

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
455 Golden Gate Avenue
San Francisco, California 94102-3688

Report Summary

TO: Members of the Judicial Council

FROM: Appellate Advisory Committee
Hon. Joyce L. Kennard, Chair
Appellate Rules Project Task Force
Peter J. Belton, Chair
Heather Anderson, Committee Counsel, 415-865-7691

DATE: July 20, 2004

SUBJECT: Revision of Appellate Rules: Fourth Installment—Rules 37–60, 70–80, 976–979 (repeal Cal. Rules of Court, rules 39–44, 45–47, 48–60, 75–80, and 976–979; adopt revised rules 37–60, 70–80, 976–979, and related Advisory Committee Comments; amend rules 2, 15, and 30.1) (Action Required)

Issue Statement

This is the fourth and final installment of the Appellate Advisory Committee’s multiyear project to revise the appellate rules of the California Rules of Court. It addresses the rules governing appeals and writs in juvenile cases, miscellaneous other appeals, general appellate procedures, original proceedings in reviewing courts, administrative provisions governing reviewing courts, and rules for publication of appellate opinions.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2005:

1. Repeal existing rules 39–44, 45–47, 48–60, 75–80, and 976–979 of the California Rules of Court;
2. Adopt revised rules 37–60, 70–80, 976–979, and related Advisory Committee Comments; and
3. Amend rules 2, 15, and 30.1

to clarify the meanings of the rules and facilitate their use by practitioners, parties, and court personnel.

The text of the revised and amended rules and the related Advisory Committee Comments is attached at pages 21–108.¹

Rationale for Recommendation

The existing rules on the topics covered in this installment suffer in varying degrees from the same deficiencies of language and structure as did the rules revised in the first three installments, i.e., obscure and ambiguous wording, redundant and obsolete provisions, long and complex sentences and paragraphs, and inconsistencies of style and terminology. To cure these deficiencies, the revision simplifies the wording and clarifies the meaning of each provision; restructures individual rules into subdivisions to promote readability and understanding; and reorders subdivisions or the rules themselves when logic or clarity dictates.

To implement this revision, it is also necessary to amend rules 2, 15, and 30.1. Each of the amendments is discussed in the following report.

Alternative Actions Considered

No alternative to the project as a whole was considered, because nothing short of a complete revision of the appellate rules would have been adequate to the task of curing their many accumulated deficiencies.

Comments from Interested Parties

After reviewing the revised rules and their related Advisory Committee Comments, the Rules and Projects Committee authorized their circulation in two parts for two public comment periods. In response, 365 comments were received from justices and clerks of reviewing courts, superior courts, and their associations; judicial staff attorneys; statewide and local bar associations; and numerous appellate specialists and other practitioners. The principal comments and the committee's response to each are discussed in the accompanying report, and a chart of all the comments and responses is attached at page 189.

Implementation Requirements and Costs

¹ Because the revisions to existing rules 39–44, 45–47, 48–60, 75–80, and 976–979 were so extensive, it was impracticable to prepare the usual struck-through and underlined rule text showing each specific deletion and addition. Instead, the Appellate Advisory Committee recommends that these rules be repealed in their entirety and replaced by revised rules 37–60, 70–80, and 976–979, as presented in this proposal. The full text of existing rules 39–44, 45–47, 48–60, 75–80, and 976–979, with strike-through marks indicating their repeal, is attached at pages 109–192.

The clerks' offices of the Supreme Court and all the appellate districts will need to review the body of appellate rules when they are adopted and make necessary adjustments in certain filing and calendaring procedures. The new provisions will necessitate some revisions in the standard operating procedures and forms used to notify parties of the steps required to process an appeal. Costs to the Supreme Court, the Courts of Appeal, and the superior courts should otherwise be minimal.

Attachments

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Appellate Advisory Committee
Hon. Joyce L. Kennard, Chair
Appellate Rules Project Task Force
Peter J. Belton, Chair
Heather Anderson, Committee Counsel, 415-865-7691

DATE: July 12, 2004

SUBJECT: Revision of Appellate Rules: Fourth Installment—Rules 37–60, 70–80, 976–979 (repeal Cal. Rules of Court, rules 39–44, 45–47, 48–60, 75–80, and 976–979; adopt revised rules 37–60, 70–80, 976–979, and related Advisory Committee Comments; amend rules 2, 15, and 30.1) (Action Required)

Issue Statement

This is the fourth and final installment of the Appellate Advisory Committee’s multiyear project to revise the appellate rules of the California Rules of Court. It addresses the rules governing appeals and writs in juvenile cases, miscellaneous other appeals, general appellate procedures, original proceedings in reviewing courts, administrative provisions governing reviewing courts, and rules for publication of appellate opinions. The revision is necessary because many provisions of the rules have become unduly complex, difficult to understand, or inconsistent with current law or practice.

Rationale for Recommendation to Adopt Revised Rules

The existing rules on the topics covered in this installment suffer in varying degrees from the same deficiencies of language and structure as did the rules revised in the first three installments, i.e., obscure and ambiguous wording, redundant and obsolete provisions, long and complex sentences and paragraphs, and inconsistencies of style and terminology. To cure these deficiencies, the revision simplifies the wording and clarifies the meaning of each provision; restructures individual rules into subdivisions to promote readability and understanding; and reorders subdivisions or the rules themselves when logic or clarity dictates.

The vast majority of the changes are stylistic only; but when necessary and appropriate, the revision also makes selected substantive changes for limited purposes, i.e., to resolve ambiguities; to fill unintended gaps in rule coverage; to conform older rules to current law, practice, and technology; and to otherwise improve the appellate process. Whenever the revision results in a substantive change, the Advisory Committee Comment to the rule identifies and explains the change.

Significant Changes in Revised Rules

The most significant proposed changes in this installment are summarized and explained as follows.

1. *Rules governing appeals and writs in juvenile cases.* Existing rule 39(a) provides that the rules in criminal appeals govern appeals and writs in juvenile cases “except where otherwise provided by this rule or rule 39.1, 39.1A, or 39.1B, or where the application of a particular rule would be clearly impracticable or inappropriate.” This structure is cumbersome and can leave the user uncertain whether a particular criminal appeal rule does or does not apply in a juvenile case.

To clarify precisely which rules do apply in juvenile cases—and in response to the urging of juvenile law practitioners—the committee proposes to make the juvenile rules self-contained. Under this revision the courts and practitioners, rather than seeking to infer which criminal rules apply to juvenile cases, would simply consult the juvenile rules directly. To avoid undue repetition of provisions that apply to both kinds of cases, however, several of the proposed juvenile rules expressly cross-refer to corresponding general civil or criminal rules.

2. *Briefs by minors represented by counsel.* Existing rule 39 does not provide for briefs by minors represented by counsel or for replies to such briefs; existing rule 39.1A(g) provides for a minor’s brief in an appeal from a judgment terminating parental rights but does not provide for a reply to the minor’s brief, and effectively excludes the latter by requiring the appellant’s reply brief to be served and filed at the same time as the minor’s brief. These provisions often require the reviewing courts to extend time in cases in which they appoint counsel for the minor, resulting in different filing requirements for such briefs in different reviewing courts.

To remedy these inadequacies, proposed rule 37.3(b)(4) would provide that a minor who is not the appellant but has appellate counsel must file any brief

within 10 days after the respondent's brief is filed. The 10-day period is derived from former rule 39.2A(f); it is believed adequate because in most cases in which the minor needs separate counsel, any brief by the minor would in effect respond to (or support) the opening brief. Because the appellant must file any reply brief within 20 days after the respondent's brief is filed (proposed rule 37.3(b)(3)), the appellant would have the opportunity to reply to both the respondent's brief and any minor's brief in the same document.

3. *Consolidation of former rules 39.1A, 39.2, and 39.2A.* Existing rule 39.1A provides a fast track procedure for appeals from judgments or appealable orders of all superior courts *terminating parental rights* under Welfare and Institutions Code section 366.26 or Family Code section 7800 et seq. Existing rules 39.2 and 39.2A provide a fast track procedure for appeals from judgments or appealable orders of the Superior Courts of Orange, Imperial, and San Diego Counties in *juvenile dependency* cases. The provisions of the three rules, however, largely duplicate each other.

In response to the urging of the Rules and Forms Committee of the Superior Court of Orange County and the Appellate Court Committee of the San Diego County Bar Association, the committee proposes to combine all three rules into new rule 37.4. That rule would itself be further simplified by deleting many provisions of existing rule 39.1A that expressly or in effect duplicate the general provisions of revised rules 37–37.3.

4. *Division of existing rule 39.1B into revised rules 38 and 38.1.* Existing rule 39.1B contains 21 subdivisions, far more than any other appellate rule. Believing the rule's present structure to be unwieldy, the committee proposes to divide it into two roughly equal parts: revised rule 38 would restate those portions of existing rule 39.1B that provide for a *notice of intent* to file a writ petition to review an order setting a hearing under Welfare and Institutions Code section 366.26, and revised rule 38.1 would restate the portions of the existing rule that provide for the *petition* itself.

The committee recognizes that current rule 39.1B would thus lose its familiar designation, but renumbering is an unavoidable consequence of the appellate rules revision project: most of the rules in the first three installments had to be renumbered. Moreover, it is believed that the benefits of the reorganization of current rule 39.1B and its division into two more manageable rules would outweigh any perceived negative effects of its renumbering.

5. *Time to file a notice of intent to seek writ review.* Existing rule 39.1B(f) provides that if a party is notified only by mail of an order setting a hearing under Welfare and Institutions Code section 366.26, the 7-day period for filing a notice of intent to seek writ review is extended by 5 days measured from the date of *the order setting the hearing*. Revised rule 38(e)(5) would specify the same total period (12 days) in the case of mailed notification, but would measure the period from the date *the notification is mailed*. The purpose of this substantive change is to ensure that if mailing of the notification is delayed, the party still has adequate time to prepare and file any notice of intent.
6. *Measuring the time to file an opposition to a motion from the date the motion is filed.* Existing rule 41(a) measures the time to file an opposition to a motion from the date the motion is *served*; revised rule 41(a)(3) would measure that time from the date the motion is *filed* and would allow five additional days for mailing. The principal reason for this proposed change is that the filing date of a document is more reliable than the date appearing on its proof of service. Using the filing date results in greater certainty for the reviewing court and makes it easier for the reviewing court clerk to verify the relevant date, both when the motion is filed and later when an opposition is presented for filing. The rule would thus be made consistent with the numerous rules providing that the filing date controls the time to prepare answers and replies to briefs and petitions (see, e.g., rules 15(a), 28(e), 29.1(a), 29.5(b), 33(c), and 36(c)).
7. *Number of copies and color of covers of filed briefs and petitions.* Existing rule 44(b) prescribes the number of copies required when filing briefs, petitions, or documents other than the record. Revised rule 44(b) would update these requirements to conform to the practices of the reviewing courts. For example, revised rule 44(b) would require that: an amicus curiae brief in the Supreme Court be filed in an original and 13 copies; a reply to an opposition to a petition in the Supreme Court be filed in an original and 10 copies; a party filing a civil brief in the Court of Appeal serve 4—rather than 5—copies of that brief on the Supreme Court; and a reply to an opposition to a petition in the Court of Appeal be filed in an original and 4 copies. Revised rule 44(c), which specifies the colors of the covers of briefs and petitions, would add several types of frequently filed documents.
8. *Number of copies of documents supporting briefs and petitions.* To conform to Supreme Court practice, revised rule 44(b)(1)(C) would require the filing of only an original and two copies of any supporting document or exhibit accompanying a petition for writ of habeas corpus or opposition or reply filed in the Supreme Court, unless the court orders otherwise. Like existing rule

44(b)(2)(B) and (C), revised rule 44(b)(2)(B) and (C) would require that certain documents be filed in the Court of Appeal in an original and multiple copies. But the party may—and under certain rules, must—accompany such a filing with supporting documents, and in some cases those documents may be voluminous.

To relieve the party of the burden of preparing—and to relieve the court of the burden of processing and storing—multiple copies of voluminous supporting documents, it is the practice of several reviewing courts to require only one set of any separately bound documents that a party files in support of a filing under rule 44(b)(2)(B) or (C). Revised rule 44(b)(3) reflects that practice, but recognizes that the courts may wish to order otherwise by local rule or in individual cases.

9. *Specific prohibitions against extending time.* Existing rule 45 is a general provision containing numerous specific prohibitions against extending the times to perform certain acts that are required or permitted under other appellate rules. Because of the importance of these prohibitions, the committee believes they should be called to the litigants' attention in the specific rules that require or permit the acts in question. To accomplish this purpose, these prohibitions would be moved from revised rule 45 to the specific rules to which they apply.

For example, existing rule 45(c) provides that the time to file a notice of appeal cannot be extended; the provision would be moved to amended rules 2(b) and 30.1(a). Existing rule 45(c) provides that the time to file a petition for review in the Supreme Court cannot be extended; the provision would be deleted as unnecessary, because revised rule 28(e)(2) now states that prohibition.

10. *Substitution of parties or attorneys.* Existing rule 48(a) provides a multistep procedure for substitution of *parties* to a pending appeal, including proceedings in the superior court; in practice, however, the reviewing courts employ a simpler and more direct method. Revised rule 48(a) would reflect that method, requiring only the serving and filing of a motion to substitute in the reviewing court.

Similarly, existing rule 48(b) provides for substitution of *attorneys* in a pending appeal by either a stipulation or a motion in the reviewing court; in practice, however, parties simply serve and file a substitution of attorneys in the reviewing court (Judicial Council form MC-050, *Substitution of Attorney—Civil*). Revised rule 48(b) would conform to that practice.

Existing rule 48(b) requires the substitution to be signed by the party, the former attorney, and the new attorney. In practice, however, the former attorney's consent is not required because that attorney does not have authority to prevent the substitution. In a substantive change intended to conform to practice and to a reasonable reading of the governing statute (Code Civ. Proc., § 284, subd. 1), revised rule 48(b) would require only the party represented and the new attorney to sign the substitution.

11. *Withdrawal of attorney.* Existing rule 48(b) requires an attorney wishing to withdraw from an appeal to serve and file either a stipulation or a motion in the reviewing court. In practice, however, an attorney does so simply by filing a motion with proof of service on the party represented and any other attorneys or unrepresented parties in the case. Revised rule 48(c) would conform to that practice. To protect privacy, revised rule 48(c)(2) would also provide that the proof of service of the motion need not include the address of the party represented, but that if the motion is granted, the withdrawing attorney must provide the court and the opposing party with the party's current or last known address and telephone number.
12. *Time to file preliminary opposition.* Existing rule 56(b) requires the respondent or any real party in interest to file any preliminary opposition to a petition for original writ "within five days after service *and* filing" of the petition. But the date of service and the date of filing do not necessarily coincide. To clarify the matter, revised rule 56(g)(1) would require the respondent or any real party in interest to file any preliminary opposition within 10 days after the petition is *filed*, the 5 additional days being allowed for mailing. The reviewing court would retain the power to act in any case without obtaining an opposition (revised rule 56(g)(4)).
13. *Reply to preliminary opposition and reply to return.* Existing rule 56 does not expressly authorize a reply to a preliminary opposition, but the reviewing courts often permit such replies. To formalize this practice, revised rule 56(g)(3) would provide that a petitioner may serve and file a reply within 10 days after an opposition is filed. To permit prompt action in urgent cases, however, the provision would recognize that the reviewing court may act on the petition without waiting for a reply.

Likewise, existing rule 56 does not expressly authorize a reply to a return to a writ petition, but the reviewing courts often permit such replies. To formalize this practice, revised rule 56(h)(3) would provide that a petitioner may serve and file a reply within 15 days after a return is filed. To permit prompt action in urgent cases, the provision would recognize that the reviewing court may order otherwise.

14. *Time to file return or opposition.* Existing rule 56(f) requires that the return to a petition for original writ be filed “at least five days before the date set for hearing.” Because “hearing” in this context means oral argument before the reviewing court, the provision causes administrative difficulties. For example, the five-day limit allows little or no time for the petitioner to reply to the return or for the court to prepare for oral argument. To alleviate those difficulties, revised rule 56(h)(2) would require instead that the return or opposition be served and filed within 30 days after the court issues the alternative writ or order to show cause or notifies the parties that it is considering issuing a peremptory writ in the first instance. To permit prompt action in urgent cases, however, the provision would recognize that the reviewing court may order otherwise.
15. *Time to file answer or reply to petition to review a decision of the Workers’ Compensation Appeals Board.* Existing rule 57(b) measures the time to file an answer (or reply) from the date the petition (or answer) is *served*; revised rule 57(b) would instead measure that time from the date the petition (or answer) is *filed*. In each case the revised rule would allow five additional days for mailing. The principal reason for this proposed change is that the filing date of a document is more reliable than the date appearing on its proof of service. Using the filing date results in greater certainty for the reviewing court and makes it easier for the reviewing court clerk to verify the relevant date, both when the motion is filed and later when an opposition is presented for filing. A similar change is proposed for rules 58 (review of Public Utilities Commission cases) and 59 (review of Agricultural Labor Relations Board and Public Employment Relations Board cases).
16. *Lists of attorneys qualified for court appointment.* Existing rule 76.5(b) requires the Court of Appeal to maintain “one or more” lists of attorneys qualified to receive appointments to represent indigent appellants. Consistently with practice, revised rule 76.5(b)(2) would instead direct the court to maintain one list of such attorneys, divided into at least two “levels” based on the attorneys’ experience and qualifications.

Existing rule 76.5(b) also requires the Court of Appeal, in establishing the lists of qualified attorneys, to “consider the guidelines in section 20 of the Standards of Judicial Administration.” Subdivision (b) of section 20 classifies qualified attorneys into three lists, but those classifications have become obsolete in practice. To conform to that practice and facilitate ongoing management of the court-appointed counsel program, revised rule 76.5(b)(2) would instead require the Court of Appeal to use “criteria approved by the Judicial Council or its designated oversight committee.”

The designated oversight committee is currently the Appellate Indigent Defense Oversight Advisory Committee.

17. *Factors to be considered in making court appointments.* The second paragraph of section 20(a) of the Standards of Judicial Administration prescribes four “factors” to be considered by the Court of Appeal in matching counsel with the demands of the case under rule 76.5. To promote efficiency, the committee proposes to move those factors from section 20 into rule 76.5 itself (subd. (c)).
18. *Time to request publication of unpublished opinion.* Existing rule 978 provides that a request to order the publication of an unpublished Court of Appeal opinion must be made “promptly,” but in practice the quoted term has proved so vague that requests are often made after the Court of Appeal has lost jurisdiction. All nonpublished opinions are publicly available on the official court Web site within one judicial day of filing, and appear on the Westlaw and Lexis systems within a few hours of that availability. In addition, the court Web site’s e-mail docket notification system allows any member of the public to track pending appeals through and beyond the filing of an opinion. The time period for requesting publication must be limited to give the Court of Appeal adequate time to act on the request before losing jurisdiction. For all these reasons, revised rule 978(a)(3) would specify that a publication request must be made within 20 days after the opinion is filed.
19. *Time to forward publication request to Supreme Court.* Existing rule 978(a) does not specify the time within which the Court of Appeal must forward to the Supreme Court a publication request that it has not granted or cannot grant. In practice, however, it is not uncommon for the court to forward such a request after the Supreme Court has denied a petition for review in the same case or, if there was no such petition, has lost jurisdiction to grant review on its own motion. To assist the Supreme Court in processing publication requests, therefore, revised rule 978(b)(1) would require the Court of Appeal to forward the request within 15 days after the decision is final in that court.

Rationale for Recommendation to Amend Rules 2, 15, and 30.1

Rules 2 and 30.1

Rules 2 and 30.1 prescribe the times within which a notice of appeal must be filed in, respectively, a civil case and a criminal case. As stated above in item 9, existing rule 45 is a general provision containing numerous specific prohibitions against extending the time to perform certain acts that are required or permitted under other appellate rules, and in the proposed revision of rule 45 these

prohibitions would be moved to the specific rules to which they apply. One of the prohibitions in existing rule 45 is the ban on extending the time to file a notice of appeal; this provision would be moved to rules 2(b) and 30.1(a).

Rule 15

Existing rule 15(c)(2) requires a party filing a civil brief in the Court of Appeal to serve five copies of that brief on the Supreme Court. As noted above in item 7, revised rule 44(b)(2)(A) reduces that number to four. The committee proposes to make the same change in existing rule 15(c)(2). Further, although the Court of Appeal may order a brief sealed under rule 12.5, existing rule 15 is silent on the question whether the copies of such a brief may become part of the public records of the Supreme Court. To preserve the intent of rule 12.5, rule 15 would be amended to provide that (1) a party filing a sealed brief in the Supreme Court must place all four copies of the brief in a sealed envelope and attach a cover sheet that contains the information required by rule 14(b)(10) and labels the contents “conditionally under seal,” and (2) the Court of Appeal clerk must promptly notify the Supreme Court of any court order unsealing the brief.

Alternative Actions Considered

No alternative to the project as a whole was considered, because nothing short of a complete revision of the appellate rules would have been adequate to the task of removing the many inconsistent, ambiguous, obsolete, and superfluous provisions that have accumulated in the rules since they were first adopted six decades ago. Nevertheless, a broad range of alternatives was considered for the structure and wording of each rule, and the committee formulated its proposals only after extensive input from the commentators.

Comments from Interested Parties

After reviewing the revised rules and their related Advisory Committee Comments, the Rules and Projects Committee authorized their circulation in two parts for two public comment periods. In response, 365 comments were received from justices and clerks of reviewing courts, superior courts, and their associations; judicial staff attorneys; statewide and local bar associations; and numerous appellate specialists and other practitioners.

Many of the comments expressed strong approval of the revised rules proposed in this installment. Other comments raised concerns about the wording of certain individual rules, and the Appellate Advisory Committee carefully considered such concerns. The proposal was revised in numerous respects in response to the public

comments. Summaries of some of the most significant of those comments and the committee's responses follow.²

1. Several of the commentators proposed that revised rule 37(b) should include a provision reflecting the longstanding practice in juvenile appeals of sharing briefs that protect the anonymity of the parties when seeking amicus curiae support from interested persons or entities. The commentators stressed that potential amicus curiae applicants need access to filed briefs in order to comply fully with the requirement that an application explain how the proposed brief "will assist the court in deciding the matter." (Rules 13(c)(2), 29.1(f)(3).) The committee agreed and modified proposed rule 37(b)(3) accordingly.
2. As proposed, revised rule 37(c)(1) required an appellant in a juvenile case not only to file but also to *serve* the notice of appeal, a substantive change from existing rule 39(b). The directors of the district appellate projects and the Appellate Court Committee of the San Diego County Bar Association objected to this change, asserting that it "would pose hardships in many juvenile cases, because appellants are often filing in pro. per., are usually indigent, and are sometimes incarcerated." The commentators pointed out that in criminal cases appellants are not required to serve their notices of appeal. The committee agreed and deleted the provision.
3. The Appellate Court Committee of the San Diego County Bar Association proposed that revised rule 37.1(a) should include, among the required components of the normal clerk's transcript in an appeal in a juvenile case, "any petition filed under rules 38 and 38.1, along with supporting and opposing documents and any order on the petition." They asserted that counsel handling an appeal under Welfare and Institutions Code section 366.26 needs to know whether such a petition was filed, what issues it raised, and how it was decided. The committee agreed in principle, explaining that appellate counsel may well need to know whether such a petition was filed and what issues it raised, but it would often be too cumbersome to include the petition and its supporting documents in the clerk's transcript in haec verba. Instead, the committee expanded revised rule 37.1(a) to require the normal record to include "any opinion . . . of a reviewing court in the same case." (Subd. (a)(11).) That opinion, it is expected, will discuss any issues raised in such a petition.

² A chart of all the comments received and the committee's responses is attached at page 193. The comments are addressed in the order in which the proposed rules were circulated for public comment. To assist the user, the following is the order of the comments addressed in the attached chart: general comments on part one of the fourth installment; comments on rules 37–39.2, 49–49.5, 56–60; general comments on part two of the fourth installment; comments on rules 40–48, 51–54, 70–80, and 976–979.

4. The Appellate Court Committee of the San Diego County Bar Association noted that revised rule 37.1(b)(1) would require the normal reporter's transcript in an appeal in a juvenile case to include the oral proceedings at any hearing that "resulted in the order or judgment being appealed." The commentators proposed that the normal reporter's transcript be broadened to include the oral proceedings at the hearings on *all* motions "related to the judgment or order being appealed," whether or not they actually resulted in that judgment or order.

The committee disagreed, noting that existing rule 39(c)(2) requires that the normal record include reporter's transcripts of all hearings in a juvenile case except the detention hearing, regardless of which order was being appealed. Existing rule 39.1A(c)(1), however, requires that the normal record in appeals from orders terminating parental rights include reporter's transcripts of only those portions of the hearing from which the appeal was taken. Revised rule 37.1(b)(1) would essentially adopt the position of existing rule 39.1A(c)(1) and establish the general rule that only the reporter's transcript of a hearing that resulted in the order being appealed must be included in the normal record. This substantive change is intended to achieve consistent record requirements in all juvenile appeals and to reduce the delays and expense caused by transcribing proceedings not necessary to the appeal. If the item is necessary, counsel may seek to augment the record under revised rule 37.2(e)(2).

5. Revised rule 38.1 governs writ petitions to review orders setting a hearing in juvenile matters under Welfare and Institutions Code section 366.26. Subdivision (d) of the proposed rule provides that "If the court intends to determine the petition on the merits, it must issue an order to show cause or alternative writ," and subdivision (h)(1) provides that "Absent exceptional circumstances, the reviewing court must decide the petition on the merits by written opinion."

Presiding Justice Arthur G. Scotland of the Court of Appeal, Third Appellate District—citing *Maribel M. v. Superior Court* (1998) 61 Cal.App.4th 1469, and *Joyce G. v. Superior Court* (1995) 38 Cal.App.4th 1501—objected to both provisions on the ground they "appear to advocate not adhering to prevailing authorities" that recognize that reviewing courts may decide such writ petitions on their merits by issuing summary denials. The committee disagreed, noting that revised rule 38.1(d) tracks the second sentence of existing rule 39.1B(*l*). It does not *require* the reviewing court to decide a petition on the merits; it operates only "[i]f the court intends to determine the petition on the merits" In turn, revised rule 38.1(h)(1) tracks existing

rule 39.1B(o). It does not require the reviewing court to decide the petition on its merits by written opinion in “exceptional circumstances,” and under the cited cases a failure to present an arguable issue is such a circumstance. The Advisory Committee Comment has nevertheless been modified to recognize the contrary view of *Maribel M. v. Superior Court* (1998) 61 Cal.App.4th 1469, 1471–1476.

6. Revised rule 39.1 governs appeals from judgments authorizing a conservator to consent to the sterilization of a developmentally disabled adult conservatee. As originally proposed, revised rule 39.1(h), tracking existing rule 39.8(g), would have required the conservatee’s *trial* counsel to “review the [appellate record] for errors or omissions” and “request any necessary corrections or additions” *before the record was certified and delivered to appellate counsel*. The Appellate Court Committee of the San Diego County Bar Association pointed out there is no provision in the rule for sending the record to trial counsel for this purpose; instead, proposed revised rule 39.1(f)(2) simply directs that the transcripts be transmitted “as provided in rule 32,” and rule 32(f)(1)(B) directs the clerk to send them to *appellate* counsel. The commentators proposed adding a provision requiring the transcripts to be sent first to trial counsel and prescribing “time frames for the process.” The committee agreed in principle, but concluded that the proposal is beyond the scope of this rules revision project. The committee agreed that revised rule 39.1(h)(2)–(4), as proposed, would be unworkable and inconsistent with rule 32. Because rule 32 now covers the matter more appropriately, proposed revised rule 39.1(h)(2)–(4) was deleted.
7. Existing rule 41(a) measures the time to file any opposition to a motion from the date the motion is *served*; in a substantive change, revised rule 41(a)(3) would instead measure that time from the date the motion is *filed* and would add five days for mailing.

The commentators were divided on this proposal. The California Appellate Project supported it, but the Appellate Courts Committee of the State Bar opposed it. The latter commentators asserted that the proof of service establishes the date of service, “at least as stated on the proof of service.” They argued that if there were a difference between the date on the proof of service and the postmark of its envelope, “opposing counsel would be able to draw any suspicious circumstances to the attention of the court.” They expressed concern that reviewing court clerks might find it necessary to answer numerous telephonic inquiries from counsel to confirm filing dates. They argued that opposing counsel generally does not know *when* a motion has actually been filed. They conceded that counsel will know the motion *has* been filed—because it must be filed on or after the date of service—and

hence will know the minimum amount of time available to oppose the motion. But they asserted without further explanation that “it is often important to pinpoint the precise date an opposition is due.”

The same commentators conceded that the date of filing is always promptly posted on the court’s Web site, but they argued that not all cases are posted (e.g., juvenile cases are not) and that “some courts appear to have a significant backlog in entering data.” They speculated that because it is unlikely there will be an “official record” of the clerk’s reply to a telephonic inquiry from counsel, “disputes could arise” and some counsel might feel compelled to send the clerk a letter documenting the conversation. They expressed concern that the change might be unfair to opposing parties who might not have an adequate opportunity to respond; in particular, they asserted there is “potential prejudice” to out-of-state and international parties because they would lose the benefit of the extra 10 or 20 days, respectively, allowed for mailing in such cases by Code of Civil Procedure section 1013.

After careful consideration, the Appellate Advisory Committee disagreed with the Appellate Courts Committee of the State Bar. The advisory committee explained that the principal reason for the change is that the filing date of a document is more reliable than the date appearing on its proof of service. As the commentators conceded, using the filing date results in greater certainty for the reviewing court: the clerk is easily able to verify the date, both when the motion is filed and later when the opposition is presented for filing. The commentators’ argument that opposing counsel could call the court’s attention to any discrepancy between the claimed service date and the postmark proves too much, because counsel would be likely to point out any such discrepancy regardless of whether it is service or filing that starts the opposition time running. Any burden on reviewing court clerks that results from having to answer counsel’s telephonic inquiries to confirm filing dates of motions is no greater than the similar burden of having to answer counsel’s telephonic inquiries to confirm filing dates of briefs and petitions; yet many rules provide that the latter filing dates control the time to prepare all answers and replies to briefs and petitions (e.g., rules 15(a), 28(e), 29.1(a), 29.5(b), 33(c), and 36(c)).

The commentators did not document their assertion that “some courts” fail to promptly post filing dates on their official Web sites, and such failure may not be assumed. The commentators’ speculation that “some counsel” might feel compelled to send a letter documenting a clerk’s response to a telephonic inquiry about a motion’s filing date is unpersuasive, and the same event is no less likely in the context of telephonic inquiry about a brief’s filing date. As the commentators conceded, in cases of service by fax or overnight delivery

the time to file an opposition is actually longer under the revised rule because the opposition time is extended from 10 to 15 days. Service by mail on out-of-state parties is often effectuated within five days. Service by mail on international parties is relatively infrequent in practice. The same “potential prejudice” to both out-of-state and international parties arises from the numerous rules measuring the time to respond to briefs and petitions from the date of filing; and in both cases, any party may apply for an extension of time to avoid prejudice.

8. Revised rule 56 governs petitions to the reviewing courts for writs within their original jurisdiction. As originally proposed, revised rule 56(b)(6) would have prohibited a party seeking writ relief from filing a “joinder” in a writ petition filed or to be filed by another party, because such “joinders” often evaded important requirements of rule 56, e.g., the requirement that the petition be verified. Numerous commentators opposed the ban and urged that joinders instead be liberally allowed. The committee noted that existing rule 56 contains no provision either allowing or disallowing joinders, and the practice of the reviewing courts is not consistent on the subject. On further reflection, the committee concluded that the subject is far more complex than first appears and is beyond the scope of this rules revision project. The proposed joinder provision was therefore deleted.
9. The Appellate Court Committee of the San Diego County Bar Association objected to revised rule 56(d)(1)(B), which would require the addition of index tabs to any group of supporting documents accompanying a petition for original writ. The commentators asserted that such tabs are unnecessary because of the requirement of consecutive pagination, are not required in ordinary appeals, and result in significant expenditures of time and money that are inconsistent with the urgent nature of original proceedings.

The committee disagreed for several reasons. The provision tracks existing rule 56(d)(2). Precisely because original proceedings are often of an urgent nature, it is important to assist the reviewing courts in speedily processing such petitions. The supporting documents are often lengthy and complex, containing numerous distinct exhibits in several volumes. The tab requirement makes it possible for the reviewing courts and their staff to quickly find a specific exhibit referred to in the briefs.

10. As proposed, revised rule 56 would have deleted the provision of existing rule 56(c)(4) requiring that a petition for original writ that also seeks an immediate stay explain “the reasons for the urgency” and state the relevant time constraints. Presiding Justice Arthur G. Scotland of the Court of Appeal, Third Appellate District, objected and urged that the deleted

provision be restored. The committee agreed and modified revised rule 56(b)(7) to require that such a petition “explain the urgency” and comply with rule 49.5, which in turn requires in its subdivision (a)(2) that the petition recite “the date of the proceeding or act sought to be stayed.”

11. Existing rule 56 does not expressly authorize petitioners for original writs to reply to preliminary oppositions. The committee recognized that reviewing courts nevertheless often permit such replies. In a substantive change intended to formalize this practice, revised rule 56(g)(3) would provide that a petitioner may serve and file a reply within 10 days after an opposition is filed. To permit prompt action in urgent cases, however, the provision would recognize that the reviewing court may act on the petition without waiting for a reply. The Appellate Courts Committee of the State Bar endorsed this change because it gives “express recognition of the right to file a reply to a preliminary opposition” and “will add clarity, certainty, and uniformity . . . , while still providing the courts with discretion to take prompt action in urgent cases.”
12. Existing rule 57(b), governing petitions to review Workers’ Compensation Appeals Board cases, measures the time to file an answer or reply to a petition for writ of review from the date the petition or answer is *served*; revised rule 57(b) would measure that time from the date the petition or answer is *filed*. The revised rule would also add five days for mailing, so that the time to file an answer would be 25 (not 20) days and the time to file a reply would be 15 (not 10) days. Staff attorneys of the Court of Appeal, Fifth Appellate District, addressed this proposal. They did not object to the change from the service date to the filing date, but did oppose adding five days for mailing.

The committee disagreed, explaining that because the petition for review is the first document filed in the judicial review process after the WCAB rules, the opposing parties are not likely to be aware it has been filed—and hence cannot ascertain its filing date—until they receive their service copy of the petition, usually by mail. Revised rule 57(b) would preserve the status quo by adding five days to allow for the period of time between the mailing and receipt of the service copy.

13. The California Appellate Defense Counsel, Bay Area Chapter, suggested that revised rule 60(b)(4), governing habeas corpus petitions filed by an attorney, should provide that in a case in which a related appeal is pending, the record in that appeal may be used to support the petition. The commentators believed the proposed revised rule implied that in such a case the petitioner

would be required to file a separate, consecutively paginated habeas corpus record, which would be expensive and burdensome.

The committee disagreed, explaining that most habeas corpus petitions raise issues outside the appellate record, which is the primary purpose of the writ. In the cases in which an appellate record may be useful (e.g., when the petition complains of inadequate assistance of counsel during trial), the attorney can ask the reviewing court to take judicial notice of the record. If both the petition and the appeal are pending in the Court of Appeal, that court already has the record; if the petition is filed in the Supreme Court while the appeal is still pending in the Court of Appeal, the Supreme Court routinely borrows the record from the Court of Appeal.

14. Revised rule 978 governs requests for publication of unpublished Court of Appeal opinions. Existing rule 978(a) requires that a publication request be made “promptly,” without specifying a number of days. As proposed, revised rule 978(a)(3) would have required that the request be made “within the time allowed to file a petition for rehearing” in the Court of Appeal, i.e., within 15 days after the filing of the opinion. Attorney Stephen J. Perello, Jr., objected to the change. He proposed several reasons why the litigants may not wish to request publication, and he asserted that unpublished opinions become known to nonlitigants only “through happenstance word of mouth or through occasional reporting in the Press.”

The committee agreed in part, explaining that the change requiring that publication requests be made within a specific number of days after filing is predicated on the public availability of any unpublished opinion on the court system’s Web site within one judicial day of filing, and on its subsequent assimilation into the Westlaw and Lexis systems within a few hours of that availability. An adjunct to that public availability of opinions is the court Web site’s e-mail docket notification system, which allows any member of the public to track pending appeals through and beyond the filing of an opinion. The time period must be limited to some degree in order to minimize the instances in which requests to publish are made after the Court of Appeal has lost jurisdiction and to give the Court of Appeal adequate time to act on the request.

A majority of the Appellate Courts Committee of the State Bar endorsed this change because it “furthers the smooth functioning of the appellate process.” Nonetheless, to give nonlitigants more time to learn of unpublished opinions through the sources discussed above, the committee modified revised rule 978(a)(3) to allow the filing of a request within 20 days after the opinion is

filed. The California Appellate Project expressed the view that 20 days is adequate for this purpose.

Implementation Requirements and Costs

The clerks' offices of the Supreme Court and all the appellate districts will need to review the body of appellate rules when they are adopted and make necessary adjustments in certain filing and calendaring procedures. The new provisions will necessitate some revisions in the standard operating procedures and forms used to notify parties of the steps required to process an appeal. Costs to the Supreme Court, the Courts of Appeal, and the superior courts should otherwise be minimal.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2005:

4. Repeal existing rules 39–44, 45–47, 48–60, 75–80, and 976–979 of the California Rules of Court;
5. Adopt revised rules 37–60, 70–80, 976–979, and related Advisory Committee Comments; and
6. Amend rules 2, 15, and 30.1

to clarify the meanings of the rules and facilitate their use by practitioners, parties, and court personnel.

Attachments

1 Rules 39, 39.1, 39.1A, 39.1B, 39.2, 39.2A, 39.4, 39.8, 40, 40.5, 41, 42, 43, 44, 45,
2 45.1, 45.5, 46, 46.5, 47, 48, 49, 49.5, 50, 51, 52, 52.5, 53, 54, 54.5, 55, 56, 56.4,
3 56.5, 57, 58, 59, 60, 75, 76, 76.1, 76.5, 76.6, 77, 78, 80, 976, 976.1, 977, 978, and
4 979 are repealed; revised rules 37, 37.1, 37.2, 37.3, 37.4, 38, 38.1, 38.4, 38.5, 38.6,
5 39, 39.1, 39.2, 40, 40.1, 40.2, 40.5, 41, 42, 43, 44, 45, 45.1, 45.5, 46, 46.5, 47, 48,
6 49, 49.5, 51, 52, 53, 54, 56, 57, 58, 59, 60, 70, 71, 75, 76.1, 76.5, 76.6, 77, 78, 80,
7 976, 976.1, 977, 978, and 979 are adopted; and rules 2, 15, and 30.1 are amended,
8 effective January 1, 2005, to read:

9
10 **TITLE 1. Appellate Rules**

11
12 **DIVISION 1. Rules Relating to the Supreme Court and Courts of Appeal**

13
14 **CHAPTER 1. Rules on Appeal**

15
16 **PART VIII. Appeals and Writs in Juvenile Cases**

17
18 **Rule 37. Appeals in juvenile cases generally**

19
20 **(a) Application**

21
22 Rules 37–38.6 govern:

23
24 (1) appeals from judgments or appealable orders in

25
26 (A) dependency and delinquency cases under the Welfare and
27 Institutions Code and

28
29 (B) actions to free a child from parental custody and control
30 under Family Code section 7800 et seq.; and

31
32 (2) writ petitions under Welfare and Institutions Code sections 366.26
33 and 366.28.

34
35 **(b) Confidentiality**

36
37 (1) Except as provided in (3), the record on appeal and documents
38 filed by the parties may be inspected only by reviewing court and
39 appellate project personnel, the parties or their attorneys, and other
40 persons the court may designate.

41
42 (2) To protect anonymity, a party must be referred to by first name and
43 last initial in all filed documents and court orders and opinions; but

1 if the first name is unusual or other circumstances would defeat the
2 objective of anonymity, the party's initials may be used.

3
4 (3) Filed documents that protect anonymity as required by (2) may be
5 inspected by any person or entity that is considering filing an
6 amicus curiae brief.

7
8 (4) The court may limit or prohibit public admittance to oral argument.
9

10 **(c) Notice of appeal**

11
12 (1) To appeal from a judgment or appealable order under these rules,
13 the appellant must file a notice of appeal in the superior court. The
14 appellant or the appellant's attorney must sign the notice.

15
16 (2) The notice of appeal must be liberally construed, and is sufficient
17 if it identifies the particular judgment or order being appealed.
18 The notice need not specify the court to which the appeal is taken;
19 the appeal will be treated as taken to the Court of Appeal for the
20 district in which the superior court is located.

21
22 **(d) Time to appeal**

23
24 (1) Except as provided in (2) and (3), a notice of appeal must be filed
25 within 60 days after the rendition of the judgment or the making of
26 the order being appealed. Except as provided in rule 45.1, no court
27 may extend the time to file a notice of appeal.

28
29 (2) In matters heard by a referee not acting as a temporary judge, a
30 notice of appeal must be filed within 60 days after the referee's
31 order becomes final under rule 1417(c).

32
33 (3) When an application for rehearing of an order of a referee not
34 acting as a temporary judge is denied under rule 1418, a notice of
35 appeal from the referee's order must be filed within 60 days after
36 that order is served under rule 1416(b)(3) or 30 days after entry of
37 the order denying rehearing, whichever is later.

38
39 (4) If an appellant timely appeals from a judgment or appealable order,
40 the time for any other party to appeal from the same judgment or
41 order is extended until 20 days after the superior court clerk mails
42 notification of the first appeal.
43
44

1 **(e) Premature or late notice of appeal**

2
3 (1) A notice of appeal is premature if filed before the judgment is
4 rendered or the order is made, but the reviewing court may treat
5 the notice as filed immediately after the rendition of judgment or
6 the making of the order.

7
8 (2) The superior court clerk must mark a late notice of appeal
9 “Received [date] but not filed,” notify the party that the notice was
10 not filed because it was late, and send a copy of the marked notice
11 of appeal to the district appellate project.

12
13 **(f) Superior court clerk’s duties**

14
15 (1) When a notice of appeal is filed, the superior court clerk must
16 immediately:

17
18 (A) mail a notification of the filing to each party—including the
19 minor—other than the appellant, to all attorneys of record,
20 and to the reviewing court clerk, and

21
22 (B) notify the reporter by telephone and in writing to prepare a
23 reporter’s transcript and deliver it to the clerk within 20 days
24 after the notice of appeal is filed.

25
26 (2) The clerk must immediately mail a notification of the filing to any
27 de facto parent, any Court Appointed Special Advocate, and any
28 Indian tribe that has appeared in the proceedings.

29
30 (3) The notification must show the name of the appellant, the date it
31 was mailed, the number and title of the case, and the date the
32 notice of appeal was filed. If the information is available, the
33 notification must also include:

34
35 (A) the name, address, telephone number, and California State
36 Bar number of each attorney of record in the case;

37
38 (B) the name of the party that each attorney represented in the
39 superior court; and

40
41 (C) the name, address, and telephone number of any
42 unrepresented party.
43

- 1 (4) The notification to the reviewing court clerk must also include a
2 copy of the notice of appeal and any sequential list of reporters
3 made under rule 980.4.
4
5 (5) A copy of the notice of appeal is sufficient notification if the
6 required information is on the copy or is added by the superior
7 court clerk.
8
9 (6) The mailing of a notification is a sufficient performance of the
10 clerk's duty despite the discharge, disqualification, suspension,
11 disbarment, or death of the attorney.
12
13 (7) Failure to comply with any provision of this subdivision does not
14 affect the validity of the notice of appeal.
15
16

Advisory Committee Comment

17 Revised rule 37 principally restates subdivisions (a)–(b) and (e)–(g) of former rule 39.
18

19 **Subdivision (a).** Revised rule 37(a)(2) fills a gap by specifying that the rules in this part
20 also apply to certain writ petitions under the Welfare and Institutions Code.
21

22 **Subdivision (b).** Revised rule 37(b) is former rule 39(f)–(g). In a substantive change,
23 revised rule 37(b)(1) authorizes appellate project personnel to inspect the record on appeal and
24 documents filed by the parties. Appellate project personnel may need access to these documents
25 in order to discharge their duties in juvenile cases.
26

27 Former rule 39 was silent on the question of how to preserve the anonymity of parties to
28 juvenile appeals. The practice, however, is to do so by referring to a party by first name and last
29 initial unless it would defeat the objective of anonymity, in which case the party's initials alone
30 may be used. (See *California Style Manual* (4th ed. 2000) §§ 5:9, 5:10, 6:18.) Revised rule
31 37(b)(2) follows this practice.
32

33 Filling a gap, revised rule 37(b)(3) authorizes any person or entity that is considering
34 filing an amicus curiae brief to inspect filed documents that protect the anonymity of the parties
35 as required by revised rule 37(b)(2). A potential amicus curiae's need for this access is
36 underscored by the requirement that an application for permission to file an amicus curiae brief
37 explain how the proposed brief "will assist the court in deciding the matter." (Rules 13(c)(2),
38 29.1(f)(3).) The change is substantive.
39

40 **Subdivision (c).** Revised rule 37(c) is derived from rule 30(a).
41

42 **Subdivision (d).** Filling a gap, revised rule 37(d)(4) provides for the time to file a cross-
43 appeal. (See rule 3(e)(1).)
44

45 **Subdivision (e).** Revised rule 37(e) is derived from rule 30.1(b)–(c).
46

1 **Subdivision (f).** The requirement of revised rule 37(f)(1) that the superior court clerk
2 notify the affected minor of the filing of the notice of appeal is derived from former rule 39.1B(f)
3 (now revised rule 38(f)); the requirement that the clerk notify the reviewing court and the reporter
4 is derived from rule 30(c)(1).

5
6 The requirement of revised rule 37(f)(1)(B) that the clerk notify the reporter not only in
7 writing but also by telephone is derived from former rule 39.1A(c) (now revised rule 38(g)(1)). It
8 implements the Legislature’s intent that appeals in dependency and delinquency cases be treated
9 expeditiously. (See, e.g., Welf. & Inst. Code, §§ 395, 800 [such appeals must be given
10 precedence “over all other cases”].)

11
12 Former rule 39(b) limited to *dependency* cases the requirement that the clerk mail a
13 notification of the filing of a notice of appeal to “any defendant facto parent, any court-appointed
14 special advocate, and . . . the tribe of an Indian child.” Because such parents, advocates, or tribes
15 may also be involved in delinquency cases, revised rule 37(f)(2) deletes the limitation. And
16 because the interest of a tribe does not necessarily coincide with that of one of its members, the
17 revised subdivision requires that the clerk notify only a tribe “that has appeared in the
18 proceedings.” These are substantive changes.

19
20 Revised rule 37(f)(3) requires the clerk to include the name of the appellant in a
21 notification of the filing of a notice of appeal. This substantive change facilitates early settlement
22 discussions in multiparty cases. The remainder of revised rule 37(f)(3)–(7) is derived from rule
23 30(c)(2)–(6).

24
25 **Former subdivision (e).** Former rule 39(e) is deleted as unnecessary; it restated existing
26 statutory provisions giving juvenile appeals precedence (Welf. & Inst. Code, §§ 395, 800) and
27 was primarily directed to the reviewing courts.

28 29 30 **Rule 37.1. Record on appeal**

31 32 **(a) Normal record: clerk’s transcript**

33
34 The clerk’s transcript must contain:

- 35
36 (1) the petition;
- 37
38 (2) any notice of hearing;
- 39
40 (3) all court minutes;
- 41
42 (4) any report or other document submitted to the court;
- 43
44 (5) the jurisdictional findings;
- 45
46 (6) the judgment or order appealed from;
- 47

- 1 (7) any application for rehearing;
- 2
- 3 (8) the notice of appeal and any order pursuant to the notice;
- 4
- 5 (9) any transcript of a sound or sound-and-video recording tendered to
- 6 the court under rule 243.9;
- 7
- 8 (10) any application for additional record and any order on the
- 9 application; and
- 10
- 11 (11) any opinion or dispositive order of a reviewing court in the same
- 12 case.
- 13

14 **(b) Normal record: reporter's transcript**

15 The reporter's transcript must contain:

- 16
- 17
- 18 (1) except as provided in (2), the oral proceedings at any hearing that
- 19 resulted in the order or judgment being appealed;
- 20
- 21 (2) in appeals from dispositional orders, the oral proceedings at
- 22 hearings on
- 23
- 24 (A) jurisdiction and disposition and
- 25
- 26 (B) any motion by the appellant that was denied in whole or in
- 27 part; and
- 28
- 29 (3) any oral opinion of the court.
- 30

31 **(c) Application in superior court for addition to normal record**

- 32
- 33 (1) Any party may apply to the superior court for inclusion in the
- 34 record of any of the following items:
- 35
- 36 (A) in the clerk's transcript: any written motion or notice of
- 37 motion by any party, with supporting and opposing
- 38 memoranda and attachments, and any written opinion of the
- 39 court; and
- 40
- 41 (B) in the reporter's transcript: the oral proceedings on any
- 42 prehearing motions.
- 43

1 (2) The application and order are governed by rule 31.1(c)–(d).

2
3 **(d) Agreed or settled statement**

4
5 To proceed by agreed or settled statement, the parties must comply with
6 rule 32.2 or 32.3, as applicable.

7
8 **(e) Form of record**

9
10 Except in cases governed by rule 37.4(b), the clerk’s and reporter’s
11 transcripts must comply with rule 9.

12
13 **(f) Transmitting exhibits**

14
15 Exhibits that were admitted in evidence, refused, or lodged may be
16 transmitted to the reviewing court as provided in rule 18.

17
18 **Advisory Committee Comment**

19
20 Revised rule 37.1 principally restates former rule 39(c)–(d).

21
22 **Subdivision (a).** Former rule 39(c)(1) declared that the normal clerk’s transcript on
23 appeal included “any notice of hearing *addressed to the minor, the parent, or guardian.*” Revised
24 rule 37.1(a)(2) deletes the italicized qualification because it made the designation underinclusive:
25 it excluded, for example, a notice of hearing given under the federal Indian Child Welfare Act,
26 which must also be included in the clerk’s transcript.

27
28 Revised rule 37.1(a)(4) combines and simplifies the provisions of former rule
29 39.1A(c)(4)–(5). Under the former rules, the required components of the clerk’s transcript in an
30 appeal from an order terminating parental rights differed from the required components of the
31 clerk’s transcript in every other juvenile appeal. Revised rule 37.1(a)(4) requires that the same
32 clerk’s transcript be prepared in all juvenile appeals. This substantive change is intended to
33 eliminate any possible confusion or delays caused by the inconsistent record requirements of the
34 former rules.

35
36 Revised rule 37.1(a)(9) is derived from rule 31(b)(11).

37
38 Revised rule 37.1(a)(10) is derived from rule 31(b)(12).

39
40 Revised rule 37.1(a)(11) fills an important gap. An earlier opinion of the reviewing court
41 in the same case should be part of the record on appeal.

42
43 **Subdivision (b).** Former rule 39(c)(2) required that the normal record include reporter’s
44 transcripts of all hearings in a juvenile case except the detention hearing, regardless of which
45 order was being appealed. Former rule 39.1A(c)(1), however, provided that in appeals from
46 orders terminating parental rights the normal record must include reporter’s transcripts of only
47 those portions of the hearing from which the appeal was taken. Revised rule 37.1(b)(1)
48 essentially adopts the position of former rule 39.1A(c)(1) and establishes the general rule that

1 only the reporter’s transcript of a hearing that resulted in the order being appealed must be
2 included in the normal record. This substantive change is intended to achieve consistent record
3 requirements in all juvenile appeals and to reduce the delays and expense caused by transcribing
4 proceedings not necessary to the appeal.
5

6 Revised rule 37.1(b)(2)(A) recognizes that findings made in a jurisdictional hearing are
7 not separately appealable and can be challenged only in an appeal from the ensuing dispositional
8 order. The revised rule therefore specifically provides that a reporter’s transcript of jurisdictional
9 proceedings must be included in the normal record on appeal from a dispositional order.
10

11 Revised rule 37.1(b)(2)(B) specifies that the oral proceedings on any motion by the
12 appellant that was denied in whole or in part must be included in the normal record on appeal
13 from a disposition order. Rulings on such motions usually have some impact on either the
14 jurisdictional findings or the subsequent disposition order. Former rule 39(d) permitted a party to
15 request inclusion of these proceedings in the reporter’s transcript, but the need to seek
16 augmentation often caused delays in the preparation of the record. Routine inclusion of these
17 proceedings in the record will promote expeditious resolution of juvenile appeals. This is a
18 substantive change.
19

20 Former rule 39(c)(2) required the reporter’s transcript to include the oral proceedings in
21 the trial court, “excluding opening statements.” Because such statements are often combined
22 with evidentiary requests and rulings, the requirement is difficult for reporters to meet; revised
23 rule 37.1(b) deletes it in the interest of efficiency. The change is substantive.
24

25 **Subdivisions (d) and (e).** Revised rule 37.1(d)–(e) fills gaps consistently with practice.
26

27 **Subdivision (f).** Revised rule 37.1(f) restates provisions of former rule 39(c)(3) and
28 (d)(3); it is derived from rule 33.1.
29
30

31 **Rule 37. 2. Preparing, sending, augmenting, and correcting the record**

32

33 **(a) Application**

34

35 Except as provided in (b), this rule does not apply to cases under rule
36 37.4.
37

38 **(b) Preparing and certifying the transcripts**

39

40 Within 20 days after the notice of appeal is filed:

- 41 (1) the clerk must prepare and certify as correct an original of the
42 clerk’s transcript and sufficient copies to comply with (d), and
43
44
- 45 (2) the reporter must prepare, certify as correct, and deliver to the
46 clerk an original of the reporter’s transcript and the same number
47 of copies as (1) requires of the clerk’s transcript.

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(c) Extension of time

- (1) The superior court may not extend the time to prepare the record.
- (2) The reviewing court may order one or more extensions of time, not exceeding a total of 60 days, on receipt of:
 - (A) an affidavit showing good cause, and
 - (B) in the case of a reporter’s transcript, certification by the superior court presiding judge, or a court administrator designated by the presiding judge, that an extension is reasonable and necessary in light of the workload of all reporters in the court.

(d) Sending the record

- (1) When the transcripts are certified as correct, the superior court clerk must immediately send:
 - (A) the original transcripts to the reviewing court, noting the sending date on each original, and
 - (B) one copy of each transcript to the appellate counsel for the appellant, the respondent, and the minor.
- (2) If appellate counsel has not yet been retained or appointed when the transcripts are certified as correct, the clerk must send that counsel’s copy of the transcripts to the district appellate project.
- (3) The clerk must not send a copy of the transcripts to the Attorney General or the district attorney unless that office represents a party.

(e) Augmenting and correcting the record in the reviewing court

- (1) Rule 32.1(a)–(b) governs augmentation of the record without court order.
- (2) On request of a party or on its own motion, the reviewing court may order the record augmented or corrected as provided in rule 12(a) and (c).

1 **Advisory Committee Comment**

2 New rule 37.2 fills a number of gaps. It is derived from former rule 39.1A and the rules
3 governing appeals from the superior court in criminal cases (rules 30–33.2).

4 **Subdivision (a).** New rule 37.2(a) calls litigants’ attention to the fact that a different rule
5 (revised rule 37.4) governs *sending, augmenting, and correcting* the record in appeals from
6 judgments or orders terminating parental rights and in dependency appeals in certain counties.
7 New rule 37.2(b) governs *preparing and certifying* the record in those appeals. (See revised rule
8 37.4(a)(2) [“In all respects not provided for in this rule, rules 37–37.3 apply”].)
9

10 **Subdivision (b).** New rule 37.2(b) requires the record to be prepared within 20 days
11 after the notice of appeal is filed. The requirement is based on former rule 39.1A(c).
12

13 **Subdivision (c).** As provided in criminal appeals by rule 32(e)(2), new rule 37.2(c)
14 limits extensions of time to prepare the record to a total of 60 days and, to support an order of the
15 reviewing court extending the time to prepare a reporter’s transcript, requires that the superior
16 court presiding judge or court administrator certify that the extension is reasonable and necessary
17 in light of the workload of all reporters in the court.
18

19 **Subdivision (d).** As provided in criminal appeals by rule 32(f)(2), new rule
20 37.2(d)(1)(A) requires the clerk to note, on the originals of the clerk’s and reporter’s transcripts,
21 the date they were sent to the reviewing court.
22

23 New rule 37.2(d)(2) fills a gap and reflects current practice (see also rules 31.2(a)(3)(B)
24 and 32(f)(2)).
25

26 New rule 37.2(d)(3) is former rule 39.1(c).
27

28 **Subdivision (e).** New rule 37.2(e) is derived from rule 32.1 and former rule 39.1A(d).
29
30

31 **Rule 37.3. Briefs**

32
33 **(a) Contents, form, and length**

34
35 Rule 33(a)–(b) governs the contents, form, and length of briefs.
36

37 **(b) Time to file**

38
39 (1) Except in cases governed by rule 37.4(e), the appellant must serve
40 and file the appellant’s opening brief within 40 days after the
41 record is filed in the reviewing court.
42

43 (2) The respondent must serve and file the respondent’s brief within
44 30 days after the appellant’s opening brief is filed.
45

- 1 (3) The appellant must serve and file any reply brief within 20 days
2 after the respondent's brief is filed.
3
4 (4) In dependency cases in which the minor is not an appellant but has
5 appellate counsel, the minor must serve and file any brief within
6 10 days after the respondent's brief is filed.
7
8 (5) Rule 17 applies if a party fails to timely file an appellant's opening
9 brief or a respondent's brief, but the period specified in the notice
10 required by that rule must be 30 days.

11
12 **(c) Extensions of time**

13
14 The superior court may not order any extensions of time to file briefs.
15 Except in cases governed by rule 37.4(f), the reviewing court may order
16 extensions of time for good cause.
17

18 **(d) Additional service requirements**

- 19
20 (1) A copy of each brief must be served on the superior court clerk for
21 delivery to the superior court judge.
22
23 (2) If the Court of Appeal has appointed counsel for any party:
24
25 (A) the county child welfare department and the People must
26 serve two copies of their briefs on that counsel, and
27
28 (B) each party must serve a copy of its brief on the district
29 appellate project.
30
31 (3) In delinquency cases the parties must serve copies of their briefs
32 on the Attorney General and the district attorney. In all other cases
33 the parties must not serve copies of their briefs on the Attorney
34 General or the district attorney unless that office represents a party.
35
36 (4) The parties must not serve copies of their briefs on the Supreme
37 Court under rule 44(b)(2)(A).
38

39 **Advisory Committee Comment**

40 New rule 37.3 fills a gap. It is derived from former rule 39.1A(g) and the rules governing
41 appeals from the superior court in criminal cases (rules 30–33.2).
42

1 **Subdivision (b).** New rule 37.3(b)(1) calls litigants’ attention to the fact that a different
2 rule (revised rule 37.4(e)) governs the time to file an appellant’s opening brief in appeals from
3 judgments or orders terminating parental rights and in dependency appeals in certain counties.
4

5 Former rule 39 did not provide for briefs by minors represented by counsel or for replies
6 to such briefs; former rule 39.1A(g) provided for a minor’s brief in an appeal from a judgment
7 terminating parental rights but did not provide for a reply to the minor’s brief, and effectively
8 excluded the latter by requiring the appellant’s reply brief to be served and filed at the same time
9 as the minor’s brief. These provisions often required the reviewing courts to extend time in cases
10 in which they appointed counsel for the minor, resulting in different filing requirements for such
11 briefs in different reviewing courts. For the purpose of remedying these inadequacies, new rule
12 37.3(b)(4) provides that a minor who is not the appellant but has appellate counsel must file any
13 brief within 10 days after the respondent’s brief is filed. The 10-day period is derived from
14 former rule 39.2A(f); it is believed adequate because in most cases in which the minor needs
15 separate counsel, any brief by the minor in effect responds to (or supports) the opening brief.
16 Because the appellant must file any reply brief within 20 days after the respondent’s brief is filed
17 (new rule 37.3(b)(3)), the appellant has the opportunity to reply to both the respondent’s brief and
18 any minor’s brief in the same document. The changes are substantive.
19

20 **Subdivision (c).** New rule 37.3(c) calls litigants’ attention to the fact that a different rule
21 (revised rule 37.4(f)) governs the showing required for extensions of time to file briefs in appeals
22 from judgments or orders terminating parental rights and in dependency appeals in certain
23 counties.
24

25 **Subdivision (d).** New rule 37.3(d)(2) is derived from former rule 39.1(d) and is made
26 consistent with the rule on the number of copies of their briefs the People are required to serve in
27 criminal cases (rule 33(d)(3)).
28

29 New rule 37.3(d)(3) is derived from rule 33(d)(1) and former rule 39.1(d).
30

31 New rule 37.3(d)(4) is derived from former rule 39.1(e).
32
33

34 **Rule 37.4. Appeals from all terminations of parental rights; dependency**
35 **appeals in Orange, Imperial, and San Diego Counties**
36

37 **(a) Application**
38

39 (1) This rule governs:
40

41 (A) appeals from judgments or appealable orders of all superior
42 courts terminating parental rights under Welfare and
43 Institutions Code 366.26 or freeing a child from parental
44 custody and control under Family Code section 7800 et seq.,
45 and
46

1 (B) appeals from judgments or appealable orders of the Superior
2 Courts of Orange, Imperial, and San Diego Counties in all
3 juvenile dependency cases.
4

5 (2) In all respects not provided for in this rule, rules 37–37.3 apply.
6

7 **(b) Cover of record**
8

9 (1) In appeals under (a)(1)(A), the cover of the record must
10 prominently display the title “Appeal From [Judgment or Order]
11 Terminating Parental Rights Under [Welfare and Institutions Code
12 Section 366.26 or Family Code Section 7800 et seq.],” whichever
13 is appropriate.
14

15 (2) In appeals from judgments or appealable orders of the Superior
16 Courts of Orange, Imperial, and San Diego Counties, the cover of
17 the record must prominently display the title “Appeal From
18 [Judgment or Order] Under [Welfare and Institutions Code Section
19 300 et seq. or Family Code Section 7800 et seq.],” whichever is
20 appropriate.
21

22 **(c) Sending the record**
23

24 (1) When the clerk’s and reporter’s transcripts are certified as correct,
25 the clerk must immediately send:

26 (A) the original transcripts to the reviewing court by the most
27 expeditious method, noting the sending date on each original,
28 and
29

30 (B) one copy of each transcript to the attorneys of record for the
31 appellant, the respondent, and the minor, and to the district
32 appellate project, by any method as fast as United States
33 Postal Service express mail.
34

35 (2) If appellate counsel has not yet been retained or appointed when
36 the transcripts are certified as correct, the clerk must send that
37 counsel’s copies of the transcripts to the district appellate project.
38
39

40 **(d) Augmenting or correcting the record in the reviewing court**
41

42 (1) Except as provided in (2) and (3), rule 12 governs any
43 augmentation or correction of the record.

