

**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. Kathryn Doi Todd, Chair  
Heather Anderson, Senior Attorney, 415-865-7691,  
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DATE: September 8, 2009

SUBJECT: Appellate Procedure: Record on Appeal (adopt Cal. Rules of Court, rule 8.819; amend rules 8.122, 8.124, 8.147, 8.320, 8.336, 8.832, 8.861, 8.862, 8.864, and 8.915; renumber rule 8.160 as rule 8.46; approve forms APP-010, APP-011, and APP-110; and revise forms APP-003 and APP-103)  
(Action Required)

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Issue Statement

The *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) and *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) do not currently include spaces for an appellant to provide certain information required or permitted to be in a record designation by statute or rule. In addition, there is no Judicial Council form that a respondent can use to file a notice designating additional documents or proceedings for inclusion in a clerk's or reporter's transcript.

When a respondent elects under rule 8.124 to use an appendix, rather than a clerk's transcript, this may place additional burdens on the appellant, particularly an indigent appellant. In addition, the procedures relating to records to be incorporated by reference or copied into the current record under both rules 8.124 and 8.147 are not clear.

Rules 8.864 and 8.915 do not currently specify the consequences if an appellant does not timely file an election indicating whether he or she wants a record of the oral proceedings in the trial court and, if so, what form of the record he or she elects to use.

Currently, the documents that must be included in a clerk's transcript in a felony and a misdemeanor appeal under rules 8.320(b) and 8.861 do not include certain court-ordered diagnostic or psychological reports. In addition, these rules do not appropriately address the confidentiality of probation reports that are included in a clerk's transcript.

Currently it is not clear whether rule 8.160, which addresses sealed records and records proposed to be sealed, applies in felony appeals or in appellate division proceedings.

### Recommendation

The Appellate Advisory Committee recommends that the Judicial Council:

1. Effective January 1, 2010:

- a. Approve new optional forms, *Respondent's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-010), *Respondent's Notice Electing to Use an Appendix (Unlimited Civil Case)* (form APP-011), and *Respondent's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-110) to assist respondents in civil cases in making record designations permitted under the rules;
- b. Amend rules 8.122 and 8.832 to clarify the time frame for sending the trial court exhibits that have been designated for inclusion in a clerk's transcript by replacing the requirement that they be sent "promptly" with a requirement that they be sent within 10 days after they are designated;
- c. Amend rule 8.124 to address the burden on the appellant when a respondent elects to use an appendix by providing that respondents may only elect to use an appendix in cases in which the appellant's fees for the clerk's transcript have not been waived and by adding provisions to facilitate borrowing or copying of documents for an appendix;
- d. Amend rules 8.124 and 8.147 to provide additional guidance regarding incorporating by reference or copying records from another appeal, including indicating how parts of any record to be incorporated by reference or copied are to be identified and requiring that the cover of the appendix or the clerk's or reporter's transcript include a notice of any incorporated record;
- e. Amend rules 8.864 and 8.915 to fill a gap in these rules by specifying the consequences if the appellant in a misdemeanor or infraction cases does not timely file the required election concerning the record of the oral proceedings;
- f. Amend rules 8.320(b) and 8.861 to reduce the need for requests to augment the record by adding certain court-ordered diagnostic or psychological reports to the documents that are automatically included in the clerk's transcript when the defendant is the appellant;
- g. Amend rules 8.336(g) and 8.862 to clarify the appropriate handling of court-ordered diagnostic reports and probation reports in the clerk's transcript; and

- h. Adopt new rule 8.819 and move rule 8.160 to chapter 1 of the appellate rules and renumber it as rule 8.46 to clarify that the procedures relating to sealed records apply in criminal as well as civil appeals and in appellate division proceedings.
2. Effective July 1, 2010 revise *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) and *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) to include spaces for additional information required or permitted by statute or rule and to make clarifying changes;

The text of the new and amended rules and the new and revised forms are attached at pages 18-45.

#### Rationale for Recommendation

To provide appellants with space where they can provide additional information required or permitted under the rules, this proposal would revise *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) and *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) to include spaces where the appellant can (1) identify the points to be raised on appeal if less than a full reporter's transcript is designated, (2) indicate that the required deposit for a reporter's transcript or one of the permissible substitutes has been made, and (3) request a reporter's transcript in computer-readable format. Other clarifying changes would also be made.

To assist respondents in filing notices permitted under the rules relating to the record on appeal, this proposal recommends three new, optional forms: *Respondent's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-010), *Respondent's Notice Electing to Use an Appendix (Unlimited Civil Case)* (form APP-011), and *Respondent's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-110).

To make the time frame for delivering exhibits held by a party to the court clearer, this proposal would amend rules 8.122 and 8.832 to provide that such exhibits must be delivered to the clerk within 10 days after a notice designating the exhibit is served.

To address concerns about the burden placed on appellants when respondents elect to use an appendix, this proposal would amend rule 8.124 to provide that such an election can only be made in cases in which the appellant's fees for a clerk's transcript are not waived and would also add language facilitating the borrowing or copying of documents held by other parties for inclusion in an appendix.

To clarify the procedures for incorporating by reference materials from the record in another appeal into a clerk's or reporter's transcript or an appendix or for copying such materials into the record, this proposal would amend rules 8.124 and 8.147 to: (1) clarify how the requesting party must identify the parts of any prior appellate record he or she wants incorporated by reference or copied into the current record; (2) require that the cover of the appendix or the clerk's or reporter's transcript include a notice of any

incorporated record; (3) require the designating party, on request of the reviewing court or any party, to make the materials to be incorporated by reference or copied into the clerk's transcript available to the court or another party; (4) limit the copying of prior records to material from a prior clerk's transcript or other record of documents from the trial court proceeding; (4) clarify that the estimated cost of copying records must be included in the overall estimate for preparing the clerk's transcript; and (5) provide that portions of the record from a prior appeal copied into a clerk's transcript are to be placed in a separate section at the end of the transcript and identified in a separate section at the end of the indexes.

This proposal would fill a gap in the appellate division rules by amending rules 8.864 and 8.915 to provide that if the appellant in a misdemeanor or infraction proceeding does not timely file the required election concerning the record, the trial court clerk must notify the appellant that the election must be filed within 15 days after the notice was sent and that failure to comply will result in the appeal proceeding without a record of the oral proceedings.

To reduce the need for augmentation requests, this proposal would amend rules 8.320(b) and 8.861 to add certain court-ordered diagnostic and psychological reports to the documents that are automatically included in the clerk's transcript in criminal appeals when the defendant is the appellant. To ensure the appropriate confidentiality of both probation reports and court-ordered diagnostic reports, this proposal would also amend rule 8.336 to provide that these reports are to be included only in the copies of the record sent to the reviewing court and appellate counsel for the People and the defendant who is the subject of the report and would amend rule 8.862, relating to the preparation of clerk's transcripts in misdemeanor appeals, to add similar provisions.

To clarify that the procedures in rule 8.160 regarding sealed records apply in all appeals and writ proceedings, this proposal would renumber this rule as rule 8.46 and move it to the chapter of the appellate rules containing general provisions. It would also add new rule 8.819 indicating that rule 8.46 governs sealed records in the appellate division.

#### Alternative Actions Considered

The committee considered, but ultimately decided against, recommending alternative amendments to rule 8.124 and an alternative version of *Respondent's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-010).

#### Comments From Interested Parties

These proposed amendments were circulated as part of the spring 2009 comment cycle. Fourteen individuals or organizations submitted comments on this proposal. Five commentators agreed with the proposal, three agreed with the proposal if modified, two disagreed with the proposal, and four did not indicate their position on the proposal as a whole but provided comments on specific aspects of the proposal. The committee made several changes in the proposed rule amendments and forms in response to these public comments. The full text of the comments received and the committee's responses are

attached beginning on page 46.

#### Implementation Requirements and Costs

There may be some costs to the courts and form publishers associated with revising forms APP-003 and APP-103. However, the delayed effective date of July 1, 2010 for these revisions should allow courts sufficient time to use up any existing stockpiles of these forms.

Amending rules 8.124 and 8.147 to require that parties more clearly identify materials to be incorporated by reference in the record on appeal and also that the cover of an appendix or clerk's transcript clearly indicate when a record from another appeal has been incorporated by reference should reduce delays in the appellate courts associated with such incorporated materials. Amending rule 8.124 to provide that a party preparing an appendix may seek the reviewing court's assistance in obtaining documents held by another party may increase the workload of Court of Appeal staff, but the committee believes that any increase will be small.

Amending rules 8.320(b) and 8.861 to automatically include certain court-ordered diagnostic or psychological reports in the clerk's transcript when the defendant is the appellant should reduce the workload of the trial and reviewing courts and of appointed appellate counsel associated with requests to augment the record on appeal to include these reports.

Attachments



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(Action Required)

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Issue Statement

*Forms for designating the record in civil cases*

The *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) and *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) do not currently include spaces for an appellant to provide certain information required or allowed to be in a record designation by statute or rule, such as a request for a computer-readable copy of a reporter's transcript or a list of the points to be raised on appeal if the appellant designates a reporter's transcript with less than all of the testimony. In addition, there is no Judicial Council form that a respondent can use to file a notice designating additional documents or proceedings to be included in a clerk's or reporter's transcript or to elect to use an appendix rather than a clerk's transcript.

*Appendixes*

Under rule 8.124, a respondent in an appeal in an unlimited civil case may elect that an appendix, rather than a clerk's transcript, be used as the record of the documents filed in a case. Preparing an appendix instead of using a clerk's transcript may place additional burdens on the appellant, however, particularly an indigent appellant.

*Records from other appeals incorporated by reference or copied into the record*

Rules 8.124 and 8.147 permit records from another appeal to be incorporated by reference in an appendix or in a clerk's or reporter's transcript and rule 8.147 also allows the record from a prior appeal to be copied into the current record on appeal. Currently,

there is no easy way for the reviewing court to know that records from other appeals have been incorporated by reference, which may cause delay in obtaining these records. In addition, the procedures for identifying records to be incorporated by reference or copied into the current record or for obtaining estimates for the cost of copying parts of the record from a prior appeal into the current record are not clearly spelled out.

#### *Election regarding the oral proceedings in misdemeanor and infraction appeals*

Rules 8.864 and 8.915 require appellants in misdemeanor and infraction cases to file an election with the court indicating whether they want a record of the oral proceedings in the trial court and, if so, what form of the record they elect to use. Currently, the rules do not indicate what the consequences are if an appellant does not timely file this election.

#### *Clerk's transcripts in criminal appeals*

Rules 8.320(b) and 8.861 list the documents that must be included in a clerk's transcript in a felony and a misdemeanor appeal, respectively. Currently, the documents listed in these rules do not include certain court-ordered diagnostic or psychological reports so parties must request that the record be augmented if they want these records included in the clerk's transcript. In addition, these rules do not appropriately address the confidentiality of probation reports that are included in a clerk's transcript.

#### *Sealed records*

Rule 8.160 addresses sealed records and records proposed to be sealed in both appeals and original proceedings in the Supreme Court and Courts of Appeal. Because this rule is located in the chapter of the rules regarding appeals in unlimited civil cases, it currently is not clear that this rule applies in felony appeals and in appellate division proceedings.

### Rationale for Recommendation

#### *Forms for appellants to designate the record in civil cases*

The *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) and *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) are optional forms that appellants in unlimited and limited civil cases, respectively, can use to designate the record on appeal in a civil case, including a reporter's transcript. Rules 8.130(a)(2) and 8.834(a)(2), which relate to the designation of reporter's transcripts in unlimited and limited civil cases, respectively, both require that if the appellant designates less than all of the testimony to be included in a reporter's transcript, the notice designating the transcript must state the points to be raised on appeal. Currently, however, neither APP-003 nor APP-103 include spaces where the appellant can identify these points. This proposal would revise both of these forms to add space for this purpose.

Rules 8.130(b) and 8.834(b), which relate to the deposits for reporter's transcripts in unlimited and limited civil cases, respectively, require appellants to deposit the approximate cost of preparing the reporter's transcript or to provide a designated substitute for this deposit. Form APP-003 does not currently include spaces where an

appellant can indicate that the required deposit or one of the permissible substitutes has been made. Form APP-103 does not currently reflect the fact that an appellant can provide a reporter's written waiver of the deposit instead of a deposit. This proposal would revise form APP-003 to include spaces where the appellant can indicate whether he or she has deposited the cost of the reporter's transcript or one of the substitutes permitted under rule 8.130(b) and would revise form APP-103 to indicate that an appellant can provide a reporter's written waiver of the deposit for a reporter's transcript instead of a deposit.

Code of Civil Procedure section 271 provides that parties can request either their copy of a reporter's transcript or a second copy of a reporter's transcript in computer-readable format.<sup>1</sup> Currently, form APP-003 includes a space that appellants can use to request their copy of the reporter's transcript in computer-readable format, but does not provide space for appellants to request a second copy of the transcript in this format. Form APP-103 does not currently include any spaces for requesting a reporter's transcript in computer-readable format. This proposal would revise form APP-003 to provide check boxes that appellants could use to request their copy of the transcript in paper or computer-readable format or to request both paper and computer-readable copies of the transcript. This proposal would also revise form APP-103 to include spaces for similar requests in limited civil appeals.

Current item 6 on form APP-003 is used for requesting that a record of an administrative proceeding be transmitted to the reviewing court under rule 8.123. This item is presently located at the bottom of a page that generally addresses designation of a clerk's transcript. To clarify that a request to transmit an administrative record is separate from the designation of the clerk's transcript, this proposal would revise form APP-003 to move the item relating to the administrative record to the top of the page under a new, separate heading. Check boxes would also be added to this item and to current items 5 and 6 on form APP-003.

