

Invitation to Comment

<p>Title</p>	<p>Appellate Procedure: Record on Appeal (adopt Cal. Rules of Court, rule 8.819; amend rules 2.1040, 8.122, 8.124, 8.147, 8.320, 8.336, 8.832, 8.861, 8.862, 8.864, and 8.915; renumber rule 8.160 as rule 8.46; approve forms APP-010 and APP-110; and revise forms APP-003 and APP-103)</p>
<p>Summary</p>	<p>This proposal would make several changes to the California Rules of Court relating to the record on appeal in civil and criminal cases. These changes include: (1) eliminating the provision allowing the judge to make an exception to the rule that a party offering into evidence an electronic sound or sound-and-video recording must tender to the court a typewritten transcript of the electronic recording; (2) clarifying that records from other appeals may be incorporated by reference in an appendix or, when there is a later appeal, in a clerk’s or reporter’s transcript and establishing requirements for identifying parts of any record to be incorporated; (3) requiring that the cover of an appendix, clerk’s transcript, or reporter’s transcript indicate if a party is incorporating by reference the record from another appeal; (4) requiring parties who either incorporate the record in another appeal by reference or ask that portions of a such a record be copied into a clerk’s transcript make a copy of the other record available to the court or another party on request; (5) specifying the consequence if the appellant in a misdemeanor or infraction appeal fails to timely file the required election regarding the record of the oral proceedings; (6) adding certain diagnostic and psychological reports to the list of documents that must be included in the clerk’s transcript when a defendant appeals in a felony or misdemeanor case; and (7) clarifying the handling of probation reports in the clerk’s transcripts in felony and misdemeanor appeals. In addition, this proposal would clarify that the rule on sealed records applies in all proceedings in the appellate courts, not just in civil appeals.</p> <p>This proposal would also make several changes to the Judicial Council forms relating to designating the record in civil appeals, including: (1) revising the <i>Appellant’s Notice Designating Record on Appeal (Unlimited Civil Case)</i> (form APP-003) to separate the request for transmittal of an administrative record from the section of the form on designating a clerk’s transcript; and (2) providing two new forms that respondents can use to make further record designations in both unlimited and limited cases.</p>

Source	Appellate Advisory Committee Hon. Kathryn Doi Todd, Chair
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Discussion In spring 2008, the Appellate Advisory Committee circulated an earlier version of this proposal for public comment. Many of the comments received at that time suggested additional changes should be made to the rules relating to record preparation. The committee also received other suggestions for changes to the rules and forms relating to records on appeal. Based on these suggestions, the committee has revised its proposal and is circulating this revised proposal for public comment.

Transcripts of electronic recordings offered into evidence under rule 2.1040

Rule 2.1040 currently provides that, unless otherwise ordered by the trial judge, a party offering into evidence an electronic sound or sound-and-video recording must tender to the court a typewritten transcript of the electronic recording, and a copy of the transcript must be filed by the clerk and must be made part of the clerk's transcript in the event of an appeal. The rules on felony, misdemeanor, and infraction appeals also specifically require that any transcript provided by a party under rule 2.1040 be included in the clerk's transcript on appeal (see rules 8.320, 8.861, and 8.912). Sometimes, however, a party offering such a recording into evidence will not tender a written transcript of the recording and, as a result, no written record of the recording is available for inclusion in the clerk's transcript in the event of an appeal.

To ensure that there is a written record of any recording offered into evidence or played for the court under rule 2.1040, this proposal would eliminate the provision in 2.1040 allowing the judge to make an exception to the rule that a transcript of such a recording must be provided by the party. It would also eliminate the references in rule 2.1040 to inclusion of the transcript in the clerk's transcript in the event of an appeal. As noted above, the rules on felony, misdemeanor, and infraction appeals already require that any transcript provided by a party under rule 2.1040 be included in the clerk's transcript on appeal. In civil appeals, the contents of clerk's transcript is generally determined by the parties (see rules 8.122(b) and 8.832(a)). In some civil appeals, the content of the electronic recording is not relevant to the issues on appeal, in which case it is not necessary for a transcript of such a recording to be included in the clerk's transcript. To guide rule users, a new advisory committee comment would be added explaining that the purpose of rule

2.1040 is to ensure that a written record of any electronic recording offered into evidence is available in the event of an appeal and providing citations to the rules concerning the contents of clerk's transcripts.

Forms for designating the record in civil cases

Appellant's Notice Designating Record on Appeal (Unlimited Civil Case) (form APP-003) and *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) are optional forms that appellants in unlimited and limited civil cases, respectively, can use to designate the record on appeal. Rules 8.130(a)(2) and 8.834(a)(2), which relate to the designation of reporter's transcripts in unlimited and limited civil cases, respectively, both require that if the appellant designates less than all of the testimony to be included in the transcript, the notice designating the transcript must state the points to be raised on appeal. Currently, however, neither APP-003 nor APP-103 include spaces where the appellant can identify these points. This proposal would revise both of these forms to add space for this purpose.

Current item 6 on form APP-003 is for requesting that a record of an administrative proceeding be transmitted to the reviewing court under rule 8.123. This item is presently located at the bottom of a page that generally addresses designation of a clerk's transcript. To clarify that a request to transmit an administrative record is separate from the designation of the clerk's transcript, this proposal would revise form APP-003 to move the item relating to the administrative record to the top of the page as new item 3 under a new, separate heading. A check box would also be added to this item and to items 5 and 6 on form APP-003. Other nonsubstantive formatting changes would also be made to this form.

If an appellant in a civil case designates a clerk's transcript, under rules 8.122(a)(2) and 8.832(b), relating to unlimited and limited civil cases, respectively, the respondent may file a notice designating additional documents to be included in the clerk's transcript. Similarly, if an appellant in a civil case designates a reporter's transcript, under rules 8.130(a)(3) and 8.834(a)(3), the respondent may file a notice designating additional proceedings to be included in that transcript. In addition, rule 8.124(a) allows a respondent in an appeal to the Court of Appeal to file a notice electing to use an appendix in lieu of a clerk's transcript. Currently, however, there is no Judicial Council form that a respondent can use to file such notices. This proposal includes a new *Respondent's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-010) and *Respondent's Notice Designating Record on Appeal*

(Limited Civil Case) (form APP-110) that can be used to file these notices.

Exhibits returned to a party

Rules 8.122 and 8.832, relating to clerk's transcripts in civil appeals, allow parties to designate exhibits to be included in the clerk's transcript. These rules currently provide that if an exhibit was returned to a party by the trial court, that party must "promptly" deliver the exhibit to the trial court clerk if it is designated for inclusion in the clerk's transcript. To make the time frame for delivery of such exhibits clearer, this proposal would instead provide that such exhibits must be delivered to the clerk within 10 days after a notice designating the exhibit is served.

Appendixes

As a general rule, in a civil appeal, the appellant designates the form of the record that is used. As noted above, however, rule 8.124 allows a respondent in an appeal in an unlimited civil case to elect that an appendix, rather than a clerk's transcript, be used as the record of the documents filed in a case. Because appendixes are prepared by the parties, not the trial court clerk, a respondent's election to use an appendix may place additional burdens on the appellant to gather, organize, and copy necessary documents. In addition, unlike the costs associated with preparing a clerk's transcript, which can be waived by the trial court, the costs of preparing an appendix are borne by the parties.