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(2) An appellant must serve and file any request for augmentation or correction within 15 days after receiving the record. A respondent must serve and file any such request within 15 days after the appellant’s opening brief is filed.

(3) The clerk and the reporter must prepare any supplemental transcripts within 20 days, giving them the highest priority.

(4) The clerk must certify and send any supplemental transcripts as required by (c).

(e) Time to file appellant’s opening brief

To permit determination of the appeal within 250 days after the notice of appeal is filed, the appellant must serve and file the appellant’s opening brief within 30 days after the record is filed in the reviewing court.

(f) Extensions of time

The superior court may not order any extensions of time to prepare the record or to file briefs; the reviewing court may order extensions of time, but must require an exceptional showing of good cause.

(g) Oral argument and submission of the cause

(1) Unless the reviewing court orders otherwise, counsel must serve and file any request for oral argument no later than 15 days after the appellant’s reply brief is filed or due to be filed. Failure to file a timely request will be deemed a waiver.

(2) The court must hear oral argument within 60 days after the appellant’s last reply brief is filed or due to be filed, unless the court extends the time for good cause or counsel waive argument.

(3) If counsel waive argument, the cause is deemed submitted no later than 60 days after the appellant’s reply brief is filed or due to be filed.

1
2 **Advisory Committee Comment**
3

4 Revised rule 37.4 combines former rules 39.1A, 39.2, and 39.2A, but deletes all
5 provisions of those rules that expressly or in effect duplicated revised rules 37–37.3.
6 Subdivisions (b) and (e) of former rule 39.1A were deleted because they expressly or in effect
7 duplicated provisions of Welfare and Institutions Code section 366.26(*l*). No substantive change
8 is intended.
9

10 **Subdivision (e).** Revised rule 37.3(b)(5) provides that “Rule 17 applies if a party fails to
11 timely file an appellant’s opening brief or a respondent’s brief, but the period specified in the
12 notice required by that rule must be 30 days.” Revised rule 37.4(a)(2) makes the quoted
13 provision applicable to all appeals governed by revised rule 37.4(e).
14

15 **Subdivision (g).** Revised rule 37.4(g)(1) recognizes certain reviewing courts’ practice of
16 requiring counsel to file any request for oral argument within a time period other than 15 days
17 after the appellant’s reply brief is filed or due to be filed. It is not a substantive change. The
18 reviewing court is still expected to determine the appeal “within 250 days after the notice of
19 appeal is filed.” (*Id.*, subd. (e).)
20
21

22 **Rule 38. Notice of intent to file writ petition to review order setting hearing**
23 **under Welfare and Institutions Code section 366.26**
24

25 **(a) Application**
26

27 Rules 38–38.1 govern writ petitions to review orders setting a hearing
28 under Welfare and Institutions Code section 366.26. Rule 56 does not
29 apply to petitions governed by these rules.
30

31 **(b) Purpose**
32

33 Rules 38–38.1 are intended to encourage and assist the reviewing courts
34 to determine on their merits all writ petitions filed under these rules
35 within the 120-day period for holding a hearing under Welfare and
36 Institutions Code section 366.26.
37

38 **(c) Who may file**
39

40 The petitioner’s trial counsel—or, if the petitioner was not represented
41 by counsel at the hearing at which the section 366.26 hearing was set,
42 the petitioner—is responsible for filing any notice of intent and writ
43 petition under rules 38–38.1. Trial counsel is encouraged to seek
44 assistance from or consult with attorneys experienced in writ procedure.
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(d) Extensions of time

The superior court may not extend any time period prescribed by rules 38–38.1. The reviewing court may extend any time period, but must require an exceptional showing of good cause.

(e) Notice of intent

- (1) A party seeking writ review under rules 38–38.1 must file a notice of intent to file a writ petition and a request for the record.
- (2) The notice must include all known dates of the hearing that resulted in the order under review.
- (3) The notice must be signed by the party intending to file the petition or, if filed on behalf of the minor, by the attorney of record for the minor. The reviewing court may waive this requirement for good cause on the basis of a declaration by the attorney of record explaining why the party could not sign the notice.
- (4) The notice must be filed within seven days after the date of the order setting the hearing or, if the order was made by a referee not acting as a temporary judge, within seven days after the referee’s order becomes final under rule 1417(c). The date of the order setting the hearing is the date on which the court states the order on the record orally or in writing, whichever occurs first.
- (5) If the party was notified of the order setting the hearing only by mail, the notice of intent must be filed within 12 days after the date that the clerk mailed the notification.

(f) Sending the notice of intent

- (1) When the notice of intent is filed, the superior court clerk must immediately mail a copy of the notice to:
 - (A) each counsel of record;
 - (B) each party, including the minor, the parent, the present custodian of a dependent child, any legal guardian, and any person who has been declared a de facto parent and given standing to participate in the juvenile court proceedings;

1
2 (C) the probation officer or social worker; and

3
4 (D) any Court Appointed Special Advocate.

- 5
6 (2) The clerk must promptly send a copy of the notice of intent and a
7 proof of service list to the reviewing court, by first-class mail or
8 facsimile. If the party was notified of the order setting the hearing
9 only by mail, the clerk must include the date that the notification
10 was mailed.

11
12 **(g) Preparing the record**

13
14 When the notice of intent is filed, the superior court clerk must:

- 15
16 (1) immediately notify the reporter by telephone and in writing to
17 prepare a reporter's transcript of the oral proceedings at the
18 hearing that resulted in the order under review and deliver the
19 transcript to the clerk within 12 days after the notice of intent is
20 filed; and
21
22 (2) within 20 days after the notice of intent is filed, prepare a clerk's
23 transcript that includes the notice of intent, proof of service, and all
24 items listed in rule 37.1(a).

25
26 **(h) Sending the record**

27
28 When the transcripts are certified as correct, the superior court clerk
29 must immediately send:

- 30
31 (1) the original transcripts to the reviewing court by the most
32 expeditious method, noting the sending date on each original, and
33
34 (2) one copy of each transcript to each counsel of record and any
35 unrepresented party by any means as fast as United States Postal
36 Service express mail.

37
38 **(i) Reviewing court clerk's duties**

- 39
40 (1) The reviewing court clerk must immediately lodge the notice of
41 intent. When the notice is lodged, the reviewing court has
42 jurisdiction of the writ proceedings.
43

- 1 (2) When the record is filed in the reviewing court, that court’s clerk
2 must immediately notify the parties, stating the date on which the
3 10-day period for filing the writ petition under rule 38.1(c)(1) will
4 expire.
5

6 **Advisory Committee Comment**
7

8 Revised rule 38 restates the portions of former rule 39.1B that provided for a *notice of*
9 *intent* to file a writ petition to review an order setting a hearing under Welfare and Institutions
10 Code section 366.26. The portions of the former rule that provided for the petition itself are
11 restated in revised rule 38.1.
12

13 **Subdivision (d).** Revised rule 38(d) is new. The case law generally recognizes that the
14 reviewing courts may grant extensions of time under these rules for exceptional good cause.
15 (See, e.g., *Jonathan M. v. Superior Court* (1995) 39 Cal.App.4th 1826, and *In re Cathina W.*
16 (1998) 68 Cal.App.4th 716 [recognizing that a late notice of intent may be filed on a showing of
17 exceptional circumstances not under the petitioner’s control].) The provision is derived from
18 revised rule 37.4(f).
19

20 **Subdivision (e).** Former rule 39.1B(f) declared that if a party was notified of the order
21 setting the hearing only by mail, the 7-day period for filing a notice of intent to seek writ review
22 was extended by 5 days measured from the date of *the order setting the hearing*. Revised rule
23 38(e)(5) prescribes the same total time (12 days) in that case, but measures the period from the
24 date *the notification is mailed*. The purpose of this substantive change is to ensure that if mailing
25 of the notification is delayed the party still has adequate time to prepare and file any notice of
26 intent.

27 **Subdivision (f).** To implement the change in revised rule 38(e)(5) discussed in the
28 preceding comment, revised rule 38(f)(2) provides that if the party was notified of the order
29 setting the hearing only by mail, the clerk must advise the reviewing court of the date that the
30 notification was mailed.
31

32 **Subdivision (g).** In the interest of completeness, revised rule 38(g)(2) specifies that the
33 clerk’s transcript must include, in addition to all items listed in revised rule 37.1(a), the notice of
34 intent and proof of service.
35

36 **Former rule 39.1B(d)-(e).** Subdivisions (d) and (e) of former rule 39.1B were deleted
37 because they expressly or in effect duplicated provisions of Welfare and Institutions Code section
38 366.26(l). No substantive change is intended.
39

40
41 **Rule 38.1. Writ petition to review order setting hearing under Welfare and**
42 **Institutions Code section 366.26**
43

44 **(a) Petition**
45

- 46 (1) The petition must include:
47

- 1 (A) the identities of the parties;
- 2
- 3 (B) the date on which the superior court made the order setting
- 4 the hearing;
- 5
- 6 (C) the date on which the hearing is scheduled to be held;
- 7
- 8 (D) a summary of the grounds of the petition; and
- 9
- 10 (E) the relief requested.

11 (2) The petition must be liberally construed.

12 (3) The petition must be accompanied by points and authorities.

13

14

15

16 **(b) Contents of points and authorities**

17

18 (1) The points and authorities must provide a summary of the

19 significant facts, limited to matters in the record.

20

21 (2) The points and authorities must state each point under a separate

22 heading or subheading summarizing the point and support each

23 point by argument and citation of authority.

24

25 (3) The points and authorities must support any reference to a matter

26 in the record by a citation to the record. The points and authorities

27 should explain the significance of any cited portion of the record

28 and note any disputed aspects of the record.

29

30 **(c) Time to file petition and response**

31

32 (1) The petition must be served and filed within 10 days after the

33 record is filed in the reviewing court.

34

35 (2) Any response must be served and filed:

36

37 (A) within 10 days—or, if the petition was served by mail, within

38 15 days—after the petition is filed, or

39

40 (B) within 10 days after a respondent receives a request from the

41 reviewing court for a response, unless the court specifies a

42 shorter time.

43

1 **(d) Order to show cause or alternative writ**

2
3 If the court intends to determine the petition on the merits, it must issue
4 an order to show cause or alternative writ.

5
6 **(e) Augmenting or correcting the record in the reviewing court**

- 7
8 (1) Except as provided in (2) and (3), rule 12 governs any
9 augmentation or correction of the record.
10
11 (2) The petitioner must serve and file any request for augmentation or
12 correction within 5 days—or, if the record exceeds 600 pages,
13 within 10 days—after receiving the record. A respondent must
14 serve and file any such request within five days after the petition is
15 filed.
16
17 (3) An order augmenting or correcting the record may grant no more
18 than 15 days for compliance. The clerk and the reporter must give
19 the order the highest priority.
20
21 (4) The clerk must certify and send any supplemental transcripts as
22 required by rule 38(h).

23
24 **(f) Stay**

25
26 The reviewing court may stay the hearing set under Welfare and
27 Institutions Code section 366.26, but must require an exceptional
28 showing of good cause.
29

30 **(g) Oral argument**

- 31
32 (1) The reviewing court must hear oral argument within 30 days after
33 the response is filed or due to be filed, unless the court extends the
34 time for good cause or counsel waive argument.
35
36 (2) If argument is waived, the cause is deemed submitted not later than
37 30 days after the response is filed or due to be filed.
38

39 **(h) Decision**

- 40
41 (1) Absent exceptional circumstances, the reviewing court must decide
42 the petition on the merits by written opinion.
43

- 1 (2) The reviewing court clerk must promptly notify the parties of any
2 decision and must promptly send a certified copy of any writ or
3 order to the court named as respondent.
4
- 5 (3) If the writ or order stays or prohibits proceedings set to occur
6 within seven days or requires action within seven days—or in any
7 other urgent situation—the reviewing court clerk must make a
8 reasonable effort to notify the clerk of the respondent court by
9 telephone. The clerk of the respondent court must then notify the
10 judge or officer most directly concerned.
11
- 12 (4) The reviewing court clerk need not give telephonic notice of the
13 summary denial of a writ, unless a stay previously issued and will
14 be dissolved.
15

16 Advisory Committee Comment

17 Revised rule 38.1 restates the portions of former rule 39.1B that provided for a writ
18 petition to review an order setting a hearing under Welfare and Institutions Code section 366.26.
19 The portions of the former rule that provided for the *notice of intent* to file the petition are
20 restated in revised rule 38.

21 **Subdivision (a).** Revised rule 38.1(a)(1) is new. It fills a gap, setting out the essential
22 elements of a writ petition filed under this rule.

23 **Subdivision (b).** Revised rule 38.1(b) restates former rule 39.1B(j) but conforms it to the
24 requirements of case law and the relevant provisions of rule 14.

25 **Subdivision (d).** Revised rule 38.1(d) tracks the second sentence of former rule 39.1B(l).
26 (But see *Maribel M. v. Superior Court* (1998) 61 Cal.App.4th 1469, 1471–1476.)

27 **Subdivision (e).** Former rule 39.1B(o) required any augmentation or correction of the
28 record to be conducted “under rule 12 or rule 35(e) [now rule 32.1].” In a substantive change
29 intended to expedite these proceedings, revised rule 38.1(e)(1) limits the cross-reference to rule
30 12. The reviewing court should control the terms and conditions of augmentation or correction.

31 Revised rule 38.1(e)(4) fills a gap.

32 **Subdivision (f).** Revised rule 38.1(f) restates former rule 39.1B(p) but simplifies and
33 broadens its wording in order to permit a stay, for example, when the time remaining before the
34 scheduled date of the hearing under Welfare and Institutions Code section 366.26 is inadequate to
35 permit proper review. The wording of the provision is consistent with revised rules 38(d) and
36 37.4(f).

37 **Subdivision (h).** Revised rule 38.1(h)(1) tracks former rule 39.1B(o). (But see *Maribel*
38 *M. v. Superior Court* (1998) 61 Cal.App.4th 1469, 1471–1476.) The revised rule deletes as
39 superfluous, however, the provision of the former rule requiring that in the absence of exceptional

1 circumstances the reviewing court must “review the petition . . .” The reviewing court must
2 necessarily “review the petition” to determine whether there are any exceptional circumstances.

3 Former rule 39.1B(r) required the reviewing court clerk, in urgent situations, to give the
4 respondent court clerk telephonic notice of a writ or order prohibiting any proceedings, but
5 declared that telephonic notice of a summary denial was unnecessary “whether or not a stay was
6 previously issued.” To provide for the possibility of the reviewing court’s issuing a stay but
7 subsequently dissolving it and summarily denying relief, revised rule 38.1(h)(4) declares instead
8 that the reviewing court clerk need not give such telephonic notice “unless a stay previously
9 issued and will be dissolved.”

10 11 12 **Rule 38.4. Hearing and decision in the Court of Appeal**

13
14 Except as provided in rules 37–38.4, rules 22–26 govern hearing and decision
15 in the Court of Appeal in juvenile cases.

16 17 **Advisory Committee Comment**

18 Rule 38.4 is new, but it is not a substantive change. It clarifies the applicability to
19 juvenile cases of the relevant rules governing the hearing and decision of civil appeals in the
20 Court of Appeal.

21 22 23 **Rule 38.5. Hearing and decision in the Supreme Court**

24
25 Rules 28–28.9 govern hearing and decision in the Supreme Court in juvenile
26 cases.

27 28 **Advisory Committee Comment**

29 Rule 38.5 is new, but it is not a substantive change. It clarifies the applicability to
30 juvenile cases of the rules governing the hearing and decision of civil appeals in the Supreme
31 Court.

32 33 34 **Rule 38.6. Procedures and data**

35 36 **(a) Procedures**

37
38 The judges and clerks of the superior courts and the reviewing courts
39 must adopt procedures to identify the records and expedite the
40 processing of all appeals and writs in juvenile cases.
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(b) Data

The clerks of the superior courts and the reviewing courts must the provide data required to assist the Judicial Council in evaluating the effectiveness of the rules governing appeals and writs in juvenile cases.

Advisory Committee Comment

Revised rule 38.6 restates former rules 39.1A(f), 39.2(e), and 39.2A(e).

PART IX. Miscellaneous Appeals

Rule 39. Appeal from order establishing conservatorship

(a) Application

Except as otherwise provided in this rule, rules 30–33.3 govern appeals from orders establishing conservatorships under Welfare and Institutions Code section 5350 et seq.

(b) Clerk’s transcript

The clerk’s transcript must contain:

- (1) the petition;
- (2) any demurrer or other plea;
- (3) any written motion with supporting and opposing memoranda and attachments;
- (4) any filed medical or social worker reports;
- (5) all court minutes;
- (6) all instructions submitted in writing, each noting the party requesting it;
- (7) any verdict;
- (8) any written opinion of the court;

- 1
2 (9) the judgment or order appealed from;
3
4 (10) the notice of appeal; and
5
6 (11) any application for additional record and any order on the
7 application.
8

9 **(c) Reporter’s transcript**

10
11 The reporter’s transcript must contain all oral proceedings, excluding
12 the voir dire examination of jurors and any opening statement.
13

14 **(d) Sending the record**

15
16 The clerk must not send a copy of the record to the Attorney General or
17 the district attorney unless that office represents a party.
18

19 **(e) Briefs**

20
21 The parties must not serve copies of their briefs:

- 22
23 (1) on the Attorney General or the district attorney, unless that office
24 represents a party, or
25
26 (2) on the Supreme Court under rule 44(b)(2)(A).
27

28 **Advisory Committee Comment**

29 Revised rule 39 is former rule 39.4.
30
31

32 **Rule 39.1. Appeal from judgment authorizing conservator to consent to**
33 **sterilization of conservatee**

34
35 **(a) Application**

36
37 Except as otherwise provided in this rule, rules 30–33.3 govern appeals
38 from judgments authorizing a conservator to consent to the sterilization
39 of a developmentally disabled adult conservatee.
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(b) When appeal is taken automatically

An appeal from a judgment authorizing a conservator to consent to the sterilization of a developmentally disabled adult conservatee is taken automatically, without any action by the conservatee, when the judgment is rendered.

(c) Superior court clerk’s duties

After entering the judgment, the clerk must immediately:

- (1) begin preparing a clerk’s transcript and notify the reporter to prepare a reporter’s transcript, and
- (2) mail certified copies of the judgment to the Court of Appeal and the Attorney General.

(d) Clerk’s transcript

The clerk’s transcript must contain:

- (1) the petition and notice of hearing;
- (2) all court minutes;
- (3) any application, motion, or notice of motion, with supporting and opposing memoranda and attachments;
- (4) any report or other document submitted to the court;
- (5) any transcript of a proceeding pertaining to the case;
- (6) the statement of decision; and
- (7) the judgment or order appealed from.

(e) Reporter’s transcript

The reporter’s transcript must contain all oral proceedings, including:

- (1) all proceedings at the hearing on the petition, with opening statements and closing arguments;

- 1
2 (2) all proceedings on motions;
3
4 (3) any comments on the evidence by the court; and
5
6 (4) any oral opinion or oral statement of decision.
7

8 **(f) Preparing and sending transcripts**
9

- 10 (1) The clerk and the reporter must prepare and send an original and
11 two copies of each of the transcripts as provided in rule 32.
12
13 (2) Probate Code section 1963 governs the cost of preparing the record
14 on appeal.
15

16 **(g) Confidential material**
17

- 18 (1) Written reports of physicians, psychologists, and clinical social
19 workers, and any other matter marked confidential by the court,
20 may be inspected only by court personnel, the parties and their
21 counsel, the district appellate project, and other persons designated
22 by the court.
23
24 (2) Material under (1) must be sent to the reviewing court in a sealed
25 envelope marked “Confidential—May Not Be Examined Without
26 Court Order.”
27

28 **(h) Trial counsel’s continuing representation**
29

30 To expedite preparation and certification of the record, the
31 conservatee’s trial counsel must continue to represent the conservatee
32 until appellate counsel is retained or appointed.
33

34 **(i) Appointment of appellate counsel**
35

36 If appellate counsel has not been retained for the conservatee, the
37 reviewing court must appoint such counsel.
38

39 **Advisory Committee Comment**
40

41 Revised rule 39.1 is former rule 39.8. It implements Probate Code section 1963(b).
42

43 **Subdivision (a).** Former rule 39.8(a) stated that it governed appeals from judgments
44 “*authorizing the appointment of a limited conservator to consent to sterilization*” of a

1 developmentally disabled adult conservatee. (Italics added.) But the statute addresses instead
2 appeals from judgments “*authorizing the conservator of a person to consent to the sterilization*”
3 (Prob. Code, § 1962(b), italics added), and the power to consent is not restricted to a limited
4 conservator (*id.*, § 1960). To conform to the statutes, revised rule 39.1(a) provides that it governs
5 appeals from judgments “authorizing a conservator to consent” to such sterilization.
6

7 **Subdivision (b).** Former rule 39.8(c) stated that an appeal was deemed automatically
8 taken from a judgment authorizing consent to sterilization upon *entry* of that judgment. But the
9 statute provides instead that the appeal is automatically taken when the judgment is *rendered*.
10 (Prob. Code, § 1962(b).) Revised rule 39.1(b) conforms to the statute.
11

12 **Subdivision (g).** Filling a gap, revised rule 39.1(g)(1) adds the district appellate project
13 to the list of entities entitled to inspect confidential reports in the record. To allow the project to
14 inspect any such materials would help the project (1) make its initial recommendation for
15 appointment of counsel for the appellant, (2) assist that attorney in representing the client, and (3)
16 ensure that the record is complete. The change is substantive.
17

18 **Subdivision (h).** Former rule 39.8(g) provided for certain duties of trial counsel during
19 the period of record preparation. Revised rule 39.1(h) largely deletes these provisions because
20 the topic is now covered by rule 32. This is a substantive change.
21

22

23 **Rule 39.2. Appeal from order granting relief by writ of habeas corpus**

24

25 **(a) Application**

26
27 Except as otherwise provided in this rule, rules 30–33.3 govern appeals
28 under Penal Code section 1506 or 1507 from orders granting all or part
29 of the relief sought in a petition for writ of habeas corpus.
30

31 **(b) Contents of record**

32
33 In an appeal under this rule, the record must contain:

- 34 (1) the petition, the return, and the traverse;
- 35 (2) the order to show cause;
- 36 (3) all court minutes;
- 37 (4) all documents and exhibits submitted to the court;
- 38 (5) the reporter’s transcript of any oral proceedings;
- 39 (6) any written opinion of the court;
- 40
- 41
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1 (7) the order appealed from; and

2
3 (8) the notice of appeal.

4
5 **Advisory Committee Comment**

6 Revised rule 39.2 is former rule 50.

7
8 **Subdivision (b).** Paragraphs (2), (3), and (6) of revised rule 39.2(b) fill gaps; they are
9 derived from revised rule 31(b)(3) and (7).

10
11
12 **PART X. General Appellate Procedures**

13
14 **Rule 40. Definitions**

15
16 Unless the context or subject matter requires otherwise, the following
17 definitions apply to Title 1 of these rules.

18
19 **(a) Appellant, respondent, and party**

20
21 (1) “Appellant” means the appealing party; “respondent” means the
22 adverse party.

23
24 (2) “Party” includes any attorney of record for that party.

25
26 **(b) Gender, tense, and number**

27
28 Each gender (masculine, feminine, or neuter) includes the others; each
29 tense (past, present, or future) includes the others; each number
30 (singular or plural) includes the other.

31
32 **(c) Judgment**

33
34 “Judgment” includes any judgment or order that may be appealed.

35
36 **(d) Must, may, and may not; should; will**

37
38 (1) “Must” is mandatory; “may” is permissive; “may not” means “is
39 not permitted to.”

40
41 (2) “Should” expresses a preference or a nonbinding recommendation.

1 (3) “Will” expresses a future contingency or predicts action by a court
2 or a judicial officer.

3
4 **(e) Superior and reviewing courts**

5
6 (1) “Superior court” means the court from which an appeal is taken.

7
8 (2) “Reviewing court” means the Supreme Court or the Court of
9 Appeal to which an appeal is taken, in which an original
10 proceeding is begun, or to which an appeal or original proceeding
11 is transferred.

12
13 **Advisory Committee Comment**

14 Former rule 40(f), (i), and (k) and the second sentence of former rule 40(e) have been
15 moved to new rule 40.1 on service and filing.

16
17 Former rule 40(j) defined “register” and “register of actions” to mean the permanent
18 record of cases maintained by electronic, magnetic, microphotographic, or similar means. The
19 topic is covered more fully in rule 70.

20
21 Former rule 40(l) has been moved to new rule 40.2 on recycled paper.

22
23 Former rule 40(h) has been deleted as unnecessary.

24
25 **Subdivision (d).** Former rule 40(d) defined the word “shall” as mandatory; revised rule
26 40(d)(1) instead defines the word “must” as mandatory. Effective January 1, 2001, the latter
27 usage was adopted by both the Judicial Council and its Rules and Projects Committee for all new
28 and all amended California Rules of Court. (See Judicial Council of Cal., mins. (Oct. 27, 2000)
29 p. 30; Judicial Council of Cal., Rules and Projects Com., *Policies and Guidelines for Rules,*
30 *Forms, and Standards* (Dec. 17, 2001) p. 3.)

31
32
33 **Rule 40.1. Service and filing**

34
35 **(a) Service**

36
37 (1) Before filing any document in a court, a party must serve, by any
38 method permitted by the Code of Civil Procedure, one copy of the
39 document on the attorney for each party separately represented, on
40 each unrepresented party, and on any other person or entity when
41 required by statute or rule.

42
43 (2) The party must attach a proof of service to the document presented
44 for filing. The proof must name each party represented by each
45 attorney served.

1
2 **Rule 40.5. Notice of change of address or telephone number**

3
4 **(a) Serving and filing notice**

5
6 (1) An attorney or unrepresented party whose address or telephone
7 number changes while a case is pending in a reviewing court must
8 promptly serve and file in that court a written notice of the change.

9
10 (2) The notice must specify the title and number of the case or cases to
11 which it applies. If an attorney gives the notice, the notice must
12 include the attorney's California State Bar number.

13
14 **(b) Matters affected by notice**

15
16 Unless the person giving the notice advises the reviewing court clerk
17 otherwise in writing, the clerk may use the new address or telephone
18 number in all pending and concluded cases.

19
20 **(c) Appearance not conforming to address of record; multiple offices**

21
22 (1) The clerk must enter a proposed appearance in a new matter even
23 if it shows an attorney's address different from the address of
24 record; but the appearance is subject to being struck if, after
25 inquiry by the court, the attorney does not promptly confirm the
26 address or serve and file a change of address.

27
28 (2) Attorneys with two or more offices may have a corresponding
29 number of addresses of record, but only one address may be
30 associated with a given case.

31
32 **Advisory Committee Comment**

33 **Subdivision (a).** Former rule 40.5(a) required that a notice of change of address or
34 telephone number specify the number of the case to which it applied. Filling a gap, revised rule
35 40.5(a) requires that the notice also specify the case title.

36
37 **Subdivision (b).** Former rule 40.5(b) was limited on its face to notices filed by attorneys.
38 Filling a gap, revised rule 40.5(b) includes notices filed by unrepresented parties.

1 **Rule 41. Motions in the reviewing court**

2
3 **(a) Motion and opposition**

4
5 (1) Except as these rules provide otherwise, a party wanting to make a
6 motion in a reviewing court must serve and file a written motion
7 stating the grounds and the relief requested and identifying any
8 documents on which the motion is based.

9
10 (2) A motion must be accompanied by points and authorities and, if it
11 is based on matters outside the record, by declarations or other
12 supporting evidence.

13
14 (3) Any opposition must be served and filed within 15 days after the
15 motion is filed.

16
17 **(b) Disposition**

18
19 (1) The court may rule on a motion at any time after an opposition or
20 other response is filed or the time to oppose has expired.

21
22 (2) On a party's request or its own motion, the court may place a
23 motion on calendar for a hearing. The clerk must promptly send
24 each party a notice of the date and time of the hearing.

25
26 **(c) Failure to oppose motion**

27
28 A failure to oppose a motion may be deemed a consent to the granting
29 of the motion.

30
31 **Advisory Committee Comment**

32 **Subdivision (a).** Former rule 41(a) measured the time to file an opposition to a motion
33 from the date the motion was *served*; revised rule 41(a)(3) instead measures that time from the
34 date the motion is *filed*. In each case the revised rule allows five additional days for mailing. The
35 principal reason for this substantive change is that the filing date of a document is more reliable
36 than the date appearing on its proof of service. Using the filing date results in greater certainty
37 for the reviewing court and makes it easier for the reviewing court clerk to verify the relevant
38 date, both when the motion is filed and later when an opposition is presented for filing. The rule
39 is thus made consistent with the rules providing that the filing date controls the time to prepare
40 answers and replies to briefs and petitions (see, e.g, rules 15(a), 28(e), 29.1(a), 29.5(b), 33(c), and
41 36(c)).

42
43 **Subdivision (b).** Former rule 41(b) allowed a court to rule on a motion at any time after
44 opposition was filed or the time to file an opposition had expired. In practice, however, a party

1 often does not intend to oppose the motion and so notifies the court. Recognizing this practice,
2 revised rule 41(b)(1) provides that the court may rule when an opposition “or other response,”
3 e.g., a statement of intent not to oppose, is filed.
4

5 Former rule 41(b) declared that a motion would be deemed made “on all the grounds
6 stated therein.” Revised rule 41 deletes this provision as superfluous.
7

8 **Subdivision (c).** Former rule 41(c) separately stated the consequences of (1) failure “to
9 appear and oppose [a motion to dismiss an appeal] after notification by the clerk of a hearing
10 thereon” and (2) failure to oppose any other motion. Because the consequence was the same in
11 either case—implied consent to the granting of the motion—revised rule 41(c) deletes the
12 distinction and provides simply that a “failure to oppose a motion” may be deemed a consent to
13 the granting of the motion. The change is not substantive, and is not intended to indicate a
14 position on the question whether there is an implied right to a hearing to oppose a motion to
15 dismiss an appeal.
16

17 **Rule 42. Motions before the record is filed**

18 **(a) Motion to dismiss appeal**

19
20 A motion to dismiss an appeal before the record is filed in the reviewing
21 court must be accompanied by a certificate of the superior court clerk, a
22 declaration, or both, stating:
23

- 24 (1) the nature of the action and the relief sought by the complaint and
25 any cross-complaint or complaint in intervention;
- 26 (2) the names, addresses, and telephone numbers of all attorneys of
27 record—stating whom each represents—and unrepresented parties;
- 28 (3) a description of the judgment or order appealed from, its entry
29 date, and the service date of any written notice of its entry;
- 30 (4) the factual basis of any extension of the time to appeal under rule
31 3;
- 32 (5) the filing dates of all notices of appeal and the courts in which they
33 were filed;
- 34 (6) the filing date of any document necessary to procure the record on
35 appeal; and
- 36 (7) the status of the record preparation process, including any order
37 extending time to prepare the record.
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1
2 **(b) Other motions**
3

4 Any other motion filed before the record is filed in the reviewing court
5 must be accompanied by a declaration or other evidence necessary to
6 advise the court of the facts relevant to the relief requested.
7

8 **Advisory Committee Comment**

9 **Subdivision (a).** Filling gaps, revised rule 42(a)(2) requires the certificate or declaration
10 to state the addresses and telephone numbers of all attorneys of record and all unrepresented
11 parties, and the name of the party represented by each attorney.
12

13 Former rule 42(a)(4)–(5) required the certificate or declaration to state the filing date of
14 any notice of intention to move for a new trial, the date and content of any ruling on that motion,
15 and the service date of notice of that ruling. But these facts were relevant only insofar as they
16 reflected one ground to extend the time to appeal under rule 3. The provision was underinclusive,
17 because rule 3 recognizes additional grounds to extend the time to appeal. In a substantive
18 change, revised rule 42(a)(4) therefore requires instead that the certificate or declaration state the
19 factual basis of “any extension of the time to appeal under rule 3.”
20

21 Former rule 40(a)(7) specified several documents whose filing dates the certificate or
22 declaration was required to state. But these documents were relevant only insofar as they affected
23 the process of procuring the record on appeal. The provision was underinclusive, because other
24 documents may also be relevant to that process. In a substantive change, revised rule 42(a)(6)
25 requires instead that the certificate or declaration state the filing date of “any document necessary
26 to procure the record on appeal.”
27

28 Former rule 42(a)(8) required the certificate or declaration to state the date of either
29 “certification” of the record or “the facts relating to failure to certify.” But the rules on appeals in
30 civil and noncapital criminal cases contain no procedure for certifying the *record*; and no party
31 may make a motion to *dismiss* an appeal in death penalty appeals, which are taken automatically
32 (rule 34(a)). Former rule 42(a)(8) also required the certificate or declaration to state the fact that
33 no proceeding for record preparation was pending in superior court or that the time to institute
34 such a proceeding had expired. Revised rule 42(a)(7) focuses the provision on its purpose by
35 requiring the certificate or declaration to state “the status of the record preparation process,”
36 including any order extending time to prepare the record.
37

38
39 **Rule 43. Applications in the reviewing court**
40

41 **(a) Service and filing**
42

43 Except as these rules provide otherwise, parties must serve and file all
44 applications, including applications to extend the time to file records,
45 briefs, or other documents, and applications to shorten time. For good
46 cause, the Chief Justice or presiding justice may excuse advance
47 service.

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(b) Contents

The application must state facts showing good cause—or exceptional good cause, when required by these rules—for granting the application and must identify any previous application filed by any party.

(c) Envelopes

An application to a Court of Appeal must be accompanied by addressed, postage-prepaid envelopes for the clerk’s use in mailing copies of the order on the application to all parties.

(d) Disposition

Unless the court determines otherwise, the Chief Justice or presiding justice may rule on the application.

Advisory Committee Comment

Revised rule 43 addresses applications generally. Revised rules 45 and 45.5 address applications to extend or shorten time.

Subdivision (a). Former rule 43 provided that the Chief Justice or presiding justice “may require an additional showing to be made” to support an application to the reviewing court. This provision in effect duplicated the rule’s subsequent provision requiring the application to state facts showing good cause for granting the application. Revised rule 43(a) deletes the provision for an “additional showing” but subdivision (b) retains the requirement of a showing of good cause. The change is not substantive.

Subdivision (c). Revised rule 43(c) limits the applicant’s duty to provide addressed, postage-prepaid envelopes to filings in the Court of Appeal. The Supreme Court does not use such envelopes.

Rule 44. Form, number, and cover of documents filed in the reviewing court

(a) Form

Except as these rules provide otherwise, documents filed in a reviewing court may be either produced on a computer or typewritten and must comply with the relevant provisions of rule 14(b).

1
2 **(b) Number of copies**
3

4 The following number of copies must be filed of every brief, petition,
5 motion, or other document, except the record, filed in a reviewing court:
6

7 (1) If filed in the Supreme Court:
8

- 9 (A) except as provided in (D), an original and 13 copies of a
10 petition for review, an answer, a reply, a brief on the merits,
11 an amicus curiae brief, an answer to an amicus curiae brief, a
12 petition for rehearing, or an answer to a petition for rehearing;
13
14 (B) an original and 10 copies of a petition for a writ within the
15 court's original jurisdiction, an opposition or other response
16 to the petition, or a reply;
17
18 (C) unless the court orders otherwise, an original and 2 copies of
19 any supporting document accompanying a petition for writ of
20 habeas corpus, an opposition or other response to the petition,
21 or a reply;
22
23 (D) an original and 8 copies of a petition for review to exhaust
24 state remedies under rule 33.3, an answer, or a reply, or an
25 amicus curiae letter under rule 28(g);
26
27 (E) an original and 8 copies of a motion or an opposition or other
28 response to a motion; and
29
30 (F) an original and 1 copy of an application, including an
31 application to extend time, or any other document.
32

33 (2) If filed in a Court of Appeal:
34

- 35 (A) an original and 4 copies of a brief, an amicus curiae brief, or
36 an answer to an amicus curiae brief, and, in civil appeals,
37 proof of delivery of 4 copies to the Supreme Court;
38
39 (B) an original and 4 copies of a petition, an answer, opposition
40 or other response to a petition, or a reply;
41
42 (C) an original and 3 copies of a motion or an opposition or other
43 response to a motion; and

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(D) an original and 1 copy of an application, including an application to extend time, or any other document.

(3) Unless the court orders otherwise by local rule or in the specific case, only one set of any separately bound supporting documents accompanying a document filed under (2)(B) or (C) need be filed.

(c) Cover color

(1) As far as practicable, the covers of briefs and petitions must be in the following colors:

- Appellant’s opening brief or appendix.....green
- Respondent’s brief or appendix.....yellow
- Appellant’s reply brief or appendix.....tan
- Joint appendix.....white
- Amicus curiae brief.....gray
- Answer to amicus curiae brief.....blue
- Petition for rehearing.....orange
- Answer to petition for rehearing.....blue
- Petition for original writ.....red
- Answer (or opposition) to petition for original writ.....red
- Reply to answer (or opposition) to petition for original writ.....red
- Petition for review.....white
- Answer to petition for review.....blue
- Reply to answer to petition for review.....white
- Opening brief on the merits.....white
- Answer brief on the merits.....blue
- Reply brief on the merits.....white

(2) In appeals under rule 16, the cover of a combined respondent’s brief and appellant’s opening brief must be yellow, and the cover of a combined reply brief and respondent’s brief must be tan.

(3) A brief or petition not conforming to (1) or (2) must be accepted for filing, but in case of repeated violations by an attorney or party the court may proceed as provided in rule 14(e).

(d) Cover information

The cover—or first page if there is no cover—of every document filed by an attorney in a reviewing court must comply with rule 14(b)(10)(D).

1
2 **Advisory Committee Comment**

3 **Subdivision (a).** Former rule 44(a) required that all copies of documents be clear,
4 legible, and on recycled paper, and encouraged the use of recycled paper for brief covers.
5 Revised rule 44(a) deletes these requirements because they duplicate provisions of rule 14(b),
6 incorporated by reference into the revised rule.

7
8 **Subdivision (b).** Revised rule 44(b)(1)(A) combines former rule 44(b)(1)(A) and (B).
9 Filling gaps, revised rule 44(b)(1)(A) specifies that an amicus curiae brief, an answer to an
10 amicus curiae brief, a petition for rehearing, and an answer to such a petition in the Supreme
11 Court must be filed in an original and 13 copies.

12
13 Filling a gap, revised rule 44(b)(1)(B) specifies that a reply to an opposition to a writ
14 petition in the Supreme Court must be filed in an original and 10 copies.

15
16 To conform to Supreme Court practice, revised rule 44(b)(1)(C) specifies that only an
17 original and 2 copies of any supporting document or exhibit accompanying a petition for writ of
18 habeas corpus, an opposition, or a reply must be filed unless the court orders otherwise.

19 Filling a gap, revised rule 44(b)(1)(D) specifies that an amicus curiae letter under rule
20 28(g) must be filed in an original and 8 copies.

21
22 Revised rule 44(b)(1)(F) and (2)(D) clarifies that only an original and one copy of “an
23 application, including an application for extension of time,” must be filed in either the Supreme
24 Court or the Court of Appeal.

25
26 Former rule 44(b)(2)(ii) required a party filing a brief in the Court of Appeal in a civil
27 case to attach proof of service of 5 copies on the Supreme Court. Revised rule 44(b)(2)(A)
28 reduces that number from 5 to 4. If the Court of Appeal has ordered such briefs sealed, the party
29 must comply with rule 15(c)(2) as amended effective January 1, 2005.

30
31 Filling a gap, revised rule 44(b)(2)(B) specifies that a reply to an opposition to a petition
32 in the Court of Appeal must be filed in an original and 4 copies.

33
34 Revised rule 44(b)(3) is new. Like former rule 44(b)(2)(B) and (C), revised rule
35 44(b)(2)(B) and (C) requires that certain documents be filed in the Court of Appeal in an original
36 and multiple copies. But the party may—and under certain rules, must—accompany such a filing
37 with supporting documents, and in some cases those documents may be voluminous. To relieve
38 the party of the burden of preparing—and the court of the burden of processing and storing—
39 multiple copies of voluminous supporting documents, it is the practice of several Courts of
40 Appeal to require only one set of any separately bound documents that a party files in support of a
41 filing under rule 44(b)(2)(B) or (C). Revised rule 44(b)(3) reflects that practice, but recognizes
42 that the courts may wish to order otherwise by local rule or in specific cases.

43
44 **Subdivision (c).** Filling gaps, revised rule 44(c) specifies the colors of the following
45 additional documents: appellant’s appendix (rule 5.1), respondent’s appendix, joint appendix,
46 answer to amicus curiae brief, and reply to answer (or opposition) to petition for original writ.

47

1 Filling a gap, revised rule 44(c)(2) specifies that in an appeal in which a party is both an
2 appellant and a respondent, the cover of a combined respondent's brief and appellant's opening
3 brief must be yellow, and the cover of a combined reply brief and respondent's brief must be tan.
4

5
6 **Rule 45. Extending and shortening time**

7
8 **(a) Computing time**

9
10 The Code of Civil Procedure governs computing and extending the time
11 to do any act required or permitted under these rules.
12

13 **(b) Extending time**

14
15 For good cause—or exceptional good cause, when required by these
16 rules—and except as these rules provide otherwise, the Chief Justice or
17 presiding justice may extend the time to do any act required or
18 permitted under these rules.
19

20 **(c) Shortening time**

21
22 For good cause and except as these rules provide otherwise, the Chief
23 Justice or presiding justice may shorten the time to do any act required
24 or permitted under these rules.
25

26 **(d) Application for extension**

27
28 (1) An application to extend time must include a declaration stating
29 facts, not mere conclusions, and must be served on all parties. For
30 good cause, the Chief Justice or presiding justice may excuse
31 advance service.
32

33 (2) The application must state:

34 (A) the due date of the document to be filed;

35 (B) the length of the extension requested;

36
37 (C) whether any earlier extensions have been granted and, if so,
38 their lengths and whether granted by stipulation or by the
39 court; and
40
41
42

1 (D) good cause—or exceptional good cause, when required by
2 these rules—for granting the extension, consistent with the
3 factors in rule 45.5(b).
4

5 **(e) Relief from default**
6

7 For good cause, a reviewing court may relieve a party from default for
8 any failure to comply with these rules except the failure to file a timely
9 notice of appeal or a timely statement of reasonable grounds in support
10 of a certificate of probable cause.
11

12 **(f) No extension by superior court**
13

14 Except as these rules provide otherwise, a superior court may not extend
15 the time to do any act to prepare the appellate record.
16

17 **(g) Notice to party**
18

- 19 (1) In a civil case, counsel must deliver to the client a copy of any
20 stipulation or application to extend time that counsel files.
21 Counsel must attach evidence of such delivery to the stipulation or
22 application, or certify in the stipulation or application that the copy
23 has been delivered.
24
- 25 (2) In a class action, the copy required under (1) need be delivered to
26 only one represented party.
27
- 28 (3) The evidence or certification of delivery under (1) need not include
29 the address of the party notified.
30

31 **Advisory Committee Comment**

32 **Subdivision (d).** Revised rule 45(d) is former rule 45.5(b).
33

34 **Subdivision (e).** Filling a gap, revised rule 45(e) specifies that in appeals after a plea of
35 guilty or nolo contendere, the reviewing court may not relieve any party from default for failure
36 to file the timely statement of reasonable grounds in support of a certificate of probable cause
37 required by rule 30(b)(1). (See *In re Chavez* (2003) 30 Cal.4th 643, 652–653.)
38

39 Former subdivision (c). Former rule 45(c) provided that the time to file a notice of
40 appeal could not be extended. The provision has been moved to rules 2(b) and 30.1(a).
41

42 Former rule 45(c) provided that the time to file a petition in the Supreme Court to review
43 a Court of Appeal decision could not be extended. The provision has been moved to rule
44 28(e)(2).

1 Former rule 45(c) provided that the time to grant or deny a petition for rehearing in the
2 Court of Appeal could not be extended. The provision has been moved to rule 25(c).

3
4 Former rule 45(c) provided that the time to grant or deny a petition for Supreme Court
5 review of a Court of Appeal decision could be extended only as provided in former rule 28(a).
6 The provision is deleted as unnecessary; revised rule 28.2(b) now states the only manner in which
7 the Supreme Court may extend that time.

8
9 Former rule 45(c) provided that the time to grant or deny a petition for rehearing in the
10 Supreme Court could be extended only as provided in former rule 24(a). The provision is deleted
11 as unnecessary; revised rule 29.5(c) now states the only manner in which the Supreme Court may
12 extend that time.

13
14 Former rule 45(c) included provisions relating to the time to do certain acts under former
15 rules 62 and 63(d). Those rules were repealed effective January 1, 2003.

16
17 Former rule 45(c) included a provision authorizing the Chief Justice or presiding justice
18 to relieve a party from default for failure to file a timely petition for review or rehearing. The
19 provision has been moved to rule 25(b)(4) in the case of the Court of Appeal and to rules 28(e)(2)
20 and 29.5(b) in the case of the Supreme Court.

21 22 23 **Rule 45.1. Appellate emergencies**

24 25 **(a) Emergency extensions of time**

26
27 If made necessary by the occurrence or danger of an earthquake, fire, or
28 other public calamity, or by the destruction of or danger to a building
29 housing a reviewing court, the Chair of the Judicial Council,
30 notwithstanding any other rule in this title, may:

- 31
32 (1) extend by no more than 14 additional days the time to do any act
33 required or permitted under these rules, or
34
35 (2) authorize specified courts to extend by no more than 30 additional
36 days the time to do any act required or permitted under these rules.

37 38 **(b) Applicability of order**

- 39
40 (1) An order under (a) must specify whether it applies throughout the
41 state, only to specified courts, or only to courts or attorneys in
42 specified geographic areas, or applies in some other manner.
43
44 (2) An order of the Chair of the Judicial Council under (a)(2) must
45 specify the length of the authorized extension.
46

1
2 **(b) Factors considered**
3

4 In determining good cause—or exceptional good cause, when required
5 by these rules—the court must consider the following factors when
6 applicable:
7

8 (1) The degree of prejudice, if any, to any party from a grant or denial
9 of the extension. A party claiming prejudice must support the
10 claim in detail.
11

12 (2) In a civil case, the positions of the client and any opponent with
13 regard to the extension.
14

15 (3) The length of the record, including the number of relevant trial
16 exhibits. A party relying on this factor must specify the length of
17 the record. In a civil case, a record containing one volume of
18 clerk’s transcript or appendix and two volumes of reporter’s
19 transcript is considered an average-length record.
20

21 (4) The number and complexity of the issues raised. A party relying
22 on this factor must specify the issues.
23

24 (5) Whether there are settlement negotiations and, if so, how far they
25 have progressed and when they might be completed.
26

27 (6) Whether the case is entitled to priority.
28

29 (7) Whether counsel responsible for preparing the document is new to
30 the case.
31

32 (8) Whether other counsel or the client needs additional time to review
33 the document.
34

35 (9) Whether counsel responsible for preparing the document has other
36 time-limited commitments that prevent timely filing of the
37 document. Mere conclusory statements that more time is needed
38 because of other pressing business will not suffice. Good cause
39 requires a specific showing of other obligations of counsel that:
40

41 (A) have deadlines that as a practical matter preclude filing the
42 document by the due date without impairing its quality, or
43

1 (B) arise from cases entitled to priority.
2

3 (10) Illness of counsel, a personal emergency, or a planned vacation
4 that counsel did not reasonably expect to conflict with the due date
5 and cannot reasonably rearrange.
6

7 (11) Any other factor that constitutes good cause in the context of the
8 case.
9

10 **Advisory Committee Comment** 11

12 **Subdivision (a).** Revised rule 45.5(a) restates in simpler terms the policies governing
13 extensions of time set forth in former rule 45.5(a), but intends no substantive change.

14 **Subdivision (c).** Former rule 45.5(c)(3) stated that the “average-length record” on appeal
15 was one volume of clerk’s transcript and two volumes of reporter’s transcript. Because the
16 average-length record in appeals from judgments of death is much longer, revised rule 45.5(c)(3)
17 limits the statement to civil cases. The revised rule also adds a reference to appendixes (rule 5.1).

18 **Former subdivision (b).** Former rule 45.5(b) is now revised rule 45(d).
19
20

21 **Rule 46. Documents violating rules not to be filed** 22

23 Except as these rules provide otherwise, the reviewing court clerk must
24 not file any record, brief, or other document that does not conform to
25 these rules.
26

27 **Advisory Committee Comment**

28 Revised rule 46 adds a proviso noting there are exceptions to this rule (e.g., rule 17(a)
29 and revised rule 56(d)(2)).
30

31 **Rule 46.5 Sanctions to compel compliance** 32

33
34 The failure of a court reporter or clerk to perform any duty imposed by
35 statute or these rules that delays the filing of the appellate record is an
36 unlawful interference with the reviewing court’s proceedings. It may be
37 treated as an interference in addition to or instead of any other sanction
38 that may be imposed by law for the same breach of duty. This rule does
39 not limit the reviewing court’s power to define and remedy any other
40 interference with its proceedings.
41

1
2 **Rule 47. Courts of Appeal with more than one division**

3
4 Appeals and original proceedings filed in a Court of Appeal with more
5 than one division, or transferred to such a court without designation of a
6 division, may be assigned to divisions in a way that will equalize the
7 distribution of business among them. The Court of Appeal clerk must
8 keep records showing the divisions in which cases and proceedings are
9 pending.

10
11 **Advisory Committee Comment**

12 Former rule 47(a) required that assignments of appeals in a multidivision Court of Appeal
13 be made “by the presiding justices successively for periods of one year unless a majority of the
14 judges of the court in the district shall otherwise determine”; former rule 47(b) required that
15 assignment of original proceedings and unassigned motions in such a court be made “as a
16 majority of the judges of the court in the district shall determine.” In practice, however, the
17 Courts of Appeal with more than one division have developed different ways to make such
18 assignments according to their needs. Recognizing this fact, revised rule 47 simply authorizes the
19 courts to make such assignments “in a way that will equalize the distribution of business” among
20 the several divisions. The change is not substantive.

21
22
23 **Rule 48. Substituting parties; substituting or withdrawing attorneys**

24
25 **(a) Substituting parties**

26
27 Substitution of parties in an appeal or original proceeding must be made
28 by serving and filing a motion in the reviewing court. The clerk of that
29 court must notify the superior court of any ruling on the motion.

30
31 **(b) Substituting attorneys**

32
33 A party may substitute attorneys by serving and filing in the reviewing
34 court a substitution signed by the party represented and the new
35 attorney. In all appeals and in original proceedings related to a superior
36 court proceeding, the party must also serve the superior court.

37
38 **(c) Withdrawing attorney**

39
40 (1) An attorney may request withdrawal by filing a motion to
41 withdraw. Unless the court orders otherwise, the motion need be
42 served only on the party represented and the attorneys directly
43 affected.
44

- 1 (2) The proof of service need not include the address of the party
2 represented. But if the court grants the motion, the withdrawing
3 attorney must promptly provide the court and the opposing party
4 with the party’s current or last known address and telephone
5 number.
6
7 (3) In all appeals and in original proceedings related to a superior
8 court proceeding, the reviewing court clerk must notify the
9 superior court of any ruling on the motion.
10
11 (4) If the motion is filed in any proceeding pending in the Supreme
12 Court after grant of review, the Supreme Court clerk must also
13 notify the Court of Appeal of any ruling on the motion.
14

15 **Advisory Committee Comment**

16 **Subdivision (a).** Revised rule 48(a) simplifies and restates former rule 48(a) to conform
17 to good practice. No substantive change is intended.
18

19 **Subdivision (b).** Former rule 48(b) required a party substituting attorneys to serve and
20 file either a stipulation or a motion in the reviewing court. In practice, however, a party does so
21 by serving and filing a *substitution*. Revised rule 48(b) conforms to that practice. The change is
22 not substantive.
23

24 Former rule 48(b) required the substitution to be signed by the party, the former attorney,
25 and the new attorney. In practice, however, the former attorney’s consent is not required because
26 that attorney does not have authority to prevent the substitution. In a substantive change intended
27 to conform to practice and to a reasonable reading of the governing statute (Code Civ. Proc., §
28 284, subd. 1), revised rule 48(b) requires only the party represented and the new attorney to sign
29 the substitution.
30

31 Former rule 48(b) required the new attorney, following a substitution, to “give notice
32 thereof to all parties.” Because such a notice would duplicate the requirement of revised rule
33 48(b) that the substitution be *served*, it is deleted.
34

35 **Subdivision (c).** Former rule 48(b) required an attorney wishing to withdraw to serve
36 and file either a stipulation or a motion in the reviewing court. In practice, however, an attorney
37 withdraws by filing a motion with proof of service on the party represented and the attorneys
38 directly affected. Revised rule 48(c)(1) conforms to that practice, but the change is not
39 substantive. To protect privacy, revised rule 48(c)(2) provides that the proof of service of the
40 motion need not include the address of the party represented; but if the motion is granted, the
41 withdrawing attorney must promptly provide the court and the opposing party with the party’s
42 current or last known address and telephone number.
43

44 Filling a gap, revised rule 48(c)(4) provides that if a motion to withdraw is filed in any
45 proceeding—whether an appeal or an original proceeding in the Court of Appeal—pending in the
46 Supreme Court after grant of review, the Supreme Court clerk must also notify the Court of
47 Appeal of any ruling on the motion.

1
2
3 **Rule 49. Writ of supersedeas**
4

5 **(a) Petition**
6

- 7 (1) A party seeking a stay of the enforcement of a judgment or order
8 pending appeal may serve and file a petition for writ of
9 supersedeas in the reviewing court.
10
11 (2) The petition must bear the same title as the appeal and, if known,
12 the appeal's docket number.
13
14 (3) The petition must explain the necessity for the writ and include
15 points and authorities.
16
17 (4) If the record has not been filed in the reviewing court, the petition
18 must include:
19
20 (A) the judgment or order, showing its date of entry;
21
22 (B) the notice of appeal, showing its date of filing; and
23
24 (C) a statement of the case, including a summary of the material
25 facts.
26
27 (5) The petition must be verified.
28

29 **(b) Opposition**
30

- 31 (1) Unless otherwise ordered, any opposition must be served and filed
32 within 15 days after the petition is filed.
33
34 (2) An opposition must state any material facts not included in the
35 petition and include points and authorities.
36
37 (3) The court may not issue a writ of supersedeas until the respondent
38 has had the opportunity to file an opposition.
39

40 **(c) Temporary stay**
41

- 42 (1) The petition may include a request for a temporary stay under rule
43 49.5 pending the ruling on the petition.

1
2 (2) Except when the custody of a minor is involved, a separately filed
3 request for a temporary stay need not be served on the respondent.
4

5 **(d) Issuing the writ**

6
7 (1) The court may issue the writ on any conditions it deems just.
8

9 (2) The court must hold a hearing before it may issue a writ staying an
10 order that awards or changes the custody of a minor.
11

12 (3) The court must notify the superior court, under rule 56(j), of any
13 writ or temporary stay that it issues.
14

15
16 **Rule 49.5. Request for writ of supersedeas or temporary stay**

17
18 **(a) Information on cover**

19
20 If a petition for original writ, petition for review, or any other document
21 requests a writ of supersedeas or temporary stay from a reviewing court,
22 the cover of the document must:
23

24 (1) prominently display the notice “STAY REQUESTED” and

25
26 (2) identify the nature and date of the proceeding or act sought to be
27 stayed.
28

29 **(b) Additional information**

30
31 The following information must appear either on the cover or at the
32 beginning of the text:
33

34 (1) the trial court and department involved, and

35
36 (2) the name and telephone number of the trial judge whose order the
37 request seeks to stay.
38

39 **(c) Sanction**

40
41 If the document does not comply with (a) and (b), the reviewing court
42 may decline to consider the request for writ of supersedeas or temporary
43 stay.

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Advisory Committee Comment

Subdivisions (a) and (b). Revised rule 49.5(a)(2) and (b) are substantive changes designed to assist the reviewing courts in processing requests for writ of supersedeas or temporary stay.

Rule 51. Substitute trial judge

(a) Who may act

If these rules require an act to be done by the judge who tried the case and that judge is unavailable or unable to act at the required time, the act may be done by another judge of the same court in counties with more than one judge.

(b) Who must designate

- (1) The presiding judge—or, if none, the senior judge—must designate the judge to act under (a).
- (2) If no judge of the superior court in the county is available, the Chair of the Judicial Council must designate a judge to do the act.

Rule 52. Presumption from record

The reviewing court will presume that the record in an appeal includes all matters material to deciding the issues raised. If the appeal proceeds without a reporter’s transcript, this presumption applies only if the claimed error appears on the face of the record.

Advisory Committee Comment

Rule 52 has been simplified and restated to reflect its intent as explained in the case law. (See, e.g., *Dumas v. Stark* (1961) 56 Cal.2d 673, 674.) No substantive change is intended.

Rule 53. Application and construction of rules

(a) Application

The rules in Title 1 apply to:

- 1 (1) appeals from superior courts;
2
3 (2) original proceedings, motions, applications, and petitions in the
4 Courts of Appeal and Supreme Court; and
5
6 (3) proceedings for transferring cases within the appellate jurisdiction
7 of the superior court to the Court of Appeal for review, unless rules
8 61–69 provide otherwise.
9

10 **(b) Construction**

11
12 These rules must be liberally construed to ensure the just and speedy
13 determination of the proceedings they govern.
14

15 **(c) Amendments to statutes**

16
17 In these rules a reference to a statute includes any subsequent
18 amendments to the statute.
19

20 **Advisory Committee Comment**

21 **Subdivision (c).** Revised rule 53(c) fills a gap. It is derived from Evidence Code
22 section 6.
23

24
25 **Rule 54. Amendments to rules**

26
27 Only the Judicial Council may amend these rules. An amendment must
28 be published in the advance pamphlets of the Official Reports and takes
29 effect on the date ordered by the Judicial Council.
30

31 **Advisory Committee Comment**

32 Former rule 54 stated that an amendment to these rules took effect 60 days after its first
33 publication unless the Judicial Council ordered otherwise. That practice is no longer followed;
34 currently, the Judicial Council specifies the effective date of an amendment in the order of the
35 Council adopting it. Revised rule 54 reflects this practice.
36

37 Former rule 54 provided for the *withdrawal* of a rule amendment by the Judicial Council
38 before its effective date. Revised rule 54 deletes this provision as obsolete: the council neither
39 uses nor needs the procedure. The council retains the authority to repeal or modify a pending
40 amendment at any time. The change is not substantive.
41
42
43

1 **CHAPTER 2. Rules on Original Proceedings in Reviewing Courts**

2
3 **Rule 56. Original proceedings**

4
5 **(a) Application**

6
7 (1) This rule governs petitions to the reviewing court for writs of
8 mandate, certiorari, or prohibition, or other writs within its original
9 jurisdiction. In all respects not provided for in this rule, rule 14
10 applies.

11
12 (2) This rule does not apply to petitions for writs of habeas corpus,
13 except as provided in rule 60, or to petitions for writs of review
14 under rules 57–59.

15
16 **(b) Petition**

17
18 (1) If the petition could have been filed first in a lower court, it must
19 explain why the reviewing court should issue the writ as an
20 original matter.

21
22 (2) If the petition names as respondent a judge, court, board, or other
23 officer acting in a public capacity, it must disclose the name of any
24 real party in interest.

25
26 (3) If the petition seeks review of trial court proceedings that are also
27 the subject of a pending appeal, the notice “Related Appeal
28 Pending” must appear on the cover of the petition and the first
29 paragraph of the petition must state:

30
31 (A) the appeal’s title, trial court docket number, and any
32 reviewing court docket number, and

33
34 (B) if the petition is filed under Penal Code section 1238.5, the
35 date the notice of appeal was filed.

36
37 (4) The petition must be verified.

38
39 (5) The petition must be accompanied by points and authorities, which
40 need not repeat facts alleged in the petition.

41
42 (6) Rule 14(c) governs the length of the petition and points and
43 authorities, but the tables, the certificate, the verification, and any

1 supporting documents are excluded from the limits stated in rule
2 14(c)(1) and (2).

- 3
4 (7) If the petition requests a temporary stay, it must comply with rule
5 49.5 and explain the urgency.

6
7 **(c) Contents of supporting documents**

- 8
9 (1) A petition that seeks review of a trial court ruling must be
10 accompanied by an adequate record, including copies of:
11
12 (A) the ruling from which the petition seeks relief;
13
14 (B) all documents and exhibits submitted to the trial court
15 supporting and opposing the petitioner's position;
16
17 (C) any other documents or portions of documents submitted to
18 the trial court that are necessary for a complete understanding
19 of the case and the ruling under review; and
20
21 (D) a reporter's transcript of the oral proceedings that resulted in
22 the ruling under review.
23
24 (2) If a transcript under (1)(D) is unavailable, the record must include
25 a declaration by counsel:
26
27 (A) explaining why the transcript is unavailable and fairly
28 summarizing the proceedings, including counsel's arguments
29 and any statement by the court supporting its ruling; or
30
31 (B) stating that the transcript has been ordered, the date it was
32 ordered, and the date it is expected to be filed, which must be
33 a date prior to any action requested of the reviewing court
34 other than issuance of a temporary stay supported by other
35 parts of the record.
36
37 (3) A declaration under (2) may omit a full summary of the
38 proceedings if part of the relief sought is an order to prepare a
39 transcript for use by an indigent criminal defendant in support of
40 the petition and if the declaration demonstrates the petitioner's
41 need for and entitlement to the transcript.
42

1 (4) In exigent circumstances, the petition may be filed without the
2 documents required by (1)(A)–(C) if counsel files a declaration
3 that explains the urgency and the circumstances making the
4 documents unavailable and fairly summarizes their substance.
5

6 (5) If the petitioner does not submit the required record or
7 explanations or does not present facts sufficient to excuse the
8 failure to submit them, the court may summarily deny a stay
9 request, the petition, or both.
10

11 **(d) Form of supporting documents**
12

13 (1) Documents submitted under (c) must comply with the following
14 requirements:

15 (A) They must be bound together at the end of the petition or in
16 separate volumes not exceeding 300 pages each. The pages
17 must be consecutively numbered.
18

19 (B) They must be index-tabbed by number or letter.
20

21 (C) They must begin with a table of contents listing each
22 document by its title and its index-tab number or letter. If a
23 document has attachments, the table of contents must give the
24 title of each attachment and a brief description of its contents.
25
26

27 (2) The clerk must file any supporting documents not complying with
28 (1), but the court may notify the petitioner that it may strike or
29 summarily deny the petition if the documents are not brought into
30 compliance within a stated reasonable time of not less than five
31 days.
32

33 (3) Rule 44(b)(3) governs the number of copies of supporting
34 documents to be filed.
35

36 **(e) Sealed records**
37

38 Rule 12.5 applies if a party seeks to lodge or file a sealed record or to
39 unseal a record.
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(f) Service

- (1) If the respondent is the superior court or a judge of that court, the petition and one set of supporting documents must be served on any named real party in interest but only the petition must be served on the respondent.
- (2) If the respondent is not the superior court or a judge of that court, both the petition and one set of supporting documents must be served on the respondent and on any named real party in interest.
- (3) The proof of service must give the telephone number of each attorney served and name each party represented by each attorney.
- (4) The petition must be served on a public officer or agency when required by statute or rule 44.5.
- (5) The clerk must file the petition even if its proof of service is defective, but if the petitioner fails to file a corrected proof of service within five days after the clerk gives notice of the defect the court may strike the petition or impose a lesser sanction.
- (6) The court may allow the petition to be filed without proof of service.

