



RULES COMMITTEE

MINUTES OF OPEN VIDEOCONFERENCE MEETING

Wednesday, May 1, 2024

4:00 p.m. - 5:00 p.m.

Rules Committee Members Present:	Hon. Carin T. Fujisaki, Hon., Hon. Charles S. Crompton, Hon. Maria D. Hernandez, Hon. Ms. Rachel W. Hill, and Mr. Charles Johnson.
Rules Committee Members Absent:	Michelle Williams Court Ms. Kate Bieker, Mr. Maxwell V. Pritt, and Hon. Erica R. Yew.
Rules Committee Staff Present:	Ms. Anne M. Ronan and Ms. Benita Downs
Advisory Bodies Chair(s) and Staff Present	Hon. Maria D. Hernandez, Ms. Grace DiLaura, Ms. Jenny Grantz, and Ms. Saskia Kim.
Other JC Staff Present	Mr. Michael Giden

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 12:10 p.m., and Ms. Downs took roll call.

Approval of Minutes

The committee approved the minutes of the March 28 and April 4 meetings.

DISCUSSION AND ACTION ITEMS (ITEMS 01-02)

TRIAL COURT PRESIDING JUDGES ADVISORY COMMITTEE

Judicial Council Report—Recommend Council Action

Item 01

Civil Remote Proceedings: When a Judicial Officer May Preside Remotely

The committee reviewed a recommendation from the Trial Court Presiding Judges Advisory Committee for the Judicial Council to adopt a rule of court concerning when a judicial officer may preside remotely in civil cases subject to Code of Civil Procedure section 367.75, effective July 1, 2024. The proposed rule satisfies the statutory mandate contained in Code of Civil Procedure section 367.10 which requires the council to adopt a rule that includes “standards for when a judicial officer, in limited situations and in the

interest of justice, may preside over a remote court proceeding from a location other than a courtroom.” (Code Civ. Proc., § 367.10.)

Action: The committee unanimously approved the recommendation, which is to go to the Judicial Council for action at the May council meeting.

JUDICIAL COUNCIL STAFF

Judicial Council Report–Recommend Council Action

Item 02

Rules and Forms: Order for Debtor’s Examination in Small Claims Cases

The committee reviewed a recommendation from the Judicial Council staff to revise the instructions on one Judicial Council form to implement a statutory change made by Assembly Bill 1119 (Stats. 2023, ch. 562), enacted October 8, 2023. Revisions to the form will ensure that it conforms to existing law and avoid causing confusion for court users, clerks, and judicial officers.

Action: The committee unanimously approved the recommendation, which is to go to the Judicial Council for action at the May council meeting.

A D J O U R N M E N T

There being no further business, the meeting was adjourned at 12:27 p.m.



RULES COMMITTEE

MINUTES OF OPEN VIDEOCONFERENCE MEETING

Tuesday, June 4
12:10 p.m. - 1:10 p.m.

Rules Committee Members Present:	Hon. Carin T. Fujisaki, Hon. Michelle Williams Court, Hon. Charles S. Crompton, Hon. Ms. Rachel W. Hill, Mr. Charles Johnson.
Rules Committee Members Absent:	Ms. Kate Bieker, Hon. Maria D. Hernandez, Mr. Maxwell V. Pritt, and Hon. Erica R. Yew.
Rules Committee Staff Present:	Ms. Anne M. Ronan and Ms. Benita Downs
Advisory Bodies Chair(s) and Staff Present	Mr. James Barolo, Mr. Tony Cheng, Ms. Sarah Jacobvitz, Ms. Anna Maves, and Ms. Marina Soto.
Other JC Staff Present	Ms. Audrey Fancy, Mr. Michael Giden, Ms. Lollie Roberts, Ms. Christy Simon, and Ms. Xiaoyu Zhang.

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 12:10 p.m., and Ms. Downs took roll call. After the roll call, Justice Fujisaki announced that Ms. Hill had abstained from voting on all proposals.

DISCUSSION AND ACTION ITEMS (ITEMS 01-05)

FAMILY AND JUVENILE LAW

Invitation to Comment-Recommend Circulation for Comment

Item 01

Juvenile Law: Racial Justice Act

The committee reviewed a proposal from the Family and Juvenile Law Advisory Committee recommending four new forms to assist litigants and juvenile courts with claims under the Racial Justice Act. The act prohibits the state from seeking or obtaining a criminal conviction or sentence on the basis of race, ethnicity, or national origin, and applies to adjudications and dispositions in juvenile court. Juvenile courts expect more claims to be filed since recent legislation expanded the retroactive application of the act, enabling more individuals to file claims for relief based on violations of its provisions.

Action: The committee unanimously approved the proposal for circulation on a special Cycle through July 10.

Judicial Council Report–Recommend Council Action

Item 02

Child Support: Implementing Amendments to the Family Code

The committee reviewed a recommendation from the Family and Juvenile Law Advisory Committee that the Judicial Council approve 2 new forms, revise 20 forms, and revoke 3 forms related to child support. This action is necessary to implement recent changes to the Family Code that (1) require, in compliance with recent federal regulations, that child support orders be based on evidence of actual income or the specific circumstances of the obligor parent; (2) mandate that local child support agencies provide notice regarding payment of support to parents and the court when they begin and cease to provide child support enforcement services; and (3) increase the time period before child support resumes after an obligor parent has been released from incarceration or confinement.

Action: The committee unanimously approved the recommendation, which is to go to the Judicial Council for action at the July council meeting.

PROBATE AND MENTAL HEALTH

Judicial Council Report–Recommend Council Action

Item 03

Mental Health Law: CARE Act and Related Proceedings

The committee reviewed a recommendation from the Probate and Mental Health Advisory Committee to approve an optional form for the court’s use to order the county agency to provide information to the respondent’s attorney in specified related proceedings that a petition to commence proceedings under the Community Assistance, Recovery, and Empowerment (CARE) Act has been filed on the respondent’s behalf. This form, recommended in response to comments from courts and counties, would facilitate the process required by rule 7.2210(e) of the California Rules of Court.

Action: The committee unanimously approved the recommendation, which is to go to the Judicial Council for action at the July council meeting.

JUDICIAL COUNCIL STAFF

Discussion Only–No Materials

Item 04

Rules and Forms: Adjustments to Exemptions from Enforcement of Judgments

Action: No action information only

JUDICIAL COUNCIL STAFF

Judicial Council Report—Recommend Council Action

Item 05

Rules and Forms: Miscellaneous Technical Changes

The committee reviewed a recommendation from Judicial Council staff to correct errors identified in particular rules and forms resulting from input errors, and minor changes needed to conform to changes in law or previous council actions. These changes are technical in nature and necessary to avoid causing confusion for court users, clerks, and judicial officers.

Action: The committee unanimously approved the recommendation, which is to go to the Judicial Council for action at the July council meeting.

A D J O U R N M E N T

There being no further business, the meeting was adjourned at 12:50 p.m.

Approved by the committee on



Judicial Council of California

Rules Committee

www.courts.ca.gov/rulescomm.htm
rulesmeetings@jud.ca.gov

RULES COMMITTEE

MINUTES OF ACTION BY EMAIL

Monday, June 10, 2024

Rules Committee Members Who Participated:

Hon. Carin T. Fujisaki, Hon. Michelle Williams Court, Ms. Kate Bieker, Hon. Charles S. Crompton, Hon. Maria D. Hernandez, Mr. Charles Johnson, Mr. Maxwell V. Pritt, and Hon. Erica R. Yew.

Rules Committee Members Who Did Not Participate:

Ms. Rachel Hill

Rules Committee Staff:

Ms. Anne M. Ronan and Ms. Benita Downs

ACTION BY EMAIL

As provided in the California Rules of Court, rule 10.75 (o)(1)(B), the chair concluded that prompt action was needed. This action by e-mail concerned a matter that would otherwise be discussed in an open meeting; therefore, in accordance with rule 10.75(o)(2), public notice and the proposal were posted on Friday, June 7, 2024, to allow at least one complete business day for public comment before the committee took action. No public comments were received.

OPEN ACTION AND DISCUSSION ITEMS (01)

JUDICIAL COUNCIL STAFF**Item 01****Rules and Forms: Adjustments to Exemptions from Enforcement of Judgments**

The committee reviewed a recommendation from Judicial Council staff to revise the form that contains the list of dollar amounts of exemptions from judgment to reflect the updated figure for deposit accounts and to implement the recent statutory amendments.

Action: The committee unanimously approved the recommendation from Judicial Council staff, which is to go to the Judicial Council for action at the July council meeting.

CLOSURE OF ACTION

The action by e-mail concluded on Monday, June 10, 2024, at 5:00 p.m.

Approved by the committee on

DRAFT



Judicial Council of California

Rules Committee

www.courts.ca.gov/rulescomm.htm
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RULES COMMITTEE

MINUTES OF ACTION BY EMAIL

Thursday, June 27, 2024

Rules Committee Members Who Participated:

Hon. Carin T. Fujisaki, Hon. Michelle Williams Court, Ms. Kate Bieker, Hon. Charles S. Crompton, Hon. Maria D. Hernandez, Mr. Charles Johnson, Mr. Maxwell V. Pritt, and Hon. Erica R. Yew.

Rules Committee Members Who Did Not Participate:

Ms. Rachel Hill

Rules Committee Staff:

Ms. Anne M. Ronan and Ms. Benita Downs

ACTION BY EMAIL

As provided in the California Rules of Court, rule 10.75 (o)(1)(B), the chair concluded that prompt action was needed. This action by e-mail concerned a matter that would otherwise be discussed in an open meeting; therefore, in accordance with rule 10.75(o)(2), public notice and the proposal were posted on Tuesday, June 25, 2024, to allow at least one complete business day for public comment before the committee took action. No public comments were received.

OPEN ACTION AND DISCUSSION ITEMS (01)

JUDICIAL COUNCIL STAFF

Item 01

Civil Practice and Procedure: Implementation of Assembly Bill 1119 in Small Claims Cases

The committee reviewed a proposal from the Civil and Small Claims Advisory Committee recommending the adoption of two mandatory Small Claims forms and revising four forms. The committee also proposed revisions to the general civil judgment form to reflect the new law. Another proposal revising Judicial Council Enforcement of Judgment forms to implement AB 1119 has already circulated for public comment, and this proposal parallels that one.

Action: The committee unanimously approved the proposal for circulation on the special cycle through July 31.

CLOSURE OF ACTION

The action by e-mail concluded on Thursday, June 27, 2024, at 5:00 p.m.

Approved by the committee on

DRAFT

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: 8/6/2024

Rules Committee action requested [Choose from the drop-down menu below]:

Recommend JC approval (has circulated for comment)

Title of proposal: Appellate Procedure: Civil Case Information Statement, Calendar Preference, and Extension of Time

Proposed rules, forms, or standards (include amend/revise/adopt/approve):

Amend Cal. Rules of Court, rule 8.100; revise forms APP-001-INFO, APP-004, APP-006, APP-106, CR-126, JV-816, and JV-817

Committee or other entity submitting the proposal:

Appellate Advisory Committee

Staff contact (name, phone and e-mail): Jeremy Varon, (415) 865-7424, jeremy.varon@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:

Annual agenda approved by Rules Committee on (date): October 26, 2023

Project description from annual agenda: : Consider rules and forms relating to appeal procedures, from the recommendations of the Appellate Caseflow Workgroup7 and which the council's Executive and Planning Committee directed the Appellate Advisory Committee to consider:

- Consider revising the Civil Case Information Statement (form APP-004) and the applicable rules of court related to that form. The workgroup encouraged the Judicial Council to consider revising form APP-004 to allow litigants to identify nonstatutory grounds for an appeal to be given priority. In addition, a committee member has noted that it is often impossible to comply with the rule requiring form APP-004 to be filed with the reviewing court within 15 days after the superior court clerk sends notification of the filing of a notice of appeal because the appeal has not been docketed within that time frame.
- Consider amending the rules of court to require litigants who request extensions of time without using the council's optional forms to include in their request some or all of the information contained on the request forms, or making the request forms (forms APP 006, APP-106, CR-126, JV-816, and JV-817) mandatory. The workgroup encouraged the council to consider requiring litigants to provide certain information in extension of time requests to enable courts to better evaluate whether the moving party has demonstrated good cause.
- Consider revising the INFO sheets applicable to various types of appeals (e.g., forms APP-100-INFO and APP-101-INFO), and any other rules and forms as needed to reflect the above changes

Out of Cycle: *If requesting September 1 effective date or out of cycle, explain why:*

Additional Information for Rules Committee: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

Additional Information for JC Staff

- **Director Approval** (required for all invitations to comment and reports)

This report or invitation to comment was

reviewed by EGG on (date) June 17, 2024

approved by Office Director (or Designee) (name)
on (date)

If either of above not checked, explain why:

Complete the following for all reports to be submitted to council (optional for ITCs):

- **Form Translations** (check all that apply)

This proposal:

- includes forms that have been translated.
- includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: [Click or tap here to enter text.](#)
- includes forms that staff will request be translated.

- **Form Descriptions** (for any report with new or revised forms)

The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is checked, the form descriptions should be approved by a supervisor before submitting this RAR.).

- **Self-Help Website** (check if applicable)

This proposal may require changes or additions to self-help web content.



Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 24-146

For business meeting on September 20, 2024

Title

Appellate Procedure: Civil Case Information Statement, Calendar Preference, and Extension of Time

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rule 8.100; revise forms APP-001-INFO, APP-004, APP-006, APP-106, CR-126, JV-816, and JV-817

Recommended by

Appellate Advisory Committee
Hon. Louis Mauro, Chair

Agenda Item Type

Action Required

Effective Date

January 1, 2025

Date of Report

July 17, 2024

Contact

Jeremy Varon, 415-865-7424

Jeremy.Varon@jud.ca.gov

Executive Summary

The Appellate Advisory Committee recommends amending California Rules of Court, rule 8.100 to require appellants to file the *Civil Case Information Statement* (APP-004) within 15 days after the reviewing court assigns the appeal a case number and revising form APP-004 to allow the appellant to provide a nonstatutory reason why the appeal is eligible for calendar preference. The committee also recommends revising the forms used by parties to request extensions of time to file briefs to make slight substantive and formatting improvements.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2025:

1. Amend California Rules of Court, rule 8.100 to require the appellant to file *Civil Case Information Statement* (form APP-004) within 15 days after the reviewing court assigns the appeal a case number;

2. Revise *Civil Case Information Statement* (form APP-004) to reflect the change to rule 8.100 and to allow the appellant to provide a nonstatutory reason why the appeal is eligible for calendar preference; and
3. Revise the following forms to make slight substantive and formatting improvements:
 - *Information on Appeal Procedures for Unlimited Civil Cases* (form APP-001-INFO)
 - *Application for Extension of Time to File Brief—Unlimited Civil Case* (form APP-006)
 - *Application for Extension of Time to File Brief—Limited Civil Case* (form APP-106)
 - *Application for Extension of Time to File Brief—Criminal Case* (form CR-126)
 - *Application for Extension of Time to File Brief—Juvenile Justice Case* (form JV-816)
 - *Application for Extension of Time to File Brief—Juvenile Dependency Case* (form JV-817)

The proposed amended rule and revised forms are attached at pages 9–39.

Relevant Previous Council Action

The predecessor to California Rules of Court,¹ rule 8.100(g), governing the filing of the Civil Case Information Statement, was adopted by the Judicial Council effective January 1, 2003. Effective January 1, 2014, rule 8.100(g) was amended to remove a requirement that the Court of Appeal clerk mail the appellant a notice of the requirement to file *Civil Case Information Statement* (form APP-004) along with a copy of form APP-004. This requirement was replaced with the current requirement that the appellant file form APP-004 within 15 days after the superior court mails the required notification of the filing of the notice of appeal.

The Judicial Council adopted *Civil Case Information Statement* (originally as form APP-001) for mandatory use in October 2002. It was renumbered to form APP-004 effective January 1, 2004.

Application for Extension of Time to File Brief forms were approved for optional use at various times. Form APP-006, for unlimited civil cases, was approved effective January 1, 2004. Form APP-106, for limited civil cases, was approved effective January 1, 2010. And the remaining forms—form CR-126, for felony criminal cases; form JV-816, for juvenile delinquency cases; and form JV-817, for juvenile dependency cases—were approved effective January 1, 2025. Each of these forms has been previously revised, but the prior revisions are not relevant to this proposal.

Analysis/Rationale

Civil Case Information Statement rule and form revisions

Rule 8.100(g)(1) currently requires an appellant, within 15 days after the superior court sends notification that a notice of appeal has been filed, to serve and file in the reviewing court a

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

completed *Civil Case Information Statement* (form APP-004). This proposal recommends amending the due date in rule 8.100(g)(1) and revising form APP-004.

Deadline for filing Civil Case Information Statement

The committee received feedback that appellants are, in practice, often unable to comply with rule 8.100(g)(1)'s current deadline because the reviewing court has not docketed and assigned the appeal a case number within 15 days after the notice of appeal has been filed. When this happens, there is no case in which the appellant can file *Civil Case Information Statement* (form APP-004).

To prevent this situation, this proposal recommends amending rule 8.100(g)(1) to require the appellant to serve and file a completed form APP-004 within "15 days after the reviewing court assigns the appeal a case number." Tying the deadline to the date the reviewing court assigns a case number will ensure that there is a case in the reviewing court where the appellant can file form APP-004, thus preventing confusion among appellants.

This proposal recommends revising *Information on Appeal Procedures for Unlimited Civil Appeals* (form APP-001-INFO) and form APP-004 to reflect rule 8.100(g)(1)'s new deadline. This proposal would also revise form APP-001-INFO to advise appellants that they can use the Appellate Courts Case Information website to check whether their appeal has been assigned a case number.

Civil Case Information Statement item regarding calendar preference or priority

Last December, the Appellate Caseflow Workgroup² made a number of recommendations on ways to improve the efficiency of the appellate process. Among recommendations referred to the Appellate Advisory Committee by the workgroup via the Executive and Planning Committee was for the advisory committee to propose revisions to form APP-004 to "allow litigants or counsel to identify an alternative, non-statutory ground for an appeal to be given priority."³

For civil cases in the Court of Appeal, rule 8.240 governs calendar preference and requires a party seeking preference to promptly serve and file a motion for preference in the reviewing court. "Calendar preference" can mean an expedited appeal schedule, including expedited briefing and preference in setting the date of oral argument. The advisory committee comment to this rule advises that the rule covers motions for preference based on statute,⁴ as well as

² The Appellate Caseflow Workgroup was appointed by former Chief Justice Tani G. Cantil-Sakauye in June 2022 and made its report to her in December 2022.

³ Appellate Caseflow Workgroup, *Report to the Chief Justice* (Dec. 6, 2022), p. 20, https://newsroom.courts.ca.gov/sites/default/files/newsroom/2022-12/Appellate%20Caseflow%20Workgroup%20Report_Final.pdf.

⁴ E.g., Code Civ. Proc., § 44 (probate proceedings, contested elections, libel by public official) or § 45 (judgments freeing minors from parental custody).

situations where the court should exercise its discretion to grant preference on a nonstatutory ground.⁵

Currently, item 2 of part II of form APP-004 reads: “This appeal is entitled to calendar preference/priority on appeal (*cite authority*).” The use of the word “entitled” and the direction to “cite authority” could be construed as narrowing the item only to cases where a statute expressly grants a type of case calendar preference or priority. To avoid such a narrow reading, this proposal would revise this item on the form to read, “This appeal is eligible for calendar preference/priority on appeal (*cite authority or explain*).”

A commenter expressed the view that litigants may erroneously conclude that filling out this item would satisfy rule 8.240’s requirement that a party seeking calendar preference or priority promptly serve and file a motion to this effect. To prevent such an error, the committee recommends adding the following advisement to the item: “*A party seeking calendar preference or priority on a nonstatutory or discretionary ground must promptly serve and file in the Court of Appeal a motion for preference. (See Cal. Rules of Court, rule 8.240.)*”

The committee believes that these revisions will help flag for the Courts of Appeal at an early stage that a case may be eligible for case preference or priority. They may also ensure that litigants are aware of the need to promptly file a motion if they believe their case should be given calendar preference or priority. In these ways, the committee believes the revisions will aid appellate efficiency.

Revisions to extension-of-time forms

This proposal recommends revising the various forms for requesting an extension of time to file a brief to make the following improvements:

- On forms APP-006, CR-126, JV-816, and JV-817, revising:
 - Item 1a to allow the user to describe the “supplemental or other brief” for which an extension is being sought (the committee believes this option will allow the reviewing court to easily identify the brief for which an extension is requested);
 - Item 1c to require the user to indicate how many total days are being sought for the extension (the committee believes this option will allow the reviewing court to quickly determine the length of the requested extension);
 - The language in item 3 to ask, “Did the court use the words ‘no further’ in a prior order or directive granting an extension?” (the committee believes this revised language improves the clarity of this item);
 - The items (5 or 6) to provide more space for a party seeking an extension to state the length of the record and the date the record was filed; and

⁵ See, e.g., *Warren v. Schecter* (1997) 57 Cal.App.4th 1189, 1199–1200 (finding court had discretion to grant appellate calendar preference where one of the parties was elderly and ailing).

- The items (9 or 10) to increase the size of the text box where a party states the reason why an extension is needed.
- Revising item 8 on form APP-106 to provide a check box where the party seeking the extension can indicate that additional space is needed and that their reasons are provided on a separate attachment.
- Revising item 10 on form CR-126 and item 9 on form JV-816 so that the parentheticals direct the party seeking the extension to “possible prejudice to the parties,” not just to the defendant or juvenile, respectively.

Policy implications

The recommended rule amendment and form revisions will help avoid litigant confusion and avoid unnecessary, time-consuming defaults before the Court of Appeal. These revisions are therefore consistent with the *Strategic Plan for California’s Judicial Branch*, specifically the goals of Modernization of Management and Administration (Goal III) and Quality of Justice and Service to the Public (Goal IV).

Comments

This proposal circulated for public comment from March 29 to May 3, 2024, as part of the regular spring comment cycle. Seven responsive comments were received: one from Division 1 of the Fourth District Court of Appeal; one from the Superior Court of Los Angeles; three from legal organizations; and two from practicing attorneys. The commenters who addressed these aspects of the proposal were supportive of the proposed changes to the *Civil Case Information Statement* form and rule. Commenters, however, were split on the circulated proposal’s suggestion that the council’s extension-of-time forms be made mandatory. A chart with the full text of the comments received and the committee’s responses is attached at pages 40–72. The principal comments and responses are summarized below.

Mandatory Judicial Council extension-of-time forms

As circulated, this proposal contained a suggestion that the Judicial Council’s extension-of-time forms (forms APP-006, APP-106, CR-126, JV-816, and JV-817) be made mandatory. The purpose behind this suggestion was to help ensure that all extension-of-time requests contain the information the reviewing court needs to determine whether the requested extension is supported by good cause. Requiring use of the council’s forms would also ensure that this information is provided in a consistent, easy-to-read format.

Conflicting comments were received on this part of the circulated proposal. On the one hand, the Family Violence Appellate Project supported the suggested change. On the other hand, the California Lawyers Association Committee on Appellate Courts (CAC), the California Appellate Defense Counsel (CADC), and a practicing attorney submitted comments opposing the change.

CAC recognized that although the council’s extension-of-time forms might help focus the applicant on the relevant factors, making the forms mandatory could “trap” unwary litigants who

are unaware of the requirement to use the form. It stated that this could cause valid extension-of-time applications to be rejected simply because of the form of the document, resulting in appeals going into default. CADC noted that its members frequently encounter technical issues with the council's extension-of-time forms. It also noted that limitations with the programs used to fill out PDF forms require time-consuming workarounds to finalize and file the extension-of-time form.

In light of the above comments, the committee has decided not to recommend that the council's extension-of-time forms be made mandatory at this time. The committee concluded that leaving these forms optional will help ensure that all parties are able to efficiently access the courts to request an extension of time to file a brief without encountering technology-based problems or inconveniences.

At the same time, the committee is committed to constantly improving the usability of the appellate forms. The commenters made a number of suggestions on how to improve the extension-of-time forms, most of which the committee is, as discussed above, recommending be adopted. In addition, staff have reviewed the concerns raised by the commenters regarding the usability of the existing forms and have fixed certain formatting errors identified by the commenters.

Adoption of a new extension-of-time form for use in misdemeanor appeals

As circulated, the proposal included a suggestion that the Judicial Council adopt a new extension-of-time form that would be used in misdemeanor appeals before the appellate division. Although no commenters opposed this change, the committee has removed this proposed form from this proposal to allow it to potentially be considered at a future date as part of a larger proposal.

The Superior Court of Los Angeles County commented that if the proposal was going to make the Judicial Council's extension-of-time forms mandatory, rule 8.927 may need to be amended to require appellants in infraction appeals to use the mandatory form. Although the committee is not recommending that the council's extension-of-time forms be made mandatory, the superior court's comment highlights a gap in the coverage of these forms—namely, that there is no extension-of-time form that can be used in infraction appeals.

The committee believes this gap can likely be filled by taking the misdemeanor extension-of-time form that was included in this proposal as circulated and expanding it to be used in infraction appeals as well. The committee notes that the overlap in the procedures in misdemeanor and infraction appeals is significant and that both proceed before the appellate division.

However, expanding the proposed misdemeanor extension-of-time form to include infraction appeals is outside the scope of this proposal because the public has not been given the opportunity to comment on such a change. The committee has therefore removed the proposed misdemeanor extension-of-time form from the proposal. Doing so will allow the committee to

consider in a future proposal whether a single misdemeanor/infraction form is appropriate or whether separate forms are necessary.⁶

Civil Case Information Statement *deadline and forms*

The commenters were supportive of the proposed amendment to rule 8.100(g) and the revision to form APP-004. In light of the comments received, two substantive changes were made to the proposal.

First, as circulated, the proposal suggested that rule 8.100(g)(1) be amended to make *Civil Case Information Statement* due within “15 days after the reviewing court lodges the notice of appeal and assigns the appeal a case number.” CAC commented that it appeared unnecessary to have the deadline be tied to both “lodgment” and assignment of a case number because a case number will be assigned only after the notice of appeal is lodged. The committee agrees and has revised the proposal to recommend that *Civil Case Information Statement* be due within “15 days after the reviewing court assigns the appeal a case number.”

Second, the Fourth District Court of Appeal, Division One expressed concern that the proposed revision to item 2 in Part II of *Civil Case Information Statement* that allows the litigant to identify a nonstatutory ground for calendar preference or priority could cause confusion. It noted that a litigant may erroneously conclude that listing this information is sufficient to request calendar preference or priority without having to comply with rule 8.240’s notice requirement. As discussed above, the committee has revised the proposed item to advise the party of the need to file a motion.

CAC also suggested that the proposal be revised to require appellate clerks to notify the parties when an appeal is docketed, and to tie the deadline for filing *Civil Case Information Statement* to the service of this notice. The committee has declined to recommend this change at this time. The recommended change is outside the scope of the proposal as circulated. Additionally, the committee has been informed that the majority of the Courts of Appeal send out some form of notice to the parties when their appeal is docketed.⁷

⁶ The committee believes such a proposal would allow the committee to also explore whether additional extension-of-time forms are needed for other classes of cases. For instance, as noted in the invitation to comment, additional extension-of-time forms may be useful in the civil commitment/conservatorship contexts in light of the First Appellate District of the Court of Appeal’s recent opinion in *Public Guardian of Contra Costa v. K.Y.*, 100 Cal.App.5th 985 (2024).

⁷ The committee notes that this may signal a shift in practice. As discussed above, rule 8.100(g)(1) used to require appellate court clerks to “promptly mail the appellant a copy of the *Civil Case Information Statement* (form APP-004) and a notice that the statement must be filed within 10 days.” The council replaced this requirement with the current rule effective January 1, 2014, to eliminate what it deemed “atypical copying, mailing, and staff costs on the Court of Appeal.” If experience with this proposal’s amendment to rule 8.100(g)(1) suggests that requiring appellate clerks to send docketing notices to the parties would be beneficial, the committee may revisit this question in the future.

Alternatives considered

The committee considered the alternative of taking no action but concluded that amending rule 8.100(g)(1) was appropriate because the current rule has proven unworkable in practice. The committee further concluded that revising form APP-004 would help improve appellate efficiency by helping ensure that cases are given calendar preference or priority where appropriate. Finally, the committee believes that the proposed changes to the extension-of-time forms will improve the usability of the forms.

The committee considered recommending that the Judicial Council's extension-of-time forms be made mandatory. For the reasons discussed above, the committee decided against this course of action.

Fiscal and Operational Impacts

Other than providing training for court staff to advise them of the rule change, the committee anticipates no fiscal or operational impacts.

Attachments and Links

1. Cal. Rules of Court, rule 8.100, at page 9
2. Forms APP-001-INFO, APP-004, APP-006, APP-106, CR-126, JV-816, and JV-817, at pages 10–39
3. Chart of comments, at pages 40–76

Rule 8.100 of the California Rules of Court is amended, effective January 1, 2025, to read:

1 **Rule 8.100. Filing the appeal**

2

3 **(a)–(f)** * * *

4

5 **(g) Civil case information statement**

6

7 (1) Within 15 days after the reviewing court ~~superior court clerk sends the~~
8 ~~notification of the filing of the notice of appeal required by (e)(1)~~ assigns the
9 appeal a case number, the appellant must serve and file in the reviewing court
10 a completed *Civil Case Information Statement* (form APP-004), attaching a
11 copy of the judgment or appealed order that shows the date it was entered.

12

13 (2) * * *

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GENERAL INFORMATION

1 What does this information sheet cover?

This information sheet tells you about appeals in unlimited civil cases. These are civil cases in which the amount of money claimed is more than \$35,000, as well as other types of cases, such as those filed in family court, probate court, and juvenile court.

If you are the party who is appealing (asking for the trial court's decision to be reviewed), you are called the APPELLANT, and you should read "Information for the Appellant," starting on page 3. If you received notice that another party in your case is appealing, you are called the RESPONDENT and you should read "Information for the Respondent," starting on page 13.

This information sheet does not cover everything you may need to know about appeals in unlimited civil cases. It gives you a general idea of the appeal process. To learn more:

- Read rules [8.100–8.278](#) of the California Rules of Court, which set out the procedures for unlimited civil appeals. You can get these rules at any courthouse or county law library or online at www.courts.ca.gov/rules.
- Read the local rules and find out about self-help resources for the district in which you filed your appeal at www.courts.ca.gov/courtsofappeal.htm.
- Visit the Self-Help Guide to the California Courts at selfhelp.courts.ca.gov/.
- Review the counties included in each appellate district at www.courts.ca.gov/documents/appdistmap.pdf.

2 What is an appeal?

An appeal is a request to a higher court to review a decision made by a judge or jury in the superior court. In an unlimited civil case, the court hearing the appeal is the Court of Appeal for the district in which the superior court is located. The lower court—called the "trial court" in this information sheet—is the superior court.

It is important to understand that **an appeal is NOT a new trial**. The Court of Appeal will not consider new evidence, such as the testimony of new witnesses or new exhibits.

The appellate court's job is to review a record of what happened in the trial court and the trial court's decision to see if certain kinds of legal errors were made.

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

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

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

3 Who can appeal?

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

4 Can I appeal any decision the trial court made?

No. Generally, you can only appeal the final judgment—the decision at the end that decides the whole case. Other rulings made by the trial court before the final judgment generally cannot be separately appealed but can be reviewed only later as part of an appeal of the final judgment. There are a few exceptions to this general rule. [Code of Civil Procedure section 904.1](#) lists a few types of orders in an unlimited civil case that can be appealed right away. These include orders that:

- Grant a motion to quash service of summons or grant a motion to stay or dismiss the action on the ground of inconvenient forum.
- Grant a new trial or deny a motion for judgment notwithstanding the verdict.
- Discharge or refuse to discharge an attachment or grant a right to attach.
- Grant or dissolve an injunction or refuse to grant or dissolve an injunction. Note: Injunctions include restraining orders.
- Appoint a receiver.
- Are made after final judgment in the case.



- Are made appealable by the Family Code or the Probate Code.

You should consult with a lawyer or a court self-help center to determine if your order is final and appealable. Go to www.courts.ca.gov/selfhelp-selfhelpcenters.htm to find information about the self-help center in your county.

(You can view Code of Civil Procedure section 904.1 using the link below:

leginfo.legislature.ca.gov/faces/codes.xhtml.)

5 What does the appellant need to prove to win on appeal?

The appellant must prove that an error in the trial court proceedings was made and that the error affected the outcome of the court's or jury's decision. An error that affected the outcome of the case is called a "prejudicial error."

An error can include things like errors made by the judge about the law, errors or misconduct by the lawyers or by the jury, incorrect instructions given to the jury, or insufficient evidence to support the judgment, order, or other decision being appealed. Note: This is not a complete list of all possible errors.

When the appellant argues that the error was based on insufficient evidence to support the judgment or other decision being appealed, the Court of Appeal will determine whether there was "substantial evidence" to support the judgment, order, or other decision being appealed. But in conducting its review, the Court of Appeal only looks to see if there was evidence that reasonably supports the decision.

The Court of Appeal generally will not reconsider the jury's or the trial court's conclusions about which side had more or stronger evidence or whether witnesses were believable. It only determines whether the evidence is sufficient to support the judgment, order, or other decision.

The Court of Appeal will generally not overturn the judgment, order, or other decision being appealed unless the record shows a prejudicial error was made. The winning party does not have to prove that the judgment, order, or other decision was correct. Instead, it is up to the appellant to prove that the error was made and that the error affected the outcome of the case.

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

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

If you decide not to use a lawyer, you must put your address, telephone number, fax number (if available), and email address (if available) on the first page of every document you file with the court.

However, if you need to keep your contact information private (for instance, in an appeal involving a domestic violence restraining order), you may give a different mailing address instead. But if you use a different address, be sure to check it regularly to stay informed about your case and about your obligations regarding your case.

You must keep the Court of Appeal, the trial court (if the trial court proceedings continue or are expected to continue), and the other parties in your case informed of any change in your contact information for service of notices and other documents relating to the appeal.

For your trial court case, you may complete *Notice of Change of Address or Other Contact Information* (form [MC-040](#)), file it in the trial court, and have it served on the parties in the case.

For your case in the Court of Appeal, you may refer to form MC-040 as an example of the information that you need to include in a notice regarding the change in your contact information. That notice must be filed in the Court of Appeal and served on the parties in the appellate case.

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

You have to hire your own lawyer if you want one. You can get information about finding a lawyer on the Self-Help Guide to the California Courts at selfhelp.courts.ca.gov/get-free-or-low-cost-legal-help.



INFORMATION FOR THE APPELLANT

This part of the information sheet is written for the appellant—the party who is appealing the trial court’s decision. It explains some of the rules and procedures relating to appealing a decision in an unlimited civil case. The information may also be helpful to the respondent. Additional information for respondents can be found starting on page 13 of this information sheet.

8 How do I start my appeal?

First, you must serve and file a notice of appeal. The notice of appeal tells the other party or parties in the case and the trial court that you are appealing the trial court’s decision. You may use *Notice of Appeal/Cross-Appeal—Unlimited Civil Case* (form [APP-002](#)) to prepare a notice of appeal in an unlimited civil case. You can get form APP-002 at any courthouse or county law library or online at www.courts.ca.gov/forms.

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

“Serve and file” means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (“serve”) the notice of appeal to the other party or parties in the way required by law. If the notice of appeal is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the notice of appeal has been served. This record is called a “proof of service.” *Proof of Service (Court of Appeal)* (form [APP-009](#)) or *Proof of Electronic Service (Court of Appeal)* (form [APP-009E](#)) can be used to make this record. The proof of service must show who served the notice of appeal, who was served with the notice of appeal, how the notice of appeal was served (by mail, in person, or electronically), and the date the notice of appeal was served.
- Bring or send (by mail or electronically) the original notice of appeal and the proof of service to the trial court that issued the judgment, order, or other decision you are appealing. You should make a copy of the notice of appeal you are planning to file for your own records before you file it with the court.

Unless you are filing electronically, it is a good idea to bring or mail an extra copy of the notice of appeal to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *Information Sheet for Proof of Service (Court of Appeal)* (form [APP-009-INFO](#)) and on the Self-Help Guide to the California Courts at www.courts.ca.gov/selfhelp-serving.htm.

10 Is there a deadline to serve and file my notice of appeal?

Yes. Generally, in an unlimited civil case, the notice of appeal must be served on the other party or parties in the case and filed with the clerk of the superior court within **60 days** after the trial court clerk or a party serves either (1) a document called a “Notice of Entry” of the trial court judgment or appealable order or (2) a file-stamped copy of the judgment or appealable order.

If the clerk or a party served neither of these documents, the notice of appeal must be filed within 180 days after entry of judgment or appealable order (generally, the date the judgment or appealable order is file-stamped).

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

If a notice of appeal has been filed in a case, any other party to the case may file its own appeal from the same judgment or order. This is called a “cross-appeal.”

To cross-appeal, a party must file a notice of appeal within either the regular time for filing a notice of appeal or within 20 days after the clerk of the superior court mails notice of the first appeal, whichever is later. A party that wishes to cross-appeal may use *Notice of Appeal/Cross-Appeal—Unlimited Civil Case* (form APP-002) to file this notice in an unlimited civil case.

11 Do I have to pay a fee to file a notice of appeal?

Yes. Unless the court waives this fee, you must pay a fee for filing your notice of appeal. You can ask the clerk of the court where you are filing the notice of appeal what the fee is or look up the fee for an appeal in an unlimited civil case in the current Statewide Civil Fee Schedule at www.courts.ca.gov/7646.htm (see the “Appeal and Writ Related Fees” section near the end of the schedule).



If you cannot afford to pay the fee, you can ask the court to waive it. To do this, you must fill out and file a *Request to Waive Court Fees* (form [FW-001](#)). You can get form FW-001 at any courthouse or county law library or online at www.courts.ca.gov/forms. You can file this application either before you file your notice of appeal or with your notice of appeal. The court will review this application to determine if you are eligible for a fee waiver.

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

Filing a notice of appeal does NOT automatically postpone most judgments or orders, such as those requiring you to pay another party money, deliver property to another party, or comply with child custody or visitation orders (see Code of Civil Procedure sections 917.1–917.9 and 1176; you can get a copy of these laws at www.leginfo.legislature.ca.gov/faces/codes.xhtml). These kinds of judgments or orders will be postponed, or “stayed,” only if you request a stay and the court grants your request or some other procedure authorizes a stay (such as filing a bond in appropriate cases).

In most cases, if the trial court denies your request for a stay, you can apply to the Court of Appeal for a stay. If you do not get a stay and you do not do what the trial court ordered you to do, court proceedings to collect the money or otherwise enforce the judgment or order may be started against you.

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

Within 15 days after the Court of Appeal assigns the appeal a case number, the appellant must serve and file in the Court of Appeal a completed *Civil Case Information Statement* (form [APP-004](#)), attaching a copy of the judgment or appealed order that shows the date it was entered. See rules [8.100](#) and [8.104](#) of the California Rules of Court. You may check to see if the Court of Appeal has assigned your appeal a case number by going to the Appellate Courts Case Information website, located at appellatecases.courtinfo.ca.gov/index.cfm.

In addition, since the Court of Appeal justices were not there to see what happened in the trial court, an official record of what happened must be prepared and sent to the Court of Appeal for its review.

Within 10 days of filing the notice of appeal, the appellant must tell the trial court in writing (designate) what documents and oral proceedings, if any, to include in the record that will be sent to the Court of Appeal. You will need to designate all parts of the record that the Court of Appeal will need to decide the issues you raised in the appeal.

You can use *Appellant’s Notice Designating Record on Appeal (Unlimited Civil Case)* (form [APP-003](#)) to designate the record in an unlimited civil case. You can get form APP-003 at any courthouse or county law library or online at www.courts.ca.gov/forms.htm.

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

- Have somebody over 18 years old mail, deliver, or electronically send (serve) the notice to the other party or parties in the way required by law. If the notice is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the notice has been served. This record is called a “proof of service.” *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) can be used to make this record. The proof of service must show who served the notice, who was served with the notice, how the notice was served (by mail, in person, or electronically), and the date the notice was served.
- Bring or send (by mail or electronically) the original notice and the proof of service to the trial court that issued the judgment, order, or other decision you are appealing. You should make a copy of the notice you are planning to file for your own records before you file it with the court. Unless you are filing electronically, it is a good idea to bring or mail an extra copy of the notice to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.



You can get more information about how to serve court papers and proof of service from *Information Sheet for Proof of Service* (form APP-009-INFO) and on the Self-Help Guide to the California Courts at www.courts.ca.gov/selfhelp-serving.htm.

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

There are three parts of the official record:

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

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

a. Record of the documents filed in the trial court

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

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

Read below for more information about these options.

(1) Clerk’s transcript or appendix

Description: A clerk’s transcript is a compilation of the documents filed in the trial court that is prepared by the trial court clerk. An appendix is a compilation of these documents prepared by a party. (Cal. Rules of Court, rule [8.124](#).)

Contents: Certain documents, such as the notice of appeal and the trial court judgment or order being appealed, must be included in the clerk’s transcript or appendix. These documents are listed in rule [8.122\(b\)](#) and rule [8.124\(b\)](#) of the California Rules of Court and in Appellant’s Notice Designating Record on Appeal (Unlimited Civil Case) (form [APP-003](#)).

Clerk’s transcript. If you want any documents other than those listed in rule [8.122\(b\)](#) to be included in the clerk’s transcript, you must tell the trial court in your notice designating the record on appeal. You can use form APP-003 to do this. You will need to identify each document you want included in the clerk’s transcript by its title and filing date or, if you do not know the filing date, the date the document was signed.

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

Cost: The appellant is responsible for paying for preparing a clerk’s transcript. The trial court clerk will send you a bill for the cost of preparing an original and one copy of the clerk’s transcript.

You must do one of the following three things within 10 days after the clerk sends this bill or the Court of Appeal may dismiss your appeal:

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

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



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

The party preparing the appendix must serve the appendix on each other party (unless the parties have agreed or the Court of Appeal has ordered otherwise) and file the appendix in the Court of Appeal. The appellant’s appendix or a joint appendix must be served and filed before or together with the appellant’s opening brief. See (16) for information about the brief.

(2) Trial court file

When available: If the Court of Appeal has a local rule allowing this, and the parties agree, the clerk can send the Court of Appeal the original trial court file instead of a clerk’s transcript as a record of documents filed in the trial court (see rule 8.128 of the California Rules of Court).

Cost: As with a clerk’s transcript, the appellant is responsible for paying for preparing the trial court file. The trial court clerk will send you a bill for this preparation cost.

You must do one of the following things within 10 days after the clerk sends this bill or the Court of Appeal may dismiss your appeal:

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

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

(3) Agreed statement

Description: An agreed statement is a summary of the trial court proceedings agreed to by the parties. (See rule 8.134 of the California Rules of Court.)

When available: If the trial court proceedings were not recorded by a court reporter or if you do not want to use that option, you can choose (elect) to use an agreed statement as the record of the oral proceedings. Please note that it may take more of your time to prepare an agreed statement than to use a reporter’s transcript, if it is available.

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

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

Preparation: If you elect to use this option, you must file either (1) an agreed statement or (2) a written agreement (called a “stipulation”) that the parties are trying to agree on a statement, along with your notice designating the record on appeal. If you file the stipulation and the parties agree on a statement, you must file the statement within 40 days after filing the notice of appeal. If you file the stipulation and the parties cannot agree on the statement, you must file a new notice designating the record within 50 days after filing the notice of appeal.



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

Important! The type of record of the oral proceedings that you choose, including a reporter’s transcript or a settled statement, should be carefully considered, as it may affect your appeal. You should consult with a lawyer to determine the best option in your case.

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

You are responsible for deciding how the record of the oral proceedings will be provided and, depending on what option you select and your circumstances, you may also be responsible for paying for preparing this record or for preparing an initial draft of the record. If you do not take care of these responsibilities, a record of the oral proceedings in the trial court will not be prepared and sent to the Court of Appeal. **If the Court of Appeal does not receive this record, you may forfeit your arguments on appeal, or the Court of Appeal may make presumptions in favor of the judgment or order.**

In an unlimited civil case, you can use *Appellant’s Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) to tell the trial court whether you want a record of the oral proceedings and, if so, the form of the record that you want to use. You can get form APP-003 at any courthouse or county law library or online at www.courts.ca.gov/forms.

There are three ways in which a record of the oral proceedings can be prepared for the Court of Appeal:

- If you or the other party arranged to have a court reporter present during the trial court proceedings, the reporter can prepare a record, called a “*reporter’s transcript*.”
- You can use an *agreed statement*.
- You can use a *settled statement*.

Read below for more information about these options.

(1) Reporter’s transcript

Description: A reporter’s transcript is a written record (sometimes called a “verbatim” record) of the oral proceedings in the trial court prepared by a court reporter. Rule [8.130](#) of the California Rules of Court establishes the requirements for reporter’s transcripts.

When available: If a court reporter was present in the trial court and made a record of the oral proceedings, you can choose (elect) to have the court reporter prepare a reporter’s transcript for the Court of Appeal. But a court reporter might not have been present unless you or another party in your case had made specific arrangements to have a court reporter present. If you are unsure, check with the trial court to see if a court reporter made a record of the oral proceedings in your case before choosing this option.

Contents: If you elect to use a reporter’s transcript, you must identify by date (this is called “designating”) what proceedings you want to be included in the reporter’s transcript. You can use the same form you used to tell the court you wanted to use a reporter’s transcript—*Appellant’s Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003)—to do this.

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



without a reporter's transcript, however, the respondent may not designate a reporter's transcript without first getting an order from the Court of Appeal.

Cost: The appellant is responsible for paying for preparing a reporter's transcript. The trial court clerk or the court reporter will notify you of the cost of preparing an original and one copy of the reporter's transcript. You must deposit payment for this cost (and a fee for the trial court) or one of the substitutes allowed by rule 8.130 with the trial court clerk within 10 days after this notice is sent. (See rule 8.130 for more information about this deposit and the permissible substitutes, such as a waiver of this deposit signed by the court reporter.)

Unlike the fee for filing the notice of appeal and the costs for preparing a clerk's transcript, the court cannot waive the fee for preparing a reporter's transcript. Money from a special fund, called the Transcript Reimbursement Fund, may be available to help you pay for the transcript. You can get information about this fund at www.courtreportersboard.ca.gov/consumers/index.shtml#rtf.

If you are unable to pay the cost of a reporter's transcript, a record of the oral proceedings can be prepared in other ways, by using an agreed statement or a settled statement, which are described below.

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

(2) Agreed statement

Description: An agreed statement is a written summary of the trial court proceedings agreed to by all the parties. See rule 8.134 of the California Rules of Court.

When available: If the trial court proceedings were not recorded by a court reporter or if you do not want to use that option, you can choose (elect) to use an agreed statement as the record of the oral proceedings. Please note that it may take more of your time to prepare an agreed statement than to use a reporter's transcript, if it is available.

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

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

Preparation: If you elect to use this option, you must file either (1) an agreed statement or (2) a written agreement (called a "stipulation") that the parties are trying to agree on a statement, along with your notice designating the record on appeal. If you file the stipulation and the parties agree on a statement, you must file the statement within 40 days after filing the notice of appeal. If you file the stipulation and the parties cannot agree on the statement, you must file a new notice designating the record within 50 days after filing the notice of appeal.

(3) Settled statement

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

When available: Under rule [8.137](#) of the California Rules of Court, you can choose (elect) to use a settled statement as the record of the oral



proceedings if (1) the trial court proceedings were not recorded by a court reporter or (2) if you have an order waiving your court fees and costs. Please note that it may take more of your time to prepare a settled statement than to use a reporter's transcript, if it is available.

If you want to use a settled statement as the record of the oral proceedings for reasons other than the two previously mentioned, you must file a motion to ask the trial court for an order. You may use *Appellant's Motion to Use a Settled Statement (Unlimited Civil Case)* (form APP-025) for this purpose. Read rule 8.137 about the requirements of your motion or request for order.

Contents: A settled statement must include:

- A statement of the points you (the appellant) are raising on appeal;
- A condensed narrative of the oral proceedings that you specified in the notice designating the record on appeal or motion. The condensed narrative is a summary of the testimony of each witness and other evidence that is relevant to the issues you are raising on appeal; and
- A copy of the judgment or order you are appealing attached to the settled statement.

Preparing a proposed settled statement: If you elect to use a settled statement, you must prepare a proposed settled statement. You may use *Appellant's Proposed Settled Statement (Unlimited Civil Case)* (form [APP-014](#)) to prepare your proposed statement. You can get the form at any courthouse or county law library or online at www.courts.ca.gov/forms.

(See rule 8.137 of the California Rules of Court for more information about what must be included in a settled statement and the procedures for preparing a statement. You can get a copy of this rule at any courthouse or county law library or online at www.courts.ca.gov/rules.)

Serving and filing a proposed settled statement:

You must serve and file the proposed statement within 30 days after filing your notice electing to use a settled statement or within 30 days after the trial court clerk sends, or a party serves, the order granting the motion to use a settled statement.

“Serve and file” means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (serve) the proposed settled statement to the respondent in the way required by law. If the proposed statement is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the proposed settled statement has been served. This record is called a “proof of service.” *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) can be used to make this record. The proof of service must show who served the proposed statement, who was served with the proposed statement, how the proposed statement was served (by mail, in person, or electronically), and the date the proposed statement was served.
- File the original proposed settled statement and the proof of service with the trial court. You should make a copy of the proposed statement you are planning to file for your own records before you file it with the court. Unless you are filing electronically, it is a good idea to bring or mail an extra copy of the proposed statement to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *Information Sheet for Proof of Service* (form APP-009-INFO) and on the Self-Help Guide to the California Courts at www.courts.ca.gov/selfhelp-serving.htm.



Respondent's review: The respondent has 20 days from the date you serve your proposed settled statement to serve and file either:

- Proposed changes (called “amendments”) to the proposed statement; or
- If the oral proceedings in the trial court were reported by a court reporter, a notice indicating that the respondent is electing to provide a reporter’s transcript instead of proceeding with a settled statement.

Review of appellant’s proposed settled statement: If the respondent proposes changes, the trial court judge then reviews both your proposed statement and the respondent’s proposed amendments. The trial judge will either make or order you (the appellant) to make any corrections or modifications to the statement that are needed to make sure that the statement provides an accurate summary of the testimony and other evidence relevant to the issues you indicated you are raising on appeal. For more information, see rule 8.137(f) of the California Rules of Court. See also rule [8.140](#), which explains the consequences for a party’s failure to make corrections that are ordered to be made to the proposed statement.

Request for hearing to review proposed settled statement: No later than 10 days after the respondent files proposed amendments, or the time to do so has expired, a party may request a hearing to review and correct the proposed statement. No hearing will be held unless ordered by the trial court judge. A judge will not ordinarily order a hearing unless there is a factual dispute about a material aspect of the trial court proceeding. If there is a hearing, see rule 8.137 for more information.

Additional review procedures: If there is no hearing after the respondent proposes changes to the settled statement, and if the judge makes any

corrections or modifications to the proposed statement, the corrected or modified statement will be sent to you and the respondent for your review.

If the judge orders you to make any corrections or modifications to the proposed statement, you must serve and file the corrected or modified statement within the time ordered by the judge. See rule 8.140, which explains the consequences for a party’s failure to make corrections to the proposed statement.

If you or the respondent disagree with anything in the modified or corrected statement, you have 10 days from the date the modified or corrected statement is sent to you to serve and file proposed amendments or objections to the statement. The judge then reviews the modified or corrected statement and any proposed modifications. If the judge decides that further corrections or modifications are necessary, the review process described above takes place again.

Completion and certification: If the judge does not order any corrections or modifications to the proposed statement, the judge must promptly certify the statement as an accurate summary of the evidence and testimony of each witness relevant to the issues you indicated you are raising on appeal.

Alternatively, the parties may serve and file a stipulation (agreement) that the statement as originally served or corrected or modified is correct. Such a stipulation is equivalent to the judge’s certification of the statement.

Sending settled statement to the Court of Appeal: Once the trial court judge certifies the statement or the trial court receives the parties’ stipulation, the trial court clerk will send the statement to the Court of Appeal as required under rule [8.150](#) of the California Rules of Court.



c. Exhibits

The third part of the official record of the trial court proceeding is the exhibits, such as photographs, documents, or other items that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court. Exhibits are considered part of the record on appeal, but the clerk will not include any exhibits in the clerk's transcript unless you ask that they be included in your notice designating the record on appeal. *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) includes a space for you to make this request.

You also can ask the trial court to send original exhibits to the Court of Appeal at the time briefs are filed. (See rule [8.224](#) for more information about this procedure and see below for information about briefs.)

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

You should read rules 8.200–8.224 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in unlimited civil appeals, including requirements for the format and length of these briefs. You can get copies of these rules at any courthouse or county law library or online at www.courts.ca.gov/rules.

Contents and format of briefs: If you are the appellant, your brief, called an “appellant’s opening brief,” must clearly explain the legal errors you believe were made in the trial court. Your brief must refer to the exact places in the clerk’s transcript and the reporter’s transcript (or the other forms of the record you are using) that support your argument. Each brief must be no longer than 14,000 words if produced on a computer, including footnotes. A brief produced on a typewriter must not be longer than 50 pages. The brief must contain a table of contents and a table of authorities. The cover of appellant’s opening brief filed in paper form must be green. For other content and formatting requirements for the brief, read rules [8.40](#) and [8.204](#) of the California Rules of Court.

Remember that an appeal is not a new trial. The Court of Appeal will not consider new evidence, such as new exhibits or the testimony of new witnesses, so do not include any new evidence in your brief.

Serving and filing: You must serve and file your opening brief within 40 days after the record is filed in the Court of Appeal or 70 days from the date the appellant chooses to proceed with no reporter’s transcript under rule [8.124](#). “Serve and file” means that you must:

- Have somebody over 18 years old mail, personally deliver, or electronically send (serve) the brief to the other parties in the way required by law. If the brief is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the brief has been served. This record is called a “proof of service.” *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) can be used to make this record. The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail, in person, or electronically), and the date the brief was served.

15 What happens after the official record has been prepared?

As soon as the record on appeal is complete, the clerk of the trial court will send it to the Court of Appeal for the district in which the trial court is located. When the Court of Appeal receives the record, it will send you a notice telling you when you must file your brief in the Court of Appeal.

16 What is a brief?

Description: A “brief” is a party’s written description of the facts in the case, the law that applies, and the party’s argument about the issues being appealed. If you are represented by a lawyer in your appeal, your lawyer will prepare your brief. If you are not represented by a lawyer, you will have to prepare your brief yourself.



- File the original brief and the proof of service with the Court of Appeal. You should make a copy of the brief you are planning to file for your own records before you file it with the court. Unless you are filing electronically, it is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.
- Note: If a party chooses to prepare an appendix of the documents filed in the trial court instead of designating a clerk’s transcript, the appellant’s appendix or a joint appendix must be served and filed before or together with the appellant’s opening brief.

You can get more information about how to serve court papers and proof of service from *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) and on the Self-Help Guide to the California Courts at www.courts.ca.gov/selfhelp-serving.htm.

You and the other parties can agree (stipulate) to extend the time for filing this brief by up to 60 days (see rule [8.212\(b\)](#) for requirements for these agreements). You can also apply to the presiding justice of the Court of Appeal to extend the time for filing this brief if you can show good cause for an extension (see rule [8.63](#) for information about extensions of time). You may use *Application for Extension of Time to File Brief—Unlimited Civil Case* (form [APP-006](#)) to ask the court for an extension.

If you do not file your brief by the deadline set by the Court of Appeal, the court may dismiss your appeal.

17 What happens after I file my brief?

Within 30 days after you serve and file your brief, the respondent must respond by serving and filing a respondent’s brief. Within 20 days after the respondent’s brief was filed, you may, but are not required to, file another brief replying to the respondent’s brief. This is called a “reply brief.”

18 What happens after all the briefs have been filed?

After all the briefs have been filed or the time to file them has passed, the Court of Appeal will contact you to tell you the date for oral argument in your case or ask if you want to participate in oral argument.

19 What is “oral argument”?

“Oral argument” is not a chance to present new evidence. Instead, it is a chance to orally explain the arguments you made in your brief to the Court of Appeal justices. You do not have to participate in oral argument if you do not want to; you can notify the Court of Appeal that you want to “waive” oral argument. If all parties waive oral argument, the justices will decide your appeal based on the briefs and the appellate record. But if any party requests oral argument, the Court of Appeal will hold oral argument.

If you choose to participate in oral argument, you will have a limited amount of time as set by the court.

Remember that the justices will have already read the briefs, so you do not need to read your brief to the justices or merely repeat the information in it. It is more helpful to tell the justices what you think is most important in your appeal or ask the justices if they have any questions you could answer.

You can find more information about oral argument in appeals cases in rule [8.256](#) of the California Rules of Court and online at www.courts.ca.gov/12421.htm.

20 What happens after oral argument?

After oral argument is held or waived, the justices of the Court of Appeal will make a decision about your appeal. The clerk of the court will mail you a notice of the Court of Appeal’s decision.

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

If you do not want to continue with your appeal, you must notify the court. If the record has not yet been filed in the Court of Appeal, file *Abandonment of Appeal (Unlimited Civil Case)* (form [APP-005](#)) in the superior court.

If the record has already been filed in the Court of Appeal, file *Request for Dismissal of Appeal (Civil Case)* (form [APP-007](#)) in the Court of Appeal.



INFORMATION FOR THE RESPONDENT

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

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

You do not *have* to do anything, but there may be consequences if you do nothing. The notice of appeal simply tells you that another party is appealing the trial court’s decision. However, this would be a good time to get advice from a lawyer, if you want it. You do not *have* to have a lawyer; if you are an individual (not a corporation, for example), you are allowed to represent yourself in an appeal in an unlimited civil case. But appeals can be complicated and you will have to follow the same rules that lawyers have to follow.

If you have any questions about the appeal procedures, you should talk to a lawyer. You must hire your own lawyer if you want one. You can get information about finding a lawyer on the Self-Help Guide to the California Courts at selfhelp.courts.ca.gov/get-free-or-low-cost-legal-help.

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

Yes. Even if another party has already appealed, you may still appeal the same judgment or order. This is called a “cross-appeal.” To cross-appeal, you must serve and file a notice of appeal. You can use *Notice of Appeal/Cross-Appeal—Unlimited Civil Case* (form [APP-002](#)) to file this notice in an unlimited civil case. Please read the information for appellants about filing a notice of appeal, starting on page 3 of this information sheet, if you are considering filing a cross-appeal.

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

Yes. You must serve and file your notice of appeal within either the regular time for filing a notice of appeal (generally 60 days after service of Notice of Entry of the judgment or a file-stamped copy of the judgment) or within 20 days after the clerk of the trial court serves notice of the first appeal, whichever is later.

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

You do not *have* to do anything, but there may be consequences if you do nothing. A notice designating the record on appeal lets you know what kind of official record the appellant has asked to be sent to the Court of Appeal. Depending on the kind of record chosen by the appellant, however, you may have the option to:

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

Look at the appellant’s notice designating the record on appeal to see what kind of record the appellant has chosen and read about that form of the record in the response to question 14 above. Then read below for what your options are when the appellant has chosen that form of the record.

a. Clerk's transcript or appendix

Clerk’s transcript: If the appellant is using a clerk’s transcript, you have the option of asking the clerk to include additional documents in the clerk’s transcript. To do this, within 10 days after the appellant serves its notice designating the record on appeal, you must serve and file a notice designating additional documents to be included in the clerk’s transcript. You may use *Respondent’s Notice Designating Record on Appeal—Unlimited Civil Case* (form [APP-010](#)) for this purpose.



Whether or not you ask for additional documents to be included in the clerk's transcript, you must pay a fee if you want a copy of the clerk's transcript. The trial court clerk will send you a notice indicating the cost for a copy of the clerk's transcript. If you want a copy, you must deposit this amount with the court within 10 days after the clerk's notice was sent.

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

Appendix: If the appellant is using an appendix, and you and the appellant have not agreed to a joint appendix, you may prepare a separate respondent's appendix. See pages 5–6 for more information about preparing an appendix.

If the appellant chooses a clerk's transcript but does not have a waiver of the fee for a clerk's transcript, you can choose an appendix instead of a clerk's transcript, and the appeal will proceed by appendix. To choose an appendix, you can fill out and file *Respondent's Notice Designating Record on Appeal—Unlimited Civil Case* (form APP-010) within 10 days after the appellant's notice designating the record on appeal is filed.

b. Reporter's transcript

If the appellant is using a reporter's transcript, you have the option of asking for additional proceedings to be included in the reporter's transcript. To do this, within 10 days after the appellant files its notice designating the record on appeal, you must serve and file a notice designating additional proceedings to be included in the reporter's transcript. You may use *Respondent's Notice Designating Record on Appeal—Unlimited Civil Case* (form APP-010) for this purpose.

Whether or not you ask for additional proceedings to be included in the reporter's transcript, you must generally pay a fee if you want a copy of the reporter's transcript. The trial court clerk or reporter will send you a notice indicating the cost of preparing a copy of the reporter's transcript. If you want a copy of the reporter's transcript, you must deposit payment for this cost (and a fee for the trial court) or one of the substitutes allowed by rule [8.130](#) with the trial court clerk within 10 calendar days after this notice is sent. (See rule 8.130 for more information about this deposit and the permissible substitutes, such as a waiver of this deposit signed by the court reporter.)

Unlike the fee for preparing a clerk's transcript, the court cannot waive the fee for preparing a reporter's transcript. Money from a special fund, called the Transcript Reimbursement Fund, may be available to help you pay for the transcript. You can get information about this fund at www.courtreportersboard.ca.gov/consumers/index.shtml#trf.

The reporter will not prepare a copy of the reporter's transcript for you unless you deposit the cost of the transcript, or provide one of the permissible substitutes, or your application for payment by the Transcript Reimbursement Fund is approved.

c. Agreed statement

If you and the appellant agree to prepare an agreed statement (a summary of the trial court proceedings that is agreed to by the parties), you and the appellant will need to reach an agreement on that statement within 40 days after the appellant files its notice of appeal. See rule [8.134](#) of the California Rules of Court.

d. Settled statement

If the appellant elects to use a settled statement (a summary of the trial court proceedings that is approved by the trial court), the appellant will send you a proposed settled statement to review. You will have 20 days from the date the appellant served you this proposed statement to serve and file either:



- Suggested changes (called “amendments”) that you think are needed to make sure that the settled statement provides an accurate summary of the evidence and testimony of each witness relevant to the issues the appellant is raising on appeal (see page 10 of this form and rule [8.137\(e\)–\(h\)](#) for more information about the amendment process); or
- If the oral proceedings in the trial court were reported by a court reporter, a notice indicating that you are choosing to provide a reporter’s transcript, at your expense, instead of proceeding with a settled statement (see rule 8.137(e)(2) for the requirements for choosing to provide a reporter’s transcript).

Have somebody over 18 years old mail, personally deliver, or electronically send (serve) the proposed amendments to the appellant in the way required by law. If the proposed amendments are mailed or personally delivered, it must be by someone who is not a party to the case—so not you.

- Make a record that the proposed amendments have been served. This record is called a “proof of service.” *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form [APP-009E](#)) can be used to make this record. The proof of service must show who served the proposed amendments, who was served with the proposed amendments, how the proposed amendments were served (by mail, in person, or electronically), and the date the proposed amendments were served.
- File the original proposed amendments and the proof of service with the trial court. You should make a copy of the proposed amendments you are planning to file for your own records before you file them with the court. Unless you are filing electronically, it is a good idea to bring or mail an extra copy of the proposed amendments to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *Information Sheet for Proof of Service (Court of Appeal)* (form [APP-009-INFO](#)) and on the Self-Help Guide to the California Courts at www.courts.ca.gov/selfhelp-serving.htm.

26 What happens after the official record has been prepared?

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

A brief is a party’s written description of the facts in the case, the law that applies, and the party’s argument about the issues being appealed. If you are represented by a lawyer, your lawyer will prepare your brief. If you are not represented by a lawyer in your appeal, you will have to prepare your brief yourself.

You should read rules [8.200–8.224](#) of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in unlimited civil appeals, including requirements for the format and length of these briefs. You can get these rules at any courthouse or county law library or online at www.courts.ca.gov/rules.

The appellant serves and files the first brief, called an “appellant’s opening brief.” You must respond by serving and filing a “respondent’s brief” within 30 days after the appellant’s opening brief is filed. “Serve and file” means that you must:

- Have somebody over 18 years old mail, personally deliver, or electronically send (serve) the brief to the other parties in the way required by law. If the brief is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the brief has been served. This record is called a “proof of service.” *Proof of Service (Court of Appeal)* (form [APP-009](#)) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) can be used to make this record.

The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail, in person, or electronically), and the date the brief was served.



- File the original brief and the proof of service with the Court of Appeal. You should make a copy of the brief you are planning to file for your own records before you file it with the court. Unless you are filing electronically, it is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) and on the Self-Help Guide to the California Courts at www.courts.ca.gov/selfhelp-serving.htm.

You and the other parties can agree (stipulate) to extend the time for filing this brief by up to 60 days (see rule 8.212(b) for requirements for these agreements). You can also apply to the presiding justice of the Court of Appeal to extend the time for filing this brief if you can show good cause for an extension. You **may** use *Application for Extension of Time to File Brief—Unlimited Civil Case* (form [APP-006](#)) to ask the court for an extension.

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

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

27 What happens after all the briefs have been filed?

After all the briefs have been filed or the time to file them has passed, the Court of Appeal will contact you to tell you the date for oral argument in your case or ask if you want to participate in oral argument.

28 What is “oral argument”?

“Oral argument” is not a chance to present new evidence. Instead, it is a chance to orally explain the arguments you made in your brief to the Court of Appeal justices. You do not have to participate in oral argument if you do not want to; you can notify the Court of Appeal that you want to “waive” oral argument. If all parties waive oral argument, the justices will decide your appeal based on the briefs and the appellate record. But if any party requests oral argument, the Court of Appeal will hold oral argument.

If you choose to participate in oral argument, you will have a limited amount of time as set by the court.

Remember that the justices will have already read the briefs, so you do not need to read your brief to the justices or merely repeat the information in it. It is more helpful to tell the justices what you think is most important in your appeal or ask the justices if they have any questions you could answer.

You can find more information about oral argument in appeals cases in rule [8.256](#) of the California Rules of Court and online at www.courts.ca.gov/12421.htm.

29 What happens after oral argument?

After oral argument is held or waived, the justices of the Court of Appeal will make a decision about your appeal. The clerk of the court will mail you a notice of the Court of Appeal’s decision.

COURT OF APPEAL, _____ APPELLATE DISTRICT, DIVISION _____	COURT OF APPEAL CASE NUMBER (if known):
ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NUMBER: _____ NAME: FIRM NAME: STREET ADDRESS: CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ EMAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY <h2 style="margin: 0;">DRAFT</h2> <h2 style="margin: 0;">06.17.2024</h2> <h2 style="margin: 0;">Not approved</h2> <h2 style="margin: 0;">by Judicial</h2> <h2 style="margin: 0;">Council</h2>
APPELLANT: RESPONDENT:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
JUDGES (all who participated in case):	SUPERIOR COURT CASE NUMBER:
CIVIL CASE INFORMATION STATEMENT	
NOTE TO APPELLANT: You must file this form with the clerk of the Court of Appeal within 15 days after the Court of Appeal assigns the appeal a case number. You must attach to this form a copy of the judgment or order being appealed that shows the date it was entered (see Cal. Rules of Court, rule 8.104 for definition of "entered"). A copy of this form must also be served on the other party or parties to this appeal. (CAUTION: An appeal in a limited civil case (Code Civ. Proc., § 85) may be taken ONLY to the appellate division of the superior court (Code Civ. Proc., § 904.2) or to the superior court (Code Civ. Proc., § 116.710 [small claims cases]).	

PART I – APPEAL INFORMATION

1. APPEALABILITY

a. Appeal is from:

- judgment after jury trial.
- judgment after court trial.
- default judgment.
- judgment after an order granting a summary judgment motion.
- judgment of dismissal under Code Civ. Proc., § 581d, 583.250, 583.360, or 583.430.
- judgment of dismissal after an order sustaining a demurrer.
- an order after judgment under Code Civ. Proc., § 904.1(a)(2).
- an order or judgment under Code Civ. Proc., § 904.1(a)(3)–(13).
- Other (describe and specify code section that authorizes this appeal):

b. Does the judgment appealed from dispose of all causes of action, including all cross-actions between the parties?

- Yes No (If no, please explain why the judgment is appealable):

2. TIMELINESS OF APPEAL (Provide all applicable dates.)

- a. Date of entry of judgment or order appealed from:
- b. Date that notice of entry of judgment or a copy of the judgment was served by the clerk or by a party under California Rules of Court, rule 8.104:
- c. Was a motion for new trial, for judgment notwithstanding the verdict, for reconsideration, or to vacate the judgment made and denied?

- Yes No (If yes, please specify the type of motion):

Date notice of intention to move for new trial (if any) filed:

Date motion filed:

Date motion denied:

Date denial served:

d. Date notice of appeal or cross-appeal filed:

3. BANKRUPTCY OR OTHER STAY

Is there a related bankruptcy case or a court-ordered stay that affects this appeal? Yes No
 (If yes, please attach a copy of the bankruptcy petition [without attachments] and any stay order.)

APPELLATE CASE TITLE:	APPELLATE COURT CASE NUMBER:
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4. APPELLATE CASE HISTORY (*Provide additional information, if necessary, on attachment 4.*) Is there now, or has there previously been, any appeal, writ, or other proceeding related to this case pending in any California appellate court?

Yes No (If yes, insert name of appellate court):

Appellate court case no.:

Title of case:

Name of trial court:

Trial court case no.:

5. SERVICE REQUIREMENTS

Is service of documents in this matter, including a notice of appeal, petition, or brief, required on the Attorney General or other nonparty public officer or agency under California Rules of Court, rule 8.29 or a statute?

Yes No (*If yes, please indicate the rule or statute that applies*)

Rule 8.29 (e.g., constitutional challenge; state or county party) Code Civ. Proc., § 1355 (Escheat)

Bus. & Prof. Code, §16750.2 (Antitrust)

Gov. Code, § 946.6(d) (Actions against public entities)

Bus. & Prof. Code, § 17209 (Unfair Competition Act)

Gov. Code, § 4461 (Disabled access to public buildings)

Bus. & Prof. Code, § 17536.5 (False advertising)

Gov. Code, § 12656(a) (False Claims Act)

Civ. Code, § 51.1 (Unruh, Ralph, or Bane Civil Rights Acts; antiboycott cause of action; sexual harassment in business or professional relations; civil rights action by district attorney)

Health & Saf. Code, § 19954.5 (Accessible seating and accommodations)

Health & Saf. Code, § 19959.5 (Disabled access to privately funded public accommodations)

Civ. Code, § 55.2 (Disabled access to public conveyances, accommodations, and housing)

Pub. Resources Code, § 21167.7 (CEQA)

Other (*specify statute*):

NOTE: The rule and statutory provisions listed above require service of a copy of a party's notice of appeal, petition, or brief on the Attorney General or other public officer or agency. Other statutes requiring service on the Attorney General or other public officers or agencies may also apply.

PART II – NATURE OF ACTION

1. Nature of action (*check all that apply*):

a. Conservatorship

b. Contract

c. Eminent domain

d. Equitable action (1) Declaratory relief (2) Other (*describe*):

e. Family law

f. Guardianship

g. Probate

h. Real property rights (1) Title of real property (2) Other (*describe*):

i. Tort

(1) Medical malpractice

(2) Product liability

(3) Other personal injury

(4) Personal property

(5) Other tort (*describe*):

j. Trust proceedings

k. Writ proceedings in superior court

(1) Mandate (Code Civ. Proc., § 1085) (2) Administrative mandate (Code Civ. Proc., § 1094.5)

(3) Prohibition (Code Civ. Proc., § 1102) (4) Other (*describe*):

l. Other action (*describe*):

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

A party seeking calendar preference or priority on a non-statutory or discretionary ground must promptly serve and file in the Court of Appeal a motion for preference. (See Cal. Rules of Court, rule 8.240).

APPELLATE CASE TITLE:	APPELLATE COURT CASE NUMBER:
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NOTICE TO PARTIES: A copy of this form must be served on the other party or parties to this appeal. If served by mail or personal delivery, THE MAILING OR DELIVERY MUST BE PERFORMED BY SOMEONE WHO IS NOT A PARTY TO THE APPEAL. Electronic service is authorized only if ordered by the court or if the party served has agreed to accept electronic service. A person who is at least 18 years old must complete the information below and serve all pages of this document. When all pages of this document have been completed and a copy served, the original may then be filed with the court.

PROOF OF SERVICE

Mail Personal Service Electronic Service

1. At the time of service I was at least 18 years of age.
2. My residence or business address is (*specify*):

3. I mailed, personally delivered, or electronically served a copy of the *Civil Case Information Statement (Appellate)* as follows (*complete a, b, or c*):
 - a. **Mail.** I am a resident of or employed in the county where the mailing occurred and am not a party to this legal action.
 - (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 am not a party to this legal action. I personally delivered a copy as follows:
 - (1) Name of person served:
 - (2) Address where delivered:

 - (3) Date delivered:
 - (4) Time delivered:
 - c. **Electronic service.** My electronic service address is (*specify*):
I electronically served a copy as follows:
 - (1) Name of person served:
 - (2) Electronic service address of person served:
 - (3) On (*date*):

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)

COURT OF APPEAL	APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER:		SUPERIOR COURT CASE NUMBER:
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (name):		<h2 style="margin: 0;">DRAFT</h2> <h2 style="margin: 0;">6.17.2024</h2> <h2 style="margin: 0;">Not approved</h2> <h2 style="margin: 0;">by Judicial</h2> <h2 style="margin: 0;">Council</h2>
APPELLANT: RESPONDENT:		
APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF— UNLIMITED CIVIL CASE		
Notice: Please read Judicial Council form APP-001-INFO before completing this form.		

1. a. I (name): _____ request that the time to file (check one)
 - appellant's opening brief (AOB)
 - respondent's brief (RB)
 - combined respondent's brief (RB) and appellant's opening brief (AOB) (see Cal. Rules of Court, rule [8.216](#))
 - combined appellant's reply brief (ARB) and respondent's brief (RB) (see Cal. Rules of Court, rule [8.216](#))
 - appellant's reply brief (ARB)
 - supplemental or other brief (describe): _____
- b. now due on (date): _____
- c. be extended to (date): _____ for an extension of (total number of days sought): _____ days.
2. I have have not received a Cal. Rules of Court, rule [8.220](#) default notice.
3. I have received
 - no previous extensions to file this brief.
 - the following previous extensions:
 - (number of extensions): _____ extensions by stipulation totaling (total number of days): _____
 - (number of extensions): _____ extensions from the court totaling (total number of days): _____

Did the court use the words "no further" in a prior order or directive granting an extension? Yes No
4. I am unable to file a stipulation to an extension because
 - the other party is unwilling to stipulate to an extension.
 - the maximum stipulated time has already been used.
 - other reason (please specify): _____
5. The last brief filed by any party was AOB RB RB and AOB ARB and RB ARB Other filed on (date): _____
6. The record in this case is

	<u>Volumes (#)</u>	<u>Pages (#)</u>	<u>Date filed</u>
Appendix/Clerk's Transcript:	_____	_____	_____
Reporter's Transcript:	_____	_____	_____
Augmentation/Other:	_____	_____	_____
7. The trial court has ordered the proceedings in this case stayed until this appeal is decided.

APPELLANT: RESPONDENT:	COURT OF APPEAL CASE NUMBER:
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8. This appeal is eligible for, or has been granted, calendar preference/priority (*cite authority or explain*):
9. The reasons that I need an extension to file this brief are stated
 below.
 on a separate declaration. You may use *Attached Declaration (Court of Appeal)* (form [APP-031A](#)) for this purpose.
(Please address the Cal. Rules of Court, rule [8.63](#) factors, including possible prejudice to the parties):

10. For attorneys filing application on behalf of client, I certify that I have delivered a copy of this application to my client (Cal. Rules of Court, rule [8.60](#)).
11. A proof of service of this application on all other parties is attached (see Cal. Rules of Court, rule 8.60(c)). You may use *Proof of Service (Court of Appeal)* (form [APP-009](#)) or *Proof of Electronic Service (Court of Appeal)* (form [APP-009E](#)) for this purpose.

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

Date: _____

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

Order on Application is below on a separate document

ORDER

EXTENSION OF TIME IS

granted to (*date*):
 denied

Date: _____

_____  _____
 (SIGNATURE OF PRESIDING JUSTICE)

Clerk stamps date here when form is filed.

**DRAFT
06.03.2024
Not approved
by Judicial
Council****Instructions**

- This form is only for requesting an extension of time to file a brief in an appeal in a **limited civil case**. Note that any rules referenced in this form are from the California Rules of Court.
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form [APP-101-INFO](#)) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form [APP-109-INFO](#)) and on the Self-Help Guide to the California Courts at www.courts.ca.gov/selfhelp-serving.htm.
- 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 ZipPhone: _____ Email: _____
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 ZipPhone: _____ Email: _____
Street City State Zip

Fax: _____



Case Name: _____

- 2 I am requesting an extension on the time to file:
 - Appellant’s opening brief, which is now due on (date): _____
 - Respondent’s brief, which is now due on (date): _____
 - Appellant’s reply brief, which is now due on (date): _____
 - Supplemental or other brief, which is now due on (date): _____
- 3 I am requesting that the time to file the brief identified in 2 be extended to (date): _____
For an extension of (total number of days sought): _____ days.
- 4 I have have not received a default notice under rule 8.882(c) from the clerk that this brief must be filed within 15 days.
- 5 The time to file the brief (check all that apply):
 - Has not been extended before.
 - Has been extended before by the stipulation of the parties. The parties stipulated to (number of extensions) _____ totaling (number of days) _____
 - Has been extended before by the court. The court granted (number of extensions) _____ totaling (number of days) _____
- 6 I am not able to stipulate to an extension to file this brief because (check one):
 - The other party is not willing to stipulate to an extension.
 - The maximum stipulated time has already been used.
 - Other reason (please describe the reason):


- 7 This appeal is eligible for calendar preference/priority because (cite authority or explain):

- 8 The reason I need an extension to file this brief is (describe the reason you need an extension; please address the rule 8.811(b) factors, including possible prejudice to the parties):

- Check here if there is not enough space for your answer. Put your complete answer on an attached sheet of paper, and write “Attachment 8” for a title. You may use form APP-031A.
- 9 The last brief filed by any party in this case was:
 - The appellant’s opening brief, filed on (date): _____
 - The respondent’s brief, filed on (date): _____
 - The appellant’s reply brief, filed on (date): _____
 - A supplemental or other brief, filed on (date): _____
- 10 If this extension is being requested by a lawyer on behalf of a client, the lawyer must complete this item.
 - I certify that I have delivered a copy of this application to my client (rule 8.810(e)). I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

Type or print your name



Signature of party or attorney

COURT OF APPEAL	APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER:	
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:		SUPERIOR COURT CASE NUMBER:	
NAME:		DRAFT 06.03.2024 Not approved by Judicial Council	
FIRM NAME:			
STREET ADDRESS:			
CITY:	STATE:		ZIP CODE:
TELEPHONE NO.:	FAX NO.:		
EMAIL ADDRESS:			
ATTORNEY FOR (<i>name</i>):			
APPELLANT:			
RESPONDENT:			
APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF— CRIMINAL CASE			

1. a. I (*name*): _____ request that the time to file (*check one*)
 - appellant's opening brief (AOB)
 - respondent's brief (RB)
 - appellant's reply brief (ARB)
 - supplemental or other brief (*describe*): _____
 b. now due on (*date*): _____
 c. be extended to (*date*): _____ for an extension of (*total number of days sought*): _____ days.

2. I have have not received a Cal. Rules of Court, rule [8.360\(c\)\(5\)](#) default notice.

3. I have received
 - no previous extensions to file this brief.
 - the following previous extensions: _____
 (*number of extensions*): _____ extensions from the court totaling (*total number of days*): _____
 Did the court use the words "no further" in a prior order or directive granting an extension? Yes No

4. The last brief filed by any party was AOB RB ARB Other filed on (*date*): _____

5. The record in this case is

	Volumes (#)	Pages (#)	Date filed
Clerk's Transcript:	_____	_____	_____
Reporter's Transcript:	_____	_____	_____
Augmentation/Other:	_____	_____	_____

6. Defendant was convicted of (*specify*): _____

7. The conviction is based on a (*check one*)
 - jury or court trial.
 - plea of guilty or no contest.

APPELLANT: RESPONDENT:	COURT OF APPEAL CASE NUMBER:
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8. The court imposed the following punishment:

9. The defendant is is not on bail pending appeal.

10. The reasons that I need an extension to file this brief are stated

below.

on a separate declaration. You may use *Attached Declaration (Court of Appeal)* (form [APP-031A](#)) for this purpose.

(Please address the Cal. Rules of Court, rule [8.63](#) factors, including possible prejudice to the parties):

11. A proof of service of this application on all other parties is attached (see Cal. Rules of Court, rule [8.60\(c\)](#)). You may use *Proof of Service (Court of Appeal)* (form [APP-009](#)) or *Proof of Electronic Service (Court of Appeal)* (form [APP-009E](#)) for this purpose.

