

**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,  
heather.anderson@jud.ca.gov

DATE: September 18, 2007

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

---

Issue Statement

*Record Designation in Civil Appeals*

Rules 8.120, 8.124, 8.128, 8.130, 8.134, and 8.137 of the California Rules of Court address alternative forms of the record of the documents filed in the trial court or the record of the oral proceedings in the trial court that may be used in civil appeals. Because all of these forms of the record are addressed separately, some rule users may not be aware of all of the options that may be used to provide the record on appeal. In addition, form APP-003, *Notice Designating Record on Appeal*, the optional form that parties in civil appeals can use to inform the trial court how they have elected to provide the record on appeal, does not currently encompass all of these forms of the record, so form users do not have an easy way of using some of these options.

*Clerk's Transcripts in Civil and Criminal Appeals*

Rule 8.120, which would be renumbered as rule 8.122 under this proposal, and rule 8.320 address clerk's transcripts in civil and criminal appeals, respectively. Both of these rules list jury instructions and certain posttrial motions among the documents that can or must be included in a clerk's transcript. Currently, however, these rules use different language to refer to these instructions and do not consistently address whether memoranda and attachments that were part of a motion must be included in the transcript. This inconsistent language may cause confusion.

Rule 8.120 requires that certain documents included in the clerk's transcript, such as the judgment or order appealed from and the notice of entry of this judgment or order, must "show the date necessary to determine the timeliness of the appeal." Some rule users may not be aware of what dates need to be shown on these documents to determine timeliness.

#### *Transmission of Administrative Records on Appeal*

The rules relating to records in civil appeals do not currently address how an administrative record that was admitted in evidence, refused, or lodged in the trial court should be included in the record on appeal. This may cause confusion for litigants who wish to include an administrative record in the record on appeal.

#### *Index of Exhibits in Reporter's Transcripts*

Rule 8.144 requires that a reporter's transcript contain an index listing the volume and page where any exhibit is marked for identification and where it is admitted or refused. The general practice is for court reporters to also include in this index a brief description of each exhibit, but this is not currently reflected in the rules.

#### Recommendation

The Appellate Advisory Committee recommends that the Judicial Council effective January 1, 2008:

1. Adopt new rule 8.120 to clearly lay out all the options for providing the record of the documents and the oral proceedings from the trial court in a civil appeal;
2. Adopt new rule 8.121 to provide for a single notice that informs the trial court what form of the record of the documents and what form of the record of the oral proceedings, if any, the appellant elects to use in a civil appeal;
3. Renumber rule 8.120, relating to the clerk's transcripts in civil appeals, as rule 8.122 and amend it to:
  - a. Eliminate the separate requirement for a notice designating a clerk's transcript in light of proposed new notice requirement in rule 8.121;
  - b. Make the language concerning jury instructions and motions in clerk's transcripts more consistent with the language in rule 8.320 relating to clerk's transcripts in felony appeals; and
  - c. Add a cross-reference to the rules that establish the timeliness of an appeal.
4. Adopt new rule 8.123 to establish a procedure for designating and transmitting to the reviewing court administrative records that were presented to the trial court;

5. Amend rules 8.124, 8.128, 8.130, 8.134, 8.137, 8.147, and 8.224 to:
  - a. Eliminate the separate requirements for notices electing to use an appendix, original court file in lieu of a clerk’s transcript, a reporter’s transcript, an agreed statement, or a settled statement in light of proposed new notice requirement in rule 8.121; and
  - b. Correct cross-references to the proposed new and revised rules;
6. Amend rule 8.144 to require that the index of exhibits in the reporter’s transcript identify each exhibit by letter or number and a brief description of the exhibit; and
7. Revise *Notice Designating Record on Appeal* (form APP-003) to:
  - a. Reflect the proposed changes to the record designation rules, including adding a box for designating an administrative record under proposed rule 8.123;
  - b. Add boxes that the appellant can check to indicate that he or she will be using the superior court file instead of a clerk’s transcript under rule 8.128, an agreed statement under rule 8.134, or a settled statement under rule 8.137;
  - c. Add a box the appellant can use to request a reporter’s transcript in computer-readable format; and
  - d. Make other clarifying changes to the design of the form.

The text of the proposed amendments to the rules and revisions to the form are attached beginning at page 14.