This proposal would make two changes in rule 8.124 to address concerns about the burden placed on appellants when a respondent makes an election to use an appendix. First, it would provide that such an election can only be made in cases in which the appellant has not been granted a fee waiver. This would protect indigent appellants from having to bear the costs of preparing an appendix. Second, the proposal would broaden the provisions in 8.124(c) that currently address how a party preparing an appendix can borrow or copy exhibits held by another party to include them in the appendix. Under this proposal, 8.124(c) would be amended to encompass any document held by another party. This would address situations in which an appellant does not have a copy of a document necessary for the appendix. In addition, because paragraph (a)(1) in rule 8.124 is currently very long and complicated, this proposal would break this paragraph up into several shorter subparagraphs that should be easier to understand.

Records from other appeals incorporated by reference or copied into the record

Rule 8.147, part of the rules on civil appeals in the Court of Appeal, addresses records in cases in which there is a later appeal. This rule currently permits parties in these appeals to incorporate by reference in a clerk's or reporter's transcript or copy into the record parts of the record from a prior appeal in the same case. Subdivision (b)(1) provides that, "in an appeal under rule 8.122¹ or 8.130,²" a party may incorporate by reference parts of a record in a prior appeal by specifying those parts in its designation of the record. Subdivision (b)(2) provides that a party who wants parts of a prior record to be copied into the later record must serve and file a notice specifying those parts and must deposit the estimated copying cost with the clerk.

In a more indirect way, rule 8.124, which addresses the use of appendixes in lieu of clerk's transcripts in unlimited civil cases, similarly permits the incorporation by reference of other records on appeal in an appendix. Subdivision (b)(2) provides that an appendix must not incorporate any document by reference "except the record on appeal in another case pending in the reviewing court or the record in a prior appeal in the same case." Thus, under this exception, an appendix may incorporate by reference the record from such other appeals.

There are some challenges associated with these procedures, however. First, without some clear notice on the cover of the record, the reviewing court may not immediately recognize that records from other appeals have been incorporated by reference, which may cause delay in obtaining these records. Second, the procedures for obtaining estimates for the cost of copying parts of clerk's transcripts from a prior appeal into the record are not clearly spelled out. In addition, courts and other parties might not have ready access to records from another appeal that are incorporated by reference or that a party has asked be copied into the record on appeal.

This proposal would amend rule 8.147 to: (1) clarify its general application to appeals in which a clerk's or reporter's transcript is being used; (2) limit the procedure for copying material into the new record to material from a prior clerk's transcript or other record of documents; and (3) clarify that a request to copy parts of a clerk's transcript or other record of documents from a prior appeal into the new record must be made as part of the designation of the clerk's transcript and that the

¹ This rule addresses clerk's transcripts.

² This rule addresses reporter's transcripts.

estimated cost of copying these records must be included in the overall estimate for preparing the clerk's transcript. It would also amend rule 8.124 to more clearly and affirmatively state that the record in another appeal can be incorporated by reference in an appendix. In addition, both rules 8.124 and 8.147 would be amended to: (1) indicate how parts of any record to be incorporated by reference are to be identified; (2) require that the cover of the appendix or the clerk's or reporter's transcript include a notice of any such incorporated record, which will alert the reviewing court clerk that the records in those other appeals should be retained and made accessible for the appeal; and (3) require the designating party, on request of the reviewing court or any party, to make the materials incorporated by reference or to be copied into the clerk's transcript available to the court or the party.

Election regarding the oral proceedings in misdemeanor and infraction appeals

Rules 8.864 and 8.915 require appellants in misdemeanor and infraction cases to file an election with the court indicating whether they want a record of the oral proceedings and, if so, what form of the record they elect to use. Currently, these rules do not indicate what the consequences are if an appellant does not timely file the required election. This proposal would fill that gap by providing that if the appellant does not timely file an election, the trial court clerk must notify the appellant that the election must be filed within 15 days after the notice was sent and that failure to comply will result in the appeal proceeding without a record of the oral proceedings. This proposed provision is similar to other default notices required under the appellate rules, which give the party time within which to cure the default.

Clerk's transcripts in criminal appeals

Rules 8.320(b) and 8.861 list the documents that must be included in a clerk's transcript in a felony and a misdemeanor appeal, respectively. Currently, the documents listed in these rules do not include court-ordered diagnostic reports under Penal Code section 1203.03³ or psychological reports under Penal Code section 1369. If any such reports were ordered during the trial court proceedings, they are likely to be needed in the record on appeal. Because these documents are not automatically included in the clerk's transcript, counsel must currently make and the court must consider requests to augment the record on appeal in order to include these reports. These requests take time and resources for both the litigants and the courts. This proposal would eliminate the need for such augmentation requests by adding these

³ This section applies only in felony cases.

reports to the documents that are automatically included in the clerk's transcript when the defendant is the appellant.

Under rule 8.320(b)(13)(D) and 8.861(12)(D), probation reports are required to be included in the clerk's transcript when the defendant appeals in a felony or misdemeanor case. Under Penal Code section 1203.05, a probation report is only open to public inspection for 60 days from the date judgment is pronounced or probation is granted, whichever is earlier. After that time, the report is not open to the public or other defendants in a case absent a court order. However, rule 8.336 currently provides that a probation officer's report must be included in all copies of the appellate record.

This proposal would amend rule 8.336 to provide that the probation officer's report is to be included only in the copies of the record sent to the reviewing court, the People, and the defendant who is the subject of the report. In addition, this proposal would add a new subdivision to rule 8.862, relating to the preparation of clerk's transcripts in misdemeanor appeals, containing this same requirements as rule 8.336.

Sealed records

Rule 8.160 addresses sealed records and records proposed to be sealed in both appeals and original proceedings. When this rule was originally adopted, it appears it was intended to apply to sealed records in both civil and criminal proceedings. Currently, however, this rule is located in chapter 2 of the rules for the Supreme Court and Courts of Appeal, which covers civil appeals. Rule 8.486, which addresses petitions for writs of mandate, certiorari, and prohibition, specifically provides that rule 8.160 applies if a party seeks to lodge or file a sealed record or to unseal a record in such a writ proceeding. There is currently no similar provision concerning the application of rule 8.160 in criminal appeals. To clarify that the procedures for sealing and unsealing records apply in all appeals and writ proceedings in the Supreme Court and Court of Appeal, this proposal would move rule 8.160 to chapter 1 of the rules for the Supreme Court and Court of Appeal, which covers general provisions, and renumber it as rule 8.46. New rule 8.819 would also be added to the appellate division rules indicating that rule 8.46 governs sealed records in the appellate division.

The proposed new, amended, and renumbered rules are attached on pages 8–18, and the proposed new and revised forms are attached on pages 19–35.