(g) Preliminary opposition

- (1) Within 10 days after the petition is filed, the respondent or any real party in interest, separately or jointly, may serve and file a preliminary opposition.
- (2) An opposition must contain points and authorities and a statement of any material fact not included in the petition.
- (3) Within 10 days after an opposition is filed, the petitioner may serve and file a reply.
- (4) Without requesting opposition or waiting for a reply, the court may grant or deny a request for temporary stay, deny the petition, issue an alternative writ or order to show cause, or notify the parties that it is considering issuing a peremptory writ in the first instance.

1 **(h) Return or opposition; reply**

- 2
- 3 (1) If the court issues an alternative writ or order to show cause, the
- 4 respondent or any real party in interest, separately or jointly, may
- 5 serve and file a return by demurrer, verified answer, or both. If the
- 6 court notifies the parties that it is considering issuing a peremptory
- 7 writ in the first instance, the respondent or any real party in interest
- 8 may serve and file an opposition.
- 9
- 10 (2) Unless the court orders otherwise, the return or opposition must be
- 11 served and filed within 30 days after the court issues the alternative
- 12 writ or order to show cause or notifies the parties that it is
- 13 considering issuing a peremptory writ in the first instance.
- 14
- 15 (3) Unless the court orders otherwise, the petitioner may serve and file
- 16 a reply within 15 days after the return or opposition is filed.
- 17
- 18 (4) If the return is by demurrer alone and the demurrer is not
- 19 sustained, the court may issue the peremptory writ without
- 20 granting leave to answer.

21

22 **(i) Attorney General’s amicus curiae brief**

- 23
- 24 (1) If the court issues an alternative writ or order to show cause, the
- 25 Attorney General may file an amicus curiae brief without the
- 26 permission of the Chief Justice or presiding justice, unless the brief
- 27 is submitted on behalf of another state officer or agency.
- 28
- 29 (2) The Attorney General must serve and file the brief within 14 days
- 30 after the return is filed or, if no return is filed, within 14 days after
- 31 the date it was due.
- 32
- 33 (3) The brief must provide the information required by rule 13(c)(2)
- 34 and comply with rule 13(c)(4).
- 35
- 36 (4) Any party may serve and file an answer within 14 days after the
- 37 brief is filed.

38

39 **(j) Notice to trial court**

- 40
- 41 (1) If a writ or order issues directed to any judge, court, board, or other
- 42 officer, the reviewing court clerk must promptly send a certified

1 copy of the writ or order to the person or entity to whom it is
2 addressed.

3
4 (2) If the writ or order stays or prohibits proceedings set to occur
5 within seven days or requires action within seven days—or in any
6 other urgent situation—the reviewing court clerk must make a
7 reasonable effort to notify the clerk of the respondent court by
8 telephone. The clerk of the respondent court must then notify the
9 judge or officer most directly concerned.

10
11 (3) The clerk need not give telephonic notice of the summary denial of
12 a writ, whether or not a stay previously issued.

13
14 **(k) Responsive pleading under Code of Civil Procedure section 418.10**

15
16 If the Court of Appeal denies a petition for writ of mandate brought
17 under Code of Civil Procedure section 418.10(c) and the Supreme Court
18 denies review of the Court of Appeal’s decision, the time to file a
19 responsive pleading in the trial court is extended until 10 days after the
20 Supreme Court files its order denying review.

21
22 **(l) Costs**

23
24 (1) Except in a proceeding in which a party is entitled to court-
25 appointed counsel, the prevailing party in an original proceeding is
26 entitled to costs if the court resolves the proceeding by written
27 opinion after issuing an alternative writ, an order to show cause, or
28 a peremptory writ in the first instance.

29
30 (2) In the interests of justice, the court may award or deny costs as it
31 deems proper.

32
33 (3) The opinion or order resolving the proceeding must specify the
34 award or denial of costs.

35
36 (4) Rule 27(b)–(d) governs the procedure for recovering costs under
37 this rule.

38
39 **Advisory Committee Comment**

40 Revised rule 56 combines the provisions of former rules 56 and 56.4.
41

1 **Subdivision (b).** Because of the importance of the point, revised rule 56(b)(6) explicitly
2 states that the provisions of rule 14(c)—and hence the word-count limits imposed by that rule—
3 apply to a petition for original writ.
4

5 **Subdivision (d).** Revised rule 56(d)(3) fills a gap by specifying that a petitioner must file
6 only one set of supporting documents in the reviewing court. The revised rule, however,
7 recognizes the courts’ practice of requiring additional sets of such documents when needed.
8

9 **Subdivision (f).** Revised rule 56 (f)(1) makes it clear that the required supporting
10 documents must not be served on the respondent if the latter, as is commonly the case, is the
11 superior court or a judge of that court.
12

13 **Subdivision (g).** Consistently with practice, revised rule 56 draws a distinction between
14 a “preliminary opposition,” which the respondent or a real party in interest may file before the
15 court takes any action on the petition (subd. (g)(1)), and a more formal “opposition,” which the
16 respondent or a real party in interest may file if the court notifies the parties that it is considering
17 issuing a peremptory writ in the first instance (subd. (h)(1)).
18

19 Former rule 56(b) allowed the respondent or any real party in interest to file a preliminary
20 opposition “within five days after service *and* filing” of the petition. Because the date of service
21 and the date of filing do not necessarily coincide, the provision was unclear. In a substantive
22 change, revised rule 56(g)(1) instead allows the respondent or any real party in interest to file a
23 preliminary opposition within 10 days after the petition is *filed*, the 5 additional days being
24 allowed for mailing. The reviewing court retains the power to act in any case without obtaining
25 an opposition (revised rule 56(g)(4)).
26

27 Revised rule 56(g)(3) is new. Former rule 56 did not expressly authorize petitioners to
28 reply to preliminary oppositions, but the reviewing courts often permitted such replies. In a
29 substantive change intended to formalize this practice, revised rule 56(g)(3) provides that a
30 petitioner may serve and file a reply within 10 days after an opposition is filed. To permit prompt
31 action in urgent cases, however, the provision recognizes that the reviewing court may act on the
32 petition without waiting for a reply.
33

34 Filling a gap, revised rule 56(g)(4) recognizes that the reviewing court may also “grant or
35 deny a request for temporary stay” without requesting opposition or waiting for a reply.
36

37 The several references in revised rule 56 to the power of the court to issue a peremptory
38 writ in the first instance, after notifying the parties that it is considering doing so (subs. (g)–(h)),
39 implement the rule of *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171. The change
40 is not substantive.
41

42 **Subdivision (h).** Former rule 56(f) required the return to be filed “at least five days
43 before the date set for hearing.” Because “hearing” in this context meant oral argument before
44 the reviewing court, the provision caused administrative difficulties: for example, the five-day
45 limit allowed little or no time for the petitioner to reply to the return or for the court to prepare for
46 oral argument. In a substantive change intended to alleviate those difficulties, revised rule
47 56(h)(2) requires instead that the return or opposition be served and filed within 30 days after the
48 court issues the alternative writ or order to show cause or notifies the parties that it is considering
49 issuing a peremptory writ in the first instance. To permit prompt action in urgent cases, however,
50 the provision recognizes that the reviewing court may order otherwise.
51

1 Revised subdivision 56(h)(3) is new. In a substantive change, it formalizes the common
2 practice of permitting petitioners to file replies to returns and specifies that such a reply must be
3 served and filed within 15 days after the return is filed. To permit prompt action in urgent cases,
4 however, the provision recognizes that the reviewing court may order otherwise.
5

6 **Subdivision (l).** Revised rule 56(l) is former rule 56.4.
7
8

9 **Rule 57. Review of Workers' Compensation Appeals Board cases**

10 **(a) Petition**

- 11 (1) A petition to review an order, award, or decision of the Workers'
12 Compensation Appeals Board must include:
13 (A) the order, award, or decision to be reviewed, and
14 (B) the workers' compensation judge's minutes of hearing and
15 summary of evidence, findings and decision, and report and
16 recommendation on the petition for reconsideration.
17
18 (2) If the petition claims that the board's ruling is not supported by
19 substantial evidence, it must fairly state and attach copies of all the
20 relevant material evidence.
21
22 (3) The petition must be accompanied by proof of service of two
23 copies of the petition on the Secretary of the Workers'
24 Compensation Appeals Board in San Francisco and one copy on
25 each party who appeared in the action and whose interest is
26 adverse to the petitioner. Service on the board's local district
27 office is not required.
28
29
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31
32

33 **(b) Answer and reply**

- 34 (1) Within 25 days after the petition is filed, the board or any real
35 party in interest may serve and file an answer and any relevant
36 exhibits not included in the petition.
37
38 (2) Within 15 days after an answer is filed, the petitioner may serve
39 and file a reply.
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Advisory Committee Comment

Subdivision (a). In a substantive change intended to assist the reviewing court in understanding the procedural history of the case and the stipulations and evidence introduced at the hearing, revised rule 57(a)(1)(B) requires the petition to include the minutes of hearing and summary of evidence prepared by the workers’ compensation judge.

To assist the reviewing court in determining the merits, revised rule 57(a)(2) requires that a petition that raises any issue of the substantiality of the evidence must not only state, but must also attach copies of, all the material evidence relevant to that issue. The change is substantive.

To clarify on whom and where the petition must be served, revised rule 57(a)(3) specifies that it must be served on the Secretary of the Workers’ Compensation Appeals Board in San Francisco. Neither the petition nor a courtesy copy should be served on the local district office of the board.

Subdivision (b). Former rule 57(b) measured the time to file an answer (or reply) from the date the petition (or answer) was *served*; revised rule 57(b) instead measures that time from the date the petition (or answer) is *filed*. In each case the revised rule allows five additional days for mailing. The principal reason for this substantive change is that the filing date of a document is more reliable than the date appearing on its proof of service. Using the filing date results in greater certainty for the reviewing court and makes it easier for the reviewing court clerk to verify the relevant date, both when the motion is filed and later when an opposition is presented for filing. The rule is thus made consistent with the rules providing that the filing date controls the time to prepare answers and replies to briefs and petitions (see, e.g, rules 15(a), 28(e), 29.1(a), 29.5(b), 33(c), and 36(c)).

To clarify that a respondent may rely on exhibits filed with the petition without duplicating them in the answer, revised rule 57(b)(1) specifies that exhibits filed with an answer must be limited to exhibits “not included in the petition.”

Rule 58. Review of Public Utilities Commission cases

(a) Petition

- (1) A petition to review an order or decision of the Public Utilities Commission must be verified and must be served on the executive director and general counsel of the commission and any real parties in interest.
- (2) A real party in interest is one who was a party of record to the proceeding and took a position adverse to the petitioner.

1 the filing date controls the time to prepare answers and replies to briefs and petitions (see, e.g.,
2 rules 15(a), 28(e), 29.1(a), 29.5(b), 33(c), and 36(c)).
3
4

5 **Rule 60. Petition for writ of habeas corpus**
6

7 **(a) Required Judicial Council form**
8

- 9 (1) A petition to a reviewing court for writ of habeas corpus—or other
10 writ within its original jurisdiction—that seeks release from, or
11 modification of the conditions of, custody of a person confined in a
12 state or local penal institution, hospital, narcotics treatment facility,
13 or other institution must be filed on Judicial Council form
14 MC-275, *Petition for Writ of Habeas Corpus*. For good cause the
15 court may permit the filing of a petition that is not on form
16 MC-275.
17
18 (2) A petition on form MC-275 need not comply with the provisions
19 of rule 56 that prescribe the form and content of a petition and
20 require the petition to be accompanied by points and authorities.
21

22 **(b) Petition filed by attorney**
23

24 If the petition is filed by an attorney:
25

- 26 (1) The petition need not be filed on form MC-275 but must contain
27 the information requested in that form and must comply with rule
28 14(a)–(b).
29
30 (2) Any memorandum of points and authorities accompanying the
31 petition must comply with rule 14(a)–(b).
32
33 (3) The petition must be accompanied by a copy of any petition—
34 excluding exhibits—pertaining to the same judgment and
35 petitioner that was previously filed in any lower state court or any
36 federal court. If such documents have previously been filed in the
37 Supreme Court, the petition need only so state.
38
39 (4) Any supporting documents accompanying the petition must
40 comply with rules 44(b)(1)(C) and 56(d).
41

- 1 (5) The petition and any memorandum of points and authorities must
2 support any reference to a matter in the supporting documents by a
3 citation to its index tab and page.
4
5 (6) If the petition asserts a claim that was the subject of an evidentiary
6 hearing, the petition must be accompanied by a certified transcript
7 of that hearing.
8
9 (7) The clerk must file an attorney’s petition not complying with (1)–
10 (6) if it otherwise complies with the rules of court, but the court
11 may notify the attorney that it may strike the petition or impose a
12 lesser sanction if the petition is not brought into compliance within
13 a stated reasonable time of not less than five days.

14
15 **(c) Record**

16
17 Before ruling on the petition, the court may order the custodian of any
18 relevant record to produce the record or a certified copy to be filed with
19 the court.
20

21 **(d) Informal response**

- 22
23 (1) The court may request an informal written response from the
24 respondent, the real party in interest, or an interested person. The
25 court must send a copy of any request to the petitioner.
26
27 (2) The response must be served and filed within 15 days or as the
28 court specifies.
29
30 (3) If a response is filed, the court must notify the petitioner that a
31 reply may be served and filed within 15 days or as the court
32 specifies. The court may not deny the petition until that time has
33 expired.
34

35 **(e) Petition unrelated to appellate district**

- 36
37 (1) A Court of Appeal may deny without prejudice a petition for writ
38 of habeas corpus that is based primarily on facts occurring outside
39 the court’s appellate district, including petitions that question:
40
41 (A) the validity of judgments or orders of trial courts located
42 outside the district, or
43

1 (B) the conditions of confinement or conduct of correctional
2 officials outside the district.

3
4 (2) If the court denies a petition solely under (1), the order must state
5 the basis of the denial and must identify the appropriate court in
6 which to file the petition.

7
8 **Advisory Committee Comment**

9 Revised rule 60(a)–(b) restates former rule 56.5.

10
11 **Subdivision (b).** New subdivision (b)(5) of revised rule 60 is a substantive change
12 intended to assist the reviewing courts in processing habeas corpus petitions filed by attorneys. It
13 implements a recent amendment to rule 56(d)(1) that requires documents submitted in support of
14 a writ petition to be continuously paginated and index-tabbed by number or letter.

15
16 New subdivision (b)(6) of revised rule 60 is a substantive change intended to assist the
17 reviewing courts in determining the merits of any habeas corpus petition that was the subject of
18 an evidentiary hearing in a lower court.

19
20 Subdivision (b)(7) of revised rule 60 is former rule 56.5(d), conformed to revised rule
21 56(d)(2).

22
23 **Subdivision (e).** Revised rule 60(e) restates section 6.5 of the Standards of Judicial
24 Administration.

25
26
27 **CHAPTER 4. Administrative Provisions Governing Reviewing Courts**

28
29 **Rule 70. Preservation and destruction of Court of Appeal records**

30
31 **(a) Form in which records may be preserved**

32
33 (1) Court of Appeal records may be preserved in any appropriate
34 medium, including paper or an optical, electronic, magnetic,
35 photographic, or microphotographic medium or other technology
36 capable of accurately reproducing the original. The medium used
37 must comply with the minimum standards or guidelines for the
38 preservation and reproduction of the medium adopted by the
39 American National Standards Institute or the Association for
40 Information and Image Management.

41
42 (2) If records are preserved in a medium other than paper, the
43 following provisions of Government Code section 68150 apply:
44 subdivisions (b)–(d); (f), excluding subdivision (f)(1); and (g)–(h).

- 1 (A) the cases called for argument,
2
3 (B) the justices hearing argument,
4
5 (C) the name of the attorney arguing for each party, and
6
7 (D) whether the case was submitted at the close of argument or
8 the court requested further briefing;
9

- 10 (5) the date of submission, if other than the date of argument;
11
12 (6) orders vacating submission, including the reason for vacating and
13 the resubmission date;
14
15 (7) orders dismissing appeals for lack of jurisdiction;
16
17 (8) orders consolidating cases;
18
19 (9) orders affecting a judgment or its finality date; and
20
21 (10) orders changing or correcting any of the above.
22

23 **(c) Optional contents**
24

25 At the court’s discretion, the minutes may include such other matter as:
26

- 27 (1) assignments of justices by the Chief Justice;
28
29 (2) reports of the Commission on Judicial Appointments confirming
30 justices; and
31
32 (3) memorials.
33

34 **Advisory Committee Comment**

35 New rule 71 is former rule 55(c).
36

37 **Subdivision (b).** New rule 71(b)(5) fills a gap but is not a substantive change. Former rule
38 55(c)(6) has been deleted as inconsistent with current practice: “clerical errors” are not corrected
39 by court *order* and do not require *modification* of a published opinion. Former rule 55(c)(7)
40 required the minutes to reflect any orders dismissing appeals for lack of jurisdiction “unless the
41 lack of jurisdiction is patent and uncontested”; because any order dismissing an appeal for lack of
42 jurisdiction should be noted in the minutes, new rule 71(b)(7) omits the exception.
43

1
2 **Rule 75. Court of Appeal administrative presiding justice**

3
4 **(a) Designation**

- 5
6 (1) In a Court of Appeal with more than one division, the Chief Justice
7 may designate a presiding justice to act as administrative presiding
8 justice. The administrative presiding justice serves at the pleasure
9 of the Chief Justice for the period specified in the designation
10 order.
11
12 (2) The administrative presiding justice must designate another
13 member of the court to serve as acting administrative presiding
14 justice in the administrative presiding justice's absence; if the
15 administrative presiding justice does not make that designation, the
16 Chief Justice must do so.
17
18 (3) In a Court of Appeal with only one division, the presiding justice
19 acts as the administrative presiding justice.
20

21 **(b) Responsibilities**

22
23 The administrative presiding justice is responsible for leading the court,
24 establishing policies, promoting access to justice for all members of the
25 public, providing a forum for the fair and expeditious resolution of
26 disputes, and maximizing the use of judicial and other resources.
27

28 **(c) Duties**

29
30 The administrative presiding justice must perform any duties delegated
31 by a majority of the justices in the district with the Chief Justice's
32 concurrence. In addition, the administrative presiding justice:
33

- 34 (1) *Personnel*: has general direction and supervision of the
35 clerk/administrator and all court employees except those assigned
36 to a particular justice or division;
37
38 (2) *Unassigned matters*: has the authority of a presiding justice with
39 respect to any matter that has not been assigned to a particular
40 division;
41
42 (3) *Judicial Council*: cooperates with the Chief Justice and any officer
43 authorized to act for the Chief Justice in connection with the

1 making of reports and the assignment of judges or retired judges
2 under article VI, section 6 of the California Constitution;

3
4 (4) *Transfer of cases*: cooperates with the Chief Justice in expediting
5 judicial business and equalizing the work of judges by
6 recommending, when appropriate, the transfer of cases by the
7 Supreme Court under article VI, section 12 of the California
8 Constitution;

9
10 (5) *Administration*: supervises the administration of the court's day-to-
11 day operations, including personnel matters, but must secure the
12 approval of a majority of the justices in the district before
13 implementing any change in court policies;

14
15 (6) *Budget*: has sole authority in the district over the budget as
16 allocated by the Chair of the Judicial Council, including but not
17 limited to budget transfers, execution of purchase orders,
18 obligation of funds, and approval of payments; and

19
20 (7) *Facilities*: except as provided in (d), has sole authority in the
21 district over the operation, maintenance, renovation, expansion,
22 and assignment of all facilities used and occupied by the district.

23
24 **(d) Geographically separate divisions**

25
26 Under the general oversight of the administrative presiding justice, the
27 presiding justice of a geographically separate division:

28
29 (1) generally directs and supervises all of the division's court
30 employees not assigned to a particular justice;

31
32 (2) has authority to act on behalf of the division regarding day-to-day
33 operations;

34
35 (3) administers the division budget for day-to-day operations,
36 including expenses for maintenance of facilities and equipment;
37 and

38
39 (4) operates, maintains, and assigns space in all facilities used and
40 occupied by the division.

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Advisory Committee Comment

Revised rule 75 combines former rules 75 and 76.

Rule 76.1. Reviewing court clerk/administrator

(a) Selection

A reviewing court may employ a clerk/administrator selected in accordance with procedures adopted by the court.

(b) Responsibilities

Acting under the general direction and supervision of the administrative presiding justice, the clerk/administrator is responsible for planning, organizing, coordinating, and directing, with full authority and accountability, the management of the clerk’s office and all nonjudicial support activities in a manner that promotes access to justice for all members of the public, provides a forum for the fair and expeditious resolution of disputes, and maximizes the use of judicial and other resources.

(c) Duties

Under the direction of the administrative presiding justice, the clerk/administrator:

- (1) *Personnel*: directs and supervises all court employees assigned to the clerk/administrator by the administrative presiding justice and ensures that the court receives a full range of human resources support;
- (2) *Budget*: develops, administers, and monitors the court budget and develops practices and procedures to ensure that annual expenditures are within the budget;
- (3) *Contracts*: negotiates contracts on the court’s behalf in accord with established contracting procedures and applicable laws;
- (4) *Calendar management*: employs and supervises efficient calendar and caseflow management, including analyzing and evaluating

1 pending caseloads and recommending effective calendar
2 management techniques;

- 3
4 (5) *Technology*: coordinates technological and automated systems
5 activities to assist the court;
6
7 (6) *Facilities*: coordinates facilities, space planning, court security,
8 and business services support, including the purchase and
9 management of equipment and supplies;
10
11 (7) *Records*: creates and manages uniform record-keeping systems,
12 collecting data on pending and completed judicial business and the
13 court's internal operation as the court and Judicial Council require;
14
15 (8) *Recommendations*: identifies problems and recommends policy,
16 procedural, and administrative changes to the court;
17
18 (9) *Public relations*: represents the court to internal and external
19 customers—including the other branches of government—on
20 issues pertaining to the court;
21
22 (10) *Liaison*: acts as liaison with other governmental agencies;
23
24 (11) *Committees*: provides staff for judicial committees;
25
26 (12) *Administration*: develops and implements administrative and
27 operational programs and policies for the court and the clerk's
28 office; and
29
30 (13) *Other*: performs other duties as the administrative presiding justice
31 directs.
32

33 **(d) Geographically separate divisions**

34
35 Under the general oversight of the clerk/administrator, an assistant
36 clerk/administrator of a geographically separate division has
37 responsibility for the nonjudicial support activities of that division.
38
39

1
2 **Rule 76.5. Appointment of appellate counsel**

3
4 **(a) Procedures**

5
6 (1) Each Court of Appeal must adopt procedures for appointing
7 appellate counsel for indigents not represented by the State Public
8 Defender in all cases in which indigents are entitled to appointed
9 counsel.

10
11 (2) The procedures must require each attorney seeking appointment to
12 complete a questionnaire showing the attorney's California State
13 Bar number, date of admission, qualifications, and experience.

14
15 **(b) List of qualified attorneys**

16
17 (1) The Court of Appeal must evaluate the attorney's qualifications for
18 appointment and, if the attorney is qualified, place the attorney's
19 name on a list to receive appointments in appropriate cases.

20
21 (2) The court must divide its appointments list into at least two levels
22 based on the attorneys' experience and qualifications, using criteria
23 approved by the Judicial Council or its designated oversight
24 committee.

25
26 **(c) Demands of the case**

27
28 In matching counsel with the demands of the case, the Court of Appeal
29 should consider:

30
31 (1) the length of the sentence;

32
33 (2) the complexity or novelty of the issues;

34
35 (3) the length of the trial and of the reporter's transcript; and

36
37 (4) any questions concerning the competence of trial counsel.

38
39 **(d) Evaluation**

40
41 The court must review and evaluate the performance of each appointed
42 counsel to determine whether counsel's name should remain on the list

1 at the same level, be placed on a different level, or be deleted from the
2 list.

3
4 **(e) Contracts to perform administrative functions**

5
6 (1) The court may contract with an administrator having substantial
7 experience in handling appellate court appointments to perform
8 any of the duties prescribed by this rule.

9
10 (2) The court must provide the administrator with the information
11 needed to fulfill the administrator's duties.

12
13 **Advisory Committee Comment**

14 Revised rule 76.5 combines former rule 76.5 and former section 20(a)–(b) of the
15 Standards of Judicial Administration. No substantive change is intended.

16
17 **Subdivision (a).** On its face, former rule 76.5 applicable only to appeals in criminal
18 cases, but in practice the rule was also applied to appeals in certain juvenile, mental health,
19 paternity, and other cases in which indigent appellants were entitled to appointed appellate
20 counsel. Reflecting that practice, revised rule 76.5(a) declares that the rule applies “in all cases in
21 which indigents are entitled to appointed counsel.”

22
23 **Subdivision (b).** Former rule 76.5(b) required the Court of Appeal to maintain “one or
24 more lists” of attorneys qualified to receive appointments to represent indigent appellants.
25 Consistently with practice, revised rule 76.5(b)(2) instead directs the court to maintain one list of
26 such attorneys divided into at least two “levels” based on the attorneys’ experience and
27 qualifications.

28
29 Former rule 76.5(b) required the Court of Appeal, in establishing the lists of qualified
30 attorneys, to “consider the guidelines in section 20 of the Standards of Judicial Administration.”
31 Subdivision (b) of section 20 classified qualified attorneys into three lists, but those
32 classifications have become obsolete in practice. To facilitate ongoing management of the court-
33 appointed counsel program, revised rule 76.5(b)(2) instead requires the Court of Appeal to use
34 “criteria approved by the Judicial Council or its designated oversight committee.” The
35 “designated oversight committee” is currently the Appellate Indigent Defense Oversight Advisory
36 Committee.

37
38 The second paragraph of former section 20(a) of the Standards of Judicial Administration
39 prescribed four “factors” to be considered by the Court of Appeal in matching counsel with the
40 demands of the case under rule 76.5. To promote efficiency, those factors have been moved from
41 section 20 into rule 76.5 itself (subd. (c)).

42
43 **Subdivision (d).** Former rule 76.5(c) required the Court of Appeal to evaluate the
44 performance of each appointed counsel to determine whether counsel’s name should remain “on
45 the same appointment list, be placed on a different list,” or be deleted. Consistently with the
46 usage adopted in revised rule 76.5(b), discussed above, revised rule 76.5(d) instead directs the
47 Court of Appeal to determine whether counsel’s name should remain “at the same level, be
48 placed on a different level,” or be deleted.

1
2 **Subdivision (e).** The final sentence of former rule 76.5(d) provided that “if the
3 administrator is to perform the review and evaluation functions specified in subdivision (c), the
4 court shall notify the administrator of any superior or substandard performance by appointed
5 counsel.” In a nonsubstantive change intended to make the rule consistent with the practice of the
6 Courts of Appeal, revised rule 76.5(e)(2) deletes the quoted directive. The requirement of revised
7 rule 76.5(e)(1) that the court “must provide the administrator with the information needed to
8 fulfill the administrator’s duties” ensures that the courts will, when necessary or advisable,
9 communicate with the district appellate projects concerning the quality of appointed counsel’s
10 performance.
11

12
13 **Rule 76.6. Qualifications of counsel in death penalty appeals and habeas**
14 **corpus proceedings**

15
16 **(a) Purpose**

17
18 This rule defines the minimum qualifications for attorneys appointed by
19 the Supreme Court in death penalty appeals and habeas corpus
20 proceedings related to sentences of death. An attorney is not entitled to
21 appointment simply because the attorney meets these minimum
22 qualifications.
23

24 **(b) General qualifications**

25
26 The Supreme Court may appoint an attorney only if it has determined,
27 after reviewing the attorney’s experience, writing samples, references,
28 and evaluations under (d) through (f), that the attorney has demonstrated
29 the commitment, knowledge, and skills necessary to competently
30 represent the defendant. An appointed attorney must be willing to
31 cooperate with an assisting counsel or entity that the court may
32 designate.
33

34 **(c) Definitions**

35
36 As used in this rule:

- 37
38 (1) “Appointed counsel” or “appointed attorney” means an attorney
39 appointed to represent a person in a death penalty appeal or death
40 penalty–related habeas corpus proceedings in the Supreme Court.
41 Appointed counsel may be either lead counsel or associate counsel.
42
43 (2) “Lead counsel” means an appointed attorney or an attorney in the
44 Office of the State Public Defender, the Habeas Corpus Resource

1 Center, or the California Appellate Project in San Francisco who is
2 responsible for the overall conduct of the case and for supervising
3 the work of associate and supervised counsel. If two or more
4 attorneys are appointed to represent a defendant jointly in a death
5 penalty appeal, in death penalty–related habeas corpus
6 proceedings, or in both classes of proceedings together, one such
7 attorney will be designated as lead counsel.
8

9 (3) “Associate counsel” means an appointed attorney who does not
10 have the primary responsibility for the case but nevertheless has
11 casewide responsibility to perform the duties for which that
12 attorney was appointed, whether they are appellate, habeas corpus,
13 or appellate and habeas corpus duties. Associate counsel must
14 meet the same minimum qualifications as lead counsel.
15

16 (4) “Supervised counsel” means an attorney who works under the
17 immediate supervision and direction of lead or associate counsel
18 but is not appointed by the Supreme Court. Supervised counsel
19 must be an active member of the State Bar of California.
20

21 (5) “Assisting counsel or entity” means an attorney or entity
22 designated by the Supreme Court to provide appointed counsel
23 with consultation and resource assistance. Entities that may be
24 designated include the Office of the State Public Defender, the
25 Habeas Corpus Resource Center, and the California Appellate
26 Project in San Francisco.
27

28 **(d) Qualifications for appointed appellate counsel**
29

30 An attorney appointed as lead or associate counsel in a death penalty
31 appeal must have at least the following qualifications and experience:
32

33 (1) Active practice of law in California for at least four years.
34

35 (2) Either:
36

37 (A) service as counsel of record for a defendant in seven
38 completed felony appeals, including one murder case; or
39

40 (B) service as counsel of record for a defendant in five completed
41 felony appeals and as supervised counsel for a defendant in
42 two death penalty appeals in which the opening brief has
43 been filed. Service as supervised counsel in a death penalty

1 appeal will apply toward this qualification only if lead or
2 associate counsel in that appeal attests that the supervised
3 attorney performed substantial work on the case and
4 recommends the attorney for appointment.
5

- 6 (3) Familiarity with Supreme Court practices and procedures,
7 including those related to death penalty appeals.
8
- 9 (4) Within three years before appointment, completion of at least nine
10 hours of Supreme Court–approved appellate criminal defense
11 training, continuing education, or course of study, at least six hours
12 of which involve death penalty appeals. If the Supreme Court has
13 previously appointed counsel to represent a defendant in a death
14 penalty appeal or a related habeas corpus proceeding, and counsel
15 has provided active representation within three years before the
16 request for a new appointment, the court, after reviewing counsel's
17 previous work, may find that such representation constitutes
18 compliance with this requirement.
19
- 20 (5) Proficiency in issue identification, research, analysis, writing, and
21 advocacy, taking into consideration all of the following:
22
 - 23 (A) two writing samples—ordinarily appellate briefs—written by
24 the attorney and presenting an analysis of complex legal
25 issues;
 - 26
 - 27 (B) if the attorney has previously been appointed in a death
28 penalty appeal or death penalty–related habeas corpus
29 proceeding, the evaluation of the assisting counsel or entity in
30 that proceeding;
 - 31
 - 32 (C) recommendations from two attorneys familiar with the
33 attorney’s qualifications and performance; and
34
 - 35 (D) if the attorney is on a panel of attorneys eligible for
36 appointments to represent indigents in the Court of Appeal,
37 the evaluation of the administrator responsible for those
38 appointments.
39

1
2 **(e) Qualifications for appointed habeas corpus counsel**
3

4 An attorney appointed as lead or associate counsel to represent a person
5 in death penalty–related habeas corpus proceedings must have at least
6 the following qualifications and experience:
7

- 8 (1) Active practice of law in California for at least four years.
9
10 (2) Either:
11
12 (A) service as counsel of record for a defendant in five completed
13 felony appeals or writ proceedings, including one murder
14 case, and service as counsel of record for a defendant in three
15 jury trials or three habeas corpus proceedings involving
16 serious felonies; or
17
18 (B) service as counsel of record for a defendant in five completed
19 felony appeals or writ proceedings and service as supervised
20 counsel in two death penalty–related habeas corpus
21 proceedings in which the petition has been filed. Service as
22 supervised counsel in a death penalty–related habeas corpus
23 proceeding will apply toward this qualification only if lead or
24 associate counsel in that proceeding attests that the attorney
25 performed substantial work on the case and recommends the
26 attorney for appointment.
27
28 (3) Familiarity with the practices and procedures of the California
29 Supreme Court and the federal courts in death penalty–related
30 habeas corpus proceedings.
31
32 (4) Within three years before appointment, completion of at least nine
33 hours of Supreme Court–approved appellate criminal defense or
34 habeas corpus defense training, continuing education, or course of
35 study, at least six hours of which address death penalty habeas
36 corpus proceedings. If the Supreme Court has previously
37 appointed counsel to represent a defendant in a death penalty
38 appeal or a related habeas corpus proceeding, and counsel has
39 provided active representation within three years before the request
40 for a new appointment, the court, after reviewing counsel’s
41 previous work, may find that such representation constitutes
42 compliance with this requirement.
43

- 1 (5) Proficiency in issue identification, research, analysis, writing,
2 investigation, and advocacy, taking into consideration all the
3 following:
4
5 (A) three writing samples—ordinarily two appellate briefs and
6 one habeas corpus petition—written by the attorney and
7 presenting an analysis of complex legal issues;
8
9 (B) if the attorney has previously been appointed in a death
10 penalty appeal or death penalty–related habeas corpus
11 proceeding, the evaluation of the assisting counsel or entity in
12 that proceeding;
13
14 (C) recommendations from two attorneys familiar with the
15 attorney’s qualifications and performance; and
16
17 (D) if the attorney is on a panel of attorneys eligible for
18 appointments to represent indigent appellants in the Court of
19 Appeal, the evaluation of the administrator responsible for
20 those appointments.

21
22 **(f) Alternative qualifications**

23
24 The Supreme Court may appoint an attorney who does not meet the
25 requirements of (d)(1) and (2) or (e)(1) and (2) if the attorney has the
26 qualifications described in (d)(3)–(5) or (e)(3)–(5) and:
27

- 28 (1) The court finds that the attorney has extensive experience in
29 another jurisdiction or a different type of practice (such as civil
30 trials or appeals, academic work, or work for a court or prosecutor)
31 for at least four years, providing the attorney with experience in
32 complex cases substantially equivalent to that of an attorney
33 qualified under (d) or (e).
34
35 (2) Ongoing consultation is available to the attorney from an assisting
36 counsel or entity designated by the court.
37
38 (3) Within two years before appointment, the attorney has completed
39 at least 18 hours of Supreme Court–approved appellate criminal
40 defense or habeas corpus defense training, continuing education, or
41 course of study, at least nine hours of which involve death penalty
42 appellate or habeas corpus proceedings. The Supreme Court will
43 determine in each case whether the training, education, or course

1 of study completed by a particular attorney satisfies the
2 requirements of this subdivision in light of the attorney’s
3 individual background and experience. If the Supreme Court has
4 previously appointed counsel to represent a defendant in a death
5 penalty appeal or a related habeas corpus proceeding, and counsel
6 has provided active representation within three years before the
7 request for a new appointment, the court, after reviewing counsel's
8 previous work, may find that such representation constitutes
9 compliance with this requirement.

10
11 **(g) Attorneys without trial experience**

12
13 If an evidentiary hearing is ordered in a death penalty–related habeas
14 corpus proceeding and an attorney appointed under either (e) or (f) to
15 represent a defendant in that proceeding lacks experience in conducting
16 trials or evidentiary hearings, the attorney must associate an attorney
17 who has such experience.

18
19 **(h) Use of supervised counsel**

20
21 An attorney who does not meet the qualifications described in (d), (e),
22 or (f) may assist lead or associate counsel, but must work under the
23 immediate supervision and direction of lead or associate counsel.

24
25 **(i) Appellate and habeas corpus appointment**

26
27 (1) An attorney appointed to represent a defendant in both a death
28 penalty appeal and death penalty–related habeas corpus
29 proceedings must meet the minimum qualifications of both (d) and
30 (e) or of (f).

31
32 (2) Notwithstanding (1), two attorneys together may be eligible for
33 appointment to represent a defendant jointly in both a death
34 penalty appeal and death penalty–related habeas corpus
35 proceedings if the Supreme Court finds that their qualifications in
36 the aggregate satisfy the provisions of both (d) and (e) or of (f).

37
38 **(j) Designated entities as appointed counsel**

39
40 (1) Notwithstanding any other provision of this rule, the State Public
41 Defender is qualified to serve as appointed counsel in death
42 penalty appeals, the Habeas Corpus Resource Center is qualified to
43 serve as appointed counsel in death penalty–related habeas corpus

1 proceedings, and the California Appellate Project in San Francisco
2 is qualified to serve as appointed counsel in both classes of
3 proceedings.
4

5 (2) When serving as appointed counsel in a death penalty appeal, the
6 State Public Defender or the California Appellate Project in San
7 Francisco must not assign any attorney as lead counsel unless it
8 finds the attorney qualified under (d)(1)–(5) or the Supreme Court
9 finds the attorney qualified under (f).
10

11 (3) When serving as appointed counsel in a death penalty–related
12 habeas corpus proceeding, the Habeas Corpus Resource Center or
13 the California Appellate Project in San Francisco must not assign
14 any attorney as lead counsel unless it finds the attorney qualified
15 under (e)(1)–(5) or the Supreme Court finds the attorney qualified
16 under (f).
17

18 **(k) Attorney appointed by federal court**
19

20 Notwithstanding any other provision of this rule, the Supreme Court
21 may appoint an attorney who is under appointment by a federal court in
22 a death penalty–related habeas corpus proceeding for the purpose of
23 exhausting state remedies in the Supreme Court and for all subsequent
24 state proceedings in that case, if the Supreme Court finds that attorney
25 has the commitment, proficiency, and knowledge necessary to represent
26 the defendant competently in state proceedings.
27

28 **Advisory Committee Comment**

29 **Subdivision (c).** The definition of “associate counsel” in revised rule 76.6(c)(3) is
30 intended to make it clear that although appointed lead counsel has overall and supervisory
31 responsibility in a capital case, appointed associate counsel also has casewide responsibility to
32 perform the duties for which he or she was appointed, whether they are appellate duties, habeas
33 corpus duties, or appellate *and* habeas corpus duties. The change is not substantive.
34
35

36 **Rule 77. Supervising progress of appeals**
37

38 **(a) Duty to ensure prompt filing**
39

40 The administrative presiding justices of Courts of Appeal with more
41 than one division in the same city and the presiding justices of all other
42 Courts of Appeal are generally responsible for ensuring that all

1 appellate records and briefs are promptly filed. Staff must be provided
2 for that purpose, to the extent funds are appropriated and available.

3
4 **(b) Authority**

5
6 Notwithstanding any other rule, the administrative presiding justices
7 and presiding justices referred to in (a) may:

- 8
9 (1) grant or deny applications to extend the time to file records, briefs,
10 and other documents, except that a presiding justice may extend
11 the time to file briefs in conjunction with an order to augment the
12 record;
13
14 (2) order the dismissal of an appeal or any other authorized sanction
15 for noncompliance with these rules, if no application to extend
16 time or for relief from default has been filed before the order is
17 entered; and
18
19 (3) grant relief from default or from a sanction other than dismissal
20 imposed for the default.
21
22

23 **Rule 78. Notice of failure to perform judicial duties**

24
25 **(a) Notice**

- 26
27 (1) The Chief Justice or presiding justice must notify the Commission
28 on Judicial Performance of a reviewing court justice's:
29
30 (A) substantial failure to perform judicial duties, including any
31 habitual neglect of duty, or
32
33 (B) disability-caused absences totaling more than 90 court days in
34 a 12-month period, excluding absences for authorized
35 vacations and for attending schools, conferences, and judicial
36 workshops.
37
38 (2) If the affected justice is a presiding justice, the administrative
39 presiding justice must give the notice.

40 **(b) Copy to justice**
41

1 The Chief Justice, administrative presiding justice, or presiding justice
2 must give the affected justice a copy of any notice under (a).

3
4
5 **Rule 80. Local rules of Courts of Appeal**

6
7 **(a) California Rules of Court prevail**

8
9 A Court of Appeal must accept for filing a record, brief, or other
10 document that complies with the California Rules of Court despite any
11 local rule imposing other requirements.

12
13 **(b) Publication**

14
15 (1) A Court of Appeal must submit any local rule it adopts to the
16 Reporter of Decisions for publication in the advance pamphlets of
17 the Official Reports.

18
19 (2) As used in this rule, “publication” means printing in the manner in
20 which amendments to the California Rules of Court are printed.

21
22 **(c) Effective date**

23
24 A local rule cannot take effect sooner than 45 days after the publication
25 date of the advance pamphlet in which it is printed.

26
27
28 **TITLE 3. Miscellaneous Rules**

29
30 **DIVISION 3. Rules for Publication of Appellate Opinions**

31
32 **Rule 976. Publication of appellate opinions**

33
34 **(a) Supreme Court**

35
36 All opinions of the Supreme Court are published in the Official Reports.

37
38 **(b) Courts of Appeal and appellate divisions**

39
40 Except as provided in (d), an opinion of a Court of Appeal or a superior
41 court appellate division is published in the Official Reports if a majority
42 of the rendering court certifies the opinion for publication before the
43 decision is final in that court.

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(c) Standards for certification

No opinion of a Court of Appeal or a superior court appellate division may be certified for publication in the Official Reports unless the opinion:

- (1) establishes a new rule of law, applies an existing rule to a set of facts significantly different from those stated in published opinions, or modifies, or criticizes with reasons given, an existing rule;
- (2) resolves or creates an apparent conflict in the law;
- (3) involves a legal issue of continuing public interest; or
- (4) makes a significant contribution to legal literature by reviewing either the development of a common law rule or the legislative or judicial history of a provision of a constitution, statute, or other written law.

(d) Changes in publication status

- (1) Unless otherwise ordered under (2), an opinion is no longer considered published if the Supreme Court grants review or the rendering court grants rehearing.
- (2) The Supreme Court may order that an opinion certified for publication is not to be published or that an opinion not certified is to be published. The Supreme Court may also order publication of an opinion, in whole or in part, at any time after granting review.

(e) Editing

- (1) Computer versions of all opinions of the Supreme Court and Courts of Appeal must be provided to the Reporter of Decisions on the day of filing. Opinions of superior court appellate divisions certified for publication must be provided as prescribed in rule 106.
- (2) The Reporter of Decisions must edit opinions for publication as directed by the Supreme Court. The Reporter of Decisions must

1 submit edited opinions to the courts for examination, correction,
2 and approval before finalization for the Official Reports.

3
4
5 **Rule 976.1. Partial publication**

6
7 **(a) Order for partial publication**

8
9 A majority of the rendering court may certify for publication any part of
10 an opinion meeting a standard for publication under rule 976.

11
12 **(b) Opinion contents**

13
14 The published part of the opinion must specify the part or parts not
15 certified for publication. All material, factual and legal, including the
16 disposition, that aids in the application or interpretation of the published
17 part must be published.

18
19 **(c) Construction**

20
21 For purposes of rules 976, 977, and 978, the published part of the
22 opinion is treated as a published opinion and the unpublished part as an
23 unpublished opinion.

24
25
26 **Rule 977. Citation of opinions**

27
28 **(a) Unpublished opinion**

29
30 Except as provided in (b), an opinion of a California Court of Appeal or
31 superior court appellate division that is not certified for publication or
32 ordered published must not be cited or relied on by a court or a party in
33 any other action.

34
35 **(b) Exceptions**

36
37 An unpublished opinion may be cited or relied on:

- 38
39 (1) when the opinion is relevant under the doctrines of law of the case,
40 res judicata, or collateral estoppel, or
41

1 (2) when the opinion is relevant to a criminal or disciplinary action
2 because it states reasons for a decision affecting the same
3 defendant or respondent in another such action.
4

5 **(c) Citation procedure**
6

7 A copy of an opinion citable under (b) or of a cited opinion of any court
8 that is available only in a computer-based source of decisional law must
9 be furnished to the court and all parties by attaching it to the document
10 in which it is cited or, if the citation will be made orally, by letter within
11 a reasonable time in advance of citation.
12

13 **(d) When a published opinion may be cited**
14

15 A published California opinion may be cited or relied on as soon as it is
16 certified for publication or ordered published.
17

18 **Advisory Committee Comment**

19 A footnote to the published version of former rule 977(d) stated that a citation to an
20 opinion ordered published by the Supreme Court after grant of review should include a reference
21 to the grant of review and to any subsequent Supreme Court action in the case. Revised rule 977
22 deletes this footnote because it is not part of the rule itself and the event it describes rarely occurs
23 in practice.
24

25
26 **Rule 978. Requesting publication of unpublished opinions**
27

28 **(a) Request**
29

- 30 (1) Any person may request that an unpublished opinion be ordered
31 published.
32
33 (2) The request must be made by a letter to the court that rendered the
34 opinion, concisely stating the person's interest and the reason why
35 the opinion meets a standard for publication.
36
37 (3) The request must be delivered to the rendering court within 20
38 days after the opinion is filed.
39
40 (4) The request must be served on all parties.
41

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(b) Action by rendering court

- (1) If the rendering court does not or cannot grant the request before the decision is final in that court, it must forward the request to the Supreme Court with a copy of its opinion, its recommendation for disposition, and a brief statement of its reasons. The rendering court must forward these materials within 15 days after the decision is final in that court.
- (2) The rendering court must also send a copy of its recommendation and reasons to all parties and any person who requested publication.

(c) Action by Supreme Court

The Supreme Court may order the opinion published or deny the request. The court must send notice of its action to the rendering court, all parties, and any person who requested publication.

(d) Effect of Supreme Court order to publish

A Supreme Court order to publish is not an expression of the court’s opinion of the correctness of the result of the decision or of any law stated in the opinion.

Advisory Committee Comment

Subdivision (a). Former rule 978(a) required generally that a publication request be made “promptly,” but in practice the term proved so vague that requests were often made after the Court of Appeal had lost jurisdiction. To assist persons intending to request publication and to give the Court of Appeal adequate time to act, revised rule 978(a)(3) specifies that the request must be made within 20 days after the opinion is filed. The change is substantive.

Subdivision (b). Former rule 978(a) did not specify the time within which the Court of Appeal was required to forward to the Supreme Court a publication request that it had not or could not have granted. In practice, however, it was not uncommon for the court to forward such a request after the Supreme Court had denied a petition for review in the same case or, if there was no such petition, had lost jurisdiction to grant review on its own motion. To assist the Supreme Court in timely processing publication requests, therefore, revised rule 978(b)(1) requires the Court of Appeal to forward the request within 15 days after the decision is final in that court. The change is substantive.

1
2 **Rule 979. Requesting depublication of published opinions**

3
4 **(a) Request**

- 5
6 (1) Any person may request the Supreme Court to order that an
7 opinion certified for publication not be published.
8
9 (2) The request must not be made as part of a petition for review, but
10 by a separate letter to the Supreme Court not exceeding 10 pages.
11
12 (3) The request must concisely state the person's interest and the
13 reason why the opinion should not be published.
14
15 (4) The request must be delivered to the Supreme Court within 30
16 days after the decision is final in the Court of Appeal.
17
18 (5) The request must be served on the rendering court and all parties.

19
20 **(b) Response**

- 21
22 (1) Within 10 days after the Supreme Court receives a request under
23 (a), the rendering court or any person may submit a response
24 supporting or opposing the request. A response submitted by
25 anyone other than the rendering court must state the person's
26 interest.
27
28 (2) A response must not exceed 10 pages and must be served on the
29 rendering court, all parties, and any person who requested
30 depublication.

31
32 **(c) Action by Supreme Court**

- 33
34 (1) The Supreme Court may order the opinion depublished or deny the
35 request. It must send notice of its action to the rendering court, all
36 parties, and any person who requested depublication.
37
38 (2) The Supreme Court may order an opinion depublished on its own
39 motion, notifying the rendering court of its action.
40

1
2 **(d) Effect of Supreme Court order to depublish**
3

4 A Supreme Court order to depublish is not an expression of the court’s
5 opinion of the correctness of the result of the decision or of any law
6 stated in the opinion.

7
8 **Advisory Committee Comment**

9 **Subdivision (b).** Former rule 979(a) required depublishation requests to be made “by
10 letter to the Supreme Court,” but in practice many were incorporated in petitions for review. To
11 clarify and emphasize the requirement, revised rule 979(a)(2) specifically states that the request
12 “must not be made as part of a petition for review, but by a separate letter to the Supreme Court
13 not exceeding 10 pages.” The change is not substantive.

14
15
16 **Rule 2. Time to appeal**

17
18 **(a) *****

19
20 **(b) No extension of time; late notice of appeal**

21
22 Except as provided in rule 45.1, no court may extend the time to file a
23 notice of appeal. If a notice of appeal is filed late, the reviewing court
24 must dismiss the appeal.

25
26 ~~**(b)(c) *****~~

27
28 ~~**(e)(d) *****~~

29
30 ~~**(d)(e) *****~~

31
32 ~~**(e) Late notice of appeal**~~

33
34 ~~If a notice of appeal is filed late, the reviewing court must dismiss the~~
35 ~~appeal.~~

36
37 **(f) Appealable order**

38
39 As used in (a) and ~~(d)(e)~~, “judgment” includes an appealable order if the
40 appeal is from an appealable order.

1
2 **Rule 15. Service and filing of briefs**

3
4 **(a)–(b) *****

5
6 **(c) Service**

7
8 (1) ***

9
10 (2) ~~Five~~ Four copies of each brief filed in a civil appeal must be served
11 on the Supreme Court. If the Court of Appeal has ordered the brief
12 sealed:

13
14 (A) the party serving the brief must place all four copies of the
15 brief in a sealed envelope and attach a cover sheet that
16 contains the information required by rule 14(b)(10) and labels
17 the contents as “CONDITIONALLY UNDER SEAL,” and

18
19 (B) the Court of Appeal clerk must promptly notify the Supreme
20 Court of any court order unsealing the brief. In the absence
21 of such notice the Supreme Court clerk must keep` all copies
22 of the brief under seal.

23
24 (3) ***

25
26
27 **Rule 30.1. Time to appeal**

28
29 **(a) Normal time**

30
31 Unless otherwise provided by law, a notice of appeal must be filed
32 within 60 days after the rendition of the judgment or the making of the
33 order being appealed. Except as provided in rule 45.1, no court may
34 extend the time to file a notice of appeal.

35
36 **(b)–(d) *****

1 **Rule 39. Juvenile appeals**

2 ~~(a) [General provision] The rules governing appeals from the superior~~
3 ~~court in criminal cases are applicable to all appeals from the juvenile~~
4 ~~court and any appeal in an action under part 4 (commencing with~~
5 ~~section 7800) of division 12 of the Family Code, except where~~
6 ~~otherwise expressly provided by this rule or rule 39.1, 39.1A, or 39.1B,~~
7 ~~or where the application of a particular rule would be clearly~~
8 ~~impracticable or inappropriate. This rule does not apply to any action or~~
9 ~~proceeding heard by a traffic hearing officer, nor to any rehearing or an~~
10 ~~appeal from a denial of a rehearing following an order by a traffic~~
11 ~~hearing officer.~~

12 ~~(Subd (a) amended effective January 1, 2001; adopted effective July 1, 1977; and~~
13 ~~previously amended effective July 1, 1987, July 1, 1989, and January 1, 1991.)~~

14 ~~(b) [Notice of appeal; time for filing] In the cases provided by law, an~~
15 ~~appeal from the juvenile court is taken by filing with the clerk of that~~
16 ~~court a written notice of appeal within 60 days after the rendition of the~~
17 ~~judgment or the making of the order or, in matters heard by a referee~~
18 ~~who is not sitting as a judge pro tem, within 60 days after the order of~~
19 ~~the referee becomes final under rule 1417(c). When an application for a~~
20 ~~judicial rehearing of an order by a referee not sitting as a judge pro tem~~
21 ~~is denied under rule 1418, the notice of appeal shall be filed within 60~~
22 ~~days after service of the referee's order in accordance with rule~~
23 ~~1416(b)(3), or within 30 days after the entry of the order denying the~~
24 ~~application, whichever time is greater. Notice of appeal may be filed on~~
25 ~~Judicial Council form Notice of Appeal Juvenile (JV-800). When a~~
26 ~~notice of appeal is received, the clerk shall mail a notification of the~~
27 ~~filing of the notice of appeal to each party other than the appellant, and~~
28 ~~all attorneys of record. In a juvenile dependency case, the clerk shall~~
29 ~~also mail a notification to any de facto parent, any court-appointed~~
30 ~~special advocate, and to the tribe of an Indian child. The clerk shall then~~
31 ~~proceed in accordance with rule 31.~~

32 ~~(Subd (b) amended effective January 1, 1997; adopted effective July 1, 1977;~~
33 ~~previously amended effective January 1, 1991, January 1, 1993.)~~

34 ~~(c) [Contents of record on appeal-normal record] The record on appeal~~
35 ~~shall include the following (which shall constitute the normal record):~~

36
37 ~~(1) A clerk's transcript, containing copies of:~~
38

- ~~(a) the notice of appeal and any order made pursuant thereto;~~
- ~~(b) the petition and any notice of hearing addressed to the minor, the parent, or guardian;~~
- ~~(c) any application or motion for rehearing;~~
- ~~(d) all minutes of the court relating to the action;~~
- ~~(e) the findings of the juvenile court that the minor is within its jurisdiction;~~
- ~~(f) the judgment or order appealed from;~~
- ~~(g) any report by a probation officer, social worker, or duly appointed guardian ad litem.~~

~~(2) A reporter's transcript of the oral proceedings taken at the jurisdiction, disposition, review, and hearings under section 366.26 of the Welfare and Institutions Code, including oral arguments to the court and any oral opinions of the court, but excluding opening statements.~~

~~(3) To be transmitted as originals upon request by the reviewing court as provided in rule 10: any exhibit admitted in evidence or rejected.~~

~~(4) Those portions of the clerk's transcript, reporter's transcript, and exhibits incident to the order appealed from, if the appeal is taken from any subsequent order under section 395 or 800.~~

~~(Subd (c) amended effective January 1, 1993; adopted effective July 1, 1977; previously amended effective July 1, 1985, July 1, 1989, January 1, 1991.)~~

~~**(d) [Request for additional record]** Either party may request the inclusion in the record of any of the following:~~

~~(1) In the clerk's transcript:~~

- ~~(a) written motions made or notices of motion given by either side, and affidavits filed in support of or in opposition to a motion for rehearing or any other motion;~~

1 (b) ~~any written opinion of the juvenile court.~~

2
3 (2) ~~In the reporter's transcript:~~

4
5 (a) ~~proceedings on any prehearing motions;~~

6
7 (b) ~~opening statements~~

8
9 (3) ~~To be transmitted as originals: any exhibits admitted in evidence or~~
10 ~~rejected that have not been requested by the reviewing court under~~
11 ~~subdivision (c)(3).~~

12
13 A party who desires any additional record shall file with the notice of
14 appeal or as soon thereafter as is practicable an application describing
15 the material desired and the points on which appellant intends to rely
16 which make its inclusion appropriate. The court shall act on the
17 application in accordance with rule 33(b).

18 ~~(Subd (d) amended effective January 1, 1993; adopted effective July 1, 1977;~~
19 ~~previously amended July 1, 1985.)~~

20 (e) ~~[Priority of juvenile appeals] An appeal from the juvenile court or an~~
21 ~~appeal in an action under Civil Code section 232 shall have precedence~~
22 ~~over all other cases, as provided by statute.~~

23 ~~(Subd (e) amended effective July 1, 1987; adopted effective July 1, 1977.)~~

24 (f) ~~[Confidentiality section 300 proceedings] In an appeal under rule~~
25 ~~1435(b) or an appeal from an order or judgment under Civil Code~~
26 ~~section 232, the record on appeal and briefs may be inspected only by~~
27 ~~court personnel, the parties to the proceeding or their attorneys, and~~
28 ~~other persons designated by the court.~~

29 ~~(Subd (f) amended effective January 1, 1991; adopted effective July 1, 1977; and~~
30 ~~previously amended effective July 1, 1981, and July 1, 1987.)~~

31 (g) ~~[Confidential information section 300 proceedings] All records,~~
32 ~~briefs, or other documents filed by the parties, and opinions or orders~~
33 ~~filed by the court, shall protect the anonymity of the parties. The court~~
34 ~~may limit or prohibit public admission to hearings.~~

35 ~~(Subd (g) adopted effective January 1, 1997.)~~

1 ~~Rule 39 amended effective January 1, 2001; adopted effective July 1, 1977;~~
2 ~~previously amended effective July 1, 1981, July 1, 1985, July 1, 1987, July 1,~~
3 ~~1989, January 1, 1991, January 1, 1993, and January 1, 1997.~~

4 **Former Rules**

5 Former rule 39, relating to copy of opinion, was repealed effective January 1,
6 1975.

7 Original rule 39, also relating to copy of opinion, was repealed effective January 1,
8 1951.

9 **Advisory Committee Comment**

10 Neither the statutes nor the California Rules of Court presently provide guidance
11 as to the handling of juvenile court matters on appeal. As a result, practices vary
12 from county to county and from one appellate district to another. In most
13 jurisdictions, the clerk's offices have applied the rules governing civil appeals to
14 dependency proceedings and have attempted to apply the rules governing criminal
15 appeals to section 602 cases, at least insofar as the costs and preparation of
16 transcripts and the appointment of counsel are concerned. In section 601
17 proceedings, there has been a wide disparity of practices.

18 Subdivision (a) provides generally that the rules governing appeals from the
19 superior court in criminal cases (Cal. Rules of Court, rules 30-38) apply to all
20 appeals from the juvenile court. This would include appeals from section 300
21 dependency proceedings as well as section 601 or 602 proceedings. Although
22 proceedings in juvenile court are not criminal proceedings (Welf. & Inst. Code
23 §203) but "essentially civil" (*In re Dennis M.* (1969) 70 Cal.2d 444, 462), the
24 application of the general rules relating to criminal appeals to all juvenile appeals
25 would better enable the appellate courts to implement the legislative policy that
26 juvenile court matters be handled expeditiously at the appellate as well as at the
27 trial court level (see Welf. & Inst. Code §§395, 800; cf. *Joe Z. v. Superior Court*
28 (1970) 3 Cal.3d 797, 801). The general criminal rules would not apply, however,
29 where express provision is made to the contrary in this rule (see, e.g., subds. (b),
30 (c), (d)) or where the application of a particular rule would be clearly
31 impracticable or inappropriate (see, e.g., rule 32(b); *In re William M.* (1970) 3
32 Cal.3d 16, 26, n. 17 (right to bail not recognized in juvenile cases)).

33 Subdivision (b), relating to the time for filing the notice of appeal, is based upon
34 rules 3(b) and 31(a). If the trial proceedings are conducted by the juvenile court
35 judge or, if the judge has conducted a hearing de novo following an initial hearing
36 before the referee, the notice of appeal must be filed within 60 days after the

1 rendition of the judgment or the making of the order by the judge. (See rule 31(a));
2 see also *In re Sarah L.* (1974) 43 Cal.App.3d 88 (judicial granting of rehearing
3 under Welf. & Inst. Code §559 not appealable.) In the case of appealable matters
4 heard by a referee (see Welf. & Inst. Code §§395, 800), the notice of appeal must
5 be filed within 60 days after the referee's order becomes final under rule 1318(c).
6 A special provision allowing an extended time for filing the notice of appeal
7 applies whenever an application for rehearing of a referee order is made and
8 denied under rule 1319. As an order denying a rehearing is not ordinarily
9 considered appealable (*In re Joe R.* (1970) 12 Cal.App.3d 80; but see *In re Edgar*
10 *M.* (1975) 14 Cal.3d 727, 740), the order entered by the referee is usually viewed
11 as being appealable. (See Judicial Council of California, Nineteenth Biennial
12 Report (1963) Administration of Justice Under the Juvenile Court Law, Pt. I, Ch.
13 16, p. 63, at p. 83.) The rehearing application procedure, however, could consume
14 at least 45 of the 60 days within which the notice of appeal from the referee's order
15 must be filed. (See rule 1319(c).) For this reason, subdivision (b) provides that the
16 time for filing the notice of appeal in these cases shall be 60 days after the service
17 of the referee's order or 30 days after the entry of the juvenile court judge's order
18 denying the application for rehearing, whichever time is greater. (Cf. rule 3(b).)

19 Subdivision (c) prescribes what is to be included in a normal record on appeal. It is
20 analogous to rules 33(a) and 34.

21 Subdivision (d) lists those matters which the parties may request to be included in
22 the record on appeal.

23 Subdivision (e), relating to the priority of juvenile appeals, is based on sections
24 395 and 800.

25 **Drafter's Notes**

26 **1981** Rule 39 was amended to provide for confidentiality of the record and briefs
27 in an appeal from proceedings under W & I C §300.

