



Judicial Council of California

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INVITATION TO COMMENT

SPR26-01

Title

Appellate Procedure: Required Use of Appendixes in Civil Appeals

Action Requested

Review and submit comments by May 18, 2026, to invitations@jud.ca.gov

Proposed Rules, Forms, Standards, or Statutes

Amend Cal. Rules of Court, rules 8.40, 8.124, 8.702, 8.713, and 8.845

Proposed Effective Date

January 1, 2027

Proposed by

Appellate Advisory Committee
Hon. Allison M. Danner, Chair

Contact

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Executive Summary and Origin

The Appellate Advisory Committee proposes amending five California Rules of Court to require parties represented by counsel to use appendixes in unlimited and limited civil appeals. This proposal is designed to expedite the record-preparation process in civil appeals. This proposal originated from a recommendation of the former Chief Justice's Appellate Caseflow Workgroup.

The Proposal

Under California Rules of Court, rules 8.124, 8.702, 8.713, and 8.845, the use of appendixes is not required in civil appeals, but parties have the option to elect to use an appendix.¹ Rule 8.124 applies to unlimited civil appeals before the Courts of Appeal, rule 8.702 applies to appeals of streamlined California Environmental Quality Act (CEQA) Projects, rule 8.713 applies to appeals from an order dismissing or denying a petition to compel arbitration, and rule 8.845 applies to limited civil appeals before the appellate division of the superior court.²

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

² A separate proposal concurrently circulating for comment would also amend rule 8.702. See Appellate Advisory Com. and Civil and Small Claims Advisory Com., *CEQA Actions: Implementation of Senate Bill 676*, available at courts.ca.gov/policy-administration/invitations-comment. The revisions from this other proposal only affect

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.

The appellate record typically consists of the clerk’s transcript, prepared by the court clerk, and the reporter’s transcript.³ In civil cases, rules 8.124 and 8.845 currently allow parties to choose to prepare an appendix instead of having the court clerk complete a clerk’s transcript. Because these appendixes are prepared by the parties, the preparation of an appendix can be faster than the process for completing a clerk’s transcript. For this reason, the Appellate Caseflow Workgroup recommended that the Judicial Council revise the rules of court to encourage represented civil litigants to prepare their own joint appendixes.⁴

General requirement for appendixes

Based on the Workgroup’s recommendation, the committee proposes amending rules 8.124 and 8.845 to establish a general requirement that represented civil litigants prepare appendixes. Because preparing an appendix is both complicated and resource-intensive, the committee proposes exempting from this general requirement represented civil litigants who have a waiver of the fee for a clerk’s transcript. The committee also proposes allowing courts to make case-specific exemptions on a motion by a party, as well as establishing a process for such motions. For parties not required to use an appendix under the general rule, the committee proposes amending the current rules to allow the option to elect to use an appendix. This amendment would also allow a party who has a fee waiver to elect to proceed by appendix if the opposing party does not have a fee waiver. However, no party would be able to make such an election if the opposing party has a fee waiver. Similarly, elections to use appendixes would not be permitted if the court had granted a motion by the opposing party to be exempted from the requirement to use appendixes. The committee further proposes amending the advisory committee comment to clarify the above amendments.

Joint appendixes

Under rules 8.40, 8.124, 8.702, 8.713 and 8.845, litigants have the option to prepare a joint appendix, an appendix to which both the appellant and respondent stipulate. To simplify the rules for appendixes, the committee proposes amending those rules to remove the option for joint appendixes. While this amendment would remove the joint appendix option, the goal of submitting a single appendix could still be achieved under the amended rules if the parties work together to determine the documents for inclusion in the appellant’s appendix. Parties could still reserve the right to file respondents’ and reply appendixes should the parties later determine the appendix should be supplemented with additional records. To clarify this process, the committee

subdivisions (b), (c), and (f) and the advisory committee comment of rule 8.702, which would not be revised by this proposal and are, therefore, not shown in the attached rule document. (SPR26-06).

³ Appellate Caseflow Workgroup, *Report to the Chief Justice* (Dec. 6, 2022), p. 15, newsroom.courts.ca.gov/sites/default/files/newsroom/2022-12/Appellate%20Caseflow%20Workgroup%20Report_Final.pdf. The workgroup was appointed by former Chief Justice Tani G. Cantil-Sakauye in June 2022. The Chief Justice directed the workgroup to “review policies, procedures, and management and administrative practices of the Courts of Appeal, and to recommend measures to promote transparency, accountability, and efficiency in issuing timely judgments.” (*Id.* at p. 1.)