Attachments

Rule 8.819 of the California Rules of Court would be adopted; rules 2.1040, 8.122, 8.124, 8.147, 8.320, 8.336, 8.832, 8.861, 8.862, 8.864, and 8.915 would be amended; and rule 8.160 would be renumbered as rule 8.46, forms APP-010 and APP-110 would be approved; and forms APP-003 and APP-103 would be revised, effective January 1, 2010, to read:

1 **Title 2. Trial Court Rules**

2
3 **Division 8. Trials**

4
5 **Chapter 3. Testimony and Evidence**

6
7 **Rule 2.1040. Electronic recordings ~~offered in evidence~~ presented to the court**

8
9 **(a) Transcript of electronic recording**

10
11 ~~Unless otherwise ordered by the trial judge, A party offering into evidence or~~
12 ~~presenting an electronic sound or sound-and-video recording to the court must~~
13 ~~tender to the court and to opposing parties a typewritten transcript of the electronic~~
14 ~~recording. The recording and the transcript must be marked for identification. A~~
15 ~~duplicate of the transcript, as defined in Evidence Code section 260, must be filed~~
16 ~~by the clerk and must be part of the clerk's transcript in the event of an appeal. Any~~
17 ~~other recording transcript provided to the jury must also be marked for~~
18 ~~identification, and a duplicate must be filed by the clerk and made part of the clerk's~~
19 ~~transcript in the event of an appeal.~~

20
21 **(b) Transcription by court reporter ~~not required~~**

22
23 ~~Unless otherwise ordered by the trial judge, the court reporter need not take down or~~
24 ~~transcribe an electronic recording that is admitted into evidence.~~

25
26 **Advisory Committee Comment**

27
28 This rule is designed to ensure that, in the event of an appeal, if any electronic sound or sound-and-video
29 recording is tendered to the court, there is a written record of that recording for inclusion in the record on
30 appeal. The rules on felony, misdemeanor, and infraction appeals require that the transcript provided by a
31 party be included in the clerk's transcript on appeal (see rules 8.320, 8.861, and 8.912). In civil appeals
32 the parties may designate such a transcript for inclusion in the clerk's transcript (see rules 8.122(b) and
33 8.832(a)).
34
35

1 Title 8. Appellate Rules

2
3 Division 1. Rules Relating to the Supreme Court and Courts of Appeal

4
5 Chapter 1. General Provisions

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

7
8 Rule ~~8.160.~~ 8.46 Sealed records

9
10 * * *

11
12 Chapter 2. Civil Appeals

13
14 Article 2. Record on Appeal

15
16 Rule 8.122. Clerk’s transcript

17
18 (a) Designation

19
20 (1)–(2) * * *

21
22 (3) Except as provided in (b)(4), all exhibits admitted in evidence, refused, or
23 lodged are deemed part of the record, but a party wanting a copy of an exhibit
24 included in the transcript must specify that exhibit by number or letter in its
25 notice of designation. If the superior court has returned a designated exhibit to
26 a party, the party in possession of the exhibit must promptly deliver it to the
27 superior court clerk ~~on receipt of the designation~~ within 10 days after the
28 notice designating the exhibit is served.

29
30 (b)–(d) * * *

31
32
33 Rule 8.124. Appendixes

34
35 (a) Notice of election

36
37 (1) Unless the superior court orders otherwise on a motion served and filed within
38 10 days after the notice of election is served, this rule governs if:

39
40 (A) In the notice designating the record on appeal under rule 8.121, the
41 appellant elects to use an appendix under this rule; or
42

1 (B) if, In any case in which the appellant has not been granted a fee waiver,
2 within 10 days after the notice of appeal is filed, the respondent serves
3 and files a notice in the superior court electing to use an appendix under
4 this rule, this rule governs unless the superior court orders otherwise on
5 a motion served and filed within 10 days after the notice of election is
6 served.

7
8 (2)–(3) * * *

9
10 **(b) Contents of appendix**

11
12 (1) * * *

13
14 (2) An appendix may incorporate by reference all or part of the record on appeal in
15 another case pending in the reviewing court or in a prior appeal in the same
16 case.

17
18 (A) The other appeal must be identified by its case name and number. If only
19 part of a record is being incorporated by reference, that part must be
20 identified by citation to the volume and page numbers of the record where
21 it appears and either the title of the document or documents or the date of
22 the oral proceedings to be incorporated. The parts of any record
23 incorporated by reference must be identified both in the body of the
24 appendix and in a separate section at the end of the index.

25
26 (B) If the appendix incorporates by reference any such record, the cover of
27 the appendix must prominently display the notice “Record in case
28 number: _____ incorporated by reference,” identifying the number of the
29 case from which the record is incorporated.

30
31 (C) On request of the reviewing court or any party, the designating party must
32 provide a copy of the materials incorporated by reference to the court or
33 another party or lend them for copying as provided in (c).

34
35 (2)(3) An appendix must not:

36
37 (A)–(C) * * *

38
39 (D) Incorporate any document by reference except the record on appeal in
40 another case pending in the reviewing court or the record in a prior appeal
41 in the same case as provided in (2).

1 (3)–(5) * * *

2
3 (c) **Document or exhibit held by other party**

4
5 If a party preparing an appendix wants it to contain a copy of ~~an~~ a document or
6 exhibit in the possession of another party:

7
8 (1) The party must first ask the party possessing the document or exhibit to
9 provide a copy or lend it for copying. All parties should reasonably cooperate
10 with such requests.

11
12 (2) If the attempt under (1) is unsuccessful, the party may serve and file in the
13 reviewing court a notice identifying the document or specifying the exhibit's
14 trial court designation and requesting the party possessing the document or
15 exhibit to deliver it to the requesting party or, if the possessing party prefers,
16 to the reviewing court. The possessing party must comply with the request
17 within 10 days after the notice was served.

18
19 (3) If the party possessing the document or exhibit sends it to the requesting party,
20 that party must copy and return it to the possessing party within 10 days after
21 receiving it.

22
23 (4) If the party possessing the document or exhibit sends it to the reviewing court,
24 that party must:

25
26 (A) Accompany the document or exhibit with a copy of the notice served by
27 the requesting party; and

28
29 (B) Immediately notify the requesting party that it has sent the document or
30 exhibit to the reviewing court.

31
32 (5) On request, the reviewing court may return ~~an~~ a document or exhibit to the
33 party that sent it. When the remittitur issues, the reviewing court must return
34 all documents or exhibits to the party that sent them.

35
36 (d)–(g) * * *

37
38 **Advisory Committee Comment**

39
40 **Subdivision (a).** * * *

41
42 **Subdivision (b).** Under subdivision (b)(1)(A), a joint appendix or an appellant's appendix must contain
43 any register of actions that the clerk sent to the parties under subdivision (a)(2). This provision is intended

1 to assist the reviewing court in determining the accuracy of the appendix. The provision is derived from
2 rule 30-1.3(a)(ii) of the United States Circuit Rules (9th Cir.).
3

4 In support of or opposition to pleadings or motions, the parties may have filed a number of lengthy
5 documents in the proceedings in superior court, including, for example, declarations, memorandums, trial
6 briefs, documentary exhibits (e.g., insurance policies, contracts, deeds), and photocopies of judicial
7 opinions or other publications. Subdivision ~~(b)(2)(A)~~~~(b)(3)(A)~~ prohibits the inclusion of such documents
8 in an appendix when they are not necessary for proper consideration of the issues raised in the appeal.
9 Even if a document is otherwise includable in an appendix, the rule prohibits the inclusion of any
10 substantial *portion* of the document that is not necessary for proper consideration of the issues raised in
11 the appeal. The prohibition is intended to simplify and therefore expedite the preparation of the appendix,
12 to reduce its cost to the parties, and to relieve the courts of the burden of reviewing a record containing
13 redundant, irrelevant, or immaterial documents. The provision is adapted from rule 30-1.4 of the United
14 States Circuit Rules (9th Cir.).
15

