



Judicial Council of California · Administrative Office of the Courts

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

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 28, 2011

Title	Agenda Item Type
Appellate Procedure: Filing Fees	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 8.25 and 8.26; amend the advisory committee comments to rules 8.50, 8.54, 8.200, 8.487, 8.496, 8.498, 8.500, and 8.520; and revise forms APP-001 and APP-015/FW-015-INFO	October 28, 2011
	Date of Report
	October 12, 2011
	Contact
Recommended by	Heather Anderson, 415-865-7691
Administrative Presiding Justices Advisory Committee	heather.anderson@jud.ca.gov
Hon. Tani Cantil-Sakauye, Chair	
Appellate Advisory Committee	
Hon. Kathryn Doi Todd, Chair	

Executive Summary

To implement recently enacted urgency legislation, the Administrative Presiding Justices Advisory Committee and the Appellate Advisory Committee recommend amending the appellate rules relating to filing documents and fee waivers and revising the information sheets concerning civil appeals and appellate fee waivers. These rules and form changes are necessary to reflect the new fees enacted by the Legislature for the first document filed by a party other than the appellant or petitioner in civil matters before the Supreme Court or Court of Appeal. Because the new fees went into effect on August 30, 2011, the advisory committees recommend that these implementing rule and form changes be adopted effective immediately and be circulated for public comment after their adoption.

Recommendation

The Administrative Presiding Justices Advisory Committee and the Appellate Advisory Committee recommend that the Judicial Council, effective October 28, 2011:

1. Amend rule 8.25 of the California Rules of Court, relating to filing documents in the Supreme Court or Court of Appeal, to:
 - Provide that any document for which a filing fee is required must be accompanied at the time of filing by either the required fee or an application for a fee waiver;
 - List documents for which a filing fee may be required;
 - Provide that if a document other than a notice of appeal or writ petition is not accompanied by the fee or a fee waiver application, the clerk must file the document but must also notify the filing party that the document will be stricken if either the fee is not paid or the fee waiver application filed within a time of not less than five court days as specified in the court's notice; and
 - Add new paragraphs to the advisory committee comment referencing the fee statutes and clarifying that the new fees do not apply in juvenile cases, proceedings to declare a minor free from parental custody or control, or conservatorship proceedings or to cross-appellants or those filing applications to file amicus briefs.
2. Amend rule 8.26, relating to fee waivers in the Supreme Court and Court of Appeal, and revise the information sheets regarding civil appeals and appellate fee waivers (forms APP-001 and APP-015-INFO) to include references to the new appellate fees and to indicate when applications to waive these fees must be filed;
3. Further revise form APP-015-INFO to update information about the Transcript Reimbursement Fund;
4. Amend the advisory committee comments to rules 8.50, 8.54, 8.200, 8.487, 8.496, 8.498, 8.500, and 8.520, relating to applications, motions, briefs, petitions for writs, and petitions for review filed in the Supreme Court and Court of Appeal, to note that filing fees may be required; and
5. Direct staff to circulate these rule amendments and from revisions for public comment during the winter 2011 comment cycle.

The text of the proposed rule amendments are at pages 8–16 and the revised forms are attached at pages 17–23.

Previous Council Action

The Judicial Council adopted “Rules on Appeal” effective July 1, 1943. Until 2005, general provisions relating to filing of documents in the Supreme Court and Court of Appeal were addressed as part of the definitions included in rule 40. Effective January 1, 2005, as part of a comprehensive revision of the appellate rules, the general provisions relating to service and filing of documents were moved to new rule 40.1. Effective January 1, 2007, as part of the overall reorganization of the California Rules of Court, this rule was renumbered as rule 8.25.

The Judicial Council amended the rules relating to filing a notice of appeal and notification of appeals (then rules 1 and 10, respectively), effective January 1, 1976, to require that parties pay the statutorily required fee for a notice of appeal at the time that they file such a notice and that the clerk notify a party who does not pay the fee at that time of the potential consequences if the fee is not paid within a specified time. These amendments provided that a “notice of appeal” includes a notice of cross-appeal and “appellant” includes a respondent who files notice of cross-appeal. They also provided for waiver of the filing fee for a notice of appeal on the same basis as provided in the trial court. Effective January 1, 2002, these provisions were consolidated into newly adopted rule 1. Effective January 1, 2007, this rule was renumbered as rule 8.100.

In response to amendment of the statutes relating to waiver of court fees, effective July 1, 2009, the Judicial Council adopted rule 8.26 addressing waiver of fees and costs in appellate proceedings and *Information Sheet on Waiver of Appellate Court Fees (Supreme Court, Court of Appeal, Appellate Division)* (form APP-015/FW-015-INFO). This form has since been revised to reflect changes in federal poverty guidelines, but the form and rule have otherwise remained substantively unchanged.

In July 2011, the Judicial Council’s Policy Coordination and Liaison Committee, acting on behalf of the Council, adopted the recommendation of the Administrative Presiding Justices Advisory Committee to create a responsive filing fee in appellate proceedings in order to offset some of the cuts to funding for the courts. Assembly Bill 110 (Blumenfeld) was amended to include language establishing such a fee, and the Judicial Council urged the Governor to sign this bill.

Rationale for Recommendation

On August 30, the Governor signed into law Assembly Bill 110 (Stats. 2011, ch. 193). (A copy of this bill is attached to this report at pages 26-30). Among other things, this legislation established new fees in appellate proceedings for the first document filed by a party other than an appellant or petitioner in civil cases in the Supreme Court and Court of Appeal. Because this was urgency legislation, the new fees took effect on August 30 when the Governor signed the bill.

The need for rule and form changes

This type of responsive fee in appellate court proceedings is completely new in California. Therefore, the Rules of Court and Judicial Council forms related to filing documents and fee waivers in appellate proceedings do not currently reflect such fees and many litigants may be completely unaware of these new fees. Rules 8.26 and 8.100 and the information sheets about civil appeals and fee waivers in appellate proceedings provide guidance about when the fee for filing a notice of appeal must be paid, waiver of this fee, and what the consequences are if this fee is not timely paid or a waiver obtained. Without similar guidance concerning the new responsive fees in appellate proceedings, there are likely to be many questions about the procedures associated with these new fees and many cases in which parties fail to pay a required fee. The appellate courts will have to devote time and resources to responding to these questions and addressing these defaults. In addition, these implementation issues may impede the timely realization of the revenue the legislation was designed to generate for the support of the courts.

In this proposal, the Administrative Presiding Justices Advisory Committee and the Appellate Advisory Committee recommend amendments to the Rules of Court and revisions to Judicial Council forms that are designed to help inform parties in appellate proceedings about the new fees and help the appellate courts in the implementation of these fees. As noted above, since 1976, rule 8.100 (or its predecessor) has required that parties pay the statutory fee for filing a notice of appeal or submit an application for a fee waiver at the time that they file the notice of appeal and that the clerk notify a party who does not do so of the potential consequences if the fee is not paid or a fee waiver application filed within a specified time. Rule 8.25, which generally addresses filing of documents in the Supreme Court and Court of Appeal, does not currently address the payment of filing fees. The proposed amendments to rule 8.25, which are modeled on the fee-related provisions of rule 8.100, would require that any document for which a filing fee is required must be accompanied at the time of filing by either the required fee or an application for a fee waiver. In addition, they would require the clerk file a document not accompanied by a required fee or a fee waiver application,¹ but also to notify the filing party of this default, and specify that if the fee is not paid or a fee waiver application filed within the time specified in the clerk's notice, the document will be stricken.

Like rule 8.100, these proposed amendments would require the clerk to notify parties who do not pay the required filing fee of the consequence for failure to timely correct this default. Because of the short time courts have to act after some of the documents to which these new fees apply are filed, however, these proposed amendments would allow the clerk to set a shorter time for curing the default than is provided in rule 8.100. In addition, because the new fees may potentially apply to many different types of documents, these proposed amendments would identify the most common "first documents" for which such a fee may be required.