#### Rationale for Recommendation

##### *Record Designation in Civil Appeals*

To clarify the alternative forms of the record that are available under the rules, this proposal would adopt a new rule—proposed rule 8.120—that more clearly lays out all of the options that an appellant may use to provide the record on appeal. This proposal also would replace the separate notice provisions that now appear in the rule relating to each form of the record with a single rule—proposed rule 8.121—requiring the appellant to file a notice designating the record within 10 days after filing the notice of appeal. Form APP-003, *Notice Designating Record on Appeal*, would also be revised to reflect all of the available record options and the proposed new rules relating to filing a single notice designating the record on appeal. In addition, it would be revised to add a space where parties can request a copy of the reporter’s transcript in computer-readable format and several changes would be made to the design of the form.

### *Clerk's Transcripts in Civil and Criminal Appeals*

This proposal would amend rule 8.120 relating to clerk's transcripts in civil appeals, which would be renumbered as rule 8.122 under this proposal, and rule 8.320 relating to clerk's transcripts in felony appeals to make the language regarding jury instructions and motions in both rules consistent with each other. In addition, to help rule users determine what date needs to be shown on documents in a clerk's transcript to show the timeliness of the appeal, the rule text would be amended to include a cross-reference to rules 8.104 and 8.108, which address the time for filing a notice of appeal.

### *Transmission of Administrative Records on Appeal*

This proposal would add a new rule addressing how administrative records from the trial court proceedings are to be handled. Similar in concept to the procedure for transmitting exhibits under rule 8.224, proposed new rule 8.123 would require that, if a party designates an administrative record in its notice designating the record on appeal, the original administrative record would be transmitted to the reviewing court. Unlike rule 8.224, however, proposed new rule 8.123 would require that an administrative record be transmitted in time for it to be available to the reviewing court when the parties' briefs are filed.

### *Index of Exhibits in Reporter's Transcripts*

This proposal would conform rule 8.144 to general practice by amending it to require that when the index in a reporter's transcript identifies an exhibit, it does so by letter or number and a brief description of the exhibit.

### Alternative Actions Considered

The committee considered requiring that administrative records that were presented to the trial court be transmitted to the reviewing court in the same way as exhibits. This would have allowed such records to be included in either a clerk's transcript or an appendix or to be transmitted to the reviewing court at the time of briefing under rule 8.224. The committee ultimately decided not to recommend this approach, however, based on concerns both about the cost and the timing of the reviewing court's receipt of the record.

### Comments From Interested Parties

These proposed amendments were circulated as part of the spring 2007 comment cycle. Twelve individuals or organizations submitted comments on this proposal. Five commentators agreed with the proposal, six agreed with the proposal if amended, and one disagreed with the proposal. The full text of the comments received and the committee's responses is attached beginning on page 33.

As circulated for public comment, revised form APP-003 included a proposed new box that the appellant could check to request that original exhibits be transmitted to the Court of Appeal under rule 8.224. The California Appellate Clerks' Association raised concerns about this aspect of the proposal. In particular, they were concerned that this could result in exhibits being transmitted to the reviewing court before the reviewing court is ready to

consider them, causing storage problems for the reviewing court. Based on these concerns, the committee deleted this box from the recommended revisions to form APP-003.

The Orange County Bar Association pointed out that, as circulated for public comment, the proposed amendments to rule 8.124 relating to the use of appendixes in lieu of clerk's transcripts, could have been read as eliminating respondents' ability to elect to use an appendix. The committee did not intend to make such a substantive change and has modified the recommended amendments to rule 8.124 to clarify that the respondent may still make such an election.

#### Implementation Requirements and Costs

Adopting a rule that more clearly lays out the options for designating the record in a civil appeal and providing a form that allows appellants to choose from among all these options should make the record designation process easier for civil litigants to understand and implement. This should reduce burdens on both the trial and reviewing courts associated with errors in this designation process.

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

455 Golden Gate Avenue  
San Francisco, California 94102-3688

**Report**

TO: Members of the Judicial Council

FROM: Advisory Committee on Civil Jury Instructions  
Hon. Kathryn Doi Todd, Chair  
Heather Anderson, Senior Attorney, 415-865-7691,  
heather.anderson@jud.ca.gov

DATE: September 18, 2007

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

Issue Statement

*Record Designation in Civil Appeals*

Rules 8.120, 8.124, 8.128, 8.130, 8.134, and 8.137 of the California Rules of Court address alternative forms of the record of the documents filed in the trial court and/or the record of the oral proceedings in the trial court that may be used in civil appeals. Because all of these forms of the record are addressed separately, some rule users may not be aware of all of the options that may be used to provide the record of the documents filed or the record of the oral proceedings in the trial court.