⁴ *Id.* at p. 19.

also proposes adding an advisory committee comment explaining that parties are encouraged to cooperate in the preparation of an appellant's appendix.

Register of actions

Subdivision (a)(2) in both rule 8.124 and 8.845 requires the superior court clerk to send a copy of the register of actions to the parties *only when* a party files a notice electing to use an appendix. To maintain consistency with the committee's concurrent proposal⁵ to require court clerks to provide the register of actions *in every appeal*, the committee proposes deleting subdivision (a)(2) in both rule 8.124 and 8.845, as well as the corresponding advisory committee comments for those subdivisions.

Alternatives Considered

The committee considered the alternative of requiring joint appendixes but concluded that separate appellant's and respondent's appendixes would be more practicable given that joint appendixes are rarely used in most civil appeals. The committee considered the alternative of maintaining the option for joint appendixes but decided to remove the joint appendix option because the collaboration of a joint appendix can be achieved through the parties' collaboration on an appellant's appendix. The committee considered the alternative of requiring appendixes for all parties but decided to exempt self-represented litigants and other litigants who may not be well-equipped to prepare an appendix due to cost or complexity. The committee considered including a specific provision to allow appellate divisions by local rule to opt out of mandatory appendixes in favor of mandatory clerk's transcripts but decided it would be better for appendixes in limited and unlimited civil appeals to have the same requirements. The committee also considered the alternative of taking no action but rejected this option because the proposal would make the record preparation process more efficient.

Fiscal and Operational Impacts

The committee anticipates the proposed amendments will reduce the fiscal and operational burdens of record preparation on the courts. Implementation would involve making the Courts of Appeal and superior courts aware of the changes.

⁵ See Appellate Advisory Com., *Appellate Procedure: Record Designation Rules and Forms* (SPR26-02) available at courts.ca.gov/policy-administration/invitations-comment.

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?
- Is there anything that joint appendixes achieve that consultation on appellant's appendix does not achieve?
- Should rule 8.845 allow appellate divisions by local rule to opt out of mandatory appendixes in favor of mandatory clerk's transcripts?

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

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would two 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?

Attachments and Links

1. Cal. Rules of Court, rules 8.40, 8.124, 8.713, and 8.845, at pages 5–21

Rules 8.40, 8.124, 8.702, 8.713, and 8.845 of the California Rules of Court would be amended, effective January 1, 2027, to read:

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
7 **Article 2. Service, Filing, Filing Fees, Form, and Privacy**

8
9 **Rule 8.40. Cover requirements for documents filed in paper form**

10
11 **(a) Cover color**

12
13 (1) As far as practicable, the covers of briefs and petitions filed in paper form
14 must be in the following colors:

15

16 Appellant's opening brief or appendix	green
17 Respondent's brief or appendix	yellow
18 Appellant's reply brief or appendix	tan
19 Joint appendix	white
20 Amicus curiae brief	gray
21 Answer to amicus curiae brief	blue
22 Petition for rehearing	orange
23 Answer to petition for rehearing	blue
24 Petition for original writ	red
25 Answer (or opposition) to petition for original writ	red
26 Reply to answer (or opposition) to petition for original writ	red
27 Petition for transfer of appellate division case to Court of	white
28 Appeal	
29 Answer to petition for transfer of appellate division case to Court	blue
30 of Appeal	
31 Petition for review	white
32 Answer to petition for review	blue
33 Reply to answer to petition for review	white
34 Opening brief on the merits	white
35 Answer brief on the merits	blue
36 Reply brief on the merits	white

1 (2)–(3) * * *

2
3 (b) * * *

4
5
6 **Chapter 2. Civil Appeals**

7
8 **Article 2. Record on Appeal**

9
10 **Rule 8.124. Appendixes**

11
12 **(a) Required use of appendixes**

13
14 (1) Except as provided in this rule, the use of appendixes is required in all
15 appeals under this chapter in which all parties are represented by counsel.

16
17 (2) The use of appendixes is not required under (1) if:

18
19 (A) Any party has a waiver of the fee for a clerk’s transcript;

20
21 (B) The superior court orders otherwise on a motion served and filed by a
22 party.

23
24 (i) Any motion requesting an exemption from the requirement under
25 (1) must be served and filed as follows:

26
27 a. If filed by the appellant, with the notice designating the
28 record on appeal under rule 8.121.

29
30 b. If filed by the respondent, within 10 days after the appellant
31 serves the notice designating the record on appeal.

32
33 (ii) Any opposition to a motion must be served and filed within 10
34 days after service of the motion.

35
36 (iii) In considering whether to grant a motion, the court should weigh
37 the potential hardships and efficiencies for the parties and for the
38 court of using an appendix compared to using a clerk’s transcript.