¹ Government Code section 68634.5(c) provides that a person shall be permitted to file his or her papers in an appellate court immediately, even if the person does not present the filing fee, or an application for, or order granting, a fee waiver.

Since 1976, rule 8.100 (or its predecessor) has also made clear that, for purposes of requirements relating to filing fees, a respondent who files a notice of cross appeal is considered an appellant. Such parties pay the fee for filing a notice of appeal. The proposed amendments to rule 8.25 would reflect this long-standing definition and practice, making it clear that a respondent who files a notice of cross appeal is not considered a “party other than the appellant” for purposes of the new filing fee requirements. In addition, proposed amendments to the advisory committee comment accompanying this rule would: (1) clarify that because amicus curiae are not parties, they are not required to pay the new filing fees applicable to “a party” other than the appellant or petitioner; and (2) reiterate the statutory prohibition on charging filing fees in juvenile cases, proceedings to declare a minor free from parental custody or control, or conservatorship proceedings.²

Rule 8.26, relating to waiver of court fees and costs in appellate proceedings, currently specifies when applications to waive specified fees must be filed and identifies the court fees and costs that must be waived as part of an initial fee waiver. The proposed amendments would update this rule to also specify when applications to waive the new filing fees must be filed and add these new fees to the list of fees that must be waived as part of an initial fee waiver. *Information on Appeal Procedures for Unlimited Civil Cases (Appellate)* (form APP-001) and *Information Sheet on Waiver of Appellate Court Fees (Supreme Court, Court of Appeal, Appellate Division)* (form APP-015/FW-015-INFO) would similarly be revised to reflect the new fees and the timeframe for filing an application to waive these fees. In addition, the advisory committee comments accompanying the rules that address filing of the most common types of documents in the appellate courts—applications, motions, petitions, and briefs—would all be amended to include a note about the possibility that a filing fee may apply and a cross-reference to rule 8.25.

The need to adopt this proposal effective immediately

As indicated above, the legislation enacting these new appellate fees took effect on August 30. The committees concluded that, to provide timely guidance regarding the new fees and minimize implementation costs, it is important for the rules and forms to be modified as soon as possible to reflect these fees. Although the appellate courts have taken steps to inform litigants about the new fees by posting notices on their websites and in the clerk’s offices, the California Rules of Court and Judicial Council forms are important sources of information for litigants. Until they are modified, there will be gaps in the rules and inconsistencies between the rules and forms and the statutes, court websites, and notices in the clerks’ offices that may create confusion for litigants. The committees’ view is that eliminating this confusion and facilitating implementation of the statutes by the courts warrants immediate adoption of these rule and form changes. The committees therefore recommend that the council adopt this proposal effective immediately, without circulating it for public comment. To provide a full opportunity for public input, the

² Government Code sections 68926 and 68927 provide that fees may not be charged in appeals from, petitions for writs involving, or petitions for review from decisions in juvenile cases or proceedings to declare a minor free from parental custody or control, or proceedings under the Lanterman-Petris-Short Act.

committees also recommend that the amended rules and revised forms be circulated for public comment after they are adopted.

Comments, Alternatives Considered, and Policy Implications

Comments

Although this proposal has not yet circulated for public comment, it does reflect input from all of the affected courts and, to a limited extent, from appellate counsel. The Administrative Presiding Justices Advisory Committee is composed of the Chief Justice and the Administrative Presiding Justices of each appellate district. The Appellate Advisory Committee also includes a justice from the Supreme Court and one justice from each of the six appellate districts, as well as three civil appellate attorneys. In developing this proposal, the committees also consulted with all of the appellate court clerk/administrators and managing attorneys. The appellate clerk/administrators expressed support for amending the rules and revising the forms as quickly as possible. In particular, they noted the need for a rule establishing the consequences if a party fails to pay a fee and suggested that the absence of such a rule could hinder collection of the new fees. During this review process, one of the supervising attorneys noted that the information on form APP-015/FW-015-INFO about the Transcript Reimbursement Fund did not reflect a current pilot program permitting pro per litigants to apply for free transcripts. The proposal was modified to include revisions to the form to update this information.

Alternatives considered

The committees considered the following alternatives to amending the rules and revising the forms as proposed as recommended in this report:

Option 1: Shortened circulation and adoption at December Judicial Council meeting. The committees considered, but decided against, recommending that these proposed rules and form changes be sent out for a shortened public comment period and then presented to the Judicial Council for adoption at its December 13 meeting. The advantage of this alternate approach is that the council would have the benefit of public comments on the proposal before considering it for adoption. But, as noted above, the committees concluded that to provide timely guidance and minimize implementation costs, it is important for the rules and forms to be modified as soon as possible to reflect the new filing fees. Waiting until December 13 to modify the rules and forms would mean the confusion-inducing gaps in the rules and inconsistencies with statutes, court websites, and posted notices would persist for an additional six weeks. In addition, a shortened comment period is more burdensome for individuals and entities who wish to provide input.

Option 2: Do not list documents for which a filing fee may be required in rule 8.25. The committees considered not recommending that rule 8.25 include a list of the documents for which a filing may be required. Some committee members initially expressed concern about the possibility that there may be documents not included on the list that will be “the first document” filed by a party other than the appellant or petitioner and, therefore, for which a filing fee will be charged under the statute. Although the committee members recognized that the proposed list does not identify every document for which a fee might be charged, because the type of

responsive fee in appellate court proceedings authorized by the statutory amendments is completely new in California, members concluded that it would be helpful to litigants for the rule to identify the most commonly filed documents for which a filing fee may be required.

Option 3: Make no changes to the rules or forms. The committees did not consider making no changes to the Rules of Court or Judicial Council forms to be a viable option. While the appellate courts have the power to adopt local rules, the committees concluded that it would be preferable to have uniform statewide rules addressing the implementation of these new fees. In addition, if Rules of Court or Judicial Council forms are not updated to reflect these new fees, there will be confusion-inducing inconsistencies between these rules and forms and the fee statutes, court websites, and notices posted in the court clerks' offices.

Implementation Requirements, Costs, and Operational Impacts

There will be costs and operational impacts for the appellate courts associated with implementing the new fees established by the statutory amendments. However, the rule and form changes in this proposal should *reduce* these costs. By providing for uniform procedures and alerting litigants about the fees and the consequences for failure to pay these fees, these rule and form changes should reduce potential confusion, encourage timely payment of the fees, reduce the need for courts to send follow-up notices, and facilitate collection of unpaid fees, all of which should reduce implementation costs and help the courts obtain the much-needed revenue from these new fees.

Attachments

1. Cal. Rules of Court, rules, 8.25, 8.26, 8.50, 8.54, 8.200, 8.487, 8.496, 8.498, 8.500, and 8.520, at pages 8–16
2. Form APP-001, at pages 17–20
3. Form APP-015/FW-015-INFO, at pages 21–23
4. Assembly Bill 110 (Stats. 2011, ch. 193), at pages 24–29

Rules 8.25, 8.26, 8.50, 8.54, 8.200, 8.487, 8.496, 8.498, 8.500, and 8.520 of the California Rules of Court are amended, effective October 28, 2011, to read:

Title 8. Appellate Rules

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

Chapter 1. General Provisions

Article 2. Service, Filing, Filing Fees, Form, and Number of Documents

Rule 8.25. Service, ~~and filing~~, and filing fees

(a) – (b) * * *

(c) Filing fees

(1) Unless otherwise provided by law, any document for which a filing fee is required under Government Code sections 68926 or 68927 must be accompanied at the time of filing by the required fee or an application for a waiver of court fees under rule 8.26.