Form APP-003, *Notice Designating Record on Appeal*, is an optional form that parties in civil appeals can use to inform the trial court how they have elected to provide the record on appeal and to designate the materials that they would like to be included in a clerk's or reporter's transcript, or both. This form does not currently encompass all of the options that may be used under the California Rules of Court to provide the record of the documents filed or the record of the oral proceedings in the trial court, so form users do not have an easy way of using some of these options.

*Clerk's Transcripts in Civil and Criminal Appeals*

Rule 8.120, which would be renumbered as rule 8.122 under this proposal, and rule 8.320 address clerk's transcripts in civil and criminal appeals, respectively. Both of these rules

list jury instructions and certain posttrial motions among the documents that can or must be included in a clerk’s transcript. Currently, however, these rules use different language to refer to these instructions and do not consistently address whether memoranda and attachments that were part of a motion must be included in the transcript. This inconsistent language may cause confusion.

Rule 8.120 requires that certain documents included in the clerk’s transcript, such as the judgment or order appealed from and the notice of entry of this judgment or order, must “show the date necessary to determine the timeliness of the appeal.” Some rule users may not be aware of what dates need to be shown on these documents to determine timeliness.

#### *Transmission of Administrative Records on Appeal*

The rules relating to records in civil appeals do not currently address how an administrative record that was admitted in evidence, refused, or lodged in the trial court should be included in the record on appeal. This may cause confusion for litigants who wish to include an administrative record in the record on appeal.

#### *Index of Exhibits in Reporter’s Transcripts*

Rule 8.144 requires that a reporter’s transcript contain an index listing the volume and page where any exhibit is marked for identification and where it is admitted or refused. The general practice is for court reporters to also include in this index a brief description of each exhibit, but this is not currently reflected in the rules.

#### Rationale for Recommendation

##### *Record Designation in Civil Appeals*

Rules 8.120, 8.124, 8.128, 8.130, 8.134, and 8.137 of the California Rules of Court relate, respectively, to clerk’s transcripts, appendixes, use of the superior court file in lieu of a clerk’s transcript, reporter’s transcripts, agreed statements, and settled statements. To clarify that these are alternative forms of the record, this proposal would adopt a new rule—proposed rule 8.120—that more clearly lays out all of the options that an appellant may use to provide the record of the documents filed in the trial court and/or the record of the oral proceedings in the trial court.

Each of these existing rules also currently contains a separate provision that requires the appellant to notify the court if he or she elects to use that particular form of the record. All of these separate provisions require that these notices be filed within 10 days after the notice of appeal is filed. This proposal would replace all of these separate notice provisions with a single rule—proposed rule 8.121—requiring the appellant to file a notice designating the record within 10 days after filing the notice of appeal. In this notice, the appellant would be required to indicate what form of the record on appeal he or she elects to use. The trial court clerk would be required to send a copy of this notice to the reviewing court.

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

Form APP-003, *Notice Designating Record on Appeal*, would be revised to reflect the proposed new rules relating to filing a single notice designating the record on appeal. In addition, it would be revised to add several new boxes relating to record options that are available under the California Rules of Court. Rule 8.128 permits parties to use the original superior court file instead of a clerk's transcript if the reviewing court has a local rule permitting this practice and if the parties stipulate to proceed in this manner. Four of the six Court of Appeal districts currently have local rules permitting this practice.<sup>1</sup> Form APP-003, *Notice Designating Record on Appeal*, however, does not currently include any space for parties to indicate that they have stipulated to provide the record as permitted under rule 8.128. This proposal would revise form APP-003 to add such a space. Similarly, rule 8.134 allows the parties to use an agreed statement and rule 8.137 allows the appellant, with the court's permission, to use a settled statement as alternate forms of the record on appeal. Form APP-003 does not currently include any spaces for appellants to indicate that they intend to use these forms of the record. This proposal would revise form APP-003 to add such spaces.