Currently, in different places on form APP-003, the court that issued the decision that is being appealed is referred to as the "superior court" or the "trial court." To make the language of this form more consistent both internally and with the language used on other forms relating to appeals in unlimited civil cases, all of the references to the "trial court" would be replaced with references to the "superior court." To make the title of forms APP-103 and APP-003, the title of form APP-103 would be revised to read "Appellant's Notice Designating Record on Appeal." Other nonsubstantive formatting changes would also be made to forms APP-003 and APP-103.

*Forms for respondents to make additional record designations in civil cases*

If an appellant in a civil case designates a clerk's transcript, under rules 8.122(a)(2) and 8.832(b), relating to unlimited and limited civil cases, respectively, the respondent may

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<sup>1</sup> Gov. Code §§69950(b) and 69954(b) also address, respectively, the fees for a "copy" of a transcript and for a "second copy" of a transcript in computer-readable format.

file a notice designating additional documents to be included in the clerk's transcript. Similarly, if an appellant in a civil case designates a reporter's transcript, under rules 8.130(a)(3) and 8.834(a)(3), the respondent may file a notice designating additional proceedings to be included in that transcript. In addition, rule 8.124(a) allows a respondent in an appeal to the Court of Appeal to file a notice electing to use an appendix in lieu of a clerk's transcript. Currently, however, there is no Judicial Council form that a respondent can use to file such notices. This proposal includes new, optional *Respondent's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-010), *Respondent's Notice Electing to Use an Appendix (Unlimited Civil Case)* (form APP-011), and *Respondent's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-110) that can be used to file these notices.

#### *Exhibits returned to a party*

Rules 8.122 and 8.832, relating to clerk's transcripts in unlimited and limited civil cases, respectively, allow parties to designate exhibits to be included in the clerk's transcript. These rules currently provide that if an exhibit was returned to a party by the trial court, that party must "promptly" deliver the exhibit to the trial court clerk if it is designated for inclusion in the clerk's transcript. To make the time frame for delivery of such exhibits clearer, this proposal would instead provide that such exhibits must be delivered to the clerk within 10 days after a notice designating the exhibit is served.

#### *Appendixes*

As a general rule, in a civil appeal, the appellant designates the form of the record that is used. As noted above, however, rule 8.124 allows a respondent in an appeal in an unlimited civil case to elect that an appendix, rather than a clerk's transcript, be used as the record of the documents filed in a case. Because appendixes are prepared by the parties, not the trial court clerk, a respondent's election to use an appendix may place additional burdens on the appellant to gather, organize, and copy necessary documents. In addition, unlike the costs associated with preparing a clerk's transcript, which can be waived by the trial court, the costs of preparing an appendix are borne by the parties.

This proposal would make two changes in rule 8.124 to address concerns about the burden placed on appellants when a respondent makes an election to use an appendix. First, it would provide that such an election can only be made in cases in which the appellant's fees for a clerk's transcript are not waived.<sup>2</sup> This would protect indigent appellants from having to bear the costs of preparing an appendix. Second, the proposal would broaden the provisions in 8.124(c) that currently address how a party preparing an appendix can borrow or copy exhibits held by another party to include them in the appendix. Under this proposal, 8.124(c) would be amended to encompass any document held by another party. This would address situations in which an appellant does not have a copy of a document necessary for the appendix. In addition, because paragraph (a)(1) in

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<sup>2</sup> These fees may be waived by the trial court if the appellant is granted a fee waiver during the trial court proceedings or, if that fee waiver has expired or the appellant was not granted a fee waiver during the trial court proceedings, the trial court can waive these fees at the time of the appeal.

rule 8.124 is currently very long and complicated, this proposal would break this paragraph up into several shorter subparagraphs that should be easier to understand.

*Records from other appeals incorporated by reference or copied into the record*

Rule 8.147(b), part of the rules on civil appeals in the Court of Appeal, addresses records in cases in which there is a later appeal. This rule currently permits parties in these appeals to incorporate by reference in a clerk's or reporter's transcript or copy into the record parts of the record from a prior appeal in the same case. Subdivision (b)(1) provides that, "in an appeal under rule 8.122<sup>3</sup> or 8.130,<sup>4</sup>" a party may incorporate by reference parts of a record in a prior appeal by specifying those parts in its designation of the record. Subdivision (b)(2) provides that a party who wants parts of a prior record to be copied into the later record must serve and file a notice specifying those parts and must deposit the estimated copying cost with the clerk.

In a more indirect way, rule 8.124, which addresses the use of appendixes in lieu of clerk's transcripts in unlimited civil cases, similarly permits the incorporation by reference of other appellate records in an appendix. Subdivision (b)(2) provides that an appendix must not incorporate any document by reference "except the record on appeal in another case pending in the reviewing court or the record in a prior appeal in the same case." Thus, under this exception, an appendix may incorporate by reference the record from such other appeals.

There are some challenges associated with these procedures, however. First, without some clear notice on the cover of the record, the reviewing court may not immediately recognize that records from other appeals have been incorporated by reference, which may cause delay in obtaining these records. Second, the rules do not currently clearly spell out how a party should identify records that he or she wants incorporated by reference or copied into the current record, the procedures for obtaining estimates for the cost of copying parts of another record, nor how copied records should be identified in the clerk's transcript. In addition, courts and other parties might not have ready access to records from another appeal that are incorporated by reference or that a party has asked to be copied into the record on appeal.

This proposal would amend rule 8.147 to: (1) clarify its general application to appeals in which a clerk's or reporter's transcript is being used; (2) limit the procedure for copying material into the new record to material from a prior clerk's transcript or other record of documents from the trial court proceeding, (this will avoid issues relating to copying reporter's transcripts); (3) clarify that a request to copy parts of a clerk's transcript or other record of documents from a prior appeal into the new record must be made as part of the designation of the clerk's transcript; (4) clarify that the estimated cost of copying these records must be included in the overall estimate for preparing the clerk's transcript; and (5) provide that portions of the record from a prior appeal copied into a clerk's

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<sup>3</sup> This rule addresses clerk's transcripts.

<sup>4</sup> This rule addresses reporter's transcripts.

transcript are to be placed in a separate section at the end of the transcript and identified in a separate section at the end of the indexes. It would also amend rule 8.124 to more clearly and affirmatively state that the record in another appeal can be incorporated by reference in an appendix. In addition, both rules 8.124 and 8.147 would be amended to: (1) indicate how the requesting party must identify the parts of any prior appellate record he or she wants incorporated by reference or copied into the current record; (2) require that the cover of the appendix or the clerk's or reporter's transcript include a notice of any incorporated record, which will alert the reviewing court clerk that the records in those other appeals should be retained and made accessible for the appeal; and (3) require that the designating party, on request of the reviewing court or any party, make the materials to be incorporated by reference or copied into the clerk's transcript available to the court or another party.

*Election regarding the oral proceedings in misdemeanor and infraction appeals*

Rules 8.864 and 8.915 require appellants in misdemeanor and infraction cases to file an election with the court indicating whether they want a record of the oral proceedings and, if so, what form of the record they elect to use. Currently, these rules do not indicate what the consequences are if an appellant does not timely file the required election. This proposal would fill that gap by providing that if the appellant does not timely file an election, the trial court clerk must notify the appellant that the election must be filed within 15 days after the notice was sent and that failure to comply will result in the appeal proceeding without a record of the oral proceedings. This proposed provision is similar to other default notices required under the appellate rules, which give the party time within which to cure the default.

*Clerk's transcripts in criminal appeals*

Rules 8.320(b) and 8.861 list the documents that must be included in a clerk's transcript in a felony and a misdemeanor appeal, respectively. Currently, the documents listed in these rules do not include court-ordered diagnostic reports under Penal Code section 1203.03<sup>5</sup> or psychological reports under Penal Code section 1369. If any such reports were ordered during the trial court proceedings, they are likely to be needed in the record on appeal. Because these documents are not automatically included in the clerk's transcript, counsel must currently make and the court must consider requests to augment the record on appeal in order to include these reports. These requests take time and resources for both the litigants and the courts. This proposal would eliminate the need for such augmentation requests by adding these reports to the documents that are automatically included in the clerk's transcript when the defendant is the appellant.

Under rule 8.320(b)(13)(D) and 8.861(12)(D), probation reports are required to be included in the clerk's transcript when the defendant appeals in a felony or misdemeanor case. Under Penal Code section 1203.05, a probation report is open to public inspection for only 60 days from the date judgment is pronounced or probation is granted, whichever is earlier. After that time, the report is not open to the public or other

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<sup>5</sup> This section applies only in felony cases.

defendants in a case absent a court order. However, rule 8.336 currently provides that a probation officer's report must be included in all copies of the appellate record. The release of court-ordered diagnostic reports under Penal Code section 1203.3 is similarly limited by statute.<sup>6</sup> To ensure the appropriate confidentiality of these reports, this proposal would amend rule 8.336 to provide that probation officers' reports and court-ordered diagnostic reports are to be included only in the copies of the record sent to the reviewing court and appellate counsel for the People and the defendant who is the subject of the report. In addition, this proposal would add a new subdivision to rule 8.862, relating to the preparation of clerk's transcripts in misdemeanor appeals, containing requirements similar to those in rule 8.336.

### *Sealed records*

Rule 8.160 addresses sealed records and records proposed to be sealed in both appeals and original proceedings. When this rule was originally adopted, it was intended to apply to sealed records in both civil and criminal proceedings. Currently, however, this rule is located in chapter 2 of the rules for the Supreme Court and Courts of Appeal, which covers civil appeals. Rule 8.486, which addresses petitions for writs of mandate, certiorari, and prohibition, specifically provides that rule 8.160 applies if a party seeks to lodge or file a sealed record or to unseal a record in such a writ proceeding. There is currently no similar provision concerning the application of rule 8.160 in criminal appeals. To clarify that the procedures for sealing and unsealing records apply in all appeals and writ proceedings in the Supreme Court and Courts of Appeal, this proposal would move rule 8.160 to chapter 1 of the rules for the Supreme Court and Courts of Appeal, which covers general provisions, and renumber it as rule 8.46. New rule 8.819 would also be added to the appellate division rules indicating that rule 8.46 governs sealed records in the appellate division.

### Alternative Actions Considered

The committee considered proposing that rule 2.1040, relating to sound or sound-and-video recordings offered into evidence in the trial court, be amended. The amendments considered by the committee included eliminating the trial court judge's discretion to accept a recording without an accompanying transcript and providing that either a transcript must be provided by the party who is offering the recording into evidence or the court reporter must take down the recording when it is played in court and include it in the reporter's transcript. Based on a request by the council's Rules and Projects Committee, the Appellate Advisory Committee withdrew the amendments to rule 2.1040 from this proposal and will consider other possible amendments to this rule during the next committee year.

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<sup>6</sup> Penal Code section 1203.03(b) provides, in relevant part, "copies of the report shall be served only upon the defendant or his counsel, the probation officer, and the prosecuting attorney by the court receiving such report. After delivery of the copies of the report, the information contained therein shall not be disclosed to anyone else without the consent of the defendant. After disposition of the case, all copies of the report, except the one delivered to the defendant or his counsel, shall be filed in a sealed file and shall be available thereafter only to the defendant or his counsel, the prosecuting attorney, the court, the probation officer, or the Department of Corrections."

The committee also considered proposing that the rules on clerk's transcripts in civil appeals be amended to require that the transcript of any electronic recording offered into evidence be included in the clerk's transcript and, in fact, circulated such proposed amendments for comment last year. Based on the comments received on that earlier proposal, however, the committee concluded that it was preferable not to require that these be included in the clerk's transcript in all civil cases, as there may be some appeals in which this material is not relevant.

The committee considered proposing that rule 8.124, relating to the use of an appendix in lieu of a clerk's transcript, be amended to eliminate the current provision allowing a respondent in an appeal in an unlimited civil case to elect that an appendix be used as the record of the documents filed in a case. The State Bar's Committee on Appellate Courts suggested this change in the comments it submitted on the proposal circulated for comment by the committee last year. The Appellate Advisory Committee decided not to recommend this change, however. The committee concluded that there are several potential benefits to using an appendix rather than a clerk's transcript. Often, an appendix can be prepared more quickly than a clerk's transcript, thereby reducing delay in appellate proceedings, and, although parties pay for the costs of preparing clerk's transcripts, less trial court clerk time and resources are needed in conjunction with preparing an appendix than with preparing a clerk's transcript. With respect to concerns about the burdens imposed on the appellant when a respondent makes an election to use an appendix, most of the attorney members of the committee indicated that, in their experience, parties typically cooperate well and are willing to help each other in preparing an appendix. Ultimately, the committee concluded that other measures could be recommended to protect appellants from the burdens associated with preparing an appendix without eliminating a respondent's ability to elect the use of an appendix.

The committee considered proposing a single form that respondents in unlimited civil appeals could use to either counter-designate additional documents for inclusion in the clerk's transcript or elect to use an appendix and, in fact, the proposal that was circulated for public comment included such a dual-purpose form. However, because there are different time frames for filing a respondent's election to use an appendix (10 days after the filing of the notice of appeal) and a counter-designation (10 days after the appellant files its designation of the record), the committee ultimately decided that it would be clearer and would avoid confusion if there were separate forms for respondents' counter-designation and election to use an appendix.