(2) Documents for which a filing fee may be required under Government Code sections 68926 or 68927 include:

(A) A notice of appeal in a civil case. For purposes of this rule, “notice of appeal” includes a notice of cross-appeal;

(B) A petition for a writ within the original civil jurisdiction of the Supreme Court or Court of Appeal;

(C) A petition for review in a civil case in the Supreme Court;

(D) The following where the document is the first document filed in the Court of Appeal or Supreme Court by a party other than the appellant or petitioner in a civil case. For purposes of this rule, a “party other than the appellant” does not include a respondent who files a notice of cross-appeal.

(i) An application or an opposition or other response to an application;

(ii) A motion or an opposition or other response to a motion;

(iii) A respondent’s brief;

1 (iv) A preliminary opposition to a petition for a writ, excluding a preliminary
2 opposition requested by the court unless the court has notified the parties
3 that it is considering issuing a peremptory writ in the first instance;

4
5 (v) A return (by demurrer, verified answer, or both) after the court issues an
6 alternative writ or order to show cause;

7
8 (vi) Any answer to a petition for review in the Supreme Court; and

9
10 (vii) Any brief filed in the Supreme Court after the Court grants review.

11
12 (3) If a document other than the notice of appeal or a petition for a writ is not
13 accompanied by the filing fee or an application for a waiver of court fees under rule
14 8.26, the clerk must file the document and must promptly notify the filing party in
15 writing that the court may strike the document unless, within the stated time of not
16 less than 5 court days after the notice is sent, the filing party either:

17
18 (A) Pays the filing fee; or

19
20 (B) Files an application for a waiver under rule 8.26 if the party has not previously
21 filed such an application.

22
23 (4) If the party fails to take the action specified in a notice given under (2), the reviewing
24 court may strike the document, but may vacate the striking of the document for good
25 cause.

26
27 **Advisory Committee Comment**

28
29 **Subdivision (a).** * * *

30
31 **Subdivision (b).** * * *

32
33 **Subdivision (c).** Government Code section 68926 establishes fees in civil cases for filing a notice of
34 appeal, filing a petition for a writ within the original civil jurisdiction of the Supreme Court or a Court
35 of Appeal, and for a party other than appellant or petitioner filing its first document in such an appeal or
36 writ proceeding in the Supreme Court or a Court of Appeal. Government Code section 68927 establishes
37 fees for filing a petition for review in a civil case in the Supreme Court and for a party other than the
38 petitioner filing its first document in a civil case in the Supreme Court. These statutes provide that fees
39 may not be charged in appeals from, petitions for writs involving, or petitions for review from decisions
40 in juvenile cases or proceedings to declare a minor free from parental custody or control, or proceedings
41 under the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the
42 Welfare and Institutions Code).

1 **Subdivision (c)(2)(A) and (D).** Under rule 8.100(f) , “notice of appeal” includes a notice of a cross-
2 appeal and a respondent who files a notice of cross-appeal in a civil appeal is considered an appellant and
3 is required to pay the fee for filing a notice of appeal under Government Code section 68926.
4

5 A person who files an application to file an amicus brief is not a “party” and therefore is not subject to the
6 fees applicable to a party other than the appellant or petitioner.
7

8 **Subdivision (c)(3).** Rule 8.100 establishes the procedures applicable when an appellant in a civil appeal
9 fails to pay the fee for filing a notice of appeal or the deposit for the clerk’s transcript that must also be
10 paid at that time.
11

12
13 **Rule 8.26. Waiver of fees and costs**
14

15 (a) * * *

16
17
18 (b) **Filing the application**
19

20 (1) *Appeals*
21

22 (A) The appellant should submit any application for initial waiver of court fees and
23 costs for an appeal with the notice of appeal in the superior court that issued
24 the judgment or order being appealed. For purposes of this rule, a respondent
25 who files a notice of cross-appeal is an “appellant.”
26

27 (B) ~~The respondent~~ A party other than the appellant should submit any application
28 for initial waiver of the court fees and costs for an appeal at the time the fees
29 are to be paid to the court.
30

31 (2) *Writ proceedings*
32

33 (A) The petitioner should submit the application for waiver of the court fees and
34 costs for a writ proceeding with the writ petition.
35

36 (B) A party other than the petitioner should submit any application for initial
37 waiver of the court fees and costs at the time the fees for filing its first
38 document in the writ proceeding are to be paid to the reviewing court.
39

40 (3) *Petitions for review*
41

42 (A) The petitioner should submit the application for waiver of the court fees and
43 costs for a petition for review in the Supreme Court with the petition.
44

45 (B) A party other than the petitioner should submit any application for initial
46 waiver of the court fees and costs at the time the fees for filing its first
47 document in the proceeding are to be paid to the Supreme Court.

1
2 (c) – (d) * * *

3
4 (e) **Court fees and costs waived**

5
6 Court fees and costs that must be waived on granting an application for initial waiver of
7 court fees and costs in the Supreme Court or Court of Appeal include:

- 8
9 (1) The fee for filing the notice of appeal and the fee required for a party other than the
10 appellant filing its first document under Government Code section 68926;
11
12 (2) The fee for filing an original proceeding and the fee required for a party other than
13 the petitioner filing its first document ~~required~~ under Government Code section
14 68926;
15
16 (3) The fee for filing a petition for review and the fee required for a party other than the
17 petitioner filing its first document ~~under required by~~ Government Code section
18 68927; and
19
20 (4) Any court fee for telephonic oral argument.

21
22 (f) – (g) * * *

23
24
25 **Rule 8.50. Applications**

26
27 (a) **Service and filing**

28
29 Except as these rules provide otherwise, parties must serve and file all applications in the
30 reviewing court, including applications to extend the time to file records, briefs, or other
31 documents, and applications to shorten time. For good cause, the Chief Justice or presiding
32 justice may excuse advance service.
33

34 (b) – (d) * * *

35
36 **Advisory Committee Comment**

37
38 Rule 8.50 addresses applications generally. Rules 8.60, 8.63, and 8.68 address applications to extend or
39 shorten time.

40
41 **Subdivision (a).** A party other than the appellant or petitioner who files an application or opposition to
42 an application may be required to pay a filing fee under Government Code sections 68926 or 68927 if the
43 application or opposition is the first document filed in the appeal or writ proceeding in the reviewing
44 court by that party. See rule 8.25(c).

45
46 **Subdivision (b):** An exceptional showing of good cause is required in applications in certain juvenile
47 proceedings under rules 8.416, 8.450, 8.452, and 8.454.

1
2
3 **Rule 8.54. Motions**

4
5 **(a) Motion and opposition**

- 6
7 (1) Except as these rules provide otherwise, a party wanting to make a motion in a
8 reviewing court must serve and file a written motion stating the grounds and the
9 relief requested and identifying any documents on which the motion is based.
10
11 (2) A motion must be accompanied by a memorandum and, if it is based on matters
12 outside the record, by declarations or other supporting evidence.
13
14 (3) Any opposition must be served and filed within 15 days after the motion is filed.
15

16 **(b) – (c) * * ***

17
18 **Advisory Committee Comment**

19
20 **Subdivision (a).** A party other than the appellant or petitioner who files a motion or opposition to a
21 motion may be required to pay a filing fee under Government Code sections 68926 or 68927 if the motion
22 or opposition is the first document filed in the appeal or writ proceeding in the reviewing court by that
23 party. See rule 8.25(c).