28 **1985** Rule 39 was amended to include in the normal record on appeal of a juvenile
29 case the report of the probation officer, the social worker, or the appointed
30 guardian ad litem.

31 **1987** The council amended rule 39, which previously dealt only with appeals from
32 the juvenile court, to make the rule applicable to appeals in actions under Civil
33 Code section 232 to declare a child free from parental custody and control.

1 ~~1989~~ The council amended rule 39 to clarify the right to appeal from the denial of
2 rehearing of the decision of a juvenile traffic hearing office and to specify the
3 record on appeal for those cases.

4 ~~1990~~ The council amended rule 39 to conform to statutory and rule changes on
5 juvenile appeals.

6 ~~1993~~ The council amended rules 39 and 39.2 to change the expiration date of each
7 rule from January 1, 1993, to January 1, 1994. Rule 39 also is amended to include
8 in the normal record on appeal transcripts of oral arguments and oral opinions of
9 the juvenile court.

10 ~~1997~~ Rules 39 and 39.1A, on juvenile appeals, were amended to clarify
11 procedures on filing notice of appeals and to provide that all information in the
12 appellate file is confidential.

13 ~~2001~~ Rules 39, 39.1, and 39.1A were amended to correctly reference the Family
14 Code.

15 ~~**Rule 39.1. Special rule for dependency and freedom from custody appeals**~~

16 (a) ~~**[Applicability of rule]** This rule applies to any appeal in an action~~
17 ~~under either Part 4 (commencing with section 7800) of Division 12 of~~
18 ~~the Family Code or Welfare and Institutions Code section 300.~~

19 ~~*(Subd (a) amended effective January 1, 2001; previously amended effective*~~
20 ~~*January 1, 1994.)*~~

21 (b) ~~**[Notice of appeal]** The clerk shall give notice of the filing of a notice of~~
22 ~~appeal in accordance with rule 1(b).~~

23
24 (c) ~~**[Copies of record on appeal]** Notwithstanding rule 35, the clerk shall~~
25 ~~not deliver copies of the record on appeal to the Attorney General or the~~
26 ~~district attorney unless that office represents a party.~~

27
28 (d) ~~**[Copies of briefs]** Notwithstanding rules 33(d)(1) and 44.5, the parties~~
29 ~~must not serve briefs on the Attorney General or the district attorney~~
30 ~~unless that office represents a party. If the Court of Appeal has~~
31 ~~appointed appellate counsel for any party, the county child welfare~~
32 ~~department must serve two copies of its briefs on that counsel and one~~
33 ~~copy of its briefs on the appellate project for the district, if applicable.~~

1 *(Subd (d) amended effective July 1, 2004; previously amended effective January 1,*
2 *2004.)*

3 ~~(e) [Copies to Supreme Court] Notwithstanding rule 44(b)(2)(ii), proof of~~
4 ~~delivery of five copies of each brief to the Supreme Court shall not be~~
5 ~~required.~~

6 *(Subd (e) amended effective January 1, 1995.)*

7 ~~(f) [Time for filing notice of appeal] Notice of appeal shall be filed within~~
8 ~~60 days after the making of an appealable order or, if the matter was~~
9 ~~heard by a referee who was not sitting as a temporary judge, within 60~~
10 ~~days after the order becomes final under rule 1417(c).~~

11 *(Subd (f) as adopted effective January 1, 1992.)*

12 *Rule 39.1 amended effective July 1, 2004; adopted effective July 1, 1987;*
13 *previously amended effective January 1, 1992, January 1, 1994, January 1, 1995,*
14 *January 1, 2001, and January 1, 2004.*

15 **Drafter's Notes**

16 ~~**1987** The council adopted rule 39.1, applicable to appeals in actions under Civil~~
17 ~~Code section 232 and Welfare and Institutions Code section 300. The new rule~~
18 ~~defines the responsibility of the clerk to give notice of the filing of the appeal and~~
19 ~~exempts those appeals from the requirement that a copy of the record and briefs be~~
20 ~~served on the People and that copies of the briefs be delivered to the Supreme~~
21 ~~Court.~~

22 ~~**1992** Rule 39.1, the special rule for dependency and freedom from custody~~
23 ~~appeals, was amended to make it clear that in a case heard by a referee who was~~
24 ~~not sitting as a temporary judge, and in which there was no rehearing by a judge of~~
25 ~~the referee's order, the time for appeal runs from the date the referee's order~~
26 ~~becomes final.~~

27 ~~Rule 39.2, the special rule governing appeals from Orange County Superior Court~~
28 ~~orders under Civil Code section 232, was amended to apply, also, to that court's~~
29 ~~appealable orders under section 300 of the Welfare and Institutions Code.~~

30 ~~**1994** These amendments (to rules 39.1, 39.1A, 39.2, 39.2A) establish a pilot~~
31 ~~project statewide to specify procedures for expediting appeals from judgments~~
32 ~~freeing children from parental custody and control.~~

1 ~~1995~~ The council also . . . amended rules 39.1 and 39.4 (special rules for
2 dependency and conservatorship appeals) to conform to rule 44 by requiring that
3 five rather than seven copies of each Court of Appeal brief be filed with the
4 California Supreme Court.

5 ~~2001~~ Rules 39, 39.1, and 39.1A were amended to correctly reference the Family
6 Code.

7 ~~**Rule 39.1A. Appeals from orders or judgments terminating parental rights**~~

8 ~~(a) [Applicability]~~ Notwithstanding any other rule to the contrary, this rule
9 applies to appeals from orders or judgments terminating parental rights
10 under Welfare and Institutions Code section 366.26, or freeing children
11 from parental custody and control under Part 4 (commencing with
12 section 7800) of Division 12 of the Family Code.

13 *(Subd (a) amended effective January 1, 2001.)*

14 ~~(b) [Order setting a hearing under section 366.26; limitations on~~
15 ~~appeal]~~ A judgment, order, or decree setting a hearing under section
16 366.26 may be reviewed on appeal following the order of the 366.26
17 hearing only if the following have occurred:

18
19 (1) ~~An extraordinary writ was sought by the timely filing of Judicial~~
20 ~~Council form Writ Petition Juvenile (JV-825) or other petition for~~
21 ~~extraordinary writ; and~~

22
23 (2) ~~The petition for extraordinary writ was summarily denied or~~
24 ~~otherwise not decided on the merits.~~

25
26 ~~Review on appeal of the order setting a hearing under section 366.26 is~~
27 ~~limited to issues raised in a previous petition for extraordinary writ that~~
28 ~~were supported by an adequate record.~~

29
30 ~~Failure to file a petition for extraordinary writ review within the period~~
31 ~~specified by rules 39.1B and 1436.5, to substantively address the issues~~
32 ~~challenged, or to support the challenge by an adequate record, shall~~
33 ~~preclude subsequent review on appeal of the findings and orders made~~
34 ~~by the juvenile court in setting the hearing under section 366.26.~~

35 *(Subd (b) amended effective January 1, 1995.)*

1 ~~(e) [Notice of appeal; record on appeal] Immediately on the filing of the~~
2 ~~notice of appeal, the clerk shall mail a notification of the filing of the~~
3 ~~notice of appeal to each party other than the appellant, to all attorneys of~~
4 ~~record, to any de facto parent, any court-appointed special advocate, and~~
5 ~~to the tribe of an Indian child. The clerk shall then assemble the record~~
6 ~~on appeal by (1) notifying each court reporter for each hearing that is~~
7 ~~the subject of the appeal by telephone and in writing to prepare a~~
8 ~~reporter's transcript and to deliver the transcript to the clerk no more~~
9 ~~than 20 days after the notice of appeal is filed, and (2) preparing the~~
10 ~~clerk's transcript under rule 35(a).~~

11
12 The normal record on appeal shall include:

13
14 ~~(1) Reporter's transcripts of the portions of the hearing from which the~~
15 ~~appeal is taken;~~

16
17 ~~(2) All findings and orders in the dependency case and any other~~
18 ~~findings and orders of which the court took judicial notice;~~

19
20 ~~(3) The original petition or petitions;~~

21
22 ~~(4) The reports prepared and submitted to the court for the hearing~~
23 ~~from which the appeal is taken, by any social worker, therapist or~~
24 ~~other expert; and~~

25
26 ~~(5) Any other documents or evidence considered by the court in its~~
27 ~~findings and orders from which the appeal is taken.~~

28
29 ~~Immediately on completion of the transcripts, the clerk shall certify the~~
30 ~~record as correct, deliver it by the most expeditious means to the~~
31 ~~reviewing court, and transmit copies to the attorneys for appellant,~~
32 ~~respondent, the child, and the appointed counsel administrator for the~~
33 ~~district appellate project, by any method as fast as the express mail~~
34 ~~service of the United States Postal Service.~~

35
36 ~~The cover shall bear the conspicuous notation, "Appeal from order~~
37 ~~terminating parental rights under [Welfare and Institutions Code section~~
38 ~~366.26] or [Family Code section 7800]," with the appropriate code~~
39 ~~section number shown as illustrated in the bracketed phrases.~~

40 ~~(Subd (e) amended effective January 1, 2001; previously amended January 1,~~
41 ~~1997.)~~

1 (d) ~~[Augmentation and correction of the record]~~ Augmentation or
2 correction of the record shall be done under rule 12 or rule 35(e).
3 Preparation of a supplemental transcript pursuant to an order under this
4 subdivision shall be given highest priority. The procedures described in
5 subdivision (e) shall be followed when applicable. Any request for
6 augmentation by the appellant shall be filed within 15 days after counsel
7 has received the record on appeal. Any request for augmentation by the
8 respondent shall be filed within 15 days after the filing of appellant's
9 opening brief. If available, the request for augmentation shall include
10 copies of requested documents to be added to the record.

11
12 (e) ~~[Limitation of appeal]~~ The review on appeal of the findings and orders
13 of the juvenile court in terminating parental rights is limited to the
14 record on appeal of the hearings on the issues that were before the court
15 under Welfare and Institutions Code section 366.26. The review shall
16 not include a review of any prior hearings in the dependency case unless
17 the party and court have complied with rule 39.1B.

18 ~~(Subd (e) adopted effective January 1, 2001.)~~

19 (f) ~~[Appellate procedure]~~ The judges and clerks of the superior and
20 reviewing courts shall adopt procedures to identify clearly the record
21 and expedite all processing of a case to which this rule applies. The
22 clerks of the courts shall provide data required to assist the Judicial
23 Council in evaluating the effectiveness of this rule.

24 ~~(Subd (f) relettered effective January 1, 2001; adopted as subd (e) effective~~
25 ~~January 1, 1994.)~~

26 (g) ~~[Briefs]~~ To permit determination within 250 days of the filing of the
27 notice of appeal, the appellant's opening brief shall be served and filed
28 within 30 days after the filing of the record in the reviewing court. The
29 respondent's brief shall be served and filed within 30 days after the
30 filing of the appellant's opening brief. The minor's opening brief and
31 appellant's reply brief, if any, shall be served and filed within 20 days
32 after filing of the respondent's brief, unless minor's counsel is granted
33 leave to file the minor's opening brief at a different time. Briefs shall
34 conform to rule 37(b).

35 ~~(Subd (g) relettered effective January 1, 2001; adopted as subd (f) effective~~
36 ~~January 1, 1994.)~~

1 ~~(h) [Argument and submission]~~ Oral argument shall be held no later than
2 60 days after appellant's reply brief is filed or is due to be filed, unless
3 waived or extended for good cause by the reviewing court. Counsel
4 shall file and serve any request for oral argument, referencing rule
5 39.1A, within 15 days after appellant's reply brief is filed or is due to be
6 filed. If oral argument is waived, the case shall be deemed submitted not
7 later than the sixtieth day after appellant's reply brief is filed or is due to
8 be filed.

9 ~~(Subd (h) relettered effective January 1, 2001; adopted as subd (g) effective~~
10 ~~January 1, 1994; amended effective January 1, 1996.)~~

11 ~~(i) [Extensions of time]~~ Only the reviewing court may grant extensions of
12 time to prepare the record or to serve and file briefs. The court shall
13 require an exceptional showing of good cause before granting any
14 extension. The trial court shall not grant any extensions of time.

15 ~~(Subd (i) relettered effective January 1, 2001; adopted as subd (h) effective~~
16 ~~January 1, 1994.)~~

17 ~~(j) [Confidential information-section 300 proceedings]~~ In appeals under
18 this rule, the record on appeal and briefs may be inspected only by court
19 personnel, the parties to the proceedings, their attorneys, and other
20 persons designated by the court. All records, briefs, or other documents
21 filed by the parties, and opinions or orders filed by the court, shall
22 protect the anonymity of the parties. The court may limit or prohibit
23 public admission to hearings.

24 ~~(Subd (j) relettered effective January 1, 2001; adopted as subd (i) effective~~
25 ~~January 1, 1997.)~~

26 ~~(Previous subd (j) repealed effective January 1, 1998; adopted as subd (i) effective~~
27 ~~January 1, 1994, operative until January 1, 1998; relettered effective January 1,~~
28 ~~1997; previously amended effective January 1, 1996.)~~

29 ~~Rule 39.1A amended effective January 1, 2001; adopted effective January 1, 1994;~~
30 ~~previously amended effective January 1, 1995, January 1, 1996, January 1, 1997,~~
31 ~~and January 1, 1998.~~

32 **Drafter's Notes**

33 ~~1994 Rule 39.1A is adopted to establish a two year pilot project statewide to~~
34 ~~specify procedures for expediting appeals from judgments terminating parental~~

1 rights. The primary goal of the pilot project is to achieve a permanent and stable
2 placement for a child as quickly as possible by ensuring that any appeal in these
3 cases is determined within 250 days after the filing of the notice of appeal.

4 ~~1995~~ In accordance with the legislative mandate, the council adopted rules 39.1B
5 and 1436.5 and amended rules 39.1A, 39.2, 39.2A, 1435, 1436, 1456, 1460, 1461,
6 and 1462 to specify procedures, including filing and record requirements, for
7 appellate review of these orders. The rules provide that the findings and orders
8 setting a hearing under section 366.26 may be reviewed on appeal following the
9 order of the 366.26 hearing only if the following have occurred:

10 (1) an extraordinary writ was sought by the timely filing of Judicial Council form
11 Writ Petition Juvenile (JV-825) or other petition for extraordinary writ; and

12 (2) the petition for extraordinary writ was summarily denied or otherwise not
13 decided on the merits.

14 Review on appeal of the order setting a hearing under section 366.26 is limited to
15 issues raised in a previous petition for extraordinary writ that were supported by
16 an adequate record. Under the new procedures, if the party wishes to preserve any
17 right to review on appeal of the order setting the hearing under section 366.26, the
18 party is required to seek an extraordinary writ by filing a new form, Notice of
19 Intent to File Writ Petition and Request for Record (JV-820), or other notice of
20 intent to file a writ petition and request for record.

21 To ensure that all participants in juvenile dependency proceedings receive timely
22 notice of the new legislation and procedures, the Judicial Council is requiring that
23 juvenile courts post the new rules in a conspicuous place.

24 The council recognizes that there may be unforeseen difficulties in implementing
25 the new legislation and writ rules since an expedited process is required and some
26 trial counsel may be unfamiliar with writ procedures. Therefore the council is
27 requesting that judges and clerks of the trial and reviewing courts report to the
28 council on a quarterly basis to assist in evaluating the effectiveness of the rule
29 changes. Further, the council has directed staff to monitor implementation of the
30 new procedures to discern any problems or issues in order to make
31 recommendations for timely rule revisions and report to the council.

32 ~~1996~~ The Judicial Council of California has amended rule 39.1A to (1) change the
33 expiration date in subdivision (i) from January 1, 1996, to January 1, 1998, in
34 order to extend the statewide pilot project on appeals from termination of parental
35 rights proceedings; and (2) permit a good cause exception to the 60-day rule for
36 oral argument.

1 ~~1997~~ Rules 39 and 39.1A, on juvenile appeals, were amended to clarify
2 procedures on filing notice of appeals and to provide that all information in the
3 appellate file is confidential.

4 ~~1998~~ This rule was amended to remove the January 1, 1998, sunset clause. The
5 rule provides procedures for appeals in cases terminating parental rights. It was
6 originally enacted as an experimental statewide pilot project. Four years of
7 experience with the rule have proved it to be a useful step toward achieving timely
8 permanency for children and families.

9 ~~2001~~ Rules 39, 39.1, and 39.1A were amended to correctly reference the Family
10 Code. Rules 39.1A and 39.1B were amended to clarify the record that needs to be
11 prepared for appeal, listing what it must include.

12 **Rule 39.1B. Special rule for orders setting a hearing under Welfare and**
13 **Institutions Code section 366.26**

14 (a) ~~[Purpose]~~ The purpose of this rule, as mandated by statute, is to
15 facilitate and implement the following policies:

16
17 (1) ~~To achieve a substantive and meritorious review by the appellate~~
18 ~~court within the period specified in Welfare and Institutions Code~~
19 ~~sections 361.5, 366.21, and 366.22 for the commencement of a~~
20 ~~hearing under section 366.26; and~~

21
22 (2) ~~To encourage and assist the appellate court to determine on their~~
23 ~~merits all writ petitions filed to challenge the findings and orders~~
24 ~~of the juvenile court in setting a hearing under section 366.26.~~
25 ~~Such petitions shall be handled in conformance with standard writ~~
26 ~~practice and procedure except as otherwise specified in these rules.~~

27 *(Subd (a) amended effective January 1, 1998.)*

28 (b) ~~[Applicability]~~ This rule applies to all petitions for extraordinary writ
29 ~~challenging the findings and orders entered on or after January 1, 1995,~~
30 ~~by a juvenile court in setting a hearing under section 366.26.~~

31
32 (c) ~~[Order]~~ For purposes of this rule, the date of the order, at which the
33 ~~findings and orders of the juvenile court in setting a hearing under~~
34 ~~section 366.26 are made, is the date on which the court orally or in~~
35 ~~writing states its order on the record, whichever occurs first.~~
36

1 ~~(d) [Limitations of appeal] The findings and orders of the juvenile court in~~
2 ~~setting a hearing under section 366.26 may be reviewed on appeal~~
3 ~~following the order of the 366.26 hearing only if the following have~~
4 ~~occurred:~~

5
6 ~~(1) An extraordinary writ was sought by the timely filing of Judicial~~
7 ~~Council form Writ Petition Juvenile (JV-825) or other petition for~~
8 ~~extraordinary writ; and~~

9
10 ~~(2) The petition for extraordinary writ was summarily denied or~~
11 ~~otherwise not decided on the merits.~~

12
13 ~~Review on appeal of the order setting a hearing under section 366.26 is~~
14 ~~limited to issues raised in a previous petition for extraordinary writ that~~
15 ~~were supported by an adequate record.~~

16
17 ~~(e) [Failure to file a petition for writ; precludes appeal] Failure by a~~
18 ~~party to file a petition for extraordinary writ review as specified in this~~
19 ~~rule shall preclude that party from obtaining subsequent review on~~
20 ~~appeal of the findings and orders made by a juvenile court in setting a~~
21 ~~hearing under section 366.26.~~

22
23 ~~(f) [Notice of intent to file writ petition and request for record; service;~~
24 ~~jurisdiction] To permit determination of the writ petition prior to the~~
25 ~~scheduled date for the hearing under section 366.26 of the Welfare and~~
26 ~~Institutions Code on the selection of the permanent plan, a notice of~~
27 ~~intent to file a writ petition and request for record shall be filed with the~~
28 ~~clerk of the juvenile court within 7 days of the date of the order setting a~~
29 ~~hearing under section 366.26, or if the order was made by a referee not~~
30 ~~sitting as a judge pro tem, within 7 days after the order of the referee~~
31 ~~becomes final under rule 1417(c). The notice of intent to file a writ~~
32 ~~petition shall be signed by the party intending to file a writ petition, or if~~
33 ~~to be filed on behalf of the child, by the attorney of record for the child.~~
34 ~~Upon a finding of good cause, based on a declaration by the attorney of~~
35 ~~record as to why the party could not sign the notice, the appellate court~~
36 ~~may waive the requirement of the party's signature. The period for filing~~
37 ~~a notice of intent to file a writ petition and request for record shall be~~
38 ~~extended 5 days, if the party received notice of the order setting the~~
39 ~~hearing under section 366.26 of the Welfare and Institutions Code only~~
40 ~~by mail. Judicial Council form *Notice of Intent to File Writ Petition and*~~
41 ~~*Request for Record* (JV-820) may be used. The notice of intent to file a~~
42 ~~writ petition shall include, if known, all dates of the hearing that~~
43 ~~resulted in the order setting the hearing under section 366.26 of the~~

1 Welfare and Institutions Code. The clerk shall serve a copy of the notice
2 of intent to file a writ petition on each party, including the child, parent,
3 any legal guardian, and any person who has been declared a de facto
4 parent and given standing to participate in the juvenile court
5 proceedings, and on the probation officer or social worker, each counsel
6 of record, present custodian of a dependent child, and any court-
7 appointed child advocate, as prescribed by rule 1407. The clerk shall
8 also serve, by first class mail or fax, on the clerk of the reviewing court,
9 a copy of the notice of intent to file a writ petition and a proof of service
10 list. Upon receipt of the notice of intent to file a writ petition, the clerk
11 of the reviewing court shall lodge the notice, whereupon the reviewing
12 court acquires jurisdiction of the writ proceedings.

13 *(Subd (f) amended effective July 1, 1999; previously amended effective July 1,*
14 *1995, January 1, 1996, and January 1, 1997.)*

15 ~~(g) [Record]~~ Immediately on the filing of the notice of intent to file a writ
16 petition and request for record, the clerk of the juvenile court shall
17 assemble the record (1) notifying each court reporter by telephone and
18 in writing to prepare a reporter's transcript of each session of the hearing
19 at which the order setting the hearing under section 366.26 was made
20 and to deliver the transcript to the clerk no more than 12 days after the
21 notice of intent to file a writ petition and request for record are filed, and
22 (2) preparing the clerk's transcript under rule 35(a).

23 ~~The record shall include all reports and minute orders contained in the~~
24 ~~juvenile court file, a reporter's transcript of all sessions of the hearing at~~
25 ~~which the order setting a hearing under section 366.26 was made, and~~
26 ~~any additional evidence or documents considered by the court at that~~
27 ~~hearing.~~

28 ~~Immediately on completion of the transcript, the clerk shall certify the~~
29 ~~record as correct, and deliver it by the most expeditious means to the~~
30 ~~reviewing court, and transmit copies to the petitioner and parties or~~
31 ~~counsel of record, by any method as fast as the express mail service of~~
32 ~~the United States Postal Service. Upon receipt of the transcript and~~
33 ~~record, the clerk of the reviewing court shall notify all parties that the~~
34 ~~record has been filed and indicate the date on which the 10-day period~~
35 ~~for filing the writ petition will expire.~~

36 *(Subd (g) amended effective January 1, 2001; previously amended effective*
37 *January 1, 1996, and January 1, 1998.)*

1 ~~(h) [Petitioner; trial counsel] Trial counsel for the petitioning party, or in~~
2 ~~the absence of trial counsel, the party, is responsible for filing the~~
3 ~~petition for extraordinary writ. Trial counsel is encouraged to seek~~
4 ~~assistance from, or consult with, attorneys experienced in writ~~
5 ~~procedures.~~

6
7 ~~(i) [Petition form; JV-825] The petition for extraordinary writ may be~~
8 ~~filed on Judicial Council form Writ Petition Juvenile (JV-825) or other~~
9 ~~petition for extraordinary writ. Petitions for extraordinary writ submitted~~
10 ~~on Judicial Council form Writ Petition Juvenile (JV-825) shall be~~
11 ~~accepted for filing by the appellate court. All petitions shall be liberally~~
12 ~~construed in favor of their sufficiency. The processing of the petition for~~
13 ~~writ shall not be delayed or impeded due to technical defects or~~
14 ~~omissions.~~

15
16 ~~(j) [Contents of petition for writ; service] The petition for extraordinary~~
17 ~~writ shall summarize the factual basis for the petition. Petitioner need~~
18 ~~not repeat facts as they appear in any attached or submitted record,~~
19 ~~provided, however, that references to specific portions of the record,~~
20 ~~their significance to the grounds alleged, and disputed aspects of the~~
21 ~~record will assist the reviewing court and shall be noted. Petitioner shall~~
22 ~~attach applicable points and authorities. Petitioner shall give notice to all~~
23 ~~parties entitled to receive notice under rule 1407.~~

24 *(Subd (j) amended effective January 1, 1996.)*

25 ~~(k) [Time for filing writ petition] The writ petition shall be served and~~
26 ~~filed within 10 days after the filing of the record in the reviewing court.~~

27 *(Subd (k) amended effective January 1, 1998; previously amended effective*
28 *January 1, 1996.)*

29 ~~(l) [Notice of action] The court may deny the petition using Judicial~~
30 ~~Council form *Denial of Petition* (JV-826) in appropriate cases. In all~~
31 ~~cases in which the court intends to issue a determination on the merits,~~
32 ~~the court shall issue an Order to Show Cause or an Alternative Writ.~~

33 *(Subd (l) adopted effective January 1, 1998.)*

34 ~~(m) [Time for filing response] Any response shall be served and filed~~
35 ~~within 10 days after the filing of the writ petition, or within 15 days~~
36 ~~after filing if the writ petition was served by mail, or within 10 days of~~

1 receiving a request for a response from the reviewing court, unless a
2 shorter time is designated by the court.

3 *(Subd (m) adopted effective January 1, 1998.)*

4 ~~(n) [Augmentation and correction of the record] If the court requires~~
5 ~~additional records or transcripts, the court may grant up to 15 additional~~
6 ~~days for the preparation and submission of the full record.~~
7 ~~Augmentation or correction of the record shall be done under rule 12 or~~
8 ~~rule 35(e). Preparation of a supplemental transcript pursuant to an order~~
9 ~~under this subdivision shall be given highest priority. The procedures~~
10 ~~described in subdivision (g) shall be followed when applicable. Any~~
11 ~~request for augmentation by the petitioner shall be filed within 5 days~~
12 ~~after counsel has received the initial record. Any further request for~~
13 ~~augmentation by a responding party shall be filed within 5 days after the~~
14 ~~filing of the petition. If available, the request for augmentation shall~~
15 ~~include copies of requested documents to be added to the record.~~

16 *(Subd (n) relettered effective January 1, 1998; adopted as subd (l) effective*
17 *January 1, 1995; previously amended effective January 1, 1996.)*

18 ~~(o) [Decision on the merits] Absent exceptional circumstances the~~
19 ~~appellate court shall review the petition for extraordinary writ and~~
20 ~~decide it on the merits by written opinion.~~

21 *(Subd (o) relettered and amended effective January 1, 1998; adopted as subd (m)*
22 *effective January 1, 1995.)*

23 ~~(p) [Stay] A request by petitioner for a stay of the hearing set under section~~
24 ~~366.26 shall not be granted unless the petition for extraordinary writ~~
25 ~~raises issues of substantial complexity and adequate review requires~~
26 ~~extraordinary research and analysis.~~

27 *(Subd (p) relettered effective January 1, 1998; adopted as subd (n) effective*
28 *January 1, 1995.)*

29 ~~(q) [Hearing on the petition] Oral argument shall be held no later than 30~~
30 ~~days after the response is filed or due to be filed, unless waived, or~~
31 ~~unless extended for good cause by the reviewing court. If oral argument~~
32 ~~is waived, the case shall be deemed submitted not later than the thirtieth~~
33 ~~day after the response is filed or is due to be filed.~~

1 *(Subd (q) relettered effective January 1, 1998; adopted as subd (o) effective*
2 *January 1, 1995; previously amended effective January 1, 1996.)*

3 ~~(r) [Notice of decision]~~ The clerk of the reviewing court shall promptly
4 transmit any notice of decision to the petitioner. If a writ or order issues
5 directed to any judge or court, the clerk of the reviewing court shall
6 promptly transmit a certified copy to the court. If the writ or order stays
7 or prohibits proceedings scheduled to occur within 7 days of its
8 issuance, or if the writ or order requires that action be taken by the
9 respondent within 7 days, or in any other urgent situation, the clerk of
10 the reviewing court shall make a reasonable effort to give telephone
11 notice to the clerk of the court or tribunal below, who shall notify the
12 judge or other officer most directly concerned. Telephone notice of the
13 summary denial of a writ is not required, whether or not a stay was
14 previously issued.

15 *(Subd (r) relettered effective January 1, 1998; adopted as subd (p) effective*
16 *January 1, 1995.)*

17 ~~(s) [Implementation of the rule; protocol]~~ The administrative presiding
18 justice of each appellate district is encouraged to convene a committee
19 of representatives of the appellate and trial court legal community to
20 design procedures and protocols to facilitate the implementation of this
21 rule and the intent of the legislation to expedite resolution of these
22 issues.

23 *(Subd (s) relettered effective January 1, 1998; adopted as subd (q) effective*
24 *January 1, 1995.)*

25 ~~(t) [Rule 56 not applicable]~~ The provisions of rule 56 do not apply to
26 these petitions for extraordinary writ.

27 *(Subd (t) relettered effective January 1, 1998; adopted as subd (r) effective*
28 *January 1, 1995.)*

29 ~~(u) [Confidential information section 300 proceedings]~~ In proceedings
30 under this rule, the record and petition and responses may be inspected
31 only by court personnel, the parties to the proceedings, their attorneys,
32 and other persons designated by the court. All records, briefs, or other
33 documents filed by the parties, and opinions or orders filed by the court,
34 shall protect the anonymity of the parties. The court may limit or
35 prohibit public admission to hearings.

1 ~~(Subd (u) relettered effective January 1, 1998; adopted as subd (s) effective~~
2 ~~January 1, 1997.)~~

3 ~~Rule 39.1B amended effective January 1, 2001; adopted effective January 1, 1995;~~
4 ~~previously amended effective July 1, 1995, January 1, 1996, January 1, 1997,~~
5 ~~January 1, 1998, and July 1, 1999.~~

6 **Drafter's Notes**

7 **January 1995** ~~In accordance with the legislative mandate, the council adopted~~
8 ~~rules 39.1B and 1436.5 and amended rules 39.1A, 39.2, 39.2A, 1435, 1436, 1456,~~
9 ~~1460, 1461, and 1462 to specify procedures, including filing and record~~
10 ~~requirements, for appellate review of these orders. The rules provide that the~~
11 ~~findings and orders setting a hearing under section 366.26 may be reviewed on~~
12 ~~appeal following the order of the 366.26 hearing only if the following have~~
13 ~~occurred:~~

14 ~~(1) An extraordinary writ was sought by the timely filing of Judicial Council form~~
15 ~~Writ Petition Juvenile (JV-825) or other petition for extraordinary writ; and~~

16 ~~(2) The petition for extraordinary writ was summarily denied or otherwise not~~
17 ~~decided on the merits.~~

18 ~~Review on appeal of the order setting a hearing under section 366.26 is limited to~~
19 ~~issues raised in a previous petition for extraordinary writ that were supported by~~
20 ~~an adequate record. Under the new procedures, if the party wishes to preserve any~~
21 ~~right to review on appeal of the order setting the hearing under section 366.26, the~~
22 ~~party is required to seek an extraordinary writ by filing a new form, *Notice of*~~
23 ~~*Intent to File Writ Petition and Request for Record* (JV 820), or other notice of~~
24 ~~intent to file a writ petition and request for record.~~

25 ~~To ensure that all participants in juvenile dependency proceedings receive timely~~
26 ~~notice of the new legislation and procedures, the Judicial Council is requiring that~~
27 ~~juvenile courts post the new rules in a conspicuous place.~~

28 ~~The council recognizes that there may be unforeseen difficulties in implementing~~
29 ~~the new legislation and writ rules since an expedited process is required and some~~
30 ~~trial counsel may be unfamiliar with writ procedures. Therefore the council is~~
31 ~~requesting that judges and clerks of the trial and reviewing courts report to the~~
32 ~~council on a quarterly basis to assist in evaluating the effectiveness of the rule~~
33 ~~changes. Further, the council has directed staff to monitor implementation of the~~
34 ~~new procedures to discern any problems or issues in order to make~~
35 ~~recommendations for timely rule revisions and report to the council.~~

1 ~~July 1995~~ On the recommendation of the Family and Juvenile Law Standing
2 Advisory Committee, the council made technical amendments to rules 39.1B(f)
3 and 1436.5(e) specifying that the trial clerk shall serve a copy of any notice of
4 intent to file a writ petition on the clerk of the reviewing court.

5 ~~1997~~ Rule 39.1B, on special writ procedures for orders setting a hearing under
6 Welfare and Institutions Code section 366.26, was amended to clarify procedures
7 for filing notices of intent to file writ petitions, and to address confidential
8 information regarding section 300 proceedings.

9 ~~1998~~ This rule was amended to clarify procedures relating to appellate review of
10 orders setting a hearing under Welfare and Institutions Code section 366.26. It
11 specifies that writ petitions filed under rule 39.1B are to be handled in
12 conformance with standard writ practice and procedure, unless otherwise specified
13 in the rule. It also specifies that absent exceptional circumstances, the appellate
14 court will review the petition for extraordinary writ and decide it on the merits by
15 written opinion.

16 ~~1999~~ This amendment clarifies and conforms rule 39.1B to statutory changes.

17 ~~2001~~ Rules 39.1A and 39.1B were amended to clarify the record that needs to be
18 prepared for appeal, listing what it must include.

19 ~~Rule 39.2. Experimental project for Orange County juvenile appeals~~

20 ~~(a) [Applicability]~~ Notwithstanding any other rule to the contrary, this rule
21 applies to appealable orders of the Orange County Superior Court under
22 section 300 et seq. of the Welfare and Institutions Code and to appeals
23 from judgments of the Orange County Superior Court freeing minors
24 from parental custody and control under Civil Code section 232.

25 ~~(Subd (a) amended effective January 1, 1992; adopted effective January 1, 1989.)~~

26 ~~(b) [Order setting a hearing under section 366.26; limitations on~~
27 ~~appeal]~~ A judgment, order, or decree setting a hearing under section
28 366.26 may be reviewed on appeal following the order of the 366.26
29 hearing only if the following have occurred:

30
31 ~~(1)~~ An extraordinary writ was sought by the timely filing of Judicial
32 Council form Writ Petition Juvenile (JV-825) or other petition for
33 extraordinary writ; and
34

1 ~~(2) The petition for extraordinary writ was summarily denied or~~
2 ~~otherwise not decided on the merits.~~

3
4 ~~Review on appeal of the order setting a hearing under section 366.26 is~~
5 ~~limited to issues raised in a previous petition for extraordinary writ that~~
6 ~~were supported by an adequate record.~~

7
8 ~~Failure to file a petition for extraordinary writ review within the period~~
9 ~~specified by rules 39.1B and 1436.5, to substantively address the issues~~
10 ~~challenged, or to support the challenge by an adequate record, shall~~
11 ~~preclude subsequent review on appeal of the findings and orders made~~
12 ~~by the juvenile court in setting the hearing under section 366.26.~~

13 ~~(Subd (b) amended effective January 1, 1995.)~~

14 ~~(c) [Record on appeal] Immediately on the filing of the notice of appeal,~~
15 ~~the clerk shall assemble the record on appeal by~~

16
17 ~~(1) notifying the court reporter by telephone and in writing to prepare~~
18 ~~a reporter's transcript and to deliver the transcript to the clerk no~~
19 ~~more than 20 days after the notice of appeal is filed, and~~

20
21 ~~(2) preparing the clerk's transcript under rule 35(a).~~

22
23 ~~The record on appeal shall include all portions of a dependency case of~~
24 ~~which the court has taken judicial notice.~~

25
26 ~~Immediately on completion of the transcripts, the clerk shall certify the~~
27 ~~record as correct, hand carry it to the reviewing court, and transmit~~
28 ~~copies to the attorneys for appellant, respondent, the minor, and~~
29 ~~Appellate Defenders, Inc., by any method as fast as the express mail~~
30 ~~service of the United States Postal Service.~~

31
32 ~~The cover shall bear the conspicuous notation "Appeal from order under~~
33 ~~[Welfare and Institutions Code section 300]."~~

34 ~~(Subd (c) amended effective January 1, 1994.)~~

35 ~~(d) [Augmentation and correction of the record] Augmentation or~~
36 ~~correction of the record shall be done under rule 12. Preparation of a~~
37 ~~supplemental transcript pursuant to an order under this subdivision shall~~
38 ~~be given highest priority. The procedures described in subdivision (c)~~
39 ~~shall be followed when applicable.~~

1
2 ~~(e) [Appellate procedure] The judges and clerks of the superior and~~
3 ~~reviewing courts shall adopt procedures to identify clearly the record~~
4 ~~and expedite all processing of a case to which this rule applies. The~~
5 ~~clerks of the courts shall provide data required to assist the Judicial~~
6 ~~Council in evaluating the effectiveness of this rule.~~

7
8 ~~(f) [Briefs] To permit determination within 250 days of the filing of the~~
9 ~~notice of appeal, the appellant's opening brief shall be served and filed~~
10 ~~within 30 days after the filing of the record in the reviewing court. The~~
11 ~~respondent's brief shall be served and filed within 30 days after the~~
12 ~~filing of the appellant's opening brief. The minor's opening brief and~~
13 ~~appellant's reply brief, if any, shall be served and filed within 20 days~~
14 ~~after filing of the respondent's brief. Briefs shall conform to rule 37(b).~~

15 *(Subd (f) amended effective January 1, 1994.)*

16 ~~(g) [Argument and submission] Oral argument shall be held no later than~~
17 ~~60 days after appellant's reply brief is filed or is due to be filed. If oral~~
18 ~~argument is waived, the case shall be deemed submitted as of the~~
19 ~~sixtieth day after appellant's reply brief is filed.~~

20
21 ~~(h) [Extensions of time] Only the reviewing court may grant extensions of~~
22 ~~time to prepare the record or to serve and file briefs. The court shall~~
23 ~~require an exceptional showing of good cause before granting any~~
24 ~~extension. The trial court shall not grant any extensions of time.~~

25
26 ~~(i) [Expiration of this rule] Subdivision repealed effective January 1,~~
27 ~~1995.~~

28 *(Subd (i) repealed effective January 1, 1995; previously amended effective*
29 *January 1, 1993, January 1, 1994.)*

30 *Rule 39.2 amended effective January 1, 1995; adopted effective January 1, 1989;*
31 *previously amended January 1, 1992, January 1, 1993, January 1, 1994.*

32 **Drafter's Notes**

33 ~~1988~~ Recent legislation (Stats. 1988, ch. 805) requires the Judicial Council to
34 implement a four-year pilot project in Orange County to expedite appeals from
35 proceedings under Welfare and Institutions Code section 366.26 or Civil Code
36 section 232 (freedom from parental control). The council adopted rule 39.2 to
37 establish procedures governing appeals in the project.

1 ~~1992~~ See note following rule 39.1.

2 ~~1993~~ The council amended rules 39 and 39.2 to change the expiration date of each
3 rule from January 1, 1993, to January 1, 1994.

4 ~~1994~~ These amendments (to rules 39.1, 39.1A, 39.2, 39.2A) establish a pilot
5 project statewide to specify procedures for expediting appeals from judgments
6 freeing children from parental custody and control.

7 ~~1995~~ The council also amended rules 39.2 and 39.2A to continue the pilot projects
8 on dependency appeals

9 In accordance with the legislative mandate, the council adopted rules 39.1B and
10 1436.5 and amended rules 39.1A, 39.2, 39.2A, 1435, 1436, 1456, 1460, 1461, and
11 1462 to specify procedures, including filing and record requirements, for appellate
12 review of these orders. The rules provide that the findings and orders setting a
13 hearing under section 366.26 may be reviewed on appeal following the order of
14 the 366.26 hearing only if the following have occurred:

15 (1) an extraordinary writ was sought by the timely filing of Judicial Council form
16 Writ Petition Juvenile (JV-825) or other petition for extraordinary writ; and

17 (2) the petition for extraordinary writ was summarily denied or otherwise not
18 decided on the merits.

19 Review on appeal of the order setting a hearing under section 366.26 is limited to
20 issues raised in a previous petition for extraordinary writ that were supported by
21 an adequate record. Under the new procedures, if the party wishes to preserve any
22 right to review on appeal of the order setting the hearing under section 366.26, the
23 party is required to seek an extraordinary writ by filing a new form, Notice of
24 Intent to File Writ Petition and Request for Record (JV-820), or other notice of
25 intent to file a writ petition and request for record.

26 To ensure that all participants in juvenile dependency proceedings receive timely
27 notice of the new legislation and procedures, the Judicial Council is requiring that
28 juvenile courts post the new rules in a conspicuous place.

29 The council recognizes that there may be unforeseen difficulties in implementing
30 the new legislation and writ rules since an expedited process is required and some
31 trial counsel may be unfamiliar with writ procedures. Therefore the council is
32 requesting that judges and clerks of the trial and reviewing courts report to the
33 council on a quarterly basis to assist in evaluating the effectiveness of the rule
34 changes. Further, the council has directed staff to monitor implementation of the

1 new procedures to discern any problems or issues in order to make
2 recommendations for timely rule revisions and report to the council.

3 **Rule 39.2A. Experimental project for Imperial County and San Diego County**
4 **juvenile appeals**

5 ~~(a) [Applicability] Notwithstanding any other rule to the contrary, this rule~~
6 ~~applies to appealable orders of the Imperial County and San Diego~~
7 ~~County Superior Courts under section 300 et seq. of the Welfare and~~
8 ~~Institutions Code and to appeals from judgments of the Imperial County~~
9 ~~and San Diego County Superior Courts freeing minors from parental~~
10 ~~custody and control under Civil Code section 232.~~

11
12 ~~(b) [Order setting a hearing under section 366.26; limitations on~~
13 ~~appeal] A judgment, order, or decree setting a hearing under section~~
14 ~~366.26 may be reviewed on appeal following the order of the 366.26~~
15 ~~hearing only if the following have occurred:~~

16
17 ~~(1) An extraordinary writ was sought by the timely filing of Judicial~~
18 ~~Council form Writ Petition Juvenile (JV-825) or other petition for~~
19 ~~extraordinary writ; and~~

20
21 ~~(2) The petition for extraordinary writ was summarily denied or~~
22 ~~otherwise not decided on the merits.~~

23
24 ~~Review on appeal of the order setting a hearing under section 366.26 is~~
25 ~~limited to issues raised in a previous petition for extraordinary writ that~~
26 ~~were supported by an adequate record.~~

27
28 ~~Failure to file a petition for extraordinary writ review within the period~~
29 ~~specified by rules 39.1B and 1436.5, to substantively address the issues~~
30 ~~challenged, or to support the challenge by an adequate record, shall~~
31 ~~preclude subsequent review on appeal of the findings and orders made~~
32 ~~by the juvenile court in setting the hearing under section 366.26.~~

33 ~~(Subd (b) amended effective January 1, 1995.)~~

34 ~~(c) [Record on appeal] Immediately on the filing of the notice of appeal,~~
35 ~~the clerk shall assemble the record on appeal by~~

36
37 ~~(1) notifying the court reporter by telephone and in writing to prepare~~
38 ~~a reporter's transcript and to deliver the transcript to the clerk no~~
39 ~~more than 20 days after the notice of appeal is filed, and~~

1
2 ~~(2) — preparing the clerk's transcript under rule 35(a).~~

3
4 The record on appeal shall include all portions of a dependency case of
5 which the court has taken judicial notice.

6
7 Immediately on completion of the transcripts, the clerk shall

8
9 ~~(1) — certify the record as correct,~~

10
11 ~~(2) — hand carry it from the San Diego County Superior Court to the~~
12 ~~reviewing court or deliver by the most expeditious means from the~~
13 ~~Imperial County Superior Court to the reviewing court, and~~

14
15 ~~(3) — transmit copies to the attorneys for appellant, respondent, the~~
16 ~~minor, and Appellate Defenders, Inc., by any method as fast as the~~
17 ~~express mail service of the United States Postal Service.~~

18
19 The cover shall bear the conspicuous notation "Appeal from order under
20 [Welfare and Institutions Code section 300]."

21 ~~(Subd (c) amended effective January 1, 1994.)~~

22 ~~(d) — [Augmentation and correction of the record] Augmentation or~~
23 ~~correction of the record shall be done under rule 12. Preparation of a~~
24 ~~supplemental transcript pursuant to an order under this subdivision shall~~
25 ~~be given highest priority. The procedures described in subdivision (c)~~
26 ~~shall be followed when applicable. Any request for augmentation by the~~
27 ~~appellant shall be filed within 15 days after counsel has received the~~
28 ~~record on appeal. Any request for augmentation by the respondent shall~~
29 ~~be filed within 15 days after the filing of appellant's opening brief. If~~
30 ~~available, the request for augmentation shall include copies of requested~~
31 ~~documents to be added to the record.~~

32
33 ~~(e) — [Appellate procedure] The judges and clerks of the superior and~~
34 ~~reviewing courts shall adopt procedures to identify clearly the record~~
35 ~~and expedite all processing of a case to which this rule applies. The~~
36 ~~clerks of the courts shall provide data required to assist the Judicial~~
37 ~~Council in evaluating the effectiveness of this rule.~~

38
39 ~~(f) — [Briefs] To permit determination within 250 days of the filing of the~~
40 ~~notice of appeal, the appellant's opening brief shall be served and filed~~
41 ~~within 30 days after the filing of the record in the reviewing court. The~~

1 respondent's brief shall be served and filed within 30 days after the
2 filing of the appellant's opening brief. The minor's opening brief shall be
3 served and filed within 10 days after filing of the respondent's brief, and
4 appellant's reply brief, if any, shall be served and filed within 20 days
5 after filing of the respondent's brief. Briefs shall conform to rule 37(b).

6 *(Subd (f) amended effective January 1, 1994.)*

7 ~~(g) [Argument and submission]~~ Oral argument shall be held no later than
8 60 days after the appellant's reply brief is filed or is due to be filed. If
9 oral argument is waived, the case shall be deemed submitted as of the
10 sixtieth day after the appellant's reply brief is filed.

11
12 ~~(h) [Extensions of time]~~ Only the reviewing court may grant extensions of
13 time to prepare the record or to serve and file briefs. The court shall
14 require an exceptional showing of good cause before granting any
15 extension. The trial court shall not grant any extensions of time.

16 **Rule 39.4. Special rules for conservatorship appeals**

17 ~~(a) [General provision]~~ The rules governing appeals from the superior
18 court in criminal cases are applicable to any appeals from a judgment or
19 order pursuant to Welfare and Institutions Code section 5350, except
20 where otherwise expressly provided by this rule.

21
22 ~~(b) [Contents of record on appeal-normal record]~~ The record on appeal
23 shall include the following (which shall constitute the normal record):

24
25 (1) A clerk's transcript containing copies of the notice of appeal, any
26 request for additional record and any order made pursuant to it, the
27 petition, any demurrer or written motions with supporting and
28 opposing memoranda and affidavits, any medical reports filed, any
29 motion for a new trial with supporting and opposing memoranda
30 and affidavits, all minutes of the court relating to the action, the
31 verdict, the judgment or order appealed from, written instructions
32 given or refused indicating on each instruction the party requesting
33 it, and all reports of the social workers which have been filed.

34
35 (2) A reporter's transcript of all oral proceedings taken, except voir
36 dire examination of jurors and opening statements of counsel.
37

1 (3) ~~To be transmitted as originals upon request by the reviewing court~~
2 ~~as provided in rule 10: any exhibit admitted in evidence or~~
3 ~~rejected.~~

4
5 ~~(e) [Transmission] A copy of the record shall be transmitted to the parties;~~
6 ~~however, the record shall not be transmitted to the district attorney or~~
7 ~~the Attorney General unless that office represents a party.~~

8
9 ~~(d) [Briefs] Briefs shall be served on the parties; however, briefs shall not~~
10 ~~be served on the district attorney or the Attorney General unless that~~
11 ~~office represents a party.~~

12
13 ~~(e) [Service] Notwithstanding rule 44(b)(2)(ii), proof of delivery of five~~
14 ~~copies to the Supreme Court shall not be required.~~

15 *(Subd (e) amended effective January 1, 1995.)*

16 *Rule 39.4 amended effective January 1, 1995; adopted effective July 1, 1987.*

17 **Drafter's Notes**

18 ~~1987~~ The council adopted new rule 39.4, which defines the record on appeal in a
19 conservatorship matter under Welfare and Institutions Code section 5350
20 (Lanterman-Petris-Short Act), and states special rules applicable to those appeals.

21 ~~1995~~ The council also . . . amended rules 39.1 and 39.4 (special rules for
22 dependency and conservatorship appeals) to conform to rule 44 by requiring that
23 five rather than seven copies of each Court of Appeal brief be filed with the
24 California Supreme Court.

25 ~~(i) [Expiration of this rule] Subdivision repealed effective January 1, 1995.~~

26 *(Subd (i) repealed effective January 1, 1995; previously amended effective*
27 *January 1, 1993, January 1, 1994.)*

28 *Rule 39.2A amended effective January 1, 1995; adopted effective March 1, 1992;*
29 *previously amended effective January 1, 1993, January 1, 1994.*

30 **Drafter's Notes**

31 ~~1994~~ These amendments (to rules 39.1, 39.1A, 39.2, 39.2A) establish a pilot
32 project statewide to specify procedures for expediting appeals from judgments
33 freeing children from parental custody and control.

1 ~~1995~~ The council also amended rules 39.2 and 39.2A to continue the pilot projects
2 on dependency appeals

3 ~~In accordance with the legislative mandate, the council adopted rules 39.1B and~~
4 ~~1436.5 and amended rules 39.1A, 39.2, 39.2A, 1435, 1436, 1456, 1460, 1461, and~~
5 ~~1462 to specify procedures, including filing and record requirements, for appellate~~
6 ~~review of these orders. The rules provide that the findings and orders setting a~~
7 ~~hearing under section 366.26 may be reviewed on appeal following the order of~~
8 ~~the 366.26 hearing only if the following have occurred:~~

9 ~~(1) an extraordinary writ was sought by the timely filing of Judicial Council form~~
10 ~~Writ Petition Juvenile (JV-825) or other petition for extraordinary writ; and~~

11 ~~(2) the petition for extraordinary writ was summarily denied or otherwise not~~
12 ~~decided on the merits.~~

13 ~~Review on appeal of the order setting a hearing under section 366.26 is limited to~~
14 ~~issues raised in a previous petition for extraordinary writ that were supported by~~
15 ~~an adequate record. Under the new procedures, if the party wishes to preserve any~~
16 ~~right to review on appeal of the order setting the hearing under section 366.26, the~~
17 ~~party is required to seek an extraordinary writ by filing a new form, Notice of~~
18 ~~Intent to File Writ Petition and Request for Record (JV-820), or other notice of~~
19 ~~intent to file a writ petition and request for record.~~

20 ~~To ensure that all participants in juvenile dependency proceedings receive timely~~
21 ~~notice of the new legislation and procedures, the Judicial Council is requiring that~~
22 ~~juvenile courts post the new rules in a conspicuous place.~~

23 ~~The council recognizes that there may be unforeseen difficulties in implementing~~
24 ~~the new legislation and writ rules since an expedited process is required and some~~
25 ~~trial counsel may be unfamiliar with writ procedures. Therefore the council is~~
26 ~~requesting that judges and clerks of the trial and reviewing courts report to the~~
27 ~~council on a quarterly basis to assist in evaluating the effectiveness of the rule~~
28 ~~changes. Further, the council has directed staff to monitor implementation of the~~
29 ~~new procedures to discern any problems or issues in order to make~~
30 ~~recommendations for timely rule revisions and report to the council.~~

31 ~~Rule 39.8. Appeals in sterilization cases~~

32 ~~(a) — [Applicability] This rule applies to appeals from judgments or orders~~
33 ~~authorizing the appointment of a limited conservator to consent to~~
34 ~~sterilization of a developmentally disabled adult conservatee.~~

1 ~~(b) [Rules in criminal appeals apply] The rules governing appeals from~~
2 ~~the superior court in criminal cases are applicable to appeals in~~
3 ~~sterilization cases unless otherwise expressly provided in this rule or~~
4 ~~unless the application of a criminal rule would be clearly impracticable~~
5 ~~or inappropriate.~~

6
7 ~~(c) [When appeal is deemed taken] Entry of a judgment or order~~
8 ~~authorizing consent to sterilization has the effect of a notice of appeal.~~
9 ~~The clerk shall forthwith prepare the clerk's transcript and notify the~~
10 ~~reporter to prepare the reporter's transcript.~~

11
12 ~~(d) [Notification by clerk] The clerk of the superior court shall, forthwith~~
13 ~~upon entry of the judgment or order, mail certified copies to the clerk of~~
14 ~~the Court of Appeal for the district and to the Attorney General.~~

15
16 ~~(e) [Contents of record] The normal record on appeal shall include the~~
17 ~~following:~~

18
19 ~~(1) A clerk's transcript containing copies of all papers or records filed~~
20 ~~with the court, including~~

21
22 ~~(i) the petition and the notice of hearing on the petition;~~

23
24 ~~(ii) each application, motion, and notice of motion, with~~
25 ~~supporting and opposing memoranda and affidavits;~~

26
27 ~~(iii) each report filed or lodged with the court;~~

28
29 ~~(iv) each transcript of a proceeding pertaining to the case;~~

30
31 ~~(v) minutes of the court relating to the case;~~

32
33 ~~(vi) the written statement of decision and findings of the court;~~

34
35 ~~(viii) the judgment or order appealed from.~~

36
37 ~~(2) A reporter's transcript containing all proceedings in the superior~~
38 ~~court pertaining to the case, including~~

39
40 ~~(i) all proceedings at the hearing on the petition, with opening~~
41 ~~statements and closing arguments;~~

42
43 ~~(ii) all proceedings on motions;~~

1
2 (iii) ~~all comments on the evidence by the court and any oral~~
3 ~~opinion or statement of decision by the court.~~
4

5 (3) ~~All exhibits admitted in evidence or rejected.~~
6

7 ~~Additional items may be requested, following the procedure stated in rule 33(b).~~
8

9 ~~An original and two copies of each transcript shall be prepared. The transcript~~
10 ~~shall be corrected, certified, and transmitted as provided by rule 35.~~
11

12 ~~The cost of preparing the record on appeal shall be as provided by Probate Code~~
13 ~~section 1963.~~
14

15 (f) ~~[Confidential material] Written reports of physicians, psychologists,~~
16 ~~and clinical social workers and other matter designated as confidential~~
17 ~~by the trial court included in the record on appeal may be inspected only~~
18 ~~by court personnel, the parties to the proceeding and their attorneys, and~~
19 ~~other persons designated by the court. These reports and other~~
20 ~~confidential matter shall be transmitted to the clerk of the reviewing~~
21 ~~court in a sealed envelope marked "Confidential—May Not Be~~
22 ~~Examined Without Court Order."~~
23

24 (g) ~~[Duty of trial counsel] To expedite certification of the record on~~
25 ~~appeal, trial counsel for the conservatee shall continue to represent the~~
26 ~~conservatee until the record is certified. Trial counsel shall check that~~
27 ~~the record on appeal has been prepared and shall check for errors or~~
28 ~~omissions in that record and request any corrections within the time~~
29 ~~provided by rule 35. After certification, trial counsel shall deliver the~~
30 ~~transcripts to appellate counsel. Appellate counsel for the conservatee~~
31 ~~may request additions or corrections to the record on appeal in either the~~
32 ~~trial court or the appellate court.~~
33

34 (h) ~~[Appointment of appellate counsel] Upon appeal from a judgment or~~
35 ~~order authorizing consent to sterilization, the appellate court shall~~
36 ~~appoint counsel to represent on appeal the conservatee if no legal~~
37 ~~counsel on appeal has been retained for the conservatee.~~

38 *(Rule 39.8 adopted effective January 1, 1987.)*

39 **Rule 40. Definitions**

40 ~~In these rules, unless the context or subject matter otherwise requires:~~

- 1 ~~(a) The past, present and future tenses shall each include the other; the~~
2 ~~masculine, feminine and neuter gender shall each include the other; and~~
3 ~~the singular and plural number shall each include the other.~~
4
- 5 ~~(b) The words "superior court" mean the court from which an appeal is~~
6 ~~taken pursuant to these rules; the words "reviewing court" apply to the~~
7 ~~court in which an appeal or original proceeding is pending, and mean~~
8 ~~the Supreme Court or the Court of Appeal to which an appeal is taken,~~
9 ~~or to which an appeal or an original proceeding is transferred, or in~~
10 ~~which an original proceeding is commenced.~~
11
- 12 ~~(c) The party appealing is known as the "appellant," and the adverse party~~
13 ~~as the "respondent."~~
14
- 15 ~~(d) The word "shall" is mandatory and the word "may" is permissive.~~
16
- 17 ~~(e) The terms "party," "appellant," "respondent," "petitioner" or other~~
18 ~~designation of a party include such party's attorney of record. Whenever~~
19 ~~under these rules a notice is required to be given to or served on a party~~
20 ~~such notice or service shall be made on his attorney of record, if he has~~
21 ~~one.~~
22
- 23 ~~(f) The words "serve and file" mean that a document filed in a court is to be~~
24 ~~accompanied by proof of prior service, in a manner permitted by law, of~~
25 ~~one copy of the document on counsel for each party who is represented~~
26 ~~by separate counsel and on each party appearing in person. The proof of~~
27 ~~service shall name each party represented by each attorney served.~~
28 ~~(Subd (f) amended effective January 1, 1998.)~~
29
- 30 ~~(g) "Judgment" includes any judgment, order or decree from which an~~
31 ~~appeal lies.~~
32
- 33 ~~(h) The words "Chief Justice" include the acting Chief Justice, and the~~
34 ~~words "Presiding Justice" include the acting Presiding Justice.~~
35
- 36 ~~(i) The word "briefs" includes petitions for rehearing, petitions for review,~~
37 ~~and answers thereto. It does not include petitions for extraordinary relief~~
38 ~~in original proceedings.~~

39 *(Subd (i) relettered effective January 1, 2002; adopted as subd (k) effective*
40 *January 1, 1951; previously amended effective July 1, 1989, and July 1, 1991.)*

1 ~~(j) "Register" and "register of actions" means the permanent record of cases~~
2 ~~maintained by electronic, magnetic, microphotographic, or similar~~
3 ~~means.~~

4 ~~(Subd (j) relettered effective January 1, 2002; adopted as subd (m) effective July~~
5 ~~1, 1989.)~~

6 ~~(k) "Date of filing" of a brief (as defined in subdivision (i)) is the date of~~
7 ~~delivery to the clerk's office during normal business hours. The brief is~~
8 ~~timely, however, if the time for its filing had not expired on the date of~~
9 ~~its mailing by certified or express mail as shown on the postal receipt or~~
10 ~~postmark, or the date of its delivery to a common carrier promising~~
11 ~~overnight delivery as shown on the carrier's receipt.~~

12 ~~(Subd (k) amended effective January 1, 2003; adopted as subd (n) effective July 1,~~
13 ~~1989; previously amended effective July 1, 1991 and January 1, 2002.)~~

14 ~~(l) The word "recycled" as applied to paper means "recycled paper~~
15 ~~product" as defined by section 42202 of the Public Resources Code.~~
16 ~~Whenever the use of recycled paper is required by these rules, the~~
17 ~~attorney, party, or other person filing or serving a document certifies, by~~
18 ~~the act of filing or service, that the document was produced on paper~~
19 ~~purchased as recycled paper as defined by that section.~~

20 ~~(Subd (l) relettered effective January 1, 2002; adopted as subd (o) effective~~
21 ~~January 1, 1994.)~~

22 ~~Rule 40 amended effective January 1, 2003; previously amended effective January~~
23 ~~1, 1983, July 1, 1989, July 1, 1991, January 1, 1994, July 1, 1996, January 1,~~
24 ~~1998, and January 1, 2002.~~

25 **Drafter's Notes**

26 ~~1983~~ See note following rule 15.

27 ~~1989~~ Rule 40 was amended to define "register" to include the permanent record
28 kept by electronic or similar means, to conform to Court of Appeal
29 computerization of their dockets.

30 New subdivision (n) of rule 40 defines "date of filing" of a brief to include date of
31 mailing via certified or express mail or delivery to an overnight delivery common
32 carrier. Subdivision (k), which defines "brief," was technically amended to include
33 petitions for "review" rather than obsolete petitions for "hearing."

1 ~~1991~~ The council amended rule 40(n) to state that a document sent by an approved
2 method on or before the day it was due is timely. The council also amended 40(k)
3 (definition of a brief) to memorialize that the 40(n) (overnight delivery service)
4 provision does not apply to petitions for original writs.

5 ~~1994~~ New and amended California Rules of Court (new rules 989.1, 1071.5;
6 amended rules 9, 40, 44, 201, 501) require the use of recycled paper for original
7 papers filed in California courts after January 1, 1995, and for copies after January
8 1, 1996. The rules provide that an attorney, by the act of filing the document,
9 certifies that recycled paper was used.

10 ~~1996~~ Rules 15, 28(e)(6), 29.3(a), (c), 37, 40, and 44(a) . . . These rules were
11 amended concerning typography and length of briefs and accompanying
12 explanatory matter, and page limits adjustments.

13 ~~1998~~ Subdivision (f) was amended to require that all documents and briefs filed in
14 an appeal be served on all parties, and that proofs of service include the name of
15 each party represented by each attorney served.

16 ~~2002~~ See note following rule 1.

17 ~~Rule 40.5. Service and filing of notice of change of address~~

18 ~~(a) [Service and filing of notice] An attorney or unrepresented party whose~~
19 ~~address or telephone number changes while an appeal, original~~
20 ~~proceeding, or petition is pending before a reviewing court shall serve~~
21 ~~and file written notice of the change of address or telephone number.~~
22 ~~The notice shall specify the case number or numbers to which it applies.~~
23 ~~In the case of attorneys, the notice shall include the attorney's California~~
24 ~~State Bar membership number.~~

26 ~~(b) [Notice applies to all pending and past matters unless otherwise~~
27 ~~stated] When an attorney files a notice of change of address or~~
28 ~~telephone number in connection with any pending appeal, original~~
29 ~~proceeding, or petition, the clerk of the reviewing court is authorized to~~
30 ~~use the new address and telephone number in attempting to~~
31 ~~communicate with the attorney in connection with all other matters~~
32 ~~pending before the court at the time the notice was filed, and in~~
33 ~~connection with any matter that was concluded prior to the filing, unless~~
34 ~~the attorney advises the clerk otherwise in writing.~~

36 ~~(c) [Appearance not conforming to address on record] If a proposed~~
37 ~~appearance in a new matter shows an attorney's address different from~~

1 the attorney's address of record in the court, the clerk shall enter the
2 appearance subject to its being stricken if, after inquiry by the court, the
3 attorney does not promptly confirm the address or file and serve a
4 change of address.

