

Invitation to Comment

<p>Title</p>	<p>Appellate Procedure: Records in Civil and Criminal Cases (amend and renumber Cal. Rules of Court, rule 8.120 as rule 8.122, adopt new rules 8.120, 8.121 and 8.123, amend rules 8.124, 8.128, 8.130, 8.134, 8.137, 8.144, 8.147, 8.224, and 8.320, and revise <i>Notice Designating Record on Appeal</i> form (APP-003))</p>
<p>Summary</p>	<p>This proposal would make several clarifying changes to the rules concerning the record on appeal in civil and criminal cases, including: (1) adding a new rule that clearly lays out all the different options for providing the record of the documents and the oral proceedings from the trial court in a civil appeal; (2) providing for a single notice that informs the trial court what form of the record of the documents and what form of the record of the oral proceedings (if any) the appellant elects to use in a civil appeal; (3) making the language regarding jury instructions and motions in the clerk’s transcript consistent in the rules for both civil and criminal appeals; (4) establishing a new procedure for designating and transmitting to the reviewing court administrative records that were presented to the trial court; and (5) requiring that the index of exhibits in the reporter’s transcript identify each exhibit by letter or number and a brief description of the exhibit.</p> <p>This proposal would also revise the optional form that appellants can use to designate the record on appeal in a civil case, <i>Notice Designating Record on Appeal</i> (form APP-003) to: (1) reflect the proposed changes to the record designation rules; (2) add a box that the appellant can check to indicate that he or she will be using the superior court file instead of a clerk’s transcript under rule 8.134; (3) add a box that the appellant can check to request that original exhibits be transmitted to the Court of Appeal under rule 8.224; and (4) add a box the appellant can use to request a reporter’s transcript in computer-readable format.</p>
<p>Source</p>	<p>Appellate Advisory Committee Hon. Kathryn Doi Todd, Chair</p>
<p>Staff</p>	<p>Heather Anderson, Committee Counsel, 415-865-7691, heather.anderson@jud.ca.gov</p>
<p>Discussion</p>	<p><u>Record Designation in Civil Appeals</u></p> <p><i>Rules</i> Rules 8.120, 8.124, 8.128, 8.130, 8.134, and 8.137 of the California Rules of Court address alternative forms of the record of the documents filed in the trial court and/or the record of the oral</p>

proceedings in the trial court that may be used in civil appeals. These rules relate, respectively, to clerk's transcripts, appendixes, use of the superior court file in lieu of a clerk's transcript, reporter's transcripts, agreed statements, and settled statements. To clarify that these are alternative forms of the record, this proposal would adopt a new rule that more clearly lays out all of the options that an appellant may use to provide the record of the documents filed in the trial court and/or the record of the oral proceedings in the trial court.

Each of these rules currently contains a separate provision that requires the appellant to notify the court if he or she elects to use that particular form of the record. All of these separate provisions require that these notices be filed within 10 days after the notice of appeal is filed. This proposal would replace all of these separate notice requirements with a single rule requiring the appellant to file a notice designating the record within 10 days after filing the notice of appeal. In this notice, the appellant would be required to indicate what form of the record on appeal he or she elects to use. The trial court clerk would be required to send a copy of this notice to the reviewing court.

Adding these new rules would require renumbering current rule 8.120, relating to clerk's transcripts, as rule 8.122 and correcting existing cross-references to rule 8.120 in several other rules.

Form APP-003

Form APP-003, *Notice Designating Record on Appeal*, is an optional form that parties in civil appeals can use to inform the trial court how they have elected to provide the record on appeal and to designate the materials that they would like to be included in a clerk's or reporter's transcript, or both. This proposal would revise this form to reflect the proposed new rules relating to filing a single notice designating the record on appeal. In addition, this proposal would make several other changes to this form.

Rule 8.128 permits parties to use the original superior court file instead of a clerk's transcript if the reviewing court has a local rule permitting this practice and if the parties stipulate to proceed in this manner. Form APP-003, *Notice Designating Record on Appeal*, however, does not currently include any space for parties to indicate that they have stipulated to provide the record as permitted under rule 8.128. This proposal would revise form APP-003 to add such a space.

Rule 8.224 permits parties to designate for transmittal to the Court of

Appeal an original exhibit that was admitted in evidence, refused, or lodged in the trial court but that was not copied in the clerk's transcript or the appendix. This proposal would revise form APP-003 to add a space where parties can make this designation.

