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INVITATION TO COMMENT

SPR12-03

Title	Action Requested
Appellate Procedure: Contents of normal record in criminal appeals	Review and submit comments by Friday, June 15, 2012
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rules 8.320, 8.867 and 8.920	January 1, 2013
Proposed by	Contact
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Executive Summary and Origin

To save time and costs for both litigants and courts associated with making and considering requests to augment the record and preparing and transmitting supplemental clerk's or reporter's transcripts to the reviewing court, this proposal would add items to the normal record in certain criminal appeals that are routinely needed for appellate review in these cases. This proposal originated from a suggestion submitted by the Appellate Court Committee of the San Diego County Bar Association.

Background

Rule 8.320 addresses the contents of the normal record in felony appeals. Subdivision (d) of this rule provides for a limited record in certain kinds of felony appeals—those where the People are appealing from a judgment on a demurrer to the accusatory pleading or where the defendant or the People are appealing from an appealable order other than a ruling on a motion for new trial. Rules 8.867 and 8.920 similarly address the contents of the record in these types of appeals in misdemeanor and infraction cases, respectively. All of these rules currently provide that the normal contents of the record in these appeals contain only those court minutes and reporter's transcript (or other form of the record) of those oral proceedings relating to the judgment or order appealed. In addition, probation officers' reports are not required to be included in the limited records for these appeals.

Some of the most common types of appeals covered by these provisions are appeals from sentencing following probation revocation, from compensatory victim restitution orders, and from

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orders affecting custody credits. It is the committee's understanding that in these cases, there are materials not currently included in the limited normal record that both the parties and the reviewing court routinely need in order to appropriately address the appeal. For appeals of post-conviction orders, materials routinely needed include the court's minutes relating to the original conviction and the reporter's transcript (or other form of the record of the oral proceedings) relating to the sentencing on that conviction. When the appellant is the defendant, it is the committee's understanding that probation officers' reports and, in felony cases, any court-ordered diagnostic reports required under Penal Code section 1203.03(b) are also routinely needed.

Both the First District Court of Appeal and the Second District Court of Appeal have adopted local rules that provide for automatic augmentation of the record in probation revocation appeals. First District Court of Appeal local rule 6 requires that the record in these cases include reporter's transcripts of: (1) the original sentencing proceeding at which probation was imposed; (2) the proceedings at the time of entry of a guilty plea or nolo contendere plea if the original judgment of conviction is based on such plea; and (3) the proceedings at which probation is revoked and the defendant is sentenced. Second District Court of Appeal local rule 1, subdivision (6) similarly requires these proceedings be included in the reporter's transcript, but also requires augmentation of the clerk's transcript to include documents relating to these proceedings.

In all other District Courts of Appeal and in all other proceedings covered by rules 8.320, 8.867 and 8.920, because these materials are not currently required to be included in the normal record in these appeals, parties must routinely file and the court must routinely consider motions to augment the record with these materials. Preparing and considering these motions takes time for both the parties and the Courts of Appeal and superior court appellate divisions and increases public expenses for attorneys representing the parties and for the courts, including Court of Appeal expenses associated with appointed counsel in felony cases. If the Courts of Appeal and superior court appellate divisions routinely grant these augmentation requests, it does not save trial courts any record preparation costs not to have included these materials in the original clerk's or reporter's transcript and it may actually cost the courts more to separately prepare and transmit to the reviewing court supplemental clerk's or reporter's transcripts at a later time.

The Proposal

This proposal is intended to provide significant cost savings and efficiencies by reducing costs associated with preparing and considering augmentation requests and preparing and transmitting supplemental clerk's or reporter's transcripts to the reviewing court. It would amend the rules relating to what must be in the normal record in these appeals to require inclusion of the following:

- If there was a trial in the case, any court minutes of proceedings after the original verdict is rendered in felony and misdemeanor cases or after the original judgment is rendered in infraction cases;

- If the original judgment of conviction is based on a guilty plea or nolo contendere plea, any court minutes of the proceedings at the time of entry of on such plea and any subsequent proceedings;
- If the appellant is the defendant, all probation officers’ reports and, in felony cases, any court-ordered diagnostic reports required under Penal Code section 1203.03(b); and
- If the appeal is from an order after judgment in a felony case or in a misdemeanor or infraction case in which the appellant has opted to have a record of the oral proceedings, a reporter’s transcript (or other form of the record) of the oral proceedings from:
 - The original sentencing proceeding; and
 - If the original judgment of conviction is based on a guilty plea or nolo contendere plea, the proceedings at the time of entry of such plea.

This proposal would also clarify that, as in other appeals in misdemeanor and infraction cases, an official electronic recording may be used as the record of the oral proceedings in these limited types of appeals under certain circumstances and would correct a cross-referencing error to the rule on such official electronic recordings. In addition, to make rules 8.320 and 8.867 easier to read, this proposal includes some nonsubstantive changes to the organization of those rules.