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

Date:

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

Order on Application is below on a separate document

ORDER

EXTENSION OF TIME IS

granted to (date):
 denied

Date:

 (SIGNATURE OF PRESIDING JUSTICE)

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form

Save this form

Clear this form

COURT OF APPEAL	APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:	SUPERIOR COURT CASE NUMBER(S):	
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.:	DRAFT 06.03.2024 Not approved by Judicial Council	
EMAIL ADDRESS: ATTORNEY FOR (name):		
Case Name: In re _____, person(s), coming under the juvenile court law		
APPELLANT: RESPONDENT:		
APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF— JUVENILE JUSTICE CASE		

1. a. I (name): _____ request that the time to file (check one)
 - appellant's opening brief (AOB)
 - respondent's brief (RB)
 - combined respondent's brief (RB) and appellant's opening brief (AOB) (see Cal. Rules of Court, rule [8.216](#))
 - combined appellant's reply brief (ARB) and respondent's brief (RB) (see Cal. Rules of Court, rule 8.216)
 - appellant's reply brief (ARB)
 - supplemental or other brief (describe): _____
- b. now due on (date): _____
- c. be extended to (date): _____ for an extension of (total number of days sought): _____ days.
2. I have have not received a Cal. Rules of Court, rule [8.412\(d\)\(1\)](#) default notice.
3. I have received
 - no previous extensions to file this brief.
 - the following previous extensions:
 - (number of extensions): _____ extensions from the court totaling (total number of days): _____
 - Did the court use the words "no further" in a prior order or directive granting an extension? Yes No
4. The last brief filed by any party was AOB RB RB and AOB ARB and RB ARB Other filed on (date): _____
5. The record in this case is

	<u>Volumes (#)</u>	<u>Pages (#)</u>	<u>Date filed</u>
Clerk's Transcript: _____	_____	_____	_____
Reporter's Transcript: _____	_____	_____	_____
Augmentation/Other: _____	_____	_____	_____
6. The juvenile was adjudicated a ward of the court based on commission of the following offense(s): _____
7. The disposition followed (check one)
 - a contested hearing.
 - an admission.

APPELLANT: RESPONDENT:	COURT OF APPEAL CASE NUMBER:
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8. The court imposed the following disposition:

9. The reasons that I need an extension to file this brief are stated

below.

on a separate declaration. You may use *Attached Declaration (Court of Appeal)* (form [APP-031A](#)) for this purpose.

(Please address the Cal. Rules of Court, rule [8.63](#) factors, including possible prejudice to the parties. Note that an exceptional showing of good cause is required in cases subject to Cal. Rules of Court, rule [8.417](#).)

10. A proof of service of this application on all other parties is attached (see Cal. Rules of Court, rule [8.60\(c\)](#)). You may use *Proof of Service (Court of Appeal)* (form [APP-009](#)) or *Proof of Electronic Service (Court of Appeal)* (form [APP-009E](#)) for this purpose.

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

Date:

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

Order on Application is below on a separate document

ORDER

EXTENSION OF TIME IS

granted to (date):
 denied

Date:

(SIGNATURE OF PRESIDING JUSTICE)

COURT OF APPEAL	APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:		SUPERIOR COURT CASE NUMBER(S):
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.:		<p>DRAFT 06.03.2024 Not approved by Judicial Council</p>
EMAIL ADDRESS: ATTORNEY FOR (<i>name</i>):		
Case Name: In re _____, person(s), coming under the juvenile court law		
APPELLANT: RESPONDENT:		
APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF— JUVENILE DEPENDENCY CASE		

1. a. I (*name*): _____ request that the time to file (*check one*)
 - appellant's opening brief (AOB)
 - respondent's brief (RB)
 - combined respondent's brief (RB) and appellant's opening brief (AOB) (see Cal. Rules of Court, rule [8.216](#))
 - combined appellant's reply brief (ARB) and respondent's brief (RB) (see Cal. Rules of Court, rule [8.216](#))
 - appellant's reply brief (ARB)
 - supplemental or other brief (*describe*): _____
- b. now due on (*date*): _____
- c. be extended to (*date*): _____ for an extension of (*total number of days sought*): _____ days.
2. I have have not received a Cal. Rules of Court, rule [8.412\(d\)\(1\)](#) default notice.
3. I have received
 - no previous extensions to file this brief.
 - the following previous extensions:
 - (*number of extensions*): _____ extensions from the court totaling (*total number of days*): _____
 - Did the court use the words "no further" in a prior order or directive granting an extension? Yes No
4. The last brief filed by any party was AOB RB RB and AOB ARB and RB ARB Other filed on (*date*): _____
5. The record in this case is

	<u>Volumes (#)</u>	<u>Pages (#)</u>	<u>Date filed</u>
Clerk's Transcript:	_____	_____	_____
Reporter's Transcript:	_____	_____	_____
Augmentation/Other:	_____	_____	_____
6. The order appealed from was made under Welfare and Institutions Code (*check all that apply*)
 - a. section 360 (declaration of dependency) removal of custody from parent or guardian other orders
 with review of section 300 jurisdictional findings
 - b. section 366.26
 termination of parental rights appointment of guardian planned permanent living arrangement

SPR24-02

Appellate Procedure: Civil Case Information Statement, Calendar Preference, and Extension of Time (amend Cal. Rules of Court, rules 8.100; revise forms APP-001-INFO, APP-004, APP-006, APP-106, CR-126, JV-816, and JV-817)
All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	Brendan J. Begley Weintraub Tobin Chediak Coleman	AM	Revising all existing forms for requesting an extension of time to file briefs to make the forms mandatory, and revising the rules to reflect this new mandatory status, is a good idea if the mandatory form(s) allow(s) for supplemental information to be provided. Not frequently but sometimes the circumstances that warrant or pertain to a requested continuance are complicated and require more detail than the space on the declaration section allows. When such information is elaborate, it would be easier for the courts to read it in double-spaced, larger-font format than allowed by the present declaration on APP-006 or even the supplemental declaration on APP-031A. Thank you for considering my point of view.	The committee appreciates the feedback. As currently drafted, the extension of time forms allow the party seeking the extension to explain why the extension is needed either on the form itself or on a separate declaration. If the party wants to use a separate declaration, the instructions state that the party “may” use form APP-031A, but this is not required. A party is free to provide a separate declaration in another format.
2.	California Appellate Defense Counsel by Rebecca Jones, Vice President	AM	<p>On behalf of California Appellate Defense Counsel (“CADC”), I would like to submit the following comments regarding the proposed rule mandating use of Judicial Council Forms for applications for extensions of time in criminal matters.</p> <p>CADC is a nonprofit organization whose members accept appointments at state expense in criminal, juvenile, and dependency appeals. Most of our members are solo practitioners who primarily handle criminal indigent appeals.</p>	The committee appreciates the feedback.

SPR24-02

Appellate Procedure: Civil Case Information Statement, Calendar Preference, and Extension of Time (amend Cal. Rules of Court, rules 8.100;

revise forms APP-001-INFO, APP-004, APP-006, APP-106, CR-126, JV-816, and JV-817)

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

	Commenter	Position	Comment	Committee Response
			<p>For reasons that I explain <i>post</i>, we oppose the proposed rule change. Our members are not opposed to change per se. Nor are they opposed to rules that ensure that every lawyer complies with the court’s rules regarding counsel’s duty to explain why an extension of time is necessary and will not prejudice the parties. They are opposed to rules that make their work more difficult, without any discernible improvement in their ability to provide quality representation to their clients.</p>	<p>The committee appreciates the response and notes the commenter’s opposition to making the extension of time forms mandatory.</p> <p>The committee has decided not to recommend that the Council’s extension of time forms be made mandatory. The committee believes that leaving the forms optional will help ensure that all parties and attorneys are able to efficiently access the courts and request an extension of time to file their briefs without encountering technology-based problems or inconveniences. This will also help ensure that otherwise valid requests for extensions of time will not be rejected simply because the form was not used.</p>
			<p>This state is struggling to recruit and retain lawyers to do the constitutionally mandated work that our members do. By imposing unreasonable and unnecessary procedural rules on our members, the state not only runs the risk of incurring greater costs for processing appeals already in the pipeline, it also runs the risk of discouraging new lawyers to join the ranks of those of us already committed to indigent criminal appellate representation.</p>	<p>The committee appreciates the feedback.</p>
			<p>If this committee ultimately decides it must mandate use of the CR-126 form, it should commit to meeting with members of CADC to ensure that the form is functional for every lawyer who is</p>	<p>The committee appreciates the feedback and always welcomes feedback or comments on appellate forms.</p>

SPR24-02

Appellate Procedure: Civil Case Information Statement, Calendar Preference, and Extension of Time (amend Cal. Rules of Court, rules 8.100;

revise forms APP-001-INFO, APP-004, APP-006, APP-106, CR-126, JV-816, and JV-817)

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

	Commenter	Position	Comment	Committee Response
			required to use it, regardless of that lawyer’s access to any particular computer software. But this committee should also consider the possibility that mandating use of a particular form would be both counterproductive and expensive, requiring the state to reimburse counsel for hours required to navigate an unusable form rather than reserving state funds for the real reason the state pays us: To ensure that everyone receives constitutionally adequate representation during the litigation of their criminal appeal.	

SPR24-02

Appellate Procedure: Civil Case Information Statement, Calendar Preference, and Extension of Time (amend Cal. Rules of Court, rules 8.100;

revise forms APP-001-INFO, APP-004, APP-006, APP-106, CR-126, JV-816, and JV-817)

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

		<p>To understand our position on this proposed rule change, the committee should understand a few aspects of our practice that have changed in recent years and that have made it inevitable that we will request more extensions of time than in the past.</p> <p>Over the past 10-15 years, our membership, and the number of attorneys willing to take on appointed criminal appeals on behalf of indigent defendants, have dropped precipitously. We, and the courts, attribute this decrease in large part to the extreme financial difficulty in managing a solo practice that must comply with relatively rigid billing rules, including statewide guidelines regarding the performance of tasks that the state considers to be routine, and a low hourly payment rate, which caps out at \$130 per hour. For comparison purposes, according to U.S. News and World Report, attorneys nationwide averaged a fee of \$327 per hour in August 2023. https://law.usnews.com/law-firms/advice/articles/what-does-hiring-a-lawyer-cost. This citation is not intended to complain about pay disparities but is offered to explain why the pool of attorneys willing to handle indigent appointed criminal appeals has shrunk.</p> <p>The nature of our work, and the constraints under which we may bill our time, makes us particularly sensitive to issues that impact our ability to work efficiently. Importantly, for purposes of this committee’s consideration, our ability to work efficiently also affects the state’s coffers. If we</p>	<p>The committee appreciates the feedback.</p>
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SPR24-02

Appellate Procedure: Civil Case Information Statement, Calendar Preference, and Extension of Time (amend Cal. Rules of Court, rules 8.100;

revise forms APP-001-INFO, APP-004, APP-006, APP-106, CR-126, JV-816, and JV-817)

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

		<p>have to spend additional time on a court-mandated task, the court needs to pay for that work.</p> <p>Other factors affect our practice and the use of extensions of time also. First, there are now many fewer of us than in the past. The appellate projects that manage our appointments are asking us to take many more appointments than we took previously. This means, if we try to accommodate those requests, we need to take on a larger caseload and are less able to review records and file briefs as quickly as we could in the past. This is not a problem of our own making. We have been asked to carry a heavier caseload to ensure that appellate litigants do not languish unrepresented for unreasonable periods of time. But it also means we may need to request more extensions of time to complete our work competently.</p> <p>Second, since this nation weathered the COVID-19 pandemic and the cessation of jury trials for an extended period of time, jury trials have finally restarted. Our members are finding that superior court appellate clerks are struggling to provide us with complete appellate records in a timely manner, requiring us to file repeated requests for extensions of time until we have all the materials we need to represent our clients consistent with the mandate of the Sixth Amendment.</p> <p>Against this background, we ask the committee to consider the impact of forcing counsel in criminal appeals (which, for the most part, are all indigent</p>	
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SPR24-02

Appellate Procedure: Civil Case Information Statement, Calendar Preference, and Extension of Time (amend Cal. Rules of Court, rules 8.100;

revise forms APP-001-INFO, APP-004, APP-006, APP-106, CR-126, JV-816, and JV-817)

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

		<p>criminal appeals) to use a single Judicial Council form to request extensions of time. Our survey of members regarding the currently available form for extensions of time (EOTs) has revealed that members find the form difficult to use, time-consuming to edit, and a general waste of time.</p>	
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SPR24-02

Appellate Procedure: Civil Case Information Statement, Calendar Preference, and Extension of Time (amend Cal. Rules of Court, rules 8.100;

revise forms APP-001-INFO, APP-004, APP-006, APP-106, CR-126, JV-816, and JV-817)

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

	Commenter	Position	Comment	Committee Response
			<p>That is not to say that our members could not adapt to using a state-mandated form. But if they were required to do so, our membership asks that the state find a way to make any such form accessible and usable on a variety of platforms – including MAC and Windows – that it be easily savable and editable for repeat use, and that the court accept applications for extensions of time that contain all of the information included on the mandatory form but that may have been input through non-.pdf software, such as Microsoft Word, that creates a document mirroring the mandated form.</p>	<p>The committee appreciates the feedback. Staff has tested the extension of time forms to ensure that users who download the most recent version of the forms on the Judicial Council website are able to fill out each field on the forms, save the forms on their computer, and then reopen and further edit those saved forms. Staff has confirmed that this can be done on both Windows and MacOS based machines using Adobe Acrobat Reader.</p>
			<p>For the committee’s consideration, I have included an appendix of comments from our organization’s membership regarding the difficulties they confront using the current CR-126 form available on the state’s website. For purposes of this committee’s consideration, these difficulties translate into more attorney hours spent on activities that should be routine clerical matters and that will cost the state unnecessary money.</p> <p>We appreciate the opportunity to share our membership’s views on this proposal and are available for further discussions on the issue.</p>	<p>The committee appreciates the feedback. See below for responses to specific comments.</p>
			<p>APPENDIX TO COMMENT ON PROPOSED RULE CHANGE</p>	<p>The committee appreciates the feedback. Staff has tested the extension of time forms to ensure that users who download the most recent version of the</p>

SPR24-02

Appellate Procedure: Civil Case Information Statement, Calendar Preference, and Extension of Time (amend Cal. Rules of Court, rules 8.100;

revise forms APP-001-INFO, APP-004, APP-006, APP-106, CR-126, JV-816, and JV-817)

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

	Commenter	Position	Comment	Committee Response
			<p>* The PDF forms drive me stark raving mad. Sometimes they won't save with the new information, sometimes they won't let you insert information into certain fields. Sometimes you have to print them out and hand write in missing information and scan them back as a PDF. Ridiculous! Waste of time and energy.</p>	<p>forms on the Judicial Council website are able to fill out each field on the forms, save the forms on their computer, and then reopen and further edit those saved forms. Staff has confirmed that this can be done on both Windows and MacOS based machines using Adobe Acrobat Reader.</p>
			<p>* The standard supposedly fillable forms have been awful to use. I still use my standard template and can't see any benefit to having to abandon it.</p>	<p>The committee appreciates the feedback.</p>
			<p>* I would only (barely) support this rule if they hire the person at CCAP who made the form usable. Because the one provided by the Judicial Council is (a) hard to use and (b) gets rejected by the courts routinely for flaws that are built into the original. I vastly prefer to use Word or Word Perfect to do things like this since it is easier to use templates and autofill fields (without accidentally overwriting an original), but if I must use a required form it damn well needs to work.</p>	<p>See above response.</p>
			<p>* I use the CCAP form (the current version can be used for any district) and I am able to reuse and edit it as long as I save it under a new name. The versions provided by the JCC do not allow this because you have to save them in some funky uneditable format or else the courts can't read them.</p>	<p>The committee appreciates the feedback. Staff has tested the extension of time forms to ensure that users who download the most recent version of the forms on the Judicial Council website are able to fill out each field on the forms, save the forms on their computer, and then reopen and further edit those saved forms. Staff has confirmed that this</p>

SPR24-02

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	Commenter	Position	Comment	Committee Response
				can be done on both Windows and MacOS based machines using Adobe Acrobat Reader.
			* The online forms don't let you re-use the same filled in form over and over, so you have to look up or at least retype information about the size of the record and the dates things were filed, over and over again. Although I have had a staff attorney tell me it is a tech problem on my end that the form will lock, we risk getting hours cut on any EOT after the first because we have to re-type the information.	See above response.
			* I don't like the form because it is not feasible to update it for any subsequent EOT requests, and I have to start from scratch, yet we are not supposed to bill the full time for preparing subsequent EOTs because it has always been assumed that once the original EOT has been filed, repeat ones take less time to prepare.	See above response.
			* CR-126 doesn't work for me, so I have had to save CR-126 as a series of tiff files, fill them in with a graphics editor, and then assemble the tiffs into a pdf. This works pretty well for me and I don't have the worry of filled in text disappearing or fields not wanting to be filled in. It was easier to do this than trying to create a form that looks like CR-126. However, I don't think the average person would want to go through the trouble and it	See above response.

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	Commenter	Position	Comment	Committee Response
			<p>produces about six different files per completed extension.</p>	
			<p>* I have had great frustration and waste of time with the Judicial Council forms. If they are going to accept only that actual form, I hope they are also going to allow for a lot more flexibility on the compensation guidelines so that we can bill for the actual time it takes to comply with a rule requiring use of the Judicial Council forms. To require use of that form and not compensate us for that would be very unfair. But even with compensation, I would rather spend my time doing substantive law practice than dealing with an unwieldy form.</p>	<p>The committee appreciates the feedback. Adjustment to the compensation guidelines is outside of the committee’s purview.</p>
			<p>This extended comment from a member is particularly insightful:</p> <p>The current version of the form has buttons to print, save and clear but they do not function on the website or after downloading. I also cannot save a copy for my files or print without those boxes appearing. I had to purchase Adobe Acrobat Pro in order to "edit" the form to remove those boxes, and to electronically sign my PDFs. (I was unable to use Apple's Preview or the free standard Adobe Acrobat to fill the form without difficulties). Also, I have found Acrobat Pro necessary to prevent having to print out the proof of service separately. Acrobat Pro allows me to "Combine Files" so I can save my proof of service</p>	<p>The committee appreciates the response. Currently, Judicial Council forms do not provide fields allowing for electronic signatures and have security features designed to protect form integrity and therefore do not permit for modification of the forms (including combining a form with another document).</p>

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			<p>Word document as a PDF, and then combine the extension form PDF with the proof of service PDF into one document.</p>	
			<p>Notably, each update of the form has had a new glitch, which tends to be the norm in any electronic update these days, but this is something to consider when requiring a form by law. The past form would not let me fill in my state bar number correctly without editing with Adobe Acrobat Pro. The current version has a similar problem but this time it requires the additional four numbers of my zip code (e.g. 92130-1234), and if I do not type in numbers it will fill in the first four numbers as "0" (e.g. the last example with only five digits would appear as 00009-2130). I use the Edit function on Adobe and fix the numbers later (I do not know the last four of my zip because it is a PMB). In the older version, the calendar link had dates in different styles (e.g. Sept. 12, 2024; September 12, 2024).</p>	<p>The committee appreciates the feedback. The extension of time forms have been revised to correct the formatting of the state bar and ZIP code fields.</p>
			<p>When I first tried using the form, I had to print out a PDF, print out a separate proof of service document, sign both and scan them to save into a PDF for filing purposes.</p>	<p>The committee appreciates the response. Currently, Judicial Council forms do not provide fields allowing for electronic signatures and have security features designed to protect form integrity do not permit for modification of the forms (including combining a form with another document).</p>
			<p>The spacing for the record page count can be difficult to work with when records get complex--</p>	<p>The committee appreciates the feedback and is recommending that CR-126 be revised to expand</p>

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	Commenter	Position	Comment	Committee Response
			<p>there is a single line for each of the Clerk's, Reporters, and Augment/Other, and a single filing date for each. Thus, I have had to use Adobe Acrobat to Edit and add additional lines if there were parts that were filed on different dates. I have also used the Edit/Add-a-typed-line function for requests for Supplemental Pro Per Briefs when my clients have requested I filed an extension on their behalf (it does not include that in the list of possible briefs, although technically it states "supplemental/other brief" I write in it is the pro per brief, not filed by me, to be clear).</p>	<p>the lines on item 5 to provide more space to provide information.</p> <p>Additionally on each extension of time form, the committee is recommending that item 1's "supplemental or other brief" item be revised to say: "supplemental or other brief (<i>describe</i>):" followed by a text box where the user describes the brief for which an extension is being sought.</p>
			<p>The Respondent box sometimes requires me to shorthand the title for the Department/Agency, or if there are multiple respondents (i.e. another parent).</p>	<p>The committee appreciates the feedback.</p>
			<p>If there are errors, I cannot undo any deletions without losing what I wrote (cannot "undo" and have writing reappear) so I usually type up my request in Word then copy/paste into the PDF form. Then I usually find that I am a few characters over the limit in the space available (1131 characters, including spaces and punctuation marks). I often need to include citations to rules and pending cases, etc., and there is the newly added requirement of addressing prejudice (technically not new to address if there was prejudice but now we have to state no prejudice). Also, there was a time period where LA wanted us</p>	<p>The committee appreciates the feedback and has made Judicial Council staff aware of the specific issues raised. Staff has confirmed that the "undo" function works on the most recent version of the extension of time forms available on the Judicial Council website.</p> <p>The committee is recommending that CR-126 be revised to expand the space for users to list why an extension of time is being sought.</p>

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			<p>to use specific verbiage when we were taking package offers l--in addition to other reasons-- which made the explanation require additional space. Otherwise, an additional page can be used but that somewhat defeats the efficiency purpose of the PDF form. I understand the court will have the ability to see important information on the first page, but it seems awkward to have a third page for explanations, especially when there simply is an extra line or two needed. Perhaps they could make more space for the explanation and move the box for grant/denial to a third page, or at least move line 8 down a little bit because there is some wasted space after line 8 (that just states a proof of service is attached) and the grant/denial box.)</p>	
3.	<p>California Lawyers Association, Litigation Section, Committee on Appellate Courts by Saul Bercovitch, Associate Executive Director, Governmental Affairs</p>	AM	<p>The Committee on Appellate Courts (CAC) of the California Lawyers Association’s Litigation Section submits this response to the Invitation to Comment on SPR24-02. Established in 2018, the California Lawyers Association is a nonprofit, voluntary organization comprising thousands of licensed attorneys that is dedicated to the professional advancement of attorneys practicing in the State of California. The CAC consists of over twenty experienced appellate practitioners and court staff, drawn from a wide range of practice areas. As part of its mission, the CAC frequently shares its views regarding proposals to change rules that govern appellate practice. This new proposed change would change filing procedures for the Civil Case Information</p>	<p>The committee appreciates the feedback. See below for response to specific comments.</p>

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			<p>Statement (CCIS), update the question regarding calendar preference on the CCIS form, and modify procedures for extension requests, including mandating use of the Judicial Council’s extension-application forms. The CAC generally supports some of these changes. However, we also propose modifying the rule regarding the CCIS filing deadline and we have concerns regarding making the extension forms mandatory. Finally, we thank the Advisory Appellate Committee for its work on this issue.</p>	
			<p>1. Changing the Deadline for Filing a Civil Case Information Statement The CAC supports SPR24-02’s proposed change to Rule 8.100(g), requiring an appellant to file the CCIS within 15 days after an appeal is docketed, but we suggest modifications to prevent an appellant from having the deadline triggered without notice.</p>	<p>The committee appreciates the feedback.</p>
			<p>The current rule requires an appellant to file the CCIS within 15 days after the Superior Court clerk sends the parties notification of the filing of a notice of appeal. The Court of Appeal often does not assign a case number within that timeframe, making it impossible to comply with the current rule because there is no case number in which to file the CCIS. To avoid this problem, most courts treat the CCIS filing deadline as triggered when the clerk sends notification that the appeal has</p>	<p>See above response.</p>

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			<p>been docketed, but the conflict between this practice and Rule 8.100(g) leads to confusion.</p> <p>Although we support changing the rule, we recommend modifications to make the new rule easier to follow. The current proposal requires the appellant to file a CCIS within 15 days after the reviewing court “lodges the notice of appeal and assigns the appeal a case number.” It seems unnecessary to hinge the filing deadline on both (1) lodgment and (2) assignment of a case number.</p> <p>The appeal is always lodged with the Court of Appeal before a case number is assigned, and it is the assignment of a case number that makes it possible to file the CCIS. We would therefore recommend removing the reference to “lodgment.”</p>	<p>The committee appreciates the feedback. The committee has revised the proposal to remove the reference to the notice of appeal being “lodged.” The proposal now recommends that Rule 8.100(g)(1) be amended to read “Within 15 days after the reviewing court assigns the appeal a case number, the appellant must serve and file in the reviewing court a completed <i>Civil Case Information Statement</i> (form APP-004), attaching a copy of the judgment or appealed order that shows the date it was entered.”</p>

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			<p>One other concern is that Courts of Appeal do not uniformly notify the parties when a case number is assigned (or the notification can take several days to issue), so under the proposed rule, some appellants may have the CCIS filing deadline triggered without notice. A survey of the clerk’s offices statewide illustrates this lack of uniformity. Every district notifies the parties of the assignment of a case number except for Divisions Two and Three of the Fourth District. Of those that notify the parties, some do so by email and some by Truefiling with mail copy to pro per parties who do not have Truefiling access. Most districts’ docketing notice letters provide that the CCIS is due within 15 days of the letter, not from when the case number was assigned.</p> <p>Given these practices, we suggest requiring the clerk to notify the parties when a case is docketed (if this can be done within the scope of the current rule), and to make the CCIS due within 15 days of the clerk’s docketing notice. This change aligns with common practice and serves the rule’s purpose of requiring the CCIS to be filed promptly. It also protects parties from having the CCIS filing deadline triggered without notice.</p>	<p>The committee appreciates the feedback. Amending the rules to require the clerk to send a notification to the parties when a case number is assigned is outside the scope of the instant proposal.</p> <p>The committee notes that rule 8.100(g)(1) used to require what the commenter is suggesting: that appellate clerks send docketing notices to the parties and that the Civil Case Information Statement deadline be tied to the sending of this notice. The rule was amended effective January 1, 2014, to replace these requirements with the existing rule. The committee is now informed that a majority of the Courts of Appeal do send docketing notices in some form to the parties once a case number is assigned.</p> <p>If experience with this proposal’s recommended amendment to rule 8.100(g)(1) suggests that requiring appellate clerks to send docketing notices to the parties would be beneficial, the committee may revisit this question in the future.</p>
			<p>2. Modifying the Civil Case Information Statement Question Regarding Calendar Preference or Priority</p>	<p>The committee appreciates the feedback and notes the commenter’s support for revising item 2 on the CCIS.</p>

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			The CAC supports amending item 2, part II of the CCIS to clarify that the appellant may provide a nonstatutory reason why the appeal is eligible for calendar preference. We agree that the current reference to “authority” may cause some appellants to forego identifying an appeal as a priority matter on the CCIS form.	

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		<p>3. Mandating Use of Judicial Council Form for “Good Cause” Filing Extensions</p> <p>The CAC has concerns about requiring parties to use the Judicial Council forms to request extensions of time. The Appellate Advisory Committee proposes mandatory use of the forms to ensure that applications address the “good cause” factors in Rule 8.63(b)(1)–(11), such as whether the appeal is entitled to priority and whether the requested extension would result in prejudice to opposing parties.</p> <p>Our concern is that, while the form might help focus the applicant on relevant factors, making it mandatory could also trap unwary litigants, causing valid applications to be rejected because of the form of the document. The consequence could be more appeals going into default, creating unnecessary work for the parties and the court.</p> <p>Making the extension-application form mandatory while the extension-stipulation form remains optional would also likely lead to confusion. As it stands, almost all Judicial Council appeal forms are optional, including stipulations for extensions of time. The only mandatory appellate forms consist of the Civil Case Information Statement in civil cases and death-penalty related documents in criminal cases. The optional nature of most forms (including extension stipulations that serve a similar purpose to an extension application) creates a high likelihood that counsel will not remember to submit the mandatory form when</p>	<p>The committee appreciates the feedback and notes the commenter’s opposition to making the Judicial Council’s extension of time forms mandatory.</p> <p>The committee has decided not to recommend that the Council’s extension of time forms be made mandatory. The committee believes that leaving the forms optional will help ensure that all parties and attorneys are able to efficiently access the courts and request an extension of time to file their briefs without encountering technology-based problems or inconveniences. This will also help ensure that otherwise valid requests for extensions of time will not be rejected simply because the form was not used.</p>
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		<p>applying for, as opposed to stipulating to, an extension.</p> <p>The proposed change would also require changes to local rules and forms, which either do not call for the same information as the Judicial Council’s form or which explicitly state that parties do <i>not</i> need to follow the Judicial Council’s forms exactly. (<i>See, e.g.</i>, Second District Form 2DCA-04, Application for Extension of Time (Brief) available at https://www.courts.ca.gov/documents/2DCA-04.pdf, Local Rules of the Court of Appeal First Appellate District, Rule 11(b) (requiring extension-of-time applications to be “substantially in the form of” the optional judicial council form).)</p> <p>Given these potential downsides, we question whether the change will accomplish a significant enough gain in efficiency to merit adoption. The mandatory-form proposal springs from concerns of some members of the Appellate Caseflow Workgroup, but it does not appear that the Workgroup reached a consensus to recommend this change specifically. The Workgroup recommended changing the optional form to include more of the Rule 8.63 factors. It also suggested requiring parties that choose not to use the optional form to still include the relevant information in their applications (which we believe is already mandated by Rule 8.63). The Judicial Council modified the forms on January 1, 2024 to include more of the Rule 8.63 factors.</p>	
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			<p>With that change in place, making the form mandatory is unnecessary because the court can simply reject any application that fails to address the relevant factors, regardless of how the information is presented.</p>	
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			<p>Finally, it appears that some practitioners have identified problems with the forms themselves. These include an inability to input certain fields or to save the completed document for editing. Compiling the PDF form together with extra declaration pages may also prove technologically challenging.</p>	<p>The committee appreciates the feedback. Staff has tested the extension of time forms to ensure that users who download the most recent version of the forms on the Judicial Council website are able to fill out each field on the forms, save the forms on their computer, and then reopen and further edit those saved forms. Staff has confirmed that this can be done on both Windows and MacOS based machines using Adobe Acrobat Reader.</p>
			<p>While we would encourage any applicant for an extension of time to address the Rule 8.63 factors, the downsides of requiring the Judicial Council forms outweigh potential benefits to be gained from this rule change.</p>	<p>The committee appreciates the feedback.</p>
			<p>4. Implementing a Judicial Council Form for Extensions in Misdemeanor Appeals The CAC supports adopting a form by which the parties in a misdemeanor appeal can request an extension of time to file briefs. The forms are useful, yet the extension form for criminal appeals is not formatted for use in the appellate division of the Superior Court. As long as the form is adopted for optional use, we believe it will be beneficial.</p>	<p>See above response.</p>
4.	Family Violence Appellate Project (FVAP) by Cory Hernandez, Senior Managing Attorney Oakland	AM	The following comments are submitted by Family Violence Appellate Project (FVAP) regarding the Judicial Council’s Invitation to Comment number SPR24-02. We greatly appreciate the Council’s continued efforts to make the appellate process	No response necessary.

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			<p>more accessible and inclusive, and are grateful to the Council for considering and responding to many of our past suggestions on these issues (and are more than happy to continue working with the Council on further issues as well as other past issues we’ve raised that have not yet been addressed).</p>	
			<p>(1) Support the proposal to clarify on the APP-004 CCIS (civil case information statement) form that the ground for calendar preference can be a nonstatutory reason.</p>	<p>The committee notes the commenter’s support for revising form APP-004.</p>
			<p>a. However, for what it may be worth, we wanted to note that there arguably is not really a “nonstatutory” ground for calendar preference (or perhaps stated more precisely, not really a need for such nonstatutory ground), given the broad scope covered already by CCP § 36, subd. (e) (“interests of justice”). Indeed, the proposal cites Warren v. Schecter, but in that case, the Court expressly relied on CCP § 36, subd. (e) and former CRC 19.3 (current CRC 8.240), so its ruling was, at least arguably, actually statutory. This technical distinction may, though, be a distinction without much of a difference, especially as related to this proposal.</p>	<p>The committee appreciates the feedback.</p>
			<p>b. At the same time, we do not doubt that a court, including an appellate court, has inherent authority</p>	<p>See above response.</p>

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			to grant calendar preference—that is, a court could still grant calendar preference in “the interests of justice” even if, say, CCP § 36, subd. (e) were amended or removed.	
			(2) Support the proposal to amend CRC 8.100 to require the CCIS form be filed within 15 days that the Court of Appeal lodges the Notice of Appeal (NOA) and opens an appellate case number.	The committee notes the commenter’s support for amending rule 8.100.
			a. In practice, it has often been unclear when precisely the CCIS would be due, especially since it can take weeks or months before an appeal gets docketed, after an NOA is filed. So we appreciate this rule’s clarification.	The committee appreciates the feedback.
			i. We also ask the Council consider addressing delays in docketing appeals. We have seen several reasons why appeal docketing gets delayed, from superior courts rejecting NOA forms on improper grounds to clerks not sending/receiving NOAs for weeks after they are filed.	The committee appreciates the feedback. Addressing docketing delays is outside the scope of the instant proposal.
			b. Plus, this amendment to CRC 8.100 seems to make logical sense, since the APP-004 (CCIS), unlike the APP-003 (NDRA), has to be filed in the Court of Appeal instead of the superior court.	The committee appreciates the feedback.

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			i. Tying the CCIS deadline to the filing of the NOA (current rule) is problematic because it can take weeks or months, after the NOA is filed, before a Court of Appeal case is opened. So this proposal has a better internal logic by tying the CCIS deadline to the action of the Court of Appeal, i.e., docketing the appeal.	See above response.
			(3) Recommend for the proposed amendment to the APP-001-INFO form, there should be added language clarifying that many cases do not have online dockets available on the court’s website, since they’re confidential or masked. In such cases, parties should be directed to contact the Court directly to get an update. Without that clarifying language, pro. per. appellants may not know they need to reach out to the Court of Appeal instead of waiting for an online docket to be created.	The committee appreciates the feedback. The committee has declined to make the recommended revision. The committee concludes that it will be the rare case where there is no online information for an appeal.
			(4) Recommend , in response to the proposal’s specific question about <i>In re Conservatorship of K. Y.</i> , that California Rules of Court, rule 8.480 (instead of the EOT form as proposed) be amended—or a new rule of court adopted—to require that, in cases of conservatorship and other civil commitments, a party seeking an extension of time (EOT) tell the court, in the application, both (1) whether calendar preference has been granted/is warranted and (2) when the challenged order expires.	The committee appreciates the feedback. Rule or form amendments to address extension of time requests in civil commitment or conservatorship appeals is outside the scope of the instant appeal. The committee may consider this issue in the future as time and resources allow.

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			<p>a. OR, we recommend that, instead of amending the EOT form, a new form should be adopted for these cases—separate from APP-006 for the reasons discussed below.</p>	<p>See above response.</p>
			<p>b. We would OPPOSE adding an item for expiration dates on the APP-006 form. That form is used in family law appeals, and many/most family law orders have no expiration date (e.g., custody, child support), so having this item on the form will cause confusion, especially for self-represented litigants. (About one- third of appellants represent themselves, so far as we can see from the data available.)</p>	<p>See above response.</p>
			<p>i. Furthermore, even if a challenged family law order <i>may</i> have an expiration date, like a domestic violence restraining order after hearing (Fam. Code, § 6345, subd. (a)), the expiration of the order does not necessarily moot an appeal from or related to that same order. (See, e.g., <i>A.F. v. Jeffrey F.</i> (2023) 90 Cal.App.5th 671, 682; <i>Yost v. Forestiere</i> (2020) 51 Cal.App.5th 509, 515, fn. 2; <i>Harris v. Stampolis</i> (2016) 248 CA4 484, 495-496; <i>Celia S. v. Hugo H.</i> (2016) 3 Cal.App.5th 655, 665-666; <i>Gonzalez v. Munoz</i> (2007) 156 Cal.App.4th 413, 416-417.)</p>	<p>See above response.</p>

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			<p>ii. And, even if the expiration of the order, or some other occurrence like death of the respondent, may moot a family law or restraining order appeal, that does not necessarily bar the appeal because a court has discretion to consider an otherwise moot appeal. (See, e.g., <i>IRMO F.M. & M.M.</i> (2021) 65 CA5 106, 110, fn. 1.)</p>	<p>See above response.</p>
			<p>(5) Support, in a LIMITED way as discussed below, the proposal to require the EOT forms (like APP-006) be mandatory instead of optional.</p>	<p>The committee notes the commenter’s support for making the extension of time forms mandatory, subject to the qualifications stated in the comment.</p>
			<p>a. More specifically, we agreed with this recommendation back in our comments to prior proposal SPR23-06.</p>	<p>The committee appreciates the feedback.</p>
			<p>b. However, in those comments, which we repeat here, we want to be clear that we would NOT want these EOT forms (like APP-006) to be mandatory if the forms were amended to require the party to explain what work has been done on the appeal thus far, as that type of requirement would raise serious confidentiality and privilege issues, not to mention practical implementation issues for self-represented parties</p>	<p>The committee appreciates the feedback.</p>
			<p>c. If the EOT forms (like APP-006) <i>are</i> amended to require more of parties, those form changes should only come from statutory or rule changes.</p>	<p>The committee appreciates the feedback.</p>

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

	Commenter	Position	Comment	Committee Response
			<p>(6) Recommend that the EOT forms (e.g., APP-006) be amended to address the following issues, which we had also noted in our comments to proposal SPR23-06:</p> <p>a. Item 1(a) should have space for amicus to use the form to request an extension. (CRC 8.200(c)(1).)</p> <p style="padding-left: 40px;">i. Or perhaps better, there should be a separate form for amici to request an EOT to file their brief.</p> <p>b. Item 8 should be divided into two parts: 8(a) for “The Court granted calendar preference on []”; and then 8(b) for “This appeal is eligible for calendar preference because [].” This will help with readability, especially for pro. per. parties.</p> <p>c. Item 9 should be amended, in the <i>italicized parenthetical explanation</i>, to remove the phrase “including possible prejudice to the parties.”</p>	<p>See below for response to specific comments.</p> <p>Last year, the extension of time forms were revised to, among other things, include a “supplemental or other brief” option in item 1. The committee has revised this item to include a direction for the party to describe the “supplemental or other brief” with a text box for this description.</p> <p>The committee declines to make the suggested revision due to space constraints.</p> <p>The committee declines to make the suggested revision. The committee notes that in its December 2022 report, the Chief Justice’s Appellate Caseload Workgroup recommended that the extension of time forms specifically request whether an extension would result in prejudice to the parties.</p> <p>Rule 8.63(b)(1) states that a court should consider the “degree of prejudice, if any, to any party from a grant or denial of the extension. A party claiming prejudice must support the claim in detail.” The</p>

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revise forms APP-001-INFO, APP-004, APP-006, APP-106, CR-126, JV-816, and JV-817)

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

	Commenter	Position	Comment	Committee Response
				<p>committee does not read this rule as only requiring a discussion of possible prejudice if one party is claiming prejudice. To the contrary, the committee believes that the absence of prejudice to any party is an important factor that should be considered in determining whether to grant an extension.</p> <p>Given the potential importance of the prejudice factor, the committee believes the form, as drafted, is likely to elicit information from a party that will be useful to a reviewing court.</p>
			<p>i. CRC 8.36(b)(1) only requires a party to discuss possible prejudice <i>if they or the other party is claiming prejudice</i>.</p>	<p>See above response.</p>
			<p>ii. By having additional language in the form, the form now requires a party to discuss possible prejudice <i>in every case</i>, whereas CRC 8.36 only requires such discussion <i>in a limited number of cases</i>.</p>	<p>See above response.</p>
			<p>iii. As such, having this language in the form adds to the rule, and is basically thus further rulemaking in the cloak of modifying the form.</p>	<p>See above response.</p>
			<p>iv. If the Council wishes to maintain this language on the form, it seems it would be useful to amend CRC 8.36 to reflect this requirement as well.</p>	<p>See above response. Amending rule 8.63 is outside the scope of the instant proposal.</p>

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

	Commenter	Position	Comment	Committee Response
			<p>(7) Have no comment on whether to adopt a mandatory form for EOTs in misdemeanor appeals. a. We do not practice in misdemeanor appeals.</p>	<p>The committee appreciates the feedback.</p>
			<p>FVAP is a State Bar-funded legal services support center and the only nonprofit organization in California dedicated to representing survivors of domestic violence and other forms of gender-based abuse in civil appeals for free. We are also funded by the California Office of Emergency Services to support domestic violence, sexual assault and human trafficking advocates who work directly with self-represented litigants seeking protection or other relief from the court system. FVAP is devoted to ensuring survivors can live in healthy, safe environments, free from abuse. This includes ensuring appellate procedures and rules are straightforward enough to follow for parties without representation, which includes most survivors.</p>	<p>No response necessary.</p>
			<p>In conclusion, we support much of this proposal but have further points for consideration as noted above, and additional suggestions. *[contact information removed]</p>	<p>The committee appreciates the feedback.</p>
<p>5.</p>	<p>Fourth District Court of Appeal, Division One by Karen M. Harkins, Managing Attorney</p>	<p>AM</p>	<p>Thank you for the opportunity to comment on Proposed Rule SPR24-02. Running the due date for the Civil Case Information Statement from the time the Court of Appeal receives and assigns a case number to a new civil notice of appeal would</p>	<p>The committee appreciates the feedback and notes the commenter’s support for the proposal’s amendment to the due date for the Civil Case Information Statement.</p>

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

	Commenter	Position	Comment	Committee Response
			benefit the court because it would improve efficiency by making compliance for appellants easier. This change has minimal impact to court operations, and it can be implemented within three months.	
			This proposed rule also revises item 2 of part II of form APP-004 (the Civil Case Information Statement) by changing language on the form, asking appellants to explain why the appeal is eligible for, rather than entitled to, calendar preference. The executive summary explains the purpose of this change is to allow appellants an opportunity to share situations “where the court should exercise discretion to grant preference on nonstatutory grounds.”	No response required.
			While the court is open to receiving this information, it is not clear what benefit this change provides. California Rule of Court, rule 8.240 governs calendar preference. It requires parties seeking calendar preference to “promptly serve and file a motion for preference in the reviewing court.” The associated advisory comment clarifies that the rule is broad in scope, and parties may file a motion based on nonstatutory grounds.	The committee appreciates the feedback.
			The revision to item 2 may create confusion, particularly with parties appearing in propria persona, who may be unaware that simply including this information will not, in itself, allow	The committee appreciates the feedback. Item 2 in the <i>Civil Case Information Statement</i> does not replace the requirement that a party

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	Commenter	Position	Comment	Committee Response
			<p>the court to “exercise discretion to grant preference on nonstatutory grounds.” It is not clear how the court should use the information when an appellant offers a nonstatutory basis for calendar preference, because including the information does not replace the rule 8.240’s requirements. Instead, this change may create confusion: If an appellant indicates a reason for preference on this form, how should the respondent view that information? Would parties treat information the form as triggering the timeline for opposition to calendar preference? If parties treat the statement as a request for court action, it would require the court to address the requests that do not comply with court rules. That would also potentially require the parties to duplicate their efforts.</p> <p>If the proposed language change occurs, we suggest including language on the form clarifying that including such information on the form will not result in calendar preference where the eligibility is not based on nonstatutory grounds, with a reference to California Rules of Court, rule 8.240. It may also be helpful to revise the</p>	<p>seeking calendar preference promptly serve and file a motion seeking such preference. However, as the advisory committee comment to rule 8.240 recognizes, that rule does not “bar the court from ordering preference without a motion when the ground is apparent on the face of the appeal.”</p> <p>In cases where the grounds for preference are clear on the face of the appeal, item 2 helps ensure that the case is properly given case preference or priority. In cases where the litigant believes there is a nonstatutory or discretionary ground for calendar preference, item 2 still notifies the Court of Appeal that there may potentially be a basis for calendar preference.</p> <p>To alleviate any confusion, the committee is recommending that item 2 be revised to include the following statement: “A party seeking calendar preference or priority on a non-statutory or discretionary ground must promptly serve and file in the Court of Appeal a motion for preference, see Cal. Rules of Court, rule 8.240.” Amending rule 8.240 or its advisory committee comment are outside the scope of the instant proposal.</p> <p>See above response.</p>

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	Commenter	Position	Comment	Committee Response
			<p>advisory comment to rule 8.240 to state that parties must file a motion for preference in the reviewing court even if the Civil Case Information Statement includes an explanation for why the appeal is eligible for calendar preference or priority.</p>	
6.	Rebecca P. Jones Attorney at Law	N	<p>I am attorney licensed to practice in California since 1992. I have been handling indigent criminal matters for my entire career and have been specializing in criminal appeals in the state courts since approximately 2002.</p> <p>I received notice that the committee is considering instituting a rule that would require counsel in criminal matters to use a Judicial Council fillable .pdf form to apply for extensions of time to file their briefs. I oppose this rule and would like to explain why.</p> <p>The only court in which I have practiced recently that prefers that we use a fillable .pdf form to request extensions of time is the Fifth Appellate District. I also practice – at least until recently, when I took a nearly full-time job at CAP-SF – in the Second, Fourth, and Third Appellate Districts. Those other districts have allowed me to submit applications for extensions of time in a variety of different formats. Every application I submit has a place for me to include crucial information about the amount of work I</p>	<p>No response necessary.</p> <p>The committee appreciates the feedback and notes the commenter’s opposition to the part of the proposal that would make the Judicial Council’s extension of time forms mandatory.</p> <p>The committee appreciates the feedback.</p>

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	Commenter	Position	Comment	Committee Response
			have completed on the case and my reasons for needing additional time to file a brief.	

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		<p>Every time I have tried to use the fillable form available on the Fifth Appellate District's website, I have run into problems printing it or saving it so that I can submit it through TrueFiling. Frequently, I end up trying to find an old .pdf that was functional for another case and using my editing tools within Acrobat to change the dates, names, and other relevant information. Trying to find work-arounds to deal with the lack of functionality in the online fillable form takes approximately twice the amount of time I normally have to spend writing an application for extension of time and getting it filed.</p> <p>Right now I downloaded the form from the Fifth Appellate District's website, and I could not fill in the names of the Appellant and Respondent on page 2. Then, when I tried to use the "Print this Form" button and selected "Adobe PDF" as the file format, it turned into an unusable .txt file. These are problems I have had with using this form for a number of years. I have to keep playing around with various options until I get a correctly filled-in form that is saved in the correct .pdf format so I can file it.</p> <p>If the Judicial Council is going to insist on us using a fillable form, rather than any other format for requesting extensions of time, it should provide us with a functional form that can actually print as a .pdf and that allows us to fill in all the relevant fields. Further, I think that the vast majority of attorneys have been able to provide relevant and critical information regarding their requests for</p>	<p>The committee appreciates the feedback. Staff has ensured that the extension of time forms are functional and the user can save the forms on their computer and print the form properly.</p> <p>The committee has decided not to recommend that the Council's extension of time forms be made mandatory. The committee believes that leaving the forms optional will help ensure that all parties and attorneys are able to efficiently access the courts and request an extension of time to file their briefs without encountering technology-based problems or inconveniences. This will also help ensure that otherwise valid requests for extensions of time will not be rejected simply because the form was not used.</p>
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revise forms APP-001-INFO, APP-004, APP-006, APP-106, CR-126, JV-816, and JV-817)

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			extensions of time filed in other formats. The proposed change is also unnecessary	
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All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
7.	Superior Court of Los Angeles County by Bryan Borys, Director of Research and Data Management	A	<p>The following comments are representative of the Superior Court of California, County of Los Angeles (Court), and do not represent or promote the viewpoint of any particular judicial officer or employee.</p>	No response necessary.
			<p>The Court agrees with proposal SPR24-02, “Appellate Procedure: Civil Case Information Statement, Calendar Preference, and Extension of Time” and its stated purpose.</p>	<p>The committee appreciates the feedback and notes the commenter’s support for the proposal.</p>
			<p>In addition to this proposal, the Court suggests amendments to rule 8.927 to require infraction appellants to use the mandatory form. Rule 8.925 is authority for infraction litigants to seek an extension of time to file a brief. However, it is not clear that it can authorize the court to require an infraction litigant to use the mandatory form.</p>	<p>Amending rule 8.927 is outside the scope of this proposal. The committee may consider whether to recommend adoption of an extension of time form for use in infraction appeals in the future as time and resources allow.</p> <p>In addition, the committee has decided not to recommend that the Council’s extension of time forms be made mandatory. The committee believes that leaving the forms optional will help ensure that all parties and attorneys are able to efficiently access the courts and request an extension of time to file their briefs without encountering technology-based problems or inconveniences. This will also help ensure that otherwise valid requests for extensions of time will not be rejected simply because the form was not used.</p>

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

	Commenter	Position	Comment	Committee Response
8.	Michael M. Ward Retired Disabled Veteran	AM	*[The comment addresses the details of a specific case and does not address any of the issues in the proposal and is not included in the comment chart.]	No response necessary.

DRAFT

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: 8/6/2024

Rules Committee action requested [Choose from the drop-down menu below]:
Recommend JC approval (has circulated for comment)

Title of proposal: Appellate Procedure: Expanded Clerk's Transcripts in Felony Appeals

Proposed rules, forms, or standards (include amend/revise/adopt/approve):
Amend Cal. Rules of Court, rule 8.320

Committee or other entity submitting the proposal:
Appellate Advisory Committee

Staff contact (name, phone and e-mail): Jeremy Varon, (415) 865-7424, jeremy.varon@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:

Annual agenda approved by Rules Committee on (date): October 26, 2023

Project description from annual agenda: Consider adopting a rule of court that would allow litigants in criminal cases to stipulate to the use of the superior court file in lieu of a clerk's transcript. The Appellate Caseflow Workgroup encouraged the Judicial Council to consider this action. The Workgroup noted that use of the case file would eliminate delays associated with parties needing to cure omissions from, or make augmentations to, the standard criminal record. The Executive and Planning Committee has referred this recommendation to the Appellate Advisory Committee for consideration. Currently, under rule 8.128, litigants in unlimited civil appeals may stipulate to the use of the original superior court file instead of a clerk's transcript if a local rule of the reviewing court permits. This project would involve adoption of a similar rule, applicable to criminal appeals.

Out of Cycle: *If requesting September 1 effective date or out of cycle, explain why:*

Additional Information for Rules Committee: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

Additional Information for JC Staff

- **Director Approval** (required for all invitations to comment and reports)

This report or invitation to comment was

reviewed by EGG on (date) June 20, 2024

approved by Office Director (or Designee) (name)
on (date)

If either of above not checked, explain why:

Complete the following for all reports to be submitted to council (optional for ITCs):

- **Form Translations** (check all that apply)

This proposal:

includes forms that have been translated.

includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: [Click or tap here to enter text.](#)

includes forms that staff will request be translated.

- **Form Descriptions** (for any report with new or revised forms)
 - The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is checked, the form descriptions should be approved by a supervisor before submitting this RAR.).

- **Self-Help Website** (check if applicable)
 - This proposal may require changes or additions to self-help web content.



Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 24-148

For business meeting on September 20, 2024

Title

Appellate Procedure: Expanded Clerk's
Transcripts in Felony Appeals

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rule 8.320

Recommended by

Appellate Advisory Committee
Hon. Louis Mauro, Chair

Agenda Item Type

Action Required

Effective Date

January 1, 2025

Date of Report

July 17, 2024

Contact

Jeremy Varon, (415) 865-7424
Jeremy.Varon@jud.ca.gov

Executive Summary

The Appellate Advisory Committee recommends amending California Rules of Court, rule 8.320 to authorize the Courts of Appeal to require, by local rule, that the clerk's transcript in felony appeals include additional court records from the superior court file beyond those currently required in rule 8.320(b) or (d)(1). This amendment is intended to help minimize delays in felony appeals occasioned by the need to cure omissions from, or make augmentations to, the clerk's transcript.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2025, amend California Rules of Court, rule 8.320 to authorize the Courts of Appeal to require, by local rule, that the clerk's transcript in felony appeals include any or all additional court records in the superior court file beyond those required by rule 8.320(b) or (d)(1).

The proposed amended rule is attached at page 8–12.

Relevant Previous Council Action

Rule 8.320, governing the normal record on appeal in felony appeals, was adopted as rule 31 in 2004 and renumbered in 2007. Rule 8.320 has previously been amended effective January 1, 2007, January 1, 2010, and January 1, 2013, to require the clerk's transcript to contain certain materials. The advisory committee comment on rule 8.320 was amended effective January 1, 2014, to state that rules 8.45 and 8.46 address the appropriate handling of sealed and confidential records. Other amendments to the rule are not relevant to this proposal.

Analysis/Rationale

Under California Rules of Court, rule 8.320,¹ the record on appeal in a felony case consists of both a clerk's transcript and a reporter's transcript. Rule 8.320(b) governs the contents of the clerk's transcript in appeals from a judgment of conviction (or an appeal from an order granting a new trial), while rule 8.320(d)(1) governs the clerk's transcript when the People appeal from a judgment on a demurrer to the accusatory pleading or either party appeals from an appealable order. Both rules provide a list of filings, orders, and other items from the superior court proceedings that the superior court clerk must include in the clerk's transcript.²

Rule 8.340 provides procedures for (1) correcting omissions from the clerk's transcript, and (2) requesting that the clerk's transcript be augmented or corrected.³ In its December 2022 report, the Appellate Caseflow Workgroup recognized that the "need to cure omissions from and to make augmentations to the standard criminal record are two of the most significant causes for record preparation delay."⁴

To help reduce the delay that may result from a need to correct omissions from or make augmentations to the clerk's transcript, the committee recommends amending rule 8.320 to add a new subdivision (g) which authorizes the Courts of Appeal to require, by local rule, that the clerk's transcript include "any or all additional court records contained in the superior court file" in addition to those required by rule 8.320(b) or (d)(1).

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

² See rules 8.320(b)(1)–(13) and 8.320(d)(1)(A)–(G); see also rule 8.336(c) & (g) (requiring the superior court clerk to prepare and send the clerk's transcript to the reviewing court and copies to the parties).

³ Rule 8.340(b) & (c).

⁴ Appellate Caseflow Workgroup, Report to the Chief Justice (Dec. 6, 2022), p. 20, newsroom.courts.ca.gov/sites/default/files/newsroom/2022-12/Appellate%20Caseflow%20Workgroup%20Report_Final.pdf. The Workgroup was appointed by former Chief Justice Tani G. Cantil-Sakauye in June 2022. The Chief Justice directed the Workgroup to "review policies, procedures, and management and administrative practices of the Courts of Appeal, and to recommend measures to promote transparency, accountability, and efficiency in issuing timely judgments." (*Id.* at p. 1.)

The new subdivision defines “court records” as having the same meaning used in rule 2.502(3).⁵ In addition, the new subdivision would allow these local rules to require the clerk’s transcript to include copies of exhibits admitted into evidence, refused, or lodged.

The committee has concluded that authorizing the Courts of Appeal to adopt local rules in this area is preferable to a statewide rule expanding clerk’s transcripts. An expanded clerk’s transcript might impose burdens on both the Court of Appeal and superior court clerks. A Court of Appeal would receive a larger record on appeal that could include a number of items irrelevant to the issues on appeal, complicating the record review process. Additionally, requiring superior court clerks to compile larger clerk’s transcripts would impose responsibilities and costs that would vary based on staffing levels and technological capabilities. For example, some superior courts maintain paper records. In those courts, the time and expense of copying and scanning additional court records, or all court records in the court file, could be significant. Even in superior courts that maintain electronic records, the case management systems employed may vary in their capabilities such that what is easy to do in one court may be difficult in another.

The Courts of Appeal are in a position to assess the needs and capabilities in their districts and weigh the potential benefits and burdens of preparing or reviewing a larger record on appeal. They could consider a local rule that would require commonly needed records or exhibits to be included in the clerk’s transcript. This could minimize record preparation-related delays.

Policy implications

This proposal strives to balance potential burdens and costs with the possible benefits of requiring an expanded clerk’s transcript in felony appeals. The proposal authorizes Courts of Appeal to enact local rules rather than imposing a statewide rule expanding the contents of the clerk’s transcript. Because this proposal could help improve appellate efficiency, it is consistent with the *Strategic Plan for California’s Judicial Branch*, specifically the goal of Quality of Justice and Service to the Public (Goal IV).

Comments

This proposal circulated for public comment from March 29 to May 3, 2024, as part of the regular spring comment cycle. Eight responsive comments were received: one from the Court of Appeal, Fourth Appellate District, Division One; two from superior courts (for Los Angeles County and Orange County); one from a court supervisor with the Superior Court of Stanislaus County; one from the San Diego County District Attorney’s Office; one from the Orange County Bar Association; one from the California Lawyers Association, Committee on Appellate Courts (CAC); and one from the Judicial Council’s Joint Rules Subcommittee of the Trial Court

⁵ Rule 2.502(3) (defining court record as, in relevant part, “any document, paper, or exhibit filed in an action or proceeding; any order or judgment of the court; and any item listed in Government Code section 68151(a)—excluding any reporter’s transcript for which the reporter is entitled to receive a fee—that is maintained by the court in the ordinary course of the judicial process. The term does not include the personal notes or preliminary memoranda of judges or other judicial branch personnel . . .”).

Presiding Judges Advisory Committee and the Court Executives Advisory Committee (JRS). With one exception, the commenters were supportive of the proposal. A chart with the full text of the comments received and the committee's responses is attached at pages 13–33. The principal comments and responses are summarized below.

Whether the rule text should include reference to rule 2.502(3)

As circulated for comment, the proposed rule language provided that a reviewing court's local rule could include either "All contents of the superior court file" or "Additional filings, orders, or other documents contained in the superior court file." The advisory committee comment in the rule then stated that, for purposes of the rule, "items excluded from the definition of 'court records' under rule 2.502(3) are not considered part of the superior court file." The committee sought specific comment on whether the rule 2.502(3) definition should be included in the rule text.

The commenters who addressed this question uniformly supported including the definition in the rule text. The commenters noted this would improve clarity and would prevent the definition from being overlooked. JRS recommended that the relevant parts of the rule replace "superior court file" with "superior court file as defined by Rule 2.502(3)."

In light of these comments, the committee has modified the proposed rule to improve clarity and to eliminate potential confusion as to the scope of the rule. The proposed rule now states that local rules may require the clerk's transcript to include "any or all additional court records contained in the superior court file." It then provides that "For purposes of this provision, 'court records' has the meaning provided in rule 2.502(3)."

Whether the rule should also include exhibits

The committee sought comment on whether the proposal should include a provision allowing for the reviewing court's local rule to require inclusion of exhibits in the clerk's transcripts. The Court of Appeal, Fourth Appellate District, Division One; the Superior Court of Orange County; CAC; and the San Diego County District Attorney's Office expressed support for such a provision.

CAC noted that an "appellate record without the exhibits does not give the reader the complete picture of what happened at trial." While recognizing that rule 8.224 includes a process for exhibits to be officially transmitted to the reviewing court, CAC noted that appellate attorneys often need access to the exhibits when initially reviewing the record, evaluating the case, and crafting arguments. It also stated that the frequent need to file requests to have exhibits transferred to the reviewing court consumes valuable judicial resources and delays adjudication of the appeal. Similarly, the Court of Appeal, Fourth Appellate District, Division One, noted that the rule 8.224 procedure "sometimes delays record completion, particularly in matters where exhibits are essential to a party's argument," and that a local rule directing superior courts to routinely request exhibits would reduce delays.

Additionally, the San Diego County District Attorney's Office encouraged the committee to consider "potential hurdles related to the multitude of forms that evidence can take" and the way these forms of evidence could be transmitted to the reviewing court. The Superior Court of Orange County recommended that the reviewing courts add to their local rules a provision as to "how" they want the exhibits transmitted and exhibited.

In light of these comments, the committee has decided to keep a provision in the proposed rule authorizing the reviewing court's local rule to require inclusion in the clerk's transcript of exhibits admitted, refused, or lodged in the superior court. To implement this provision, the proposal would also amend rule 8.320(e) to provide that exhibits may be transmitted pursuant to the new rule 8.320(g)(2) or the existing rule 8.224 procedure.

Finally, for the reasons discussed above as to why the committee believes local rules are preferable in this area, the committee believes that questions of how, and in what form, exhibits should be transmitted are best addressed by the local rules promulgated pursuant to this proposal.

Whether the rule should include a stipulation requirement

The committee sought comment on whether the proposed rule should include a requirement that the parties stipulate to the use of an expanded clerk's transcript. The commenters did not support including such a requirement. CAC noted that such a requirement would essentially nullify the rule, given that attorneys are frequently not appointed until the record is certified and the Attorney General's Office does not assign attorneys until the opening brief is filed. The San Diego County District Attorney's Office felt that such a requirement would impose an unwarranted additional step.

Given these comments, the committee does not recommend such a requirement be included in the proposed rule. First, the committee notes that use of an expanded clerk's transcript based on local rule would not prejudice the parties, either in a financial sense (since the parties do not pay for preparation of the clerk's transcript) or in their ability to present their arguments. Second, the committee notes that rules 8.863 and 8.914, which allow the use of the trial court file in lieu of a clerk's transcript in misdemeanor and infraction appeals, respectively, do not require the parties' stipulation.

Whether the proposed rule should encompass appeals covered by rule 8.320(d)

The committee sought specific comment on whether rule 8.320(d) should be similarly amended to allow the reviewing court's local rule to expand the clerk's transcript in appeals governed by that rule. The commenters split on this question.

On the one hand, the Court of Appeal, Fourth Appellate District, Division One; the Superior Court of Los Angeles County; and the San Diego County District Attorney's Office supported including rule 8.320(d) in the proposal. The Court of Appeal, Fourth Appellate District, Division One, notes that appeals from postjudgment motions are growing in complexity and frequently require a detailed review of complete records. It suggested that a local rule expanding the clerk's transcript in those cases would allow for such appeals to proceed more expeditiously. Similarly,

the San Diego County District Attorney's Office noted that it frequently encounters issues with obtaining an adequate clerk's transcript in appeals covered by the rule.

On the other hand, the Superior Court of Orange County opposed including rule 8.320(d) in the proposed rule. Additionally, a court supervisor from the Superior Court of Stanislaus County noted that appeals covered by rule 8.320(d) may frequently involve older case files that may not be digitized and may be housed in offsite storage. She thus cautioned that expanding the clerk's transcript in those cases may impose a significant burden on clerk staff to digitize and build the expanded transcript.

The committee has revised the proposed rule to authorize reviewing courts to adopt local rules that would expand the clerk's transcript in appeals covered by rule 8.320(d). The committee is cognizant of the potential costs and burdens expanded clerks' transcripts may impose on superior courts. It envisions that those burdens will be considered by the Courts of Appeal in determining whether to adopt a local rule authorized by this proposal and, if so, the scope of such a local rule.

Statewide applicability versus local rules; burden on superior courts

A court supervisor from the Superior Court of Stanislaus County disagreed with the proposal authorizing the Courts of Appeal to adopt local rules expanding the clerk's transcript. She felt that a statewide approach would be less confusing for parties and their counsel and more fair to all litigants regardless of where their case is filed.

She also cautioned that expanding the clerk's transcript can have significant costs on superior courts. For example, she noted that in superior courts maintaining paper records, expanded clerk's transcripts could add significant personnel costs due to the additional time needed to scan and index paper files to prepare the record. She also stated it could result in courts having to purchase additional equipment to digitize paper records. Finally, she noted that such burdens would depend largely on the staffing level of each superior court's appeals department and whether the court's records are primarily paper or electronic.

Although a statewide rule might provide certain benefits, the committee does not recommend a statewide rule at the present time, for reasons discussed above. Differences in staffing and record management in the superior courts, referenced by the commenter, make a one-size-fits-all approach to expanding the clerk's transcript difficult at best. As for the risk of confusion, counsel should be aware of the need to look for, and comply with, local rules.

The committee also concludes that all parties, regardless of where their case is pending, will receive fair process under the proposal. It will not deprive a party of any process to which they were entitled previously: rule 8.320(b) and (d)(1) will continue to require certain materials be automatically included in the clerk's transcript, and parties may still utilize rule 8.340 to augment or correct the record. What this proposal does is allow Courts of Appeal to assess their local conditions and craft a local rule in an effort to improve the efficiency of the record preparation process.

Alternatives considered

The committee considered the alternative of taking no action but concluded that the proposal could help reduce delays in the appellate process.

The committee also considered recommending a statewide rule that would expand the clerk's transcript in felony appeals but does not recommend such an approach for reasons stated above.

Finally, the Appellate Caseflow Workgroup encouraged the Judicial Council to consider "adopting a rule of court that would allow litigants in criminal cases to stipulate to the use of the superior court file in lieu of a clerk's transcript."⁶ As stated in the invitation to comment, the committee concluded that such a rule would add complexity to the rules and record designation process. By contrast, the committee believes this proposal advances the workgroup's goal of seeking to streamline the record preparation process and does so within the clerk's transcript procedures.

Fiscal and Operational Impacts

If a Court of Appeal adopts a local rule expanding the clerk's transcript in a felony appeal as authorized by this proposal, superior court clerks might need to take additional time to compile the expanded clerk's transcript, and they may need to purchase additional equipment to digitize paper records. As detailed above, the committee believes these potential impacts will vary among superior courts based on the staffing level and case management system employed in each court.

The committee envisions that the Courts of Appeal will consider the potential impact on the superior courts in their district before adopting a local rule authorized by this proposal. However, the committee anticipates that local rules expanding the clerk's transcript in felony appeals could reduce appellate delays caused by the need to correct omissions from, or make augmentations to, the clerk's transcript.

Attachments and Links

1. Cal. Rules of Court, rule 8.320, at pages 8–12
2. Chart of comments, at pages 13–33

⁶ Appellate Caseflow Workgroup, *supra*, at p. 2.

Rule 8.320 of the California Rules of Court is amended, effective January 1, 2025, to read:

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

2
3 **(a) Contents**

4
5 If the defendant appeals from a judgment of conviction, or if the People appeal
6 from an order granting a new trial, the record must contain a clerk's transcript and a
7 reporter's transcript, which together constitute the normal record.
8

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

10
11 The clerk's transcript must contain:

- 12
13 (1) The accusatory pleading and any amendment;
14
15 (2) Any demurrer or other plea;
16
17 (3) All court minutes;
18
19 (4) All jury instructions that any party submitted in writing and the cover page
20 required by rule 2.1055(b)(2) indicating the party requesting each instruction,
21 and any written jury instructions given by the court;
22
23 (5) Any written communication between the court and the jury or any individual
24 juror;
25
26 (6) Any verdict;
27
28 (7) Any written opinion of the court;
29
30 (8) The judgment or order appealed from and any abstract of judgment or
31 commitment;
32
33 (9) Any motion for new trial, with supporting and opposing memoranda and
34 attachments;
35
36 (10) The notice of appeal and any certificate of probable cause filed under rule
37 8.304(b);
38
39 (11) Any transcript of a sound or sound-and-video recording furnished to the jury
40 or tendered to the court under rule 2.1040;
41
42 (12) Any application for additional record and any order on the application;
43

1 (13) And, if the appellant is the defendant:
2

3 (A) Any written defense motion denied in whole or in part, with supporting
4 and opposing memoranda and attachments;
5

6 (B) If related to a motion under (A), any search warrant and return and the
7 reporter's transcript of any preliminary examination or grand jury
8 hearing;
9

10 (C) Any document admitted in evidence to prove a prior juvenile
11 adjudication, criminal conviction, or prison term;
12

13 (D) The probation officer's report; and
14

15 (E) Any court-ordered diagnostic or psychological report required under
16 Penal Code section 1203.03(b) or 1369.
17

18
19 **(c) Reporter's transcript**
20

21 The reporter's transcript must contain:
22

23 (1) The oral proceedings on the entry of any plea other than a not guilty plea;
24

25 (2) The oral proceedings on any motion in limine;
26

27 (3) The oral proceedings at trial, but excluding the voir dire examination of
28 jurors and any opening statement;
29

30 (4) All instructions given orally;
31

32 (5) Any oral communication between the court and the jury or any individual
33 juror;
34

35 (6) Any oral opinion of the court;
36

37 (7) The oral proceedings on any motion for new trial;
38

39 (8) The oral proceedings at sentencing, granting or denying of probation, or other
40 dispositional hearing;
41

42 (9) And, if the appellant is the defendant:
43

- 1 (A) The oral proceedings on any defense motion denied in whole or in part
2 except motions for disqualification of a judge and motions under Penal
3 Code section 995;
4
5 (B) The closing arguments; and
6
7 (C) Any comment on the evidence by the court to the jury.
8
9

10 **(d) Limited normal record in certain appeals**
11

12 If the People appeal from a judgment on a demurrer to the accusatory pleading, or
13 if the defendant or the People appeal from an appealable order other than a ruling
14 on a motion for new trial, the normal record is composed of:
15

16 (1) *Clerk's transcript*
17

18 A clerk's transcript containing:
19

- 20 (A) The accusatory pleading and any amendment;
21
22 (B) Any demurrer or other plea;
23
24 (C) Any written motion or notice of motion granted or denied by the order
25 appealed from, with supporting and opposing memoranda and
26 attachments;
27
28 (D) The judgment or order appealed from and any abstract of judgment or
29 commitment;
30
31 (E) Any court minutes relating to the judgment or order appealed from and:
32
33 (i) If there was a trial in the case, any court minutes of proceedings
34 at the time the original verdict is rendered and any subsequent
35 proceedings; or
36
37 (ii) If the original judgment of conviction is based on a guilty plea or
38 nolo contendere plea, any court minutes of the proceedings at the
39 time of entry of such plea and any subsequent proceedings;
40
41 (F) The notice of appeal; and
42

1 (G) If the appellant is the defendant, all probation officer reports and any
2 court-ordered diagnostic report required under Penal Code section
3 1203.03(b).
4

5 (2) *Reporter's transcript*
6

7 (A) A reporter's transcript of any oral proceedings incident to the judgment
8 or order being appealed; and
9

10 (B) If the appeal is from an order after judgment, a reporter's transcript of:
11

12 (i) The original sentencing proceeding; and
13

14 (ii) If the original judgment of conviction is based on a guilty plea or
15 nolo contendere plea, the proceedings at the time of entry of such
16 plea.
17

18
19 (e) **Exhibits**
20

21 Exhibits admitted in evidence, refused, or lodged are deemed part of the record, but
22 may be transmitted to the reviewing court only as provided in (g)(2) or rule 8.224.
23
24

25 (f) **Stipulation for partial transcript**
26

27 If counsel for the defendant and the People stipulate in writing before the record is
28 certified that any part of the record is not required for proper determination of the
29 appeal, that part must not be prepared or sent to the reviewing court.
30

31 (g) **Additional clerk's transcript materials required by local rule**
32

33 In addition to the items listed in (b) and (d)(1), the reviewing court may, by local
34 rule, require the clerk's transcript to include any or all additional court records
35 contained in the superior court file.
36

37 (1) For purposes of this provision, "court records" has the meaning provided in
38 rule 2.502(3).
39

40 (2) The reviewing court's local rule may require the clerk's transcript to include
41 copies of exhibits admitted into evidence, refused, or lodged.
42

43 **Advisory Committee Comment**

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Rules 8.45–8.46 address the appropriate handling of sealed and confidential records that must be included in the record on appeal. 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 (d)(1)(E). This rule identifies the minutes that must be included in the record. The trial court clerk may include additional minutes beyond those identified in this rule if that would be more cost-effective.

Subdivision (g). This rule authorizes the Courts of Appeal to adopt local rules that require additional court records, as defined by rule 2.502(3), to be included in the clerk’s transcript, up to all court records in the superior court file. For purposes of this rule, items excluded from the definition of “court records” under rule 2.502(3) are not considered part of the superior court file.

Rule 8.483 governs the normal record and exhibits in civil commitment appeals.

SPR24-03

Appellate Procedure: Expanded Clerk’s Transcript in Criminal Appeals (amend Cal. Rules of Court, rule 8.320)

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

	Commenter	Position	Comment	Committee Response
1.	Sandy Almansa Court Supervisor, Appeals Division Superior Court of Stanislaus County	AM	<p>1. "Does the proposal appropriately address the stated purpose?"</p> <p>Not in my opinion. The proposal aims to address the stated purpose, however, allowing for local rules that might differ in each Court of Appeal could make the appellate process more confusing for parties and their counsel, especially if they are litigating cases in different appellate districts. This may result in additional omissions and/or augment motions, which could also delay perfecting the record.</p> <p>Changes should be the same in all courts, for the sake of clarity and for it to be a fair process to all litigants, regardless of where their case is filed.</p>	<p>The committee appreciates the feedback.</p> <p>The committee believes that such a statewide rule is not feasible at this time. The superior courts differ in case management systems, technological capabilities, and staffing. These differences mean that a rule expanding the clerk’s transcript may impose a significant burden on one superior court, while having a negligible impact on another. The Courts of Appeal are in a better position to determine the capabilities of the superior courts in their districts and weigh the potential time-saving benefits against the potential costs inherent in preparing and reviewing a larger record on appeal. The committee anticipates that the Courts of Appeal would undertake this balancing approach in deciding whether, and if so how, to craft a local rule for their district.</p> <p>The committee believes the risk is low that counsel who appear in different appellate districts will be confused. Presumably, counsel is aware of the need to comply with the local rules of the courts in which they practice. Further, under the proposal, rule 8.320 still requires certain materials to be included in the clerk’s transcript. Thus, regardless of where a case is pending, counsel will know that the clerk’s transcript will include certain documents at a minimum.</p> <p>Finally, the committee does not believe that this proposal undermines litigants’ right to a fair process. The proposal does not authorize a Court</p>

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Appellate Procedure: Expanded Clerk’s Transcript in Criminal Appeals (amend Cal. Rules of Court, rule 8.320)

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

	Commenter	Position	Comment	Committee Response
				<p>of Appeal to constrict the items required to be included in the clerk’s transcript under rule 8.320. Additionally, litigants retain the ability to move for augmentation of the record to include additional items filed or lodged in the superior court but not included in the clerk’s transcript. This proposal simply allows the Court of Appeal to assess local conditions and consider crafting a local rule to improve the efficiency of the record preparation process.</p>
			<p>2. "Should the rule text define “superior court file” as excluding items not considered “court records” as defined by rule 2.502(3), or is it enough to have this limitation addressed in the advisory committee comment? "</p> <p>Excluded items should be specified, as noted in the comments, otherwise it may be too vague and leave things open to interpretation. The focus should be on clarity.</p>	<p>The committee has revised the proposed rule so it now provides that the “reviewing court may, by local rule, require the clerk’s transcript to include any or all additional court records contained in the superior court file.” It then states that “For purposes of this provision ‘court records’ has the meaning provided in rule 2.502(3).” The committee concludes that rule 2.502(3)’s definition, and the proposed rule text’s reference to that definition, is sufficiently clear.</p>
			<p>3. "Should the proposal include a provision allowing for a Court of Appeal’s local rule to require inclusion of exhibits in the clerk’s transcript?"</p> <p>If it is required in one Court of Appeal, it should be required in all districts, for the same reasons noted in prior question number one.</p>	<p>The committee appreciates the feedback. See previous response to commenter’s first comment.</p>

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Appellate Procedure: Expanded Clerk’s Transcript in Criminal Appeals (amend Cal. Rules of Court, rule 8.320)

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	Commenter	Position	Comment	Committee Response
			<p>4. "In addition to authorizing Courts of Appeal to adopt a local rule expanding the contents of the clerk’s transcript, should the proposal include a requirement that the parties stipulate before an expanded clerk’s transcript is used?"</p> <p>My thought is that the California Rules of Court should be changed to require either the entire case file, or in the alternative, to modify the rules of court to define specific additional items that should be included in an expanded case file. It should not be a local rule, and it should not require parties to have to stipulate to an expanded case file.</p> <p>5. "Should rule 8.320(d) be similarly amended to allow the Courts of Appeal to adopt a local rule expanding the contents of the clerk’s transcript in appeals governed by that rule?"</p> <p>While it may be a good idea to expand the contents of the clerk’s transcript in a limited record appeal, I feel the Judicial Council should simply modify the California Rules of Court to include specifics that should be included in a</p>	<p>The committee appreciates the feedback. As to the feasibility of a statewide rule, see previous response to commenter’s first comment.</p> <p>As to a requirement that the parties stipulate, the committee has determined that the proposal should not include a requirement that the parties stipulate to the use of an expanded clerk’s transcript. Use of an expanded clerk’s transcript would not prejudice either party to an appeal, either financially or in their ability to present their case. Unlike in civil cases, where the parties must stipulate before the superior court file can be used in lieu of a clerk’s transcript (see rule 8.128(a)), parties in felony appeals do not pay for preparation of the clerk’s transcript.</p> <p>Additionally, the committee notes that rules 8.863 and 8.914, which allow the use of the trial court file in lieu of a clerk’s transcript in misdemeanor and infraction appeals, respectively, do not require the parties’ stipulation.</p> <p>As to the feasibility of a statewide rule, see previous response to commenter’s first comment.</p> <p>The committee appreciates the feedback about the potential burden an expanded clerk’s transcript could pose to courts in cases covered by rule 8.320(d), particularly in limited record appeals where the underlying criminal record is in paper or in off-site storage.</p>

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Appellate Procedure: Expanded Clerk’s Transcript in Criminal Appeals (amend Cal. Rules of Court, rule 8.320)

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

	Commenter	Position	Comment	Committee Response
			<p>limited record appeal, so it may apply in all Courts of Appeal, so it may be implemented statewide.</p> <p>For Courts that do not have all of their records digitized, expanding the definitions of a limited record, or requiring the use of an entire case file for the limited record could be a significant issue because limited record appeals can involve older case files that are not digitized, and may be housed off-site in storage.</p> <p>For example, most of the limited record appeals our court has filed in the last year are appeals after decisions on petitions for resentencing. Most of these cases are paper records, or they are a combination of digital and paper records. This could add a significant impact in the process as to the time required for digitizing and building the transcripts with these older records.</p> <p>The advisory committee also seeks comments from courts on the following cost and implementation matters:</p> <p>1. "Would the proposal provide cost savings? If so, please quantify."</p> <p>It would not provide cost savings. In fact, it has the potential to add significant personnel costs due to additional staff time spent on scanning and indexing paper files to prepare the record. It may even require allocating additional staff in some</p>	<p>The committee has included in the proposed rule a provision authorizing the Courts of Appeal to adopt a local rule expanding the clerk’s transcript beyond the items identified in 8.320(d)(1). The committee anticipates that the costs and burdens identified by the commenter would be considered by the Courts of Appeal in determining whether, and how, to craft a local rule under the proposed rule.</p> <p>The committee appreciates the feedback on the nature of the burden a local rule adopted pursuant to the proposed rule would place on superior courts that maintain paper files. The committee anticipates that the potential costs and burdens identified by the commenter would be considered by the Courts of Appeal in deciding whether, and how, to craft a local rule pursuant to the proposed rule.</p>

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Appellate Procedure: Expanded Clerk’s Transcript in Criminal Appeals (amend Cal. Rules of Court, rule 8.320)

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

	Commenter	Position	Comment	Committee Response
			<p>Courts as well as purchasing equipment to digitize paper records.</p> <p>2. What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</p> <p>The following factors would need to be considered if this is implemented as is:</p> <ul style="list-style-type: none">a. Additional staff may be required to be added to Appeals Units in some Courts, depending on whether their records are already digitized. That may require recruitment and the hiring process, which takes time.b. Additional costs that may be required for equipment, scanners, etc. Budget-related limitations may impact acquisition of equipment and personnel needed to accomplish the new rules.c. If the "Local Rules" options are approved, then it will take each Court of Appeal some time to determine what they will require - full case file or expanded transcripts, exhibits or not, etc. The timeline for this is unknown and may vary in each Court of Appeal.d. Up to 1 month to review “Local Rules” of the Appellate Court and to revise procedures (if Local Rules are implemented)e. Up to 1 month of training on new procedures.	<p>The committee appreciates the feedback on the potential implementation costs of a local rule adopted pursuant to this proposal. The committee anticipates that the potential costs and burdens identified by the commenter would be considered by the Courts of Appeal in deciding whether, and how, to craft a local rule pursuant to the proposed rule.</p>

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Appellate Procedure: Expanded Clerk’s Transcript in Criminal Appeals (amend Cal. Rules of Court, rule 8.320)

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

	Commenter	Position	Comment	Committee Response
			<p>3. Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? For our court, it might be sufficient, depending on whether a local rule provision is included for the Courts of Appeal, and what decision is made as to what will be required. A more realistic timeline would be six months.</p>	<p>The committee appreciates the feedback.</p>
			<p>4. How well would this proposal work in courts of different sizes?</p> <p>In some of the larger courts, it might not be as much of an impact, as these courts typically have fully staffed appeals department. If the court’s records are primarily paper, then it could be a significant impact – process development, equipment, a possible need for more staff and additional training.</p> <p>In medium sized courts, it may have a significant impact as well, and may result in increased workload, additional costs, and additional staffing and training. Again, the unknown factors are whether or not all records are digitized and what each local Court of Appeal decides to do with the Local Rule options.</p> <p>In smaller sized courts, it may be a tremendous impact with increased workloads, increase in costs related to staffing, equipment, training, and they have less staff available to apply their time to this</p>	<p>The committee appreciates the feedback regarding the potential impact the proposal may have on courts of different sizes. The committee anticipates that the potential costs and burdens identified by the commenter would be considered by the Courts of Appeal in deciding whether, and how, to craft a local rule pursuant to the proposed rule.</p>

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	Commenter	Position	Comment	Committee Response
			process. The unknown factors again are regarding the digitization of their court's records, and what the Court of Appeal in their area will require.	
2.	California Lawyers Association Litigation Section, Committee on Appellate Courts by Saul Bercovitch, Associate Executive Director, Governmental Affairs	AM	<p>The Committee on Appellate Courts (CAC) of the California Lawyers Association's Litigation Section submits this response to the Invitation to Comment on SPR24-03. Established in 2018, the California Lawyers Association is a nonprofit, voluntary organization comprising thousands of licensed attorneys that is dedicated to the professional advancement of attorneys practicing in the State of California. The CAC consists of over twenty experienced appellate practitioners and court staff, drawn from a wide range of practice areas. As part of its mission, the CAC frequently shares its views regarding proposals to change rules that govern appellate practice.</p> <p>In SPR24-03, the Advisory Appellate Committee (AAC) proposes to amend California Rules of Court, rule 8.230 to authorize Courts of Appeal to create local rules requiring that the clerk's transcript in felony appeals include: (1) all contents of the superior court file or (2) additional items from the superior court file beyond those currently listed in rule 8.320(b). A proposed new paragraph would also authorize local rules to require the clerk's transcript to include copies of exhibits admitted into evidence, refused, or lodged. The CAC supports these changes. The</p>	<p>No response necessary.</p> <p>The committee notes the commenter's support for the proposal.</p>

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Appellate Procedure: Expanded Clerk’s Transcript in Criminal Appeals (amend Cal. Rules of Court, rule 8.320)

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

	Commenter	Position	Comment	Committee Response
			<p>CAC also cautions against requiring a stipulation before an expanded clerk’s transcript is used.</p> <p>1. CAC Recognizes the Need for Complete Transcripts The CAC recognizes the need for intervention in the criminal appellate record creation process. We frequently see incomplete clerk’s transcripts which require omission letters (Rule 8.340(b)) or motions to augment with documents necessary to competently consider arguable issues. Incomplete clerk transcripts often take months to correct by curing omissions or augmenting the record. These delays extend the timeline of the case, sometimes to the extent that an appellate decision is not issued until after the underlying criminal sentence is served.</p> <p>CAC agrees with the AAC’s proposal to give individual Courts of Appeal the flexibility to decide how best to quickly and accurately prepare the necessary record. As an example, the Second District has a local rule which expands the contents of the clerk’s transcript in criminal and juvenile delinquency appeals. (<i>See</i> Local Rule 1 https://www.courts.ca.gov/2133.htm.) Creating local rules in other Courts of Appeal would facilitate more complete records when the clerk’s transcript is initially assembled, requiring fewer omission letters or motions to augment in the Court of Appeal.</p>	<p>The committee appreciates the information regarding the delay caused by incomplete clerk’s transcripts and the need to cure omissions or to augment the record. The committee also appreciates the commenter’s feedback that the proposal will help alleviate these delays. Finally, the committee notes the Second District Court of Appeal’s local rule.</p>

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Appellate Procedure: Expanded Clerk’s Transcript in Criminal Appeals (amend Cal. Rules of Court, rule 8.320)

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

	Commenter	Position	Comment	Committee Response
			<p>2. Requested Feedback Supporting Inclusion of Trial Exhibits In response to the AAC’s request for feedback regarding exhibits, the CAC strongly supports giving Courts of Appeal greater flexibility regarding exhibits. As the invitation notes, trial exhibits are technically deemed part of the record on appeal (Rule 8.320(e)), but they traditionally are not included in the clerk’s transcript on appeal and thus not automatically provided to attorneys. An appellate record without the exhibits does not give the reader the complete picture of what happened at trial. In testimony and argument, witnesses and attorneys often reference diagrams, maps, cell phone logs, social media posts or other documentary exhibits that can and should be photocopied/scanned and included in a clerk’s transcript. While it is true that exhibits can be officially transmitted to the reviewing court (Rule 8.224), the appellate attorneys need access to the exhibits when initially reviewing the record, evaluating the case, and crafting arguments. Appellate attorneys do not always live in the county where the trial took place, making it difficult to view exhibits in person at the courthouse where exhibits are stored.</p>	<p>The committee appreciates the feedback. The committee has included in the proposal a provision authorizing the Courts of Appeal to adopt local rules requiring that the clerk’s transcript include exhibits admitted into evidence, refused, or lodged. This provision will allow the Court of Appeal to assess its needs and the capabilities of the superior courts in its district and determine whether including exhibits in the clerk’s transcript will improve appellate efficiency. Additionally, the committee believes that this provision will give the Courts of Appeal flexibility to determine in their local rules how various forms of exhibits included in the clerk’s transcript should be transmitted.</p>
			<p>Similarly, limiting access to a physical location often poses significant challenges to attorneys and clients with mobility impairments.</p>	<p>See above response.</p>

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Appellate Procedure: Expanded Clerk’s Transcript in Criminal Appeals (amend Cal. Rules of Court, rule 8.320)

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	Commenter	Position	Comment	Committee Response
			<p>Consequently, a rule including <i>documentary</i> exhibits (relevant marked documents, photos, cell phone call logs, social media posts, maps, etc.) in the clerk’s transcript would provide both parties in the appeal the critical full picture of the trial up front and also minimizes the need for extensions of time for attorneys on both sides to view exhibits in person or prepare motions to augment in the Court of Appeal. Again, the Second District already has a local rule (Local Rule 1(a)(7)) on this subject</p>	<p>See above response.</p>
			<p>3. Requested Feedback against Requiring a Stipulation The CAC strongly cautions against a requirement that parties must stipulate before an expanded clerk’s transcript is used. Attorneys are not usually appointed until the record on appeal is certified and the Attorney General’s Office does not assign an attorney to a criminal appeal until the opening brief is filed. Thus, an appointed defense attorney and a deputy attorney general are unlikely to be able to stipulate to an expanded record when a case is first initiated.</p>	<p>The committee appreciates the feedback. The committee has determined that the proposal should not include a requirement that the parties stipulate to the use of an expanded clerk’s transcript. Use of an expanded clerk’s transcript would not prejudice either party to an appeal, either financially or in their ability to present their case. Unlike in civil cases, where the parties must stipulate before the superior court file can be used in lieu of a clerk’s transcript (see rule 8.128(a)), parties in felony appeals do not pay for preparation of the clerk’s transcript.</p> <p>Additionally, the committee notes that rules 8.863 and 8.914, which allow the use of the trial court file in lieu of a clerk’s transcript in misdemeanor and infraction appeals, respectively, do not require the parties’ stipulation.</p>
3.	Fourth District Court of Appeal, Division One	A	I write in response to the advisory committee’s invitation to comment on SPR24-03, which	No response necessary.