39
40 (iv) A motion is deemed denied unless the court gives notice of action
41 on the motion within 20 court days after the time for filing
42 opposition has expired.

1 **(a)(b)** **Notice of Election to use appendixes**

2
3 ~~(1)~~ Unless the superior court orders otherwise on a motion served and filed
4 within 10 days after the notice of election is served, this rule governs if In appeals
5 in which appendixes are not required under (a), parties may elect to use appendixes
6 as follows:

7
8 ~~(A)(1)~~ If the respondent does not have a waiver of the fee for a clerk's
9 transcript and the superior court has not granted a motion by the respondent
10 under (a)(2)(B) for exemption to the requirement to use appendixes, the
11 appellant may elects to use an appendix under this rule. This election must be
12 made in the appellant's notice designating the record on appeal under rule
13 8.121; or.

14
15 ~~(B)(2)~~ If the appellant does not have a waiver of the fee for a clerk's transcript
16 and the superior court has not granted a motion by the appellant under
17 (a)(2)(B) for exemption to the requirement to use appendixes, the respondent
18 may elect to use an appendix under this rule. The respondent serves and files
19 must make this election by serving and filing a notice in the superior court
20 electing to use an appendix under this rule within 10 days after the
21 appellant's notice designating the record on appeal is filed and no waiver of
22 the fee for a clerk's transcript is granted to the appellant. If the appellant has
23 a fee waiver, the respondent cannot elect an appendix instead of a clerk's
24 transcript. served.

25
26 ~~(2)~~ When a party files a notice electing to use an appendix under this rule, the
27 superior court clerk must promptly send a copy of the register of actions, if
28 any, to the attorney of record for each party and to any unrepresented party.

29
30 ~~(3)~~ The parties may prepare separate appendixes or they may stipulate to a joint
31 appendix.

32
33 ~~(3)~~ Within 10 days after a notice of election is served under (1) or (2), a party
34 receiving the notice of election may file a motion in the superior court asking
35 the court to order that appendixes not be used in the appeal. The court should
36 use the factors provided in (a)(2)(B)(iii) to determine if there is good cause to
37 grant the motion.

38
39 **(b)(c)** **Contents of appendix**

40
41 (1) ~~A joint appendix or~~ An appellant's appendix must contain:
42

- 1 (A) All items required by rule 8.122(b)(1), showing the dates required by
2 rule 8.122(b)(2);
3
- 4 (B) Any item listed in rule 8.122(b)(3) that is necessary for proper
5 consideration of the issues, including, for an appellant’s appendix, any
6 item that the appellant should reasonably assume the respondent will
7 rely on; and
8
- 9 (C) If the respondent elected to proceed by appendix under (b)(2), the
10 notice of election, ~~and~~
11
- 12 ~~(D) For a joint appendix, the stipulation designating its contents.~~
13
- 14 (2) An appendix may incorporate by reference all or part of the record on appeal
15 in 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
19 only part of a record is being incorporated by reference, that part must
20 be identified by citation to the volume and page numbers of the record
21 where it appears and either the title of the document or documents or
22 the date of the oral proceedings to be incorporated. The parts of any
23 record incorporated by reference must be identified both in the body of
24 the 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
32 must provide a copy of the materials incorporated by reference to the
33 court or another party or lend them for copying as provided in ~~(e)~~(d).
34
- 35 (3) An appendix must not:
36
- 37 (A) Contain documents or portions of documents filed in superior court that
38 are unnecessary for proper consideration of the issues.
39
- 40 (B) Contain transcripts of oral proceedings that may be designated under
41 rule 8.130.
42

1 (C) Contain the record of an administrative proceeding that was admitted in
2 evidence, refused, or lodged in the trial court. Any such administrative
3 record must be transmitted to the reviewing court as specified in rule
4 8.123.

5
6 (D) Incorporate any document by reference except as provided in (2).

7
8 (4) All exhibits admitted in evidence, refused, or lodged are deemed part of the
9 record, whether or not the appendix contains copies of them.

10
11 (5) A respondent's appendix may contain any document that could have been
12 included in the appellant's appendix ~~or a joint appendix~~.

13
14 (6) An appellant's reply appendix may contain any document that could have
15 been included in the respondent's appendix.

16
17 **(e)(d) Document or exhibit held by other party**

18
19 If a party preparing an appendix wants it to contain a copy of a document or an
20 exhibit in the possession of another party:

21
22 (1) The party must first ask the party possessing the document or exhibit to
23 provide a copy or lend it for copying. All parties should reasonably cooperate
24 with such requests.

