



Judicial Council of California

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INVITATION TO COMMENT

SPR26-03

Title

Appellate Procedure: Record in Felony 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, rule 8.320

Proposed Effective Date

January 1, 2027

Proposed by

Appellate Advisory Committee
Hon. Allison M. Danner, Chair

Contact

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

Executive Summary and Origin

The Appellate Advisory Committee proposes amending California Rules of Court, rule 8.320, to clarify what must be included in the record in criminal felony appeals. This proposal is designed to help reduce the number of appeals in which augmentation or correction of the record is necessary, which would reduce both the work for court clerks and resulting delays. This proposal originated from a recommendation of the former Chief Justice’s Appellate Caseflow Workgroup.

The Proposal

Under California Rules of Court, rule 8.320, the normal record on appeal in an appeal from a judgment of conviction (or an appeal from an order granting a new trial) in a felony case must contain both a reporter’s transcript and a clerk’s transcript.¹ The Appellate Caseflow Workgroup identified in its December 2022 report the following sources of delay in preparing the clerk’s transcript: finding case files, reviewing their contents, and identifying relevant documents.² The

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

² Appellate Caseflow Workgroup, *Report to the Chief Justice* (Dec. 6, 2022), p. 16, newsroom.courts.ca.gov/sites/default/files/newsroom/2022-12/Appellate%20Caseflow%20Workgroup%20Report_Final.pdf. The workgroup was appointed by then-Chief Justice Tani G. Cantil-Sakauye in June 2022. Chief Justice Cantil-Sakauye 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.” (*Ibid.* at p. 1.)

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 It is circulated for comment purposes only.

workgroup also found that “superior courts have too few fully trained staff to compile clerks’ transcripts promptly.”³

Rule 8.320

Currently, rule 8.320 sets out general requirements for the normal record in subdivision (a), for clerk’s transcripts in subdivision (b), and for reporter’s transcripts in subdivision (c). Subdivision (d) of the rule then sets out the circumstances and requirements for a limited normal record, and subdivision (e) sets out when exhibits are deemed part of the record. To address the concerns identified by the Appellate Caseflow Workgroup, the committee proposes amending rule 8.320 to simplify the requirements for clerk’s transcripts and reporter’s transcripts in felony appeals by restructuring the rule for consistency and clarity. The changes are intended to help both litigants and court clerks understand what is required in a felony appellate record and to make the differing requirements clearer.

Subdivision (a) would set out what is required to be included in a normal record on appeal in felony cases: the clerk’s transcript and the reporter’s transcript. To clarify that exhibits are deemed part of the record, the committee proposes deleting the language on exhibits in subdivision (e) and moving it to subdivision (a). For subdivisions (b), (c), and (d), the committee proposes amendments to give different types of appeals governed by this rule their own subdivision based on the procedural posture. New subdivision (b), “Record in defendant’s appeal from conviction or People’s appeal from order granting new trial,” and new subdivision (c), “Record in appeal from a postjudgment order or action,” would be formatted the same way as current subdivision (d), with (1) for the clerk’s transcript and (2) for the reporter’s transcript. As a result of moving the provision on exhibits into subdivision (a), the proposal would redesignate existing subdivisions (f) and (g) as subdivisions (e) and (f).

To align the rule’s language with this restructuring, the committee proposes the use of different terms in different contexts. Subdivision (a) would continue to use “must contain” to set out the general requirement for the record. Because the requirement is established in subdivision (a), subdivisions (b), (c), and (d) would list what “the normal record is composed of” because these subdivisions would be definitional. The definition in (1) would be phrased as, “A clerk’s transcript containing [various documents]” because clerk’s transcripts contain documents; the definition in (2) would be phrased as, “A reporter’s transcript of [various oral proceedings]” because reporter’s transcripts are transcriptions of what was said on the record.

For clarity, the amendments to (b) would consolidate the provisions regarding the contents of the clerk’s and reporter’s transcripts in appeals from a conviction or new trial order into one subdivision; these provisions are spread over subdivisions (a), (b), and (c) in the existing rule. For example, the language that would be stricken from subdivision (a) concerning the type of appeal would be moved into new subdivision (b). The requirements for reporter’s transcripts in current subdivision (c) would also be incorporated into new subdivision (b).

³ *Ibid.* at p. 16.