#### Comments From Interested Parties

These proposed rule amendments and forms were circulated as part of the spring 2009 comment cycle. Fourteen individuals or organizations submitted comments on this proposal. Five commentators agreed with the proposal, three agreed with the proposal if modified, two disagreed with the proposal, and four did not indicate their position on the proposal as a whole but provided comments on specific aspects of the proposal. The full text of the comments received and the committee's responses are attached beginning on page 46.

One of the two commentators who expressed disagreement with the proposal was concerned about only one provision in the proposal: the proposed amendments to rule 8.336(g), which, as circulated, referred to including a probation report in the copy of the record sent to “the defendant.” The commentator was concerned that this amendment implied counsel for the defendant would not receive the record on appeal. In response to this and another comment, the committee revised the proposed amendment to rule 8.366(g) to refer to the copy of the record sent to the defendant’s “appellate counsel.” This is consistent with the language of 8.366(f), which generally provides that the record is sent to the defendant’s appellate counsel.

Several other comments on the proposed amendment to rule 8.366 also suggested that this rule should address the appropriate handling of court-ordered diagnostic reports in clerk’s transcripts. As circulated for public comment, the proposed amendment to rule 8.366 addressed only how probation reports included in a clerk’s transcript are to be handled. Two commentators specifically suggested that, like probation reports, court-ordered diagnostic reports under Penal Code section 1203.03 should be included only in the copies of the record sent to the reviewing court and appellate counsel for the People and the defendant who is the subject of the report. Based on these comments and the clear statutory confidentiality of section 1203.03 reports, the committee revised the proposal to provide that court-ordered diagnostic reports are to be handled in the same way as probation reports in a clerk’s transcript.

The other commentator that expressed disagreement with the proposal, the Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Working Group, raised concerns about potential impacts on the workload of court staff associated with (1) the proposed amendment to rule 8.124 allowing a party to request the reviewing court’s assistance in obtaining a document from another party for inclusion in an appendix, and (2) the proposed amendment to rule 8.147 relating to clerk’s estimates of the cost of copying material from a prior record into the current record. The committee does not believe that either of these proposed amendments will increase the workload of the trial courts. The procedure outlined in rule 8.124 for obtaining documents for an appendix does not involve the trial court. Since the parties are responsible for preparing appendixes under rule 8.124, the parties bear the initial burden of trying to obtain necessary documents from another party. If their efforts fail, rule 8.147 specifies that the parties are to request assistance from the reviewing court, not the trial court. With respect to rule 8.147, this rule already requires the trial court clerk to provide an estimate of the cost of copying material from a prior appellate record into the current record. The proposed amendments to this provision simply clarify that the estimate for this copying is to be incorporated into the clerk’s overall estimate for preparing the clerk’s transcript. For these reasons, the committee did not revise its proposal in response to this comment.

One other commentator provided input on another aspect of the proposed amendments to rule 8.147, relating to incorporating by reference materials from the record in a prior

appeal into the record for a current appeal. As circulated for public comment, the proposed amendments to rule 8.147 would have required that materials to be incorporated by reference be identified in a separate section at the end of both the transcript and the index. The commentator suggested that this would place an inappropriate burden on the trial court clerk to identify these materials in the clerk's transcript and that the responsibility for identifying the materials should be placed on the designating party. The committee agreed with this comment and modified its proposal to provide that the materials to be incorporated must be identified in the designation of the record. This change will not diminish the information the Court of Appeal receives about the materials incorporated by reference, as the party's notice designating the record is one of the documents that is required to be included in the clerk's transcript. The committee is recommending, however, that materials from another appeal that are copied into a clerk's transcript be identified in a separate section at the end of both the transcript and the indexes. The committee concluded that this would reduce the burden on the trial court clerk, because these materials would not need to be integrated with materials from the case on appeal, and would make it easier for users of the clerk's transcript, including the reviewing court, to identify these copied materials.

Several commentators also provided input on the proposed new *Respondent's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-010). One commentator suggested that the language on the form relating to requests for computer-readable copies of a reporter's transcript be revised to make it clearer whether the respondent was requesting only a computer-readable copy or both a computer-readable copy and a paper copy of the reporter's transcript. The committee agreed that this clarification would be helpful and revised the proposed form to incorporate check boxes for these options. The committee also revised its proposal to incorporate similar changes into the other record designation forms: *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003), *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103), and *Respondent's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-110).

#### Implementation Requirements and Costs

There may be some costs to the courts and form publishers associated with revising forms APP-003 and APP-103. However, the delayed effective date of July 1, 2010 for these revisions should allow courts sufficient time to use up any existing stockpiles of these forms.

Amending rules 8.124 and 8.147 to require that parties more clearly identify materials to be incorporated by reference in the record on appeal and also that the cover of an appendix or clerk's transcript clearly indicate when a record from another appeal has been incorporated by reference should reduce delays in the appellate courts associated with such incorporated materials. Amending rule 8.124 to provide that a party preparing an appendix may seek the reviewing court's assistance in obtaining documents held by another party may increase the workload of Court of Appeal staff, but the committee believes that any increase will be small.

Amending rules 8.320(b) and 8.861 to automatically include certain court-ordered diagnostic or psychological reports in the clerk's transcript when the defendant is the appellant should reduce the workload of the trial and reviewing courts and of appointed appellate counsel associated with requests to augment the record on appeal to include these reports.

### Recommendation

The Appellate Advisory Committee recommends that the Judicial Council:

1. Effective January 1, 2010:

- a. Approve new optional forms, *Respondent's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-010), *Respondent's Notice Electing to Use an Appendix (Unlimited Civil Case)* (form APP-011), and *Respondent's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-110) to assist respondents in civil cases in making record designations permitted under the rules;
- b. Amend rules 8.122 and 8.832 to clarify the time frame for sending the trial court exhibits that have been designated for inclusion in a clerk's transcript by replacing the requirement that they be sent "promptly" with a requirement that they be sent within 10 days after they are designated;
- c. Amend rule 8.124 to address the burden on the appellant when a respondent elects to use an appendix by providing that respondents may only elect to use an appendix in cases in which the appellant's fees for the clerk's transcript have not been waived and by adding provisions to facilitate borrowing or copying of documents for an appendix;
- d. Amend rules 8.124 and 8.147 to provide additional guidance regarding incorporating by reference or copying records from another appeal, including indicating how parts of any record to be incorporated by reference or copied are to be identified and requiring that the cover of the appendix or the clerk's or reporter's transcript include a notice of any incorporated record;
- e. Amend rules 8.864 and 8.915 to fill a gap in these rules by specifying the consequences if the appellant does not timely file the required election concerning the record of the oral proceedings;
- f. Amend rules 8.320(b) and 8.861 to reduce the need for requests to augment the record by adding certain court-ordered diagnostic or psychological reports to the documents that are automatically included in the clerk's transcript when the defendant is the appellant;

- g. Amend rules 8.336(g) and 8.862 to clarify the appropriate handling of court-ordered diagnostic reports and probation reports in the clerk's transcript; and
  - h. Adopt new rule 8.819 and move rule 8.160 to chapter 1 of the appellate rules and renumber it as rule 8.46 to clarify that the procedures relating to sealed records apply in criminal as well as civil appeals and in appellate division proceedings.
2. Effective July 1, 2010 revise *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) and *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) to include spaces for additional information required or permitted by statute or rule and to make clarifying changes;

The text of the new and amended rules and new and revised forms is attached at pages 18-45.

Attachments



1 (A) ~~in the notice designating the record on appeal under rule 8.121, The~~  
2 appellant elects to use an appendix under this rule in the notice  
3 designating the record on appeal under rule 8.121; or  
4

5 (B) ~~if, within 10 days after the notice of appeal is filed, The respondent~~  
6 serves and files a notice in the superior court electing to use an appendix  
7 under this rule within 10 days after the notice of appeal is filed and no  
8 waiver of the fee for a clerk’s transcript is granted to the appellant, ~~this~~  
9 ~~rule governs unless the superior court orders otherwise on a motion~~  
10 ~~served and filed within 10 days after the notice of election is served.~~

11  
12 (2)–(3) \* \* \*

13  
14 **(b) Contents of appendix**

15  
16 (1) \* \* \*

17  
18 (2) An appendix may incorporate by reference all or part of the record on appeal in  
19 another case pending in the reviewing court or in a prior appeal in the same  
20 case.

21  
22 (A) The other appeal must be identified by its case name and number. If only  
23 part of a record is being incorporated by reference, that part must be  
24 identified by citation to the volume and page numbers of the record  
25 where it appears and either the title of the document or documents or the  
26 date of the oral proceedings to be incorporated. The parts of any record  
27 incorporated by reference must be identified both in the body of the  
28 appendix and in a separate section at the end of the index.

29  
30 (B) If the appendix incorporates by reference any such record, the cover of  
31 the appendix must prominently display the notice “Record in case  
32 number: \_\_\_\_ incorporated by reference,” identifying the number of the  
33 case from which the record is incorporated.

34  
35 (C) On request of the reviewing court or any party, the designating party  
36 must provide a copy of the materials incorporated by reference to the  
37 court or another party or lend them for copying as provided in (c).

38  
39 ~~(2)~~(3) An appendix must not:

40  
41 (A)–(C) \* \* \*

1 (D) Incorporate any document by reference except ~~the record on appeal in~~  
2 ~~another case pending in the reviewing court or the record in a prior~~  
3 ~~appeal in the same case~~ as provided in (2).  
4

5 ~~(3)(4)~~ \* \* \*

6  
7 ~~(4)(5)~~ \* \* \*

8  
9 ~~(5)(6)~~ \* \* \*

10  
11 (c) Document or exhibit held by other party  
12

13 If a party preparing an appendix wants it to contain a copy of a document or an  
14 exhibit in the possession of another party:  
15

16 (1) The party must first ask the party possessing the document or exhibit to  
17 provide a copy or lend it for copying. All parties should reasonably cooperate  
18 with such requests.  
19

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

27 (3) If the party possessing the document or exhibit sends it to the requesting party,  
28 that party must copy and return it to the possessing party within 10 days after  
29 receiving it.  
30

31 (4) If the party possessing the document or exhibit sends it to the reviewing court,  
32 that party must:  
33

34 (A) Accompany the document or exhibit with a copy of the notice served by  
35 the requesting party; and  
36

37 (B) Immediately notify the requesting party that it has sent the document or  
38 exhibit to the reviewing court.  
39

40 (5) On request, the reviewing court may return a document or an exhibit to the  
41 party that sent it. When the remittitur issues, the reviewing court must return  
42 all documents or exhibits to the party that sent them.  
43

1 (d)–(g) \* \* \*

2  
3 Advisory Committee Comment

4  
5 **Subdivision (a).** Under this provision either party may elect to have the appeal proceed by way of an  
6 appendix. ~~A respondent's timely election~~ If the appellant's fees for a clerk's transcript are not waived and  
7 the respondent timely elects to use an appendix, that election will govern unless the superior court orders  
8 otherwise. This election procedure differs from all other appellate rules governing designation of a record  
9 on appeal. In those rules, the appellant's designation, or the stipulation of the parties, determines the type  
10 of record on appeal. Before making this election, respondents should check whether the appellant has  
11 been granted a fee waiver that is still in effect. If the trial court has granted appellant a fee waiver for the  
12 clerk's transcript, or grants such a waiver after the notice of appeal is filed, respondent cannot elect to  
13 proceed by way of an appendix.

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

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

24  
25 In support of or opposition to pleadings or motions, the parties may have filed a number of lengthy  
26 documents in the proceedings in superior court, including, for example, declarations, memorandums, trial  
27 briefs, documentary exhibits (e.g., insurance policies, contracts, deeds), and photocopies of judicial  
28 opinions or other publications. Subdivision ~~(b)(2)(A)~~ (b)(3)(A) prohibits the inclusion of such documents  
29 in an appendix when they are not necessary for proper consideration of the issues raised in the appeal.  
30 Even if a document is otherwise includable in an appendix, the rule prohibits the inclusion of any  
31 substantial *portion* of the document that is not necessary for proper consideration of the issues raised in  
32 the appeal. The prohibition is intended to simplify and therefore expedite the preparation of the appendix,  
33 to reduce its cost to the parties, and to relieve the courts of the burden of reviewing a record containing  
34 redundant, irrelevant, or immaterial documents. The provision is adapted from rule 30-1.4 of the United  
35 States Circuit Rules (9th Cir.).

36  
37 Subdivision ~~(b)(2)(B)~~ (b)(3)(B) prohibits the inclusion in an appendix of transcripts of oral proceedings  
38 that may be made part of a reporter's transcript. (Compare rule 8.130(e)(3) [the reporter must not copy  
39 into the reporter's transcript any document includable in the clerk's transcript under rule 8.122].) The  
40 prohibition is intended to prevent a party filing an appendix from evading the requirements and  
41 safeguards imposed by rule 8.130 on the process of designating and preparing a reporter's transcript, or  
42 the requirements imposed by rule 8.144(d) on the use of daily or other transcripts instead of a reporter's  
43 transcript (i.e., renumbered pages, required indexes). In addition, if an appellant were to include in its  
44 appendix a transcript of less than all the proceedings, the respondent would not learn of any need to  
45 designate additional proceedings (under rule 8.130(a)(3)) until the appellant had served its appendix with  
46 its brief, when it would be too late to designate them. Note also that a party may file a certified transcript  
47 of designated proceedings instead of a deposit for the reporter's fee (rule 8.130(b)(3)).