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Appellate Procedure: Expanded Clerk’s Transcript in Criminal Appeals (amend Cal. Rules of Court, rule 8.320)

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

	Commenter	Position	Comment	Committee Response
	by Karen M. Harkins, Managing Attorney		<p>proposes amending California Rules of Court, rule 8.320.</p> <p>First, authorizing Courts of Appeal to adopt a local rule to require the transcript to include “[a]dditional filings, orders, or other documents contained in the superior court file,” would permit the Courts of Appeal to specify what additional documents should routinely be included. This would allow courts to explore augmentation requests and identify the types of documents that records from superior courts in their region routinely omit. Courts of Appeal can then craft local rules that meet their unique needs, ultimately saving time while limiting the burden.</p> <p>Second, the proposed rule does not modify rule 8.320(e), which requires exhibits to be transmitted as provided in rule 8.224. The procedure detailed in rule 8.224 sometimes delays record completion, particularly in matters where exhibits are essential to a party’s argument. Allowing a local rule directing superior courts to include routinely requested exhibits would reduce delays in the record gathering process, improving efficiency.</p>	<p>The committee appreciates the feedback.</p> <p>The committee appreciates the information regarding the delay that can result from exhibits being transmitted to the Court of Appeal under rule 8.224.</p> <p>The committee has included in the proposal a provision authorizing the Courts of Appeal to adopt local rules requiring that the clerk’s transcript include exhibits admitted into evidence, refused, or lodged. This provision will allow the Court of Appeal to assess its needs and the capabilities of the superior courts in its district and determine whether including exhibits in the clerk’s transcript will improve appellate efficiency. Additionally, the committee believes that this provision will give the Courts of Appeal flexibility</p>

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Appellate Procedure: Expanded Clerk’s Transcript in Criminal Appeals (amend Cal. Rules of Court, rule 8.320)

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

	Commenter	Position	Comment	Committee Response
				to determine how various forms of exhibits included in the clerk’s transcript should be transmitted.
			<p>Third, the advisory committee comment to rule 8.320 currently references sealed and confidential records, noting their appropriate handling is addressed in Rules 8.45-8.46. Confidential and sealed records are frequent subjects of requests for augmentation. To improve efficiency, it would be helpful to include a clarification in the advisory committee comments specifying that sealed and confidential records are part of the superior court record and should be transmitted as part of the clerk’s transcript, consistent with rules 8.45-8.46. Authorizing adoption of a local rule, as discussed above, would also permit Courts of Appeal to direct inclusion of specific, routinely requested confidential or sealed documents.</p>	<p>The committee declines to provide any further clarification in the advisory committee comment regarding handling of sealed and confidential records. The committee believes such clarification is unnecessary.</p> <p>The definition of “court record” contained in rule 2.502(3) is incorporated into the proposal. In relevant part, this definition includes “any document, paper, or exhibit filed in an action or proceeding.” Sealed or confidential records fit within this definition. Further, the advisory committee comment states that “Rules 8.45-8.46 address the appropriate handling of sealed and confidential records that must be included in the record on appeal.”</p> <p>Accordingly, the committee concludes that it is sufficiently clear that the proposal authorizes the Courts of Appeal to require, by local rule, that sealed or confidential documents be included in the clerk’s transcript. Such sealed or confidential documents would be handled pursuant to Rules 8.45 and 8.46.</p>
			Finally, given the growing complexity and need for detailed review of complete records of	The committee appreciates the feedback. The committee has included in the proposal a provision

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

	Commenter	Position	Comment	Committee Response
			conviction in appeals from postjudgment motions like those brought pursuant to Penal Code section 1172.6, it makes sense to amend rule 8.320(d) to allow Courts of Appeal to similarly adopt a local rule expanding the contents of the clerk’s transcript in appeals governed by that rule. A local rule expanding the clerk’s transcript in those matters from the outset would permit them to proceed more expeditiously.	allowing the Courts of Appeal to require the clerk’s transcript to include additional items beyond those required by rule 8.320(d)(1). The committee concludes that such a provision will help avoid delays resulting from motions to augment the record in appeals covered by this rule.
4.	Orange County Bar Association By Christina Zabat-Fran, President	A	Expanding the Clerk’s Transcript is appropriate.	The committee notes the commenter’s support for the proposal.
5.	San Diego County District Attorney's Office by Emmaline Campbell, Deputy District Attorney	A	<p>The San Diego County District Attorney’s Office submits this comment in support of SPR-24-03. We thank the Committee for identifying an important issue and drafting an excellent proposal that would reduce confusion and delays in the preparation of records on appeal.</p> <p>We now turn to the questions posed by the Request for Specific Comments.</p>	The committee appreciates the feedback.
			First, we believe the proposal does appropriately address the stated purpose, though we believe additional provisions would improve the proposal. These are outlined below.	The committee appreciates the feedback.
			Second, we believe that articulating the definition of “superior court file” within the text of the rule is preferable to relegating the issue to the advisory	The committee declines to define “superior court file” because it has revised the proposal. The proposed rule now reads that the “reviewing court

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

	Commenter	Position	Comment	Committee Response
			<p>comments section, as advisory comments can often be inadvertently overlooked.</p>	<p>may, by local rule, require the clerk’s transcript to include any or all additional court records contained in the superior court file.” Instead of defining “superior court file,” the proposed rule provides that “For purposes of this provision ‘court records’ has the meaning provided in rule 2.502(3).” As a result, items that are excluded from rule 2.502(3)’s definition of “court records” (such as notes or preliminary memoranda) are not covered by the proposed rule.</p> <p>With this revision, the committee concludes that the proposed rule is sufficiently clear regarding its scope.</p>
			<p>Third, we strongly agree with including a provision requiring inclusion of exhibits in the record on appeal. Exhibits are often critical evidence for the reviewing court to consider on appeal. The San Diego County District Attorney’s Office regularly must file requests to transmit exhibits in our own appellate work and often must address requests from the Attorney General and other appellate counsel to provide District Attorney working-versions of exhibits, which may not reflect any changes made in court to the admitted exhibit. This current procedure needlessly consumes judicial resources and can result in delays in the adjudication of the appeal.</p>	<p>The committee appreciates the information regarding the delay that can result from exhibits being transmitted to the Court of Appeal pursuant to rule 8.224.</p> <p>The committee has included in the proposal a provision authorizing the Courts of Appeal to adopt local rules requiring that the clerk’s transcript include exhibits admitted into evidence, refused, or lodged. This provision will allow the Court of Appeal to assess its needs and the capabilities of the superior courts in its district and determine whether including exhibits in the clerk’s transcript will improve appellate efficiency.</p>
			<p>Further, as to the exhibits issue, we encourage the Committee to consider potential hurdles related to</p>	<p>The committee appreciates the feedback. The committee believes that the proposal as drafted</p>

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

	Commenter	Position	Comment	Committee Response
			<p>the multitude of forms that evidence can take. Evidence might include: evidence stored in digital form (videos, audio, data, etc.), physical evidence (guns, narcotics, etc.), and color photographs. Additional language clarifying the form of exhibits to be transmitted could be helpful. For example, digital evidence could be shared with the reviewing court by secured upload links; physical evidence could be represented via an accompanying photograph that was marked into evidence by the trial court at the time of the hearing; and color photographs could be copied via a color copier or shared digitally. These may be issues more appropriately handled by each Court of Appeal in formulating their local rule, but we suggest the Committee flag the issue within an advisory comment or other appropriate avenue.</p>	<p>will give the Courts of Appeal flexibility to determine how various forms of exhibits included in the clerk’s transcript should be transmitted.</p>
			<p>Fourth, we believe that requiring a stipulation to the use of an expanded clerk’s transcript would create an unwarranted additional procedural step in the appellate process. Should a party believe that items in the record are not properly before the reviewing court, the onus should remain on that party to seek remediation, rather than a frontloaded stipulation requirement.</p>	<p>The committee appreciates the feedback. The committee has determined that the proposal should not include a requirement that the parties stipulate to the use of an expanded clerk’s transcript. Use of an expanded clerk’s transcript would not prejudice either party to an appeal, either financially or in their ability to present their case. Unlike in civil cases, where the parties must stipulate before the superior court file can be used in lieu of a clerk’s transcript (see rule 8.128(a)), parties in felony appeals do not pay for preparation of the clerk’s transcript.</p> <p>Additionally, the committee notes that rules 8.863 and 8.914, which allow the use of the trial court</p>

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

	Commenter	Position	Comment	Committee Response
				file in lieu of a clerk’s transcript in misdemeanor and infraction appeals, respectively, do not require the parties’ stipulation.
			Fifth, we urge the Committee to similarly amend rule 8.320(d)(1). This subdivision governs many of our People’s appeals, where we frequently encounter issues with obtaining an adequate clerk’s transcript for purposes of the appeal, thus causing delay. Amending both subdivisions (b) and (d)(1) would avoid confusion and streamline the preparation of clerk’s transcripts in criminal appeals.	The committee appreciates the feedback. The committee has included in the proposal a provision allowing the Courts of Appeal to require the clerk’s transcript to include additional items beyond those required by rule 8.320(d)(1). The committee concludes that such a provision will help avoid delays resulting from motions to augment the record in appeals covered by this rule.
			Finally, we recommend that the Committee consider a similar amendment to rule 8.861, which governs the record for misdemeanors appeals handled by the Superior Court Appellate Division. Identical concerns to those raised by the Committee vis-à-vis felony appeals are present in the case of misdemeanor appeals; thus, a global amendment to the relevant Rules of Court governing all criminal appeals seems prudent.	Amending rule 8.861 is outside the scope of this proposal. The committee will consider the issue in the future as time and resources allow. The committee notes that rule 8.863 authorizes superior courts to adopt a local rule utilizing the trial court file in lieu of a clerk’s transcript.
6.	Superior Court of Los Angeles County by Bryan Borys, Director of Research and Data Management	AM	The following comments are representative of the Superior Court of California, County of Los Angeles (Court), and do not represent or promote the viewpoint of any particular judicial officer or employee.	See responses to specific comments below.

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

	Commenter	Position	Comment	Committee Response
			In response to SPR24-03, “Appellate Procedure: Expanded Clerk’s Transcript in Felony Appeals,” the Court agrees with the proposal, if modified.	The committee notes the commenter’s general support for the proposal.
			It is insufficient to mention Rule 2.502(3) in the advisory committee comment. It should be referenced in Rule 8.320(b)(2)(A).	The committee has revised the proposed rule to read that the “reviewing court may, by local rule, require the clerk’s transcript to include any or all additional court records contained in the superior court file.” The proposed rule then provides “For purposes of this provision ‘court records’ has the meaning provided in rule 2.502(3).”
			Additionally, the proposal should not include a requirement that parties stipulate before an expanded clerk’s transcript is used. There is currently no such provision for stipulation for augmentation or omission.	The committee appreciates the feedback. The committee has determined that the proposal should not include a requirement that the parties stipulate to the use of an expanded clerk’s transcript. Use of an expanded clerk’s transcript would not prejudice either party to an appeal, either financially or in their ability to present their case. Unlike in civil cases, where the parties must stipulate before the superior court file can be used in lieu of a clerk’s transcript (see rule 8.128(a)), parties in felony appeals do not pay for preparation of the clerk’s transcript. Additionally, the committee notes that rules 8.863 and 8.914, which allow the use of the trial court file in lieu of a clerk’s transcript in misdemeanor and infraction appeals, respectively, do not require the parties’ stipulation.

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

	Commenter	Position	Comment	Committee Response
			<p>Finally, the Court agrees that Rule 8.320(d) should be similarly amended.</p>	<p>The committee appreciates the feedback. The committee has included in the proposal a provision allowing the Courts of Appeal to require the clerk’s transcript to include additional items beyond those required by rule 8.320(d)(1). The committee concludes that such a provision will help avoid delays resulting from motions to augment the record in appeals covered by this rule.</p>
7.	<p>Superior Court of Orange County By Elizabeth Flores, Operations Analyst</p>	A	<p>Does the proposal appropriately address the stated purpose?</p> <p>Yes, the proposal appropriately addresses the stated purpose.</p> <hr/> <p>Should the rule text define “superior court file” as excluding items not considered “court records” as defined by rule 2.502(3), or is it enough to have this limitation addressed in the advisory committee comment?</p> <p>Yes. Additionally, those requirements should be specified.</p> <hr/> <p>Should the proposal include a provision allowing for a Court of Appeal’s local rule to require inclusion of exhibits in the clerk’s transcript?</p> <p>Yes, we recommend that Court of Appeal add their provision as to “how” they want the exhibits</p>	<p>The committee appreciates the feedback.</p> <hr/> <p>The committee has revised the proposed rule to read that the “reviewing court may, by local rule, require the clerk’s transcript to include any or all additional court records contained in the superior court file.” The proposed rule then provides “For purposes of this provision ‘court records’ has the meaning provided in rule 2.502(3).” As a result, items that are excluded from rule 2.502(3)’s definition of “court records” (such as notes or preliminary memoranda) are not covered by the proposed rule.</p> <hr/> <p>The committee has included in the proposal a provision authorizing the Courts of Appeal to adopt local rules requiring that the clerk’s transcript include exhibits admitted into evidence, refused, or lodged. This provision will allow the Court of Appeal to assess its needs and the</p>

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

	Commenter	Position	Comment	Committee Response
			<p>transmitted and how it should be indexed. We recommend extending the timeline for the submission of the clerk’s transcript to account for the additional documents and exhibits that will be required.</p>	<p>capabilities of the superior courts in its district and determine whether including exhibits in the clerk’s transcript will improve appellate efficiency. Additionally, the committee believes that this provision will give the Courts of Appeal flexibility to determine how various forms of exhibits included in the clerk’s transcript should be transmitted.</p> <p>Expanding the timeline for submission of the clerk’s transcript is outside the scope of the instant proposal.</p>
			<p>In addition to authorizing Courts of Appeal to adopt a local rule expanding the contents of the clerk’s transcript, should the proposal include a requirement that the parties stipulate before an expanded clerk’s transcript is used?</p> <p>If the intent of the proposal is to streamline the appeal process, requiring a stipulation from the parties would likely cause a delay. Attorneys may request more time to review the records in the clerk’s transcript that would have been defined by the proposed local rule.</p>	<p>The committee appreciates the feedback. The committee has determined that the proposal should not include a requirement that the parties stipulate to the use of an expanded clerk’s transcript. Unlike in the civil context, where the parties must stipulate before the superior court file can be used in lieu of a clerk’s transcript (see rule 8.128(a)), parties in felony appeals do not pay for preparation of the clerk’s transcript. An expanded clerk’s transcript will not impose a financial cost on the parties. The committee notes that rules 8.863 and 8.914, which allow the use of the trial court file in lieu of a clerk’s transcript in misdemeanor and infraction appeals, respectively, do not require the parties’ stipulation.</p>
			<p>Should rule 8.320(d) be similarly amended to allow the Courts of Appeal to adopt a local rule</p>	<p>The committee appreciates the feedback. The committee has included in the proposal a provision allowing the Courts of Appeal to require by local</p>

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	Commenter	Position	Comment	Committee Response
			<p>expanding the contents of the clerk’s transcript in appeals governed by that rule?</p> <p>No.</p>	<p>rule that the clerk’s transcript to include additional items beyond those required by rule 8.320(d)(1). The committee believes that this provision will give the Courts of Appeal the flexibility to assess the relative costs and benefits of requiring additional materials in cases governed by rule 8.320(d)(1) and, if appropriate, adopt a local rule which will improve appellate efficiency in these cases.</p>
			<p>Would the proposal provide cost savings? If so, please quantify.</p> <p>Yes, minimizes delays in felony appeals and eliminates additional work in augmenting transcripts.</p>	<p>The committee appreciates the feedback.</p>
			<p>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</p> <p>Collaboration with our Records and Exhibit Management Department, update procedure and process.</p>	<p>The committee appreciates the feedback.</p>
			<p>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p>	<p>The committee appreciates the feedback. The committee concludes that three months from Judicial Council approval until the proposal’s effective date is sufficient because the proposal</p>

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

	Commenter	Position	Comment	Committee Response
			No, recommend 6 months.	does not impose any obligations on parties or the courts. Rather, it simply authorizes the Courts of Appeal to adopt local rules, a process that would necessarily take additional time beyond the proposal’s effective date (see rule 10.1030).
			How well would this proposal work in courts of different sizes? The impact is not affected by the size of the court.	The committee appreciates the feedback.
8.	Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) (TCPJAC/CEAC) Joint Rules Subcommittee	AM	It is suggested that Rule 8.320(b)(2)(A) should read “superior court file as defined by Rule 2.502(3).”	The committee appreciates the feedback. The committee has revised the proposed rule to provide that the “reviewing court may, by local rule, require the clerk’s transcript to include any or all additional court records contained in the superior court file.” The revised proposed rule then provides “For purposes of this provision ‘court records’ has the meaning provided in rule 2.502(3).”
9.	Michael M. Ward Retired Disabled Veteran Redding, California	AM	*[The comment addresses the details of a specific case and does not address any of the issues in the proposal and is not included in the comment chart.]	No response is required.

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: 8/6/2024

Rules Committee action requested [Choose from the drop-down menu below]:
Recommend JC approval (has circulated for comment)

Title of proposal: Appellate Procedure: Deadline for Amicus Curiae Briefs

Proposed rules, forms, or standards (include amend/revise/adopt/approve):
Amend Cal. Rules of Court, rule 8.200

Committee or other entity submitting the proposal:
Appellate Advisory Committee

Staff contact (name, phone and e-mail): Jeremy Varon, (415) 865-7424, jeremy.varon@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:

Annual agenda approved by Rules Committee on (date): October 26, 2023

Project description from annual agenda: Rule 8.200(c) provides that an application for permission to file an amicus curiae brief must be filed within 14 days after the last appellant's reply brief is filed or could have been filed under Rule 8.212, whichever is earlier. Where a respondent fails to file an answering brief, however, no reply brief will be, or can be, filed. Rule 8.200(c) does not provide a deadline which would apply in these situations. It has been reported that this situation arises often in family law cases and courts have interpreted Rule 8.200 differently in these situations. This project was recommended by the Family Violence Appellate Project and a committee member..

Out of Cycle: *If requesting September 1 effective date or out of cycle, explain why:*

Additional Information for Rules Committee: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

Additional Information for JC Staff

- **Director Approval** (required for all invitations to comment and reports)

This report or invitation to comment was

- reviewed by EGG on (date) June 20, 2024
- approved by Office Director (or Designee) (name) on (date)

If either of above not checked, explain why:

Complete the following for all reports to be submitted to council (optional for ITCs):

- **Form Translations** (check all that apply)

This proposal:

- includes forms that have been translated.
- includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: [Click or tap here to enter text.](#)
- includes forms that staff will request be translated.

- **Form Descriptions** (for any report with new or revised forms)

The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is

(05/20/24)

checked, the form descriptions should be approved by a supervisor before submitting this RAR.).

- **Self-Help Website** (check if applicable)
 - This proposal may require changes or additions to self-help web content.



Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 24-149

For business meeting on September 20, 2024

Title

Appellate Procedure: Deadline for Amicus Curiae Briefs

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rule 8.200

Recommended by

Appellate Advisory Committee
Hon. Louis Mauro, Chair

Agenda Item Type

Action Required

Effective Date

January 1, 2025

Date of Report

July 17, 2024

Contact

Jeremy Varon, 415-865-7424
Jeremy.Varon@jud.ca.gov

Executive Summary

The Appellate Advisory Committee recommends amending California Rules of Court, rule 8.200 to provide a deadline for filing an application to file an amicus curiae brief when no respondent's brief has been filed. This proposal is intended to close a gap in the current rule.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2025, amend California Rules of Court, rule 8.200 to require that when no respondent's brief has been filed, an application for permission to file an amicus curiae brief must be filed within 34 days after the respondent's brief could have been filed.

The proposed amended rule is attached at page 4.

Relevant Previous Council Action

Rule 8.200 of the California Rules of Court,¹ governing briefs by parties and amici curiae, was adopted as rule 13 in 2002 and renumbered in 2007. Effective January 1, 2008, the Judicial

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

Council amended rule 8.200 to provide that applications to file an amicus brief must be filed no later than 14 days after the last appellant’s reply brief was filed or could have been filed. Other amendments to rule 8.200 are not relevant to this proposal.

Analysis/Rationale

Currently, rule 8.200(c)(1) provides that a person or entity may file an application for permission to file an amicus curiae brief “[w]ithin 14 days after the last appellant’s reply brief is filed or could have been filed under rule 8.212, whichever is earlier.” Under rule 8.212, an appellant’s optional reply brief must be served and filed “within 20 days after the respondent files its brief.”² Thus, in the usual case, an amicus curiae application will be due no later than 34 days after the filing of the respondent’s brief.

Rule 8.200, however, does not state when an amicus curiae application is due when no respondent’s brief is filed and, thus, no reply brief can be filed. To close this gap in the rule, and eliminate any potential confusion, the committee recommends that rule 8.200(c) be amended to provide that, when no respondent’s brief is filed, amicus curiae applications are due “within 34 days after the respondent’s brief could have been filed.” The committee also recommends amending the advisory committee comment to rule 8.200 to provide that the time a respondent’s brief “could have been filed” includes any authorized extension of the deadline specified in rule 8.212 and the default notice period specified in rule 8.220(a).

The committee believes this amendment to rule 8.200(c) will ensure that potential amici curiae are not prejudiced by the respondent’s decision to not file a respondent’s brief. The amendment gives amici curiae the same amount of time to file their application as they would have had if a respondent’s brief had been filed. Accordingly, the amendment helps ensure that amici curiae have sufficient time to research the relevant issues in the case and draft their proposed briefs.

Policy implications

Amending rule 8.200(c) will help ensure that potential amici curiae are able to effectively access the courts. The amendment is therefore consistent with the *Strategic Plan for California’s Judicial Branch*,³ especially the goals of Access, Fairness, Diversity, and Inclusion (Goal I) and Quality of Justice and Service to the Public (Goal IV).

Comments

This proposal was circulated for public comment from March 29 to May 3, 2024, as part of the regular spring comment cycle. Three comments were received: one from the California Lawyers Association, Committee on Appellate Courts (CAC); one from the Family Violence Appellate Project (FVAP); and one from the Orange County Bar Association. All commenters agreed with

² Rule 8.212(a)(3).

³ Available at www.courts.ca.gov/3045.htm.

the proposal. A chart with the full text of the comments received and the committee's responses is attached at pages 5–11.

The invitation to comment asked whether the deadline for amicus curiae applications should be shorter than the proposed 34 days after the respondent's brief could have been filed. CAC and FVAP both opposed a shorter deadline. CAC noted that drafting and filing amicus curiae briefs require significant planning, coordination, and research and that this work is frequently undertaken by nonprofit organizations with limited resources and capacity. FVAP joined in CAC's comments.

The invitation to comment also asked whether the deadline for amicus curiae applications when no respondent's brief is filed should be based on the date the opening brief was filed, as opposed to the date the respondent's brief could have been filed. CAC opposed this alternative, noting that in cases in which a respondent obtains an extension of time to file the respondent's brief, the deadline for filing an amicus curiae brief would fall *before* the respondent's brief was due. This would create a situation where the amicus curiae, not knowing whether the respondent would actually file a brief and thus not knowing which rule 8.200(c)(1) deadline would apply, would have to protect its ability to participate by filing its proposed brief before the respondent's brief. Both CAC and FVAP noted that this result would result in less useful amicus briefs, as the briefs could not address the issues raised in the respondent's brief.

Alternatives considered

The committee considered the alternative of not taking any action but concluded that the amendment would benefit the courts and potential amici curiae. The committee considered recommending adoption of a shorter deadline or running the deadline from the filing of the appellant's opening brief but concluded that either alternative would prove unworkable for the reasons identified by the commenters.

Fiscal and Operational Impacts

Other than training for court staff to advise them of the rule change, the committee anticipates no fiscal or operational impacts.

Attachments and Links

1. Cal. Rules of Court, rule 8.200, at page 4
2. Chart of comments, at pages 5–11

Rule 8.200 of the California Rules of Court is amended, effective January 1, 2025, to read:

1 **Rule 8.200. Briefs by parties and amici curiae**

2
3 **(a)–(b) * * ***

4
5 **(c) Amicus curiae briefs**

6
7 (1) Within 14 days after the last appellant’s reply brief is filed or could have been filed
8 under rule 8.212, whichever is earlier, any person or entity may serve and file an
9 application for permission of the presiding justice to file an amicus curiae brief. If no
10 respondent’s brief is filed, the application is due within 34 days after the
11 respondent’s brief could have been filed. For good cause, the presiding justice may
12 allow later filing.

13
14 **(2)–(6) * * ***

15
16 (7) The Attorney General may file an amicus curiae brief without the presiding justice’s
17 permission, unless the brief is submitted on behalf of another state officer or agency.
18 The Attorney General must serve and file the brief within 14 days after the last
19 appellant’s reply brief is filed or could have been filed under rule 8.212, whichever is
20 earlier, ~~and~~. If no respondent’s brief is filed, the Attorney General must serve and file
21 the amicus curiae brief within 34 days after the respondent’s brief could have been
22 filed. The brief must provide the information required by (2) and comply with (5).
23 Any party may serve and file an answer within 14 days after the brief is filed.

24
25 **Advisory Committee Comment**

26
27 **Subdivision (a)(2). * * ***

28
29 **Subdivision (b). * * ***

30
31 **Subdivision (c)(1).** The time within which a reply brief “could have been filed under rule 8.212” includes
32 any authorized extension of the deadline specified in rule 8.212. The time within which a respondent’s
33 brief “could have been filed” includes any authorized extension of the deadline specified in rule 8.212 and
34 the 15-day default notice period specified in rule 8.220(a).

SPR24-04

Appellate Procedure: Deadline for Amicus Curiae Briefs (amend Cal. Rules of Court, rule 8.200)

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

	Commenter	Position	Comment	Committee Response
1.	California Lawyers Association, Litigation Section, Committee on Appellate Courts by Saul Bercovitch, Associate Executive Director, Governmental Affairs	AM	<p>The Committee on Appellate Courts (CAC) of the California Lawyers Association’s Litigation Section submits this response to the Invitation to Comment on SPR24-04. Established in 2018, the California Lawyers Association is a nonprofit, voluntary organization comprising thousands of licensed attorneys that is dedicated to the professional advancement of attorneys practicing in the State of California. The CAC consists of over twenty experienced appellate practitioners and court staff, drawn from a wide range of practice areas. As part of its mission, the CAC frequently shares its views regarding proposals to change rules that govern appellate practice.</p> <p>In SPR24-04, the Advisory Appellate Committee proposes 1) amending California Rules of Court, rules 8.200(c)(1) and (c)(7) to clarify that “[i]f no respondent’s brief is filed, the [amicus curiae] application is due within 34 days after the respondent’s brief could have been filed,” and 2) amending the Advisory Committee Comment to clarify that the 15-day default notice period contained in rule 8.220(a) (Default Letter) should be counted in determining when the respondent’s brief or reply brief “could have been filed.” The CAC supports these changes. The CAC opposes the alternative approach, which would amend rules 8.200(c)(1) and (c)(7) to require amicus “applications to be filed 79 days after the appellant’s opening brief was actually filed.”</p>	<p>No response necessary.</p> <p>The committee appreciates the feedback and notes the commenter’s support for making the amicus curiae application due within 34 days after the respondent’s brief could have been filed. To ensure that potential amici curiae have sufficient time to conduct research, draft their proposed brief, and file their applications, the committee has decided not to recommend the alternative approach that would base the amicus curiae application deadline on the date the opening brief has been filed.</p>

SPR24-04

Appellate Procedure: Deadline for Amicus Curiae Briefs (amend Cal. Rules of Court, rule 8.200)

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

	Commenter	Position	Comment	Committee Response
			<p>1. CAC supports the proposed 34-day deadline after the respondent’s brief could have been filed</p> <p>The CAC supports the proposal, as it addresses a genuine problem for parties and appellate courts in determining the amicus curiae brief deadline in appeals where no respondent’s brief is filed. We caution against the alternative approach.</p> <hr/> <p>The deadline should not be shorter than 34 days. Many amicus curiae briefs are submitted by nonprofit organizations (e.g., legal aid organizations) and institutions with limited resources and capacity, and they need the 34-day period to prepare the amicus brief in addition to their direct services work (which already far exceeds their capacity) or to secure pro bono counsel to assist them with it. The process can take longer when pro bono counsel is involved, as pro bono counsel may be unfamiliar with the topic before they become involved. Also, amicus curiae briefs often involve extensive legal and academic research, which can be time-consuming for counsel. They can also involve numerous interested parties, either that are directly involved in the drafting of the brief (or their own related briefs) or are contributing behind the scenes on broader public policy aspects of the case. In many cases, the amicus brief needs to be reviewed by multiple individuals before it can be filed. For these reasons, we do not recommend shortening the timeframe.</p>	<p>See above response.</p> <hr/> <p>See above response.</p>

SPR24-04

Appellate Procedure: Deadline for Amicus Curiae Briefs (amend Cal. Rules of Court, rule 8.200)

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

		<p>2. CAC cautions against the alternative approach of a 79-day deadline after the appellant’s opening brief is filed</p> <p>The alternative approach could significantly prejudice and frustrate the purpose of amicus curiae if the respondent is granted an extension and amicus curiae’s deadline precedes the respondent’s brief. As such, the amicus curiae will not be able to address the issues raised in the respondent’s brief, depriving the court of a full briefing of the issues from broader interested parties and public policy arguments. A hypothetical may help elucidate the problem.</p> <p>The opening brief is filed on May 1, 2024. On May 30, the respondent requests and is granted a 30-day extension, making July 1 the deadline for the respondent’s brief (because the deadline falls on Saturday, June 29). The appellate court then sends the Default Letter on July 5.[See Footnote 1]. The respondent’s new deadline is July 22 (because the deadline falls on Saturday, July 20). The respondent files its brief on July 22, which is 82 days after the opening brief was filed. The amicus curiae brief is due on July 19—79 days after the opening brief is filed.</p> <p>Under the alternative approach, amicus curiae would have to guess whether respondent files a brief because its deadline (79 days) would be before the respondent files its brief (82 days). That creates problems for amicus curiae regardless of whether respondent files a brief. If the amicus curiae waits to see if the respondent files a brief—</p>	<p>See above response.</p>
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SPR24-04

Appellate Procedure: Deadline for Amicus Curiae Briefs (amend Cal. Rules of Court, rule 8.200)

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

		<p>so it can consider or address the arguments made therein—and the respondent does not do so, then amicus curiae risks losing the opportunity to file a brief [See Footnote 2]. If amicus curiae timely files (within the 79-day period) and the respondent later files a brief, then amicus curie will have been deprived of the opportunity to address information that will help the court in resolving the issues in the respondent’s brief. Or it will be forced to undertake the burdensome process of drafting and requesting leave to file an amended amicus brief—a process not expressly contemplated by the rules. Both options frustrate the purpose of an amicus curiae brief, which is to allow amicus curiae to bring to the court’s attention matters that the parties did not address.</p> <p>In sum, we believe that the adverse consequences resulting from the alternative approach caution against its adoption.</p> <p><i>Footnote 1:</i> In our experience, the Default Letter is not always sent the day after the respondent’s brief is due. In this hypothetical, the Default Letter is sent three court days (July 4 is a court holiday) after respondent’s deadline. But even if the Default letter is sent the day after, respondent’s deadline would be July 17—only two days before amicus’s deadline, which is an insufficient amount of time for amicus to meaningfully consider and address the issues in respondent’s brief.</p> <p><i>Footnote 2:</i> While Rule 8.200(c)(1) gives the presiding justice authority to allow tardy amicus briefs, the right to do so is not guaranteed and the</p>	
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SPR24-04

Appellate Procedure: Deadline for Amicus Curiae Briefs (amend Cal. Rules of Court, rule 8.200)

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

			<p>current rule does not expressly state that this situation is “good cause” to grant an exception to the deadline. And this would just create unnecessary motion practice for the courts.</p>	
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SPR24-04

Appellate Procedure: Deadline for Amicus Curiae Briefs (amend Cal. Rules of Court, rule 8.200)

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

	Commenter	Position	Comment	Committee Response
2.	Family Violence Appellate Project by Shuray Ghorishi, Senior Managing Attorney Oakland	A	<p>The following comment is submitted by Family Violence Appellate Project (FVAP) regarding the Judicial Council’s Invitation to Comment number SPR24-04. FVAP is a State Bar-funded legal services support center and the only nonprofit organization in California dedicated to representing survivors of domestic violence and other forms of gender-based abuse in civil appeals for free. FVAP is devoted to ensuring survivors can live in healthy, safe environments, free from abuse. This includes filing amicus curiae briefs in federal and state cases that raise important issues for abuse survivors. To date, FVAP has filed amicus curiae briefs in over 63 cases—nearly half of which were filed in the California Courts of Appeal.</p> <p>FVAP strongly supports the proposal to amend California Rules of Court, rule 8.200(c)(1) and (c)(7) to clarify that an amicus curiae application is due “34 days after the respondent’s brief could have been filed,” and to amend the Advisory Committee Comment to clarify that the 15-day default notice period should be calculated in determining that time. We are grateful to the Council for considering and responding to many of FVAP’s past suggestions, including its work on SPR24-04.</p> <p>For the reasons outlined in the comments submitted by the Committee on Appellate Courts (CAC) of the California Lawyers Association’s</p>	<p>No response necessary.</p> <p>The committee appreciates the feedback and notes the commenter’s support for making the amicus curiae application due within 34 days after the respondent’s brief could have been filed.</p> <p>To ensure that potential amici curiae have sufficient time to conduct research, draft their proposed brief, and file their applications, the</p>

SPR24-04

Appellate Procedure: Deadline for Amicus Curiae Briefs (amend Cal. Rules of Court, rule 8.200)

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

	Commenter	Position	Comment	Committee Response
			<p>Litigation Section, FVAP opposes the alternative approach and making the deadline shorter than 34 days.</p>	<p>committee has decided not to recommend the alternative approach that would base the amicus curiae application deadline on the date the opening brief has been filed.</p>
			<p>To avoid repetition, we will not recite the reasons in CAC’s comments, except to say that we entirely agree with them. The alternative approach could create a situation where amicus curiae would have to file their brief before the respondent’s brief. That would be more akin to the federal rule, where amicus curiae must file their brief shortly after the appellant’s brief. (See Fed. Rules App. Proc., rule 29(a)(6).) In our experience, California’s rule is superior, as it allows amicus curiae enough time to grapple with the issues in respondent’s brief, so that the court has a complete briefing of how the issues raised in the case impact broader communities. Naturally, this leads to more well-informed jurisprudence. Because the alternative approach has the potential to foreclose amicus curiae’s opportunity to do this, we oppose it.</p>	<p>See above response.</p>
			<p>Moreover, although amicus curiae will need to calculate when respondent’s brief “could have been filed” under the proposal, we do not foresee this as too cumbersome of a task, since many (if not most) amicus curiae briefs are not submitted by self-represented litigants, but rather attorneys representing organizations, institutions, and governments’ interests.</p>	<p>The committee agrees that potential amici curiae will not find calculating the deadline under the proposed rule cumbersome.</p>

SPR24-04

Appellate Procedure: Deadline for Amicus Curiae Briefs (amend Cal. Rules of Court, rule 8.200)

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

	Commenter	Position	Comment	Committee Response
			In sum, we support the proposal, oppose the alternative approach, and urge the Council to keep the length of time to 34 days.	The committee appreciates the feedback and notes the commenter’s support for making the amicus curiae application due within 34 days after the respondent’s brief could have been filed.
3.	Orange County Bar Association by Christina Zabat-Fran President	A	The proposed rule is appropriate.	The committee appreciates the feedback and notes the commenter’s support for the proposal.

DRAFT

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: 8/6/2024

Rules Committee action requested [Choose from the drop-down menu below]:
Recommend JC approval (has circulated for comment)

Title of proposal: Appellate Procedure: Form Briefs for Use in Limited Civil Appeals

Proposed rules, forms, or standards (include amend/revise/adopt/approve):

Amend Cal. Rules of Court, rule 8.883; approve forms APP-200, APP-200-INFO, APP-201, APP-201-INFO, APP-202, and APP-202-INFO; revise form APP-101-INFO

Committee or other entity submitting the proposal:

Appellate Advisory Committee

Staff contact (name, phone and e-mail): Jeremy Varon, (415) 865-7424, jeremy.varon@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:

Annual agenda approved by Rules Committee on (date): October 26, 2023

Project description from annual agenda: Consider the development of fillable form appellate briefs for use in the Court of Appeal and the appellate division. Form briefs that are formatted and organized appropriately and contain required content may assist litigants in filing briefs, and may assist the courts to the extent that they receive briefs that are more helpful in evaluating the merits of an appeal. It is likely that fewer briefs would be rejected for not meeting filing requirements. This project was proposed by the California Lawyer Association, Litigation Section, Committee on Appellate Courts

Out of Cycle: *If requesting September 1 effective date or out of cycle, explain why:*

Additional Information for Rules Committee: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

Additional Information for JC Staff

- **Director Approval** (required for all invitations to comment and reports)

This report or invitation to comment was

reviewed by EGG on (date) June 20, 2024

approved by Office Director (or Designee) (name)
on (date)

If either of above not checked, explain why:

Complete the following for all reports to be submitted to council (optional for ITCs):

- **Form Translations** (check all that apply)

This proposal:

includes forms that have been translated.

includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: [Click or tap here to enter text.](#)

includes forms that staff will request be translated.

- **Form Descriptions** (for any report with new or revised forms)

The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is checked, the form descriptions should be approved by a supervisor before submitting this RAR.).

- **Self-Help Website** (check if applicable)

This proposal may require changes or additions to self-help web content.



Judicial Council of California

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

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 24-147

For business meeting on September 20, 2024

Title

Appellate Procedure: Form Briefs for Use in Limited Civil Appeals

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rule 8.883; approve forms APP-200, APP-200-INFO, APP-201, APP-201-INFO, APP-202, and APP-202-INFO; revise form APP-101-INFO

Recommended by

Appellate Advisory Committee
Hon. Louis Mauro, Chair

Agenda Item Type

Action Required

Effective Date

January 1, 2025

Date of Report

July 17, 2024

Contact

Jeremy Varon, 415-865-7424
Jeremy.Varon@jud.ca.gov

Executive Summary

The Appellate Advisory Committee recommends the approval of three optional form briefs that parties can use in limited civil appeals, as well as related information sheets that explain how to use each form brief. Additionally, the committee recommends amending one rule of court and revising one information sheet to address these new forms. The new forms are intended to assist self-represented litigants and attorneys unfamiliar with appellate practice in drafting effective briefs before the appellate division of the superior court.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2025:

1. Approve the following forms for optional use:

- *Appellant's Opening Brief—Limited Civil Case* (form APP-200)
- *How to Use Form APP-200 in Limited Civil Cases* (form APP-200-INFO)
- *Respondent's Brief—Limited Civil Case* (form APP-201)

- *How to Use Form APP-201 in Limited Civil Cases* (form APP-201-INFO)
 - *Appellant’s Reply Brief—Limited Civil Case* (form APP-202)
 - *How to Use Form APP-202 in Limited Civil Cases* (form APP-202-INFO)
2. Amend California Rules of Court, rule 8.883 to provide that when parties use a form brief approved for use by the Judicial Council, the brief and attachments may not exceed 25 pages in length and the attachments must comply with the formatting requirements in rule 8.883(c)(1)–(7).
 3. Revise *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to refer to the new forms.

The proposed amended rule and new and revised forms are attached at pages 6–50.

Relevant Previous Council Action

Effective January 1, 2009, the Judicial Council adopted California Rules of Court, rule 8.883,¹ which governs the content and form of briefs in the appellate division, and approved form APP-101-INFO, which provides information on appellate procedures in limited civil cases. Both the rule and form have been amended and revised a number of times, but those amendments and revisions are not relevant to this proposal.

Analysis/Rationale

The committee recommends approval of three new forms that parties in limited civil cases can use as their appellate briefs before the appellate division. It also recommends the approval of three new information sheets, one for each form brief, that describe how to fill out the form briefs. The forms are designed to improve appellate efficiency and access to justice by helping self-represented litigants, or attorneys unfamiliar with appellate practice, prepare appellate briefs that comply with applicable rules of court,² and by helping the appellate division to receive appellate arguments in a compliant and consistent format.

In addition, the committee recommends amending rule 8.883(c) to provide that when a party uses a form brief approved by the Judicial Council, the form brief (and any attachments) may not exceed 25 pages in length.

Finally, the committee recommends revising form APP-101-INFO to include references to the new form briefs and information sheets.

Policy implications

The form briefs are designed to help parties clearly and effectively present their appellate arguments in limited civil cases and, as a result, improve appellate efficiency in those cases. This

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

² See rule 8.883(a) (describing what appellate briefs must contain).

proposal is therefore consistent with the *Strategic Plan for California's Judicial Branch*, specifically the goals of Access, Fairness, Diversity, and Inclusion (Goal I) and Quality of Justice and Service to the Public (Goal IV).

Comments

This proposal was circulated for public comment from March 29 to May 3, 2024, as part of the regular spring cycle. Seven comments were received: one from the Superior Court of Los Angeles County, three from county bar associations, two from legal organizations, and one from a retired attorney. All commenters agreed with the proposal. A chart with the full text of the comments received and the committee's responses is attached at pages 51–89.

Page limits when using form briefs

As circulated, proposed rule 8.883(c) provided that when a party uses a form brief, the brief and any attachments may not exceed 20 pages. The invitation to comment asked whether 20 pages would provide parties with sufficient space to present their argument on appeal. Two comments were received in response to that question.

The California Lawyers Association Committee on Appellate Courts recommended the proposal be revised to provide that the parties be permitted to include 20 pages of attachments. It noted that some parties will choose to provide their full answer on attached pages, thus reducing the amount of space available to them. On the other hand, the San Diego County Bar Association commented that the 20-page limit was sufficient given that a presiding judge may allow a longer brief for good cause.

The committee declines to recommend that rule 8.883(c) be amended to permit 20 pages of attachments. The committee believes a page limit only referencing attachments could cause confusion. However, to ensure that litigants have more space to present their arguments, and to avoid delays that might result from parties seeking leave to file a larger brief, the committee has revised the proposal to expand the page limit from 20 pages to 25 pages (including the brief and attachments).

Length and format of information sheet

As circulated, the proposal included a single information sheet, which provided information on how to fill out all three form briefs. This single information sheet was 10 pages in length.

Two commenters (the Family Violence Appellate Project and the San Diego County Bar Association) expressed concerns that the length or format of the information sheet could either make it difficult for litigants to find relevant information or be daunting for self-represented litigants. To address these concerns, the committee has revised the proposal to split the information sheet into three separate information sheets, one for each proposed form brief. The committee has concluded that shorter information sheets, which contain instructions for a single form brief, will make it easier for litigants to read and find relevant information.

Use of form briefs in unlimited civil cases

In the invitation to comment, the committee explained that it had considered including form briefs for use in unlimited civil cases in the proposal. The committee concluded that employing form briefs in unlimited civil cases in the first instance was inadvisable given the complex nature of those cases. Instead, the committee determined that using form briefs in limited civil cases first would allow the Judicial Council to assess the degree to which form briefs provide benefits to parties and the courts and to use that information in determining whether to expand form briefs in the future. With one exception, commenters expressed support for the committee to consider expanding the use of form briefs.

The California Lawyers Association Committee on Appellate Courts, while recognizing the benefits of the approach adopted by the committee, encouraged the committee to evaluate how the limited civil form briefs operate, refine them as necessary, and use that information to craft form briefs for unlimited civil appeals at the earliest opportunity. Similarly, the Appellate Practice Section of the San Diego County Bar Association suggested that this proposal should be seen as a first step and stated that if the form briefs in limited civil cases prove useful to parties, serious consideration should be given to expanding their use in unlimited civil appeals. It noted that the complex nature of unlimited civil cases is precisely why form briefs would be a benefit. It stated that form briefs would give litigants a structure to better organize the facts and legal arguments of their complex cases.

On the other hand, a retired attorney who served as an appellate specialist cautioned against the use of form briefs in unlimited civil cases. This commenter supported this proposal because the amount of money at stake in limited civil cases often makes it difficult for litigants in such cases to retain counsel. In unlimited civil cases, however, the commenter believes that unrepresented parties pose a threat to their own rights and a burden to the courts. The commenter further cautioned that form briefs in such cases could be deceptive for self-represented parties—making them think they can handle the case on their own—and thus increase the number of unrepresented litigants.

The committee appreciates the feedback on this issue and intends to monitor how the form briefs in this proposal are received and used. It envisions that experience will lead to refinement and improvement of the forms. In the future, the committee will consider this experience and evaluate whether additional form briefs should be expanded as time and resources allow.

Other suggested revisions

The commenters provided numerous suggestions to improve clarity and readability in the proposed form briefs and information sheet. The committee has adopted many of them. In drafting the form briefs, however, the committee had to strike a balance between including extensive instructions or examples in the briefs, maintaining a reasonable length, and providing the parties with sufficient space for their answers. For this reason, the committee has declined to make some of the suggested revisions. The committee believes the information sheets are the appropriate place for more detailed instructions and discussion on how to fill out each item. To

make sure the parties are aware of this information, the committee has ensured that the parties are advised, in multiple places on the forms, to review the information sheets.

Alternatives considered

As discussed above, the committee considered recommending the adoption of form briefs for use in unlimited civil cases but concluded that utilizing form briefs in limited civil cases and assessing their utility in those cases is an important first step.

The committee also considered recommending form briefs that would be used in limited civil cases where a cross-appeal has been filed. The committee determined that such briefs, and the need to discuss the briefs in the proposed information sheet, would introduce needless complexity, given the rarity of cross-appeals in limited civil cases.

Fiscal and Operational Impacts

The committee anticipates that the proposal may help to reduce staff time previously needed to review and reject noncompliant briefs. It anticipates no other fiscal or operational impacts on the courts as a result of the proposal. Implementation requirements for courts would involve making litigants, court staff, and judicial officers aware of the new forms and the revised rule.

Attachments and Links

1. Cal. Rules of Court, rule 8.883, at pages 6–8
2. Forms APP-101-INFO, APP-200, APP-200-INFO, APP-201, APP-201-INFO, APP-202, and APP-202-INFO, at pages 9–50
3. Chart of comments, at page 51–89

Rule 8.883 of the California Rules of Court is amended, effective January 1, 2025, to read:

1 **Rule 8.883. Contents and form of briefs**

2
3 **(a) Contents**

4
5 * * *

6
7 **(b) Length**

8
9 (1) Except as provided in (4), a brief produced on a computer must not exceed
10 6,800 words, including footnotes. Such a brief must include a certificate by
11 appellate counsel or an unrepresented party stating the number of words in
12 the brief. The person certifying may rely on the word count of the computer
13 program used to prepare the brief.

14
15 (2) A brief produced on a typewriter must not exceed 20 pages.

16
17 (3) The information listed on the cover, any table of contents or table of
18 authorities, the certificate under (1), and any signature block are excluded
19 from the limits stated in (1) or (2).

20
21 (4) If a party uses a form brief approved for use by the Judicial Council, the
22 brief, including any attachments, may not exceed 25 pages in length.
23 Attachments must comply with the formatting requirements stated in (c)(1)
24 through (c)(7).

25
26 ~~(4)~~(5) On application, the presiding judge may permit a longer brief for good cause.
27 A lengthy record or numerous or complex issues on appeal will ordinarily
28 constitute good cause. If the court grants an application to file a longer brief,
29 it may order that the brief include a table of contents and a table of
30 authorities.

31
32 **(c) Form**

33
34 (1) A brief may be reproduced by any process that produces a clear, black image
35 of letter quality. All documents filed must have a page size of 8 1/2 by 11
36 inches. If filed in paper form, the paper must be white or unbleached and of at
37 least 20-pound weight. Both sides of the paper may be used if the brief is not
38 bound at the top.

39
40 (2) Any conventional font may be used. The font may be either proportionally
41 spaced or monospaced.
42

Rule 8.883 of the California Rules of Court is amended, effective January 1, 2025, to read:

- 1 (3) The font style must be roman; but for emphasis, italics or boldface may be
2 used or the text may be underscored. Case names must be italicized or
3 underscored. Headings may be in uppercase letters.
4
- 5 (4) Except as provided in (11), the font size, including footnotes, must not be
6 smaller than 13-point.
7
- 8 (5) The lines of text must be at least one-and-a-half-spaced. Headings and
9 footnotes may be single-spaced. Quotations may be block-indented and
10 single-spaced. Single-spaced means six lines to a vertical inch.
11
- 12 (6) The margins must be at least 1½ inches on the left and right and 1 inch on the
13 top and bottom.
14
- 15 (7) The pages must be consecutively numbered.
16
- 17 (8) The cover—or first page if there is no cover—must include the information
18 required by rule 8.816(a)(1).
19
- 20 (9) If filed in paper form, the brief must be bound on the left margin, except that
21 briefs may be bound at the top if required by a local rule of the appellate
22 division. If the brief is stapled, the bound edge and staples must be covered
23 with tape.
24
- 25 (10) The brief need not be signed.
26
- 27 (11) If the brief is produced on a typewriter:
28
 - 29 (A) A typewritten original and carbon copies may be filed only with the
30 presiding judge’s permission, which will ordinarily be given only to
31 unrepresented parties proceeding in forma pauperis. All other
32 typewritten briefs must be filed as photocopies.
33
 - 34 (B) Both sides of the paper may be used if a photocopy is filed; only one
35 side may be used if a typewritten original and carbon copies are filed.
36
 - 37 (C) The type size, including footnotes, must not be smaller than standard
38 pica, 10 characters per inch. Unrepresented incarcerated litigants may
39 use elite type, 12 characters per inch, if they lack access to a typewriter
40 with larger characters.
41

Rule 8.883 of the California Rules of Court is amended, effective January 1, 2025, to read:

1 **(d) Noncomplying briefs**

2
3 * * *

4
5 **Advisory Committee Comment**

6
7 **Subdivision (b).** Subdivision (b)(1) states the maximum permissible lengths of briefs produced
8 on a computer in terms of word count rather than page count. This provision tracks a provision in
9 rule 8.204(c) governing Court of Appeal briefs and is explained in the comment to that provision.
10 Subdivision (b)(3) specifies certain items that are not counted toward the maximum brief length.
11 Signature blocks, as referenced in this provision, include not only the signatures, but also the
12 printed names, titles, and affiliations of any attorneys filing or joining in the brief, which may
13 accompany the signature.

14
15 Subdivision (b)(4) provides the maximum length of a brief, with attachments, if the party uses a
16 form brief approved for use by the Judicial Council. The Judicial Council has approved the
17 following optional form briefs that parties may use in limited civil appeals where there is no
18 cross-appeal: *Appellant's Opening Brief—Limited Civil Case* (form APP-200), *Respondent's*
19 *Brief—Limited Civil Case* (form APP-201), and *Appellant's Reply Brief—Limited Civil Case*
20 (form APP-202).

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 \$35,000 or less.

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

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

2 What is an appeal?

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

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

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

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

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

- **Prejudicial error:** The appellant (the party who is appealing) may ask the appellate division to **decide** 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 **decide** 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 email 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 Self-Help Guide to the California Courts at selfhelp.courts.ca.gov/get-free-or-low-cost-legal-help.

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 leginfo.legislature.ca.gov/faces/codes.xhtml.)

7 How do I start my appeal?

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

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

“Serve and file” means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (“serve”) the notice of appeal to the other party or parties in the way required by law. If the notice of appeal is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.



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

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

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

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

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

10 Do I have to pay to file an appeal?

Yes. Unless the court waives this fee, you must pay a fee for filing your notice of appeal. You can ask the clerk of the court where you are filing the notice of appeal what the fee is or look up the fee for an appeal in a limited civil case in the current Statewide Civil Fee Schedule linked at www.courts.ca.gov/7646.htm (note that the “Appeal and Writ Related Fees” section is near the end of this schedule

and that there are different fees for limited civil cases depending on the amount demanded in the case). If you cannot afford to pay the fee, you can ask the court to waive it. To do this, you must fill out and file a *Request to Waive Court Fees* (form [FW-001](#)). You can get form FW-001 at any courthouse or county law library or online at www.courts.ca.gov/forms. You can file this application either before you file your notice of appeal or with your notice of appeal. The court will review this application to **decide** if you are eligible for a fee waiver.

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

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

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

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

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



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

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

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

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

There are three parts of the official record:

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

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

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

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

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

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

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

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



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

Read below for more information about these options.

(1) Reporter's transcript

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

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

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

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

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

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

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

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

(2) Official electronic recording or transcript

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



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

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

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

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

- You can use the amounts listed in rule 8.130 (b)(1)(B) for each full or half day of court proceedings to estimate the cost of making a transcript of the proceeding you have designated in your notice designating the record on appeal. Deposit this estimated amount and the \$50 fee with the trial court clerk when you file your notice designating the record on appeal.
- You can ask the trial court clerk for an estimate of the cost of preparing a transcript of the proceedings you have designated in your notice designating the record on appeal. You must deposit this amount and the \$50 fee with the trial court within 10 days of receiving the estimate from the clerk.

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

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

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

(3) Agreed statement

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

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



Contents: An agreed statement must explain what the trial court case was about, describe why the appellate division is the right court to consider an appeal in this case (why the appellate division has “jurisdiction”), and describe the rulings of the trial court relating to the points to be **made** 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 **making** on appeal;
- A summary of the trial court’s rulings and judgment; and
- A summary of the testimony of each witness and other evidence that is relevant to the issues you are raising on appeal.

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

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

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

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



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

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

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

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

b. Record of the documents filed in the trial court

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

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

Read below for more information about these options.

(1) Clerk’s transcript or appendix

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

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

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

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



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

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

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

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

The party preparing the appendix must serve the appendix on each other party (unless the parties have agreed or the appellate division has ordered otherwise) and file the appendix in the appellate division. The appellant's appendix or a joint appendix must be served and filed before or together with the appellant's opening brief. See [\(15\)](#) for information about the brief.

(2) Trial court file

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

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

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

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



(3) Agreed statement

When available: If you and the respondent have already agreed to use an agreed statement as the record of the oral proceedings (see a(3) above) and agree to this, you can use an agreed statement instead of a clerk’s transcript. To do this, you must attach to your agreed statement all of the documents that are required to be included in a clerk’s transcript.

c. Exhibits

The third part of the official record of the trial court proceeding is the exhibits, such as photographs, documents, or other items that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court. Exhibits are considered part of the record on appeal, but the clerk will not include any exhibits in the clerk’s transcript unless you ask that they be included in your notice designating the record on appeal. *Appellant’s Notice Designating Record on Appeal (Limited Civil Case)* (form [APP-103](#)), includes a space for you to make this request. You also can ask the trial court to send original exhibits to the appellate division at the time briefs are filed (see rule [8.843](#) for more information about this procedure and see below for information about briefs).

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

(14) What happens after the official record has been prepared?

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

(15) What is a brief?

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

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

You may, but are not required to, fill out *Appellant’s Opening Brief—Limited Civil Case* (form [APP-200](#)) and use it as your opening brief. You can get more information about using this form as your opening brief from *How to Use Form APP-200 in Limited Civil Cases* (form [APP-200-INFO](#)).

Serving and filing: You must serve and file your brief in the appellate division by the deadline the court set in the notice it sent you, which is usually 30 days after the record is filed in the appellate division or 60 days from the date the appellant chooses to proceed with no reporter’s transcript under rule [8.845](#). “Serve and file” means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (“serve”) the brief to the other parties in the way required by law. If the brief is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the brief has been served. This record is called a “proof of service.” *Proof of Service* (form APP-109) or *Proof of Electronic Service* (form APP-109E) can be used to make this record. The proof



of service must show who served the brief, who was served with the brief, how the brief was served (by mail, in person, or electronically), and the date the brief was served.

- File the original brief and the proof of service with the appellate division. You should make a copy of the brief you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.
- Note: If a party chooses to prepare an appendix of the documents filed in the trial court instead of designating a clerk's transcript, the appellant's appendix or a joint appendix must be served and filed before or together with the appellant's opening brief.

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

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

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

16) What happens after I file my brief?

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

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

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

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

18) What is "oral argument"?

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

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

19) What happens after oral argument?

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

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

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



INFORMATION FOR THE RESPONDENT

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

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

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

If you have any questions about the appeal procedures, you should talk to a lawyer. You must hire your own lawyer if you want one. You can get information about finding a lawyer on the Self-Help Guide to the California Courts at selfhelp.courts.ca.gov/get-free-or-low-cost-legal-help.

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

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

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

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

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

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

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

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

a. Reporter's transcript

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

Whether or not you ask for additional proceedings to be included in the reporter’s transcript, you must generally pay a fee if you want a copy of the reporter’s transcript. The trial court clerk or reporter will send you a notice **stating** the cost of preparing a copy of the reporter’s transcript. If you want a copy of the reporter’s transcript, you must deposit this amount (and a fee for the trial court) or one of the substitutes allowed by rule [8.834](#) with the



trial court clerk within 10 days after this notice is sent. (See rule 8.834 for more information about this deposit and the permissible substitutes, such as a waiver of this deposit signed by the court reporter.)

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

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

b. Agreed statement

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

c. Statement on appeal

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

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

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

d. Clerk's transcript or appendix

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

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



Whether or not you ask for additional documents to be included in the clerk’s transcript, you must pay a fee if you want a copy of the clerk’s transcript. The trial court clerk will send you a notice stating the cost for a copy of the clerk’s transcript. If you want a copy, you must deposit this amount with the court within 10 days after the clerk’s notice was sent.

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

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

If the appellant chooses a clerk’s transcript but does not have a waiver of the fee for a clerk’s transcript, you can choose an appendix instead of a clerk’s transcript, and the appeal will proceed by appendix. To choose an appendix, you can fill out and file *Respondent’s Notice Designating Record on Appeal—Limited Civil Case* (form APP-110) within 10 days after the appellant’s notice designating the record on appeal is filed.

25 What happens after the official record has been prepared?

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

A brief is a party’s written description of the facts in the case, the law that applies, and the party’s argument about the issues being appealed. If you are represented by a lawyer, your lawyer will prepare your brief. If you are not represented by a lawyer in your appeal, you will have to

prepare your brief yourself. You should read rules [8.882–8.884](#) of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in limited civil appeals, including requirements for the format and length of these briefs. You can get these rules at any courthouse or county law library or online at www.courts.ca.gov/rules.

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

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

You may, but are not required to, fill out *Respondent’s Brief—Limited Civil Case* (form [APP-201](#)) and use it as your answering brief. You can get more information about using this form as your answering brief from *How to Use Form APP-201 in Limited Civil Cases* (form [APP-201-INFO](#)).



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 may 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.

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.

**DRAFT
06.24.2024
Not approved
by Judicial
Council****Appellant**
(fill in the name of each party appealing)

v.

Respondent
*(fill in the name of each party against whom the appeal is brought)***Appellate Division Case Number:****Trial Court Case Number:****Trial Court Judicial Officer:****Instructions**

- This form is for use as the appellant's opening brief in a **limited civil case** appeal only. Do not use this form if this is a criminal case, this is an unlimited civil case, or there is a cross-appeal in this case.
- Before you fill in this form, review *How to Use Form APP-200 in Limited Civil Cases* (form [APP-200-INFO](#)). You can get form APP-200-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.
- You may attach additional pages as needed when answering an item by checking the box that states there is not enough space. These additional pages must meet the formatting requirements of California Rules of Court, rule [8.883\(c\)](#). Your brief cannot be longer than 25 pages, including this form and any additional pages used to complete your answers.
- Fill out this brief and make a copy for each of the other parties and the trial court. Serve a copy of the completed form on each of the other parties and the trial court, and keep proof of this service. *Proof of Service* (form [APP-109](#)) or *Proof of Electronic Service* (form [APP-109E](#)) can be used to make this record. 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 Self-Help Guide to the California Courts website at www.courts.ca.gov/selfhelp-serving.htm.
- 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.

1 Information About the Appellant

- a. Appellant (*name*): _____
 Your Lawyer (*if you have one for this case*):
 Name: _____ State Bar No.: _____
 Firm Name: _____
- b. Your Address (*If you are a lawyer filling this form out on behalf of your client, give your contact information and not your client's.*)
 Address: _____
 City: _____ State: _____ Zip: _____
 Telephone: _____ Fax: _____
 Email Address: _____



2 The Order Being Appealed as Stated in the Notice of Appeal

I am/My client is appealing (*check all that apply*):

- a. The final judgment in the trial court case.
- b. An order made after the final judgment in the case.
- c. An order changing or refusing to change the place of trial (venue).
- d. An order granting a motion to quash service of summons.
- e. An order granting a motion to stay or dismiss the action on the ground of inconvenient forum.
- f. An order granting a new trial.
- g. An order denying a motion for judgment notwithstanding the verdict.
- h. An order granting or dissolving an injunction or refusing to grant or dissolve an injunction.
- i. An order appointing a receiver.
- j. Other action (*please describe, write the date that the trial court took the action you are appealing, and explain why it is appealable*):

3 Timeliness of Appeal

- a. Date of entry of judgment or order appealed from:
- b. Date that notice of entry of judgment or a copy of the judgment was served by the clerk or by a party under California Rules of Court, rule 8.822:
- c. Was a notice of intention to move for new trial, a motion for judgment notwithstanding the verdict, a motion for reconsideration, or a motion to vacate the judgment made and denied? Yes No
 - (1) If yes, please specify the type of motion:
 - (2) Date motion filed:
Date motion denied:
Date denial served:
- d. Date you filed the notice of appeal:

4 Other Appeals

Has there been another appeal in this same case? Yes No

If yes, list the case number for each appeal and the date of the decision in that prior appeal. Include all appeals in the case, whether or not all appeals have finished.



5 What Are the Facts of This Case?

Discuss the facts of the dispute between you and the opposing party that are important to the arguments you are making to the appellate division. You may discuss only facts that were presented to the trial court. For each fact you mention, cite the page or pages of the record where it shows that the fact was presented to the trial court. Read item 11 on *How to Use Form APP-200 in Limited Civil Cases* (form APP-200-INFO) before filling out this section.

- Check here if there is not enough space for your answer. Continue your answer on an attached sheet of paper, and write "Attachment 5" at the top.

6 What Happened in the Trial Court?

Describe the proceedings in the trial court. When referring to a specific document (such as the complaint, a motion, or an order), cite to the page of the record where that document can be found.

a. In the trial court, you or your client was the (*check one*):

- Plaintiff (the party who filed the complaint in the case).
 Defendant (the party against whom the complaint was filed).

b. What legal claims did the plaintiff make in the complaint? (*For example, a claim for negligence, breach of contract, violation of civil rights, or employment discrimination*):

- Check here if there is not enough space for your answer. Continue your answer on an attached sheet of paper, and write "Attachment 6b" at the top.

c. What did the complaint ask the court to do? (*For example, order the defendant to pay damages*):

- Check here if there is not enough space for your answer. Continue your answer on an attached sheet of paper, and write "Attachment 6c" at the top.

d. What legal arguments did the defendant make in response? These arguments can be found either in the answer to the complaint or in motions filed by the defendant. (*For example, the claims in the complaint were barred by the statute of limitations, there was no enforceable contract, or the facts do not support the legal claims in the complaint*):

- Check here if there is not enough space for your answer. Continue your answer on an attached sheet of paper, and write "Attachment 6d" at the top.



- 6 e. Did the defendant file a cross-complaint? Yes No

If yes, describe the legal claims the defendant made in the cross-complaint and what the defendant asked the trial court to do:

- Check here if there is not enough space for your answer. Continue your answer on an attached sheet of paper, and write "Attachment 6e" at the top.

- f. What did the trial court do? Describe what the order or judgment being appealed said and what, if anything, the order or judgment required the parties to do.

- Check here if there is not enough space for your answer. Continue your answer on an attached sheet of paper, and write "Attachment 6f" at the top.

7 **Your Request of the Appellate Division of the Superior Court**

What would you like the appellate division to do? (For example, reverse the judgment or order on appeal, or send the case back to the court for more proceedings):

- Check here if there is not enough space for your answer. Continue your answer on an attached sheet of paper, and write "Attachment 7" at the top.



8 What Do You Think the Trial Court Did Wrong?

What do you think the trial court did wrong in deciding the case, and what law supports your arguments? Refer to facts presented to the trial court as well as the statutes, cases, court rules, or constitutions that support your arguments. You may, but do not have to, make more than one argument. Read item 14 on *How to Use Form APP-200 in Limited Civil Cases* (form APP-200-INFO) before filling out this section.

a. **Argument 1.** *(Include the law and/or facts that support your argument.)*

- Check here if there is not enough space for your answer. Continue your answer on an attached sheet of paper, and write "Attachment 8a" at the top.*




- 8 b. **Argument 2 (Optional).** *(Include the law and/or facts that support your argument.)*
 Check here if there is not enough space for your answer. Continue your answer on an attached sheet of paper, and write "Attachment 8b" at the top.

- c. Check here to make additional arguments. Include these additional arguments on an attached sheet of paper, and write "Attachment 8c" at the top.

Date: _____

Type or print your name

 _____
Sign your name

Do not forget to serve this brief on the other parties and the trial court and to use a proof of service. See the instructions on page 1 of this brief.

GENERAL INFORMATION

1 What does this information sheet cover?

This information sheet tells you about how to use *Appellant’s Opening Brief—Limited Civil Case* (form [APP-200](#)) to prepare an opening brief in a limited civil case.

A “limited civil case” is a civil case that involves an amount of \$35,000 or less. If your case involves more than \$35,000, your case is an “unlimited civil case” and you cannot use form APP-200. Also, do not use form APP-200 in a criminal case.

Do not use form APP-200 if a cross-appeal has been filed in your case. A cross-appeal is when both parties have filed notices of appeal asking to have the trial court’s decision reviewed. For more information about briefs where a cross-appeal has been filed, see California Rules of Court, rule [8.884](#).

For information about the appeal process in limited civil cases in general, you should read *Information on Appeal Procedures for Limited Civil Cases* (form [APP-101-INFO](#)). To learn even more, you should read rules [8.800–8.845](#) and [8.880–8.891](#) of the California Rules of Court, which set out the procedures for appeals in limited civil cases. You can get this form and these rules at any courthouse or county law library or online at www.courts.ca.gov/rules and www.courts.ca.gov/forms.

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 and in the form briefs—is the superior court.

If you are the party appealing (asking for the trial court’s decision to be reviewed), you are called the appellant. If you received notice that another party in the case is appealing, you are called the respondent.

3 What is a brief?

A “brief” is a written document that tells the appellate division (the court reviewing your case):

- The facts in the case;
- The law that applies; and
- The party’s arguments about the issues being appealed.

If you are the appellant, you will file the first brief, called an “opening brief.” If you are the respondent, after the appellant files the opening brief, you will have the chance to file the “respondent’s brief” to respond to the appellant’s arguments in the opening brief. Finally, if the respondent files a respondent’s brief, the appellant will then have the chance to file a “reply brief” to reply to the respondent’s arguments. The reply brief is the final brief unless the appellate division orders further briefing.

4 Preparing a brief

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.

If you are the appellant, *Appellant’s Opening Brief—Limited Civil Case* (form APP-200) may be used to prepare your opening brief. This information sheet explains to appellants how to fill out form APP-200.

If you are the respondent, *Respondent’s Brief—Limited Civil Case* (form [APP-201](#)) may be used to prepare your respondent’s brief. The information sheet *How to Use Form APP-201 in Limited Civil Cases* (form [APP-201-INFO](#)) explains how to fill out form APP-201.

If you are the appellant, and you would like to use a form to prepare your reply brief, you can use *Appellant’s Reply Brief—Limited Civil Case* (form [APP-202](#)). The information sheet *How to Use Form APP-202 in Limited Civil Cases* (form [APP-202-INFO](#)) explains how to fill out form APP-202.

You or your lawyer do not need to use these forms for your briefs. If you choose to draft your own brief, read California Rules of Court, rules [8.882–8.884](#) to learn about what your brief must contain, how it must be formatted, and how and when it must be served and filed.



**INFORMATION ABOUT FILLING OUT
APPELLANT'S OPENING BRIEF—
LIMITED CIVIL CASE (FORM APP-200)**

If you are the appellant, you must prepare and file the first brief, called an “appellant’s opening brief.” This brief must clearly explain what you believe are the legal errors made in the trial court. You or your lawyer may use *Appellant’s Opening Brief—Limited Civil Case* (form APP-200) to prepare this opening brief. This section describes how to fill out that form.

5 Attachments, format, and length

Form APP-200 has spaces for you to give information or answer questions. If any of these spaces are not big enough and you need more space for your response to an item, you may check the box in that item stating that you need more space. After you check the box, you may continue your answer on a separate sheet of paper labeled “Attachment” followed by the item number you are filling out. For example, an attachment continuing your response to item 4 would be labeled “Attachment 4” at the top of the page. The separate sheets of paper used to continue your answers and the proof of service are the only attachments that may be included with your brief. Do not attach any other documents.

You should format your brief and attachments as follows:

- The attachments must be on white paper, 8.5 inches by 11 inches in size, with 1.5-inch margins on the left and right and 1-inch margins on the top and bottom.
- In typing the brief and attachments, you may use any standard font, but the font must not be smaller than 13 point.
- You should use normal typeface, but italics, boldface type, or underscores can be used for emphasis. Case names must also be in italics or underscored.
- If you file the brief in paper form, you should bind the brief on the left margin, unless the appellate division has a local rule requiring the brief to be bound on the top.
- All attachments need to be included at the end of form APP-200 in the order of the attachment number. For example, you would put Attachment 4 after Attachment 3. You then need to number the pages of all the attachments in order, starting with page 8 (because the actual form is 7 pages long).

Your opening brief, including the form and any attachments, may not be longer than 25 pages.

6 Completing the caption (the top part of the form)

Name of the parties on appeal. At the top left of the form, fill out the name of each party appealing the trial court’s decision and the name of each party who is a respondent in the appeal.

Appellate division case number. When you filed the notice of appeal in your case, the clerk gave the appeal a case number. You can find this number on the notice of briefing schedule or another document about your case sent to you by the clerk of the appellate division. Write that number in the box entitled “Appellate Division Case Number.”

Trial court case number and trial court judicial officer. Write the case number your case had in the trial court here. You can find this number on any court order from the trial court. Also write the name of the trial court judge or other judicial officer who made the decision you are appealing.

7 Completing item 1, "Information About the Appellant"

In item 1a, type your name. If you are a lawyer filling this out for your client, type your name, State Bar number, and the name of your law firm.

In item 1b, type your address and contact information if you do not have a lawyer. If you are a lawyer filling out this form for your client, write your office address, telephone number, fax number (if applicable), and email address.

8 Completing item 2, "The Order Being Appealed as Stated in the Notice of Appeal"

In this item, you are telling the appellate division about the judgment or order you are appealing. Check the box or boxes that describe the judgment or orders you are appealing. You may check multiple boxes. For example, if you are appealing from the final judgment after a jury trial *and* the trial court’s denial of your motion for a new trial, you would check the box at item 2a and 2b.

For more information, see Code of Civil Procedure section 904.2.



9 Completing item 3, "Timeliness of Appeal"

In item 3, you are providing the court with information about when the trial court entered the order or judgment you are appealing, when notice of that order or judgment was served, and when your notice of appeal was filed. This information will help the appellate division decide whether you filed your notice of appeal in time.

Usually, under California Rules of Court, rule 8.822, the deadline to file a Notice of Appeal is **30 days** after you are served with *either* a document called "Notice of Entry" of judgment or a file-stamped copy of the judgment or order. If neither of these documents is served on you, the deadline is **90 days** after the judgment or order was made. There are very limited exceptions to these deadlines that you can find in California Rules of Court, rule [8.823](#).

In item 3a, write the date the trial court entered the judgment or order you are appealing.

In item 3b, write the date that you were served by the clerk or another party with a notice of entry of judgment or a copy of the judgment under California Rules of Court, rule [8.822](#).

The time to file a notice of appeal may be longer if certain types of motions were filed after the trial court made its decision and the motion was denied by the trial court. These motions are listed in item 3c (notice of intention to move for a new trial, motion for judgment notwithstanding the verdict, motion for reconsideration, or motion to vacate judgment).

In item 3c, check "yes" if a party filed one of the listed motions which was then denied by the trial court. If you check "yes," write the type of motion that was filed, the date the motion was filed, the date the trial court denied the motion, and the date you were served with a copy of the trial court's denial.

Finally, in item 3d, list the date you filed your notice of appeal.

10 Completing item 4, "Other Appeals"

In item 4, state whether there have been any other appeals in this case. If yes, give the case numbers for those other appeals.

11 Completing item 5, "What Are the Facts of This Case?"

In item 5, discuss what happened between the parties to cause this lawsuit to be filed. You must only include facts that:

- Are important to what you think the trial court got wrong, and
- Were presented to the trial court.

Important: The appellate division will NOT consider new evidence, such as the testimony of new witnesses or new exhibits, so do not discuss any facts that were not given to the trial court.

For each fact you discuss in item 5, you must tell the appellate division where in the record on appeal it shows that the fact was presented to the trial court. (For more information about the record on appeal, read item 13 on form [APP-101-INFO](#).) To do this, when you discuss a fact, you must **cite** the page in the record where it shows that fact was presented to the trial court. To *cite* means to give (1) the volume number of the part of the record where the fact can be found, (2) the name of the part of the record you are citing, and (3) the page number in the record where the fact can be found. Here are examples of how to cite to different forms of the record:

- If the fact you are discussing appears at page 10 of volume 2 of the Clerk's Transcript, you would cite the Clerk's Transcript as "2 CT 10."
- If the fact you are discussing appears at page 15 of volume 1 of the Reporter's Transcript, you would cite the Reporter's Transcript as "1 RT 15."
- If the parties used an appendix on appeal instead of a clerk's transcript, and the fact you are discussing appears at page 33 of volume 1 of the appendix, you would cite the appendix as "1 AA 33."

12 Completing item 6, "What Happened in the Trial Court?"

In item 6, you will give the appellate division the facts about what happened in the trial court. Just like in item 5, you must cite to where in the record on appeal a fact you give appears. For example, when you are talking about a specific document filed in the trial court (such as a complaint, a motion, or a court order), cite to where in the record that document can be found.



In item 6a, state whether you were the plaintiff or the defendant in the trial court. The plaintiff is the party who filed the complaint in the case. The defendant is the party against whom the complaint was filed.

In item 6b, describe the legal claims the plaintiff made in the complaint. The plaintiff started this lawsuit by filing a complaint. The complaint explains how the plaintiff believes they have been harmed. The “legal claims” in the complaint describe why the plaintiff believes the defendant is legally responsible for that harm. The following are examples of legal claims:

- The defendant drove through a red light and crashed into the plaintiff. The legal claim would be for “negligence.”
- The defendant failed to pay the plaintiff for work the plaintiff did under a contract. The legal claim would be for “breach of contract.”

In item 6c, describe what the plaintiff asked the trial court to do in the complaint to fix the harm they suffered. For example, the plaintiff may have asked the trial court to order the defendant to pay damages (money) to the plaintiff or to issue an injunction (an order requiring the defendant either to do something or not to do something).

In item 6d, describe the arguments the defendant made to the trial court against the complaint. These arguments are the reasons why the defendant believed the plaintiff should lose the lawsuit. These arguments can be found either in the defendant’s answer or in motions filed by the defendant (such as a demurrer or a motion for summary judgment). Examples of such arguments could include:

- The plaintiff waited too long to bring this lawsuit and the claims are now barred by the statute of limitations.
- The facts stated in the complaint do not support the legal claims.
- The plaintiff failed to give evidence supporting their legal claims.