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

Finally, several changes would be made to the design of form APP-003. For example, the area of the form used to designate a clerk's transcript would be reformatted to more clearly indicate what documents are automatically included in a clerk's transcript and therefore do not need to be designated. New headings would be added to help appellants identify documents and exhibits that they want included in a clerk's transcript and proceedings they want included in a reporter's transcript.

### *Clerk's Transcripts in Civil and Criminal Appeals*

---

<sup>1</sup> See rule 8 in the First District, rule 2 in the Third District, rule 3 in the Fourth District, and rule 5 in the Fifth District.

Rule 8.120 relating to clerk’s transcripts in civil appeals, which would be renumbered as rule 8.122 under this proposal, and rule 8.320 relating to clerk’s transcripts in felony appeals use different language to refer to jury instructions in these transcripts. Rule 8.320 requires that the clerk’s transcript in felony appeals contain “[a]ll instructions submitted in writing, each one indicating the party requesting it.” In contrast, rule 8.120 currently provides that, if designated by any party, the clerk’s transcript in a civil appeal must contain “[a]ny instruction that a party submitted in writing.” This proposal would amend these rules to make the language regarding jury instructions in both rules consistent with each other. It would also make the language regarding identification of the party requesting a jury instruction more consistent with the language of rule 2.1055 relating to the format of proposed jury instructions. Before 2004, the predecessor to rule 2.1055—rule 229—required that each jury instruction indicate “the party upon whose behalf it is requested,” so it made sense to require that each jury instruction included in the clerk’s transcript indicate the party requesting that instruction. Rule 2.1055(b)(2) now requires that “[e]ach set of proposed jury instructions must have a cover page . . . stating the name of the party proposing the instructions.” Under this proposal, both rules 8.120 and 8.320 would be amended to require that the cover sheet required by rule 2.1055 indicating the party requesting a jury instruction be included in the clerk’s transcript. In addition, the language regarding jury instructions would be broadened to more clearly encompass written jury instructions from the trial judge among the documents that must be in the clerk’s transcript in felony appeals and may be designated for inclusion in civil appeals.

The current rules also treat memoranda and attachments that are part of posttrial motions in different ways. In criminal appeals, rule 8.320 requires that the clerk’s transcript contain any motion for new trial with supporting and opposing memoranda and attachments, and, if the defendant is the appellant, any written defense motion denied in whole or in part, with supporting and opposing memoranda and attachments. In civil appeals, rule 8.120 currently requires that the clerk’s transcript include any notice of intention to move for a new trial, or motion to vacate the judgment, for judgment notwithstanding the verdict or for reconsideration of an appealed order, but the rules do not specify whether these motions must include the memoranda and attachments. Under this proposal, the language of former rule 8.120—proposed to be renumbered as rule 8.122—would be amended to require that the motions required to be in the clerk’s transcript include memoranda and attachments.

Rule 8.120 currently requires that certain documents included in the clerk’s transcript, such as the judgment or order appealed from and the notice of entry of this judgment or order, must “show the date necessary to determine the timeliness of the appeal.” To help rule users determine what date needs to be shown on these documents, this provision in the renumbered rule 8.122 would be amended to include a cross-reference to rules 8.104 and 8.108, which address the time for filing a notice of appeal.

### *Transmission of Administrative Records on Appeal*

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

This proposal would add a new rule addressing how administrative records from the trial court proceedings are to be handled. Similar in concept to the procedure for transmitting exhibits under rule 8.224, proposed new rule 8.123 would require that if a party designates an administrative record in its notice designating the record on appeal, the original administrative record would be transmitted to the reviewing court. Unlike rule 8.224, however, proposed new rule 8.123 would require that an administrative record be transmitted in time for it to be available to the reviewing court when the parties' briefs are filed. If a clerk's or reporter's transcript is used, the administrative record would be transmitted to the reviewing court by the clerk with that clerk's or reporter's transcript. If neither a clerk's nor a reporter's transcript is used, the clerk would be required to transmit the administrative record to the reviewing court within 45 days after the notice designating the record on appeal is filed.