48  
49 **Subdivision (d).** \* \* \*

1 **Subdivision (e).** Subdivision (e)(2) requires a joint appendix to be filed with the appellant’s opening  
2 brief. The provision is intended to improve the briefing process by enabling the appellant’s opening brief  
3 to include citations to the record. To provide for the case in which a respondent concludes in light of the  
4 appellant’s opening brief that the joint appendix should have included additional documents, subdivision  
5 ~~(b)(4)~~(b)(5) permits such a respondent to present in an appendix filed with its respondent’s brief (see  
6 subd. (e)(3)) any document that could have been included in the joint appendix.  
7

8 Under subdivision (e)(2)–(4) an appendix is required to be filed “with” the associated brief. This  
9 provision is intended to clarify that an extension of a briefing period ipso facto extends the filing period of  
10 an appendix associated with the brief.  
11

12 **Subdivision (g).** \* \* \*  
13  
14

15 **Rule 8.147. Record in multiple or later appeals in same case**  
16

17 (a) \* \* \*  
18

19 (b) **Later appeal**  
20

21 In an appeal in which the parties are using either a clerk’s transcript under rule  
22 8.122 or a reporter’s transcript under rule 8.130:  
23

24 (1) A party wanting to incorporate by reference all or parts of a record in a prior  
25 appeal in the same case must specify those parts in its designation of the  
26 record, ~~with page numbers if available.~~  
27

28 (A) The prior appeal must be identified by its case name and number. If only  
29 part of a record is being incorporated by reference, that part must be  
30 identified by citation to the volume and page numbers of the record where  
31 it appears and either the title of the document or documents or the date of  
32 the oral proceedings to be incorporated. The parts of any record  
33 incorporated by reference must be identified in a separate section at the  
34 end of the designation of the record.  
35

36 (B) If the transcript incorporates by reference any such record, the cover of  
37 the transcript must prominently display the notice “Record in case  
38 number: \_\_\_ incorporated by reference,” identifying the number of the  
39 case from which the record is incorporated.  
40

41 (C) On request of the reviewing court or any party, the designating party must  
42 provide a copy of the materials incorporated by reference to the reviewing  
43 court or another party or lend them as provided in rule 8.153.  
44

1 (2) A party wanting any ~~incorporated~~ parts of a ~~prior record~~ clerk's transcript or  
2 other record of the written documents from a prior appeal in the same case to  
3 be copied into the clerk's transcript in a later ~~record~~ appeal must serve and file  
4 a notice specifying specify those parts in its designation of the record as  
5 provided in (1). and ~~must deposit~~ The estimated ~~copying~~ cost of copying these  
6 materials must be included in the clerk's estimate of the cost of preparing the  
7 transcript under rule 8.122(c)(1) within 10 days after the clerk mails notice of  
8 that cost. On request of the trial court clerk, the designating party must provide  
9 a copy of or lend the materials to be copied to the clerk. The parts of any  
10 record from a prior appeal that are copied into a clerk's transcript under this  
11 rule must be placed in a separate section at the end of the transcript and  
12 identified in a separate section at the end of the indexes.  
13

### Chapter 3. Criminal Appeals

#### Article 2. Record on Appeal

##### Rule 8.320. Normal record; exhibits

21  
22 (a) \* \* \*

23  
24 (b) **Clerk's transcript**

25  
26 The clerk's transcript must contain:

27  
28 (1)–(12) \* \* \*

29  
30 (13) And, if the appellant is the defendant:

31  
32 (A) Any written defense motion denied in whole or in part, with supporting  
33 and opposing memoranda and attachments;

34  
35 (B) If related to a motion under (A), any search warrant and return and the  
36 reporter's transcript of any preliminary examination or grand jury  
37 hearing;

38  
39 (C) Any document admitted in evidence to prove a prior juvenile  
40 adjudication, criminal conviction, or prison term. If a record was closed to  
41 public inspection in the trial court because it is required to be kept  
42 confidential by law, it must remain closed to public inspection in the  
43 reviewing court unless that court orders otherwise; ~~and~~

1  
2 (D) The probation officer's report; and

3  
4 (E) Any court-ordered diagnostic or psychological report required under  
5 Penal Code section 1203.03(b) or 1369.

6  
7 (c)–(f) \* \* \*

8  
9 (g) Form of record

10  
11 The clerk's and reporter's transcripts must comply with rules 8.144, 8.328, and  
12 8.336.

13  
14 Advisory Committee Comment

15  
16 Subdivision (b)(13). Rule 8.336(g) addresses the appropriate handling of probation officers' reports and  
17 court-ordered diagnostic reports that must be included in the clerk's transcript under (b)(13)(D) or (E).

18  
19  
20 **Rule 8.336. Preparing, certifying, and sending the record**

21  
22 (a)–(f) \* \* \*

23  
24 (g) Probation officer's reports and **court-ordered diagnostic reports**

25  
26 ~~The~~ A probation officer's report or court-ordered diagnostic report included in the  
27 clerk's transcript under rule 8.320(b)(13)(D) or (E) must appear in ~~all~~ only the  
28 copies of the appellate record that are sent to the reviewing court, to appellate  
29 counsel for the People, and to appellate counsel for the defendant who was the  
30 subject of the report. The reviewing court's copy of the report must be placed in a  
31 sealed envelope marked "CONFIDENTIAL—MAY NOT BE EXAMINED  
32 WITHOUT COURT ORDER—~~PROBATION OFFICER REPORT.~~"

33  
34 (h) \* \* \*

1                   **Division 2. Rules Relating to the Superior Court Appellate Division**

2  
3                   **Chapter 1. General Rules Applicable to Appellate Division Proceedings**

4  
5  
6                   **Rule 8.819. Sealed records**

7  
8                   Rule 8.46 governs records sealed by court order under rules 2.550–2.551 and records  
9                   proposed to be sealed in the appellate division.

10  
11  
12                   **Chapter 2. Appeals and Records in Limited Civil Cases**

13  
14                   **Article 2. Record in Civil Appeals**

15  
16                   **Rule 8.832. Clerk’s transcript**

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

19  
20                   **(b) Notice of designation**

21  
22                   (1)–(2)

23  
24                   (3) All exhibits admitted in evidence, refused, or lodged are deemed part of the  
25                   record, but a party wanting an exhibit included in the transcript must specify  
26                   that exhibit by number or letter in its designation. If the trial court has returned  
27                   a designated exhibit to a party, the party in possession of the exhibit must  
28                   promptly deliver it to the trial court clerk within 10 days after the notice  
29                   designating the exhibit is served.

30  
31                   **(c)–(d) \* \* \***

32  
33  
34                   **Chapter 3. Appeals and Records in Misdemeanor Cases**

35  
36                   **Article 2. Record in Misdemeanor Appeals**

37  
38  
39                   **Rule 8.861. Contents of clerk’s transcript**

40  
41                   Except in appeals covered by rule 8.867 or when the parties have filed a stipulation under  
42                   rule 8.860(b) that any of these items is not required for proper determination of the  
43                   appeal, the clerk’s transcript must contain:

1  
2 (1)–(11) \* \* \*

3  
4 (12) If the appellant is the defendant:

5  
6 (A) Any written defense motion denied in whole or in part, with supporting and  
7 opposing memoranda and attachments;

8  
9 (B) If related to a motion under (A), any search warrant and return;

10  
11 (C) Any document admitted in evidence to prove a prior juvenile adjudication,  
12 criminal conviction, or prison term. If a record was closed to public  
13 inspection in the trial court because it is required to be kept confidential by  
14 law, it must remain closed to public inspection in the appellate division  
15 unless that court orders otherwise; ~~and~~

16  
17 (D) The probation officer's report; and

18  
19 (E) Any court-ordered psychological report required under Penal Code section  
20 1369.

21  
22 Advisory Committee Comment

23  
24 Rule 8.862(c) addresses the appropriate handling of probation officers' reports that must be included in  
25 the clerk's transcript under (12)(D).

26  
27  
28 **Rule 8.862 Preparation of clerk's transcript**

29  
30 (a)–(b) \* \* \*

31  
32 (c) Probation officer's reports

33  
34 A probation officer's report included in the clerk's transcript under rule  
35 8.861(12)(D) must appear in only the copies of the appellate record that are sent to  
36 the reviewing court, to appellate counsel for the People, and to appellate counsel for  
37 the defendant who was the subject of the report or to the defendant if he or she is  
38 self-represented. The reviewing court's copy of the report must be placed in a  
39 sealed envelope marked "CONFIDENTIAL—MAY NOT BE EXAMINED  
40 WITHOUT COURT ORDER—PROBATION OFFICER REPORT."

41  
42 (e)(d) \* \* \*

1 ~~(d)~~(e) \* \* \*

2

3

4 Rule 8.864. Record of oral proceedings

5

6 (a)–(b) \* \* \*

7

8 (c) Failure to file election

9

10 If the appellant does not file an election within the time specified in (b), the trial  
11 court clerk must promptly notify the appellant by mail that the election must be  
12 filed within 15 days after the notice is mailed and that failure to comply will result  
13 in the appeal proceeding without a record of the oral proceedings.

14

15 ~~(e)~~(d) \* \* \*

16

17

18 Chapter 5. Appeals in Infraction Cases

19

20 Article 2. Record in Infraction Appeals

21

22

23 Rule 8.915. Record of oral proceedings

24

25 (a)–(b) \* \* \*

26

27 (c) Failure to file election

28

29 If the appellant does not file an election within the time specified in (b), the trial  
30 court clerk must promptly notify the appellant by mail that the election must be  
31 filed within 15 days after the notice is mailed and that failure to comply will result  
32 in the appeal proceeding without a record of the oral proceedings.

33

34 ~~(e)~~(d) \* \* \*

35

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

## 1. RECORD OF THE DOCUMENTS FILED IN THE SUPERIOR COURT

I elect to use the following method of providing the Court of Appeal with a record of the documents filed in the superior (check a, b, c, d, or e and fill in any required information):

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

## 2. RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT

I elect to proceed:

- a.  WITHOUT a record of the oral proceedings in the superior court. I understand that without a record of the oral proceedings in the superior court, the Court of Appeal will not be able to consider what was said during those proceedings in determining whether an error was made in the superior court proceedings.

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

- b.  WITH the following record of the oral proceedings in the superior court:
- (1)  A reporter's transcript under rule 8.130. *(You must fill out the reporter's transcript section on page 3 of this form.)*  
I have *(check all that apply)*:
    - (a)  Deposited the approximate cost of transcribing the designated proceedings with this notice as provided in rule 8.130(b)(1).
    - (b)  Attached a copy of a Transcript Reimbursement Fund application filed under rule 8.130(c)(1).
    - (c)  Attached the reporter's written waiver of a deposit for *(check either (i) or (ii))*:
      - (i)  all of the designated proceedings.
      - (ii)  part of the designated proceedings.
    - (d)  Attached a certified transcript under rule 8.130(b)(3).
  - (2)  An agreed statement. *(Check and complete either (a) or (b) below.)*
    - (a)  I have attached an agreed statement to this notice.
    - (b)  All the parties have agreed in writing (stipulated) to try to agree on a statement. *(You must attach a copy of this stipulation to this notice.)* I understand that, within 40 days after I file the notice of appeal, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.
  - (3)  A settled statement under rule 8.137. *(You must attach the motion required under rule 8.137(a) to this form.)*

**3. RECORD OF AN ADMINISTRATIVE PROCEEDING TO BE TRANSMITTED TO THE REVIEWING COURT**

I request that the clerk transmit to the reviewing court under rule 8.123 the record of the following administrative proceeding that was admitted into evidence, refused, or lodged in the superior court *(give the title and date or dates of the administrative proceeding)*:

<b>Title of Administrative Proceeding</b>	<b>Date or Dates</b>
---	----------------------

**4. NOTICE DESIGNATING CLERK'S TRANSCRIPT**

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

a. **Required documents.** The clerk will automatically include the following items in the clerk's transcript, but you must provide the date each document was filed or, if that is not available, the date the document was signed.

Document Title and Description	Date of Filing
(1) Notice of appeal	
(2) Notice designating record on appeal <i>(this document)</i>	
(3) Judgment or order appealed from	
(4) Notice of entry of judgment <i>(if any)</i>	
(5) Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order <i>(if any)</i>	
(6) Ruling on one or more of the items listed in (5).	
(7) Register of actions or docket <i>(if any)</i>	

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

**4. NOTICE DESIGNATING CLERK'S TRANSCRIPT**

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

I request that the clerk include the following documents from the superior court proceeding in the transcript. *(You must identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed*

Document Title and Description	Date of Filing
(8)	
(9)	
(10)	
(11)	
(12)	

See additional pages.

c. **Exhibits to be included in clerk's transcript.**

I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the superior court *(for each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit. Indicate whether or not the court admitted the exhibit into evidence):*

Exhibit Number	Description	Admitted (Yes/No)
(1)		
(2)		
(3)		
(4)		
(5)		

See additional pages.

**5. NOTICE DESIGNATING REPORTER'S TRANSCRIPT**

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

a. I request that the reporters provide *(check one)*:

- (1)  My copy of the reporter's transcript in paper format.
- (2)  My copy of the reporter's transcript in computer-readable format.
- (3)  My copy of the reporter's transcript in paper format and a second copy in computer-readable format.

*(Code Civ. Proc., § 271; Cal. Rules of Court, rule 8.130(f)(4).)*

CASE NAME:	CASE NUMBER:
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**b. Proceedings.**

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

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

- (1)
- (2)
- (3)
- (4)
- (5)
- (6)
- (7)

See additional pages.

c. The proceedings designated in 5b  include  do not include all of the testimony in the superior court.