In item 6e, state whether the defendant filed a cross-complaint against the plaintiff or another party. When a plaintiff sues a defendant, the defendant can sue the plaintiff back, or if the defendant thinks someone else is responsible for plaintiff’s harm, the defendant can sue that other person and bring them into the lawsuit. This is called filing a cross-complaint. If the defendant in this case filed a cross-complaint, briefly describe the legal claims made in the cross-complaint and what relief the defendant asked the trial court to order.

In item 6f, describe the decision of the trial court that you are appealing. You should state what the trial court’s decision was (for example, an order sustaining defendant’s demurrer, an order granting a motion for summary judgment, or a judgment after a jury verdict) and describe any reasons the trial court gave for its decision. Finally, describe what, if anything, the trial court’s decision requires the parties to do.

13 Completing item 7, "Your Request of the Appellate Division of the Superior Court"

In item 7, tell the appellate division what you would like it to do to fix the mistakes you believe the trial court made. For example, if the trial court sustained the defendant’s demurrer and dismissed your case, you could ask the appellate division to reverse the judgment and send the case back to the trial court to allow the case to continue.

14 Completing item 8, "What Do You Think the Trial Court Did Wrong?"

In item 8, you must clearly explain what you believe the trial court did wrong in deciding your case. You must include all your arguments in this opening brief. The appellate division will only consider arguments made in the opening brief.

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. Instead, the appellate division will review the appellate record (the record of what happened in the trial court that the parties have given the court) and the trial court’s decision to see if certain kinds of legal errors were made. The appellate division can only review a case to see whether one of the two types of mistakes happened:

- A **prejudicial error** happened in the case before the trial court. A *prejudicial error* is an error that was made about either the law or court procedures in the case and that caused harm to the appellant.

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. As the appellant, you have the responsibility of showing that an error was made and that you were harmed by the error in some way.



- That there was **no substantial evidence** to support the judgment, order, or other decision being appealed. *Substantial evidence* is evidence that is reasonable and believable. When it conducts its review, the appellate division only looks to see if there was evidence that reasonably supports the trial court’s judgment, order, or other 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 law that supports your argument. This can take the form of statutes, court opinions, court rules, constitutional provisions, or other legal authority. You may find law that supports your appeal mentioned in the documents filed by the parties in the trial court or in the trial court’s decisions.

The appellate division generally will not reverse the judgment, order, or other decision being appealed unless the record clearly shows that one of these mistakes was made. (*Reverse* means to change the trial court’s decision.)

Item 8 is your opportunity to explain to the appellate division how the trial court made one of these mistakes and how the mistake harmed your case.

For each argument, you should clearly identify the following:

- The mistake you believe the trial court made in its judgment, order, or other decision you are appealing
- The **standard of review** the appellate division should apply in reviewing the argument. The standard of review is how the appellate division looks at what happened in the trial court to decide if the trial court made a mistake.

Some common standards of review are *de novo*, *abuse of discretion*, and *substantial evidence*. *De novo* review is used if you are arguing that the trial court applied the law wrong. *Abuse of discretion* review is used if you are arguing that the trial court exercised its discretion in an absurd or arbitrary way. *Substantial evidence* review is used if you are arguing that the evidence as decided by the trial court or jury does not support the trial court’s decision.

For more information about standards of review, visit the Self-Help Guide to the California Courts website at selfhelp.courts.ca.gov/civil-appeals/legal-errors-standards-review.

- The places in the record on appeal where the facts that support your argument can be found. (Please see the discussion of cites to the record on appeal in item 11 of this information sheet.)

Form APP-200 has items for you to make two arguments. If you have more than two arguments to make, check the box at item 8c and make those additional arguments on a separate piece of paper and write “Attachment 8c” at the top.

15 Serving and Filing Your Brief

After you have completed your brief, make copies of the brief (with all attachments) for your records, each of the other parties in the case, and the trial court.

Serve a copy of the completed form (with all attachments) on each of the other parties and the trial court and keep proof of this service. There are two forms you may use to show proof of service:

- *Proof of Service* (form [APP-109](#)); or
- *Proof of Electronic Service* (form [APP-109E](#)).

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 Self-Help Guide to the California Courts website at www.courts.ca.gov/selfhelp-serving.htm.

After you have served copies of the brief on the other parties and the trial court, file the original brief and all attachments, along with the proof of service, with the appellate division.

Clerk stamps date here when form is filed.

**DRAFT
06.24.2024
Not approved
by Judicial
Council****Appellant***(fill in the name of each party appealing)***v.****Respondent***(fill in the name of each party against whom the appeal is brought)***Appellate Division Case Number:****Trial Court Case Number:****Trial Court Judicial Officer:****Instructions**

- This form is for use as the respondent's brief in a **limited civil case** appeal only. Do not use this form if this is a criminal case, this is an unlimited civil case, or there is a cross-appeal in this case.
- Before you fill in this form, review *How to Use Form APP-201 in Limited Civil Cases* (form [APP-201-INFO](#)). You can get form APP-201-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.
- You may attach additional pages as needed when answering an item by checking the box that states there is not enough space. These additional pages must meet the formatting requirements of California Rules of Court, rule [8.883\(c\)](#). Your brief cannot be longer than 25 pages, including this form and any additional pages used to complete your answers.
- Fill out this brief and make a copy for each of the other parties and the trial court. Serve a copy of the completed form on each of the other parties and the trial court, and keep proof of this service. *Proof of Service* (form [APP-109](#)) or *Proof of Electronic Service* (form [APP-109E](#)) can be used to make this record. 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 Self-Help Guide to the California Courts website at www.courts.ca.gov/selfhelp-serving.htm.
- 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.

1 Information About the Respondent

- a. Respondent (*name*): _____
 Your Lawyer (*if you have one for this case*):
 Name: _____ State Bar No.: _____
 Firm Name: _____
- b. Your Address (*If you are a lawyer filling this form out on behalf of your client, give your contact information and not your client's.*)
 Address: _____
 City: _____ State: _____ Zip: _____
 Telephone: _____ Fax: _____
 Email Address: _____



2 What Are the Facts of This Case?

You do not need to fill out this item if you agree with what the appellant's opening brief says are the facts. If you do not agree with what the appellant's opening brief says are the facts, please describe the facts presented to the trial court that are relevant to the parties' arguments on appeal. For each fact you mention, cite the page or pages of the record where it shows that the fact was presented to the trial court. Read item 8 on *How to Use Form APP-201 in Limited Civil Cases* (form APP-201-INFO) before filling out this section.

Check here if there is not enough space for your answer. Continue your answer on an attached sheet of paper, and write "Attachment 2" at the top.



3 What Are Your Responses to Appellant's Arguments?

In responding to the arguments made in the appellant's opening brief, you should try to explain why the trial court was correct in the decision the appellant is challenging on appeal. Refer to facts presented to the trial court as well as the statutes, cases, court rules, constitutions, or other legal authorities that support your responses. Read item 9 on *How to Use form APP-201 in Limited Civil Cases* (form APP-201-INFO) before filling out this section.

a. Response 1.

- (1) What is the first argument in the Appellant's Opening Brief to which you are responding? Briefly describe the argument.
 Check here if there is not enough space for your answer. Continue your answer on an attached sheet of paper, and write "Attachment 3a(1)" at the top.

- (2) What is your response to that argument? Include the law and/or facts that support your response.
 Check here if there is not enough space for your answer. Continue your answer on an attached sheet of paper, and write "Attachment 3a(2)" at the top.



3 b. **Response 2.**

(1) What is the second argument in the appellant’s opening brief to which you are responding? Briefly describe the argument.

Check here if there is not enough space for your answer. Continue your answer on an attached sheet of paper, and write “Attachment 3b(1)” at the top.

(2) What is your response to that argument? Include the law and/or facts that support your response.

Check here if there is not enough space for your answer. Continue your answer on an attached sheet of paper, and write “Attachment 3b(2)” at the top.

c. Check here to respond to additional arguments. Include these additional responses on an attached sheet of paper, and write “Attachment 3c” at the top. For each response, begin first by briefly describing the argument in the Appellant’s Opening Brief to which you are responding, and then give your response.



4 Other Arguments

Are there any other arguments you would like to raise to explain why the superior court was correct in the decision that the appellant is challenging on appeal or why the appellant should not be allowed to appeal?

Check here if there is not enough space for your answer. Continue your answer on an attached sheet of paper, and write "Attachment 4" at the top.


5 Your Request of the Appellate Division

What would you like the appellate division to do? (For example, affirm the trial court's decision or dismiss appellant's appeal):

Check here if there is not enough space for your answer. Continue your answer on an attached sheet of paper, and write "Attachment 5" at the top.

Date: _____

Type or print your name

 _____
Sign your name

Do not forget to serve this brief on the other parties and the trial court and to use a proof of service. See the instructions on page 1 of this brief.

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

This information sheet tells you about how to use *Respondent's Brief—Limited Civil Case* (form [APP-201](#)) to draft a respondent's brief in a limited civil case.

A “limited civil case” is a civil case that involves an amount of \$35,000 or less. If your case involves more than \$35,000, your case is an “unlimited civil case” and you cannot use form APP-201. Also, do not use form APP-201 in a criminal case.

Do not use form APP-201 if a cross-appeal has been filed in your case. A cross-appeal is when both parties have filed notices of appeal asking to have the trial court's decision reviewed. For more information about briefs where a cross-appeal has been filed, see California Rules of Court, rule [8.884](#).

For information about the appeal process in limited civil cases in general, you should read *Information on Appeal Procedures for Limited Civil Cases* (form [APP-101-INFO](#)). To learn even more, you should read rules [8.800–8.845](#) and [8.880–8.891](#) of the California Rules of Court, which set out the procedures for appeals in limited civil cases. You can get this form and these rules at any courthouse or county law library or online at www.courts.ca.gov/rules and www.courts.ca.gov/forms.

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 and in the form briefs—is the superior court.

If you are the party appealing (asking for the trial court's decision to be reviewed), you are called the appellant. If you received notice that another party in the case is appealing, you are called the respondent.

3 What is a brief?

A “brief” is a written document that tells the appellate division (the court reviewing your case):

- The facts in the case;
- The law that applies; and
- The party's arguments about the issues being appealed.

If you are the appellant, you will file the first brief, called an “opening brief.” If you are the respondent, after the appellant files the opening brief, you will have the chance to file the “respondent's brief” to respond to the appellant's arguments in the opening brief. Finally, if the respondent files a respondent's brief, the appellant will then have the chance to file a “reply brief” to reply to the respondent's arguments. The reply brief is the final brief unless the appellate division orders further briefing.

4 Preparing a brief

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.

If you are the appellant, *Appellant's Opening Brief—Limited Civil Case* (form APP-200) may be used to prepare your opening brief. The information sheet *How to Use Form APP-200 in Limited Civil Cases* (form [APP-200-INFO](#)) explains how to fill out form APP-200.

If you are the respondent, *Respondent's Brief—Limited Civil Case* (form [APP-201](#)) may be used to prepare your respondent's brief. This information sheet explains how to fill out form APP-201.

If you are the appellant, and you would like to use a form to prepare your reply brief, you can use *Appellant's Reply Brief—Limited Civil Case* (form [APP-202](#)). The information sheet *How to Use Form APP-202 in Limited Civil Cases* (form [APP-202-INFO](#)) explains how to fill out form APP-202.

You or your lawyer do not need to use these forms for your briefs. If you choose to draft your own brief, read California Rules of Court, rules [8.882–8.884](#) to learn about what your brief must contain, how it must be formatted, and how and when it must be served and filed.



**INFORMATION ABOUT FILLING OUT
RESPONDENT'S BRIEF—LIMITED CIVIL
CASE (FORM APP-201)**

If you are the respondent, your brief, called a “respondent’s brief,” responds to the arguments made in the appellant’s opening brief and explains why the trial court’s decision being appealed is correct. You or your lawyer may use *Respondent’s Brief—Limited Civil Case* (form [APP-201](#)) for this purpose. This section describes how to fill out that form.

You do not need to submit a respondent’s brief. However, if you do not submit a brief, you will lose the chance to present your argument to the appellate division, either in writing or by making an oral argument before the appellate division. (For more information about oral argument, read item 26 on form [APP-101-INFO](#).) If you do not submit a brief, the appellant does not automatically win the appeal. Instead, the appellate division will decide the appeal on the trial court record, the appellant’s opening brief, and any oral argument by the appellant.

5 Attachments, format, and length

Form APP-201 has spaces for you to give information or answer questions. If any of these spaces are not big enough and you need more space for your response to an item, you may check the box in that item stating that you need more space. After you check the box, you may continue your answer on a separate sheet of paper labeled “Attachment” followed by the item number you are filling out. For example, an attachment continuing your response to item 4 would be labeled “Attachment 4” at the top of the page. The separate sheets of paper used to continue your answers and the proof of service are the only attachments that may be included with your brief. Do not attach any other documents.

You should format your brief and attachments as follows:

- The attachments must be on white paper, 8.5 inches by 11 inches in size, with 1.5 inch margins on the left and right and 1-inch margins on the top and bottom.
- In typing the brief and attachments, you may use any standard font, but the font must not be smaller than 13 point.
- You should use normal typeface, but italics, boldface type, or underscores can be used for emphasis. Case names must also be in italics or underscored.

- If you file the brief in paper form, you should bind the brief on the left margin, unless the appellate division has a local rule requiring the brief to be bound on the top.
- All attachments need to be included at the end of form APP-201 in the order of the attachment number. For example, you would put Attachment 4 after Attachment 3. You then need to number the pages of all the attachments in order, starting with page 6 (because the actual form is 5 pages long).

Your respondent’s brief, including the form and any attachments, may not be longer than 25 pages.

6 Completing the caption (the top part of the form)

Name of the parties on appeal. At the top left of the form, fill out the name of each party appealing the trial court’s decision and the name of each party who is a respondent in the appeal.

Appellate division case number. When the appellant filed the notice of appeal in this case, the clerk gave the appeal a case number. You can find this number on the appellant’s opening brief or on the notice of briefing schedule sent to you by the clerk of the appellate division. Write that number in the box entitled “Appellate Division Case Number.”

Trial court case number and trial court judicial officer. Write the case number your case had in the trial court here. You can find this number on any court order from the trial court. Also write the name of the trial court judge or other judicial officer who made the decision the appellant is appealing.

7 Completing item 1, "Information About the Respondent"

In item 1a, type your name. If you are a lawyer filling this out for your client, type your name, State Bar number, and the name of your law firm.

In item 1b, type your address and contact information if you do not have a lawyer. If you are a lawyer filling out this form for your client, write your office address, telephone number, fax number (if applicable), and email address.



8 Completing item 2, "What Are the Facts of This Case?"

You do not need to fill out item 2 if you agree with the facts stated by the appellant in the appellant's opening brief. If you do not agree with those facts, then, in item 2, discuss what happened between the parties to cause this lawsuit to be filed.

If you discuss the facts, you must only include facts that:

- Are important to the arguments made in the appellant's opening brief, your responses to those arguments you make in item 3, or other arguments you make in item 4 about why the trial court was correct in the decision the appellant is challenging on appeal or why the appellant should not be allowed to appeal; and
- Were presented to the trial court. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits, so do not discuss any facts that were not presented to the trial court.

For each fact you discuss in item 2, you must tell the appellate division where in the record on appeal it shows that the fact was presented to the trial court. (For more information about the record on appeal, read item 13 on form APP-101-INFO.) To do this, when you discuss a fact, you must **cite** the page in the record where it shows that fact was presented to the trial court. To *cite* means to give (1) the volume number of the part of the record where the fact can be found, (2) the name of the part of the record you are citing, and (3) the page number in the record where the fact can be found. Here are examples of how to cite to different forms of the record:

- If the fact you are discussing appears at page 10 of volume 2 of the Clerk's Transcript, you would cite the Clerk's Transcript as "2 CT 10."
- If the fact you are discussing appears at page 15 of volume 1 of the Reporter's Transcript, you would cite the Reporter's Transcript as "1 RT 15."
- If the parties used an appendix on appeal instead of a clerk's transcript, and the fact you are discussing appears at page 33 of volume 1 of the appendix, you would cite the appendix as "1 AA 33."

9 Completing item 3, "What Are Your Responses to Appellant's Arguments?"

Item 3 is your opportunity to explain why the arguments made by the appellant in the appellant's opening brief are wrong and the trial court's decision is right. You should respond to every legal argument made by the appellant in the opening brief and should respond to the arguments in the same order that appellant made them.

Form APP-201 has items for you to respond to the appellant's first two arguments. If the appellant made more than two arguments, check the box at item 3c, and respond to the appellant's other arguments on a separate piece of paper labeled "Attachment 3c" at the top of the page.

For each response, begin by briefly describing the appellant's argument to which you are responding. Then, explain why you believe the appellant's argument is wrong and the trial court's decision is correct. Even if the appellant has identified a legal mistake made by the trial court, you can argue that the mistake did not cause enough harm (or *prejudice*) to the appellant's case to require the trial court's decision to be changed (or *reversed*).

In each of your responses, you must clearly identify the following:

- The places in the record on appeal where the facts that support your argument can be found. (Please see the discussion of cites to the record on appeal in item 8 of this information sheet.)
- The law that supports your argument. This can take the form of statutes, court opinions, court rules, constitutional provisions, or other legal authority. You may find law that supports your appeal mentioned in the documents filed by the parties in the trial court or in the trial court's decisions.

In reviewing the arguments made by the appellant in the opening brief and your responses to those arguments, the appellate division will apply a **standard of review**. The *standard of review* is the rule or guidelines the appellate division will apply to decide whether a mistake was made in the trial court. If the appellant's opening brief failed to discuss the applicable standard of review, or if you disagree with the appellant about which standard of review applies, you should include in your response a discussion of what standard of review you believe applies.



You can get information about the possible standards of review that may apply on the Self-Help Guide to the California Courts website at selfhelp.courts.ca.gov/civil-appeals/legal-errors-standards-review.

10 Completing item 4, "Other Arguments"

In item 3, you responded to the arguments the appellant made in the appellant's opening brief. Item 4 is your opportunity to make any additional arguments you may have for why the trial court's decision is correct.

For example, if the trial court's decision gave two reasons why the appellant lost, but the appellant only discussed one of these reasons in the appellant's opening brief, you could argue that the appellant has lost the ability to challenge the other reason.

Additionally, if the appellant did not follow the court rules about appeals, you can argue in item 4 that the appellate division should dismiss the appeal. For example, if the appellant failed to file the notice of appeal in time or if the trial court's decision is not an appealable order, you could make these arguments in item 4. For more information about the deadlines for filing a notice of appeal and what orders or trial court decisions can be appealed, see the Self-Help Guide to the California Courts website at selfhelp.courts.ca.gov/civil-appeals/can-you-appeal.

You may make as many additional arguments as you want. Each argument should be listed separately with a title that summarizes the argument in a single sentence, followed by the argument. If you require additional space, check the box stating you need additional space, and continue your answer on an attached sheet of paper labeled "Attachment 4" at the top of the page.

11 Completing item 5, "Your Request of the Appellate Division"

In item 5, tell the appellate division what you would like it to do. For example, if you believe the trial court's decision is correct, you could ask the appellate division to **affirm** the trial court's decision (to *affirm* means to uphold the trial court's decision). Or, if you believe the appellant has not followed the rules about appeals and the appellate division should reject the appeal, you could ask the appellate division to dismiss the appellant's appeal, leaving the trial court's decision in place.

12 Serving and Filing Your Brief

After you have completed your brief, make copies of the brief (with all attachments) for your records, each of the other parties in the case, and the trial court.

Serve a copy of the completed form (with all attachments) on each of the other parties and the trial court, and keep proof of this service. There are two forms you may use to show proof of service:

- *Proof of Service* (form [APP-109](#)); or
- *Proof of Electronic Service* (form [APP-109E](#)).

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After you have served copies of the brief on the other parties and the trial court, file the original brief and all attachments, along with the proof of service, with the appellate division.

Clerk stamps date here when form is filed.

**DRAFT
06.24.2024
Not approved
by Judicial
Council****Appellant**
(fill in the name of each party appealing)

v.

Respondent
*(fill in the name of each party against whom the appeal is brought)***Appellate Division Case Number:****Trial Court Case Number:****Trial Court Judicial Officer:****Instructions**

- This form is for use as the appellant's reply brief in a **limited civil case** appeal only. Do not use this form if this is a criminal case, this is an unlimited civil case, or there is a cross-appeal in this case.
- Before you fill in this form, review *How to Use Form APP-202 in Limited Civil Cases* (form [APP-202-INFO](#)). You can get form APP-202-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.
- You may attach additional pages as needed when answering an item by checking the box that states there is not enough space. These additional pages must meet the formatting requirements of California Rules of Court, rule [8.883\(c\)](#). Your brief cannot be longer than 25 pages, including this form and any additional pages used to complete your answers.
- Fill out this brief and make a copy for each of the other parties and the trial court. Serve a copy of the completed form on each of the other parties and the trial court and keep proof of this service. *Proof of Service* (form [APP-109](#)) or *Proof of Electronic Service* (form [APP-109E](#)) can be used to make this record. 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 Self-Help Guide to the California Courts website at www.courts.ca.gov/selfhelp-serving.htm.
- 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.

1 Information About the Appellant

- a. Appellant (name): _____
 Your Lawyer (if you have one for this case):
 Name: _____ State Bar No.: _____
 Firm Name: _____
- b. Your Address (If you are a lawyer filling this form out on behalf of your client, give your contact information and not your client's):
 Address: _____
 City: _____ State: _____ Zip: _____
 Telephone: _____ Fax: _____
 Email Address: _____



2 Replying to Respondent's Arguments

List each argument raised in the respondent's brief to which you are replying, and then explain your reply to that argument. Do not repeat arguments from your opening brief or raise new arguments. Refer to facts presented to the trial court, as well as the statutes, cases, court rules, constitutions, and other legal authorities that support your arguments.

a. Reply 1.

(1) What is the first response or argument in the respondent's brief to which you are replying?

- Check here if there is not enough space for your answer. Continue your answer on an attached sheet of paper, and write "Attachment 2a(1)" at the top.

(2) What is your reply to that response or argument? Include the law and/or facts that support your reply.

- Check here if there is not enough space for your answer. Continue your answer on an attached sheet of paper, and write "Attachment 2a(2)" at the top.



2 b. **Reply 2.**

(1) What is the second response or argument in the respondent’s brief to which you are replying?

Check here if there is not enough space for your answer. Continue your answer on an attached sheet of paper, and write “Attachment 2b(1)” at the top.

(2) What is your reply to that response or argument? Include the law and/or facts that support your reply.

Check here if there is not enough space for your answer. Continue your answer on an attached sheet of paper, and write “Attachment 2b(2)” at the top.

c. Check here to reply to additional responses or arguments made in the respondent’s brief. Include the additional replies on an attached sheet of paper, and write “Attachment 2c” at the top.

Date: _____

Type or print your name



Sign your name

Do not forget to serve this brief on the other parties and the trial court and to use a proof of service. See the instructions on page 1 of this brief.

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

This information sheet tells you about how to use *Appellant’s Reply Brief—Limited Civil Case* (form [APP-201](#)) to draft a reply brief in a limited civil case.

A “limited civil case” is a civil case that involves an amount of \$35,000 or less. If your case involves more than \$35,000, your case is an “unlimited civil case” and you cannot use form APP-202. Also, do not use form APP-202 in a criminal case.

Do not use form APP-202 if a cross-appeal has been filed in your case. A cross-appeal is when both parties have filed notices of appeal asking to have the trial court’s decision reviewed. For more information about briefs where a cross-appeal has been filed, see California Rules of Court, rule [8.884](#).

For information about the appeal process in limited civil cases in general, you should read *Information on Appeal Procedures for Limited Civil Cases* (form [APP-101-INFO](#)). To learn even more, you should read rules [8.800–8.845](#) and [8.880–8.891](#) of the California Rules of Court, which set out the procedures for appeals in limited civil cases. You can get this form and these rules at any courthouse or county law library or online at www.courts.ca.gov/rules and www.courts.ca.gov/forms.

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 and in the form briefs—is the superior court.

If you are the party appealing (asking for the trial court’s decision to be reviewed), you are called the appellant. If you received notice that another party in the case is appealing, you are called the respondent.

3 What is a brief?

A “brief” is a written document that tells the appellate division (the court reviewing your case):

- The facts in the case;
- The law that applies; and
- The party’s arguments about the issues being appealed.

If you are the appellant, you will file the first brief, called an “opening brief.” If you are the respondent, after the appellant files the opening brief, you will have the chance to file the “respondent’s brief” to respond to the appellant’s arguments in the opening brief. Finally, if the respondent files a respondent’s brief, the appellant will then have the chance to file a “reply brief” to reply to the respondent’s arguments. The reply brief is the final brief unless the appellate division orders further briefing.

4 Preparing a brief

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.

If you are the appellant, *Appellant’s Opening Brief—Limited Civil Case* (form APP-200) may be used to prepare your opening brief. The information sheet *How to Use Form APP-200 in Limited Civil Cases* (form [APP-200-INFO](#)) explains how to fill out form APP-200.

If you are the respondent, *Respondent’s Brief—Limited Civil Case* (form [APP-201](#)) may be used to prepare your respondent’s brief. The information sheet *How to Use Form APP-201 in Limited Civil Cases* (form [APP-201-INFO](#)) explains how to fill out form APP-201.

If you are the appellant, and you would like to use a form to prepare your reply brief, you can use *Appellant’s Reply Brief—Limited Civil Case* (form [APP-202](#)). This information sheet explains how to fill out form APP-202.

You or your lawyer do not need to use these forms for your briefs. If you choose to draft your own brief, read California Rules of Court, rules [8.882–8.884](#) to learn about what your brief must contain, how it must be formatted, and how and when it must be served and filed.



**INFORMATION ABOUT FILLING OUT
APPELLANT'S REPLY BRIEF—
LIMITED CIVIL CASE (FORM APP-202)**

If you are the appellant and the respondent filed a respondent's brief, that brief contained arguments that responded to your opening brief. You now have the opportunity to file an "appellant's reply brief," which replies to those arguments made in the respondent's brief. You or your lawyer may use *Appellant's Reply Brief—Limited Civil Case* (form [APP-202](#)) for this purpose. This section describes how to fill out that form.

You do not need to file a reply brief unless you want to. If you choose to file a reply brief, it will be the final brief filed in the case, unless the appellate division chooses to order additional briefing.

5 Attachments, format, and length

Form APP-202 has spaces for you to give information or answer questions. If any of these spaces are not big enough and you need more space for your response to an item, you may check the box in that item stating that you need more space. After you check the box, you may continue your answer on a separate sheet of paper labeled "Attachment" followed by the item number you are filling out. For example, an attachment continuing your response to item 4 would be labeled "Attachment 4" at the top of the page. The separate sheets of paper used to continue your answers and the proof of service are the only attachments that may be included with your brief. Do not attach any other documents.

You should format your brief and attachments as follows:

- The attachments must be on white paper, 8.5 inches by 11 inches in size, with 1.5-inch margins on the left and right and 1-inch margins on the top and bottom.
- In typing the brief and attachments, you may use any standard font, but the font must not be smaller than 13 points.
- You should use normal typeface, but italics, boldface type, or underscores can be used for emphasis. Case names must also be in italics or underscored.

- If you file the brief in paper form, you should bind the brief on the left margin, unless the appellate division has a local rule requiring the brief to be bound on the top.
- All attachments need to be included at the end of form APP-202 in the order of the attachment number. For example, you would put Attachment 4 after Attachment 3. You then need to number the pages of all the attachments in order, starting with page 4 (because the actual form is 3 pages long).

Your reply brief, including the form and any attachments, may be no longer than 25 pages.

6 Completing the caption (the top part of the form)

Name of the parties on appeal. At the top left of the form, fill out the name of each party appealing the trial court's decision and the name of each party who is a respondent in the appeal.

Appellate division case number. When you filed the notice of appeal in your case, the clerk gave the appeal a case number. You can find this number on the notice of briefing schedule or another document about your case sent to you by the clerk of the appellate division. Write that number in the box entitled "Appellate Division Case Number."

Trial court case number and trial court judicial officer. Write the case number your case had in the trial court here. You can find this number on any court order from the trial court. Also write the name of the trial court judge or other judicial officer who made the decision you are appealing.

7 Completing item 1, "Information About the Appellant"

In item 1a, type your name. If you are a lawyer filling this out for your client, type your name, State Bar number, and the name of your law firm.

In item 1b, type your address and contact information if you do not have a lawyer. If you are a lawyer filling out this form for your client, write your office address, telephone number, fax number (if applicable), and email address.



8 Completing item 2, "Replying to Respondent's Arguments"

Item 2 is your opportunity to reply to the responses made by the respondent in the respondent's brief.

Form APP-202 has items for you to reply to the respondent's first two arguments. If the respondent's brief contained more than two arguments, check the box at item 2c, and reply to the other arguments on a separate piece of paper labeled "Attachment 2c" at the top of the page.

For each reply, begin by briefly describing the respondent's argument to which you are replying. Then, give your reply explaining why the respondent's arguments are incorrect. Your reply brief should not simply repeat the arguments you made in the opening brief. Instead, your reply arguments can do the following:

- Address legal issues and arguments made in the respondent's brief.
- Show the appellate division how the respondent did not successfully address the legal issues made in the appellant's opening brief.
- Address new legal authorities (cases, statutes, or constitutional provisions) included in the respondent's brief.

For each of your reply arguments, you must clearly identify the following:

- The places in the record on appeal where the facts that support your argument can be found.
- The law that supports your argument. This can take the form of statutes, court opinions, court rules, constitutional provisions, or other legal authority. You may find law that supports your appeal mentioned in the documents filed by the parties in the trial court or in the trial court's decisions.

9 Serving and Filing Your Brief

After you have completed your brief, make copies of the brief (with all attachments) for your records, each of the other parties in the case, and the trial court.

Serve a copy of the completed form (with all attachments) on each of the other parties and the trial court, and keep proof of this service. There are two forms you may use to show proof of service:

- *Proof of Service* (form [APP-109](#)); or
- *Proof of Electronic Service* (form [APP-109E](#)).

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 Self-Help Guide to the California Courts website at www.courts.ca.gov/selfhelp-serving.htm.

After you have served copies of the brief on the other parties and the trial court, file the original brief and all attachments, along with the proof of service, with the appellate division.

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

	Commenter	Position	Comment	Committee Response
1.	Richard Hill Benes Attorney at Law (Ret.) San Diego	A	<p>I am a retired appellate specialist who practiced civil appellate law for 47 years.</p> <p>With a philosophical reservation, I support the proposal for the promulgation of form briefs for use in limited civil appeals, primarily because I believe it is very difficult for litigants to retain attorneys for representation in such appeals. The amount at stake seldom justifies the expense of legal representation and makes it exceedingly difficult for parties in such appeals to obtain the help of willing attorneys, even when they seek them. Because appellate representation is seldom obtained in limited civil appeals, the use of form appellate briefs should improve the efficiency of appellate departments.</p> <p>However, for the following reasons, I write to urge caution in expanding the proposal to facilitate the use of form appellate briefs in unlimited civil cases.</p> <p>Our system of justice is based upon the fundamental premise that truth appears and justice is best achieved in an adversarial system in which all opposing parties are represented by competent attorneys. When a party cannot afford to obtain counsel, or chooses not to, the system is degraded and operates less efficiently and accurately in producing justice. Unrepresented parties are unfamiliar with the law and the rules of civil procedure. In both limited and unlimited civil</p>	The committee appreciates the feedback and notes the commenter's support for the instant proposal.

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

	Commenter	Position	Comment	Committee Response
			<p>cases, they represent a threat to their own legal rights and a burden to the judicial system.</p> <p>Therefore, the primary goal of the State Bar, the Judicial Council, and all local bar associations should be to develop programs to insure that all litigants can obtain legal representation. It should not be to facilitate self-representation, especially on appeal in unlimited cases. After all, appellate law has been recognized as a specialized area of legal practice for 28 years.</p> <p>Unfortunately, such self-representation is rarely a matter of choice. Despite tools that have increased the productivity of attorneys in recent decades, such as word-processing, electronic legal research, and even artificial intelligence, the cost of legal representation has outpaced the rate of inflation. When appellate lawyers charge \$600 or more per hour, many civil appellate litigants simply cannot afford appellate representation, despite the greater rights at stake in unlimited civil cases.</p> <p>I have heard that as many as one in three appeals in unlimited civil cases now involve at least one unrepresented party. That should be very disappointing to the bench as well as the bar. Who would not be shocked if one in six patients performed appendectomies on themselves because they could not afford a surgeon?</p>	

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

	Commenter	Position	Comment	Committee Response
			<p>To appellate litigants who are either unable to afford appellate counsel, or simply penurious, the opportunity of self-representation through the use of form briefs promulgated by the Judicial Council would be attractive (especially with the availability of artificial intelligence tools) and dangerous. Such forms may deceptively appear like “legalzoom.com” or “trustandwill.com” procedures in which parties can prepare their own legal documents. The promulgation of such forms might even increase the number of unrepresented litigants.</p> <p>As the Invitation to Comment well notes, “Unlimited civil cases are more likely to involve complex or complicated factual or legal backgrounds for which form briefs may not be well suited.” Unlimited civil cases are certainly more heavily litigated in trial courts than limited civil cases. More importantly, the users of form appellate briefs in unlimited civil cases would usually be unfamiliar with the rules of law and the standards of appellate review, and they would usually lack the analytical ability of a trained attorney. A form is simply not a substitute for a legal education.</p> <p>Thank you for consideration of these comments.</p>	
2.	California Lawyers Association, Litigation Section, Appellate Courts Committee	AM	The Committee on Appellate Courts (CAC) of the California Lawyers Association’s Litigation Section submits this response to the Invitation to Comment on SPR24-05 (Form Briefs). Established	No response necessary.

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

	Commenter	Position	Comment	Committee Response
	By Saul Bercovitch, Associate Executive Director, Governmental Affairs		<p>in 2018, the California Lawyers Association is a nonprofit, voluntary organization comprising thousands of licensed attorneys that is dedicated to the professional advancement of attorneys practicing in the State of California. The CAC consists of over twenty experienced appellate practitioners and court staff, drawn from a wide range of practice areas. As part of its mission, the CAC frequently shares its views regarding proposals to change rules that govern appellate practice.</p> <p>In SPR24-05, the Advisory Appellate Committee proposes use of form briefs in the Appellate Division. The CAC strongly supports SPR24-05. We offer four general observations, and then specific comments to further this initiative. The draft briefs and proposed Information Sheets plainly required extensive work. We commend the Appellate Advisory Committee for undertaking this effort.</p> <p>1. General Observations Regarding SPR24-05 <i>First</i>, the form briefs are a giant leap forward in facilitating access to appellate justice for self-represented litigants seeking review of trial court decisions. For the reasons detailed in the Invitation to Comment, these briefs will be a “win-win” for both parties and the courts.</p>	<p>The committee notes the commenter’s support for the proposal.</p> <p>The committee appreciates the feedback.</p>

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Appellate Procedure: Form Briefs for Use in Limited Civil Appeals (amend Cal. Rules of Court, rule 8.883; approve forms APP-200, APP-200-INFO, APP-201, APP-201-INFO, APP-202 and APP-202-INFO; revise APP-101-INFO)

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

	Commenter	Position	Comment	Committee Response
			<p><i>Second</i>, when proposing form briefs, the CAC did not consider possible use in the Appellate Division, but an incremental approach makes sense. If these briefs are as beneficial as we anticipate, as they have been in other jurisdictions, we hope the Appellate Advisory Committee will consider form briefs for use in the Court of Appeal at the earliest opportunity.</p>	
			<p><i>Third</i>, we foresee an iterative process possibly refining the form briefs in response to any practical issues arising in their use. After two years using form briefs in the Appellate Division, for example, the Appellate Advisory Committee might consider evaluating what has worked well and what can be improved. This could occur in connection with introducing form briefs for use in the Court of Appeal.</p>	<p>The committee appreciates the feedback.</p>
			<p><i>Fourth</i>, we propose additions to the form briefs that should help self-represented litigants who do not read the Information Sheets before using the form briefs. We also suggest some revisions to the Information Sheets.</p>	<p>See responses to specific comments below.</p>
			<p>2. Comments on SPR24-05</p> <ul style="list-style-type: none"> ▪ The Invitation to Comment does not indicate whether the briefs will be fillable on a computer, with the ability to save the document as a PDF 	<p>It will be possible to complete the form briefs on a computer and save them, similar to other Judicial Council forms.</p>

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

	Commenter	Position	Comment	Committee Response
			file. Like many other Judicial Council forms, there should be a fill-and-save option.	
			<ul style="list-style-type: none"> ▪ The line spacing on the draft forms may be too tight for a legible presentation, especially if the briefs are typed separately or handwritten. If possible, the lines could be eliminated entirely. 	The committee has made the suggested revision and removed the lines from the text boxes.
			<ul style="list-style-type: none"> ▪ We suggest that the form briefs permit 20 pages of attachments. There are two reasons for this suggestion. First, for the substantive questions, the user might decide not to write in the form brief at all and only use the attachments. Under those circumstances, the attachments may provide insufficient space. Second, the form briefs are different lengths. The appellant would have only 13 pages of attachments for the opening brief, whereas the respondent would have 15 pages of attachments. The reply brief would permit 17 pages of attachments. 	<p>The committee declines to revise the proposed page limit for form briefs to permit 20 pages of attachments. The committee believes defining the page limit in such a way could cause confusion, especially compared to the page limits applicable to briefs composed with a computer or typewriter which are articulated in terms of total pages.</p> <p>However, to provide more space for parties to present their arguments on appeal, the committee has increased the page limit applicable to the proposed form briefs (including attachments) to 25 pages.</p>
			<ul style="list-style-type: none"> ▪ At pp. 4-5 of Appellant’s Opening Brief (PDF pp. 28-29), Subsections 6(d)-(e) ask the appellant to identify the arguments made by the defendant and whether the defendant filed a cross-complaint. A self-represented litigant who is the plaintiff in the case, as is common, may not fully understand the defendant’s arguments. Although we understand the judicial reader’s interest in the opposing position, the answer to the first question 	The committee declines to make the suggested change. First, <i>Appellant’s Opening Brief</i> (form APP-200) may be filled out by defendant-appellants. In these cases, the information requested by items 6(d) & (e) would not be included in the respondent’s brief. Second, the committee believes these items request information that would be useful for the appellate division in understanding what transpired in the

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

	Commenter	Position	Comment	Committee Response
			<p>will be largely, if not entirely, found in the Respondent’s Brief. Likewise, because “cross-complaint” is a term of art, and cross-complaints are exceptional, the appellant may find the second question confusing. For these reasons, we suggest that these two questions be omitted, or made optional if the appellant wishes to provide an answer.</p>	<p>trial court. Finally, the committee believes that any confusion will be minimized by the information provided in <i>How to Use Form APP-200 in Limited Civil Cases</i> (APP-200-INFO)</p>
			<ul style="list-style-type: none"> ▪ At pp. 5 & 7 of APP-200-INFO (PDF pp. 36, 38), the Information Sheet refers to standards of review, but the Appellant’s Opening Brief and Respondent’s Brief do not mention standards of review. Given the basic importance of these standards on appeal and the possibility that self-represented litigants will not read form APP-200-INFO, the form briefs could include a reference to the standard of review at PDF pp. 30 (What the Trial Court Did Wrong) & 44 (Responses to Appellant’s Arguments). We suggest using a check box for the standards of review. 	<p>The committee declines to make the suggested revision. The committee had to strike a balance between including additional information on the form brief, keeping the form’s length reasonable, and ensuring that the parties have sufficient space to provide an answer. The committee concludes that the instructions to item 7 on form APP-200 and item 3 on form APP-201, which specifically direct the party to refer to the relevant section of the information sheet, will sufficiently advise the party of the need to address the standard of review.</p>
			<ul style="list-style-type: none"> ▪ Sections 5 and 8 (PDF pp. 27, 30) in the Appellant’s Opening Brief reference the Information Sheet, but sections 2 and 3 of the Respondent’s Brief (PDF pp. 43–44) do not reference the Information Sheet. We suggest including references to the Information Sheet in the Respondent’s Brief. 	<p>The committee has made the suggested revision.</p>

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Appellate Procedure: Form Briefs for Use in Limited Civil Appeals (amend Cal. Rules of Court, rule 8.883; approve forms APP-200, APP-200-INFO, APP-201, APP-201-INFO, APP-202 and APP-202-INFO; revise APP-101-INFO)

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

	Commenter	Position	Comment	Committee Response
			<p>3. Comments on specific lines or aspects</p> <ul style="list-style-type: none"> ▪ At p. 3 of APP-200-INFO (PDF p. 34), in the first column at the bottom under number 11, the term “district court” presumably intends to refer to “trial court.” ▪ At p. 3 of APP-200-INFO (PDF p. 34), in the second column in the middle under number 11, “App’x” presumably intends to refer to “AA.” 	<p>The committee has made the recommended revisions.</p>
			<ul style="list-style-type: none"> ▪ At p. 2 of APP-200-INFO (PDF p. 33), in the second column under number 8, presumably “denial” (“the trial court’s denial of your motion for new trial”) intends to refer to “grant.” 	<p>The committee declines to make the recommended revision. The example is addressing a situation where a party loses at trial, unsuccessfully moves for a new trial, and then appeals both the jury verdict and the denial of the motion for a new trial.</p>
			<ul style="list-style-type: none"> ▪ At p. 3 of the Appellant’s Opening Brief (PDF p. 27), under “What Are the Facts of this Case?” in number 5, we recommend expanding the explanation along the following lines, given the possibility that many self-represented litigants may not read form APP-200-INFO: 	<p>The committee declines to make the suggested revision. The committee had to strike a balance between including additional information on the form brief, keeping the form’s length reasonable, and ensuring that the parties have sufficient space to provide an answer.</p> <p>However, the committee has slightly revised the instructions to the fact section in light of this and similar comments. As revised, the committee believes the instructions, which refer the party to the relevant part of the information sheet, are sufficiently clear given the available space.</p>
			<p>In this section, discuss only the facts important to the arguments you are</p>	

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Appellate Procedure: Form Briefs for Use in Limited Civil Appeals (amend Cal. Rules of Court, rule 8.883; approve forms APP-200, APP-200-INFO, APP-201, APP-201-INFO, APP-202 and APP-202-INFO; revise APP-101-INFO)

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	Commenter	Position	Comment	Committee Response
			<p>making in this court and that were presented to the trial court. Here are some examples. If you are appealing from an order sustaining a demurrer to your complaint (dismissing your case before a trial), state the facts that you included in your complaint. If you are appealing after a trial, discuss the facts that you presented and the facts your opponent presented.</p>	
			<p>For every fact you include, you must state where the court can find that fact in the record. For example, if you are referring to the fact that “they went to the store” and that fact is on page 14 of volume 1 of the clerk’s transcript, write “They went to the store. (1 CT 14.)” If the fact is on page 26 of volume 2 of the reporter’s transcript, write “They went to the store. (2 RT 26.)”</p>	
			<p>Read item 11 on Information on Using Form Appellate Briefs (form APP-200-INFO) before filing out this section. Remember, failing to follow these rules may result in the appellate division disregarding part or all of your statement of the facts and ruling against you.</p>	
			<ul style="list-style-type: none"> ▪ At p. 4 of Appellant’s Opening Brief (PDF p. 28), we suggest changing “Describe the 	<p>The committee has made the suggested revision.</p>

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	Commenter	Position	Comment	Committee Response
			proceedings before the trial court” to “Describe the proceedings in the trial court.”	
			<ul style="list-style-type: none"> ▪ At p. 7 of the Appellant’s Opening Brief (PDF p. 31), we suggest adding “Optional” in parenthesis after “Argument 2,” so it would be: Argument 2 (optional). The instructions for the argument section say it is not mandatory to include more than one argument, but it would be a helpful reminder so that self-represented litigants do not feel obligated to fill the space. 	The committee has made the suggested revision.
			<ul style="list-style-type: none"> ▪ After the signature line on all the briefs, we suggest adding: “Don’t forget to serve this brief on the other parties and the trial court and use a proof of service. See the instructions on page 1 of this brief.” 	The committee has made the suggested revision.
3.	Family Violence Appellate Project By Gloria Carolina Chong, Housing Attorney, Housing and Employment Justice Program Oakland	AM	<p>The Family Violence Appellate Project (“FVAP”) submits the following comments regarding the Judicial Council’s (“Council”) proposed new form briefs and instructions (Appellant’s Opening Brief—Limited Civil Appeal (form APP-200), Respondent’s Brief—Limited Civil Appeal (form APP-201), Appellant’s Reply Brief—Limited Civil Appeal (form APP-202), and Information on Using Form Appellate Briefs (APP-200-INFO)) for limited civil appeals.</p> <p>FVAP is the only nonprofit organization in California dedicated to representing domestic</p>	<p>No response necessary.</p> <p>No response necessary.</p>

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Appellate Procedure: Form Briefs for Use in Limited Civil Appeals (amend Cal. Rules of Court, rule 8.883; approve forms APP-200, APP-200-INFO, APP-201, APP-201-INFO, APP-202 and APP-202-INFO; revise APP-101-INFO)

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

	Commenter	Position	Comment	Committee Response
			<p>violence survivors in civil appeals for free. FVAP’s goal is to empower abuse survivors through the court system and ensure that they and their children can live in safe and healthy environments, free from abuse. This includes a commitment to increasing survivors’ access to secure and safe housing through representing survivors in appeals, including limited civil appeals. Our expertise in appellate procedure and creating plain language materials for pro per litigants makes FVAP uniquely situated to assess the impact of the Council’s proposed new limited civil appeal forms.</p> <p>We greatly appreciate the Council’s work to create these new forms and provide thoughtful instructions for each form. We submit the following comments to ensure these forms and instructions serve their crucial function of accurately conveying information that court users — particularly pro per litigants — can understand.</p> <p>I. Consider Adding a Table of Contents to Form APP-200-INFO. We commend the Council for providing such extensive information to pro per litigants regarding the civil appeals brief-writing process in form APP-200-INFO. Because of APP-200-INFO’s length, we suggest adding a table of contents. A table of contents would make it easier for pro per</p>	<p>The committee appreciates the feedback.</p> <hr/> <p>The committee declines to make the recommended revision. Instead, the committee has revised the proposal to split up APP-200-INFO into three separate information sheets, one applicable to each form brief:</p> <ul style="list-style-type: none"> • <i>How to Use Form APP-200 in Limited Civil Cases</i> (form APP-200-INFO)

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	Commenter	Position	Comment	Committee Response
			<p>litigants to find specific pieces of information within the form.</p> <hr/> <p>II. Consider Clarifying and Expanding the Page Limits for Each Form Brief For pro per litigants to have enough space to make their arguments, the Council should consider expanding the page limit to at least 25 pages. Currently, the proposed form briefs’ explanations and formatting take up a significant amount of space, so expanding the page limits would ensure equity among litigants regarding the amount of space they have to make their arguments.</p> <p>Further, the current page requirements on page one of each form brief state the following, “Your brief cannot be longer than 20 pages, including this form and any attached pages.” With this language, pro per litigants may mistakenly believe that the page limit includes any additional paperwork such as exhibits and other documents in the record. Thus, current language should clarify that the</p>	<ul style="list-style-type: none"> • <i>How to Use Form APP-201 in Limited Civil Cases</i> (form APP-200-INFO) • <i>How to Use Form APP-202 in Limited Civil Cases</i> (form APP-202-INFO) <p>The committee believes these shorter information sheets, which include only information relevant to the form brief being filled out, will make it easier for litigants to find relevant information.</p> <p>The committee has made the suggested revision to proposed rule 8.883. The committee believes a 25-page limit will provide more space for parties to make their arguments on appeal.</p> <p>To address the identified concern, the committee has made two revisions. First, the instruction regarding the page limit and attachments has been revised to state that the “brief cannot be longer than 25 pages, including this form and any additional pages used to complete your answers.” Second, the information sheet items which discuss attachments, formatting, and length, now advises that “The separate sheets of paper used to continue your answers and the proof of service are the only</p>

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			<p>attachments do not include any part of the trial court record, such as the exhibits or transcripts.</p>	<p>attachments that may be included with your brief. Do not attach any other documents.”</p>
			<p>A. Recommended language: “Your brief cannot be longer than 25 pages. The 25 pages includes this form and any attachments to the form. The 25 pages does NOT include any of the trial court record such as the exhibits or transcripts.”</p>	<p>See above response.</p>
			<p>III. Consider Adding Background Information to Form APP-200, Form APP-201 and Form APP-202 Although the Council provided detailed information in the APP-200-INFO for pro per litigants, we think pro per litigants may not use form APP-200-INFO, instead relying solely on the form briefs. Thus, we suggest that the Council expand on some information in each form brief for pro per litigants who do not to refer to APP-200-INFO (perhaps because they were never made aware of the INFO form). Adding short summaries in the form briefs of complex concepts — such as record citation or standards of review — will make the forms more accessible for pro per litigants. The suggested additions below are listed in order of importance to include in the forms.</p>	<p>See below for responses to specific comments.</p>
			<p>A. Information Regarding Record Citation</p>	<p>The committee declines to make the recommended revision. The committee had to strike a balance</p>

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	Commenter	Position	Comment	Committee Response
			<p>Form briefs APP-200 and APP-201 ask the litigant to note the important facts of the case and refers the litigant to form APP-200-INFO for more information on record citation. Without additional information in the form briefs themselves, pro per litigants may miss that citing to the record is necessary for the appellate court to effectively review the appeal. Thus, we suggest adding some information to form briefs APP-200 and APP-201 about record citation with an explanation on how to cite to the record.</p>	<p>between including additional information on the form brief, keeping the form’s length reasonable, and ensuring that the parties have sufficient space to provide an answer. The committee concludes that the multiple references to the need to review the information sheet strikes the appropriate balance between space constraints on the form brief and the need to provide instruction to the form user. The committee notes that the “fact section” items on form APP-200 and form APP-201 include instructions that direct the form user to the precise item on the information sheet that discuss record citations.</p>
			<p>1. Recommended Language: “For each fact you bring up, you must tell the appellate court where to find that fact in the record, this is also known as “citing to the record.” To cite the record, you must give the appellate court the following information: 1) the volume number of the record where the fact is, (2) the name of the part of the record where the fact is, and (3) the page number in the record where the fact is. For example, if the fact you mentioned is on page 10 of volume 2 of the Clerk’s Transcript, you could cite this as “(2CT10).” Here is an example of how this could look in a brief: “On 1-1-2024, Mr. Tenant got a 3-day Notice to Terminate Tenancy from Landlord LLP. (2CT10).””</p>	<p>See above response.</p>

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			<p>B. Information Regarding Standard of Review Form APP-200 asks the litigant to state what they think the trial court did wrong and directs the litigant to form APP-200-INFO for more information on this section. Because a pro per litigant may not refer to form APP-200-INFO, we suggest adding information on standards of review as they are necessary to include in the appellant’s opening brief, yet a difficult concept to understand.</p>	<p>The committee declines to make the recommended revision. The committee had to strike a balance between including additional information on the form brief, keeping the form’s length reasonable, and ensuring that the parties have sufficient space to provide an answer. The committee concludes that the multiple references to the need to review the information sheet strikes the appropriate balance between space constraints on the form brief and the need to provide instruction to the form user. The committee notes that the argument section of form APP-200 includes an instruction that specifically directs the user to read the item on the information sheet that includes the standard of review discussion.</p>
			<p>1. Recommended Language: “You must include the standard of review that the appellate court should apply for every argument. The standard of review is how the appellate court looks at what happened at trial to decide if the trial court made a mistake. Some common standards of review are de novo, abuse of discretion, and substantial evidence. De novo review is used if you are arguing the trial court applied the law wrong. Abuse of discretion review is used if you are arguing the trial court’s decision was absurd given the facts of the case. Substantial evidence review is used if you are arguing the evidence as found by the trial court does not support the trial court’s decision. Read</p>	<p>See above response.</p>

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			<p>item 14 on form APP-200-INFO to learn more about standards of review and about how to fill out this section.”</p>	
			<p>C. Information Regarding Formatting Requirements Each form brief indicates that the brief and attachments must comply with the formatting requirements of the California Rules of Court rule 8.883(c). However, it may be difficult for a pro per litigant to find the rules if they do not have internet access. Further, it may be difficult for pro per litigants to understand the complex language of the California Rules of Court. Thus, we suggest adding language that briefly lists the main formatting requirements. We also suggest that the Council directly refer litigants to form APP-200-INFO section 5, for more detailed information on the formatting requirements.</p>	<p>The committee declines to make the recommended revision. The committee had to strike a balance between including additional information on the form brief, keeping the form’s length reasonable, and ensuring that the parties have sufficient space to provide an answer. The committee concludes that the reference to the California Rule of Court which provides the formatting requirements, and the instruction immediately proceeding the discussion of the formatting requirements which direct the user to review the information sheet, strikes the appropriate balance between space constraints and the need to provide information to the form user.</p>
			<p>1. Recommended language: “The attachments must be on 8.5-inch by 11-inch white paper. They must have 1.5-inch margins on the left and right and 1-inch margins on the top and bottom. You should use a standard font that is at least 13-point. Don’t use bold, italics or underline unless you need to for emphasis. However, case names should be in italics or underlined. If you file the brief in paper form, bind it on the left-hand side, or on the top if your specific court rules say you should.</p>	<p>See above response.</p>

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			<p>Please note: These are only the main rules, to see all the formatting rules you must follow, go to the California Rules of Court rule 8.883(c). Refer to form APP-200-INFO section 5, for more details on the formatting requirements also.”</p>	
			<p>IV. Consider Adding a Reminder to Serve Documents After Signature Line Since litigants may forget about service after going through the process of drafting their brief, it would be useful to remind pro per litigants to serve the form briefs by including information on service at the end of the form briefs.</p>	<p>The committee has made the recommended revision.</p>
			<p>General Language Access Changes to All Forms Again, these new form briefs and instructions are a tremendous step forward in enabling access to appellate justice for pro per litigants seeking review of trial court decisions. To further increase the accessibility and positive impact of these forms, we encourage the Council to make plain language revisions on all form briefs and instructions.</p>	<p>The committee appreciates the feedback.</p>
			<p>We believe that the form briefs and instructions drafted by the Council should be drafted in a manner similar to the forms used in Small Claims cases and petitions for Restraining Orders. Those forms use plain language principles that a party</p>	<p>The committee appreciates the feedback. See responses to specific comments below.</p>

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			<p>with limited formal education is more likely to understand. We elaborate on our specific recommendations below.</p>	
			<p>I. Avoid Long Sentences with Many Clauses Separated by Commas. Although this type of sentence structure is common in legal writing, it often leads to confusion and misunderstanding for people without a legal background. These sentences should be broken down into separate, shorter sentences or with bullet-points. Below we provide examples of how to incorporate these changes using samples from the proposed APP-200 and APP-200-INFO form.</p>	
			<p>A. Item 3(c) on APP-200 Page 2 1. Original Language: “c. Was a notice of intention to move for new trial, a motion for judgment notwithstanding the verdict, a motion for reconsideration, or a motion to vacate the judgment made and denied?”</p>	<p>The committee declines to make the suggested revision due to space constraints. The committee concludes that the item in question is sufficiently clear as drafted.</p>
			<p>2. Suggested language: “Were any of the following motions made and denied by the court?: 1) notice of intention to move for a new trial, 2) a motion for judgment notwithstanding the verdict, 3) a motion for reconsideration,</p>	<p>See above response.</p>

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			4) a motion to vacate the judgment”	
			<p>B. Item 8 on APP-200 Page 6 1. Original Language: “What do you think the trial court did wrong in deciding the case, and what law supports your arguments? Refer to facts presented to the trial court as well as the statutes, cases, court rules, or constitutions which support your arguments.”</p>	The committee declines to make the suggested revision due to space constraints and the need to ensure that the form user has sufficient space to provide an answer.
			<p>2. Suggested Language: “What do you think the trial court did wrong in deciding the case? Also, what law supports your arguments? Refer to the following to support your argument: ● the facts presented at trial, ● statutes, ● cases, ● court rules, and ● constitutions.”</p>	See above response.
			<p>B. Item 9 on APP-200-INFO Page 3 1. Original Language: “Except in very limited circumstances listed in California Rules of Court, rule 8.823, you must have filed your notice of appeal within 30 days after the trial court clerk or a party served either a document called “Notice of Entry” of the trial court judgment or a file-stamped copy of the</p>	The committee has made the recommended revision to item 9 on APP-200-INFO.

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			<p>judgment or within 90 days after entry of the judgment, whichever is earlier.”</p>	
			<p>2. Suggested Language: “Usually, the deadline to file a Notice of Appeal is 30 days after you are served with either a document called “Notice of Entry” of judgment or a filed-stamped copy of the judgment or order. If neither of these documents is served on you, the deadline is 90 days from the date the order was made. There are very limited exceptions to these deadlines that you can find in the California Rules of Court, rule 8.823.”</p>	<p>See above response.</p>
			<p>II. Break Up Long Paragraphs of Dense Text into Smaller Sections. Individuals with limited English proficiency and limited literacy skills often struggle to read and comprehend long sections of prolix text.</p>	<p>The committee appreciates the information.</p>
			<p>A. Item 14 on AP-200-INFO Page 5 1. Original Language “- The standard of review that the reviewing court should apply in reviewing the argument. The standard of review is the rule or guidelines the appellate division will apply to determine whether a mistake was made in the trial court. Common standards of review include “de novo” if you are claiming the trial court misapplied the law; “abuse of discretion” if you are claiming the trial court</p>	<p>The committee has made the recommended revision to item 14 of APP-200-INFO with minor edits for clarity.</p>

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			<p>exercised their discretion in an absurd or arbitrary way; or “substantial evidence” if you are challenging the factual findings of the judge or jury. You can get information about the possible standards of review that may apply on the Self-Help Guide to the California Courts website at selfhelp.courts.ca.gov/civil-appeals/legal-errors-standards-review.”</p>	
			<p>2. Recommended language “- The standard of review that the appellate court should apply in reviewing the argument. The standard of review is how the appellate court looks at what happened at trial to decide if the trial court made a mistake.</p>	<p>See above response.</p>
			<p>Some common standards of review are de novo, abuse of discretion, and substantial evidence. De novo review is used if you are arguing the trial court applied the law wrong. Abuse of discretion review is used if you are arguing the trial court’s decision was absurd given the facts of the case. Substantial evidence review is used if you are arguing the evidence as decided by the trial court does not support the trial court’s decision.</p>	
			<p>For more information about standards of review, go to the Self-Help Guide on the California Courts website at https://selfhelp.courts.ca.gov/civil-appeals/legal-errors-standards-review.”</p>	

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			<p>III. Use a Variety of Text Formatting Options Throughout the Forms. Individuals with limited English proficiency or limited literacy skills would be able to understand and appropriately utilize the forms if the key words/phrases and instructions stood out from the rest of the text using italics, bold font, underlining, larger font size, ALL CAPS, and creative combinations thereof.</p>	<p>The committee has revised APP-200-INFO to add bold text to emphasize certain requirements or statements.</p>
			<p>These formatting options should be used especially in cases where a pro per litigant is likely to miss a key point in the information sheets. For example, because many, if not most, pro per litigants struggle to understand that appellate courts will not consider new evidence or information, it is common for pro per litigants to erroneously introduce new evidence during an appeal. See below for how to potentially emphasize this concept in the APP-200-INFO.</p>	<p>See above response.</p>
			<p>A. Item 11 on APP-200-INFO Page 3 1. Original language “In item 5, discuss what happened between the parties to cause this lawsuit to be filed. You must only include facts that: ● Are important to what you think the district court got wrong, and ● Were presented to the trial court. The appellate division will not consider new evidence, such as</p>	<p>The committee has made the suggested revision to item 11 on APP-200-INFO.</p>

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			<p>the testimony of new witnesses or new exhibits, so do not discuss any facts that were not presented to the trial court.”</p>	
			<p>2. Recommended language “In item 5, discuss what happened between the parties to cause this lawsuit to be filed. You must ONLY include facts that:</p> <ul style="list-style-type: none"> ● Are important to what you think the trial court got wrong, and ● Were presented to the trial court. <p>IMPORTANT: The appellate division will most likely NOT consider new evidence, like the testimony of new witnesses or new exhibits, so do not discuss any facts that were not given to the trial court.”</p>	<p>See above response.</p>
			<p>IV. Use Language at a 7th or 8th Grade Reading Level. The language in forms used by the public should be at about a 7th or 8th grade reading level. Thus, we encourage the Council to use less complex language when possible.</p>	<p>The committee appreciates the feedback.</p>
			<p>Below is list of words used in the form briefs and instructions that have easier to understand synonyms. The Council is welcome to use the alternative synonyms to make their forms and instructions even more reader-friendly for pro per litigants:</p>	

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			<p>Replace “concluded” with “finished.” (AP-200, pg. 2)</p> <p>Replace “believe” with “think.” (APP-101-INFO, pg. 10; APP-200-INFO, pgs. 2, 3,4,5 7 & 8)</p> <p>Replace “indicate(s)/(d)” with “show(s)/(ed)”, “put” or “write”, depending on what fits best. (APP-101-INFO, pgs. 8 &13; APP-200, pgs. 1 & 2; APP-200-INFO, pgs. 3 & 4; APP-201. pg. 1; APP-202. pg. 1.)</p> <p>Replace “conventional” with “standard.” (APP-200-INFO, pgs. 2, 6 & 9.)</p> <p>Replace “determine” with “decide.” (APP-101-INFO, pgs. 1, 3, 6, 9 &14; APP-200-INFO, pgs. 3, 5 & 7.)</p> <p>Replace “provide” and “provided” with “give” and “given,” respectively. (APP-101-INFO, pgs. 4, 6, 8 & 13; APP-200, pg. 1; APP-200-INFO, pgs. 2, 3, 4, 5, 6, 7, 8, 9 & 10; APP-201, pgs. 1 & 4.; APP-202, pg. 1)</p> <p>Replace “occurred” with “happened.” (APP-200-INFO, pg. 4)</p> <p>Replace “alleged” with “stated.” (APP-200-INFO, pg. 4.)</p> <p>Re: Invitation to Comment SPR 24-05 May 3, 2024 Page 9</p>	<p>The committee has made the recommended revisions on the indicated forms with the following exceptions. First, the committee declines to change “believe” with “think.” The committee concludes that “believe” is sufficiently clear. Second, the committee replaced “indicated” or “indicate” with “stated” or “state.”</p>

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			<p>Replace “comply with” with “meet.” (APP-200, pg. 1; APP-201, pg. 1; APP-202 pg. 1.)</p> <p>Within the context of raise an argument or arguments raised, replace “raise” and “raised” with “make” and “made” respectively. (APP-101-INFO, pg. 7; APP-200-INFO, pgs. 4, 6, 7, 8 & 10; APP-201, pg. 5; APP-202, pg. 2)</p> <p>Replace “permitted” to “allowed.” (APP-200-INFO, pg. 7; APP-201, pg. 5.)</p> <p>* * *</p>	
			<p>It is our hope that this is the beginning of a longer dialogue about ways the California courts can be more accessible to pro per litigants.</p>	<p>The committee appreciates the feedback and welcomes suggestions on how to improve litigants’ access to the California courts.</p>
			<p>In conclusion, we express our appreciation for the Judicial Council’s work on introducing these important form briefs and instructions, and for the Council’s consideration of these comments</p>	<p>The committee appreciates the feedback.</p>

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4.	Los Angeles County Bar Association, Appellate Courts Section by Julia C. Shear Kushner, Chair,	AM	<p>The Appellate Courts Section of the Los Angeles County Bar Association (LACBA) approves of, and joins in, the Committee on Appellate Courts (CAC) of the California Lawyer’s Association Litigation Section’s response to the Invitation to Comment on SPR24-05 (Form Briefs), attached to this letter. The Appellate Courts Section joins the CAC in its support of the proposal and commendation of the Appellate Advisory Committee for this effort.</p> <p>The Appellate Courts Section of LACBA consists of approximately 250 members of the bar actively and regularly involved in handling civil, criminal, and juvenile appeals in private practice and with public agencies and entities. The Appellate Courts Section provides continuing legal education seminars concerning state and federal appellate practice, strives to improve the administration of appellate justice by working with the appellate courts and serving as a bridge between the bench and the bar, provides a forum for professional networking among members of the appellate bar, and seeks to improve the appellate practice by monitoring and evaluating proposals affecting appellate practice and recommending changes to relevant statutes and rules.</p> <p>*[The commenter attached a copy of the comment submitted by the California Lawyer’s Association Committee on Appellate Courts]</p>	<p>The committee appreciates the feedback and notes the commenter’s support for the proposal and joinder in the California Lawyer’s Association’s comment.</p>

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5.	Orange County Bar Association by Christina Zabat-Fran, President	AM	<p>The 20-page limit should be enough for most cases, but there are a lot of different questions and subquestions that theoretically could require a party to attach a sheet of paper for additional explanation. And right now, the instruction reads “Continue your answer on an attached sheet of paper, and write ‘Attachment 6b’ at the top.” (emphasis added). This implies the party must include a separate sheet of paper for each subquestion, even when the required additional explanation might be short and only take a few lines on the page.</p> <p>Consider changing the instructions to “Continue your answer on an attached sheet of paper, and write ‘Attachment 6b’ as the heading to your answer to this question.” Or something similar.</p>	The committee declines to make the suggested revision. Under the Judicial Council’s Form Manual, the continuation of each answer needs to be on a separate attachment.
6.	San Diego County Bar Association, Appellate Practice Section by Jeff Michalowski, Chair,	AM	<p>Dear Madam Chief Justice and Members of the Judicial Council:</p> <p>The Appellate Practice Section of the San Diego County Bar Association appreciates the opportunity to comment on proposal SPR24-05, Appellate Procedure: Form Briefs for Use in Limited Civil Appeals.</p> <p>The Appellate Practice Section thanks Melanie Gold and Richard Benes for their work in preparing this letter.</p>	No response necessary.

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			<p>I. Overview Comment to Form Brief Proposal</p> <p>The San Diego Appellate Practice Section was pleased and impressed with the Judicial Council’s detailed proposal to provide form briefs to assist litigants in bringing their limited civil appeals. We strongly endorse the proposal, with some modest suggestions described below. If the form brief concept proves useful in limited civil appeals, as we expect it will, we encourage the Judicial Council to consider potentially expanding the rule to assist self-represented litigants in unlimited civil appeals. We are available to participate in evaluating the use of the Form Brief after implementation and to assist in considering any necessary modifications.</p>	<p>The committee appreciates the feedback and notes the commenter’s support for the proposal.</p>
			<p>The San Diego Appellate Practice Section has particular expertise in this area. We have long supported measures providing greater access to justice for unrepresented litigants in the appellate courts. We sponsor two programs in which our attorneys have worked with hundreds of self-represented appellate litigants: (1) the San Diego Appellate Self-Help Workshop—a monthly program in which volunteer appellate attorneys educate self-represented litigants on appellate rules and procedure; and (2) the Access to Appellate Justice project—a pilot program that seeks to match low-income self-represented litigants with attorneys willing to represent them on a pro bono basis.</p>	

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	Commenter	Position	Comment	Committee Response
			<p>Through these programs, we have developed an understanding of how best to communicate complex appellate topics to self-represented litigants. We have also witnessed first-hand the difficulties experienced by self-represented litigants in presenting their cases on appeal. Even with the information provided at the workshops, most of these litigants have a hard time preparing an organized appellate brief that is effective in describing the relevant facts and in asserting legal arguments. Based on this experience, we think a form brief will provide a critical tool to assist litigants in brief preparation. It will also potentially provide an economical way for attorneys who do not frequently practice in appellate courts to prepare and submit briefs in limited civil appeals.</p>	
			<p>II. Response to Request for Specific Comments</p> <p>A. Does the proposal appropriately address the stated purpose?</p> <p>Yes. Providing a form brief will help certain parties draft more effective briefs because it will help them better organize their briefs and more effectively describe the relevant facts and legal contentions.</p>	<p>The committee appreciates the feedback</p>
			<p>The most helpful aspect of the proposed Form Brief is providing the litigants with a printed</p>	<p>The committee appreciates the feedback.</p>

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

	Commenter	Position	Comment	Committee Response
			<p>outline to format and structure their presentation. Without a structure and the accompanying instructions, self-represented litigants have a hard time knowing how to begin and/or how to communicate their main points. The structure will also help opposing parties and courts in effectively responding to and evaluating the merits of the appellate arguments.</p>	<p>The committee appreciates the feedback.</p> <p>The committee appreciates the feedback. To help ensure that litigants have more space to provide their answers and information, the committee has revised the proposal to provide a 25-page limit.</p>
			<p>The Form Brief will also assist litigants in complying with important appellate rules, such as describing only matters that are part of the appellate record and providing citations to the record. This will promote a decision on the merits, rather than a determination on procedural grounds, such as waiver/forfeiture.</p> <p>As discussed below, we think the proposal could be improved by providing in the Form Brief more specific directions and examples, and better reference to the Instruction materials. We will discuss those in Part III below.</p>	
			<p>B. Does the proposed 20-page limit for the form brief (including any attachments) provide the parties with sufficient space to present their arguments on appeal?</p> <p>In general yes, with the safety net of Rule 8.883(b)(4)—which would be renumbered to Rule 8.883(b)(5) if the proposal is adopted—allowing the presiding judge to permit a longer brief for</p>	

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	Commenter	Position	Comment	Committee Response
			<p>good cause. It is sensible for the page limit for form briefs to align with the existing 20-page limit for typewritten briefs (see Rule 8.883(b)(2)).</p> <p>III. Suggestions for Modest Changes</p> <p>1. We understand that this form is a fillable pdf form. (If it is not, we would encourage you to make it one.) We thus think the lines on the form are somewhat confusing and might not be helpful. Additionally, if the litigant uses a printed version of the form and completes it in a handwritten form, the lines are so close together, it would be hard for the court to read the content. If there are to be lines on the form, we would suggest the line spacing be increased somewhat.</p> <p>2. Regarding the Information on Using Form Appellate Briefs (form APP-200-INFO) form, we think this Information form is confusing because its numbering does not correspond with the sections on the Form Briefs. To be most useful, the circled numbers should correspond with the circled sections. That way the litigant will easily find the directions for that section. For example, on the Appellant’s Form Brief, the circled section 1 corresponds with the circled section 7 in the Information form. Likewise, on the Respondent’s Form Brief, the circled section 1 corresponds with the circled section 18. If the Judicial Council intends to use one Information</p>	<p>The committee has made the suggested revision and removed the lines from the text boxes.</p> <p>The committee declines to make the suggested revision as it does not comply with the Judicial Council Forms Manual provisions on numbering items on a form.</p> <p>However, to help litigants find relevant information in the information sheets, the committee has revised APP-200-INFO to split it into three information sheets, one for each of the proposed form briefs:</p> <ul style="list-style-type: none"> • <i>How to Use Form APP-200 in Limited Civil Cases (form APP-200-INFO)</i>

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Appellate Procedure: Form Briefs for Use in Limited Civil Appeals (amend Cal. Rules of Court, rule 8.883; approve forms APP-200, APP-200-INFO, APP-201, APP-201-INFO, APP-202 and APP-202-INFO; revise APP-101-INFO)

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

	Commenter	Position	Comment	Committee Response
			<p>form for all three briefs, perhaps the sections could be labeled 1A [appellant’s brief sections]; 1R [respondent’s brief sections]; and 1RB [reply brief sections]. Alternatively, the form could be clearly subdivided into three sections, corresponding to the three form briefs, with the circled numbering starting at 1 for each section.</p>	<ul style="list-style-type: none"> • <i>How to Use Form APP-201 in Limited Civil Cases</i> (form APP-200-INFO) • <i>How to Use Form APP-202 in Limited Civil Cases</i> (form APP-202-INFO) <p>The committee believes these shorter information sheets, which include only information relevant to the form brief being filled out, will make it easier for litigants to find relevant information and minimize potential confusion.</p>
			<p>3. On the first page of each of the Form Briefs, the second bullet point states: “Before you fill in this form, read Information on Using Form Appellate Briefs (form APP-200-INFO). You can get this form at any courthouse or county law library or online at www.courts.ca.gov/forms.” (Bolding added)</p> <p>We think this direction to “read” the APP-200 Information form before filling out the Form Brief creates a difficult task for the self-represented litigant. Although the Information form contains helpful advice, the Information form is dense and would be hard to “read” as a whole for most self-represented litigants, especially if English is a second language. We are concerned that this direction could result in the self-represented litigant becoming overwhelmed with too much</p>	<p>The committee has made the suggested revision in part. The committee has changed “read” to “review.”</p> <p>In addition, to help address the concern that self-represented litigants may find a long information sheet daunting or difficult to read, the committee has revised APP-200-INFO to split it into three information sheets, one for each of the proposed form briefs:</p> <ul style="list-style-type: none"> • <i>How to Use Form APP-200 in Limited Civil Cases</i> (form APP-200-INFO) • <i>How to Use Form APP-201 in Limited Civil Cases</i> (form APP-200-INFO) • <i>How to Use Form APP-202 in Limited Civil Cases</i> (form APP-202-INFO)

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Appellate Procedure: Form Briefs for Use in Limited Civil Appeals (amend Cal. Rules of Court, rule 8.883; approve forms APP-200, APP-200-INFO, APP-201, APP-201-INFO, APP-202 and APP-202-INFO; revise APP-101-INFO)

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

	Commenter	Position	Comment	Committee Response
			<p>information, and could serve as a barrier to the use of the form.</p> <p>To prevent this outcome, we suggest two modest changes. First, replacing “read” with a term such as “review” or “refer to” would make the direction sound somewhat less intimidating. Second, it would be helpful to highlight that each section in the Form Brief has a corresponding section in the Information form, which would indicate to readers that they do not necessarily need to read the entire Information form at once. So we suggest the direction read as follows:</p> <p>“Before you fill in this Form Brief, review the Information on Using Form Appellate Briefs (form APP-200-INFO). You can obtain this Information form at any courthouse or county law library or online at www.courts.ca.gov/forms.”</p> <p>Each section in the Form Brief has a corresponding section in the Information form to guide you how to complete that section. When you begin filling out the Form Brief, review the directions applicable to the particular section you are working on.”</p> <p>4. On page 2, sections 2 and 3 in the Form Brief, we would suggest a reference to the applicable statute or Rule of Court, and also adding those references to the Information form. For example:</p>	<p>The committee believes these shorter information sheets, which include only information relevant to the form brief being filled out, will make it easier for litigants to find relevant information and minimize potential confusion.</p> <p>The committee declines the suggestion that citations to the relevant statute or rule of court be included on the form itself. Instead, the committee has included the citations in the relevant section of the information sheet.</p>

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	Commenter	Position	Comment	Committee Response
			<p>on Part 2 (“The Order Being Appealed as Stated in the Notice of Appeal”), we would add See Code of Civil Procedure section 904.2.</p> <p>on part 3 “Timeliness of Appeal,” we would add California Rules of Court, rule 8.104</p> <p>Adding these references will assist the self-represented litigant who wants to understand/view the underlying rule, and will also help attorneys who are using the form or others who are assisting the self-represented litigant fill out the form.</p> <p>5. The Form Brief (Appellant’s Brief) provides the following directions before the Factual Section (page 3, Section 5):</p> <p>“What Are the Facts of This Case?”</p> <p>“What are the facts about what happened between the parties that caused this lawsuit? Discuss only the facts that are important to your arguments made in item 8 and that were presented to the trial court. For each fact you mention, cite the page or pages of the record where it shows that the fact was presented to the trial court. Read item 11 on Information on Using Form Appellate Briefs (form APP-200-INFO) before filing out this section.”</p>	<p>The committee declines the suggested revision. The committee had to strike a balance between including additional information on the form brief, keeping the form’s length reasonable, and ensuring that the parties have sufficient space to provide an answer.</p> <p>To help avoid a situation where a litigant provides a narrative that is not tethered to the evidence or issues on appeal, the committee has revised the instructions on item 5 of form APP-200 to read: “Discuss the facts of the dispute between you and the opposing party that are important to the arguments you are making to the appellate division. You may discuss only facts that were presented to the trial court. For each fact you mention, cite the page or pages of the record where it shows that the fact was presented to the</p>

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Appellate Procedure: Form Briefs for Use in Limited Civil Appeals (amend Cal. Rules of Court, rule 8.883; approve forms APP-200, APP-200-INFO, APP-201, APP-201-INFO, APP-202 and APP-202-INFO; revise APP-101-INFO)

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

	Commenter	Position	Comment	Committee Response
			<p>trial court. Read item 11 on <i>How to Use form APP-200 in Limited Civil Cases</i> (form APP-200-INFO) before filling out this section.”</p>	
			<p>We have some concern that these directions do not provide sufficient guidance for the self-represented litigant on how to describe the relevant facts, and as currently drafted, the first sentence—particularly the words “what happened between the parties”—may invite a lengthy narrative untethered to the evidence in the case or the issues on appeal. We suggest some modest changes. First, we think it would make sense to emphasize in the first sentence that parties should only discuss facts that were presented in the trial court. Second, to underscore that each fact should include a record citation, we think it would be useful to provide an example of what that would look like. So we think this direction should read:</p>	<p>See above response.</p>
			<p>“What Are the Facts of This Case?” “What are the facts that were presented in the trial court about the dispute between you and the opposing party? Discuss only the facts that are important to your arguments made in item 8 and that were presented to the trial court. For each fact you mention, please provide the page or pages of the record—typically either the clerk’s transcript (CT) or reporter’s transcript (RT)—where it shows that the fact was presented to the trial court. For example, if you say, “they went to</p>	<p>See above response.</p>

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Appellate Procedure: Form Briefs for Use in Limited Civil Appeals (amend Cal. Rules of Court, rule 8.883; approve forms APP-200, APP-200-INFO, APP-201, APP-201-INFO, APP-202 and APP-202-INFO; revise APP-101-INFO)

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

	Commenter	Position	Comment	Committee Response
			<p>the store” and that fact was stated on page 14 of the clerk’s transcript, write “They went to the store. (CT 14.)” Read item 11 on Information on Using Form Appellate Briefs (form APP- 200-INFO) before filing out this section.”</p>	
			<p>6. For the Respondent’s Brief Fact section: The proposed form states:</p> <p>“What Are the Facts of this Case?”</p> <p>You do not need to fill out this item if you agree with the [sic] what the Appellant’s Opening Brief says are the facts. If you do not agree with what the Appellant’s Opening Brief says are the facts, please describe here the facts about what happened between the parties to cause this lawsuit. For each fact you mention cite the page or pages of the record where it shows that the fact was presented to the trial court.”</p>	<p>The committee has made the suggested revision in part. The instructions to item 2 on form APP-201 have been revised to read: “You do not need to fill out this item if you agree with what the appellant’s opening brief says are the facts. If you do not agree with what the appellant’s opening brief says are the facts, please describe the facts presented to the trial court which are relevant to the parties’ arguments on appeal. For each fact you mention, cite the page or pages of the record where it shows that the fact was presented to the trial court. Read item 8 on <i>How to Use form APP-201 in Limited Civil Cases</i> (form APP-201-INFO) before filling out this section.</p> <p>The committee believes the language suggested by the commenter, which would have the respondent provide “all different or additional facts,” could be confusing to the respondent. The committee concludes it would be better for the respondent to provide their own recitation of the facts in the event they disagree with the facts articulated in the opening brief.</p>
			<p>We agree with the first sentence (except that the additional word “the” should be removed). But,</p>	<p>See above response.</p>

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Appellate Procedure: Form Briefs for Use in Limited Civil Appeals (amend Cal. Rules of Court, rule 8.883; approve forms APP-200, APP-200-INFO, APP-201, APP-201-INFO, APP-202 and APP-202-INFO; revise APP-101-INFO)

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	Commenter	Position	Comment	Committee Response
			<p>for the second sentence, we have the same concerns as expressed in Section III.5 above that this direction would not provide sufficient guidance to the litigant and would be unlikely to lead to a statement of facts relevant to the appellate issues. Thus, we suggest revising the second sentence to read: “If you do not agree with what the Appellant’s Opening Brief says are the facts, please describe here all different or additional facts that were presented in the trial court and are related to the legal issues raised by the appellant.”</p> <p>IV. Potential Future Expansion of Form Briefs to Unlimited Civil Appeals</p> <p>The San Diego Appellate Practice Section believes Form Briefs could also be valuable in unlimited civil appeals. The Invitation to Comment notes a concern that “Unlimited civil cases are more likely to involve complex or complicated factual or legal backgrounds for which form briefs may not be well suited.” We understand this concern, but do not believe it warrants categorically restricting the use of Form Briefs to limited civil appeals. In complex cases, self-represented litigants often have a particularly difficult time describing the relevant facts and law, and their appellate contentions. A structured brief would help these litigants organize the facts and arguments and provide a better opportunity for the court to consider their arguments on their merits.</p>	<p>The committee appreciates the feedback and notes the commenter’s support for using form briefs in limited civil cases as a “first step.”</p>

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

	Commenter	Position	Comment	Committee Response
			<p>While it would obviously be preferable for litigants to hire experienced counsel in more complex unlimited civil cases, that is often not financially feasible. In about one-third of civil appellate cases in the Court of Appeal, one or more of the parties are self-represented. Without assistance, these parties generally do not have the ability to prepare a brief that effectively explains the factual and legal issues and/or articulates their appellate contentions. This is a strong barrier to a full and meaningful appellate review of their challenges to the trial court’s rulings. A form brief could be a valuable tool to assist these litigants.</p>	<p>See above response.</p>
			<p>We fully support the Judicial Council’s decision to propose the Form Briefs only for limited civil appeals as a first step. But we think that if the Form Briefs prove useful for litigants in limited civil appeals, serious consideration should be given in the future to expanding the Form Briefs to unlimited civil appeals.</p>	<p>See above response.</p>
7.	<p>Superior Court of Los Angeles County by Bryan Borys, Director of Research and Data Management</p>	AM	<p>The following comments are representative of the Superior Court of California, County of Los Angeles (Court), and do not represent or promote the viewpoint of any particular judicial officer or employee.</p>	<p>No response necessary</p>

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Appellate Procedure: Form Briefs for Use in Limited Civil Appeals (amend Cal. Rules of Court, rule 8.883; approve forms APP-200, APP-200-INFO, APP-201, APP-201-INFO, APP-202 and APP-202-INFO; revise APP-101-INFO)

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

	Commenter	Position	Comment	Committee Response
			<p>The Court agrees with SPR24-05, “Appellate Procedure: Form Briefs for Use in Limited Civil Appeals,” if modified.</p> <p>It is suggested that language be added to the information sheet for using the form briefs and to the form brief to clarify that the attachments to the form briefs are limited to the continuation pages of their briefs. The concern is that litigants may interpret “attachments” as used on the form brief and information sheet as including the items that are allowed under rule 8.204(a) in the Court of Appeal and the Supreme Court. There is no similar rule for limited civil appeals.</p>	<p>The committee notes the commenter’s support for the proposal.</p> <p>The committee has revised the instructions on each form brief to state, in relevant part, “You may attach additional pages as needed when answering an item by checking the box that states there is not enough space. . . . Your brief cannot be longer than 25 pages including this form and any additional pages used to complete your answers.”</p> <p>Additionally, the items on each of the proposed information sheets that discuss attachments, formatting, and length have been revised to include the statement “The separate sheets of paper used to continue your answers and the proof of service are the only attachments that may be included with your brief. Do not attach any other documents.”</p>

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: August 6, 2024

Rules Committee action requested [Choose from the drop-down menu below]:

Recommend JC approval (has circulated for comment)

Title of proposal: Civil Practice and Procedure: Order on Unlawful Use of Personal Identifying Information

Proposed rules, forms, or standards (include amend/revise/adopt/approve):

Revise form CIV-165

Committee or other entity submitting the proposal:

Civil and Small Claims Advisory Committee

Staff contact (name, phone and e-mail): Eric Long, 415-865-7691, eric.long@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:

Annual agenda approved by Rules Committee on (date): October 25, 2023

Project description from annual agenda: Develop form recommendations as appropriate. An employee at the Secretary of State's Office suggested that Order on Unlawful Use of Personal Identifying Information (form CIV-165) is unworkable in its present form because it does not provide enough information for the Secretary of State's office to take action. At the very least the form should include the name of the business entity that fraudulently used the petitioner's personally identifying information.