Proposed new rule 8.121 regarding designating the record and revised form APP-003 would also include provisions designed to implement this procedure. Under rule 8.121, an appellant would be required to designate the record of an administrative proceeding that was admitted in evidence, refused, or lodged in the superior court if the appellant intends to raise any issue that requires consideration of that record; revised form APP-003 would include a check box for designating such an administrative record. Under rule 8.121, if the appellant does not designate such an administrative record, the respondent would be given an opportunity to do so. In addition, rule 8.120, which would be renumbered as rule 8.122, relating to a clerk's transcript, and rule 8.124 relating to appendixes, would be amended to clarify that copies of an administrative record must not be included in either a clerk's transcript or an appendix but must be transmitted to the reviewing court under rule 8.123.

### *Index of Exhibits in Reporter's Transcripts*

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

### Alternative Actions Considered

The committee considered requiring that administrative records presented to the trial court be transmitted to the reviewing court in the same way as exhibits. This would have allowed such records to be included in either a clerk's transcript or an appendix or to be transmitted to the reviewing court at the time of briefing under rule 8.224. The committee ultimately decided not to recommend this approach, however, based on concerns both about the cost and the timing of the reviewing court's receipt of the record.

Administrative records can often be quite lengthy, so it could be quite costly to copy them as part of either a clerk's transcript or an appendix. For this reason, the committee felt it would be preferable to transmit the original administrative record to the reviewing court in a manner similar to the transmission of exhibits under rule 8.224. Under rule 8.224, however, exhibits are not transmitted to the court until the time of briefing. The committee believed it was preferable for the reviewing court to receive any administrative record along with other portions of the record on appeal, well before the time of briefing. The committee therefore ultimately recommended a separate rule that requires any administrative record to be transmitted to the reviewing court earlier in the appellate process.

### Comments From Interested Parties

These proposed amendments were circulated as part of the spring 2007 comment cycle. Twelve individuals or organizations submitted comments on this proposal. Five commentators agreed with the proposal, six agreed with the proposal if amended, and one disagreed with the proposal. The full text of the comments received and the committee's responses is attached beginning on page 33.

As circulated for public comment, revised form APP-003 included a proposed new box that the appellant could check to request that original exhibits be transmitted to the Court of Appeal under rule 8.224. The California Appellate Court Clerks' Association raised concerns about this aspect of the proposal. In particular, they were concerned that this could result in exhibits being transmitted to the reviewing court before the reviewing court is ready to consider them, causing storage problems for the reviewing court. Based on these concerns, the committee deleted this box from the recommended revisions to form APP-003.

The Orange County Bar Association pointed out that as circulated for public comment, the proposed amendments to rule 8.124, relating to the use of appendixes in lieu of clerk's transcripts, could have been read as eliminating respondents' ability to elect to use an appendix. The committee did not intend to make such a substantive change and has modified the recommended amendments to rule 8.124 to clarify that the respondent may still make such an election.

### Implementation Requirements and Costs

Adopting a rule that more clearly lays out the options for designating the record in a civil appeal and providing a form that allows appellants to choose from among all these options should make the record designation process easier for civil litigants to understand and implement. This should reduce burdens on both the trial and reviewing courts associated with errors in this designation process.

### Recommendation

The Appellate Advisory Committee recommends that the Judicial Council effective January 1, 2008:

1. Adopt new rule 8.120 to clearly lay out all the options for providing the record of the documents and the oral proceedings from the trial court in a civil appeal;
2. Adopt new rule 8.121 to provide for a single notice that informs the trial court what form of the record of the documents and what form of the record of the oral proceedings, if any, the appellant elects to use in a civil appeal;
3. Renumber rule 8.120, relating to the clerk's transcripts in civil appeals, as rule 8.122 and amend it to:
  - a. Eliminate the separate requirement for a notice designating a clerk's transcript in light of proposed new notice requirement in rule 8.121;
  - b. Make the language concerning jury instructions and motions in clerk's transcripts more consistent with the language in rule 8.320 relating to clerk's transcripts in felony appeals; and
  - c. Add a cross-reference to the rules that establish the timeliness of an appeal.
4. Adopt new rule 8.123 to establish a procedure for designating and transmitting to the reviewing court administrative records that were presented to the trial court;
5. Amend rules 8.124, 8.128, 8.130, 8.134, 8.137, 8.147, and 8.224 to:
  - a. Eliminate the separate requirements for notices electing to use an appendix, an original court file in lieu of a clerk's transcript, a reporter's transcript, an agreed statement, or a settled statement in light of proposed new notice requirement in rule 8.121; and
  - b. Correct cross-references to the proposed new and revised rules;
6. Amend rule 8.144 to require that the index of exhibits in the reporter's transcript identify each exhibit by letter or number and a brief description of the exhibit; and