If the designated proceedings DO NOT include all of the testimony, state the points that you intend to raise on appeal *(rule 8.130(a)(2) provides that your appeal will be limited to these points unless, on motion, the reviewing court permits otherwise).*

Date:

\_\_\_\_\_

(TYPE OR PRINT NAME)



\_\_\_\_\_

(SIGNATURE OF APPELLANT OR ATTORNEY)

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

**1. RECORD OF THE DOCUMENTS FILED IN THE SUPERIOR COURT**

The appellant has elected to use a clerk's transcript under rule 8.122.

- a.  **Additional documents.** *(If you want any documents from the superior court proceedings in addition to the documents designated by the appellant to be included in the clerk's transcript, you must identify those documents here.)*

In addition to the documents designated by the appellant, I request that the clerk include in the transcript the following documents from the superior court proceedings. *(You must identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed.)*

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

- (1)
- (2)
- (3)

See additional pages.

- b.  **Additional exhibits.** *(If you want any exhibits from the superior court proceedings in addition to those designated by the appellant to be included in the clerk's transcript, you must identify these exhibits here.)*

In addition to the exhibits designated by the appellant, I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the superior court. *(For each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit. Indicate whether or not the court admitted the exhibit into evidence.)*

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

- (1)
- (2)
- (3)

See additional pages.

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

1. c.  **Copy of clerk's transcript.** I request a copy of the clerk's transcript. (*check (1) or (2).*)

- (1)  I will pay the superior court clerk for this transcript when I receive the clerk's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, I will not receive a copy.
- (2)  I request that the clerk's transcript be provided to me at no cost because I cannot afford to pay this cost. I have attached the following document (*check (a) or (b)*):
- (a)  An order granting a waiver of court fees and costs under rule 3.50 et seq.; or
- (b)  An application for a waiver of court fees and costs under rule 3.50 et seq. (*Use Request to Waive Court Fees (form FW-001) to prepare and file this application.*)

## 2. RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT

The appellant has elected to use a reporter's transcript under rule 8.130.

a.  **Additional proceedings.** (*If you want any oral proceedings in addition to the proceedings designated by the appellant to be included in the reporter's transcript, you must identify those proceedings here.*)

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

Date	Department	Full/Partial Day	Description of Proceedings	Reporter's Name
(1)				
(2)				
(3)				
(4)				
(5)				
(6)				
(7)				

See additional pages.

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

**2.b. Copy of Reporter’s Transcript.**

- (1)  I request a copy of the reporter’s transcript.
- (2)  I request that the reporters provide (*check (a), (b), or (c)*):
  - (a)  My copy of the reporter’s transcript in paper format.
  - (b)  My copy of the reporter’s transcript in computer-readable format.
  - (c)  My copy of the reporter’s transcript in paper format and a second copy of the reporter’s transcript in computer-readable format.

(Code Civ. Proc., § 271; Cal. Rules of Court, rule 8.130(f)(4).)

- (3) I have (*check all that apply*):
  - (a)  Deposited the approximate cost of transcribing the designated proceedings with this notice as provided in rule 8.130(b)(1).
  - (b)  Attached a copy of a Transcript Reimbursement Fund application filed under rule 8.130(b)(3).
  - (c)  Attached the reporter’s written waiver of a deposit for (*check either (i) or (ii)*):
    - (i)  All of the designated proceedings.
    - (ii)  Part of the designated proceedings.
  - (d)  Attached a certified transcript under rule 8.130(b)(3).

Date:

---

(TYPE OR PRINT NAME)

▶

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(SIGNATURE OF RESPONDENT OR ATTORNEY)







**Appellant's Notice Designating Record on Appeal (Limited Civil Case)**

Clerk stamps date here when form is filed.

**Instructions**

- This form is only for choosing (“designating”) the record on appeal in a **limited civil case**.
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms).
- This form can be attached to your notice of appeal. If it is not attached to your notice of appeal, you must serve and file this form within 10 days after you file your notice of appeal. **If you do not file this form on time, the court may dismiss your appeal.**
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service on the California Courts Online Self-Help Center site at [www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving](http://www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving).
- Take or mail the original completed form and proof of service on the other parties to the clerk’s office for the same court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

**Superior Court of California, County of**

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

**Trial Court Case Number:**  
**Trial Court Case Name:**

You fill in the appellate division case number (if you know it):

**Appellate Division Case Number:**

**1 Your Information**

a. Name of appellant (the party who is filing this appeal):

\_\_\_\_\_

b. Appellant’s contact information (skip this if the appellant has a lawyer for this appeal):

Street address: \_\_\_\_\_  
Street City State Zip

Mailing address (if different): \_\_\_\_\_  
Street City State Zip

Phone: ( ) \_\_\_\_\_ E-mail (optional): \_\_\_\_\_

c. Appellant’s lawyer (skip this if the appellant does not have a lawyer for this appeal):

Name: \_\_\_\_\_ State Bar number: \_\_\_\_\_

Street address: \_\_\_\_\_  
Street City State Zip

Mailing address (if different): \_\_\_\_\_  
Street City State Zip

Phone: ( ) \_\_\_\_\_ E-mail (optional): \_\_\_\_\_

Fax (optional): ( ) \_\_\_\_\_

Trial Court Case Name: \_\_\_\_\_

**Information About Your Appeal**

② On (fill in the date): \_\_\_\_\_ I/my client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.

**Record of the Documents Filed in the Trial Court**

③ I elect (choose)/My client elects to use the following record of the documents filed in the trial court (check a or b and fill in any required information):

a.  **Clerk’s Transcript.** (Fill out (1)–(4).) Note that, if the appellate division has adopted a local rule permitting this, the clerk may prepare and send the original court file to the appellate division instead of a clerk’s transcript.

(1) **Required documents.** The clerk will automatically include the following items in the clerk’s transcript, but you must provide the date each document was filed or, if that is not available, the date the document was signed.

Document Title and Description	Date of Filing
(a) Notice of appeal	
(b) Notice designating record on appeal (this document)	
(c) Judgment or order appealed from	
(d) Notice of entry of judgment (if any)	
(e) Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order (if any)	
(f) Ruling on any item included under (e)	
(g) Register of actions or docket	

(2) **Additional documents.** If you want any documents in addition to the required documents listed in (1) above to be included in the clerk’s transcript, you must identify those documents here.

I request that the clerk include in the transcript the following documents that were filed in the trial court. (Identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed).

Document Title and Description	Date of Filing
(a)	
(b)	
(c)	
(d)	
(e)	

Check here if you need more space to list other documents and attach a separate page or pages listing those documents. At the top of each page, write “APP-103, item 3a(2).”

Trial Court Case Name: \_\_\_\_\_

**3** a. (continued)

**(3) Exhibits.**

- I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the trial court. *(For each exhibit, give the exhibit number (such as Plaintiff's #1 or Defendant's A) and a brief description of the exhibit and indicate whether or not the court admitted the exhibit into evidence. If the trial court has returned a designated exhibit to a party, the party who has that exhibit must deliver it to the trial court clerk as soon as possible.)*

Exhibit Number	Description	Admitted Into Evidence	
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No

- Check here if you need more space to list other exhibits and attach a separate page or pages listing those exhibits. At the top of each page, write "APP-103, item 3a(3)."

**(4) Payment for clerk's transcript. (Check a or b.)**

- (a)  I will pay the trial court clerk for this transcript myself when I receive the clerk's estimate of the costs of the transcript. I understand that if I do not pay for the transcript, it will not be prepared and provided to the appellate division.
- (b)  I am asking that the clerk's transcript be provided at no cost to me because I cannot afford to pay this cost. I have attached *(check (i) or (ii) and attach the checked document)*:
  - (i)  An order granting a waiver of the cost under rules 3.50–3.58
  - (ii)  An application for a waiver of court fees and costs under rules 3.50–3.58 *(use Request to Waive Court Fees (form FW-001) The court will review this form to decide if you are eligible for a fee waiver).*

**OR**

- b.  **Agreed statement.** *(You must complete item 5d below and attach to your agreed statement copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in 3a(1) above and in rule 8.832 of the California Rules of Court.)*

**Record of Oral Proceedings in the Trial Court**

*You do not have to provide the appellate division with a record of what was said in the trial court (this is called a record of the "oral proceedings"). But, if you do not, the appellate division will not be able to consider what was said during the trial court proceedings in deciding whether a legal error was made in those proceedings.*

**4** I elect (choose)/My client elects to proceed *(check a or b)*:

- a.  WITHOUT a record of the oral proceedings in the trial court *(skip 5); sign and date this form)*. I understand that if I elect to proceed without a record of the oral proceedings in the trial court the appellate division will not be able to consider what was said during those proceedings in determining whether a legal error was made.

*(Write initials here):* \_\_\_\_\_



Trial Court Case Name: \_\_\_\_\_

**4** (continued)

- b.  WITH a record of the oral proceedings in the trial court (*complete item 5 below*). I understand that, if I elect (choose) to proceed WITH a record of the oral proceedings in the trial court, I have to choose the record I want to use and take the actions described below to make sure that this record is provided to the appellate division. I understand that if I do not take the actions described below and the appellate division does not receive this record, I am not likely to succeed in my appeal.

(Write initials here): \_\_\_\_\_

**5** I want to use the following record of what was said in the trial court proceedings in my case (*check and complete only one of the following below—a, b, c, d, or e*):

- a.  **Reporter’s Transcript.** *This option is available only if there was a court reporter in the trial court who made a record of what was said in court. Check with the trial court to see if there was a court reporter in your case before choosing this option. (Complete (1) and (2).):*

- (1) **Designation of proceedings to be included in reporter’s transcript.** I request that the following proceedings in the trial court be included in the reporter’s transcript.

*(You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings [for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions], and, if you know it, the name of the court reporter who recorded the proceedings.)*

Date	Department	Description	Court Reporter’s Name
(a)			
(b)			
(c)			
(d)			
(e)			
(f)			
(g)			

- Check here if you need more space to list other proceedings and attach a separate page or pages listing those proceedings. At the top of each page, write “APP-103, item 5a.”*

- (2) The proceedings designated in (1)  include  do not include all of the testimony in the trial court. If the designated proceedings DO NOT include all of the testimony, state the points that you intend to raise on appeal. (*Rule 8.834(a)(2) provides that your appeal will be limited to these points unless, on motion, the appellate division permits otherwise.*)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- Check here if you need more space to list other points and attach a separate page or pages listing those points. At the top of each page, write “APP-103, item 5a(2).”*

Trial Court Case Name: \_\_\_\_\_

**5** a. (continued)

- (3) **Payment for reporter's transcript.** I will pay for this transcript myself when I receive the court reporter's estimate of the costs of this transcript. I understand that if I do not pay the trial court clerk's office for this transcript or file with the court a written waiver of this deposit signed by the reporter, the transcript will not be prepared and provided to the appellate division. (*Write initials here*): \_\_\_\_\_

- I request that the reporters provide (*check one*):
- (i)  My copy of the reporter's transcript in paper format.
  - (ii)  My copy of the reporter's transcript in computer-readable format.
  - (iii)  My copy of the reporter's transcript in paper format and a second copy of the reporter's transcript in computer-readable format.

**OR**

- b.  **Transcript From Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. (Check and complete (1) or (2)):*
- (1)  I will pay the trial court clerk for this transcript myself when I receive the clerk's estimate of the costs of the transcript. I understand that if I do not pay for the transcript, it will not be prepared and provided to the appellate division.
- (2)  I am asking that the transcript be provided at no cost to me because I cannot afford to pay this cost. I have attached (*check (a) or (b) and attach the appropriate document*):
- (a)  An order granting a waiver of the cost under rules 3.50–3.58
  - (b)  An application for a waiver of court fees and costs under rules 3.50–3.58 (*use Request to Waive Court Fees (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.*)

**OR**

- c.  **Copy of Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court, the court has a local rule for the appellate division authorizing parties to use the official electronic recording itself as the record of the court proceedings, and all of the parties have agreed (stipulated) that they want to use the recording itself as the record of what was said in the case. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. You must attach a copy of your agreement (stipulation) with the other parties to this notice. (Check and complete (1) or (2).):*
- (1)  I will pay the trial court clerk for this copy of the recording myself when I receive the clerk's estimate of the costs of this copy. I understand that if I do not pay for this copy of the recording, it will not be prepared and provided to the appellate division.
- (2)  I am asking that a copy of the recording be provided at no cost to me because I cannot afford to pay this cost. I have attached (*check (a) or (b) and attach the appropriate document*):
- (a)  An order granting a waiver of the cost under rules 3.50–3.58
  - (b)  An application for a waiver of court fees and costs under rules 3.50–3.58 (*use Request to Waive Court Fees (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.*)

Trial Court Case Name: \_\_\_\_\_

⑤ (continued)

**OR**

- d.  **Agreed Statement.** I want to use an agreed statement (a summary of the trial court proceedings agreed to by the parties) as the record of what was said in my case. *(Check (1) or (2).):*
- (1)  I have attached an agreed statement to this notice.
- (2)  All the parties have agreed in writing (stipulated) to try to agree on a statement *(you must attach a copy of this agreement (stipulation) to this notice)*. I understand that, within 30 days after I file this notice, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.

**OR**

- e.  **Statement on Appeal.** I want to use a statement on appeal (a summary of the trial court proceedings approved by the trial court) as the record of what was said in my case. *(Check (1) or (2).):*
- (1)  I have attached my proposed statement on appeal to this notice of appeal. *(If you are not represented by a lawyer in this appeal, you must use Proposed Statement on Appeal (Limited Civil Case) (form APP-104) to prepare and file this proposed statement. You can get a copy of form APP-104 at any courthouse or county law library or online at www.courtinfo.ca.gov/forms.)*
- (2)  I have NOT attached my proposed statement. I understand that I must serve and file this proposed statement in the trial court within 20 days of the date I file this notice and that if I do not file the proposed statement on time, the court may dismiss my appeal.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Type or print your name*\_\_\_\_\_  
*Signature of appellant or attorney*

**Respondent's Notice Designating Record on Appeal (Limited Civil Case)**

Clerk stamps date here when form is filed.