25
26 (2) If the attempt under (1) is unsuccessful, the party may serve and file in the
27 reviewing court a notice identifying the document or specifying the exhibit's
28 trial court designation and requesting the party possessing the document or
29 exhibit to deliver it to the requesting party or, if the possessing party prefers,
30 to the reviewing court. The possessing party must comply with the request
31 within 10 days after the notice was served.

32
33 (3) If the party possessing the document or exhibit sends it to the requesting
34 party ~~non-electronically~~ nonelectronically, that party must copy and return it
35 to the possessing party within 10 days after receiving it.

36
37 (4) If the party possessing the document or exhibit sends it to the reviewing
38 court, that party must:

39
40 (A) Accompany the document or exhibit with a copy of the notice served
41 by the requesting party; and
42

1 (B) Immediately notify the requesting party that it has sent the document or
2 exhibit to the reviewing court.

3
4 (5) On request, the reviewing court may return a document or an exhibit to the
5 party that sent it ~~non-electronically~~ nonelectronically. When the remittitur
6 issues, the reviewing court must return all documents or exhibits to the party
7 that sent them, if they were sent ~~non-electronically~~ nonelectronically.

8
9 ~~(d)~~(e) **Form of appendix**

10
11 (1) An appendix must comply with the requirements of rule 8.144 for a clerk's
12 transcript.

13
14 (2) In addition to the information required on the cover of a brief by rule
15 8.204(b)(10), the cover of an appendix must prominently display the title
16 "~~Joint Appendix~~" or "Appellant's Appendix" or "Respondent's Appendix" or
17 "Appellant's Reply Appendix."

18
19 (3) An appendix must not be bound or transmitted electronically as one
20 document with a brief.

21
22 ~~(e)~~(f) **Service and filing**

23
24 (1) A party preparing an appendix must:

25
26 (A) Serve the appendix on each party, unless otherwise agreed by the
27 parties or ordered by the reviewing court; and

28
29 (B) File the appendix in the reviewing court.

30
31 (2) ~~A joint appendix or~~ An appellant's appendix must be served and filed before
32 or together with the appellant's opening brief.

33
34 (3) A respondent's appendix, if any, must be served and filed with the
35 respondent's brief.

36
37 (4) An appellant's reply appendix, if any, must be served and filed with the
38 appellant's reply brief.

39
40 ~~(f)~~(g) **Cost of appendix**

41
42 ~~(1)~~ Each party must pay for its own appendix.

1 the clerk’s transcript, or grants such a waiver after the notice of appeal is filed, ~~respondent the~~
2 ~~other party cannot may not~~ elect to proceed by way of an appendix.

3
4 ~~Subdivision (a)(2) is intended to assist appellate counsel in preparing an appendix by providing~~
5 ~~them with the list of pleadings and other filings found in the register of actions or “docket sheet”~~
6 ~~in those counties that maintain such registers. (See Gov. Code, § 69845.) The provision is derived~~
7 ~~from rule 10-1 of the United States Circuit Rules (9th Cir.).~~

8
9 ~~**Subdivision (b)(c).** Under subdivision (b)(1)(A), a joint appendix or an appellant’s appendix~~
10 ~~must contain any register of actions that the clerk sent to the parties under subdivision (a)(2). This~~
11 ~~provision is intended to assist the reviewing court in determining the accuracy of the appendix.~~
12 ~~The provision is derived from rule 30-1.3(a)(ii) of the United States Circuit Rules (9th Cir.).~~

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

26
27 Subdivision ~~(b)(c)~~(3)(B) prohibits the inclusion in an appendix of transcripts of oral proceedings
28 that may be made part of a reporter’s transcript. (Compare rule 8.130(e)(3) [the reporter must not
29 copy into the reporter’s transcript any document includable in the clerk’s transcript under rule
30 8.122].) The prohibition is intended to prevent a party filing an appendix from evading the
31 requirements and safeguards imposed by rule 8.130 on the process of designating and preparing a
32 reporter’s transcript, or the requirements imposed by rule 8.144(e) on the use of daily or other
33 transcripts instead of a reporter’s transcript (i.e., renumbered pages, required indexes). In
34 addition, if an appellant were to include in its appendix a transcript of less than all the
35 proceedings, the respondent would not learn of any need to designate additional proceedings
36 (under rule 8.130(a)(3)) until the appellant had served its appendix with its brief, when it would
37 be too late to designate them. Note also that a party may file a certified transcript of designated
38 proceedings instead of a deposit for the reporter’s fee (rule 8.130(b)(3)).