7. Revise Notice Designating Record on Appeal (form APP-003) to:
  - a. Reflect the proposed changes to the record designation rules, including adding a box for designating an administrative record under proposed rule 8.123;
  - b. Add boxes that the appellant can check to indicate that he or she will be using the superior court file instead of a clerk's transcript under rule 8.128, an agreed statement under rule 8.134, or a settled statement under rule 8.137;
  - c. Add a box the appellant can use to request a reporter's transcript in computer-readable format; and
  - d. Make other clarifying changes to the design of the form.

The text of the proposed amendments to the rules and revisions to the form are attached at pages 14–32.

Attachments

Rule 8.120 of the California Rules of Court is and renumbered as rule 8.122; new rules 8.120, 8.121, and 8.123 are adopted; rules 8.124, 8.128, 8.130, 8.134, 8.137, 8.144, 8.147, 8.224, and 8.320 are amended; and Judicial Council form APP-003 is revised, effective January 1, 2008, to read:

1 **Title 8. Appellate Rules**

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

4  
5 **Chapter 2. Civil Appeals**

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

8  
9 Except as otherwise provided in this chapter, the record on an appeal in a civil  
10 case must contain the records specified in (a) and (b), which constitute the normal  
11 record on appeal.

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

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

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

19  
20 (B) An appendix under rule 8.124;

21  
22 (C) The original superior court file under rule 8.128, if a local rule of  
23 the reviewing court permits this form of the record;

24  
25 (D) An agreed statement under rule 8.134(a)(2); or

26  
27 (E) A settled statement under rule 8.137.

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

33  
34 **(b) Record of the oral proceedings**

35  
36 If an appellant intends to raise any issue that requires consideration of the  
37 oral proceedings in the superior court, the record on appeal must include a  
38 record of these oral proceedings in the form of one of the following:  
39

- 1 (1) A reporter's transcript under rule 8.130;
- 2
- 3 (2) An agreed statement under rule 8.134; or
- 4
- 5 (3) A settled statement under rule 8.137.
- 6
- 7

8 **Rule 8.121. Notice designating the record on appeal**

9

10 **(a) Time to file**

11

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

16

17 **(b) Contents**

18

19 (1) The notice must:

20

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

22

23 (B) Specify which form of the record of the written documents  
24 from the superior court proceedings listed in rule 8.120(a)(1)  
25 the appellant elects to use. If the appellant elects to use a  
26 clerk's transcript, the notice must also designate the documents  
27 to be included in the clerk's transcript as required under rule  
28 8.122(b)(1).

29

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

38

39 (2) If an appellant intends to raise any issue that requires consideration of  
40 the record of an administrative proceeding that was admitted in  
41 evidence, refused, or lodged in the superior court, the notice must also

1                    request that this administrative record be transmitted to the reviewing  
2                    court under rule 8.123.

3  
4    **(c) Copy to the reviewing court**

5  
6                    The clerk must promptly send the reviewing court a copy of any notice filed  
7                    under this rule.

8  
9                    **Advisory Committee Comment**

10  
11                    The Judicial Council has adopted an optional form—*Appellant’s Notice Designating Record on*  
12                    *Appeal* (form APP-003)—that can be used to provide the notice required by this rule.

13  
14                    This rule makes the filing of a notice designating the record an “act required to procure the  
15                    record” within the meaning of rule 8.140(a). Under that rule, a failure to file such a notice triggers  
16                    the clerk’s duty to issue a 15-day notice of default and thereby allows the appellant to cure the  
17                    default in superior court.