You fill in the name and street address of the court that issued the judgment or order that is being appealed:

**Superior Court of California, County of**

You fill in the number and name of the trial court case in which the judgment or order is being appealed:

**Trial Court Case Number:**  
**Trial Court Case Name:**

You fill in the appellate division case number (if you know it):

**Appellate Division Case Number:**

**Instructions**

- This form is only for choosing (“designating”) the record on appeal in a **limited civil case**.
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms).
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) or on the California Courts Online Self-Help Center Web site at [www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving](http://www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving).
- Take or mail the original completed form and proof of service on the other parties to the clerk’s office for the same court that issued the judgment or order that is being appealed. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

**1 Your Information**

a. Name of respondent (the party who is responding to an appeal filed by another party):

\_\_\_\_\_

b. Respondent’s contact information (*skip this if the respondent has a lawyer for this appeal*):

Street address: \_\_\_\_\_  
Street City State Zip

Mailing address (*if different*): \_\_\_\_\_  
Street City State Zip

Phone: ( ) \_\_\_\_\_ E-mail (*optional*): \_\_\_\_\_

c. Respondent’s lawyer (*skip this if the respondent does not have a lawyer for this appeal*):

Name: \_\_\_\_\_ State Bar number: \_\_\_\_\_

Street address: \_\_\_\_\_  
Street City State Zip

Mailing address (*if different*): \_\_\_\_\_  
Street City State Zip

Phone: ( ) \_\_\_\_\_ E-mail (*optional*): \_\_\_\_\_

Fax (*optional*): ( ) \_\_\_\_\_

Trial Court Case Name: \_\_\_\_\_

**Information About the Appeal**

- 2 On (fill in the date): \_\_\_\_\_ another party filed a notice of appeal in the trial court case identified in the box on page 1 of this form.
- 3 On (fill in the date): \_\_\_\_\_ the appellant filed an appellant’s notice designating the record on appeal.

**Record of the Documents Filed in the Trial Court**

- 4 The appellant elected (chose) to use a clerk’s transcript under rule 8.832 as the record of the documents filed in the trial court.
  - a.  **Additional documents or exhibits.** *If you want any documents or exhibits in addition to those designated by the appellant to be included in the clerk’s transcript, you must identify those documents here.*

(1) **Documents**

- In addition to the documents designated by the appellant, I request that the clerk include in the transcript the following documents that were filed in the trial court. *(Identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed).*

Document Title and Description	Date of Filing
(a)	
(b)	
(c)	
(d)	

- Check here if you need more space to list other documents and attach a separate page or pages listing those documents. At the top of each page, write “APP-110, item 4a(1).”

(2) **Exhibits**

- I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the trial court. *(For each exhibit, give the exhibit number (such as Plaintiff’s #1 or Defendant’s A) and a brief description of the exhibit and indicate whether or not the court admitted the exhibit into evidence. If the trial court has returned a designated exhibit to a party, the party who has that exhibit must deliver it to the trial court clerk as soon as possible.)*

Exhibit Number	Description	Admitted Into Evidence
		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No

- Check here if you need more space to list other exhibits and attach a separate page or pages listing those exhibits. At the top of each page, write “APP-110, item 4a(2).”

Trial Court Case Name: \_\_\_\_\_

**4** (continued)

- b.  **Copy of clerk’s transcript.** I request a copy of the clerk’s transcript. *(Check (1) or (2).)*
- (1)  I will pay the trial court clerk for this transcript myself when I receive the clerk’s estimate of the costs of the transcript.
- (2)  I am asking that a copy of the clerk’s transcript be provided at no cost to me because I cannot afford to pay this cost. I have attached *(check (i) or (ii) and attach the checked document)*:
- (a)  An order granting a waiver of the cost under rules 3.50–3.58.
- (b)  An application for a waiver of court fees and costs under rules 3.50–3.58 *(use Request to Waive Court Fees (form FW-001)). The court will review this form to decide if you are eligible for a fee waiver.)*

**Record of Oral Proceedings in the Trial Court**

**5** The appellant elected to use the following record of what was said in the trial court proceedings *(check and complete only one of the following below—a, b, or c)*:

- a.  **Reporter’s Transcript.** The appellant elected to use a reporter’s transcript under rule 8.834 as the record of the oral proceedings in the trial court.
- (1)  **Designation of additional proceedings to be included in the reporter’s transcript.** *(If you want any proceedings in addition to the proceedings designated by the appellant to be included in the reporter’s transcript, you must identify those proceedings here.)*

In addition to the proceedings designated by the appellant, I request that the following proceedings in the trial court be included in the reporter’s transcript. *(You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings (for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions), and, if you know it, the name of the court reporter who recorded the proceedings.)*

Date	Department	Description	Court Reporter’s Name
(a)			
(b)			
(c)			
(d)			
(e)			
(f)			
(g)			

*Check here if you need more space to list other proceedings and attach a separate page or pages listing those proceedings. At the top of each page, write “APP-110, item 5a(1).”*

Trial Court Case Name: \_\_\_\_\_

**5** a. (continued)

**(2) Copy of reporter's transcript.**

- (a)  I request receive a copy of the reporter's transcript. I will pay for this transcript myself when I receive the court reporter's estimate of the costs of this transcript. I understand that if I do not pay the trial court clerk's office for this transcript or file with the court a waiver of this deposit signed by the court reporter, I will not receive a copy.
- (b)  I request that the reporters provide:
  - (i)  My copy of the reporter's transcript in paper format.
  - (ii)  My copy of the reporter's transcript in computer-readable format.
  - (iii)  My copy of the reporter's transcript in paper format and a second copy of the reporter's transcript in computer-readable format.

**OR**

b.  **Transcript From Official Electronic Recording.** The appellant elected to use the transcript from an official electronic recording as the record of the oral proceedings in the trial court under rule 8.835(b). I request a copy of this transcript. *(Check and complete (1) or (2).):*

- (1)  I will pay the trial court clerk for this transcript myself when I receive the clerk's estimate of the costs of the transcript.
- (2)  I am asking that the transcript be provided at no cost to me because I cannot afford to pay this cost. I have attached *(check (a) or (b) and attach the appropriate document):*
  - (a)  An order granting a waiver of the cost under rules 3.50–3.58.
  - (b)  An application for a waiver of court fees and costs under rules 3.50–3.58 *(use Request to Waive Court Fees (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.)*.

**OR**

c.  **Copy of Official Electronic Recording.** The appellant and I have agreed to use the official electronic recording itself as the record of the oral proceedings in the trial court under rule 8.835(a). I request a copy of this recording. *(Check and complete (1) or (2).):*

- (1)  I will pay the trial court clerk for this copy of the recording myself when I receive the clerk's estimate of the costs of this copy.
- (2)  I am asking that a copy of the recording be provided at no cost to me because I cannot afford to pay this cost. I have attached *(check (a) or (b) and attach the appropriate document):*
  - (a)  An order granting a waiver of the cost under rules 3.50–3.58.
  - (b)  An application for a waiver of court fees and costs under rules 3.50–3.58 *(use Request to Waive Court Fees (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.)*.

Date: \_\_\_\_\_

\_\_\_\_\_  
Type or print your name

▶  
\_\_\_\_\_  
Signature of respondent or attorney

## SPR09-05

**Appellate Procedure: Record on Appeal** (adopt Cal. Rules of Court, rule 8.819; amend rules 2.1040, 8.122, 8.124, 8.147, 8.320, 8.336, 8.832, 8.861, 8.862, 8.864, and 8.915; renumber rule 8.160 as rule 8.46; approve forms APP-010, APP-011, and APP-110; and revise forms APP-003 and APP-103)

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<b>List of All Commentators and General Comments</b>				
	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Appellate Court Committee San Diego County Bar Association by Matthew C. Mulford, Chair	NI	SPR 09-05's goal of making the rules governing the record on appeal more user-friendly is unquestionably sound. We have some comments and observations on a few discrete points.  See specific comments below.	
2.	Committee on Appellate Courts State Bar of California by Saul Bercovitch Legislative Counsel	A	The Committee supports this proposal, with two comments.  See specific comments below.	
3.	First District Appellate Project by Mat Zwerling Executive Director	NI	See specific comments below.	
4.	Katherine Lynn Managing Attorney Court of Appeal, Second Appellate District	AM	See specific comments below.	
5.	Hon. Judith D. McConnell Administrative Presiding Justice Court of Appeal, Fourth Appellate District	A	I agree with the Committee's revisions to the rules relating to the record on appeal . . .  See specific comments below.	No response required.
6.	Michael Ogul Deputy Public Defender Santa Clara County Public Defender	N	I am the attorney in charge of the research division of the Santa Clara County Public Defender's Office and a member of the Amicus	

**SPR09-05**

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**List of All Commentators and General Comments**

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
	San Jose		Committee of the California Public Defenders Association.  See specific comments concerning rule 8.336 below.	
7.	Orange County Bar Association by Michael G. Yoder, President	A	No additional comments.	No response required.
8.	Public Counsel Law Center by Lisa Jaskol Directing Attorney Appellate Law Program Los Angeles	NI	See specific comments below.	
9.	Michael D. Schwartz Special Assistant District Attorney County of Ventura	NI	See specific comments below.	
10.	Superior Court of Los Angeles County	A	See specific comments concerning rule 2.1040 below.	
11.	Superior Court of Orange County by Vickie Dimeo Civil Analyst, on behalf of appellate division clerks	AM	See specific comments below.	
12.	Superior Court of San Diego County by Michael M. Roddy Executive Officer	A	No additional comments.	

## SPR09-05

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### List of All Commentators and General Comments

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
13.	Superior Court of Ventura County by Julie Camacho Court Program Manager	AM	See specific comments below.	
14.	Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Working Group by Patrick Danna Court Services Analyst	N	A working group operational impact review on this proposal is available by contacting working group staff.  See specific comments below.	

**SPR09-05**

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<b>Rule 2.1040</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
Hon. Judith D. McConnell Administrative Presiding Justice Court of Appeal, Fourth Appellate District	I agree with the Committee’s revisions to the rules relating to the record on appeal, particularly the proposed revisions to (1) rule 2.1040 requiring that parties provide the trial court with written transcripts of any electronic recordings presented at trial. . .	Based on a request by the council’s Rules and Projects Committee, the Appellate Advisory Committee withdrew the amendments to rule 2.1040 from this proposal and will consider other possible amendments to this rule during the next committee year.
Michael D. Schwartz Special Assistant District Attorney County of Ventura	Do not agree to changes to rule 2.1040. . . Rule 2.1040 currently requires that a party offering into evidence an electronic sound or sound-and video recording provide the court with a typewritten transcript, “[u]nless otherwise ordered by the trial judge.” As it stands now, the general rule is that a transcript is required, but the court has discretion to excuse it. There are a number of circumstances that might warrant an exception such as counsel receiving the recording at the last minute, recording includes many disputed or foreign words, etc. I believe that the court should have discretion in this area and I disagree with the proposal to eliminate the court's authority to excuse the written transcript. Also, the reference to a “typewritten” transcript is archaic; I suggest “printed or typewritten” (as in rule 2.104).	Please see the response to the comments of Hon. Judith D. McConnell above.
Superior Court of Los Angeles County	We believe Rule 2.1040(b) should also remove the prepositional phrase “unless otherwise ordered by the trial judge.” With the requirement of a transcript, there is no need for the reporter to take down the electronic recording. Reporters indicate that creating a verbatim transcript of a tape being played, is not possible.	The committee considered this idea before recommending this proposal for circulation and decided not to include it in the proposal. There may be some circumstances, such as when, for impeachment or other purposes, very short portions of an electronic recording are played interspersed with live testimony, that a trial judge may conclude it would be helpful for the court reporter to take down the portions of the recording that are played so that they can be integrated into a reporter’s

**SPR09-05**

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<b>Rule 2.1040</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
		transcript. The committee concluded it was important not to preclude this.
Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Working Group by Patrick Danna Court Services Analyst	3. Recommend that a typewritten transcript be incorporated as part of the exhibit, rather than filed. That would accomplish the intent of the rule, while making long-term storage easier and more cost effective, and simplify the process of preparing the clerk’s transcript;	This would be a substantive change that was not included in the proposal circulated for comment. Under rule 10.22, substantive changes to the rules of court generally cannot be recommended for adoption without first being circulated for public comment. The committee will therefore consider this suggestion during an upcoming committee year.

<b>Rule 8.122</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
Superior Court of Orange County by Vickie Dimeo Civil Analyst, on behalf of appellate division clerks	Rule 8.122(a)(3) Clerk’s Transcript  The proposed rule doesn’t include any consequences for the party if they fail to deposit the exhibits within the allowed time. Since the appellate clerk will not know who is in possession of the exhibits, defaulting would require research time. A logical consequence could be: failure to deliver the documents in the allowed time will result in their omission from the clerk’s transcript. The exhibits may be transmitted to the DCA according to rule 8.224 CRC.	Adding consequences for the failure to deposit exhibits under this rule would be a substantive change that was not included in the proposal circulated for comment. Under rule 10.22, substantive changes to the rules of court generally cannot be recommended for adoption without first being circulated for public comment. The committee will therefore consider this suggestion during an upcoming committee year. The committee notes, however, that not including the exhibits in the clerk’s transcript may not be an appropriate consequence, since the burden of this consequence would fall on the person designating these exhibits, rather than on the person who failed to timely deposit the exhibits.