Out of Cycle: *If requesting September 1 effective date or out of cycle, explain why:*

Additional Information for Rules Committee: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

Additional Information for JC Staff

- **Director Approval** (required for all invitations to comment and reports)

This report or invitation to comment was

reviewed by EGG on (date) 6/20/24

approved by Office Director (or Designee) (name) Michael Giden
on (date) 7/15/24

If either of above not checked, explain why:

Complete the following for all reports to be submitted to council (optional for ITCs):

- **Form Translations** (check all that apply)

This proposal:

includes forms that have been translated.

includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: [Click or tap here to enter text.](#)

includes forms that staff will request be translated.

- **Form Descriptions** (for any report with new or revised forms)

The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is checked, the form descriptions should be approved by a supervisor before submitting this RAR.).

(05/20/24)

- **Self-Help Website** (check if applicable)
 - This proposal may require changes or additions to self-help web content.



Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 24-108

For business meeting on September 20, 2024

Title

Civil Practice and Procedure: Order on Unlawful Use of Personal Identifying Information

Agenda Item Type

Action Required

Effective Date

January 1, 2025

Rules, Forms, Standards, or Statutes Affected

Revise form CIV-165

Date of Report

July 15, 2024

Recommended by

Civil and Small Claims Advisory Committee
Hon. Tamara L. Wood, Chair

Contact

Eric Long, 415-865-7691
eric.long@jud.ca.gov

Executive Summary

The Civil and Small Claims Advisory Committee recommends revising form CIV-165, *Order on Unlawful Use of Personal Identifying Information*, for a judicial officer to identify (1) the business entity at issue in the petition underlying the order and (2) its corresponding file number with the Secretary of State if identified in the petition. The recommendation responds to a request from the Secretary of State's office for more information to allow it to act on a court's determination that a petitioner's personal identifying information was used unlawfully in a business entity filing. The revisions are intended to assist the Secretary of State in locating the offending record so that Secretary of State staff can perform the steps necessary to comply with the court's order granting relief to a petitioner.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2025, revise *Order on Unlawful Use of Personal Identifying Information* (form CIV-165) to allow the court to identify the business entity and, if the information has been included in the petition underlying the order, the entity's file number with the Secretary of State.

The proposed revised form is attached at page 5.

Relevant Previous Council Action

The Judicial Council adopted form CIV-165 for mandatory use, effective September 1, 2019, to implement Senate Bill 1196 (Stats. 2018, ch. 696). Under SB 1196, a party may petition a court to stop the wrongful use of the party's personal identifying information in a business record on file with the Secretary of State (called a "business entity filing" in SB 1196). SB 1196 required the council to adopt a form order for making the necessary statutory determinations.

Analysis/Rationale

To better serve victims of identity fraud whose personal identifying information has been used in documents filed with the Secretary of State, the committee recommends revising form CIV-165 by adding items 2 and 3 for a judicial officer to complete based on a successful petition for relief.¹ Item 2 asks the judicial officer to enter the name of the business entity identified in the victim's petition. Item 3 allows the judicial officer to select either that the victim's petition does not identify the business entity's file number or to enter the entity's file number if one has been identified in the petition. Victims will be better served if the Secretary of State can accurately and expeditiously locate the offending business entity filing and execute the relief granted by the court.

As background, Civil Code section 1798.201 allows a person to petition for relief from the wrongful use of their personal identifying information in a business entity filing.² Section 1798.202 provides that if the court determines a petition is meritorious and there is no reasonable cause to believe that the victim's personal identifying information has been used lawfully, the court must make a finding that the victim's personal identifying information has been used unlawfully and issue an order certifying this determination. On making the determination, the court must grant specific relief.³ A certified copy of form CIV-165 is then to be filed with the Secretary of State for it to carry out the order.⁴

In its present state, form CIV-165 asks the judicial officer to identify the petitioner, the hearing date, and the department in which the successful petition was heard. The form goes on to state the findings required under section 1798.202 and instructs the petitioner to file a certified copy of the order with the Secretary of State for the order to be carried out. The problem with the current version of the form, according to the Secretary of State's office, is that their office cannot easily

¹ Business entity filings are any document required by law to be filed with the Secretary of State pursuant to the Corporations Code, the Financial Code, or the Insurance Code. (Civ. Code, § 1798.200(a).) Common examples of these filings are registrations of new corporations, limited liability companies, and limited partnerships.

² All references are to the Civil Code.

³ A victim's relief from the court must include (1) redacting the victim's name and personal identifying information from the filing or labeling the data to show that it is impersonated and (2) removing the data from its publicly accessible electronic indexes and databases. (§ 1798.202(c).)

⁴ § 1798.202(f).

carry out the order because business entity filings are not searchable by a person's name contained within a record. Instead, business entity filings are searchable by the entity's name or its file number. To obtain information about the business entity that is the subject of a meritorious petition, the Secretary of State's office would need to contact the petitioner (or petitioner's attorney) and request more information every time a certified copy of an order is filed with the Secretary of State. By supplying the business entity's name and, if available, its corresponding file number in form CIV-165, the Secretary of State should be able to carry out the court's order without having to ask for more details.

Policy implications

Form CIV-165 is used by courts to comply with section 1798.202. The new information called for in items 2 and 3 will assist the Secretary of State in accurately locating the business entity filing that is the subject of the court's order. With this additional information, the advisory committee believes that victims will more expeditiously be able to achieve the relief granted by courts under section 1798.202.

Comments

This proposal circulated for public comment from April 2 to May 3, 2024. Five comments were received, two agreeing with the proposal and three not indicating a position. The Secretary of State's office and the Superior Court of San Diego County, in response to a specific question in the invitation to comment, stated that the space allotted is sufficient for listing more than one business entity if needed. Both the Orange County Bar Association and the Superior Court of Riverside County noted that a court could use an attachment to the order form if the petition concerns multiple business entities. The Secretary of State's office also indicated that historically only one entity has been at issue in orders it has received. The committee recommends the council approve the form with a check box for the court to indicate an attachment has been used for listing additional business entities in the more uncommon situation in which a petition concerns more than one business entity.

The Secretary of State's office emphasized the importance of including a business entity's file number on form CIV-165 because business entities often have similar names. Supplying the file number in item 3 would facilitate the Secretary of State's accurate processing of form CIV-165. However, section 1798.201 does not require a victim to include a business entity's file number in their petition for relief. Because the statute does not require the information, the committee recommends an option that allows the court to indicate that the petition does not identify the file number. The committee believes this alternative is preferable, even though a file number would be helpful to the Secretary of State, because a court cannot supply information it does not have.

A chart of the comments and committee responses is attached at pages 6–12.

Alternatives considered

The committee considered taking no action but determined that the revisions would facilitate the Secretary of State's locating the business record at issue and ultimately expedite victims' access to justice. The committee also considered and rejected the alternative of combining the two new

items into one and using a numbered list to identify the business entity along with its file number, as suggested by the Secretary of State and others during public comment. The committee concluded that using multiple blank lines was not an optimal solution because most petitions involve just one business entity, and because providing multiple lines on the form could result in confusion if some lines are left incomplete. A blank line could be understood to mean the court did not have information to supply or it could be left blank by mistake, oversight, or for other reasons.

Fiscal and Operational Impacts

Any fiscal and operational impacts of revising form CIV-165 are limited to training court staff and possibly updating case management systems.

Attachments and Links

1. Form CIV-165, at page 5
2. Chart of comments, at pages 6–12

DRAFT

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY DRAFT 05/31/2024 Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITION OF (name):	
ORDER ON UNLAWFUL USE OF PERSONAL IDENTIFYING INFORMATION	CASE NUMBER:

1. The petition of (name):
 under Civil Code section 1798.201 came on for hearing on (date): at (time):
 in (department):

2. The petition concerns a business entity filing for (entity name):

3. The petition

- a. does not identify the business entity's file number with the Secretary of State.
- b. identifies the business entity as having Secretary of State file number (entity number):

Additional business entity names and corresponding Secretary of State file numbers (if identified in the petition) are listed in an attachment.

4. THE COURT FINDS, based on declarations, affidavits, police reports, or other material, relevant, and reliable information submitted by the parties or ordered to be made part of the record by the court, that the petition is meritorious and there is no reasonable cause to believe that the petitioner's personal identifying information has been used lawfully in the business entity filing. The court finds that the victim's personal identifying information has been used unlawfully in the business entity filing.

5. THE COURT ORDERS that the name and associated personal identifying information in the business entity filing is to be redacted or labeled to show that the data is impersonated and does not reflect the victim's identity and the name and personal identifying information is to be removed from publicly accessible electronic indexes and databases.

6. For this order to be carried out, the petitioner must file a certified copy of this order with the Secretary of State.

Date: _____ JUDICIAL OFFICER

SPR24-06

Civil Practice and Procedure: Order on Unlawful Use of Personal Identifying Information (revise form CIV-165)

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

	Commenter	Position	Comment	Committee Response
1.	Orange County Bar Association by Christina Zabat-Fran, President	A	The form meets its stated purpose. Completion of these newly created requests on the form is not required. The proposal also asks if longer blanks would be necessary if there is personal identifying information in more than one business entity filing. This would not be necessary as orders can always attach additional pages if needed.	The committee acknowledges the Orange County Bar Association’s support for the proposal. The committee appreciates the information provided. Based on the comment, the committee recommends adding a check box in item 3 for indicating an attachment is being used to list additional business entity names and corresponding Secretary of State file numbers.
2.	Secretary of State State of California by Lexi Howard, Attorney, Legal Affairs Office	NI	<p>The following comments in response to the Invitation to Comment SPR24-06 (Form CIV-165 proposed changes) are provided on behalf of the California Secretary of State. The Secretary of State processes filings, maintains records and provides information to the public relating to business entities, such as corporations and limited liability companies. As part of this role, the Secretary of State files Form CIV-165 orders submitted to our office pursuant to Civil Code section 1798.202(f). These orders must be filed and placed on the Secretary of State’s business entity record. Updating and refining Form CIV-165 as proposed and below is anticipated to provide clarity that will assist parties, particularly self-represented parties, the Courts, and our office to complete and file Form CIV-165 more efficiently. Thank you for the opportunity to provide these comments.</p> <p>1. <u>Addition of New Item (2); business entity name.</u></p>	<p>See the committee’s responses to the Secretary of State’s comments below.</p> <p>The committee acknowledges the Secretary of State’s support for item 2</p>

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

SPR24-06

Civil Practice and Procedure: Order on Unlawful Use of Personal Identifying Information (revise form CIV-165)

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

	Commenter	Position	Comment	Committee Response
			<p>The Secretary of State (SOS) supports this change. Adding the name of the business entity on Form CIV-165 will increase the likelihood that the SOS is able to file Form CIV-165 on the correct entity record without the need for external documentation from parties involved. Specifically, Form CIV-165 must be filed with the SOS within the record of the associated business entity(ies). Business entities registered with the SOS can be searched by business name or by their California SOS file number but are not capable of being searched by the names of individuals that may appear within an entity record. Accordingly, a Form CIV-165 submitted to the SOS without this information is incapable of being filed since our office cannot discern which business entity record to apply the order to.</p> <p>Additionally, because business entities may have similar names where sometimes only a letter or word distinguishes one from another, the absence of this information on the Form CIV-165 can result in inadequate or inaccurate identification of the subject business entity(ies) with enough certainty to comply with the Court’s order. In that event, it is likely the Form CIV-165 would be returned to the submitter for correction by the submitter and/or the Court, resulting in further delays and potentially further costs to the impacted party.</p> <p><u>2. Addition of New Item (3); business entity file number.</u></p> <p>The SOS supports this change. Adding the California SOS file number (SOS Entity Number) will accurately identify the business entity for the reasons in (1) above. Further, adding the SOS Entity Number is consistent with California laws that require parties that file documents with the SOS related to existing business entities to include the SOS Entity Number for each such entity for identification purposes (See e.g., Corp. Code sec. 110(d) and sec. 17702.02 et seq.).</p> <p>Nearly every person who first contacts the SOS because they have learned of an unauthorized filing for which they later seek Court relief provides at the</p>	<p>on the form. The committee thanks the Secretary of State for the information concerning how its records are organized and how form CIV-165 is used.</p> <p>No further response required.</p> <p>The committee acknowledges the Secretary of State’s support for item 3 on the form.</p> <p>The committee thanks the</p>

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

SPR24-06

Civil Practice and Procedure: Order on Unlawful Use of Personal Identifying Information (revise form CIV-165)

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

	Commenter	Position	Comment	Committee Response
			<p>time of their inquiry to the SOS both the name and entity number of the business entity at issue. Typically, this is because the person was alerted to the filing that included their PII by documents received in the mail or some other manner and which contained both the business entity name and the SOS Entity Number. Further, the party has often already visited the public website of the SOS and viewed the filed business entity documents, which also provide both entity name and SOS Entity Number (see https://bizfileonline.sos.ca.gov/search/business). Last, when the SOS responds to these inquiries, our responses typically also include the business entity name and the SOS Entity Number, as well as other resources, including the Form CIV-165, to assist the impacted party.</p> <p>Though not specifically required by Civ. Code sec. 1798.200 et seq, the inclusion of the SOS Entity Number serves as an important accuracy and efficiency mechanism that facilitates accurate processing when a Court-certified copy of the order is transmitted to the SOS. Including the SOS Entity Number also serves as a safeguard to reduce the possibility of inaccurate identification and inaccurate, court-ordered modification of incorrect business records, which could cause damaging and costly results to a business entity that did not engage in wrongdoing.</p>	<p>Secretary of State for this information.</p> <p>The committee understands that from the Secretary of State’s standpoint including the entity’s file number on form CIV-165 would be helpful to its accurate and efficient processing of the form. Because a petitioner is not required to include a file number in their petition for relief, the committee does not recommend eliminating the option that allows a judicial officer to indicate that the petition does not identify a file number. The committee believes the best approach is for item 3 to include an option that indicates no file number has been identified because a</p>

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

SPR24-06

Civil Practice and Procedure: Order on Unlawful Use of Personal Identifying Information (revise form CIV-165)

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

	Commenter	Position	Comment	Committee Response
			<p>3. <u>Use for more than one business entity; sufficient space for use.</u></p> <p>It appears that the space allotted in new Section 2 on the form would be sufficient for more than one business entity. Most submissions received by the SOS have historically been for only one entity, however allowing for more than one entity here seems reasonable and likely to be in the interest of judicial economy.</p> <p>If more than one entity is listed either in this Section 2 or in Section 3 below, there would need to be clear correlation between the applicable entity names and the corresponding SOS Entity Number for each, to avoid a list of each that did not correspond. To avoid error, care would need to be taken by the Court to ensure that every such entity referenced in the supporting papers was accurately and completely represented on the form.</p> <p>An alternate approach to address this may be to combine new Sections 2 and 3 into one, two-column, Section 2, allowing also for the attachment of an additional page, if needed, as follows:</p> <p>2. The petition concerns a filing for the following business entity(ies)(list the business entity name and its corresponding California Secretary of State filing number (SOS Entity Number) below for the business entity, or for each business entity, if more than one):</p> <p>Business entity name: SOS Entity Number:</p> <p>_____ _____</p> <p>_____ _____</p> <p>_____ _____</p>	<p>judicial officer cannot identify a number if it was not included in the petition.</p> <p>The committee thanks the commenter for this information and for suggesting an alternate approach. The committee considered the alternative of two columns of information with rows listing each business entity name and a corresponding file number. Because the committee understands most petitions involve only one business entity, the committee has decided to recommend a check box in item 3 for indicating, if required by the circumstances, an attachment is being used to list additional business entity names and corresponding Secretary of State file numbers. The committee also had concerns about including multiple lines on the form, which might create confusion or ambiguity.</p>

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

SPR24-06

Civil Practice and Procedure: Order on Unlawful Use of Personal Identifying Information (revise form CIV-165)

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

	Commenter	Position	Comment	Committee Response
			<p>(attach additional page if more space is needed)</p> <p>4. <u>Alternatives considered.</u></p> <p>The proposed changes to Form CIV-165, together with our comments here, are likely to support the efforts of the submitting parties, many of them victims of the theft of their PII and some who have experienced related harmful resulting effects of identity theft. Most of these victims are self-represented. The SOS anticipates that the revision of Form CIV-165 to allow for the full and accurate provision of business entity name(s) and SOS Entity Number(s) will facilitate access to justice, judicial economy, and the accuracy and effectiveness of filings.</p> <p>Thank you for your time and consideration and that of the Civil and Small Claims Advisory Committee. Please do not hesitate to contact us if you have questions or need further information.</p>	<p>The committee thanks the Secretary of State for this information.</p> <p>No response required.</p>
3.	<p>Superior Court of Orange County Training & Analyst Group, Civil, Probate and Language Access Services by Sean Lillywhite, Operations Analyst</p>	NI	<p>Paragraph 5 of the proposal discusses the possibility of multiple business entity filings, and to accommodate, increasing the blank space for said multiple entity filings. This could create confusion in the event Secretary of State filing numbers are also identified. Perhaps consider creating a numbered list to identify the business entity with their filing number (if provided)</p>	<p>The committee considered including a numbered list on the order but concluded that most cases can be resolved without one. The committee believes that an attachment could be used if required by the circumstances and recommends a check box in item 3 for indicating an attachment is being used to list additional business entity names and corresponding Secretary of State file numbers.</p>

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

SPR24-06

Civil Practice and Procedure: Order on Unlawful Use of Personal Identifying Information (revise form CIV-165)

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

	Commenter	Position	Comment	Committee Response
4.	Superior Court of Riverside County by Sarah Hodgson, Chief Deputy of Legal Services / General Counsel	NI	<p>No additional comments nor suggestions.</p> <p>Does the proposal appropriately address the stated purpose?</p> <ul style="list-style-type: none"> It does address the stated purpose. <p>The form’s proposed new items each ask for one piece of information. Do petitions under Civil Code section 1798.202 sometimes involve the use of personal identifying information in more than one business entity filing such that an option to identify more than one business entity name and more than one file number would be helpful? If so, are longer blanks sufficient to address this situation?</p> <ul style="list-style-type: none"> Suggestion: Have an attachment so that #2 and #3 can be listed together which is the business and the Secretary of State File name (if known) <p>Would the proposal provide cost savings? If so, please quantify.</p> <ul style="list-style-type: none"> No cost saving associated with this change for the Court. <p>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</p> <ul style="list-style-type: none"> Notifying staff of form revisions <p>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p> <ul style="list-style-type: none"> Yes <p>How well would this proposal work in courts of different sizes</p> <ul style="list-style-type: none"> It would not adversely affect our Court 	<p>No response required.</p> <p>The committee appreciates the information provided. With respect to the suggestion, the committee agrees that an attachment could be used if required by the circumstances and recommends adding a check box in item 3 for indicating an attachment is being used to list additional business entity names and corresponding Secretary of State file numbers.</p>

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

SPR24-06

Civil Practice and Procedure: Order on Unlawful Use of Personal Identifying Information (revise form CIV-165)

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

	Commenter	Position	Comment	Committee Response
5.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	<p>Q: Does the proposal appropriately address the state purpose? A: Yes.</p> <p>Q: The form’s proposed new items each ask for one piece of information. Do petitions under Civil Code section 1798.202 sometimes involve the use of personal identifying information in more than one business entity filing such that an option to identify more than one business entity name and more than one file number would be helpful? If so, are longer blanks sufficient to address this situation? A: It appears that the space provided is sufficient.</p> <p>Q: Would the proposal provide cost savings? If so, please quantify. A: No.</p> <p>Q: What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? A: Minimal. Implementation will require training affected staff.</p> <p>Q: Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? A: Yes</p> <p>Q: How well would this proposal work in courts of different sizes? A: This proposal should work well, regardless of the size of the court.</p>	The committee appreciates the information provided and acknowledges the San Diego Superior Court’s support for the proposal.

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

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: August 6, 2024

Rules Committee action requested [Choose from the drop-down menu below]:
Recommend JC approval (has circulated for comment)

Title of proposal: Civil Practice and Procedure: Memorandum of Costs

Proposed rules, forms, or standards (include amend/revise/adopt/approve):
 Revise forms MC-010 and MC-011

Committee or other entity submitting the proposal:
 Civil and Small Claims Advisory Committee

Staff contact (name, phone and e-mail): Eric Long, 415-865-7691, eric.long@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:

Annual agenda approved by Rules Committee on (date): October 26, 2023

Project description from annual agenda: Develop form recommendations as appropriate. An unpublished opinion from the Fifth District raises concerns about the trial court memorandum of costs (form MC-010) because it doesn't contain a verification under penalty of perjury. The corresponding appellate form (form APP-013) contains such verification. The committee should review the form and the applicable law and determine if form or rule revisions are appropriate

Out of Cycle: *If requesting September 1 effective date or out of cycle, explain why:*

Additional Information for Rules Committee: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

Additional Information for JC Staff

- **Director Approval** (required for all invitations to comment and reports)
 This report or invitation to comment was
 - reviewed by EGG on (date) 6/17/24
 - approved by Office Director (or Designee) (name) Michael Giden
 on (date) 7/14/24

If either of above not checked, explain why:

Complete the following for all reports to be submitted to council (optional for ITCs):

- **Form Translations** (check all that apply)
 This proposal:
 - includes forms that have been translated.
 - includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: [Click or tap here to enter text.](#)
 - includes forms that staff will request be translated.
- **Form Descriptions** (for any report with new or revised forms)
 - The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is checked, the form descriptions should be approved by a supervisor before submitting this RAR.)

- **Self-Help Website** (check if applicable)
 - This proposal may require changes or additions to self-help web content.



Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 24-107

For business meeting on September 20, 2024

Title

Civil Practice and Procedure: Memorandum of Costs

Agenda Item Type

Action Required

Effective Date

January 1, 2025

Rules, Forms, Standards, or Statutes Affected

Revise forms MC-010 and MC-011

Date of Report

July 15, 2024

Recommended by

Civil and Small Claims Advisory Committee
Hon. Tamara L. Wood, Chair

Contact

Eric Long, 415-865-7691
eric.long@jud.ca.gov

Executive Summary

The Civil and Small Claims Advisory Committee recommends revising the optional form litigants use for claiming prejudgment costs under Code of Civil Procedure sections 1032 and 1033.5 (form MC-010) to add a certification under penalty of perjury for the costs submitted. The committee also recommends on form MC-010 and its companion worksheet (form MC-011) (1) removing the references to fees for hosting electronic documents as a cost because these fees have sunsetted as an expressly allowable cost and (2) relocating the item “Models, enlargements, and photocopies of exhibits” on the lists of costs. The origins of this proposal are a litigant’s challenge to form MC-010’s verification language, a sunset provision in the statute, and a suggestion from a form user to make parallel the cost items in the two forms.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2025:

1. Revise *Memorandum of Costs (Summary)* (form MC-010) to add a certification under penalty of perjury for the costs requested; and

2. Revise form MC-010 and *Memorandum of Costs (Worksheet)* (form MC-011) by removing references to fees for hosting electronic documents as a cost and relocating “Models, enlargements, and photocopies of exhibits” to item 13 of the list of costs.

The proposed revised forms are attached at pages 5–10.

Relevant Previous Council Action

To implement legislation (Sen. Bill 654; Stats. 1986, ch. 377), the Judicial Council originally approved for optional use forms MC-010 and MC-011, effective January 1, 1987, for claiming prejudgment costs under Code of Civil Procedure sections 1032 and 1033.5. Both forms were revised in 1999 to conform to statute—for example, by including “court reporter fees as established by statute” among the costs that a litigant can claim. Finally, both forms were revised, effective September 1, 2017, to implement technical changes based on amendments to section 1033.5 regarding fees for interpreters and electronic filing or service, as well as to replace the word “blowups” with “enlargements.”

Analysis/Rationale

The committee recommends three changes to the current form for claiming prejudgment interest (form MC-010) and two corresponding changes to the companion worksheet (form MC-011).

Adding a sworn verification to form MC-010

To conform the existing verification of costs on form MC-010 to those on other council forms, the committee recommends adding a penalty-of-perjury recital. At least one party has argued unsuccessfully that form MC-010 does not comply with applicable verification requirements because it is not signed under penalty of perjury.¹ A Court of Appeal in an unpublished case rejected the argument, holding that form MC-010’s verification complies with the requirements of California Rules of Court, rule 3.1700 because it provides for a signed statement from the party, attorney, or agent that “to the best of [their] knowledge the items of cost are correct and were necessarily incurred in the case.”² Without a published decision resolving the issue, parties who choose to use form MC-010 remain open to similar challenges.

The committee notes that the council’s mandatory forms for seeking costs on appeal (*Memorandum of Costs on Appeal* (form APP-013)) and for requesting entry of default or default judgment (*Request for Entry of Default (Application to Enter Default)* (form CIV-100)), which includes a memorandum of costs as item 7), both contain penalty-of-perjury recitals after rule 3.1700’s verification language that to the best of the party’s, counsel’s, or the agent’s knowledge, the costs are correct and were necessarily incurred in the case. Based on those two forms, the committee recommends adding a penalty-of-perjury recital to form MC-010. Doing so will make

¹ See *Srabian v. Triangle Truck Ctr.* (Aug. 12, 2022, F080066) 2022 Cal.App.Unpub. Lexis 4963, at p. *11.

² See *id.* at pp. 12–13; see also form MC-010 (Rev. Sept. 1, 2017), www.courts.ca.gov/documents/mc010.pdf.

form MC-010 consistent with these other council forms and should reduce the incidence of litigants having to defend challenges to the legal sufficiency of form MC-010's verification.

Removing references to fees for the hosting of electronic documents

The committee also recommends deleting on forms MC-010 and MC-011 fees for hosting electronic documents. This change is necessary because the provision that expressly authorized those hosting costs became inoperative as of January 1, 2022. (Code Civ. Proc., § 1033.5(a)(15); Assem. Bill 2244 (Stats. 2016, ch. 461).)

Other changes to forms MC-010 and MC-011

A form user pointed out that the items of allowable costs on forms MC-010 and MC-011 are not in the same sequence. "Models, enlargements, and photocopies of exhibits" is listed as item 12 on form MC-010 but as item 11 on form MC-011. The sequence of the items of costs set out in these companion forms should be the same. With the purpose of more closely following the statutory list of costs in section 1033.5 and making the forms more user friendly, the committee recommends a minor technical change of relocating "Models, enlargements, and photocopies of exhibits" to item 13 in both forms.

Policy implications

This proposal has no major policy implications. It aligns with the Judicial Council's policy of keeping forms consistent with related statutes.

Comments

This proposal circulated for public comment from April 2 to May 3, 2024. The committee received four comments, including three from superior courts. Two commenters agreed with the proposal as circulated, and two commenters did not indicate a position. All four stated that the proposal addresses the stated purpose, and none of the commenters suggested any changes.

A chart of comments and committee responses is attached at pages 11–13.

Alternatives considered

The alternative of not making changes to the forms was not considered because one of the changes is to remove references to costs for the hosting of electronic documents, which are no longer awardable under section 1033.5 due to a sunset provision. The committee considered making no other changes beyond the removal of the references to the fees for hosting electronic documents because form MC-010 already includes a verification of the costs claimed and the two forms list the same items, albeit in a different order; however, the committee concluded that adding a penalty-of-perjury recital in form MC-010 would make the form consistent with other council forms involving costs. The committee also believes that resequencing the items of allowable costs to harmonize the two forms would be helpful to litigants and courts.

Fiscal and Operational Impacts

Operational impacts are expected to be minimal. The proposal would impose the usual costs for courts to train judicial officers and staff and to update internal procedures.

Attachments and Links

1. Forms MC-010 and MC-011, at pages 5–10
2. Chart of comments, at pages 11–13

DRAFT

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY DRAFT 06/17/2024 Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF: DEFENDANT:	
MEMORANDUM OF COSTS (SUMMARY)	CASE NUMBER:

The following costs are requested:

	TOTALS
1. Filing and motion fees	\$
2. Jury fees	\$
3. Jury food and lodging	\$
4. Deposition costs	\$
5. Service of process	\$
6. Attachment expenses	\$
7. Surety bond premiums	\$
8. Witness fees	\$
9. Court-ordered transcripts	\$
10. Attorney fees (enter here if contractual or statutory fees are fixed without necessity of a court determination; otherwise a noticed motion is required)	\$
11. Court reporter fees as established by statute	\$
12. Interpreter fees	\$
13. Models, enlargements, and photocopies of exhibits	\$
14. Fees for electronic filing or service	\$
15. Other	\$
TOTAL COSTS	\$

I am the party counsel for the party agent for the party who claims the costs listed above.
 To the best of my knowledge, the items of costs are correct and were necessarily incurred in this case.
 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)

(Proof of service on reverse)

SHORT TITLE	CASE NUMBER:
-------------	--------------

PROOF OF MAILING PERSONAL DELIVERY

1. At the time of mailing or personal delivery, 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 *Memorandum of Costs (Summary)* 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' 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)

SHORT TITLE	CASE NUMBER:
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MEMORANDUM OF COSTS (WORKSHEET)

1. Filing and motion fees

DRAFT

06/17/2024

**Not approved by
the Judicial Council**

	<u>Paper filed</u>		<u>Filing fee</u>
a.	_____	\$	_____
b.	_____	\$	_____
c.	_____	\$	_____
d.	_____	\$	_____
e.	_____	\$	_____
f.	_____	\$	_____
g. <input type="checkbox"/> Information about additional filing and motion fees is contained in Attachment 1g.			

TOTAL 1. \$

2. Jury fees

	<u>Date</u>		<u>Fee & mileage</u>
a.	_____	\$	_____
b.	_____	\$	_____
c.	_____	\$	_____
d.	_____	\$	_____
e. <input type="checkbox"/> Information about additional jury fees is contained in Attachment 2e.			

TOTAL 2. \$

3. Juror food: \$ _____ and lodging: \$ _____

TOTAL 3. \$

4. Deposition costs

	<u>Name of deponent</u>		<u>Taking</u>		<u>Transcribing</u>		<u>Travel</u>		<u>Videotaping</u>		<u>Subtotals</u>
a.	_____	\$	_____	\$	_____	\$	_____	\$	_____	\$	_____
b.	_____	\$	_____	\$	_____	\$	_____	\$	_____	\$	_____
c.	_____	\$	_____	\$	_____	\$	_____	\$	_____	\$	_____
d.	_____	\$	_____	\$	_____	\$	_____	\$	_____	\$	_____

e. Information about additional deposition costs is contained in Attachment 4e.

TOTAL 4. \$

(Continued on reverse)

Page ___ of ___

SHORT TITLE	CASE NUMBER:
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5. **Service of process**

	<u>Name of person served</u>	<u>Public officer</u>	<u>Registered process</u>	<u>Publication</u>	<u>Other (specify)</u>
a.	_____	\$ _____	\$ _____	\$ _____	\$ _____
b.	_____	\$ _____	\$ _____	\$ _____	\$ _____
c.	_____	\$ _____	\$ _____	\$ _____	\$ _____
d.	<input type="checkbox"/> Information about additional costs for service of process is contained in Attachment 5d.				

TOTAL 5. \$

6. Attachment expenses (*specify*):

6. \$

7. Surety bond premiums (*itemize bonds and amounts*):

7. \$

8. a. **Ordinary witness fees**

	<u>Name of witness</u>	<u>Daily fee</u>	<u>Mileage</u>		<u>Total</u>
(1)	_____	days at _____ \$/day	_____ miles at _____ ¢/mile:		\$ <input style="width: 100px;" type="text"/>
(2)	_____	days at _____ \$/day	_____ miles at _____ ¢/mile:		\$ <input style="width: 100px;" type="text"/>
(3)	_____	days at _____ \$/day	_____ miles at _____ ¢/mile:		\$ <input style="width: 100px;" type="text"/>
(4)	_____	days at _____ \$/day	_____ miles at _____ ¢/mile:		\$ <input style="width: 100px;" type="text"/>
(5)	_____	days at _____ \$/day	_____ miles at _____ ¢/mile:		\$ <input style="width: 100px;" type="text"/>

(6) Information about additional ordinary witness fees is contained in Attachment 8a(6).

SUBTOTAL 8a. \$

(Continued on next page)

SHORT TITLE	CASE NUMBER:
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8. b. **Expert fees** (per Code of Civil Procedure section 998)

	Name of witness	Fee	
(1)	_____	_____ hours at \$ _____ /hr	\$ _____
(2)	_____	_____ hours at \$ _____ /hr	\$ _____
(3)	_____	_____ hours at \$ _____ /hr	\$ _____
(4)	_____	_____ hours at \$ _____ /hr	\$ _____
(5)	<input type="checkbox"/> Information about additional expert fees is contained in Attachment 8b(5).		

SUBTOTAL 8b. \$ _____

c. **Court-ordered expert fees**

	Name of witness	Fee	
(1)	_____	_____ hours at \$ _____ /hr	\$ _____
(2)	_____	_____ hours at \$ _____ /hr	\$ _____
(3)	<input type="checkbox"/> Information about additional court-ordered expert fees is contained in Attachment 8c(3).		

SUBTOTAL 8c. \$ _____

TOTAL (8a, 8b, & 8c) 8. \$ _____

9. **Court-ordered transcripts** (specify):

9. \$ _____

10. **Attorney fees** (enter here if contractual or statutory fees are fixed without necessity of a court determination; otherwise a noticed motion is required):

10. \$ _____

11. **Court reporter fees** (as established by statute)

- a. (Name of reporter): _____ Fees: \$ _____
- b. (Name of reporter): _____ Fees: \$ _____
- c. Information about additional court-reporter fees is contained in Attachment 11c.

TOTAL 11. \$ _____

12. **Interpreter fees**

- a. Fees of a certified or registered interpreter for the deposition of a party or witness
 (Name of interpreter): _____ Fees: \$ _____
 (Name of interpreter): _____ Fees: \$ _____
- b. Fees for a qualified court interpreter authorized by the court for an indigent person represented by a qualified legal services project or a pro bono attorney
 (Name of interpreter): _____ Fees: \$ _____
 (Name of interpreter): _____ Fees: \$ _____
- c. Information about additional court-reporter fees is contained in Attachment 12c.

TOTAL 12. \$ _____

13. **Models, enlargements, and photocopies of exhibits** (specify):

13. \$ _____

14. **Fees for electronic filing or service of documents through an electronic filing service provider** (enter here if required or ordered by the court):

14. \$ _____

15. **Other** (specify): _____

15. \$ _____

TOTAL COSTS	\$ _____
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(Additional information may be supplied on the reverse)

SHORT TITLE	CASE NUMBER:
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SPR24-07

Civil Practice and Procedure: Memorandum of Costs (revise forms MC-010 and MC-011)

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

	Commenter	Position	Comment	Committee Response
1.	Orange County Bar Association by Christina Zabat-Fran, President	A	These changes all address the stated purpose and, in particular, it is important to remove non-recoverable costs from the form.	The committee acknowledges the Orange County Bar Association’s agreement with the proposal, and appreciates the information provided.
2.	Superior Court of Orange County Family Law and Juvenile Divisions by Katie Tobias, Operations Analyst	NI	<p>Comments N/A</p> <p>Request for Specific Comments In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:</p> <p><i>Does the proposal appropriately address the stated purpose?</i></p> <ul style="list-style-type: none"> • Yes, the proposal appropriately addresses the stated purpose. 	The committee appreciates the information provided.
			<p>The advisory committee also seeks comments from courts on the following cost and implementation matters:</p> <p><i>Would the proposal provide cost savings? If so, please quantify.</i></p> <ul style="list-style-type: none"> • No, the proposal does not appear to provide any cost savings. <p><i>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</i></p> <ul style="list-style-type: none"> • Implementation would require providing communication to judicial officers and staff. <p><i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i></p> <ul style="list-style-type: none"> • Yes, three months would provide sufficient time for implementation in Orange County. <p><i>How well would this proposal work in courts of different sizes?</i></p> <ul style="list-style-type: none"> • Our court is a large court, and this could work for Orange County. 	The committee appreciates the information provided.

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

SPR24-07

Civil Practice and Procedure: Memorandum of Costs (revise forms MC-010 and MC-011)

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

	Committer	Position	Comment	Committee Response
3.	Superior Court of Riverside County by Sarah Hodgson, Chief Deputy of Legal Services / General Counsel	NI	<p>No additional comments nor suggestions.</p> <hr/> <p>Does the proposal appropriately address the stated purpose?</p> <ul style="list-style-type: none"> • It does address the stated purpose <p>Would the proposal provide cost savings? If so, please quantify.</p> <ul style="list-style-type: none"> • No cost saving associated with this change for the Court <p>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</p> <ul style="list-style-type: none"> • Not required <p>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p> <ul style="list-style-type: none"> • Yes <p>How well would this proposal work in courts of different sizes?</p> <ul style="list-style-type: none"> • No impact to the Court 	<p>No response required.</p> <hr/> <p>The committee appreciates the information provided.</p>

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

SPR24-07

Civil Practice and Procedure: Memorandum of Costs (revise forms MC-010 and MC-011)

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

	Commenter	Position	Comment	Committee Response
4.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	<p>Q: Does the proposal appropriately address the state purpose? A: Yes.</p> <p>Q: Would the proposal provide cost savings? If so, please quantify. A: No.</p> <p>Q: What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? A: Implementation will require updating internal procedures and training affected staff.</p> <p>Q: Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? A: Yes.</p> <p>Q: How well would this proposal work in courts of different sizes? A: This proposal should work well, regardless of the size of the court</p>	The committee acknowledges the Superior Court of San Diego County’s agreement with the proposal, and appreciates the information provided.

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

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: August 6, 2024

Rules Committee action requested [Choose from the drop-down menu below]:
Recommend JC approval (has circulated for comment)

Title of proposal: Civil Practice and Procedure: Tentative Rulings

Proposed rules, forms, or standards (include amend/revise/adopt/approve):
amend rule 3.1308

Committee or other entity submitting the proposal:
Civil and Small Claims Advisory Committee

Staff contact (name, phone and e-mail): James Barolo, 415-865-8928, james.barolo@jud.ca.gov
Jeremy Varon, 415-865-7424, jeremy.varon@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Annual agenda approved by Rules Committee on (date): October 26, 2023 (amended February 9, 2024)
Project description from annual agenda: Develop rule recommendations as appropriate. A court administrator alerted Judicial Council staff that California Rule of Court, rule 3.1308 requires courts to make tentative rulings available via telephone. The court administrator further explained that current practice is for most users obtain to tentative rulings through the internet and others to obtain them through posting outside the courtroom. Courts that are complying with the existing rule may be straining court resources, and thus the rule should be updated.

Out of Cycle: *If requesting September 1 effective date or out of cycle, explain why:*

Additional Information for Rules Committee: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

Additional Information for JC Staff

- **Director Approval** (required for all invitations to comment and reports)

This report or invitation to comment was

- reviewed by EGG on (date) June 21, 2024
- approved by Office Director (or Designee) (name)
on (date)

If either of above not checked, explain why:

Complete the following for all reports to be submitted to council (optional for ITCs):

- **Form Translations** (check all that apply)

This proposal:

- includes forms that have been translated.
- includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: [Click or tap here to enter text.](#)
- includes forms that staff will request be translated.

- **Form Descriptions** (for any report with new or revised forms)

The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is

checked, the form descriptions should be approved by a supervisor before submitting this RAR.).

- **Self-Help Website** (check if applicable)
 - This proposal may require changes or additions to self-help web content.



Judicial Council of California

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

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 24-130

For business meeting on September 20, 2024

Title

Civil Practice and Procedure: Tentative Rulings

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rule 3.1308

Recommended by

Civil and Small Claims Advisory Committee
Hon. Tamara L. Wood, Chair

Agenda Item Type

Action Required

Effective Date

January 1, 2025

Date of Report

July 17, 2024

Contact

James Barolo, 415-865-8928
james.barolo@jud.ca.gov

Jeremy Varon, 415-865-7424
jeremy.varon@jud.ca.gov

Executive Summary

Rule 3.1308 of the California Rules of Court requires courts that offer tentative rulings in civil law and motion matters to make all tentative rulings available by telephone. The Civil and Small Claims Advisory Committee recommends amending the rule to eliminate that requirement, given the variety of different court practices necessitated by individual court circumstances.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2025, amend rule 3.1308 to eliminate the requirement that tentative rulings made in civil law and motion matters be made available by telephone, and provide only that they be made available by a method designated by the court.

The text of the amended rule is attached at pages 4–5.

Relevant Previous Council Action

In 1992, the Judicial Council adopted rule 3.1308 (then-numbered rule 324) to establish a uniform timetable for courts that wish to use a tentative ruling procedure requiring notice of appearance at oral argument for civil law and motion matters. The Judicial Council included the requirement that all tentative rulings requiring notice of appearance at oral argument be made available by telephone.

In 2000, the Judicial Council amended the rule to allow courts to make tentative rulings available both by telephone and “at the option of the court, by any other method designated by the court.” The Civil and Small Claims Advisory Committee noted that “notice by telephone is more reliable and more widely available than notice by fax or e-mail.” (Judicial Council of Cal., Advisory Com. Rep., Uniform Statewide Rules in Preempted Fields, Apr. 17, 2000, p. 4.)

In 2007, the Judicial Council renumbered the rule to rule 3.1308 in accordance with the reorganization and renumbering of the California Rules of Court. At the same time, the Judicial Council also amended the rule to move part of subdivision (c) to its own subdivision (e) to make clear that “[t]his rule does not require any judge to issue tentative rulings.” (California Rules of Court, rule 3.1308(e).)

Analysis/Rationale

Given that the committee has not revisited this rule in over 15 years, during which time the internet and electronic communication have become ubiquitous, the requirement that courts make tentative rulings available by telephone is ripe for reevaluation. The committee made the determination in 2000 that “notice by telephone is more reliable and more widely available than notice by fax or e-mail.” Recent technological advancements, however, call for a reevaluation of this determination.

The committee understands that at least some courts are not making tentative rulings available by telephone but, instead, are using other methods to make these rulings available. The committee understands that various courts exercise different methods for making tentative rulings available, including posting tentative rulings online or, when no notice to appear is required (under rule 3.1308(a)(2)), posting them on the courtroom door, handing them to parties in person as parties enter the courtroom, and reading them out loud. To the extent courts are publishing the tentative rulings telephonically, they are expending court and staff resources to make tentative rulings available in a method that may be underutilized by litigants.

The committee recommends removing the telephone requirement from rule 3.1308 and permitting each court to determine the publication method most useful to litigants in their area. The rule will continue to require that a court following the tentative ruling procedures in subdivision (a) of the rule so state in its local rules, but the court will be able to identify whatever method of publication is used, rather than be required to provide a telephone number.

Policy implications

The key policy implication is to afford courts maximum flexibility in how they inform litigants of tentative rulings. This amendment is therefore consistent with the *Strategic Plan for California's Judicial Branch*, specifically the goals of Access, Fairness, Diversity, and Inclusion (Goal I); Modernization of Management and Administration (Goal III); and Quality of Justice and Service to the Public (Goal IV). Additionally, courts that currently make tentative rulings available by phone but would not under the proposed amendment may experience a decreased demand on resources.

Comments

The proposal was circulated for public comment from March 29 to May 3 as part of the council's spring 2024 invitation-to-comment cycle. It received six comments. Four were from courts, one was from the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee, and one was from a county bar association. All commenters agreed with the proposal (or indicated that the proposal appropriately addressed the stated purpose) without substantive comment.

A chart of comments and the committee's response to each is attached at pages 6–9.

Alternatives considered

The committee considered amending rule 3.1308 to require that tentative rulings be made available “by internet,” “upon request,” “in a method or methods designated by the court, which must include a method accessible to persons without internet access,” or some combination of those options. However, given the individual circumstances of each court, the committee concluded that the rule should allow courts to determine the best method for providing tentative rulings, and that the courts' local rules should state the chosen method, just as they must now state the telephone number.

The committee considered taking no action but concluded that amending the rule to remove the telephone requirement was appropriate given that this option, where available, is not frequently used by litigants; complying with the requirement places a burden on courts; and alternative methods are available to inform litigants of tentative rulings.

Fiscal and Operational Impacts

The committee anticipates that this proposal would require courts to train court staff and judicial officers on the amended rule and may require amendments to local rules if courts decide to make tentative rulings available by methods other than telephone. To the extent courts currently providing tentative rulings by telephone decide to post them in some other way, this amendment may have a positive operational impact by better utilizing administrative resources.

Attachments and Links

1. Cal. Rules of Court, rule 3.1308, at pages 4–5
2. Chart of comments, at pages 6–9

Rule 3.1308 of the California Rules of Court is amended, effective January 1, 2025, to read:

1 **Rule 3.1308. Tentative rulings**

2
3 **(a) Tentative ruling procedures**

4
5 A trial court that offers a tentative ruling procedure in civil law and motion matters
6 must follow one of the following procedures:

7
8 (1) *Notice of intent to appear required*

9
10 The court must make its tentative ruling available by ~~telephone and also, at~~
11 ~~the option of the court, by any other~~ a method designated by the court, by no
12 later than 3:00 p.m. the court day before the scheduled hearing. If the court
13 desires oral argument, the tentative ruling must so direct. The tentative ruling
14 may also note any issues on which the court wishes the parties to provide
15 further argument. If the court has not directed argument, oral argument must
16 be permitted only if a party notifies all other parties and the court by 4:00
17 p.m. on the court day before the hearing of the party's intention to appear. A
18 party must notify all other parties by telephone or in person. The court must
19 accept notice by telephone and, at its discretion, may also designate
20 alternative methods by which a party may notify the court of the party's
21 intention to appear. The tentative ruling will become the ruling of the court if
22 the court has not directed oral argument by its tentative ruling and notice of
23 intent to appear has not been given.

24
25 (2) *No notice of intent to appear required*

26
27 The court must make its tentative ruling available by ~~telephone and also, at~~
28 ~~the option of the court, by any other~~ a method designated by the court, by a
29 specified time before the hearing. The tentative ruling may note any issues on
30 which the court wishes the parties to provide further argument at the hearing.
31 This procedure must not require the parties to give notice of intent to appear,
32 and the tentative ruling will not automatically become the ruling of the court
33 if such notice is not given. The tentative ruling, or such other ruling as the
34 court may render, will not become the final ruling of the court until the
35 hearing.

36
37 **(b) No other procedures permitted**

38
39 Other than following one of the tentative ruling procedures authorized in (a), courts
40 must not issue tentative rulings except:

41
42 (1) By posting a calendar note containing tentative rulings on the day of the
43 hearing; or

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(2) By announcing the tentative ruling at the time of oral argument.

(c) Notice of procedure

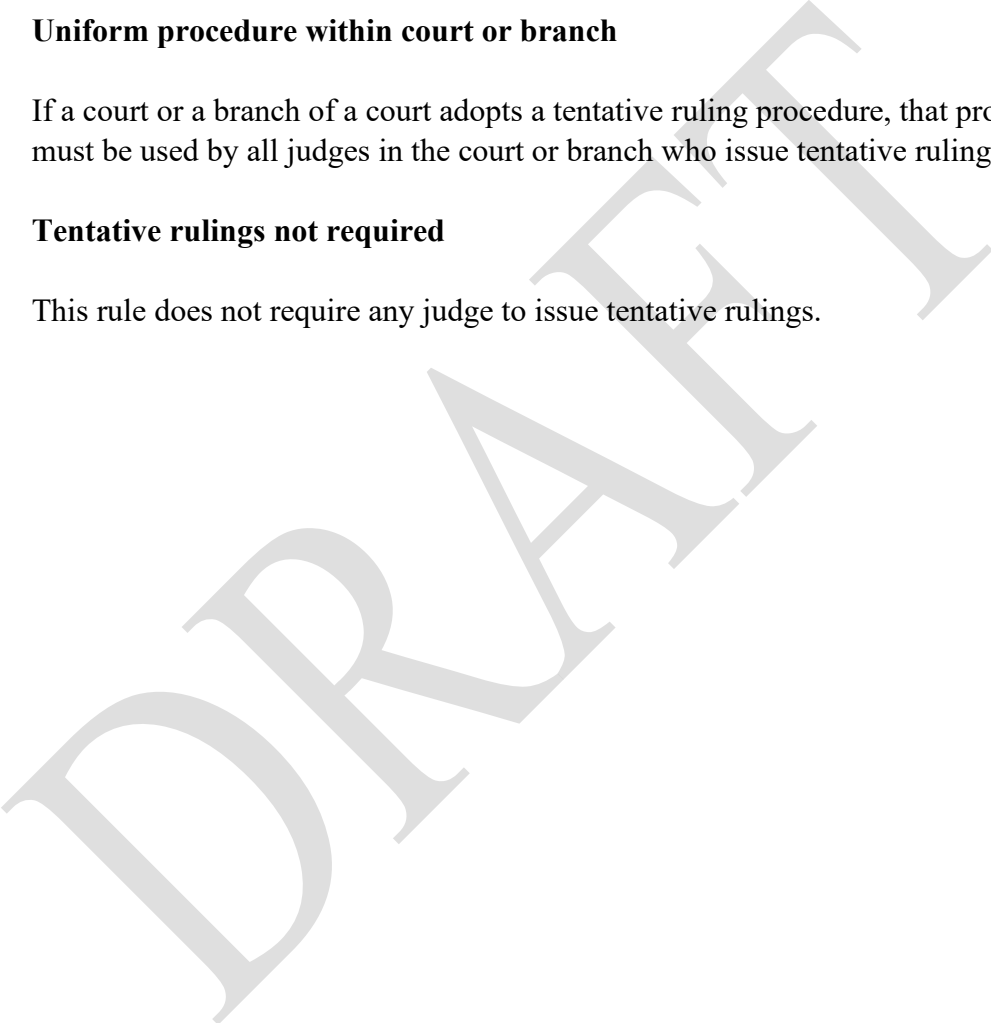
A court that follows one of the procedures described in (a) must so state in its local rules. The local rule must specify the ~~telephone number~~ method for obtaining the tentative rulings and the time by which the rulings will be available.

(d) Uniform procedure within court or branch

If a court or a branch of a court adopts a tentative ruling procedure, that procedure must be used by all judges in the court or branch who issue tentative rulings.

(e) Tentative rulings not required

This rule does not require any judge to issue tentative rulings.



SPR24-09

Civil Practice and Procedure: Tentative Rulings (amend Cal. Rules of Court, rule 3.1308)

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

	Commenter	Position	Comment	DRAFT Committee Response
1.	Orange County Bar Association by Christina Zabat-Fran President	A	The proposal appropriately addresses the stated purpose.	The committee appreciates the information provided.
2.	Superior Court of Los Angeles County by Bryan Borys Director of Research and Data Management	A	The Court supports this proposal.	The committee appreciates the information provided.
3.	Superior Court of Orange County Family Law and Juvenile Divisions by Katie Tobias Operations Analyst	NI	<i>Does the proposal appropriately address the stated purpose?</i> Yes, the proposal appropriately addresses the stated purpose.	The committee appreciates the information provided.
			<i>Would the proposal provide cost savings? If so, please quantify.</i> No, the proposal does not appear to provide any cost savings.	The committee appreciates the information provided.
			<i>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</i> Implementation would require providing communication to judicial officers and staff.	The committee appreciates the information provided.

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

SPR24-09

Civil Practice and Procedure: Tentative Rulings (amend Cal. Rules of Court, rule 3.1308)

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

	Commenter	Position	Comment	DRAFT Committee Response
			<p><u>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</u> Yes, three months would provide sufficient time for implementation in Orange County.</p>	<p>The committee appreciates the information provided.</p>
			<p><u>How well would this proposal work in courts of different sizes?</u> Our court is a large court, and this could work for Orange County.</p>	<p>The committee appreciates the information provided.</p>
4.	Superior Court of Riverside County by Sarah Hodgson Chief Deputy of Legal Services / General Counsel	NI	<p>No additional comments nor suggestions.</p> <p>Does the proposal appropriately address the stated purpose?</p> <ul style="list-style-type: none"> • It does address the state purpose. <p>Would the proposal provide cost savings? If so, please quantify.</p> <ul style="list-style-type: none"> • No cost saving associated with this change for the Court <p>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</p>	<p>The committee appreciates the information provided.</p> <p>The committee appreciates the information provided.</p> <p>The committee appreciates the information provided.</p> <p>The committee appreciates the information provided.</p>

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

SPR24-09

Civil Practice and Procedure: Tentative Rulings (amend Cal. Rules of Court, rule 3.1308)

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

	Commenter	Position	Comment	DRAFT Committee Response
			<ul style="list-style-type: none"> Depending on the court’s method of choice, training will be needed, maybe technology upgrades, revising processes and procedures. 	
			<p>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p> <ul style="list-style-type: none"> No, if a Local Rule is needed, that will take more than three months. 	<p>The committee notes that the proposed rule amendment does not require courts to amend their local rules. If a court chooses to amend its local rules in response to this proposed change, the court may do so as provided in California Rules of Court, rule 10.613, which includes the possibility of an expedited effective date under subdivision <i>i</i>.</p>
			<p>How well would this proposal work in courts of different sizes?</p> <ul style="list-style-type: none"> It will work well as it give the Courts the flexibility to designate the method on making these tentative available. 	<p>The committee appreciates the information provided.</p>
5.	Superior Court San Diego County by Mike Roddy Executive Officer	A	<p>Q: Does the proposal appropriately address the state purpose? A: Yes.</p> <p>Q: Would the proposal provide cost savings? If so, please quantify. A: No, as our court currently posts tentative rulings on our website.</p>	<p>The committee appreciates the information provided.</p> <p>The committee appreciates the information provided.</p>

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

SPR24-09

Civil Practice and Procedure: Tentative Rulings (amend Cal. Rules of Court, rule 3.1308)

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

	Commenter	Position	Comment	DRAFT Committee Response
			<p>Q: What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? A: None.</p>	The committee appreciates the information provided.
			<p>Q: Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? A: Yes.</p>	The committee appreciates the information provided.
			<p>Q: How well would this proposal work in courts of different sizes? A: This proposal should work well, regardless of the size of the court.</p>	The committee appreciates the information provided.
6.	Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) (TCPJAC/CEAC Joint Rules Subcommittee)	A	The Joint Rules Subcommittee (JRS) notes that the proposal is intended to provide significant cost savings or efficiencies.	The committee appreciates the information provided.

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

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: August 6, 2024

Rules Committee action requested [Choose from the drop-down menu below]:
Recommend JC approval (has circulated for comment)

Title of proposal: Civil Practice and Procedure: Case Dismissal With Retained Jurisdiction

Proposed rules, forms, or standards (include amend/revise/adopt/approve):
Amend Cal. Rules of Court, rule 3.1385; revise form CIV-110

Committee or other entity submitting the proposal:
Civil and Small Claims Advisory Committee

Staff contact (name, phone and e-mail): James Barolo, 415-865-8928, james.barolo@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Annual agenda approved by Rules Committee on (date): October 26, 2023 (amended February 9, 2024)
Project description from annual agenda: Develop form recommendations as appropriate. AB 1756, contains amendments to Code of Civil Procedure section 664.6, to extend the circumstances in which courts may retain jurisdiction over a settled case. The legislation requires the Judicial Council to "update or develop new forms or Rules of Court as necessary to implement this section" by January 1, 2025. Accordingly, the Council should update form CIV-110 and possibly others to implement the legislation.

Out of Cycle: *If requesting September 1 effective date or out of cycle, explain why:*

Additional Information for Rules Committee: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

Additional Information for JC Staff

- **Director Approval** (required for all invitations to comment and reports)
This report or invitation to comment was
 reviewed by EGG on (date) June 24, 2024
 approved by Office Director (or Designee) (name) Deborah Brown
on (date) July 2, 2024

If either of above not checked, explain why:

Complete the following for all reports to be submitted to council (optional for ITCs):

- **Form Translations** (check all that apply)
This proposal:
 includes forms that have been translated.
 includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: [Click or tap here to enter text.](#)
 includes forms that staff will request be translated.
- **Form Descriptions** (for any report with new or revised forms)
 The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is checked, the form descriptions should be approved by a supervisor before submitting this RAR.).

(05/20/24)

- **Self-Help Website** (check if applicable)
 - This proposal may require changes or additions to self-help web content.



Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

Item No.:

For business meeting on September 20, 2024

Title

Civil Practice and Procedure: Case Dismissal
With Retained Jurisdiction

Agenda Item Type

Action Required

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rule 3.1385;
revise form CIV-110

Effective Date

January 1, 2025

Date of Report

July 2, 2024

Recommended by

Civil and Small Claims Advisory Committee
Hon. Tamara L. Wood, Chair

Contact

James Barolo, 415-865-8928
james.barolo@jud.ca.gov

Executive Summary

The Civil and Small Claims Advisory Committee recommends amending California Rules of Court, rule 3.1385 and revising form CIV-110 to implement amended Code of Civil Procedure section 664.6, which allows courts to dismiss cases without prejudice and retain jurisdiction to enforce settlement terms. The rule would be amended to incorporate advisory committee comments clarifying the application of specific subdivisions of the rule depending on whether dismissal under section 664.6 is sought. The recommended form revision would add a new option to request dismissal without prejudice and with retained jurisdiction.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2025:

1. Amend California Rules of Court, rule 3.1385 to add advisory committee comments explaining that parties must still follow the provisions of rule 3.1385(a) and (b) if they seek dismissal under Code of Civil Procedure section 664.6 and that rule 3.1385(c) provides an alternative process to dismissal under section 664.6; and

2. Revise *Request for Dismissal* (form CIV-110) to add an option for the party asking for dismissal to request dismissal without prejudice and with the court retaining jurisdiction.

The proposed amended rule and revised form are attached at pages 6–10.

Relevant Previous Council Action

The Judicial Council last amended rule 3.1385, effective January 1, 2013, to provide that most hearings and other proceedings requiring the appearance of a party be vacated between the filing of the notice of conditional settlement and the dismissal date specified in the notice, and, with the amendment, parties could avoid unnecessary appearances in court. Before that amendment, the council amended the rule, effective January 1, 2009, to provide additional time for completing a settlement after a party provided notice of settlement to the court. Specifically, the amendment added subdivision (d), relating to settlements involving minors and persons with disabilities, and subdivision (e), allowing additional time to complete settlement for good cause shown. The council added the 45-day dismissal requirement in 1989, and that provision has largely remained the same ever since.

The Judicial Council last amended form CIV-110, effective January 1, 2013, to include a notice that the form may not be used for dismissal of a class action or a derivative action.

Analysis/Rationale

Background

In 2023, the Legislature amended Code of Civil Procedure¹ section 664.6.² Before this amendment, section 664.6 authorized courts to enter judgment pursuant to the terms of a settlement agreement. Amended section 664.6 expands the court's authority by permitting the court to dismiss a case without prejudice and to retain jurisdiction over the parties to enforce settlement until performance in full.³ Such a dismissal with retained jurisdiction can be ordered upon the stipulation of the parties, either in writing or orally before the court, or on the court's own motion.⁴

In addition, the California Rules of Court mandate certain actions that courts and parties must take upon the settlement of a case. Specifically, rule 3.1385(a) requires the party seeking affirmative relief to give notice of the settlement to the court, other parties, and others involved in the case. Moreover, rule 3.1385(b) requires the party seeking affirmative relief to dismiss the case, which generally occurs by filing form CIV-110, within 45 days of the settlement. Rule 3.1385(c) applies to cases with conditional settlement agreements and provides that instead of

¹ All further statutory citations are to the Code of Civil Procedure, unless otherwise stated.

² Assembly Bill 1756 (Stats. 2023, ch. 478). AB 1756 is available at [leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240AB1756](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202320240AB1756).

³ See § 664.6(a).

⁴ § 664.6(a) & (e).

dismissing the case within 45 days, the party seeking affirmative relief must state the date that dismissal will be filed.⁵

Proposed amendments to rule 3.1385

The committee recommends adding advisory committee comments to rule 3.1385 explaining the rule's requirements depending on whether dismissal under section 664.6 is sought. Specifically, the committee believes that even if parties agree to dismiss the case upon settlement under section 644.6, it is still appropriate for the party seeking affirmative relief to notify the court and others of the settlement under rule 3.1385(a) and to timely file a request for dismissal under rule 3.1385(b). Accordingly, the first recommended advisory committee comment for rule 3.1385 explains that even if the parties settle the case under section 664.6, the party seeking affirmative relief must still follow the procedures in rule 3.1385(a) and (b).

Conversely, amended section 664.6 supplants the need for rule 3.1385(c) if the parties stipulate to, or the court seeks, dismissal under the section. Under section 664.6, a case may be dismissed *immediately* with retained jurisdiction rather than dismissing the case only upon the completion of settlement terms. Parties and courts, however, are not obligated to dismiss the case pursuant to section 664.6 upon settlement. Accordingly, the committee proposes a second advisory committee comment for the rule explaining that rule 3.1385(c) provides an alternative process to dismissal under section 664.6.⁶

Proposed revisions to form CIV-110

The committee also recommends, in addition to the rule changes, adding an option on *Request for Dismissal* (form CIV-110) for the party requesting dismissal to request dismissal without prejudice and with the court retaining jurisdiction.⁷ Additionally, the committee recommends that the revised form require all parties to sign the request for dismissal if the court will retain jurisdiction,⁸ to ensure that such retention of jurisdiction is agreed to by all parties or ordered by the court as required in section 664.6.

Policy implications

The proposed rule amendment and form revision recommended by the committee implement an amended statute that allows courts to dismiss cases without prejudice and to retain jurisdiction over the parties to enforce settlements. The committee believes its recommendation to

⁵ Rule 3.1385(d) contains specific procedures if the case involves compromise of the claim of a minor or person with disability, and rule 3.1385(e) provides an alternative procedure if the case cannot be dismissed within 45 days.

⁶ To the extent dismissal under section 664.6 becomes pervasive for parties with conditional settlement agreements, the committee may consider, at a later date, whether amendments to the text of rule 3.1385(c) are needed.

⁷ Adding this option as item 1a(3) resulted in the date fields from items 1b(3) and 1b(4) printing directly below the request for retained jurisdiction. The committee thus recommends switching the order of the date and name fields in items 1b(3) and 1b(4) so they are further to the left and are not mistakenly assumed to be part of item 1a(3).

⁸ The committee recommends that this requirement be added to the existing note in item 3 of the form, which explains that additional parties need to sign the request for dismissal if certain circumstances are present. To prevent confusion, the committee recommends using a dagger symbol to highlight this note as opposed to double asterisks.

incorporate advisory committee comments in rule 3.1385 will provide clarity to litigants and is therefore consistent with the *Strategic Plan for California's Judicial Branch*—specifically, the goal of Access, Fairness, Diversity, and Inclusion (Goal I). The key policy implication for the form revision is to ensure that forms correctly reflect the amended law. The revision of form CIV-110 is thus consistent with the goals of Modernization of Management and Administration (Goal III) and Quality of Justice and Service to the Public (Goal IV).

Comments

This proposal circulated for public comment from April 2 to May 3, 2024. The committee received seven comments. Three of the comments were from courts, three were from individuals, and one was from a bar association. No commenters disagreed with the proposal. The commenters' substantive suggestions on the proposal and the committee's responses are summarized below.

One commenter suggested that form CIV-110 include a check box indicating whether the terms of the settlement are attached or have previously been provided to the court. The committee does not recommend any modifications in response to this suggestion because having a copy of the settlement agreement when the request for dismissal is filed does not appear necessary. If the court retains jurisdiction and a party asks the court to enforce the terms of the settlement agreement, the party can present the agreement to the court at that time.

Another commenter asked whether form CIV-110 should be transmitted to the court for an order retaining jurisdiction before a clerk can ministerially dismiss the case. The suggestion appears to stem from *Mesa RHF Partners, L.P. v. City of Los Angeles* (2019) 33 Cal.App.5th 913 (*Mesa RHF Partners*), in which the court said retained jurisdiction under section 664.6 had not been effectuated because the parties neither signed form CIV-110, which contained a statement retaining jurisdiction, nor attached the signed settlement agreement, which also contained a statement retaining jurisdiction, to the form.⁹ The court noted that the parties could have invoked section 664.6 “by filing a stipulation and proposed order either attaching a copy of the settlement agreement and requesting that the trial court retain jurisdiction under section 664.6 or a stipulation and proposed order signed by the parties noting the settlement and requesting that the trial court retain jurisdiction.” The committee does not recommend revisions based on this comment because neither Code of Civil Procedure section 664.6 nor *Mesa RHF Partners* requires the court to issue an order to retain jurisdiction.

Finally, two commenters pointed out that the existing signature blocks on form CIV-110 may be insufficient for *all* parties to sign the form. Accordingly, the committee recommends adding a check box in item 3 of the form for parties to indicate that additional signatures are attached.

A chart of comments and committee responses is attached at pages 11–18.

⁹ Effective January 1, 2025, amended section 664.6 permits attorneys to sign a stipulation for retained jurisdiction on behalf of parties.

Alternatives considered

The committee discussed several alternative ways to amend rule 3.1385. One alternative would be to not require the party seeking affirmative relief to perform the actions in rule 3.1385(a) and (b) if the party seeks dismissal under 664.6, but the committee determined that requiring such notices is the best way to ensure that all those involved in the case are aware of the settlement and that the court has a record of dismissal with retained jurisdiction. Another alternative was to eliminate rule 3.1385(c) altogether, but given that the provisions of 664.6 are not mandated on parties and courts, retaining the dismissal procedures for conditional settlements is appropriate. The committee did not consider taking no action because leaving rule 3.1385 and form CIV-110 without modification would be confusing to courts and parties.

Fiscal and Operational Impacts

The committee anticipates that this proposal would require courts to train court staff and judicial officers on the amended rule and revised form. Courts will also incur costs to incorporate the revised form into the paper or electronic processes.

Attachments and Links

1. Cal. Rules of Court, rule 3.1385, at pages 6–8
2. Form CIV-110, at pages 9–10
3. Chart of comments, at pages 11–18
4. Link A: AB 1756,
leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240AB1756

Rule 3.1385 of the California Rules of Court is amended, effective January 1, 2025, to read:

1 **Rule 3.1385. Duty to notify court and others of settlement of entire case**

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

4
5 (1) *Court and other persons to be notified*

6
7 If an entire case is settled or otherwise disposed of, each plaintiff or other
8 party seeking affirmative relief must immediately file written notice of the
9 settlement or other disposition with the court and serve the notice on all
10 parties and any arbitrator or other court-connected alternative dispute
11 resolution (ADR) neutral involved in the case. Each plaintiff or other party
12 seeking affirmative relief must also immediately give oral notice to all of the
13 above if a hearing, conference, or trial is scheduled to take place within 10
14 days.

15
16 (2) *Compensation for failure to provide notice*

17
18 If the plaintiff or other party seeking affirmative relief does not notify an
19 arbitrator or other court-connected ADR neutral involved in the case of a
20 settlement at least 2 days before the scheduled hearing or session with that
21 arbitrator or neutral, the court may order the party to compensate the
22 arbitrator or other neutral for the scheduled hearing time. The amount of
23 compensation ordered by the court must not exceed the maximum amount of
24 compensation the arbitrator would be entitled to receive for service as an
25 arbitrator under Code of Civil Procedure section 1141.18(b) or that the
26 neutral would have been entitled to receive for service as a neutral at the
27 scheduled hearing or session.

28
29 **(b) Dismissal of case**

30
31 Except as provided in (c) or (d), each plaintiff or other party seeking affirmative
32 relief must serve and file a request for dismissal of the entire case within 45 days
33 after the date of settlement of the case. If the plaintiff or other party required to
34 serve and file the request for dismissal does not do so, the court must dismiss the
35 entire case 45 days after it receives notice of settlement unless good cause is shown
36 why the case should not be dismissed.

37
38 **(c) Conditional settlement**

39
40 (1) *Notice*

41
42 If the settlement agreement conditions dismissal of the entire case on the
43 satisfactory completion of specified terms that are not to be performed within

1 45 days of the settlement, including payment in installment payments, the
2 notice of conditional settlement served and filed by each plaintiff or other
3 party seeking affirmative relief must specify the date by which the dismissal
4 is to be filed.
5

6 (2) *Dismissal*
7

8 If the plaintiff or other party required to serve and file a request for dismissal
9 within 45 days after the dismissal date specified in the notice does not do so,
10 the court must dismiss the entire case unless good cause is shown why the
11 case should not be dismissed.
12

13 (3) *Hearings vacated*
14

15 (A) Except as provided in (B), on the filing of the notice of conditional
16 settlement, the court must vacate all hearings and other proceedings
17 requiring the appearance of a party and may not set any hearing or
18 other proceeding requiring the appearance of a party earlier than 45
19 days after the dismissal date specified in the notice, unless requested by
20 a party.
21

22 (B) The court need not vacate a hearing on an order to show cause or other
23 proceeding relating to sanctions, or for determination of good faith
24 settlement at the request of a party under Code of Civil Procedure
25 section 877.6.
26

27 (4) *Case disposition time*
28

29 Under standard 2.2(n)(1)(A), the filing of a notice of conditional settlement
30 removes the case from the computation of time used to determine case
31 disposition time.
32

33 (d)–(e) * * *

34
35 **Advisory Committee Comment**
36

37 **Subdivisions (a) and (b).** Amended Code of Civil Procedure section 664.6 allows parties to
38 settle a case and agree to have the case dismissed without prejudice. The plaintiff or other party
39 seeking affirmative relief must follow the procedures outlined in subdivisions (a) and (b) even if
40 the parties settle the case and agree to dismiss under the provisions of Code of Civil Procedure
41 section 664.6.
42

1 **Subdivision (c).** Code of Civil Procedure section 664.6 allows for but does not mandate the
2 dismissal of cases with conditional settlements either upon stipulation of the parties or on the
3 court's own motion. Subdivision (c) provides an alternative process for cases with a conditional
4 settlement in which dismissal is not sought under Code of Civil Procedure section 664.6.
5

DRAFT

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY DRAFT 2024-07-02 Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
REQUEST FOR DISMISSAL	CASE NUMBER:

A conformed copy will not be returned by the clerk unless a method of return is provided with the document.

This form may not be used for dismissal of a derivative action or a class action or of any party or cause of action in a class action. (Cal. Rules of Court, rules 3.760 and 3.770.)

1. TO THE CLERK: Please **dismiss** this action as follows:

- a. (1) With prejudice (2) Without prejudice (3) Without prejudice and with the court retaining jurisdiction (Code Civ. Proc., § 664.6)
- b. (1) Complaint (2) Petition
- (3) Cross-complaint filed on (date): by (name):
- (4) Cross-complaint filed on (date): by (name):
- (5) Entire action of all parties and all causes of action
- (6) Other (specify)*:

2. (Complete in all cases except family law cases.)

The court did did not waive court fees and costs for a party in this case. (This information may be obtained from the clerk. If court fees and costs were waived, the declaration on the back of this form must be completed.)

Date:

(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)

* If dismissal requested is of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed

(SIGNATURE)

 Attorney or party without attorney for
 Plaintiff/Petitioner Defendant/Respondent
 Cross-Complainant

3. TO THE CLERK: Consent to the above dismissal is hereby given.†

Date:

(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)

† If item 1a(3) is checked, all parties must sign. If a cross-complaint—or Response—Marriage/Domestic Partnership (form FL-120) seeking affirmative relief—is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581(i) or (j).

(SIGNATURE)

 Attorney or party without attorney for
 Plaintiff/Petitioner Defendant/Respondent
 Cross-Complainant

Check here and use form MC-025 or a separate page for additional signatures. Include date, printed name, and party information.

- 4. Dismissal entered as requested on (date):
- 5. Dismissal entered on (date): as to only (name):
- 6. Dismissal **not entered** as requested for the following reasons (specify):
- 7. a. Attorney or party without attorney notified on (date):
- b. Attorney or party without attorney not notified. Filing party failed to provide a copy to be conformed means to return conformed copy

Date: _____, Clerk, by _____, Deputy

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:
--	--------------

COURT'S RECOVERY OF WAIVED COURT FEES AND COSTS

If a party whose court fees and costs were initially waived has recovered or will recover \$10,000 or more in value by way of settlement, compromise, arbitration award, mediation settlement, or other means, the court has a statutory lien on that recovery. The court may refuse to dismiss the case until the lien is satisfied. (Gov. Code, § 68637.)

Declaration Concerning Waived Court Fees

1. The court waived court fees and costs in this action for *(name)*:
2. The person named in item 1 is *(check one below)*
 - a. not recovering anything of value by this action.
 - b. recovering less than \$10,000 in value by this action.
 - c. recovering \$10,000 or more in value by this action. *(If item 2c is checked, item 3 must be completed.)*
3. All court fees and court costs that were waived in this action have been paid to the court *(check one)*: Yes No

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

Date:

(TYPE OR PRINT NAME OF ATTORNEY PARTY MAKING DECLARATION)

▶ _____
(SIGNATURE)

SPR24-10

Civil Practice and Procedures: Case Dismissal with Retained Jurisdiction (amend Cal. Rules of Court, rule 3.1385; revise form CIV-110)

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

	Commenter	Position	Comment	DRAFT Committee Response
1.	Rachel Enders Clark Santa Clarita	A	This is a fantastic idea. There is great value in having a court form on the record reflecting the 664.6 dismissal in addition to being buried in settlement terms and minute orders. The proposed change to the form clarifies and streamlines the new requirements.	The committee appreciates the information provided.
			A suggestion you may take or leave: -Perhaps add check box options stating the written terms of the settlement are either (1) attached as Exhibit X or (2) previously filed with the court.	The committee does not recommend revisions based on this suggestion as it does not appear necessary for the court to have a copy of the settlement agreement when the request for dismissal is filed. If the court retains jurisdiction and a party asks the court to enforce the terms of the settlement agreement, the party can present the agreement to the court at that time.
2.	Michael R. Diliberto Mediator and Arbitrator Los Angeles	AM	I have worked as a full-time mediator and arbitrator for approximately 21 years. I served as an Administrative Law Judge, pro tem, with the Office of Administrative Hearings (General Jurisdiction and Special Education Divisions), and I taught negotiations and mediation as an adjunct professor at Loyola Law School, Los Angeles, California. I also serve as the Chair of the Los Angeles County Bar Association’s Alternative Dispute Resolution (ADR) Section. The comments below are my own, and are not made on behalf of any company, association or organization.	The committee appreciates the information provided.
			In April 2022, I wrote an article titled “Proposal for a User Friendlier CCP § 664.6” which was published in Los Angeles Lawyer magazine. My	The committee appreciates the information provided.

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

SPR24-10

Civil Practice and Procedures: Case Dismissal with Retained Jurisdiction (amend Cal. Rules of Court, rule 3.1385; revise form CIV-110)

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

	Commenter	Position	Comment	DRAFT Committee Response
			<p>article highlighted some of the problems with the procedure to request the trial court to reserve jurisdiction before a settled case is dismissed, including the fact that some parties fail to ask the trial court to retain jurisdiction beyond simply agreeing to that in their settlement agreement—the classic ineffective secret handshake.</p> <p>My article suggested revising Judicial Council form CIV-110 (Request for Dismissal) to add a new “check the box” option to request dismissal of an action with the court retaining jurisdiction under Code of Civil Procedure section 664.6. My idea generated Proposal SPR24-10 by the Judicial Council Civil and Small Claims Advisory Committee titled “Civil Practice and Procedure: Case Dismissal With Retained Jurisdiction.”</p>	<p>The committee appreciates the information provided.</p>

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

SPR24-10

Civil Practice and Procedures: Case Dismissal with Retained Jurisdiction (amend Cal. Rules of Court, rule 3.1385; revise form CIV-110)

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

	Commenter	Position	Comment	DRAFT Committee Response
			<p>Comment: The Judicial Council should consider allowing the parties to check item 1a(3) to dismiss the case with prejudice and with the court retaining jurisdiction. When the parties enter into a settlement agreement they want final closure to a litigated case. Final closure typically includes filing a request to dismiss the entire action with prejudice. Once the parties request the court to reserve jurisdiction by checking item 1a(3) in the revised CIV-110, the entire case can be dismissed, with prejudice.</p> <p>This is true for cases with conditional terms of settlement that are not to be performed within 45 days of the date of settlement, or cases with settlement terms that require less time to be performed in full. If a party later requires the court’s assistance to enforce the settlement agreement after the case is dismissed (even if the case is dismissed with prejudice), such party may file a motion with the court to enforce the settlement pursuant to Code of Civil Procedure section 664.6. This suggested modification obviates the need for the parties to file another Judicial Council form CIV-110 to dismiss the case with prejudice after full performance of the settlement terms.</p> <p>Comment: Proposal SPR24-10 (and the proposed revised form CIV-110) appear to indicate that when the parties check item 1a(3) in the CIV-110, the deputy clerk’s ministerial duties include the ability to cause the trial court to retain jurisdiction</p>	<p>The committee does not recommend revisions based on this suggestion as amended Code of Civil Procedure section 664.6 only authorizes the court to “dismiss the case as to the settling parties <i>without prejudice</i> and retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement” (emphasis added).</p> <p>The committee does not recommend revisions based on this comment as neither Code of Civil Procedure section 664.6 nor <i>Mesa RHF Partners, L.P v. City of Los Angeles</i> (2019) 33 Cal.App.5th</p>

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

SPR24-10

Civil Practice and Procedures: Case Dismissal with Retained Jurisdiction (amend Cal. Rules of Court, rule 3.1385; revise form CIV-110)

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

	Commenter	Position	Comment	DRAFT Committee Response
			<p>before the deputy clerk enters the dismissal of the action. This process appears to find support in Mesa RHF Partners, L.P v. City of Los Angeles (2019) 33 Cal.App.5th 913. In Mesa, the parties filed requests for dismissal on Judicial Council form CIV-110. Counsel inserted language into the forms, such as: “The Court shall retain jurisdiction to enforce the settlement agreement per Code of Civil Procedure § 664.6.” A deputy clerk entered the dismissal “as requested” on the same day. (Id. at p. 916.)</p> <p>The Court of Appeal determined that the requests for dismissal did not operate as requests to the trial court that it retain jurisdiction under section 664.6 to enforce the parties’ settlement agreements, because the requests for dismissal were not signed by the “parties” (or even a single “party”). (Id. at p. 917.) Proposal SPR24-10 and the revised CIV-110 solve that problem by expressly stating on the revised CIV-110, “If item 1a(3) is checked, all parties must sign.”</p> <p>I conclude by simply raising the issue of whether the deputy clerk’s ministerial duties include the ability to cause the trial court to retain jurisdiction before dismissal is entered by the clerk, or whether after the CIV-110 is filed, it should first be transmitted to the trial court for an order indicating that the court has reserved jurisdiction (an order within the CIV-110 form) before the case is dismissed by the deputy clerk.</p>	<p>913 appears to require the court to issue an order to retain jurisdiction.</p>

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

SPR24-10

Civil Practice and Procedures: Case Dismissal with Retained Jurisdiction (amend Cal. Rules of Court, rule 3.1385; revise form CIV-110)

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

	Commenter	Position	Comment	DRAFT Committee Response
3.	Marc E. Hankin Managing Partner Los Angeles	A	This change would simplify and streamline the process and should be approved forthwith.	The committee appreciates the information provided.
4.	Orange County Bar Association by Christina Zabat-Fran President	A	The proposal appropriately addresses the stated purpose.	The committee appreciates the information provided.
5.	Superior Court of Orange County Family Law and Juvenile Divisions by Katie Tobias Operations Analyst	NI	<i>Does the proposal appropriately address the state purpose?</i> Yes, the proposal appropriately addresses the stated purpose.	The committee appreciates the information provided.
			<i>Would the proposal provide cost savings? If so, please quantify.</i> No, the proposal does not appear to provide any cost savings.	The committee appreciates the information provided.
			<i>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</i> Implementation would require revising procedures, providing communication to judicial officers and staff, and conducting staff training (approximately 10 minutes).	The committee appreciates the information provided.