24
25 **Subdivision (c). * * ***

26
27
28
29 **Chapter 2. Civil Appeals**

30
31 **Article 3. Briefs in the Court of Appeal**

32
33
34 **Rule 8.200. Briefs by parties and amici curiae**

35
36 **(a) Parties' briefs**

- 37
38 (1) Each appellant must serve and file an appellant's opening brief.
39
40 (2) Each respondent must serve and file a respondent's brief.
41
42 (3) Each appellant may serve and file a reply brief.
43
44 (4) No other brief may be filed except with the permission of the presiding justice,
45 unless it qualifies under (b) or (c)(6).
46

1 (5) Instead of filing a brief, or as part of its brief, a party may join in or adopt by
2 reference all or part of a brief in the same or a related appeal.
3

4 **(b) – (c) * * ***
5

6 **Advisory Committee Comment**
7
8

9 **Subdivision (a)(2).** A respondent, other than a respondent who has filed a notice of cross-appeal, who
10 files a respondent’s brief may be required to pay a filing fee under Government Code sections 68926 if
11 the respondent’s brief is the first document filed in the appellate proceeding in the Court of Appeal by that
12 party. See rule 8.25(c).
13

14 **Subdivision (b).** * * *
15

16 **Subdivision (c)(1).** * * *
17
18

19 **Chapter 7. Writs of Mandate, Certiorari, and Prohibition in the Supreme Court and**
20 **Court of Appeal**
21

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

24 **(a) Preliminary opposition**
25

26 (1) Within 10 days after the petition is filed, the respondent or any real party in interest,
27 separately or jointly, may serve and file a preliminary opposition.
28

29 (2) – (4) * * *
30

31 **(b) Return or opposition; reply**
32

33 (1) If the court issues an alternative writ or order to show cause, the respondent or any
34 real party in interest, separately or jointly, may serve and file a return by demurrer,
35 verified answer, or both. If the court notifies the parties that it is considering issuing
36 a peremptory writ in the first instance, the respondent or any real party in interest
37 may serve and file an opposition.
38

39 (2) – (4) * * *
40

41 **(c)** * * *
42

43 **Advisory Committee Comment**
44

45 A party other than the petitioner who files a preliminary opposition under (a) or a return or opposition
46 under (b) may be required to pay a filing fee under Government Code section 68926 if the preliminary

1 opposition, return, or opposition is the first document filed in the writ proceeding in the reviewing court
2 by that party. See rule 8.25(c).
3

4 **Subdivision (a).** * * *

5
6 **Subdivision (b).** * * *

7
8
9 **Chapter 8. Miscellaneous Writs of Review**

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

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

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

16
17 (1) Within 35 days after the petition is filed, the commission or any real party in interest
18 may serve and file an answer.

19
20 (2) Within 25 days after an answer is filed, the petitioner may serve and file a reply.

21
22 **(c)** * * *

23
24 **Advisory Committee Comment**

25
26 **Subdivision (b).** A party other than the petitioner who files an answer may be required to pay a filing fee
27 under Government Code section 68926 if the answer is the first document filed in the writ proceeding in
28 the reviewing court by that party. See rule 8.25(c).
29

30
31 **Rule 8.498. Review of Agricultural Labor Relations Board and Public Employment**
32 **Relations Board cases**

33
34 **(a) – (b)** * * *

35
36 **(c) Briefs**

37
38 (1) The petitioner must serve and file its brief within 35 days after the index is filed.

39
40 (2) Within 35 days after the petitioner’s brief is filed, the board must—and any real
41 party in interest may—serve and file a respondent’s brief.

42
43 (3) Within 25 days after the respondent’s brief is filed, the petitioner may serve and file
44 a reply brief.

45
46 **(d)** * * *

1 Advisory Committee Comment

2
3 A party other than the petitioner who files an answer or brief may be required to pay a filing fee under
4 Government Code section 68926 if the answer or brief is the first document filed in the writ proceeding in
5 the reviewing court by that party. See rule 8.25(c).
6
7

8 **Chapter 9. Proceedings in the Supreme Court**

9
10 **Rule 8.500. Petition for review**

11
12 **(a) Right to file a petition, answer, or reply**

- 13
14 (1) A party may file a petition in the Supreme Court for review of any decision of the
15 Court of Appeal, including any interlocutory order, except the denial of a transfer of
16 a case within the appellate jurisdiction of the superior court.
17
18 (2) A party may file an answer responding to the issues raised in the petition. In the
19 answer, the party may ask the court to address additional issues if it grants review.
20
21 (3) The petitioner may file a reply to the answer.
22

23 **(b) – (g) * * ***
24

25 Advisory Committee Comment

26
27 **Subdivision (a).**

28 A party other than the petitioner who files an answer may be required to pay a filing fee under
29 Government Code section 68927 if the answer is the first document filed in the proceeding in the
30 Supreme Court by that party. See rule 8.25(c).
31

32 Subdivision (a)(1) makes it clear that any interlocutory order of the Court of Appeal—such as an order
33 denying an application to appoint counsel, to augment the record, or to allow oral argument—is a
34 “decision” that may be challenged by petition for review.
35

36 **Subdivision (e). * * ***
37

38 **Subdivision (f). * * ***
39
40

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

42
43 **(a) Parties’ briefs; time to file**

- 44
45 (1) Within 30 days after the Supreme Court files the order of review, the petitioner must
46 serve and file in that court either an opening brief on the merits or the brief it filed in
47 the Court of Appeal.

- 1
2 (2) Within 30 days after the petitioner files its brief or the time to do so expires, the
3 opposing party must serve and file either an answer brief on the merits or the brief it
4 filed in the Court of Appeal.
5
6 (3) The petitioner may file a reply brief on the merits or the reply brief it filed in the
7 Court of Appeal. A reply brief must be served and filed within 20 days after the
8 opposing party files its brief.
9
10 (4) A party filing a brief it filed in the Court of Appeal must attach to the cover a notice
11 of its intent to rely on the brief in the Supreme Court.
12
13 (5) The time to serve and file a brief may not be extended by stipulation but only by
14 order of the Chief Justice under rule 8.60.
15
16 (6) The court may designate which party is deemed the petitioner or otherwise direct the
17 sequence in which the parties must file their briefs.
18

19 **(b) – (h) * * ***

20
21 **Advisory Committee Comment**
22

23 **Subdivision (a).** A party other than the petitioner who files a brief may be required to pay a filing fee
24 under Government Code section 68927 if the brief is the first document filed in the proceeding in the
25 Supreme Court by that party. See rule 8.25(c).
26

27 **Subdivisions (c) and (d).** * * *
28

INFORMATION ON APPEAL PROCEDURES FOR UNLIMITED CIVIL CASES

The following is general information about the procedures for appeals of unlimited civil cases (“unlimited civil case” generally means a civil case in which the amount in controversy is more than \$25,000; see Code of Civil Procedure sections 85 and 88). This information is not intended to be comprehensive, but to provide an overview to help guide you through the appeal process. **You should thoroughly read rules 8.100–8.276 of the California Rules of Court. If you have questions about the appellate process, you should consult an attorney of your own choosing.**

1. NATURE OF AN APPEAL

An appeal is a review of a court’s decision by another court. A party may appeal an unfavorable judgment and certain orders in an unlimited civil case made in the superior court to the Court of Appeal for the district in which the superior court is located. Generally, the appeal must be based on an argument that a **legal error** was made by the superior court. An appeal is not a retrial. You will not be permitted to introduce new evidence, and the appellate court will not reassess conflicting evidence. You may not appeal on behalf of a friend, a spouse, a child, or other relative (unless you are a legally appointed guardian).

2. PARTIES

The party filing the appeal is called the APPELLANT. The party against whom the appeal is brought is called the RESPONDENT.

STEPS IN THE APPEAL PROCESS AT THE SUPERIOR COURT

3. NOTICE OF APPEAL

To appeal from a superior court decision in an unlimited civil case, the appellant must file a notice of appeal **in the superior court** (Cal. Rules of Court, rule 8.100). A notice of appeal tells the other party or parties in the case and the superior court that you are appealing the decision of the superior court. You may use Judicial Council form APP-002, *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)*, to file a notice of appeal in an unlimited civil case.