This proposal would also revise form APP-003 to add a space where parties can request a copy of the reporter's transcript in computer-readable format. Code of Civil Procedure section 271, Government Code section 69954, and rule 8.130 of the California Rules of Court all provide for copies of the reporter's transcript in computer-readable format. Code of Civil Procedure section 271 provides, in relevant part: "(a) Any court, party, or other person entitled to a transcript may request that it be delivered in computer-readable form, except that an original transcript shall be on paper." Government Code section 69954, in turn, specifies the rates to be paid to court reporters for copies of transcripts that are in computer-readable format. Finally, rule 8.130(f) provides that, if requested, the reporter must provide any party with a copy of the reporter's transcript in computer-readable format. The proposed revision to form APP-003 would assist litigants in making requests for such a transcript.

Clerk's Transcripts in Civil and Criminal Appeals

Rule 8.120 (which would be renumbered as rule 8.122 under this proposal) and rule 8.320 address clerk's transcripts in civil and criminal appeals, respectively. Both of these rules list jury instructions and motions among the documents that can or must be included in a clerk's transcript. Currently, however, these rules use different language to refer to these documents. This proposal would revise these rules to make the language regarding jury instructions and motions in both rules consistent. In addition, the language regarding jury instructions would be broadened to more clearly encompass written jury instructions from the trial judge among the documents that can or must be in the clerk's transcript.

Transmission of Administrative Records on Appeal

The rules relating to records in civil appeals do not currently address how an administrative record that was admitted in evidence, refused, or lodged in the trial court should be included in the record on appeal. It is the committee's understanding that practices differ among the Court of Appeal districts and divisions. Some districts/divisions allow these records to be included as part of an appendix under rule 8.124. Others require that the original administrative record be transmitted to the trial court as an exhibit under rule 8.224.

This proposal would add a new rule addressing how administrative records from the trial court proceedings are to be handled. Similar in concept to the procedure for transmitting exhibits under rule 8.224, proposed new rule 8.123 would require that, if a party designates an administrative record in its notice designating the record on appeal, the original administrative record would be transmitted to the reviewing court. Unlike rule 8.224, however, proposed new rule 8.123 would require that an administrative record be transmitted in time for it to be available to the reviewing court when the parties' briefs are filed. If a clerk's transcript or reporter's transcript is used, the administrative record would be transmitted to the reviewing court by the clerk with the record on appeal. If neither a clerk's transcript nor a reporter's transcript is used, the clerk would be required to transmit the administrative record to the reviewing court within 70 days after the notice designating the record on appeal is filed, which is when the appellant's opening brief and either an appellant's or a joint appendix are due under rules 8.124 and 8.212 when no reporter's transcript is used.

Proposed new rule 8.121 regarding designating the record would also include provisions designed to implement this procedure. Under rule 8.121, an appellant would be required to designate the record of an administrative proceeding that was admitted in evidence, refused, or lodged in the superior court if the appellant intends to raise any issue that requires consideration of that record. If the appellant does not designate such an administrative record, the respondent would be given an opportunity to do so. In addition, rules 8.120 (which would be renumbered as rule 8.122) relating to clerk's transcripts, and rule 8.124 relating to appendices, would be amended to clarify that copies of an administrative record must not be included in either a clerk's transcript or an appendix, but must be transmitted to the reviewing court under rule 8.123.

Index of Exhibits in Reporter's Transcripts

Rule 8.144 requires that a reporter's transcript contain an index listing the volume and page where any exhibit is marked for identification and where it is admitted or refused. Although rule 8.144 does not currently address this, it is the committee's understanding that the general practice is for court reporters to include in this index a brief description of each exhibit. This brief description is helpful to both litigants and the courts when reviewing reporter's transcripts. This proposal would conform the rules to this general practice by amending rule 8.144 to require that the index identify each exhibit by letter or number and a brief description of the exhibit.

Attachment

Rule 8.120 of the California Rules of Court would be amended and renumbered as rule 8.122, new rules 8.120, 8.121 and 8.123 would be adopted, rules 8.124, 8.128, 8.130, 8.134, 8.144, 8.147, 8.244, and 8.137 would be amended and Judicial Council form APP-003 would be revised, effective January 1, 2008, to read:

1 **Title 8. Appellate Rules**

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

4
5 **Chapter 2. Civil Appeals**

6
7 **Rule 8.120. Record on appeal**

8
9 Except as otherwise provided in this chapter, the record on an appeal in a civil
10 case must contain the following, which constitute the normal record on appeal.