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

SPR24-10

Civil Practice and Procedures: Case Dismissal with Retained Jurisdiction (amend Cal. Rules of Court, rule 3.1385; revise form CIV-110)

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

	Commenter	Position	Comment	DRAFT Committee Response
			<p><u>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</u> Yes, three months would provide sufficient time for implementation in Orange County.</p>	<p>The committee appreciates the information provided.</p>
			<p><u>How well would this proposal work in courts of different sizes?</u> Our court is a large court, and this could work for Orange County.</p>	
6.	<p>Superior Court of Riverside County Riverside by Sarah Hodgson Chief Deputy of Legal Services / General Counsel</p>	NI	<p>Suggestions: Since this rule requires signatures of all parties, suggesting that an attachment form is created as majority of the cases will have more than two parties.</p> <p>Does the proposal appropriately address the stated purpose?</p> <ul style="list-style-type: none"> • Yes, it addresses the stated purpose <p>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</p> <ul style="list-style-type: none"> • Update case management system • Revise procedures/processes • Advise staff and judicial officers 	<p>In light of this suggestion and others, the committee recommends including a checkbox in item 3 of form CIV-110 for parties to indicate that additional signatures are attached.</p> <p>The committee appreciates the information provided.</p> <p>The committee appreciates the information provided.</p>

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

SPR24-10

Civil Practice and Procedures: Case Dismissal with Retained Jurisdiction (amend Cal. Rules of Court, rule 3.1385; revise form CIV-110)

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

	Commenter	Position	Comment	DRAFT Committee Response
7.	Superior Court of San Diego County by Mike Roddy Executive Officer	AM	<p>Q: Does the proposal appropriately address the stated purpose? A: Yes.</p>	The committee appreciates the information provided.
			<p>Q: Would the proposal provide cost savings? If so, please quantify. A: No.</p>	The committee appreciates the information provided.
			<p>Q: What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? A: Implementation will require updating the case management system and internal procedures to reflect changes to CIV-110.</p>	The committee appreciates the information provided.
			<p>Q: Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? A: Yes.</p>	The committee appreciates the information provided.
			<p>Q: How well would this proposal work in courts of different sizes? A: This proposal should work well, regardless of the size of the court.</p>	The committee appreciates the information provided.
			CIV-110:	In light of this suggestion and others, the committee recommends including a check box in

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

SPR24-10

Civil Practice and Procedures: Case Dismissal with Retained Jurisdiction (amend Cal. Rules of Court, rule 3.1385; revise form CIV-110)

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

	Commenter	Position	Comment	DRAFT Committee Response
			Should additional signature blocks be added to accommodate the signatures of multiple parties/attorneys? If item 1.a.(3) is checked, all parties must sign to acknowledge they agree to retention of jurisdiction.	item 3 of form CIV-110 for parties to indicate that additional signatures are attached.

DRAFT

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

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: August 6, 2024

Rules Committee action requested [Choose from the drop-down menu below]:
Recommend JC approval (has circulated for comment)

Title of proposal: CEQA Actions: Initial Case Management Conferences

Proposed rules, forms, or standards (include amend/revise/adopt/approve):
amend rule 3.2226

Committee or other entity submitting the proposal:
Civil and Small Claims Advisory Committee

Staff contact (name, phone and e-mail): James Barolo, 415-865-8928, james.barolo@jud.ca.gov
Jeremy Varon, 415-865-7424, jeremy.varon@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Annual agenda approved by Rules Committee on (date): October 26, 2023 (amended February 9, 2024)
Project description from annual agenda: Develop rule recommendations as appropriate. SB 149, which went into effect July 10, 2023, provides that for all CEQA cases, the court must schedule a case management conference within 30 days of filing the complaint. Current California Rules of Court state that such a conference must be held within 30 days for certain types of CEQA cases. While current Rules of Court are not inconsistent with statute, amending the rules would prevent any confusion about which cases are required to have a case management conference within 30 days of filing the complaint.

Out of Cycle: *If requesting September 1 effective date or out of cycle, explain why:*

Additional Information for Rules Committee: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

Additional Information for JC Staff

- **Director Approval** (required for all invitations to comment and reports)
This report or invitation to comment was
 reviewed by EGG on (date) June 21, 2024
 approved by Office Director (or Designee) (name)
on (date)

If either of above not checked, explain why:

Complete the following for all reports to be submitted to council (optional for ITCs):

- **Form Translations** (check all that apply)
This proposal:
 includes forms that have been translated.
 includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: [Click or tap here to enter text.](#)
 includes forms that staff will request be translated.
- **Form Descriptions** (for any report with new or revised forms)

The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is checked, the form descriptions should be approved by a supervisor before submitting this RAR.).

- **Self-Help Website** (check if applicable)

This proposal may require changes or additions to self-help web content.



Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 24-131

For business meeting on September 20, 2024

Title

CEQA Actions: Initial Case Management Conferences

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rule 3.2226

Recommended by

Civil and Small Claims Advisory Committee
Hon. Tamara L. Wood, Chair

Agenda Item Type

Action Required

Effective Date

January 1, 2025

Date of Report

July 17, 2024

Contact

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Executive Summary

The Civil and Small Claims Advisory Committee recommends amending rule 3.2226 of the California Rules of Court to implement the provisions of Senate Bill 149 concerning initial case management conferences for actions brought under the California Environmental Quality Act.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2025, amend rule 3.2226 to implement SB 149. This amendment provides that the court must hold an initial case management conference within 30 days of the filing of the complaint in actions brought under the California Environmental Quality Act that receive expedited court review. In addition, it incorporates a topic listed in SB 149 into the enumerated topics that the court should consider at the conference.

The text of the amended rule is attached at pages 5–6.

Relevant Previous Council Action

The Judicial Council adopted rules, later renumbered as rules 3.2205–3.2208, effective January 2010, relating to the form and format of the administrative record in cases brought under the California Environmental Quality Act (CEQA).¹ Since 2011, the Legislature has enacted numerous bills providing expedited judicial review for legal challenges under CEQA for specified types of projects. To implement these statutes, the council adopted and, as necessary, amended, rules 3.2220–3.2240 and 8.700–8.705 to set out certain pleading and service requirements and incentives to help streamline judicial review in those expedited cases.

Most recently, in 2023, the Legislature enacted Senate Bill 149 to add “infrastructure projects” to the list of projects to receive expedited CEQA review.² At its November 2023 meeting, the Judicial Council adopted several rule amendments to implement the major provisions of SB 149, effective December 31, 2023.³

Analysis/Rationale

One of the provisions of SB 149 not addressed by the rule amendments adopted by the council in November 2023 is addressed in this proposal. Specifically, SB 149 amended Public Resources Code section 21167.6(b)(1)(B) to provide that, in all legal challenges against a project brought under CEQA, the “court shall schedule a case management conference within 30 days of the filing of the complaint or petition . . . to review the scope, timing, and cost of the record of proceedings.”

Currently, one rule of court—rule 3.2226—addresses case management conferences in CEQA cases. Rule 3.2226, which applies only to CEQA actions that receive expedited court review, provides that “the court *should* hold an initial case management conference within 30 days of the filing of the petition or complaint” (emphasis added). The current rule also lists 15 specific subjects for consideration at the conference but the scope, timing, and cost of the record of proceedings are not included among these listed subjects.

To implement SB 149’s amendments to Public Resources Code section 21167.6(b)(1)(B), the committee recommends amending rule 3.2226(a) to provide that the court “must,” rather than “should,” hold a case management conference. In addition, the committee recommends

¹ Unless otherwise noted, all rules referred to herein are California Rules of Court.

² Sen. Bill 149 (Stats. 2023, ch. 60), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB149.

³ Judicial Council of Cal., *CEQA Actions: New Projects and Fees for Expedited Review* (Oct. 26, 2023), <https://jcc.legistar.com/View.ashx?M=F&ID=12398997&GUID=7F912B56-E0AF-4D15-B801-87FE8D7EF0C2>.

amending rule 3.2226(a)(6) to add “the scope, timing, and cost of the record of proceedings” to the enumerated topics that must be considered at the case management conference.⁴

Policy implications

The committee recommends amending the rule to implement legislation and to ensure that the rule conforms to law. The policy choices have been made by the Legislature.

Comments

The committee solicited public comments on this proposal from March 29 through May 3 as part of the council’s regular spring 2024 invitation-to-comment cycle. Of the four comments received, three were from courts and one was from a county bar association. The substantive comments and the committee’s responses are summarized below.

The Superior Court of Los Angeles County recommends modifying the amendment to give courts 90 days to implement the change. In fact, courts will have more than 90 days to implement the change because the Judicial Council will vote on the proposed amendment, as written, in September 2024, and, if approved, it would not take effect until January 1, 2025. As such, the committee does not recommend making any modification in response to this comment.

The Orange County Bar Association proposed changing “must” to “shall” because it would be consistent with mandatory language typically used by the Legislature to convey a mandate. However, the rules of court provide for the use of “must” to convey mandates. (Rule 1.5(b).) As such, the committee does not recommend adopting this suggestion.

A chart of comments and the committee’s responses is attached at pages 7–9.

Alternatives considered

The committee considered expanding rule 3.2226 to require case management conferences in all CEQA cases (as opposed to just cases that receive expedited review) because SB 149 now requires such conferences. The committee chose not to recommend broadening rule 3.2226, however, because all the rules in the chapter where rule 3.2226 is located apply only to expedited CEQA cases.

The committee also considered adding a new rule requiring case management conferences in all CEQA cases. However, the existing rules that apply to all CEQA cases—those in chapter 1, division 22 of Title 3 of the Rules of Court—address only the administrative record in such actions. The rules are not related to case management and so are not inconsistent with the new statutory provision. The committee concluded that although it is necessary to make rule 3.2226 consistent with Public Resources Code section 21167.6(b)(1)(B), it would be unnecessary and

⁴ As circulated for comment, the proposal would have amended rule 3.2226(c) to add “the scope, timing, and cost of the record of proceedings” as a new enumerated item. However, upon further review the committee concludes that these topics are more appropriately included in existing rule 3.2226(c)(6) because that provision already addresses matters related to the record of proceedings.

contrary to general rule drafting policy to propose a new rule that simply duplicates statutory requirements.

The committee did not consider taking no action because leaving rule 3.2226 in conflict with section 21167.6 would be confusing to courts and parties.

Fiscal and Operational Impacts

The committee anticipates that this proposal would require courts to train court staff and judicial officers on the amended rule, but any such training would be required to implement the statutory change in any event.

Attachments and Links

1. Cal. Rules of Court, rule 3.2226, at pages 5–6
2. Chart of comments, at pages 7–9
3. Link A: Sen. Bill 149 (Stats. 2023, ch. 60),
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB149

Rule 3.2226 of the California Rules of Court is amended, effective January 1, 2025, to read:

1 **Rule 3.2226. Initial case management conference**

2
3 **(a) Timing of conference**

4
5 The court ~~should~~ must hold an initial case management conference within 30 days
6 of the filing of the petition or complaint.

7
8 **(b) Notice**

9
10 Petitioner must provide notice of the case management conference to respondent,
11 real party in interest, and any responsible agency or party to the action who has
12 been served before the case management conference, within one court day of
13 receiving notice from the court or at time of service of the petition or complaint,
14 whichever is later.

15
16 **(c) Subjects for consideration**

17
18 At the conference, the court should consider the following subjects:

- 19
20 (1) Whether all parties named in the petition or complaint have been served;
21
22 (2) Whether a list of responsible agencies has been provided, and notice provided
23 to each;
24
25 (3) Whether all responsive pleadings have been filed, and if not, when they must
26 be filed, and whether any hearing is required to address them;
27
28 (4) Whether severance, bifurcation, or consolidation with other actions is
29 desirable, and if so, a relevant briefing schedule;
30
31 (5) Whether to appoint a liaison or lead counsel, and either a briefing schedule
32 on this issue or the actual appointment of counsel;
33
34 (6) The scope, timing, and cost of the record of proceedings, including whether
35 the administrative record has been certified and served on all parties, whether
36 there are any issues with it, and whether the court wants to receive a paper
37 copy;
38
39 (7) Whether the parties anticipate any motions before the hearing on the merits
40 concerning discovery, injunctions, or other matters, and if so, a briefing
41 schedule for these motions;
42

- 1 (8) What issues the parties intend to raise in their briefs on the merits, and
2 whether any limitation of issues to be briefed and argued is appropriate;
3
4 (9) Whether a schedule for briefs on the merits different from the schedule
5 provided in these rules is appropriate;
6
7 (10) Whether the submission of joint briefs on the merits is appropriate, and the
8 page limitations on all briefs, whether aggregate per side or per brief;
9
10 (11) When the hearing on the merits of the petition will be held, and the amount of
11 time appropriate for it;
12
13 (12) The potential for settlement, and whether a schedule for settlement
14 conferences or alternative dispute resolution should be set;
15
16 (13) Any stipulations between the parties;
17
18 (14) Whether a further case management conference should be set; and
19
20 (15) Any other matters that the court finds appropriate.
21

22 **(d) Joint case management conference statements**

23
24 At least three court days before the case management conference, petitioner and all
25 parties that have been served with the petition must serve and file a joint case
26 management conference statement that addresses the issues identified in (c) and
27 any other pertinent issues.
28

29 **(e) Preparation for the conference**

30
31 At the conference, lead counsel for each party and each self-represented party must
32 appear in person or remotely, must be familiar with the case, and must be prepared
33 to discuss and commit to the party's position on the issues listed in (c).

SPR24-11

CEQA Actions: Initial Case Management Conferences (amend Cal. Rules of Court, rule 3.2226)

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

	Commenter	Position	Comment	DRAFT Committee Response
1.	Orange County Bar Association by Christina Zabat-Fran President	AM	This proposed amendment to Cal. Rules of Court, rule 3.2226 accomplishes its purpose to conform the rule to the statutory language in Public Resources Code section 21167.6(b)(1)(B) by making the timing of the initial conference mandatory and by adding as required by the statute that the parties discuss “the scope, timing, and cost of the record of proceedings.” However, we would propose changing “must” to “shall”, which is more in line with mandatory language typically used by the Legislature to convey a mandate.	The committee does not recommend revisions based on this suggestion as the Judicial Council’s practice is to use “must” to convey mandates. See California Rules of Court, rule 1.5(b).
2.	Superior Court of Los Angeles County by Bryan Borys Director of Research and Data Management	AM	The following comments are representative of the Superior Court of California, County of Los Angeles (Court), and do not represent or promote the viewpoint of any particular judicial officer or employee. The Court agrees with the proposal in SPR24-11, “CEQA Actions: Initial Case Management Conferences,” if modified, as some trial courts may need 90 days if they choose to implement this change through automatically scheduled hearings.	The committee does not recommend revisions based on this suggestion because the Judicial Council will vote on the proposed amendment in September 2024 and, if approved, it would not take effect until January 1, 2025, which provides courts with more than 90 days to implement this change.
3.	Superior Court of Riverside County by Sarah Hodgson Chief Deputy of Legal Services / General Counsel	NI	No additional comments nor suggestions.	The committee appreciates the information provided.
			Does the proposal appropriately address the stated purpose? <ul style="list-style-type: none"> • Yes, it addresses the stated purpose 	The committee appreciates the information provided.

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

SPR24-11

CEQA Actions: Initial Case Management Conferences (amend Cal. Rules of Court, rule 3.2226)

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

	Commenter	Position	Comment	DRAFT Committee Response
			What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? <ul style="list-style-type: none"> • None 	The committee appreciates the information provided.
			Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? <ul style="list-style-type: none"> • Yes 	The committee appreciates the information provided.
			How well would this proposal work in courts of different sizes? <ul style="list-style-type: none"> • No adverse effect 	The committee appreciates the information provided.
4.	Superior Court of San Diego County by Mike Roddy Executive Officer	A	Q: Does the proposal appropriately address the state purpose? A: Yes.	The committee appreciates the information provided.
			Q: Would the proposal provide cost savings? If so, please quantify. A: No.	The committee appreciates the information provided.

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

SPR24-11

CEQA Actions: Initial Case Management Conferences (amend Cal. Rules of Court, rule 3.2226)

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

	Commenter	Position	Comment	DRAFT Committee Response
			<p>Q: What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? A: Minimal updates to internal procedures.</p>	<p>The committee appreciates the information provided.</p>
			<p>Q: Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? A: Yes.</p>	<p>The committee appreciates the information provided.</p>
			<p>Q: How well would this proposal work in courts of different sizes? A: This proposal should work well, regardless of the size of the court.</p>	<p>The committee appreciates the information provided.</p>

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

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: August 6, 2024

Rules Committee action requested [Choose from the drop-down menu below]:
Circulate for comment (January 1 cycle)

Title of proposal: Judicial Branch Education: Fairness and Access Requirements

Proposed rules, forms, or standards (include amend/revise/adopt/approve):
 Adopt Cal. Rules of Court, rule 10.465; amend rules 10.461, 10.462, and 10.469

Committee or other entity submitting the proposal:
 The Center for Judicial Education and Research (CJER) Advisory Committee

Staff contact (name, phone and e-mail): Karene Alvarado, 415-865-7761, karene.alvarado@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:

Annual agenda approved by Rules Committee on (date): N/A

Project description from annual agenda: The CJER Advisory Committee's annual agenda is approved by the Executive and Planning Committee. The Executive and Planning Committee approved this project as part of the CJER Advisory Committee's 2024 annual agenda on March 14, 2024.

Draft Project Summary: Recommend adding California Rules of Court, rule 10.465 and repealing California Rules of Court, rule 10.469(e)(2). Currently, judicial education antibias and antidiscrimination requirements are listed in rule 10.469(e)(2), among the rule's other education recommendations. Adopting a new court rule would place the current antibias and antidiscrimination mandates in their own rule due to those topics' required nature and importance. Creating a new, separate rule aligns with rule 10.463 (family law), rule 10.464 (domestic violence), and rule 10.468 (probate). It may also raise awareness of and facilitate adherence to these judicial education mandates. No substantive change to judicial education requirements would be made.

Out of Cycle: *If requesting September 1 effective date or out of cycle, explain why:*
 N/A

Additional Information for Rules Committee: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)
 N/A

Additional Information for JC Staff

- **Director Approval** (required for all invitations to comment and reports)
 This report or invitation to comment was
 - reviewed by EGG on (date) 6/14/2024
 - approved by Office Director (or Designee) (name) Karene Alvarado on (date) 6/21/2024

If either of above not checked, explain why:

Complete the following for all reports to be submitted to council (optional for ITCs):

- **Form Translations** (check all that apply)
 This proposal:
 - includes forms that have been translated.
 - includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: [Click or tap here to enter text.](#)

includes forms that staff will request be translated.

- **Form Descriptions** (for any report with new or revised forms)
 - The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is checked, the form descriptions should be approved by a supervisor before submitting this RAR.).
- **Self-Help Website** (check if applicable)
 - This proposal may require changes or additions to self-help web content.



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REPORT TO THE JUDICIAL COUNCIL

Item No.: 24-113

For business meeting on September 19, 2024

Title

Judicial Branch Education: Fairness and Access Requirements

Agenda Item Type

Action Required

Rules, Forms, Standards, or Statutes Affected

Adopt Cal. Rules of Court, rule 10.465; amend rules 10.461, 10.462, and 10.469

Effective Date

January 1, 2025

Date of Report

July 29, 2024

Recommended by

Center for Judicial Education and Research
Advisory Committee
Hon. Darrell S. Mavis, Chair

Contact

Karene Alvarado, 415-865-7761
karene.alvarado@jud.ca.gov

Executive Summary

Rule 10.469 of the California Rules of Court has generated some confusion about fairness and access education requirements for judicial officers. Therefore, the Center for Judicial Education and Research Advisory Committee proposes adopting rule 10.465 and amending rule 10.469 to clarify those education requirements. The proposal also makes related technical changes to rules 10.461 and 10.462.

Recommendation

The Center for Judicial Education and Research Advisory Committee recommends that the Judicial Council, effective January 1, 2025:

1. Adopt California Rules of Court, rule 10.465 and amend rule 10.469 to clarify existing fairness and access education requirements for judicial officers; and
2. Amend rules 10.461 and 10.462 to implement necessary related technical changes.

The proposed new and amended rules are attached at pages 5–7.

Relevant Previous Council Action

The Judicial Council adopted a comprehensive set of rules on judicial branch education in two stages in 2006 and 2007. This action included the adoption of California Rules of Court, rule 10.469, effective January 1, 2008, which contained only nonmandatory education recommendations for judicial officers.¹ In 2020, the Judicial Council amended rule 10.469 to include new subdivision (e)(2) mandating new education requirements for judicial officers “on unconscious bias, as well as on the prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct.”

Analysis/Rationale

Since its adoption, rule 10.469(e)(2) has generated confusion by stating two separate mandatory education *requirements* for judicial officers in a rule that had previously contained only education *recommendations*. Additionally, subdivision (e)(2) generated further misunderstanding of what training judicial officers are required to obtain by expressing two separate education requirements in one provision.

Without altering the requirements for judicial officers, this proposal clarifies existing education regulation on fairness and access issues by moving fairness and access requirements and recommendations to a new, standalone rule—proposed rule 10.465. In the new rule, the recommendations remain in a separate subdivision from the requirements, but the two requirements are now separated into their own provisions, emphasizing that education on two discrete subjects—bias and the prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct—must be obtained by judicial officers every three-year education cycle. An added benefit of the proposal is that it emphasizes the essential nature of fairness and access education for all judicial officers and places the requirements on par with mandatory education requirements contained in other rules, including rule 10.463 (family law), rule 10.464 (domestic violence), and rule 10.468 (probate, guardianships, and conservatorships).

Finally, the proposal, if adopted, also requires an amendment to rule 10.469 to delete subdivision (e) and amendments to rules 10.461 and 10.462 to include references to new rule 10.465.

Policy implications

This proposal will help judicial officers better understand their training obligations on the prevention of bias, discrimination, harassment, retaliation, and other inappropriate workplace conduct. Thus, this proposal supports Goal I of the Strategic Plan for California’s Judicial Branch, specifically the goal of providing equal access to the courts and court proceedings and programs. (California Courts, “The Strategic Plan for California’s Judicial Branch” (July 2019), www.courts.ca.gov/3045.htm.)

¹ All further references are to the California Rules of Court unless otherwise indicated.

Comments

The proposal generated no significant points of discussion or divergence of opinion within the Center for Judicial Education and Research (CJER) Advisory Committee membership. Before circulation for public comment, however, members of the Rules Committee asked whether there was a distinction between the terms “unconscious bias” and “implicit bias.” They further inquired whether there was a rationale for the adoption of the term “unconscious bias” instead of “implicit bias” in rule 10.469(e)(2) that supported keeping the term in the proposed new rule. During this discussion, it was noted that these terms are often used interchangeably, but some subject-matter experts in this field believe that a notable distinction exists between the two terms.

This proposal circulated for public comment from March 29 through May 3, 2024, as part of the regular spring comment cycle. Three comments were received, one agreeing with the proposal and two not indicating a position.

One of the commenters offered a suggestion on the same issues raised during the Rules Committee’s initial consideration of the proposal. The commenter noted that the term “implicit bias” is used predominantly in section 68088(b)(1) of the Government Code, which authorizes the Judicial Council to develop training on this topic. The statute further requires that such training include, among other things, “the social science on *implicit bias*, *unconscious bias*, and *systemic implicit bias*, including the ways that bias affects institutional policies and practices.” (Gov. Code, § 68088(b)(1)(A) (emphasis added).) The use of three distinct terms in the statute strongly implies a legal distinction between them. The commentator also noted that the term “implicit bias” is used by the California State Bar in its recently adopted minimum continuing legal education requirements. (Cal. State Bar, rule 2.72(B)(2)(a)(ii)(1) [“[A]t least one hour must focus on *implicit bias* and the promotion of bias-reducing strategies . . .” (emphasis added)].)

Based on the above, “implicit bias” appears to be the current preferred term on this topic. To combat bias in its various forms, the committee recommends broadening its proposal by adding a parenthetical explanation that bias education includes training on “explicit, implicit, and/or unconscious bias.”

A chart with the text of the comments and the committee responses is included at pages 8–10.

Alternatives considered

The committee considered two alternatives to the proposal. It initially considered taking no action, leaving the fairness and access requirements in rule 10.469(e). The committee rejected this alternative because it did not address the underlying issue: the confusion caused by including two education requirements within a single subdivision of a rule pertaining to education recommendations.

The committee also considered a draft version of the new rule that condensed the current requirements and recommendation on fairness and access into one subdivision with additional clarifying language and references. The committee declined this approach given the potential for it to be misinterpreted as adding additional mandates in this area. The alternative language

considered also did not resolve the underlying need to clarify that judicial officers are separately required to participate in education on bias *and* on the prevention of discrimination, harassment, retaliation, and inappropriate workplace conduct.

Fiscal and Operational Impacts

Because the proposal is a reorganization and clarification of existing requirements, the proposal will have no significant fiscal or operational impacts on the judicial branch.

Attachments and Links

1. Cal. Rules of Court, rules 10.461, 10.462, 10.465, and 10.469, at pages 5–7
2. Chart of comments, at pages 8–10
3. Link A: Cal. Rules of Court, rule 10.461,
www.courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_461
4. Link B: *Id.*, rule 10.462,
www.courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_462
5. Link C: *Id.*, rule 10.469,
www.courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_469
6. Link D: Gov. Code, § 68088,
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=68088.&lawCode=GOV

Rule 10.465 of the California Rules of Court is adopted and rules 10.461, 10.462, and 10.469 are amended, effective January 1, 2025, to read:

1 **Rule 10.461. Minimum education requirements for Supreme Court and Court of**
2 **Appeal justices**

3
4 **(a) Applicability**

5
6 All California Court of Appeal justices must complete the minimum judicial
7 education requirements for new justices under (b), and all Supreme Court and
8 Court of Appeal justices must complete minimum continuing education
9 requirements as outlined under (c). All justices must complete education
10 requirements on fairness and access as stated in rule 10.465(a) and should
11 participate in more judicial education than is required, related to each individual’s
12 responsibilities and in accordance with the judicial education recommendations ~~set~~
13 forth stated in rule 10.469.

14
15 **(b)–(e) * * ***

16
17
18 **Rule 10.462. Minimum education requirements and expectations for trial court**
19 **judges and subordinate judicial officers**

20
21 **(a) Applicability**

22
23 All California trial court judges must complete the minimum judicial education
24 requirements for new judges under (c)(1) and are expected to participate in
25 continuing education as outlined under (d). All subordinate judicial officers must
26 complete the minimum education requirements for new subordinate judicial
27 officers under (c)(1) and for continuing education as outlined under (d). All trial
28 court judges and subordinate judicial officers must complete education
29 requirements on fairness and access as stated in rule 10.465(a). All trial court
30 judges and subordinate judicial officers who hear family law matters must complete
31 additional education requirements ~~set forth~~ as stated in rule 10.463. All trial court
32 judges and subordinate judicial officers who hear ~~certain types of~~ matters specified
33 in rule 10.464(a) must participate in education on domestic violence issues as
34 provided in rule 10.464. All trial court judges and subordinate judicial officers
35 regularly assigned to hear probate proceedings must complete additional education
36 requirements ~~set forth~~ as stated in rule 10.468. All trial court judges and
37 subordinate judicial officers should participate in more judicial education than is
38 required and expected, related to each individual’s responsibilities and particular
39 judicial assignment or assignments and in accordance with the judicial education
40 recommendations ~~set forth~~ stated in rule 10.469.

1 (b)–(g) * * *

2
3
4 **Rule 10.465. Education requirements and recommendations for justices, judges,**
5 **and subordinate judicial officers on fairness and access**
6

7 **(a) Education on bias and the prevention of harassment, discrimination,**
8 **retaliation, and inappropriate workplace conduct**
9

- 10 (1) Each justice, judge, and subordinate judicial officer must participate in bias
11 education (including explicit, implicit, and/or unconscious bias).
12
13 (2) Each justice, judge, and subordinate judicial officer must participate in
14 education on the prevention of harassment, discrimination, retaliation, and
15 inappropriate workplace conduct.
16
17 (3) The education in (1) and (2) must be taken at least once every three-year
18 continuing education cycle as determined under rules 10.461(c)(1) and
19 10.462(d).
20

21 **(b) Additional education on fairness and access**
22

23 To achieve the objective of assisting judicial officers in preserving the integrity and
24 impartiality of the judicial system through the prevention of bias, each justice,
25 judge, and subordinate judicial officer should regularly participate in education on
26 fairness and access in addition to that required in (a). The education should include
27 the following subjects: race and ethnicity, gender, sexual orientation, and persons
28 with disabilities, persons with limited economic means, and persons without stable
29 housing.
30
31

32 **Rule 10.469. Education recommendations for justices, judges, and subordinate**
33 **judicial officers**
34

35 (a)–(d) * * *

36
37 ~~**(e) Education on fairness and access, unconscious bias, and prevention of**~~
38 ~~**harassment, discrimination, retaliation, and inappropriate workplace conduct**~~
39

- 40 ~~(1) In order to achieve the objective of assisting judicial officers in preserving~~
41 ~~the integrity and impartiality of the judicial system through the prevention of~~
42 ~~bias, each justice, judge, and subordinate judicial officer should regularly~~
43 ~~participate in education on fairness and access. The education should include~~

1 the following subjects: race and ethnicity; gender; sexual orientation; persons
2 with disabilities; persons with limited economic means; and persons without
3 stable housing.

4

5 (2) — Each justice, judge, and subordinate judicial officer must participate in
6 education on unconscious bias, as well as the prevention of harassment,
7 discrimination, retaliation, and inappropriate workplace conduct. This
8 education must be taken at least once every three-year continuing education
9 cycle as determined by rules 10.461(c)(1) and 10.462(d).

SPR24-13**Judicial Branch Education: Fairness and Access Requirements** (adopt Cal. Rules of Court, rule 10.465; amend rules 10.461, 10.462, and 10.469)

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

	Commenter	Position	Comment	Committee Response
1.	Rasha Gerges Shields Attorney Los Angeles	NI	<p>* The commenter proposes two changes to the committee’s recommendation to adopt rule 10.465.</p> <p>I commend the underlying goals of the education requirements, as well as the stated goals of the proposed changes to the rules, which is to provide clarity to the requirements and avoid confusion. With those same goals in mind, I believe proposed rule 10.465 would benefit from two changes. First, proposed rule 10.465 (and rule 10.469) use the phrase “unconscious bias,” but I believe the more precise phrase to use is “implicit bias.” Although the two phrases are often used interchangeably, Diversity Equity & Inclusion professionals do not all agree that these terms, are, in fact, equivalent (see, e.g., https://percipiocompany.com/what-is-the-difference-between-implicit-and-unconscious-bias/). In any event, using the phrase “implicit bias” instead of “unconscious bias” would align more directly with Government Code Section 68088, which authorizes the Judicial Council to “develop training on implicit bias” broadly, which shall include, but not be limited to [Gov. Code § 68088(b)(1)(A)-(F) (emphasizing multiple references to the term “implicit bias”)].</p> <p>Although the statute references unconscious biases, the structure of the statute demonstrates that the over-arching topic of the training should be “implicit bias,” with unconscious bias being a sub-topic. Accordingly, to avoid confusion and to be more faithful to the underlying statutory authority, proposed Rule 10.465 should refer to “implicit bias” rather than “unconscious bias.”</p> <p>I also note that using the phrase “implicit bias” would also align this judicial training requirement to the MCLE requirements of California attorneys. The California Bar requires one hour of bias-related training to “focus on implicit bias and the promotion</p>	<p>The committee agrees with the commenter’s suggestion to replace the phrase “unconscious bias” with an amendment that includes additional terms consistent with Government Code section 68088. Although the terms “implicit bias” and “unconscious bias” are often used interchangeably, the committee agrees that both terms may have distinct meanings under the statute.</p>

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

SPR24-13

Judicial Branch Education: Fairness and Access Requirements (adopt Cal. Rules of Court, rule 10.465; amend rules 10.461, 10.462, and 10.469)

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

	Commenter	Position	Comment	Committee Response
			<p>of bias-reducing strategies to address how unintended biases regarding race, ethnicity, gender identity, sexual orientation, socioeconomic status, or other characteristics undermine confidence in the legal system (Implicit Bias/Bias-Reducing Strategies Credit).” https://www.calbar.ca.gov/Attorneys/MCLE-CLE/Requirements#:~:text=At%20least%20two%20credit%20hours,(Elimination%20of%20Bias%20Credit). Using similar terminology between the two trainings will help judges and lawyers work together with a shared vocabulary to disrupt bias, including attending joint trainings that clearly satisfy both requirements.</p> <p>Second, to avoid any confusion, proposed Rule 10.465 should include hours requirements for each of the trainings set forth in the rule. Currently, the rule requires education in unconscious bias and the prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct. It is likely implied that each of those trainings would be at least one-hour in duration. However, it would be clearer if the rule expressly stated that each education program should be at least one hour, similar to the California attorneys’ MCLE requirements.</p>	<p>As to the commenter’s second suggestion that a minimum number of hours be added to the proposed rule, the committee believes this would be an important substantive change to the proposal that would require additional public comment before it could be considered for adoption. The committee will consider this suggestion during the next rules cycle.</p>
2.	Superior Court of Los Angeles County by Bryan Borys, Director of Research and Data Management	A	<p>The Court agrees that SPR24-13, “Judicial Branch Education: Fairness and Access Requirements” adequately addresses its goal of clarifying existing fairness and access education requirements for judicial officers. To add even more clarity, it is suggested that the rule also outline the number of hours required to be taken for subdivisions (a)(1) and (a)(2).</p>	<p>The committee believes that adding a minimum number of hours requirement for both implicit bias and discrimination prevention would be an important substantive change to the current proposal that would require additional public comment. The committee will consider this suggestion during the next rules cycle.</p>

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

SPR24-13

Judicial Branch Education: Fairness and Access Requirements (adopt Cal. Rules of Court, rule 10.465; amend rules 10.461, 10.462, and 10.469)

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

	Commenter	Position	Comment	Committee Response
3.	Superior Court of Orange County, Family Law and Juvenile Divisions by Katie Tobias, Operations Analyst	NI	* The commenter provided no comment on the substance of the proposal, but the court responded that the proposal appropriately addresses the stated purpose. The commenter also noted that implementation of the proposal would require the court to communicate the adoption to its judicial officers and that four months' notice prior to the effective date of the proposal would provide sufficient time for implementation.	No response required.

DRAFT

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: 8/6/2024

Rules Committee action requested [Choose from the drop-down menu below]:
Recommend JC approval (has circulated for comment)

Title of proposal: Criminal Law: Parole Period Advisement

Proposed rules, forms, or standards (include amend/revise/adopt/approve):
Amend Cal. Rules of Court, rule 4.433

Committee or other entity submitting the proposal:
Criminal Law Advisory Committee

Staff contact (name, phone and e-mail): Sarah Fleischer-Ihn, 415-865-7702, sarah.fleischer-ihn@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:

Annual agenda approved by Rules Committee on (date): 10/26/2023

Project description from annual agenda: Amend California Rules of Court, rule 4.433, Matters to be considered at time set for sentencing, to update references to the parole or postrelease community supervision period. Rule 4.433 currently states that the sentencing judge must inform the defendant under Penal Code section 1170(c) of the parole period provided by section 3000 to be served after the expiration of the sentence. Section 1170(c) was amended by AB 1156 (Stats. 2015, ch. 378) to add references to a parole period provided by section 3000.08 or postrelease community supervision in section 3451.

Out of Cycle: *If requesting September 1 effective date or out of cycle, explain why:*

Additional Information for Rules Committee: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

Additional Information for JC Staff

- **Director Approval** (required for all invitations to comment and reports)

This report or invitation to comment was

reviewed by EGG on (date) 6/10/2024

approved by Office Director (or Designee) (name) Francine Byrne
on (date) 6/14/2024, 7/18/2024

If either of above not checked, explain why:

Complete the following for all reports to be submitted to council (optional for ITCs):

- **Form Translations** (check all that apply)

This proposal:

includes forms that have been translated.

includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: [Click or tap here to enter text.](#)

includes forms that staff will request be translated.

- **Form Descriptions** (for any report with new or revised forms)

The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is

(05/20/24)

checked, the form descriptions should be approved by a supervisor before submitting this RAR.).

- **Self-Help Website** (check if applicable)
 - This proposal may require changes or additions to self-help web content.



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REPORT TO THE JUDICIAL COUNCIL

Item No.: 24-037

For business meeting on September 20, 2024

Title

Criminal Law: Parole Period Advisement

Agenda Item Type

Action Required

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rule 4.433

Effective Date

January 1, 2025

Recommended by

Criminal Law Advisory Committee
Hon. Brian M. Hoffstadt, Chair

Date of Report

June 17, 2024

Contact

Sarah Fleischer-Ihn, 415-865-7702
sarah.fleischer-ihn@jud.ca.gov

Executive Summary

The Criminal Law Advisory Committee recommends amending rule 4.433 of the California Rules of Court to add a reference to the parole periods described in Penal Code section 3000.01. The recommended addition to the rules is to the provision on the sentencing judge's advisement to the defendant about the parole period to be served after expiration of the sentence. The proposed amendment reflects a legislative change and is intended to guide sentencing judges in accurately informing defendants of relevant parole periods.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2025, amend California Rules of Court, rule 4.433 to add a reference to the parole periods described in Penal Code section 3000.01 to the provision on the sentencing judge's advisement to the defendant about the parole period to be served after expiration of the sentence.

The proposed rule is attached at pages 5–6.

Relevant Previous Council Action

Rule 4.433, Matters to be considered at time set for sentencing, was adopted by the Judicial Council effective July 1, 1977, as rule 433 and renumbered as rule 4.433 effective January 1, 2001. It was last revised to incorporate relevant provisions of the 2011 Realignment Legislation,¹ effective January 1, 2017, and to require enhancements be considered at sentencing by the judge, effective January 1, 2018.

Analysis/Rationale

Rule 4.433 outlines matters for the court to consider at sentencing, including a requirement for the sentencing judge to inform a defendant “[u]nder section 1170(c) of the parole period provided by section 3000 to be served after expiration of the sentence, in addition to any period of incarceration for parole violation.” (Cal. Rules of Court, rule 4.433(e)(1); see Pen. Code, § 1170(c).²)

Penal Code section 3000³ sets a three-year parole period for persons who served a determinate prison sentence for a serious or violent felony committed on or after July 1, 2013, with specified exceptions. (§ 3000(b)(2)(B).) Beginning August 6, 2020, section 3000.01 limits the parole period to two years for persons sentenced to a determinate term in state prison and released on or after July 1, 2020, with specified exceptions.⁴ *People v. Tilley* (2023) 92 Cal.App.5th 772, 779–780 described how this legislative change has created some ambiguity and inconsistency:

[D]espite adding section 3000.01 limiting the parole term for those released from prison on or after July 1, 2020, the Legislature did not amend the relevant provisions of sections 3000 and 3000.08, which still provide the inmate shall be released on parole for a period of three years. (§ 3000, subd. (b)(2)(B).) Section 1170 and California Rules of Court, rule 4.433 still require the court to advise as to the period delineated in section 3000, and section 3000 makes no reference to section 3000.01. The Judicial Council forms similarly indicate the parole term is three years under section 3000, subdivision (b). These statutory inconsistencies put trial courts in a bit of a conundrum when advising of the parole term, but as noted above, it is up to the Legislature to amend all the relevant statutes to reflect the correct parole terms.

As noted, rule 4.433(e) currently only refers to the parole period under section 3000. To address the issue identified in *Tilley* and guide trial courts in providing accurate information to

¹ Assem. Bill 109 (Stats. 2011, ch. 15).

² Under section 1170(c), “[t]he court shall also inform the defendant that as part of the sentence after expiration of the term[, the defendant] may be on parole for a period as provided in section 3000 or 3000.08 or postrelease community supervision for a period as provided in Section 3451.”

³ All further statutory references are to the Penal Code unless otherwise specified.

⁴ Sen. Bill 118 (Stats. 2020, ch. 29). SB 118 was a public safety budget trailer bill that took effect immediately upon the Governor’s signature.

defendants about parole periods to be served after expiration of a sentence, the committee recommends amending the rule to add a reference to parole periods under section 3000.01.

Policy implications

This proposal has no major policy implications because the recommendation is to make an existing rule more accurate.

Comments

The committee received two comments in agreement with the proposal from the Superior Court of Orange County and the Orange County Bar Association and one comment in agreement, if modified, by the Superior Court of Los Angeles County.

In developing the proposal, the committee discussed whether to amend the language to be more general by requiring courts to inform the defendant “of the parole period to be served after expiration of the sentence,” without reference to specific statutes. However, most committee members supported referencing specific statutes to better aid sentencing courts in accurately informing defendants of relevant parole periods. The committee requested specific comments on whether the general or specific language was preferred. The Superior Court of Los Angeles County preferred the general language, while the Superior Court of Orange County preferred referencing specific statutes for a clear and concise record. The committee agrees with the Superior Court of Orange County and recommends referencing the specific statutes.

Alternatives considered

The committee did not consider the alternative of taking no action, determining that it was important to amend the rule for accuracy.

Fiscal and Operational Impacts

The committee anticipates no fiscal or operational impacts because of this proposal.

Attachments and Links

1. Cal. Rules of Court, rule 4.433, at page 4
2. Chart of comments, at pages 5–6
3. Link A: Pen. Code, § 3000.01,
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=3000.01.&lawCode=PEN

Rule 4.433 of the California Rules of Court is amended, effective January 1, 2025, to read:

1 **Rule 4.433. Matters to be considered at time set for sentencing**

2
3 **(a)–(b)** * * *

4
5 **(c)** If a sentence of imprisonment is to be imposed, or if the execution of a sentence of
6 imprisonment is to be suspended during a period of probation, the sentencing judge
7 must:

- 8
9 (1) Determine, under section 1170(b), whether to impose one of the three
10 authorized terms of imprisonment referred to in section 1170(b), or any
11 enhancement, and state on the record the reasons for imposing that term;
12
13 (2) Determine whether any additional term of imprisonment provided for an
14 enhancement charged and found will be stricken;
15
16 (3) Determine whether the sentences will be consecutive or concurrent if the
17 defendant has been convicted of multiple crimes;
18
19 (4) Determine any issues raised by statutory prohibitions on the dual use of facts
20 and statutory limitations on enhancements, as required in rules 4.420(c) and
21 4.447; and
22
23 (5) Pronounce the court’s judgment and sentence, stating the terms thereof and
24 giving reasons for those matters for which reasons are required by law.

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

27
28 **(e)** When a sentence of imprisonment is imposed under (c) or under rule 4.435, the
29 sentencing judge must inform the defendant:

- 30
31 (1) ~~Under section 1170(e)~~ Of the parole period provided by section 3000 under
32 section 1170(c), or the parole period provided by section 3000.01, to be
33 served after expiration of the sentence, in addition to any period of
34 incarceration for parole violation;
35
36 (2) Of the period of postrelease community supervision provided by section 3456
37 to be served after expiration of the sentence, in addition to any period of
38 incarceration for a violation of postrelease community supervision; or
39
40 (3) Of any period of mandatory supervision imposed under section
41 1170(h)(5)(A) and (B), in addition to any period of imprisonment for a
42 violation of mandatory supervision.

SPR24-15

Criminal Law: Parole Period Advisement (Amend Cal. Rules of Court, rule 4.433)

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

	Commenter	Position	Comment	Committee Response
1.	Orange County Bar Association by Christina Zabat-Fran, President	A	Appropriately adds PC 3000.01 to advisement of defendant on period of parole.	The committee appreciates the comment.
2.	Superior Court of Los Angeles County by Bryan Borys, Director of Research and Data Management	AM	The following comments are representative of the Superior Court of California, County of Los Angeles (Court), and do not represent or promote the viewpoint of any particular judicial officer or employee. <i>Should the advisal on parole periods to be served after expiration of a sentence be more general and not refer to specific statutes?</i> The Court suggests that the advisal be more general and not refer to specific statutes.	The committee appreciates the comment. The committee will keep the references to specific statutes on parole periods to better aid sentencing courts in accurately informing defendants of relevant parole periods.
3.	Superior Court of Orange County by Elizabeth Flores, Operations Analyst	A	<i>Does the proposal appropriately address the stated purpose?</i> Yes, the proposal appropriately addresses the stated purpose. <i>Should the advisal on parole periods to be served after expiration of a sentence be more general and not refer to specific statutes?</i> For a clear and concise record, it is best to give specific statutes. The defendant may not know or understand the specific statutes, but they will have some understanding as to why the judge is advising them as to their parole term. <i>Would the proposal provide cost savings? If so, please quantify.</i> No.	The committee appreciates the comment. No response required. The committee agrees with the comment. No response required.

SPR24-15

Criminal Law: Parole Period Advisement (Amend Cal. Rules of Court, rule 4.433)

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

	Commenter	Position	Comment	Committee Response
			<p><i>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</i></p> <p>Our current docket code for advisement of parole can be modified to conform to the statutory changes. Courtroom clerks would be advised of the new language and how to properly select which advisement statute is contained in the docket code. The presiding judge would ensure some type of training to all judicial officers, including assigned judicial officers. I believe a 30-minute presentation would suffice for their training.</p> <p><i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i></p> <p>Yes</p> <p><i>How well would this proposal work in courts of different sizes?</i></p> <p>The impact is not affected by the size of the court.</p>	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p>

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: 8/6/2024

Rules Committee action requested [Choose from the drop-down menu below]:
Recommend JC approval (has circulated for comment)

Title of proposal: Criminal Law: Firearm and Body Armor Prohibitions

Proposed rules, forms, or standards (include amend/revise/adopt/approve):
Revise forms CR-101, CR-102, CR-160, CR-161, CR-162, CR-210

Committee or other entity submitting the proposal:
Criminal Law Advisory Committee

Staff contact (name, phone and e-mail): Sarah Fleischer-Ihn, 415-865-7702, sarah.fleischer-ihn@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:

Annual agenda approved by Rules Committee on (date): 10/24/2023, 2/9/2024

Project description from annual agenda:

Revise the optional misdemeanor domestic violence plea form (form CR-102) to reflect the lifetime ban on possession of firearms for persons convicted after January 1, 2019 of a misdemeanor violation of Penal Code section 273.5. This statutory change was enacted by AB 3219 (Stats. 2018, ch. 883).

Revise Prohibited Persons Relinquishment Form Findings (form CR-210) to reflect statutory changes to firearms relinquishment procedures under AB 732 (Stats. 2023, ch. 240).

Develop recommendations for form revisions to implement Assembly Bill 92 (Stats. 2023, Ch. 232). Under the statute, any person prohibited from possessing firearms is, also prohibited from possessing, owning, or buying body armor. This advisement needs to be added to forms in the Domestic Violence, Juvenile, Criminal, Civil Harassment, Elder Abuse, Workplace Violence, School Violence, and Gun Violence form series.

Revise the felony plea form advisement on parole violations to state that a parole violation may result in a return to state prison if the defendant is convicted of a crime that is subject to parole pursuant to Penal Code section 3000.1 or 3000(b)(4) and delete references to the Department of Juvenile Justice.

Out of Cycle: *If requesting September 1 effective date or out of cycle, explain why:*

Additional Information for Rules Committee: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

Additional Information for JC Staff

- **Director Approval** (required for all invitations to comment and reports)
This report or invitation to comment was
 - reviewed by EGG on (date) 6/12/2024
 - approved by Office Director (or Designee) (name) Kara Portnow, Francine Byrne on (date) 6/18/2024, 7/18/2024

If either of above not checked, explain why:

Complete the following for all reports to be submitted to council (optional for ITCs):

- **Form Translations** (check all that apply)

This proposal:

- includes forms that have been translated.
- includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: [Click or tap here to enter text.](#)
- includes forms that staff will request be translated.

- **Form Descriptions** (for any report with new or revised forms)

The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is checked, the form descriptions should be approved by a supervisor before submitting this RAR.).

- **Self-Help Website** (check if applicable)

This proposal may require changes or additions to self-help web content.



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REPORT TO THE JUDICIAL COUNCIL

Item No.: 24-132

For business meeting on September 20, 2024

Title

Criminal Law: Firearm and Body Armor Prohibitions

Agenda Item Type

Action Required

Rules, Forms, Standards, or Statutes Affected

Revise forms CR-101, CR-102, CR-160, CR-161, CR-162, and CR-210

Effective Date

January 1, 2025

Date of Report

June 18, 2024

Recommended by

Criminal Law Advisory Committee
Hon. Brian M. Hoffstadt, Chair

Contact

Sarah Fleischer-Ihn, 415-865-7702
sarah.fleischer-ihn@jud.ca.gov

Executive Summary

The Criminal Law Advisory Committee recommends revising six criminal forms to incorporate firearm and body armor prohibitions enacted in recent legislation. The committee also recommends revisions to the plea and firearm relinquishment forms to reflect new procedures on firearm relinquishment, clarify prohibited items and relinquishment requirements, and refer to the possibility of a lifetime prohibition on firearm possession for misdemeanor domestic violence offenses. Finally, the committee recommends additional revisions to the felony plea form based on other statutory changes, and to the criminal protective order forms based on stakeholder suggestions.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2025:

1. Revise *Plea Form, With Explanations and Waiver of Rights—Felony* (form CR-101) to advise defendants about body armor, firearm, and ammunition-related prohibitions, delete

references to the Division of Juvenile Justice, and update information related to prison commitments based on parole violations;

2. Revise *Domestic Violence Plea Form, With Waiver of Rights—Misdemeanor* (form CR-102) to advise defendants about and clarify body armor, firearm, and ammunition-related prohibitions;
3. Revise *Criminal Protective Order—Domestic Violence* (form CR-160) and *Criminal Protective Order—Other Than Domestic Violence* (form CR-161) to advise defendants about body armor prohibitions and relinquishment and to clarify the item related to additional protected persons;
4. Revise *Order to Surrender Firearms in Domestic Violence Case* (form CR-162) to advise defendants about body armor prohibitions and relinquishment; and
5. Revise *Prohibited Persons Relinquishment Form Findings* (form CR-210) to advise defendants about body armor prohibitions and to align the form with statutory changes to the firearm relinquishment procedure.

The proposed revised forms are attached at pages 10–29.

Relevant Previous Council Action

The forms in this proposal all contain firearm and ammunition prohibitions for criminal defendants. The forms were most recently revised effective March 1, 2023, to update advisements on firearm prohibitions to reflect statutory changes to the definition of a firearm.¹

Analysis/Rationale

This proposal is needed to implement statutory changes regarding firearm, body armor, and ammunition prohibitions, firearm relinquishment requirements and procedures, and to make additional clarifications.

Firearm, body armor, and ammunition prohibitions and relinquishment

Body armor prohibition

Assembly Bill 92 (Stats. 2023, ch. 232) amended Penal Code section 31360² to expand the prohibition against owning, purchasing, or possessing body armor to any person prohibited from

¹ Assembly Bill 1621 (Stats. 2022, ch. 76) expanded the definition of a firearm as used in specified code sections to include completed frames, receivers, and “firearm precursor part[s].”

² All further statutory references are to the Penal Code unless otherwise specified.

possessing a firearm under state law,³ effective January 1, 2024.⁴ The amendment added a requirement that the court advise a prohibited person of the body armor prohibition.⁵

To implement the bill, the committee recommends incorporating a court advisement prohibiting body armor on six criminal forms. These forms currently include a court advisement prohibiting firearm possession due to qualifying convictions or being subject to a criminal protective order.⁶

Advisement of prohibited items and relinquishment requirements

Under existing law, criminal defendants are prohibited from possessing a firearm, ammunition, reloaded ammunition, and ammunition feeding devices if they are convicted of a felony or a specified misdemeanor and they must relinquish any firearms in their possession.⁷ Courts must instruct defendants of these prohibitions and relinquishment requirements upon conviction of a qualifying offense.⁸

The Judicial Council plea forms currently include some, but not all, of the advisements on prohibited items and relinquishment requirements. To incorporate all prohibitions, the committee recommends revising form CR-101, item 3j, and form CR-102, item 7f, to supplement the existing language to advise defendants not to own, purchase, receive, or have prohibited items under the defendant's custody or control.⁹ The committee also recommends revising forms CR-101 and CR-102 to include reloaded ammunition and ammunition feeding devices, including but not limited to magazines, as prohibited items and state that firearms and firearm parts must be relinquished.¹⁰

Lifetime firearm ban for misdemeanor domestic violence convictions

Effective January 1, 2019, section 29805 was amended to require a lifetime ban on possession of firearms for anyone convicted of a misdemeanor violation of section 273.5 (willful infliction of corporal injury to a spouse or cohabitant) on or after January 1, 2019.¹¹ Additionally, existing

³ Except under section 29610.

⁴ Prior to this amendment, section 31360 only prohibited persons convicted of “a violent felony under the laws of the United States, the State of California, or any other state, government, or country” from purchasing, owning, or possessing body armor.

⁵ AB 92 also impacts numerous protective orders issued in civil, domestic violence, and juvenile matters. The Joint Protective Order Working Group, composed of members from the Criminal Law Advisory Committee, the Civil and Small Claims Advisory Committee, and the Family and Juvenile Law Advisory Committee, met in January 2024 to coordinate consistent and clear language for the body armor prohibition across protective orders. The working group also concluded that clarifying legislation regarding how body armor must be relinquished would be helpful.

⁶ The criminal forms incorporate firearm prohibitions under sections 136.2(a)(1)(G)(ii), 29800, 29805, and Code of Civil Procedure section 527.9.

⁷ §§ 29800(a)(1), 29805, 29810(a)(1) & (2), 30305(a)(1).

⁸ § 29810(a)(2).

⁹ See § 29800(a)(1), 29805.

¹⁰ See §§ 29810(a)(1) & (2), 30305(a)(1).

¹¹ Assem. Bill 3129 (Stats. 2018, ch. 883).

federal law makes it unlawful for a person convicted in any court of a misdemeanor crime of domestic violence “to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.”¹²

The committee recommends revising form CR-102 to refer to the possibility of a lifetime ban on possessing firearms and other prohibited items under state and federal law.

Court confirmation of firearm relinquishment

Effective January 1, 2024, section 29810 was amended to add new procedural requirements for firearm relinquishment due to a qualifying conviction.¹³ Among these changes, prior to final disposition or sentencing in the case, courts are required to “confirm” that the defendant relinquished all firearms and whether the court received a completed Prohibited Persons Relinquishment Form¹⁴ and receipts. Under prior law, the court was required to make findings “concerning whether the probation officer’s report indicates” that the defendant relinquished all firearms and turned in the Prohibited Persons Relinquishment Form and receipts.

To implement these changes, the committee recommends revising form CR-210’s Noncompliance section so a court can indicate whether the defendant turned in the form and reported any firearms, whether the probation officer’s report indicates that the defendant possessed firearms and, if so, whether the firearms were recovered. Additionally, the committee recommends revisions to clarify the court’s options in the Compliance section and delete items reflecting former statutory provisions.

Additional legislative changes related to form CR-101

The felony plea form lists the Division of Juvenile Justice (DJJ) as an option for sentencing because criminal courts previously had authority, in limited circumstances, to commit a minor to the DJJ.¹⁵ However, the DJJ closed on June 30, 2023, due to legislation enacted in 2020 and 2021.¹⁶ The committee recommends deleting the reference to the DJJ on form CR-101.

Form CR-101 also refers to possible custody periods due to a parole violation, including being “returned to state prison for up to one year, up to a maximum of ____ years.” However, after criminal justice realignment, a person on parole can only be returned to state prison to serve parole revocation time in limited circumstances, and the maximum time served varies and is

¹² 18 U.S.C. § 922(g)(9).

¹³ Assem. Bill 732 (Stats. 2023, ch. 240).

¹⁴ As required by section 29810, the Department of Justice has developed such a form with that name and assigned it form number BOF 1022.

¹⁵ See Welf. & Inst. Code, §§ 736.5(c), 1731.5, 1732.6.

¹⁶ Sen. Bill 823 (Stats. 2020, ch. 337); Sen. Bill 92 (Stats. 2021, ch. 18).

determined by the Board of Parole Hearings.¹⁷ The committee recommends revising this language to state that if a defendant violates parole, the defendant may be returned to state prison if the conviction was for a crime subject to section 3000(b)(4) or 3000.1.¹⁸

Stakeholder suggestions related to criminal protective orders (forms CR-160 and CR-161)

The criminal protective orders underwent extensive revisions effective March 1, 2023. These revisions included a check box (new item 3a) for the court to indicate that it finds the protected person’s family members have been targeted or harmed by the defendant—a finding required for postconviction protective orders under section 136.2(i)(1). The committee added item 3a because under section 136.2(i)(1), a court may issue an order restraining the defendant from any contact with “a victim of the crime” for up to 10 years upon conviction of specified offenses.

Courts have held that a victim’s family members cannot be included in the postconviction protective order under section 136.2(i)(1) without evidence they have been targeted or harmed. (See, e.g., *People v. Beckemeyer* (2015) 238 Cal.App.4th 461, 466–467; *People v. Delarosaranda* (2014) 227 Cal.App.4th 205, 212.) An attorney with the Los Angeles City Attorney’s office requested that item 3a include non-family members if there is evidence they were targeted or harmed during the incident of domestic violence. In support of this request, the attorney asserts that the case law defines a “victim” under section 136(i)(1) to include anyone targeted or harmed during the incident (see *People v. Beckemeyer, supra*, 238 Cal.App.4th at 466 [“victim” is broadly defined in section 136 as any person against whom there is reason to believe a crime has been committed] and *People v. Race* (2017) 18 Cal.App.5th 211, 219 [the term “victim” pursuant to section 136.2 criminal protective orders must be construed broadly to include any individual against whom there is “some evidence” from which the court could find the defendant had committed or attempted to commit some harm within the household]).

The committee recommends revising item 3a to apply to additional protected persons who are also victims of the crime.

An attorney with the Alameda County District Attorney’s office requested revising item 1 of the instructions for law enforcement (on page 4 of form CR-160 and page 3 of form CR-161) to state that postconviction protective orders may be issued by the court “regardless of” whether the

¹⁷ If a person is subject to parole for a specified sex offense (§ 3000(b)(4)) or a murder conviction with a maximum term of life imprisonment (§ 3000.1(a)(2)) and a court determines that the person has violated the law or the conditions of parole, the person “shall be remanded to the custody of the Department of Corrections and Rehabilitation and the jurisdiction of the Board of Parole Hearings for the purpose of future parole consideration.” (§ 3000.08(h).) For persons subject to life parole, a parole reconsideration hearing must be held on the next available calendar, but no later than 12 months from the date of the parole revocation. (§ 3000.1(d); 15 Cal. Code Regs. § 2275(a).) The panel or board must release the person within one year of the date of revocation unless it determines that the circumstances and gravity of the parole violation are such that consideration of public safety requires a lengthier period of incarceration or unless there is a new prison commitment following a conviction. (§ 3000.1(d).) If a person is not rereleased on parole, they must be reconsidered for release on parole annually. (*Ibid.*)

¹⁸ In a separate proposal, the committee is also recommending amendments to California Rules of Court, rule 4.433, to add a reference to the parole periods described in Penal Code section 3000.01 to the provision on the sentencing judge’s advisement to the defendant about the parole period to be served after expiration of the sentence.

defendant is sentenced to custody or probation. (See § 136.2(i)(1), which provides: “This protective order may be issued by the court regardless of whether the defendant is sentenced to the state prison or a county jail, whether the defendant is subject to mandatory supervision, or whether imposition of sentence is suspended and the defendant is placed on probation.” The committee agrees and recommends the revised language.

Policy implications

The recommended revisions will implement statutory changes so that council forms are accurate. These revisions are consistent with the judicial branch’s strategic plan goals of Modernization of Management and Administration (Goal III) and Quality of Justice and Service to the Public (Goal IV).

Comments

The committee received two comments agreeing with the proposal from the Orange County Bar Association and the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee. The Superior Court of Orange County and Giffords Law Center agreed with the proposal if modified, and the California Department of Justice’s Office of Gun Violence Prevention and Bureau of Firearms did not indicate a position but included a suggestion for revising language on a form.

A chart with the full text of the comments received and the committee’s responses is attached at pages 30–39. The main comments and the committee’s responses are discussed below.

Registered firearms

The California Department of Justice and Giffords Law Center objected to specified references to “registered firearms” on *Prohibited Persons Relinquishment Form Findings* (form CR-210), an optional form for courts to record findings about a defendant’s compliance with firearm relinquishment requirements under Penal Code section 29810. The circulated proposal referred to relinquishment of registered firearms in items 1c, 2a, 2b, and 3.¹⁹

Because section 29810 contemplates relinquishment of all firearms, both registered and nonregistered, the commenters request deleting the term “registered” from these items. In support of this position, the commenters point to statutory references in section 29810 referring to all firearms:

- “Upon conviction ... the person shall relinquish all firearms they own, possess, or have under their custody or control” (§ 29810(a)(1).)
- A probation officer must investigate whether the Automated Firearms System or other credible information, such as a police report, reveals that the defendant has any firearms (§ 29810(c)(1)), and the officer must report to the court and the prosecuting attorney

¹⁹ Proposed form CR-210 as circulated for public comment can be found on page 29 of the invitation to comment, which can be found at <https://www.courts.ca.gov/documents/spr24-16.pdf>.

whether the defendant has properly complied with the requirements of this section by relinquishing all firearms identified by the probation officer's investigation or declared by the defendant on the relinquishment form. (§ 29810(c)(2).)

- “Prior to final disposition or sentencing ... the court shall confirm that the defendant has relinquished all firearms as required” (§ 29810(c)(4).)

The committee previously suggested referring to registered firearms because, in some members' experience, unregistered firearms are not being reported by defendants and probation officers to courts. Additionally, section 29810(c)(3) references follow-up actions the court must take “[i]f the report of the probation officer does not confirm relinquishment of firearms registered in the defendant's name.” However, the committee agrees with the commenters' position that the statute contemplates covering all firearms and recommends deleting the term “registered” from the form.

Factual basis for a plea

The Court's Findings and Order section of the felony plea form (form CR-101) states that the court finds that “[a] factual basis exists for the plea and admissions, or the defendant is pleading under a plea bargain under *People v. West*.” The committee requested specific comments on whether to delete the second clause in light of section 1192.5(c) (“The court shall also cause an inquiry to be made of the defendant to satisfy itself that the plea is freely and voluntarily made, and that there is a factual basis for the plea”) and case law.²⁰ Additionally, the reference to *People v. West* (1970) 3 Cal.3d 595 appears inaccurate, as *West* holds that a defendant may enter a guilty plea to a lesser related offense to avoid conviction of the greater offense, but a court would still need to find a factual basis for the plea.

The Superior Court of Orange County agreed with deleting the second clause, while the Orange County Bar Association disagreed, stating that “*People v. West* remains valid and does not contradict section 1192.5(c) or *People v. Willard*.”

The committee recommends deleting the second clause. In response to the Orange County Bar Association's comment, the committee agrees that *People v. West* remains valid for its holding that a defendant may enter a guilty plea to a lesser related offense to avoid conviction of the greater offense, but that a *West* plea does not create an exception to a court finding of a factual basis for the plea and admissions.

Expanding additional protected persons for postconviction criminal protective orders

The committee requested specific comments on whether the proposed revisions to item 3a in forms CR-160 and CR-161 properly reflect the case law defining a “victim” for purposes of a postconviction protective order under section 136.2(i)(1).

²⁰ See *People v. Willard* (2007) 154 Cal.App.4th 1329 (a plea is not valid without an adequate factual basis).

The Orange County Bar Association commented that the proposed revisions could more specifically refer to a “victim who was targeted or harmed” or otherwise define a “victim.” The committee opts to use the term “victims of the crime” to mirror the language of section 136.2(i)(1).

Alternatives considered

The committee did not consider the alternative of not revising the forms, determining that it was important to revise the forms to implement legislative changes.

In implementing the new body armor prohibition, the committee considered providing more guidance on how “relinquishment” can be satisfied (e.g., include a deadline, who to give it to, and whether destruction of body armor qualifies). However, the committee decided against this approach as the statute does not define relinquishment or provide a framework for compliance.

The committee discussed whether to revise the advisement that a misdemeanor domestic violation conviction *may* subject a defendant to a firearm prohibition to be a mandatory prohibition. While the most common misdemeanor domestic violence offenses are listed under prohibitions of firearm possession,²¹ the committee decided not to recommend mandatory prohibition language because there could be offenses, such as vandalism, that may not be subject to a firearm prohibition but still be considered a domestic violence offense, since a domestic violence offense is defined by the relationship between the defendant and the victim.²²

Fiscal and Operational Impacts

The fiscal and operational impacts of this proposal are largely attributable to legislation. Expected costs include training, case management system updates, and the production of new forms.

Attachments and Links

1. Forms CR-101, CR-102, CR-160, CR-161, CR-162, and CR-210, at pages 10–29
2. Chart of comments, at pages 30–39
3. Link A: Penal Code section 16288,
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=16288.&lawCode=PEN
4. Link B: Penal Code section 29800,
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=29800.&lawCode=PEN

²¹ For example, violations of sections 140, 243, 273.5, 422, and 646.9. (§ 29805(a)(1).)

²² The Penal Code defines “domestic violence” as abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship. (§ 13700(b).)

5. Link C: Penal Code section 29805,
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=29805.&lawCode=PEN
6. Link D: Penal Code section 29810,
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=29810.&lawCode=PEN
7. Link E: Penal Code section 30305,
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=30305.&lawCode=PEN
8. Link F: Penal Code section 31360,
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=31360.&lawCode=PEN

DRAFT

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY 07/15/2024 DRAFT Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:
PLEA FORM, WITH EXPLANATIONS AND WAIVER OF RIGHTS—FELONY	

INSTRUCTIONS:

- (1) Fill out this form only if you want to plead guilty or no contest.
- (2) Read this form carefully. For each item, if you understand and agree with what you read, put your initials in the box to the right of the item. For any item that does not apply to you or that you do not understand, leave the box blank.
- (3) On page 6, sign and date the form under "DEFENDANT'S STATEMENT."
- (4) Keep in mind that the court cannot give legal advice. If you have any questions about anything in this form, ask your attorney.

1. **CHARGES AND MAXIMUM TERM.** I want to plead guilty or no contest ("nolo contendere") to the charges and admit the following prior convictions, enhancements, allegations, and circumstances in aggravation listed below. I understand that the minimum and maximum penalties for the charges to which I am pleading guilty or no contest are listed below. INITIALS

COUNT	CHARGES (SECTION & DESCRIPTION)	YEARS / MONTHS		PRIOR CONVICTIONS, ENHANCEMENTS, ALLEGATIONS & CIRCUMSTANCES IN AGGRAVATION (SECTION & DESCRIPTION)	YEARS / MONTHS		TOTAL MAXIMUM TIME
		MINIMUM	MAXIMUM		MINIMUM	MAXIMUM	
AGGREGATE MAXIMUM TIME OF IMPRISONMENT							

2. **PLEA AGREEMENT.** I understand that I must tell the court on this form about any promises anyone has made to me about the sentence I will receive or the sentence recommendations that will be made to the court. My attorney, the court, or the prosecutor has explained to me that if I plead guilty or no contest to the charges and admit the prior convictions, enhancements, allegations, and circumstances in aggravation listed above, the court will sentence me as follows:

- a. Check one: **State Prison** for **County Jail** for
- (1) years and months or
- (2) not less than years and months and/or not more than years and months.
- (3) Other (specify):
- b. **Probation** for years under conditions to be set by the court, including
- days in the **county jail** or
- up to days in the **county jail**.

I understand that a violation of any of the conditions of probation, including failure to complete a drug education or treatment program, if ordered by the court, may cause the court to send me to **county jail or state prison** for up to the **"Aggregate Maximum Time of Imprisonment"** specified in item 1, which may include a period of mandatory supervision under Penal Code section 1170(h)(5)(B) if the court sends me to county jail.

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2. c. Split Sentence (1170(h)(5)(B)): years and days in the county jail and years and days on mandatory supervision under conditions set by the court. I understand that if I violate any of the terms or conditions of mandatory supervision, I may be remanded into custody for the entire unserved portion of the sentence.

d. Open Plea

- (1) I understand the maximum and minimum sentences for the charges, enhancements, and allegations stated on page 1. No one has made any other promises to me about what sentence the court may order.
(2) I understand that I am not eligible for probation.
(3) I understand that I will not be granted probation unless the court finds at the time of sentencing that this is an unusual case where the interests of justice would be best served by granting probation.

e. Restitution, Statutory Fees, and Assessments

I understand that the court will order me to pay the following amounts (if an amount is not yet known, "TBD" for "to be determined" is entered next to the \$); I must prepare financial disclosure statements to assist the court in determining my ability to pay; and refusal or failure to prepare the required financial disclosure statements may be used against me at sentencing:

- (1) \$ to the Victim Restitution Fund
(2) \$ restitution to actual victims
(3) \$ restitution to the State of California, Victims of Crime Fund
(4) \$ court operations assessment
(5) \$ court facilities assessment
(6) \$ base fine plus any applicable penalties, assessments, and surcharges
(7) \$ other (specify):
(8) \$ other (specify):
(9) An (additional) amount to be determined by the court at sentencing or such other hearing as the court may set.

f. Fines for Revocation of Parole, Postrelease Community Supervision, Mandatory Supervision, or Probation

I understand that if I am sentenced to state prison, the court will impose a parole revocation fine or a postrelease community supervision revocation fine, which will be collected only if my parole or postrelease community supervision is later revoked. I also understand that if I am granted probation or mandatory supervision, the court will impose a probation revocation fine or mandatory supervision revocation fine, which will be collected only if my probation or mandatory supervision is later revoked.

g. Dismissal of Other Counts

I understand that as part of the plea agreement bargain, the following counts will be dismissed after sentencing:

I understand and agree that the sentencing judge may consider facts underlying dismissed counts to determine restitution and to sentence me on the counts to which I am entering a plea.

h. Other Terms (specify):

3. CONSEQUENCES OF MY PLEA

a. No Contest ("Nolo Contendere") Plea

I understand that a no contest plea is the same as pleading guilty and that if I plead no contest, I will be convicted and my no contest plea could be used against me in a civil case.

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3. b. **Parole and Postrelease Community Supervision**

I understand that if I am sentenced to **state prison**

- (1) I will be placed on parole or postrelease community supervision for up to _____ years after my release.
- (2) if I abscond or the court tolls my supervision, the total time of parole or postrelease community supervision can be extended.
- (3) if I violate any of the terms or conditions of my parole, I can be sentenced to county jail for up to 180 days for each violation, or if I am convicted of a crime that is subject to parole pursuant to Penal Code section 3000(b)(4) or 3000.1, I could be returned to state prison.

c. **Effect of Conviction on Other Cases**

I understand that a conviction in this case may constitute a violation of any other current grant of parole, mandatory supervision, postrelease community supervision, or probation in any other case and that I may receive additional punishment as a result of that violation.

d. **Registration**

I understand that I will be required to register with the local police agency or sheriff's department in the city or county in which I reside as

- (1) an arson offender
- (2) a gang member
- (3) a sex offender (**this registration is a lifelong requirement**)
- (4) Other (*specify*):

and that if I fail to register or to keep my registration current for any reason, new felony criminal charges may be filed against me.

e. **Prints and DNA Samples**

I understand that I must provide biological samples and prints for identification purposes—including buccal (mouth) swab samples, right thumb prints, palm prints of each hand, and blood specimens or other biological samples required by law—and that failure to do so constitutes a new criminal offense.

f. **Serious or Violent Felony**

- (1) I understand that by pleading guilty or no contest to a serious or violent felony ("strike"), the penalty for any future felony conviction will be increased as a result of my conviction in this case, depending on the number of strikes I have, up to a mandatory prison sentence of double the term otherwise provided or a term of at least 25 years to life.
- (2) I understand that if I am convicted of a violent felony, jail or prison conduct/work-time credit I may accrue will not exceed 15 percent.
- (3) I understand that if I am admitting a prior strike conviction, prison work-time credit that I may accrue will not exceed 20 percent of the total term of imprisonment.
- (4) I understand that if I am convicted of murder or a third felony conviction of certain offenses, I am ineligible to receive work-time credits. Count _____ is such an offense.

g. **Prior Prison Term for Sexually Violent Offense**

I understand that if I am sentenced to serve a state prison term for this sexually violent offense, as defined in Welfare and Institutions Code section 6600(b), the penalty for any future felony conviction may be increased as a result of my incarceration in this case.

h. **Driver's License and Vehicle Forfeiture**

I understand that my privilege to drive a motor vehicle may be revoked or suspended by the court or the California Department of Motor Vehicles and my vehicle may be ordered forfeited if it was involved in the offense.

i. **Immigration Consequences**

I understand that if I am not a citizen of the United States, my plea of guilty or no contest may result in my deportation, exclusion from admission to the United States, or denial of naturalization under the laws of the United States.

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3. j. **Firearms (Guns), Firearm Parts, and Ammunition Prohibition and Relinquishment**

I understand that under federal and state law a conviction in this case prohibits me from owning, using, purchasing, receiving, or having under my custody or control firearms (guns), firearm parts, ammunition, reloaded ammunition, and ammunition feeding devices, including but not limited to magazines, for life. This includes firearm receivers and frames, and any item that may be used as or easily turned into a receiver or frame (see Penal Code section 16531). I must relinquish any firearms and firearm parts I own, possess, or have under my custody or control (see Penal Code section 29810).

k. **Body Armor Prohibition and Relinquishment**

I understand that a conviction in this case prohibits me from purchasing, owning, or possessing body armor (defined in Penal Code section 16288). I must relinquish any body armor I have in my possession (see Penal Code section 31360).

l. **Other Consequences (specify):**

4. **RIGHT TO AN ATTORNEY**

I understand that I have the right to an attorney of my choice to represent me throughout the proceedings. If I cannot afford to hire an attorney, the court will appoint one to represent me.

I hereby give up my right to be represented by an attorney.

5. **OTHER CONSTITUTIONAL RIGHTS**

I understand that I am entitled to each of the following rights as to the charges, enhancements, allegations, and circumstances in aggravation listed in item 1 (on page 1):

a. **Right to a Jury Trial**

I understand that I have a right to a speedy and public jury trial. At the trial, I would be presumed to be innocent, and I could not be convicted unless, after hearing all of the evidence, 12 impartial jurors chosen from the community were unanimously convinced beyond a reasonable doubt that I am guilty. I have a right, through my counsel, to participate in jury selection.

b. **Right to a Court Trial**

I understand that, as an alternative to a jury trial, if the prosecutor agrees, I may give up a jury trial and have a court trial in which the judge alone, without a jury, hears the evidence. I still could not be convicted unless, after hearing all of the evidence, the judge was convinced beyond a reasonable doubt that I am guilty.

c. **Right to Confront and Cross-Examine Witnesses**

I understand that I have the right to confront and cross-examine all witnesses testifying against me. This means that the prosecution must produce the witnesses in court, they must testify under oath in my presence, and my attorney may question them.

d. **Right to Remain Silent and Not to Incriminate Myself**

I understand that I have the right to remain silent, and my silence cannot be considered as evidence against me. I understand that I also have the right not to incriminate myself, and I cannot be forced to testify.

e. **Right to Produce Evidence and to Present a Defense**

I understand that I have a right to present evidence and to have the court issue subpoenas to bring to court all witnesses and evidence favorable to me, at no cost to me. I also have the right to testify on my own behalf.

6. **BEFORE THE PLEA**

a. **Discussion With My Attorney**

Before entering this plea, I have had a full opportunity to discuss the following with my attorney:

- (1) The facts of my case;
- (2) The elements of the charged offenses, prior convictions, enhancements, allegations, and circumstances in aggravation;
- (3) Any defenses that I may have;
- (4) My constitutional and statutory rights and waiver of those rights;
- (5) The consequences of this plea, including the immigration consequences; and
- (6) Anything else I think is important to my case.

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6. b. **Questions**
 I have no further questions of the court or of my attorney with regard to my plea and admissions in this case, any of the rights, or anything else on this form.

c. **Stipulation to Commissioner**
 I understand that I have the right to have a judge take my plea and sentence me. I give up this right and agree to have a commissioner, sitting as a temporary judge, take my plea and sentence me.

d. **Medications or Controlled Substances**
 I am not taking any medication that affects my ability to understand this form and the consequences of my plea, have not recently consumed any alcohol or drugs, and am not suffering from any medical condition, except for the following:

e. **Court Approval of Plea Agreement**
 I understand that the plea agreement in item 2 (on pages 1 and 2) is based on the facts before the court. I understand that if the court approves this plea agreement, the approval of the court is not binding, and that the court may withdraw its approval of the plea agreement upon further consideration of the matter. I understand that if the court withdraws its approval of this plea agreement, I will be allowed to withdraw my plea. (Pen. Code, § 1192.5.)

7. **STATUTORY RIGHT TO A PRELIMINARY HEARING**
 I understand that before I have a trial, the law gives me the right to a speedy preliminary hearing at which the prosecution would produce evidence and the court must find reasonable cause to believe I committed the crimes with which I have been charged. I understand that I have all of the above constitutional rights at the preliminary hearing, except for the right to a jury trial.

I give up my right to a preliminary hearing and the constitutional rights listed in item 5 (on page 4).

8. **WAIVER OF CONSTITUTIONAL AND STATUTORY RIGHTS**
 I give up, for each of the charges, enhancements, allegations, and circumstances in aggravation listed in item 1 (on page 1), my right to a jury trial, my right to a court trial, my right to confront and cross-examine witnesses, my right to remain silent and not to incriminate myself, and my right to produce evidence and to present a defense, including my right to testify on my own behalf. I understand that I am, in fact, incriminating myself with my plea.

9. **THE PLEA**
 I freely and voluntarily plead GUILTY NO CONTEST to the charges listed in item 1 (on page 1) and admit the prior convictions, enhancements, allegations, and circumstances in aggravation listed in item 1 (on page 1), understanding that this plea and admission will lead to the penalties listed in item 2 (on pages 1 and 2).

a. I offer my plea of guilty or no contest freely and voluntarily and with full understanding of everything in this form. No one has made any threats; used any force against me, my family, or my loved ones; or made any promises to me, except as listed in this form, in order to convince me to plead guilty or no contest.

b. I understand that the court is required to find a factual basis for my plea to make sure that I am entering a plea to the proper offenses under the facts of the case.

I offer to the court the following as the basis for my plea of guilty or no contest and any admissions:

(1) I understand that the court may consider the following as proof of the factual basis for my plea:

- (a) Preliminary hearing transcript
- (b) Police report
- (c) Probation report
- (d) Welfare investigator's declaration
- (e) Court documents regarding any alleged prior offenses
- (f) Other (specify):
- (g) (Specify facts):

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9. b. (2) **I am pleading guilty or no contest to take advantage of a plea agreement (my attorney will stipulate to a factual basis for the plea).** (*People v. West* (1970) 3 Cal.3d 595.)

10. AFTER THE PLEA

a. Surrender

I understand that the court is allowing me to surrender at a later date to begin serving time in custody.

I agree that if I fail to appear on the date set for surrender or sentencing without a legal excuse, my plea will become an "open plea" to the court, I will not be allowed to withdraw my plea, and I may be sentenced up to the maximum allowed by law.

b. Sentencing Court

I understand that I have the right to be sentenced by the same judge or commissioner who takes my plea.

I give up that right and agree that any judge or commissioner may sentence me.

c. Sentencing Date

I understand that I have the right to be sentenced within 20 court days. I give up that right and agree to be sentenced at a later date.

11. MANDATORY WARNING

I understand that if I am charged with violating Vehicle Code section 23103, as specified in Vehicle Code section 23103.5, or Vehicle Code section 23152 or 23153, the following warning applies:

You are hereby advised that being under the influence of alcohol or drugs, or both, impairs your ability to safely operate a motor vehicle. Therefore, it is extremely dangerous to human life to drive while under the influence of alcohol or drugs, or both. If you continue to drive while under the influence of alcohol or drugs, or both, and as a result of that driving someone is killed, you can be charged with murder.

DEFENDANT'S STATEMENT

I have read or have had read to me this form and have initialed each of the items that applies to my case. If I have an attorney, I have discussed each item with my attorney. By putting my initials next to the items in this form, I am indicating that I understand and agree with what is stated in each item that I have initialed. The nature of the charges, possible defenses, and effects of any prior convictions, enhancements, allegations, and circumstances in aggravation have been explained to me. I understand each of the rights outlined above, and I give up each of them to enter my plea.

Date:

(TYPE OR PRINT NAME)

▶

(SIGNATURE OF DEFENDANT)

ATTORNEY'S STATEMENT

I am the attorney of record for the defendant. I have reviewed this form with my client. I have explained each of the items in the form, including the defendant's constitutional and statutory rights, to the defendant and have answered all of the defendant's questions with regard to those rights, the other items in this form, and the plea agreement. I have also discussed the facts of the case with the defendant and have explained the nature and elements of each charge; any possible defenses to the charges; the effect of any prior convictions, enhancements, allegations, and circumstances in aggravation; and the consequences of the plea.

I concur in the plea and admissions and join in the waiver of the defendant's constitutional and statutory rights, and I hereby stipulate that there is a factual basis for the plea and refer the court to the police report preliminary hearing transcript probation report other (*specify*): _____ . (*People v. West* (1970) 3 Cal.3d 595.)

Date:

(TYPE OR PRINT NAME)

▶

(SIGNATURE OF ATTORNEY)

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6. **Rights for Probation Violations** (*Leave this box blank if you are not charged with a probation violation*). I understand that I have all the constitutional rights listed above for all probation violations charged against me, except that I do not have a right to a jury trial, only a court hearing before a judge.