The notice of appeal must be served on the other party or parties in the case and filed with the clerk of the superior court. Generally, this service and filing must be completed within **60 calendar days** after the clerk or a party serves either a notice of entry of judgment or a file-stamped copy of the judgment. If neither of these documents is served, the notice of appeal must be filed within **180 calendar days** after entry of judgment (generally the date the judgment is file-stamped). **If your notice of appeal is filed late, your appeal will be dismissed** (Cal. Rules of Court, rules 8.104 and 8.108).

If a notice of appeal has been filed in a case, any other party to the case may file its own appeal from the same judgment or order. This is called a cross-appeal. To cross-appeal, a party must file a notice of appeal within either the regular time for filing a notice of appeal or within 20 days after the clerk of the superior court mails notice of the first appeal, whichever is later (Cal. Rules of Court, rule 8.108). You may use Judicial Council form APP-002, *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)*, to file this notice in an unlimited civil case.

4. FEE ON APPEAL

The notice of appeal must be accompanied by a \$655 filing fee (Gov. Code, §§ 68926 and 68926.1) made payable to “Clerk, Court of Appeal” and a \$100 deposit (Gov. Code, § 68926.1) made payable to “Clerk of the Superior Court.” If you do not have the money for the fees, you may submit an application for waiver of court fees and costs on appeal under rule 8.26 and 3.50–3.63 of the California Rules of Court (Cal. Rules of Court, rule 8.100).

5. DESIGNATION OF RECORD

See rules 8.130–8.163 of the California Rules of Court, which govern the preparation of the record on appeal.

Since the appellate court was not present at the trial or other proceedings in the superior court, there must be an official record of the proceedings from the superior court for the appellate court to review in assessing the appeal. Within 10 days of filing the notice of appeal, the appellant must tell the superior court in writing (“designate”) what documents and oral proceedings, if any, to include in the record that will be sent to the Court of Appeal. **You will need to designate all the parts of the record that the Court of Appeal will need to decide the issues you raise in the appeal.** You can use Judicial Council form APP-003, *Notice Designating Record on Appeal (Unlimited Civil Case)* to designate the record in an unlimited civil case.

Reporter’s Transcript

A court reporter’s transcript is a written record (often called the “verbatim” record) of the oral proceedings in the superior court. A reporter’s transcript is not required but is usually necessary.

Within 10 days of filing the notice of appeal, the appellant must serve and file with the superior court clerk either a notice designating a reporter’s transcript or a notice of intent to proceed without a reporter’s transcript (Cal. Rules of Court, rule 8.130). You can use Judicial Council form APP-003, *Appellant’s Notice Designating Record on Appeal (Unlimited Civil Case)* to file this notice in an unlimited civil case.

If the appellant chooses to designate a reporter’s transcript, the notice designating this transcript must specify the date of each proceeding to be included in the transcript and must be served on each known court reporter (Cal. Rules of Court, rule 8.130). The names of the court reporters who reported the proceedings are found in the superior court clerk’s minute orders, which are prepared for each day of the proceedings and then placed in the superior court file.

With the notice designating the reporter’s transcript, the appellant must deposit the approximate cost of transcribing the proceedings designated (Cal. Rules of Court, rule 8.130). The cost may be obtained from the reporter’s written estimate or calculated at \$650 per day (more than three hours of court time) or \$325 per fraction of a day (less than three hours of court time) (Cal. Rules of Court, rule 8.130).

Within 10 days after service of the appellant’s designation of the reporter’s transcript, the respondent may serve and file a notice designating additional proceedings to be included in the reporter’s transcript (Cal. Rules of Court, rule 8.130). Respondent must pay for the cost of transcribing any additional proceedings designated.

If the appellant chooses to proceed without a reporter’s transcript, the respondent may not designate a reporter’s transcript without first obtaining an order from the reviewing court (Cal. Rules of Court, rule 8.130).

Clerk’s Transcript or Appendix

The clerk’s transcript is a compilation of the documents filed in the superior court. Within 10 days of filing the notice of appeal, the appellant must serve and file with the superior court clerk a notice either designating the documents from the court file that the appellant wants the superior court to include in the clerk’s transcript (Cal. Rules of Court, rule 8.122) or a notice of intent to prepare his or her own compilation of these documents, called an appendix (Cal. Rules of Court, rule 8.124). You can use Judicial Council form APP-003, *Appellant’s Notice Designating Record on Appeal (Unlimited Civil Case)* to file this notice in an unlimited civil case.

If the appellant chooses to designate a clerk’s transcript, each document designated for inclusion in the clerk’s transcript must be identified by its title and filing date. If the filing date is not known, the date the document was signed may be used instead (Cal. Rules of Court, rule 8.122).

Within 10 days after service of a notice designating the documents to be included in the clerk’s transcript, respondent may serve and file a notice designating additional documents to be included in the clerk’s transcript (Cal. Rules of Court, rule 8.122).

The superior court clerk will send the appellant a bill for the cost of preparing an original and one copy of the transcript (Cal. Rules of Court, rule 8.122). This must be paid within 10 days or the appeal may be dismissed by the Court of Appeal.

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

6. FILING OF CLERK'S AND REPORTER'S TRANSCRIPTS (IF ANY)

If the appellant chooses to designate a clerk's transcript, after all the fees have been paid, the superior court clerk will compile the requested documents into a transcript format and forward the original clerk's transcript, together with the original reporter's transcript, if any, to the Court of Appeal for filing. A copy of the transcript(s) will be sent to the appellant. If the respondent has purchased a copy, the clerk's transcript will also be mailed to the respondent (Cal. Rules of Court, rules 8.122, 8.130, and 8.150).

7. ABANDONMENT OF APPEAL

If the appellant decides not to proceed with the appeal and the record has not yet been filed in the Court of Appeal, the appellant must file an abandonment of appeal in the superior court (Cal. Rules of Court, rule 8.244). You can use Judicial Council form APP-005, *Abandonment of Appeal (Unlimited Civil Case)*, for this purpose.

STEPS IN THE APPEAL PROCESS AT THE COURT OF APPEAL

8. CIVIL CASE INFORMATION STATEMENT

When the Court of Appeal is notified that a notice of appeal has been filed in an unlimited civil case, the clerk of the Court of Appeal will mail the appellant a copy of Judicial Council form APP-004, the *Civil Case Information Statement*, along with a notice that this form must be filed within 10 days. Within 10 days after the clerk mails this notice, the appellant must serve and file in the Court of Appeal a completed *Civil Case Information Statement*, attaching a copy of the judgment or appealed order that shows the date it was entered (Cal. Rules of Court, rules 8.100 and 8.104).

9. SERVING AND FILING APPENDIX IN LIEU OF CLERK'S TRANSCRIPT

If a party chooses to prepare an appendix of the documents filed in the superior court under rule 8.124 rather than designating a clerk's transcript, the party preparing the appendix must serve the appendix on each other party (unless the parties have agreed or the Court of Appeal has ordered otherwise) and file the appendix in the Court of Appeal. A joint appendix or an appellant's appendix must be served and filed with the appellant's opening brief. A respondent's appendix, if any, must be served and filed with the respondent's brief. An appellant's reply appendix, if any, must be served and filed with the appellant's reply brief (Cal. Rules of Court, rule 8.124).

10. BRIEFS

A brief is a party's written description of the facts in the case, the relevant law, and the party's argument. The preparation and filing of briefs is governed by rules 8.200–8.224 of the California Rules of Court. Parties are encouraged to read these rules thoroughly and comply accordingly.

Contents and Format of Briefs

See rule 8.204 of the California Rules of Court.

The brief must clearly explain, using references to the clerk's and reporter's transcripts (or other form of the record being used), the claimed legal errors in the superior court proceedings. Each brief must be no longer than 14,000 words if produced on a computer (you can rely on the word count provided by your computer in meeting this requirement) or up to 50 pages if produced on a typewriter. The brief must contain a table of contents and a table of authorities.

