to order transfer, the superior court clerk must send the record specified in (b) to the Court of Appeal within five days after:
  - (A) The appellate division certifies a case for transfer under rule 8.1005;
  - (B) The superior court clerk sends a copy of an appellate division opinion certified for publication to the Court of Appeal under rule 8.887;
  - (C) The superior court clerk receives a copy of a petition for transfer under rule 8.1006; or
  - (D) The superior court receives a request for the record from the Court of Appeal.
- (2) The Court of Appeal clerk must promptly notify the parties when the clerk files the record.

*(Subd (a) amended and relettered effective January 1, 2011; adopted as subd (b); previously amended effective January 1, 2007, and July 1, 2009.)*

**(b) Contents**

The record sent to the Court of Appeal under (a) must contain:

- (1) The original record on appeal prepared under rules 8.830–8.843, 8.860–8.873, or 8.910–8.923;
- (2) Any briefs filed in the appellate division;
- (3) The decision of the appellate division; and
- (4) Any application for certification for transfer, any answer to that application, and the appellate division's order on the application.

*(Subd (b) amended and relettered effective January 1, 2011; adopted as subd (a); previously amended effective January 1, 2007, and July 1, 2009.)*

*Rule 8.1007 amended and renumbered effective January 1, 2011; repealed and adopted as rule 65 effective January 1, 2003; previously amended and renumbered as rule 8.1010 effective January 1, 2007; previously amended effective July 1, 2009.*

**Advisory Committee Comment**

Under rule 8.72 (a), the superior court clerk may send the record to the reviewing court in electronic form where permitted by the reviewing court and not otherwise prohibited.

Drafter's Note: Rule 8.1007 solely addresses the record being sent to the Court of Appeal, where the parties will already have copies of the record from the appeal to the appellate division. For this reason the Advisory Committee Comment here, unlike other proposed advisory committee comments on sending the record in electronic form, does not comment on how the record might be sent to the parties.

**Rule 10.1028. Preservation and destruction of Court of Appeal records**

(a)-(c) \* \* \*

**(d) Time to keep other records**

(1) Except as provided in (2), the clerk may destroy all other records in a case 10 years after the decision becomes final, as ordered by the administrative presiding justice or, in a court with only one division, by the presiding justice.

(2) In a criminal case in which the court affirms a judgment of conviction, the clerk must keep the original reporter's transcript or a true and correct electronic copy thereof for 20 years after the decision becomes final.

**Advisory Committee Comment**

**Subdivision (d).** Subdivision (d) permits the Court of Appeal to keep an electronic copy of the reporter's transcript in lieu of keeping the original. Although subdivision (a) allows the Court of Appeal to maintain its records in any format that satisfies the otherwise applicable standards for maintenance of court records, including electronic formats, the original of a reporter's transcript is required under Code of Civil Procedure section 271(a) to be on paper. Subdivision (d) therefore specifies that an electronic copy may be kept, to clarify that the paper original need not be kept by the Court.

*(Subd (d) relettered effective January 1, 2013; adopted as subd (c).)*

*Rule 10.1028 amended effective January 1, 2013; adopted as rule 70 effective January 1, 2005; previously renumbered effective January 1, 2007.*



CASE NAME:

CASE NUMBER:

**NOTICE TO PARTIES:** A copy of this document must be mailed or personally delivered to the other party or parties to this appeal. A PARTY TO THE APPEAL MAY NOT PERFORM THE MAILING OR DELIVERY HIMSELF OR HERSELF. A person who is at least 18 years old and is not a party to this appeal must complete the information below and mail (by first-class mail, postage prepaid) or personally deliver the front and back of this document. When the front and back of this document have been completed and a copy mailed or personally delivered, the original may then be filed with the court.

**PROOF OF SERVICE**

**Mail**     **Personal Service**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My residence or business address is *(specify)*:
3. I mailed or personally delivered a copy of the *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)* as follows *(complete either a or b)*:
  - a.  **Mail.** I am a resident of or employed in the county where the mailing occurred.
    - (1) I enclosed a copy in an envelope and
      - (a)  **deposited** the sealed envelope with the United States Postal Service, with the postage fully prepaid.
      - (b)  **placed** the envelope for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
    - (2) The envelope was addressed and mailed as follows:
      - (a) Name of person served:
      - (b) Address on envelope:
      - (c) Date of mailing:
      - (d) Place of mailing *(city and state)*:
  - b.  **Personal delivery.** I personally delivered a copy as follows:
    - (1) Name of person served:
    - (2) Address where delivered:
    - (3) Date delivered:
    - (4) Time delivered:

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

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
(SIGNATURE OF DECLARANT)



**TO BE FILED IN THE SUPERIOR COURT**

**APP-005**

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, state bar number, and address):</i>  <hr/> <p style="text-align: center;">TELEPHONE NO.:                      FAX NO. <i>(Optional):</i></p> <p>E-MAIL ADDRESS <i>(Optional):</i> <i>if available</i></p> <p>ATTORNEY FOR <i>(Name):</i></p>	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b>  STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER:  DEFENDANT/RESPONDENT:	Superior Court Case Number:
<b>ABANDONMENT OF APPEAL (UNLIMITED CIVIL CASE)</b>	Court of Appeal Case Number <i>(if known):</i>

The undersigned appellant hereby abandons the appeal filed on *(date):* \_\_\_\_\_ in the above-entitled action.

Date:

\_\_\_\_\_

(TYPE OR PRINT NAME)

▶

\_\_\_\_\_

(SIGNATURE OF APPELLANT OR ATTORNEY)

**NOTE: File this form in the superior court if the record has not yet been filed in the Court of Appeal. If the record has already been filed in the Court of Appeal, you cannot use this form; you must file a request for dismissal in the Court of Appeal. You can use form APP-007 to file a request for dismissal in the Court of Appeal.**

CASE NAME:	CASE NUMBER:
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**NOTICE TO PARTIES:** A copy of this document must be mailed or personally delivered to the other party or parties to this appeal. A PARTY TO THE APPEAL MAY NOT PERFORM THE MAILING OR DELIVERY HIMSELF OR HERSELF. A person who is at least 18 years old and is not a party to this appeal must complete the information below and mail (by first-class mail, postage prepaid) or personally deliver the front and back of this document. When the front and back of this document have been completed and a copy mailed or personally delivered, the original may then be filed with the court.

**PROOF OF SERVICE**

**Mail**     **Personal Service**

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**
2. My residence or business address is (*specify*):
  
3. I mailed or personally delivered a copy of the *Abandonment of Appeal (Unlimited Civil Case)* as follows (*complete either a or b*):
  - a.  **Mail.** I am a resident of or employed in the county where the mailing occurred.
    - (1) I enclosed a copy in an envelope **and**
      - (a)  **deposited** the sealed envelope with the United States Postal Service, with the postage fully prepaid.
      - (b)  **placed** the envelope for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
    - (2) The envelope was addressed and mailed as follows:
      - (a) Name of person served:
      - (b) Address on envelope:
  
      - (c) Date of mailing:
      - (d) Place of mailing (city and state):
  - b.  **Personal delivery.** I personally delivered a copy as follows:
    - (1) Name of person served:
    - (2) Address where delivered:
    - (3) Date delivered:
    - (4) Time delivered:

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

Date:

(TYPE OR PRINT NAME)		(SIGNATURE OF DECLARANT)
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**TO BE FILED IN THE COURT OF APPEAL**

**APP-007**

COURT OF APPEAL, _____ APPELLATE DISTRICT, DIVISION _____	Court of Appeal Case Number (if known): _____ Superior Court Case Number: _____
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): _____  TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (optional): <i>if available</i> ATTORNEY FOR (Name): _____	<b>FOR COURT USE ONLY</b>
APPELLANT: RESPONDENT:	
<b>REQUEST FOR DISMISSAL OF APPEAL (CIVIL CASE)</b>	

The undersigned appellant hereby requests that the appeal filed on (date) \_\_\_\_\_ in the above entitled action be dismissed.

Date:

\_\_\_\_\_  
 (TYPE OR PRINT NAME)

▶ \_\_\_\_\_  
 (SIGNATURE OF APPELLANT OR ATTORNEY)

**NOTE: File this form in the Court of Appeal if the record on appeal has already been filed in the Court of Appeal. If the record has not yet been filed in the Court of Appeal, you cannot use this form; you must file an *Abandonment of Appeal (Unlimited Civil Case)* (form APP-005) in the superior court.**

CASE NAME:	CASE NUMBER:
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**NOTICE TO PARTIES:** A copy of this document must be mailed or personally delivered to the other party or parties to this appeal. A PARTY TO THE APPEAL MAY NOT PERFORM THE MAILING OR DELIVERY HIMSELF OR HERSELF. A person who is at least 18 years old and is not a party to this appeal must complete the information below and mail (by first-class mail, postage prepaid) or personally deliver the front and back of this document. When the front and back of this document have been completed and a copy mailed or personally delivered, the original may then be filed with the court.

### PROOF OF SERVICE

Mail     Personal Service

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**
2. My residence or business address is (*specify*):
3. I mailed or personally delivered a copy of the *Request for Dismissal of Appeal (Civil Case)* as follows (*complete either a or b*):
  - a.  **Mail.** I am a resident of or employed in the county where the mailing occurred.
    - (1) I enclosed a copy in an envelope and
      - (a)  **deposited** the sealed envelope with the United States Postal Service, with the postage fully prepaid.
      - (b)  **placed** the envelope for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
    - (2) The envelope was addressed and mailed as follows:
      - (a) Name of person served:
      - (b) Address on envelope:
      - (c) Date of mailing:
      - (d) Place of mailing (*city and state*):
  - b.  **Personal delivery.** I personally delivered a copy as follows:
    - (1) Name of person served:
    - (2) Address where delivered:
    - (3) Date delivered:
    - (4) Time delivered:

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

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
(SIGNATURE OF DECLARANT)

**TO BE FILED IN THE COURT OF APPEAL**

**APP-008**

<b>COURT OF APPEAL,</b>	<b>APPELLATE DISTRICT, DIVISION</b>	Court of Appeal Case Number:
ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i>		Superior Court Case Number:
TELEPHONE NO.: _____ FAX NO. <i>(Optional):</i> _____ E-MAIL ADDRESS <i>(Optional):</i> <u>if available</u> ATTORNEY FOR <i>(Name):</i> _____		<b>FOR COURT USE ONLY</b>
APPELLANT/PETITIONER:		
RESPONDENT/REAL PARTY IN INTEREST:		
<b>CERTIFICATE OF INTERESTED ENTITIES OR PERSONS</b>		
(Check one): <input type="checkbox"/> INITIAL CERTIFICATE <input type="checkbox"/> SUPPLEMENTAL CERTIFICATE		
<b>Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.</b>		

1. This form is being submitted on behalf of the following party *(name)*: \_\_\_\_\_

2. a.  There are no interested entities or persons that must be listed in this certificate under rule 8.208.  
 b.  Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest <i>(Explain):</i>
--	--------------------------------------

- (1)
- (2)
- (3)
- (4)
- (5)

Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date:

\_\_\_\_\_ ▶ \_\_\_\_\_  
 (TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY)

<b>PROOF OF SERVICE (Court of Appeal)</b> <input type="checkbox"/> Mail <input type="checkbox"/> Personal Service	
<b>Notice: This form may be used to provide proof that a document has been served in a proceeding in the Court of Appeal. Please read <i>Information Sheet for Proof of Service (Court of Appeal)</i> (form APP-009-INFO) before completing this form.</b>	
Case Name: Court of Appeal Case Number: Superior Court Case Number:	

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**
2. My  residence  business address is (*specify*):
3. I mailed or personally delivered a copy of the following document as indicated below (*fill in the name of the document you mailed or delivered and complete either a or b*):
  - a.  **Mail.** I mailed a copy of the document identified above as follows:
    - (1) I enclosed a copy of the document identified above in an envelope or envelopes **and**
      - (a)  **deposited** the sealed envelope(s) with the U.S. Postal Service, with the postage fully prepaid.
      - (b)  **placed** the envelope(s) for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope(s) with postage fully prepaid.
    - (2) Date mailed:
    - (3) The envelope was or envelopes were addressed as follows:
      - (a) Person served:
        - (i) Name:
        - (ii) Address:
      - (b) Person served:
        - (i) Name:
        - (ii) Address:
      - (c) Person served:
        - (i) Name:
        - (ii) Address:
- Additional persons served are listed on the attached page (*write "APP-009, Item 3a" at the top of the page*).
- (4) I am a resident of or employed in the county where the mailing occurred. The document was mailed from (city and state):

Case Name:	Case Number:
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3. b.  **Personal delivery.** I personally delivered a copy of the document identified above as follows:

(1) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

(2) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

(3) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

Names and addresses of additional persons served and delivery dates and times are listed on the attached page (*write "APP-009, Item 3b" at the top of the page*).

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

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)



\_\_\_\_\_  
(SIGNATURE OF PERSON COMPLETING THIS FORM)

## INFORMATION SHEET FOR PROOF OF SERVICE (COURT OF APPEAL)

### GENERAL INFORMATION ABOUT SERVICE AND PROOF OF SERVICE

This information sheet provides instructions for completing *Proof of Service (Court of Appeal)* (form APP-009). This information sheet is not part of the proof of service and does not need to be copied, served, or filed.

Rule 8.25 of the California Rules of Court provides that before filing any document in court in a case in the Court of Appeal, a party must serve, by any method permitted by the Code of Civil Procedure, one copy of the document on the attorney for each party separately represented, on each unrepresented party, and on any other person or entity when required by statute or rule. Other rules specifically require that certain documents be served, including the notice of appeal and notice designating the record on appeal in civil appeals and briefs in both civil and criminal appeals.

To "serve" a document on a person means to have that document delivered to the person. The general requirements concerning service are set out in Code of Civil Procedure sections 1011–1013a. There are two main ways to serve documents: (1) by mail and (2) by personal delivery. Regardless of what method of service is used, the Code of Civil Procedure provides that a document in a court case can only be served by a person who is:

- Over 18 years of age; and
- Not a party in the court case.

If you are a party to the case, you must therefore have someone else who is over 18 and who is not a party to the case serve any documents in your case. You will need to give the person doing the serving (the server) the names and addresses of all those who must be served. You will also need to give the server one copy of each document that needs to be served for each person or entity that is being served.

Rule 8.25 also requires the party filing a document in the court to attach to the document presented for filing a proof of service showing the required service. *Proof of Service (Court of Appeal)* (form APP-009) may be used to provide this required proof of service in any proceeding in the Court of Appeal. Tell the server to follow the instructions below for completing the *Proof of Service (Court of Appeal)* (form APP-009) and to give you the original form when it is completed. You will need to attach this original proof of service to the document you are filing.

### INSTRUCTIONS FOR THE SERVER (THE PERSON WHO IS SERVING THE DOCUMENTS)

If you are serving a document for a party in a court case, it is your responsibility to prepare the proof of service. You can use *Proof of Service (Court of Appeal)* (form APP-009) to prepare this proof of service in any case in the Court of Appeal. The proof of service should be printed or typed. If you have Internet access, a fillable version of form APP-009 is available at [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms). You can fill out most of the form before you serve the document, but you should sign and date the form only after you have finished serving the document.

**Complete the top section of *Proof of Service (Court of Appeal)* (form APP-009) as follows:**

1. *First box, left side:* Check whether the document is being served by mail or by personal delivery.
2. *Third box, left side:* Print the name of the case in which the document is being filed, the Court of Appeal case number, and the superior court case number. Use the same case name and numbers as are on the top of the document that you are serving.
3. *Box, top of form, right side:* Leave this box blank for the court's use.