7. **Consequences of My Plea**

a. **No contest plea.** I understand that a no contest plea has the same effect as a guilty plea except that it cannot be used against me in a civil case that derives from an act on which this prosecution is based unless the offense is punishable as a felony.

b. **Effect of conviction on other cases.** I understand that a conviction in this case may be used to increase my punishment for future domestic violence convictions and may constitute a violation of any other current grant of parole or probation, which may result in additional punishment.

c. **Mandatory minimum conditions of probation.** I understand that if I am granted probation, the terms and conditions will include *at least* all of the following (see Pen. Code, § 1203.097):

- (1) A minimum of either 36 months (three years) or 48 months (four years) of probation;
- (2) A criminal court protective order that may include residence exclusion or stay-away conditions;
- (3) Booking within one week of sentencing if I have not already been booked;
- (4) Several statutory fines, fees, and assessments, including a domestic violence fee, restitution fine, probation revocation fine (stayed), criminal conviction assessment, and court security fee;
- (5) Successful completion of an appropriate batterer's treatment program lasting at least 52 weeks;
- (6) Community service;
- (7) Restitution to the victim (if applicable); and
- (8) Other:

d. **Effect of future probation violation.** I understand that if I violate any of the terms or conditions of probation, I may be returned to court and sentenced up to the maximum punishment on each charge as indicated in item 1.

e. **Immigration consequences.** I understand that if I am not a citizen of the United States, my plea of guilty or no contest may result in my deportation, exclusion from admission to the United States, or denial of naturalization under the laws of the United States.

f. **Firearms (guns), firearm parts, and ammunition prohibition and relinquishment.** I understand that a conviction in this case may prohibit me from owning, using, purchasing, possessing, receiving, or having under my custody and control firearms (guns), firearm parts, ammunition, reloaded ammunition, and ammunition feeding devices, including but not limited to, magazines for 10 years to life under federal law and state law (Penal Code sections 29805 and 30305). This includes firearm receivers and frames, and any item that may be used as or easily turned into a receiver or frame (see Penal Code section 16531). I understand that a conviction in this case may require me to relinquish any firearm or firearm parts I own, possess, or have under my custody or control (Penal Code section 29810).

g. **Body armor prohibition and relinquishment.** I understand that a conviction in this case may prohibit me from purchasing, owning, or possessing body armor (defined in Penal Code section 16288). I must relinquish any body armor I have in my possession (see Penal Code section 31360).

h. **Child custody consequences.** I understand that a conviction in this case may result in a rebuttable presumption that an award of sole or joint physical or legal custody of a child is detrimental to the best interest of the child under Family Code section 3044.

i. **Other consequences (specify):**

8. **Before the Plea**

a. **Discussion with my attorney** (*leave this box blank if you are not represented by an attorney*). Before entering this plea, I have had a full opportunity to discuss with my attorney the facts of the case, the elements of the charged offenses and prior convictions (if any), any defenses that I may have, my constitutional and statutory rights and waiver of those rights, the consequences of this plea, and anything else I think is important to my case.

b. **Questions.** I have no further questions for the court or for my attorney with regard to my plea and admissions in this case or any of my rights or anything else on this form.

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:
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INITIALS

- 9. **Waiver of Constitutional Rights.** For each of the charges, prior convictions (if any), and probation violations (if any) listed in items 1, 2, and 3, I give up my right to a jury trial, my right to a court hearing, my right to confront and cross-examine witnesses, and my right to remain silent and not to incriminate myself. I understand that I am, in fact, incriminating myself with my plea.

- 10. **The Plea** (*check one*). I freely and voluntarily plead GUILTY NO CONTEST to the charges listed in item 1. I offer my plea with full understanding of everything in this form. No one has made any threats; used any force against me, my family, or loved ones; or made any promises to me, except as listed in this form, in order to convince me to plead guilty or no contest.

- 11. **Prior Convictions.** I freely and voluntarily admit the prior convictions (if any) listed in item 2, and I understand that this admission may increase the penalties that are imposed on me.

- 12. **Probation Violations.** I freely and voluntarily admit the probation violations (if any) listed in item 3.

- 13. **Sentencing.** I understand that I have a right to delay my sentencing at least 6 hours and as long as 5 days after my plea. I give up this right and agree to be sentenced at this time.

DRAFT

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:
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DEFENDANT'S STATEMENT

I have read or have had read to me this form and have initialed each of the items that applies to my case. If I have an attorney, I have discussed each item with my attorney. By putting my initials next to the items in this form, I am indicating that I understand and agree with what is stated in each item that I have initialed. The nature of the charges, possible defenses, and the effects of any prior convictions and probation violations have been explained to me. I understand each of the rights outlined above and I give up each of them to enter my plea.

Date: _____

_____ (TYPE OR PRINT NAME)	_____ SIGNATURE OF DEFENDANT
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ATTORNEY'S STATEMENT

I am the attorney of record for the defendant. I have reviewed this form with my client. I have explained each of the items in the form, including the defendant's constitutional and statutory rights, to the defendant and have answered all of the defendant's questions with regard to those rights, the other items in this form, and the plea agreement. I have also discussed the facts of the case with the defendant and have explained the nature and elements of each charge, any possible defenses to the charges, the effect of any prior convictions and probation violations, and the consequences of the plea.

Date: _____

_____ (TYPE OR PRINT NAME)	_____ SIGNATURE OF ATTORNEY
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INTERPRETER'S STATEMENT

I, having been duly sworn or having a written oath on file, certify that I truly translated this form to the defendant in the language noted below.

Language: Spanish Other (specify):

Date: _____

_____ (TYPE OR PRINT NAME)	_____ (CERTIFICATION NUMBER)
_____ (TYPE OR PRINT NAME)	_____ SIGNATURE OF INTERPRETER

COURT'S FINDINGS AND ORDER

The court, having reviewed this form and having orally examined the defendant, finds that (a) the defendant has read or been read and understands each of the initialed items on this form; (b) the defendant understands the nature of the crimes and allegations listed in items 1, 2, and 3 and the consequences of the plea and any admissions; (c) the defendant expressly, knowingly, understandingly, and intelligently waives the defendant's constitutional and statutory rights; and (d) the defendant's plea, admissions, and waiver of rights are made freely and voluntarily.

The court accepts the defendant's plea, admissions, and waiver of rights, and the defendant is hereby convicted based thereon.

It is ordered that this document be filed with the court's records of this case and that the defendant's plea, admissions, and waiver of rights be accepted and entered in the minutes of this court.

Date: _____

_____ (TYPE OR PRINT NAME)	_____ SIGNATURE OF JUDICIAL OFFICER
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SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	<i>FOR COURT USE ONLY</i> 07/09/2024 DRAFT Not approved by the Judicial Council
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	
CRIMINAL PROTECTIVE ORDER—DOMESTIC VIOLENCE (CLETS—CPO) <input type="checkbox"/> ORDER PENDING TRIAL (Pen. Code, § 136.2) <input type="checkbox"/> MODIFICATION <input type="checkbox"/> PROBATION CONDITION ORDER (Pen. Code, § 1203.097(a)(2)) ORDER UPON CONVICTION: <input type="checkbox"/> PENAL CODE, § 136.2(i) <input type="checkbox"/> PENAL CODE, § 273.5(j) <input type="checkbox"/> PENAL CODE, § 368(l) <input type="checkbox"/> PENAL CODE, § 646.9(k)	CASE NUMBER:

This order may take precedence over other conflicting orders; see item 4 on page 4.

1. Restrained person

*Name: _____ *Gender: M F Nonbinary *Race: _____
 *Date of birth: _____ Height: _____ Weight: _____ Hair color: _____ Eye color: _____

2. Protected person

*Name: _____ *Gender: M F Nonbinary Age: _____

3. Additional protected persons

*Name _____ *Gender _____ Relationship to person in item 2 _____

- a. The court finds that the additional protected persons were also victims of the crime (finding required for postconviction orders issued under Penal Code section 136.2(i)(1)).
- b. The court finds by clear and convincing evidence that the above named percipient witnesses have been harassed by the defendant (finding required for postconviction orders issued under Penal Code section 136.2(i)(1)).

(For items 1, 2, and 3: Information that has a star (*) next to it is required to add this order into the California Restraining and Protective Order System. Please provide all known information.)

4. Expiration date

- a. For pretrial orders, this order remains in effect until further court order. To terminate, courts must use *Notice of Termination of Protective Order in Criminal Proceeding* (form CR-165).
- b. For postconviction orders, this order expires on (date): _____ (Postconviction orders under Penal Code sections 136.2(i), 273.5(j), 368(l), and 646.9(k) may be valid for up to 10 years.)

5. Hearing

This proceeding was heard on (date): _____ at (time): _____ in Dept.: _____
 by (judicial officer): _____

6. Personal service

Defendant was personally served with a copy of this order at the court hearing, and no additional proof of service of this order is required.

7. The court finds good cause to grant a protective order. See items 8–19.

To the defendant

- If you do not obey these orders, you can be charged with a crime, go to jail or prison, and/or pay a fine.
- It is a felony to take or hide a child in violation of this order.
- Traveling across state or tribal boundaries with the intent to violate the order may be punishable as a federal offense. (18 U.S.C. § 2261(a)(1).)

DEFENDANT:	CASE NUMBER:
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8. No firearms (guns), firearm parts, or ammunition

- a. The defendant must not own, possess, buy or try to buy, receive or try to receive, or in any other way get any firearms (guns), firearm parts (meaning receivers, frames, or any item that may be used as or easily turned into a receiver or frame; see Penal Code section 16531), or ammunition. Possession of firearms, firearm parts, or ammunition while this order is in effect may subject the defendant to state or federal prosecution and may include jail or prison time and/or a fine.
- b. Within 24 hours of receiving this order the defendant must turn in to local law enforcement, or sell to or store with a licensed gun dealer, any firearms and firearm parts owned by the defendant or within the defendant's immediate possession or control.
- c. Within 48 hours of receiving this order the defendant must file a receipt with the court showing that all firearms and firearm parts have been turned in, sold, or stored.
- d. The court finds good cause to believe that the defendant has a firearm and firearm parts within their immediate possession or control and sets a review hearing for (*date*): _____ (*time*): _____ (*dept.*): _____ to ascertain whether the defendant has complied with the firearm and firearm parts relinquishment requirements of Code of Civil Procedure section 527.9 (Cal. Rules of Court, rule 4.700).
- e. Limited exemption: The court has made the necessary findings to grant an exemption under Code of Civil Procedure section 527.9(f). Under California law, the defendant is not required to relinquish this firearm (*specify make, model, and serial number of firearm*): _____ but must only have it during scheduled work hours and to and from their place of work. Even if exempt under California law, the defendant may be subject to federal prosecution for possessing or controlling a firearm.

9. No body armor

The defendant must not own, possess, or buy any body armor (defined in Penal Code section 16288). Defendant must relinquish any body armor in their possession.

10. No dissuading victim or witness (for pretrial orders issued under Penal Code section 136.2(a)(1))

The defendant must not attempt to or actually prevent or dissuade any victim or witness from attending a hearing, testifying, or making a report to any law enforcement agency or person.

11. No obtaining addresses (for orders issued under Penal Code section 136.2)

- a. The defendant must take no action to obtain the addresses or locations of protected persons or their family members, caretakers, or guardians unless good cause exists otherwise.
- b. The court finds good cause not to make this order.

12. Order to not abuse

Defendant must not harass, strike, threaten, assault (sexually or otherwise), hit, follow, stalk, molest, destroy or damage personal or real property, disturb the peace of, keep under surveillance, annoy by phone or other electronic means (including repeatedly contact), impersonate (on the internet, electronically, or otherwise), or block movements of the protected persons named in items 2 and 3.

- “Disturb the peace of” means to destroy someone's mental or emotional calm. This can be done directly or indirectly, such as through someone else. This can also be done in any way, such as by phone, over text, or online. Disturbing the peace includes coercive control.
- “Coercive control” means a number of acts that unreasonably limit the free will and individual rights of any person protected by this restraining order. Examples include isolating them from friends, relatives, or other support; keeping them from food or basic needs; controlling or keeping track of them, including their movements, contacts, activities, money, or access to services; and making them do something by force, threat, or intimidation, including threats based on actual or suspected immigration status; and reproductive coercion, meaning controlling someone's reproductive choices, such as using force, threat, or intimidation to pressure someone to be or not be pregnant, and to control or interfere with someone's contraception, birth control, pregnancy, or access to related health information.

13. No-contact order

Defendant must not contact the protected persons named in items 2 and 3, directly or indirectly, by any means, including by telephone, mail, email or other electronic means, or through a third party. Contact through an attorney under reasonable restrictions set by the court does not violate this order.

14. Stay-away order

Defendant must stay at least _____ yards away from the protected person and their

- a. home
- b. job or workplace
- c. vehicle
- d. other protected person in item 3
- e. other locations:

DEFENDANT:	CASE NUMBER:
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15. **Exceptions**

Defendant may have peaceful contact with the protected persons named in items 2 and 3, as an exception to the no-contact and stay-away orders in items 13 and 14 of this order, only for the safe exchange of children and court-ordered visitation as stated in

- a. the family, juvenile, or probate court order in *(case number)*:
issued on *(date)*:
- b. any family, juvenile, or probate court order issued *after* the date this order is signed.

The restrained and protected persons should always carry a certified copy of the most recent order issued by the family, juvenile, or probate court.

16. **Protected animals**

a. The protected persons named in items 2 and 3 are given the exclusive care, possession, and control of the animals listed below:

Name:	Type of animal:	Breed (optional):	Color (optional):
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- b. Defendant must not take, transfer, sell, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of the animals listed above.
- c. Defendant must not come within _____ yards of the animals listed above.

17. **Electronic monitoring**

Defendant must be placed on electronic monitoring for *(specify length of time)*:
(Not to exceed 1 year from the date of this order. Pen. Code, § 136.2(a)(1)(G)(iv), (i)(3).)

18. **Recordings**

The protected person in item 2 may record communications made by the person in item 1 that violate this order.

19. **Other orders**

Executed on *(date)*:

JUDICIAL OFFICER

Certificate of Compliance With Violence Against Women Act (VAWA)

This protective order meets all full faith and credit requirements of the Violence Against Women Act, 18 U.S.C. § 2265 (1994). This court has jurisdiction over the parties and the subject matter, and the restrained person has been afforded notice and a timely opportunity to be heard as provided by the laws of this jurisdiction. **This order is valid and entitled to enforcement in each jurisdiction throughout the 50 states of the United States, the District of Columbia, all tribal lands, and all U.S. territories, and shall be enforced as if it were an order of that jurisdiction.**

DEFENDANT:	CASE NUMBER:
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Instructions for Law Enforcement

1. Start Date and End Date of Order

This order starts on the date it was issued by a judicial officer.

This order ends as ordered in item 4 on page 1 of this order.

- Orders under Penal Code section 136.2(a) are valid as long as the court has jurisdiction over the case. They are not valid after imposition of a county jail or state prison commitment. (*People v. Stone* (2004) 123 Cal.App.4th 153.)
- Orders issued under Penal Code sections 136.2(i)(1), 273.5(j), 368(l), and 646.9(k) are valid for up to 10 years and may be issued by the court **regardless of** whether the defendant is sentenced to state prison, county jail, or subject to mandatory supervision or if imposition of sentence is suspended and the defendant is placed on probation.
- Orders under Penal Code section 1203.097(a)(2) are probationary orders, and the court has jurisdiction as long as the defendant is on probation.
- To terminate this protective order, courts should use form CR-165, *Notice of Termination of Protective Order in Criminal Proceeding (CLETS—CANCEL)*.

2. If the Protected Person Contacts the Restrained Person

Even if the protected person invites or consents to contact with the restrained person, the orders remain in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The orders can be changed only by another court order. (Pen. Code, § 13710(b).)

3. Enforcing This Order in California

- This order must be enforced in California by any law enforcement agency that has received the order, or is shown a copy of the order, or has verified its existence on the California Law Enforcement Telecommunications System (CLETS).
- Law enforcement must determine whether the restrained person had notice of the order. If notice cannot be verified, law enforcement must advise the restrained person of the terms of the order and, if the restrained person fails to comply, must enforce it. (Fam. Code, § 6383.)

4. Conflicting Orders—Priority of Enforcement

If more than one restraining order has been issued protecting the protected person from the restrained person, the orders must be enforced in the following priority (see Penal Code section 136.2 and Family Code sections 6383(h)(2), 6405(b)):

- **Emergency Protective Order (EPO):** If one of the orders is an *Emergency Protective Order* (form EPO-001), provisions (e.g., stay-away order) that are more restrictive than in the other restraining/protective orders must be enforced. Provisions of another order that do not conflict with the EPO must be enforced.
- **No-Contact Order:** If a restraining/protective order includes a no-contact order, the no-contact order must be enforced. Item **13** is an example of a no-contact order.
- **Criminal Protective Order (CPO):** If none of the orders includes an EPO or a no-contact order, the most recent CPO must be enforced. (Family Code sections 6383(h)(2), 6405(b).) Additionally, a CPO issued in a criminal case involving charges of domestic violence, Penal Code sections 261, 261.5, or former 262, or charges requiring sex offender registration must be enforced over any civil court order. (Penal Code section 136.2(e)(2).) All provisions in the civil court order that do not conflict with the CPO must be enforced.
- **Civil Restraining Orders:** If there is more than one civil restraining order (e.g., domestic violence, juvenile, elder abuse, civil harassment) then the order that was issued last must be enforced. Provisions that do not conflict with the most recent civil restraining order must be enforced.

Peace Officer Firearm Prohibition Exemption

If a peace officer's employment and personal safety depend on the ability to carry a firearm, a court may grant an exemption that allows the officer to carry a firearm on or off duty, but only if the court finds, after a mandatory psychological examination of the peace officer, that the officer does not pose a threat of harm. (Code Civ. Proc., § 527.9(f).)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	<i>FOR COURT USE ONLY</i>
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	07/15/2025 DRAFT Not approved by the Judicial Council
CRIMINAL PROTECTIVE ORDER—OTHER THAN DOMESTIC VIOLENCE (CLETS—CPO) (Pen. Code, §§ 136.2, 136.2(i), 368(l), and 646.9(k)) ORDER <input type="checkbox"/> Pen. Code, § 136.2 <input type="checkbox"/> MODIFICATION PENDING TRIAL: <input type="checkbox"/> Pen. Code, § 136.2(i) <input type="checkbox"/> Pen. Code, § 646.9(k) ORDER UPON <input type="checkbox"/> Pen. Code, § 136.2(i) <input type="checkbox"/> Pen. Code, § 646.9(k) CONVICTION: <input type="checkbox"/> Pen. Code, § 368(l)	CASE NUMBER:

1. **Restrained person**

*Name: _____ *Gender: M F Nonbinary *Race: _____
 *Date of birth: _____ Height: _____ Weight: _____ Hair color: _____ Eye color: _____

2. **Protected person**

*Name: _____ *Gender: M F Nonbinary Age: _____

3. **Additional protected persons**

*Name _____ *Gender _____ Relationship to person in item 2 _____

- a. The court finds that the additional protected persons were also victims of the crime (finding required for postconviction orders issued under Penal Code section 136.2(i)(1)).
- b. The court finds by clear and convincing evidence that the above named percipient witnesses have been harassed by the defendant (finding required for postconviction orders issued under Penal Code section 136.2(i)(1)).

(For items 1, 2, and 3: Information that has a star (*) next to it is required to add this order into the California Restraining and Protective Order System. Please provide all known information.)

4. **Expiration date**

- a. For pretrial orders, this order remains in effect until further court order. To terminate, courts must use *Notice of Termination of Protective Order in Criminal Proceeding* (form CR-165).
- b. For postconviction orders, this order expires on (date): _____ (Postconviction orders under Penal Code sections 136.2(i) and 646.9(k) may be valid for up to 10 years.)

5. **Hearing**

This proceeding was heard on (date): _____ at (time): _____ in Dept.: _____
 by (judicial officer): _____

6. **Personal service**

Defendant was personally served with a copy of this order at the court hearing, and no additional proof of service of this order is required.

7. The court finds good cause to grant a protective order. See items 8–17.

To the defendant

- If you do not obey these orders, you can be charged with a crime, go to jail or prison, and/or pay a fine.

8. **No firearms (guns), firearm parts, or ammunition**

- a. The defendant must not own, possess, buy or try to buy, receive or try to receive, or in any other way get any firearms (guns), firearm parts (meaning receivers, frames, or any item that may be used as or easily turned into a receiver or frame; see Penal Code section 16531), or ammunition. Possession of firearms, firearm parts, or ammunition while this order is in effect may subject the defendant to state or federal prosecution and may include jail or prison time and/or a fine.

DEFENDANT:	CASE NUMBER:
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8. b. Within 24 hours of receiving this order the defendant must turn in to local law enforcement, or sell to or store with a licensed gun dealer, any firearms or firearm parts owned by the defendant or within the defendant's immediate possession or control.
- c. Within 48 hours of receiving this order the defendant must file a receipt with the court showing that all firearms and firearm parts have been turned in, sold, or stored.
- d. The court finds good cause to believe that the defendant has a firearm and firearm parts within their immediate possession or control and sets a review hearing for *(date):* _____ *(time):* _____ *(dept.):* _____ to ascertain whether the defendant has complied with the firearm and firearm parts relinquishment requirements of Code of Civil Procedure section 527.9 (Cal. Rules of Court, rule 4.700).
- e. Limited exemption: The court has made the necessary findings to grant an exemption under Code of Civil Procedure section 527.9(f). Under California law, the defendant is not required to relinquish this firearm (*specify make, model, and serial number of firearm*): _____ but must only have it during scheduled work hours and while traveling to and from their place of work. Even if exempt under California law, the defendant may be subject to federal prosecution for possessing or controlling a firearm.

9. No body armor

The defendant must not own, possess, or buy any body armor (defined in Penal Code section 16288). Defendant must relinquish any body armor in their possession.

10. **No dissuading victim or witness (for pretrial orders issued under Penal Code section 136.2(a)(1))**
The defendant must not attempt to or actually prevent or dissuade any victim or witness from attending a hearing, testifying, or making a report to any law enforcement agency or person.
11. **No obtaining addresses (for orders issued under Penal Code section 136.2)**
- a. The defendant must take no action to obtain the addresses or locations of protected persons or their family members, caretakers, or guardians unless good cause exists otherwise.
- b. The court finds good cause not to make this order.

12. **Order to not abuse**

Defendant must not harass, strike, threaten, assault (sexually or otherwise), hit, follow, stalk, molest, destroy or damage personal or real property, disturb the peace of, keep under surveillance, annoy by phone or other electronic means (including repeatedly contact), impersonate (on the internet, electronically, or otherwise), or block movements of the protected persons named in items 2 and 3.

13. **No-contact order**

Defendant must not contact the protected persons named in items 2 and 3, directly or indirectly, by any means, including by telephone, mail, email or other electronic means, or through a third party. Contact through an attorney under reasonable restrictions set by the court does not violate this order.

14. **Stay-away order**

Defendant must stay at least _____ yards away from the protected person and their

- a. home b. job or workplace c. vehicle d. other protected person in item 3
- e. other locations:

15. **Exceptions**

Defendant may have peaceful contact with the protected persons named in items 2 and 3, as an exception to the no-contact and stay-away orders in items 13 and 14 of this order, only for the safe exchange of children and court-ordered visitation as stated in

- a. the family, juvenile, or probate court order in *(case number):* _____ issued on *(date):* _____
- b. any family, juvenile, or probate court order issued *after* the date this order is signed.

The restrained and protected persons should always carry a certified copy of the most recent order issued by the family, juvenile, or probate court.

16. **Electronic monitoring**

Defendant must be placed on electronic monitoring for *(specify length of time):* _____
(Not to exceed 1 year from the date of this order. Pen. Code, § 136.2(a)(1)(G)(iv), (i)(3).)

17. **Other orders**

Executed on *(date):* _____

JUDICIAL OFFICER

DEFENDANT:	CASE NUMBER:
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Instructions for Law Enforcement

1. Start Date and End Date of Order

This order starts on the date it was issued by a judicial officer.

This order ends as ordered in item 4 on page 1 of this order.

- Orders under Penal Code section 136.2(a) are valid as long as the court has jurisdiction over the case. They are not valid after imposition of a county jail or state prison commitment. (*People v. Stone* (2004) 123 Cal.App.4th 153.)
- Orders issued under Penal Code sections 136.2(i)(1) and 646.9(k) are valid for up to 10 years and may be issued by the court **regardless of** whether the defendant is sentenced to state prison, county jail, or subject to mandatory supervision or if imposition of sentence is suspended and the defendant is placed on probation.
- To terminate this protective order, courts should use form CR-165, *Notice of Termination of Protective Order in Criminal Proceeding (CLETS—CANCEL)*.

2. Enforcing This Order in California

- This order must be enforced in California by any law enforcement agency that has received the order, or is shown a copy of the order, or has verified its existence on the California Law Enforcement Telecommunications System (CLETS).

3. Conflicting Orders—Priority of Enforcement

If more than one restraining order has been issued protecting the protected person from the restrained person, the orders must be enforced in the following priority (see Penal Code section 136.2 and Family Code sections 6383(h)(2), 6405(b)):

- **Emergency Protective Order (EPO):** If one of the orders is an *Emergency Protective Order* (form EPO-001), provisions (e.g., stay-away order) that are more restrictive than in the other restraining/protective orders must be enforced. Provisions of another order that do not conflict with the EPO must be enforced.
- **No-Contact Order:** If a restraining/protective order includes a no-contact order, the no-contact order must be enforced. Item **13** is an example of a no-contact order.
- **Criminal Protective Order (CPO):** If none of the orders includes an EPO or a no-contact order, the most recent CPO must be enforced. (Family Code sections 6383(h)(2), 6405(b).) Additionally, a CPO issued in a criminal case involving charges of domestic violence, Penal Code sections 261, 261.5, or former 262, or charges requiring sex offender registration must be enforced over any civil court order. (Penal Code section 136.2(e)(2).) All provisions in the civil court order that do not conflict with the CPO must be enforced.
- **Civil Restraining Orders:** If there is more than one civil restraining order (e.g., domestic violence, juvenile, elder abuse, civil harassment) then the order that was issued last must be enforced. Provisions that do not conflict with the most recent civil restraining order must be enforced.

Peace Officer Firearm Prohibition Exemption

If a peace officer's employment and personal safety depend on the ability to carry a firearm, a court may grant an exemption that allows the officer to carry a firearm on or off duty, but only if the court finds, after a mandatory psychological examination of the peace officer, that the officer does not pose a threat of harm. (Code Civ. Proc., § 527.9(f).)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	<i>FOR COURT USE ONLY</i> 06/13/2024 DRAFT Not approved by the Judicial Council
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	
ORDER TO SURRENDER FIREARMS IN DOMESTIC VIOLENCE CASE (CLETS—CPO) (Penal Code, § 136.2(a)(1)(G)(ii))	CASE NUMBER:

PERSON TO SURRENDER FIREARMS (*complete name*):

Gender: M F Nonbinary Race: _____ Date of birth: _____

Ht.: _____ Wt.: _____ Hair color: _____ Eye color: _____

1. This proceeding was heard on (*date*): _____ at (*time*): _____ in Dept.: _____
 Room: _____ by judicial officer (*name*): _____
2. This order expires on (*date*): _____. If no date is listed, this order remains in effect until further court order.
 To terminate, courts must use *Notice of Termination of Protective Order in Criminal Proceeding* (form CR-165).
3. Defendant was personally served with a copy of this order at the court hearing, and no additional proof of service of this order is required.
4. **GOOD CAUSE APPEARING, THE COURT ORDERS THAT THE ABOVE-NAMED DEFENDANT**
 - a. Must not own, possess, buy or try to buy, receive or try to receive, or in any other way get any firearms, firearm parts (meaning receivers, frames, or any item that may be used as or easily turned into a receiver or frame; see Penal Code section 16531), or ammunition. Possession of firearms, firearm parts, or ammunition while this order is in effect may subject the defendant to state or federal prosecution, and may include jail or prison time and/or a fine.
 - b. Within 24 hours of receiving this order the defendant must turn in to local law enforcement, or sell to or store with a licensed gun dealer, any firearms or firearm parts owned by the defendant or within the defendant's immediate possession or control.
 - c. Within 48 hours of receiving this order the defendant must file a receipt with the court showing that all firearms or firearm parts have been turned in, sold, or stored.
 - d. The court finds good cause to believe that the defendant has a firearm or firearm parts within their immediate possession or control and sets a review hearing for (*date*): _____ (*time*): _____ (*dept.*): _____
 to ascertain whether the defendant has complied with the firearm and firearm parts relinquishment requirements of **Code of Civil Procedure section 527.9**. (Cal. Rules of Court, rule 4.700.)
 - e. Limited exemption: The court has made the necessary findings to grant an exemption under **Code of Civil Procedure section 527.9(f)**. Under California law, the defendant is not required to relinquish this firearm (*specify make, model, and serial number of firearm*): _____
 but must only have it during scheduled work hours and to and from their place of work. Even if exempt under California law, the defendant may be subject to federal prosecution for possessing or controlling a firearm.
5. **No body armor**
 The defendant must not own, possess, or buy any body armor (defined in Penal Code section 16288). Defendant must relinquish any body armor in their possession.

Executed on: _____ (DATE) _____ (SIGNATURE OF JUDICIAL OFFICER)

NOTICES

- This order is effective as of the date it was issued by the judicial officer and expires as ordered in item 2.
- This order is to be used **ONLY** when the court orders firearms relinquishment but does not make any other protective or restraining orders. Do NOT use in conjunction with other criminal protective orders (form CR-160 or CR-161).
- Specified defendants may request an exemption from the firearm relinquishment requirements stated in item 4 of this order. *The court must check the box under item 4 to order an exemption from the firearm relinquishment requirements.* If the defendant can show that the firearm is necessary as a condition of continued employment, the court may grant an exemption for a particular firearm to be in the defendant's possession only during work hours and while traveling to and from work. If a peace officer's employment and personal safety depend on the ability to carry a firearm, a court may grant an exemption that allows the officer to carry a firearm on or off duty, but only if the court finds, after a mandatory psychological examination of the peace officer, that the officer does not pose a threat of harm. (Code Civ. Proc., § 527.9(f).)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	<i>FOR COURT USE ONLY</i> 06/13/2024 DRAFT Not approved by the Judicial Council
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:
PROHIBITED PERSONS RELINQUISHMENT FORM FINDINGS (Pen. Code, § 29810(c))	<i>FOR COURT USE ONLY</i> Date: Time: Department:

Any reference to "firearm" in this form includes any firearms (guns), receivers, frames, and any item that may be used as or easily turned into a receiver or frame (see Penal Code section 16351). The defendant is prohibited from owning, purchasing, receiving, possessing, or having under their custody any firearms, ammunition, and ammunition feeding devices, including but not limited to magazines, and must relinquish all firearms under Penal Code section 29810. The defendant is prohibited from purchasing, owning, or processing body armor (defined in Penal Code section 16288) and must relinquish any body armor in their possession.

Compliance

1. The court received a Prohibited Persons Relinquishment Form from the defendant, and (choose one)
 - a. defendant relinquished all firearms to a local law enforcement agency or a licensed firearms dealer under Penal Code section 29810(a)(3) and provided relinquishment receipts;
 - b. defendant was allowed an alternative method of relinquishment under Penal Code section 29810(f) and relinquished all firearms under an alternative method; or
 - c. defendant has no firearms according to the Prohibited Persons Relinquishment Form and no firearms according to the probation officer's report

Noncompliance

2. The court has not received a Prohibited Persons Relinquishment Form from the defendant, and (choose one)
 - a. the probation officer's report does not indicate any firearms; or
 - b. the probation officer's report indicates the defendant has firearms. The firearms were:
 - (1) Recovered (explain):

 - (2) Not recovered (explain):

3. The court received a Prohibited Persons Relinquishment Form from the defendant. The probation officer's report indicates the defendant has firearms that were not reported on the form. The firearms were:
 - a. Recovered (explain):

 - b. Not recovered (explain):

(DATE)

(SIGNATURE OF JUDICIAL OFFICER)

SPR24-16

Criminal Law: Firearm and Body Armor Prohibitions (Revise forms CR-101, CR-102, CR-160, CR-161, CR-162, CR-210)

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

	Commenter	Position	Comment	Committee Response
1.	California Department of Justice, Division of Law Enforcement Office of Gun Violence Prevention and the Bureau of Firearms By Ari Freilich Director	N/I	<p>The Office of Gun Violence Prevention and the Bureau of Firearms, within the Division of Law Enforcement in the California Department of Justice (DOJ), respectfully submit this public comment regarding proposed changes to the Judicial Council form CR-210 (“Prohibited Persons Relinquishment Form Findings”). We wish to strongly urge the Judicial Council to reconsider and delete the proposed addition of the word “registered” before “firearm” in items 1(c); 2(a); 2(b); and (3).</p> <p>On the CR-210 form, courts make findings regarding whether a defendant convicted of a firearm-prohibiting criminal offense has complied with firearm relinquishment requirements. The CR-210 form’s current language requires courts to make findings regarding whether the defendant has relinquished <i>all</i> firearms identified in the probation officer’s report to the court. However, the proposed revisions to the CR-210 form would add four new references to “registered” firearms on form CR-210. (E.g., the revised language would prompt courts, among other things, to make findings regarding whether the defendant has relinquished any “registered” firearms identified in the probation officer’s report). This would have the effect of narrowing the court’s role in verifying whether a defendant convicted of a firearm-prohibiting crime has relinquished “all” firearms in their possession, including all firearms identified in the probation officer’s mandated investigation</p>	<p>The committee appreciates the comments.</p> <p>The committee agrees with the comment and recommends replacing the reference to registered firearms in items 1c, 2b, and 3 of form CR-210 with a reference to firearms generally.</p>

SPR24-16

Criminal Law: Firearm and Body Armor Prohibitions (Revise forms CR-101, CR-102, CR-160, CR-161, CR-162, CR-210)

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

	Commenter	Position	Comment	Committee Response
			<p>and report to the court. This would be contrary to public safety and generally inconsistent with the relevant statute, California Penal Code Section 29810.</p> <p>In the context of Penal Code Section 29810 and the CR-210 form, the term “registered” firearms presumably refers to firearms for which there is a record of legal acquisition in DOJ’s Automated Firearms System (AFS). However, many individuals convicted of firearm-prohibiting offenses are in possession of firearms that are not recorded in this system. For instance, AFS would generally not have firearm acquisition records for firearms that were unlawfully obtained, or self-assembled as unserialized ghost guns, or for rifles and shotguns that were lawfully acquired before 2014 when California first required DOJ to maintain long gun acquisition records in AFS.</p> <p>To protect the public and enforce laws prohibiting firearm access by individuals convicted of felonies and misdemeanors involving violence or misuse of weapons, California law requires courts, probation officers, and other stakeholders to ensure that newly prohibited criminal defendants verify that they relinquished <i>all</i> firearms, not just those that are “registered” as recorded in AFS.</p> <p>More specifically, Penal Code Section 29810(a) and (b) require courts to order defendants convicted of firearm-prohibiting offenses to</p>	

SPR24-16

Criminal Law: Firearm and Body Armor Prohibitions (Revise forms CR-101, CR-102, CR-160, CR-161, CR-162, CR-210)

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

	Commenter	Position	Comment	Committee Response
			<p>relinquish all firearms they own, possess, or have under their custody or control. Penal Code Section 29810(b) requires the defendant to declare all of their firearms, implicitly including firearms that are not recorded in AFS, on the Prohibited Persons Relinquishment Form.</p> <p>The probation officer must then also investigate and report to the court whether the prohibited defendant has any firearms, including firearms that are both recorded and not recorded in the defendant's name: Penal Code Section 29810(c)(1) requires an assigned probation officer to investigate whether <i>either</i> the Automated Firearms System "or other credible information, such as a police report, reveals that the defendant owns, possesses, or has under their custody or control any firearms." This paragraph then requires the probation officer to ensure that AFS is properly updated to indicate that the defendant has relinquished any firearms identified in the probation officer's report, which may in practice have the effect of "registering" some firearms in AFS that were not previously recorded in that system.</p> <p>Penal Code Section 29810(c)(2) then requires the probation officer to report to the court and prosecuting attorney whether the defendant has complied with the requirements of this statute by "relinquishing all firearms identified by the probation officer's investigation or declared by the defendant on the Prohibited Persons Relinquishment Form." This reference to "all</p>	

SPR24-16

Criminal Law: Firearm and Body Armor Prohibitions (Revise forms CR-101, CR-102, CR-160, CR-161, CR-162, CR-210)

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

Commenter	Position	Comment	Committee Response
		<p>firearms” would, again, include unregistered firearms identified by either the assigned probation officer or by the defendant.</p> <p>We do acknowledge that Penal Code Section 29810(c)(3) includes a reference to “registered” firearms when it requires courts to take certain steps “if the report of the probation officer does not confirm relinquishment of firearms registered in the defendant’s name.” We believe this is a drafting oversight that is inconsistent with the intent and language used in the rest of the statute. For instance, Penal Code Section 29810(c)(3) directs courts to issue a warrant to search for and seize firearms in appropriate cases, if the court finds probable cause that the defendant has failed to relinquish “any firearms as required”. And more definitively, Penal Code Section 29810(c)(4) requires courts to ensure that the defendant relinquished “all” firearms prior to final disposition or sentencing: “Prior to final disposition or sentencing in the case, the court shall confirm that the defendant has relinquished all firearms as required.”</p> <p>As a result, it would be inconsistent with the language and intent of this statute for Form CR-210 to add the word “registered” where it appears before “firearm” on the draft form in items 1(c); 2(a); 2(b); and (3). This is inconsistent with the language used throughout most of Penal Code Section 29810 and with the voters’ stated intent in enacting Penal Code</p>	

SPR24-16

Criminal Law: Firearm and Body Armor Prohibitions (Revise forms CR-101, CR-102, CR-160, CR-161, CR-162, CR-210)

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

	Commenter	Position	Comment	Committee Response
			<p>Section 29810 through Proposition 63 in 2016; that ballot measure included no references to “registered” firearms. Finally, this would be inconsistent with the Legislature’s stated intent in adopting AB 732 (Fong), which amended Penal Code Section 29810 last year to ensure that fewer criminal defendants remained in unlawful possession of firearms (and also introduced an anomalous reference to “registered” firearms). See, e.g., paragraph (d) of AB 732’s codified findings (emphasis added): <i>“It is the intent of the Legislature that every person convicted of an offense that prohibits firearm ownership shall in fact relinquish all firearms at the time of conviction. It is the further intent of the Legislature that prosecuting attorneys and courts shall ensure relinquishment of firearms prior to the final disposition of a criminal case.”</i></p>	
2.	<p>Giffords Law Center to Prevent Gun Violence by Julia Weber, Esq., MSW, Consultant</p>	AM	<p>Giffords concurs with the comments submitted by the Department of Justice’s Office of Gun Violence Prevention. In addition, we note that the form (CR-210) should not be limited to registered firearms because the probation report and other sources of evidence may also provide the court with information about unregistered firearms. As CR-210 currently indicates, California Penal Code section 29810 prohibits defendants from having firearms. Within section 29810, there is no distinction between registered and unregistered firearms. The proposed addition of “registered” would create confusion about whether the court could include unregistered firearms when addressing non-</p>	<p>The committee appreciates the comments.</p> <p>The committee agrees with the comment and recommends replacing the reference to registered firearms in items 1c, 2b, and 3 of form CR-210 with a reference to firearms generally.</p>

SPR24-16

Criminal Law: Firearm and Body Armor Prohibitions (Revise forms CR-101, CR-102, CR-160, CR-161, CR-162, CR-210)

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

	Commenter	Position	Comment	Committee Response
			<p>compliance on this form, thereby unnecessarily increasing risk and avoiding holding defendants accountable.</p>	
3.	<p>Orange County Bar Association by Christina Zabat-Fran, President</p>	A	<p>Proposes revising court forms to incorporate new firearm prohibitions, modifying plea and relinquishment forms and revising criminal protective orders to reflect new relinquishment procedure, clarify prohibited items, and incorporate legislative changes</p> <p><i>Does the proposal appropriately address the stated purpose?</i> Yes</p> <p><i>Item 5 of the Court Findings and Order section on page 7 of CR-101 states “A factual basis exists for the plea and admissions, or the defendant is pleading under a plea bargain under People v. West.” Should the second clause be deleted in light of section 1192.5(c) (“The court shall also cause an inquiry to be made of the defendant to satisfy itself that the plea is freely and voluntarily made, and that there is a factual basis for the plea.”) and case law (see People v. Willard (2007) 154 Cal.App.4th 1329 (a plea is not valid without an adequate factual basis)?</i> No. <i>People v. West</i> remains valid and does not contradict section 1192.5(c) or <i>People v. Willard</i>.</p>	<p>The committee appreciates the comments.</p> <p>No response required.</p> <p>The committee agrees that <i>People v. West</i> remains valid for its holding that a defendant may enter a guilty plea to a lesser related offense to avoid conviction of the greater offense, but that a <i>West</i> plea does not create an exception to a court</p>

SPR24-16

Criminal Law: Firearm and Body Armor Prohibitions (Revise forms CR-101, CR-102, CR-160, CR-161, CR-162, CR-210)

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

	Commenter	Position	Comment	Committee Response
			<p><i>Do the proposed revisions to item 3a in forms CR-160 and CR-161 properly reflect the case law defining a “victim” for purposes of a postconviction protective order under section 136.2(i)(1)?</i></p> <p>The proposed revisions are not in conflict with case law, but could more specifically refer to a “victim who was targeted or harmed” or otherwise define a “victim.”</p>	<p>finding of a factual basis for the plea and admissions.</p> <p>The committee recommends using the term “victim[s] of the crime” to mirror the language of Penal Code section 136.2(i)(1).</p>
4.	Superior Court of Orange County by Elizabeth Flores, Operations Analyst	AM	<p><i>Position on Proposal:</i></p> <p>Overall, the proposal addresses its stated purpose. Additionally, items 3k of the felony plea form (CR-101) and 7g of the Misdemeanor plea form (CR-102) should be modified to reference PC 31360.</p> <p><i>Does the proposal appropriately address the stated purpose?</i></p> <p>Yes, the proposal appropriately addresses the stated purpose.</p> <p><i>Item 5 of the Court Findings and Order section on page 7 of CR-101 states “A factual basis exists for the plea and admissions, or the defendant is pleading under a plea bargain under People v. West.” Should the second clause be deleted in light of section 1192.5(c) (“The court shall also cause an inquiry to be</i></p>	<p>The committee appreciates the comments.</p> <p>The committee recommends including a reference to Penal Code section 31360 on these items.</p> <p>No response required.</p>

SPR24-16

Criminal Law: Firearm and Body Armor Prohibitions (Revise forms CR-101, CR-102, CR-160, CR-161, CR-162, CR-210)

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

	Commenter	Position	Comment	Committee Response
			<p><i>made of the defendant to satisfy itself that the plea is freely and voluntarily made, and that there is a factual basis for the plea.”) and case law (see People v. Willard (2007) 154 Cal.App.4th 1329 (a plea is not valid without an adequate factual basis?</i></p> <p>Yes, the second clause should be deleted considering PC 1192.5(c) and the precedent reiterated in People v. Willard (2007) 154 Cal.App.4th 1329.</p> <p><i>Do the proposed revisions to item 3a in forms CR-160 and CR-161 properly reflect the case law defining a “victim” for purposes of a postconviction protective order under section 136.2(i)(1)?</i></p> <p>Yes, they do. “Immediate family members” include the spouse, children, or parents of the victim or witness.”</p> <p><i>Would the proposal provide cost savings? If so, please quantify.</i></p> <p>This is not a cost-saving measure. New guilty plea waiver forms, revised protective orders, revised finding forms, and a new form of relinquishment have to be produced.</p> <p><i>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</i></p>	<p>The committee agrees with the comment and will recommend removing it from the form.</p> <p>The committee appreciates the comment.</p> <p>The committee appreciates the comment.</p>

SPR24-16

Criminal Law: Firearm and Body Armor Prohibitions (Revise forms CR-101, CR-102, CR-160, CR-161, CR-162, CR-210)

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

	Commenter	Position	Comment	Committee Response
			<p>OCSC implemented docket codes that reference both the firearms and body armor prohibition. The proposal addresses them as two separate items, therefore, we would have to remove reference to body armor from existing docket codes and create them separately. In addition, the courtroom clerks will need to be more vigilant of the specific box, which must be checked as well.</p> <p><i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> For OCSC, three months is sufficient because it would not be a great impact to the court.</p> <p><i>How well would this proposal work in courts of different sizes?</i> This proposal works well for a court of our size.</p>	<p>The committee appreciates the comment.</p> <p>The committee appreciates the comment.</p> <p>The committee appreciates the comment.</p>
5.	<p>Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) by TCPJAC/CEAC Joint Rules Subcommittee (JRS)</p>	A	<p>The JRS notes that the proposal is required to conform to a change of law.</p> <p>The JRS also notes the following:</p> <p>The proposal does appropriately address the stated purpose. Regarding the requested comment as to Item 5 of the Court Findings and Order section on CR-101 plea form, the second clause should be deleted in light of the cited language from section 1192.5(c) in the Request for Specific Comments. Additionally, the proposed revisions to item 3a in forms CR-160 and CR-161 do properly reflect the caselaw</p>	<p>The committee appreciates the comments.</p> <p>The committee agrees with the comment and will recommend removing the second clause from the form.</p> <p>The committee appreciates the comment.</p>

SPR24-16

Criminal Law: Firearm and Body Armor Prohibitions (Revise forms CR-101, CR-102, CR-160, CR-161, CR-162, CR-210)

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

	Commenter	Position	Comment	Committee Response
			<p>defining a “victim” for purposes of a postconviction protective order under section 136.2(i)(1) and preserve the trial court’s discretion to make appropriate orders.</p> <p>Overall, the changes made to the forms provide consistency and clarity to the various forms as to the Firearm and Body Armor Prohibitions. There will not be a significant fiscal impact in that the proposal will amend existing forms, not create new forms. Existing case management codes should be largely unaffected. A three month implementation date appears to be adequate for courts of all sizes.</p>	<p>The committee appreciates the comment.</p>

DRAFT

Deferred

Moved to August 13 agenda

Deferred

Moved to August 13 agenda

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: August 6, 2024

Rules Committee action requested [Choose from the drop-down menu below]:
Recommend JC approval (has circulated for comment)

Title of proposal: Trial Courts: Standard 2.2 Diversion Reporting

Proposed rules, forms, or standards (include amend/revise/adopt/approve):
 Amend Cal. Stds. Jud. Admin., standard 2.2

Committee or other entity submitting the proposal:
 Court Executives Advisory Committee

Staff contact (name, phone and e-mail): Paarth Malkan, 415-865-7588, paarth.malkan@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:

Annual agenda approved by Rules Committee on (date): Annual agenda approved by Executive and Planning Committee on December 12, 2023

Project description from annual agenda: CEAC Judicial Branch Statistical Information System Subcommittee: Implement a change to JBSIS data reporting related to standard 2.2(m) (renumbered as of January 1, 2024 from rule 2.2(n)), particularly as it relates to diversion proceedings.

Out of Cycle: *If requesting September 1 effective date or out of cycle, explain why:*

Additional Information for Rules Committee: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

Additional Information for JC Staff

- **Director Approval** (required for all invitations to comment and reports)
 This report or invitation to comment was
 - reviewed by EGG on (date) June 10, 2024
 - approved by Office Director (or Designee) (name) Leah Rose-Goodwin on (date) June 11, 2024

If either of above not checked, explain why:

Complete the following for all reports to be submitted to council (optional for ITCs):

- **Form Translations** (check all that apply)
 This proposal:
 - includes forms that have been translated.
 - includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: [Click or tap here to enter text.](#)
 - includes forms that staff will request be translated.
- **Form Descriptions** (for any report with new or revised forms)
 - The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is checked, the form descriptions should be approved by a supervisor before submitting this RAR.).

- **Self-Help Website** (check if applicable)
 - This proposal may require changes or additions to self-help web content.



Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 24-101

For business meeting on September 20, 2024

Title

Trial Courts: Standard 2.2 Diversion Reporting

Agenda Item Type

Action Required

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Stds. Jud. Admin., std. 2.2

Effective Date

January 1, 2025

Recommended by

Court Executives Advisory Committee
David H. Yamasaki, Chair
Judicial Branch Statistical Information System (JBSIS) Subcommittee
Jake Chatters, Chair

Date of Report

July 16, 2024

Contact

Paarth Malkan, 415-865-7588
paarth.malkan@jud.ca.gov

Executive Summary

The Court Executives Advisory Committee recommends amending standard 2.2 of the California Standards of Judicial Administration, which gives guidance to trial courts on the types of matters that remove a case from court control for purposes of calculating computation of time related to case disposition time goals. Standard 2.2(m)(2)(C) specifies that felony or misdemeanor cases in diversion programs under Penal Code section 1000 et seq. should be excluded from time computation, but the standard is unclear as to whether only drug diversion or all diversion programs under the Penal Code should be excluded. Revising the language in the standard is intended to increase clarity, ensure consistent data reporting, and support council goals related to operational efficiency and improved caseload management.

Recommendation

The Court Executives Advisory Committee recommends that the Judicial Council, effective January 1, 2025, amend standard 2.2(m)(2)(C) to ensure consistent data reporting across all cases in diversion programs.

The standard, with the proposed language change, appears at page 4 of this report.

Relevant Previous Council Action

Under the Trial Court Delay Reduction Act (Gov. Code, §§ 68603–68620), the Judicial Council established the Trial Court Case Disposition Time Goals with the intention of reducing the time from filing to disposition of civil and criminal cases. Effective January 1, 2004, the Judicial Council adopted standard 2.1(n), which lists in detail the matters that remove a case from a court’s control and excludes the period a case is removed from the court’s control from the case disposition time standards. Standard 2.1(n) is the predecessor to standard 2.2(m).¹

Analysis/Rationale

Standard 2.2 provides guidance on trial court case disposition time goals that are “intended to improve the administration of justice by encouraging prompt disposition of all matters coming before the courts.” (Cal. Stds. Jud. Admin., std. 2.2(b).) Adherence to the standard is based on the computation of time elapsed for case processing and is based on calculations of when cases enter, leave, or are restored to the court’s control. The definitions contained in standard 2.2 ensure that courts are reporting time data correctly and consistently. Standard 2.2(m) outlines the matters that remove a case from the court’s control, which affect the time calculations that are used in determining a court’s adherence to case disposition time goals.

Standard 2.2(m)(2)(C) specifies removal of a felony or misdemeanor case from the court’s control pending completion of “diversion under Penal Code section 1000 et seq.” However, the current language is unclear as to whether “section 1000 et seq.” encompasses just the drug diversion programs in sections 1000–1000.65 or all subsequent sections of the Penal Code that describe other nondrug diversion programs.

Over time, the number and types of diversion programs have increased. After discussion, the JBSIS Subcommittee agreed that standard 2.2(m)(2)(C) should be written to apply to *all* diversion programs, not just drug diversion programs. It, therefore, recommended that subparagraph (C) be amended to read: “Pendency of completion of any diversion program under part 2 of title 6 of the Penal Code (commencing with section 1000).” The Court Executives Advisory Committee concurred with the subcommittee’s analysis and recommends approval of the proposal as circulated for comment.

Policy Implications

Time to disposition is a nationally recognized metric of court caseload management and helps courts assess the length of time it takes to bring cases to disposition. Updating the language of

¹ In 2006, the Judicial Council adopted a proposal to revise and reorganize the rules of court. A global change was made to standard 2.1, Trial court case disposition time standards, to replace the word “standards” with “goals.” Also, as part of a broader reorganization of the Standards of Judicial Administration, standard 2.1(n) was renumbered as standard 2.2(n). Both changes became effective January 1, 2007. In 2023, standard 2.2(m) was repealed, and standard 2.2(n) was relettered as standard 2.2(m), effective January 1, 2024.

standard 2.2(m)(2)(C) will align the standard with its implied intent: to recognize that cases in a diversion status should not be included in measures of time elapsed. The updated standard will lead to more accurate information on the amount of time that felony and misdemeanor cases take to reach disposition.

Comments

This proposal was circulated for public comment between March 29 and May 3, 2024, as part of the regular spring invitation-to-comment cycle. Two trial courts and one county bar association agreed with the proposal. A chart with the full text of those comments is attached at page 5.

Alternatives Considered

The Court Executives Advisory Committee considered the implications of maintaining the current language of standard 2.2(m)(2)(C): “Pendency of completion of diversion under Penal Code section 1000 et seq.” Maintaining the current language could be read to mean that only drug-related diversion cases are eligible for removal from the court’s control and computation of time to disposition. The committee believed that the authors of the standard did not intend to treat drug diversion cases differently from how cases in other types of diversion programs are treated and that the standard should be applied uniformly to all types of diversion programs.

Fiscal and Operational Impacts

Amendment of the standard would have no major fiscal or operational impacts. If amended, courts would need to validate their data reporting to ensure that the change is implemented.

Attachments and Links

1. Cal. Stds. Jud. Admin., std. 2.2, at page 4
2. Chart of comments, at page 5

Standard 2.2 of the California Standards of Judicial Administration is amended, effective January 1, 2025, to read:

1 **Standard 2.2. Trial court case disposition time goals**

2

3 **(a)–(l) * * ***

4

5 **(m) Cases removed from court’s control excluded from computation of time**

6

7 If a case is removed the court’s control, the period of time until the case is restored to court
8 control should be excluded from the case disposition time goals. The matters that remove a
9 case from the court’s control for the purposes of this section include:

10

11 (1) * * *

12

13 (2) Felony or misdemeanor cases:

14

15 (A)–(B) * * *

16

17 (C) Pendency of completion of any diversion program under part 2 of title 6 of the
18 Penal Code (commencing with section 1000)~~et seq.~~;

19

20 (D)–(J) * * *

21

22 **(n) * * ***

SPR24-01

Trials Courts: Standard 2.2 Diversion Reporting (amend Cal. Stds. Jud. Admin., std. 2.2)

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

	Commenter	Position	Comment	Committee Response
1.	Superior Court of Los Angeles County by Bryan Borys, Director of Research and Data Management	A	The following comments are representative of the Superior Court of California, County of Los Angeles (Court), and do not represent or promote the viewpoint of any particular judicial officer or employee. The Court supports this proposal. It provides needed clarification, and it will allow trial courts to better assess the impact of the full range of diversion programs.	The committee thanks the commenter for this information.
2.	Superior Court of Orange County by Elizabeth Flores, Operations Analyst	A	The JBSIS Analyst has reviewed the proposal and has confirmed the proposal has minimal impact to our court. All of the drug diversions are currently programmed to remove the case from the court’s control. If calculation is to stop for non-drug diversions, the CMS logic would need to be amended to resume the case aging calculations until disposition. Does the proposal appropriately address the stated purpose? - Yes, the proposal appropriately addresses the stated purpose. What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? - We are currently in compliance and would likely not be affected by the proposal. If there is impact, the JBSIS analyst would work with our tech team to have the program logic amended. There would be no impact to staff. Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? - Yes, 3 to 6 months depending on Court Management System modifications.	The committee thanks the commenter for this information.
3.	Orange Court Bar Association by Christina Zabat-Fran, President	A	The proposed rule is appropriate and collecting the data is appropriate.	The committee thanks the commenter for this information.

Item withdrawn

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: 8/13/24

Rules Committee action requested [Choose from the drop-down menu below]:
Recommend JC approval (has circulated for comment)

Title of proposal: Traffic: Mandatory Reminder Notices—Traffic Procedures

Proposed rules, forms, or standards (include amend/revise/adopt/approve):
Amend Cal. Rules of Court, rule 4.107

Committee or other entity submitting the proposal:
Traffic Advisory Committee

Staff contact (name, phone and e-mail): Jamie Schechter, 415-865-5327, Jamie.Schechter@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:

Annual agenda approved by Rules Committee on (date): October 26, 2023

Project description from annual agenda: A stakeholder requested the Traffic Advisory Committee consider revision of Cal. Rules of Court, rule 4.107 to clarify whether reminder notices are required for all infractions or Vehicle Code infractions only, and if it is required for all infractions, clarification about the procedure for litigants who do not have an address on file with the Department of Motor Vehicles.

Out of Cycle: *If requesting September 1 effective date or out of cycle, explain why:*

Additional Information for Rules Committee: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

Additional Information for JC Staff

- **Director Approval** (required for all invitations to comment and reports)
This report or invitation to comment was
 reviewed by EGG on (date) 6/21/24
 approved by Office Director (or Designee) (name) Francine Byrne
on (date) 6/24/24

If either of above not checked, explain why:

Complete the following for all reports to be submitted to council (optional for ITCs):

- **Form Translations** (check all that apply)
This proposal:
 includes forms that have been translated.
 includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: [Click or tap here to enter text.](#)
 includes forms that staff will request be translated.
- **Form Descriptions** (for any report with new or revised forms)
 The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is checked, the form descriptions should be approved by a supervisor before submitting this RAR.)

- **Self-Help Website** (check if applicable)
 - This proposal may require changes or additions to self-help web content.



Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 24-XXX

For business meeting on September 20, 2024

Title

Traffic: Mandatory Reminder Notices—
Traffic Procedures

Agenda Item Type

Action Required

Effective Date

January 1, 2025

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rule 4.107

Date of Report

July 1, 2024

Recommended by

Traffic Advisory Committee
Hon. Maria Lucy Armendariz, Chair

Contact

Jamie Schechter, 415-865-5327
Jamie.Schechter@jud.ca.gov

Executive Summary

The Traffic Advisory Committee recommends amending a rule of court to clarify the procedures for sending infraction reminder notices. The committee also recommends adding an exception to the mandatory notice procedures when (1) the defendant does not have a valid physical mailing address or (2) the court does not have the necessary information (a litigant's email address or mobile number) or the technological capability to send a notice electronically. Additionally, the committee recommends amendments to the rule to improve readability and to comply with current law.

Recommendation

The Traffic Advisory Committee recommends that the Judicial Council, effective January 1, 2025, amend California Rules of Court, rule 4.107 to:

- Specify that the rule applies to all infractions, not just infractions under the Vehicle Code;
- Add an exception to the infraction reminder notice requirement when a defendant does not have a valid physical mailing address or when electronic notice is not feasible;
- Consolidate procedures in subdivision (b) of the rule.
- Change the civil assessment amount from \$300 to \$100; and

- Eliminate outdated consequences for failure to appear or pay.

The proposed amended rule is attached at pages 5–6.

Relevant Previous Council Action

In December 2016, the Judicial Council adopted California Rules of Court, rule 4.107, effective January 1, 2017. This rule was developed by the Traffic Advisory Committee and the Criminal Law Advisory Committee—in consultation with the Advisory Committee on Providing Access and Fairness—as part of a directive from the Judicial Council to provide new procedural rules for traffic and other criminal infraction cases in order to promote access to justice.¹

Analysis/Rationale

Rule 4.107 requires courts to send reminder notices, either by regular mail or electronically through email or text, that inform defendants how to resolve their traffic cases.² The rule also requires that the notice set forth the potential consequences for failure to appear or failure to pay the amount owed. The rule does not address how a court should proceed when a litigant has failed to provide a valid physical mailing address, which occurs most often with persons who are experiencing homelessness.

A stakeholder from a large court identified a workload issue with the rule’s reminder notice requirement when the court does not have a valid physical mailing address for the person cited. In response to this concern, the committee recommends adding a new paragraph (3) to subdivision (a) that relieves the court of sending a reminder notice if the defendant has not provided a valid mailing address or if the court does not have the necessary information or the technological capability to send the notice electronically.

In addition to the issue of mailing addresses, the committee noted that the current rule does not specify whether it applies to all infractions or only to Vehicle Code infractions.³ The title of the rule refers to “traffic procedures.” However, “traffic,” as used in this context, is a nonspecific term and can be interpreted to mean only Vehicle Code infractions, or more broadly, to mean all infractions. The committee understands that most courts have interpreted rule 4.107 to apply to

¹ See Judicial Council of Cal., Advisory Com. Rep., *Traffic and Criminal Procedure: Infraction Procedures Regarding Bail, Fines, Fees, and Assessments; Mandatory Courtesy Notices; and Ability-to-Pay Determinations* (Dec. 1, 2016), <https://jcc.legistar.com/View.ashx?M=F&ID=4817182&GUID=D0F79B3B-0A7E-40FC-9F2A-C79D7B4F9024>.

² Prior to this rule of court, most courts sent courtesy notices even in the absence of this requirement.

³ The original invitation to comment and Judicial Council report for the adoption of rule 4.107 refers to “traffic defendants” without further clarification. (See invitation to comment (SP16-08), p. 1, www.courts.ca.gov/documents/SP16-08.pdf; Judicial Council of Cal., Advisory Com. Rep., *Traffic and Criminal Procedure: Infraction Procedures Regarding Bail, Fines, Fees, and Assessments; Mandatory Courtesy Notices; and Ability-to-Pay Determinations* (Dec. 1, 2016), p. 2, <https://jcc.legistar.com/View.ashx?M=F&ID=4817182&GUID=D0F79B3B-0A7E-40FC-9F2A-C79D7B4F9024>.)

all infractions. The committee concluded that applying the rule to all infractions would ensure better access to justice.

Finally, the current rule contains references to the civil assessment amount⁴ and consequences for failing to appear or pay⁵ that are no longer accurate. As a result of recent statutory changes, the committee recommends revising the maximum civil assessment amount as well as removing references to driver's license suspensions.

Policy implications

This proposal furthers the council's policy of ensuring access to justice for all litigants by ensuring litigants receive a reminder notice for all infractions, if possible. This proposal also addresses a workload concern in some courts surrounding a rule of court obligation to send a reminder notice when the court lacks the ability to send one.

Comments

The proposal circulated for public comment between April 2 and May 3, 2024. The proposal received five comments. Three agreed with the proposal, one agreed with the proposal if modified, and one did not indicate a position. A chart of the full text of the comments and the committee's responses is attached at pages 7–11.

One commenter expressed concern that an exception to the notice requirement could adversely impact the “[c]onstitutional rights of the homeless population.” This commenter reasoned that if a citation is not filed in the court's system by the appear-by or respond-by date listed on the citation, the court would use the reminder notice to identify a new date and that a defendant can be subject to a trial in absentia or have the citation sent to collections if they fail to act by the new date listed in the reminder notice.

The committee is not providing an opinion about whether, when a citation is filed after the appear-by or respond-by date, a reminder notice amounts to sufficient notice to a litigant as a matter of law. However, the committee notes that only Vehicle Code violations are eligible for trials in absentia and, in general, citations based on Vehicle Code violations would likely reflect a mailing address associated with the vehicle's registration or a driver's license. The committee believes the problem presented by citations without addresses occurs more often with non-Vehicle Code infractions, predominantly for persons experiencing homelessness, where the address section merely states “transient.” Indeed, the stakeholder who raised the workload concern about invalid or nonexistent mailing addresses advised that the problem regarding undeliverable reminder notices is generally, although not always, related to non-Vehicle Code infractions. As a practical matter, if there is no valid mailing address, and electronic notice is not feasible, there is no possible way to send notice to the litigant about a new court date.

⁴ Assem. Bill 199 (Stats. 2022, ch. 57).

⁵ Assem. Bill 2746 (Stats. 2022, ch. 800).

The Superior Court of Orange County, Family Law and Juvenile Divisions, questioned, “Does ‘valid mailing address’ ... include situations where the defendant’s address is unknown at the time the citation was being issued (e.g., transient), or is the intention only for circumstances where the court’s courtesy notice was mailed out and returned as undeliverable?” As stated above, the recommended amendment is intended to relieve courts of mailing a reminder notice when specified circumstances are present. That would include situations in which a citation lists “transient” in the address section and the litigant has not provided an address. Presumably if a reminder notice were returned as undeliverable, the court would have already mailed a reminder notice and would not need to rely on the proposed exception.

Based on the comments received, the committee did not recommend any changes to the proposal. Instead, the committee will consider amendments in the future if implementation concerns arise.

Alternatives considered

The committee considered taking no action to clarify the rule’s application or to add an exception. The committee believes that most courts already apply this rule to all infractions and smaller courts may not experience a large impact on court operations from undeliverable reminder notices. However, the committee recognized that clarifying the rule’s application would be helpful and, further, that different courts, especially larger ones, may experience a significant impact on operations from undeliverable reminder notices.

Fiscal and Operational Impacts

The proposal would impose the usual costs for courts to train staff and update their internal procedures. In particular, courts that have interpreted rule 4.107 to apply only to Vehicle Code infractions will need to change their operations to send reminder notices for all infractions. The Superior Court of Orange County addressed implementation issues, stating that while three months would not be an issue for their court, it could be insufficient for some courts. However, no comments were received from courts stating that three months would be insufficient in their court and no courts cited actual operational concerns in their courts. Additionally, relieving courts of the obligation to send undeliverable reminder notices should reduce costs.

Attachments and Links

1. Cal. Rules of Court, rule 4.107, at pages 5–6
2. Chart of comments, at pages 7–11
3. Link A: Assem. Bill 199 (Stats. 2022, ch. 57),
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB199
4. Link B: Assem. Bill 2746 (Stats. 2022, ch. 800),
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2746

Rule 4.107 of the California Rules of Court is amended, effective January 1, 2025, to read:

1 **Rule 4.107. Mandatory reminder notice—traffic procedures**

2
3 **(a) Mandatory reminder notice for infractions**

- 4
5 (1) Each court must send a reminder notice to the address shown on the *Notice to*
6 *Appear*, ~~unless the defendant otherwise notifies the court of a different~~
7 ~~address~~ or an alternate address of which the defendant notifies the court.
8
9 (2) The court may satisfy the requirement in ~~paragraph~~ (1) by sending the notice
10 electronically, including by ~~e-mail~~ email or text message, to the defendant.
11 By providing an electronic address or number to the court or to a law
12 enforcement officer at the time of signing the promise to appear, a defendant
13 consents to receiving the reminder notice electronically at that electronic
14 address or number.
15
16 (3) If the court cannot comply with (1) because the defendant does not have a
17 valid mailing address or with (2) because the court does not have the
18 necessary information or the technological capability to send reminder
19 notices electronically, the court need not send a reminder notice.
20
21 (4) The failure to receive a reminder notice does not relieve the defendant of the
22 obligation to appear by the date stated in the *Notice to Appear*.

23
24 **(b) Minimum information in reminder notice**

25
26 In addition to information obtained from the *Notice to Appear*, the reminder notice
27 must contain at least the following information:

- 28
29 (1) An appearance date and location;
30
31 (2) Whether a court appearance is mandatory or optional;
32
33 (3) The total bail amount and payment options, including procedures for
34 requesting installment plans, community service, and an ability-to-pay
35 determination;
36
37 (4) The notice about traffic school required under Vehicle Code section 42007, if
38 applicable;
39
40 (5) Notice that a traffic violator school will charge a fee in addition to the
41 administrative fee charged by the court;
42

Rule 4.107 of the California Rules of Court is amended, effective January 1, 2025, to read:

- 1 (6) The potential consequences for failure to appear or pay, including a driver's
2 license ~~hold or suspension~~, a civil assessment of up to \$300 \$100, a new
3 charge for failure to appear, a warrant of arrest, or some combination of these
4 consequences, if applicable;
5
- 6 ~~(7) The potential consequences for failure to pay a fine, including a driver's~~
7 ~~license hold or suspension, a civil assessment of up to \$300, a new charge for~~
8 ~~failure to pay a fine, a warrant of arrest, or some combination of these~~
9 ~~consequences, if applicable;~~
10
- 11 ~~(8) The right to request an ability to pay determination;~~
12
- 13 ~~(9) Notice of the option to pay bail through community service (if available) and~~
14 ~~installment plans (if available);~~
15
- 16 ~~(10)~~(7) Contact information for the court, including the court's website;
17
- 18 ~~(11)~~(8) Information regarding trial by declaration, informal trial (if available),
19 and telephone or website scheduling options (if available); and
20
- 21 ~~(12)~~(9) Correction requirements and procedures for correctable violations.
22
23

SPR24-33

Traffic: Mandatory Reminder Notices—Traffic Procedures (Amend Cal. Rules of Court, rule 4.107)

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

	Commenter	Position	Comment	Committee Response
1.	Hon. Janine Highiet, Commissioner Superior Court of Stanislaus County	AM	<p>VC 40501 requires law enforcement to identify a respond-by date at least 21 days after the date of the alleged infraction. The backside of the Notice to Appear states the citation may take up to 14 days to show up in the court system. Rule 4.107(a)(4) states that a failure to receive a reminder notice does not relieve the defendant of the obligation to appear by the date stated in the Notice to Appear. Rule 4.210(b)(2) and (3) state a written request for trial by declaration must be received by the clerk’s “by the appearance date indicated on the Notice to Appear.” And Rule 4.106 identifies consequences for failing to appear or pay on “infraction offenses for which the defendant has received a notice to appear.”</p> <p>Some courts are backed up in processing otherwise timely-filed Notices to Appear. By the time the court can process the Notice to Appear, the appear-by or respond-by date has already passed. The current practice is to use the reminder notice to identify a new appear-by or respond-by date selected by the clerk’s office and mail the reminder notice to the defendant’s last known address. When the defendant fails to appear by the new appear-by or respond-by date identified in the reminder notice, the defendant may be subject to a trial by declaration in absentia or sent to collections for failing to appear/respond.</p> <p>The proposed changes state no reminder notice need be sent by the court if there is no valid</p>	<p>The committee appreciates this feedback. The committee is not commenting on whether reminder notices supply sufficient notice in all instances when courts have missed filing citations by the notice to appear date. The committee notes that only Vehicle Code violations are eligible for trials in absentia. In general, on citations for Vehicle Code violations, there is a valid mailing address provided because a defendant has a driver’s license or a car that is registered. The committee believes non-Vehicle Code infractions are far more likely to not have an address provided.</p> <p>The rule is intended to clarify if there is no known valid mailing address for the defendant and if sending a reminder notice electronically is not possible, either because the court does not have the necessary information or the court does not possess the technological ability to send one, the court need not send a reminder notice in those circumstances. As a practical matter, if there is no valid mailing address, there is no possible way to mail the litigant/defendant a reminder notice with a new court date. The committee declines to make any changes to the proposal at this time, but may consider changes in the future.</p>

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

SPR24-33

Traffic: Mandatory Reminder Notices—Traffic Procedures (Amend Cal. Rules of Court, rule 4.107)

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

	Commenter	Position	Comment	Committee Response
			<p>physical or email address for the defendant. (Those defendants were notified of the original appearance/response due date because they were physically handed the Notice to Appear.) Without any requirement to send out a Reminder Notice on cases processed by the court after the initial appearance date has passed, due process (notice) violations could subject defendants to consequences for failing to appear (trial by declaration in absentia or sent to collections) by the new reminder notice date even though they were unaware the case was ever ultimately filed. This may create a greater impact on the Constitutional rights of the homeless population.</p>	
2.	Orange County Bar Association by Christina Zabat-Fran, President	A	The proposal appropriately addresses the stated purpose.	The committee appreciates this feedback.
3.	Superior Court of Orange County by Elizabeth Flores, Operations Analyst	A	<p>Position on Proposal: This proposal will not have an impact on our court as we are already in compliance with the suggested changes.</p> <p>Does the proposal appropriately address the stated purpose? Yes, the proposal appropriately addresses the stated purpose.</p> <p>Would the proposal provide cost savings? If so, please quantify. No</p> <p>What would the implementation requirements be for courts—for example, training staff</p>	<p>The committee appreciates this feedback.</p> <p>The committee appreciates this feedback.</p> <p>The committee appreciates this feedback.</p>

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

SPR24-33

Traffic: Mandatory Reminder Notices—Traffic Procedures (Amend Cal. Rules of Court, rule 4.107)

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

	Commenter	Position	Comment	Committee Response
			<p>(please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? OCSC will not have to implement any changes to our courtesy notices as they are currently in compliance with the proposed new language of CRC 4.107.</p> <p>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? For courts that will need to draft new or modify their courtesy notices, three months is insufficient time. Recommend six months for all courts.</p> <p>How well would this proposal work in courts of different sizes? The proposal will go into effect next year. Depending on the court location, necessary adjustments may range from minor to major, or none at all, contingent upon their existing procedures.</p>	<p>The committee appreciates this feedback.</p> <p>The committee understands based on this comment theoretically three months could be insufficient for some courts. However, no comments were received from affected courts requesting more time.</p> <p>The committee appreciates this feedback.</p>
4.	Superior Court of Orange County, Family Law and Juvenile Divisions by Katie Tobias, Operations Analyst	NI	Does “valid mailing address” within CRC 4.107(a)(3) include situations where the defendant’s address is unknown at the time the citation was being issued (e.g., transient), or is the intention only for circumstances where the court’s courtesy notice was mailed out and returned as undeliverable?	The committee appreciates this feedback. The rule is intended to clarify if there is no known valid mailing address for the defendant and if sending a reminder notice electronically is not possible, either because the court does not have the necessary information or the court does not possess the technological ability to send one, the

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

SPR24-33

Traffic: Mandatory Reminder Notices—Traffic Procedures (Amend Cal. Rules of Court, rule 4.107)

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

	Commenter	Position	Comment	Committee Response
			<p>Does the proposal appropriately address the stated purpose? Yes, the proposal appropriately addresses the stated purpose.</p> <p>Would the proposal provide cost savings? If so, please quantify. No, the proposal does not appear to provide any cost savings.</p> <p>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? Implementation would require revising procedures, providing communication to judicial officers and staff, conducting staff training, and updating the case management system.</p>	<p>court need not send a reminder notice in those circumstances. That could apply if a person is experiencing homelessness and no mailing address is provided in the address section on the citation and the litigant has not provided any mailing address. Presumably if a reminder notice was already mailed and returned as undeliverable, this part of the rule would not apply, as the reminder notice was already mailed.</p> <p>The committee appreciates this feedback.</p> <p>The committee appreciates this feedback.</p> <p>The committee appreciates this feedback.</p>

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

SPR24-33**Traffic: Mandatory Reminder Notices—Traffic Procedures** (Amend Cal. Rules of Court, rule 4.107)

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

	Commenter	Position	Comment	Committee Response
			<p>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes, three months would provide sufficient time for implementation in Orange County.</p> <p>How well would this proposal work in courts of different sizes? Our court is a large court, and this could work for Orange County.</p>	<p>The committee appreciates this feedback.</p> <p>The committee appreciates this feedback.</p>
5.	Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) by TCPJAC/CEAC Joint Rules Subcommittee (JRS)	A	The JRS notes that the proposal is required to conform to a change of law.	The committee appreciates this feedback.

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

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: 8/13/24

Rules Committee action requested [Choose from the drop-down menu below]:
Recommend JC approval (has circulated for comment)

Title of proposal: Traffic: Instructions for Notice to Appear and Related Forms

Proposed rules, forms, or standards (include amend/revise/adopt/approve):
 Revise form TR-INST

Committee or other entity submitting the proposal:
 Traffic Advisory Committee

Staff contact (name, phone and e-mail): Jamie Schechter, 415-865-5327, Jamie.Schechter@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:

Annual agenda approved by Rules Committee on (date): October 26, 2023

Project description from annual agenda: Traffic citation forms, including form TR-130 (commonly known as a "ticket") fall within the purview of the Traffic Advisory Committee. A revised form TR-130 was adopted by the council on September 19, 2023. The Traffic Advisory Committee expects to make conforming changes to the remaining citation forms based on the new form TR-130.

Out of Cycle: *If requesting September 1 effective date or out of cycle, explain why:*

Additional Information for Rules Committee: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

As noted in the Report to the Judicial Council's Alternatives considered section and as implied by the committee's annual agenda, the proposal began as a bigger project to potentially revise forms TR-INST, TR-100, TR-106, TR-108, TR-115, TR-120, TR-140. The committee focused on TR-INST instead of proposing changes to the other forms.

Additional Information for JC Staff

- **Director Approval** (required for all invitations to comment and reports)

This report or invitation to comment was

reviewed by EGG on (date) 6/21/24

approved by Office Director (or Designee) (name) Francine Byrne
 on (date) 6/14/24

If either of above not checked, explain why:

Complete the following for all reports to be submitted to council (optional for ITCs):

- **Form Translations** (check all that apply)

This proposal:

includes forms that have been translated.

includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: [Click or tap here to enter text.](#)

includes forms that staff will request be translated.

- **Form Descriptions** (for any report with new or revised forms)

The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is

(05/20/24)

checked, the form descriptions should be approved by a supervisor before submitting this RAR.).

- **Self-Help Website** (check if applicable)
 - This proposal may require changes or additions to self-help web content.



Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

Item No.:

For business meeting on September 20, 2024

Title

Traffic: Instructions for Notice to Appear and Related Forms

Agenda Item Type

Action Required

Rules, Forms, Standards, or Statutes Affected

Revise form TR-INST

Effective Date

January 1, 2025

Recommended by

Traffic Advisory Committee
Hon. Maria Lucy Armendariz, Chair

Date of Report

July 2, 2024

Contact

Jamie Schechter, 415-865-5327
Jamie.Schechter@jud.ca.gov

Executive Summary

The Traffic Advisory Committee recommends revising the manual of instructions for the notice to appear and related forms (form TR-INST) to improve clarity and consistency. The revisions include technical amendments and corrections and respond to suggestions from forms users.

Recommendation

The Traffic Advisory Committee recommends that the Judicial Council, effective January 1, 2025, revise *Notice to Appear and Related Forms* (form TR-INST) to:

1. Clarify in section 1.010 that the defendant must respond to the citation (as opposed to answer allegations);
2. Remove the word “paper” in section 2.010 to allow for electronic service. Although electronic service is not yet an option, the proposal removes the word “paper” in this section so that form TR-INST is not inadvertently inconsistent with electronic service in the future;
3. Add information in section 4.050 about the “Tab Area” allowing for perforation at the top or bottom of the citation;

4. Clarify in section 6.040 how officers should complete the top of form TR-130 and, specifically, the circumstances under which a particular box should be checked; and
5. Make other minor technical changes to improve clarity and consistency.

The proposed revised form is attached at pages 4–40.

Relevant Previous Council Action

In 2023, the Judicial Council revised form TR-130 (commonly known as a “citation” or “notice to appear”) with an effective date of January 1, 2024.¹ This revision was an extensive redesign and the culmination of a two-year project of the Traffic Advisory Committee. In addition to form TR-130, the Judicial Council also revised *Notice to Correct Violation* (form TR-140) to reflect statutory changes and form TR-INST to conform with the changes to forms TR-130, effective January 1, 2024.

Analysis/Rationale

Form TR-INST provides a manual of instructions for the notice to appear and related forms that include forms TR-100, TR-106, TR-108, TR-115, TR-120, TR-130, and TR-140. Although form TR-INST was updated in 2023, additional technical and clarifying changes would help with implementation of the redesigned form TR-130.

The following is a summary of stakeholder feedback regarding form TR-130 and the corresponding instructions in form TR-INST:

- Electronic citation vendors have expressed interest in expanding electronic service options to litigants in the future. However, form TR-INST currently states that the officer issues a “paper” citation to the litigant;
- Several stakeholders identified concerns with the “Tab Area” on form TR-130 and requested clarification as to whether that area could appear on the top or bottom of the citation; and
- Some law enforcement agencies inquired how officers should fill out the top of form TR-130, including which box to check.

The committee recommends clarifying revisions and technical corrections to form TR-INST in response to the feedback from stakeholders and for improved clarity.

¹ Form TR-130 is statutorily mandated by Vehicle Code section 40500. This statute requires the Judicial Council to prescribe the notice to appear used when a person is arrested for misdemeanor or infraction violations of the Vehicle Code. (Veh. Code, § 40500(b).) When a notice to appear issued on a Judicial Council form is verified by the issuing officer, it constitutes a complaint in a criminal case. (Pen. Code, § 853.9; Veh. Code, § 40513(b).) Penal Code section 959.1(d) permits a court to receive and file an electronic notice to appear form approved by the Judicial Council. Each law enforcement agency prints its own citations or uses an e-citation platform.

Policy implications

The committee has not identified any policy implications with the proposed revisions. The proposed revisions are recommended to address concerns with the current version of the form.

Comments

The proposal circulated for public comment between April 2 to May 3, 2024. The proposal received three comments. All three commenters agreed with the proposal and did not request any changes. The chart of comments and committee responses is attached at pages 41–42.

Alternatives considered

The committee considered a larger proposal of clarifying revisions to all notice to appear and related forms appearing in form TR-INST, potentially combining or revoking some of the forms. Although some of the forms are older and could potentially be improved or combined, the committee has not received complaints or suggestions from stakeholders about them. Additionally, because the citation forms are primarily for law enforcement purposes rather than courts, any revisions to the forms can be burdensome on multiple county and state agencies and would require extensive outreach to these agencies. As a result, the committee decided to focus on making clarifying revisions to form TR-INST.

Fiscal and Operational Impacts

The committee does not believe there will be any operational or fiscal impacts caused by these revisions.

Attachments and Links

1. Form TR-INST, at pages 4–40
2. Chart of comments, at pages 41–42

**NOTICE TO APPEAR AND RELATED FORMS
(Form TR-INST)**

Revised Effective January 1, **2024 2025**



JUDICIAL COUNCIL of CALIFORNIA

455 Golden Gate Avenue
San Francisco, California 94102-3688

ACKNOWLEDGMENTS

The Judicial Council gratefully acknowledges the contributions and cooperation of those representatives from the judicial community, law enforcement agencies, and special interest groups who made this manual possible.

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Chapter 1 PURPOSE OF FORMS

1.000. Definitions

For the purposes of these instructions the following words are synonymous: (a) Notice to Appear, citation; (b) violation, offense, allegation, charges; (c) defendant, violator, person, individual, citee, driver; (d) court, court of jurisdiction; (e) officer, arresting officer, citing officer, issuing officer.