11
12 **(a) Record of written documents**

13
14 (1) A record of the written documents from the superior court proceedings
15 in the form of one of the following:

16
17 (A) A clerk's transcript under rule 8.122;

18
19 (B) An appendix under rule 8.124;

20
21 (C) The original superior court file under rule 8.128;

22
23 (D) An agreed statement under rule 8.134(a)(2); or

24
25 (E) A settled statement under rule 8.137.

26
27 (2) If an appellant intends to raise any issue that requires consideration of
28 the record of an administrative proceeding that was admitted in
29 evidence, refused, or lodged in the superior court, the record on appeal
30 must include that administrative record, transmitted under rule 8.123.

31
32 **(b) Record of the oral proceedings**

33
34 If an appellant intends to raise any issue that requires consideration of the
35 oral proceedings in the superior court, the record on appeal must include a
36 record of these oral proceedings in the form of one of the following:

37
38 (1) A reporter's transcript under rule 8.130;
39

1 (2) An agreed statement under rule 8.134; or

2
3 (3) A settled statement under rule 8.137.

4
5
6 **Rule 8.121. Notice designating the record on appeal**

7
8 **(a) Time to file**

9
10 Within 10 days after filing the notice of appeal, an appellant must serve and
11 file a notice in the superior court designating the record on appeal. The
12 appellant may combine its notice designating the record with its notice of
13 appeal.

14
15 **(b) Contents**

16
17 (1) The notice must:

18
19 (A) Specify the date the notice of appeal was filed.

20
21 (B) Specify which form of the record of the written documents
22 from the superior court proceedings listed in rule 8.120(a)(1)
23 the appellant elects to use. If the appellant elects to use a
24 clerk's transcript, the notice must also designate the documents
25 to be included in the clerk's transcript as required under rule
26 8.122(b)(1).

27
28 (C) Specify whether the appellant elects to proceed with or without
29 a record of the oral proceedings in the trial court. If the
30 appellant elects to proceed with a record of the oral
31 proceedings in the trial court, the notice must specify which
32 form of the record listed in rule 8.120(b) the appellant elects to
33 use. If the appellant elects to use a reporter's transcript, the
34 notice must designate the proceedings to be included in the
35 transcript as required under rule 8.130.

36
37 (2) If an appellant intends to raise any issue that requires consideration of
38 the record of an administrative proceeding that was admitted in
39 evidence, refused, or lodged in the superior court, the notice must also
40 request that this administrative record be transmitted to the reviewing
41 court under rule 8.123.

1 **(c) Copy to the reviewing court**

2
3 The clerk must promptly send the reviewing court a copy of any notice filed
4 under this rule.

5
6 **Advisory Committee Comment**

7
8 This rule makes the filing of a notice designating the record an “act required to procure the
9 record” within the meaning of rule 8.140(a). Under that rule, a failure to file such a notice triggers
10 the clerk’s duty to issue a 15-day notice of default and thereby allows the appellant to cure the
11 default in superior court.

12
13
14 **Rule 8.120. 8.122. Clerk’s transcript**

15
16 **(a) Notice of dDesignation**

17
18 ~~(1) Within 10 days after filing the notice of appeal, an appellant must serve~~
19 ~~and file a notice in superior court designating the documents to be~~
20 ~~included in the clerk’s transcript, unless the appeal proceeds by~~
21 ~~appendix under rule 8.124, by stipulation under rule 8.128, or by agreed~~
22 ~~or settled statement under rule 8.134 or 8.137 instead of a clerk’s~~
23 ~~transcript.~~

24
25 ~~(2) The appellant may combine its notice designating a clerk’s transcript~~
26 ~~with any notice designating a reporter’s transcript under rule~~
27 ~~8.130(a)(1), and may combine both with the notice of appeal.~~

28
29 (1)(4) A notice designating documents to be included in a clerk’s transcript
30 must state the date the notice of appeal was filed and identify each
31 designated document by its title and filing date or, if the filing date is
32 not available, the date it was signed. The notice may specify portions of
33 designated documents that are not to be included in the transcript. For
34 minute orders or instructions, it is sufficient to collectively designate all
35 minute orders or all minute orders entered between specified dates, or
36 all written jury instructions given, refused, or withdrawn.

37
38 ~~(3)(2) Within 10 days after the appellant serves its notice designating a~~
39 ~~clerk’s transcript, the respondent may serve and file a notice in superior~~
40 ~~court designating any additional documents the respondent wants~~
41 ~~included in the transcript.~~

1 (5)(3) Except as provided in (b)(4), all exhibits admitted in evidence, refused,
2 or lodged are deemed part of the record, but a party wanting a copy of
3 an exhibit included in the transcript must specify that exhibit by number
4 or letter in its notice of designation. If the superior court has returned a
5 designated exhibit to a party, the party in possession of the exhibit must
6 promptly deliver it to the superior court clerk on receipt of the
7 designation.