**SPR09-05**

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<b>Rule 8.124</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
Appellate Court Committee San Diego Bar Association by Matthew C. Mulford, Chair	<b>Revised Rule 8.124(b)(2)(C)</b> During the 2008 Spring Cycle, we commended the efficiency of allowing parties to incorporate by reference the record on appeal in another pending or prior case in the reviewing court. We commented, however, that in certain circumstances, incorporation by reference in a party appendix may not be workable or convenient for the opposing or non-designating party. At that time we recommended additional language to the proposed rule to avoid unfairly burdening the non-designating party with the obligation of locating an appellate record incorporated only by reference in a party appendix. We appreciate the Committee’s attention to issues we previously raised. The proposed changes to rule 8.124(b)(2) address these concerns and we support the proposal.	No response required.
Committee on Appellate Courts State Bar of California by Saul Bercovitch Legislative Counsel	First, the Committee supports the proposed amendment to rule 8.124, which would allow a respondent to elect to use an appendix only in cases in which the appellant has not been granted a fee waiver. The Committee, however, believes that the ability of a respondent to force an appellant to use an appendix in lieu of a clerk’s transcript, as provided in rule 8.124, should be entirely stricken. As set forth in a letter to the Appellate Advisory Committee dated January 14, 2009, the Committee reasoned that, as a general matter, the appellant bears the burden of assuring an adequate record. For some appellants proceeding in pro per (and even for some attorneys), the burden of producing an appendix in a timely and organized manner might be significant. It remains the Committee’s position that the appellant should have the last word on record preparation.	The committee appreciates these comments and the earlier letter submitted by this commentator. The committee considered eliminating the authorization for the respondent to elect the use of an appendix, but concluded that the concerns about the burdens created by such an election could be addressed without completing eliminating this authorization. The general experience of committee members is that litigants are able to cooperate with each other in preparing an appendix and rule 8.124 provides that the court can override a respondent’s election on the appellant’s motion if preparing an appendix would be too burdensome.
Katherine Lynn Managing Attorney	<b>SPR09-05 Appellate Procedure: Record on Appeal</b>	The committee agrees with these suggestions for clarifying the rule language and has revised its

**SPR09-05**

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<b>Rule 8.124</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
<p>Court of Appeal, Second Appellate District Los Angeles</p>	<p><b>Rule 8.124: Appendixes</b>                      For ease of reading and clarity, it is suggested that (a)(1)(A) and (B) be worded as follows (taken from the proposed modification):                      (1) Unless the superior court orders otherwise on a motion served and filed within 10 days after the notice of election is served, this rule governs if:                      (A) <del>In the notice designating the record on appeal under rule 8.121,</del> <b>The appellant elects to use an appendix under this rule in the notice designating the record on appeal under rule 8.121;</b> or                      (B) In any case in which the appellant has not been granted a fee waiver, <del>within 10 days after the notice of appeal is filed,</del> the respondent serves and files a notice in the superior court electing to use an appendix under this rule <b>within 10 days after the notice of appeal is filed.</b></p>	<p>proposal to incorporate these changes. The committee has also made some additional changes designed to clarify paragraph (B).</p>
<p>Public Counsel Law Center by Lisa Jaskol Directing Attorney Appellate Law Program Los Angeles</p>	<p>A. Appendixes                       Public Counsel supports the proposal that a respondent's election to use an appendix under rule 8.124 "can only be made in cases in which the appellant has not been granted a fee waiver." This rule change will prevent respondents from imposing the cost of preparing an appendix on indigent appellants, who—having receive a fee waiver—would otherwise be entitled to receive a free copy of the Clerk's Transcript.</p>	<p>No response required.</p>
<p>Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Working Group by Patrick Danna</p>	<p>The working group felt that there may be a significant impact to existing court staff workload if the rule is approved as submitted: . . . (2) The options for a designating party to request or compel a possessing party to either provide a document for copying, or to send it to the reviewing party will put the clerk in</p>	<p>The committee acknowledges that the proposed changes to rule 8.124(c) may have some impact on the workload of the reviewing court; the committee does not believe, however, that these changes will impact the workload of the trial courts. Rule 8.124</p>

**SPR09-05**

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<b>Rule 8.124</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
Court Services Analyst	the middle of tracking down such documents and interacting with the parties and the court of review;	addresses preparation of an appendix in lieu of a clerk’s transcript. Thus, in this context, the parties rather than the trial court clerk are responsible for compiling the necessary documents. Under subdivision (c), problems with obtaining documents or exhibits held by another party are addressed to the reviewing court, not the trial court.

<b>Rule 8.147</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Proposed Committee Response</b>
Superior Court of Orange County by Vickie Dimeo Civil Analyst, on behalf of appellate division clerks	<p>Rule 8.147(b) Record in multiple or later appeals in same case</p> <p>This rule was previously changed to take the responsibility of identifying and listing the items incorporated off the clerk. This new revision reverses that. See Rule 8.147(b)(1)(A): "The parts of any record incorporated by reference must be identified in a separate section at the end of both the transcript and the index." (Believe they actually mean appendix, not index.) The DCA expects references in the clerk's transcript to be accurate. To achieve this, the clerk must check the information supplied by the designating party. Also, previously, the DCA was not satisfied by a reference that the full record of a previous appeal was incorporated. The full index of any incorporated clerk's transcript had to be included in the new record on appeal. The clerk also had to list each day of incorporated reporter's transcripts with volume and page numbers. The clerk often had to borrow the record(s) from the DCA to get the needed information. This can be a very time consuming task. Suggest changing this to require any party wishing to incorporate the record from a previous appeal to file a "Notice of Incorporation of Previous Appeal Record" (new form needed) with their designation of record. This notice would be part of the record</p>	<p>The committee agrees that the clerk should not be responsible for identifying material that a party designates for incorporation by reference in a clerk’s transcript; this should be done by the party that designates these materials. The reference in 8.147(b)(1)(A) to “the transcript and the index” should be to the designation of the record. The committee has revised its proposal to correct this reference. The Court of Appeal will receive the information about the incorporated material because the designation of the record is included in the clerk’s transcript. However, the committee concluded that it would be appropriate for the portions of another record that are copied into a clerk’s transcript be identified in a separate section at the end of both the transcript and the index. The committee has therefore revised the proposal to incorporate this requirement into 8.147(b)(2).</p>

## SPR09-05

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<b>Rule 8.147</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Proposed Committee Response</b>
	<p>on appeal and be designed to meet the requirements of the DCA.</p> <p>Rule 8.147(b)(2) The changes make this section unnecessary. If the party wants a document or testimony from a record on a previous appeal copied into the record on a new appeal, they simply designate it. The clerk would be exceeding their authority if they refused to include items in the new appeal record because they were in a previous record.</p> <p>In regard to the last line, the trial court clerk would not need copies of “materials to be incorporated.” Incorporated items are not copied into the new record. Possibly, if the party who filed the incorporation gave inaccurate information, the reviewing court could want the copies, to avoid searching through a previous appeal record.</p>	<p>The committee believes it is helpful to both litigants and some clerk’s offices to have specific rule language that addresses copying material from the record in another appeal.</p> <p>The commentator is correct; the reference in this provision should be to “materials to be copied.” The committee has revised its proposal to correct this reference.</p>
<p>Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Working Group by Patrick Danna Court Services Analyst</p>	<p>The working group felt that there may be a significant impact to existing court staff workload if the rule is approved as submitted: (1) Procedures for obtaining estimates for the cost of copying parts of the clerk’s transcripts from prior appeals into the record will need to be determined;</p>	<p>The committee does not believe that the amendments to rule 8.147 will increase the workload of court staff. Current rule 8.147 already provides that the clerk must mail the party designating materials to be copied a notice of the estimated copying costs.</p>

**SPR09-05**

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<b>Rules 8.320 and 8.366</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
<p>Appellate Court Committee San Diego Bar Association by Matthew C. Mulford, Chair</p>	<p><b>Revised Rules 8.320 and 8.336</b> We support and commend the proposed revisions to rule 8.320, which properly includes any court ordered diagnostic or psychological report required under Penal Code section 1203.03, subdivision (b) or 1969 in the appellate record. Such amendment would improve efficiency since appellate counsel generally must request such reports anyway. Likewise, we support the added protections of the proposed amended language in rule 8.336 because such language is necessary for confidentiality. (Pen. Code, § 1203.05.)</p> <p>We, however, believe a further amendment is necessary: The amendment of rule 8.320 also requires the amendment of rule 8.336. As currently drafted, proposed rule 8.336 is limited to probation reports. However, all Penal Code section 1203.03, subdivision (b) reports and most, if not all, Penal Code section 1369 reports also include sensitive, confidential materials. Penal Code section 1203.03, subdivision (b) explicitly requires such reports remain confidential. Therefore, the same procedures for handling probation reports should apply to such reports. In our view, proposed rule 8.336 should explicitly include all Penal Code section 1203.03, subdivision (b) reports and all Penal Code section 1369 sealed below. To obviate any potential confusion, we suggest the following additions (in <i>bold italics</i>) to subsection (g) of the proposed rule:</p> <p>Rule 8.336. Preparing, certifying and sending the record</p> <p>(a)-(f) *****</p> <p>(g) Probation Officer’s Report, <i><b>Diagnostic and Psychological Reports</b></i></p>	<p>No response required.</p> <p>Based on this and other comments, the committee has revised the proposal to provide that court-ordered diagnostic reports, like probation reports, are to be included in only the clerk’s transcript sent to the reviewing court, counsel for the People, and counsel for the defendant who is the subject of the report. The committee decided not to address the handling of court-ordered psychological reports under Penal Code section 1369 in this way, however. There are not specific statutory provisions or case law concerning the confidentiality of these latter reports and, to the extent that they were sealed in the trial court proceedings, rule 8.160 addresses the handling of these reports on appeal.</p>

**SPR09-05**

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<b>Rules 8.320 and 8.366</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>The probation officer’s report, <i>reports pursuant to Penal Code section 1203.03, subdivision (b), and sealed reports pursuant to Penal Code section 1369</i> included in the transcript under rule 8.320(b) must appear <u>only</u> in <del>all</del> the copies of the appellate record <u>that are sent to the reviewing court, to appellate counsel for the People, and to the defendant who was the subject of the report.</u> The reviewing court’s copy of <i>such</i> reports must be place in a sealed envelope marked “CONFIDENTIAL—MAY NOT BE EXAMINED WITHOUT COURT ORDER—<i>[INSERT NAME OF REPORT].</i>”</p>	
<p>First District Appellate Project by Mat Zwerling Executive Director</p>	<p>The proposal would amend rule 8.320(b) to add Penal Code section 1203.03 diagnostic reports and section 1369 psychiatric reports to the list of items to be included in the normal clerk’s transcript. It would also amend rule 8.336(g) to provide that probation reports be included only in those copies of the record going to the court, the Attorney General, and counsel for the defendant who was the subject of the report.</p> <p>We agree with both these changes. Inclusion of these items in the normal record will obviate the need to augment the record, thus saving time and money. The express amendment to rule 8.336(g) will ensure consistency with section 1203.05 of the Penal Code which makes probation officer reports confidential.</p> <p>We have, however, two suggestions regarding the change to 8.336. First, the proposal provides for inclusion of the probation report in the copy of the record “sent to the reviewing court, to appellate counsel for the People, and to the defendant.” We recommend a small change in the phrasing to specify that the report be sent to “appellate counsel for the</p>	<p>No response required</p> <p>The committee agrees with this suggestion and has revised its proposal to incorporate this change in the proposed language of rule 8.336 and to incorporate a similar change in the proposed language of rule 8.862, relating to misdemeanor appeals.</p>

**SPR09-05**

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<b>Rules 8.320 and 8.366</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>defendant” (rather than “to the defendant”), as the record is sent to counsel, not to the defendant. This change would also make the language consistent with the reference to “appellate counsel for the people” in the same subdivision and with the reference to “appellate counsel for the defendant” found in subdivision (f)(1)(B) (sending the transcripts).</p> <p>Second, 1203.03 reports, like probation reports, are also confidential (Pen. Code, § 1203.03(b)) and should not be included in the copy of the transcript sent to co-defendants. They should be treated in the same way as probation reports. With these two changes in mind, we suggest:</p> <p><b>Rule 8.336. Preparing, certifying, and sending the record</b></p> <p><b>(a)–(f) * * *</b></p> <p><b><u>(g) Probation officer’s report and Penal Code section 1203.03 report</u></b></p> <p>The probation officer’s report <u>and Penal Code section 1203.03 report</u> included in the clerk’s transcript under rule 8.320(b) must appear only in the copies of the appellate record that are sent to the reviewing court, to appellate counsel for the People, and to <u>appellate counsel for</u> the defendant who was the subject of the report. The reviewing court’s copy of the report must be placed in a sealed envelope marked “CONFIDENTIAL—MAY NOT BE EXAMINED WITHOUT COURT ORDER—[PROBATION OFFICER/PENAL CODE SECTION 1203.03] REPORT.”</p> <p>A corresponding change should be made to the proposed new Advisory Committee Comment to rule 8.320:</p>	<p>Please see response to the comments of the Appellate Court Committee of the San Diego Bar Association, above. Based on this and other comments, the committee has revised the proposal to provide that court-ordered diagnostic reports, like probation reports, are to be included in only the clerk’s transcript sent to the reviewing court, counsel for the People, and counsel for the defendant who is the subject of the report.</p>