Service and Filing of Briefs

See rule 8.212 of the California Rules of Court.

The appellant's opening brief must be served and filed within 40 days after the record is filed in the Court of Appeal or 70 days from the date the appellant elects to proceed under rule 8.124 with no reporter's transcript. The cover of the appellant's opening brief must be green (Cal. Rules of Court, rules 8.212 and rule 8.40).

The respondent's brief must be served and filed within 30 days after the appellant's opening brief is filed. If this brief is the first document you have filed in the Court of Appeal in this case, you may have to pay a filing fee with the brief. The cover of the respondent's brief must be yellow.

The appellant's reply brief, if any, must be served and filed within 20 days after the respondent's brief is filed. The cover of the appellant's reply brief must be tan.

An original and four copies of each brief, along with proof of service, must be filed with the Court of Appeal. A copy of each brief must be served on all counsel and self-represented parties and on the superior court clerk for delivery to the trial judge. One electronic copy or four paper copies must also be served on the California Supreme Court (Cal. Rules of Court, rule 8.212). The addresses of the California Supreme Court, Courts of Appeal, and superior courts can be found on the Internet at www.courts.ca.gov/courts.htm.

In some instances a copy of each brief must be served on the Attorney General or the local district attorney. See rule 8.29 of the California Rules of Court and the *Civil Case Information Statement* (Judicial Council form APP-004).

Cover:	Appellant's opening brief—green Respondent's brief—yellow Appellant's reply brief—tan
File:	Original plus 4 copies along with proof of service in the Court of Appeal
Serve:	California Supreme Court—1 electronic or 4 paper copies Superior court—1 copy All counsel All self-represented parties

Extension of Time to File Brief

The parties may extend the time to file a brief for up to 60 days by filing a stipulation (agreement) in the Court of Appeal (Cal. Rules of Court, rule 8.212).

An application for extension of time must be filed with the Court of Appeal before the brief is due when:

The parties cannot agree to a stipulation; or

The parties have stipulated to the maximum automatic extension permitted under rule 8.212 of the California Rules of Court, and the applicant seeks a further extension.

Judicial Council form APP-006, *Application for Extension of Time to File Brief (Civil Case)*, can be used to apply to the Court of Appeal for an extension of time to file a brief.

11. DISMISSAL OF APPEAL

If the appellant decides not to proceed with the appeal after the record has been filed in the Court of Appeal, the appellant must file a request for dismissal in the Court of Appeal (Cal. Rules of Court, rule 8.244). You can use Judicial Council form APP-007, *Request for Dismissal of Appeal (Civil Case)* for this purpose (Cal. Rules of Court, rule 8.244).

INFORMATION SHEET ON WAIVER OF APPELLATE COURT FEES (SUPREME COURT, COURT OF APPEAL, APPELLATE DIVISION)

If you file an appeal, a petition for a writ, or a petition for review in a civil case, such as a family law case or a case in which you sued someone or someone sued you, you must generally pay a filing fee to the court. **If you are a party other than the party who filed the appeal or the petition, you must also generally pay a fee when you file your first document in a case in the Court of Appeal or Supreme Court.** You and the other parties in the case may also have to pay other court fees in these proceedings, such as fees to prepare or get a copy of a clerk's transcript in an appeal. However, if you cannot afford to pay these court fees and costs, you may ask the court to issue an order saying you do not have to pay these fees (this is called "waiving" these fees).

Who can get their court fees waived?

The court will waive your court fees and costs if:

- **You are getting public assistance**, such as Medi-Cal, Food Stamps, SSI or SSP, County Relief/General Assistance, IHSS (In-Home Supportive Services), CalWORKS, Tribal Temporary Assistance for Needy Families, or CAPI (Cash Assistance Program for Aged, Blind, and Disabled).
- **You have a low income level.** Under the law you are considered a low-income person if the gross monthly income (before deductions for taxes) of your household is less than the amount listed below:

Family Size	Family Income	Family Size	Family Income	Family Size	Family Income
1	\$1,134.38	3	\$1,930.21	5	\$2,726.05
2	\$1,532.30	4	\$2,328.13	6	\$3,123.96

If more than 6 people at home, add \$397.92 for each extra person.

- **You do not have enough income to pay for your household's basic needs and your court fees.**

What fees and costs will the court waive?

If you qualify for a fee waiver, the Supreme Court, Court of Appeal, or Appellate Division will waive the filing fee for the notice of appeal, a petition for a writ, **or a petition for review, or the first document filed by a party other than the party who filed the appeal or petition,** and any court fee for participating in oral argument by telephone. The trial court will also waive costs related to the clerk's transcript on appeal and the fees for making a transcript or copy of an official electronic recording under rule 8.835. If you are the appellant (the person who is appealing the trial court decision), the fees waived include the deposit required under Government Code section 68926.1 and the costs for preparing and certifying the clerk's transcript and sending the original to the reviewing court and one copy to you. If you are the respondent (a party other than the appellant in a case that is being appealed), the fees waived include the costs for sending you a copy of the clerk's transcript.

The court **cannot** waive the fees for preparing a reporter's transcript in a civil case. **If you are represented by a lawyer in your appeal, a** special fund, called the Transcript Reimbursement Fund, may help pay for the transcript. (See <http://www.courtreportersboard.ca.gov/consumers/index.shtml#trf> and Business and Professions Code sections 8030.2 and following for more information about this fund.) **However, there is no financial help available for parties who are not represented by lawyers.** 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 preparing an agreed statement or, in some circumstances, a statement on appeal or settled statement.

How do I ask the court to waive my fees?

- **Appeal in Limited Civil Case (civil case in which the amount of money claimed is \$25,000 or less).** In a limited civil case, if the trial court already issued an order waiving your court fees *and that fee waiver has not ended* (fee waivers automatically end 60 days after the judgment), your fee for filing a notice of appeal and your costs for the clerk's transcript are already waived; just give the court a copy of your current fee waiver. If you do not already have an order waiving your fees or you had a fee waiver but it has ended, you must complete and file a *Request to Waive Court Fees* (form FW-001). If you are the appellant (the party who is appealing), you should check both boxes in item 4 on FW-001 and file the completed form with your notice of appeal. If you are the respondent (a party other than the appellant in a case that is being appealed),

the completed form should be filed in the court when the fees you are requesting to be waived, such as the fee for the clerk's transcript or telephonic oral argument, are due.