8
9 **(b) Contents of transcript**

10
11 (1) The transcript must contain:

12 (A)–(C) * * *

13
14
15 (D) Any notice of intention to move for a new trial, or motion to vacate
16 the judgment, for judgment notwithstanding the verdict, or for
17 reconsideration of an appealed order, with supporting and
18 opposing memoranda and attachments, and any order on such
19 motion and any notice of its entry;

20
21 (E)–(F) * * *

22
23 (2) Each document listed in (1)(A), (B), (C), and (D) must show the date
24 necessary to determine the timeliness of the appeal under rules 8.104 or
25 8.108.

26
27 (3) Except as provided in (4), if designated by any party, the transcript must
28 also contain:

29 (A) Any other document filed or lodged in the case in superior court;

30 (B) Any exhibit admitted in evidence, refused, or lodged; and

31 (C) Any jury instruction that a party submitted in writing, each one
32 indicating the party requesting it, and any written jury instructions
33 given by the court.

34
35 (4) Unless the reviewing court orders or the parties stipulate otherwise,;

36 (A) The clerk must not copy or transmit to the reviewing court the
37 original of a deposition.

1 **(b) Designation**
2

3 (1) An appellant's notice designating the record on appeal under rule 8.121
4 that requests a record of an administrative proceeding be transmitted to
5 the reviewing court must identify the administrative record by the title
6 and date or dates of the administrative proceedings.
7

8 (2) If an appellant does not request that an administrative record admitted in
9 evidence, refused, or lodged in the superior court be transmitted to the
10 reviewing court, within 10 days after the appellant serves its notice
11 designating the record on appeal, the respondent may serve and file in
12 the superior court a notice requesting that this administrative record be
13 transmitted to the reviewing court.
14

15 **(c) Administrative records returned to parties**
16

17 If the superior court has returned a designated administrative record to a
18 party, the party in possession of the administrative record must promptly
19 deliver it to the superior court clerk on receipt of the notice designating the
20 record on appeal.
21

22 **(d) Transmittal to the reviewing court**
23

24 The superior court clerk must include any administrative record designated
25 by a party in the record on appeal sent to the reviewing court under rule
26 8.150. If the appellant has elected under rule 8.121 to use neither a clerk's
27 transcript nor a reporter's transcript, the superior court clerk must transmit
28 any administrative record designated by a party to the reviewing court no
29 later than 60 days after the respondent files a designation under (b)(2) or the
30 time for filing it expires, whichever first occurs.
31

32 **(e) Return by reviewing court**
33

34 On request, the reviewing court may return an administrative record to the
35 superior court or to the party that sent it. When the remittitur issues, the
36 reviewing court must return any administrative record to the superior court or
37 to the party that sent it.
38
39

1 **Rule 8.124. Appendixes instead of clerk’s transcript**

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

4
5 (1) ~~Within 10 days after the notice of appeal is filed, any party electing to~~
6 ~~proceed by~~ If in the notice designating the record on appeal under rule
7 8.121, the appellant elects to use an appendix under this rule instead of
8 ~~by a clerk’s transcript under rule 8.120 must serve and file a notice of~~
9 ~~election in superior court. The notice must state the date the notice of~~
10 ~~appeal was filed. 8.122, ¶this rule then governs unless the superior~~
11 ~~court orders otherwise on a motion served and filed within 10 days after~~
12 ~~the notice of election is served.~~

13
14 ~~(2) A party may combine a notice of election with any notice designating a~~
15 ~~reporter’s transcript under rule 8.130(a)(1), and may combine both with~~
16 ~~the notice of appeal.~~

17
18 ~~(3)~~(2) When a party files a notice of election under rule 8.121 electing to use
19 an appendix under this rule, the superior court clerk must promptly:

20
21 ~~(A) Send a copy of the notice to the reviewing court; and~~

22
23 ~~(B) send a copy of the register of actions, if any, to the attorney of~~
24 ~~record for each party and to any unrepresented party.~~

25
26 ~~(4)~~(3) The parties may prepare separate appendixes, but are encouraged to
27 stipulate to a joint appendix.