**SPR09-05**

**Appellate Procedure: Record on Appeal** (adopt Cal. Rules of Court, rule 8.819; amend rules 2.1040, 8.122, 8.124, 8.147, 8.320, 8.336, 8.832, 8.861, 8.862, 8.864, and 8.915; renumber rule 8.160 as rule 8.46; approve forms APP-010, APP-011, and APP-110; and revise forms APP-003 and APP-103)

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<b>Rules 8.320 and 8.366</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
	<b>Subdivision (b)(13).</b> Rule 8.336(g) addresses the appropriate handling of probation officers’ reports <u>and Penal Code section 1203.03(b) reports</u> that must be included in the clerk’s transcript under (b)(13)(D) <u>and (E)</u> .	
Hon. Judith D. McConnell Administrative Presiding Justice Court of Appeal, Fourth District	I agree with the Committee’s revisions to the rules relating to the record on appeal, particularly the proposed revisions to . . . (2) rule 8.320 requiring that the clerk’s transcript include court-ordered diagnostic or psychological reports prepared under Penal Code section 1203.03, subdivision (b) or 1369, both of which will facilitate more complete, or more timely, appellate review. As to the latter, the Committee may wish to provide further guidance (either through a further amendment to the rule or in the Advisory Committee Comment to it) on confidentiality.	Please see response to the comments of the Appellate Court Committee of the San Diego Bar Association, above. Based on this and other comments, the committee has revised the proposal to provide that court-ordered diagnostic reports, like probation reports, are to be included in only the clerk’s transcript sent to the reviewing court, counsel for the People, and counsel for the defendant who is the subject of the report.
Michael Ogul Deputy Public Defender Santa Clara County Public Defender San Jose	I am writing to comment on the proposed change to California Rules of Court, Rule 8.336, subdivision (g). Specifically, I am writing to object to the proposal to eliminate the provision of the probation report to counsel for the appellant (i.e., the criminal defendant who is the subject of the appeal) as part of the record on appeal.  Presently, Rule 8.336, subdivision (g), provides for the probation report to be included in all copies of the appellate record. Under the present rule, counsel for the appellant/defendant receives a copy of the probation report. The proposed change would limit provision of the probation report to the reviewing court, appellate counsel for the prosecution, and to the defendant/appellant personally but not to counsel for the appellant/defendant.  It is respectfully submitted that appellate counsel for the	Please see response to the comments of the First District Appellate Project, above. Consistent with the language of rule 8.336(f) regarding who is sent a copy of the record, the committee has revised its proposal to amend rule 8.336(g) to specify that the probation report is included in the copy of the record sent to the defendant’s appellate counsel. The committee has also incorporated a similar change in the proposed language of rule 8.862, relating to misdemeanor appeals.

**SPR09-05**

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<b>Rules 8.320 and 8.366</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>defendant/appellant must be provided with a copy of the probation report in order to be able to effectively evaluate potential sentencing issues on appeal. Just as probation reports are routinely provided to defense counsel in the trial court, they need to be provided to appellate counsel for the defendant/appellant in the reviewing court. It is equally necessary for defense counsel at the trial level and defense counsel at the appellate level to be familiar with the contents of the probation report.</p> <p>Therefore, it is respectfully recommended that the proposed revision to Rule 8.336, subdivision (g), be amended to expressly provide for the inclusion of the probation report in the copy of the appellate record sent to appellate counsel for the defendant/appellant.</p> <p>Thank you for your consideration.</p>	

<b>Rule 8.861</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Proposed Committee Response</b>
<p>Michael D. Schwartz Special Assistant District Attorney County of Ventura</p>	<p>I agree with the changes to rule 8.861, but suggest some additional changes. The clerk's transcript should also include: In an appeal from a motion to suppress evidence under Penal Code section 1538.5, the motion, with supporting and opposing memoranda and attachments.</p> <p>Such additional papers or documents contained in the trial court file as either party shall request, and the trial judge shall order.</p> <p>Note: The language of current rule 8.861(12)(A) would include the trial court pleadings for a defense appeal, but would not</p>	<p>This would be a substantive change that was not included in the proposal circulated for comment. Under rule 10.22, substantive changes to the rules of court generally cannot be recommended for adoption without first being circulated for public comment. The committee will therefore consider this suggestion during an upcoming committee year.</p>

**SPR09-05**

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<b>Rule 8.861</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Proposed Committee Response</b>
	<p>cover a People's appeal of the grant of a motion to suppress under Penal Code section 1538.5(j). These pleadings are important because they help define what the defense sought to suppress, and any warrant exception relied upon by the People. (See <i>Lorenzana v. Superior Court</i> (1973) 9 Ca1.3d 626, 640.)</p> <p>The current rule would not include documents filed in connection with a motion that resulted in dismissal (e.g., a motion to dismiss on speedy trial grounds) that is appealable by the People under Penal Code section 1466(1)(B). As to the “additional papers or documents,” the old rules (8.783(a)(11), 8.784(c)) allowed the parties to designate additional relevant items. The current rules do not appear to empower the trial court to do this, but only allow the Appellate Division to augment the record (rules 8.841, 8.873(c).) There may be various trial court motions, points and authorities, etc., that are relevant but are not listed in 8.861. It would make sense for the trial court to have authority to add them.</p>	

<b>Forms</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Proposed Committee Response</b>
<p>Appellate Court Committee San Diego Bar Association by Matthew C. Mulford, Chair</p>	<p><b>Appellant’s Notice Designating Record on Appeal</b> During the 2008 Spring Cycle we noted the potential for confusion among users (especially pro se litigants) by the interchangeable use of the terms “trial court” and “superior court” in Form APP-003. We appreciate the Committee’s consideration of our comments and commend the consistency now incorporated into the updated <i>Appellant’s Notice Designating Record on Appeal (Unlimited Civil Case)</i>, APP-003 by using the term “trial court” throughout that form.</p> <p><b>Respondent’s Notice Designating Record on Appeal</b> The optional Judicial Council forms continue to be an important</p>	<p>In order to make these forms more consistent with other appellate forms used in unlimited civil cases, the committee has modified the proposal to consistently use the term “superior court” on forms APP-003, APP-010, and APP-011.</p>

**SPR09-05**

**Appellate Procedure: Record on Appeal** (adopt Cal. Rules of Court, rule 8.819; amend rules 2.1040, 8.122, 8.124, 8.147, 8.320, 8.336, 8.832, 8.861, 8.862, 8.864, and 8.915; renumber rule 8.160 as rule 8.46; approve forms APP-010, APP-011, and APP-110; and revise forms APP-003 and APP-103)

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<b>Forms</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Proposed Committee Response</b>
	<p>source of guidance, particularly for pro se litigants. We commend the Appellate Advisory Committee’s ongoing efforts to improve these forms and develop new forms.</p> <p>The new <i>Respondent’s Notice Designating Record on Appeal (Unlimited Civil Case)</i>, APP-010 seeks to ease a respondent’s election to use an appendix in lieu of a clerk’s transcript. As currently drafted, however, paragraph 3.b of this form, which requests a copy of the reporter’s transcript, carries the potential for confusion. In requesting a copy of the reporter’s transcript, subsection (2) references a “second copy of the reporter’s transcript.” If the intent of this subsection (2) is to refer to the scenario where the respondent seeks <i>both</i> a hard copy of the transcript and a computer-readable copy, the form may be clearer if the options for the format of transcript requested were re-designated as three separate paragraphs with additional text explaining those options. For example, the form may be more user-friendly if revised as follows (suggested deletions in strikethrough and additions in <b><i>bold italics</i></b>):</p> <p><b>3b. Copy of Reporter’s Transcript:</b></p> <p>(1) I would like to receive a copy of the reporter’s transcript.</p> <p><del>(2)</del> (a) <input type="checkbox"/> I request that the reporters provide, <del>in a</del> computer-readable <del>format</del> <b><i>copy of the reporter’s transcript</i></b>.</p> <p style="padding-left: 40px;">(b) <input type="checkbox"/> <b><i>I request that the reporters provide a hard</i></b> <del>My</del> copy of the reporter’s transcript.</p> <p style="padding-left: 40px;">(c) <input type="checkbox"/> <b><i>I request that the reporters provide a second hard copy and a computer readable</i></b> copy of the reporter’s transcript.</p> <p><del>(3)</del> (2) I have (check all that apply): ...</p>	<p>The committee agrees with the commentator’s goal of clarifying whether one or two copies of the reporter’s transcript are being requested by the respondent and has revised the proposed form to include three options, as suggested by the commentator. However, the committee has retained the references to the respondent’s “copy” of the transcript and requesting a “second copy” of the transcript to keep the language of this rule consistent with the language of Government Code sections 69950(b) and 69954(b), which address, respectively, the fees for a “copy” of a transcript and for a “second copy” of a transcript in computer-readable format. The committee has also made corresponding changes to the version of forms APP-003, APP-103, and APP-110 in this proposal.</p>

**SPR09-05**

**Appellate Procedure: Record on Appeal** (adopt Cal. Rules of Court, rule 8.819; amend rules 2.1040, 8.122, 8.124, 8.147, 8.320, 8.336, 8.832, 8.861, 8.862, 8.864, and 8.915; renumber rule 8.160 as rule 8.46; approve forms APP-010, APP-011, and APP-110; and revise forms APP-003 and APP-103)

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<b>Forms</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Proposed Committee Response</b>
<p>Committee on Appellate Courts State Bar of California by Saul Bercovitch Legislative Counsel</p>	<p>Second, in Forms APP-003, APP-103, APP-010, and APP-110, the documents or proceedings to be included in the clerk’s and reporter’s transcript are listed with lower-case letters. The Committee recommends that the documents be listed instead with numbers. Listing documents or proceedings by lower-case letters is impractical in cases that have more than 26 documents or proceedings because those lists result with “(aa), (bb), (cc), . . .”</p>	<p>The committee agrees with this suggestion with respect to forms APP-003 and APP-010 and has revised the numbering on these forms as suggested by the commentator. The committee decided against making this change on forms APP-103 and APP-110, however, because the general paragraphs immediately preceding the lists noted by the commentator already use the (#) number format. The committee concluded that it might be confusing if both the general paragraph and the list of items used the same number format. In addition, the committee anticipates that that the concern raised by the commentator about having to go to (aa) or beyond is less likely to be an issue in a limited civil appeal than in an unlimited civil appeal.</p>
<p>Public Counsel Law Center by Lisa Jaskol Directing Attorney Appellate Law Program Los Angeles</p>	<p>B. Respondent’s Notice Designating Record on Appeal (Unlimited Civil Case) (APP-010)</p> <p>Consistent with the change to rule 8.124 discussed above, item 2 of the record designation form (“I elect to use an appendix under rule 8.124”) might be modified to indicate that the election will take effect only if the appellant does not have a fee waiver.</p>	<p>The committee agrees with this suggestion and has revised the proposed form as suggested by the commentator.</p>
<p>Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Working Group by Patrick Danna Court Services Analyst</p>	<p>2. The working group is concerned that Form AP-103 indicates that cost for preparation of a transcript of an electronic recording may be waived where the appellant is in forma pauperis when there are other alternatives under the rules. This could result in a significant cost impact to the court;</p>	<p>The committee appreciates the commentator’s concern. It is the committee’s understanding that a working group will be considering suggestions concerning what fees should be subject to waiver under rules 3.50 et seq. The committee will share this concern with that working group.</p>

**SPR09-05**

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<b>Other Suggestions</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Proposed Committee Response</b>
<p>Superior Court of Ventura County by Julie Camacho Court Program Manager</p>	<p>1. In addition to the recommended changes to rules 8.864 and 8.915 to add the consequences if the appellant does not file the required election, it is recommended that this same language be added to rules 8.866(c) and 8.919(c). These rules require the clerk to provide estimated costs to the party and requiring the party to make payment within 10 days of the mailing of the notice of estimated costs. The rules currently do not provide a consequence if the party does not make payment. It would be helpful if an amendment was made to the infraction and misdemeanor appeals to add similar language as exists in the rules for limited civil appeals, rule 8.842 regarding failure to procure the record of perform an act.</p> <p>2. Currently the rules on misdemeanor and infraction appeals do not contain any reference to filing an “Amended Notice of Appeal”. The infraction form contains the appellant’s election regarding the oral proceedings. On occasion, when a party receives notice of the cost of a transcript, they decide they do not wish to pay the cost and ask to amend their designation of the record on appeal to indicate that they wish to proceed by Statement on Appeal. There is no separate form by which to change the original designation, therefore filers have been presenting the clerk’s office with an “Amended” Notice of Appeal. It is recommended that the designation be removed from the Notice of Appeal and become a separate form as is used in misdemeanor appeals or that the rules be amended to provide for filing an Amended Notice of Appeal.</p> <p>3. The current Proposed Statement on Appeals forms contain sections for the appellant to indicate their reasons for appeal. Because the party is later directed to file an Appellant’s Opening Brief, it is causing confusion for the many self represented appellants because they think that they have already</p>	<p>The changes suggested by the commentator would be a substantive changes that were not included in the proposal circulated for comment. Under rule 10.22, substantive changes to the rules of court generally cannot be recommended for adoption without first being circulated for public comment. The committee will therefore consider these suggestions during an upcoming committee year, perhaps as part of a more general review of the new appellate division rules and forms.</p>

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<b>Other Suggestions</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Proposed Committee Response</b>
	filed this document by preparing the proposed statement. Because the statement on appeal is a choice in place of an oral record and the other choices for the oral record do not contain the appellant's reasons for appeal, it would be less confusing to appellants if this section was removed from the Proposed Statement on Appeal form.	