**Complete items 1–3 as follows:**

1. You are stating that you are over the age of 18 and that you are not a party to this action.
2. Check one of the boxes and provide your home or business address.
3. Fill in the name of the document that you are serving.
  - a. If you are serving the document by mail, check box a. and **BEFORE YOU SEAL AND MAIL THE ENVELOPE**, fill in the following information:
    - (1) Check box (1)(a) if you will personally deposit the document with the U.S. Postal Service such as at a U.S. Postal Service Office or U.S. Postal Service mailbox; Check box (1)(b) if you will put the document in the mail at your place of business.
    - (2) Provide the date the documents are being mailed.



**INFORMATION SHEET FOR PROOF OF SERVICE  
(COURT OF APPEAL)**

- (3) Provide the name and address of each person to whom you are mailing the document. If you need more space to list additional names and addresses, check the box after item (3)(c) and attach a page listing them. At the top of the page, write "APP-009, Item 3a."
- (4) You are stating that you live or work in the county in which the document is being mailed. Provide the city and state from which the document is being mailed.

Once you have finished filling out these parts of the form, make one copy of *Proof of Service (Court of Appeal)* (form APP-009) with this information filled in for each person you are serving by mail and put this copy in the envelope with the document you are serving. Seal the envelope and mail the document as you have indicated on the proof of service.

- b. If you personally delivered the document, check box 3b. For a party represented by an attorney, delivery needs to be made by giving the document directly to the party's attorney or by leaving the document in an envelope or package clearly labeled to identify the attorney being served with a receptionist at the attorney's office or an individual in charge of the office. For a party who is not represented by an attorney, delivery needs to be made by giving the document directly to the party or by leaving the document at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening. Under b, for each person to whom you delivered the document, you need to provide:
  - (1) The name of the person;
  - (2) The address at which you delivered the document;
  - (3) The date on which you delivered the document; and
  - (4) The time at which you delivered the document.

If you need more space to list additional names, addresses, and delivery dates and times, check the box under item 3b and attach a page listing this information. At the top of the page, write "APP-009, Item 3b."

At the bottom of the form, print your name, sign the form, and fill in the date on which you signed the form. **By signing, you are stating under penalty of perjury that all the information you have provided on *Proof of Service (Court of Appeal)* is true and correct.**

Give the original completed *Proof of Service* to the party for whom you served the document.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): <i>if available</i> ATTORNEY FOR (Name): _____	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
<b>RESPONDENT'S NOTICE ELECTING TO USE AN APPENDIX (UNLIMITED CIVIL CASE)</b>	Superior Court Case Number:
RE: Appeal filed on (date):	Court of Appeal Case Number (if known):
<p><b>Notice: Please read Judicial Council form APP-001 before completing this form. This form must be filed within 10 days after the notice of appeal is filed. It must be filed in the superior court, not in the Court of Appeal.</b></p>	

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

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)



\_\_\_\_\_  
(SIGNATURE OF RESPONDENT OR ATTORNEY)

**Application for Extension of Time to File Brief (Limited Civil Case)**

Clerk stamps date here when form is filed.

**Instructions**

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

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

**Superior Court of California, County of**

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

**Trial Court Case Number:**

**Trial Court Case Name:**

You fill in the appellate division case number:

**Appellate Division Case Number:**

**1 Your Information**

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

\_\_\_\_\_

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

Street address: \_\_\_\_\_

Mailing address (if different): \_\_\_\_\_  
Street City State Zip

Phone: \_\_\_\_\_ E-mail (optional): *if available* \_\_\_\_\_  
Street City State Zip

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

Name: \_\_\_\_\_ State Bar number: \_\_\_\_\_

Street address: \_\_\_\_\_

Mailing address (if different): \_\_\_\_\_  
Street City State Zip

Phone: \_\_\_\_\_ E-mail (optional): *if available* \_\_\_\_\_  
Street City State Zip

Fax (optional): \_\_\_\_\_



Appellate Division Case Name:

Appellate Division Case Number:

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

- Appellant's opening brief, which is now due on (date): \_\_\_\_\_
- Respondent's brief, which is now due on (date): \_\_\_\_\_
- Appellant's reply brief, which is now due on (date): \_\_\_\_\_

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

4 I  have  have not received a notice under rule 8.882(c) from the clerk that this brief must be filed in 1 days.

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

- Has not been extended before
- Has been extended before by the stipulation of the parties. The parties stipulated to (number of extensions) \_\_\_\_\_ totaling (number of days) \_\_\_\_\_
- Has been extended before by the court. The court granted (number of extensions) \_\_\_\_\_ totaling (number of days) \_\_\_\_\_

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

- The other party is not willing to stipulate to an extension.
- Other reason (please describe the reason):

\_\_\_\_\_

7 The reason I need an extension to file this brief is (describe the reason you need an extension; see rule 8.811(b), for the factors the court will consider in deciding whether there is good cause to grant an extension):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

- The appellant's opening brief, filed on (date): \_\_\_\_\_
- The respondent's brief, filed on (date): \_\_\_\_\_

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

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

Date: \_\_\_\_\_

\_\_\_\_\_  
Type or print your name

\_\_\_\_\_  
Signature of party or attorney

Clerk stamps date here when form is filed.

**Instructions**

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

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

**Superior Court of California, County of**

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

**Trial Court Case Number:**

**Trial Court Case Name:**

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

**Appellate Division Case Number:**

**1 Your Information**

a. Name of appellant (the party who filed this appeal):

\_\_\_\_\_

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

Street address: \_\_\_\_\_  
Street City State Zip

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

Phone: ( ) \_\_\_\_\_ E-mail (*optional*): \_\_\_\_\_  
Street if available

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

Name: \_\_\_\_\_ State Bar number: \_\_\_\_\_

Street address: \_\_\_\_\_  
Street City State Zip

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

Phone: ( ) \_\_\_\_\_ E-mail (*optional*): \_\_\_\_\_  
Street if available

Fax (*optional*): ( ) \_\_\_\_\_



Appellate Division Case Number:

Appellate Division Case Name: \_\_\_\_\_

2 On (fill in the date) \_\_\_\_\_, I/my client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.

3 By signing and filing this form, I abandon/my client abandons that appeal.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Type or print your name*

▲ \_\_\_\_\_  
*Signature of appellant or attorney*

## GENERAL INFORMATION

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

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

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

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

**2 What is an appeal?**

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

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

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

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

You can get these forms at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).

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

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

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

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



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

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

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

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

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

**INFORMATION FOR THE APPELLANT**

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

**5 Who can appeal?**

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

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

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

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

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

**7 How do I start my appeal?**

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





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

“Serve and file” means that you must:

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

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

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

Yes. In a limited civil case, except in the very limited circumstances listed in rule 8.823, you must file your notice of appeal within **30 days** after the trial court clerk or a party serves either a document called a “Notice of Entry” of the trial court judgment or a file-stamped copy of the judgment or within 90 days after entry of the judgment, whichever is earlier. **This deadline for filing the notice of appeal cannot be extended. If your notice of appeal is late, the appellate division will not be able to consider your appeal.**

### 10 Do I have to pay to file an appeal?

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

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

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

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

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

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

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

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

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

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

There are three parts of the official record:

- a. A record of the documents filed in the trial court (other than exhibits)

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

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

#### a. Record of the documents filed in the trial court

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

- (1) *A clerk’s transcript*
- (2) *The original trial court file or*
- (3) *An agreed statement*

Read below for more information about these options.

#### (1) Clerk’s transcript

**Description:** A clerk’s transcript is a record of the documents filed in the trial court prepared by the clerk of the trial court.

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

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



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

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

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

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

## (2) Trial court file

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

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

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

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

## (3) Agreed statement

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

**When available:** If you and the respondent agree to this, you can use an agreed statement instead of a clerk’s transcript. To do this, you must attach to your agreed statement all of the documents that are required to be included in a clerk’s transcript. If you choose this alternative, you must file with your notice designating the record on appeal either the agreed statement or a written agreement with the respondent (a “stipulation”), stating that you are trying to



agree on a statement. Within the next 30 days, you must then file the agreed statement or tell the court that you were unable to agree on a statement and file a new notice designating the record.

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

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

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

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

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

- (1) If you or the other party arranged to have a court reporter there during the trial court proceedings, the reporter can prepare a record, called a “*reporter’s transcript*.”

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

Read below for more information about these options.

**(1) Reporter’s transcript**

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

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

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

If you elect to use a reporter’s transcript, the respondent also has the right to designate additional proceedings to be included in the reporter’s transcript. If you elect to proceed without a reporter’s transcript, however, the



respondent may not designate a reporter's transcript without first getting an order from the appellate division.

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

Unlike the fee for filing the notice of appeal and the costs for preparing a clerk's transcript, the court cannot waive the fee for preparing a reporter's transcript. A special fund, called the Transcript Reimbursement Fund, may be able to help pay for the transcript. You can get information about this fund at:

[www.courtreportersboard.ca.gov/consumers/index.shtml#rtf](http://www.courtreportersboard.ca.gov/consumers/index.shtml#rtf). If you are unable to pay the cost of a reporter's transcript, a record of the oral proceedings can be prepared in other ways, by using an agreed statement or a statement on appeal, which are described below.

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

## **(2) Official electronic recording or transcript**

**When available:** In some limited civil cases, the trial court proceedings were officially recorded on approved electronic recording equipment. If your case was officially recorded, you can choose ("elect") to have a transcript prepared from the recording. Check with the trial court to see if the

oral proceedings in your case were officially electronically recorded before you choose this option. If the court has a local rule permitting this and all the parties agree ("stipulate"), a copy of an official electronic recording itself can be used as the record, instead of preparing a transcript. If you choose this option, you must attach a copy of this agreement ("stipulation") to your notice designating the record on appeal.

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

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

## **(3) Agreed statement**

**Description:** An agreed statement is a written summary of the trial court proceedings agreed to by all the parties.

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

**Contents:** An agreed statement must explain what the trial court case was about, describe why the appellate division is the right court to consider an



appeal in this case (why the appellate division has “jurisdiction”), and describe the rulings of the trial court relating to the points to be raised on appeal.

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

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

#### (4) Statement on appeal

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

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

**Contents:** A statement on appeal must include:

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

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

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

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

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

You can get more information about how to serve court papers and about proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on



the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).

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

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

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

### c. Exhibits

The third part of the official record of the trial court proceeding is the exhibits, such as photographs, documents, or other items that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court. Exhibits are considered part of the record on

appeal, but the clerk will not include any exhibits in the clerk’s transcript unless you ask that they be included in your notice designating the record on appeal. *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103), includes a space for you to make this request.

You also can ask the trial court to send original exhibits to the appellate division at the time briefs are filed (see rule 8.843 for more information about this procedure and see below for information about briefs).

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

### 14 What happens after the official record has been prepared?

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

### 15 What is a brief?

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

**Contents:** If you are the appellant, your brief, called an “appellant’s opening brief,” must clearly explain what

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

**Serving and filing:** You must serve and file your brief in the appellate division by the deadline the court set in the notice it sent you, which is usually 30 days after the record is filed in the appellate division. "Serve and file" means that you must:

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

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

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

*Time to File Brief (Limited Civil Case)* (form APP-106) to ask the court for an extension.

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

### 16 What happens after I file my brief?

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

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

### 17 What happens after all the briefs have been filed?

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

### 18 What is "oral argument?"

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

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





**19 What happens after oral argument?**

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

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

If you decide you do not want to continue with your appeal, you must file a written document with the appellate division notifying it that you are giving up (this is called "abandoning") your appeal. You can use *Abandonment of Appeal (Limited Civil Case)* (form APP-107) to file this notice in a limited civil case. You can get form APP-107 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).

**INFORMATION FOR THE RESPONDENT**

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

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

You do not *have* to do anything. The notice of appeal simply tells you that another party is appealing the trial court's decision. However, this would be a good time to get advice from a lawyer, if you want it. You do not *have* to have a lawyer; if you are an individual (not a corporation, for example), you are allowed to represent yourself in an appeal in a limited civil case. But appeals can be complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about the appeal procedures, you should talk to a lawyer. You must hire your own lawyer if you want one. You can get information about finding a lawyer on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-lowcosthelp.htm](http://www.courts.ca.gov/selfhelp-lowcosthelp.htm).

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

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

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

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

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

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

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

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

**(a) Clerk's transcript**

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

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

Whether or not you ask for additional documents to be included in the clerk's transcript, you must pay a fee if you want a copy of the clerk's transcript. The trial court clerk will send you a notice indicating the cost for a copy of the clerk's transcript. If you want a copy, you must deposit this amount with the court within 10 days after the clerk's notice was sent. If you cannot afford to pay this cost, you can ask the court to waive it. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). The court will review this application and determine if you are eligible for a fee waiver. The clerk will not prepare a copy of the clerk's transcript for you unless you deposit payment for the cost or obtain a fee waiver.

### **(b) Reporter's transcript**

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

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

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

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

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

### **(c) Agreed statement**

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

### **(d) Statement on appeal**

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

- Have somebody over 18 years old who is not a party to the case—so not you—mail or



- deliver (“serve”) the proposed amendments to the appellant in the way required by law.
- Make a record that the proposed amendments have been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the proposed amendments, who was served with the proposed amendments, how the proposed amendments were served (by mail or in person), and the date the proposed amendments were served.
- File the original proposed amendments and the proof of service with the trial court. You should make a copy of the proposed amendments you are planning to file for your own records before you file them with the court. It is a good idea to bring or mail an extra copy of the proposed amendments to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

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

### 25 What happens after the official record has been prepared?

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

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

requirements for the format and length of these briefs. You can get these rules at any courthouse or county law library or online at [www.courts.ca.gov/rules.htm](http://www.courts.ca.gov/rules.htm).

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

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

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

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

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

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

### **26 What happens after all the briefs have been filed?**

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

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

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

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

Clerk stamps date here when form is filed.

**Instructions**

- This form is only for providing proof that a document has been served (delivered) in a proceeding in the superior court appellate division.
- The person who serves (delivers) a document in this case and who fills out this form:
  - Must be at least 18 years old
  - Must NOT be a party in this case
- Before you fill out this form, read *What Is Proof of Service?* (form APP-109-INFO) to understand your responsibilities.

You fill in the name and street address of the court that issued the decision that is being challenged in this case:

**Superior Court of California, County of**

① At the time I served the documents listed in ④, I was at least 18 years old.

② I am not a party in the case identified in the box on the right side of this page.

You fill in the number and name of the trial court case in which the decision being challenged was issued:

③ My  home  business address is:

**Trial Court Case Number:**

\_\_\_\_\_  
Street City State Zip

**Trial Court Case Name:**

④ I mailed or personally delivered the following document, as indicated below (check or fill in the name of the document you are serving and check and complete either a or b).

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

- Notice of Appeal/Cross Appeal (Limited Civil Case)
- Notice Designating Record on Appeal (Limited Civil Case)
- Proposed Statement on Appeal (  Limited Civil Case  Misdemeanor  Infraction)
- Appellant's Opening Brief
- Respondent's Brief
- Appellant's Reply Brief
- Abandonment of Appeal (Limited Civil Case)
- Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)
- Other (write in the name of the document):

**Appellate Division Case Number:**

a.  Service by Mail

(1) I put one copy of the document identified ④ in an envelope addressed to each person listed in (2), sealed the envelope, and put first-class postage on the envelope.



Appellate Division Case Name:

Appellate Division Case Number:

(2) The envelope or envelopes were addressed as follows:

(a) Name of person served:

Address on envelope:

Street

City

State Zip

(b) (Name of person served:

Address on envelope:

Street

City

State Zip

Check here if you mailed copies of the document identified in (4) to more people. Attach a separate page listing the names and addresses on each additional envelope you mailed. Write "APP-109, Item 4a" on the top of the page.

