



Judicial Council of California

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INVITATION TO COMMENT

SPR26-04

Title

Appellate Procedure: Clarify Rule Requiring
Notice of Failure to Procure the Record

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 8.140

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 California Rules of Court, rule 8.140 to add an advisory committee comment providing examples of acts requiring the superior court to notify a litigant they have failed to timely do an act required to procure the record on appeal in a civil case. This proposal was prompted by a suggestion from the chair of a county bar association's appellate law section.

The Proposal

Rule 8.140(a) requires the superior court clerk to provide written notice to a party who has failed to timely do an act required to procure the record on appeal in a civil case. The committee proposes amending rule 8.140 to include an advisory committee comment to provide examples of “act[s] required to procure the record.”

The initial version of this rule came into effect in 1943, and it was amended in 1977 to the current process, which was based on the Third Appellate District's procedure to dismiss unperfected appeals on its own motion. The 1977 amendment required the superior court clerk to notify the appellant of their default when they had not taken proper steps to procure the preparation of the record, and required the reviewing court to dismiss the appeal if the appellant did not file a timely application for relief. The new process was seen as necessary to address unperfected appeals that were not progressing without relying on the respondent's initiative. In its report to the Judicial Council, the committee provided the following examples of steps

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 It is circulated for comment purposes only.

appellants failed to take for perfecting the appeal: “filing the designation or paying the estimated cost of a transcript.”¹

The rule was amended in 2002 to include defaults by respondents and an advisory committee comment with the example that “a respondent’s failure to deposit the cost of transcribing proceedings that it had designated” would trigger a default notice under subdivision (a). This example was removed in a later amendment.

Based on suggestions and comments to the committee, it appears litigants do not always complete the steps required to procure the record, which triggers a default notice under rule 8.140. These failures suggest that the term “an act required to procure the record” in subdivision (a) may be too vague to inform litigants, particularly self-represented litigants, what is required to procure the record and what will trigger a default notice. Thus, the committee proposes adding the following language to the advisory committee comment in rule 8.140:

A superior court’s duty to provide prompt written notice to a litigant applies only to acts that are required or necessary to procure the record. Examples include, but are not limited to, an appellant who does not file a notice designating the record on appeal, pay the filing fee, submit proper evidence of excuse from payment, or pay the estimated cost of a transcript, or a respondent who does not deposit the cost of transcribing proceedings they have designated.

Alternatives Considered

The committee considered not proposing any amendments to rule 8.140 but rejected this option because the proposal would provide clarity to court users, particularly self-represented litigants, and thus aid appellate efficiency.

The committee also considered amending rule 8.140(a) to add clarifying language to the rule itself but rejected this option because the committee concluded that information was best presented in the advisory committee comment.

The committee considered amending the rule to limit the number of subsequent notices or reduce the days allotted to correct a deficiency for subsequent notices. The committee rejected this option because the need for subsequent notices does not appear to be a common issue and because reducing the time to correct a deficiency may negatively impact self-represented litigants and limit their ability to appear in court.

Finally, the committee considered whether to amend the record-procurement rules for limited civil, misdemeanor, and infraction cases with a similar advisory committee comment. (See Cal. Rules of Court, rules 8.842, 8.874, and 8.924.) The committee determined a similar amendment may clarify, for court users, what acts trigger a default notice. However, because it is unclear if

¹ Judicial Council of Cal., Advisory Com. Rep., *Dismissing Civil Appeals When Record Not Perfected* (Oct. 26, 1976), at p. 1.

there is a need for a similar amendment in limited civil, misdemeanor, and infraction cases, the committee seeks specific comments as to whether a comparable advisory committee comment would be helpful for litigants to understand what triggers a default notice.

Fiscal and Operational Impacts

The committee anticipates minimal fiscal and operational impacts on courts as a result of the proposed amendment. Implementation requirements for courts would involve making litigants, court staff, and judicial officers aware of the change.

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 amending the record-procurement rules for limited civil, misdemeanor, and infraction cases to add a similar advisory committee comment be useful? (See Cal. Rules of Court, rules 8.842, 8.874, and 8.924.)

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 8.140, at page 4

Rule 8.140 of the California Rules of Court would be amended, effective January 1, 2027, to read:

1 **Rule 8.140. Failure to procure the record**

2
3 **(a) Notice of default**

4
5 Except as otherwise provided by these rules, if a party fails to timely do an act
6 required to procure the record, the superior court clerk must promptly notify the
7 party in writing that it must do the act specified in the notice within 15 days after
8 the notice is sent, and that if it fails to comply, the reviewing court may impose one
9 of the following sanctions:

- 10
11 (1) If the defaulting party is the appellant, the court may dismiss the appeal; or
12
13 (2) If the defaulting party is the respondent, the court may proceed with the
14 appeal on the record designated by the appellant.

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

17
18 **(c) * * ***

19
20 **Advisory Committee Comment**

21
22 **Subdivision (a).** In subdivision (a), the reference to a failure to “timely” do a required act is
23 intended to include any valid extension of that time.

24
25 A superior court’s duty to provide prompt written notice to a litigant applies only to acts that are
26 required or necessary to procure the record. Examples include, but are not limited to, an appellant
27 who does not file a notice designating the record on appeal, pay the filing fee, submit proper
28 evidence of excuse from payment, or pay the estimated cost of a transcript, or a respondent who
29 does not deposit the cost of transcribing proceedings they have designated.