5 Attorneys with two or more offices may have a corresponding number
6 of addresses of record with a reviewing court, but only one address may
7 be associated with a given case or proceeding.

8 *Rule 40.5 as adopted effective January 1, 1994.*

9 **Drafter's Notes**

10 ~~1993 Rule 40.5 is adopted to require filing and service of changes of address.~~

11 **Rule 41. Motions in the reviewing court**

12 ~~(a) [Motion and opposition] Except as otherwise provided in these rules,~~
13 ~~all motions in a reviewing court shall be made by the filing of a~~
14 ~~typewritten motion, with proof of service on all other parties, stating the~~
15 ~~grounds of the motion, the papers, if any, on which it is based, and the~~
16 ~~order or other relief requested. Each copy of the motion shall be~~
17 ~~accompanied by a memorandum of points and authorities, and if the~~
18 ~~motion is based on matters not appearing of record, by affidavits or~~
19 ~~other evidence in support thereof. Any showing in opposition to the~~
20 ~~motion shall be served and filed within 10 days after the service of the~~
21 ~~motion.~~

22 *(Subd (a) amended effective January 1, 1973; previously amended effective*
23 *January 1, 1951, January 2, 1962, January 1, 1967, and January 1, 1970.)*

24 ~~(b) [Disposition of motion] Motions may be disposed of after opposition~~
25 ~~thereto has been filed or the time for filing such opposition has expired.~~
26 ~~Upon request of a party or upon its own motion, the reviewing court~~
27 ~~may place any motion on the calendar for hearing or the court may~~
28 ~~otherwise dispose of the motion as it may determine. When a motion~~
29 ~~has been placed on the calendar for hearing, the clerk shall mail to each~~
30 ~~party a notice thereof showing the date and time designated for the~~
31 ~~hearing. All motions shall be deemed to be made on all the grounds~~
32 ~~stated therein.~~

33 *(Subd (b) amended effective January 1, 1973.)*

1 ~~(e) [Failure to oppose motion] Failure of an appellant to file a written~~
2 ~~opposition to a motion to dismiss an appeal or to appear and oppose the~~
3 ~~motion after notification by the clerk of a hearing thereon may be~~
4 ~~deemed an abandonment of the appeal authorizing its dismissal. Failure~~
5 ~~of the adverse party to serve and file written opposition to any other~~
6 ~~motion may be deemed a consent to the granting of such motion.~~

7 ~~(Subd (e) amended effective January 1, 1973.)~~

8 **Rule 42. Showing on motion made prior to filing record**

9 ~~(a) [Motion to dismiss appeal] When a motion to dismiss an appeal is filed~~
10 ~~prior to the filing of the record on appeal in the reviewing court, it shall~~
11 ~~be accompanied by a certificate of the clerk of the superior court or an~~
12 ~~affidavit setting forth the following:~~

13
14 ~~(1) The nature of the action and the relief demanded by the complaint~~
15 ~~and any cross-complaint or complaint in intervention.~~

16
17 ~~(2) The names of all attorneys of record.~~

18
19 ~~(3) A description of the judgment, the date of its entry, and the fact~~
20 ~~and date of service of written notice of its entry.~~

21
22 ~~(4) The fact and date of filing of notice of intention to move for a new~~
23 ~~trial, or the absence of such filing.~~

24
25 ~~(5) The disposition of proceedings on motion for new trial, the date of~~
26 ~~such disposition, and the date of service of written notice thereof.~~

27
28 ~~(6) The fact and date of filing of notice to appeal, and the court to~~
29 ~~which the appeal was taken.~~

30
31 ~~(7) The fact and date of filing~~

32
33 ~~(a) any notice to prepare a transcript or notice designating papers,~~
34 ~~records or exhibits;~~

35
36 ~~(b) any stipulation to prepare an agreed statement, or notice of~~
37 ~~intention to propose a settled statement;~~

38
39 ~~(c) any proposed narrative statement; and~~
40

1 ~~(d) any order extending the time for preparation of the record.~~

2
3 ~~(8) The date of certification of the record, or the facts relating to~~
4 ~~failure to certify, or the fact that no proceeding for the preparation~~
5 ~~of a record on appeal is pending in the superior court, and that the~~
6 ~~time to institute any such proceeding has expired.~~

7 *~~(Subd (a) amended effective July 1, 1985; previously amended effective January 1,~~*
8 *~~1973.)~~*

9 ~~(b) [Other motions] When any other motion is filed prior to the filing of~~
10 ~~the record on appeal in the reviewing court, it shall be accompanied by~~
11 ~~such affidavits or other evidence as may be necessary or proper to~~
12 ~~support the motion.~~

13 *~~(Subd (b) amended effective July 1, 1980; previously amended effective January 1,~~*
14 *~~1973.)~~*

15 *~~(Subd (c) repealed effective July 1, 1980.)~~*

16 *~~Rule 42 amended effective July 1, 1985.~~*

17 **Drafter's Notes**

18 ~~1985~~ Rule 42 was amended to permit, at counsel's option, use of an affidavit as to
19 facts supporting a motion to dismiss an appeal rather than a clerk's certificate.

20 **Rule 43. Applications on routine matters**

21 ~~Except as otherwise provided in these rules, applications to extend time for filing~~
22 ~~records and briefs, applications to shorten time, and applications relating to other~~
23 ~~matters of routine shall be served and filed; but the Chief Justice or presiding~~
24 ~~justice may require an additional showing to be made and for good cause may~~
25 ~~excuse advance service. The application shall set forth facts showing:~~

26 ~~(1) good cause for granting the application, and~~

27
28 ~~(2) any previous applications granted or denied to any party after filing~~
29 ~~of the notice of appeal.~~

30 ~~The application may be granted or denied by the Chief Justice or presiding justice,~~
31 ~~unless the court otherwise determines. The applicant shall provide to the clerk~~
32 ~~addressed, sufficient postage prepaid envelopes for mailing the order granting or~~
33 ~~denying the application to all parties.~~

1 ~~Rule 43 amended effective July 1, 1995; previously amended effective January 1,~~
2 ~~1974, and January 1, 1975.~~

3 **Drafter's Notes**

4 **1995** On the recommendation of the Appellate Standing Advisory Committee, the
5 council amended: . . . (5) rule 43 to require service of routine applications unless
6 excused for good cause, as proposed.

7 **Rule 44. Form and filing of papers**

8 **(a) Form**

9 Except as otherwise provided in these rules, all papers filed in a
10 reviewing court may be either produced on a computer or typewritten
11 and must comply with the relevant provisions of rule 14(b). All copies
12 of papers must be clear and legible. The use of recycled paper is
13 required for all papers filed with the court or served on the parties. The
14 use of recycled paper for the cover of the brief is encouraged.

15 *(Subd (a) amended effective January 1, 2004; previously amended January 1,*
16 *1959, July 1, 1974, January 1, 1993, January 1, 1994, January 1, 1995, and July*
17 *1, 1996.)*

18 **(b) Number of copies**

19 If a brief, paper, or document, other than the record, is filed in a
20 reviewing court the following number of copies must be filed:

21 (1) If filed in the Supreme Court:

22
23 (A) An original and 13 copies of a petition for review, an answer,
24 or a reply;

25
26 (B) An original and 13 copies of a brief in a cause pending in that
27 court;

28
29 (C) An original and 10 copies of a petition for a writ within the
30 court's original jurisdiction or an opposition or other response
31 to the petition;

32
33 (D) An original and 8 copies of a notice of motion, motion, or
34 opposition or other response to a motion;

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~~(E) An original and 8 copies of a federal exhaustion petition for review, an answer, or a reply; and~~

~~(F) An original and one copy of any other document or paper.~~

~~(2) If filed in a Court of Appeal:~~

~~(A) An original and 4 copies of a petition or an answer, opposition, or other response to a petition.;~~

~~(B) An original and 4 copies of a brief and, in civil appeals, proof of delivery of 5 copies to the Supreme Court;~~

~~(C) An original and 3 copies of a notice of motion, motion, or opposition or other response to a motion; and~~

~~(D) An original and one copy of any other document or paper.~~

~~(Subd (b) amended effective January 1, 2004; previously amended effective January 1, 1951, January 2, 1962, November 11, 1966, January 1, 1972, July 1, 1973, May 6, 1985, July 1, 1989, and January 1, 1996, and July 1, 1996.)~~

~~(e) Covers~~

~~So far as practicable, the covers of briefs and petitions should be in the following colors:~~

- ~~Appellant's opening brief (rule 13(a)) green~~
- ~~Respondent's brief (rule 13(a)) yellow~~
- ~~Appellant's reply brief (rule 13(a)) tan~~
- ~~Amicus curiae brief gray~~
- ~~Petition for rehearing orange~~
- ~~Answers to petition for rehearing blue~~
- ~~Petition for original writ or answer (opposition) to writ petition Red~~
- ~~Petition for review (rule 28(a)) white~~
- ~~Answer to petition for review (rule 28(a)) blue~~
- ~~Reply to answer (rule 28(a)) white~~
- ~~Petitioner's brief on the merits (rule 29.1(a)) white~~

Answer brief on the merits (rule 29.1(a)) blue
Reply brief on the merits (rule 29.1(a))..... white

1 A brief or petition not conforming to this subdivision must be accepted
2 for filing; but in the case of repeated violations by an attorney or party,
3 the court may proceed as provided in rule 14(e).

4 *(Subd (c) amended effective January 1, 2004; adopted effective January 1, 1984;*
5 *previously amended effective May 6, 1985.*

6 **(d) Attorneys' names, addresses, telephone numbers, State Bar**
7 **numbers**

8 Every brief and other paper filed in a reviewing court must contain on
9 the cover, or on the first page if there is no cover, the name, address, and
10 telephone number of the attorney filing the paper, and the California
11 State Bar membership number of that attorney and of every attorney
12 who joins in the brief or paper. California State Bar membership
13 numbers of the supervisors in a law firm or public law office of the
14 attorney responsible for the case need not be stated.

15 *(Subd (d) amended effective January 1, 2004; adopted effective August 1, 1993.)*

16 *Rule 44 amended effective January 1, 2004; previously amended effective January*
17 *1, 1984, May 6, 1985, July 1, 1987, January 1, 1993, August 1, 1993, January 1,*
18 *1994, January 1, 1996, and July 1, 1996.*

19 **Drafter's Notes**

20 ~~1983~~ Rule 44 was amended to specify the color of covers of briefs, writ petitions
21 and similar documents. The specification of colors had previously appeared in an
22 appendix to the California Rules of Court.

23 ~~1989~~ Rule 44(b) was amended to adjust in light of current court needs the number
24 of copies of briefs required to be filed (reducing some and increasing others
25 slightly).

26 **January 1993** The council adopted amendments to rules 9, 15, 44, 201, and 501
27 of the California Rules of Court, effective January 1, 1993, to: (1) expressly permit
28 and encourage litigation documents, reporter's transcripts, and records on appeal to
29 be on recycled paper, and (2) allow the use of unbleached paper.

1 ~~**August 1993** The Judicial Council of California has amended rules 15, 44, and 56~~
2 ~~of the California Rules of Court to require that attorneys' California State Bar~~
3 ~~membership numbers appear on all appellate filings. The amendments were~~
4 ~~effective August 1, 1993, but court clerks are required to give attorneys an~~
5 ~~opportunity to correct papers filed without the bar number.~~

6 ~~These amendments conform appellate practice to the requirement that California~~
7 ~~State Bar membership numbers appear on trial court filings. (Rules 201 and 501~~
8 ~~amended effective July 1, 1993.)~~

9 ~~**1994** New and amended California Rules of Court (new rules 989.1, 1071.5;~~
10 ~~amended rules 9, 40, 44, 201, 501) require the use of recycled paper for original~~
11 ~~papers filed in California courts after January 1, 1995, and for copies after January~~
12 ~~1, 1996. The rules provide that an attorney, by the act of filing the document,~~
13 ~~certifies that recycled paper was used.~~

14 ~~**July 1996** Rules 15, 28(e)(6), 29.3(a), (c), 37, 40, and 44(a) . . . These rules were~~
15 ~~amended concerning typography and length of briefs and accompanying~~
16 ~~explanatory matter, and page limits adjustments.~~

17 ~~Parties who file briefs with the Supreme Court or in a civil case with the Courts of~~
18 ~~Appeal will no longer be required to also file a copy with the Supreme Court on~~
19 ~~computer disk, under an amendment to California Rules of Court, rule 44. The~~
20 ~~amendment, adopted by the Judicial Council of California, takes effect July 1,~~
21 ~~1996, and returns the rule to its pre-January 1, 1996, form.~~

22 ~~**Rule 45. Extension and shortening of time**~~

23 ~~(a) **[Computation of time]** The time for doing any act required or~~
24 ~~permitted under these rules shall be computed and extended in the~~
25 ~~manner provided by the Code of Civil Procedure.~~

26
27 ~~(b) **[Extension by superior court prohibited]** Judges of the superior court~~
28 ~~shall not extend the time for doing any act involved in the preparation of~~
29 ~~the record on appeal. Those times may be extended as provided in~~
30 ~~subdivision (c).~~

31 ~~(Subd (b) amended effective July 1, 1989; previously amended effective January 1,~~
32 ~~1974, and January 1, 1976.)~~

33 ~~(c) **[Extension of time]** The time for filing a notice of appeal, filing a~~
34 ~~petition for Supreme Court review of a Court of Appeal decision or the~~
35 ~~granting or denial of a rehearing in the Court of Appeal shall not be~~

1 extended. The time for the granting or denial of Supreme Court review
2 of a decision of a Court of Appeal shall only be extended as provided in
3 subdivision (a) of rule 28. The time for the granting or denial of a
4 rehearing in the Supreme Court shall only be extended as provided in
5 subdivision (a) of rule 24. The time for ordering a case transferred from
6 the superior court to the Court of Appeal as provided in rule 62 shall not
7 be extended, and the time for a superior court to certify the transfer of a
8 case to the Court of Appeal shall not be extended except as provided in
9 subdivision (d) of rule 63. The Chief Justice or presiding justice, for
10 good cause shown, may extend the time for doing any other act required
11 or permitted under these rules. The Chief Justice or presiding justice
12 may relieve a party from a default for failure to file a timely petition for
13 review or rehearing if the time within which the court could order
14 review or rehearing on its own motion has not expired. An application
15 for extension of time shall be made as provided in rule 43.

16 *(Subd (c) amended effective May 6, 1985 previously amended January 1, 1951,*
17 *January 1, 1957, January 1, 1961, January 2, 1962, November 11, 1966, and*
18 *January 1, 1979.)*

19 ~~(d) [Shortening time] The Chief Justice or Presiding Justice, for good~~
20 ~~cause shown, may shorten the time for serving or filing a notice of~~
21 ~~motion or other paper incident to an appeal or an original proceeding in~~
22 ~~the reviewing court. An application to shorten time shall be made as~~
23 ~~provided in rule 43.~~

24
25 ~~(e) [Relief from default] The reviewing court for good cause may relieve a~~
26 ~~party from a default occasioned by any failure to comply with these~~
27 ~~rules, except the failure to give timely notice of appeal. This rule is~~
28 ~~applicable to any order granting relief from default made after January~~
29 ~~1, 1962.~~

30
31 ~~(f) [Notification to client] Counsel in civil cases must mail or otherwise~~
32 ~~deliver to the party represented a copy of each stipulation or application~~
33 ~~for additional time for a step in the preparation of the record or for filing~~
34 ~~briefs, and attach evidence of doing so to the application or stipulation~~
35 ~~or certify in the stipulation or application that they have done so. In~~
36 ~~class actions, delivering a copy to one represented party is adequate.~~
37 ~~The evidence or certification of mailing or other delivery need not state~~
38 ~~the address of any party to whom copies were sent.~~

39 *(Subd (f) amended effective January 1, 2003; adopted effective July 1, 1990.)*

1 ~~Rule 45 amended effective January 1, 2003; adopted effective July 1, 1943;~~
2 ~~previously amended effective January 1, 1951, January 1, 1957, January 1, 1961,~~
3 ~~January 2, 1962, November 11, 1966, January 1, 1974, January 1, 1976, January~~
4 ~~1, 1979, May 6, 1985, July 1, 1989, and July 1, 1990.~~

5 **Advisory Committee Comment**

6 ~~Extensions of time for petitions for hearing under former rule 28 were acceptable~~
7 ~~because the time within which the Supreme Court could order hearing ran from~~
8 ~~finality in the Court of Appeal; the extension did not affect that time. As rule 28 is~~
9 ~~amended effective May 6, 1985, time for the Supreme Court to act runs from the~~
10 ~~filing of the petition. An extension of that time would extend the time for the~~
11 ~~Supreme Court to act. Rule 45(c) is therefore amended to prohibit those~~
12 ~~extensions, and restrict grants of relief from default, assuring a clear time limit on~~
13 ~~the Supreme Court's jurisdiction to grant review.~~

14 **Drafter's Notes**

15 ~~1989 Rule 45(b) was amended to take away trial court authority to grant~~
16 ~~extensions for any step in the appellate process in civil appeals, conforming them~~
17 ~~to criminal appeals.~~

18 ~~1990 The council amended rule 45 to require counsel in civil appeals to give their~~
19 ~~clients copies of stipulations and applications to the court for additional time, and~~
20 ~~to attach evidence of having done so to the application or stipulation.~~

21 **Rule 45.1. Appellate emergencies**

22 ~~When earthquake, fire, or other public calamity, or the danger thereof, or the~~
23 ~~destruction of or danger to the building housing an appellate court, renders it~~
24 ~~necessary, the Chairperson of the Judicial Council may, notwithstanding any~~
25 ~~provision of rules 1 through 191, order that:~~

26 ~~(1) No more than 14 days in addition to the time allowed by the rules~~
27 ~~shall be allowed for doing any act related to commencing,~~
28 ~~pursuing, or deciding any proceeding in any reviewing court; or~~
29

30 ~~(2) No more than 14 days shall be excluded from any computation of~~
31 ~~the time allowed for doing any act related to commencing,~~
32 ~~pursuing, or deciding any proceeding in any reviewing court; or~~
33

34 ~~(3) Specified courts may, to the extent and for the period stated in the~~
35 ~~order, allow extensions of time of up to 30 days that would not~~

1 otherwise be authorized by the rules, upon a showing of facts of a
2 type specified in the order.

3 ~~The order shall specify whether it applies throughout the state, applies only to
4 specified courts, applies to courts within specified geographic areas, or applies to
5 attorneys within specified geographic areas, or shall otherwise specify the
6 applicability of the order.~~

7 ~~If the nature and extent of the public calamity make it necessary, the Chairperson
8 of the Judicial Council may extend or renew an order issued under this rule for an
9 additional period of not more than 14 days for an order under paragraph (1) or (2),
10 or an additional period of not more than 30 days for an order under paragraph (3).~~

11 *Rule 45.1 adopted effective January 1, 1995.*

12 **Drafter's Notes**

13 ~~1995 On the recommendation of the Appellate Standing Advisory Committee, the
14 council: . . . (5) adopted new rule 45.1 to give the Chief Justice power to make
15 limited modifications to appellate time deadlines by order in case of emergencies
16 such as earthquakes.~~

17 **Rule 45.5. Standards for time extensions**

18 (a) ~~[Policy on time extensions] The policy of this state is that the times
19 provided by the rules of court should generally be met so that appellate
20 business is conducted expeditiously and public confidence in efficient
21 administration of justice at the appellate level is maintained. California's
22 policy is also that litigants are entitled to have the effective assistance of
23 counsel, and that adequate time must be allowed for counsel to properly
24 represent their clients.~~

25 ~~It is recognized that, for a variety of legitimate reasons, counsel may not
26 always be able to prepare briefs or other documents within normal rule
27 times. Preparing briefs or other documents which fully advance the
28 parties' interests, and are accurate, clear, concise, and complete so they
29 assist the courts, requires adequate time. When good cause appears, an
30 extension of time shall therefore be granted.~~

31 ~~As a means of balancing these competing policies, applications to
32 extend time in the Supreme Court and Courts of Appeal shall
33 demonstrate good cause pursuant to the standards stated in this rule.~~

1 ~~(b) [Declaration stating facts] An application to extend time shall be made~~
2 ~~by a declaration containing specific facts, not mere conclusions, and~~
3 ~~shall be served on all parties to the appellate proceeding. The~~
4 ~~application shall state when the document is due, how long an extension~~
5 ~~is requested, and whether any prior extensions have been granted and, if~~
6 ~~so, their length, and whether granted by stipulation or by the court.~~

7
8 ~~(e) Factors considered] In determining good cause, the court shall~~
9 ~~consider the following factors, if applicable:~~

10
11 ~~(1) The degree of prejudice, if any, to any party, including a~~
12 ~~description of the judgment or order from which appeal is taken, in~~
13 ~~sufficient detail to enable the court to determine whether there~~
14 ~~would be significant prejudice to any litigant from grant or denial~~
15 ~~of extension.~~

16
17 ~~(2) In civil cases, the position of the client and any opponent~~
18 ~~concerning the extension being sought.~~

19
20 ~~(3) The number and complexity of the issues raised, including a~~
21 ~~description of those issues, and the length of the record, which~~
22 ~~must be described, including the number of relevant trial exhibits.~~
23 ~~A record containing one volume of clerk's transcript and two~~
24 ~~volumes of reporter's transcripts is considered an average-length~~
25 ~~record.~~

26
27 ~~(4) Settlement negotiations, including how far they have progressed~~
28 ~~and when they will be completed.~~

29
30 ~~(5) Whether the case in which the application is made involves~~
31 ~~litigation entitled to priority.~~

32
33 ~~(6) Whether counsel handling the appeal is new to the case, or the~~
34 ~~necessity for other counsel or the client to review the document to~~
35 ~~be filed.~~

36
37 ~~(7) Whether the counsel responsible for preparing the document has~~
38 ~~other time-limited commitments during the affected period. Mere~~
39 ~~conclusory statements that more time is needed because of the~~
40 ~~press of other business will not suffice. Good cause may be~~
41 ~~established by a specific showing of other obligations (i) involving~~
42 ~~deadlines which as a practical matter preclude filing the document~~

1 by the due date without impairing quality, or (ii) which are in cases
2 entitled to priority.

3
4 ~~(8) Illness of counsel, a personal emergency, or a planned vacation~~
5 ~~which cannot reasonably be rearranged and which was not~~
6 ~~reasonably expected to conflict with the due date.~~

7
8 ~~(9) Any other factor which in the context of a particular case~~
9 ~~constitutes good cause.~~

10 ~~Rule 45.5 adopted effective July 1, 1989.~~

11 **Drafter's Notes**

12 ~~1989 Rule 45.5 was adopted to help define good cause for extensions in briefing~~
13 ~~time.~~

14 **~~Rule 46. Papers violating rules not to be filed~~**

15 ~~No record, brief, or other paper or document which fails to conform to the~~
16 ~~requirements of these rules shall be filed by the clerk of the reviewing court.~~

17 **~~Rule 46.5. Sanctions to compel compliance~~**

18 ~~After the filing of a notice of appeal, the failure of any court reporter or clerk to~~
19 ~~perform a duty imposed on him by statute or these rules which delays the filing of~~
20 ~~the record on appeal is an unlawful interference with the proceedings of the~~
21 ~~reviewing court and may be treated as such in addition to or in lieu of any other~~
22 ~~sanction imposed by law for the same breach of duty.~~

23 ~~This rule does not limit the reviewing court's power over other persons not~~
24 ~~enumerated, nor does it limit the nature of acts which may, under appropriate~~
25 ~~circumstances, constitute unlawful interference with the reviewing court's~~
26 ~~proceedings.~~

27 ~~Rule 46.5 adopted effective January 1, 1976.~~

28 **~~Rule 47. Courts of Appeal with more than one division~~**

29 ~~(a) Assignment of appealed cases] Appeals taken directly to a Court of~~
30 ~~Appeal having more than one division, or transferred to such a court by~~
31 ~~orders which do not designate the division to which they are transferred,~~
32 ~~may, on such transfer or on receipt of a copy of the notice of appeal or~~
33 ~~other notification of its filing, be assigned to the divisions of the court in~~

1 a manner that will equalize the distribution of business among them.
2 These assignments shall be made by the presiding justices successively
3 for periods of one year unless a majority of the judges of the court in the
4 district shall otherwise determine.

5 *(Subd (a) amended effective July 1, 1989; previously amended effective November*
6 *11, 1966.)*

7 ~~(b) Assignment of original proceedings, certifications for transfer,~~
8 ~~motions and applications] Original proceedings, certifications for~~
9 ~~transfer of cases on appeal within the original jurisdiction of municipal~~
10 ~~or justice courts, and motions and applications relating to causes not yet~~
11 ~~assigned to a particular division of such a court, shall be assigned as a~~
12 ~~majority of the judges of the court in the district shall determine.~~

13 *(Subd (b) amended effective November 11, 1966; previously amended effective*
14 *January 1, 1959, and January 2, 1962.)*

15 ~~(c) [Clerk's records] The clerk of each Court of Appeal having more than~~
16 ~~one division shall keep records showing the divisions in which causes~~
17 ~~and proceedings are pending.~~

18 *(Subd (c) amended effective November 11, 1966.)*

19 *Rule 47 amended effective July 1, 1989.*

20 **Drafter's Notes**

21 ~~1989 Rule 47 was amended to authorize case assignment to a division upon the~~
22 ~~Court of Appeal's receipt of a copy of the notice of appeal.~~

23 **Rule 48. Substitution of parties and attorneys**

24 ~~(a) [Parties] Whenever a substitution of parties to a pending appeal is~~
25 ~~necessary, it shall be made by proper proceedings instituted for that~~
26 ~~purpose in the superior court. On suggestion thereof and the~~
27 ~~presentation of a certified copy of the order of substitution made by the~~
28 ~~superior court, a like order of substitution shall be made in the~~
29 ~~reviewing court.~~

30
31 ~~(b) [Attorneys] Withdrawal or substitution of attorneys may be effected by~~
32 ~~serving and filing a stipulation in the reviewing court, signed by the~~
33 ~~party, the retiring attorney and any substituted attorney. In the absence~~

1 of stipulation, withdrawal or substitution may be effected only by an
2 order made pursuant to a motion in the reviewing court as provided in
3 rules 41 and 42; provided, however, that unless otherwise ordered by the
4 court, service of the motion need be made only on the party and the
5 attorneys directly affected thereby. A notification of any such
6 withdrawal or substitution shall be given by the clerk of the reviewing
7 court to the clerk of the superior court, and substituted counsel shall
8 forthwith give notice thereof to all parties.

9 *(Subd (b) amended effective January 1, 1973.)*

10 **Rule 49. Writ of supersedeas**

11 A petition for a writ of supersedeas shall bear the same title as the appeal, and
12 shall be served and filed in the reviewing court in which the appeal is pending.
13 The petition shall be verified, and shall contain a statement of the necessity for the
14 writ and supporting points and authorities. If the record on appeal has not been
15 filed with the reviewing court, the petition shall contain a copy of the judgment,
16 the date of its entry, the fact and date of filing of the notice of appeal, and a
17 statement of the subject matter of the appeal sufficient to advise the reviewing
18 court of the question involved. A request for a temporary stay pending the granting
19 or denial of the writ may be included in the petition, or may be made separately
20 and, except when the custody of a minor is involved, without service on the
21 respondent. The writ may be issued on any conditions which the reviewing court
22 deems just, but a writ staying an order awarding or changing the custody of a
23 minor shall not be granted without a hearing.

24 If the writ or stay issues, the reviewing court shall notify the trial court pursuant to
25 rule 56(f).

26 A writ of supersedeas shall not issue until the respondent has had an opportunity to
27 file points and authorities and a statement of any material facts in opposition.
28 Unless otherwise ordered, the opposition may be filed within 15 days after filing
29 of the petition and points and authorities supporting it. A temporary stay pending
30 decision on the petition may be granted when appropriate.

31 *Rule 49 amended effective January 1, 1991; previously amended effective January*
32 *1, 1967, January 1, 1984, and July 1, 1985.*

33 **Drafter's Notes**

34 **1983** See note following rule 32.

1 ~~1985~~ Rule 49 was amended to prohibit any relief on a petition for a writ of
2 supersedeas, other than a stay, until an opportunity for opposition is afforded.

3 **~~Rule 49.5. Request for stay or writ of supersedeas~~**

4 When a petition or other request for a stay or writ of supersedeas is bound with or
5 included in the text of any petition for a writ, petition for hearing, or any other
6 document, the cover shall bear the conspicuous notation "STAY REQUESTED"
7 or words of like effect. If the notation does not appear on the cover, the reviewing
8 court may decline to consider the request or petition for the stay.

9 *Rule 49.5 adopted effective July 1, 1983.*

10 **Drafter's Notes**

11 ~~1983~~ At the suggestion of a member of the Supreme Court, a new rule 49.5 has
12 been added to require that any request for a stay be indicated on the cover of the
13 document containing the request.

14 **~~Rule 50. Appeals and hearings in habeas corpus matters~~**

15 (a) ~~[Appeal from superior court under Pen. C. §1506 or §1507]~~ On an
16 appeal from a final order of the superior court granting all or any part of
17 the relief sought, made upon the return of a writ of habeas corpus, as
18 provided in section 1506 or 1507 of the Penal Code, the record on
19 appeal shall include copies of:

20
21 (1) ~~The notice of appeal;~~

22
23 (2) ~~the petition for the writ;~~

24
25 (3) ~~the return and all other papers and exhibits considered by the court~~
26 ~~on the hearing;~~

27
28 (4) ~~a transcript of the oral evidence, if any, taken on the hearing; and~~

29
30 (5) ~~the final order of the court.~~

31 The time and manner of taking such an appeal, and the rules governing
32 the preparation of the record, the briefs, argument and hearing and
33 determination thereof, shall be the same as those prescribed for criminal
34 appeals.

1 **(b) [Petition for review under Penal Code, §1506 or §1507]** A petition
2 for a review in the Supreme Court, after decision by a Court of Appeal
3 in a habeas corpus proceeding, pursuant to section 1506 or 1507 of the
4 Penal Code, shall comply with the rules governing petitions for review
5 in criminal cases.

6 *(Subd (b) amended effective July 1, 1989.)*

7 *Rule 50 amended effective July 1, 1989; previously amended effective January 1,*
8 *1959, January 1, 1961, and November 11, 1966.*

9 **Drafter's Notes**

10 ~~1989 Rule 50 was amended to change obsolete references to "hearing" in the~~
11 ~~Supreme Court to "review."~~

12 **Rule 51. Substitute judge where trial judge unavailable**

13 ~~Whenever by these rules any act is required to be done by the judge who tried the~~
14 ~~case, and such judge is unavailable or unable to act at the time fixed therefor, the~~
15 ~~act shall be done by another judge of the same court in counties where there is~~
16 ~~more than one judge, such judge to be designated by the presiding judge, or if~~
17 ~~none, then by the senior judge, or if there is no judge of the superior court in the~~
18 ~~county available to act, then the act shall be done by a judge designated by the~~
19 ~~chairman of the Judicial Council.~~

20 ~~*Adopted effective July 1, 1943.*~~

21 **Rule 52. Presumption where record not complete**

22 ~~If a record on appeal does not contain all of the papers, records and oral~~
23 ~~proceedings, but is certified by the judge or the clerk, or stipulated to by the~~
24 ~~parties, in accordance with these rules, it shall be presumed in the absence of~~
25 ~~proceedings for augmentation that it includes all matters material to a~~
26 ~~determination of the points on appeal. On an appeal on the judgment roll alone, or~~
27 ~~on a partial or complete clerk's transcript, the foregoing presumption shall not~~
28 ~~apply unless the error claimed by appellant appears on the face of the record.~~

29 ~~*Rule 52 amended effective January 1, 1951.*~~

30 **Rule 52.5. Effect of pretrial order**

31 ~~On an appeal on a record consisting solely of the complete or partial judgment roll~~
32 ~~and the pretrial order, the pretrial order may be considered only to the extent it~~

1 affects the definition or joinder of issues. On an appeal in which only portions of
2 the oral proceedings are transcribed pursuant to subdivision (b) of rule 4
3 evidentiary material in the pre-trial order shall not be considered part of the record
4 unless specifically designated by any of the parties for inclusion in the clerk's
5 transcript.

6 *Rule 52.5 adopted effective January 1, 1961.*

7 **Rule 53. Scope and construction of rules**

8 These rules shall apply to appeals from superior courts and to original
9 proceedings, motions, applications and petitions in the Supreme Court and Courts
10 of Appeal. These rules shall also apply to the transfer and review of cases on
11 appeal within the original jurisdiction of municipal or justice courts unless
12 inconsistent with rules 61 to 69, and for the purpose of such application an appeal
13 under these rules includes such a transfer. The rules shall be liberally construed to
14 secure the just and speedy determination of appeals, transfers, and original
15 proceedings.

16 *Rule 53 amended effective November 11, 1966; previously amended effective*
17 *January 1, 1951, and January 2, 1962.*

18 **Rule 54. Amendments to rules**

19 These rules may be amended by the Judicial Council. Each amendment shall be
20 published in the advance sheets of the Supreme Court decisions. An amendment
21 shall become effective 60 days after its first publication unless the Judicial Council
22 shall otherwise order, or the Judicial Council, prior to its effective date, shall
23 withdraw it. Notice of the withdrawal of any proposed amendment to these rules
24 shall be published in the advance sheets of the Supreme Court decisions prior to
25 the date on which the proposed amendment would otherwise have become
26 effective.

27 **Rule 54.5. Robes**

28 The judicial robe required by section 68110 of the Government Code shall be
29 black, shall extend in front and back from the collar and shoulders to below the
30 knees, and shall have sleeves to the wrist. It shall conform to the style customarily
31 worn in courts in the United States.

32 *Rule 54.5 adopted effective September 24, 1959.*

33 **Rule 55. Preservation and destruction of records in Court of Appeal; minutes**

1 ~~(a) [Form in which records may be preserved]~~ Appellate court records
2 may be preserved in any form of communication or representation,
3 including optical, electronic, magnetic, micrographic, or photographic
4 media or other technology capable of accurately producing or
5 reproducing the original record according to minimum standards or
6 guidelines for the preservation and reproduction of the medium adopted
7 by the American National Standards Institute or the Association for
8 Information and Image Management. If records are preserved in a form
9 other than paper, the provisions of Government Code section 68150,
10 subdivisions (b) through (d) and (f) (not including subdivision (f)(1))
11 through (h) shall apply.

12 ~~(Subd (a) adopted effective July 1, 1997.)~~

13 ~~(b) [Preservation and destruction of records]~~ The clerk of a Court of
14 Appeal shall keep as the permanent records of the court the minutes of
15 the court and a register of appeals and original proceedings. The clerk
16 shall preserve all other records of cases for 10 years after the decisions
17 in the cases become final, and then the records may be destroyed as
18 ordered by the administrative presiding justice, or the presiding justice
19 in a Court of Appeal having only one division; except that in any
20 criminal case in which the court affirms a judgment of conviction, the
21 original reporter's transcript shall be retained for 20 years after the
22 decision becomes final.

23 ~~(Subd (a) as relettered effective July 1, 1997; amended and lettered effective July~~
24 ~~1, 1989.)~~

25 ~~(c) [Content of minutes]~~ The minutes of a Court of Appeal shall record the
26 significant public acts of the court and make it feasible for the public to
27 follow the major events in the history of cases coming before the court.
28 The minutes, therefore, shall include the following:

29
30 ~~(1) Reference to opinions filed, showing whether each was published.~~

31
32 ~~(2) Reference to orders granting rehearings, or modifying opinions, or~~
33 ~~denying rehearings.~~

34
35 ~~(3) Reference to orders addressing the publication status of an opinion~~
36 ~~if issued after the opinion was filed.~~

37
38 ~~(4) Summaries of all courtroom proceedings showing, at a minimum,~~
39 ~~the cases called for argument, the judges hearing argument in a~~

1 division having more than three judges, and for each case the
2 names of the attorneys who presented argument for each party and
3 whether the cause was submitted at the close of argument or
4 further briefing was requested.

5
6 ~~(5) Orders vacating submission of causes, giving the reason for doing
7 so and the date of resubmission.~~

8
9 ~~(6) Orders correcting clerical and similar errors in published opinions,
10 not requiring modification of the opinion.~~

11
12 ~~(7) Orders dismissing appeals on motion or on the court's own motion
13 for want of jurisdiction, unless the lack of jurisdiction is patent and
14 uncontested.~~

15
16 ~~(8) Orders consolidating cases.~~

17
18 ~~(9) Orders affecting the judgment or its date of finality.~~

19
20 ~~(10) Orders changing or correcting any of the above.~~

21
22 The minutes may at the direction of the court include other matter, such
23 as the following:

24
25 ~~(11) Assignments of judges by the Chief Justice.~~

26
27 ~~(12) Reports of the Commission on Judicial Appointments confirming
28 judges.~~

29
30 ~~(13) Memorials.~~

31 ~~(Subd (b) relettered effective July 1, 1997; adopted effective July 1, 1989.)~~

32 ~~Rule 55 amended effective July 1, 1997; adopted effective July 1, 1975; previously~~
33 ~~amended July 1, 1989.~~

34 **Former Rule**

35 Former rule 55 was repealed effective July 1, 1963.

36 **Drafter's Notes**

1 ~~1989~~ Rule 55 was amended to enumerate the minimum contents of minutes of
2 Courts of Appeal. Their minutes are published in the California Official Reports
3 advance sheets.

4 **Rule 56. Original proceedings**

5 ~~(a) [Form and content of petition] A petition to a reviewing court for a~~
6 ~~writ of mandate, certiorari, or prohibition, or for any other writ within~~
7 ~~its original jurisdiction, must be verified and shall set forth the matters~~
8 ~~required by law to support the petition, and also the following:~~
9

10 ~~(1) If the petition might lawfully have been made to a lower court in~~
11 ~~the first instance, it shall set forth the circumstances that, in the~~
12 ~~opinion of the petitioner, render it proper that the writ should issue~~
13 ~~originally from the reviewing court;~~
14

15 ~~(2) If any judge, court, board, or other officer or tribunal in the~~
16 ~~discharge of duties of a public character be named therein as~~
17 ~~respondent, the petition shall disclose the name of the real party in~~
18 ~~interest, if any, or the party whose interest would be directly~~
19 ~~affected by the proceeding; and~~
20

21 ~~(3) If the petition seeks review of trial court proceedings that are also~~
22 ~~the subject of a pending appeal, the title of the petition shall~~
23 ~~include the notation "Related Appeal Pending," and the first~~
24 ~~paragraph shall set forth:~~
25

26 ~~(A) The title, superior court docket number, and appellate court~~
27 ~~docket number, if any, of the pending appeal, and~~
28

29 ~~(B) If the petition is brought under Penal Code section 1238.5, the~~
30 ~~date of filing of the notice of appeal.~~
31

32 ~~Except as otherwise provided in rules 56-60, a petition shall, insofar as~~
33 ~~practicable, comply with rule 15.~~
34

35 ~~The cover of the petition shall contain the title of the case, the name,~~
36 ~~address, and telephone number of the attorney filing the petition, the~~
37 ~~name of the trial judge, and the number of the case in the trial court, if~~
38 ~~any. The cover shall also contain the California State Bar membership~~
39 ~~number of the attorney filing the petition and of every attorney who~~
40 ~~joins in the petition. California State Bar membership numbers of the~~

1 supervisors in a law firm or public law office of the attorney responsible
2 for the case need not be stated.

3 *(Subd (a) amended effective July 1, 2000; previously amended effective July 1,*
4 *1976, July 1, 1980, and August 1, 1993.)*

5 ~~(b)—[Points and authorities and service]~~ A petition for the issuance of
6 such a writ shall be accompanied by points and authorities and by proof of
7 service of both on the respondent and any real party in interest named in the
8 petition. The proof of service shall name each party represented by each
9 attorney served; a petition accompanied by a defective proof of service shall
10 be filed, but if a proper proof of service is not filed within five days, the court
11 may strike the petition or impose a lesser sanction. No statement in
12 opposition to the petition is required unless requested by the court, but within
13 five days after service and filing, the respondent or any real party in interest
14 or both, separately or jointly, may serve and file points and authorities in
15 opposition and a statement of any fact considered material not included in the
16 petition. The court in its discretion (1) may allow the filing of the petition
17 without service, and (2) may deny the petition or issue an alternative writ
18 without first requesting the filing of opposition. Additionally, the petition
19 must be served on a public officer or agency when required by statute or rule
20 44.5.

21 *(Subd (b) amended effective January 1, 2004; previously amended effective*
22 *January 1, 1951, July 1, 1964, January 1, 1984, July 1, 1985, July 1, 2000, and*
23 *January 1, 2002.)*

24 ~~(c)—[Supporting documents]~~ A petition for a writ that seeks review of a
25 trial court ruling shall be accompanied by a record adequate to permit
26 review of the ruling, including:
27
28 (1) a copy of the order or judgment from which relief is sought;
29
30 (2) copies of all documents and exhibits submitted to the trial court
31 supporting and opposing petitioner's position;
32
33 (3) copies of all other documents submitted to the trial court that are
34 necessary for a complete understanding of the case and the ruling;
35
36 (4) a transcript of the proceedings leading to the order or judgment
37 below or, if a transcript is unavailable, a declaration by counsel (i)
38 explaining why a transcript is unavailable and (ii) fairly
39 summarizing the proceedings, including arguments by counsel and

1 the basis of the trial court's decision, if stated; or a declaration by
2 counsel stating that the transcript has been ordered, the date it was
3 ordered, and the date it is expected to be filed, which shall be a
4 date prior to any action requested of the reviewing court other than
5 issuance of a stay supported by other parts of the record. A full
6 summary of the oral proceedings may be omitted if part of the
7 relief sought is an order requiring preparation of a transcript for the
8 use of an indigent criminal defendant in support of the writ
9 petition, and counsel's declaration demonstrates the petitioner's
10 need for and entitlement to the transcript.

11
12 All copies of documents shall be legible.

13
14 A petitioner who requests an immediate stay shall explain in the petition
15 the reasons for the urgency and set forth all relevant time constraints.

16
17 In exigent circumstances, a petition may be filed without the documents
18 required by (1), (2), and (3) if a declaration by counsel explains the
19 urgency and the circumstances making the documents unavailable and
20 fairly summarizes their substance.

21
22 If a petitioner does not submit the required record and explanations or
23 does not present facts sufficient to excuse the failure to submit them, the
24 court may summarily deny the stay request, the petition, or both.

25 *(Subd (c) adopted effective January 1, 1988.)*

26 **(d) — [Supporting documents tabbed, paginated, and listed]** Documents
27 submitted in support of the petition shall

28
29 (1) — Be bound together at the end of the petition or in separate volumes
30 not to exceed 300 pages each, with consecutive pagination
31 throughout;

32
33 (2) — Be index tabbed by number or letter; and

34
35 (3) — Begin with a table of contents listing each document by title and its
36 index tab number or letter.

37
38 The clerk shall accept for filing petitions and supporting documents not in
39 compliance with this subdivision; but the court may give the petitioner
40 notice requiring that the petition and documents be brought into

1 compliance within a stated reasonable time, or the petition may be
2 stricken or denied summarily.

3 *(Subd (d) amended effective July 1, 2000; adopted effective January 1, 1988.)*

4 ~~(e) [Sealed records] Rule 12.5 (Sealed records) applies if a party seeks to~~
5 ~~lodge or file a record under seal or to unseal a record.~~

6 *(Subd (e) adopted effective January 1, 2001.)*

7 ~~(f) [Return] If the petition is granted, with or without prior service or~~
8 ~~opposition, and a writ or order to show cause issues, the respondent or~~
9 ~~real party in interest or both, separately or jointly, may make a return,~~
10 ~~by demurrer, verified answer or both. Unless a different return date is~~
11 ~~specified by the court, the return shall be made at least five days before~~
12 ~~the date set for hearing. If the return is by demurrer alone, and the~~
13 ~~demurrer is not sustained, the peremptory writ may issue without leave~~
14 ~~to answer.~~

15 *(Subd (f) relettered effective January 1, 2001; former subd (e) relettered effective*
16 *January 1, 1988; previously amended effective January 1, 1951, and January 1,*
17 *1959.)*

18 ~~(g) [Attorney General's amicus curiae brief] If an alternative writ or an~~
19 ~~order to show cause is issued, the Attorney General may file an amicus~~
20 ~~curiae brief without the permission of the Chief Justice or the presiding~~
21 ~~justice, unless the brief is submitted on behalf of another state officer or~~
22 ~~agency. The Attorney General shall serve and file the brief within 14~~
23 ~~days after the date the return is filed or, if no return is filed, the date it~~
24 ~~was due. The brief shall provide the information required by rule~~
25 ~~13(b)(2) and comply with rule 13(b)(4). Any party may serve and file an~~
26 ~~answer within 14 days after the brief is filed.~~

27 *(Subd (g) adopted effective January 1, 2002.)*

28 ~~(h) [Notice to trial court] If a writ or order issues directed to any judge,~~
29 ~~court, board, or other officer or tribunal, the clerk of the reviewing court~~
30 ~~shall promptly transmit a certified copy of the writ or order to the court,~~
31 ~~board, tribunal or person to whom it is addressed.~~

32 ~~If the writ or order stays or prohibits proceedings scheduled to occur~~
33 ~~within seven days of its issuance, or if the writ or order requires that~~
34 ~~action be taken by the respondent within seven days, or in any other~~

1 urgent situation, the clerk of the reviewing court shall make a
2 reasonable effort to give telephone notice to the clerk of the court or
3 tribunal below, who shall notify the judge or other officer most directly
4 concerned. Telephone notice of the summary denial of a writ is not
5 required, whether or not a stay was previously issued.

6 *(Subd (h) relettered effective January 1, 2002; adopted effective January 1, 2004;
7 previously relettered effective January 1, 1988, and January 1, 2001.)*

8 ~~(i) [Proceedings not covered by this rule] The provisions of this rule
9 shall not apply to applications for a writ of habeas corpus, except as
10 provided in rule 56.5, or to petitions for review pursuant to rules 57, 58,
11 and 59.~~

12 *(Subd (i) amended effective January 1, 2004; relettered effective January 1, 1984;
13 January 1, 1988, January 1, 2001, and January 1, 2002.)*

14 ~~(j) [Time to file a responsive pleading under Code of Civil Procedure
15 section 418.10] If a petition for review is filed in the Supreme Court
16 after the Court of Appeal denies a writ of mandate, the time for filing a
17 responsive pleading in the trial court under Code of Civil Procedure
18 section 418.10(c) is extended until 10 days after the Supreme Court files
19 its order denying the petition.~~

20 *(Subd (j) relettered effective January 1, 2002; adopted as subd (h) effective
21 January 1, 1997; previously relettered as subd (i) effective January 1, 2001.)*

22 *Rule 56 amended effective January 1, 2004; previously amended effective January
23 1, 1951, January 1, 1959, January 1, 1984, July 1, 1985, January 1, 1988, August
24 1, 1993, January 1, 1997, July 1, 2000, January 1, 2001, and January 1, 2002.*

25 **Advisory Committee Comment (2002)**

26 New subdivision (g) is derived from former rule 14(c) as it applied to original
27 proceedings.

28 **Drafter's Notes**

29 Rule 56(b) was amended to refer expressly to sections 1088.5 and 1089.5 of the
30 Code of Civil Procedure (Stats. 1982, ch. 193), which govern proof of service and
31 time to respond to a petition for writ of mandate when no alternative writ is
32 sought.

1 ~~1983~~ Responding to legislation (Stats. 1983, ch. 818, § 1) that makes Code of
2 Civil Procedure sections 1088.5 and 1089.5 (procedure for writ of mandate)
3 applicable only to trial courts, the Judicial Council amended rule 56(b) to remove
4 references to these code sections in the rule governing original proceedings in
5 appellate courts. See also the note following rule 32.

6 ~~1985~~ Rule 56 amended to (a) require the proof of service of a writ petition to
7 name each party represented by each attorney served, (b) state that opposition is
8 not needed unless requested, and (c) change the present wording that the court
9 may "act on" the petition without requiring an opposition, to "... deny the petition
10 or issue an alternative writ"

11 ~~1988~~ Rule 56 was amended to restate the material needed to constitute an
12 adequate record for writ review of trial court action (see *Sherwood v. Superior*
13 *Court* (1979) 23 Cal.3d 183) and to require index tabbing and consecutive
14 pagination of each exhibit to the petition. A modification was made to the proposal
15 previously published for comment to make it clear that the consecutive pagination
16 requirement does not mean that all exhibits must be paginated consecutively to
17 one another as in a clerk's transcript, but only that each exhibit be paginated.

18 ~~1993~~ The Judicial Council of California has amended rules 15, 44, and 56 of the
19 California Rules of Court to require that attorneys' California State Bar
20 membership numbers appear on all appellate filings. The amendments were
21 effective August 1, 1993, but court clerks are required to give attorneys an
22 opportunity to correct papers filed without the bar number.

23 These amendments conform appellate practice to the requirement that California
24 State Bar membership numbers appear on trial court filings. (Rules 201 and 501
25 amended effective July 1, 1993.)

26 ~~1997~~ Subdivision (h) was added to rule 56 to extend the time to file a responsive
27 pleading in the trial court when a petition for review has been filed in certain writ
28 proceedings.

29 ~~2000~~ See notes following rules 15 and 24.

30 ~~2001~~ 56(e) added to reflect new rule 12.5.

31 ~~2002~~ See note following rule 1.

32 **Rule 56.4. Costs in original proceedings**

1 (a) ~~[Decision by opinion; presumption]~~ Except as provided in this rule,
2 the prevailing party in an original proceeding shall be entitled to costs if
3 the reviewing court resolves the original proceeding by written opinion
4 after issuing an alternative writ, order to show cause, or peremptory writ
5 in the first instance. In any case in which the interests of justice require
6 it, the reviewing court may make any award or apportionment of costs it
7 deems proper or decline to award costs. The award or denial of costs
8 shall be provided for in the court's opinion or order on the granting or
9 denial of the writ. The foregoing provisions do not apply in proceedings
10 arising from criminal and juvenile cases.

11
12 (b) ~~[Items recoverable]~~ The items recoverable as costs under this rule shall
13 be as specified in rule 26 governing civil appeals and can include the
14 cost of preparing and providing the record used in the writ proceeding.

15
16 (c) ~~[Claiming costs; opposition]~~ A party who claims costs awarded by the
17 reviewing court shall, within 40 days after the opinion of the reviewing
18 court becomes final as to that court, serve and file in the trial court a
19 memorandum of costs verified as prescribed by rule 870(a)(1).

20 A party may move to have costs taxed in the same manner and within a
21 like time after service of a copy of the memorandum of costs, as
22 prescribed by rule 870(b). After the costs have been taxed, or after the
23 time for taxing the costs has expired, the award of costs may be
24 enforced in the same manner as a money judgment.

25 *Rule 56.4 adopted effective July 1, 1996.*

26 **Drafter's Notes**

27 **1996** This rule was adopted to provide for an award of costs in original writ
28 proceedings by establishing a presumption that the prevailing party is entitled to
29 an award of costs.

30 **Rule 56.5. Original proceedings seeking release or modification of custody**

31 (a) ~~[Use of Judicial Council form required]~~
32 A petition to a reviewing court for a writ of habeas corpus, or for any
33 other writ within its original jurisdiction, seeking the release from or
34 modification of the conditions of custody of one who is confined under
35 the process of any court of this State in a State or local penal institution,
36 hospital, narcotics treatment facility, or other institution must be on a
37 form adopted by the Judicial Council. Any such petition is exempt from

1 the provisions of rule 56 relating to form and content of a petition and
2 requiring a petition to be accompanied by points and authorities.

3 *(Subd (a) amended effective January 1, 2004; previously amended effective January 1,*
4 *2003.)*

5 **(b) ~~Exception for good cause~~**

6 ~~For good cause the court may permit the filing of a petition that does not~~
7 ~~comply with the provisions of subdivision (a) of this rule.~~

8 *(Subd (b) amended effective January 1, 2004.)*

9 **(c) ~~Petitions filed by attorneys~~**

10 If the petition is filed by an attorney:

11 (1) ~~The petition need not be on the form specified in (a) but must~~
12 ~~contain the pertinent information specified in that form and must~~
13 ~~comply with the requirements of rule 14(a) and (b);~~

14
15 (2) ~~If the petition is accompanied by a memorandum of points and~~
16 ~~authorities, the memorandum must comply with the requirements~~
17 ~~of rule 14(a) and (b);~~

18
19 (3) ~~The petition must be accompanied by a lodged copy of any related~~
20 ~~petition (excluding exhibits) previously filed in any lower state~~
21 ~~court, or in any federal court, pertaining to the same judgment and~~
22 ~~petitioner. If such documents have previously been lodged with the~~
23 ~~Supreme Court, the petition need only so state; and~~

24
25 (4) ~~Any supporting documents accompanying the petition must~~
26 ~~comply with the requirements of rule 56(d).~~

27 *(Subd (c) amended effective January 1, 2004; adopted effective July 1, 1995; previously*
28 *amended effective January 1, 2003.)*

29 **(d) ~~[Nonconforming petitions]~~** ~~A petition that is not in technical~~
30 ~~compliance with (c) but that is otherwise in compliance with applicable~~
31 ~~court rules must be accepted and filed. It may be stricken, however, if~~
32 ~~the noncompliance is not cured promptly on request of the clerk.~~

33 *(Subd (d) amended and lettered effective January 1, 2003; adopted as part of subd (c)*
34 *effective July 1, 1995.)*

1 *Rule 56.5 amended effective January 1, 2004; adopted effective January 1, 1966;*
2 *previously amended effective July 1, 1995, and January 1, 2003*

3 **Rule 57. Review of Workers' Compensation Appeals Board cases**

4 (a) ~~[Petition]~~ A petition to review an order or award of the Workers'
5 Compensation Appeals Board shall be accompanied by proof of service
6 of two copies thereof on the Workers' Compensation Appeals Board and
7 one copy upon each party who entered an appearance in the action
8 before the Workers' Compensation Appeals Board and whose interest
9 therein is adverse to the party filing the petition. If it is claimed that the
10 decision is not supported by substantial evidence, the petition must
11 fairly state all the material evidence relative to the point at issue. The
12 petition shall include, as exhibits, copies of:

13
14 (1) ~~each order, decision, or award to be reviewed, and~~

15
16 (2) ~~the referee's findings and decision, including the referee's report~~
17 ~~and recommendation on the petition for reconsideration.~~

18 *(Subd (a) amended effective January 1, 1980; previously amended effective*
19 *November 13, 1951, July 1, 1968, and July 1, 1973.)*

20 (b) ~~[Answer and briefs]~~ Within 20 days after service of the petition, the
21 board and any real party in interest may serve and file or join in the
22 filing of an answer and brief. Within 10 days after service of an answer,
23 the petitioner may serve and file a reply. Service of the answer and reply
24 shall also be made upon all adverse parties.

25 *(Subd (b) amended effective July 1, 1968; previously amended effective November*
26 *13, 1951.)*

27 **Drafter's Notes**

28 ~~1980~~ Rule 57(a) is amended to conform to the statutes by substituting "Workers'
29 Compensation Appeals Board" for "Workmen's Compensation Appeals Board"
30 wherever the words appear.

31 **Rule 58. Review of Public Utilities Commission cases**

32 (a) ~~[Petition]~~ A petition to the Supreme Court or Court of Appeal to review
33 an order of the Public Utilities Commission shall be accompanied by
34 proof of service of copies thereof on the Public Utilities Commission

1 and on any real parties in interest. As used in this rule, a "real party in
2 interest" is one who

3
4 (1) ~~was a party of record to the action or proceeding before the~~
5 ~~commission, and~~

6
7 (2) ~~presented before the commission a position adverse to that taken~~
8 ~~before the commission by the petitioner for review. The petition~~
9 ~~shall be verified.~~

10 *(Subd (a) amended effective January 1, 1998; previously amended effective*
11 *January 1, 1951 and July 1, 1981.)*

12 ~~(b) [Answer and briefs] Within 30 days after service of the petition, the~~
13 ~~commission and any real party in interest may serve and file or join in~~
14 ~~the filing of an answer and brief. Within 20 days after service of an~~
15 ~~answer the petitioner may serve and file a reply.~~

16 *(Subd (b) amended effective July 1, 1981.)*

17 *Rule 58 amended effective January 1, 1998; previously amended effective January*
18 *1, 1951, and July 1, 1981.*

19 **Drafter's Notes**

20 ~~1981~~ Rule 58 has been amended to require service of petitions to review PUC
21 orders on real parties in interest, define real parties in interest, and make related
22 changes. A statutory requirement that these petitions be verified has been included
23 in the text of the rule, as a reminder.

24 ~~1998~~ Subdivision (a) was amended to recognize a statutory change that allows
25 parties to petition for review of "adjudicatory" decisions of the Public Utilities
26 Commission in the Court of Appeal (Stats. 1996, ch. 855, amending Pub. Util.
27 Code, §1759). "Nonadjudicatory" decisions will still be reviewed only by the
28 Supreme Court.

29 ~~Rule 59. Review of Agricultural Labor Relations Board cases and Public~~ 30 ~~Employment Relations Board cases~~

31 ~~(a) [Petition] A petition to a Court of Appeal to review a final order of the~~
32 ~~Agricultural Labor Relations Board or the Public Employment Relations~~
33 ~~Board shall be accompanied by proof of service on the Executive~~
34 ~~Secretary of the Agricultural Labor Relations Board in Sacramento or~~

1 the Executive Director of the Public Employment Relations Board in
2 Sacramento and on any real party in interest. As used in this
3 subdivision, "real party in interest" includes all parties of record to the
4 proceeding before the board. The petition shall be verified unless the
5 petitioner is exempted from verifying pleadings by Code of Civil
6 Procedure section 446. Service shall be made as provided in Code of
7 Civil Procedure sections 1010-1015.

8 *(Subd (a) amended effective July 1, 1984.)*

9 ~~(b) [Filing of certified record] Within the time permitted by Labor Code~~
10 ~~section 1160.8 for the Agricultural Labor Relations Board or~~
11 ~~Government Code sections 3520(c), 3542(c), or 3564(c) for the Public~~
12 ~~Employment Relations Board, the board shall file the certified record of~~
13 ~~the proceedings and shall simultaneously file and serve on all parties an~~
14 ~~index to the certified record.~~

15 *(Subd (b) amended effective July 1, 1984.)*

16 ~~(c) [Brief in support of petition] Within 30 days after service of the index~~
17 ~~to the certified record, the petitioner shall serve and file a brief in~~
18 ~~support of the petition.~~

19 ~~(d) [Other briefs] Within 30 days after service of the brief of petitioner, the~~
20 ~~board shall, and any real party in interest may, serve and file a brief in~~
21 ~~response to the brief of petitioner. Within 20 days after service of a~~
22 ~~response brief, the petitioner may serve and file a reply brief.~~

23 *Rule 59 amended effective July 1, 1984; adopted effective January 1, 1983.*

24 **Drafter's Notes**

25 ~~1984 Rule 59 is amended to apply to petitions for review of Public Employment~~
26 ~~Relations Board orders, as well as orders of the Agricultural Labor Relations~~
27 ~~Board.~~

28 **Rule 60. Obtaining record or informal response in habeas corpus proceedings**

29 ~~When a petition for a writ of habeas corpus is filed in a reviewing court, seeking~~
30 ~~the release from or modification of conditions of custody of one who is confined~~
31 ~~under the process of any court of this state, the court may, before passing on the~~
32 ~~petition~~

1 (1) ~~order the custodian of any record pertaining to the petitioner's case~~
2 ~~to produce the record or a certified copy to be filed with the clerk~~
3 ~~of the reviewing court; or~~
4

5 (2) ~~request an informal response from the respondent or real party in~~
6 ~~interest. The informal response shall be in writing and shall be~~
7 ~~served and filed within 15 days, or the time specified by the court~~
8 ~~in the request.~~

9 ~~A copy of the request shall be sent to the petitioner, and the informal response~~
10 ~~shall be served upon the petitioner. If an informal response is filed, the court shall~~
11 ~~notify the petitioner that he or she may reply to the informal response within 15~~
12 ~~days or a time specified by the court, and the petition shall not be denied until that~~
13 ~~time has expired.~~

14 ~~Rule 60 amended effective July 1, 1985; previously amended effective January 1,~~
15 ~~1985.~~

16 **Drafter's Notes**

17 ~~1984 Rule 60 of the California Rules of Court was amended to establish a~~
18 ~~procedure for securing informal factual responses to habeas corpus petitions, with~~
19 ~~specific provision for notice to the petitioner and an opportunity to reply to any~~
20 ~~informal response received.~~

21 ~~1985 Rule 60 was amended to delete the words "shall be limited to factual~~
22 ~~matters."~~

23 **Rule 75. Administrative presiding justices in the Courts of Appeal**

24 ~~In a Court of Appeal having more than one division the Chief Justice may~~
25 ~~designate one of the presiding justices to act as an administrative presiding justice,~~
26 ~~to serve at the pleasure of the Chief Justice for such period as may be specified in~~
27 ~~the designation order. In a Court of Appeal having one division, the presiding~~
28 ~~justice shall act as the administrative presiding justice. An administrative presiding~~
29 ~~justice shall perform those duties that are specified in rules adopted by the Judicial~~
30 ~~Council and, in addition, those duties that may be delegated to the administrative~~
31 ~~presiding justice with the concurrence of the Chief Justice by a majority of the~~
32 ~~judges of the court in the district served. In the absence of the administrative~~
33 ~~presiding justice, an acting administrative presiding justice shall perform those~~
34 ~~functions; the administrative presiding justice shall select another member of the~~
35 ~~court as acting administrative presiding justice, or, if the administrative presiding~~

1 justice fails to do so, the Chief Justice shall select another member of the court as
2 acting administrative presiding justice.