- **Writ Proceeding in Limited Civil Case (civil case in which the amount of money claimed is \$25,000 or less).** If you want the Superior Court to waive the fees in a writ proceeding in a limited civil case, you must complete a *Request to Waive Court Fees* (form FW-001). In item 4 on FW-001, check the second box. The completed form should be filed with your petition for a writ.
- **Appeal in Other Civil Cases.** If you are the appellant (the party who is appealing) want the court to waive fees and costs in an appeal in a civil case other than a limited civil case, such as a family law case or an unlimited civil case (a civil case in which the amount of money claimed is more than \$25,000), you must complete a *Request to Waive Court Fees* (form FW-001). In item 4 on FW-001, check the second box to ask the Court of Appeal to waive the fee for filing the notice of appeal or, if you are a respondent (a party other than the one who filed the appeal), the fee for the first document you file in the Court of Appeal. Check both boxes if you also want the trial court to waive your costs for the clerk's transcript (if the trial court already issued an order waiving your fees and that fee waiver has not ended, you do not need to check the first box; your costs for the clerk's transcript are already waived, just give the court a copy of your current fee waiver). If you are the appellant, the completed form should be submitted with your notice of appeal (if you check both boxes in item 4, the court may ask for two signed copies of this form). If you are the respondent, (a party other than the appellant in a case that is being appealed) and the trial court already issued an order waiving your court fees and that fee waiver has not ended, your costs for the clerk's transcript are already waived; just give the trial court a copy of your current fee waiver. If you have not already received a fee waiver in the case or you had a fee waiver but it ended, to request waiver of the fee for a copy of the clerk's transcript, you must complete a *Request to Waive Court Fees* (form FW-001) and file it the completed form should be submitted at the time the fee you are asking the court to waive is due. For example, file the form in the trial court with your request for a copy of the clerk's transcript if you are asking the court to waive the transcript fee or file the form in the Court of Appeal with the first document you file in that court if you are asking the court to waive the fee for filing that document. To request waiver of a court fee for telephonic oral argument, you should file the completed form in the Court of Appeal when the fee for telephonic oral argument is due.
- **Writ Proceeding in Other Civil Cases.** If you want the Supreme Court or Court of Appeal to waive the fees and costs in a writ proceeding in a civil case other than a limited civil case, such as a family law case or an unlimited civil case (a civil case in which the amount of money claimed is more than \$25,000), you must complete a *Request to Waive Court Fees* (form FW-001). If you are the petitioner (the party filing the petition), the completed form should be submitted with your petition for a writ in the Supreme Court or Court of Appeal clerk's office. If you are a party other than the petitioner, the completed form should be filed with first document you file in the Supreme Court or Court of Appeal.
- **Petition for Review.** If you want to request that the Supreme Court waive the fees in for filing a petition for review proceeding, you must complete a *Request to Waive Court Fees* (form FW-001). If you are the petitioner, you should submit the completed form with your petition for review. If you are a party other than the petitioner, the completed form should be filed with first document you file in the Supreme Court.

For more information about appeals and writ proceedings, see *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO), *Information on Appeal Procedures for Unlimited Civil Cases* (form APP-001), and *Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases* (form APP-150-INFO).

IMPORTANT INFORMATION!

- **Fill out your request completely and truthfully.** When you sign your request for a fee waiver, you are declaring under penalty of perjury that the information you have provided is true and correct.
- **The court may ask you for information and evidence.** You may be ordered to go to court to answer questions about your ability to pay court fees and costs and to provide proof of eligibility. Any initial fee

waiver you are granted may be ended if you do not go to court when asked. You may be ordered to repay amounts that were waived if the court finds you were not eligible for the fee waiver.

- **If you receive a fee waiver, you must tell the court if there is a change in your finances.** You must tell the court immediately if your finances improve or if you become able to pay court fees or costs during this case (file form FW-010 with the court). You may be ordered to repay any amounts that were waived after your eligibility ended. If the trial court waived your fees and costs and you settle your case for \$10,000 or more, the trial court will have a lien on the settlement in the amount of the waived fees.
- **The fee waiver ends.** The fee waiver expires 60 days after the judgment, dismissal, or other final disposition of the case or when the court finds that you are not eligible for a fee waiver.

Assembly Bill No. 110

CHAPTER 193

An act to amend Sections 68526, 68926, 68926.1, 68926.3, 68927, and 70602.5 of the Government Code, and to amend Section 1203.01 of the Penal Code, relating to courts, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[Approved by Governor August 30, 2011. Filed with
Secretary of State August 30, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 110, Blumenfield. Courts.

(1) Existing law requires the Judicial Council to conduct an analysis of the cost incurred by trial courts related to the default prove up process and to report on the different methods trial courts use in processing filings related to the default prove up process, as well as the revenue generated by these filings. Existing law requires the report to be provided to the Assembly Committee on Budget, the Senate Committee on Budget and Fiscal Review, and the Legislative Analyst's Office by September 30, 2011. Existing law requires the Legislative Analyst's Office to provide the Assembly Committee on Budget and the Senate Committee on Budget and Fiscal Review its recommendations pertaining to the report no later than June 30, 2012. Existing law provides that these provisions will become inoperative on July 1, 2013, and are repealed on January 1, 2014.

This bill would require the report to be provided no later than September 30, 2013, and the recommendations to be provided no later than June 30, 2014. The bill would provide that the above-described provisions become inoperative on July 1, 2015, and are repealed on January 1, 2016.

(2) Existing law provides that if the amount of the General Fund transfer to the Trial Court Trust Fund is decreased in excess of 10% from the amount appropriated in the 2010–11 fiscal year and is not offset by another source of noncourt fee revenue, then the amount of certain supplemental fees for filing first paper for specified civil matters shall be decreased proportionally, and that the Judicial Council shall adopt and publish a schedule setting the fees resulting from the decrease.

This bill would repeal those provisions.

(3) Existing law establishes fees for filing a notice of appeal in a civil case appealed to a court of appeal, for filing a petition for a writ within the original civil jurisdiction of the Supreme Court, and for filing a petition for a writ within the original civil jurisdiction of a court of appeal. Existing law also establishes the fee for filing a petition for review in a civil case in the Supreme Court after a decision in a court of appeal.

This bill would establish a fee of \$325 for a party other than appellant filing its first document in a civil case appealed to a court of appeal, for a party other than petitioner filing its first document in a writ proceeding within the original jurisdiction of the Supreme Court, or for a party other than petitioner filing its first document in a writ proceeding within the original jurisdiction of a court of appeal. This bill would also establish a fee of \$325 for a party other than petitioner filing its first document in a civil case in the Supreme Court after a decision in a court of appeal.

(4) Existing law provides that, within 60 days after judgment has been pronounced, the clerk of the court shall mail a copy of the charging documents, the transcript of the proceedings at the time of the defendant's guilty plea if the defendant pleaded guilty, and the transcript of the proceedings at the time of sentencing, with postage prepaid, to the prison or other institution to which the person convicted is delivered.

This bill would limit the above provisions to cases in which the judgment imposed includes a sentence of death or an indeterminate term with or without the possibility of parole, and additionally require the clerk of the court to include a copy of any waiver or plea forms. The bill would provide similar provisions without the 60-day requirement for all other cases, except that a transcript of the proceedings would be included only upon written request by the Department of Corrections and Rehabilitation, or by an inmate, or by his or her counsel, for specified purposes, including an appeal.

The bill would also make an appropriation of \$1,000 to the Administrative Office of the Courts, for support of trial court operations, payable from the Trial Court Trust Fund.

This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 68526 of the Government Code is amended to read:

68526. (a) The Judicial Council shall conduct an analysis of the cost incurred by trial courts related to the default prove up process and report on the different methods trial courts use in processing filings related to the default prove up process, as well as the revenue generated by these filings. The Judicial Council shall also compare the processes used by trial courts in filings related to the default prove up process to best practices used in other states, including, but not limited to, the use of electronic filing.

(b) The Legislative Analyst's Office shall review the Judicial Council report, consult with stakeholders, consider the best practices of other states, and make any recommendations to increase efficiency, streamline the processes and turnaround times for filing documents related to the default prove up process, and assess whether any changes should be made to the fee structure for filings related to the process. In conducting its analysis,

the Legislative Analyst's Office shall consider, among other factors it deems relevant, whether electronic filing could be implemented as a tool to improve the efficiency and turnaround times of the default prove up process.

(c) The Judicial Council shall provide its report to the Assembly Committee on Budget, the Senate Committee on Budget and Fiscal Review, and the Legislative Analyst's Office by September 30, 2013. The Legislative Analyst's Office shall provide the Assembly Committee on Budget and the Senate Committee on Budget and Fiscal Review its recommendations no later than June 30, 2014.

(d) For the purposes of this section, the following definitions apply:

(1) "Collections case" means an action for recovery of money owed in a sum stated to be certain that is not more than twenty-five thousand dollars (\$25,000), exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money were acquired on credit. "Collections case" does not include an action seeking tort damages, punitive damages, recovery of real property or personal property, a prejudgment writ of attachment, or any action filed pursuant to the Family Code.

(2) "Default prove up process" means a request for entry of default filed pursuant to Section 585 of the Code of Civil Procedure in a collections case.