16 Subdivision ~~(b)(2)(B)~~~~(b)(3)(B)~~ prohibits the inclusion in an appendix of transcripts of oral proceedings
17 that may be made part of a reporter's transcript. (Compare rule 8.130(e)(3) [the reporter must not copy
18 into the reporter's transcript any document includable in the clerk's transcript under rule 8.122].) The
19 prohibition is intended to prevent a party filing an appendix from evading the requirements and
20 safeguards imposed by rule 8.130 on the process of designating and preparing a reporter's transcript, or
21 the requirements imposed by rule 8.144(d) on the use of daily or other transcripts instead of a reporter's
22 transcript (i.e., renumbered pages, required indexes). In addition, if an appellant were to include in its
23 appendix a transcript of less than all the proceedings, the respondent would not learn of any need to
24 designate additional proceedings (under rule 8.130(a)(3)) until the appellant had served its appendix with
25 its brief, when it would be too late to designate them. Note also that a party may file a certified transcript
26 of designated proceedings instead of a deposit for the reporter's fee (rule 8.130(b)(3)).
27

28 **Subdivision (d).** * * *

29
30 **Subdivision (e).** * * *

31
32 **Subdivision (g).** * * *

33
34
35 **Rule 8.147. Record in multiple or later appeals in same case**

36
37 **(a)** * * *

38
39 **(b) Later appeal**

40
41 In an appeal in which the parties are using either a clerk's transcript under rule
42 8.122 or a reporter's transcript under rule 8.130:

- 43
44 (1) A party wanting to incorporate by reference all or parts of a record in a prior
45 appeal in the same case must specify those parts in its designation of the
46 record, ~~with page numbers if available.~~
47

1 (A) The prior appeal must be identified by its case name and number. If only
2 part of a record is being incorporated by reference, that part must be
3 identified by citation to the volume and page numbers of the record where
4 it appears and either the title of the document or documents or the date of
5 the oral proceedings to be incorporated. The parts of any record
6 incorporated by reference must be identified in a separate section at the
7 end of both the transcript and the index.

8
9 (B) If the transcript incorporates by reference any such record, the cover of
10 the transcript must prominently display the notice “Record in case
11 number: ____ incorporated by reference,” identifying the number of the
12 case from which the record is incorporated.

13
14 (C) On request of the reviewing court or any party, the designating party must
15 provide a copy of the materials incorporated by reference to the court or
16 another party or lend them as provided in rule 8.153.

17
18 (2) ~~A party wanting any incorporated parts of a prior record clerk’s transcript or~~
19 ~~other record of the written documents from a prior appeal in the same case to~~
20 ~~be copied into the clerk’s transcript in a later record appeal must serve and file~~
21 ~~a notice specifying specify those parts in its designation of the record as~~
22 ~~provided in (1). and must deposit~~ The estimated copying cost of copying these
23 materials must be included in the clerk’s estimate of the cost of preparing the
24 transcript under rule 8.122(c)(1) within 10 days after the clerk mails notice of
25 that cost. On request of the trial court clerk, the designating party must provide
26 a copy of or lend the materials to be incorporated to the clerk.

27
28
29 **Chapter 3. Criminal Appeals**

30
31 **Article 2. Record on Appeal**

32
33
34 **Rule 8.320. Normal record; exhibits**

35
36 (a) * * *

37
38 (b) **Clerk’s transcript**

39 The clerk’s transcript must contain:

40
41
42 (1)–(12) * * *

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

- 3
4 (A) Any written defense motion denied in whole or in part, with supporting
5 and opposing memoranda and attachments;
6
7 (B) If related to a motion under (A), any search warrant and return and the
8 reporter's transcript of any preliminary examination or grand jury
9 hearing;
10
11 (C) Any document admitted in evidence to prove a prior juvenile
12 adjudication, criminal conviction, or prison term. If a record was closed to
13 public inspection in the trial court because it is required to be kept
14 confidential by law, it must remain closed to public inspection in the
15 reviewing court unless that court orders otherwise; ~~and~~
16
17 (D) The probation officer's report; and
18
19 (E) Any court-ordered diagnostic or psychological report required under
20 Penal Code section 1203.03(b) or 1369.
21

22 (c)-(f) * * *

23
24 **(g) Form of record**

25
26 The clerk's and reporter's transcripts must comply with rules 8.144, 8.328, and
27 8.336.
28

29 **Advisory Committee Comment**

30
31 **Subdivision (b)(13).** Rule 8.336(g) addresses the appropriate handling of probation officers' reports that
32 must be included in the clerk's transcript under (b)(13)(D).
33

34
35 **Rule 8.336. Preparing, certifying, and sending the record**

36
37 (a)-(f) * * *

38
39 **(g) Probation officer's report**

40
41 The probation officer's report included in the clerk's transcript under rule 8.320(b)
42 must appear only in all the copies of the appellate record that are sent to the
43 reviewing court, to appellate counsel for the People, and to the defendant who was

1 the subject of the report. The reviewing court’s copy of the report must be placed in
2 a sealed envelope marked “CONFIDENTIAL—MAY NOT BE EXAMINED
3 WITHOUT COURT ORDER—PROBATION OFFICER REPORT.”

4
5 (h) * * *

6
7
8 **Division 2. Rules Relating to the Superior Court Appellate Division**

9
10 **Chapter 1. General Rules Applicable to Appellate Division Proceedings**

11
12
13 **Rule 8.819. Sealed records**

14
15 Rule 8.46 governs records sealed by court order under rules 2.550–2.551 and records
16 proposed to be sealed in the appellate division.

17
18
19 **Chapter 2. Appeals and Records in Limited Civil Cases**

20
21 **Article 2. Record in Civil Appeals**

22
23 **Rule 8.832. Clerk’s transcript**

24
25 (a) * * *

26
27 (b) **Notice of designation**

28
29 (1)–(2)

30
31 (3) All exhibits admitted in evidence, refused, or lodged are deemed part of the
32 record, but a party wanting an exhibit included in the transcript must specify
33 that exhibit by number or letter in its designation. If the trial court has returned
34 a designated exhibit to a party, the party in possession of the exhibit must
35 promptly deliver it to the trial court clerk within 10 days after the notice
36 designating the exhibit is served.

37
38 (c)–(d) * * *

1 Chapter 3. Appeals and Records in Misdemeanor Cases

2
3 Article 2. Record in Misdemeanor Appeals

4
5
6 **Rule 8.861. Contents of clerk’s transcript**

7
8 Except in appeals covered by rule 8.867 or when the parties have filed a stipulation under
9 rule 8.860(b) that any of these items is not required for proper determination of the
10 appeal, the clerk’s transcript must contain:

11
12 (1)–(11) * * *

13
14 (12) If the appellant is the defendant:

15
16 (A) Any written defense motion denied in whole or in part, with supporting and
17 opposing memoranda and attachments;

18
19 (B) If related to a motion under (A), any search warrant and return;

20
21 (C) Any document admitted in evidence to prove a prior juvenile adjudication,
22 criminal conviction, or prison term. If a record was closed to public
23 inspection in the trial court because it is required to be kept confidential by
24 law, it must remain closed to public inspection in the appellate division
25 unless that court orders otherwise; ~~and~~

26
27 (D) The probation officer’s report; and

28
29 (E) Any court-ordered psychological report required under Penal Code section
30 1369.

31
32 **Advisory Committee Comment**

33
34 Rule 8.862(c) addresses the appropriate handling of probation officers’ reports that must be included in
35 the clerk’s transcript under (12)(D).