(3) I mailed the envelope or envelopes on (date): from (city):  
(state): by depositing the envelope or envelopes (check one):

(a)  With the U.S. Postal Service or

(b)  At an office or business mail drop where I know the mail is picked up every day and deposited with the U.S. Postal Service.

b.  Service by Personal Delivery

I personally gave one copy of the document identified in (4) to each of the following people:

(1) (a) Name of person served:

(b) (Address where you gave the documents to this person:

Street

City

State Zip

(c) Date when you gave the documents to this person:

(d) Time when you gave the documents to this person:

(2) (a) Name of person served:

(b) (Address where you gave the documents to this person:

Street

City

State Zip

(c) Date when you gave the documents to this person:

(d) Time when you gave the documents to this person:

Check here if you gave copies of the document identified in (4) to more people. Attach a separate page listing the names of each of these people, the address where you gave each of them the document, and the date and time you gave them the document. Write "APP-109, Item 4b" on the top of the page.

(5) I declare under penalty of perjury under California state law that the information above is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
Type or print server's name

\_\_\_\_\_  
Server signs here after serving

## GENERAL INFORMATION

**What does this information sheet cover?**

This information sheet tells you how to fill out *Proof of Service (Appellate Division)* (form APP-109). This information sheet is not part of the proof of service and does not need to be copied, served, or filed.

**1 What is “serving” a document?**

“Serving” a document on a person means having the document delivered to that person. The general requirements for serving documents are set out in California Code of Civil Procedure sections 1011–1013a (you can get a copy of these laws at any county law library or online at [www.leginfo.ca.gov/calaw.html](http://www.leginfo.ca.gov/calaw.html)). There are two main ways to serve documents: (1) by mail and (2) by personal delivery.

When a document is served by mail, it must be put in a sealed envelope or package that is addressed to the person who is being served and that has the postage fully prepaid. The envelope then has to be deposited with the U.S. Postal Service by leaving it at a U.S. Postal Service office or mail drop or at an office or business mail drop where the person serving the document knows the mail is picked up every day and deposited with the U.S. Postal Service.

When a document is personally delivered to a party who is represented by an attorney, the document must either be given directly to the attorney representing that party or the document can be placed in an envelope or package addressed to the attorney and left with the receptionist at the attorney’s office or with a person who is in charge of the attorney’s office. When a document is personally served on a party who is not represented by an attorney, the document must either be given directly to the party or the document can be given to someone who is at least 18 years old at the party’s residence between the hours of eight in the morning and six in the evening.

**2 What documents have to be served?**

Rule 8.817 of the California Rules of Court requires that before you file any document with the court in a case in the appellate division of the superior court, you must

serve one copy of the document on each of the other parties in the case and on anyone else when required by law (statute or rule of court). Other rules require that certain documents in cases in the appellate division be served, including the notice of appeal and the notice designating the record on appeal in appeals in limited civil cases and briefs in all appeals. (For more information about appeals in general and about these documents, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO), *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO), and *Information on Appeal Procedures for Infractions* (form CR-141-INFO).)

**3 Who can serve a document?**

State law (the Code of Civil Procedure) says that a document in a court case can only be served by a person who is:

- Over 18 years old; and
- Not a party in the court case

If you are a party in a case, **you must have someone else who is over 18 and who is not a party in your case serve any documents in your case for you.** You will need to give the person who is serving the document for you (the server) the names and addresses of all the people who need to be served with that document. You will also need to give the server one copy of each document that needs to be served for each person who is being served.

**4 What is proof of service?**

A “proof of service” shows the court that a document was served as required by the law. Rule 8.817 also requires a party who is filing a document with the court in a case in the appellate division to attach a proof of service to the document he or she wants to file. You can use *Proof of Service (Appellate Division)* (form APP-109) to give the court this proof of service in any case in the appellate division of the superior court. Tell the server to follow the instructions below for completing the *Proof of Service (Appellate Division)* (form APP-109) and to give you the original form when it is filled out and signed. You will need to attach this original proof of service to the document you want to file.



### INFORMATION FOR THE SERVER

#### 5 Who fills out the *Proof of Service*?

If you are the server (the person who serves a document for a party in a court case), you must prepare and sign the proof of service. You can use *Proof of Service (Appellate Division)* (form APP-109) to prepare this proof of service in any case in the appellate division.

#### 6 How do I fill out the *Proof of Service*?

You can fill out most of the information on *Proof of Service (Appellate Division)* (form APP-109) by copying the information from the document you are serving before you serve that document. However, you should not sign and date the form until after you have finished serving the document. **By signing form APP-109, you are swearing, under penalty of perjury, that the information that you put in the form is true and correct.**

When you fill out the *Proof of Service (Appellate Division)* (form APP-109), you should print neatly or use a typewriter. If you have Internet access, you can fill out the form online at [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms) (use the “fillable” version of the form).

#### Filling in the top section of form APP-109:

First box, right side of form: Leave this box blank for the court’s use.

Second box, right side of form: Fill in the name of the county in which the case is filed and the street address of the court. You can copy this information from the first page of the document that you are serving. If the document you are serving is another Judicial Council form, this information will be in the second box on the right-hand side of the form.

Third box, right side of form: Fill in the trial court case name and number. You can copy this information from the first page of the document that you are serving. If the document you are serving is another Judicial Council form, this information will be in the third box on the right-hand side of the form.

Fourth box, right side of form: Fill in the appellate division case number, if you know it. If this number is available, it will be on the first page of the document that you are serving. If the document you are serving is another Judicial Council form, this number will be in the fourth box on the right-hand side of the form.

#### Filling in items 1–5:

Items ① and ②: You are stating, under penalty of perjury, that you are over the age of 18 and that you are not a party in this court case.

Item ③: Check one of the boxes and provide your home or business address. This information is important because, if you serve the document by mail, you must live or work in the county from which the document was mailed.

Item ④: Check or fill in the name of the document that you are serving. If the document you are serving is another Judicial Council form, the name of the document is located on both the top and the bottom of the first page of the form. If the document you are serving is not a Judicial Council form, the name of the document should be on the top of the first page of the document.

- a. Check box 4a. if you are serving the document by mail. **BEFORE YOU SEAL AND MAIL THE ENVELOPE WITH THE DOCUMENT YOU ARE SERVING**, fill in the following parts of the form.
  - (1) You are stating, under penalty of perjury, that you are putting one copy of the document you identified in item 4 in an envelope addressed to each person listed in 4a.(2), sealing the envelope, and putting first-class postage on the envelope.
  - (2) Fill in the name and address of each person to whom you are mailing the document. You can copy this information from the list of people to be served or the envelopes provided by the party for whom you are serving the document. If you need more space to list names and addresses, check the box under item 4a.(2) and attach a page listing them. At the top of the page, write “APP-109, Item 4a.”





(3) Fill in the date you are mailing the document and the city and state from which you are mailing it. **REMEMBER:** You must live or work in the county from which the document is mailed.

(a) Check box 4a.(3)(a) if you are personally depositing the document with the U.S. Postal Service, such as at a U.S. Post Office or U.S. Postal Service mailbox.

(b) Check box 4a.(3)(b) if you are putting the document in the mail at your place of business.

Once you have finished filling out these parts of the form, make one copy of *Proof of Service (Appellate Division)* (form APP-109) with this information filled in for each person you are serving by mail. Put this copy of *Proof of Service (Appellate Division)* (form APP-109) in the envelope with the document you are serving. Seal the envelope and mail it as you have indicated on the *Proof of Service*.

- b. Check box 4b. If you personally delivered the documents. Remember, when a document is personally delivered to a party who is represented by an attorney, the document must either be given directly to the party's attorney or the document can be placed in an envelope or package addressed to the attorney and left with the receptionist at the attorney's office or with a person who is in charge of the attorney's office. When a document is personally served on a party who is not represented by an attorney, the document must either be given directly to the party or the document can be given to someone who is at least 18 years old at the party's residence between the hours of eight in the morning and six in the evening.

For each person to whom you personally delivered the document, fill in:

- (a) The person's name.
- (b) The address at which you delivered the document to this person.
- (c) The date on which you delivered the document to this person.

(d) The time at which you delivered the document.

If you need space to list more names, addresses, and delivery dates and times, check the box under 4b. and attach a page listing this information. At the top of the page, write "APP-109, Item 4b."

Item ⑤: At the bottom of the form, type or print your name, sign the form, and fill in the date that you signed the form. **By signing this form, you are stating under penalty of perjury that all the information you filled in on *Proof of Service (Appellate Division)* (form APP-109) is true and correct.**

After you have finished serving the document and filled in, signed, and dated *Proof of Service (Appellate Division)* (form APP-109), give the original completed form to the party for whom you served the document.

## GENERAL INFORMATION

## ① What does this information sheet cover?

This information sheet tells you about writ proceedings—proceedings in which a person is asking for a writ of mandate, prohibition, or review—in misdemeanor, infraction, and limited civil cases, and in certain small claims cases. Please read this information sheet before you fill out *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151). This information sheet does not cover everything you may need to know about writ proceedings. It is only meant to give you a general idea of the writ process. To learn more, you should read rules 8.930–8.936 of the California Rules of Court, which set out the procedures for writ proceedings in the appellate division. You can get these rules at any courthouse or county law library or online at [www.courts.ca.gov/rules](http://www.courts.ca.gov/rules).

This information sheet does NOT provide information about appeals or proceedings for writs of supersedeas or habeas corpus, or for writs in certain small claims cases.

- For information about appeals, please see the box on the right side of this page.
- For information about writs of habeas corpus, please see rules 4.550–4.552 of the California Rules of Court and *Petition for Writ of Habeas Corpus* (form MC-275).
- For information about writs of supersedeas, please see rule 8.824 of the California Rules of Court.
- This information sheet applies to writs relating to *postjudgment enforcement actions* of the small claims division. For information about writs relating to other actions by the small claims division, see rules 8.930–8.936 of the California Rules of Court and *Petition for Writ (Small Claims)* (form SC-300).
- For information about writs relating to actions of the superior court on small claims appeals, see rules 8.485–8.493 of the California Rules of Court.

You can get these rules and forms at any courthouse or county law library or online at [www.courts.ca.gov/rules](http://www.courts.ca.gov/rules) for the rules or [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms) for the forms.

## ② What is a writ?

A writ is an order from a higher court telling a lower court to do something the law says the lower court must do or not to do something the law says the lower court does not have the power to do. In writ proceedings in the appellate division, the lower court is the superior court that took the action or issued the order being challenged.

For information about appeal procedures, see:

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

You can get these forms at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).

In this information sheet, we call the lower court the “trial court.”

## ③ Are there different kinds of writs?

Yes. There are three main kinds of writs:

- Writs of mandate (sometimes called “mandamus”), which are orders telling the trial court to do something.
- Writs of prohibition, which are orders telling the trial court not to do something.
- Writs of review (sometimes called “certiorari”), which are orders telling the trial court that the appellate division will review certain kinds of actions already taken by the trial court.

There are laws (statutes) that you should read concerning each type of writ: see California Code of Civil Procedure sections 1084–1097 about writs of mandate, sections 1102–1105 about writs of prohibition, and sections 1067–1077 about writs of review. You can get copies of



these statutes at any county law library or online at [leginfo.legislature.ca.gov/faces/codes.xhtml](http://leginfo.legislature.ca.gov/faces/codes.xhtml).

#### 4 Is a writ proceeding the same as an appeal?

No. In an **appeal**, the appellate division *must* consider the parties' arguments and decide whether the trial court made the legal error claimed by the appealing party and whether the trial court's decision should be overturned based on that error (this is called a "decision on the merits"). In a **writ proceeding**, the appellate division is *not* required to make a decision on the merits; even if the trial court made a legal error, the appellate division can decide not to consider that error now, but to wait and consider the error as part of any appeal from the final judgment. Most requests for writs are denied without a decision on the merits (this is called a "summary denial"). Because of this, appeals are the ordinary way that decisions made by a trial court are reviewed and writ proceedings are often called proceedings for "extraordinary" relief.

Appeals and writ proceedings are also used to review different kinds of decisions by the trial court. Appeals can be used only to review a trial court's final judgment and a few kinds of orders. Most rulings made by a trial court before it issues its final judgment cannot be appealed right away; they can only be appealed after the trial court case is over, as part of an appeal of the final judgment. Unlike appeals, writ proceedings can be used to ask for review of certain kinds of important rulings made by a trial court before it issues its final judgment.

#### 5 Is a writ proceeding a new trial?

No. A **writ proceeding is NOT a new trial**. The appellate division will not consider new evidence, such as the testimony of new witnesses. Instead, if it does not summarily deny the request for a writ, the appellate division reviews a record of what happened in the trial court and the trial court's ruling to see if the trial court made the legal error claimed by the person asking for the writ. When it conducts its review, the appellate division presumes that the trial court's ruling is correct; the person who requests the writ must show the appellate division that the trial court made the legal error the person is claiming.

#### 6 Can a writ be used to address any errors made by a trial court?

No.

**Writs can only address certain legal errors.** Writs can only address the following types of legal errors made by a trial court:

- The trial court has a legal duty to act but:
  - Refuses to act
  - Has not done what the law says it must do
  - Has acted in a way the law says it does not have the power to act
- The trial court has performed or says it is going to perform a judicial function (like deciding a person's rights under law in a particular case) in a way that the court does not have the legal power to do.

**There must be no other adequate remedy.** The trial court's error must also be something that can be fixed only with a writ. The person asking for the writ must show the appellate division that there is no adequate way to address the trial court's error other than with the writ (this is called having "no adequate remedy at law"). As mentioned above, appeals are the ordinary way that trial court decisions are reviewed. If the trial court's ruling can be appealed, the appellate division will generally consider an appeal to be good enough (an "adequate remedy") unless the person asking for the writ can show the appellate division that he or she will be harmed in a way that cannot be fixed by the appeal if the appellate division does not issue the writ (this is called "irreparable" injury or harm).

**Statutory writs:** There are laws (statutes) that provide that certain kinds of rulings can or must be challenged using a writ proceeding. These are called "statutory writs." Here is a list of some of the most common rulings that a statute says can or must be challenged using a writ:

- A ruling on a motion to disqualify a judge (see California Code of Civil Procedure section 170.3(d))
- Denial of a motion for summary judgment (see California Code of Civil Procedure section 437c(m)(1))



- A ruling on a motion for summary adjudication of issues (see California Code of Civil Procedure section 437c(m)(1))
- Denial of a stay in an unlawful detainer matter (see California Code of Civil Procedure section 1176)
- An order disqualifying the prosecuting attorney (see California Penal Code section 1424)

You can get copies of these statutes at any county law library or online at [leginfo.legislature.ca.gov/faces/codes.xhtml](http://leginfo.legislature.ca.gov/faces/codes.xhtml). You will need to check whether there is a statute providing that the specific ruling you want to challenge can or must be reviewed using a writ proceeding. (Note that just because there is a statute requiring or allowing you to ask for a writ to challenge a ruling does not mean that the court must grant your request; the appellate division can still deny a request for a statutory writ.)

**Common law writs:** Even if there is not a statute specifically providing for a writ proceeding to challenge a particular ruling, most trial court rulings other than the final judgment can potentially be challenged using a writ proceeding if the trial court made the type of legal error described above and the petitioner has no other adequate remedy at law. These writs are called “common law” writs.