28
29 **(b) Contents of appendix**

30
31 (1) A joint appendix or an appellant’s appendix must contain:

32
33 (A) All items required by rule ~~8.120~~8.122(b)(1), showing the dates
34 required by rule ~~8.120~~8.122(b)(2);

35
36 (B) Any item listed in rule ~~8.120~~8.122(b)(3) that is necessary for
37 proper consideration of the issues, including, for an appellant’s
38 appendix, any item that the appellant should reasonably assume the
39 respondent will rely on;

40
41 (C) The notice of election; and

1 (D) For a joint appendix, the stipulation designating its contents.

2
3 (2) An appendix must not:

4
5 (A) Contain documents or portions of documents filed in superior
6 court that are unnecessary for proper consideration of the issues.

7
8 ~~(3)(B) An appendix must not~~ Contain transcripts of oral proceedings
9 that may be designated under rule 8.130.

10
11 (C) Contain the record of an administrative proceeding that was
12 admitted in evidence, refused, or lodged in the trial court. Any
13 such administrative record must be transmitted to the reviewing
14 court as specified in rule 8.123.

15
16 ~~(4)(D) An appendix must not~~ Incorporate any document by reference
17 except the record on appeal in another case pending in the
18 reviewing court or the record in a prior appeal in the same case.

19
20 ~~(5)(3) All exhibits admitted in evidence, refused, or lodged are deemed part~~
21 of the record, whether or not the appendix contains copies of them.

22
23 ~~(6)(4) A respondent's appendix may contain any document that could have~~
24 been included in the appellant's appendix or a joint appendix.

25
26 ~~(7)(5) An appellant's reply appendix may contain any document that could~~
27 have been included in the respondent's appendix.

28
29 (c) – (g) * * *

30
31 **Advisory Committee Comment**

32
33 **Subdivision (a).** Subdivision (a)~~(3)(B)~~(2) is intended to assist appellate counsel in preparing an
34 appendix by providing them with the list of pleadings and other filings found in the register of
35 actions or “docket sheet” in those counties that maintain such registers. (See Gov. Code,
36 § 69845.) The provision is derived from rule 10-1 of the United States Circuit Rules (9th Cir.).

37
38 **Subdivision (b).** Under subdivision (b)(1)(A), a joint appendix or an appellant's appendix must
39 contain any register of actions that the clerk sent to the parties under subdivision (a)~~(3)(B)~~(2).
40 This provision is intended to assist the reviewing court in determining the accuracy of the
41 appendix. The provision is derived from rule 30-1.3(a)(ii) of the United States Circuit Rules (9th
42 Cir.).

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

13
14 Subdivision (b)(3)(2)(B) prohibits the inclusion in an appendix of transcripts of oral proceedings
15 that may be made part of a reporter’s transcript. (Compare rule 8.130(e)(3) [the reporter must not
16 copy into the reporter’s transcript any document includable in the clerk’s transcript under rule
17 8.1208.122].) The prohibition is intended to prevent a party filing an appendix from evading the
18 requirements and safeguards imposed by rule 8.130 on the process of designating and preparing a
19 reporter’s transcript, or the requirements imposed by rule 8.144(d) on the use of daily or other
20 transcripts instead of a reporter’s transcript (i.e., renumbered pages, required indexes). In
21 addition, if an appellant were to include in its appendix a transcript of less than all the
22 proceedings, the respondent would not learn of any need to designate additional proceedings
23 (under rule 8.130(a)(2)(3)) until the appellant had served its appendix with its brief, when it
24 would be too late to designate them. Note also that a party may file a certified transcript of
25 designated proceedings instead of a deposit for the reporter’s fee (rule 8.130(b)(3)).

26
27 **Subdivision (d).** * * *

28
29 **Subdivision (e).** Subdivision (e)(2) requires a joint appendix to be filed with the appellant’s
30 opening brief. The provision is intended to improve the briefing process by enabling the
31 appellant’s opening brief to include citations to the record. To provide for the case in which a
32 respondent concludes in light of the appellant’s opening brief that the joint appendix should have
33 included additional documents, subdivision (b)(6)(4) permits such a respondent to present in an
34 appendix filed with its respondent’s brief (see subd.-(e)(3)) any document that could have been
35 included in the joint appendix.

36
37 Under subdivision (e)(2)–(4) an appendix is required to be filed “with” the associated brief. This
38 provision is intended to clarify that an extension of a briefing period ipso facto extends the filing
39 period of an appendix associated with the brief.