The committee also proposes amending the title of subdivision (d) from “Limited normal record in certain appeals” to “Record in appeals from judgments on demurrers or certain appealable orders.” The new title is based on subdivision (c) of rule 8.867, which covers similar appeals in the misdemeanor context and provides a more specific description of the type of appeal covered.

Because subdivision (d) pertains to judgments on demurrer and appeals of prejudgment orders, the committee proposes deleting language from subdivision (d)(1)(E) that relates to court minutes and relocating that language to new subdivision (c)(1)(F), which covers postjudgment proceedings.

New Advisory Committee Comment

The amendments would include a new advisory committee comment clarifying two subdivisions. The first comment states that subdivision (c)(1)(I) requires clerks to identify the materials other than exhibits the court stated it relied on in making any oral order, and these documents should be identified in the minute order for that hearing. Because clerks use minute orders to determine what documents the court relied on, the committee wanted to emphasize the importance of including all documents relied on in minute orders while allowing for individual courts to develop appropriate practices and procedures. The second comment states that subdivision (d) does not apply to appeals from an order granting a new trial or from postjudgment orders, which are covered by new subdivisions (b) and (c), respectively. The committee also proposes minor clarifying changes to the existing advisory committee comments.

Alternatives Considered

The committee considered alternative language but concluded that maintaining as much consistency with the current language as possible would best achieve the goal of reducing the number of appeals in which augmentation or correction of the record is necessary. The committee also considered the alternative of taking no action but rejected this option because the proposal has the potential to 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 Supreme Court, Courts of Appeal, and superior courts aware of the changes.

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?
- Would the rule be clearer as proposed, with appeals from a postjudgment court order or action separated out into new subdivision (c), or with separate paragraphs, similar to current subdivision (d)(2)(B), which calls out any separate requirements for such appeals?
- Would it be helpful to adopt similar amendments to the rules for the record on appeal in misdemeanor and infraction cases?

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, rule 8.320, at pages 5–11

Rule 8.320 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 3. Criminal Appeals

6
7 Article 2. Record on Appeal

8
9 Rule 8.320. Normal record; exhibits

10
11 (a) Contents

12
13 ~~If the defendant appeals from a judgment of conviction, or if the People appeal~~
14 ~~from an order granting a new trial, The record must contain a clerk's transcript and~~
15 ~~a reporter's transcript, which together constitute the normal record. Exhibits~~
16 ~~admitted in evidence, refused, or lodged are deemed part of the record, but may be~~
17 ~~transmitted to the reviewing court only as provided in (f)(2) or rule 8.224.~~

18
19 (b) ~~Clerk's transcript~~ **Record in defendant's appeals from conviction or People's**
20 **appeals from order granting new trial**

21
22 If the defendant appeals from a judgment of conviction, or if the People appeal
23 from an order granting a new trial, the normal record is composed of:

24
25 (1) Clerk's transcript

26
27 The A clerk's transcript ~~must~~ containing:

28
29 ~~(1)~~(A) The accusatory pleading and any amendment;

30
31 ~~(2)~~(B) Any demurrer or other plea;

32
33 ~~(3)~~(C) All court minutes;

34
35 ~~(4)~~(D) All jury instructions that any party submitted in writing and the
36 cover page required by rule 2.1055(b)(2) indicating the party requesting
37 each instruction, and any written jury instructions given by the court;

38
39 ~~(5)~~(E) Any written communication between the court and the jury or
40 any individual juror;

41
42 ~~(6)~~(F) Any verdict;

- 1
2 ~~(7)~~(G) Any written opinion of the court;
3
4 ~~(8)~~(H) The judgment or order appealed from and any abstract of
5 judgment or commitment;
6
7 ~~(9)~~(I) Any motion for new trial, with supporting and opposing
8 memoranda and attachments;
9
10 ~~(10)~~(J) The notice of appeal and any certificate of probable cause filed
11 under rule 8.304(b);
12
13 ~~(11)~~(K) Any transcript of a sound or sound-and-video recording furnished
14 to the jury or tendered to the court under rule 2.1040;
15
16 ~~(12)~~(L) Any application for additional record and any order on the
17 application;
18
19 ~~(13)~~(M) And, if the appellant is the defendant:
20
21 ~~(A)~~(i) Any written defense motion denied in whole or in part, with
22 supporting and opposing memoranda and attachments;
23
24 ~~(B)~~(ii) If related to a motion under ~~(A)~~(i), any search warrant and
25 return and the reporter’s transcript of any preliminary
26 examination or grand jury hearing;
27
28 ~~(C)~~(iii) Any document admitted in evidence to prove a prior
29 juvenile adjudication, criminal conviction, or prison term;
30
31 ~~(D)~~(iv) The probation officer’s report; and
32
33 ~~(E)~~(v) Any court-ordered diagnostic or psychological report
34 required under Penal Code section 1203.03(b) or 1369.
35