36
37
38 **Rule 8.862 Preparation of clerk’s transcript**

39
40 (a)–(b) * * *

41
42 (c) **Probation officer’s report**

1 The probation officer’s report included in the clerk’s transcript under rule
2 8.861(12)(D) must appear only in the copies of the appellate record that are sent to
3 the reviewing court, to appellate counsel for the People, and to the defendant who
4 was the subject of the report. The reviewing court’s copy of the report must be
5 placed in a sealed envelope marked “CONFIDENTIAL—MAY NOT BE
6 EXAMINED WITHOUT COURT ORDER—PROBATION OFFICER REPORT.”

7
8 ~~(e)(d)~~ * * *

9
10 ~~(d)(e)~~ * * *

11
12
13 **Rule 8.864. Record of oral proceedings**

14
15 (a)–(b) * * *

16
17 **(c) Failure to file election**

18
19 If the appellant does not file an election within the time specified in (b), the trial
20 court clerk must promptly notify the appellant by mail that the election must be
21 filed within 15 days after the notice is mailed and that failure to comply will result
22 in the appeal proceeding without a record of the oral proceedings.

23
24 ~~(e)(d)~~ * * *

25
26
27 **Chapter 5. Appeals in Infraction Cases**

28
29 **Article 2. Record in Infraction Appeals**

30
31
32 **Rule 8.915. Record of oral proceedings**

33
34 **(a) Appellant’s election**

35
36 The appellant must notify the trial court whether he or she elects to proceed with or
37 without a record of the oral proceedings in the trial court. If the appellant elects to
38 proceed with a record of the oral proceedings in the trial court, the notice must
39 specify which form of the record of the oral proceedings in the trial court the
40 appellant elects to use:

41
42 (1) A statement on appeal under rule 8.916;

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- (2) If the court has a local rule for the appellate division permitting this, an official electronic recording of the proceedings under rule 8.917(c). The appellant must attach to the notice a copy of the stipulation required under rule 8.917(c); or
- (3) A reporter’s transcript under rules 8.918–8.920 or a transcript prepared from an official electronic recording of the proceedings under rule 8.917(b). If the appellant elects to use a reporter’s transcript, the clerk must promptly mail a copy of appellant’s notice making this election and the notice of appeal to each court reporter.

(b) Time for filing election

The notice of election required under (a) must be filed with the notice of appeal.

(c) Failure to file election

If the appellant does not file an election within the time specified in (b), the trial court clerk must promptly notify the appellant by mail that the election must be filed within 15 days after the notice is mailed and that failure to comply will result in the appeal proceeding without a record of the oral proceedings.

~~(e)~~(d) * * *

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY NOT APPROVED BY JUDICIAL COUNCIL v.4 3.23.09
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)	Superior Court Case Number:
RE: Appeal filed on (date):	Court of Appeal Case Number (if known):
Notice: Please read <i>Information on Appeal Procedures for Unlimited Civil Cases</i> (form APP-001) before completing this form. This form must be filed in the trial court, not in the Court of Appeal.	

RECORD OF THE DOCUMENTS FILED IN THE TRIAL COURT

1. I elect to use the following method of providing the Court of Appeal with a record of the documents filed in the trial court (check a, b, c, d, or e and fill in any required information):
- a. A clerk's transcript under rule 8.122. (You must check (1) or (2) and fill out the clerk's transcript section on page 2 of this form.)
- (1) I will pay the trial court clerk for this transcript myself when I receive the clerk's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the Court of Appeal.
- (2) I am asking that the clerk's transcript be provided to me at no cost because I cannot afford to pay this cost. I have attached the following document (check (a) or (b)):
- (a) An order granting a waiver of court fees and costs under rule 3.50 et seq.; or
- (b) An application for a waiver of court fees and costs under rule 3.50 et seq. (Use Request to Waive Court Fees (form FW-001) to prepare and file this application.)
- b. An appendix under rule 8.124.
- c. The original trial court file under rule 8.128. (NOTE: Local rules in the Court of Appeal, First, Third, Fourth, and Fifth Appellate Districts, permit parties to stipulate to use the original trial court file instead of a clerk's transcript; you may select this option if your appeal is in one of these districts and all the parties have stipulated to use the original trial court file instead of a clerk's transcript in this case. Attach a copy of this stipulation.)
- d. An agreed statement under rule 8.134. (You must complete item 2b(2) below and attach to your agreed statement copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.134(a).)
- e. A settled statement under rule 8.137. (You must complete item 2b(3) below and attach to your proposed statement on appeal copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.137(b)(3).)

RECORD OF ORAL PROCEEDINGS IN THE TRIAL COURT

2. I elect to proceed:
- a. WITHOUT a record of the oral proceedings in the trial court. I understand that without a record of the oral proceedings in the trial court, the Court of Appeal will not be able to consider what was said during those proceedings in determining whether an error was made in the trial court proceedings.

CASE NAME:	CASE NUMBER:
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- b. WITH the following record of the oral proceedings in the trial court:
- (1) A reporter's transcript under rule 8.130. *(You must fill out the reporter's transcript section on page 3 of this form.)*
 I have *(check all that apply)*:
- (a) Deposited the approximate cost of transcribing the designated proceedings with this notice as provided in rule 8.130(b)(1).
- (b) Attached a copy of a transcript reimbursement application filed under rule 8.130(c)(1).
- (c) Attached the reporter's written waiver of a deposit for *(check either (i) or (ii))*:
- (i) all of the designated proceedings.
- (ii) part of the designated proceedings.
- (d) Attached a certified transcript under rule 8.130(b)(3).
- (2) An agreed statement. *(Check and complete either (a) or (b) below.)*
- (a) I have attached an agreed statement to this notice.
- (b) All the parties have agreed in writing (stipulated) to try to agree on a statement. *(You must attach a copy of this stipulation to this notice.)* I understand that, within 40 days after I file the notice of appeal, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.
- (3) A settled statement under rule 8.137. *(You must attach the motion required under rule 8.137(a) to this form.)*

RECORD OF AN ADMINISTRATIVE PROCEEDING TO BE TRANSMITTED TO THE REVIEWING COURT

3. I would like the clerk to transmit to the reviewing court under rule 8.123 the record of the following administrative proceeding that was admitted into evidence, refused, or lodged in the trial court *(give the title and date or dates of the administrative proceeding)*:

Title of Administrative Proceeding	Date or Dates
---	----------------------

NOTICE DESIGNATING CLERK'S TRANSCRIPT

You must complete this section if you checked item 1a. above indicating that you elect to use a clerk's transcript as the record of the documents filed in the trial court.

4. **Required documents.** The clerk will automatically include the following items in the clerk's transcript, but you must provide the date each document was filed or, if that is not available, the date the document was signed.

Document Title and Description	Date of Filing
a. Notice of appeal	
b. Notice designating record on appeal <i>(this document)</i>	
c. Judgment or order appealed from	
d. Notice of entry of judgment <i>(if any)</i>	
e. Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order <i>(if any)</i>	
f. Ruling on one or more of the items listed in e.	
g. Register of actions or docket <i>(if any)</i>	

CASE NAME:	CASE NUMBER:
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5. **Additional documents.** (If you want any documents from the trial court proceeding in addition to the items listed in 4. above to be included in the clerk's transcript, you must identify those documents here.)

I would like the clerk to include the following documents from the trial court proceeding in the transcript (You must identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed.):

Document Title and Description	Date of Filing
--------------------------------	----------------

- h.
- i.
- j.