40
41 **Subdivision (g).** * * *

1 **Rule 8.128. Superior court file instead of clerk’s transcript**

2
3 **(a) Stipulation; time to file**

4
5 (1) If a local rule of the reviewing court permits, the parties may stipulate to
6 use the original superior court file instead of a clerk’s transcript under
7 rule ~~8.120~~ 8.122. This rule and any supplemental provisions of the local
8 rule then govern unless the superior court orders otherwise after notice
9 to the parties.

10
11 (2) Parties ~~wanting~~ intending to proceed under this rule must file their
12 stipulation in superior court ~~within 10 days after the filing of a notice of~~
13 appeal with the appellant’s notice designating the record on appeal
14 under rule 8.121. The parties must serve the reviewing court with a
15 copy of the stipulation ~~and of any notice designating a reporter’s~~
16 transcript.

17
18 **(b) * * ***

19
20
21 **Rule 8.130. Reporter’s transcript**

22
23 **(a) Notice**

24
25 (1) ~~Within 10 days after filing the notice of appeal, an appellant must serve~~
26 ~~and file in superior court either a notice designating a reporter’s~~
27 ~~transcript or a notice of intent to proceed without a reporter’s transcript,~~
28 ~~unless the appellant proceeds by agreed or settled statement under rule~~
29 ~~8.134 or 8.137.~~

30
31 ~~(4) A notice designating a reporter’s transcript must state the date the notice~~
32 ~~of appeal was filed and~~ If in the notice designating the record on appeal
33 under rule 8.121, the appellant elects to use a reporter’s transcript, in
34 that notice the appellant must specify the date of each proceeding to be
35 included in the transcript, and may specify portions of designated
36 proceedings that are not to be included.

37
38 ~~(2)(5)~~ If the appellant designates less than all the testimony, the notice must
39 state the points to be raised on appeal; the appeal is then limited to those
40 points unless, on motion, the reviewing court permits otherwise.

1 reporter’s cost to transcribe the proceedings, may substitute certified transcripts of proceedings
2 that have already been transcribed (e.g., daily transcripts) and hence need only be designated for
3 inclusion in the transcript.

4
5 **Subdivision (a).** ~~Subdivision (a)(1) makes the filing of one of two notices—either to prepare a~~
6 ~~reporter’s transcript or to proceed without one—an “act required to procure the record” within the~~
7 ~~meaning of rule 8.140(a). Under that rule, a failure to file such a notice triggers the clerk’s duty to~~
8 ~~issue a 15-day notice of default and thereby allows the appellant to cure the default in superior~~
9 ~~court.~~

10
11 Subdivision (a)~~(4)~~(1) requires that every notice designating a reporter’s transcript identify which
12 proceedings are to be included, and that it do so by specifying the date or dates on which those
13 proceedings took place; if the appellant does not want a portion of the proceedings on a given
14 date to be included, the notice should identify that portion by means of a descriptive reference
15 (e.g., “August 3, 2004, but not the proceedings on defendant’s motion to tax costs”).

16
17 As used in subdivision (a)~~(4)~~(1), the phrase “oral proceedings” includes all instructions that the
18 court gives, whether or not submitted in writing, and any instructions that counsel orally propose
19 but the court refuses; all such instructions are included in the reporter’s transcript if designated
20 under this rule. All instructions that counsel submit in writing, whether or not given to the jury,
21 are lodged with the superior court clerk and are included in the clerk’s transcript if designated
22 under rule ~~8.120~~ 8.122.

23
24 Under subdivision (a), portions of depositions read in open court but not reported, or not read but
25 lodged with the superior court clerk, are included in the clerk’s transcript if designated under rule
26 ~~8.120~~ 8.122.

27
28 **Subdivision (b).** * * *

29
30 **Subdivision (c).** * * *

31
32 **Subdivision (d).** Under subdivision (d)~~(2)~~(1), the clerk’s notice to the reporter must show the
33 date on which the clerk mailed the notice. This provision is intended to establish the date when
34 the period for preparing the reporter’s transcript under subdivision (f)(1) begins to run.

35
36 **Subdivision (e).*** * *

37
38 **Subdivision (f).*** * *

39
40
41 **Rule 8.134. Agreed statement**

42
43 **(a) Contents of statement**

- 44
45 (1) The record on appeal may consist wholly or partly of an agreed
46 statement. The statement must explain the nature of the action, the basis
47 of the reviewing court’s jurisdiction, and how the superior court decided

1 the points to be raised on appeal. The statement should recite only those
2 facts needed to decide the appeal and must be signed by the parties.