39
40 ~~**Subdivision (d)(e).**~~ In current practice, served copies of filed documents often bear no clerk’s
41 date stamp and are not conformed by the parties serving them. Consistent~~ly~~ with this practice,
42 subdivision ~~(d)(e)~~ does not require such documents to be conformed. The provision thereby
43 relieves the parties of the burden of obtaining conformed copies at the cost of considerable time

1 and expense and expedites the preparation of the appendix and the processing of the appeal. It is
2 to be noted, however, that under subdivision ~~(b)(c)~~(1)(A) each document necessary to determine
3 the timeliness of the appeal must show the date required under rule 8.104 or 8.108. Note also that
4 subdivision ~~(g)(h)~~ of rule 8.124 provides that a party filing an appendix represents under penalty
5 of sanctions that its copies of documents are accurate.
6

7 **Subdivision ~~(e)(f)~~.** Subdivision ~~(e)(f)~~(2) requires a ~~joint~~ an appellant's appendix to be filed with
8 the appellant's opening brief or before the filing of the appellant's opening brief. The provision is
9 intended to improve the briefing process by enabling the appellant's opening brief to include
10 citations to the record and, by allowing earlier filing of the appendix, to assist courts in
11 considering petitions for supersedeas. To provide for the case in which a respondent concludes in
12 light of the appellant's opening brief that the ~~joint~~ appellant's appendix should have included
13 additional documents, subdivision ~~(b)(c)~~(5) permits such a respondent to present in an appendix
14 filed with its respondent's brief (see subd. ~~(e)(f)~~(3)) any document that could have been included
15 in the ~~joint~~ appellant's appendix.
16

17 Under subdivision ~~(e)(f)~~(2)–(4) an appendix is required to be filed, at the latest, “with” the
18 associated brief. ~~This provision is~~ These provisions are intended to clarify that an extension of a
19 briefing period ~~ipso facto~~ extends the filing period of an appendix associated with the brief.
20

21 **Subdivision ~~(g)(h)~~.** Under subdivision ~~(g)(h)~~, sanctions do not depend on the degree of
22 culpability of the filing party—i.e., on whether the party's conduct was willful or negligent—but
23 on the nature of the inaccuracies and the importance of the documents they affect.
24
25

26 **Division 3. Rules Relating to Miscellaneous Appeals and Writ Proceedings**

27 **Chapter 1. Review of California Environmental Quality Act Involving Streamlined** 28 **CEQA Projects** 29

30 **Rule 8.702. Appeals**

31 **(a)–(c) * * ***
32

33 **(d) Record on appeal**

34
35 (1) *Record of written documents*
36

37
38 The record of the written documents from the superior court proceedings
39 other than the administrative record must be in the form of a ~~joint appendix~~
40 ~~or separate~~ appellant's and respondent's appendixes under rule 8.124.
41
42

43 (2)–(3) * * *

1
2 (e)–(g) * * *

3
4
5 **Chapter 2. Appeals Under Code of Civil Procedure Section 1294.4 From an Order**
6 **Dismissing or Denying a Petition to Compel Arbitration**

7
8 **Rule 8.713. Record on appeal**

9
10 **(a) Record of written documents**

11
12 The record of the written documents from the superior court proceedings must be in
13 the form of ~~a joint appendix or separate~~ appellant's and respondent's appendixes
14 under rule 8.124.

15
16 **(b)** * * *

17
18
19 **Division 4. Rules Relating to the Superior Court Appellate Division**

20
21 **Chapter 2. Appeals and Records in Limited Civil Cases**

22
23 **Article 2. Record in Civil Appeals**

24
25 **Rule 8.845. Appendixes**

26
27 **(a) Required use of appendixes**

28
29 (1) Except as provided in this rule, the use of appendixes is required in all
30 appeals under this chapter in which all parties are represented by counsel.

31
32 (2) The use of appendixes is not required under (1) if:

33
34 (A) Any party has a waiver of the fee for a clerk's transcript;

35
36 (B) The superior court orders otherwise on a motion served and filed by a
37 party.

38
39 (i) Any motion requesting an exemption from the requirement under
40 (1) must be served and filed as follows:

41
42 a. With the notice designating the record on appeal under rule
43 8.831, if filed by the appellant.

1
2 **b.** Within 10 days after the appellant serves the notice
3 designating the record on appeal, if filed by the respondent.

4
5 (ii) Any opposition to a motion must be served and filed within 10
6 days after service of the motion.

7
8 (iii) In considering whether to grant a motion, the court should weigh
9 the potential hardships and efficiencies for the parties and for the
10 court of using an appendix compared to using a clerk's transcript.