### **7 Can the appellate division consider a request for a writ in any case?**

No. Different courts have the power (called “jurisdiction”) to consider requests for writs in different types of cases. The appellate division can only consider requests for writs in limited civil, misdemeanor, and infraction cases, and certain small claims cases. A limited civil case is a civil case in which the amount claimed is \$25,000 or less (see California Code of Civil Procedure sections 85 and 88). Misdemeanor cases are cases in which a person has been charged with or convicted of a crime for which the punishment can include jail time of up to one year but not time in state prison (see California Penal Code sections 17 and 19.2). (If the person was also charged with or convicted of a felony in the same case, it is considered a felony case, not a misdemeanor case.) Infraction cases are cases in which a person has been charged with or convicted of a

crime for which the punishment can be a fine, traffic school, or some form of community service but cannot include any time in jail or prison (see California Penal Code sections 17 and 19.8). Examples of infractions include traffic tickets or citations for violations of some city or county ordinances. (If a person was also charged with or convicted of a misdemeanor in the same case, it is considered a misdemeanor case, not an infraction case.) You can get copies of these statutes at any county law library or online at [leginfo.legislature.ca.gov/faces/codes.xhtml](http://leginfo.legislature.ca.gov/faces/codes.xhtml). The appellate division can consider requests for writs in small claims actions relating to postjudgment enforcement orders.

The appellate division does NOT have jurisdiction to consider requests for writs in either unlimited civil cases (civil cases in which the amount claimed is more than \$25,000) or felony cases (cases in which a person has been charged with or convicted of a crime for which the punishment can include time in state prison). Requests for writs in these cases can be made in the Court of Appeal. The appellate division also does NOT have jurisdiction to consider requests for writs of habeas corpus; requests for these writs can be made in the superior court.

Requests for writs relating to actions of the small claims division *other* than postjudgment enforcement orders are considered by a single judge in the appellate division. (See form SC-300-INFO.) Requests for writs relating to superior court actions in small claims cases on appeal may be made to the Court of Appeal.

### **8 Who are the parties in a writ proceeding?**

If you are asking for the writ, you are called the PETITIONER. You should read “Information for the Petitioner,” beginning on page 4.

The court the petitioner is asking to be ordered to do or not to do something is called the RESPONDENT. In appellate division writ proceedings, the trial court is the respondent.

Any other party in the trial court case who would be affected by a ruling regarding the request for a writ is a REAL PARTY IN INTEREST. If you are a real party in interest, you should read “Information for a Real Party in Interest,” beginning on page 10.



**9 Do I need a lawyer to represent me in a writ proceeding?**

You do not *have* to have a lawyer; you are allowed to represent yourself in a writ proceeding in the appellate division. But writ proceedings can be very complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about the writ procedures, you should talk to a lawyer. In limited civil cases and infraction cases, you must hire a lawyer at your own expense if you want one (the court cannot provide one). You can get information about finding a lawyer on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-lowcosthelp.htm](http://www.courts.ca.gov/selfhelp-lowcosthelp.htm).

**INFORMATION FOR THE PETITIONER**

This part of the information sheet is written for the petitioner—the party asking for the writ. It explains some of the rules and procedures relating to asking for a writ. The information may also be helpful to a real party in interest. There is more information for a real party in interest starting on page 10 of this information sheet.

**10 Who can ask for a writ?**

Only a party in the trial court proceeding—the plaintiff or defendant in a civil case or the defendant or prosecuting agency in a misdemeanor or infraction case—can ask for a writ challenging a ruling on a motion to disqualify a judge (see California Code of Civil Procedure section 170.3(d)). Parties are also usually the only ones that ask for writs challenging other kinds of trial court rulings. However, in most cases, a person who was not a party does have the legal right to ask for a writ if that person has a “beneficial interest” in the trial court’s ruling. A “beneficial interest” means that the person has a specific right or interest affected by the ruling that goes beyond the general rights or interests the public may have in the ruling.

**11 How do I ask for a writ?**

To ask for a writ you must serve and file a petition for a writ (see below for an explanation of how to “serve and file” a petition). A petition is a formal request that the appellate division issue a writ. A petition for a writ

explains to the appellate division what happened in the trial court, what legal error you (the petitioner) believe the trial court made, why you have no other adequate remedy at law, and what order you are requesting the appellate division to make.

**12 How do I prepare a writ petition?**

If you are represented by a lawyer, your lawyer will prepare your petition for a writ. If you are not represented by a lawyer, you must use *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151) to prepare your petition. You can get form APP-151 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). This form asks you to fill in the information that needs to be in a writ petition.

**a. Description of your interest in the trial court’s ruling**

Your petition needs to tell the appellate division why you have a right to ask for a writ in the case. As discussed above, usually only a person who was a party in the trial court case—the plaintiff or defendant in a civil case or the defendant or prosecuting agency in a misdemeanor or infraction case—asks for a writ challenging a ruling in that case. If you were a party in the trial court case, say that in your petition. If you were not a party, you will need to describe what “beneficial interest” you have in the trial court’s ruling. A “beneficial interest” means that you have a specific right or interest affected by the ruling that goes beyond the general rights or interests the public may have in the ruling. To show the appellate division that you have a beneficial interest in the ruling you want to challenge, you must describe how the ruling will affect you in a direct and negative way.

**b. Description of the legal error you believe the trial court made**

Your petition will need to tell the appellate division what legal error you believe the trial court made. Not every mistake a trial court might make can be addressed by a writ. You must show that the trial court made one of the following types of legal errors:

- The trial court has a legal duty to act but:
  - Refuses to act
  - Has not done what the law says it must do
  - Has acted in a way the law says it does not have the power to act
- The trial court has performed or says it is going to perform a judicial function (like deciding a person's rights under law in a particular case) in a way that the court does not have the legal power to do.

To show the appellate division that the trial court made one of these legal errors, you will need to:

- Show that the trial court has the legal duty or the power to act or not act in a particular way. You will need to tell the appellate division what legal authority—what constitutional provision, statute, rule, or published court decision—establishes the trial court's legal duty or power to act or not act in that way.
- Show the appellate division that the trial court has not acted in the way that this legal authority says the court is required to act. You will need to tell the appellate division exactly where in the record of what happened in the trial court it shows that the trial court did not act in the way it was required to.

### **c. Description of why you need the writ**

One of the most important parts of your petition is explaining to the appellate division why you need the writ you have requested. Remember, the appellate division does not have to grant your petition just because the trial court made an error. You must convince the appellate division that it is important for it to issue the writ.

***Your petition needs to show that a writ is the only way to fix the trial court's error.*** To convince the court you need the writ, you will need to show the appellate division that you have no way to fix the trial court's error other than through a writ (this is called having "no adequate remedy at law").

***This will be hard if the trial court's ruling can be appealed.*** If the ruling you are challenging can be appealed, either immediately or as part of an appeal of

the final judgment in your case, the appellate division will generally consider this appeal to be a good enough way to fix the trial court's ruling (an "adequate remedy"). To be able to explain to the appellate division why you do not have an adequate remedy at law, you will need to find out if the ruling you want to challenge can be appealed, either immediately or as part of an appeal of the final judgment.

### ***Here are some trial court rulings that can be appealed.***

There are laws (statutes) that say that certain kinds of trial court rulings ("orders") can be appealed immediately. In limited civil cases, California Code of Civil Procedure section 904.2 lists orders that can be appealed immediately, including orders:

- Changing or refusing to change the place of trial (venue)
- Granting a motion to quash service of summons
- Granting a motion to stay or dismiss the action on the ground of inconvenient forum
- Granting a new trial
- Denying a motion for judgment notwithstanding the verdict
- Granting or dissolving an injunction or refusing to grant or dissolve an injunction
- Appointing a receiver
- Made after final judgment in the case

In misdemeanor and infraction cases, orders made after the final judgment that affect the substantial rights of the defendant can be appealed immediately (California Penal Code section 1466).

In misdemeanor cases, orders granting or denying a motion to suppress evidence can also be appealed immediately (California Penal Code section 1538.5(j)).

You can get copies of these statutes at any county law library or online at [leginfo.legislature.ca.gov/faces/codes.xhtml](http://leginfo.legislature.ca.gov/faces/codes.xhtml). You should also check to see if there are published court decisions that indicate whether you can



or must use an appeal or a writ petition to challenge the type of ruling you want to challenge in your case.

*If the ruling can be appealed, you will need to show that an appeal will not fix the trial court's error.* If the trial court ruling you want to challenge can be appealed, you will need to show the appellate division why that appeal is not good enough to fix the trial court's error. To do that, you will need to show the appellate division how you will be harmed by the trial court's error in a way that cannot be fixed by the appeal if the appellate division does not issue the writ (this is called "irreparable" injury or harm). For example, because of the time it takes for an appeal, the harm you want to prevent may happen before an appeal can be finished.

#### d. Description of the order you want the appellate division to make

Your petition needs to describe what you are asking the appellate division to order the trial court to do or not do. Writ petitions usually ask that the trial court be ordered to cancel ("vacate") its ruling, issue a new ruling, or not take any steps to enforce its ruling.

If you want the appellate division to order the trial court not to do anything more until the appellate division decides whether to grant the writ you are requesting, you must ask for a "stay." If you want a stay, you should first ask the trial court for a stay. You should tell the appellate division whether you asked the trial court for a stay. If you did not ask the trial court for a stay, you should tell the appellate division why you did not do this.

If you ask the appellate division for a stay, make sure you also fill out the "Stay requested" box on the first page of the *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151).

#### e. Verifying the petition

Petitions for writs must be "verified." This means that either the petitioner or the petitioner's attorney must declare under penalty of perjury that the facts stated in the petition are true and correct, must sign the petition, and must indicate the date that the petition was signed. On the last page of the *Petition for Writ (Misdemeanor,*

*Infraction, or Limited Civil Case)* (form APP-151), there is a place for you to verify your petition.

### 13 Is there anything else that I need to serve and file with my petition?

Yes. Along with the petition, you must serve and file a record of what happened in the trial court (see below for an explanation of how to serve and file the petition). Since the appellate division judges were not there in the trial court, a record of what happened must be sent to the appellate division for its review. The materials that make up this record are called "supporting documents."

*What needs to be in the supporting documents.* The supporting documents must include:

- A record of what was said in the trial court about the ruling that you are challenging (this is called the "oral proceedings") and
- Copies of certain important documents from the trial court.

Read below for more information about these two parts of the supporting documents.

*Record of the oral proceedings.* There are several ways a record of what was said in the trial court may be provided to the appellate division:

- **A transcript**—A transcript is a written record (often called the "verbatim" record) of the oral proceedings in the trial court. If a court reporter was in the trial court and made a record of the oral proceedings, you can have the court reporter prepare a transcript of those oral proceedings, called a "reporter's transcript," for the appellate division. If a reporter was not there, but the oral proceedings were officially recorded on approved electronic recording equipment, you can have a transcript prepared for the appellate division from the official electronic recording of these proceedings. You (the petitioner) must pay for preparing a transcript, unless the court orders otherwise.
- **A copy of an electronic recording**—If the oral proceedings were officially recorded on approved electronic recording equipment, the court has a local rule for the appellate division permitting this



recording to be used as the record of the oral proceedings, and all the parties agree (“stipulate”), a copy of the official electronic recording itself can be used as the record of the oral proceedings instead of a transcript. You (the petitioner) must pay for preparing a copy of the official electronic recording, unless the court orders otherwise.

- **A summary**—If a transcript or official electronic recording of what was said in the trial court is not available, your petition must include a declaration (a statement signed by the petitioner under penalty of perjury) either:
  - Explaining why the transcript or official electronic recording is not available and providing a fair summary of the proceedings, including the petitioner’s arguments and any statement by the court supporting its ruling or
  - Stating that the transcript or electronic recording has been ordered, the date it was ordered, and the date it is expected to be filed.

**Copies of documents from the trial court.** Copies of the following documents from the trial court must also be included in the supporting documents:

- The trial court ruling being challenged in the petition
- All documents and exhibits submitted to the trial court supporting and opposing the petitioner’s position
- Any other documents or portions of documents submitted to the trial court that are necessary for a complete understanding of the case and of the ruling being challenged

**What if I cannot get copies of the documents from the trial court because of an emergency?** Rule 8.931 of the California Rules of Court provides that in extraordinary circumstances the petition may be filed without copies of the documents from the trial court. If the petition is filed without these documents, you must explain in your petition the urgency and the circumstances making the documents available.

**Format of the supporting documents.** Supporting documents must be put in the format required by rule

8.931 of the California Rules of Court. Among other things, there must be a tab for each document and an index listing the documents that are included. You should carefully read rule 8.931. You can get a copy of rule 8.931 at any courthouse or county law library or online at [www.courts.ca.gov/rules](http://www.courts.ca.gov/rules).

**14 Is there a deadline to ask for a writ?**

Yes. For statutory writs, the statute usually sets the deadline for serving and filing the petition. Here is a list of the deadlines for filing petitions for some of the most common statutory writs (you can get copies of these statutes at any county law library or online at [leginfo.legislature.ca.gov/faces/codes.xhtml](http://leginfo.legislature.ca.gov/faces/codes.xhtml)).

Statutory Writ	Filing Deadline
Writ challenging a ruling on a motion to disqualify a judge (see California Code of Civil Procedure section 170.3(d))	10 days after notice to the parties of the decision
Writ challenging the denial of a motion for summary judgment (see California Code of Civil Procedure section 437c(m)(1))	20 days after service of written notice of entry of the order
Writ challenging a ruling on a motion for summary adjudication of issues (see California Code of Civil Procedure section 437c(m)(1))	20 days after service of written notice of entry of the order

For common law writs or statutory writs where the statute does not set a deadline, you should file the petition as soon as possible and not later than 30 days after the court makes the ruling that you are challenging in the petition. While there is no absolute deadline for filing these petitions, writ petitions are usually used when it is urgent that the trial court’s error be fixed. Remember, the court is not required to grant your petition even if the trial court made an error. If you delay in filing your petition, it may make the appellate division think that it is not really urgent that the trial court’s error be fixed and the appellate division may deny your petition. If there are extraordinary circumstances that





delayed the filing of your petition, you should explain these circumstances to the appellate division in your petition.

### 15 How do I “serve” my petition?

Rule 8.931(d) requires that the petition and one set of supporting documents be served on any named real party in interest and that just the petition be served on the respondent trial court. “Serving” a petition on a party means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver (“serve”) the petition to the real party in interest and the respondent court in the way required by law.
- Make a record that the petition has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the petition, who was served with the petition, how the petition was served (by mail or in person), and the date the petition was served.

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

### 16 How do I file my petition?

To file a petition for a writ in the appellate division, you must bring or mail the original petition, including the supporting documents, and the proof of service to the clerk for the appellate division of the superior court that made the ruling you are challenging. If the superior court has more than one courthouse location, you should call the clerk at the courthouse where the ruling you are challenging was made to ask where to file your petition. You should make a copy of all the documents you are planning to file for your own records before you file them with the court. It is a good idea to bring or mail an extra copy of the petition to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

### 17 Do I have to pay to file a petition?

There is no fee to file a petition for a writ in a misdemeanor or infraction case, but there is a fee to file a petition for a writ in a limited civil case. You should ask the clerk for the appellate division where you are filing the petition what this fee is. If you cannot afford to pay this filing fee, you can ask the court to waive this fee. To do this, you must fill out a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). You can file this application either before you file your petition or with your petition. The court will review this application and decide whether to waive the filing fee.

### 18 What happens after I file my petition?

Within 10 days after you serve and file your petition, the respondent or any real party in interest can serve and file preliminary opposition to the petition. Within 10 days after an opposition is filed, you may serve and file a reply to that opposition.