- 3
- 4 (2) If the agreed statement replaces a clerk’s transcript, the statement must
5 be accompanied by copies of all items required by rule ~~8.120~~
6 8.122(b)(1), showing the dates required by rule ~~8.120~~ 8.122 (b)(2).
7
- 8 (3) The statement may be accompanied by copies of any document
9 includable in the clerk’s transcript under rule ~~8.120~~ 8.122 (b)(3) and (4).
10

11 **(b) Time to file; extension of time**

- 12
- 13 (1) ~~Within 10 days after filing the notice of appeal, An appellant wanting~~
14 intending to proceed under this rule must file in superior court with its
15 notice designating the record on appeal under rule 8.121 either an
16 agreed statement or a stipulation that the parties are attempting to agree
17 on a statement.
18
- 19 (2) If the appellant files the stipulation and the parties can agree on the
20 statement, the appellant must file the statement within 40 days after
21 filing the notice of appeal.
22
- 23 (3) If the appellant files the stipulation and the parties cannot agree on the
24 statement, the appellant must file ~~the notices provided for in rule 8.120~~
25 ~~8.124, or 8.130, or the stipulation provided for in rule 8.128, or a~~
26 motion under rule 8.137, a new notice designating the record on appeal
27 under rule 8.121 within 50 days after filing the notice of appeal.
28

29 **Advisory Committee Comment**

30

31 **Subdivision (b).** Subdivision (b)(1) requires the appellant to file, ~~within 10 days after the notice~~
32 ~~of appeal is filed~~ with the appellant’s notice designating the record under rule 8.121, either an
33 agreed statement or a stipulation that the parties are attempting to agree on a statement. The
34 provision is intended to prevent issuance of a notice of default while the parties are preparing an
35 agreed statement.
36

37

38 **Rule 8.137. Settled statement**

39

40 **(a) Motion to use settled statement**

- 41
- 42 (1) ~~Within 10 days after filing the notice of appeal, An appellant wanting~~
43 intending to proceed under this rule must serve and file in superior court

1 with its notice designating the record on appeal under rule 8.121 a
2 motion to use a settled statement instead of a reporter’s transcript or
3 both reporter’s and clerk’s transcripts.
4

5 (2) * * *

6
7 (3) If the court denies the motion, the appellant must file ~~the notices~~
8 ~~provided for in rule 8.120, 8.124, or 8.130, or the stipulation provided~~
9 ~~for in rule 8.128,~~ a new notice designating the record on appeal under
10 rule 8.121 within 10 days after the superior court clerk mails, or a party
11 serves, the order of denial.
12

13 **(b) Time to file; contents of statement**

14
15 (1)–(2) * * *

16
17 (3) An appellant ~~wanting~~ intending to use a settled statement instead of
18 both reporter’s and clerk’s transcripts must accompany the condensed
19 narrative with copies of all items required by rule ~~8.120~~ 8.122(b)(1),
20 showing the dates required by rule ~~8.120~~ 8.122(b)(2).
21

22 (4) Within 20 days after the appellant serves the condensed narrative, the
23 respondent may serve and file proposed amendments.
24

25 (5) The proposed statement and proposed amendments may be
26 accompanied by copies of any document includable in the clerk’s
27 transcript under rule ~~8.120~~ 8.122 (b)(3) and (4).
28

29 **(c) * * ***
30
31

32 **Rule 8.144. Form of the record**

33
34 **(a) * * ***
35

36 **(b) Indexes**

37
38 At the beginning of the first volume of each:

39
40 (1) The clerk’s transcript must contain alphabetical and chronological
41 indexes listing each document and the volume and page where it first
42 appears;

- 1
2 (2) The reporter's transcript must contain alphabetical and chronological
3 indexes listing the volume and page where each witness's direct, cross,
4 and any other examination, begins; and
5
6 (3) The reporter's transcript must contain an index listing the volume and
7 page where any exhibit is marked for identification and where it is
8 admitted or refused. Each exhibit must be identified by number or letter
9 and a brief description of the exhibit.

10
11 (c)–(f) * * *

12
13
14 **Rule 8.147. Record in multiple or later appeals in same case**

15
16 (a) * * *

17
18 (b) **Later appeal**

19
20 In an appeal under rule ~~8.120~~ 8.122 or 8.130:

21
22 (1)–(2) * * *

23
24
25 **Rule 8.224. Transmitting exhibits**

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

28
29 (1) Within 10 days after the last respondent's brief is filed or could be filed
30 under rule 8.220, a party wanting the reviewing court to consider any
31 original exhibits that were admitted in evidence, refused, or lodged but
32 that were not copied in the clerk's transcript under rule ~~8.120~~ 8.122 or
33 the appendix under rule 8.124 must serve and file a notice in superior
34 court designating such exhibits.