11
12 (iv) A motion is deemed denied unless the court gives notice of action
13 on the motion within 20 court days after the time for filing
14 opposition has expired.

15
16 **(a)(b) Notice of Election to use appendices**

17
18 ~~(1)~~ Unless the superior court orders otherwise on a motion served and filed
19 within 10 days after the notice of election is served, this rule governs if In
20 appeals in which appendixes are not required under (a), parties may elect to
21 use appendixes as follows:

22
23 (A)(1) If the respondent does not have a waiver of the fee for a clerk's
24 transcript and the superior court has not granted a motion by the
25 respondent under (a)(2)(B) for exemption to the requirement to use
26 appendixes, the appellant may elects to use an appendix under this rule.
27 This election must be made in the appellant's notice designating the
28 record on appeal under rule 8.831; or.

29
30 (B)(2) If the appellant does not have a waiver of the fee for a clerk's
31 transcript and the superior court has not granted a motion by the
32 appellant under (a)(2)(B) for exemption to the requirement to use
33 appendixes, the respondent may elect to use an appendix under this
34 rule. The respondent serves and files must make this election by
35 serving and filing a notice in the superior court electing to use an
36 appendix under this rule within 10 days after the appellant's notice of
37 designating the record on appeal is filed, and no waiver of the fee for a
38 clerk's transcript is granted to the appellant. If the appellant has a fee
39 waiver, the respondent cannot elect an appendix instead of a clerk's
40 transcript served.

1 (2) ~~When a party files a notice electing to use an appendix under this rule, the~~
2 ~~superior court clerk must promptly send a copy of the register of actions, if~~
3 ~~any, to the attorney of record for each party and to any unrepresented party.~~
4

5 (3) ~~The parties may prepare separate appendixes or they may stipulate to a joint~~
6 ~~appendix.~~
7

8 (3) Within 10 days after a notice of election is served under (A) or (B), a
9 party receiving the notice of election may file a motion in the superior
10 court asking the court to order that appendixes not be used in the
11 appeal. The court should use the factors provided in (a)(2)(B)(iii) to
12 determine if there is good cause to grant the motion.
13

14 **(b)(c) Contents of appendix**
15

16 (1) ~~A joint appendix or~~ An appellant's appendix must contain:
17

18 (A) All items required by rule 8.832(a)(1), showing the dates required by
19 rule 8.832(a)(2);
20

21 (B) Any item listed in rule 8.832(a)(3) that is necessary for proper
22 consideration of the issues, including, for an appellant's appendix, any
23 item that the appellant should reasonably assume the respondent will
24 rely on; and
25

26 (C) If the respondent elected to proceed by appendix under (b)(2), the
27 notice of election; ~~and~~
28

29 ~~(D) For a joint appendix, the stipulation designating its contents.~~
30

31 (2) An appendix may incorporate by reference all or part of the record on appeal
32 in another case pending in the reviewing court or in a prior appeal in the same
33 case.
34

35 (A) The other appeal must be identified by its case name and number. If
36 only part of a record is being incorporated by reference, that part must
37 be identified by citation to the volume and page numbers of the record
38 where it appears and either the title of the document or documents or
39 the date of the oral proceedings to be incorporated. The parts of any
40 record incorporated by reference must be identified both in the body of
41 the appendix and in a separate section at the end of the index.
42

1 (B) If the appendix incorporates by reference any such record, the cover of
2 the appendix must prominently display the notice “Record in case
3 number: ___ incorporated by reference,” identifying the number of the
4 case from which the record is incorporated.
5

6 (C) On request of the reviewing court or any party, the designating party
7 must provide a copy of the materials incorporated by reference to the
8 court or another party or lend them for copying as provided in ~~(e)~~(d).
9

10 (3) An appendix must not:

11
12 (A) Contain documents or portions of documents filed in superior court that
13 are unnecessary for proper consideration of the issues.
14

15 (B) Contain transcripts of oral proceedings that may be designated under
16 rule 8.834.
17

18 (C) Incorporate any document by reference except as provided in (2).
19

20 (4) All exhibits admitted in evidence, refused, or lodged are deemed part of the
21 record, whether or not the appendix contains copies of them.
22

23 (5) A respondent’s appendix may contain any document that could have been
24 included in the appellant’s appendix ~~or a joint appendix~~.
25

26 (6) An appellant’s reply appendix may contain any document that could have
27 been included in the respondent’s appendix.
28

29 **~~(e)~~(d) Document or exhibit held by other party**
30

31 If a party preparing an appendix wants it to contain a copy of a document or an
32 exhibit in the possession of another party:
33

34 (1) The party must first ask the party possessing the document or exhibit to
35 provide a copy or lend it for copying. All parties should reasonably cooperate
36 with such requests.
37

38 (2) If the request under (1) is unsuccessful, the party may serve and file in the
39 reviewing court a notice identifying the document or specifying the exhibit’s
40 trial court designation and requesting the party possessing the document or
41 exhibit to deliver it to the requesting party or, if the possessing party prefers,
42 to the reviewing court. The possessing party must comply with the request
43 within 10 days after the notice was served.