3 ~~Rule 75 amended effective July 1, 1994; adopted effective July 1, 1970; previously~~
4 ~~amended July 1, 1976.~~

5 **Drafter's Notes**

6 ~~1994~~ Following recommendations by the Judicial Council Rules and Forms
7 Committee, the council: (1) added a new subdivision (a)(12) to rule 1020 to create
8 the Administrative Presiding Justices Standing Advisory Committee; (2) amended
9 rule 1020(d) to include this new committee in the exemption from membership
10 nominating procedures; (3) amended rule 1020(i) to include the committee to
11 those exempted from providing an annual workplan; (4) added new rule 1032
12 relating to the function and duties of the Administrative Presiding Justices
13 Standing Advisory Committee; (5) amended rule 75 to refer to Administrative
14 Presiding Justices and to use gender neutral language; and (6) amended rule 76 to
15 specify the authority of Administrative Presiding Justices relative to budget and
16 expenditures.

17 **Rule 76. Authority and duties of administrative presiding justice**

18 (a) ~~[General responsibilities]~~ The administrative presiding justice is
19 responsible for leading the court, establishing policies, and allocating
20 resources in a manner that promotes access to justice for all members of
21 the public, provides a forum for the fair and expeditious resolution of
22 disputes, maximizes the use of judicial and other resources, increases
23 efficiency in court operations, and enhances service to the public.

24 ~~(Subd (a) adopted effective January 1, 2001.)~~

25 (b) ~~[Duties]~~ An administrative presiding justice:

- 26
- 27 (1) ~~Has general direction and supervision of the clerk/administrator~~
28 ~~and of all court employees except those specifically assigned to a~~
29 ~~particular justice or division;~~
- 30
- 31 (2) ~~Has the authority of a presiding justice with respect to any matters~~
32 ~~that have not been assigned to a particular division of the court~~
33 ~~except that the administrative presiding justice has no authority~~
34 ~~over the assignment of cases to a division unless such assignment~~
35 ~~is authorized under rule 47;~~
- 36

- 1 (3) ~~Cooperates with the Chief Justice and any officer authorized to act~~
2 ~~for the Chief Justice in connection with the making of reports and~~
3 ~~the assignment of judges or retired judges under Section 6, Article~~
4 ~~VI, of the California Constitution;~~
5
6 (4) ~~Cooperates with the Chief Justice in expediting judicial business~~
7 ~~and equalizing the work of judges when appropriate by~~
8 ~~recommending the transfer of cases by the Supreme Court under~~
9 ~~Section 12, Article VI, of the California Constitution;~~
10
11 (5) ~~Acts on behalf of the court, in connection with general court~~
12 ~~administration, including matters involving personnel. "General~~
13 ~~court administration" refers to the day to day operations of the~~
14 ~~court. The administrative presiding justice must secure the~~
15 ~~approval of a majority of the justices in the district before~~
16 ~~implementing any change in court policies;~~
17
18 (6) ~~Has sole authority within his or her district with regard to the~~
19 ~~budget as allocated by the Chair of the Judicial Council, including~~
20 ~~but not limited to budget transfers, execution of purchase orders,~~
21 ~~obligation of funds, and approval of payments; and~~
22
23 (7) ~~Has sole authority within his or her district over the operation,~~
24 ~~maintenance, renovation, expansion and assignment of all facilities~~
25 ~~used and occupied by the district except as provided in subdivision~~
26 ~~[e].~~

27 ~~(Subd (b) relettered and amended effective January 1, 2002; adopted as untitled~~
28 ~~subdivision effective July 1, 1970; previously amended effective July 1, 1994.)~~

29 ~~(e) **[Geographically separate divisions]** Under the general oversight of the~~
30 ~~administrative presiding justice, a presiding justice of a geographically~~
31 ~~separate division:~~

- 32
33 (1) ~~Generally directs and supervises all division court employees not~~
34 ~~assigned to a particular justice;~~
35
36 (2) ~~Has authority to act on behalf of the division regarding day to day~~
37 ~~operations;~~
38
39 (3) ~~Administers the division budget for day to day operations,~~
40 ~~including expenses for maintenance of facilities and equipment;~~
41 ~~and~~

1
2 (4) Operates, maintains, and assigns space in all facilities used and
3 occupied by the division.

4 *(Subd (c) adopted effective January 1, 2002.)*

5 *Rule 76 amended effective January 1, 2002; adopted effective July 1, 1970;*
6 *previously amended effective July 1, 1994.*

7 **Drafter's Notes**

8 ~~1994~~ Following recommendations by the Judicial Council Rules and Forms
9 Committee, the council: (1) added a new subdivision (a)(12) to rule 1020 to create
10 the Administrative Presiding Justices Standing Advisory Committee; (2) amended
11 rule 1020(d) to include this new committee in the exemption from membership
12 nominating procedures; (3) amended rule 1020(i) to include the committee to
13 those exempted from providing an annual workplan; (4) added new rule 1032
14 relating to the function and duties of the Administrative Presiding Justices
15 Standing Advisory Committee; (5) amended rule 75 to refer to Administrative
16 Presiding Justices and to use gender neutral language; and (6) amended rule 76 to
17 specify the authority of Administrative Presiding Justices relative to budget and
18 expenditures.

19 ~~2002~~ The amendments to rule 76 reflect the current responsibilities and leadership
20 roles of the Administrative Presiding Justices, and address the responsibilities of
21 the presiding justice of a geographically separate division. New rule 76.1 outlines
22 the responsibilities and duties of the appellate clerk/administrator acting under the
23 general direction and supervision of the administrative presiding justice. The rule
24 also addresses the responsibilities of the assistant clerk/administrator of a
25 geographically separate division.

26 **Rule 76.1. Authority and duties of appellate clerk/administrator**

27 (a) ~~[Selection]~~ An appellate court may employ a clerk/administrator
28 selected in accordance with procedures adopted by the court.

29
30 (b) ~~[General responsibilities]~~ Acting under the general direction and
31 supervision of the administrative presiding justice, the
32 clerk/administrator is responsible for planning, organizing, coordinating,
33 and directing with full authority and accountability the management of
34 the Office of the Clerk of the Court and all non-judicial administrative
35 support activities in a manner that promotes access to justice for all
36 members of the public, provides a forum for the fair and expeditious

1 resolution of disputes, maximizes the use of judicial and other
2 resources, increases efficiency in court operations, and enhances service
3 to the public.
4

5 ~~(e) [Duties] Under the direction of the administrative presiding justice and~~
6 ~~consistent with the law and rules of court, the clerk/administrator:~~

7
8 ~~(1) (Personnel) Provides general direction to and supervision of all the~~
9 ~~employees of the court who are assigned to the clerk/administrator~~
10 ~~by the administrative presiding justice, and ensures that a full~~
11 ~~range of human resources support is provided to the court;~~

12
13 ~~(2) (Budget) Develops, administers, and monitors the budget of an~~
14 ~~appellate court and develops practices and procedures to ensure~~
15 ~~that annual expenditures are within the court's budget;~~

16
17 ~~(3) (Contracts) Negotiates contracts on behalf of the court, in~~
18 ~~accordance with established contracting procedures and all~~
19 ~~applicable laws;~~

20
21 ~~(4) (Calendar management) Supervises and employs efficient calendar~~
22 ~~and caseload management systems, including analyzing and~~
23 ~~evaluating pending caseloads and recommending effective~~
24 ~~calendar management techniques;~~

25
26 ~~(5) (Technology) Coordinates technological and automated systems~~
27 ~~activities to assist the court;~~

28
29 ~~(6) (Facilities) Coordinates facilities, space planning, court security,~~
30 ~~and business services support, including the purchase and~~
31 ~~management of equipment and supplies;~~

32
33 ~~(7) (Records) Creates and manages uniform record keeping systems,~~
34 ~~collecting data on pending and completed judicial business and the~~
35 ~~internal operation of the court, as required by the court and the~~
36 ~~Judicial Council;~~

37
38 ~~(8) (Recommendations) Identifies problems, recommending policy,~~
39 ~~procedural, and administrative changes to the court;~~

40
41 ~~(9) (Public relations) Represents the court to internal and external~~
42 ~~customers, including the other branches of government, on issues~~
43 ~~pertaining to the court;~~

1
2 (10) *(Liaison)* Acts as liaison to other governmental agencies;

3
4 (11) *(Committees)* Provides staff for judicial committees;

5
6 (12) *(Administration)* Develops and implements administrative and
7 operational programs and policies for the court and for the Office
8 of the Clerk of the Court; and

9
10 (13) *(Other)* Performs other duties as the administrative presiding
11 justice directs.

12
13 ~~(d) [Geographically separate divisions] Under the general oversight of the~~
14 ~~appellate clerk/administrator, an assistant clerk/administrator of a~~
15 ~~geographically separate division has responsibility for the non judicial~~
16 ~~administrative support activities of his or her division.~~

17 ~~Rule 76.1 adopted effective January 1, 2002.~~

18 **Drafter's Notes**

19 **Rule 76.5. Appointment of counsel in criminal appeals**

20 ~~(a) [Procedures] Each appellate court shall adopt procedures for~~
21 ~~appointment of counsel in criminal cases for indigent appellants who are~~
22 ~~not represented by the State Public Defender. The procedures shall~~
23 ~~require each attorney to complete a questionnaire showing the date of~~
24 ~~admission to the bar and the attorney's qualifications and experience.~~

25
26 ~~(b) [Lists of qualified attorneys] On receiving each completed~~
27 ~~questionnaire, the court shall evaluate the attorney's qualifications to~~
28 ~~represent appellants in criminal cases, and then place the attorney's~~
29 ~~name on one or more lists to receive appointments to cases for which he~~
30 ~~or she is qualified. Each Court of Appeal shall maintain at least two~~
31 ~~lists, to match the attorney's qualifications to the demands of the case. In~~
32 ~~establishing the lists, the court shall consider the guidelines in section~~
33 ~~20 of the Standards of Judicial Administration, except as provided in~~
34 ~~subdivision (d).~~

35
36 ~~(c) [Evaluation] The court shall review and evaluate the performance of~~
37 ~~appointed counsel to determine whether counsel's name should remain~~
38 ~~on the same appointment list, be placed on a different list, or be deleted.~~
39

1 ~~(d) [Contracts for performance of administrative functions] The court~~
2 ~~may contract with an administrator having substantial experience in~~
3 ~~handling criminal appeals to perform the functions specified in this rule.~~
4 ~~The guidelines in section 20 of the Standards of Judicial Administration~~
5 ~~need not be applied if the contract provides for a qualified attorney to~~
6 ~~consult with and assist appointed counsel concerning the issues on~~
7 ~~appeal and appellant's opening brief. The court shall provide the~~
8 ~~administrator with information needed for the performance of the~~
9 ~~administrator's duties, and, if the administrator is to perform the review~~
10 ~~and evaluation functions specified in subdivision (c), the court shall~~
11 ~~notify the administrator of superior or substandard performance by~~
12 ~~appointed counsel.~~

13 *Rule 76.5 adopted effective January 1, 1985.*

14 **Drafter's Notes**

15 ~~1984 New rule 76.5 is adopted to prescribe administrative procedures for the~~
16 ~~appointment of counsel in criminal appeals, and new section 20 of the Standards~~
17 ~~of Judicial Administration is adopted containing recommended guidelines for~~
18 ~~appointment~~

19 ~~**Rule 76.6. Qualifications of counsel in death penalty appeals and habeas**~~
20 ~~**corpus proceedings**~~

21 ~~(a) [Purpose] The purpose of this rule is to define minimum qualifications~~
22 ~~for attorneys appointed to represent persons in the Supreme Court in~~
23 ~~death penalty appeals and habeas corpus proceedings related to~~
24 ~~sentences of death. An attorney is not entitled to appointment simply~~
25 ~~because the minimum qualifications are met.~~

26
27 ~~(b) [General qualifications] The Supreme Court shall appoint an attorney~~
28 ~~only if, after reviewing the attorney's experience, writing samples,~~
29 ~~references, and evaluations as set forth in subdivisions (d) through (f),~~
30 ~~the court determines that the attorney has demonstrated the~~
31 ~~commitment, knowledge, and skills necessary to competently represent~~
32 ~~the defendant. An attorney appointed under this rule must be willing to~~
33 ~~cooperate with an assisting counsel or entity as may be designated by~~
34 ~~the court.~~

35
36 ~~(c) [Definitions] The following definitions apply:~~
37

1 (1) ~~"Appointed counsel" means an attorney appointed by the Supreme~~
2 ~~Court to represent a person in a death penalty appeal or death~~
3 ~~penalty related habeas corpus proceedings in the Supreme Court.~~
4 ~~Appointed counsel may be either lead counsel or associate counsel.~~
5

6 (2) ~~"Lead counsel" means an appointed attorney or an attorney in the~~
7 ~~Office of the State Public Defender, the California Habeas~~
8 ~~Resource Center, or the California Appellate Project, who is~~
9 ~~responsible for the overall conduct of the case and for supervising~~
10 ~~the work of associate and supervised counsel. Whenever more than~~
11 ~~one attorney is appointed to represent a defendant jointly in a death~~
12 ~~penalty appeal, in death penalty related habeas corpus proceedings~~
13 ~~in the Supreme Court, or in both classes of proceedings together,~~
14 ~~one such attorney shall be designated as lead counsel.~~
15

16 (3) ~~"Associate counsel" means an attorney appointed by the Supreme~~
17 ~~Court who does not have the primary responsibility for the case.~~
18 ~~Associate counsel must meet the same minimum qualifications as~~
19 ~~lead counsel.~~
20

21 (4) ~~"Supervised counsel" means an attorney who works under the~~
22 ~~immediate supervision and direction of lead or associate counsel,~~
23 ~~but is not appointed by the Supreme Court. Supervised counsel~~
24 ~~must be an active member of the State Bar of California.~~
25

26 (5) ~~"Assisting counsel or entity" means an attorney or entity~~
27 ~~designated by the Supreme Court to provide outside consultation~~
28 ~~and resource assistance to appointed counsel. Entities that may be~~
29 ~~designated in this capacity include, as appropriate, the Office of~~
30 ~~the State Public Defender, the California Habeas Resource Center,~~
31 ~~and the California Appellate Project.~~
32

33 **(d) [Qualifications for appointed appellate counsel]** ~~An attorney~~
34 ~~appointed to represent a person in the Supreme Court in a death penalty~~
35 ~~appeal, as either lead or associate counsel, must have at least the~~
36 ~~following qualifications and experience:~~
37

38 (1) ~~Active practice of law in California for at least four years;~~
39

40 (2) ~~Either:~~

41 (A) ~~Counsel of record for a defendant in seven completed felony~~
42 ~~appeals, including one murder; or~~
43

1
2 ~~(B) Counsel of record for a defendant in five completed felony~~
3 ~~appeals and supervised counsel for a defendant in two death~~
4 ~~penalty appeals in which the opening brief has been filed.~~
5 ~~Service as supervised counsel in a death penalty appeal shall~~
6 ~~apply toward the minimum qualification described in this~~
7 ~~subdivision (d)(2)(B) only if lead or associate counsel in that~~
8 ~~appeal attests that the supervised attorney has performed a~~
9 ~~significant portion of work on the case and recommends the~~
10 ~~attorney for appointment;~~

11
12 ~~(3) Familiarity with the practices and procedures of the Supreme~~
13 ~~Court, including those specifically related to death penalty appeals;~~

14
15 ~~(4) Within three years before appointment, completion of at least nine~~
16 ~~hours of Supreme Court approved appellate criminal defense~~
17 ~~training, continuing education, or course of study, at least six hours~~
18 ~~of which involve death penalty appeals. If the Supreme Court~~
19 ~~previously has appointed counsel to represent a defendant in a~~
20 ~~death penalty appeal or a related habeas corpus proceeding, and~~
21 ~~counsel has provided active representation within three years prior~~
22 ~~to the request for a new appointment, the court, upon review of~~
23 ~~counsel's previous work, may find that such representation~~
24 ~~constitutes compliance with this training requirement; and~~

25
26 ~~(5) Proficiency in issue identification, research, analysis, writing, and~~
27 ~~advocacy, taking into consideration:~~

28
29 ~~(A) Two writing samples, ordinarily appellate briefs, written by~~
30 ~~the attorney and involving analysis of complex legal issues;~~

31
32 ~~(B) If the attorney has been appointed previously in a death~~
33 ~~penalty appeal or death penalty related habeas corpus~~
34 ~~proceeding in the Supreme Court, the evaluation of the~~
35 ~~assisting counsel or entity in that proceeding;~~

36
37 ~~(C) Recommendations from two attorneys familiar with the~~
38 ~~attorney's qualifications and performance; and~~

39
40 ~~(D) If the attorney is on a panel of attorneys eligible for~~
41 ~~appointments to represent indigent appellants in the Court of~~
42 ~~Appeal, the evaluation of the administrator responsible for~~
43 ~~those appointments.~~

1 ~~(Subd (d) amended effective April 15, 1998.)~~

2 ~~(e) [Qualifications for appointed habeas corpus counsel] An attorney~~
3 ~~appointed to represent a person in the Supreme Court in death penalty~~
4 ~~related habeas corpus proceedings, as either lead or associate counsel,~~
5 ~~must have at least the following qualifications and experience:~~

6
7 ~~(1) Active practice of law in California for at least four years;~~

8
9 ~~(2) Either:~~

10
11 ~~(A) Counsel of record for a defendant in five completed felony~~
12 ~~appeals or writ proceedings, including one murder, and~~
13 ~~counsel of record for a defendant in three jury trials or three~~
14 ~~habeas corpus proceedings involving serious felonies; or~~

15
16 ~~(B) Counsel of record for a defendant in five completed felony~~
17 ~~appeals or writ proceedings and supervised counsel in two~~
18 ~~Supreme Court death penalty related habeas corpus~~
19 ~~proceedings in which the petition has been filed. Service as~~
20 ~~supervised counsel in a Supreme Court death penalty related~~
21 ~~habeas corpus proceeding shall apply toward the minimum~~
22 ~~qualifications described in this subdivision (e)(2)(B) only if~~
23 ~~lead or associate counsel in that proceeding attests that the~~
24 ~~attorney has performed a significant portion of work on the~~
25 ~~case and recommends the attorney for appointment;~~

26
27 ~~(3) Familiarity with the practices and procedures of the California~~
28 ~~Supreme Court and the federal courts in death penalty habeas~~
29 ~~corpus proceedings;~~

30
31 ~~(4) Within three years before appointment, completion of at least nine~~
32 ~~hours of Supreme Court approved appellate criminal defense or~~
33 ~~habeas corpus defense training, continuing education, or course of~~
34 ~~study, at least six hours of which involve death penalty habeas~~
35 ~~corpus proceedings. If the Supreme Court previously has appointed~~
36 ~~counsel to represent a defendant in a death penalty appeal or a~~
37 ~~related habeas corpus proceeding, and counsel has provided active~~
38 ~~representation within three years prior to the request for a new~~
39 ~~appointment, the court, upon review of counsel's previous work,~~
40 ~~may find that such representation constitutes compliance with this~~
41 ~~training requirement; and~~
42

1 ~~(5) Proficiency in issue identification, research, analysis, writing,~~
2 ~~investigation, and advocacy, taking into consideration:~~

3
4 ~~(A) Three writing samples, ordinarily two appellate briefs and one~~
5 ~~habeas corpus petition, written by the attorney and involving~~
6 ~~analysis of complex legal issues;~~

7
8 ~~(B) If the attorney has been appointed previously in a death~~
9 ~~penalty appeal or death penalty related habeas corpus~~
10 ~~proceeding in the Supreme Court, the evaluation of the~~
11 ~~assisting counsel or entity in that proceeding;~~

12
13 ~~(C) Recommendations from two attorneys familiar with the~~
14 ~~attorney's qualifications and performance; and~~

15
16 ~~(D) If the attorney is on a panel of attorneys eligible for~~
17 ~~appointments to represent indigent appellants in the Court of~~
18 ~~Appeal, the evaluation of the administrator responsible for~~
19 ~~those appointments.~~

20 *(Subd (e) amended effective April 15, 1998.)*

21 ~~(f) [Alternative qualifications] The Supreme Court may appoint an~~
22 ~~attorney who does not meet the requirements of subdivisions (d)(1) and~~
23 ~~(d)(2) or (e)(1) and (e)(2) of this rule if the attorney has the~~
24 ~~qualifications described in subdivisions (d)(3) through (d)(5) or (e)(3)~~
25 ~~through (e)(5) and:~~

26
27 ~~(1) The court finds that the attorney has extensive experience in~~
28 ~~another jurisdiction or a different type of practice (such as civil~~
29 ~~trials or appeals, academic work, or work for a court or prosecutor)~~
30 ~~for at least four years, such that the attorney has substantially~~
31 ~~equivalent experience in complex cases as an attorney qualified~~
32 ~~under subdivision (d) or (e);~~

33
34 ~~(2) Ongoing consultation is available to the attorney from an assisting~~
35 ~~counsel or entity designated by the court; and~~

36
37 ~~(3) Within two years before appointment, the attorney has completed~~
38 ~~at least 18 hours of Supreme Court approved appellate criminal~~
39 ~~defense or habeas corpus defense training, continuing education, or~~
40 ~~course of study, at least nine hours of which involve death penalty~~
41 ~~appellate or habeas corpus proceedings. The Supreme Court shall~~

1 determine in each case whether the training, education, or course
2 of study completed by a particular attorney satisfies the
3 requirements of this subdivision in light of his or her individual
4 background and experience. If the Supreme Court previously has
5 appointed counsel to represent a defendant in a death penalty
6 appeal or a related habeas corpus proceeding, and counsel has
7 provided active representation within three years prior to the
8 request for a new appointment, the court, upon review of counsel's
9 previous work, may find that such representation constitutes
10 compliance with this training requirement.

11 *(Subd (f) amended effective April 15, 1998.)*

12 ~~(g) [Attorneys without trial experience] If an attorney appointed under~~
13 ~~either subdivision (e) or subdivision (f) to represent a defendant in death~~
14 ~~penalty related habeas corpus proceedings in the Supreme Court does~~
15 ~~not have experience in conducting trials or evidentiary hearings, the~~
16 ~~attorney must associate an attorney who has such experience if an~~
17 ~~evidentiary hearing is ordered in the habeas corpus proceeding.~~

18
19 ~~(h) [Use of supervised counsel] An attorney who does not meet the~~
20 ~~qualifications described in subdivisions (d), (e), or (f) may assist lead or~~
21 ~~associate counsel, but must work under the immediate supervision and~~
22 ~~direction of lead or associate counsel.~~

23
24 ~~(i) [Dual appointment] An attorney appointed to represent a defendant in~~
25 ~~both a death penalty appeal and death penalty related habeas corpus~~
26 ~~proceedings in the Supreme Court must meet the minimum~~
27 ~~qualifications of both subdivisions (d) and (e), or of subdivision (f).~~
28 ~~Notwithstanding the foregoing, two attorneys together may be eligible~~
29 ~~for appointment to represent a defendant jointly in both a death penalty~~
30 ~~appeal and death penalty related habeas corpus proceedings in the~~
31 ~~Supreme Court if the Supreme Court finds that their qualifications in the~~
32 ~~aggregate satisfy the provisions of both subdivisions (d) and (e), or of~~
33 ~~subdivision (f).~~

34
35 ~~(j) [Designated entities as appointed counsel] Notwithstanding any other~~
36 ~~provision of this rule, the State Public Defender is qualified and eligible~~
37 ~~to serve as appointed counsel in death penalty appeals, the California~~
38 ~~Habeas Resource Center is qualified and eligible to serve as appointed~~
39 ~~counsel in death penalty related habeas corpus proceedings in the~~
40 ~~Supreme Court, and the California Appellate Project is qualified and~~
41 ~~eligible to serve as appointed counsel in both classes of proceedings.~~

1 When serving as appointed counsel in a death penalty appeal, the State
2 Public Defender or the California Appellate Project shall not assign any
3 attorney as lead counsel in the appeal unless it finds the attorney has the
4 qualifications described in subdivisions (d)(1) through (d)(5) or the
5 Supreme Court finds the attorney to qualify under subdivision (f). When
6 serving as appointed counsel in a death penalty related habeas corpus
7 proceeding in the Supreme Court, the California Habeas Resource
8 Center or the California Appellate Project shall not assign any attorney
9 as lead counsel in the proceeding unless it finds the attorney has the
10 qualifications described in subdivisions (e)(1) through (e)(5) or the
11 Supreme Court finds the attorney to qualify under subdivision (f).
12

13 ~~(k) [Attorney appointed by federal court]~~ Notwithstanding any other
14 provision of this rule, the Supreme Court may appoint an attorney who
15 is under appointment by a federal court in a death penalty related habeas
16 corpus proceeding for the purpose of exhausting state remedies in the
17 Supreme Court and for all subsequent state proceedings in that case, if
18 the Supreme Court finds the attorney has the commitment, proficiency
19 and knowledge necessary to represent the defendant competently in
20 state proceedings.

21 ~~Rule 76.6 amended effective April 15, 1998; adopted by the Supreme Court and~~
22 ~~the Judicial Council effective February 27, 1998.~~

23 **Drafter's Notes**

24 ~~**February 1998** This rule implements legislation that became effective January 1,~~
25 ~~1998, requiring both the Judicial Council and the Supreme Court to adopt rules on~~
26 ~~the qualifications of counsel for capital appeals and habeas corpus proceedings.~~
27 ~~(SB 513 [Lockyer]; Gov. Code, § 68655.) The new rule sets standards for counsel~~
28 ~~representing defendants in capital appeals and habeas corpus proceedings.~~

29 ~~**April 1998** This rule was amended to specify that the training requirement may be~~
30 ~~satisfied if an attorney has provided active representation of a defendant in a death~~
31 ~~penalty appeal or habeas corpus proceeding within the previous three years.~~

32 **Rule 77. Supervising progress of appeals**

33 ~~(a) [Duty to assure prompt completion]~~ Each Administrative Presiding
34 ~~Justice of a Court of Appeal having more than one division located in~~
35 ~~the same city and the presiding justices of other Courts of Appeal have~~
36 ~~general responsibility for assuring that all records on appeal and briefs~~

1 are promptly filed, and staff shall be provided for that purpose to the
2 extent funds are appropriated and available.

3
4 **(b)** ~~[Authority]~~ Notwithstanding any other provision of these rules, the
5 administrative presiding justices and presiding justices referred to in
6 subdivision (a) are authorized to

7
8 (1) ~~grant or deny applications to extend the time for filing records on~~
9 ~~appeal and briefs, except that a presiding justice may grant an~~
10 ~~extension of time for briefs in conjunction with an order for~~
11 ~~augmentation of the record on appeal;~~

12
13 (2) ~~order the dismissal of an appeal, or any other authorized sanction,~~
14 ~~for a noncompliance with these rules, if no application for an~~
15 ~~extension of time or for relief from default has been filed prior to~~
16 ~~entry of the order; and~~

17
18 (3) ~~grant relief from a default or from a sanction other than dismissal~~
19 ~~imposed for the default.~~

20 *(Subd (b) amended effective July 1, 1990.)*

21 *Rule 77 amended effective July 1, 1990; adopted effective July 1, 1976.*

22 **Drafter's Notes**

23 ~~1990 Rule 77 was amended slightly to clarify the power of administrative~~
24 ~~presiding justices of the State Court of Appeal to supervise the progress of~~
25 ~~appeals.~~

26 **Rule 78. Notification of failure to perform judicial duties**

27 ~~The Chief Justice or presiding justice of a reviewing court, or the administrative~~
28 ~~presiding justice with regard to a presiding justice, shall notify the Commission on~~
29 ~~Judicial Performance of~~

30 (1) ~~a reviewing court judge's substantial failure to perform judicial~~
31 ~~duties, including but not limited to any habitual neglect of duty, or~~
32

33 (2) ~~any absences caused by disability totaling more than 90 court days~~
34 ~~in a 12-month period, excluding absences for authorized vacations~~
35 ~~and attendance at schools, conferences, and workshops for judges.~~

1 ~~The Chief Justice or presiding justice or administrative presiding justice shall give~~
2 ~~the judge a copy of any notification to the commission.~~

3 ~~Rule 78 amended January 1, 1991; adopted effective July 1, 1983.~~

4 **Drafter's Notes**

5 ~~1983~~ At the suggestion of the Commission on Judicial Performance, a new rule 78
6 is added requiring the Chief Justice, presiding justice or administrative presiding
7 justice of a reviewing court to notify the commission of a reviewing court judge's
8 substantial failure to perform judicial duties. This provision parallels subdivision
9 (a)(19) of rules 244.5 and 532.5, concerning trial court judges.

10 ~~1990~~ The council amended rules 78, 205, and 532.5 to clarify the duties of
11 presiding judges to report both the failure of judges to perform judicial duties and
12 their absences caused by disabilities. The council also voted to defer consideration
13 of the proposal to reduce the time necessary to trigger the reporting duty until a
14 judicial leave policy is drafted.

15 **Rule 80. Local rules of Courts of Appeal**

16 (a) ~~A brief, petition, motion, or other document prepared in accordance~~
17 ~~with these rules shall be accepted for filing notwithstanding any local~~
18 ~~Court of Appeal rule imposing other requirements.~~

19
20 (b) ~~A Court of Appeal shall submit to the Reporter of Decisions, for~~
21 ~~publication in the advance sheets to the Official Reports, any local rule~~
22 ~~of court adopted after the effective date of this rule.~~

23
24 (c) ~~A local rule of a Court of Appeal shall not become operative prior to 45~~
25 ~~days after the date shown on the face of the advance sheet to the Official~~
26 ~~Reports in which it is first published.~~

27
28 (d) ~~As used in this rule, "publication in the advance sheets to the Official~~
29 ~~Reports" means publication in the same manner and typeface as~~
30 ~~amendments to the California Rules of Court and does not include~~
31 ~~publication in the minutes section of an advance sheet.~~

32 ~~Rule 80 as adopted effective January 1, 1983.~~

33 **Rule 976. Publication of appellate opinions**

1 ~~(a) [Supreme Court]~~ All opinions of the Supreme Court shall be published
2 in the Official Reports.

3 ~~(Subd (a) adopted effective January 1, 1964.)~~

4 ~~(b) [Standards for publication of opinions of other courts]~~ No opinion of
5 a Court of Appeal or an appellate department of the superior court may
6 be published in the Official Reports unless the opinion:

7
8 ~~(1) establishes a new rule of law, applies an existing rule to a set of~~
9 ~~facts significantly different from those stated in published~~
10 ~~opinions, or modifies, or criticizes with reasons given, an existing~~
11 ~~rule;~~

12
13 ~~(2) resolves or creates an apparent conflict in the law;~~

14
15 ~~(3) involves a legal issue of continuing public interest; or~~

16
17 ~~(4) makes a significant contribution to legal literature by reviewing~~
18 ~~either the development of a common law rule or the legislative or~~
19 ~~judicial history of a provision of a constitution, statute, or other~~
20 ~~written law.~~

21 ~~(Subd (b) amended effective January 1, 1983; previously amended effective~~
22 ~~November 11, 1966, and January 1, 1972; adopted effective January 1, 1964.)~~

23 ~~(c) [Publication procedure]~~

24
25 ~~(1) (Courts of Appeal and appellate departments) An opinion of a~~
26 ~~Court of Appeal or an appellate department of the superior court~~
27 ~~shall be published if a majority of the court rendering the opinion~~
28 ~~certifies, prior to the decision's finality in that court, that it meets~~
29 ~~one or more of the standards of subdivision (b).~~

30
31 ~~(2) (Supreme Court) An opinion certified for publication shall not be~~
32 ~~published, and an opinion not so certified shall be published, on an~~
33 ~~order of the Supreme Court to that effect.~~

34 ~~(Subd (c) amended effective January 1, 1983; previously amended effective~~
35 ~~November 11, 1966, and January 1, 1972; adopted effective January 1, 1964.)~~

36 ~~(d) [Superseded opinions]~~ Unless otherwise ordered by the Supreme
37 ~~Court, no opinion superseded by a grant of review, rehearing, or other~~

1 action shall be published. After granting review, after decision, or after
2 dismissal of review and remand as improvidently granted, the Supreme
3 Court may order the opinion of the Court of Appeal published in whole
4 or in part.

5 *(Subd (d) amended effective May 6, 1985; previously amended effective January 1,*
6 *1983; Subd (e) renumbered subd (d) effective January 1, 1972; adopted effective*
7 *January 1, 1964.)*

8 ~~(e) [Editing]~~ Written opinions of the Supreme Court, Courts of Appeal, and
9 appellate departments of the superior courts shall be filed with the clerks
10 of the respective courts. Two copies of each opinion of the Supreme
11 Court, and two copies of each opinion of a Court of Appeal or of an
12 appellate department of a superior court which the court has certified as
13 meeting the standard for publication specified in subdivision (b) shall be
14 furnished by the clerk to the Reporter of Decisions. The Reporter of
15 Decisions shall edit the opinions for publication as directed by the
16 Supreme Court. Proof sheets of each opinion in the type to be used in
17 printing the reports shall be submitted by the Reporter of Decisions to
18 the court which prepared the opinion for examination, correction and
19 final approval.

20 *(Subd (f) renumbered subd (e) effective January 1, 1972; previously amended*
21 *effective November 11, 1966; adopted effective January 1, 1964.)*

22 *Rule 976 amended effective May 6, 1985; previously amended effective November*
23 *11, 1966, January 1, 1972, January 1, 1983; adopted by the Supreme Court*
24 *effective January 1, 1964.*

25 **Rule 976.1. Partial publication experiment**

26 ~~(a) [Partial publication authorized]~~ A majority of the court rendering an
27 opinion may certify for publication any part of the opinion that meets
28 the standard for publication specified under subdivision (b) of rule 976.
29 The published part shall indicate that part of the opinion is unpublished.
30 All material, factual and legal, that aids in the application or
31 interpretation of the published part shall be in the published part.

32
33 ~~(b) [Other rules applicable]~~ For purposes of rules 976, 977, and 978, the
34 published part of the opinion shall be treated as a published opinion, and
35 the unpublished part as an unpublished opinion.
36

1 ~~(e) [Copy to Reporter of Decisions] One extra copy of both the published~~
2 ~~and unpublished parts of the opinion shall be furnished by the clerk to~~
3 ~~the Reporter of Decisions.~~

4 *Rule 976.1 amended effective January 1, 1984; adopted effective January 1, 1983.*

5 **Rule 977. Citation of opinions**

6 ~~(a) [Unpublished opinions] An opinion of a Court of Appeal or an~~
7 ~~appellate department of the superior court that is not certified for~~
8 ~~publication or ordered published shall not be cited or relied on by a~~
9 ~~court or a party in any other action or proceeding except as provided in~~
10 ~~subdivision (b).~~

11 *(Subd (a) amended effective January 1, 1997.)*

12 ~~(b) [Exceptions] Such an opinion may be cited or relied on:~~

13
14 ~~(1) when the opinion is relevant under the doctrines of law of the case,~~
15 ~~res judicata, or collateral estoppel; or~~

16
17 ~~(2) when the opinion is relevant to a criminal or disciplinary action or~~
18 ~~proceeding because it states reasons for a decision affecting the~~
19 ~~same defendant or respondent in another such action or~~
20 ~~proceeding.~~

21 *(Subd (b) amended effective January 1, 1983.)*

22 ~~(c) [Citation procedure] A copy of any opinion citable under subdivision~~
23 ~~(b) or of a cited opinion of any court that is available only in a~~
24 ~~computer based source of decisional law shall be furnished to the court~~
25 ~~and all parties by attaching it to the document in which it is cited, or, if~~
26 ~~the citation is to be made orally, within a reasonable time in advance of~~
27 ~~citation.~~

28 *(Subd (c) amended effective January 1, 1997.)*

29 ~~(d) [Opinions ordered published by Supreme Court] An opinion of the~~
30 ~~Court of Appeal ordered published by the Supreme Court pursuant to~~
31 ~~rule 976 is citable.*~~

32 *(Subd (d) adopted effective May 6, 1985.)*

1 ~~Rule 977 amended effective January 1, 1997; adopted by the Supreme Court and~~
2 ~~by the Judicial Council effective January 1, 1974; previously amended effective~~
3 ~~January 1, 1983, and May 6, 1985.~~

4 ~~* Any citation to the Court of Appeal opinion shall include reference to the grant~~
5 ~~of review and any subsequent action by the Supreme Court.~~

6 **Rule 978. Requesting publication of unpublished opinions**

7 ~~(a) [Request procedure; action by court rendering opinion] A request~~
8 ~~by any person for publication of an opinion not certified for publication~~
9 ~~may be made only to the court that rendered the opinion. The request~~
10 ~~shall be made promptly by a letter stating the nature of the person's~~
11 ~~interest and stating concisely why the opinion meets one or more of the~~
12 ~~publication standards. The request shall be accompanied by proof of its~~
13 ~~service on each party to the action or proceeding in the Court of Appeal.~~
14 ~~If the court does not, or by reason of the decision's finality as to that~~
15 ~~court cannot, grant the request, the court shall transmit the request and a~~
16 ~~copy of the opinion to the Supreme Court with its recommendation for~~
17 ~~disposition and a brief statement of its reasons. The transmitting court~~
18 ~~shall also send a copy of its recommendation and reasons to each party~~
19 ~~and to any person who has requested publication.~~

20 ~~(Subd (a) amended effective July 1, 1997; adopted July 1, 1975; previously~~
21 ~~amended January 1, 1983, and July 1, 1992.)~~

22 ~~(b) [Action by Supreme Court] When a request for publication is received~~
23 ~~by the Supreme Court pursuant to subdivision (a), the court shall either~~
24 ~~order the opinion published or deny the request. The court shall send~~
25 ~~notice of its action to the transmitting court, each party, and any person~~
26 ~~who has requested publication.~~

27 ~~(Subd (b) amended effective January 1, 1983; adopted effective July 1, 1975.)~~

28 ~~(c) [Effect of Supreme Court order for publication] An order of the~~
29 ~~Supreme Court directing publication of an opinion in the Official~~
30 ~~Reports shall not be deemed an expression of opinion of the Supreme~~
31 ~~Court of the correctness of the result reached by the decision or of any~~
32 ~~of the law set forth in the opinion.~~

33 ~~(Adopted effective July 1, 1975.)~~

1 *Rule 978 amended effective July 1, 1997; previously amended January 1, 1983,*
2 *and July 1, 1992; adopted by the Supreme Court and by the Judicial Council*
3 *effective July 1, 1975.*

4 **Drafter's Notes**

5 ~~1992 Rule 978 was amended to require that letters requesting publication of~~
6 ~~unpublished opinions be served on each party to the action in the Court of Appeal.~~
7 ~~Before the amendment, the rule merely required that copies of the letter be sent to~~
8 ~~all parties, but did not require formal service or proof of service.~~

9 **Rule 979. Requesting depublication of published opinions**

10 ~~(a) [Request procedure] A request by any person for the depublication of~~
11 ~~an opinion certified for publication shall be made by letter to the~~
12 ~~Supreme Court within 30 days after the decision becomes final as to the~~
13 ~~Court of Appeal. Any request for depublication shall be accompanied by~~
14 ~~proof of mailing to the Court of Appeal and proof of service to each~~
15 ~~party to the action or proceeding. The request shall state the nature of~~
16 ~~the person's interest and shall state concisely reasons why the opinion~~
17 ~~should not remain published. The request shall not exceed 10 pages.~~
18

19 ~~(b) [Response] The Court of Appeal or any person may, within 10 days~~
20 ~~after receipt by the Supreme Court of a request for depublication,~~
21 ~~submit a response, either joining in the request or stating concisely~~
22 ~~reasons why the opinion should remain published. A response submitted~~
23 ~~by anyone other than the Court of Appeal shall state the nature of the~~
24 ~~person's interest. Any response shall not exceed 10 pages and shall be~~
25 ~~accompanied by proof of mailing to the Court of Appeal, and proof of~~
26 ~~service to each party to the action or proceeding, and person requesting~~
27 ~~depublishation.~~

28 *(Subd (b) amended effective July 1, 1997.)*

29 ~~(c) [Action by Supreme Court] When a request for depublication is~~
30 ~~received by the Supreme Court pursuant to subdivision (a), the court~~
31 ~~shall either order the opinion depublished or deny the request. The court~~
32 ~~shall send notice of its action to the Court of Appeal, each party, and~~
33 ~~any person who has requested depublishation.~~
34

35 ~~(d) [Limitation] Nothing in this rule limits the court's power, on its own~~
36 ~~motion, to order an opinion depublished.~~
37

1 ~~(e) [Effect of Supreme Court order for depublication]~~ An order of the
2 ~~Supreme Court directing depublication of an opinion in the Official~~
3 ~~Reports shall not be deemed an expression of opinion of the Supreme~~
4 ~~Court of the correctness of the result reached by the decision or of any~~
5 ~~of the law set forth in the opinion.~~

6 ~~Rule 979 amended effective July 1, 1997; adopted effective July 1, 1990.~~

REVISION OF APPELLATE RULES—FOURTH INSTALLMENT

NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
1.	Gen'1	Frank J. DeMarco Siskiyou County Counsel	N	The commentator agrees with all proposed revisions.	No response necessary.
2.	Gen'1	Court Operations and Legal Research Depts. San Bernardino County Superior Court	Y	The commentators agree with all proposed revisions.	No response necessary.
3.	Gen'1	Justice Maria P. Rivera Court of Appeal, First Dist.	N	The commentator states, "These are excellent revisions. The total 'overhaul' is first-rate (and long overdue)."	No response necessary.
4.	Gen'1	Lupe Valerio Monrovia, CA	N	The commentator agrees with all proposed revisions.	No response necessary.
5.	Gen'1	Richard Power Attorney at Law	N	All notices to attorneys and parties should be transmitted by electronic means.	The proposal is beyond the scope of this rules revision project.
6.	Gen'1	Harlean Carroll Probate Attorney Los Angeles County Superior Court	N	The commentator states that although these revisions do not affect probate conservatorships directly, he is concerned there may be an increasing burden on superior court clerks and insufficient staff to handle that burden.	No response necessary.
7.	Gen'1	Evyn Shomer et al. Staff Attorneys Center for Families, Children, and the Courts Administrative Office of the Courts	Y	1. The commentators query whether the correct style of a time limitation in the rules is "within X days" or "no more than X days." 2. The commentators prefer to refer to a dependent of the dependency court or a ward of the delinquency court as a "child" rather than a "minor."	1. Both styles are acceptable. 2. The former rules and the current statutes use both terms depending on the context, as do the revised rules.
8.	Gen'1	Maurice Oppenheim Attorney at Law	N	1. The commentator states it is a basic principle of drafting statutes and rules that "when an act is to be performed, the statute or rule must specifically identify the person or body	1. Agree in part. Although the revisions follow that principle whenever possible, in the few instances the commentator

† On behalf of a group: Y = Yes; N = No

REVISION OF APPELLATE RULES—FOURTH INSTALLMENT

				<p>that must perform it.” He then asserts that the proposed revisions contain at least 10 instances in which this principle has not been followed.</p> <p>2. The commentator asserts that the committee comments use “imprecise phrases” that “imply changes, without explaining them.” He gives as examples instances in which the comments say that a revised rule “principally restates,” or “is derived from,” or “essentially adopts”</p>	<p>identifies the committee deliberately adopted the passive voice either because any one of several persons may perform the act (e.g., revised rule 37.3(d)(1)) or because it is evident from the context who is to perform it (e.g., revised rule 38(h)(4)–(5)).</p> <p>2. Disagree. In each case the phrase has been deliberately chosen to reflect the degree of change resulting from the revised rule, and the comment goes on to explain that change.</p>
9.	37	Staff Attorneys Court of Appeal, Fifth Dist.	Y	<p>1. Former rule 39(e) provided that “An appeal from the juvenile court or an appeal in an action under Civil Code section 232 [repealed 1992, now Fam. Code § 7800 et seq.] shall have precedence over all other cases, <i>as provided by statute.</i>” (Italics added.) Revised rule 37 deleted this provision. The commentators propose to restore it because its deletion “could cause confusion.”</p> <p>2. It would be “useful” to refer to Judicial Council Form JV–800 (<i>Notice of Appeal—Juvenile</i>) in revised rule 37(c).</p>	<p>1. Disagree for the reasons stated in the committee comment to revised rule 37: “Former rule 39(e) is deleted as unnecessary; it restated existing statutory provisions giving juvenile appeals precedence (Welf. & Inst. Code, §§ 395, 800) and was primarily directed to the reviewing courts.” Good drafting practice is to repeat statutory provisions in rules only when strictly necessary.</p> <p>2. Disagree. In this revision project, specific references in rule text to Judicial Council forms have been omitted in favor of the more current provisions of the revised rules themselves. Good drafting practice is to cite form numbers in rules only when strictly necessary (e.g., revised rule 60, to assist indigent incarcerated criminal petitioners for habeas corpus).</p>

† On behalf of a group: Y = Yes; N = No

REVISION OF APPELLATE RULES—FOURTH INSTALLMENT

				<p>3. In revised rule 37(e)(1), relocate the phrase, “is premature,” for clarity.</p> <p>4. Check on the status of <i>In re Jacqueline P.</i> (2003) 112 Cal.App.4th 141, cited in the committee comment.</p> <p>5. Revised rule 37(f)(2) requires the clerk to send notification of the filing of a notice of appeal to, among others, any de facto parent and any court-appointed special advocate. The commentators propose deleting the first because a de facto parent is a party, and the second because special advocates “have no role in the appellate court.”</p>	<p>3. Agree. The phrase has been relocated in the provision as suggested.</p> <p>4. The cited case was ordered depublished and has been deleted from the committee comment.</p> <p>5. Disagree. Former rule 39(b) expressly required the clerk to notify “any de facto parent.” The provision is advisable because not all appeals clerks may be aware that a de facto parent is a party. As for special advocates, such a person is the child’s guardian ad litem in law or in fact and should be notified of any appeal involving the child.</p>
10.	37	Carole Greeley Bay Area Dependency Chapter Cal. Appellate Defense Counsel	Y	<p>1. Revised rule 37(a) should refer to “Rules 37–38.6” rather than “Rules 37–38.5.”</p> <p>2. Revised rule 37(b) should provide access to juvenile files as broad as that provided by Welfare and Institutions Code section 827.</p> <p>3. Revised rule 37(e)(2) should require the clerk to send a copy of a late notice of appeal to the district appellate project</p>	<p>1. Agree. The correction has been made.</p> <p>2. Disagree. The cited statute authorizes access to juvenile files by a number of nonparties for reasons based on the performance of their official duties (e.g., superintendents of schools). However, they would not be parties to any juvenile appeal and would have no legitimate reason or need to inspect the record or briefs in an appeal in the course of their duties.</p> <p>3. Agree. The provision has been changed to so provide.</p>

† On behalf of a group: Y = Yes; N = No

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				<p>in all juvenile cases, rather than—as proposed—only in delinquency cases. The appellate projects need this document in order to discharge their duties.</p> <p>4. Revised rule 37(f)(1)–(2) requires the clerk to “immediately” mail notification of the filing of a notice of appeal to listed persons. The commentators propose changing “immediately” to “within 5 days,” asserting that “some clerks interpret ‘immediately’ to mean ‘within a few months.’ ”</p>	<p>4. Disagree. To require an act to be performed “immediately” has a widely understood meaning: the act has the highest priority and must be performed with no unnecessary delay. It cannot be assumed that superior court clerks will routinely violate their prescribed duties.</p>
11.	37	<p>Evyn Shomer et al. Staff Attorneys Center for Families, Children, and the Courts Administrative Office of the Courts</p>	Y	<p>1. Revised rule 37(a) should state that rules 37–38.6 also govern writ petitions under rules 38 and 38.1.</p> <p>2. Revised rule 37(e)(2) should require the clerk to send a copy of a late notice of appeal to the district appellate project in all juvenile cases, rather than—as proposed—only in delinquency cases. The appellate projects need this document in order to discharge their duties.</p> <p>3. Revised rule 37(f)(2) should require the clerk to send a notification of the filing of a notice of appeal to a de facto parent, a court-appointed special advocate, and the tribe of an Indian child in all juvenile cases, rather than—as proposed—only in delinquency cases.</p>	<p>1. Agree. The provision has been changed to so state.</p> <p>2. Agree. See response to comment 10.3.</p> <p>3. Agree. The provision has been changed to so state.</p>
12.	37	<p>Maurice Oppenheim Attorney at Law</p>	N	<p>1. As proposed, revised rule 37(a) states that rule 37–38.6 do <i>not</i> apply to an appeal from an order by a judicial officer “under Welfare and Institutions Code section 258.” The rule should be redrafted to avoid any inappropriate negative implications.</p> <p>2. In revised rule 37(b)(1), use of the present tense in the</p>	<p>1. Agree. The rule has been redrafted to state only the types of proceedings to which the rule <i>does</i> apply.</p> <p>2. Disagree. In revised rule 37(b)(1), the</p>

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				<p>word “designate” is grammatically inconsistent with use of the past tense in the word “inspected” earlier in the same sentence.</p> <p>3. Revised rule 37(d)(3) should say “whichever is later” rather than “within the later of.”</p> <p>4. For clarity and consistency, “the clerk” in revised rule 37(f)(1) should be identified as “the superior court clerk.”</p> <p>5. The commentator agrees with the use of the word “immediately” in revised rule 37(f)(1).</p> <p>6. Revised rule 37 should resolve the question whether the constructive filing doctrine applies in juvenile cases.</p>	<p>word “inspected” is not the past tense of the verb “to inspect” used in the active voice, but the present tense of the same verb used in the passive voice, i.e., “to be inspected.” To improve the flow of the sentence, however, “designate” has been changed to “may designate.”</p> <p>3. Agree. The correction has been made.</p> <p>4. Agree. The words “superior court” have been inserted.</p> <p>5. No response necessary.</p> <p>6. The proposal is beyond the scope of this rules revision project. A prior reference to the doctrine in the committee comment has been deleted. (See also response to comment 9.4.)</p>
13.	37	Miriam A. Krinsky Executive Director Children’s Law Center of Los Angeles	Y	<p>1. Revised rule 37(b) should follow the <i>California Style Manual</i> (4th ed. 2000) § 5.9, by requiring parties to be designated by their first names and last initials in order to preserve anonymity.</p> <p>2. Revised rule 37(b) should include a provision reflecting the longstanding practice of sharing briefs that protect the anonymity of the parties when seeking amicus curiae support from interested persons and/or entities. The commentators stress that potential amicus curiae applicants need access to</p>	<p>1. Agree. Revised rule 37(b)(2) has been changed to reflect that practice.</p> <p>2. Agree. The gap has been filled by so providing in revised rule 37(b)(3).</p>

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				<p>filed briefs in order to comply fully with the requirement that an application explain how the proposed brief “will assist the court in deciding the matter.” (Rules 13(c)(2), 29.1(f)(3).)</p> <p>3. Revised rule 37(f) should require the clerk to notify the minor of the filing of a notice of appeal.</p> <p>4. Revised rule 37(f) should require the clerk to notify the child’s present custodian of the filing of a notice of appeal.</p>	<p>3. Agree. The requirement has been added to revised rule 37(f)(1)(A).</p> <p>4. Disagree. The name and address of the child's current custodian is often confidential, particularly if that custodian is a prospective adoptive home. Notice to the child, the court-appointed special advocate, and the child's attorney is sufficient to ensure that the child has notice that an appeal has been filed.</p>
14.	37	Donna W. Furth Chair, Amicus Committee Northern Cal. Assn. of Counsel for Children	Y	Same as comment 13.2.	Agree. See response to comment 13.2.
15.	37	Robert C. Fellmeth Director Children’s Advocacy Institute	Y	Same as comment 13.2.	Agree. See response to comment 13.2.
16.	37	John F. O’Toole Director National Center for Youth Law	Y	Same as comment 13.2.	Agree. See response to comment 13.2.
17.	37	William W. Patton Professor and Director Legal Policy Clinic Whittier Law School	Y	Revised rule 37(b) should include a provision allowing access to briefs that protect the anonymity of the parties by interested persons and/or entities considering filing amicus curiae briefs. The commentators stress that potential amicus curiae applicants need such access in order to determine	Agree. See response to comment 13.2.

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				which areas or issues may not have been sufficiently briefed by the parties.	
18.	37	Anne Fragasso Chair, Legislation Committee Los Angeles Affiliate National Assn. of Counsel for Children	Y	Same as comment 13.2.	Agree. See response to comment 13.2.
19.	37	Mat Zwerling et al., Directors First District Appellate Project Appellate Defenders, Inc. Sixth District Appellate Program California Appellate Project— Los Angeles	Y	<p>1. Revised rule 37(b) should reflect present practice by permitting the appellate projects to inspect the record. The projects need this access in order to discharge their duties.</p> <p>2. As proposed, revised rule 37(c)(1) requires an appellant to <i>serve</i> the notice of appeal on the other parties, a substantive change from former rule 39(b). The commentators object to this change, asserting it “would pose hardships in many juvenile cases, because appellants are often filing in pro per., are usually indigent, and are sometimes incarcerated.” The commentators point out that in criminal cases appellants are not required to serve their notices of appeal.</p> <p>3. To be truly self-contained, revised rule 37 should provide for cross-appeals, as does rule 3(e)(1). Such appeals do occur in juvenile cases.</p> <p>4. Revised rule 37(d) should contain a “prison delivery rule,” as rule 30.1(d) provides for incarcerated criminal appellants.</p> <p>5. Revised rule 37(e)(2) should require the clerk to send a copy of a late notice of appeal to the district appellate project in all juvenile cases, rather than—as proposed—only in delinquency cases. The appellate projects need this document in order to discharge their duties.</p>	<p>1. Agree. The provision has been changed to reflect this practice.</p> <p>2. Agree. The proposed service requirement has been deleted from revised rule 37 (c)(1).</p> <p>3. Agree. The provision has been added as revised rule 37(d)(4).</p> <p>4. The proposal is beyond the scope of this rules revision project.</p> <p>5. Agree. See response to comment 10.3.</p>

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20.	37	Kathleen M. Mallinger Appellate Attorney	N	<p>1. The commentator is concerned about instances in which an appellate counsel may wish to “share some aspect of the record” in a juvenile appeal with a third person, e.g., to prepare (1) an amicus curiae brief or (2) a petition for writ of habeas corpus. Revised rule 37(b)(1) should be modified “so the consent of the district appellate project would be required, rather than the consent of the court.”</p> <p>2. The commentator suggests revised rule 37(f)(2) be made more specific by requiring the clerk to send a notification of the filing of a notice of appeal to any Indian tribe that has appeared in the proceedings.</p>	<p>1. Agree in part. Revised rule 37(b)(3) has been modified to allow access to filed but redacted documents by potential amici curiae. (See response to comment 13.2.) But whether and under what circumstances a juvenile record on appeal should be “shared” with a third person for the purpose of preparing a petition for habeas corpus is an issue beyond the scope of the present rules revision project</p> <p>2. Agree. The provision has been rewritten to so provide.</p>
21.	37	Sharon L. Rhodes Appellate Court Committee San Diego County Bar Assn.	Y	<p>1. Revised rule 37(b) should be rewritten to permit the appellate projects to inspect the record. The projects need this access in order to discharge their duties.</p> <p>2. As proposed, revised rule 37(c)(1) requires an appellant to <i>serve</i> the notice of appeal on the other parties, a substantive change from former rule 39(b). The commentators object to this change, asserting it “would pose hardships in many juvenile cases, because appellants are often filing in pro per., are usually indigent, and are sometimes incarcerated.” The commentators point out that in criminal cases appellants are not required to serve their notices of appeal.</p> <p>3. If the preceding suggestion is adopted, proposed subdivision (c)(3) of revised rule 37 is unnecessary and should be deleted.</p>	<p>1. Agree. See response to comment 19.1.</p> <p>2. Agree. See response to comment 19.2.</p> <p>3. Agree. The subdivision has been deleted.</p>

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				<p>4. The commentators suggest adding to revised rule 37(c) an express statement that a certificate of probable cause under Penal Code section 1237.5 is not required in juvenile proceedings.</p> <p>5. Revised rule 37(d) should contain a “prison delivery rule,” as rule 30.1(d) provides for incarcerated criminal appellants.</p> <p>6. Welfare and Institutions Code section 252 should be cited in revised rule 37(d)(2) because it is the authority for rule 1418.</p> <p>7. To be truly self-contained, revised rule 37 should provide for cross-appeals, as does rule 3(e)(1). Such appeals do occur in juvenile cases.</p> <p>8. Revised rule 37(e)(2) should require the clerk to send a copy of a late notice of appeal to the district appellate project in all juvenile cases, rather than—as proposed—only in delinquency cases. The appellate projects need this document in order to discharge their duties.</p>	<p>4. Disagree. The commentators fail to show that the issue of whether such certificates are required arises in juvenile proceedings.</p> <p>5. Disagree. See response to comment 19.4</p> <p>6. Disagree. The commentators fail to explain why it is necessary to cite the statutory authorization for any cited rule.</p> <p>7. Agree. See response to comment 19.3.</p> <p>8. Agree. See response to comment 10.3.</p>
22.	37	Norm Harebottle Supervising Deputy Clerk Third Dist. Court of Appeal	N	The commentator asserts that for the sake of consistency with the revised civil and criminal rules, the provisions of revised rule 37(d) (time to appeal) and (e) (premature or late notice of appeal) should each be a separately numbered rule of its own.	Agree with the principle but not the timing. The point will be considered in the next stage of this project, when all the appellate rules are to be reorganized and renumbered.
23.	37	Kim Hubbard President Orange County Bar Assn.	Y	In revised rule 37(f)(3), the clerk’s notification that a notice of appeal has been filed should include the name of the appellant.	Agree. Revised rule 37(f)(3) has been rewritten to so provide.
24.	37.1	Staff Attorneys Court of Appeal, Fifth Dist.	Y	1. The commentators state it would be useful to include in rule 37.1 a “discussion of record preparation for sequential	1. The proposal is beyond the scope of this rules revision project.

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				<p>appeals, either how incorporation by reference can be accomplished or that incorporation by reference is not permitted.” (Compare rule 10(b).)</p> <p>2. The provision of rule 37.1(d) on agreed or settled statements “is not appropriate in juvenile cases.”</p>	<p>2. Disagree. Agreed or settled statements do occur in juvenile appeals.</p>
25.	37.1	Sharon L. Rhodes Appellate Court Committee San Diego County Bar Assn.	Y	<p>1. Revised rule 37.1(a) should include, among the required components of the normal clerk’s transcript, all findings and orders of which the juvenile court took judicial notice.</p> <p>2. Revised rule 37.1(a) should include, among the required components of the normal clerk’s transcript, “any petition filed under rules 38 and 38.1, along with supporting and opposing documents and any order on the petition.” Counsel handling an appeal under Welfare and Institutions Code section 366.26 needs to know if such a petition was filed, what issues it raised, and how it was decided.</p> <p>3. Revised rule 37.1(a) should include, among the required components of the normal clerk’s transcript, “any written motion[] or notice of motion by any party” (revised rule 37.1(c)(1)(A)), if it is “related to the judgment or order being appealed.” The commentators reason that if such a motion was important enough to have written pleadings and a</p>	<p>1. Disagree. In practice, matters judicially noticed are often not included in the normal record because of difficulty in later identifying them. If the matter is available and necessary, the party may seek to augment the record under revised rule 37.2(e)(2).</p> <p>2. Agree in principle. Appellate counsel may well need to know if such a petition was filed and what issues it raised, but it would often be too cumbersome to include the petition and its supporting documents in the clerk’s transcript <i>in haec verba</i>. Instead, revised rule 37.1(a) has been expanded to require the normal record to include “any opinion . . . of a reviewing court in the same case.” (Id., subd. (a)(11).) That opinion, it is expected, will discuss any issues raised in such a petition.</p> <p>3. The proposal is beyond the scope of this rules revision project.</p>

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			<p>hearing, appellate counsel will need to see them.</p> <p>4. The normal clerk’s transcript should include any transcript of a sound or sound-and-video recording tendered to the court under rule 243.9. (See rule 31(b)(11).)</p> <p>5. The commentators are “not sure” if the committee intended the term “document” in revised rule 37.1(a)(4) to include a photograph.</p> <p>6. Revised rule 37.1(b)(1) requires the normal reporter’s transcript to include the oral proceedings at any hearing that “resulted in the order or judgment being appealed.” The commentators propose that the normal reporter’s transcript more broadly include the oral proceedings at the hearings on <i>all</i> motions “related to the judgment or order being appealed,” whether or not they actually resulted in that judgment or order. The commentators assert that such transcripts “are useful to appellate attorneys” in certain circumstances.</p>	<p>4. Agree. The provision has been inserted in revised rule 37.1(a)(9).</p> <p>5. The committee so intended.</p> <p>6. Disagree. As the committee explained in its comment, former rule 39(c)(2) required that the normal record include reporter’s transcripts of all hearings in a juvenile case except the detention hearing, regardless of which order was being appealed. Former rule 39.1A(c)(1), however, provided that in appeals from orders terminating parental rights the normal record must include reporter’s transcripts of only those portions of the hearing from which the appeal is taken. Revised rule 37.1(b)(1) essentially adopts the position of former rule 39.1A(c)(1) and establishes the general rule that only the reporter’s transcript of a hearing that resulted in the order being appealed must be included in the normal record. This substantive change is intended to achieve consistent record requirements in all juvenile appeals and to reduce the delays and expense caused by the need to transcribe proceedings not necessary to the appeal. If the item is necessary, counsel</p>
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					may seek to augment the record under revised rule 37.2(e)(2).
26.	37.1	Carole Greeley Bay Area Dependency Chapter Cal. Appellate Defense Counsel	Y	<p>1. Revised rule 37(b)(2) provides that in appeals from dispositional orders the normal reporter’s transcript must contain the oral proceedings at hearings on “jurisdiction and disposition” only, i.e., must not contain the oral proceedings at detention hearings. The commentators propose that the latter be included, reasoning that at such hearings the court not only decides whether the child should be detained but may also make a wide variety of orders relating to the circumstances of that detention. The commentators assert that “These order can have a serious impact on future proceedings.”</p> <p>2. Delete the requirements of revised rule 37.1(b)(3)–(4), as proposed, that the normal reporter’s transcript contain “any oral arguments to the court <i>except opening statements</i>” and “any oral opinion of the court.” Both items are included in the requirement of revised rule 37.1(b)(1) that the transcript contain “the oral proceedings.” In addition, it would be unworkable to ask the reporter to excise the opening statement from the transcript of a dependency hearing, because any such statement “is usually combined with evidentiary requests and rulings, etc.”</p> <p>3. Change revised rule 37.1(c)(1)(B) to read: “in the reporter’s transcript: the oral proceedings at any pretrial hearings, including hearings on motions.” The commentators assert that “It is sometimes necessary to include a pretrial hearing transcript other than a transcript of a hearing on a motion, e.g., to determine whether the parties stipulated that a court commissioner or referee could sit as a temporary judge</p>	<p>1. Disagree. In practice, a transcript of proceedings at the detention hearing is rarely relevant to the issues in an appeal from the dispositional order. If the item is necessary, counsel may seek to augment the record under revised rule 37.2(d)(2).</p> <p>2. Agree in part. Because of the practical problem in excising opening statements in dependency cases, revised rule 37.1(b) has been modified to omit the exception for such statements in the normal reporter’s transcript. But an oral opinion of the court remains expressly included (revised rule 37.1(b)(3)) because of its potential importance to the appeal. Former rule 39(c)(2) expressly included such opinions in the normal reporter’s transcript.</p> <p>3. Disagree. In practice, a transcript of proceedings at a pretrial hearing other than a hearing on a motion is rarely relevant to the issues in an appeal. If the item is necessary, counsel may seek to augment the record under revised rule 37.2(e)(2).</p>

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				at the contested hearing.”	
27.	37.1	Mat Zwerling et al., Directors First District Appellate Project Appellate Defenders, Inc. Sixth District Appellate Program California Appellate Project— Los Angeles	Y	<p>1. The normal clerk’s transcript should include all findings and orders of which the trial court took judicial notice, any petition under revised rule 38 and 38.1 with supporting documents, opposition, and any order on the petition, and any written opinion of the Court of Appeal.</p> <p>2. Revised rule 37.1(b)(1) requires the normal reporter’s transcript to include the oral proceedings at any hearing that “resulted in the order or judgment being appealed.” The commentators propose that the normal reporter’s transcript more broadly include the oral proceedings at the hearings on <i>all</i> motions related to the judgment or order being appealed. The commentators stress that to do so would obviate the need to costly and time-consuming requests to augment.</p>	<p>1. Agree in part. The normal transcript should include any written opinion of the Court of Appeal but not the other items mentioned. See responses to comments 25.1 and 25.2.</p> <p>2. Disagree. See response to comment 25.6.</p>
28.	37.1	Kathleen M. Mallinger Appellate Attorney	N	The normal clerk’s transcript should include “any subsequent, supplemental, and [Welfare and Institutions Code] section 388 petitions.”	Disagree. See response to comment 25.2.
29.	37.1	Judge Ronald L. Bauer Rules & Forms Committee Orange County Superior Court	Y	In revised rule 37.1(a)(2), as proposed, “any notice of hearing” should not be limited by the phrase “addressed to the minor, a parent, or a guardian.” Notices of hearing addressed to other interested parties should also be included.	Agree. The limitation has been deleted.
30.	37.1	Miriam A. Krinsky Executive Director Children’s Law Center of Los Angeles	Y	In revised rule 37.1(a)(4), the clerk’s transcript should not include all reports merely “submitted” to the court, because of the potential for presenting unreliable information. The commentators suggest the transcript include only: “any report or other document received into evidence by the court, at any hearing that resulted in the order or judgment being appealed or otherwise designated by the parties as relevant to the issues on appeal.”	Disagree. Many more motions to augment would be necessary if the rule were limited as the commentators propose. For example, the juvenile court must consider the reports submitted to it even if it does not formally receive all such reports into evidence. (See, e.g., Welf. & Inst. Code, § 366.21 (e).) The commentators assert it

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					would be difficult on appeal for a child or parent to counter the information in a years-old report, but the time for countering that information is when the juvenile court is considering the report in the first instance. Finally, the Court of Appeal often has to consider history and background in order to reach its decision in the current appeal.
31.	37.1	Presiding Justice Manuel Ramirez Division Two Court of Appeal, Fourth Dist.	N	1. Revised rule 37.1(a) should include, among the required components of the normal clerk’s transcript, all findings and orders of which the juvenile court took judicial notice. 2. The normal reporter’s transcript in delinquency cases should include hearings on motions by the minor that are denied.	1. Disagree. See response to comment 25.1. 2. Agree. The provision has been inserted as revised rule 37.1(b)(2).
32.	37.1	Appellate Courts Committee State Bar of California	Y	The commentators approve of the change in revised rule 37.1(a) requiring the same clerk’s transcript in all juvenile appeals, including appeals from orders terminating parental rights.	No response necessary.
33.	37.1	Larry Cory Children’s Services Appellate Div. Asst. County Counsel Los Angeles County	Y	The commentators oppose the proposal made in comment 30 for a variety of reasons.	Agree. See response to comment 30.
34.	37.1	Norm Harebottle Supervising Deputy Clerk Third Dist. Court of Appeal	N	The commentator asserts that for the sake of consistency with the revised civil and criminal rules, revised rule 37.1(d) (agreed or settled statement) should be a separately numbered rule of its own.	Agree in principle. See response to comment 22.