See additional pages

6. **Exhibits to be included in clerk's transcript.** I would like the clerk to include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the trial court (for each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit. Indicate whether or not the court admitted the exhibit into evidence):

Exhibit Number	Description	Admitted (Yes/No)
----------------	-------------	-------------------

- a.
- b.
- c.

See additional pages.

NOTICE DESIGNATING REPORTER'S TRANSCRIPT

(You must complete this section if you checked item 2b(1) above indicating that you elect to use a reporter's transcript as the record of the oral proceedings in the trial court. Please remember that you must pay for the cost of preparing the reporter's transcript.)

7. I request that the reporters provide, in computer-readable format: my copy of the reporter's transcript a second copy of the reporter's transcript (Code Civ. Proc., § 271; Cal. Rules of Court, rule 8.130(f)(4).)

8. **Proceedings.** I would like the following proceedings in the trial court to be included in the reporter's transcript. (You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings—for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions—and, if you know it, the name of the court reporter who recorded the proceedings).

Date	Department	Full/Partial Day	Description of Proceedings	Reporter's Name
------	------------	------------------	----------------------------	-----------------

- a.
- b.
- c.
- d.
- e.
- f.
- g.

See additional pages.

CASE NAME:	CASE NUMBER:
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9. The proceedings designated in 8. include do not include all of the testimony in the trial court.

If the designated proceedings DO NOT include all of the testimony, state the points that you intend to raise on appeal (*rule 8.130(a)(2) provides that your appeal will be limited to these points unless, on motion, the reviewing court permits otherwise*).

Date:

(TYPE OR PRINT NAME)



(SIGNATURE OF APPELLANT OR ATTORNEY)

Appellant's Notice Designating Record on Appeal (Limited Civil Case)

Clerk stamps date here when form is filed.
NOT APPROVED BY JUDICIAL COUNCIL v. 11 04.01.09

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

Superior Court of California, County of

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

Trial Court Case Number:
Trial Court Case Name:

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

Appellate Division Case Number:

Instructions

- This form is only for choosing ("designating") the record on appeal in a limited civil case.
Before you fill out this form, read Information on Appeal Procedures for Limited Civil Cases (form APP-101-INFO) to know your rights and responsibilities.
This form can be attached to your notice of appeal.
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.
Take or mail the original completed form and proof of service on the other parties to the clerk's office for the same court that issued the judgment or order you are appealing.

1 Your Information

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

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

Street address: _____ Street City State Zip

Mailing address (if different): _____ Street City State Zip

Phone: () _____ E-mail (optional): _____

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

Name: _____ State Bar number: _____

Street address: _____ Street City State Zip

Mailing address (if different): _____ Street City State Zip

Phone: () _____ E-mail (optional): _____

Fax (optional): () _____

Trial Court Case Name: _____

Information About Your Appeal

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

Record of the Documents Filed in the Trial Court

3 I elect (choose)/My client elects to use the following record of the documents filed in the trial court (check a or b and fill in any required information):

a. **Clerk’s Transcript.** (Fill out (1)–(4).) Note that, if the appellate division has adopted a local rule permitting this, the clerk may prepare and send the original court file to the appellate division instead of a clerk’s transcript.

(1) **Required documents.** The clerk will automatically include the following items in the clerk’s transcript but you must provide the date each document was filed or, if that is not available, the date the document was signed.

Document Title and Description	Date of Filing
(a) Notice of appeal	
(b) Notice designating record on appeal (this document)	
(c) Judgment or order appealed from	
(d) Notice of entry of judgment (if any)	
(e) Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order (if any)	
(f) Ruling on any item included under 5	
(g) Register of actions or docket	

(2) **Additional documents.** If you want any documents in addition to the required documents listed in (1) above to be included in the clerk’s transcript, you must identify those documents here.

I would like the clerk to include in the transcript the following documents that were filed in the trial court. (Identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed).

Document Title and Description	Date of Filing
(a)	
(b)	
(c)	
(d)	
(e)	

Check here if you need more space to list other documents and attach a separate page or pages listing those documents. At the top of each page, write “APP-103, item 3a(2).”

Trial Court Case Name: _____

3 a. (continued)

(3) Exhibits.

- I would like the clerk to include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the trial court. *(For each exhibit, give the exhibit number (such as Plaintiff's #1 or Defendant's A) and a brief description of the exhibit and indicate whether or not the court admitted the exhibit into evidence. If the trial court has returned a designated exhibit to a party, the party who has that exhibit must deliver it to the trial court clerk as soon as possible.)*

Exhibit Number	Description	Admitted Into Evidence	
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No

- Check here if you need more space to list other exhibits and attach a separate page or pages listing those exhibits. At the top of each page, write "APP-103, item 3a(3)."

(4) Payment for clerk's transcript. (Check a or b.)

- (a) I will pay the trial court clerk for this transcript myself when I receive the clerk's estimate of the costs of the transcript. I understand that if I do not pay for the transcript, it will not be prepared and provided to the appellate division.
- (b) I am asking that the clerk's transcript be provided at no cost to me because I cannot afford to pay this cost. I have attached *(check (i) or (ii) and attach the checked document)*:
- (i) An order granting a waiver of the cost under rules 3.50–3.58
 - (ii) An application for a waiver of court fees and costs under rules 3.50–3.58 *(use Request to Waive Court Fees (form FW-001)).*

OR

- b. **Agreed statement.** *(You must complete item 5d below and attach to your agreed statement copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in 3a(1) above and in rule 8.832 of the California Rules of Court.)*

Record of Oral Proceedings in the Trial Court

You do not have to provide the appellate division with a record of what was said in the trial court (this is called a record of the "oral proceedings"). But, if you do not, the appellate division will not be able to consider what was said during the trial court proceedings in deciding whether a legal error was made in those proceedings.

4 I elect (choose)/My client elects to proceed *(check a or b)*:

- a. WITHOUT a record of the oral proceedings in the trial court *(skip 5); sign and date this form)*. I understand that if I elect to proceed without a record of the oral proceedings in the trial court the appellate division will not be able to consider what was said during those proceedings in determining whether a legal error was made.

(Write initials here): _____



Trial Court Case Name: _____

4 (continued)

- b. WITH a record of the oral proceedings in the trial court (*complete item 5 below*). I understand that, if I elect (choose) to proceed WITH a record of the oral proceedings in the trial court, I have to choose the record I want to use and take the actions described below to make sure that this record is provided to the appellate division. I understand that if I do not take the actions described below and the appellate division does not receive this record, I am not likely to succeed in my appeal.

(Write initials here): _____

5 I want to use the following record of what was said in the trial court proceedings in my case (*check and complete only one of the following below—a, b, c, d, or e*):

- a. **Reporter’s Transcript.** *This option is available only if there was a court reporter in the trial court who made a record of what was said in court. Check with the trial court to see if there was a court reporter in your case before choosing this option. (Complete (1) and (2).):*

- (1) **Designation of proceedings to be included in reporter’s transcript.** I would like the following proceedings in the trial court to be included in the reporter’s transcript.

(You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings [for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions], and, if you know it, the name of the court reporter who recorded the proceedings.)

Date	Department	Description	Court Reporter’s Name
(a)			
(b)			
(c)			
(d)			
(e)			
(f)			
(g)			

- Check here if you need more space to list other proceedings and attach a separate page or pages listing those proceedings. At the top of each page, write “APP-103, item 5a.”