35
36 (2)–(3) * * *

37
38 (b)–(d) * * *

1 **Advisory Committee Comment**

2
3 **Subdivision (b).** Subdivision (b)(2) provides a procedure by which parties send designated
4 exhibits directly to the reviewing court in cases in which the superior court has returned the
5 exhibits to the parties under Code of Civil Procedure section 1952 or other provision. (See also
6 rule 8.120(a)~~(5)~~(3).)
7

8
9 **Chapter 3. Criminal Appeals**

10
11
12 **Rule 8.320. Normal record; exhibits**

13
14 (a) * * *

15
16 (b) **Clerk's transcript**

17
18 The clerk's transcript must contain:

19
20 (1)–(3)

21
22 (4) All jury instructions that any party submitted in writing, each one
23 indicating the party requesting it, and any written jury instructions given
24 by the court;

25
26 (5)–(13)

27
28 (c)–(g) * * *

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

RECORD OF THE DOCUMENTS FILED IN THE TRIAL COURT

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

RECORD OF ORAL PROCEEDINGS IN THE TRIAL COURT

2. I elect to proceed:
- a. WITHOUT a record of the oral proceeding in the trial court. I understand that without a record of the oral proceedings in the trial court, the Court of Appeal will not be able to consider what was said during those proceedings in determining whether the trial court made an error.
- b. WITH the following record of the oral proceeding in the trial court::
- (1) A reporter's transcript under rule 8.130. (you must fill out the reporter's transcript section on page 3 of this form.)
- (2) An agreed statement (check and complete either (a) or (b) below)
- (a) I have attached an agreed statement to this notice.
- (b) All the parties have agreed in writing (stipulated) to try to agree on a statement (you must attach a copy of this stipulation to this notice). I understand that, within 40 days after I file the notice of appeal, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.
- (3) A settled statement under rule 8.137 (you must attach the motion required under rule 8.137(a) to this form.)

CASE NAME:	CASE NUMBER:
------------	--------------

NOTICE DESIGNATING CLERK'S TRANSCRIPT

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

3. **Required documents.** The clerk will automatically include the following items in the clerk's transcript:
- a. Notice of appeal
 - b. Notice designating record on appeal (*this document*)
 - c. Judgment or order appealed from
 - d. Notice of entry of judgment (*if any*)
 - e. Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order (*if any*)
 - f. Ruling on item e.
 - g. Register of actions or docket

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

I would like the clerk to include in the transcript the following documents from the trial court proceeding (*you must identify each document you want included by its title and provide the date it was filed, if you know it*):

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

- h.
- i.
- j.

See additional pages

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

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

- a.
- b.
- c.

See additional pages

6. **Original exhibits to be transmitted to the reviewing court.** I would like the clerk to transmit to the reviewing court under rule 8.224 the following exhibits that were admitted in evidence, refused, or lodged in the trial court (*for each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit and indicate whether or not the court admitted the exhibit into evidence*):

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

- a.
- b.
- c.

See additional pages

CASE NAME:	CASE NUMBER:
------------	--------------

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

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

NOTICE DESIGNATING REPORTER'S TRANSCRIPT

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

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

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

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

- a.
- b.
- c.
- d.
- e.
- f.
- g.
- h.
- i.
- j.

See additional pages

Date: _____

(TYPE OR PRINT NAME)

▶

(SIGNATURE OF APPELLANT OR ATTORNEY)

Item SPR07-02 Response Form

Title: Appellate Procedure: Records in Civil and Criminal Cases (amend and renumber Cal. Rules of Court, rule 8.120 as rule 8.122, adopt new rules 8.120, 8.121 and 8.123, amend rules 8.124, 8.128, 8.130, 8.134, 8.137, 8.144, 8.147, 8.224, and 8.320, and revise *Notice Designating Record on Appeal* form (APP-003))

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

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

Please **write** or **fax** or **respond using the Internet** to:

Address: Ms. Camilla Kieliger,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102
Fax: (415) 865-7664 **Attention:** Camilla Kieliger
Internet: www.courtinfo.ca.gov/invitationstocomment

DEADLINE FOR COMMENT: 5:00 p.m., Wednesday, June 20, 2007
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Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

Circulation for comment does not imply endorsement by the Judicial Council, the Rules and Projects Committee, or the Policy Coordination and Liaison Committee. All comments will become part of the public record of the council's action.