The appellate division does not have to wait for an opposition or reply before it can act on a petition for a writ, however. Without waiting, the appellate division can:

- Issue a stay
- Summarily deny the petition
- Issue an alternative writ or order to show cause
- Notify the parties that it is considering issuing a preemptory writ in the first instance
- Issue a preemptory writ in the first instance if such relief was expressly requested in the petition.

Read below for more information about these options.

#### a. Stay of trial court proceedings

A stay is an order from the appellate division telling the trial court not to do anything more until the appellate division decides whether to grant your petition. A stay puts the trial court proceedings on temporary hold.

**b. Summary denial**

A “summary denial” means that the appellate division denies the petition without deciding whether the trial court made the legal error claimed by the petitioner or whether the writ requested by the petitioner should be issued based on that error. Remember, even if the trial court made a legal error, the appellate division can decide not to consider that error now but to wait and consider the error as part of any appeal from the final judgment. No reasons need to be given for a summary denial. Most petitions for writs are denied in this way.

**c. Alternative writ or order to show cause**

An “alternative writ” is an order telling the trial court either to do what the petitioner has requested in the petition (or some modified form of what the petitioner requested) or to show the appellate division why the trial court should not be ordered to do what the petitioner requested. An “order to show cause” is similar; it is an order telling the trial court to show the appellate division why the trial court should not be ordered to do what the petitioner requested in the petition (or some modified form of what the petitioner requested). The appellate division will issue an alternative writ or an order to show cause only if the petitioner has shown that he or she has no adequate remedy at law and the appellate division has decided that the petitioner may have shown that the trial court made a legal error that needs to be fixed.

If the appellate division issues an alternative writ and the trial court does what the petitioner requested (or a modified form of what the petitioner requested as ordered by the appellate division), then no further action by the appellate division is needed and the appellate division may dismiss the petition.

If the trial court does not comply with an alternative writ, however, or if the appellate division issues an order to show cause, then the respondent court or a real party in interest can file a response to the appellate division’s order (called a “return”) that explains why the trial court should not be ordered to do what the petitioner requested. The return must be served and filed within the time specified by the appellate division or, if no time is specified, within 30 days from the date the alternative writ or order to show cause was issued. The petitioner will then have an opportunity to serve and file a reply

within 15 days after the return is filed. The appellate division may set the matter for oral argument. When all the papers have been served and filed (or the time to serve and file them has passed) and oral argument is completed, the appellate division will decide the case.

**d. Peremptory writ in the first instance**

A “peremptory writ in the first instance” is an order telling the trial court to do what the petitioner has requested (or some modified form of what the petitioner requested) that is issued without the appellate division first issuing an alternative writ or order to show cause. It is very rare for the appellate division to issue a peremptory writ in the first instance, and it will not do so unless the respondent and real parties in interest have received notice that the court might do so, either through the petitioner expressly asking for such relief in the petition, or by the court first notifying the parties and giving the respondent court and any real party in interest a chance to file an opposition.

The respondent court or a real party in interest can file a response to the appellate division’s notice (called an “opposition”) that explains why the trial court should not be ordered to do what the petitioner has requested. The opposition must be served and filed within the time specified by the appellate division or, if no time is specified, within 30 days from the date the notice was issued. The petitioner will then have a chance to serve and file a reply within 15 days after the opposition is filed. The appellate division may then set the matter for oral argument. When all the papers have been served and filed (or the time to serve and file them has passed) and oral argument is completed, the appellate division will decide the case.

**19 What should I do if the court denies my petition?**

If the court denies your petition, it may be helpful to talk to a lawyer. In a limited civil or infraction case, you must hire a lawyer at your own expense if you want one (the court cannot provide one). You can get information about finding an attorney on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-lowcosthelp.htm](http://www.courts.ca.gov/selfhelp-lowcosthelp.htm).



<b>INFORMATION FOR A REAL PARTY IN INTEREST</b>
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This part of the information sheet is written for a real party in interest—a party from the trial court case other than the petitioner who will be affected by a ruling on a petition for a writ. It explains some of the rules and procedures relating to responding to a petition for a writ. The information may also be helpful to the petitioner.

**20 I have received a copy of a petition for a writ in a case in which I am a party. Do I need to do anything?**

You do not *have* to do anything. The California Rules of Court give you the right to file a preliminary opposition to a petition for a writ within 10 days after the petition is served and filed, but you are not required to do this. The appellate division can take certain actions without waiting for any opposition, including:

- Summarily denying the petition
- Issuing an alternative writ or order to show cause
- Notifying the parties that it is considering issuing a peremptory writ in the first instance
- Issuing a peremptory writ in the first instance if such relief was expressly requested in the petition.

Read the response to question **18** for more information about these options.

Most petitions for writs are summarily denied, often within a few days after they are filed. If you have not already received something from the appellate division saying what action it is taking on the petition, it is a good idea to call the appellate division to see if the petition has been denied before you decide whether and how to respond.

This would be a good time to talk to a lawyer. You do not *have* to have a lawyer; you are allowed to represent yourself in a writ proceeding in the appellate division. But writ proceedings can be very complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about writ proceedings or about whether and how you should respond to a writ petition, you should talk to a lawyer. In a limited civil

case or infraction case, you must hire a lawyer at your own expense if you want one (the court cannot provide one). You can get information about finding an attorney on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-lowcosthelp.htm](http://www.courts.ca.gov/selfhelp-lowcosthelp.htm).

If the petition has not already been summarily denied, you may, but are not required to, serve and file a preliminary opposition to the petition within 10 days after the petition was served and filed. In general, it is a good idea to consider filing a preliminary opposition if the petition misstates the facts or if you think the petition shows that the trial court made a legal error that may need to be fixed. However, the appellate division will seldom grant a writ without first issuing an alternative writ, an order to show cause, or a notice that it is considering issuing a peremptory writ. In all these circumstances, you will get notice from the court and have a chance to file a response. Note that the appellate division may issue a peremptory writ without notice if the petitioner expressly asked the court, in the petition, to issue a peremptory writ in the first instance. If the petitioner did that, you may want to consider whether to file a preliminary opposition, to explain why you believe the small claims court made no legal error and why the petitioner is not entitled to a writ.

If you decide to file a preliminary opposition, you must serve that preliminary opposition on all the other parties to the writ proceeding. “Serving and filing” an opposition means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver (“serve”) the preliminary opposition to the other parties in the way required by law.
- Make a record that the preliminary opposition has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the preliminary opposition, who was served with the preliminary opposition, how the preliminary opposition was served (by mail or in person), and the date the preliminary opposition was served.
- File the original preliminary opposition and the proof of service with the appellate division. You



should make a copy of the preliminary opposition for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the preliminary opposition to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

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

**21 I have received a copy of an alternative writ or an order to show cause issued by the appellate division. Do I need to do anything?**

Yes. Unless the trial court has already done what the alternative writ told it to do, you should serve and file a response called a “return.”

As explained above, the appellate division will issue an alternative writ or an order to show cause if the appellate division has decided that the petitioner may have shown that the trial court made a legal error that needs to be fixed. An “alternative writ” is an order telling the trial court either to do what the petitioner has requested in the petition (or some modified form of what the petitioner requested) or to show the appellate division why the trial court should not be ordered to do what the petitioner requested. An “order to show cause” is similar; it is an order telling the trial court to show the appellate division why the trial court should not be ordered to do what the petitioner requested in the petition (or some modified form of what the petitioner requested).

If the appellate division issues an alternative writ and the trial court does what the petitioner requested (or a modified form of what the petitioner requested as ordered by the appellate division), then no further action by the appellate division is needed and the appellate division may dismiss the petition. If the trial court does not comply with an alternative writ, however, or if the appellate division issues an order to show cause, then the respondent court or the real party in interest may serve and file a response to the appellate division’s order, called a “return.”

A return is your argument to the appellate division about why the trial court should not be ordered to do what the petitioner has requested. If you are represented by a lawyer in the writ proceeding, your lawyer will prepare your return. If you are not represented by a lawyer, you will need to prepare your own return. A return is usually a legal response called an “answer.” An answer is used to admit or deny the facts alleged in the petition, to add to or correct the facts, and to explain any legal defenses to the legal arguments made by the petitioner. You should read California Code of Civil Procedure sections 430.10–430.80 for more information about answers. You can get copies of these statutes at any county law library or online at [leginfo.legislature.ca.gov/faces/codes.xhtml](http://leginfo.legislature.ca.gov/faces/codes.xhtml). A return can also include additional supporting documents not already filed by the petitioner.

If you do not file a return when the appellate division issues an alternative writ or order to show cause, it does not mean that the appellate division is required to issue the writ requested by the petitioner. However, the appellate division will treat the facts stated by the petitioner in the petition as true, which makes it more likely the appellate division will issue the requested writ. Unless the appellate division sets a different filing deadline in its alternative writ or order to show cause, you must serve and file your return within 30 days after the appellate division issues the alternative writ or order to show cause. The return must be served on all the other parties to the writ proceeding. “Serving and filing” the return means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver (“serve”) the return to the other parties in the way required by law.
- Make a record that the return has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the return, who was served with the return, how the return was served (by mail or in person), and the date the return was served.
- File the original return and the proof of service with the appellate division. You should make a copy of the return you are planning to file for your own records before you file it with the court. It is a good

- idea to bring or mail an extra copy of the return to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

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

**22 I have received a copy of a notice from the appellate division indicating it is considering issuing a peremptory writ in the first instance. Do I need to do anything?**

Yes. You should serve and file a response called an “opposition.”

As explained in the answer to question 18, a “peremptory writ in the first instance” is an order telling the trial court to do what the petitioner has requested (or some form of what the petitioner requested as ordered by the appellate division) that is issued without the appellate division first issuing an alternative writ or order to show cause. The appellate division will not issue a peremptory writ in the first instance without first giving the parties notice and a chance to file an opposition. However, when the appellate division issues such a notice, it means that the appellate division is strongly considering granting the writ requested by the petitioner.

An opposition is your argument to the appellate division about why the trial court should not be ordered to do what the petitioner has requested. If you are represented by a lawyer in the writ proceeding, your lawyer will prepare your opposition. If you are not represented by a lawyer, you will need to prepare your own opposition. Like a return discussed above, an opposition is usually a legal response called an “answer.” An answer is used to admit or deny the facts alleged in the petition, to add to or correct the facts, and to explain any legal defenses to the legal arguments made by the petitioner. You should read California Code of Civil Procedure sections 430.10–430.80 for more information about answers. You can get copies of these statutes at any county law library or online at [leginfo.legislature.ca.gov/faces/codes.xhtml](http://leginfo.legislature.ca.gov/faces/codes.xhtml).

Unless the appellate division sets a different deadline in its notice that it is considering issuing a peremptory writ, you must serve and file your opposition within 30 days after the appellate division issues the notice. The opposition must be served on all the other parties to the writ proceeding. “Serving and filing” the opposition means that you must:

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

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

**23 What happens after I serve and file my return or opposition?**

After you file a return or opposition, the petitioner has 15 days to serve and file a reply. The appellate division may also set the matter for oral argument. When all the papers have been filed (or the time to file them has passed) and oral argument is completed, the appellate division will decide the case.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  TELEPHONE NO.: _____ FAX NO.: _____ ATTORNEY FOR (Name): <i>E-mail (if available)</i> _____	FOR COURT USE ONLY
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b>	
<b>PEOPLE OF THE STATE OF CALIFORNIA</b>	
DEFENDANT: _____ vs. _____	
Date of birth: _____ Cal. Dept. of Corrections and Rehabilitation No. (if any): _____	
<b>NOTICE OF APPEAL—FELONY (DEFENDANT)</b> <b>(Pen. Code, §§ 1237, 1237.5, 1538.5(m); Cal. Rules of Court, rule 8.304)</b>	CASE NUMBER(S): _____

**NOTICE**

- You must file this form in the SUPERIOR COURT WITHIN 60 DAYS after the court rendered the judgment or made the order you are appealing.
- **IMPORTANT:** If your appeal challenges the validity of a guilty plea, a no-contest plea, or an admission of a probation violation, you must also complete the Request for Certificate of Probable Cause on page 2 of this form. (Pen. Code, § 1237.5.)

1. Defendant appeals from a judgment rendered or an order made by the superior court.

**NAME** of defendant:

**DATE** of the order or judgment:

2. Complete either item a. or item b. Do not complete both.

**a. If this appeal is after entry of a plea of guilty or no contest or an admission of a probation violation, check all that apply:**

- (1)  This appeal is based on the sentence or other matters occurring after the plea that do not affect the validity of the plea. (Cal. Rules of Court, rule 8.304(b).)
- (2)  This appeal is based on the denial of a motion to suppress evidence under Penal Code section 1538.5.
- (3)  This appeal challenges the validity of the plea or admission. (You must complete the Request for Certificate of Probable Cause on page 2 of this form and submit it to the court for its signature.)
- (4)  Other basis for this appeal (you must complete the Request for Certificate of Probable Cause on page 2 of this form and submit it to the court for its signature) (specify):

**b. For all other appeals, check one:**

- (1)  This appeal is after a jury or court trial. (Pen. Code, § 1237(a).)
- (2)  This appeal is after a contested violation of probation. (Pen. Code, § 1237(b).)
- (3)  Other (specify):

3.  Defendant requests that the court appoint an attorney for this appeal. Defendant  was  was not represented by an appointed attorney in the superior court.

4. Defendant's mailing address is:  same as in attorney box above.  
 as follows:

Date:

\_\_\_\_\_  
 (TYPE OR PRINT NAME) ▶ \_\_\_\_\_  
 (SIGNATURE OF DEFENDANT OR ATTORNEY)



Clerk stamps date here when form is filed.

Instructions

- This form is only for abandoning (giving up) an appeal in a misdemeanor case.
Before you fill out this form, read Information on Appeal Procedures for Misdemeanors (form CR-131-INFO) to know your rights and responsibilities.
Fill out this form and make a copy of the completed form for your records.
Take or mail the completed form to the appellate division clerk's office.

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

Superior Court of California, County of

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

Trial Court Case Number:

Trial Court Case Name: The People of the State of California v.

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

Appellate Division Case Number:

1 Your Information

a. Appellant (the party who filed this appeal):

Name: \_\_\_\_\_

Street address: \_\_\_\_\_ Street City State Zip

Mailing address (if different): \_\_\_\_\_ Street City State Zip

Phone: ( ) E-mail (optional): \_\_\_\_\_ if available

b. Appellant's lawyer (skip this if the appellant does not have a lawyer for this appeal):

Name: \_\_\_\_\_ State Bar number: \_\_\_\_\_

Street address: \_\_\_\_\_ Street City State Zip

Mailing address (if different): \_\_\_\_\_ Street City State Zip

Phone: ( ) E-mail (optional): \_\_\_\_\_ if available

Fax (optional): ( ) \_\_\_\_\_





Appellate Division Case Number:

Appellate Division Case Name: \_\_\_\_\_

② On (fill in the date): \_\_\_\_\_ I/my client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.

③ By signing and filing this form, I abandon/my client abandons that appeal.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Type or print your name*



\_\_\_\_\_  
*Signature of appellant or attorney*

Clerk stamps date here when form is filed.