36 ~~(e)~~(2) *Reporter’s transcript*

37
38 The A reporter’s transcript ~~must contain~~ of:

- 39
40 ~~(1)~~(A) The oral proceedings on the entry of any plea other than a not
41 guilty plea;
42
43 ~~(2)~~(B) The oral proceedings on any motion in limine;

- 1
2 ~~(3)~~(C) The oral proceedings at trial, but excluding the voir dire
3 examination of jurors and any opening statement;
4
5 ~~(4)~~(D) All instructions given orally;
6
7 ~~(5)~~(E) Any oral communication between the court and the jury or any
8 individual juror;
9
10 ~~(6)~~(F) Any oral opinion of the court;
11
12 ~~(7)~~(G) The oral proceedings on any motion for new trial;
13
14 ~~(8)~~(H) The oral proceedings at sentencing, granting or denying of
15 probation, or other dispositional hearing;
16
17 ~~(9)~~(I) And, if the appellant is the defendant:
18
19 ~~(A)~~(i) The oral proceedings on any defense motion denied in
20 whole or in part except motions for disqualification of a judge
21 and motions under Penal Code section 995;
22
23 ~~(B)~~(ii) The closing arguments; and
24
25 ~~(C)~~(iii) Any comment on the evidence by the court to the jury.
26

27 **(c) Record in appeal from a postjudgment court order or action**
28

29 If the defendant or the People appeal from a court order or other action after
30 judgment, the normal record is composed of:
31

32 (1) Clerk's transcript
33

34 A clerk's transcript containing:
35

36 (A) The accusatory pleading and any amendment;
37

38 (B) Any plea other than not guilty;
39

40 (C) The court order or other action appealed from and all abstracts of
41 judgment or commitment;
42

1 (D) Any written petition, motion or notice of motion, application, or other
2 paper filed in the court that was the subject of the court order or other
3 action being appealed from, with supporting and opposing memoranda
4 and attachments;

5
6 (E) All court minutes after any filing described in (D);

7
8 (F) The following additional court minutes:

9
10 (i) If there was a trial in the case, any court minutes of proceedings
11 at the time the original verdict was rendered;

12
13 (ii) If the original judgment of conviction is based on a guilty plea or
14 nolo contendere plea, any court minutes of the proceedings at the
15 time of entry of such plea; and

16
17 (iii) The court minutes of all sentencing hearings;

18
19 (G) Any written decision of the court concerning the order or other court
20 action being appealed from;

21
22 (H) All probation officer reports;

23
24 (I) Any other material, other than exhibits, the court stated that it relied on
25 in making the order or taking the other action being appealed from; and

26
27 (J) The notice of appeal.

28
29 (2) Reporter's transcript

30
31 A reporter's transcript of:

32
33 (A) Any oral proceedings incident to the order or other action being
34 appealed;

35
36 (B) All sentencing proceedings, granting or denying of probation, or other
37 dispositional hearing; and

38
39 (C) If the original judgment of conviction is based on a guilty plea or nolo
40 contendere plea, the proceedings at the time of entry of such plea.

1 (d) **Limited normal Record in certain appeals from judgments on demurrers or**
2 **certain appealable prejudgment orders**
3

4 If the People appeal from a judgment on a demurrer to the accusatory pleading, or
5 if the defendant or the People appeal from an appealable order other than a ruling
6 on a motion for new trial or a postjudgment order, the normal record is composed
7 of:
8