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

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

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

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

(5) On request, the reviewing court may return a document or an exhibit to the party that sent it nonelectronically. When the remittitur issues, the reviewing court must return all documents or exhibits to the party that sent them, if they were sent nonelectronically.

~~(d)~~(e) Form of appendix

(1) An appendix must comply with the requirements of rule 8.838 for a clerk’s transcript.

(2) In addition to the information required on the cover of a brief by rule 8.883(c)(8), the cover of an appendix must prominently display the title “~~Joint Appendix~~” or “Appellant’s Appendix” or “Respondent’s Appendix” or “Appellant’s Reply Appendix.”

(3) An appendix must not be bound with or transmitted electronically with a brief as one document.

~~(e)~~(f) Service and filing

(1) A party preparing an appendix must:

(A) Serve the appendix on each party, unless otherwise agreed by the parties or ordered by the reviewing court; and

(B) File the appendix in the reviewing court.

(2) ~~A joint appendix or~~ An appellant’s appendix must be served and filed before or together with the appellant’s opening brief.

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(3) A respondent’s appendix, if any, must be served and filed with the respondent’s brief.

(4) An appellant’s reply appendix, if any, must be served and filed with the appellant’s reply brief.

~~(e)~~(g) Cost of appendix

~~(1)~~ Each party must pay for its own appendix.

~~(2)~~—The cost of a joint appendix must be paid:

~~(A)~~—By the appellant;

~~(B)~~—If there is more than one appellant, by the appellants equally; or

~~(C)~~—As the parties may agree.

~~(g)~~(h) Inaccurate or noncomplying appendix

Filing an appendix constitutes a representation that the appendix consists of accurate copies of documents in the superior court file. The reviewing court may impose monetary or other sanctions for filing an appendix that contains inaccurate copies or otherwise violates this rule.

Advisory Committee Comment

Previous versions of this rule allowed for joint appendixes. Under this rule, a single appendix can be achieved by discussion between the parties before an appellant’s appendix is lodged, while reserving the parties’ right to file respondent’s and reply appendixes should the parties later determine the appendix should be supplemented with additional records. Parties are encouraged to cooperate in the creation of an appellant’s appendix to avoid the need for further appendixes.

Subdivision (a). Under this provision, the use of appendixes is generally required in all limited civil cases in which all parties are represented by counsel. Appendixes are not required if any party has a waiver of the fee for a clerk’s transcript or when the superior court orders otherwise on a motion served and filed by a party.

Subdivision ~~(a)~~(b). Under this provision, in cases in which appendixes are not required under subdivision (a), either party may elect to have the appeal proceed by way of an appendix unless the court orders otherwise or certain exceptions apply. If the respondent has not been granted a waiver of the fee for a clerk’s transcript and the court has not granted a motion by the respondent

1 for an exemption to the requirement to use appendixes under subdivision (a), the appellant may
2 elect to proceed by appendix. Similarly, if the appellant’s fees for a clerk’s transcript are have
3 not been waived and the court has not granted a motion by the appellant for an exemption to the
4 requirement to use appendixes under subdivision (a), the respondent timely elects to use an may
5 elect to proceed by appendix, that election will govern unless the superior court orders otherwise.
6 This respondent’s election procedure differs from all other appellate rules governing designation
7 of a record on appeal. In those rules, the appellant’s designation, or the stipulation of the parties,
8 determines the type of record on appeal. Before making this either of these elections, respondents
9 the electing party should check determine whether the appellant other party has been granted a
10 fee waiver that is still in effect. If the trial court has granted the appellant one party a fee waiver
11 for the clerk’s transcript, or grants such a waiver after the notice of appeal is filed, the respondent
12 other party cannot may not elect to proceed by way of an appendix.