- (2) The proceedings designated in (1) include do not include all of the testimony in the trial court. If the designated proceedings DO NOT include all of the testimony, state the points that you intend to raise on appeal. (*Rule 8.834(a)(2) provides that your appeal will be limited to these points unless, on motion, the appellate division permits otherwise.*)

- Check here if you need more space to list other points and attach a separate page or pages listing those points. At the top of each page, write “APP-103, item 5a(2).”



Trial Court Case Name: _____

5 a. (continued)

- (3) **Payment for reporter's transcript.** I will pay for this transcript myself when I receive the court reporter's estimate of the costs of this transcript. I understand that if I do not pay the trial court clerk's office for this transcript or file with the court a written waiver of this deposit signed by the reporter, the transcript will not be prepared and provided to the appellate division. (*Write initials here*): _____

- I request that the reporters provide, in computer-readable format:
- My copy of the reporter's transcript
 - A second copy of the reporter's transcript

OR

- b. **Transcript From Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. (Check and complete (1) or (2)):*
- (1) I will pay the trial court clerk for this transcript myself when I receive the clerk's estimate of the costs of the transcript. I understand that if I do not pay for the transcript, it will not be prepared and provided to the appellate division.
- (2) I am asking that the transcript be provided at no cost to me because I cannot afford to pay this cost. I have attached (*check (a) or (b) and attach the appropriate document*):
- (a) An order granting a waiver of the cost under rules 3.50–3.58
 - (b) An application for a waiver of court fees and costs under rules 3.50–3.58 (*use Request to Waive Court Fees (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.*)

OR

- c. **Copy of Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court, the court has a local rule for the appellate division authorizing parties to use the official electronic recording itself as the record of the court proceedings, and all of the parties have agreed (stipulated) that they want to use the recording itself as the record of what was said in the case. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. You must attach a copy of your agreement (stipulation) with the other parties to this notice. (Check and complete (1) or (2).):*
- (1) I will pay the trial court clerk for this copy of the recording myself when I receive the clerk's estimate of the costs of this copy. I understand that if I do not pay for this copy of the recording, it will not be prepared and provided to the appellate division.
- (2) I am asking that a copy of the recording be provided at no cost to me because I cannot afford to pay this cost. I have attached (*check (a) or (b) and attach the appropriate document*):
- (a) An order granting a waiver of the cost under rules 3.50–3.58
 - (b) An application for a waiver of court fees and costs under rules 3.50–3.58 (*use Request to Waive Court Fees (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.*)



Trial Court Case Name: _____

5 (continued)

OR

- d. **Agreed Statement.** I want to use an agreed statement (a summary of the trial court proceedings agreed to by the parties) as the record of what was said in my case. *(Check (1) or (2).):*
- (1) I have attached an agreed statement to this notice.
- (2) All the parties have agreed in writing (stipulated) to try to agree on a statement *(you must attach a copy of this agreement (stipulation) to this notice)*. I understand that, within 30 days after I file this notice, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.

OR

- e. **Statement on Appeal.** I want to use a statement on appeal (a summary of the trial court proceedings approved by the trial court) as the record of what was said in my case. *(Check (1) or (2).):*
- (1) I have attached my proposed statement on appeal to this notice of appeal. *(If you are not represented by a lawyer in this appeal, you must use Proposed Statement on Appeal (Limited Civil Case) (form APP-104) to prepare and file this proposed statement. You can get a copy of form APP-104 at any courthouse or county law library or online at www.courtinfo.ca.gov/forms.)*
- (2) I have NOT attached my proposed statement. I understand that I must serve and file this proposed statement in the trial court within 20 days of the date I file this notice and that if I do not file the proposed statement on time, the court may dismiss my appeal.

Date: _____

Type or print your name



Signature of appellant or attorney

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i> TELEPHONE NO.: _____ FAX NO. <i>(Optional):</i> _____ E-MAIL ADDRESS <i>(Optional):</i> _____ ATTORNEY FOR <i>(Name):</i> _____	FOR COURT USE ONLY NOT APPROVED BY JUDICIAL COUNCIL v.4 04.01.09
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
RESPONDENT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)	Superior Court Case Number:
RE: Appeal filed on <i>(date)</i> :	Court of Appeal Case Number <i>(if known)</i> :
Notice: Please read <i>Information on Appeal Procedures for Unlimited Civil Cases (form APP-001)</i> before completing this form. This form must be filed in the trial court, not in the Court of Appeal.	

RECORD OF THE DOCUMENTS FILED IN THE TRIAL COURT

1. The appellant has elected to use a clerk's transcript under rule 8.122.

a. **Additional documents or exhibits.** *(If you want any documents or exhibits from the trial court proceeding in addition to the items designated by the appellant to be included in the clerk's transcript, you must identify those documents here.)*

(1) In addition to the documents designated by the appellant, I would like the clerk to include in the transcript the following documents from the trial court proceeding. *(You must identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed.)*

Document Title and Description	Date of Filing
--------------------------------	----------------

- (a)
- (b)
- (c)

See additional pages.

(2) In addition to the exhibits designated by the appellant, I would like the clerk to include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the trial court. *(For each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit. Indicate whether or not the court admitted the exhibit into evidence.)*

Exhibit Number	Description	Admitted (Yes/No)
----------------	-------------	----------------------

- (a)
- (b)
- (c)

See additional pages.

CASE NAME:	CASE NUMBER:
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1.b. **Copy of clerk's transcript.** I would like to receive a copy of the clerk's transcript.

(1) I will pay the trial court clerk for this transcript myself when I receive the clerk's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, I will not receive a copy.

(2) I am asking that the clerk's transcript be provided to me at no cost because I cannot afford to pay this cost. I have attached the following document (*check (a) or (b)*):

(a) An order granting a waiver of court fees and costs under rule 3.50 et seq.; or

(b) An application for a waiver of court fees and costs under rule 3.50 et seq. (*Use Request to Waive Court Fees (form FW-001) to prepare and file this application.*)

2. I elect to use an appendix under rule 8.124.

RECORD OF ORAL PROCEEDINGS IN THE TRIAL COURT

3. The appellant has elected to use a reporter's transcript under rule 8.130.

a. **Additional proceedings.** (*If you want any oral proceeding in addition to the proceedings designated by the appellant to be included in the reporter's transcript, you must identify those proceedings here.*)

In addition to the proceedings designated by the appellant, I would like the following proceedings in the trial court to be included in the reporter's transcript. (*You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings—for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions—and, if you know it, the name of the court reporter who recorded the proceedings.*)

Date	Department	Full/Partial Day	Description of Proceedings	Reporter's Name
------	------------	------------------	----------------------------	-----------------

(1)

(2)

(3)

(4)

(5)

(6)

(7)

See additional pages.

CASE NAME:

CASE NUMBER:

3.b. Copy of Reporter's Transcript.

- (1) I would like to receive a copy of the reporter's transcript.
- (2) I request that the reporters provide, in computer-readable format:
- My copy of the reporter's transcript.
- A second copy of the reporter's transcript.

(Code Civ. Proc., § 271; Cal. Rules of Court, rule 8.130(f)(4).)

- (3) I have *(check all that apply)*:
- (a) Deposited the approximate cost of transcribing the designated proceedings with this notice as provided in rule 8.130(b)(1).
- (b) Attached a copy of a transcript reimbursement application filed under rule 8.130(b)(3).
- (c) Attached the reporter's written waiver of a deposit for *(check either (i) or (ii))*:
- (i) All of the designated proceedings.
- (ii) Part of the designated proceedings.
- (d) Attached a certified transcript under rule 8.130(b)(3).