**Instructions**

- This form is only for abandoning (giving up) an appeal in an **infraction** case, such as a case about a traffic ticket.
- Before you fill out this form, read *Information on Appeal Procedures for Infractions* (form CR-141-INFO) to know your rights and responsibilities. You can get form CR-141-INFO at any courthouse or county law library or online at [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms).
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the appellate division clerk's office. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

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

**Superior Court of California, County of**

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

**Trial Court Case Number:**

**Trial Court Case Name:**

*The People of the State of California*  
v. \_\_\_\_\_

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

**Appellate Division Case Number:**

**1 Your Information**

a. Appellant (the party who filed this appeal):

Name: \_\_\_\_\_

Street address: \_\_\_\_\_  
Street City State Zip

Mailing address (if different): \_\_\_\_\_  
Street City State Zip

Phone: ( ) \_\_\_\_\_ E-mail (optional): \_\_\_\_\_  
Street if available

b. Appellant's lawyer (skip this if the appellant does not have a lawyer for this appeal):

Name: \_\_\_\_\_ State Bar number: \_\_\_\_\_

Street address: \_\_\_\_\_  
Street City State Zip

Mailing address (if different): \_\_\_\_\_  
Street City State Zip

Phone: ( ) \_\_\_\_\_ E-mail (optional): \_\_\_\_\_  
Street if available

Fax (optional): ( ) \_\_\_\_\_



Appellate Division Case Number:

Appellate Division Case Name: \_\_\_\_\_

2 On (fill in the date): \_\_\_\_\_ I/my client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.

3 By signing and filing this form, I abandon/my client abandons that appeal.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Type or print your name*

▲ \_\_\_\_\_  
*Signature of appellant or attorney*

**TO BE FILED IN THE COURT OF APPEAL**

**JV-810**

COURT OF APPEAL, _____ APPELLATE DISTRICT, DIVISION _____	Court of Appeal Case Number:  Superior Court Case Number:
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  _____  TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): <i>if available</i> ATTORNEY FOR (Name):	<b>FOR COURT USE ONLY</b>
APPELLANT:  RESPONDENT:	
<b>RECOMMENDATION FOR APPOINTMENT OF                  APPELLATE ATTORNEY FOR CHILD                  (California Rules of Court, Rule 5.661)</b>	

**INSTRUCTIONS—READ CAREFULLY**

- Read the entire form *before* completing any items.
- This form must be clearly handprinted in ink or typed.
- Complete all applicable items in the proper spaces. If you need additional space, add an extra page and check the "Additional pages attached" box on page 2.
- If you are filing this form in the Court of Appeal, file the original and 4 copies.
- If you are filing this form in the California Supreme Court, file the original and 10 copies.
- A copy must be served on the local district appellate project.
- Notify the clerk of the court in writing if you change your address after filing your form.

Individual Courts of Appeal or the Supreme Court may require documents other than or in addition to this form. Contact the clerk of the reviewing court for local requirements.

APPELLATE CASE TITLE:	APPELLATE CASE NUMBER:
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1. Trial counsel, court-appointed guardian ad litem for the child under rule 5.662, or the child in the above-captioned case:
  - a. Name:
  - b. I am the  trial counsel  guardian ad litem  child
  - c. Address:
  - d. Telephone number:
  
2. I recommend that an appellate attorney be appointed for the child in this case.
  
3. The child's best interests cannot be protected without the appointment of counsel on appeal for the following reasons (*check all that apply*):
  - a.  An actual or potential conflict exists between the interests of the child and the interests of any respondent.
  - b.  The child did not have an attorney serving as his or her guardian ad litem in the trial court.
  - c.  The child is of a sufficient age or development such that he or she is able to understand the nature of the proceedings, and
    - (1)  The child expresses a desire to participate in the appeal; or
    - (2)  The child's wishes differ from his or her trial counsel's position.
  - d.  The child took a legal position in the trial court adverse to that of one of his or her siblings, and an issue has been raised in an appellant's opening brief regarding the siblings' adverse positions.
  - e.  The appeal involves a legal issue regarding a determination of parentage, the child's inheritance rights, educational rights, privileges identified in division 8 of the Evidence Code, consent to treatment, or tribal membership.
  - f.  Postjudgment evidence completely undermines the legal underpinnings of the juvenile court's judgment under review, and all parties recognize this and express a willingness to stipulate to reversal of the juvenile court's judgment.
  - g.  The child's trial counsel or guardian ad litem, after reviewing the appellate briefs, believes that the legal arguments contained in the respondents' briefs do not adequately represent or protect the best interests of the child.
  - h.  The existence of any other factors relevant to the child's best interests (*specify*):
  
4. State the facts that support your recommendation:

Additional pages attached

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, except for matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date:

\_\_\_\_\_ ▶ \_\_\_\_\_  
 (TYPE OR PRINT NAME) (SIGNATURE OF APPLICANT)

APPELLATE CASE TITLE:  	APPELLATE CASE NUMBER:  
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**PROOF OF SERVICE**

I served a copy of the foregoing *Recommendation for Appointment of Appellate Attorney for Child* on the following by personally delivering a copy to the person served, OR by delivering a copy to a competent adult at the usual place of residence or business of the person served and thereafter mailing a copy by first-class mail to the person served at the place where the copy was delivered, OR by placing a copy in a sealed envelope and depositing the envelope directly in the United States mail with postage prepaid or at my place of business for same-day collection and mailing with the United States mail, following our ordinary business practices with which I am readily familiar:

1. District appellate project  
a. Name and address:

- b. Date of service:  
c. Method of service:

2. Other  
a. Name and address:

- b. Date of service:  
c. Method of service:

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  TELEPHONE NO.: E-MAIL ADDRESS (Optional): <i>if available</i> ATTORNEY FOR (Name): FAX NO. (Optional):	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
<b>NOTICE OF INTENT TO FILE WRIT PETITION AND REQUEST FOR RECORD TO REVIEW ORDER DESIGNATING OR DENYING SPECIFIC PLACEMENT OF A DEPENDENT CHILD AFTER TERMINATION OF PARENTAL RIGHTS (California Rules of Court, Rule 8.454)</b>	CASE NUMBER:

**NOTICE**

The juvenile court has ordered or denied a specific placement for this child. If you want an appeals court to review the juvenile court's decision, you must first tell the juvenile court by filing a Notice of Intent. You may use this form as your Notice of Intent. In most cases, you have only 7 days from the court's placement decision to file a Notice of Intent. Please see page 2 for your specific deadline for filing this form.

1. Petitioner's name:
2. Petitioner's address:
3. Petitioner's phone number:
4. Petitioner is
  - a.  child's caretaker (specify dates in your care):
  - b.  child
  - c.  county welfare department
  - d.  legal guardian
  - e.  other (state relationship to child or interest in the case):
5. Child's name: \_\_\_\_\_ Child's date of birth: \_\_\_\_\_
6. a. On (date): \_\_\_\_\_ the juvenile court terminated parental rights under Welfare and Institutions Code section 366.26.
- b. On (date): \_\_\_\_\_ the court made a specific placement order or denied a specific placement request that the dependent child is to reside in, be retained in, or be removed from a specific placement. Petitioner intends to file a writ petition to challenge the specific placement order or the denial of a specific placement request made by the court on that date and requests that the clerk assemble the record.

Date: \_\_\_\_\_

\_\_\_\_\_  
 (TYPE OR PRINT NAME) ▶ \_\_\_\_\_  
 (SIGNATURE OF  PETITIONER  CHILD'S ATTORNEY)

**The Notice of Intent to File Writ Petition must be signed by the person intending to file the writ petition, or, if it is to be filed on behalf of the child, by the child's attorney of record. See the back of this form for more information.**

**PLEASE READ THE BACK OF THIS FORM FOR IMPORTANT INFORMATION AND DEADLINES**

**HOW DO I CHALLENGE THE COURT'S PLACEMENT DECISION AFTER TERMINATION OF PARENTAL RIGHTS?**

- File this *Notice of Intent to File Writ Petition and Request for Record* in the juvenile court within the time listed below in the next box. This will let the court know you intend to file a writ petition, and the court will prepare the record.
- You will be notified after the record is filed in the Court of Appeal, and you will get a copy of the record. **You have 10 days after the record is filed in the Court of Appeal to file and serve your writ petition.**
- You may use the optional Judicial Council form JV-825 to complete your writ petition, or, if you have an attorney, your attorney can write the writ petition for you.
- After you file a writ petition in the Court of Appeal you must send a copy of the petition to all of the parties in the case, to the child's CASA volunteer, to the child's present caregiver, and to any de facto parent who has standing to participate in the juvenile court proceedings.

**SEE CAL. RULES OF COURT, RULES 8.454–8.456**

**WHEN DO I HAVE TO FILE MY NOTICE OF INTENT TO FILE WRIT PETITION AND REQUEST FOR RECORD?**

- If you were present when the court granted or denied the specified placement, you must file the *Notice of Intent* within 7 days from the date the court granted or denied the specified placement.
- If you were not present in court but were given notice by mail of the court's decision to grant or deny the specified placement, you must file the *Notice of Intent* within 12 days from the date the clerk mailed the notification.
- If the order granting or denying the specific placement was made by a referee not acting as a temporary judge, you must file the *Notice of Intent* within 17 days from the date the court set the hearing.

**SIGNATURE ON NOTICE OF INTENT**

- Must be signed by the person who intends to file the writ petition, *or*
- If petition will be filed on behalf of a child, by the child's attorney, *or*
- The reviewing court may waive this requirement for good cause on the basis of a declaration by the attorney of record explaining why the party could not sign the notice. (Cal. Rules of Court, rule 8.450(e)(3).)



**TO BE FILED IN THE COURT OF APPEAL**

**JV-825**

COURT OF APPEAL, _____ APPELLATE DISTRICT, DIVISION _____	Court of Appeal Case Number <i>(court will provide)</i> : _____
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In re the Matter of:

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*(Name and date of birth of subject child or children)*

---

Petitioners

v.

Superior Court of California, County of \_\_\_\_\_

---

Respondent

---

Real Party in Interest

---

[ \_\_\_\_\_ ] (FILE STAMP)

[ \_\_\_\_\_ ]

Superior Court No. \_\_\_\_\_

Superior Court No. \_\_\_\_\_

Related Appeal Pending  
Appellate Court No. \_\_\_\_\_

**PETITION FOR EXTRAORDINARY WRIT  
(California Rules of Court, Rules 8.452, 8.456)**

**STAY REQUESTED** *(see item 11).*

**INSTRUCTIONS—READ CAREFULLY**

- Read the entire form *before* completing any items.
- This petition must be clearly handprinted in ink or typed.
- Complete all applicable items in the proper spaces. If you need additional space, add an extra page and mark the additional page box.
- If you are filing this petition in the Court of Appeal, file the original and 4 copies.
- If you are filing this petition in the California Supreme Court, file the original and 10 copies.
- Notify the clerk of the court in writing if you change your address after filing your petition.

Individual Courts of Appeal or the Supreme Court may require documents other than or in addition to this form. Contact the clerk of the reviewing court for local requirements.

CASE NAME:	CASE NUMBER:
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1. This *Petition for Extraordinary Writ (Juvenile Dependency)* is filed on behalf of petitioner.

- a. Name:
- b. Address:

c. Phone number:                      *d. E-mail (if available)*

2. Petitioner is the

- a.  child
- b.  mother
- c.  father
- d.  guardian
- e.  de facto parent
- f.  county welfare department
- g.  district attorney
- h.  other (state relationship to child or interest in the case):

3. The *Petition for Extraordinary Writ (Juvenile Dependency)* pertains to the following child or children (specify number of children):                     

- a. Name of child:  
Child's date of birth:
  - b. Name of child:  
Child's date of birth:
  - c. Name of child:  
Child's date of birth:
  - d. Name of child:  
Child's date of birth:
- Continued in Attachment 3.

4. This petition seeks extraordinary relief from the order of (name):

- a.  setting a hearing under Welfare and Institutions Code section 366.26 to consider termination of parental rights, guardianship, or another planned permanent living arrangement.
- OR
- b.  designating a specific placement after a placement order under Welfare and Institutions Code section 366.28.
- OR
- c.  other (specify):

5. The challenged order was made on (date of hearing):

6. The order was erroneous on the following grounds (specify):

- 7. a.  Supporting documents are attached.
- b.  Because of exigent circumstances, supporting documents are not attached (explain):

8. Summary of factual basis for petition (Petitioner need not repeat facts as they appear in the record. Petitioner must reference each specific portion of the record, its significance to the grounds alleged, and disputed aspects of the record):

Additional pages attached.

CASE NAME:	CASE NUMBER:
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9. Points and authorities in support of the petition are attached (*number of pages attached*): \_\_\_\_\_

10. Petitioner requests that this court direct the trial court to (*check all that apply*):

- a.  Vacate the order for hearing under section 366.26.
- b.  Vacate the order designating a specific placement after termination of parental rights under section 366.28.
- c.  Remand for hearing.
- d.  Order that reunification services be  
 provided  continued.
- e.  Order visitation between the child and petitioner.
- f.  Return or grant custody of the child to petitioner.
- g.  Terminate dependency.
- h.  Other (*specify*):

11.  Petitioner requests a temporary stay pending the granting or denial of the petition for extraordinary writ.

- a. Hearing date (*must specify*):
- b. Reasons for stay (*specify*):

Additional pages attached.

12. Total number of pages attached: \_\_\_\_\_

13. I am the  petitioner  attorney for petitioner.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, except for matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

▶ \_\_\_\_\_  
(SIGNATURE OF  PETITIONER  ATTORNEY)

Address:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

CDC or ID Number: \_\_\_\_\_

If you are filing this petition in the Court of Appeal electronically and you are an attorney, follow the requirements of the local rules of the court for electronically filed documents.

\_\_\_\_\_  
\_\_\_\_\_  
(Court)

Petitioner
vs.
Respondent

PETITION FOR WRIT OF HABEAS CORPUS

No. \_\_\_\_\_  
(To be supplied by the Clerk of the Court)

INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.

- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the superior court, you only need to file the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal <sup>in paper form</sup> and you are an attorney, file the original and 4 copies of the petition and, if separately bound, 1 set of any supporting documents (unless the court orders otherwise by local rule or in a specific case). <sup>(see bc)</sup> If you <sup>a bc</sup> are filing this petition in the Court of Appeal and you are *not* represented by an attorney, file the original and one set of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and 10 copies of the petition and, if separately bound, an original and 2 copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court (as amended effective January 1, 2007). Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

**This petition concerns:**

- A conviction
- Parole
- A sentence
- Credits
- Jail or prison conditions
- Prison discipline
- Other (specify): \_\_\_\_\_

1. Your name: \_\_\_\_\_
2. Where are you incarcerated? \_\_\_\_\_
3. Why are you in custody?  Criminal conviction  Civil commitment

Answer items a through i to the best of your ability.

a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

\_\_\_\_\_

b. Penal or other code sections: \_\_\_\_\_

c. Name and location of sentencing or committing court: \_\_\_\_\_

\_\_\_\_\_

d. Case number: \_\_\_\_\_

e. Date convicted or committed: \_\_\_\_\_

f. Date sentenced: \_\_\_\_\_

g. Length of sentence: \_\_\_\_\_

h. When do you expect to be released? \_\_\_\_\_

i. Were you represented by counsel in the trial court?  Yes  No *If yes, state the attorney's name and address:*

\_\_\_\_\_

4. What was the LAST plea you entered? (Check one):

- Not guilty
- Guilty
- Nolo contendere
- Other: \_\_\_\_\_

5. If you pleaded not guilty, what kind of trial did you have?

- Jury
- Judge without a jury
- Submitted on transcript
- Awaiting trial

6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "The trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page 4. For additional grounds, make copies of page 4 and number the additional grounds in order.)

Four horizontal lines for writing the ground for relief.

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts on which your conviction is based. If necessary, attach additional pages. CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel, you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See In re Swain (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is, who did exactly what to violate your rights at what time (when) or place (where). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

Eighteen horizontal lines for writing supporting facts.

b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

Four horizontal lines for writing supporting cases, rules, or other authority.