13
14 ~~Subdivision (a)(2) is intended to assist appellate counsel in preparing an appendix by providing~~
15 ~~counsel with the list of pleadings and other filings found in the register of actions or “docket~~
16 ~~sheet” in those counties that maintain such registers. (See Gov. Code, § 69845.) The provision is~~
17 ~~derived from rule 10-1 of the United States Circuit Rules (9th Cir.).~~
18

19 **Subdivision (b)(c).** Under subdivision (b)(c)(1)(A), a joint appendix or an appellant’s appendix
20 must contain any register of actions that the clerk sent to the parties under subdivision (a)(b)(2).
21 This provision is intended to assist the reviewing court in determining the accuracy of the
22 appendix. The provision is derived from rule 30-1.3(a)(ii) of the United States Circuit Rules (9th
23 Cir.).
24

25 In support of or opposition to pleadings or motions, the parties may have filed a number of
26 lengthy documents in the proceedings in superior court, including, for example, declarations,
27 memorandums, trial briefs, documentary exhibits (e.g., insurance policies, contracts, deeds), and
28 photocopies of judicial opinions or other publications. Subdivision (b)(c)(3)(A) prohibits the
29 inclusion of such documents in an appendix when they are not necessary for proper consideration
30 of the issues raised in the appeal. Even if a document is otherwise includable in an appendix, the
31 rule prohibits the inclusion of any substantial *portion* of the document that is not necessary for
32 proper consideration of the issues raised in the appeal. The prohibition is intended to simplify and
33 ~~therefore~~ expedite the preparation of the appendix, to reduce its cost to the parties, and to relieve
34 the courts of the burden of reviewing a record containing redundant, irrelevant, or immaterial
35 documents. The provision is adapted from rule 30-1.4 of the United States Circuit Rules (9th
36 Cir.).
37

38 Subdivision (b)(c)(3)(B) prohibits the inclusion in an appendix of transcripts of oral proceedings
39 that may be made part of a reporter’s transcript. (Compare rule 8.834(c)(4) [the reporter must not
40 copy into the reporter’s transcript any document includable in the clerk’s transcript under rule
41 8.832].) The prohibition is intended to prevent a party filing an appendix from evading the
42 requirements and safeguards imposed by rule 8.834 on the process of designating and preparing a
43 reporter’s transcript. In addition, if an appellant were to include in its appendix a transcript of less

1 than all the proceedings, the respondent would not learn of any need to designate additional
2 proceedings (under rule 8.834(a)(3)) until the appellant had served its appendix with its brief,
3 when it would be too late to designate them. Note also that a party may file a certified transcript
4 of designated proceedings instead of a deposit for the reporter’s fee (~~Cal. Rules of Court~~, rule
5 8.834(b)(2)(D)).
6

7 **Subdivision ~~(d)~~(e).** In current practice, served copies of filed documents often bear no clerk’s
8 date stamp and are not conformed by the parties serving them. Consistent with this practice,
9 subdivision ~~(d)~~(e) does not require such documents to be conformed. The provision thereby
10 relieves the parties of the burden of obtaining conformed copies at the cost of considerable time
11 and expense and expedites the preparation of the appendix and the processing of the appeal. It is
12 to be noted, however, that under subdivision ~~(b)~~(c)(1)(A) each document necessary to determine
13 the timeliness of the appeal must show the date required under rule 8.822 or 8.823. Note also that
14 subdivision ~~(g)~~(h) of rule 8.845 provides that a party filing an appendix represents under penalty
15 of sanctions that its copies of documents are accurate.
16

17 **Subdivision ~~(e)~~(f).** Subdivision ~~(e)~~(f)(2) requires a ~~joint~~ an appellant’s appendix to be filed with
18 the appellant’s opening brief or before the filing of the appellant’s opening brief. The provision is
19 intended to improve the briefing process by enabling the appellant’s opening brief to include
20 citations to the record and, by allowing earlier filing of the appendix, to assist courts in
21 considering petitions for supersedeas. To provide for the case in which a respondent concludes in
22 light of the appellant’s opening brief that the ~~joint~~ appellant’s appendix should have included
23 additional documents, subdivision ~~(b)~~(c)(5) permits such a respondent to present in an appendix
24 filed with its respondent’s brief (see subd. ~~(e)~~(f)(3)) any document that could have been included
25 in the ~~joint~~ appellant’s appendix.
26

27 Under subdivision ~~(e)~~(f)(2)–(4) an appendix is required to be filed, at the latest, “with” the
28 associated brief. ~~This provision is~~ These provisions are intended to clarify that an extension of a
29 briefing period ~~ipso facto~~ extends the filing period of an appendix associated with the brief.
30

31 **Subdivision ~~(g)~~(h).** Under subdivision ~~(g)~~(h), sanctions do not depend on the degree of
32 culpability of the filing party—i.e., on whether the party’s conduct was willful or negligent—but
33 on the nature of the inaccuracies and the importance of the documents they affect.