1.010. In General

Notice to Appear forms are designed to meet statutory requirements and, to the extent possible, address the procedural requirements of local courts and law enforcement agencies. **Notices to Appear** **Notice to Appear forms** should **also** provide the defendant with pertinent information regarding the charges and what steps the defendant must take to **answer the allegations respond.**

The uniform language and data fields assist law enforcement and the courts in the timely and accurate processing of the citation information. The design also ensures statewide conformity of advisements important to the defendant and that those advisements are clear and explicit.

1.020. Notice to Appear

- (a) Whenever a person is arrested for any violation declared to be an infraction or misdemeanor, or for a violation of any city or county ordinance, and the person is not immediately taken before a magistrate, the arresting officer must prepare a Notice to Appear form.¹
- (b) When the Notice to Appear is prepared on a form approved by the Judicial Council it constitutes a complaint to which the defendant may enter a plea.²

1.030. Continuation Form

- (a) The *Continuation of Notice to Appear* or *Continuation of Citation* form must be used when multiple offenses are charged and the Notice to Appear form does not provide sufficient space for the listing of all the charges. A *Continuation of Citation* is a multipurpose form intended for use with either a Notice to Appear form or a Notice to Correct Violation form.
- (b) A second Notice to Appear must not be issued in lieu of a continuation form.
- (c) The Notice to Appear and the corresponding continuation form must be treated as one law enforcement document and contain the same citation number.

¹ Veh. Code, § 40500(a); Pen. Code, § 853.6.

² Veh. Code, § 40513(b); Pen. Code, § 853.9.

1.040. Electronic Notice to Appear

- (a) An electronic Notice to Appear issued on form TR-130, *Traffic/Nontraffic Notice to Appear*, eliminates those citation-processing problems caused by the illegibility of handwritten information. The use of an electronic Notice to Appear also reduces the amount of information that must be entered into law enforcement and court computer systems.
- (b) A court is authorized to receive and file a Notice to Appear in an electronic form if all of the following conditions are met:³
 - (1) The information is on a form approved by the Judicial Council.
 - (2) The Notice to Appear is transmitted to the court by a law enforcement agency.
 - (3) The court has the facility to electronically store the information for the statutory period of record retention.
 - (4) The court has the ability to reproduce the Notice to Appear in physical form upon the demand and payment of the reproduction costs.
- (c) Any Notice to Appear prepared electronically must include all mandatory data fields and notices to the defendant that are on form TR-130. The formatting and spacing may vary depending on the software used to prepare the citation.

1.041. Notice to Correct Violation

Unless certain disqualifying conditions exist, a law enforcement officer who chooses to take action on certain registration, license, or equipment violations of the Vehicle Code must issue a Notice to Appear that specifies that the offense is correctable or a Notice to Correct Violation. (Veh. Code, §§ 40610, 40522, 40303.5.) If an agency does not receive proof of correction on a Notice to Correct, the agency can deliver to the court the signed promise with a certification that no proof of correction was received. (*Id.*, § 40618.) The Judicial Council adopted form TR-140, *Notice to Correct Violation*, in 2000. (See Appendix G.)

1.050. Notice of Correction and Proof of Service

Form TR-100, *Notice of Correction and Proof of Service*, must be used for any corrections to the original Notice to Appear citation.⁴ (See Appendix A.)

³ Pen. Code, § 959.1.

⁴ Veh. Code, § 40505.

Chapter 2 AUTHORITY TO PRESCRIBE FORMAT

2.010. Judicial Council

- (a) The Judicial Council has three forms for the Notice to Appear:
- (1) Form TR-115, *Automated Traffic Enforcement System Notice to Appear*,⁵ to be used in conjunction with violations of **Vehicle Code** sections 22451, 21453, and 22101 recorded by an automated traffic enforcement system. (See Appendix D.)
 - (2) Form TR-120, *Nontraffic Notice to Appear*,⁶ to be used for violations other than traffic offenses. (See Appendix E.)
 - (3) Form TR-130, *Traffic/Nontraffic Notice to Appear*,⁷ to be used for both infraction and misdemeanor offenses. If form TR-130 is prepared and submitted electronically, a computer-generated **paper** citation is issued to the defendant at the time of arrest and a copy is filed with the court either electronically when permitted or as a paper copy. (See Appendix F.)
- (b) Form TR-106, *Continuation of Notice to Appear*, and form TR-108, *Continuation of Citation*, are intended for use in conjunction with form TR-120, *Nontraffic Notice to Appear*, and form TR-130, *Traffic/Nontraffic Notice to Appear*. (See Appendix B and Appendix C.)
- (c) The Judicial Council has not adopted a form for, nor established guidelines governing, the following: (1) parking citations, (2) arrest/booking reports, and (3) court bail courtesy notices.

Chapter 3 REVISION DATES

3.010. Judicial Council

- (a) Periodically, the Judicial Council will revise Notice to Appear forms. Law enforcement must use the revised Notice to Appear form by the effective date of the revised form if it is to serve as a complaint. (See section 6.030 for exception.) Depending on changes in statutory requirements, effective dates are established to allow law enforcement as much time as possible to deplete any existing supplies of the old form, print and disseminate new forms, and, if necessary, develop new procedures and train personnel regarding the revisions.

⁵ *Id.*, § 40518.

⁶ Pen. Code, § 853.9.

⁷ Veh. Code, §§ 40500(b), 40513(b), 40522; Pen. Code, § 853.9.

-
- (b) The council revised forms TR-130 and TR-140, effective January 1, 2024, and forms TR-115 and TR-120, effective June 26, 2015. Forms TR-100, TR-106, and TR-108 have an effective date of January 1, 2004.

Chapter 4 FORM SPECIFICATIONS

4.010. Required Copies

The arresting officer must prepare the Notice to Appear form, at a minimum, in triplicate with a copy delivered to the court and the issuing agency for Vehicle Code violations⁸ and in duplicate for all other violations.⁹ The copy of the citation issued to the arrested person must include all of the information on the copy of the citation filed with the court, including any signature for the defendant's promise to appear or respond.¹⁰ Before printing or programming Notice to Appear forms, law enforcement agencies should contact their local court to determine if there are any local requirements for the court's case management system.

4.020. Size and Color

The size and color of Notice to Appear copies for printed forms TR-106, TR-108, TR-120, TR-130, and TR-140 should conform with the requirements of the courts in which they are filed. Printed copies of forms completed electronically should comply as closely as possible with these specifications but may vary depending on the courts' or law enforcement agency's technological capabilities. The Judicial Council recommends the following minimum size and other form specifications:

- (a) A "trim" size of 4-1/4 inches wide and 7-1/2 inches long; 5/8-inch tabs on the top or bottom of the form.
- (b) Original (Court's copy), white, 15-pound paper stock. Print head-to-head.
- (c) Duplicate (Police agency's copy), pink, 15-pound paper stock. No printing on reverse.
- (d) Triplicate (Officer's copy), green, 15-pound paper stock. Print reverse head-to-head.
- (e) Quadruplicate (Defendant's copy), yellow, 20-pound paper stock. Print reverse head-to-head.
- (f) The colors of the "Court's copy" and "Police agency's copy" correspond with rule 1:3-1 of the Model Rules Governing Procedure in Traffic Cases adopted by the National Conference of Commissioners on Uniform State Laws.

⁸ Veh. Code, §§ 40500(a), 40506.

⁹ Pen. Code, § 853.6.

¹⁰ Veh. Code, § 40505.

4.030. Paper Stock

Paper stock for handwritten citations must be pressure sensitive and have a shelf life of at least five years. The citation text must be reproducible on photocopy equipment.

4.040. Serial Numbers

- (a) The serial numbers of the form sets must be sequential. There must be no “duplication” of numbers between form sets.
- (b) The format of the serial numbers is at the discretion of local law enforcement with the approval of the court.

4.050. Printing Format

- (a) A vertical format is required, except for the Proof of Service on form TR-100, which is printed horizontally to facilitate mailing.
- (b) All text on the forms must be printed in black ink, except the warning at the top of form TR-130, which should be printed in white ink. All text on citation forms TR-115 and TR-120 must have a minimum font size of 6.0 points. All text on form TR-130 must have a minimum font size of 5.0 points. Serial numbers may be printed in red ink. The box for the defendant’s signature and the box for the warning may be printed in red ink. Form TR-130 may include gray shading around the appearance and response information, the citation details section, and each section on the back of the citation to improve readability. The “Tab Area” on form TR-130 may appear on the top or bottom of the form. It is meant to represent space for perforation of forms in a citation book.

4.060. Printing Expenses

The printing of the forms and the associated costs are not the responsibility of the Judicial Council; printing is to be arranged in accordance with local custom.

Chapter 5 VARIATIONS OF MANDATORY LANGUAGE/DATA FIELDS

5.000. In General

Mandatory language and data fields are indicated by unshaded areas on examples of Judicial Council forms; see section 5.010 for exceptions. On form TR-130, yellow shading indicates fields that can be customized.

5.010. Permitted Variations

- (a) To meet the unique customs and/or needs of local law enforcement agencies and courts, the Judicial Council form permits limited variations in specified data fields. To indicate that variations may be permitted, these data fields are identified by shaded areas. On form TR-130, this shading is yellow. Shading should not appear on printed forms.
- (b) The California Highway Patrol is permitted to alter the format and location of the fields for the name of the court, court address, and phone number and to add a field for the location of a CHP Inspection Facility on the face of a form TR-130, *Traffic/Nontraffic Notice to Appear*, for their form CHP-215X.
- (c) Formatting for the bracketed information that is required in the “Where” field on **Notice to Appear** forms may be modified to include information for multiple court locations. On form TR-130, formatting for the information in the yellow box containing the court addresses may be modified as necessary to include the desired number of court locations.

Chapter 6 MANDATORY LANGUAGE/DATA FIELDS

6.000. In General

The mandatory language and data fields vary between the various Notice to Appear forms depending on the purpose of the form. All language and data fields in unshaded (or nonyellow, for form TR-130) areas on the forms are mandatory, even if not discussed below. Mandatory text or data fields of the forms may not be reworded or omitted, except for references to statutory authorities, which may be abbreviated differently. Citations prepared electronically may abbreviate terms to facilitate printing of forms.

Law enforcement agencies should be aware that if a written Notice to Appear is not prepared on an approved **Judicial Council** form, a court may conclude that it does not constitute a complaint to which a defendant may enter a plea. (Veh. Code, § 40513(b).) If a defendant pleads other than “guilty” or “nolo contendere” and the court concludes that the Notice to Appear is defective, it could be necessary to refile the charges by a formal complaint. (Veh. Code, § 40513(a).)

6.010. Agency Name

The name of the citing agency and jurisdiction must appear near the top of the form.

6.020. Title of Form

The title of the form must be printed near the top of the form, or in the bottom corner, for form TR-130.

6.030. Serial Number

- (a) A sequential serial number for each multipart set of Notice to Appear forms must appear horizontally near the top right corner of each form.
- (b) To facilitate the filing systems of some courts, statewide law enforcement agencies must also print the serial number in the lower right margin of the court's copy. Statewide law enforcement agencies must comply with this requirement as specified in section 3.010. Local law enforcement agencies must comply with the requirement for the duplication of the serial number in the right margin within one calendar year of a request from a local court.
- (c) The serial number may be preprinted on the Notice to Appear.
- (d) The serial number on continuation form TR-106 or TR-108 must be the same as that on the corresponding Notice to Appear; the duplication of the serial number in the right margin is not required.
- (e) Bar coding of the serial number permits those courts with bar code readers to improve the timeliness and accuracy of processing Notice to Appear forms. Within the following parameters, the bar coding of the serial number must be placed on the face of the court's copy of the Notice to Appear form:
 - (1) The bar code must appear as near as ~~practical~~ **practicable** to the bottom of the form and ~~is the in~~ **the in** USS Code 39 barcode data format.
 - (2) The bar code should have a 1/4-inch area (quiet zone) that is clear and free of all printing preceding the start character and the following stop character.
 - (3) Statewide law enforcement agencies must comply with the bar code requirement as specified in section 3.010.
 - (4) Local law enforcement agencies must comply with the bar code requirement within one calendar year of a request from a local court.

6.040. ~~Misdemeanor Check Box~~ **Identifying the Type of Violation**

To facilitate processing, the citing officer must check ~~“Respond to Citation before”~~ **one of the three options** on form TR-130:

“Appear in Court” if one of the offenses charged is a misdemeanor or an infraction requiring an appearance. The citing officer must provide a time and date to appear when checking this box.

“Respond to Citation Before” if the offense charged is an infraction that does not require an appearance. The citing officer must provide only a date by which to respond when checking this box.

“To Be Notified” if the person being cited will be notified at a later date. The formatting of the “To Be Notified” box may be adjusted.

The citing officer must check ~~or~~ the Misdemeanor box at the top of the other Notices to Appear form TR-106, TR-108, or TR-120 if one of the offenses charged is a misdemeanor. The misdemeanor check box does not appear on the *Automated Traffic Enforcement System* notice, form, TR-115.

6.050. Date and Time

- (a) The date and time of the issuance of the Notice to Appear must be indicated near the top of the form.
- (b) The “Date of Violation” data field must be Mo./Day/Yr.
- (c) A check box “A.M./P.M.” format is provided as an optional field to indicate the time. Indicating the time in the form of “A.M./P.M.” is more easily understood by most defendants than the use of the 24-hour clock (military time).

6.060. Defendant’s Name

- (a) The defendant’s name is required on the Notice to Appear.¹¹
- (b) The sequence of the defendant’s name must be First/Middle/Last. This sequence corresponds with the California Driver License/Identification Card.

6.070. Defendant’s Address

- (a) The defendant’s current address must be indicated on the Notice to Appear.¹²
- (b) The address must be the defendant’s mailing address. The mailing address allows the court to mail a courtesy notice and/or other correspondence to the defendant.
- (c) A street address may also be indicated in addition to the mailing address.

6.071. Defendant’s Class and Category of Driver’s License

- (a) The defendant’s class of driver’s license may be specified on the Notice to Appear.
- (b) Notice to Appear forms TR-115 and TR-130 must specify whether the defendant’s driver’s license is a commercial driver’s license.

¹¹ Veh. Code, §§ 40500(a), 40518(b); Pen. Code, § 853.6.

¹² Veh. Code, §§ 40500(a), 40518(b); Pen. Code, § 853.6.

6.080. Defendant's Birth Date

- (a) The defendant's birth date is required on the Notice to Appear. The sequence of the birth date must be Mo./Day/Yr.
- (b) The birth date data field is designed to accept a numerical entry.

6.090. Defendant's Physical Description

- (a) The defendant's sex, **color of** hair, color of eyes, height, and weight are required on the Notice to Appear. See section 6.091 for the policy regarding the defendant's race/ethnicity.
- (b) Data fields for the recording of the defendant's physical description are designed to accept the standard abbreviations of physical descriptors.

6.091. Defendant's Race/Ethnicity

- (a) A specific data field for the defendant's race or ethnicity must be added to the Notice to Appear form. The data field should be located on the same line as other physical descriptors.
- (b) If the defendant's race or ethnicity is to be indicated, the Judicial Council recommends the use of a single alpha character. Reference: California Department of Justice's Electronic Disposition Reporting Manual.

6.100. Commercial Vehicle

If the vehicle involved in an offense when a **n**Notice to **a**Appear is issued is a commercial vehicle,¹³ the citing officer must mark the check box within the data field "**COMMERCIAL VEHICLE** (Veh. Code, § 15210(b))."

6.110. Hazardous Material

If the vehicle involved in an offense when a **n**Notice to **a**Appear is issued was transporting hazardous material, the citing officer must mark the check box within the data field "**HAZARDOUS MATERIAL** (Veh. Code, § 353)."

6.120. Vehicle Description

The year, make, model, body style, and color of the vehicle operated by the defendant at the time of the offense must be indicated on the Notice to Appear.¹⁴

¹³ *Commercial vehicle* is defined in Vehicle Code section 15210(b). The requirement to indicate if **an** offense involves a motor vehicle is per Vehicle Code section 40300.2.

¹⁴ Veh. Code, § 40500(a).

6.130. Reason for Stop

The officer must write the reason for the stop on notices used for traffic stops (forms TR-130 and TR-140).¹⁵

6.140. Name of Registered Owner/Lessee

- (a) The Notice to Appear must contain the name of the registered owner or lessee.¹⁶
- (b) The name must be indicated on the Notice to Appear in the sequence First/Middle/Last, unless a company is listed as the registered owner of the vehicle or vehicles.

6.150. Address of the Registered Owner/Lessee

- (a) The address of the registered owner/lessee must be indicated on the Notice to Appear.¹⁷
- (b) The address must be the registered owner's mailing address.

6.160. Correctable Violation Advisement and Check Boxes

- (a) Whenever a person is arrested for violations specified in Vehicle Code section 40303.5 and none of the disqualifying conditions set forth in Vehicle Code section 40610(b) exist, and the officer issues a Notice to Appear, the notice must specify the offense charged and note in a form approved by the Judicial Council that the charge will be dismissed upon proof of correction.¹⁸
- (b) For offenses identified in Vehicle Code section 40303.5 the citing officer must indicate by marking the appropriate "Yes" or "No" check box whether or not the offense is eligible for dismissal upon proof of timely correction. Marking the "No" box denotes that disqualifying conditions specified in Vehicle Code section 40610(b) exist.
- (c) The correctable violation advisement and the check boxes do not appear on the *Automated Traffic Enforcement System* notice form, TR-115.

6.170. Booking Required

The officer may either book the arrested person prior to release or indicate on the Notice to Appear that the arrested person must be booked before appearing in court.¹⁹ If the "Booking Required" check box is checked on form TR-120 or TR-130, the arresting agency must complete

¹⁵ Veh. Code, § 1656.3.

¹⁶ *Id.*, § 40500(a).

¹⁷ *Ibid.*

¹⁸ *Id.*, § 40522.

¹⁹ Pen. Code, § 853.6.

the verification of booking section on the defendant's copy of the form. The "Booking Required" check box does not appear on the *Automated Traffic Enforcement System* notice, form TR-115.

6.180. Violations

The Notice to Appear must state the offenses charged.²⁰

6.190. Speed

A Notice to Appear charging a speeding violation must specify the approximate speed ("approx."), prima facie or maximum speed, and any other speed limit exceeded.²¹

- (a) The "Safe Speed" box is provided so that the officer can indicate a speed different from the maximum or prima facie (posted) speed when the Notice to Appear is prepared charging a violation of the basic speed law (Veh. Code, § 22350). Conditions affecting the safe speed limit should be noted on the Notice to Appear (e.g., fog, rain, etc.).
- (b) When a speed violation is charged, both the approximate speed and the prima facie speed applicable to the street or highway should be indicated.
- (c) Entry of the maximum speed limit pertaining to the particular type of vehicle, or combination of vehicles, is only required if the defendant is cited for exceeding the speed limit for that vehicle.

6.200. Location of Violation

The Notice to Appear must state the location of where the offenses charged occurred.

6.210. Officer's Declaration on Information and Belief

The officer must indicate on the Notice to Appear (check box) when the offense was not committed in the officer's presence and that the officer's declaration is on information and belief. A citizen's complaint and a collision investigation are examples of a situation that may result in the officer checking the box. The declaration is separate and distinct from the officer's declaration under penalty of perjury discussed in section 6.220.

6.220. Officer's Declaration Under Penalty of Perjury

The Notice to Appear must contain the officer's dated declaration, under penalty of perjury, subscribed by the officer, that the information regarding the violations is true and correct.²² The

²⁰ Veh. Code, § 40500(a); Pen. Code, § 853.6.

²¹ Veh. Code, § 40503.

²² Code Civ. Proc., § 2015.5.

date of the declaration must appear in the declaration date field when completed by either an arresting or a citing officer.

6.230. Other Officer

The name of the arresting officer, if different from the name of the officer completing the Notice to Appear, must be stated on the Notice to Appear. This policy was adopted to address situations in which there are teams of officers working radar enforcement or aerial patrol. This option is not available on the *Automated Traffic Enforcement System Notice to Appear*. (See section 6.231.)

6.231. Declarant—Automated Traffic Enforcement System Citations

The name of the government agency or law enforcement representative making the declaration, “Violation was not committed in my presence. The above is declared on information and belief and is based on photographic evidence,” must be stated on the *Automated Traffic Enforcement System Notice to Appear*.

6.240. Defendant’s Signature

To secure release from arrest, the defendant must give his/her their written promise to appear.²³ The defendant’s signature on the defendant’s copy of the citation must be identical to the signature on the copy of the citation filed with the court. The requirement for a signed promise to appear does not apply to citations issued for violations recorded by an *Automated Traffic Enforcement System Notice to Appear*.

The defendant has the option to provide their cellphone information when they sign the citation. This information may be used by the court to send reminders about mandatory appearances and deadlines.²⁴

6.250. Time to Appear or Deadline to Respond

- (a) The time specified in a Notice to Appear issued for a traffic offense must be a specific date which is at least 21 days after arrest; the court having jurisdiction over the offense charged may authorize the arresting officer to specify on the Notice to Appear that the appearance may be made before the time specified.²⁵
- (b) When a Notice to Appear has been issued for a violation recorded by an automated traffic enforcement system, it must be mailed within 15 days of the violation date to the current address of the registered owner of the vehicle on file with the Department of Motor Vehicles,

²³ Veh. Code, § 40504; Pen. Code, § 853.6.

²⁴ Cal. Rules of Court, rule 4.107.

²⁵ Veh. Code, § 40501(a).

with a certificate of mailing obtained as evidence of service.²⁶ The time to appear must be at least ~~ten~~ **10** days after the Notice to Appear is delivered.²⁷

- (c) The time to appear placed on **the** Notice to Appear for a nontraffic offense must be at least 10 days after the date of arrest for a nontraffic violation. (Pen. Code, § 853.6.)
- (d) In the case of juveniles, the court having jurisdiction over the offense charged may require the arresting officer to indicate on the Notice to Appear “to be notified” rather than a specific date.²⁸

6.260. Place to Appear

The place specified on the Notice to Appear must be one of the following:

- (a) Before a magistrate or judge.²⁹
- (b) Before a person authorized to receive a deposit of bail.³⁰
- (c) Before the juvenile court, juvenile court referee, or juvenile hearing officer.³¹

6.270. Night Court

If the court identified in the Notice to Appear holds night sessions, the notice must include a statement advising the defendant.³²

6.280. Legend

The lower left corner of the Notice to Appear forms must denote that the form is a Judicial Council form and specify the council’s form number.

²⁶ *Id.*, § 40518(a).

²⁷ *Id.*, § 40518(b).

²⁸ *Id.*, § 40501(b).

²⁹ *Id.*, § 40502(a), (b); Pen. Code, § 853.6.

³⁰ Veh. Code, § 40502(c); Pen. Code, § 853.6.

³¹ Veh. Code, § 40502(d).

³² *Ibid.*

Chapter 7 DISCRETIONARY LANGUAGE/DATA FIELDS

7.000. In General

The discretionary (shaded or yellow) areas on the forms (see Appendixes) depict language and data fields that are frequently included at the option of the court or law enforcement agency (with the consent of the court in which the Notice to Appear is to be filed).

Because of limited space, not all of the discretionary language and data fields used throughout the state can be shown on the sample forms. The following are narrative descriptions of several discretionary data fields.

7.010. Bail Statement

If the offense is bailable, the magistrate must fix the amount of bail and endorse the following statement on the warrant for arrest.³³

BAIL:

The defendant is to be admitted to bail in the sum of _____ dollars.

Judge

Note: The mandatory requirement that the above statement appear on the reverse of the court's copy disrupts the processing of Notice to Appear forms in those automated courts that use the space for cash register validations, automated traffic system notations, and notes of court proceedings. These courts use a separate form when issuing a warrant for arrest. For those reasons, the warrant for arrest statement is now discretionary.

7.030. Defendant's Thumbprint

- (a) The defendant's thumbprint may be placed on the Notice to Appear in situations in which there is a question in the citing officer's mind as to the true identity of the defendant. The court will then have the option of comparing thumbprints in those cases where the defendant alleges that another person has committed the cited offense.³⁴
- (b) The Judicial Council recommends that the thumbprint on form TR-120 or TR-130 be placed in a one-inch square area located on the reverse of the court's copy in the lower left corner. For electronic citations, a digitized thumbprint or fingerprint may be printed on the defendant's paper copy of the citation and filed with the court as part of the **Notice to Appear**. If the defendant's thumbprint or fingerprint is captured electronically as a digital image, but not included as part of the **Notice to Appear**, the digital image may be retained

³³ Pen. Code, § 815(a).

³⁴ Veh. Code, § 40500(a); Pen. Code, § 853.6.

by the arresting agency for use as provided in Penal Code sections 853.5 and 853.6 and Vehicle Code sections 40500 and 40504 and any other purposes permitted by law.

(c) The thumbprint item does not appear on the *Automated Traffic Enforcement System Notice to Appear*.

Chapter 8 PROHIBITED LANGUAGE/DATA FIELDS

8.010. Defendant's Social Security Number

The defendant's social security number must not be indicated on the Notice to Appear, unless the social security number is also the driver's license number and/or the defendant holds a commercial driver's license.

To protect an individual's civil rights, federal statutes allow a very restricted compulsory use of a person's social security number for the purpose of establishing identity.³⁵

Federal statutes do permit an agency having administrative responsibility for driver's license and motor vehicle registration laws to use a person's social security number to establish that person's identity as it relates to the laws within the agency's jurisdiction.³⁶

The California Department of Motor Vehicles requires an individual to disclose their social security number in order to obtain a driver's license or identification card.³⁷ A number of other states use the individual's social security number as the driver's license number.

³⁷ Veh. Code, §§ 1653.5, 12801.

³⁵ Pub. L. No. 93-579, § 7. 5 U.S.C. § 552a.

³⁶ 42 U.S.C. § 405(c)(2)(C)(i)(IV).

³⁷ Veh. Code, §§ 1653.5, 12801.

Appendix A: Notice of Correction and Proof of Service, Form TR-100

NAME OF COURT:	
STREET ADDRESS:	
MAILING ADDRESS:	
CITY AND ZIP CODE:	
BRANCH NAME:	
TELEPHONE:	
PEOPLE OF THE STATE OF CALIFORNIA vs.	
DEFENDANT:	
NOTICE OF CORRECTION AND PROOF OF SERVICE (Vehicle Code, § 40505)	
AMENDING OFFICER NAME/ID NO.:	DEPARTMENT/AGENCY:
CITATION NUMBER:	CASE NUMBER:

1. A *Notice to Appear/Notice to Correct Violation* was issued to you by an officer of this department on (date):

2. The citation issued to you contained an error as indicated by the items checked below. This notice of correction does not affect the validity of the citation or the required court appearance.

- Date/time of violation should be _____
- Date/time of court appearance should be changed
from _____ to _____
- Violation section(s) should be changed
from _____ to _____
- Location of violation should be changed
from _____ to _____
- Other (specify): _____

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

Date: _____
(Signature of officer)

Form Adopted for Mandatory Use
Judicial Council of California
TR-100 (Rev. January 1, 2004)

I am at least 18 years of age, not a party to this action, and I am a resident of or employed in the county where where the mailing took place. My business address is:

On (date): _____ I served this Notice of Correction on the parties at the address listed below by depositing in a sealed envelope, postage prepaid, with the United States Postal Service at (city and state): _____

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

Date: _____

Original to court _____ (Type or print name)

Defendant's Address: _____ (SIGNATURE)

Appendix B: Continuation of Notice to Appear, Form TR-106

CONTINUATION OF NOTICE TO APPEAR (Face of Violator's Copy)

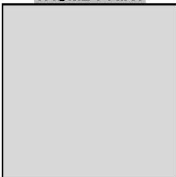
<i>(Name of Agency and Jurisdiction)</i>				
CONTINUATION OF NOTICE TO APPEAR				
		<input type="checkbox"/> Traffic <input type="checkbox"/> MISDEMEANOR <input type="checkbox"/> Nontraffic <input type="checkbox"/> Nontraffic		(Citation No.)
Date 1: / /	Time	AM PM	Day of Week S M T W T F S	Case No.
Name (First, Middle, Last) 2:				
Veh. Lic. No. or VIN 3:				State
Correctable Violation (Veh. Code, § 40610)				
Yes	No	Code and Section	Description	Misdemeanor or Infraction (Circle)
4. <input type="checkbox"/>	<input type="checkbox"/>			M I
5. <input type="checkbox"/>	<input type="checkbox"/>			M I
6. <input type="checkbox"/>	<input type="checkbox"/>			M I
7. <input type="checkbox"/>	<input type="checkbox"/>			M I
8. <input type="checkbox"/>	<input type="checkbox"/>			M I
9. <input type="checkbox"/>	<input type="checkbox"/>			M I
10. <input type="checkbox"/>	<input type="checkbox"/>			M I
11. <input type="checkbox"/>	<input type="checkbox"/>			M I
12. <input type="checkbox"/>	<input type="checkbox"/>			M I
13. <input type="checkbox"/>	<input type="checkbox"/>			M I
14. <input type="checkbox"/>	<input type="checkbox"/>			M I
15. <input type="checkbox"/>	<input type="checkbox"/>			M I
16. <input type="checkbox"/>	<input type="checkbox"/>			M I
17. <input type="checkbox"/>	<input type="checkbox"/>			M I
18. <input type="checkbox"/>	<input type="checkbox"/>			M I
19. <input type="checkbox"/>	<input type="checkbox"/>			M I
20. <input type="checkbox"/>	<input type="checkbox"/>			M I
21. <input type="checkbox"/> Violations not committed in my presence, declared on information and belief.				
I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct, and a continuation of the enforcement document noted.				
22. _____ Arresting or Citing Officer			Serial No. _____	
23. / /		Name of Arresting Officer, if different from Citing Officer		Serial No. _____
WITHOUT ADMITTING GUILT, I PROMISE TO APPEAR AT THE TIME AND PLACE INDICATED.				
24. <input checked="" type="checkbox"/> Signature				
Judicial Council of California Form Rev. 01-01-04 (Veh. Code, §§ 40600(b), 40613(b), 40622, 40600; Pen. Code, § 853.9)				SEE REVERSE TR-106

Shaded areas on the form indicate spaces subject to modification for local or agency requirements.

CONTINUATION OF NOTICE TO APEAR
(Reverse Of Court Copy)

(Circle one)

RIGHT or LEFT
THUMB PRINT



Shaded areas on the form indicate spaces subject to modification for local or agency requirements.

CONTINUATION OF CITATION
(Reverse of Court's Copy)

(Circle one)
**RIGHT or LEFT
THUMBPRINT**

Shaded areas on the form indicate spaces subject to modification for local or agency requirements.

Appendix D Automated Traffic Enforcement System Notice to Appear, Form TR-115

TRAFFIC NOTICE TO APPEAR
Automated Traffic Enforcement System

<i>(NAME OF AGENCY AND JURISDICTION)</i>									
NOTICE TO APPEAR Automated Traffic Enforcement (Citation No.)									
Date of Violation 1. / /			Time <input type="checkbox"/> AM <input type="checkbox"/> PM		Day of Week S M T W T F S		Case No.		
Name (First, Middle, Last) 2.									
Address 3.									
City 4.			State			ZIP Code			
Driver Lic. No. 5.			State		Class	Commercial <input type="checkbox"/> Yes <input type="checkbox"/> No		Age	Birth Date / /
Sex 6.	Hair	Eyes	Height	Weight	Race				
Veh. Lic. No. or VIN 7.			State			<input type="checkbox"/> COMMERCIAL VEHICLE (Veh. Code, § 15210(b))			
Yr. of Veh. 8.	Make	Model	Body Style	Color		<input type="checkbox"/> HAZARDOUS MATERIAL (Veh. Code, § 353)			
Registered Owner or Lessee 9.									
Address 10.									
City 11.			State			ZIP Code			
Code and Section 12.					Description				
Location of Violation at 13.				City/County of Occurrence					
<p><input checked="" type="checkbox"/> Violation was not committed in my presence. The above is declared on information and belief and is based on photographic evidence.</p> <p>I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct.</p>									
Date Issued 14.			Declarant				ID No.		
YOU MUST RESPOND TO THE COURT ON OR BEFORE:									
15. WHEN: DATE: _____					Time: _____ <input type="checkbox"/> AM <input type="checkbox"/> PM				
WHAT TO DO: FOLLOW THE INSTRUCTIONS ON THE REVERSE.									
16. WHERE: [Name of court(s)] [Section(s) or division(s), room no(s)] [Street address(es)] [Phone no.]						Clerk's Office Hours <i>[Insert hours clerk's office is open.]</i>			
<div style="border: 1px solid black; padding: 5px; display: inline-block;">FPO Barcode</div>									
						DEFENDANT COPY SEE REVERSE TR-115			
Judicial Council of California Form Rev. 06-26-15 (Veh. Code, § 40518)									

Shaded areas on the form indicate spaces subject to modification for local or agency requirements.

TRAFFIC NOTICE TO APPEAR
Automated Traffic Enforcement System

IMPORTANT—READ CAREFULLY
<p>This Citation Is Based on Photographic Evidence The vehicle identified on the front was photographed in violation of a traffic signal or sign. You may see the photographs. Contact: _____ You may see the photographs online at: _____ For more information about the evidence in this case, you may contact the issuing agency, _____ by telephone at: _____ or in person at: _____ on _____ during the hours of _____ If you were not driving the vehicle at the time of the violation, contact _____</p>
WHAT TO DO
<p>You have been issued a citation that charges you with a traffic infraction. You must respond by following one of the procedures below by the date on the front (see "WHEN"). If you do not, you may lose your license to drive, and your money penalties may increase.</p> <p>1. If you do NOT contest the violation a. (Pay the bail amount) (See "BAIL INFORMATION" below) Your bail will be forfeited to the court. You will not have to appear in court. You will be convicted of the violation, and it will appear on your record at the Department of Motor Vehicles (DMV). A point count will be charged to your DMV record for this offense and your insurance may be adversely affected. b. (Traffic school) You may be able to avoid the point count and adverse effect on your insurance by attending traffic school. Contact the court to request traffic school. You must pay the bail amount as a fee, and you may have to pay other fees.</p> <p>2. If you contest the violation (select one) a. (Court trial) Send a certified or registered letter postmarked not later than five days prior to the appearance date, or come to the court by the appearance date to request a court trial on a future date when an officer and witnesses will be present. You may be required to submit the bail amount. You will be given a date for your trial. Go online or call the court for information on going to court without paying bail. —OR— b. (Trial by written declaration) Send a certified or registered letter postmarked not later than five days prior to the appearance date, or come to the court on or before the date on the front and request a trial by written declaration. Submit the bail amount. You will be given forms to allow you to write a statement and submit other evidence without appearing in court. An officer will also submit a statement. The judicial officer will consider all of the evidence at the same time and decide the case.</p>
WRITING TO THE COURT
<p>If you write to the court, always write the citation number and your driver license number on your letter. Use of certified or registered mail is required. Do not send your copy of the citation. Keep it for your own records.</p>
BAIL INFORMATION
<p>The "bail" is the amount to pay or deposit for the charged violation.</p> <div style="border: 1px solid black; padding: 5px; text-align: center; margin: 10px auto; width: 60%;"> Bail Amount: \$ _____ OR [See enclosed information] </div> <p>Make the check or money order payable to _____ Write the citation number and your driver license number on your check or money order. You may deposit the bail in person, by mail or by phone. Go online or call the court for information on going to court without paying bail.</p>
NIGHT COURT TRIALS [are] [are NOT] available for this citation.
JUVENILES
<p>If you are under 18, you must be accompanied by your parent or guardian when you appear in court. Bring this citation and your driver license. You will be notified by the Juvenile Court of your court date. [For additional information, call the Juvenile Traffic Court at _____]</p>
ONLINE INFORMATION
<p>You may obtain additional information at [Local Web site: _____]</p>

Shaded areas on the form indicate spaces subject to modification for local or agency requirements.

Appendix E Nontraffic Notice to Appear, Form TR-120

NONTRAFFIC NOTICE TO APPEAR (Face of Court's Copy)

(Name of Agency and Jurisdiction)		<input type="checkbox"/> MISDEMEANOR		(Citation No.)	
NOTICE TO APPEAR		Nontraffic			
Date of Violation 1. / /		Time <input type="checkbox"/> AM <input type="checkbox"/> PM		Day of Week S M T W T F S	
Case No.					
Name (First, Middle, Last) 2.					
Address 3.					
City 4.		State/Country		ZIP Code	
E-mail Address					
Driver Lic. No. 5.		State	Class	Age	Birth Date / /
<input type="checkbox"/> Juvenile (Phone No.) ()					
Sex 6.	Hair	Eyes	Height	Weight	Race
Other Description					
Code	Ordinance	Description			Misdemeanor or Infraction (Circle)
7.					M I
8.					M I
9.					M I
10.					M I
11.					M I
12.					M I
13.					M I
14.					M I
15.					M I
16.					M I
17.					M I
18.					M I
Evidence Seized 19.				<input type="checkbox"/> Booking Required	
Location of Violation(s) 20.			City/County of Occurrence		
Comments 21.					
<input type="checkbox"/> Violations not committed in my presence, declared on information and belief.					
22. I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct.					
23. / / Dec. Date		Arresting or Citing Officer		Serial No. to Dates Off	
24. / / Dec. Date		Name of Arresting Officer, if different from Citing Officer		Serial No. to Dates Off	
WITHOUT ADMITTING GUILT, I PROMISE TO APPEAR AT THE TIME AND PLACE INDICATED BELOW.					
X Signature					
26. WHEN:		ON OR BEFORE THIS DATE: / /		Time: <input type="checkbox"/> AM <input type="checkbox"/> PM	
				Time: <input type="checkbox"/> AM <input type="checkbox"/> PM	
27. WHAT TO DO: FOLLOW THE INSTRUCTIONS ON THE REVERSE.					
WHERE: [Name of court(s)]					
[Section(s) or division(s), room no(s).]					
[Street address(es)]					
[Phone No.]					
28. <input type="checkbox"/> To be notified <input type="checkbox"/> You may arrange with the clerk to appear at a night session of the court.					
FPO Barcode (USS Code 39)				DEFENDANT COPY	
Judicial Council of California Form Rev. 06-26-15 (Pen. Code, § 853.9)				SEE REVERSE TR-120	

Shaded areas on the form indicate spaces subject to modification for local or agency requirements.

NONTRAFFIC NOTICE TO APPEAR
(Reverse Of Defendant's Copy)

IMPORTANT — READ CAREFULLY

<p>LOCAL INFORMATION FOR THE CITATION IS AVAILABLE ONLINE AT [website address]</p> <p>WARNING: If you fail to appear in court as you have promised, you may be arrested and punished by 6 MONTHS IN JAIL AND/OR A \$1,000 FINE, regardless of the disposition of the original charge. (Pen. Code, § 853.7.)</p> <p>If "Booking Required" is checked you must appear on a weekday prior to your court date for booking at: _____ between the hours of _____ and _____ and bring the signed verification to your court appearance. Call _____ for more information.</p> <p>Booking Verification: I declare under penalty of perjury under the laws of the State of California that</p> <p>_____ was booked on _____ Date _____ Officer _____ Serial No. _____</p>

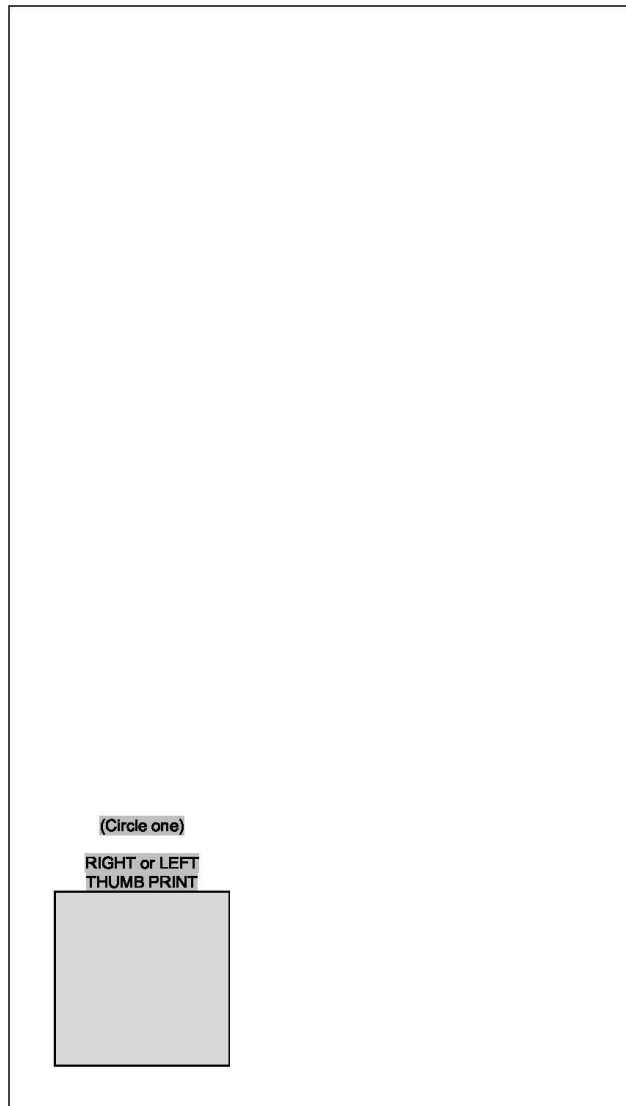
WHAT TO DO

Shaded areas on the form indicate spaces subject to modification for local or agency requirements.

NONTRAFFIC NOTICE TO APPEAR
(Reverse Of Court's Copy)

(Circle one)

RIGHT or LEFT
THUMB PRINT



Shaded areas on the form indicate spaces subject to modification for local or agency requirements.

Appendix F Traffic/Nontraffic Notice to Appear, Form TR-130

AGENCY NAME/JURISDICTION INFO				(CITATION NUMBER)																										
NOTICE TO: <input type="checkbox"/> APPEAR IN COURT AT ____ <input type="checkbox"/> AM <input type="checkbox"/> PM ON: OR <input type="checkbox"/> RESPOND TO CITATION BEFORE: DATE: ____ / ____ / ____ <i>See back for detailed instructions</i> <input type="checkbox"/> To be notified				<input type="checkbox"/> Name of Court, Division of Court, Street Address, City, State ZIP <small>Ⓞ XXX.XXX.XXXX → websiteurl.com</small> <input type="checkbox"/> Name of Court, Division of Court, Street Address, City, State ZIP <small>Ⓞ XXX.XXX.XXXX → websiteurl.com</small> <input type="checkbox"/> Name of Court, Division of Court, Street Address, City, State ZIP <small>Ⓞ XXX.XXX.XXXX → websiteurl.com</small> <input type="checkbox"/> Name of Court, Division of Court, Street Address, City, State ZIP <small>Ⓞ XXX.XXX.XXXX → websiteurl.com</small>																										
ACT BY THIS DATE TO AVOID A WARRANT OR ADDED FEES																														
Date of Violation (mm/dd/yy)		Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Driver's License Number (all states)		Class State																									
Name (first, middle, last)																														
Current Address (no., street, city, state, zip)																														
Date of Birth (mm/dd/yy)		Parent/Guardian Phone No. <input type="checkbox"/> Juvenile		Commercial <input type="checkbox"/> Y <input type="checkbox"/> N	Insurance <input type="checkbox"/> Y <input type="checkbox"/> N																									
Race / Ethnicity	Sex	Hair	Eyes	Height	Weight																									
Vehicle License/VIN		State	Reg (mm/yy)	Year of Veh.	Make																									
Registered Owner/Lessee <input type="checkbox"/> Same as driver <input type="checkbox"/> Owner's responsibility (VC, § 40001)				Model	Body Style																									
Address (no., street, city, state, zip) <input type="checkbox"/> Same as driver				Color																										
Reason for Stop				CHP / DOT / PUC / ICC																										
CITATION DETAILS <input type="checkbox"/> Booking Required (see reverse)																														
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Correctable (Fix-It)</th> <th style="text-align: left;">Code/Section</th> <th style="text-align: left;">Description</th> <th style="text-align: left;">M = Misdemeanor</th> <th style="text-align: left;">I = Infraction (circle)</th> </tr> </thead> <tbody> <tr> <td><input type="checkbox"/> Y <input type="checkbox"/> N</td> <td>_____</td> <td>_____</td> <td>M</td> <td>I</td> </tr> <tr> <td><input type="checkbox"/> Y <input type="checkbox"/> N</td> <td>_____</td> <td>_____</td> <td>M</td> <td>I</td> </tr> <tr> <td><input type="checkbox"/> Y <input type="checkbox"/> N</td> <td>_____</td> <td>_____</td> <td>M</td> <td>I</td> </tr> <tr> <td><input type="checkbox"/> Y <input type="checkbox"/> N</td> <td>_____</td> <td>_____</td> <td>M</td> <td>I</td> </tr> </tbody> </table>				Correctable (Fix-It)	Code/Section	Description	M = Misdemeanor	I = Infraction (circle)	<input type="checkbox"/> Y <input type="checkbox"/> N	_____	_____	M	I	<input type="checkbox"/> Y <input type="checkbox"/> N	_____	_____	M	I	<input type="checkbox"/> Y <input type="checkbox"/> N	_____	_____	M	I	<input type="checkbox"/> Y <input type="checkbox"/> N	_____	_____	M	I		
Correctable (Fix-It)	Code/Section	Description	M = Misdemeanor	I = Infraction (circle)																										
<input type="checkbox"/> Y <input type="checkbox"/> N	_____	_____	M	I																										
<input type="checkbox"/> Y <input type="checkbox"/> N	_____	_____	M	I																										
<input type="checkbox"/> Y <input type="checkbox"/> N	_____	_____	M	I																										
<input type="checkbox"/> Y <input type="checkbox"/> N	_____	_____	M	I																										
Approx. Speed	PF/Max Speed	Veh. Limit	Safe Speed	Radar/Lidar	<input type="checkbox"/> Commercial Veh. VC, § 15210(b)																									
Location of Violation					<input type="checkbox"/> Hazardous Mat. VC, § 353																									
City/County of Occurrence				Agency Case No.																										
Comments (weather, road, traffic conditions) <input type="checkbox"/> Crash																														
<input type="checkbox"/> Violations not committed in my presence, declared on information and belief (VC, § 40600) I declare under penalty of perjury under the laws of the State of CA that the foregoing is true and correct.																														
DECL. DATE	ARRESTING OR CITING OFFICER			SERIAL NO.																										
DECL. DATE	ARRESTING OFFICER, (if different from above)			SERIAL NO.																										
I promise to act by the date at the top of this citation. Signing DOES NOT admit guilt. (_____) _____ CELLPHONE - OPTIONAL (may be used for reminders) EMAIL - OPTIONAL (may be used for reminders)																														
X _____ SIGNATURE																														

DEFENDANT COPY | FORM INFO

Continuation form

Form Adopted for Mandatory Use
 Judicial Council of California
 TR-130, Traffic/Nontraffic Notice to Appear
 [Rev. Jan. 1, 2024]
SEE REVERSE

FPO Barcode USS Code 39

Vehicle Code, §§40500(b), 40513(b),
 40522, 40600; Pen. Code, §853.9

TAB AREA

WHAT YOU NEED TO DO

Step 1 Which box is checked on the front of the citation:
APPEAR IN COURT or RESPOND TO CITATION?

Step 2 Follow instructions based on the box checked on the front.

If **APPEAR IN COURT** is checked on the front

- ▶ **Your next step:** Go to court on the date, time and location on the front. Appearing in court is your **only option**. You can plead guilty or not guilty. **IMPORTANT: Missing court may result in a warrant for your arrest. Don't let that happen—go to court! The judge will explain next steps.**
- **Helpful Tip:** Put the court date in your calendar, set a reminder, start planning now.
- **Juveniles:** If you were under 18 years old at the time of the violation, you must bring a parent or guardian with you to court.

If **RESPOND TO CITATION** is checked on the front

Citations can take up to 14 days to show up in the court system.
 Keep checking to find your citation, and then complete Option A, B, C, or D by the date listed on front

- ▶ **Your next step:** Choose an option below and respond by the date. **IMPORTANT: Not responding by the date on the front can result in a "failure to appear" charge, a guilty finding, an additional fee of up to \$100, and a hold on your car registration (owner's responsibility). Choose one of the options below to avoid these penalties:**
- **Option A: Pay or Ask for a Reduction (Guilty Finding)**
 - Pay (online, call, in person). If you cannot pay in full now, contact the court (see front for contact information) to request a payment plan or extension.
 - Ask for a reduction at MYCITATIONS.COURTS.CA.GOV (takes about 10 minutes).**Note: This option may add points to your driving record and affect insurance.**
- **Option B: Request Traffic School** To avoid points on your driving record, you can request traffic school. You pay the citation plus an additional traffic school fee and complete traffic school. Contact the court to see if you are eligible.
- **Option C: Dispute the Citation (Plead Not Guilty)** You can dispute the citation **in person** by requesting a court date for a trial (no cost) or **by mail** ("trial by written declaration"), which requires you to pay the fine up front (amount returned if citation is dismissed). Contact court for more details (court info on front of citation).
- **Option D: Correctable ("Fix-It")** If "Correctable" is checked on the front, first show an officer, authorized inspection agency, or DMV (license and registration issues only) that you fixed the issue, and they will sign the citation (below). Then, you must show the court that you fixed the issue to have the violation dismissed. You must also pay a transaction fee. For insurance issues, you must show the court you had insurance when you got the ticket and pay a transaction fee.

CERTIFICATE OF CORRECTION (MUST BE RETURNED TO COURT)

Section(s) Violated	Signature of Person Certifying Correction	Serial No.	Agency	Date

If "**Booking Required**" is checked on front, call xxx-xxx-xxxx to schedule an appointment before the court date. You will not be arrested and will attend your court date on your own.

MORE INFORMATION

- For translations and general information about the process, visit <https://www.courts.ca.gov/forms.htm>
- To contact the court, see front of citation for court's website and phone number. The court will send notice explaining next steps.

[Rev. Jan. 1, 2024]





(Circle one)
RIGHT or LEFT
THUMB PRINT

A large, empty yellow square box with a black border, intended for a thumb print.

Appendix G Notice to Correct Violation, Form TR-140

NOTICE TO CORRECT VIOLATION (Face of Violator's Copy)

<i>(Name of Agency and Jurisdiction)</i>									
NOTICE TO CORRECT VIOLATION					(Citation No.)				
1. Date of Violation			Time		Day of Week		Case No.		
/ /					<input type="checkbox"/> AM <input type="checkbox"/> PM		S M T W T F S		
2. Name (First, Middle, Last) <input type="checkbox"/> Owner's Responsibility (Veh. Code, § 40001)									
3. Mailing Address									
4. City State ZIP Code									
5. Driver Lic. No.		State		Class	Age	Birth Date		<input type="checkbox"/> Juvenile (Tel. No.)	
						/ /		()	
6. Sex	Hair	Eyes	Height	Weight	Race	Other Description			
7. Veh. Lic. No. or VIN					State		<input type="checkbox"/> COMMERCIAL VEHICLE		
							(Veh. Code, § 15210(b))		
8. Yr. of Veh.	Make	Model	Body Style	Color		<input type="checkbox"/> HAZARDOUS MATERIAL			
						(Veh. Code, § 353)			
9. Veh. Lic. No. or VIN					State		CHP/DOT		
10. Yr. of Veh.					Make	Model	Body Style	Color	PUC/ICC
11. Reason for Stop									
12. Registered Owner or Lessee <input type="checkbox"/> Same as Driver									
13. Address City State ZIP Code <input type="checkbox"/> Same as Driver									
14. Violation(s) Code and Section Description									
15.									
16.									
17.									
18. Location of Violation(s)								City/County	
19.									
I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct.									
20. Executed at California									
21. Citing Officer					ID		Vacation Dates		
							From To		
22. I PROMISE TO CORRECT THE VIOLATION(S) LISTED ABOVE AND PROVIDE PROOF OF CORRECTION TO THE ISSUING AGENCY AS INSTRUCTED BELOW WITHIN 30 DAYS.									
X SIGNATURE									
WHEN: CORRECT VIOLATION(S) IMMEDIATELY. CONTINUED OPERATION WITHOUT CORRECTION MAY RESULT IN ARREST AND PENALTY.									
WHAT TO DO: FOLLOW THE INSTRUCTIONS ON THE REVERSE.									
WHERE: PROVIDE PROOF OF CORRECTION TO THE ISSUING AGENCY'S ADDRESS LISTED ON THE REVERSE.									
FPO Barcode					DEFENDANT COPY				
Adopted for Mandatory Use Judicial Council of California, www.courts.ca.gov TR-140, Notice to Correct Violation, [Rev. Jan. 1, 2024]					SEE REVERSE Vehicle Code, §§ 40810(d), 40818				

Shaded areas on the sample form indicate spaces subject to modification for local or agency requirements.

REVERSE OF VIOLATOR'S COPY

INSTRUCTIONS TO DRIVER-OWNER				
WHAT TO DO				
<p>METHODS FOR OBTAINING CERTIFICATION OF CORRECTION (Veh. Code, § 40616): This Notice to Correct Violation may be cleared upon correction of the violation by providing satisfactory proof of correction within 30 days of this notice, as specified below, either in person at the issuing agency's office at [address] during normal business hours or by mail postmarked within 30 days of this notice to the issuing agency's address indicated below.</p> <p>Violations may be certified as corrected on this form (as indicated below) in the following manner:</p> <ol style="list-style-type: none"> 1. Brake, lamp, smog device, or muffler violations may be certified as corrected by any station licensed to inspect and certify for the specific violation(s). 2. Driver license and registration violations may be certified as corrected at offices of the DMV by an appropriate employee thereof, or by any clerk or deputy clerk of a court. 3. Any violation may be certified as corrected by a law enforcement agency regularly engaged in the enforcement of the California Vehicle Code. <p>DO NOT STOP AN OFFICER ON ANY FREEWAY, EXPRESSWAY, OR BRIDGE FOR CERTIFICATION OF CORRECTION.</p> <p>NOTE: INSPECTION STATIONS MUST LIST THEIR AFD LICENSE NUMBER ISSUED BY THE BUREAU OF AUTOMOTIVE REPAIR IN THE SPACE PROVIDED BELOW.</p> <p>WARNING: Any person willfully violating a written promise to correct or willfully failing to deliver proof of correction is guilty of a misdemeanor (Veh. Code, § 40616), which may lead to arrest, penalty, and additional fees. In addition, the Department of Motor Vehicles (DMV) will WITHHOLD the issuance or renewal of your driver license, and may revoke or suspend your driving privilege for Vehicle Code offenses. YOU MUST RETURN THE COMPLETED CERTIFICATE OF CORRECTION TO THE ISSUING AGENCY.</p>				
CERTIFICATE OF CORRECTION (RETURN TO THE ISSUING AGENCY)				
Section(s) Violated	Signature of Person Certifying Correction	ID or AFD License No.	Agency or Certified Inspection Station	Date

[Name of Agency]
[Section(s) or division(s), room no(s)]
[Street address]

POSTMASTER: If undeliverable return to Name
and Mailing Address on reverse

FIRST
CLASS
POSTAGE
REQUIRED

Rev. Jan. 1, 2024

**Shaded areas on the sample form indicate spaces
subject to modification for local or agency requirements.**

REVERSE OF COURT COPY

TO BE EXECUTED IN CASE OF FAILURE TO DELIVER PROOF OF CORRECTION

DEFENDANT HEREIN FAILED TO DELIVER PROOF OF CORRECTION IN VIOLATION OF HIS/HER SIGNED PROMISE, AND IN VIOLATION OF VEHICLE CODE SECTION 40616.

I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED AT _____ CALIFORNIA, ON _____ DATE

BY: _____ TITLE

PRINT OR TYPE NAME

_____ SIGNATURE ID/BADGE NUMBER

ADDRESS:

FOR COURT USE ONLY

(Circle one)

RIGHT or LEFT
THUMB PRINT

Rev. Jan. 1, 2024

Shaded areas on the sample form indicate spaces subject to modification for local or agency requirements.

SPR24-34

Traffic: Instructions for Notice to Appear and Related Forms (Revise form TR-INST)

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

	Commenter	Position	Comment	Committee Response
1.	Orange County Bar Association by Christina Zabat-Fran, President	A	<p>Appropriately revises TR-INST, which is a manual of instructions for the notice to appear and related forms. These revisions are: Section 1.010: Clarify that the defendant must respond to the citation (as opposed to answer allegations); Section 2.010: Remove the word “paper” to allow for electronic service. Although electronic service is not yet an option, the proposal removes the word “paper” in this section so that form TR-INST does not inadvertently prohibit electronic service in the future; Section 4.050: Add information about the “Tab Area” allowing for perforation at the top or bottom of the citation; Section 5.010: Remove improper underlining; Section 6.040: Clarify how officers should complete the top of form TR-130 and, specifically, the circumstances under which a particular box should be checked; and, minor technical changes to improve clarity and consistency.</p> <p>The proposal appropriately addresses the stated purpose.</p>	The committee appreciates this feedback.
2.	Superior Court of Orange County by Elizabeth Flores, Operations Analyst	A	<p>Does the proposal appropriately address the stated purpose? Yes, the proposal appropriately addresses the stated purpose.</p> <p>Would the proposal provide cost savings? If so, please quantify. No</p> <p>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing</p>	The committee appreciates this feedback.

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

SPR24-34**Traffic: Instructions for Notice to Appear and Related Forms (Revise form TR-INST)**

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

	Commenter	Position	Comment	Committee Response
			<p>docket codes in case management systems, or modifying case management systems? OCSC already has processes and procedures in place for eCitations. However, Court Technology Services will need to modify and test the system. There may also be minor procedural updates required to reflect the new forms.</p> <p>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.</p> <p>How well would this proposal work in courts of different sizes? This proposal works well for a court of our size.</p>	
3.	Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) by TCPJAC/CEAC Joint Rules Subcommittee (JRS)	A	The JRS notes that the proposal is intended to provide significant cost savings and efficiencies.	The committee appreciates this feedback.

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

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: 8/13/24

Rules Committee action requested [Choose from the drop-down menu below]:
Recommend JC approval (has circulated for comment)

Title of proposal: Traffic: Ability-to-Pay Request Form and Court Order

Proposed rules, forms, or standards (include amend/revise/adopt/approve):
Revise forms TR- 320/CR- 320 and TR- 321/CR- 321

Committee or other entity submitting the proposal:
Traffic Advisory Committee

Staff contact (name, phone and e-mail): Jamie Schechter, 415-865-5327, Jamie.Schechter@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:

Annual agenda approved by Rules Committee on (date): October 26, 2023

Project description from annual agenda: MyCitations is an online option developed by the Judicial Council and 7 superior courts that allows a litigant to request an ability-to-pay determination for infraction fines and fees without having to appear in court. With the passage of Assembly Bill 143 (Stats. 2021, ch. 79), each of the 58 trial courts will offer online ability-to-pay determinations using MyCitations by June 30, 2024. Several stakeholders have noted that the infraction Can't Afford to Pay Fine forms (Ability to Pay forms) should be revised to be consistent with MyCitations.

Out of Cycle: *If requesting September 1 effective date or out of cycle, explain why:*

Additional Information for Rules Committee: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

Additional Information for JC Staff

- **Director Approval** (required for all invitations to comment and reports)

This report or invitation to comment was

reviewed by EGG on (date) 6/21/24

approved by Office Director (or Designee) (name) Francine Byrne
on (date) 6/14/24

If either of above not checked, explain why:

Complete the following for all reports to be submitted to council (optional for ITCs):

- **Form Translations** (check all that apply)

This proposal:

includes forms that have been translated.

includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: [Click or tap here to enter text.](#)

includes forms that staff will request be translated.

- **Form Descriptions** (for any report with new or revised forms)

The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is

(05/20/24)

checked, the form descriptions should be approved by a supervisor before submitting this RAR.).

- **Self-Help Website** (check if applicable)
 - This proposal may require changes or additions to self-help web content.



Judicial Council of California

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

Item No.:

For business meeting on September 20, 2024

Title

Traffic: Ability-to-Pay Request Form and Court Order

Agenda Item Type

Action Required

Rules, Forms, Standards, or Statutes Affected

Revise forms TR-320/CR-320 and TR-321/CR-321

Effective Date

January 1, 2025

Date of Report

July 1, 2024

Recommended by

Traffic Advisory Committee
Hon. Maria Lucy Armendariz, Chair

Contact

Jamie Schechter, 415-865-5327
Jamie.Schechter@jud.ca.gov

Executive Summary

The Traffic Advisory Committee recommends revising two ability-to-pay forms to incorporate options currently offered through the court's online ability-to-pay tool, MyCitations. Multiple stakeholders have requested the same options as MyCitations. Specifically, stakeholders have requested the ability to offer a plea on the form, instead of requiring litigants to go to court.

Recommendation

The Traffic Advisory Committee recommends the Judicial Council, effective January 1, 2025:

1. Revise *Can't Afford to Pay Fine: Traffic and Other Infractions* (form TR-320/CR-320) to expand the types of public benefits listed and to provide an option for a litigant to enter a plea of guilty or no contest; and
2. Revise *Can't Afford to Pay Fine: Traffic and Other Infractions (Court Order)* (form TR-321/CR-321) by adding a plea section where the court can indicate whether the litigant's plea is accepted, rejected, or otherwise moot because of a previous adjudication.

The proposed revised forms are attached at pages 6–11.

Relevant Previous Council Action

Effective April 1, 2018, the Judicial Council adopted two optional Judicial Council forms—an ability-to-pay application form (TR-320/CR-320) and a judicial order form (TR-321/CR-321)—to assist in implementing California Rules of Court, rule 4.335 on ability-to-pay determinations in traffic and other infraction cases.

Analysis/Rationale

The Traffic Advisory Committee recommends revisions to forms TR-320/CR-320 and TR-321/CR-321 to be consistent with the online ability-to-pay tool, MyCitations.

Forms TR-320/CR-320 and TR-321/CR-321

In 2015, the Judicial Council took steps to improve access and fairness in criminal and traffic infraction cases by adopting rule 4.105 of the California Rules of Court, which stated that defendants are not required to post bail before challenging Vehicle Code infractions unless an exception applies. When adopting rule 4.105, the council directed advisory committees to consider changes to rules or forms and to make other recommendations necessary to promote access to justice in all infraction cases, including recommendations related to postconviction proceedings or a defendant's failure to appear or to pay fines or fees. In response to this directive, the Traffic Advisory Committee and the Criminal Law Advisory Committee—in consultation with the Advisory Committee on Providing Access and Fairness—developed and recommended new procedural rules for traffic and other criminal infraction cases.¹ In 2016, the council adopted rule 4.106, which standardized court procedures when a defendant failed to appear or pay, and rule 4.335, which standardized court procedures related to ability-to-pay determinations. Those rules became effective January 1, 2017.

In January 2018, the Traffic Advisory Committee, the Criminal Law Advisory Committee, and the Advisory Committee on Providing Access and Fairness proposed two optional, plain-language Judicial Council forms—an application form and a judicial order form—to assist in implementing rule 4.335 on ability-to-pay determinations in traffic and other infraction cases. The forms, TR-320/CR-320 and TR-321/CR-321, were adopted with an effective date of April 1, 2018. The committees intentionally designed the forms using plain language and with a more user-friendly format.

MyCitations

In 2016, with funding from the U.S. Department of Justice's Price of Justice Initiative, the Judicial Council began to study the impact of high fines and fees on low-income court users and to explore options to minimize these impacts. The Judicial Council partnered with five superior courts to design an online process for submitting and adjudicating ability-to-pay determinations.

¹ See Judicial Council of Cal., Advisory Com. Rep., *Traffic and Criminal Procedure: Infraction Procedures Regarding Bail, Fines, Fees, and Assessments; Mandatory Courtesy Notices; and Ability-to-Pay Determinations* (Dec. 1, 2016), <https://jcc.legistar.com/View.ashx?M=F&ID=4817182&GUID=D0F79B3B-0A7E-40FC-9F2A-C79D7B4F9024>.

The resulting prototype provided users with the ability to search for their citation and make requests online for reductions for infraction fines and fees based on their ability to pay. The tool, named MyCitations, was initially implemented as a pilot program in 2018.² MyCitations (mycitations.courts.ca.gov/home) is mandated to be made available by all California superior courts no later than June 30, 2024.³

MyCitations provides an online option for people who are struggling with court debt and who have eligible infraction violations that do not require a personal appearance in court. The tool allows a litigant to look up their citation, answer several financial questions (including whether they receive public benefits), and submit a request to the court for a reduction in the amount owed. A user can also request a payment plan, additional time to pay, or community service. The tool also accepts guilty or no-contest pleas.

Unlike MyCitations, the existing forms—adopted a year before the first court went live with MyCitations—do not offer a plea option even though ability-to-pay determinations are generally available only for adjudicated cases.⁴ Nor do the forms contain the same financial information options that will be available on MyCitations. Although these forms are helpful for litigants, multiple stakeholders have requested that the forms provide the same options as MyCitations. Most importantly, stakeholders have requested the ability to offer a plea on the form, instead of requiring litigants to go to court. There have also been requests to ensure the types of public benefits that a litigant may select on the form mirror those listed in MyCitations.

The following revisions are recommended by the committee for form TR-320/CR-320:

- In the “Using this form” section on page 1, remove “Use this form **after** the court has decided that you owe the fine” from the second bullet point. This information is no longer applicable because the form will now provide an option for litigants to enter a plea of guilty or no contest.
- In the “Types of fines” section on page 1, clarify the form should not be used for misdemeanors or proof of correction citations to be consistent with advisements in MyCitations.
- In the “Important!” section on page 1, add a second bullet: “This form cannot be used to sign up for traffic school. Please contact your court if you wish to request a reduction and traffic school.”⁵

² The Budget Act of 2018 (Sen. Bill 847; Stats. 2018, ch. 29) allocated funding to the Judicial Council to implement a pilot program for MyCitations. The pilot program involved eight courts.

³ Gov. Code, § 68645.2(a) (Assem. Bill 143 (Stats. 2021, ch. 79)).

⁴ Veh. Code, § 42003(b).

⁵ Note that this form should not be used by litigants who wish both to attend traffic school and to have an ability-to-pay determination. Vehicle Code section 42007(a)(2) requires that installment payments for traffic violator school be completed within 90 days, a time period that is generally shorter than ability-to-pay payment plans.

- In item 2 (“What type of income do you have?”), add the options “WIC” and “Unemployment.” These options are planned to appear in MyCitations in summer/fall of 2024.
- In item 5 on page 3, remove the option “Cancel or lower late charges that I have for missing a hearing or failing to pay my fine on time.” This option is not applicable because the civil assessment (if any) will be part of the total amount to be reduced.⁶
- Replace item 7, “Driver’s license ‘hold’ or suspension,” with new item 7, “Plea selection.” Driver’s license restrictions due to failure to appear or pay have changed since this form was adopted.⁷
- Make minor technical changes.

The following revisions are recommended for form TR-321/CR-321:

- Add a plea acceptance section on page 1 to account for the revised form TR-320/CR-320 allowing for pleas.
- Reverse the order of the “Request denied” section and the “Need more information” section, for clarity.
- Remove the “extra late charges” check box options from the “Request granted” section, because the civil assessment (if any) will be part of the total amount to be reduced.
- Make minor technical changes.

Policy implications

This proposal furthers the council’s policy of ensuring access to justice for all litigants by conforming the forms to MyCitations. Litigants will also be able to avoid unnecessary court appearances.

Comments

The proposal circulated for public comment between April 2 and May 3, 2024. The proposal received six comments. Five commenters agreed with the proposal, and one agreed with the proposal if modified.

Two commenters recommended form TR-320/CR-320 contain additional advisements that appear in MyCitations. The Superior Court of Stanislaus County noted that, to be consistent with MyCitations, the form should contain two additional advisements explaining the form is not to be used for misdemeanors or to request a dismissal or reduction based on proof of correction. The Superior Court of Orange County commented that the form should inform litigants that the

⁶ When the forms were initially adopted, it was unclear whether civil assessments could be included under ability-to-pay requests. However, Government Code section 68645.2 now clarifies that civil assessments are included in the total amount due. A litigant does not need to separately request the civil assessment be considered. Note that this is not the appropriate form if a litigant is requesting that the civil assessment be eliminated based on good cause.

⁷ See Assembly Bill 2746 (Stats. 2022, ch. 800), repealing Vehicle Code sections 40509 and 40509.5.

form cannot be used to submit proof of correction. The committee agreed with these suggestions and recommends these additional changes.

An individual commented on the proposal requesting expanded community services options as part of the proposal. The committee determined this suggestion is outside the scope of the current proposal.

A chart of comments and committee responses is attached at pages 12–14.

Alternatives considered

Based on a significant number of stakeholder requests and legislative changes, the committee did not consider taking no action. There were no significant alternatives considered.

Fiscal and Operational Impacts

Expected costs are limited to possible case management system updates and the production of new forms.

Attachments and Links

1. Forms TR-320/CR-320 and TR-321/CR-321 at pages 6–11
2. Chart of comments, at pages 12–14
3. Link A: Veh. Code, § 42003,
leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=42003.&lawCode=VEH
4. Link B: Veh. Code, § 42007,
leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=42007.&lawCode=VEH
5. Link C: Gov. Code, § 68645.2,
leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=68645.2.&lawCode=GOV

Clerk stamps date here when form is filed.

06/28/2024
DRAFT
Not approved by
the Judicial Council

Using this form

- If you can't afford to pay your fine, fill out this form to ask for a lower fine, a payment plan, more time to pay, and/or community service.
You may use this form even if your fine has been sent to collections. If you have more than one fine, use one form for each fine.
Mail or take this form to the court listed on your ticket. If you want to file the form electronically, ask the court if it allows "e-filing."
If you lost your ticket or have questions, contact your court at www.courts.ca.gov/find-my-court.htm.



Fill in court name and street address:

Superior Court of California, County of

Fill in the case number and ticket number (if you have it):

Case Number:
Ticket Number:



Types of fines

- Use this form for traffic fines (like speeding) or other infractions (like fishing without a license or drinking in public), not for misdemeanors.
This form is not for parking tickets. Read your parking ticket to find out what you can do.
Do not use this form for a dismissal or reduction of charges for tickets requiring proof of correction.

Important!

- Do not use this form to tell the court that you didn't do anything wrong. See the instructions on your ticket and visit www.courts.ca.gov/selfhelp.htm for more information on fighting it.
This form cannot be used to sign up for traffic school. Please contact your court if you wish to request a reduction and traffic school.

1 Your information

Name: _____

Street or mailing address: _____
Street City State Zip

Telephone: _____ OK to text you at this number?* [] No [] Yes

Email (optional): _____ OK to email you at this email?* [] No [] Yes

* Some courts don't use text messages or email to contact court clients. Message and data rates would apply.



2 What type of income do you have?

- I do not get money from any source. (Skip to 3)
- I get public benefits. (Check all that apply, then skip to 3)
 - CalFresh (food stamps)
 - Medi-Cal
 - General Assistance / county relief
 - SSI: Supplemental Security Income
 - SSP: State Supplementary Payment
 - IHSS: In-Home Supportive Services
 - CalWORKs: California Work Opportunity and Responsibility to Kids Act
 - TANF: Temporary Assistance for Needy Families
 - CAPI: Cash Assistance Program for Immigrants
 - WIC: California Special Supplemental Nutrition Program for Women, Infants, and Children
 - Unemployment compensation
 - Other
 - None of the above

I do **not** get public benefits, but I get money from other sources. (Answer all that apply)

a. How much money do you earn (take-home pay) or get from other sources (including income received in your family from a spouse or live-in romantic partner)?

\$_____ every: (Check one) Year 2 weeks Twice a month
 Week Month Season
 Other: _____

b. This money supports me and _____ other people.

c. If I pay the fine, I would: (Check all that apply, if any)

- Not have enough money to pay my rent/mortgage. I pay \$_____ for rent/mortgage every (Check one): Month Week Other: _____
- Not have enough money to pay for other basic living expenses. *Basic living expenses are things like: food, utilities, childcare, child support, transportation, medication, insurance (medical, car, house, and rental), and student loans.*
- Not have enough money to pay my debt for other court cases.
- Have other problems (please explain):

3 Do you have anything that shows your public benefits, income, or expenses?

Things like an EBT card, paystubs, tax returns, rent or mortgage checks, or utility bills.



a. Yes, I have attached **copies** to this form.

Important! Keep the original documents for your own records. Any copies you attach can be destroyed after the court makes a decision on your case. Cross out any social security numbers, or other private information, on the copy you give the court.

b. No, I do not have any papers to show because:



4 Have you told the court before that you can't pay this fine?

- Yes No, not that I can remember (Skip to 5)

What has changed in your family's life since then? (Check all that apply, if any.)

- Lost job or reduced hours at work.
Started to receive public benefits.
Suffered a serious illness or disability.
Other:

5 What are you asking the court to do? (Check all that you are willing and able to do)

- Lower the amount I owe on the fine.
Payment plan: I want to pay: \$ every month on the day of the month, until this fine is paid off.
More time to pay. Please change my deadline to (month/day/year):
Community service instead of paying the fine. I understand that community service may not be available on weekends or evenings.

Warning box with exclamation mark icon and text: Not all courts offer all of these choices. Contact the court listed on your ticket to find out about your choices. Some fines can't be reduced just because you don't have the money to pay them. You may ask for more time to pay, community service, and/or monthly payments even if the court can't reduce the fine.

6 Other information:

List other facts (if any) about why you can't pay the fine or about your choices in 5. (You can add extra pages or attach other documents that help you explain.)

Multiple horizontal lines for writing additional information.



7 Plea selection *(In order to submit your request using this form, if your case is unadjudicated, you need to admit responsibility for the ticket by entering a plea of **guilty** or **no contest**. If you do not want to admit responsibility or you do not understand your rights, do not use this form. Instead, contact your court to set up a court appearance.)*
By entering a plea you will be giving up the following rights:

- To be represented by an attorney employed by you;
- To have a speedy and public trial in front of a judge;
- To testify, to present evidence, and to use court orders without cost to compel the attendance of witnesses and the production of evidence on your behalf;
- To have the witnesses against you testify under oath in court, and to question such witnesses; and
- To remain silent and not testify and not incriminate yourself.

Make a choice between pleading guilty or no contest. A no contest plea is a way of saying, “I don’t believe I did all that the officer charges, but I admit violating the law.”

Note: Once you admit responsibility, you will have a conviction for this traffic offense that will be reported to the Department of Motor Vehicles (DMV).

Your plea *(check one)*:

- No contest plea.** I am the defendant in the case. I have read, understand, and waive the rights above; there are facts to support my plea; I am entering my plea freely and voluntarily, and I agree to plead “no contest.” I understand that, for purposes of this case, a plea of no contest will be considered the same as a plea of guilty and that if I plead no contest the court will find me guilty.
- Guilty plea.** I am the defendant in the case. I have read, understand, and waive the rights above; there are facts to support my plea; I am entering my plea freely and voluntarily; and I agree to plead guilty.

8 Read and sign below



I promise that the information above is correct. *I declare under penalty of perjury, under the laws of the State of California, that all information on or attached to this form is true.*

Date: _____

Type or print your name

▶ _____
Sign your name

**Can't Afford to Pay Fine:
Traffic and Other Infractions
(Court Order)**

Clerk stamps date here when form is filed.

06/28/2024
DRAFT
Not approved by
the Judicial Council

Court order: *You said that you don't have enough money to pay what you owe. See below for the court's decision.*

1 Plea selection

- The court accepts your plea of guilty or no contest for each offense charged.
- The court rejects your plea of guilty or no contest for each offense charged.
- Your case was previously adjudicated (there was previously a bail forfeiture or a finding of guilty or no contest).

Superior Court of California, County of

Case Number:

Ticket Number:

2 Request granted: The court decided that you don't have enough money to pay what you owe.



The amount you owe is lowered to \$ _____.
Pay the new amount of \$ _____
by (date): _____.



You will pay what you owe in monthly payments.
Pay \$ _____ on the _____ day of every month for
_____ months.
Your **first** payment will be on (date): _____.
Your **last** payment will be on (date): _____.



You can have more time to pay what you owe. Pay \$ _____ on (date): _____.



You will do community service instead of paying what you owe.
You must do _____ hours of community service by (date): _____.
Contact our court to learn how to set up community service.

This is a Court Order.



Case Number: _____

3 **Need more information:** The court has more questions.

Please contact your court to set up a time to see the judicial officer.

Clerk's phone number: _____

Clerk's address: _____

Please come to court at (time): _____ on (date): _____ Go to Department: _____

Bring these things with you:

(1) _____

(2) _____

(3) _____



**Don't miss
the court date!**

4 **Request denied:** The court decided that you have to pay the full cost of what you owe.

The court decided that:

You have enough money to pay what you owe.

You made a request before, but you did not show that your situation has changed since your last request.

Pay the full cost of what you owe (\$ _____) by (date): _____.

See the court's website for payment information.

Date: _____

Judge (or Judicial Officer)

5 **Clerk's certificate of service**

I am a clerk of the Superior Court of _____ County. I certify that I am not a party to this action.

I served a copy of this order to: _____ in the following manner:
Name of person served

Service by mail: I placed a filed copy of this order in a sealed envelope addressed to the following address:

Street or mailing address: _____
Street City State Zip

The envelope was mailed by U.S. mail, with full postage, from:

Place: _____, California, on (date): _____

Electronic service: I electronically sent a copy of this order:

from _____ to _____ on _____
Electronic service address Electronic service address Date

Date: _____

Clerk, by: _____

This is a Court Order.

SPR24-35

Traffic: Ability-to-Pay Request Form and Court Order (Revise forms TR-320/CR-320 and TR-321/CR-321)

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

	Commenter	Position	Comment	Committee Response
1.	David L. Condrey San Diego	A	<p>To Whom It May Concern,</p> <p>I am writing to express my support for the proposed changes to forms TR-320/CR-320 and TR-321/CR-321, specifically regarding the alignment of these forms with the MyCitations tool and the integration of a plea option directly on the form.</p> <p>This adjustment will significantly enhance access to justice, particularly for low-income individuals who may face significant barriers when required to appear in court for traffic and other minor infractions.</p> <p>Moreover, I would like to advocate for an expansion of community service options as an alternative to fines. Current procedures that narrowly interpret or limit the ability to pay with community service disproportionately affect low-income litigants, exacerbating socioeconomic disparities.</p> <p>By mandating that all courts offer a standardized method for converting fines to community service hours, we can ensure a fairer, more inclusive judicial process. This approach not only assists those unable to pay fines but also enriches our communities through the service performed. It is crucial that we recognize and rectify any unintended biases in our judicial system, and providing diverse, accessible payment alternatives, including community service, is a critical step in this direction.</p> <p>I urge the committees to consider these perspectives thoroughly and to continue striving towards a justice system that equitably serves all Californians, regardless of economic status.</p> <p>Thank you for considering my views on this important matter. Respectfully, David L Condrey</p>	<p>The committee appreciates this feedback.</p> <p>This suggestion is outside the scope of the current proposal, but the committee may consider changes to community service recommendations and calculations in the future.</p>

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

SPR24-35

Traffic: Ability-to-Pay Request Form and Court Order (Revise forms TR-320/CR-320 and TR-321/CR-321)

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

	Commenter	Position	Comment	Committee Response
2.	Orange County Bar Association by Christina Zabat-Fran, President	A	<p>Appropriately modifies optional court form TR-320/CR-320, <i>Can't Afford to Pay Fine: Traffic and Other Infractions</i>, and to form TR-321/CR-321, <i>Can't Afford to Pay Fine: Traffic and Other Infractions</i> (Court Order) to allow plea of guilty or no contest plea on form without requiring litigant to appear in court. Further, conforms forms with the options currently offered through the court's online ability-to-pay tool, <i>MyCitations</i>.</p> <p>The proposal appropriately addresses the stated purpose.</p>	The committee appreciates this feedback.
3.	Superior Court of Orange County by Elizabeth Flores, Operations Analyst	A	<p>Position on Proposal: In addition to the proposal, the form should also inform defendants that the form cannot be used to submit proof of correction.</p> <p>Does the proposal appropriately address the stated purpose? Yes, the proposal appropriately addresses the stated purpose.</p> <p>Would the proposal provide cost savings? If so, please quantify. Yes, this may reduce the number of hearings necessary if the defendant is able to enter their plea on the form.</p> <p>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? New docket codes as well as a procedure will need to be created to support pleas being accepted in the Clerk's Office and the ability to track electronic versus manual requests for reporting purposes. A 45-minute training would suffice to get impacted staff up-to-speed.</p>	<p>The committee agrees with this suggestion and has incorporated it into the revised proposal by including the additional advisement.</p> <p>The committee appreciates this feedback.</p>

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

SPR24-35**Traffic: Ability-to-Pay Request Form and Court Order** (Revise forms TR-320/CR-320 and TR-321/CR-321)

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	Commenter	Position	Comment	Committee Response
			<p>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes</p> <p>How well would this proposal work in courts of different sizes? The impact would be more significant for larger courts as there may be a more significant number of defendants submitting reduction requests outside of the MyCitations tool.</p>	
4.	Superior Court of Stanislaus County by Hon. Janine Highiet, Commissioner	AM	The form is intended to be consistent with the online MyCitations tool. The paper form states it is not to be used to contest the ticket or to request traffic school. The online MyCitations tool also advises that the tool is not to be used to request a dismissal/reduction based on proof of correction or if the offense was charged as a misdemeanor (i.e. VC 12500, 14601.1). The paper form should include these two extra advisements to make it clear the form is not intended for these purposes either and to make sure the online version and the paper version are consistent.	The committee appreciates this feedback. The committee agrees with this suggestion and has incorporated it into the revised proposal by including the additional advisements.
5.	Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) by TCPJAC/CEAC Joint Rules Subcommittee (JRS)	A	The JRS notes that the proposal is intended to provide significant cost savings and efficiencies.	The committee appreciates this feedback.
6.	Norman J. Valdez McArthur	A	No specific comment	No response necessary.

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