(e) This section shall become inoperative on July 1, 2015, and, as of January 1, 2016, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2016, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 68926 of the Government Code is amended to read:

68926. (a) (1) The fee for filing a notice of appeal in a civil case appealed to a court of appeal is four hundred eighty-five dollars (\$485).

(2) The fee for filing a petition for a writ within the original civil jurisdiction of the Supreme Court is four hundred twenty dollars (\$420).

(3) The fee for filing a petition for a writ within the original civil jurisdiction of a court of appeal is four hundred eighty-five dollars (\$485).

(b) (1) The fee for a party other than appellant filing its first document in a civil case appealed to a court of appeal is three hundred twenty-five dollars (\$325).

(2) The fee for a party other than petitioner filing its first document in a writ proceeding within the original jurisdiction of the Supreme Court is three hundred twenty-five dollars (\$325).

(3) The fee for a party other than petitioner filing its first document in a writ proceeding within the original jurisdiction of a court of appeal is three hundred twenty-five dollars (\$325).

(c) These fees are in full, for all services, through the rendering of the judgment or the issuing of the remittitur or peremptory writ, except the fees imposed by subdivision (b) of Section 68926.1 and Section 68927. The Judicial Council may make rules governing the time and method of payment of these fees, and providing for excuse therefrom in appropriate cases. A fee may not be charged in appeals from, nor petitions for writs involving, juvenile cases or proceedings to declare a minor free from parental custody or control, or proceedings under the Lanterman-Petris-Short Act (Part 1

(commencing with Section 5000) of Division 5 of the Welfare and Institutions Code).

SEC. 3. Section 68926.1 of the Government Code is amended to read:

68926.1. (a) (1) Upon filing a notice of appeal for which a fee is paid pursuant to Section 68926, the appellant shall deposit the sum of one hundred dollars (\$100) with the clerk of the originating court. The deposit shall be credited against the amount chargeable for the preparation of the clerk's transcript or any other appeal processing or notification.

(2) The deposit shall be forfeited in the event of abandonment or dismissal of appeal prior to filing of the record in the reviewing court.

(3) The amount charged for preparation of the transcript or any deposit that is forfeited shall be distributed to the court in which it was collected.

(b) Upon filing a notice of appeal, a petition for a writ, or a petition for a hearing for which a fee is paid pursuant to subdivision (a) of Section 68926 or subdivision (a) of Section 68927, the appellant shall pay an additional fee in the amount of one hundred seventy dollars (\$170). Upon filing its first document for which a fee is paid pursuant to subdivision (b) of Section 68926 or subdivision (b) of Section 68927, a party other than the appellant or petitioner is not required to pay this additional fee. The fees collected pursuant to this subdivision shall be transmitted to the State Treasury for deposit in the Appellate Court Trust Fund.

SEC. 4. Section 68926.3 of the Government Code is amended to read:

68926.3. (a) Notwithstanding any other provision of law, sixty-five dollars (\$65) of each fee collected in a civil case by the clerk of each court of appeal pursuant to subdivision (a) of Section 68926 shall be paid into the State Treasury for deposit in a special account in the General Fund to be known as the California State Law Library Special Account, which account is hereby established.

(b) Moneys deposited in the California State Law Library Special Account shall be available for the support of the California State Law Library upon appropriation thereto by the Legislature in the annual Budget Act.

(c) This section shall remain in effect only until January 1, 2015, and as of that date, is repealed, unless a later statute that is enacted before that date extends or repeals that date.

SEC. 5. Section 68927 of the Government Code is amended to read:

68927. (a) The fee for filing a petition for review in a civil case in the Supreme Court after a decision in a court of appeal is four hundred twenty dollars (\$420).

(b) The fee for a party other than petitioner filing its first document in a civil case in the Supreme Court after a decision in a court of appeal is three hundred twenty-five dollars (\$325).

(c) A fee may not be charged for petitions for review from decisions in juvenile cases or proceedings to declare a minor free from parental custody or control or proceedings under the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code).

SEC. 6. Section 70602.5 of the Government Code is amended to read:

70602.5. (a) Notwithstanding any other law, due to the severity of the continuing economic crisis facing the State of California, it is the intent of the Legislature to supplement, until July 1, 2013, certain first paper filing fees as provided below:

(1) A supplemental fee of forty dollars (\$40) shall be collected for filing any first paper subject to the uniform fee that is set at three hundred fifty-five dollars (\$355) under Sections 70611, 70612, 70650, 70651, 70652, 70653, 70655, 70658, and 70670. The total fee collected under these sections, which includes the supplemental fee, shall be deposited and distributed as provided in Sections 68085.3 and 68086.1, as applicable.

(2) A supplemental fee of forty dollars (\$40) shall be collected for filing any first paper subject to the uniform fee that is set at three hundred thirty dollars (\$330) under Sections 70613, 70614, and 70621. The total fee collected under these sections, which includes the supplemental fee, shall be deposited and distributed as provided in Sections 68085.4 and 68086.1, as applicable.

(3) A supplemental fee of twenty dollars (\$20) shall be collected for filing any first paper subject to the uniform fee that is set at two hundred five dollars (\$205) under Sections 70613, 70614, 70621, 70654, and 70656 of this code, and Section 103470 of the Health and Safety Code. The total fee collected under these sections, which includes the supplemental fee, shall be deposited and distributed as provided in Section 68085.4.

(b) This section shall become inoperative on July 1, 2013, and, as of January 1, 2014, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2014, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 7. Section 1203.01 of the Penal Code is amended to read:

1203.01. (a) Immediately after judgment has been pronounced, the judge and the district attorney, respectively, may cause to be filed with the clerk of the court a brief statement of their views respecting the person convicted or sentenced and the crime committed, together with any reports the probation officer may have filed relative to the prisoner. The judge and district attorney shall cause those statements to be filed if no probation officer's report has been filed. The attorney for the defendant and the law enforcement agency that investigated the case may likewise file with the clerk of the court statements of their views respecting the defendant and the crime of which he or she was convicted. Immediately after the filing of those statements and reports, the clerk of the court shall mail a copy thereof, certified by that clerk, with postage prepaid, addressed to the Department of Corrections and Rehabilitation at the prison or other institution to which the person convicted is delivered. The clerk shall also mail a copy of any statement submitted by the court, district attorney, or law enforcement agency, pursuant to this section, with postage prepaid, addressed to the attorney for the defendant, if any, and to the defendant, in care of the Department of Corrections and Rehabilitation, and a copy of any statement submitted by the attorney for the defendant, with postage prepaid, shall be mailed to the district attorney.

(b) (1) In all cases in which the judgment imposed includes a sentence of death or an indeterminate term with or without the possibility of parole, the clerk shall, within 60 days after judgment has been pronounced, mail with postage prepaid, to the prison or other institution to which the person convicted is delivered, a copy of the charging documents, a copy of waiver and plea forms, if any, the transcript of the proceedings at the time of the defendant's guilty or nolo contendere plea, if the defendant pleaded guilty or nolo contendere, and the transcript of the proceedings at the time of sentencing.

(2) In all other cases not described in paragraph (1), the clerk shall mail with postage prepaid, to the prison or other institution to which the person convicted is delivered, a copy of the charging documents, a copy of the waiver and plea forms, if any, and upon written request by the Department of Corrections and Rehabilitation or by an inmate, or by his or her counsel, for, among other purposes on a particular case, appeals, review of custody credits and release dates, and restitution orders, the transcript of the proceedings at the time of the defendant's guilty or nolo contendere plea, if the defendant pleaded guilty or nolo contendere, and the transcript of the proceedings at the time of sentencing.

SEC. 8. An appropriation of one thousand dollars (\$1,000) is provided to the Administrative Office of the Courts, for the support of trial court operations, payable from the Trial Court Trust Fund.

SEC. 9. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.

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