8. Did you appeal from the conviction, sentence, or commitment?  Yes  No If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Division of Superior Court");  
\_\_\_\_\_

b. Result: \_\_\_\_\_ c. Date of decision: \_\_\_\_\_

d. Case number or citation of opinion, if known: \_\_\_\_\_

e. Issues raised: (1) \_\_\_\_\_  
(2) \_\_\_\_\_  
(3) \_\_\_\_\_

f. Were you represented by counsel on appeal?  Yes  No If yes, state the attorney's name and address, if known:  
\_\_\_\_\_

9. Did you seek review in the California Supreme Court?  Yes  No If yes, give the following information:

a. Result: \_\_\_\_\_ b. Date of decision: \_\_\_\_\_

c. Case number or citation of opinion, if known: \_\_\_\_\_

d. Issues raised: (1) \_\_\_\_\_  
(2) \_\_\_\_\_  
(3) \_\_\_\_\_

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

\_\_\_\_\_  
\_\_\_\_\_

11. Administrative review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500.) Explain what administrative review you sought or explain why you did not seek such review:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. Did you seek the highest level of administrative review available?  Yes  No  
Attach documents that show you have exhausted your administrative remedies.



12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court?  Yes If yes, continue with number 13.  No If no, skip to number 15.

13. a. (1) Name of court: \_\_\_\_\_  
(2) Nature of proceeding (for example, "habeas corpus petition"): \_\_\_\_\_  
(3) Issues raised: (a) \_\_\_\_\_  
(b) \_\_\_\_\_  
(4) Result (attach order or explain why unavailable): \_\_\_\_\_  
(5) Date of decision: \_\_\_\_\_

b. (1) Name of court: \_\_\_\_\_  
(2) Nature of proceeding: \_\_\_\_\_  
(3) Issues raised: (a) \_\_\_\_\_  
(b) \_\_\_\_\_  
(4) Result (attach order or explain why unavailable): \_\_\_\_\_  
(5) Date of decision: \_\_\_\_\_

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

\_\_\_\_\_  
\_\_\_\_\_

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

\_\_\_\_\_  
\_\_\_\_\_

16. Are you presently represented by counsel?  Yes  No If yes, state the attorney's name and address, if known:

\_\_\_\_\_  
\_\_\_\_\_

17. Do you have any petition, appeal, or other matter pending in any court?  Yes  No If yes, explain:

\_\_\_\_\_  
\_\_\_\_\_

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

\_\_\_\_\_  
\_\_\_\_\_

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date:



(SIGNATURE OF PETITIONER)

Appellate Rules-Practice Consistency

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

(a) \* \* \*

(b) **Form**

- (1) A brief may be reproduced by any process that produces a clear, black image of letter quality. All documents filed must have a page size of 8½ by 11 inches. If filed in paper form, the paper must be white or unbleached and of at least 20-pound weight.
- (2) Any conventional font may be used. The font may be either proportionally spaced or monospaced.
- (3) The font style must be roman; but for emphasis, italics or boldface may be used or the text may be underscored. Case names must be italicized or underscored. Headings may be in uppercase letters.
- (4) Except as provided in (11), the font size, including footnotes, must not be smaller than 13-point, and both sides of the paper may be used.
- (5) The lines of text must be unnumbered and at least one-and-a-half-spaced. Headings and footnotes may be single-spaced. Quotations may be block-indented and single-spaced. Single-spaced means six lines to a vertical inch.
- (6) The margins must be at least 1½ inches on the left and right and 1 inch on the top and bottom.
- (7) The pages must be consecutively numbered. The tables and the body of the brief may have different numbering systems. Document pages must be consecutively numbered using only the arabic numbering system, beginning with the number 1 on the cover page of the document.
- (8) If filed in paper form, the brief must be bound on the left margin. If the brief is stapled, the bound edge and staples must be covered with tape.
- (9) The brief need not be signed.
- (10) If filed in paper form, the cover must be in the color prescribed by rule 8.40(b). In addition to providing the cover information required by rule 8.40(c), the cover must state:
  - (A) The title of the brief;

- (B) The title, trial court number, and Court of Appeal number of the case;
  - (C) The names of the trial court and each participating trial judge;
  - (D) The name of the party that each attorney on the brief represents.
- (11) If the brief is produced on a typewriter:
- (A) A typewritten original and carbon copies may be filed only with the presiding justice's permission, which will ordinarily be given only to unrepresented parties proceeding in forma pauperis. All other typewritten briefs must be filed as photocopies.
  - (B) Both sides of the paper may be used if a photocopy is filed; only one side may be used if a typewritten original and carbon copies are filed.
  - (C) The type size, including footnotes, must not be smaller than standard pica, 10 characters per inch. Unrepresented incarcerated litigants may use elite type, 12 characters per inch, if they lack access to a typewriter with larger characters.

*(Subd (b) amended effective January 1, 2016; previously amended effective January 1, 2004, July 1, 2004, January 1, 2006, January 1, 2007, January 1, 2013, and January 1, 2014.)*

**(c)-(e) \* \* \***

**Advisory Committee Comment**

\* \* \*

## Article 5. E-filing

*Title 8, Appellate Rules—Division 1, Rules Relating to the Supreme Court and Courts of Appeal—Chapter 1, General Provisions—Article 5, E-filing; renumbered effective January 1, 2014; adopted as Article 4; previously amended effective January 1, 2012.*

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

***Rule 8.71. Electronic service***

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

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

***Rule 8.74. Responsibilities of court***

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

***Rule 8.76. Responsibilities of electronic filer***

***Rule 8.77. Requirements for signatures on documents***

***Rule 8.78. Payment of filing fees***

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

(KS Note: Rules 8.73 and 8.78 may no longer be needed; see notes below regarding those rules.)

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

### **Rule 8.70. Purpose, a Application, ~~construction~~, and definitions**

#### **(a) Purpose**

~~The purpose of the rules in this article is to facilitate the implementation and testing of e-filing projects in the Supreme Court and the Courts of Appeal.~~

*(Subd (a) amended effective January 1, 2012.)*

#### **(b) Application**

~~Notwithstanding any other rules to the contrary, t~~ The rules in this article govern filing and service by electronic means in the Supreme Court and any the Courts of Appeal that elects to implement an e-filing project.

*(Subd (b) amended effective January 1, 2012.)*

#### **(c) Construction**

~~The rules in this article must be construed to authorize and permit filing and service by electronic means to the extent feasible.~~

(KS Note: this subdivision tracks trial court rule 2.250 (a). Is there no longer a need for an appellate court rule to emphasize that the rules should be read to facilitate e-filing and e-service, rather than to restrict their use?)

## **(d b) Definitions**

As used in this article, unless the context otherwise requires:

- (1) “The court” means the Supreme Court or ~~any~~ Court of Appeal ~~that elects to implement an e-filing project.~~
- (2) ~~A document may be in paper or electronic form.~~ A “document” is:
  - (A) Any filing submitted to the reviewing court, including a brief, a petition, an appendix, or a motion;
  - (B) Any document transmitted by a trial court to the reviewing court, including a notice or a clerk’s or reporter’s transcript; or
  - (C) Any writing prepared by the reviewing court, including an opinion, an order, or a notice.

(D) A document may be in paper or electronic form.

- (3) “Electronic service” is service of a document on a party or other person by ~~either~~ electronic transmission ~~or electronic notification.~~ ~~Electronic service may be performed directly by a party, by an agent of a party including the party’s attorney, through an electronic filing service provider, or by a court.~~

(KS Note: 1. Is it useful to have electronic notification potentially available as an e-service option, as is allowed under CCP section 1010.6 (a)(1)(A) and trial court rule 2.250 (b)? Are there any situations in which the appellate courts are using, or might use, electronic notification?)

- (4) “Electronic transmission” means the transmission of a document by electronic means to the electronic service address at or through which a party or other person has authorized electronic service.
- (5) “Electronic notification” means the notification of a party or other person that a document is served by sending an electronic message to the electronic service address at or through which the party or other person has authorized electronic service, specifying the exact name of the document served and providing a hyperlink at which the served document can be viewed and downloaded.

(KS Note: if electronic notification is no longer included as a possible means of service, this definition will no longer be necessary.)

- (6) “Electronic service address” of a party means the electronic address at or through which the party has authorized electronic service.

- (7) An “electronic filer” is a party filing a document in electronic form directly with the court, by an agent, or through an electronic filing service provider.
- (8) “Electronic filing” is the electronic transmission to a court of a document in electronic form.
- (9) An “electronic filing service provider” is a person or entity that receives an electronic filing from a party for retransmission to the court or for electronic service on other parties, or both. In submission of filings, the electronic filing service provider does so on behalf of the electronic filer and not as an agent of the court.

*(Subd (d) amended effective January 1, 2012; adopted effective January 1, 2011.)*

*Rule 8.70 amended effective January 1, 2012; adopted effective July 1, 2010; previously amended effective January 1, 2011.*

#### **Advisory Committee Comment**

~~The definition of “electronic service” has been amended to provide that a party may effectuate service not only by the electronic transmission of a document, but also by providing electronic notification of where a document served electronically may be located and downloaded. This amendment is intended to modify the rules on electronic service to expressly authorize electronic notification as a legally effective alternative means of service to electronic transmission. This rules amendment is consistent with the amendment of Code of Civil Procedure section 1010.6, effective January 1, 2011, to authorize service by electronic notification. (See Stats. 2010, ch. 156 (Sen. Bill 1274).) The amendments change the law on electronic service as understood by the appellate court in *Insyst, Ltd. v. Applied Materials, Inc.* (2009) 170 Cal.App.4th 1129, which interpreted the rules as authorizing electronic transmission as the only effective means of electronic service.~~

(KS Note: If electronic notification is no longer included as a means of electronic service, this comment is no longer relevant. If electronic notification remains in the rule, however, the comment should also remain.)

#### **Rule 8.71. Electronic service**

##### **(a) Authorization for electronic service**

[Alternative 1] (1) A document ~~may~~ must be electronically served under these rules:

- (A) If electronic service is provided for by law, rule or court order; or
- (B) If a self-represented litigant ~~the recipient~~ agrees to accept electronic services as provided by these rules ~~and the document is otherwise authorized to be served by mail, express mail, overnight delivery, or fax transmission.~~

[Alternative 2] (1) A document ~~may~~ must be electronically served under these rules:

- (A) ~~If electronic service is provided for by law, rule or court order; or. However, a document may only be served on a self-represented litigant if the self-represented litigant~~
- (B) ~~If the recipient agrees to accept electronic services as provided by these rules and the document is otherwise authorized to be served by mail, express mail, overnight delivery, or fax transmission.~~
- (2) A party self-represented litigant ~~indicates that the party~~ agrees to accept electronic service by:
- (A) Registering with an approved electronic filing service provider; or
- (B) Serving a notice on all parties that the party accepts electronic service and filing the notice with the court. The notice must include the electronic service address at which the party agrees to accept service. ~~;~~ ~~or~~
- (B) ~~Electronically filing any document with the court. The act of electronic filing is evidence that the party agrees to accept service at the electronic service address that the party has furnished to the court under rule 8.76(a)(4).~~
- (3) ~~A party that has consented to electronic service under (2) and has used an electronic filing service provider to serve and file documents in a case consents to service on that electronic filing service provider as the designated agent for service for the party in the case, until such time as the party designates a different agent for service.~~
- (4) 3 A document may be electronically served on a nonparty if the nonparty consents to electronic service or electronic service is otherwise provided for by law or court order.

*(Subd (a) amended effective January 1, 2016; previously amended effective January 1, 2011.)*

(KS Note: In (1), I have changed “shall” to “must” in accordance with the style preference for rules of court. Is the intent to change the language of the rule to reflect that in cases where electronic service is allowed, it is now mandatory to use electronic service, with the exception of service on self-represented litigants? I have provided possible alternative language to do this, alternative 2 above. Also: this rule does not address the question of whether and when self-represented litigants are required to serve documents electronically on other parties. If rule 8.73 is deleted, there would be no rule to protect self-represented litigants from the requirement that they electronically serve other parties.)

**(b) Maintenance of electronic service lists**

~~When the court orders or permits electronic filing in a case, it~~ The court must maintain and make available electronically to the parties an electronic service list that contains the

parties' current electronic service addresses; as provided by the parties ~~that have filed electronically in the case.~~

*(Subd (b) amended effective January 1, 2011.)*

**(c) Service by the parties**

Notwithstanding (b), parties are responsible for electronic service on all other parties in the case. A self-represented litigant party may electronically serve documents ~~electronically~~ directly, by an agent, or through a designated electronic filing service provider.

(KS note: Should the language allowing any party to serve documents electronically directly remain here, as it is proposed to be deleted from rule 8.70(d)(3)? Why would this be limited to self-represented litigants? The existing language tracks the language of rules 2.251(e), and may be intended to clarify that a party may serve documents electronically directly on another party, although the party must use a non-party to carry out other forms of service.)

*(Subd (c) amended effective January 1, 2016; previously amended effective January 1, 2011.)*

**(d) Change of electronic service address**

- (1) A party whose electronic service address changes while the appeal or original proceeding is pending must promptly electronically file a notice of change of address ~~electronically~~ with the court and must electronically serve this notice ~~electronically~~ on all other parties.
- (2) A party's ~~election to contract~~ registration with an electronic filing service provider to electronically file and serve documents or to receive electronic service of documents on the party's behalf does not relieve the party of its duties under (1).
- (3) An electronic service address is presumed valid for a party if the party files electronic documents ~~with the court from~~ listing that address and has not filed and served notice that the address is no longer valid.

*(Subd (d) amended effective January 1, 2011.)*

(KS Note: Should there no longer be a presumption that an electronic service address used by a party to file something with the court is valid, if that same address is not given in the documents filed?)

**(e) Reliability and integrity of documents served by electronic notification**

A party that serves a document by means of electronic notification must:



- (1) Ensure that the documents served can be viewed and downloaded using the hyperlink provided;
- (2) Preserve the document served without any change, alteration, or modification from the time the document is posted until the time the hyperlink is terminated; and
- (3) Maintain the hyperlink until the case is final.

(KS Note: Again, if electronic notification is removed from 8.70 as a potential means of electronic service, subdivision (e) here can also be deleted.)

*(Subd (e) adopted effective January 1, 2011.)*

**(f) Proof of service**

- (1) Proof of electronic service may be by any of the methods provided in Code of Civil Procedure section 1013a, except that the proof of service must state:
  - (A) The electronic service address of the person making the service, in addition to that person's residence or business address;
  - (B) The date and time of the electronic service, ~~instead of the date and place of deposit in the mail;~~
  - (C) The name and electronic service address of the person served, ~~in place of that person's name and address as shown on the envelope;~~ and
  - (D) That the document was served electronically, ~~in place of the statement that the envelope was sealed and deposited in the mail with postage fully prepaid.~~
- (2) Proof of electronic service ~~may~~ must be in electronic form and may be filed electronically with the court.
- ~~(3) The party filing the proof of electronic service must maintain the printed form of the document bearing the declarant's original signature and must make the document available for inspection and copying on the request of the court or any party to the action or proceeding in which it is filed, in the manner provided in rule 8.77(c).~~

*(Subd (f) amended effective January 1, 2011.)*

(KS Note: In (2), I have changed "shall" to "must" in accordance with the style preference for rules of court. Should this also say the proof must be filed electronically with the court? If a party is able to complete electronic service, that party should also be able to file the proof of service electronically – including those self-represented litigants who use electronic service.