Date:

 (TYPE OR PRINT NAME)

 (SIGNATURE OF APPELLANT OR ATTORNEY)

Respondent's Notice Designating Record on Appeal (Limited Civil Case)

Clerk stamps date here when form is filed.

NOT APPROVED BY JUDICIAL COUNCIL

v.5 4.01.09

Instructions

- This form is only for choosing (“designating”) the record on appeal in a **limited civil case**.
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at www.courtinfo.ca.gov/forms.
- 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) or on the California Courts Online Self-Help Center Web site at www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving.
- Take or mail the original completed form and proof of service on the other parties to the clerk’s office for the same court that issued the judgment or order that is being appealed. 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 (if you know it):

Appellate Division Case Number:

1 Your Information

a. Name of respondent (the party who is responding to an appeal filed by another party):

b. Respondent’s contact information (*skip this if the respondent has a lawyer for this appeal*):

Street address: _____
Street City State Zip

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

Phone: () _____ E-mail (*optional*): _____

c. Respondent’s lawyer (*skip this if the respondent does not have a lawyer for this appeal*):

Name: _____ State Bar number: _____

Street address: _____
Street City State Zip

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

Phone: () _____ E-mail (*optional*): _____

Fax (*optional*): () _____

Trial Court Case Name: _____

Information About the Appeal

- ② On (fill in the date): _____ another party filed a notice of appeal in the trial court case identified in the box on page 1 of this form.
- ③ On (fill in the date): _____ the appellant filed an appellant’s notice designating the record on appeal.

Record of the Documents Filed in the Trial Court

- ④ The appellant elected (chose) to use a clerk’s transcript under rule 8.832 as the record of the documents filed in the trial court.
 - a. **Additional documents or exhibits.** *If you want any documents or exhibits in addition to those designated by the appellant to be included in the clerk’s transcript, you must identify those documents here.*
 - (1) In addition to the documents designated by the appellant, I would like the clerk to include in the transcript the following documents that were filed in the trial court. *(Identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed).*

Document Title and Description	Date of Filing
(a)	
(b)	
(c)	
(d)	

Check here if you need more space to list other documents and attach a separate page or pages listing those documents. At the top of each page, write “APP-110, item 4a(1).”

(2) **Exhibits.**

- I would like the clerk to include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the trial court. *(For each exhibit, give the exhibit number (such as Plaintiff’s #1 or Defendant’s A) and a brief description of the exhibit and indicate whether or not the court admitted the exhibit into evidence. If the trial court has returned a designated exhibit to a party, the party who has that exhibit must deliver it to the trial court clerk as soon as possible.)*

Exhibit Number	Description	Admitted Into Evidence
		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No

Check here if you need more space to list other exhibits and attach a separate page or pages listing those exhibits. At the top of each page, write “APP-103, item 3a(3).”

Trial Court Case Name: _____

4 (continued)

- b. **Copy of clerk’s transcript.** I would like to receive a copy of the clerk’s transcript. *(Check (1) or (2).)*
- (1) I will pay the trial court clerk for this transcript myself when I receive the clerk’s estimate of the costs of the transcript.
- (2) I am asking that a copy of the clerk’s transcript be provided at no cost to me because I cannot afford to pay this cost. I have attached *(check (i) or (ii) and attach the checked document)*:
- (a) An order granting a waiver of the cost under rules 3.50–3.58.
- (b) An application for a waiver of court fees and costs under rules 3.50–3.58 *(use Request to Waive Court Fees (form FW-001)).*

Record of Oral Proceedings in the Trial Court

5 The appellant elected to use the following record of what was said in the trial court proceedings *(check and complete only one of the following below—a, b, or c)*:

- a. **Reporter’s Transcript.** The appellant elected to use a reporter’s transcript under rule 8.834 as the record of the oral proceedings in the trial court.
- (1) **Designation of additional proceedings to be included in reporter’s transcript.** *(If you want any proceedings in addition to the proceedings designated by the appellant to be included in the reporter’s transcript, you must identify those proceedings here.)*

In addition to the proceedings designated by the appellant, I would like the following proceedings in the trial court to be included in the reporter’s transcript. *(You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings [for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions], and, if you know it, the name of the court reporter who recorded the proceedings.)*

Date	Department	Description	Court Reporter’s Name
(a)			
(b)			
(c)			
(d)			
(e)			
(f)			
(g)			

Check here if you need more space to list other proceedings and attach a separate page or pages listing those proceedings. At the top of each page, write “APP-110, item 5a(1).”

Trial Court Case Name: _____

5 (continued)

(2) **Copy of reporter's transcript.**

- (a) I would like to receive a copy of the reporter's transcript. I will pay for this transcript myself when I receive the court reporter's estimate of the costs of this transcript. I understand that if I do not pay the trial court clerk's office for this transcript or file with the court a waiver of this deposit signed by the court reporter, I will not receive a copy.
- (b) I request that the reporters provide, in computer-readable format:
- My copy of the reporter's transcript.
 - A second copy of the reporter's transcript.

OR

- b. **Transcript From Official Electronic Recording.** The appellant elected to use the transcript from an official electronic recording as the record of the oral proceedings in the trial court under rule 8.835(b). I would like a copy of this transcript. (*Check and complete (1) or (2).*):

- (1) I will pay the trial court clerk for this transcript myself when I receive the clerk's estimate of the costs of the transcript.
- (2) I am asking that the transcript be provided at no cost to me because I cannot afford to pay this cost. I have attached (*check (a) or (b) and attach the appropriate document*):
- (a) An order granting a waiver of the cost under rules 3.50–3.58.
 - (b) An application for a waiver of court fees and costs under rules 3.50–3.58 (*use Request to Waive Court Fees (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.*)

OR

- c. **Copy of Official Electronic Recording.** The appellant and I have agreed to use the official electronic recording itself as the record of the oral proceedings in the trial court under rule 8.835(a). I would like to receive a copy of this recording. (*Check and complete (1) or (2).*):

- (1) I will pay the trial court clerk for this copy of the recording myself when I receive the clerk's estimate of the costs of this copy.
- (2) I am asking that a copy of the recording be provided at no cost to me because I cannot afford to pay this cost. I have attached (*check (a) or (b) and attach the appropriate document*):
- (a) An order granting a waiver of the cost under rules 3.50–3.58.
 - (b) An application for a waiver of court fees and costs under rules 3.50–3.58 (*use Request to Waive Court Fees (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.*)

Date: _____

*Type or print your name*_____
Signature of respondent or attorney

Item SPR09-05 Response Form

Title: **Appellate Procedure: Record on Appeal** (adopt Cal. Rules of Court, rule 8.819; amend rules 2.1040, 8.122, 8.124, 8.147, 8.320, 8.336, 8.832, 8.861, 8.862, 8.864, and 8.915; renumber rule 8.160 as rule 8.46; approve forms APP-010 and APP-110; and revise forms APP-003 and APP-103)

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

Internet: <http://www.courtinfo.ca.gov/invitationstocomment/>

Email: invitations@jud.ca.gov

Mail: Ms. Camilla Kieliger
Judicial Council, 455 Golden Gate Avenue
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

DEADLINE FOR COMMENT: 5:00 p.m., Wednesday, June 17, 2009
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Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.