Alternatives considered

The committee considered whether, like the local rules of the First District Court of Appeal and the Second District Court of Appeal, this proposal should focus only on requiring additional materials in the record for probation revocation appeals. These are the most common types of appeals covered by these rules. It is the committee’s understanding, however, that the additional materials that would be included in the record under this proposal are also routinely needed in appeals from compensatory victim restitution orders and orders affecting custody credits (other common types of appeals covered by these rules). The proposal is therefore drafted to encompass all appeals covered by these rules but, as indicated below, the committee is seeking comments on whether there should be separate provisions addressing these different types of appeals.

The committee also considered whether, as originally suggested by the Appellate Courts Committee of the San Diego County Bar Association, these rules should require that the normal record in these cases include all minutes rather than just the minutes from entry of the verdict or a guilty or nolo contendere plea on. The San Diego Bar committee suggested that requiring all minutes would reduce burdens on trial court clerks associated with having to identify, as the rules now require, those minutes that “relate to the judgment or order appealed from” and would also reduce inconsistencies in what is included in the clerk’s transcripts in these appeals. The Appellate Advisory Committee was concerned both about not including material in the record that is not routinely needed for the appeal and about imposing burdens on trial court staff associated with searching for and identifying the minutes of particular proceedings in a case, such as all proceeding relating to probation violations or changes in the terms of probation or restitution. The proposal is therefore intended to make it easy for court staff to identify the minutes that must be

included in the record by requiring all inclusion of all minutes after a specific point in the case. While this may result in additional costs associated with copying a few extra pages of minutes for the record, the committee's intent is to effect an overall reduction in court costs by reducing the court staff time associated with identifying the necessary contents of the record. It is also the committee's understanding, based on input from the Joint Rules Working Group of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee, that if, in a particular court or case, it would be less burdensome to include all minutes in the case, a clerk is always free to include more in the record on appeal than the minimum that is specified in the rules. As indicated below, however, the committee would appreciate comments on whether proposed language regarding the minutes to be included in the normal record is likely to achieve the committee's overall cost-saving goal.

Implementation Requirements, Costs, and Operational Impacts

This proposal will require changes in current trial court procedures relating to what material is included in the normal record on appeal in the cases covered by these rules. This is likely to require some additional training for trial court staff. However, as indicated above, the intent of this proposal is to reduce overall costs and increase efficiency by:

- Reducing public expenses for attorneys representing the parties associated with preparing augmentation requests, including Court of Appeal expenses associated with appointed counsel in felony cases;
- Reducing costs for the Courts of Appeal and superior court appellate divisions in considering these augmentation requests;
- Reducing trial court costs associated with preparing and transmitting supplemental clerk's or reporter's transcripts to the reviewing court; and
- Reducing trial court costs associated with identifying the minutes that must be included in the record on appeal.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Are the additional materials that would be included in the normal record under this proposal routinely needed in the substantial majority of the felony, misdemeanor, and infraction cases covered under this proposal? While automatically including these materials in the record will reduce costs if the materials are routinely needed for appellate review in these cases, it may increase costs if the materials are not needed either as a whole or for a particular class of cases.
- Are there differences in the materials that are routinely needed in the record for probation revocation appeals and for appeals from restitution orders or the other types of appeals covered by these rules that warrant the rules having separate provisions on the contents of the record in these appeals?
- Would it be less burdensome for court staff to include all of the minutes relating to a proceeding in the record rather than having to search for specific minutes?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Will the proposal provide cost savings? If so please quantify.
- What are the implementation requirements 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 system, or modifying case management system.
- Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Rules 8.320, 8.867 and 8.920 of the California Rules of Court would be amended, effective January 1, 2012, to read:

Title 8. Appellate Rules

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

Chapter 3. Criminal Appeals

Article 2. Record on Appeal

Rule 8.320. Normal record; exhibits

(a) – (c) * * *

(d) Limited normal record in certain appeals

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

(1) Clerk's transcript

~~a reporter's transcript of any oral proceedings incident to the judgment or order being appealed and a~~ clerk's transcript containing:

~~(1)(A)~~ (A) The accusatory pleading and any amendment;

~~(2)(B)~~ (B) Any demurrer or other plea;

~~(3)(C)~~ (C) Any written motion or notice of motion granted or denied by the order appealed from, with supporting and opposing memoranda and attachments;

~~(4)(D)~~ (D) The judgment or order appealed from and any abstract of judgment or commitment;

~~(5)(E)~~ (E) Any court minutes relating to the judgment or order appealed from; and:

(i) If there was a trial in the case, any court minutes of proceedings after the original verdict is rendered;

(ii) If the original judgment of conviction is based on a guilty plea or nolo contendere plea, any court minutes of the proceedings at the time of entry of such plea and any subsequent proceedings;