Rule 8.71 (f)(3), proposed to be deleted, tracks trial court rule 2.251(i), and its reference to rule 2.257(a). The reference in (3) to 8.77(c) may be a typographical error in the existing rule -- 2.257 (a) sets forth requirements for keeping a printed copy of a document signed under penalty of perjury, as proofs of service are required to be, and 8.77(a) would be the parallel subdivision in the local rules. Under 8.77(a), any document required to be signed under penalty of perjury, including proofs of service, must be kept in printed form with the original signature and produced to the court or another party upon request. Should 8.71(f)(3) remain in the rule, to ensure that parties are aware that the requirements of 8.77(a) apply to electronic proofs of service?

**(g) Electronic service by or on court**

- (1) The court may electronically serve any notice, order, opinion, or other document issued by the court in the same manner that parties may serve documents by electronic service.
- (2) A document may be electronically served on a court if the court consents to electronic service or electronic service is otherwise provided for by law or court order. A court indicates that it agrees to accept electronic service by:
  - (A) Serving a notice on all parties that the court accepts electronic service. The notice must include the electronic service address at which the court agrees to accept service; or
  - (B) Adopting a local rule stating that the court accepts electronic service. The rule must indicate where to obtain the electronic service address at which the court agrees to accept service.

*(Subd (g) amended effective January 1, 2016.)*

*Rule 8.71 amended effective January 1, 2016; adopted as rule 8.80 effective July 1, 2010; previously amended and renumbered as rule 8.71 effective January 1, 2011.*

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

**(a) In general**

The court ~~may~~ must permit electronic filing of a document by a party, and may permit electronic filing of a document by a ~~or~~ trial court in any appeal or original proceeding ~~unless the rules in this article or other legal authority expressly prohibit electronic filing.~~

~~**(b) Application for waiver of court fees and costs**~~

The court may permit electronic filing of an application for waiver of court fees and costs in any proceeding in which the court accepts electronic filings.

(KS Note: Should the appellate courts be mandated to allow parties to e-file documents in all cases? Should the rule be different as to e-filing by trial courts, allowing but not requiring the appellate courts to allow trial courts to e-file?)

Rule 8.72(b) appears to be unnecessary, as applications for waiver of fees and costs are included under 8.72(a.)

### **(e b) Orders, opinions, and notices**

The court may electronically file any notice, order, opinion, or other document prepared by the court.

### **(d c) Effect of document filed electronically**

- (1) A document that the court, a party, or a trial court files electronically under the rules in this article has the same legal effect as a document in paper form.
- (2) Filing a document electronically does not alter any filing deadline.

*Rule 8.72 adopted effective July 1, 2010.*

### **~~Rule 8.73. Court order requiring electronic service or filing~~**

#### **~~(a) Court order~~**

- ~~(1) The court may, on the motion of any party or on its own motion, provided that the order would not cause undue hardship or significant prejudice to any party, order all parties to:
  - ~~(A) Serve all documents electronically, except when personal service is required by statute or rule;~~
  - ~~(B) File all documents electronically; or~~
  - ~~(C) Serve and file all documents electronically, except when personal service is required by statute or rule.~~~~
- ~~(2) The court will not:
  - ~~(A) Order a self-represented party to electronically serve or file documents;~~
  - ~~(B) Order a party to electronically serve or file documents if the party would be required to pay a fee to an electronic filing service provider to file or serve the~~~~

~~documents and the party objects to paying this fee in its opposition to the motion under (1); or~~

~~(C) Order a trial court to electronically serve or file documents.~~

~~(3) If the reviewing court proposes to make an order under (1) on its own motion, the court must mail notice to the parties. Any party may serve and file an opposition within 10 days after the notice is mailed or as the court specifies.~~

*(Subd (a) amended effective January 1, 2011.)*

**~~(b) Additional provisions of order~~**

~~The court's order may also provide that documents previously filed in paper form may be resubmitted in electronic form.~~

**~~(c) Filing in paper form~~**

~~When it is not feasible for a party to convert a document to electronic form by scanning, imaging, or another means, the court may allow that party to serve, file, or serve and file the document in paper form.~~

*Rule 8.73 amended effective January 1, 2011; adopted effective July 1, 2010.*

(KS Note: Is Rule 8.73 still needed? This is the rule that expressly authorizes the appellate courts to order parties to e-filing and e-service; the other rules set forth the requirements for e-filing and e-service where it has been ordered or is otherwise required. Rule 8.73 also provides protections for self-represented parties, and others who may face undue hardship under an order requiring e-filing or e-service. See note to rule 8.71(a), above – as drafted, the proposed language of that rule would protect self-represented litigants from having documents e-served on them, but not from being required to e-serve other parties.)

**Rule 8.74. Responsibilities of court**

**(a) Publication of electronic filing requirements**

~~When the The court permits electronic filing it will publish, its electronic filing requirements in both electronic and print formats, the court's electronic filing requirements.~~

(KS Note: Should the requirements be published in print format also? What if a self-represented litigant without access to the internet is party to a case where the other party is utilizing e-filing?)

**(b) Problems with electronic filing**

If the court is aware of a problem that impedes or precludes electronic filing, it must promptly take reasonable steps to provide notice of the problem.

(KS Note: This subdivision tracks trial court rule 2.254 (b). I think the intent is that if there is some kind of temporary disruption to the e-filing system, the court should notify litigants – for example, by posting notice on the website or with the e-filing service provider, so that someone attempting to e-file will know that there’s a problem.)

*Rule 8.74 adopted effective July 1, 2010.*

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

### **(a) Right to contract**

- (1) The court ~~may~~ must contract with ~~one or more~~ an electronic filing service providers to furnish and maintain an electronic filing system for the court.
- (2) ~~If the court contracts with an electronic filing service provider, the~~  
The court may must require electronic filers to transmit ~~the~~ electronic documents to the provider.
- (3) ~~If the court contracts with an electronic service provider or the court has an in-house system, the provider or system must accept filing from other electronic filing service providers to the extent the provider or system is compatible with them.~~

*(Subd (a) amended effective January 1, 2011.)*

(KS Note: To what extent should the language of the rule reflect current practices, and to what extent should it allow flexibility for the courts if it becomes beneficial to change those practices? What if, over time, a system is developed that would allow the appellate courts to accept e-filing directly, without using a service provider? What if existing services develop in a direction where it is beneficial for a court to have contracts with more than one e-filing service provider, or in such a way that various providers are able to accept filings from one another? (Some trial courts, for example, currently allow the parties to choose among several e-filing service providers.)

### **(b) Provisions of contract**

The court’s contract with an electronic filing service provider ~~may~~ must allow the provider to charge electronic filers a reasonable fee in addition to the court’s filing fee. The contract may also allow the electronic filing service provider to make other reasonable requirements for use of the electronic filing system.

### **(c) Transmission of filing to court**

An electronic filing service provider must promptly transmit any electronic filing and any applicable filing fee to the court.

*(Subd (c) amended effective January 1, 2011.)*

**(d) Confirmation of receipt and filing of document**

- (1) An electronic filing service provider must promptly send to an electronic filer its confirmation of the receipt of any document that the filer has transmitted to the provider for filing with the court.
- (2) The electronic filing service provider must send its confirmation to the filer's electronic service address and must indicate the date and time of receipt, in accordance with rule 8.79(a).
- (3) After reviewing the documents, the court must promptly transmit to the electronic filing service provider and the electronic filer the court's confirmation of filing or notice of rejection of filing, in accordance with rule 8.79.

*(Subd (d) amended effective January 1, 2011.)*

**(e) Ownership of information**

All contracts between the court and electronic filing service providers must acknowledge that the court is the owner of the contents of the filing system and has the exclusive right to control the system's use.

*Rule 8.75 amended effective January 1, 2011; adopted effective July 1, 2010.*

**Rule 8.76. Responsibilities of electronic filer**

**(a) Conditions of filing**

Each electronic filer must:

- (1) Comply with these rules and any court requirements designed to ensure the integrity of electronic filing and to protect sensitive personal information pertaining to court filings, including rules for electronic filings and electronic documents;
- ~~(2) Furnish information that the court requires for case processing;~~
- (~~3~~ 2) Take all reasonable steps to ensure that the filing does not contain computer code, including viruses, that might be harmful to the court's electronic filing system and to other users of that system;
- ~~(4) Furnish one or more electronic service addresses, in the manner specified by the court, at which the electronic filer agrees to accept service; and~~

(§ 3) Immediately provide the court and all parties with any change to the electronic filer's electronic service address.

*(Subd (a) amended effective January 1, 2011.)*

(KS Note: I don't think the requirement that a party furnish an e-service address, here in 8.76(a)(4), proposed to be deleted, is set forth elsewhere in the rules. Rule 8.71(d) only applies to require a party to inform the court and other parties of a change.)

**(b) Format of documents to be filed electronically**

A document that is filed electronically with the court must be in a format specified by these rules and the court ~~unless it cannot be created in that format~~. The format adopted by a court must meet the following requirements:

- (1) The software for creating and reading documents must be in the public domain or generally available at a reasonable cost.
- (2) The printing of documents must not result in the loss of document text, format, or appearance.

~~If a document is filed electronically under the rules in this article and cannot be formatted to be consistent with a formatting rule elsewhere in the California Rules of Court, the rules in this article prevail.~~

*Rule 8.76 amended effective January 1, 2011; adopted effective July 1, 2010.*

**Rule 8.77. Requirements for signatures on documents**

**(a) Documents signed under penalty of perjury**

If a document to be filed electronically must be signed under penalty of perjury, the following procedure applies:

- (1) The document is deemed signed by the declarant if, before filing, the declarant has signed a printed form of the document.
- (2) By electronically filing the document, the electronic filer certifies that (1) has been complied with and that the original signed document is available for inspection and copying at the request of the court or any other party.
- (3) At any time after the document is filed, any other party may serve a demand for production of the original signed document. The demand must be served on all other parties but need not be filed with the court.

- (4) Within five days of service of the demand under (3), the party on whom the demand is made must make the original signed document available for inspection and copying by all other parties.
- (5) At any time after the document is filed, the court may order the filing party to produce the original signed document in court for inspection and copying by the court. The order must specify the date, time, and place for the production and must be served on all parties.

*(Subd (a) amended effective January 1, 2014.)*

**(b) Documents not signed under penalty of perjury**

If a document does not require a signature under penalty of perjury, the document is deemed signed by the party if the document is filed electronically.

**(c) Documents requiring signatures of multiple parties**

When a document to be filed electronically, such as a stipulation, requires the signatures of multiple parties, the following procedure applies:

- (1) The party filing the document must obtain the signatures of all parties either in the form of an original signature on a printed form of the document or in the form of a copy of the signed signature page of the document. By electronically filing the document, the electronic filer indicates that all parties have signed the document and that the filer has the signatures of all parties in a form permitted by this rule in his or her possession.
- (2) The party filing the document must maintain the original signed document and any copies of signed signature pages and must make them available for inspection and copying as provided in (a)(2). The court and any other party may demand production of the original signed document and any copies of signed signature pages in the manner provided in (a)(3)–(5).

*(Subd (c) amended effective January 1, 2014.)*

**(d) Digital signature**

A party is not required to use a digital signature on an electronically filed document.

**(e) Judicial signatures**

If a document requires a signature by a court or a judicial officer, the document may be electronically signed in any manner permitted by law.

*Rule 8.77 amended effective January 1, 2014; adopted effective July 1, 2010.*



(KS Note: I read this rule as necessary in that it sets the requirements when an e-filed document is required to be signed under penalty of perjury, or when the signatures of multiple parties are required. It sets setting forth a requirement not included elsewhere in the rules, but not inconsistent with other requirements for electronic filing, that a signed printed original be kept for such documents and produced upon request. Where only one signature is required and it is not under penalty of perjury, the rule deems an e-filed document to be signed. Is this consistent with local rules such as the Third DCA's Local Rule 5(d), which provides that a TrueFiling username and password is the equivalent of an electronic signature? The effect would seem to be the same – an e-filed document need not have a digital signature, and once filed is deemed signed.)

### **Rule 8.78. Payment of filing fees**

#### **(a) Use of credit cards and other methods**

The court may permit the use of credit cards, debit cards, electronic fund transfers, or debit accounts for the payment of filing fees associated with electronic filing, as provided in Government Code section 6159 and other applicable law. The court may also authorize other methods of payment.

#### **(b) Fee waivers**

Eligible persons may seek a waiver of court fees and costs, as provided in Government Code section 68634.5 and rule 8.26.

*Rule 8.78 adopted effective July 1, 2010.*

#### **Advisory Committee Comment**

**Subdivision (b).** A fee charged by an electronic filing service provider under rule 8.75(b) is not a court fee that can be waived under Government Code section 68634.5 and rule 8.26.

(KS Note: Is this rule needed? Are there other rules or statutes that would not allow a court to accept credit cards etc. for filing fees in e-filing cases, if this rule did not exist? 8.78 (b) also appears to be unnecessary – nothing in rule 8.26 suggests that it would not apply in e-filed cases. If this rule were to be deleted, should this advisory committee comment be added to the comment to rule 8.26, to inform parties seeking fee waivers that e-filing service provider fees cannot be waived?)

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

#### **(a) Confirmation of receipt and filing of document**

##### *(1) Confirmation of receipt*

When the court receives an electronically submitted document, the court must

promptly send the electronic filer confirmation of the court's receipt of the document, indicating the date and time of receipt. A document is considered received at the date and time the confirmation of receipt is created.

(2) *Confirmation of filing*

If the document received by the court under (1) complies with filing requirements, the court must promptly send the electronic filer confirmation that the document has been filed. The filing confirmation must indicate the date and time of filing and is proof that the document was filed on the date and at the time specified. The filing confirmation must also specify:

- (A) Any transaction number associated with the filing;
- (B) The titles of the documents as filed by the court; and
- (C) The fees assessed for the filing.

(3) *Transmission of confirmations*

The court must send receipt and filing confirmation to the electronic filer at the electronic service address that the filer furnished to the court under rule 8.76(a)(4). The court must maintain a record of all receipt and filing confirmations.

(4) *Filer responsible for verification*

In the absence of the court's confirmation of receipt and filing, there is no presumption that the court received and filed the document. The electronic filer is responsible for verifying that the court received and filed any document that the electronic filer submitted to the court electronically.

*(Subd (a) amended effective January 1, 2011.)*

**(b) Notice of rejection of document for filing**

If the clerk does not file a document because it does not comply with applicable filing requirements, the court must promptly send notice of the rejection of the document for filing to the electronic filer. The notice must state the reasons that the document was rejected for filing.

**(c) Document received after close of business**

A document that is received electronically by the court after 11:59 p.m. is deemed to have been received on the next court day.

*(Subd (c) amended effective January 1, 2011.)*

**(d) Delayed delivery**

If a technical problem with a court's electronic filing system prevents the court from accepting an electronic filing on a particular court day, and the electronic filer demonstrates that he or she attempted to electronically file the document on that day, the court must deem the document as filed on that day.

**(e) Endorsement**

- (1) The court's endorsement of a document electronically filed must contain the following: "Electronically filed by [Name of Court], on \_\_\_\_\_ (date)," followed by the name of the court clerk.
- (2) The endorsement required under (1) has the same force and effect as a manually affixed endorsement stamp with the signature and initials of the court clerk.
- (3) A record on appeal, brief, or petition in an appeal or original proceeding that is filed and endorsed electronically may be printed and served on the appellant or respondent in the same manner as if it had been filed in paper form.

*(Subd (e) amended effective January 1, 2012.)*

*Rule 8.79 amended effective January 1, 2012; adopted effective July 1, 2010; previously amended effective January 1, 2011.*

**(KS Note: Are changes needed to conform this rule to the current practices of the appellate courts?)**