9 (1) *Clerk's transcript*

10 A clerk's transcript containing:

- 11 (A) The accusatory pleading and any amendment;
12
13 (B) Any demurrer or other plea;
14
15 (C) Any written motion or notice of motion granted or denied by the order
16 appealed from, with supporting and opposing memoranda and
17 attachments;
18
19 (D) The judgment or order appealed from and any abstract of judgment or
20 commitment;
21
22 (E) Any court minutes relating to the judgment or order appealed from;
23 and:
24
25 (i) ~~If there was a trial in the case, any court minutes of proceedings~~
26 ~~at the time the original verdict is rendered and any subsequent~~
27 ~~proceedings; or~~
28
29 (ii) ~~If the original judgment of conviction is based on a guilty plea or~~
30 ~~nolo contendere plea, any court minutes of the proceedings at the~~
31 ~~time of entry of such plea and any subsequent proceedings;~~
32
33 (F) The notice of appeal; and
34
35 (G) ~~If the appellant is the defendant, all probation officer reports and any~~
36 ~~court ordered diagnostic report required under Penal Code section~~
37 ~~1203.03(b).~~
38
39

40 (2) *Reporter's transcript*
41
42

1 (A) A reporter’s transcript of any oral proceedings incident to the judgment
2 or order being appealed; and

3
4 (B) ~~If the appeal is from an order after judgment, a reporter’s transcript of:~~

5
6 (i) ~~The original sentencing proceeding; and~~

7
8 (ii) ~~If the original judgment of conviction is based on a guilty plea or~~
9 ~~nolo contendere plea, the proceedings at the time of entry of such~~
10 ~~plea.~~

11
12 **(e) Exhibits**

13
14 ~~Exhibits admitted in evidence, refused, or lodged are deemed part of the record, but~~
15 ~~may be transmitted to the reviewing court only as provided in (g)(2) or rule 8.224.~~

16
17 **~~(f)~~(e) Stipulation for partial transcript**

18
19 If counsel for the defendant and the People stipulate in writing before the record is
20 certified that any part of the record is not required for proper determination of the
21 appeal, that part must not be prepared or sent to the reviewing court.

22
23 **~~(g)~~(f) Additional clerk’s transcript materials required by local rule**

24
25 In addition to the items listed in (b)(1), (c)(1), and (d)(1), the reviewing court may,
26 by local rule, require the clerk’s transcript to include any or all additional court
27 records contained in the superior court file.

28
29 (1) For purposes of this provision, “court records” has the meaning provided in
30 rule 2.502(3).

31
32 (2) The reviewing court’s local rule may require the clerk’s transcript to include
33 copies of exhibits admitted into evidence, refused, or lodged.

34
35 **Advisory Committee Comment**

36
37 Rule 8.320 addresses the normal record in felony criminal appeals only. Rule 8.483 governs the
38 normal record and exhibits in civil commitment appeals.

39
40 ~~Rules 8.45–8.46~~ 8.45 and 8.46 address the appropriate handling of sealed and confidential records
41 that must be included in the record on appeal. Examples of confidential records include Penal
42 Code section 1203.03 diagnostic reports, records closed to inspection by court order under *People*
43 *v. Marsden* (1970) 2 Cal.3d 118 or *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, ~~in camera~~

1 in camera proceedings on a confidential informant, and defense expert funding requests (Pen.
2 Code, § 987.9; *Keenan v. Superior Court* (1982) 31 Cal.3d 424, 430).

3
4 **Subdivision (c)(1)(I).** This subdivision requires the court clerk to include any materials (other
5 than exhibits) the court stated it relied on in making any oral order. These documents should be
6 identified in the minute order for that hearing.

7
8 **Subdivision (d).** This subdivision does not apply to appeals from an order granting a new trial, as
9 the record in those appeals is governed by subdivision (b), nor does it apply to appeals from
10 postjudgment orders, as the record in those appeals is governed by subdivision (c).

11
12 **Subdivision (d)(1)(E).** This ~~rule~~ subdivision identifies the minutes that must be included in the
13 record in appeals subject to subdivision (d). The ~~trial~~ superior court clerk may include additional
14 minutes beyond those identified in this rule if that would be more cost-effective.

15
16 **Subdivision (g).** This ~~rule~~ subdivision authorizes the Courts of Appeal to adopt local rules that
17 require additional court records, as defined by rule 2.502(3), to be included in the clerk’s
18 transcript, up to all court records in the superior court file. For purposes of this ~~rule~~ subdivision,
19 items excluded from the definition of “court records” under rule 2.502(3) are not considered part
20 of the superior court file.

21
22 ~~Rule 8.483 governs the normal record and exhibits in civil commitment appeals.~~