1 ~~(F)~~ The notice of appeal; and

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

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6 (2) Reporter's transcript

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

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

12 (i) The original sentencing proceeding; and

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

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18 (e) – (g) * * *

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20 **Advisory Committee Comment**

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22 **Subdivisions (b)(13) and (d)(1)(G).** Rule 8.336(g) addresses the appropriate handling of probation
23 officers' reports and court-ordered diagnostic reports that must be included in the clerk's transcript ~~under~~
24 ~~(b)(13)(D) or (E).~~

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28 **Division 2. Rules Relating to the Superior Court Appellate Division**

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

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32 **Article 2. Record in Misdemeanor Appeals**

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35 **Rule 8.867. Limited normal record in certain appeals**

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37 If the People appeal from a judgment on a demurrer to the complaint, including any notice to
38 appear, or if the defendant or the People appeal from an appealable order other than a ruling on a
39 motion for new trial, the normal record is composed of:

40
41 (1) *Record of the documents filed in the trial court*

42 A clerk's transcript or original trial court file containing:

43 (A) The complaint, including any notice to appear, and any amendment;

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45 (B) Any demurrer or other plea;

- 1
2 (C) Any motion or notice of motion granted or denied by the order appealed from, with
3 supporting and opposing memoranda and attachments;
4
5 (D) The judgment or order appealed from and any abstract of judgment or
6 commitment;
7
8 (E) Any court minutes relating to the judgment or order appealed from; and:
9
10 (i) If there was a trial in the case, any court minutes of proceedings after the
11 original verdict is rendered;
12
13 (ii) If the original judgment of conviction is based on a guilty plea or nolo
14 contendere plea, any court minutes of the proceedings at the time of entry of on
15 such plea and any subsequent proceedings
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17 (F) The notice of appeal; and
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19 (G) If the appellant is the defendant, all probation officer's reports.
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21 (2) *Record of the oral proceedings in the trial court*

22
23 If an appellant wants to raise any issue which requires consideration of the oral
24 proceedings in the trial court;:

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26 (A) aA reporter's transcript, a transcript prepared under rule ~~8.866~~ 8.868, an official
27 electronic recording under rule 8.868, or a ~~settled~~ statement on appeal under rule
28 8.869 summarizing any oral proceedings incident to the judgment or order being
29 appealed.
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31 (B) If the appeal is from an order after judgment, a reporter's transcript, a transcript
32 prepared under rule 8.868, an official electronic recording under rule 8.868, or a
33 statement on appeal under rule 8.869 summarizing any oral proceedings from:
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35 (i) The original sentencing proceeding; and
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37 (ii) If the original judgment of conviction is based on a guilty plea or nolo
38 contendere plea, the proceedings at the time of entry of on such plea.
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40 **Advisory Committee Comment**

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42 Rule 8.862(c) addresses the appropriate handling of probation officers' reports that must be included in
43 the clerk's transcript under (1)(G).
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1 **Chapter 5. Appeals in Infraction Cases**

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3 **Article 2. Record in Infraction Appeals**

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5 **Rule 8.920. Limited normal record in certain appeals**

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7 If the People appeal from a judgment on a demurrer to the complaint, including any notice to
8 appear, or if the defendant or the People appeal from an appealable order other than a ruling on a
9 motion for new trial, the normal record is composed of:

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11 (1) *Record of the documents filed in the trial court*

12 A clerk's transcript or original trial court file containing:

- 13
14 (A) The complaint, including any notice to appear, and any amendment;
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16 (B) Any demurrer or other plea;
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18 (C) Any motion or notice of motion granted or denied by the order appealed from, with
19 supporting and opposing memoranda and attachments;
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21 (D) The judgment or order appealed from and any abstract of judgment;
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23 (E) Any court minutes relating to the judgment or order appealed from; and:
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25 (i) If there was a trial in the case, any court minutes of proceedings after the
26 original judgment is rendered;
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28 (ii) If the original judgment of conviction is based on a guilty plea or nolo
29 contendere plea, any court minutes of the proceedings at the time of entry of on
30 such plea and any subsequent proceedings; and
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32 (F) The notice of appeal.

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35 (2) *Record of the oral proceedings in the trial court*

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37 If an appellant wants to raise any issue that requires consideration of the oral proceedings
38 in the trial court;

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40 (A) aA reporter's transcript, a transcript prepared under rule ~~8.918~~ 8.917, an official
41 electronic recording under rule 8.917, or a settled statement on appeal under rule
42 8.915 8.916 summarizing any oral proceedings incident to the judgment or order
43 being appealed.
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45 (B) If the appeal is from an order after judgment, a reporter's transcript, a transcript
46 prepared under rule 8.917, an official electronic recording under rule 8.917, or a
47 statement on appeal under rule 8.916 summarizing any oral proceedings from:

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(i) The original sentencing proceeding; and

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