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35.	37.1	Staff Attorneys Court of Appeal, Fifth Dist.	Y	Revised rule 37.1(d) should be deleted because agreed or settled statements “are not appropriate in juvenile cases.”	Disagree. The need for such statements does arise in certain juvenile cases.
36.	37.2	Carole Greeley Bay Area Dependency Chapter Cal. Appellate Defense Counsel	Y	<p>1. For completeness, the title of rule 37.2 should be “Preparing, sending, augmenting, <u>and correcting the record.</u>”</p> <p>2. To make the rule consistent with the requirements for extension of time requests by parties, the commentators propose adding to what is now revised rule 37.2(c)(2): “(C) proof that copies of the documents listed in (A) and (B) were served on the attorneys of record for the parties;” and “(3) A copy of any court order granting an extension of time to prepare the record shall be served on the attorneys of record for the parties.”</p> <p>3. The commentators ask whether the minor will receive a copy of the record in a dependency case if he is not represented in the Court of Appeal.</p> <p>4. Revised rule 37.2(e)(1) should provide that rule 32.1(a)–(b) governs “augmentation <u>and correction</u>” of the record without court order.</p>	<p>1. Agree. The addition has been made.</p> <p>2. Disagree. Revised rule 37.2(c) addresses requests for extensions of time by clerks and reporters, not by parties. The commentators fail to explain why service of such documents should also be made on the parties. Service on the parties is not required by the corresponding criminal rule (rule 32(e)).</p> <p>3. If appellate counsel has not been appointed for the minor it means there was no conflict to justify an appointment and hence no justification for providing the minor with a personal copy of the record.</p> <p>4. Disagree. Rule 32.1(a)–(b) govern augmentation only.</p>
37.	37.2	Sharon L. Rhodes Appellate Court Committee San Diego County Bar Assn.	Y	<p>1. To alert practitioners that section 37.2 does not govern all juvenile cases, add to the rule title, “in juvenile cases other than terminations of parental rights or cases from San Diego, Imperial, or Orange Counties under Welfare and Institutions Code section 300.” Alternatively, include in the advisory committee comment that the admonition that alternative rules may apply.</p> <p>2. Revised rule 37.2(d)(1)(B) should provide that the clerk</p>	<p>1. Agree in principle, but not by unduly lengthening the rule title. New subdivision (a) of rule 37.2 notifies practitioners that, with certain exceptions, rule 37.2 “does not apply to cases under rule 37.4,” which governs the appeals to which the commentators refer.</p> <p>2. Disagree. The appellate projects did</p>

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				<p>must also send a copy of the transcripts in all juvenile appeals to the district appellate project (i.e., in addition to “fast-track” cases under revised rule 38.2(c)(2)). The commentators assert that “Copies of the record for both the project staff attorney and the appointed attorney facilitates assisted cases, since they can review them simultaneously.”</p>	<p>not request this substantive change in their extensive comments on these rules. In the large majority of such cases, counsel are appointed on an independent basis, with no initial project review of the record and a relatively small amount of assistance. In the small number of assisted cases, the projects generally have been able to provide assistance without serious problems. The projects would thus have relatively little use for these transcripts, and sending them the transcripts in every case would create additional work and expense for the county clerks, would take up some project support staff time, and for some projects could cause storage issues and related expenses.</p>
38.	37.2	<p>Mat Zwerling et al., Directors First District Appellate Project Appellate Defenders, Inc. Sixth District Appellate Program California Appellate Project—Los Angeles</p>	Y	<p>To alert practitioners that section 37.2 does not govern all juvenile cases, add to the rule title, “in juvenile cases other than terminations of parental rights or cases from San Diego, Imperial, or Orange Counties under Welfare and Institutions Code section 300.” Alternatively, include in the advisory committee comment that the admonition that alternative rules may apply.</p>	<p>See response to comment 37.1.</p>
39.	37.2	<p>Staff Attorneys Court of Appeal, Fifth Dist.</p>	Y	<p>Referring to revised rule 37.2(d)(1), the commentators assert that “Augmentation without court order (current 35(e) [<i>sic</i>]) is not appropriate for [Welfare and Institutions Code]</p>	<p>Disagree. The corresponding criminal rule (rule 32.1(a)–(b)) contemplates augmentation without court order in</p>

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				sections 300 or 366.6 [<i>sic</i>] appeals. The courts require a formal augmentation motion.”	appropriate cases.
40.	37.3	Sharon L. Rhodes Appellate Court Committee San Diego County Bar Assn.	Y	<p>1. To alert practitioners that section 37.2 does not govern all juvenile cases, add to the rule title, “in juvenile cases other than terminations of parental rights or cases from San Diego, Imperial, or Orange Counties under Welfare and Institutions Code section 300.” Alternatively, include in the advisory committee comment that the admonition that alternative rules may apply.</p> <p>2. The commentators assert that in revised rule 37.3(b), as proposed, the time frames of 20 days for filing a minor’s brief and 20 more days for an appellant’s reply thereto “are too long for cases having statutory priority and dealing with a child’s placement and status.” The commentators propose, as “workable for all dependency cases,” the shorter time frames of former rule 39.2A(f), i.e., a minor’s brief must be filed within 10 days after the respondent’s brief is filed and a reply thereto must be filed within 20 days after the respondent’s brief. This procedure will also enable an appellant to combine its replies to the respondent and to the minor into a single brief, and will solve any problem of when to reply to the respondent if the minor does not file a brief.</p>	<p>1. See response to comment 37.1.</p> <p>2. Agree. Revised rule 37.3(b)(4) has been redrafted to provide a 10-day period for filing a minor’s brief and to delete the special time period for an appellant’s reply to the minor; an appellant’s combined reply to both the respondent’s brief and any brief by the minor is now governed by the general provision of revised rule 37.3(b)(3). Presumably a minor will have separate counsel on appeal only if respondent’s counsel cannot adequately represent the minor’s views. Under such circumstances, the minor will be in effect responding to (or supporting) the opening brief, and 10 days should be enough time to do so. Moreover, respondents often obtain an extension of time under rule 17, thus giving minors even more time to file their brief. As to the timing of the reply brief, the appellant will have 10 days to respond to any arguments raised in the minor's brief, which should be sufficient.</p>

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				3. In delinquency cases under Welfare and Institutions Code sections 601 or 602, copies of the briefs must be served on both the Attorney General and the district attorney. Revised rule 37.3(d)(3)(A) should therefore provide that the parties must not serve copies of their briefs on the Attorney General or the district attorney “unless that office represents a party <u>or unless the case arose under Welfare and Institutions Code sections 601 or 602.</u> ”	3. Agree in principle. Revised rule 37.3(d)(3) now requires such service.
41.	37.3	Mat Zwerling et al., Directors First District Appellate Project Appellate Defenders, Inc. Sixth District Appellate Program California Appellate Project— Los Angeles	Y	1. Same as comment 37.1. 2. In delinquency cases, the Attorney General should also serve two copies of their brief on any appointed counsel for the minor. 3. In dependency cases, the minor’s counsel should provide two copies of the minor’s brief to any represented party. 4. In all cases, each party should serve a copy of its brief on the district appellate project, to enable the latter to discharge its contractual duties. 5. Same as comment 40.2.	1. See response to comment 37.1. 2. Agree. The provision has been added to revised rule 37.3(d)(2)(B). 3. Disagree. Because a separate counsel for the minor in dependency cases is always court-appointed, the proposal would unnecessarily increase the cost of such representation. 4. Agree. The provision has been added as revised rule 37.3(d)(2)(B). 5. Agree. See response to comment 40.2.
42.	37.3	Miriam A. Krinsky Executive Director Children’s Law Center of Los Angeles	Y	Approves of the originally proposed time limits for filing a minor’s brief.	Disagree. See response to comment 40.2.
43.	37.3	Kim Hubbard President	Y	1. The commentators assert that former rule 39.1A(g) required the appellant’s opening brief to be filed within 30	1. Disagree. The commentators are mistaken. Former rule 39.1A(g) did not

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		Orange County Bar Assn.		<p>days in “all juvenile appeals,” and therefore object to the “expansion” of that time to 40 days in revised rule 37.3(b)(1).</p> <p>2. The commentators assert that 20 days for an appellant to file a reply brief (see revised rule 37.3(b)(3)) is “a waste of time” and 10 days would be “more than generous and better ensures no undue delay.”</p> <p>3. The commentators assert that “If a minor is not an appellant then the minor is a respondent.” The minor’s respondent’s brief would then be due at the same time as the other respondents’ briefs, thus “several weeks would be saved.”</p>	<p>apply to “all juvenile appeals” but only to appeals from judgments or order terminating parental rights; all other juvenile appeals have always been governed by the 40-day period prescribed in the criminal rules (rule 33(c)(1)) for filing opening briefs (see former rule 39(a)).</p> <p>2. Disagree. The former rules always allowed 20 days for a reply brief in juvenile appeals, and the commentators fail to demonstrate that the procedure was unworkable or led to “undue delay.”</p> <p>3. Disagree. In some cases the minor’s interests do not coincide with either the appellants or the respondent. And because under revised rule 37.3(b) as now proposed an appellant’s brief replying to the minor will be filed at the same time—and presumably will be combined with—an appellant’s brief replying to the respondent, to allow a minor to file a brief will not in fact extend the overall briefing time.</p>
44.	37.3	Staff Attorneys Court of Appeal, Fifth Dist.	Y	<p>1. A minor’s brief should be filed at the same time as the respondent’s brief.</p>	<p>1. Disagree. All the former rules that provided for a minor’s briefs allowed such briefs to be filed either 10 or 20 days after the respondent’s brief (former rules 39.1A(g), 39.2(f), 39.2A(f)). The commentators fail to explain how the procedure led to injustice or undue delay.</p>

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				<p>2. An appellant’s reply brief “should not be delayed 20 days,” as originally proposed in revised rule 37.3(b)(4)(B).</p> <p>3. Under revised rule 37.3(b)(5), in a case governed by rule 17 the period specified in the clerk’s notice must be 30 days. The commentators state that period “should be 15 days rather than 30 days.”</p>	<p>2. Agree. The provision has been deleted.</p> <p>3. Disagree. In this regard, juvenile appeals have always been governed by the 30-day period prescribed in the criminal rules (rule 33(c)(5)), and the commentators fail to explain how the procedure led to injustice or undue delay.</p>
45.	37.3	Appellate Courts Committee State Bar of California	Y	The commentators approve the provision of revised rule 37.3(b) allowing minors who are not appellants to file separate briefs and allowing appellants to reply to those briefs. The commentators characterize this a “a very good change” that “will provide appellate courts with more information in all juvenile appeals.”	No response necessary.
46.	37.3	Larry Cory Children’s Services Appellate Div. Asst. County Counsel Los Angeles County	Y	In <i>In re Mary C.</i> (1995) 41 Cal.App.4 th 71, an appellate court held that a minor will be appointed counsel on appeal only when there is a conflict of interest or a showing that appointing counsel is in the minor's best interest. Under this view, appellate counsel will be appointed only when the minor’s position is adverse to that of the county welfare department (and therefore is aligned with that of the appellant). Thus to allow the minors to file a brief after the respondent files would mean that a party aligned with the appellant files its brief after the respondent files, which may require the respondent to submit further briefing. The commentator suggests continuing “the traditional practice of all aligned parties filing their briefs at same time.”	Disagree. See responses to comments 43.3 and 44.1.
47.	37.3	Maurice Oppenheim Attorney at Law	N	The commentator makes a suggestion based on the originally proposed wording of revised rule 37.3(b)(4)(B).	No response necessary. The proposed wording has been deleted.

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48.	37.3	Presiding Justice Manuel Ramirez Division Two Court of Appeal, Fourth Dist.	N	The commentator makes a suggestion based on the originally proposed wording of revised rule 37.3(b)(4)(B).	No response necessary. The proposed wording has been deleted.
49.	38	Merry A. Mayes Court Services Coordinator Stanislaus County Superior Court	N	Rule 38 should include a provision for marking a late notice of intent "received but not filed" similar to that in revised rule 37(e)(2).	Disagree. The settled policy is that these matters should be decided expeditiously within the statutory 120-day period before the section 366.26 hearing. Consequently, the Courts of Appeal have strictly enforced timely filing of the notice of intent and have interpreted the time limits as mandatory. (See, e.g., <i>Karl S. v. Superior Court</i> (1995) 34 Cal.App.4th 1397.)
50.	38	Carole Greeley Bay Area Dependency Chapter Cal. Appellate Defense Counsel	Y	Revised rules 38 and 38.1 should be combined into a single rule.	Disagree. The two rules address different aspects of the topic of writ petitions to review an order setting a hearing under Welfare and Institutions Code section 366.26. A single rule containing all the provisions of revised rules 38 and 38.1 would be unduly cumbersome and leave little room for future additions or amendments.
51.	38	Staff Attorneys Court of Appeal, Fifth Dist.	Y	Every effort should be made to retain rule number 39.1B for the writ rules in juvenile cases because it is referred to in case law and legislation.	Agree in principle, but it has been impossible to do so because of the demands of the rule reorganization process.
52.	38	Kim Hubbard President Orange County Bar Assn.	Y	Referral orders can also be issued at hearings conducted under Welfare and Institutions Code section 366.3. This statute should be mentioned in the rule.	Disagree. The reference in revised rule 38(b) to Welfare and Institutions Code sections 361.5, 366.21, and 366.22 is

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					intended to reference the 120-day period within which the section 366.26 hearing must be held under section 366.26. To clarify the point, the statutory references in the rule have been deleted and the rule now refers simply to "the 120-day period for holding a hearing under Welfare and Institutions Code section 366.26."
53.	38	Carole Greeley Bay Area Dependency Chapter Cal. Appellate Defense Counsel	Y	Revised rule 38(c) places primary responsibility on trial counsel for filing both the notice of intent under revised rule 38 and the writ petition under revised rule 38.1. This is inappropriate, because trial counsel ordinarily lack the skills to prepare writ petitions, as revised rule 38(c) itself recognizes. The commentators propose that the rule be modified to provide that (1) trial counsel will be responsible for filing the notice of intent and (2) appellate counsel will be appointed to file the writ petition. The commentators give reasons why such a system would better serve the petitioners and save both time and money.	The proposal is beyond the scope of this rules revision project.
54.	38	Presiding Justice Arthur G. Scotland Court of Appeal, Third Dist.	N	Revised rule 38(c) states that trial counsel, "or, in the absence of trial counsel, the petitioner," is responsible for filing the notice of intent and writ petition. The commentator asserts that the quoted wording is ambiguous because it could refer to the case in which the petitioner is acting in pro per. or the case in which the petitioner's trial counsel is unavailable, or to both.	Agree. Revised rule 38(c) has been modified to clarify that the petitioner is responsible for filing the notice and petition only when he or she was not represented by counsel at the hearing at which the section 366.26 hearing was set.
55.	38	Justice Nathan Mihara Court of Appeal, Sixth Dist.	Y	Former rule 39.1A(i) authorized the reviewing court, on an exceptional showing of good cause, to grant an extension of time "to prepare the record or to serve and file briefs." As proposed, revised rule 38(d) expands that authority to permit extension of "any time limit prescribed by rule 38–38.1."	Disagree. The case law generally recognizes that the reviewing courts may grant extensions of time under these rules for exceptional good cause. (See, e.g., <i>Jonathan M. v. Superior Court</i> (1995) 39

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				The commentator urges that the provision should not apply to the time to file a notice of intent to file a petition under revised rule 38. The commentator reasons that notice should be considered jurisdictional, like a notice of appeal, and hence an extension would leave the reviewing court’s jurisdiction in limbo. The commentator proposes adding the proviso that the reviewing court’s power to extend time does not apply to the filing of a notice of intent.	Cal.App. 4th 1826, and <i>In re Cathina W.</i> (1998) 68 Cal.App.4th 716 [recognizing that a late notice of intent may be filed on a showing of exceptional circumstances not under the petitioner’s control].)
56.	38	Presiding Justice Arthur G. Scotland Court of Appeal, Third Dist.	N	The reviewing courts should not have the power to extend the time to file either notices of intent under rule 38 or writ petitions under revised rule 38.1. This is a slippery slope that will lead to extensions being granted even in cases of a “feeble excuse.”	Disagree. As to late notices of intent, see response to preceding comment. As to late petitions, there may be “exceptional good cause” for extending the time to file the petition itself, e.g., a timely and necessary augmentation of the record. Once the reviewing court has jurisdiction, it should have authority to recognize showings of exceptional good cause.
57.	38	Appellate Courts Committee State Bar of California	Y	The commentators explain that the rule of revised rule 38(d), as proposed, that reviewing courts may extend the time to file notices of intent on a showing of exceptional good cause “comes from case law.”	Agree. See response to comment 55.
58.	38	Sharon L. Rhodes Appellate Court Committee San Diego County Bar Assn.	Y	The commentators assert that certain Courts of Appeal have adopted informal practices for receiving late notices of intent from incarcerated or out-of-state parents, and propose to “promote statewide uniformity” by amending revised rule 38(d) to specifically provide for extensions of time or relief from default for late filings by such parents.	The proposal is beyond the scope of this rules revision project.
59.	38	Carole Greeley Bay Area Dependency Chapter	Y	The commentators propose deleting the requirement of revised rule 38(e)(1) that a party seeking writ review must serve the notice of intent on all other parties. Existing rule	Agree. The requirement has been deleted.

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		Cal. Appellate Defense Counsel		39(b) does not require such service. The commentators assert that service is unnecessary because revised rule 38(f)(1) requires the clerk to mail a copy of the notice to all other parties immediately after the notice is filed.	
60.	38	Sharon L. Rhodes Appellate Court Committee San Diego County Bar Assn.	Y	Same as preceding comment.	Agree. The requirement has been deleted.
61.	38	Carole Greeley Bay Area Dependency Chapter Cal. Appellate Defense Counsel	Y	Revised rule 38(e)(3) provides that “the notice [of intent] must be signed by the party” The commentators propose changing the rule to permit either the party or the party’s attorney to sign the notice. The commentators note that either may sign a notice of appeal (revised rule 37(c)(1)), and argue there is no reason for a different rule here. They also assert that the requirement is “contrary to the legislature’s intent that these cases should be heard on the merits.”	Disagree. Several Courts of Appeal have held that the notice of intent must be signed by the party, and if it is not, the attorney who signs it must show good cause why the party did not do so. (See, e.g., <i>Guillermo G. v. Superior Court</i> (1995) 33 Cal.App.4th 1168.) Revised rule 38(e)(3) tracks former rule 39.1B(f) in this regard.
62.	38	Miriam A. Krinsky Executive Director Children’s Law Center of Los Angeles	Y	The provision of revised rule 38(e)(3) allowing the minor’s attorney to sign the notice of intent “on behalf of the minor” should include the case of a minor parent. The commentators assert that “as the number of minor parents in the juvenile court continues to be significant, the rule should address this specific situation and provide guidance for the reviewing courts.”	The proposal is beyond the scope of this rules revision project.
63.	38	Sharon L. Rhodes Appellate Court Committee San Diego County Bar Assn.	Y	The time-limit provisions of revised rule 38(e)(4)–(5) should be moved to an earlier position in the subdivision, perhaps to the paragraph (2) position.	Disagree. The paragraphs of subdivision (e) follow a logical order.
64.	38	Mat Zwerling et al., Directors First District Appellate Project	Y	The 7-day deadline for filing a notice of intent to file a writ petition is too short. Many parents have lost their right to appellate review merely because of the workload of their trial	The proposal is beyond the scope of this rules revision project.

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		Appellate Defenders, Inc. Sixth District Appellate Program California Appellate Project— Los Angeles		counsel who must prepare the notice. The commentators suggest that a 15-day deadline would be more realistic and fair, while still consistent with the legislative intent to expedite these proceedings.	
65.	38	Merry A. Mayes Court Services Coordinator Stanislaus County Superior Court	N	Revised rule 38(e)(5) omits a filing deadline.	Agree. The provision has been modified to state a 12-day filing deadline, as explained in the Advisory Committee Comment.
66.	38	Appellate Courts Committee State Bar of California	Y	Revised rule 38(e)(5) provides that if the party was notified of the order setting the hearing only by mail, the time to file a notice of intent is extended by five days from the date the notification was mailed. The commentators assert “This is a good change, taking into account delays in mailing the notification.”	No response necessary.
67.	38	Justice Nathan Mihara Court of Appeal, Sixth Dist.	N	1. Same as comment 65. 2. Under former rule 39.1B(f), a party notified only by mail of the order setting the hearing had a total of 12 days (after the order date) to file a notice of intent; but under revised rule 38(e)(5) as proposed, such a party may have as few as five days to do so. Revised rule 38(e)(5) should be modified to provide that such a party must serve the notice within 12 days after the date that the clerk mailed the notification.	1. See response to comment 65. 2. Agree. The provision has been so modified.
68.	38	Presiding Justice Manuel Ramirez Division Two Court of Appeal, Fourth Dist.	Y	Under revised rule 38(e)(5), the time for filing a notice of intent is measured from “the date that the [superior court] clerk mailed the notification [of the order setting a hearing.]” But the reviewing court clerk cannot determine that time unless the superior court clerk shows the date of mailing the notification in the materials sent to the reviewing court.	Agree. Revised rule 38(f)(2) has been modified to so provide.

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69.	38	Carole Greeley Bay Area Dependency Chapter Cal. Appellate Defense Counsel	Y	<p>1. Revised rule 38(f)(1) requires the clerk to mail a copy of the notice of intent to the parties “immediately” after the notice is filed. The commentators propose to change “immediately” to “within 24 hours.”</p> <p>2. Revised rule 38(f)(1) should be modified to require the clerk to send a copy of the notice of intent to the district appellate project.</p> <p>3. In revised rule 38(g)(2) delete the word “relevant” from “all relevant items listed in rule 37.1(a).” Rule 37.1(a) describes a normal record on appeal, which implies that all the listed items are relevant.</p> <p>4. Revised rule 38(h) requires the clerk, “When the transcripts are certified,” to “immediately” send the transcripts to the reviewing court and counsel. The commentators propose modifying the provision to require the clerk to do so “Within 15 days after the notice of intent is filed.”</p> <p>5. Revised rule 38(i)(2) refers to “the 10-day period for filing the writ petition under rule 38.1(c)(1).” Modify the provision to “the 30-day period.” This would result in better briefs and less work for the Courts of Appeal.</p>	<p>1. Disagree. Former rule 39.1B(f) provided no time limit for the clerk to send copies of the notice of intent. The qualifier “immediately” promotes the legislative intent that these proceedings be expeditiously processed.</p> <p>2. Disagree. Former rule 39.1B did not so require, and no appellate project has requested such a change. The appellate projects play no role in these proceedings.</p> <p>3. Agree. The provision has been modified accordingly.</p> <p>4. Disagree. The commentators offer no reason for the proposal. The revised rule tracks former rule 39.1B(g), third paragraph.</p> <p>5. Disagree. The provision tracks former rule 39.1B(g). The 10-day period appears adequate: it is trial counsel who prepares the petition, and such counsel is familiar with the facts and issues. In any event, the proposal to triple the length of the filing period is beyond the scope of this rules revision project.</p>

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70.	38.1	Carole Greeley Bay Area Dependency Chapter Cal. Appellate Defense Counsel	Y	<p>1. Revised rule 38.1(c)(1) requires the petition to be filed within 10 days after the record is filed in the reviewing court. Modify the provision to “the 30-day period.” This would result in better briefs and less work for the Courts of Appeal.</p> <p>2. Add a provision that automatically stays the time to file a petition when the party files a request to augment the record or to extend the time to file.</p> <p>3. The revised rule should specify the person who must be served with the petition or response.</p> <p>4. Delete revised rule 38.1(d), which provides that “If the court intends to determine the petition on its merits, it must issue an order to show cause or alternative writ.” The commentators assert that the provision “causes confusion. There is a right to file a response and a right to request oral argument.”</p> <p>5. Revised rule 38.1(e)(2) provides that the petitioner may file a request to augment or correct the record within five days after receiving the record. Modify the provision to allow 15 days if the record is more than 300 pages. Trial counsel assert they “never seek to augment” because they do not have enough to determine if it is necessary to do so.</p>	<p>1. Disagree. The provision tracks former rule 39.1B(k). See response to preceding comment.</p> <p>2. The proposal is beyond the scope of this rules revision project.</p> <p>3. Disagree. Former rule 39.1B did not so provide, and the commentators fail to propose a specific service list.</p> <p>4. Disagree. The provision tracks former rule 39.1B(l). An order to show cause or alternative writ permits the court to specify the time frames for further filings and any special instructions for county counsel’s opposition.</p> <p>5. The proposal is beyond the scope of this rules revision project.</p>
71.	38.1	Sharon L. Rhodes Appellate Court Committee San Diego County Bar Assn.	Y	<p>1. Modify revised rule 38.1(a) to refer to Judicial Council Form JV-820, or state in the Advisory Committee Comment to the rule that use of this form is “acceptable.”</p>	<p>1. Disagree. In this revision project, specific references in rule text to Judicial Council forms have been omitted in favor of the more current provisions of the revised rules themselves. And it is to be presumed that use of a relevant Judicial Council form is “acceptable.”</p>

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				<p>2. Revised rule 38.1(e) “seems to contemplate handling record corrections through the rule 32.1(b) process.” The commentators assert that because of the short time frames, “it may be preferable to handle them under rule 12.”</p> <p>3. Reletter revised rule 38.1(h)–(i) as rule 38.1(g)–(h).</p> <p>4. Modify revised rule 38.1(i)(4)—now (h)(4)—to state that court need not give telephonic notice of summary denial of a writ if a stay was not issued, but to require such notice where a stay was ordered but will be dissolved and the petition denied.</p>	<p>2. Agree. The provision has been modified accordingly.</p> <p>3. Agree. The oversight has been corrected.</p> <p>4. Agree. The provision has been modified accordingly.</p>
72.	38.1	Staff Attorneys Court of Appeal, Fifth Dist.	Y	<p>1. Revised rule 38.1(a) should include, in the contents of the petition, “the factual basis” for the petition. Litigants petitioning in pro. per. “are unlikely to understand Points and Authorities.”</p> <p>2. Revised rule 38.1(a)(3) states that the petition must be “accompanied by” points and authorities. This suggests the points and authorities must be a separate document, but the reviewing courts do not want a separate document.</p>	<p>1. Disagree. Revised rule 38.1(a)(3) requires the petition to be accompanied by points and authorities, and revised rule 38.1(b)(1) requires the points and authorities to provide “a summary of the significant facts.” These requirements are easily understandable.</p> <p>2. Disagree. The commentators’ reading of revised rule 38.1(a)(3) is unpersuasive. The provision tracks the general rule governing writ petitions, revised rule 56(b)(5).</p>
73.	38.1	Appellate Courts Committee State Bar of California	Y	Revised rule 38.1 “sets forth the essential elements of a writ petition. The change is essential. The current rule does not accurately describe the contents of the writ petition.”	No response necessary.
74.	38.1	Mat Zwerling et al., Directors	Y	Revised rule 38.1(c) should specify the person who must be	Agree that rules 1407(e) and 40(f) are

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		First District Appellate Project Appellate Defenders, Inc. Sixth District Appellate Program California Appellate Project— Los Angeles		served with the petition or response. If rule 1407(e) applies, the list is longer than needed. If rule 40(f) applies, it is too short. The rule should parallel the service requirements of revised rule 37.3(d).	inappropriate in this context. But disagree that rule 37.3(d) is appropriate: that rule addresses only “additional” service requirements, not primary service requirements (e.g., all other parties). Former rule 39.1(B)(j), (k), and (m) did not specify the primary persons to be served, and the commentators do not show the rule was unworkable.
75.	38.1	Maurice Oppenheim Attorney at Law	N	<p>1. In revised rule 38.1(d), substitute “must” for “should.” The provision was mandatory in former rule 39.1B(l).</p> <p>2. In revised rule 38.1(i)(1)—now 38.1(h)(1)—substitute “must” for “should.” The provision was mandatory in former rule 39.1B(o).</p> <p>3. Revised rule 38.1(i)(1)—now 38.1(h)(1)—provides that “Absent exceptional circumstances, the reviewing court must review the petition and decide it on the merits by written opinion.” Define “exceptional circumstances.”</p> <p>4. Revised rule 38.1(i)(1)—now 38.1(h)(1)—provides that absent exceptional circumstances, the reviewing court must “review the petition” and decide it on the merits by written opinion. Delete “review the petition”; it is surplusage.</p>	<p>1. Agree. The provision has been modified accordingly.</p> <p>2. Agree. The provision has been modified accordingly.</p> <p>3. Disagree. Such a definition would be necessarily incomplete and would inhibit the reviewing courts in applying the rule to the facts of each case.</p> <p>4. Agree. The provision has been modified accordingly.</p>
76.	38.1	Paul T. DeQuattro Deputy Public Defender Orange County	N	Revised rule 38.1(c)(1) requires the petition to be filed “within 10 days [i.e., 10 calendar days] after the record is filed in the reviewing court.” Modify the provision to read, “within 10 <i>court</i> days.” The commentator asserts that 10 calendar days is insufficient time for trial counsel “to do a good job,” especially when the record is filed on a Friday and four of the ensuing ten days will fall on weekends.	Disagree. The provision tracks former rule 39.1B(k). The 10-day period is adequate: it is calculated from the date the record is filed, not the date of the order to be reviewed. It is trial counsel who prepares the petition, and such counsel is familiar with the facts and issues. None of the time

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					periods set forth in these rules is prescribed in “court” days. The proposal is therefore beyond the scope of this rules revision project.
77.	38.1	Kim Hubbard President Orange County Bar Assn.	Y	The commentators assert: “Sometimes the Court of Appeal issues an order acknowledging that a writ petition has been filed but directs the real parties in interest not to file a <i>response</i> until an order to show cause has been issued.” For this reason, revised rule 38.1(e)(2) should be modified to provide that a respondent must file any <i>request to augment the record</i> “within five days after the petition is filed <u>or an order to show cause is issued.</u> ”	The proposal is beyond the scope of this rules revision project.
78.	38.1	Presiding Justice Arthur G. Scotland Court of Appeal, Third Dist.	N	Revised rule 38.1(d) and (i)(1)—now (d) and (h)(1)—“appear to advocate not adhering to prevailing authorities” that recognize that reviewing courts may decide writ petitions on their merits by issuing summary denials, citing <i>Maribel M. v. Superior Court</i> (1998) 61 Cal.App. 4th 1469, and <i>Joyce G. v. Superior Court</i> (1995) 38 Cal.App. 4th 1501.	Disagree. Revised rule 38.1(d) tracks the second sentence of former rule 39.1B(l). It does not <i>require</i> the reviewing court to decide a petition on the merits; it operates only “ <i>If</i> the court intends to determine the petition on the merits” Revised rule 38.1(h)(1) tracks former rule 39.1B(o). It does not require the reviewing court to decide the petition on its merits by written opinion in “exceptional circumstances,” and under the cited cases a failure to present an arguable issue is such a circumstance. The Advisory Committee Comment has been modified to recognize the contrary view of <i>Maribel M. v. Superior Court</i> (1998) 61 Cal.App. 4th 1469, 1471–1476.
79.	38.2	Carole Greeley Bay Area Dependency	Y	1. Revised rule 38.2 should be renumbered rule 37.4 “because this is a rule about appeals.”	1. Agree. The rule has been renumbered accordingly.

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		Chapter Cal. Appellate Defense Counsel		<p>2. The commentators ask whether the minor gets a copy of the record in dependency cases under revised rule 38.2(c)(2) if he is not represented by counsel on appeal.</p> <p>3. The commentators propose, in revised rule 38.2(g)(2)–(3), to “change 60 days to 30 days.”</p>	<p>2. Revised rule 38.2(c)(2) [now 37.4(c)(2)] has been modified so that if counsel for a minor appellant has not yet been retained or appointed when the transcripts are certified, the clerk must send that counsel’s copy to the district appellate project.</p> <p>3. Disagree. The commentators fail to explain their reasons for proposing this change. The revised rule tracks former rule 39.1A(h). Thirty days is inadequate time for the reviewing court to prepare for oral argument. The proposal is beyond the scope of this rules revision project.</p>
80.	38.2	Maurice Oppenheim Attorney at Law	N	Revised rule 38.2(g)(1) requires counsel to file any request for oral argument no later than 15 days after the appellant’s reply brief is filed or due, “Unless the court orders a shorter time.” The Advisory Committee Comment explains that the quoted exception “recognizes the practice of certain reviewing courts” of requiring counsel to file in less than 15 days. The commentator objects to the quoted exception because it represents the practice of some rather than all reviewing courts. He is concerned that such an exception will lead to a profusion of local rules.	Disagree. It is not inappropriate for statewide rules to allow reviewing courts reasonable flexibility in managing their dockets. (See, e.g., rule 23(c) [“Unless the court provides otherwise by local rule or order . . .”].)
81.	38.2	Sharon L. Rhodes Appellate Court Committee San Diego County Bar Assn.	Y	1. Revised rule 38.2(c)(2) should be modified to provide that the clerk must send a copy of the record to the minor only if the minor is represented by appellate counsel, to avoid unnecessary expense and delay.	1. Agree. Revised rule 38.2 (c)(2) [now rule 37.4(c)(2)] has been modified so that if counsel for a minor appellant has not yet been retained or appointed when the transcripts are certified, the clerk must send that counsel’s copy to the district appellate project.

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			<p>2. Revised rule 38.2(d)(1) “seems to contemplate handling record corrections through the rule 32.1(b) process.” The commentators assert that because of the short time frames, “it may be preferable to handle them under rule 12.”</p> <p>3. The commentators assert that “The time frames for minor’s and reply briefs are too long.”</p> <p>4. Revised rule 38.2(e) should specify whether rule 17 applies to appeals governed by this rule (i.e., appeals from judgments terminating parental rights), because some courts do not apply rule 17 to such appeals.</p> <p>5. Revised rule 38.2(g) should be entitled, “Oral argument and submission.”</p> <p>6. Revised rule 38.2(g)(1), as proposed, prescribes a 15-day time limit for requesting oral argument, but begins with the qualification, “Unless the court orders a shorter time. . . .” The commentators suggest modifying the qualification to read. “Unless the court orders otherwise,” reasoning that the particular calendaring system might not fit a “15 days or less” rule.</p> <p>7. Revised rule 38.2(g)(3) provides that if counsel waive argument the cause is deemed submitted “no later than 60 days after the appellant’s reply brief is filed or due to be filed.” The provision should be modified to prescribe the same submission time as applies in appeals in ordinary juvenile cases (rule 23(d)(1)), made applicable by revised rule 38.4), i.e., when the court has heard argument or</p>	<p>2. Agree. Revised rule 38.2(d)(1) now rule 37.4(d)(1)] has been revised accordingly.</p> <p>3. The comment is not relevant to revised rule 38.2(e) [now rule 37.4(e)], which addresses only the time to file an appellant’s opening brief.</p> <p>4. Rule 17 is made applicable by revised rule 38.2(a)(2) [now rule 37.4(a)(2)]. The Advisory Committee Comment has been modified to so state.</p> <p>5. Agree. The provision [now rule 37.4(g)] has been modified accordingly.</p> <p>6. Agree. The provision [now rule 37.4(g)(1)] has been modified accordingly.</p> <p>7. The proposal is beyond the scope of this rules revision project.</p>
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				approved its waiver and the time for filing all briefs has expired.	
82.	38.2	Presiding Justice Manuel Ramirez Division Two Court of Appeal, Fourth Dist.	N	To accommodate a local Court of Appeal practice of not requiring counsel to request oral argument until 12 days after the court mails its tentative opinion to counsel, the commentator proposes to change “Unless the court orders a shorter time” in revised rule 38.2(g)(1) to “Unless the court orders otherwise.” The commentator explains that the local practice does not result in delay because the court regularly hears argument within 60 days after the appellant’s reply brief is filed in any event.	Agree. The provision [now rule 37.4(g)(1)] has been modified accordingly.
83.	38.3	Judge Ronald L. Bauer Rules & Forms Committee Orange County Superior Court	Y	Proposed rule 38.3 should be deleted because it is largely repetitive of revised rule 38.2, and its few provisions that are different from rule 38.2 should be moved into that rule.	Agree. Revised rule 38.2 [now rule 37.4] has been modified accordingly and proposed rule 38.3 has been deleted.
84.	38.3	Sharon L. Rhodes Appellate Court Committee San Diego County Bar Assn.	Y	Proposed rule 38.3 should be deleted because it is largely repetitive of revised rule 38.2, and its few provisions that are different from rule 38.2 should be moved into that rule.	Agree. Revised rule 38.2 [now rule 37.4] has been modified accordingly and proposed rule 38.3 has been deleted.
85.	38.3	Maurice Oppenheim Attorney at Law	N	Delete revised rule 38.3 because there should not be a “special rule” for a few counties in a system of statewide rules of court—unless it is truly an “experimental project” with a “sunset” date, which this no longer is.	The proposal is beyond the scope of this rules revision project.
86.	38.4	Maurice Oppenheim Attorney at Law	N	Revised rule 38.4 provides that “Except as provided in rules 37–38.3,” rules 21 through 27 govern hearing and decision in juvenile appeals in the Court of Appeal. The commentator criticizes the Advisory Committee Comment because it does not cite any particular provisions of rules 37–38.3 that could apply.	Disagree. The use of such an “exception” clause is a common practice in these rules. It is not the function of the Advisory Committee Comment to list the many provisions of the general civil or criminal appeal rules that may apply to juvenile appeals.

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87.	39	Sharon L. Rhodes Appellate Court Committee San Diego County Bar Assn.	Y	<p>1. Like existing rule 39.4, revised rule 39 generally tracks the criminal rules, including the time frames. But these are typically so protracted that almost all conservatorship appeals are moot by the time of decision because the one-year conservatorship under review has expired and been superseded by a new one or other ruling. The only way to address this problem would be to adopt expedited time frames similar to juvenile “fast track” rules (revised rules 38, 38.1).</p> <p>2. The criminal rules on notice of appeal are inapplicable. Revised rule 39(a) could emulate revised rule 37(c) on notices of appeal in juvenile cases.</p> <p>3. Former rule 39.4(b)–(c) specified the items contained in the normal clerk's transcript and reporter's transcript in conservatorship appeals, but proposed revised rule 39(b)–(c) does not; it simply cross-refers to the corresponding provisions in the criminal rules (rule 31(b)–(c)). This is a substantive change, but the Comment does not explain it. The differences between criminal and conservatorship appeals are enough to warrant specifying the record contents in the latter.</p>	<p>1. The proposal is beyond the scope of this rules revision project.</p> <p>2. On this point the revised rule closely tracks the former rule. The proposal is beyond the scope of this rules revision project.</p> <p>3. Agree. Revised rule 39(b)–(c) have been modified to specify the required contents of the record in these appeals.</p>
88.	39	Mat Zwerling et al., Directors First District Appellate Project Appellate Defenders, Inc. Sixth District Appellate Program California Appellate Project– Los Angeles	Y	Same as comment 87.1.	Same as response to comment 87.1.

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89.	39.1	Sharon L. Rhodes Appellate Court Committee San Diego County Bar Assn.	Y	<p>1. The commentators assert: “The time frames for criminal cases may not be suitable for sterilization situations. The health of the appellant may be at stake.”</p> <p>2. Revised rule 39.1 omits the provision of the former rule on exhibits (former rule 39.8(e)(3)).</p> <p>3. As proposed, revised rule 39.1(h)(2), tracking former rule 39.8(g), requires the conservatee’s <i>trial</i> counsel to “review the [appellate record] for errors or omissions” and “request any necessary corrections or additions” <i>before it is certified and delivered to appellate counsel</i>. But there is no provision for sending the record to trial counsel for this purpose; instead, proposed revised rule 39.1(f)(2) simply directs the transcripts to be transmitted “as provided in rule 32,” and rule 32(f)(1)(B) directs the clerk to send them to <i>appellate</i> counsel. The commentators propose adding a specific provision requiring the transcripts to be sent first to trial counsel, “as well as prescribed time frames for the process.”</p> <p>4. Revised rule 39.1(f) should be modified to provide that the clerk must also send a copy of the record to the district appellate project.</p>	<p>1. The proposal is beyond the scope of this rules revision project.</p> <p>2. Disagree. Revised rule 39.1 begins by incorporating the exhibits rule by reference, stating that “rules 30–33.3 govern” sterilization appeals. Rule 31(e) is the provision of the criminal rules covering the transmission of exhibits to the reviewing court. That rule therefore governs sterilization appeals unless proposed rule 39.1 “expressly provides otherwise,” which it does not. The sterilization appeal rule is not meant to be self-contained like the juvenile rules.</p> <p>3. Agree in principle, but the proposal is beyond the scope of this rules revision project. The committee agrees that revised rule 39.1(h)(2)–(4), as proposed, is unworkable and inconsistent with rule 32. Because rule 32 now covers the matter more appropriately, revised rule 39.1(h)(2)–(4) has been deleted.</p> <p>4. Disagree. The provisions of rule 32(f)(2) are adequate in the circumstances of these appeals, which are infrequent.</p>
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REVISION OF APPELLATE RULES—FOURTH INSTALLMENT

				<p>5. Revised rule 39.1(h) should be titled “<i>Trial</i> counsel’s duties.”</p> <p>6. Revised rule 39.1(g)(1) should be modified to include the district appellate project in the list of persons entitled to inspect any confidential materials in the record.</p> <p>7. Revised rule 39.1(b), like former rule 39.8(c), makes an appeal in these cases automatic, “without any action by the conservatee.” The commentators assert this creates problems for appellate counsel, e.g., in cases where the conservatee may actually <i>want</i> to be sterilized or counsel believes it would be in his client’s best interest, counsel may be unsure what to do. The commentators propose the rule should provide for appointment of a guardian ad litem on counsel’s request and a showing of good cause.</p> <p>8. Former rule 39.8(h) provided for the appointment of appellate counsel if no counsel “has been retained for the conservatee.” Putting the verb in the active voice, revised rule 39.1(i) as proposed provides for such appointment if “the conservatee has not retained” such counsel. The commentators point out that a gravely disabled person loses the capacity to contract and hence “is presumptively incapable of retaining counsel,” so that the reviewing court should <i>automatically</i> appoint counsel if the conservatee is not in fact represented by counsel.</p>	<p>5. Agree in part. Because of the change discussed in the response to comment 89.3, above, revised rule 39.1(h) has been retitled, “Trial counsel’s continuing representation.”</p> <p>6. Agree. The provision has been modified accordingly.</p> <p>7. The proposal is beyond the scope of this rules revision project.</p> <p>8. Agree. The wording of the former rule has been restored. (See revised rule 39.1(i).)</p>
90.	39.1	Presiding Justice Arthur G. Scotland	N	Like former rule 39.8(h), revised rule 39.1(i) requires the reviewing court to appoint appellate counsel if the	That is the intent of revised rule 39.1(i), as it was of former rule 39.8(h).

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		Court of Appeal, Third Dist.		conservatee is not represented. The commentator asks, “Is it the intent to require appointment of counsel even if the conservatee is not indigent?”	
91.	39.2	Appellate Courts Committee State Bar of California	Y	“The Committee endorses proposed rule 39.2. It clarifies exactly what rules govern appeals from orders granting habeas corpus relief and sensibly states what the appellate record must contain.”	No response necessary.
92.	49	Appellate Courts Committee State Bar of California	Y	The commentators generally endorse the proposal to revise rule 49 “because it is more logically organized than the current rule, and its new structure furthers the stated goals of clarifying the rule’s meaning and facilitating its use by practitioners, parties, and court personnel.” The commentators observe that, as proposed, revised rule 49(a)(1) unintentionally limits the right to seek supersedeas to “an appellant,” whereas the former rule allowed anyone who is a party to the case to do so, e.g., a nonappellant custodian or beneficiary of an asset that is subject to execution or transfer by the judgment under appeal. The commentators propose that “appellant” be changed back to “party.”	Agree. The provision has been so modified.
93.	49	Maurice Oppenheim Attorney at Law	N	In revised rule 49(b)(1) [prescribing the time to file any opposition], the phrase “Unless otherwise ordered” needs to be followed by the words “by the court.”	Disagree. An “order” in an appeal is always issued by a court.
94.	49	Sharon L. Rhodes Appellate Court Committee San Diego County Bar Assn.	Y	Revised rule 49(c)(2) provides that except in child custody cases, “a separately filed request for a temporary stay need not be served on the respondent.” The commentators object because “There may be critical interests at stake,” and urge that at least some form of notice be required, noting that the local rules of the Fourth District Court of Appeal so require and one practice guide suggests it is better practice. The commentators then propose an elaborate revision of the rule	Disagree. This is not just an unintended gap discovered in the rules: former rule 49 expressly provided that except in child custody cases a request for temporary stay “may be made . . . without service on the respondent.” Whatever one may think of its wisdom, the provision was deliberate. The proposal is therefore beyond the scope

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				to require such service or an explanation why it could not be effectuated, with prescribed time limits.	of this rules revision project.
95.	49.5	Appellate Courts Committee State Bar of California	Y	Revised rule 49.5, as proposed, deletes from the former rule a number of references to petitions for supersedeas, and limits the rule on its face to requests for temporary stay. By so doing, it unintentionally changes the substantive reach of the rule because it would no longer apply to an appellate filing that seeks a writ of supersedeas but not a temporary stay. In that event, the petition for supersedeas would no longer be required to provide the information require by new subdivisions (a) and (b) of rule 49.5, thus defeating the intent of “providing the reviewing courts with the information they need to process” not only stay requests but also petitions for supersedeas “as expeditiously as possible.” The commentators propose reintroducing the prior references to supersedeas into revised rule 49.5. Among other things, the additional contact information required by revised rule 49.5(b)(2) would assist the reviewing court in discharging its obligation under revised rule 49(d)(3) to promptly notify the superior court of any temporary stay <i>or</i> writ of supersedeas it issues.	Agree. The provision has been so modified.
96.	49.5	Sharon L. Rhodes Appellate Court Committee San Diego County Bar Assn.	Y	Revised rule 49.5 should expressly cross-refer to revised rule 49(c) because it “deals with the same subject.”	Disagree. Rule 49(c)(1) already cross-refers forward to the requirements of rule 49.5; a cross-reference <i>back</i> to the same rule is unnecessary.
97.	49.5	Carole Greeley Bay Area Dependency Chapter Cal. Appellate Defense Counsel	Y	Subdivision (a) of revised rule 49.5 lists the required information on the cover of a petition for supersedeas or temporary stay; subdivision (b) lists additional required information that must appear “either on the cover <u>or at the beginning of the text.</u> ” The commentators assert the underlined words are ambiguous, and ask “Does it mean in	The quoted phrase appears sufficiently clear; a similar but not identical phrase is used in rule 28.1(b)(1) for the contents of a petition for review (“The body of the petition must begin with . . .”), and it has proved workable.

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				the introduction, in the first paragraph of the petition before any allegations are made, or something else entirely.”	
98.	56	Appellate Courts Committee State Bar of California	Y	<p>1. As proposed, revised rule 56(b)(6) specifically prohibits a party seeking writ relief from filing a “joinder” in a writ petition filed or to be filed by another party. The commentators oppose the ban, and urge that joinders instead be liberally allowed.</p> <p>2. As proposed, revised rule 56(d)(2) directs the clerk to file any “<i>petition or</i> supporting document” not complying with the requirements of subdivision (d)(1) of the rule. The commentators propose deleting the italicized words because the petition is not required to comply with subdivision (d)(1).</p> <p>3. The commentators point out that the wording of revised rule 56 (d)(2) is unnecessarily inconsistent with a provision of identical purpose in revised rule 60(b)(5), and urges that the two provisions be made consistent.</p> <p>4. The commentators endorse revised rule 56(d)(3), which requires only one set of supporting documents to be filed, terming it “a sensible revision” that will “add clarity and certainty to the rule.”</p> <p>5. The commentators endorse revised rule 56(f)(1), which simplifies service on a respondent superior court, stating that the provision “adds clarity and certainty” and “will reduce costs for parties and help to save resources.”</p>	<p>1. Disagree. Former rule 56 contained no provision either allowing or disallowing joinders, and the practice of the reviewing courts was not consistent on the subject. On further reflection, it appears the subject is beyond the scope of this rules revision project. The joinder provision has therefore been deleted.</p> <p>2. Agree. The provision has been so modified.</p> <p>3. Agree. The two provisions have been modified accordingly.</p> <p>4. No response necessary.</p> <p>5. No response necessary.</p>
99.	56	Sharon L. Rhodes	Y	1. Revised rule 56(b)(1) provides that “If the petition could	1. Disagree. The provision tracks former

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		Appellate Court Committee San Diego County Bar Assn.		<p>have been filed first in a lower court, it must explain why the reviewing court should issue the writ as an original matter.” The commentators assert, “This assumes a petition was not filed first in a lower court although one may have been filed.”</p> <p>2. The commentators oppose the proposed prohibition on joinders and urge that joinders be allowed. (See comment 98.1.)</p> <p>3. The commentators object to revised rule 56(d)(1)(B), which requires supporting documents to be index-tabbed. The commentators assert that such tabs are unnecessary because of the requirement of consecutive pagination, are not required in ordinary appeals, and result in significant expenditures of time and money that are inconsistent with the urgent nature of original proceedings.</p> <p>4. Consistent with the preceding comment, delete “and its index-tab number or letter.”</p> <p>5. The commentators propose adding a new provision for expeditious service if the petition seeks immediate relief or a stay.</p>	<p>rule 56(a)(1). If a petition for the same relief was filed first in a lower court, the remedy is ordinarily by appeal from the judgment of that court.</p> <p>2. See response to comment 98.1.</p> <p>3. Disagree. The provision tracks former rule 56(d)(2). Precisely because original proceedings are often of an urgent nature, it is important to assist the reviewing courts in speedily processing such petitions. The supporting documents are often lengthy and complex, containing numerous different exhibits in several volumes. The tab requirement makes it possible for the courts and their staff to quickly find a specific exhibit referred to in the briefs.</p> <p>4. Disagree. See response to preceding comment.</p> <p>5. The proposal is beyond the scope of this rules revision project.</p>
100.	56	Maurice Oppenheim Attorney at Law	N	The commentator proposes clarifying revised rule 56(i)(2) by rewriting it to read: “The Attorney General must serve and file its brief within 14 days after the return is filed, or from the date it was due, if no return was filed.”	Disagree. The present wording of revised rule 56(i)(2) is adequately clear.

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101.	56	Miriam A. Krinsky Executive Director Children’s Law Center of Los Angeles	Y	The commentators oppose the proposed prohibition on joinders and urge that joinders be allowed. (See comment 98.1.)	See response to comment 98.1.
102.	56	Staff Attorneys Court of Appeal, Fifth Dist.	Y	The commentators oppose the proposed prohibition on joinders and urge that joinders be allowed. (See comment 98.1.)	See response to comment 98.1.
103.	56	Linda Robertson Cal. Appellate Project	Y	<p>1. The commentators oppose the proposed prohibition on joinders and urge that joinders be allowed. (See comment 98.1.)</p> <p>2. The commentators propose adding the words “copies of” to revised rule 56(c)(1) to make it clear that copies of supporting documents are acceptable.</p> <p>3. Revised rule 56(d)(1)(A) provides that the pages of the supporting documents “must be consecutively numbered.” The commentators assert the quoted wording could be read to mean “consecutively numbered within individual exhibits,” and urge that reading be made explicit.</p>	<p>1. See response to comment 98.1.</p> <p>2. Agree. The provision has been so modified.</p> <p>3. Disagree. The commentators’ reading of the provision is not persuasive. Revised rule 56(d)(1)(A) is intended to bear the same meaning as former rule 56(d)(1), i.e., “consecutive pagination throughout” the entire set of supporting documents, in the manner of a clerk’s transcript on appeal.</p>
104.	56	Larry Cory Children’s Services Appellate Div. Asst. County Counsel Los Angeles County	Y	The commentators oppose the proposed prohibition on joinders and urge that joinders be allowed, at least as to parties who seek to support another party. (See comment 97.1.)	See response to comment 97.1.
105.	56	Presiding Justice Arthur G. Scotland Court of Appeal, Third Dist.	N	The commentator proposes specifying that revised rule 56(c) refers to supporting documents submitted to the <i>trial</i> court.	Agree. The provision has been so modified.

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106.	56	Carole Greeley Bay Area Dependency Chapter Cal. Appellate Defense Counsel	Y	The commentators assert that requiring the pages of the supporting documents to be consecutively numbered is burdensome, and proposes either to require them to be consecutively numbered with each tab or to eliminate the tabbing requirement altogether and cite only by page number.	Disagree. See response to comment 99.3.
107.	56	Justice Nathan Mihara Court of Appeal, Sixth Dist.	N	The caption of revised rule 56(a) should be amended to indicate that the rule 14 word-count limit applies to writ petitions.	Agree, but the point is of sufficient importance to justify a new paragraph (6) in revised rule 56(b).
108.	56	Presiding Justice Arthur G. Scotland Court of Appeal, Third Dist.	N	As proposed, revised rule 56 deleted the provision of former rule 56(c)(4) requiring that a petitioner seeking an immediate stay explain “the reasons for the urgency” and state the relevant time constraints. The commentator proposes to restore the deleted provision.	Agree. Revised rule 56(b)(7) provides that such a petition must “explain the urgency” and comply with rule 49.5, which requires in its subdivision (a)(2) that the petition recite “the date of the proceeding or act sought to be stayed.”
109.	56	Sharon L. Rhodes Appellate Court Committee San Diego County Bar Assn.	Y	The commentators propose changing the heading of revised rule 56(g) from “preliminary opposition” to “informal response.” They assert the change would eliminate confusion and further the intent of the rule to distinguish between informal and formal oppositions.	Disagree. The commentators fail to establish that the use of the term “preliminary opposition” has caused any confusion. The relevant statutes and case law use both terms with almost equal frequency. It would be unusual to provide that an <i>informal</i> response “must contain points and authorities” (revised rule 56(g)(2)).
110.	56	Presiding Justice Arthur G. Scotland Court of Appeal, Third Dist.	Y	1. Former rule 56(b) allowed that the respondent or any real party in interest to file a preliminary opposition within five days “after service <i>and</i> filing” of the petition. Revised rule 56(g)(1) allows such opposition within 10 days “after the petition is filed.” The commentator objects to the change because it is proposed “without explanation,” the date of	Agree in part. An explanation for the change has been added to the Advisory Committee Comment: the former provision was unclear, because the date of service and the date of filing do not necessarily coincide. A party served with a petition

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				filing does not appear on the served copy of the petition, and the five-day limit is too short because of inevitable delays in mailing.	may obtain its filing date from the official court Web site. And the former five-day limit for filing an opposition has been extended to 10 days.
111.	56	Miriam A. Krinsky Executive Director Children’s Law Center of Los Angeles	Y	Insofar as it applies to emergency writs in juvenile dependency cases, the commentators object to the “new approach” of revised rule 56(g)(2) that requires a preliminary opposition to “contain points and authorities and a statement of any material fact not included in the petition.” The commentators assert that in juvenile dependency cases many writs seek immediate stays and receive prompt attention by the reviewing court. Because of these time constraints, “It is often necessary to file informal letter briefs.” They propose qualifying revised rule 56(g)(2) by adding: “except if the opposition is to a request for an immediate stay in a juvenile dependency matter.”	Disagree. Revised rule 56(g)(2) tracks former rule 56(b). Many writ proceedings are no less urgent than juvenile dependency matters, yet counsel for the respondent or real party in interest in non-juvenile proceedings have been able to timely file preliminary oppositions containing at least some authorities or facts to persuade the courts not to issue stays. No reason appears for an exception to this settled rule.
112.	56	Appellate Courts Committee State Bar of California	Y	The commentators endorse revised rule 56(g)(3) because it “gives “express recognition of the right to file a reply to a preliminary opposition.” Combined with subdivision (g)(4), the rule “will add clarity, certainty, and uniformity . . . , while still providing the courts with discretion to take prompt action in urgent cases.”	No response necessary.
113.	56	Justice Nathan Mihara Court of Appeal, Sixth Dist.	N	Revised rule 56(g)(4) should also provide that the court may issue a temporary stay without requesting opposition or waiting for a reply.	Agree, but for completeness the provision has been modified to authorize the court not only to grant a stay but also to deny one.
114.	56	Appellate Courts Committee State Bar of California	Y	The commentators endorse revised rule 56(h)(2)–(3) because its provisions “are likely to improve writ proceedings by requiring the return or opposition to be filed early enough to allow the petitioner to file a reply and the reviewing court to	No response necessary.

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				prepare for oral argument,” and the right to a reply “will add clarity, certainty, and uniformity to the rule, while still providing the courts with discretion to take prompt action in urgent cases.”	
115.	56	Sharon L. Rhodes Appellate Court Committee San Diego County Bar Assn.	Y	Revised rule 56(h)(3) provides that if the court has issued an alternative writ or order to show cause and the respondent or real party in interest has filed a return, “the petitioner may serve and file a reply within 15 days” unless the court orders otherwise. The commentators propose replacing “reply” with “traverse,” which “is the official title of the document.” They assert that the change “would make the rules more compatible with the statutory provisions, keep the nomenclature uniform, and avoid confusion.”	Disagree. The commentators fail to demonstrate that “traverse” is “the official title.” The word “traverse” is not used the statutes governing writs of review, mandate, or prohibition. (Code Civ. Proc., §§ 1084–1108.) It is an older term whose use could cause, rather than avoid, confusion.
116.	56	Maurice Oppenheim Attorney at Law	N	<p>1. In revised rule 56(j)(1), substitute “immediately” for “promptly,” because the latter term “allows for an undefined amount of time.”</p> <p>2. Revised rule 56(j)(2) provides that if the writ stays proceedings set to occur within seven days, the reviewing court clerk must “make a reasonable effort to” notify the clerk of the respondent court by telephone.” The commentator proposes to replace the quoted phrase with “immediately,” because “Certainty of notification as well as time are important here.”</p>	<p>1. Disagree. “Promptly” and “immediately” are equally undefined, but “immediately” connotes a speed and sense of urgency that is not necessary to describe the clerk’s duty to send a copy of the court’s writ to the parties. Rule 24(a)(1) likewise uses “promptly” to describe the clerk’s duty to send the parties copies of the court’s opinion in an appeal.</p> <p>2. Disagree. Revised rule 56(j)(2) is an identical copy of former rule 39.1B(r), now revised rule 38.1(h)(3), dealing with the equally urgent matter of a writ staying an order setting a hearing in a juvenile dependency case under Welfare and Institutions Code section 366.26. The proposal is beyond the scope of this rules revision project.</p>

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117.	56	Appellate Courts Committee State Bar of California	Y	The commentators approve moving the substance of former rule 56.4 regarding costs into revised rule 56(<i>l</i>). The change “will add clarity by collecting in one place rules regarding original proceedings in the appellate courts.”	No response necessary.
118.	56	Sharon L. Rhodes Appellate Court Committee San Diego County Bar Assn.	Y	As proposed, revised rule 56(<i>l</i>)(1) provides for costs except in “a criminal or juvenile case.” The commentators propose adding to the quoted words, “or other cases in which a party is entitled to a free transcript and court-appointed counsel.” They point to such examples as conservatorship, sterilization, and paternity cases.	Agree in principle. It is enough to except “a proceeding in which a party is entitled to court-appointed counsel,” and revised rule 56(<i>l</i>)(1) now so provides.
119.	56	Mat Zwerling et al., Directors First District Appellate Project Appellate Defenders, Inc. Sixth District Appellate Program California Appellate Project– Los Angeles	Y	Same as preceding comment.	Same response.
120.	56	Maurice Oppenheim Attorney at Law	N	1. Revised rule 56(<i>l</i>)(1) should include the proviso “except as provided in (2),” because paragraph (2) makes an additional exception for an award of costs in the interests of justice. To do otherwise lays a trap for the unwary. 2. In revised rule 56(<i>l</i>)(4), as proposed, the verb “govern” should be in the singular.	1. Such a provision was necessary in the general civil rule on costs on appeal (rule 27(a)(1)), because there were numerous exceptions stated in that rule; in revised rule 56(<i>l</i>) there is only one exception. 2. Agree. The number of the verb has been changed.
121.	57	Staff Attorneys Court of Appeal, Fifth Dist.	Y	Former rule 57(b) measured the time to file an answer or reply to a petition for writ of review from the date that the petition or answer was <i>served</i> ; revised rule 57(b) measures	Disagree. Because the petition for review is the first document filed in the judicial review process after the administrative

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				<p>the time to file an answer or reply from the date that the petition or answer is <i>filed</i>. The revised rule also adds five extra days for mailing, so that the time to file an answer is 25 (not 20) days and the time to file a reply is 15 (not 10) days. The commentators oppose adding five extra days for mailing. They reason that “The additional time was needed when the due date was triggered by date of service. The additional days were permitted only if service was by mail, to allow for the period of time between the mailing and receipt of the service copy. The filing date is readily available immediately upon filing.”</p>	<p>agency rules, the opposing parties are not likely to be aware it has been filed—and hence cannot ascertain its filing date—until they receive their service copy of the petition, usually by mail. Revised rule 57(b) thus simply preserves the status quo when it adds five days “to allow for the period of time between the mailing and receipt of the service copy.”</p>
122.	57	Bradley Tahajian Workers’ Comp. Writ Attorney Court of Appeal, Fifth Dist.	N	<p>1. Revised rule 57(a)(1) uses the full title “Workers’ Compensation Appeals Board,” but the remaining provisions of the rule refer to “the board.” Consider defining “board” in the rule itself.</p> <p>2. The Courts of Appeal receive a number of WCAB petitions that contain only the minimum items listed in revised rule 57(a)(1); but the “Minutes of Hearing and Summary of Evidence” prepared by the judge are extremely useful in understanding the procedural history, stipulations, and evidence below. The commentator proposes modifying revised rule 57(a)(1)(B) to read: “the referee’s <u>minutes of hearing and summary of evidence</u>, findings and decision, and report and recommendation on the petition for reconsideration.”</p> <p>3. When the petition raises a question of substantial evidence, revised rule 57, like the former rule, requires the petition to “fairly state” the material evidence. The commentator explains that the reviewing courts generally dismiss the petition if it does not support these allegations with actual <i>copies</i> of the evidence admitted below, usually medical</p>	<p>1. Disagree. This is standard rule-drafting style when, as here, it is clear from the context which board is referred to.</p> <p>2. Agree. The provision has been so modified.</p> <p>3. Agree. The provision has been so modified.</p>

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			<p>reports or records or other documentary evidence. To avoid this trap, the commentator proposes modifying subdivision (a)(2) of the rule to read: “If the petition claims that the board’s ruling is not supported by substantial evidence, it must fairly state <u>and attach as exhibits copies of</u> all the evidence material to the ruling.”</p> <p>4. Revised rule 57(b), like the former rule, refers to the filing of “an answer <u>and brief.</u>” The commentator points out that the word “brief” is superfluous, because the answer in a WCAB case is typically composed of a formal answer to the petition, paragraph by paragraph (like an answer to a civil complaint), followed by a set of points and authorities, all bound in one volume. The commentator suggests deleting the word “brief.”</p> <p>5. The commentator finds it odd that revised rule 57(b)(3) separates out the requirement of serving the answer or reply <i>on adverse parties</i>. He proposes incorporating that simple requirement into the basic provisions on serving and filing the answer or reply—i.e., into subdivisions (b)(1) and (b)(2)—and then deleting subdivision (b)(3). The commentator also proposes deleting the language in subdivision (b)(1) that states the board and any real party in interest may file an answer “separately or jointly”; in practice, they never do so “jointly.”</p> <p>6. The Advisory Committee Comment to revised rule 56(b)(1)–(2) states that “In each case the revised rule allows five extra days for mailing.” The commentator recommends deleting the sentence because it is unclear or explaining how <i>Camper v. Workers’ Comp. Appeals Bd.</i> (1992) 3 Cal.4th 679, 684–688, and Code of Civil Procedure section 1013 “affect the answer and reply timing requirements.”</p>	<p>4. Agree. The provision has been so modified.</p> <p>5. Agree. The provision has been so modified.</p> <p>6. Disagree. The quoted sentence clearly means the five days in question have been added to the periods prescribed by former rule 56. The “explanation” requested by the commentator is inappropriate in a rule of court or its Advisory Committee Comment.</p>
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				<p>7. The commentator recommends making the filing and service wording consistent in the three rules governing review by the WCAB, PUC, and ALRB (revised rules 57, 58, and 59).</p> <p>8. The commentator asserts that in WCAB cases some respondents routinely attach hefty exhibits to their answers even though most of the exhibits are already attached to the petitions for review; such respondents apparently believe they cannot refer to those exhibits unless they also attach them to their answers, which is not true. This duplication of exhibits is wasteful and makes it more difficult for the reviewing court to review the case. The commentator proposes further modifying revised rule 57(b)(1) as follows: “. . . may serve and file an answer <u>and any relevant exhibits not included in the petition.</u>”</p>	<p>7. Agree, to the extent possible. There will always remain a few institutional differences.</p> <p>8. Agree. The provision has been so modified.</p>
123.	57	Presiding Justice Arthur G. Scotland Court of Appeal, Third Dist.	N	Like the former rule, revised rule 57(a) refers to “referee,” but that term is no longer used. It should be updated.	Agree. Consistently with current practice, “referee” has been replaced with “workers’ compensation judge.”
124.	58	Staff Attorneys Court of Appeal, Fifth Dist.	Y	The commentators oppose adding five extra days for mailing in revised rule 58(b).	Disagree. See response to comment 121.
125.	58	Sharon L. Rhodes Appellate Court Committee San Diego County Bar Assn.	Y	The Advisory Committee Comment to revised rule 58 states that it intends to measure the time to file an answer from the date of filing rather than the date of service, but the text of proposed rule 58(b) still refers to the date of service.	Agree. The oversight has been corrected.
126.	58	Justice Nathan Mihara Court of Appeal, Sixth Dist.	N	Same as preceding comment.	Same response.
127.	58	Mary F. McKenzie	N	1. Revised rule 58(a)(1), like the existing rule, requires in	1. Agree. The provision has been so

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		Asst. General Counsel Cal. Public Utilities Commission		<p>general terms that a petition to review a PUC decision must be served “on the commission.” But PUC Code § 1756(b) specifies that “The petition for review shall be served <i>upon the executive director</i> of the commission either personally or by service at the office of the commission.” The commentator asserts that if the rule were to specify that service must be made on the executive director “and, if possible, on the general counsel,” it would “help ensure that petitions for writ of review are not misplaced at the commission.” She proposes inserting “executive director and general counsel of” in front of the word “commission” in revised rule 58(a)(1).</p> <p>2. The commentator asks that “separately or jointly” be deleted from revised rule 58(b)(1).</p>	<p>modified.</p> <p>2. Agree. The quoted phrase has been deleted.</p>
128.	58	Presiding Justice Manuel Ramirez Division Two Court of Appeal, Fourth Dist.	N	Same as comment 125.	Same response.
129.	59	Staff Attorneys Court of Appeal, Fifth Dist.	Y	The commentators oppose adding five extra days for mailing in rule 59.	Disagree. See response to comment 121.
130.	59	Presiding Justice Arthur G. Scotland Court of Appeal, Third Dist.	N	The commentator notes the same oversight in revised rule 59(c) as noted in rule 58(b) by comment 125.	Agree. The oversight has been corrected.
131.	59	Sharon L. Rhodes Appellate Court Committee San Diego County Bar Assn.	Y	Same as preceding comment.	Same response.
132.	59	Justice Nathan Mihara Court of Appeal, Sixth Dist.	N	Same as preceding comment.	Same response.

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133.	59	Presiding Justice Manuel Ramirez Division Two Court of Appeal, Fourth Dist.	N	Same as preceding comment.	Same response.
134.	60	Ingrid Haubrich Habeas Corpus Attorney California Supreme Court	N	The commentator suggests that revised rule 60 require a habeas corpus petitioner who had an evidentiary hearing in a lower court to present a transcript of that hearing when filing a petition for habeas corpus in the next higher court. She explains that the reviewing court cannot review the petition without the transcript, and it is especially burdensome when counsel do this: they refer to a transcript, point out errors by the judge, but do not include the transcript with the petition.	Agree in part. The proposal would be an undue burden on an incarcerated indigent petitioner, but not on counsel. The requirement has been added to revised rule 60(b) [“Petition filed by an attorney”].
135.	60	Appellate Courts Committee State Bar of California	Y	The commentators point out that revised rule 56(d)(2) and 60(b)(5)—now proposed rule 60(b)(7)— both address the question of what the reviewing court or clerk is to do with nonconforming petitions, but do so in slightly different ways. The commentators urge that the two provisions be coordinated, and propose that rule 60(b)(7) be revised to read: “The clerk must file an attorney’s petition that does not comply with (1)–(6) if it otherwise complies with the rules of court, but if the attorney does not file a corrected petition within five days after the clerk gives notice of the defect, the court may <u>notify the petitioner that it may strike the petition or impose a lesser sanction if the petition is not brought into compliance within a stated reasonable time not less than five days.</u> ”	Agree. The two provisions have been so modified.
136.	60	Carole Greeley Bay Area Dependency Chapter Cal. Appellate Defense	Y	Revised rule 60(b)(4) should specify that if an attorney files a habeas corpus petition in a case in which there is a related pending appeal, the record in that appeal may be used to support the petition. The commentators are concerned that	Disagree. Most habeas corpus petitions raise issues outside of the appellate record, which is the primary purpose of the writ. In the few cases in which an appellate

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		Counsel		there is “an implication” that in such a case the petitioner must file a separate, consecutively paginated habeas corpus record, which would be expensive and burdensome.	record might be useful (e.g., when the petition complains of inadequate assistance of counsel during trial), the attorney can ask the reviewing court to take judicial notice of the record. If both the petition and the appeal are pending in the Court of Appeal, that court already has the record; if the petition is filed in the Supreme Court while the appeal is still pending in the Court of Appeal, the Supreme Court routinely borrows the record from the Court of Appeal.
137.	60	Justice Nathan Mihara Court of Appeal, Sixth Dist.	N	Existing rule 60 provides that before ruling on a petition for habeas corpus the reviewing court may order the custodian of any relevant record to “produce” the record or a certified copy “to be filed” with the court. In an effort to simplify that wording, revised rule 60(c) as proposed provides that the court may order the custodian “to file the record” or a copy with the court. Justice Mihara prefers the existing wording. He explains that the practice of his court is to ask the superior court to send up the record, but his court does not “file” that record; “instead, we review the record and return it to the superior court. Perhaps the rule should expressly authorize this practice, because it does not seem necessary to file the superior court record in all cases.”	Agree. The provision has been so modified.
138.	60	Linda Robertson Cal. Appellate Project	N	Existing rule 60 provides that before ruling on a petition for habeas corpus the reviewing court may order the custodian of any record “pertaining to the petitioner’s case” to produce the record or a certified copy to be filed with the court. In an effort to simplify that wording, revised rule 60(c) changes “pertaining to the petitioner’s case” to “relevant.” The commentator asserts that “pertains to” is broader than	Disagree. The legal definition of “relevant evidence” is any evidence “having <i>any tendency in reason</i> to prove or disprove <i>any disputed fact</i> that is of consequence to the determination of the action.” (Evid. Code, § 210, ital. added.) It is difficult to conceive of any record the reviewing court

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				“relevant,” and that “A document may pertain to the petitioner’s case and be valuable to the court in considering its merits without being legally relevant in the evidentiary sense.”	might want to see that is not covered by that definition, and the commentator fails to suggest any.
139.	60	Sharon L. Rhodes Appellate Court Committee San Diego County Bar Assn.	Y	Revised rule 60(e) deals with habeas corpus petitions that are filed in the wrong appellate district because they are based on facts occurring outside the court’s appellate district. The rule tracks section 6.5 of the Standards of Judicial Administration, which it supersedes; it provides that the court may deny such a petition without prejudice, but if the court does so, its order must state the basis of the denial and “must identify the appropriate court in which to file the petition.” The purpose of the quoted provision is to help the petitioner refile his petition in the right court; the problem usually arises because the petitioner is indigent and is incarcerated in a county different from the one in which the crime and trial took place. The commentators appear to want the reviewing courts to do more to help incarcerated indigent petitioners; specifically, they appear to want the reviewing courts to “order inter- and intra-district transfers of writ petitions to the correct venue,” thus relieving the petitioner of the burden of refiling the petition. This procedure, the commentators assert, would promote judicial economy and expediency.	The proposal is beyond the scope of this rules revision project.
140.	Gen’l	Mary Majich Davis Chief Deputy Executive Officer San Bernardino Superior Court	N	The commentator states: “All of the proposed revisions are practical and appear grounded in common sense and practice. The rules committee continually makes the rules easier to understand.”	No response necessary.
141.	Gen’t	Raymond Coates California Defense Counsel	N	The commentator agrees with all proposed revisions.	No response necessary.

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142.	Gen'l	Richard Blackburn Visalia, CA	N	The commentator requests: "Make the Appeals process easier by explaining the entry process in plain English."	Agree in principle. That has been one of the goals of this rules revision project. The commentator, however, does not make any specific proposals.
143.	Gen'l	Sharon L. Rhodes Chair, Appellate Court Committee San Diego County Bar Assn.	Y	For future reference, the commentators suggest it would be helpful to reorganize the rules so as to put the general rules before the rules governing specific types of cases.	Agree. Such a reorganization is planned.
144.	Gen'l	Maurice Oppenheim Attorney at Law	N	The commentator urges that "any later amendments or additions [to the appellate rules] have the approval for style and word consistency by a designated staff drafting expert within the Judicial Council. . . . The revision represents a 'new beginning' that should not be eroded by indifferent future attention to writing style, uniform appearance and consistency of word use. Unfortunately the passage of time can result in any or all of these errors creeping into the rules unless someone has the responsibility to maintain the writing style, uniform appearance and consistency of word use."	Agree. The proposal is a good one and will be given serious consideration.
145.	40	Sharon L. Rhodes Chair, Appellate Court Committee San Diego County Bar Assn.	Y	Former rule 40(j) defined <i>register</i> and <i>register of actions</i> to mean the permanent record of cases maintained by electronic, magnetic, microphotographic, or similar means. Revised rule 40 deletes it with the comment, "The topic is covered more fully in rule 55." The present commentators note that rule 55 is now revised rule 70, which is even more detailed than former rule 40(j) but uses the term "register of appeals" without a definition. The commentators say a definition of <i>that</i> term in rule 40 "would be helpful," with a cross-reference to it in rule 70.	Disagree. The reference to "rule 55" in the Advisory Committee Comment in rule 40 has been corrected to read "rule 70." But no further definition appears necessary: rule 70 is addressed exclusively to Court of Appeal clerks, who understand the term.
146.	40	Maurice Oppenheim Attorney at Law	N	1. Former rule 40(d) defined the word "shall" as mandatory; revised rule 40(d)(1) defines the word "must" as mandatory.	1. Agree. The Advisory Committee Comment has been modified to provide

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				<p>The commentator points out that the Advisory Committee Comment to revised rule 40 does not explain the change.</p> <p>2. Like former rule 40, revised rule 40 begins with the qualification, “Unless the context or subject matter requires otherwise, . . .” The commentator asserts that in view of this qualification, “The substitution of ‘must’ for ‘shall’ does not increase the mandatory force of the command”</p> <p>3. The commentator asserts that if this change is adopted, “the rules on appeal would be the only body of law in California which mandates the use of ‘must’ rather than ‘shall.’”</p> <p>4. The commentator asserts that the present revision “may have a much broader goal, [namely] changing ‘must’ for ‘shall’ in all of the California Codes, all of the local ordinances,” and all other governmental regulations, and that such a change would entail an enormous cost to government and lawyers.</p> <p>5. The commentator revisits and challenges a number of the considerations that have been put forward to justify using “must” rather than “shall” to express a mandatory duty. The commentator apparently wishes to debate the question at this time.</p>	<p>that explanation.</p> <p>2. Disagree. The purpose of the change is to increase the clarity of the command, not its force. The quoted qualification is a standard feature of all definitional provisions.</p> <p>3. Disagree. After the pending revision and reorganization of all the California Rules of Court, the change will affect all the Rules of Court.</p> <p>4. Disagree. The revision does not have the presumed “broader goal,” much of which is beyond the jurisdiction of the Judicial Council in any event.</p> <p>5. Disagree. The question is no longer open so far as this rules revision project is concerned. (See Judicial Council of Cal., mins. (Oct. 27, 2000), p. 30; Judicial Council of Cal., Rules and Projects Com., <i>Policies and Guidelines for Rules, Forms, and Standards</i> (Dec. 17, 2001), p. 3.)</p>
147.	40.1	Sharon Rhodes Chair, Appellate Court Committee San Diego County Bar Assn.	Y	<p>1. Revised rule 40.1(a)(1) states the general rule that a document must be served on “the attorney for each party separately represented and on each unrepresented party.” To this should be added, “and on any person or entity required to be served under these rules or other law.” The addition</p>	<p>1. Agree. The following has been added: “and on any other person or entity as required by statute or rule.”</p>

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				would “alert attorneys to the possibility of additional service requirements.” 2. Revised rule 40.1(a)(1) should specifically enumerate all the rules that contain such additional service requirements “so long as it is accompanied by a prominent caveat that that the enumeration is confined to rules in chapters I, II, and III of the California Rules of Court and that specialized provisions of statutes or other rules may apply.” The commentators propose a long list of relevant rules but add the caution that “we may have overlooked some.”	2. Disagree. A list such as that proposed is unwieldy, likely to be incomplete, and requires frequent amendments to remain current and correct.
148.	40.1	Jody Isenberg President Cal. Judicial Attorneys Assn.	Y	Revised rule 40.1(b)(1) states that a document “is deemed filed on the date the clerk receives it.” The commentators assert that this wording could be read to mean that a document is “deemed filed” whenever the clerk takes it in. But that would conflict with revised rule 46, which provides that the clerk must not file any paper that does not comply with the rules. Rule 40.1(b)(1) should provide: “A document <i>accepted for filing</i> is deemed filed on the date the clerk receives it.”	Agree in principle. Although it is unlikely that reviewing court clerks will misunderstand the relationship between revised rules 40.1(b)(1) and 46, revised rule 40.1(b)(1) has been modified to declare expressly that it applies “Except as provided in rule 46.”
149.	40.1	Linda Robertson Supervising Attorney California Appellate Project	Y	Revised rule 40.1(b)(1) does not provide for cases in which the clerk receives a document and does not immediately file it, such as when a brief is submitted late and the clerk stamps it “received” and waits for the court to rule on the party’s relief motion.	Agree in principle. See response to preceding comment.
150.	40.1	Sharon L. Rhodes Chair, Appellate Court Committee San Diego County Bar Assn.	Y	The commentators approve of the fact that revised rule 40.1(b)(3) substitutes priority mail for certified mail “as a substantial move toward economy and efficiency.” They propose further modification by adopting the federal appellate rule that allows filing by first-class mail or by third-party commercial carrier for delivery within 3 calendar days.	The proposal is beyond the scope of this rules revision project.

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151.	40.1	Mat Zwerling et al., Directors First District Appellate Project Appellate Defenders, Inc. Sixth District Appellate Program California Appellate Project— Los Angeles	Y	The commentators propose several additions to the permissible forms of mailing specified in revised rule 40.1(b)(3), such as first-class mail, common carrier within 3 days, and metered mail.	The proposal is beyond the scope of this rules revision project.
152.	40.1	Linda Robertson Supervising Attorney California Appellate Project	Y	Revised rule 40.1(b)(4) declares that the special mailing provisions of subdivision (b)(3) do not apply to original proceedings. The commentators find “no reason” for this blanket exception and propose deleting it.	Former rule 40(i)–(k) provided the same exception. The proposal is beyond the scope of this rules revision project.
153.	40.2	Kim Hubbard President Orange County Bar Assn.	Y	Delete revised rule 40.2 because it is “otherwise covered.”	Disagree. The commentators fail to identify another rule on the topic among the appellate rules.
154.	40.2	Maurice H. Oppenheim Attorney at Law	N	Revised rule 40.2 begins, “When these rules require the use of recycled paper” The commentator urges that the Advisory Committee Comment should list the specific cross-references.	Disagree. Rules requiring the use of recycled paper occur throughout the Rules of Court, and a complete list would be both cumbersome and difficult to keep current.
155.	40.5	Jody Isenberg President Cal. Judicial Attorneys Assn.	Y	1. The title of the rule should reflect the fact that it applies to both changes of address and changes of telephone number. 2. The heading of subdivision (b) is “Matters affected by notice filed by attorney,” but the subdivision also applies to notice filed by an unrepresented party. Delete “filed by attorney” from the heading.	Agree. The title has been changed accordingly. 2. Agree. The heading has been changed accordingly.
156.	40.5	Sharon L. Rhodes Chair, Appellate Court	Y	1. Revised rule 40.5(b) provides that the clerk may use a litigant’s new address or telephone number in all pending “or	Disagree. Concluded cases may be reopened under certain circumstances.

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		Committee San Diego County Bar Assn.		concluded” cases. The commentators urge that it is unclear how a change of address or telephone number “affects concluded cases.” 2. The commentators find unclear the phrase “address of record” in revised rule 40.5(c).	Former rule 40.5(b) provided likewise. 2. Disagree. The phrase is widely understood by attorneys and litigants.
157.	40.5	Linda Robertson Supervising Attorney California Appellate Project	Y	The heading of subdivision (b) is “Matters affected by notice filed by attorney,” but the subdivision also applies to notice filed by an unrepresented party. Delete “filed by attorney” from the heading.	Agree. The heading has been changed accordingly.
158.	41	Sharon L. Rhodes Chair, Appellate Court Committee San Diego County Bar Assn.	Y	1. “The rules should clarify the difference between motions and applications and when to use which.” 2. The rule should specify whether covers are required for motions, and if so, rule 44(c) should specify the color. The commentators assert that different courts have different rules regarding motion cover requirements. 3. The commentators “suggest providing an express opportunity for the moving party to file a reply to an opposition—for example, five to 10 days after the opposition is filed.” 4. Revised rule 41 should be amended to include a provision	1. Disagree. Rule 43 covers applications and this rule covers motions; they explain the difference. Throughout the rules, the drafters have been careful to specify whether an application or a motion should be used in particular situations. Also, rule 43 itself specifies certain instances when an application should be used. 2. Disagree. Like former rule 44(c), revised rule 44(c) specifies cover colors only for briefs, petitions, and answer or replies to briefs and petitions. The proposal is beyond the scope of this rules revision project. 3. The proposal is beyond the scope of this rules revision project. 4. Disagree. Former rule 41 did not so

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				stating the court has authority to shorten or extend time for opposition and reply “to account for unusually urgent or complex motions.”	provide. Shortening time is adequately covered by the general rule on the topic stated in revised rule 45(c).
159.	41	Maurice H. Oppenheim Attorney at Law	N	Revised rule 41(a) begins, “Except as these rules provide otherwise . . .” The commentator urges that the Advisory Committee Comment should list the specific cross-references.	Disagree. Former rule 41(a) so provided, and the provision was not shown to be unworkable. A complete list of such exceptions would be both cumbersome and difficult to keep current.
160.	41	Linda Robertson Supervising Attorney California Appellate Project	Y	Former rule 41(a) measured the time to file any opposition to a motion from the date that the motion was <i>served</i> ; revised rule 41(a)(3) instead measures the time to file any opposition to a motion from the date that the motion is <i>filed</i> . Under former rule 41(a) any opposition had to be served and filed within 10 days after the motion was served; under revised rule 41(a)(3) that period is 15 days after the motion is filed. The commentators approve of this change.	No response necessary.
161.	41	Appellate Court Committee State Bar of California	Y	Contrary to the preceding commentators, these commentators disapprove of the provision of revised rule 41(a)(3) allowing an opposition to be filed within 15 days after the motion is filed rather than 10 days after the motion is served. They assert that the Advisory Committee Comments on two other rules (rules 2(a)(2) and 3(f)) state that the proof of service “establishes the date” that a given time period begins to run. They assert they are not aware of any problems arising under former rule 41, and stress that the proof of service establishes the date of service, “at least as stated on the proof or service.” They argue that if there is a difference between the date on the proof of service and the postmark of its envelope, “opposing counsel would be able to draw any suspicious circumstances to the attention of the court.”	Disagree after careful reconsideration. The principal reason for the change is that the filing date of a document is more reliable than the date appearing on its proof of service. As the commentators concede, using the filing date results in greater certainty for the reviewing court: the clerk is easily able to verify the date, both when the motion is filed and later when the opposition is presented for filing. The commentators’ reliance on the Advisory Committee Comments to rules 2(a)(2) and 3(f) is unpersuasive, because the notices served under those rules need not be filed at all. The commentators’ argument that

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			<p>The comentators express concern that reviewing court clerks might find it necessary to answer numerous telephonic inquiries by counsel to confirm filing dates. They assert that opposing counsel will generally not know when a motion has actually been filed; they concede that counsel will know the motion has in fact been filed, because it must be filed on or after the date of service, and hence will know the minimum amount of time available to oppose the motion. But they argue that “it is often important to pinpoint the precise date an opposition is due.” They concede that the date of filing is always posted on the court’s Web site, but they argue that not all cases are posted (e.g., juvenile cases) and “some courts appear to have a significant backlog in entering data.”</p> <p>The commentators speculate that because it is unlikely there will be an “official record” of the clerk’s reply to a telephonic inquiry from counsel, “disputes could arise” and some counsel might feel compelled to send the clerk a letter documenting their conversation. They express concern that the change in the rule may be unfair to opposing parties who might not have an adequate opportunity to respond; in particular, they assert there is “potential prejudice” to out-of-state and international parties because the latter would lose the benefit of the extra 10 or 20 days, respectively, allowed for mailing in such cases by Code of Civil Procedure section 1013.</p>	<p>opposing counsel could call the court’s attention to any discrepancy between the claimed service date and the postmark proves too much, because counsel would want to point out any such discrepancy regardless of whether it is service or filing that starts the opposition time running.</p> <p>Any burden on reviewing court clerks from having to answer telephonic inquiries by counsel to confirm filing dates of motions is no greater than the similar burden from having to answer telephonic inquiries by counsel to confirm filing dates of briefs and petitions; yet many rules provide that the latter filing dates control the time to prepare all answers and replies to briefs and petitions (see, e.g, rules 15(a), 28(e), 29.1(a), 29.5(b), 33(c), 36(c), etc.).</p> <p>The commentators do not document their assertion that “some courts” fail to promptly post filing dates on their official Web sites, and such failure may not be assumed. The commentators’ speculation that “some counsel” might feel compelled to send a letter documenting a clerk’s response to a telephonic inquiry as to a motion’s filing date is unpersuasive; and the same event is no less likely in the context of telephonic inquiry as to a brief’s filing date.</p> <p>As the commentators concede, in cases of</p>
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					service by fax or overnight delivery the time to file an opposition is actually longer under the revised rule because it extends the opposition time from 10 to 15 days. Service by mail on out-of-state parties is often effectuated within five days. Service by mail on international parties is relatively infrequent in practice. The same “potential prejudice” to both out-of-state and international parties arises from the numerous rules measuring the time to respond to briefs and petitions from the date of filing; and in both cases, any party may apply for an extension of time to avoid prejudice.
162.	41	Linda T. Barney Attorney at Law	N	The commentator opposes the provision of revised rule 41(a)(3) allowing an opposition to be filed within 15 days after the motion is filed rather than 10 days after the motion is served, arguing that the filing date is “unknown to the opposing party.”	Disagree. See response to preceding comment.
163.	41	Jody Isenberg President Cal. Judicial Attorneys Assn.	Y	Revised rule 41(a)(3) should provide the address of the courts’ official Web site and state that the provisions of Code of Civil Procedure 1013 do not apply to this rule.	Disagree. Such information is too much detail for a rule of court. If it were added to revised rule 41, it would also have to be added to all the briefing rules and all other rules that measure time periods from the date of a document is filed.
164.	41	Sharon L. Rhodes Chair, Appellate Court Committee San Diego County Bar Assn.	Y	The commentators observe that a party will often notify the court that it does not oppose a motion, and in that event the court should have the power to rule on the motion before the time for opposition has expired.	Agree. Revised rule 41(b)(1) has been modified to allow the court to rule after an opposition “or other response,” i.e., including a statement of intent not to oppose, has been filed.

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165.	41	Maurice H. Oppenheim Attorney at Law	N	Revised rule 41(b)(2) begins, “On a party’s request or <i>its own</i> motion, the court may” The commentator asserts the grammar is erroneous because a pronoun must have an antecedent noun.	Disagree. The structure of the sentence is concise and its meaning is clear. The same structure is used in other rules. (E.g., rules 12(c)(1), 26(c)(2), 27(e)(1).)
166.	41	Linda Robertson Supervising Attorney California Appellate Project	Y	Revised rule 41(c) provides that “A failure to oppose a motion may be deemed a consent to the granting of the motion.” The commentator asserts “This may lead counsel to file oppositions just to make a record of having objected to the granting of a motion.”	Disagree. In this respect the revised rule tracks former rule 41(c). If a party objects to a motion, it should file an opposition; if it does not object, it has no need to do so “just to make a record.”
167.	41	Appellate Court Committee State Bar of California	Y	Former rule 41(c) provided, “Failure of an appellant to file a written opposition to <i>a motion to dismiss an appeal</i> or to <i>appear</i> and oppose the motion after notification by the clerk of a hearing thereon may be deemed an abandonment of the appeal authorizing its dismissal. Failure of the adverse party to serve and file written opposition to <i>any other motion</i> may be deemed a consent to the granting of such motion.” (Italics added.) Revised rule 41(c) states simply that “A failure to oppose a motion may be deemed a consent to the granting of the motion.” The commentators assert that the intent of the revision appears to be nonsubstantive, but question whether the new wording “may impact an implied right to a hearing to oppose a dismissal motion,” which some practice guides believe is suggested by the differences in the former wording. The Advisory Committee Comment should clarify the point.	Agree. The Advisory Committee Comment has been revised accordingly.
168.	42	Linda Robertson Supervising Attorney California Appellate Project	Y	As proposed, revised rule 42(b) provides that a motion other than a motion to dismiss an appeal must be accompanied by a declaration or other evidence necessary to advise the court of “the relevant facts.” The commentators are concerned that the quoted phrase could mean all the facts of the case rather than, as intended, only the facts the court needs to rule on the	Agree. The provision has been modified accordingly.

† On behalf of a group: Y = Yes; N = No

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				motion.	
169.	43	Deena C. Fawcett Clerk/Administrator Court of Appeal, Third Dist.	Y	The commentators oppose “that part of Rule 43 that deletes the requirement for applicants to provide post-prepaid envelopes for mailing copies of the disposition order to all parties.” Making the applicant provide envelopes saves court costs in staff time, postage, and envelopes, and the existing system “has worked very well.”	Agree in part. The Supreme Court does not use such self-addressed envelopes, but a number of the Court of Appeal districts do. Accordingly, revised rule 43(c) restores this requirement but limits it to filings in the Court of Appeal.
170.	43	Sharon L. Rhodes Chair, Appellate Court Committee San Diego County Bar Assn.	Y	1. The rules “should clarify the difference between motions and applications and when to use which.” 2. The commentators propose that all the rules pertaining to applications for extensions of time (rules 43,45, and 45.5) be consolidated into rule 45, and that rule 43 be limited to applications for other relief. 3. Cross-references to rules 45 and 45.5 should be added to rule 43. 4. Revised rule 43(b) should recognize that “exceptional” good cause is required in certain cases.	1. The proposal is beyond the scope of this rules revision project. (Cf. Code Civ. Proc., § 1003 [“An application for an order is a motion.”].) 2. Agree in part. Rule 45.5 is too long to be incorporated into rule 45, but the provisions of former rule 45.5(b), relating to the contents of an application to extend time, have been moved to new subdivision (d) of rule 45, the rule on extending and shortening time generally. 3. Agree in principle. The cross-references have been added to the Advisory Committee Comment for revised rule 43. 4. Agree. The provision has been modified to so provide.
171.	43	Linda Robertson Supervising Attorney California Appellate Project	Y	The commentators favor eliminating the former requirement that an application be accompanied by an addressed, postage-prepaid envelope.	Agree in part. See response to comment 169.
172.	43	Maurice H. Oppenheim	N	Revised rule 43(a) begins, “Except as these rules provide	Disagree. Former rule 43 so provided, and

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		Attorney at Law		otherwise” The commentator urges that the Advisory Committee Comment should list the specific cross-references.	the provision was not shown to be unworkable. A complete list of such exceptions would be both cumbersome and difficult to keep current.
173.	44	Linda Robertson Supervising Attorney California Appellate Project	Y	<p>1. Revised rule 44 should prescribe the number of copies of an amicus curiae brief to be filed in the Supreme Court and the Court of Appeal, and the number of copies of an amicus curiae letter to be filed in the Supreme Court under rule 28.</p> <p>2. Revised rule 44(b) should explain the difference between a motion and “any other document,” and should explain that the latter term includes applications, especially applications for extensions of time.</p> <p>3. Revised rule 44(b)(3), applicable to writ petitions in the Court of Appeal, should be extended to provide that counsel filing a petition for habeas corpus in the Supreme Court need accompany the petition with only one set of supporting documents. The provision would save counsel thousands of dollars per case and require much less storage space in the Supreme Court.</p>	<p>1. Agree. The relevant provisions of revised rule 44(b)(1) and (2) have been modified accordingly.</p> <p>2. Agree in part. The proposal to explain the difference between a motion and an application generally is beyond the scope of this rules revision project. But to assist counsel and litigants, revised rule 44(b)(1)(F) and (b)(2)(D) have been clarified to require “an original and one copy of <i>an application, including an application for extension of time, or any other document.</i>” (Italics added.)</p> <p>3. Agree in part. The Supreme Court requires, as now provided in new subdivision (b)(1)(C) of revised rule 44, “an original and two copies of any supporting document accompanying a petition for writ of habeas corpus, an opposition or other response to the petition, or a reply,” unless the court orders otherwise in the specific case.</p>
174.	44	Appellate Court Committee State Bar of California	Y	Rule 44(c) should be expanded to prescribe the cover colors in cross-appeals, i.e., the cover colors of (1) a combined	Agree in part. Revised rule 44(c)(2) now provides that “In appeals under rule 16, the

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				respondent’s brief and cross-appellant’s opening brief, (2) a combined appellant’s reply brief and cross-respondent’s brief, and (3) a cross-appellant’s reply brief.	cover of a combined respondent’s brief and appellant’s opening brief must be yellow and the cover of a combined reply brief and respondent’s brief must be tan.” A cross-appellant’s reply brief is an ordinary appellant’s reply brief and hence its cover color is already prescribed by revised rule 44(c)(1) as tan.
175.	44	Maurice H. Oppenheim Attorney at Law	N	<p>1. Revised rule 44(a) begins, “Except as these rules provide otherwise . . .” The commentator urges that the Advisory Committee Comment should list the specific cross-references.</p> <p>2. Rule 44(b)(3), as proposed, provides that in the Court of Appeal only one set of supporting documents need be filed “Unless the court orders otherwise.” The Advisory Committee Comment to revised rule 44(b)(3) states more fully that in the Court of Appeal only one set of supporting documents need be filed unless the court orders otherwise “by local rule or in the specific case.” Asserting that the rules on appeal should be uniform throughout the state, the commentator first proposes in effect to bar local Court of Appeal rules. Failing that, the commentator urges that the rule text be modified to accord with the quoted Advisory Committee Comment, so as to put counsel on notice of the possibility of a contrary local rule.</p>	<p>1. Disagree. Former rule 43 so provided, and the provision was not shown to be unworkable. A complete list of such exceptions would be both cumbersome and difficult to keep current.</p> <p>2. Agree in part. The proposal to bar local Court of Appeal rules is beyond the scope of this rules revision project. (See rule 80.) But the rule text has been modified to accord with the quoted Advisory Committee Comment.</p>
176.	44	Leonard Sacks Attorney at Law	N	The commentator questions the number of copies of briefs, etc., required to be filed in the Supreme Court by revised rule 44(b)(1).	Disagree. The number is not arbitrary. Like former rule 44(b)(1), revised rule 44(b)(1) states the exact number of copies that the Supreme Court has determined it needs to conduct its review process.

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177.	44	Sharon L. Rhodes Chair, Appellate Court Committee San Diego County Bar Assn.	Y	<p>1. Add “except as provided in (C) [now (D)]” to revised rule 44(b)(1)(A) to alert the inexperienced reader not to follow (A) in filing a petition for review to exhaust state remedies.</p> <p>2. Add a cross-reference to rule 33.3 in revised rule 44b)(1)(D).</p> <p>3. Add “traverse” to “reply to answer (or opposition)” in revised rule 44(c)(1).</p>	<p>1. Agree. The provision has been modified accordingly.</p> <p>2. Agree. The provision has been modified accordingly.</p> <p>3. Disagree. See response to comment 115.</p>
178.	45	Sharon L. Rhodes Chair, Appellate Court Committee San Diego County Bar Assn.	Y	<p>1. Revised rule 45(b) provides that the time to do any act may be extended by the reviewing court “except as these rules provide otherwise.” Because of the importance of this rule, it should list the specific exceptions, as former rule 45(c) did.</p> <p>2. Revised rule 43(b) should recognize that “exceptional” good cause is required in certain cases.</p> <p>3. Revised rule 45(b) should expressly cross-refer to revised rule 45.1 (appellate emergencies).</p> <p>4. Revised rule 45(c) should expressly list the exceptions to the court’s power to shorten time.</p>	<p>1. Disagree. Each exception to this rule listed in former rule 45(c) has been moved to the particular rule that it affects, and the Advisory Committee Comment to revised rule 45 specifically identifies the those rules.</p> <p>2. Agree. The provision has been modified accordingly.</p> <p>3. Disagree. Revised rule 45.1 is rarely invoked and may be easily found.</p> <p>4. Disagree. Former rule 45(d) did not list these exceptions, and it did not prove unworkable.</p>
179.	45	Linda Robertson Supervising Attorney California Appellate Project	Y	<p>1. Revised rule 45(a) provides that “The Code of Civil Procedure governs computing or extending the time to do any act required or permitted under these rules.” The commentators find the provision “confusing” and ask for further clarification.</p>	<p>1. Disagree. The revised rule tracks former rule 45(a) in this respect. The cited statute is well known, and provides for an automatic extension of time when service is effectuated by mail; the remainder of rule 45 addresses court-ordered extensions</p>

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				2. As proposed, revised rule 45(e) [now (f)] provides that a superior court may not extend the time to prepare an appellate record. But there is an exception to this rule in appeals from judgments of death (see rule 35.2(d)), and this rule should mention the exception.	of time. 2. Agree. The provision has been modified to acknowledge that there are exceptions.
180.	45	Maurice H. Oppenheim Attorney at Law	N	Revised rule 45(a) provides that “The Code of Civil Procedure governs computing or extending the time to do any act required or permitted under these rules.” The Advisory Committee Comment to this rule should list the specific sections of the code relevant to the point.	Disagree. Former rule 45(a) did not list these code sections, and it did not prove unworkable.
181.	45	Jody Isenberg President Cal. Judicial Attorneys Assn.	Y	As proposed, revised rule 45(d) [now rule 45(e)] states that a court has the power to grant relief from default for failure to comply with these rules in all instances except the failure to file a timely notice of appeal. The commentators suggest another exception—failure to file a timely statement of reasonable grounds to appeal in support of a certificate of probable cause. The commentator cites <i>In re Chavez</i> (2003) 30 Cal. 4th 643, to support the suggestion.	Agree. The provision has been modified accordingly.
182.	45.1	Leonard Sacks Attorney at Law	N	The commentator questions whether it is “necessary to have a deadline to file a notice of appeal that cannot be extended except in case of calamity?”	It is settled case law that the time to file a notice of appeal is jurisdictional. The proposal is beyond the scope of this rules revision project.
183.	45.1	Maurice H. Oppenheim Attorney at Law	N	The commentator asserts that under revised rule 45.1 the total amount of time the time may be extended in cases of public calamity is 88 days, and proposes to increase that time to six months because of “the kinds of threats we may now face.”	The proposal is beyond the scope of this rules revision project.
184.	45.1	Sharon L. Rhodes	Y	Proposes moving revised rule 45.1 so as to follow revised	Agree in principle. The matter will be

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		Chair, Appellate Court Committee San Diego County Bar Assn.		rule 45.5 because they address the same topic.	addressed when the rules of court are reorganized.
185.	45.5	Sharon L. Rhodes Chair, Appellate Court Committee San Diego County Bar Assn.	Y	Revised rule 45.5(b) should recognize that “exceptional” good cause is required in certain cases.	Agree. The provision has been modified accordingly.
186.	45.5	Appellate Court Committee State Bar of California	Y	The commentators suggest deleting the word “also” in the second sentence of revised rule 45.5(a)(2).	Disagree. The word is used to emphasize that the policy recognized in that sentence is distinct from the policy recognized in the first sentence.
187.	45.5	Linda Robertson Supervising Attorney California Appellate Project	Y	The commentators approve of the provision in revised rule 45.5(3) stating that “If good cause is shown, time must be extended.”	No response necessary.
188.	45.5	Kim Hubbard President Orange County Bar Assn.	Y	In revised rule 45.5(c)(2) [now (b)(2)], change “client” to “party.”	Disagree. Under the definition of revised rule 40(a)(2), “party” includes the party’s attorney. But in revised rule 45.5(b)(2) and (b)(8), the rule refers to the actual person or entity represented, excluding the person’s or entity’s attorney.
189.	45.5	Maurice H. Oppenheim Attorney at Law	N	The commentator questions the accuracy of the estimate in revised rule 45.5(b)(3) that “In a civil case, a record containing one volume of clerk’s transcript or appendix and two volumes of reporter’s transcript is considered an average-length record.”	Disagree. Although the provision is taken from former rule 45.5—which, as the commentator notes, dates from 1989—there is no reason to believe it is no longer correct and the commentator proposes no other wording.
190.	46	Maurice H. Oppenheim Attorney at Law	N	Revised rule 46 begins, “Except as these rules provide otherwise . . .” The commentator urges that the Advisory	Disagree. The Advisory Committee Comment lists two principal exceptions to

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				Committee Comment should list the specific cross-references.	the rule, which is adequate in the circumstances.
191.	46	Sharon L. Rhodes Chair, Appellate Court Committee San Diego County Bar Assn.	Y	Revised rule 46 provides that “the reviewing court clerk <i>must not</i> file any . . . brief . . . that does not conform to these rules.” The commentators find the rule facially inconsistent with rule 14(e)(1), which provides that if a brief does not comply with that rule “the reviewing court clerk <i>may</i> decline to file it” but must then return it to the party marked “received but not filed.”	Disagree. Revised rule 46 is administered by the reviewing court clerks, who understand its scope. In the case of noncomplying briefs, the clerks apply the specific rule—rule 14(e)—rather than the general rule—rule 46. The rule has not proved unworkable.
192.	46.5	Maurice H. Oppenheim Attorney at Law	N	The commentator observes that the first sentence of revised rule 46.5, as proposed, contains 69 words, and urges that it be divided into two.	Agree. The provision has been modified accordingly.
193.	47	Maurice H. Oppenheim Attorney at Law	N	Former rule 47 provided that when a case was appealed to Courts of Appeal with more than one division, the presiding justice would assign it to a particular division. Revised rule 47 provides instead that such cases “may be assigned to divisions in a way that will equalize the distribution of business among them.” The commentator complains that the revised rule does not state who has the duty to make the assignments.	Disagree. The Advisory Committee Comment to revised rule 47 explains that in practice “the Courts of Appeal with more than one division have each developed different ways to make such assignments according to their needs. Recognizing this fact, revised rule 47 simply authorizes the courts to make such assignments ‘in a way that will equalize the distribution of business’ among the several divisions. The change is not substantive.”
194.	48	Jody Isenberg President Cal. Judicial Attorneys Assn.	Y	The commentators suggest that two cross-references in the Advisory Committee Comment be made more specific.	Agree. The provision has been modified accordingly.
195.	48	Linda Robertson Supervising Attorney	Y	The commentators approve of revised rule 48.	No response necessary.

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		California Appellate Project			
196.	48	Maurice H. Oppenheim Attorney at Law	N	Revised rule 48(a) provides that “Substitution of parties in an appeal or original proceeding must be made by serving and filing a motion in the reviewing court.” The commentator objects to the wording because it does not specify who is serve and file that motion.	Disagree. It is apparent from the context that the motion is to be served and filed by whoever initiates the substitution of parties. The revised rule tracks former rule 48 in this respect.
197.	48	Sharon L. Rhodes Chair, Appellate Court Committee San Diego County Bar Assn.	Y	<p>1. The heading of revised rule 48(b) should read, “Substituting attorneys <i>by stipulation</i>,” because that is the only way attorneys can be substituted.</p> <p>2. Former rule 48(b) required that a substitution of attorneys be signed by the party and both the former and the new attorney. As proposed, revised rule 48(b) imposed the same requirement. The commentators assert that the provision should be made consistent with Code of Civil Procedure section 284, subdivision 1, which appears to require only the signatures of the party and the new attorney, noting that in some cases the former attorney does not agree with the substitution.</p> <p>3. The commentators assert that revised rule 48(b) should be made consistent with Code of Civil Procedure section 284, subdivision 2, which provides for substitution of attorneys by court order.</p> <p>4. The commentators assert that revised rule 48(b) “needs to be clarified for application when one (or both) of the attorneys is court-appointed.” The commentators propose that in such situations the district appellate project “should be notified in advance of the proposed substitution, so that it can</p>	<p>1. Disagree. The subdivision in question is brief; headings do not need to summarize the contents of such subdivisions.</p> <p>2. Agree. The provision has been modified accordingly and the change is fully explained in the Advisory Committee Comment.</p> <p>3. Disagree. Rules of court need not duplicate unambiguous statutory provisions. Nothing in the rule is inconsistent with the cited statutory provision.</p> <p>4. Disagree. The rule does not need further clarification. The district appellate projects have appropriate procedures in place to deal with this situation.</p>

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				amend its records and, if the new counsel is to be appointed, submit its recommendation to the court.”	
198.	48	Appellate Court Committee State Bar of California	Y	As proposed, revised rule 48(c)(1) provides, like former rule 48(c), that the proof of service of a motion to withdraw as attorney “need not include the address of the party represented.” The purpose is to protect privacy. The commentators agree that privacy should be protected when the motion is <i>filed</i> but contend that it should give way if and when the motion is <i>granted</i> . At that stage, they assert, the court and the opposing party need to know the address and telephone number of the moving party, and in practice this information is regularly provided.	Agree. The provision has been modified accordingly.
199.	51	Maurice H. Oppenheim Attorney at Law	N	Revised rule 51(a) provides that if the rules “require an act to be done by the judge who tried the case” but that judge is unavailable or unable to act at the required time, the act “may be done by another judge of the same court” The commentator asserts that the use of the permissive term “may” is confusing and “suggests the another [<i>sic</i>] judge may decline to do it for no reason.”	Disagree. The proposed reading of the rule is unreasonable. By its terms, the rule applies only to an act that the rules <i>require</i> to be done by the trial judge, and simply allows another judge to do it in the absence of the former.
200.	51	Linda Robertson Supervising Attorney California Appellate Project	Y	Revised rule 51(a) provides that if the rules “require an act to be done by the judge who tried the case” but that judge is unavailable or unable to act at the required time, the act “may be done by another judge of the same court” The commentators assert “there may be circumstances in which it would not be proper to designate another judge in place of the judge who tried the case,” citing <i>People v. Moreda</i> (2004) 118 Cal.App.4th 507. They propose that the rule should be modified to allow the presiding justice to decide whether it would be “appropriate” to substitute another judge for the trial judge in a particular proceeding.	Disagree. <i>Moreda</i> does not support its use by the commentators; that case held that a defendant does not have a due process right to have the judge who tried the case hear the new trial motion. On the contrary, in <i>Moreda</i> the defendant successfully disqualified the trial judge from hearing the new trial motion, and the reviewing court held it was proper to designate another judge to hear the motion. No reason appears why the presiding justice should determine whether it is

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					“appropriate” to allow another judge to perform a required act if the trial judge is “unavailable or unable” to perform it.
201.	53	Linda Robertson Supervising Attorney California Appellate Project	Y	The commentators approve of revised rule 53.	No response necessary.
202.	53	Maurice H. Oppenheim Attorney at Law	N	In revised rule 53(a)(3), the commentator proposes moving the qualifying clause, “unless inconsistent with rules 61–69,” to the end of the sentence.	Agree. The provision has been modified accordingly.
203.	54	Maurice H. Oppenheim Attorney at Law	N	Revised rule 54 provides that an amendment to the Rules of Court must be published in “the advance pamphlets of the Official Reports.” The commentator asserts that the “full title” of the cited publication is “California Official Reports” and the rule should be changed accordingly.	Disagree. In the context of the <i>California</i> Rules of Court, it is redundant and hence unnecessary to specify that the Official Reports in question are the “California” Official Reports. The publication has been variously cited in various rules, and an editorial decision was made at the outset of this revision project to conform the rules, over time, to the simple designation “Official Reports.”
204.	70	Sharon L. Rhodes Chair, Appellate Court Committee San Diego County Bar Assn.	Y	1. The commentators propose that revised rule 70(c)(1) be modified to “take account of the special needs of participants in juvenile dependency cases” by adding a new provision requiring retention of Court of Appeal records “for 10 years after the minor who was the subject of the appeal reaches the age of 18.” 2. The commentators propose that revised rule 70(c)(2) be modified to require Court of Appeal clerks, 20 years after finality in criminal cases, to “send a postcard to counsel for the parties to notify them of the intended destruction. If no	1. The proposal is beyond the scope of this rules revision project. 2. The proposal is beyond the scope of this rules revision project.

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				party objects within 10 days of the notification, the records will be destroyed.”	
205.	76.5	Sharon L. Rhodes Chair, Appellate Court Committee San Diego County Bar Assn.	Y	<p>1. Revised rule 76.5(a)(2) provides that an attorney seeking appointment as counsel by the Court of Appeal must complete a questionnaire showing date of admission, qualifications, and experience. The commentators propose that the attorney’s State Bar number should also be shown.</p> <p>2. The commentators propose two changes in revised rule 76.5 that address problems of general appellate procedure in cases in which indigents are entitled to court-appointed counsel: (1) require that a copy of every brief be served on the district appellate project, and (2) allow the project to inspect and copy any superior court file relating to the indigent for whom counsel has been appointed, including sealed and confidential materials, to the same extent as the party or the court-appointed counsel.</p>	<p>1. Agree. The provision has been modified accordingly.</p> <p>2. Disagree. Neither proposal, however meritorious it may turn out to be, belongs in this rule, which deals only with the procedures for <i>appointing</i> counsel for indigents in the Court of Appeal. The proposals are thus beyond the scope of this rules revision project.</p>
206.	76.5	Maurice H. Oppenheim Attorney at Law	N	<p>1. At the end of revised rule 76.5(a)(1), delete “such” and substitute “an.” Make the same change in the Advisory Committee Comment.</p> <p>2. In revised rule 76.5(a)(2), insert “an” before the word “appointment.”</p> <p>3. In revised rule 76.5(a)(2), delete “showing” and substitute “indicating.” In traditional legal usage, “showing” refers to the obligation of a party. A questionnaire is not a party.</p> <p>4. In revised rule 76.5(d)(3), insert the word “a” between “provide” and “review.”</p>	<p>1. Agree in principle. The phrase has been modified to eliminate the word “such.”</p> <p>2. Disagree. The phrase “seeking appointment” is clear in the context.</p> <p>3. Disagree. The traditional legal usage referred to is not exclusive. This rules revision strives to avoid using the word “indicate” because of its inherent vagueness.</p> <p>4. No response necessary. The sentence in question has been deleted in its entirety.</p>

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207.	76.6	Linda Robertson Supervising Attorney California Appellate Project	Y	<p>1. The commentators concede that the definition of the term “associate counsel” in revised rule 76.6(c)(3) conforms to the Supreme Court view of the matter and hence is correct. But the commentators find a “tension” between that definition and subdivision (i) of the rule, which deals with joint appointment as appeal and habeas counsel. The commentators are concerned about a case in which two attorneys with different skills are appointed to such a joint representation under subdivision (i)(2) and one is later removed or fails to perform. The commentators offer no specific solution.</p> <p>2. The commentators note that in the definition of “assisting counsel or entity” in revised rule 76.6(c)(5), their organization is listed third, after the Office of the State Public Defender and the Habeas Corpus Resource Center. They suggest “it might make more sense” to place it first on the list.</p>	<p>1. No such concern is warranted. In practice, appointments under subdivision (i) are few; and if two counsel are appointed and one is removed, the Supreme Court routinely offers to locate and appoint a replacement lead or associate counsel and takes steps to do so.</p> <p>2. Disagree. The Supreme Court prefers the current sequence.</p>
208.	76.6	Appellate Court Committee State Bar of California	Y	The commentators endorse the revisions to rule 76.6, but ask for further clarification of the definition of “associate counsel” in subdivision (c)(3). They do not propose new wording.	Agree. The definition has been clarified and further explained in the Advisory Committee Comment.
209.	77	Maurice H. Oppenheim Attorney at Law	N	Revised rule 77(a) requires Court of Appeal presiding justices and certain administrative presiding justices to ensure that all records and briefs are promptly filed, and adds: “Staff must be provided for that purpose” The commentator reiterates his concern that the rule does not specify <i>who</i> must so provide.	Disagree. It is clear from the context that the appropriate presiding justice or administrative presiding justice will so provide. The revised rule tracks the existing rule.
210.	78	Appellate Court Committee State Bar of California	Y	The commentators propose to clarify the rule by deleting “in the case of” from revised rule 78(a) and substituting “if (1) or	Disagree. The proposed wording would not render the rule’s meaning accurately.

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				(2) apply to.”	The rule is administered by reviewing court justices, and they have had no difficulty in understanding it.
211.	976	Maurice H. Oppenheim Attorney at Law	N	The commentator asserts the term “rendering court” is an antiquated, obscure phrase, and having to define it in the Advisory Committee Comment proves the assertion.	Disagree. Current rule 976 reads, “a majority of the court rendering the opinion,” which was simplified in revised rule 976 to “a majority of the rendering court.” The objection seems to be the word “rendering,” but no alternative is suggested by the commentator. The meaning of the term “rendering court,” at least in this context, seems adequately clear. The definition in the Advisory Committee Comment is useful in cases arising in multipanel courts.
212.	976	Sharon L. Rhodes Chair, Appellate Court Committee San Diego County Bar Assn.	Y	The commentators propose changing revised rule 976(d)(2) to declare that the Supreme Court may order <i>partial</i> publication or depublication of published Court of Appeal opinions.	The proposal is beyond the scope of this rules revision project.
213.	977	Appellate Court Committee State Bar of California	Y	The commentators propose changing revised rule 977 to permit an unpublished Court of Appeal opinion to be cited or relied on in a petition for review “for the limited purpose of showing that a conflict in decisions exists or the issue arises often.”	As the commentators acknowledge, the proposal is beyond the scope of this rules revision project.
214.	977	Linda Robertson Supervising Attorney California Appellate Project	Y	The commentators approve of revised rule 977(d), which provides that “A published California opinion may be cited or relied on as soon as it is certified for publication or ordered published.”	No response necessary.
215.	978	Stephen J. Perello, Jr.	N	1. Former rule 978(a) required generally that a publication	1. Agree in part. The change requiring that

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		<p>Attorney at Law</p>	<p>request be made “promptly,” i.e., without specifying any particular number of days. As proposed, revised rule 978(a)(3) specifies the request must be made “within the time allowed to file a petition for rehearing” in the Court of Appeal, i.e., within 15 days after the opinion is filed. The commentator objects to the change. He gives a number of reasons why the litigants in the case in question may not wish to request publication, and he asserts that unpublished opinion become known to nonlitigants only “through happenstance word of mouth or through occasional reporting in the Press.”</p> <p>2. As proposed, revised rule 978(c)(1) declares that “If the rendering court denies or recommends denying the request, the Supreme Court normally will not order publication.” The commentator objects to this provision because it would</p>	<p>publication requests be made within a specific number of days after filing is predicated on the public availability of all nonpublished opinions on the court system’s Web site within one judicial day of filing, and on its subsequent assimilation into the Westlaw and Lexis systems within a few hours of that availability. Adjunct to that public availability of opinions is the court Web site’s e-mail docket notification system, which allows any member of the public to track pending appeals through and beyond the filing of an opinion. The time period must be limited to some degree in order to minimize the instances in which requests to publish are made after the Court of Appeal has lost jurisdiction, and in order to give the Court of Appeal adequate time to act on the request. However, to give nonlitigants more time to learn of unpublished opinions through the sources discussed above, revised rule 978(a)(3) has been modified to allow a request to be filed within 20 days after the opinion is filed. The California Appellate Project has expressed the view that 20 days is adequate for this purpose. (See comment 218.)</p> <p>2. The provision has been deleted.</p>
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				require a person requesting publication to affirmatively overcome a presumption against granting the request.	
216.	978	Appellate Court Committee State Bar of California	Y	<p>1. A majority of the commenting committee approve of the change in revised rule 978(a) requiring a request to publish to be filed within a specific number of days after the opinion is filed, asserting that “The proposed rule furthers the smooth functioning of the appellate process.”</p> <p>2. The commentators object to the provision of revised rule 978(c), as proposed, which declares that “If the rendering court denies or recommends denying the request, the Supreme Court normally will not order publication.” The commentators believe the provision “serves no apparent purpose.”</p>	<p>1. No response necessary.</p> <p>2. The provision has been deleted.</p>
217.	978	Gerald L. Gleeson Public Defender San Joaquin County	Y	As proposed, revised rule 978(a)(3) specifies the request must be made “within the time allowed to file a petition for rehearing” in the Court of Appeal, i.e., within 15 days after the opinion is filed. The commentator objects to the change because, he asserts, “it is not infrequent that Courts of Appeal would order their opinions final forthwith,” in which cases there can be no petition for rehearing.	The problem, if it was one, has been resolved by modifying revised rule 978(a)(3) to eliminate any reference to the time to file a petition for rehearing.
218.	978	Linda Robertson Supervising Attorney California Appellate Project	Y	<p>1. The commentators propose lengthening the time to request publication from 15 to 20 days.</p> <p>2. The commentators propose changing revised rule 978 to provide that persons who fail to request publication within the rule time may make their request directly to the Supreme Court.</p> <p>3. The commentators object to the provision of revised rule 978(c), as proposed, which declares that “If the rendering</p>	<p>1. Agree. The provision has been modified accordingly.</p> <p>2. The proposal is beyond the scope of this rules revision project.</p> <p>3. The provision has been deleted.</p>

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				court denies or recommends denying the request, the Supreme Court normally will not order publication.” The commentators assert that the provision “does not define or limit the right of people to make requests for publication or the discretion of the Supreme Court to grant them.”	
219.	978	Jody Isenberg President Cal. Judicial Attorneys Assn.	Y	The commentators object to the provision of revised rule 978(c), as proposed, which declares that “If the rendering court denies or recommends denying the request, the Supreme Court normally will not order publication.” The commentators propose that the provision be placed in the Advisory Committee Comment rather than in the rule text.	The provision has been deleted.
220.	978	Sharon L. Rhodes Chair, Appellate Court Committee San Diego County Bar Assn.	Y	The commentators propose changing revised rule 978(c) to declare that the Supreme Court may order <i>partial</i> publication of unpublished Court of Appeal opinions.	The proposal is beyond the scope of this rules revision project.
221.	979	Sharon L. Rhodes Chair, Appellate Court Committee San Diego County Bar Assn.	Y	The commentators propose changing revised rule 979(c) to declare that the Supreme Court may order <i>partial</i> depublication of published Court of Appeal opinions.	The proposal is beyond the scope of this rules revision project.
222.	30.1	Appellate Court Committee State Bar of California	Y	The provision of former rule 45(c) that “no court may extend the time to file a notice of appeal” (with the sole exception of a case of appellate emergency under revised rule 45.1) has been moved to amended rule 30.1. The commentators are concerned that the amended provision “might be perceived as an attempt to limit the doctrine of constructive filing under <i>In re Benoit</i> (1973) 10 Cal. 3d 72.”	Disagree. The concern is unwarranted. The <i>Benoit</i> constructive filing doctrine does not <i>extend</i> the time to file a notice of appeal, but simply redefines the point at which the notice is deemed filed.

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