18  
19  
20    **Rule 8.120. 8.122. Clerk’s transcript**

21  
22    **(a) Notice of dDesignation**

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

30  
31                    ~~(2) The appellant may combine its notice designating a clerk’s transcript~~  
32                    ~~with any notice designating a reporter’s transcript under rule~~  
33                    ~~8.130(a)(1), and may combine both with the notice of appeal.~~

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

1           ~~(3)~~(2) Within 10 days after the appellant serves its notice designating a  
2           clerk’s transcript, the respondent may serve and file a notice in superior  
3           court designating any additional documents the respondent wants  
4           included in the transcript.  
5

6           ~~(5)~~(3) Except as provided in (b)(4), all exhibits admitted in evidence, refused,  
7           or lodged are deemed part of the record, but a party wanting a copy of  
8           an exhibit included in the transcript must specify that exhibit by number  
9           or letter in its notice of designation. If the superior court has returned a  
10          designated exhibit to a party, the party in possession of the exhibit must  
11          promptly deliver it to the superior court clerk on receipt of the  
12          designation.  
13

14   **(b) Contents of transcript**

15  
16   (1) The transcript must contain:

17  
18       (A)–(C) \* \* \*

19  
20       (D) Any notice of intention to move for a new trial, or motion to vacate  
21       the judgment, for judgment notwithstanding the verdict, or for  
22       reconsideration of an appealed order, with supporting and  
23       opposing memoranda and attachments, and any order on such  
24       motion and any notice of its entry;  
25

26       (E)–(F) \* \* \*

27  
28   (2) Each document listed in (1)(A), (B), (C), and (D) must show the date  
29   necessary to determine the timeliness of the appeal under rule 8.104 or  
30   8.108.  
31

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

34  
35       (A) Any other document filed or lodged in the case in superior court;

36  
37       (B) Any exhibit admitted in evidence, refused, or lodged; and  
38

39       (C) Any jury instruction that a any party submitted in writing and the  
40       cover page required by rule 2.1055(b)(2) indicating the party  
41       requesting it, and any written jury instructions given by the court.  
42

1 (4) Unless the reviewing court orders or the parties stipulate otherwise;

2  
3 (A) The clerk must not copy or transmit to the reviewing court the  
4 original of a deposition.

5  
6 (B) The clerk must not include in the transcript the record of an  
7 administrative proceeding that was admitted in evidence, refused,  
8 or lodged in the trial court. Any such administrative record must  
9 be transmitted to the reviewing court as specified in rule 8.123.

10  
11 (c) **Deposit for cost of transcript**

12  
13 (1) Within 30 days after the respondent files a designation under (a)(~~3~~2) or  
14 the time for filing it expires, whichever first occurs, the superior court  
15 clerk must send:

16  
17 (A) To the appellant, notice of the estimated cost to prepare an original  
18 and one copy of the clerk's transcript; and

19  
20 (B) To each party other than the appellant, notice of the estimated cost  
21 to prepare a copy of the clerk's transcript for that party's use.

22  
23 (2)–(3) \* \* \*

24  
25 (d) \* \* \*

26  
27 **Advisory Committee Comment**

28  
29 **Subdivision (a).** Subdivision (a)(~~4~~1) allows a party designating documents for inclusion in the  
30 clerk's transcript to specify *portions* of such documents that are not to be included, e.g., because  
31 they are duplicates of other designated documents or are not necessary for proper consideration of  
32 the issues raised in the appeal. The notice of designation should identify any portion to be omitted  
33 by means of a descriptive reference, e.g., by specific page or exhibit numbers. This provision is  
34 intended to simplify and therefore expedite the preparation of the clerk's transcript, to reduce its  
35 cost to the parties, and to relieve the courts of the burden of reviewing a record containing  
36 redundant, irrelevant, or immaterial documents.

37  
38 **Subdivision (b)–(c).** \* \* \*

1 **Rule 8.123. Record of administrative proceedings**

2  
3 **(a) Application**

4  
5 This rule applies if the record of an administrative proceeding was admitted  
6 in evidence, refused, or lodged in the superior court.

7  
8 **(b) Designation**

9  
10 (1) An appellant's notice designating the record on appeal under rule 8.121  
11 that requests a record of an administrative proceeding be transmitted to  
12 the reviewing court must identify the administrative record by the title  
13 and date or dates of the administrative proceedings.

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

21  
22 **(c) Administrative records returned to parties**

23  
24 If the superior court has returned a designated administrative record to a  
25 party, the party in possession of the administrative record must deliver it to  
26 the superior court clerk within 15 days after the notice designating the record  
27 on appeal is served.

28  
29 **(d) Transmittal to the reviewing court**

30  
31 If any administrative record is designated by a party, the superior court clerk  
32 must transmit the original administrative record with any clerk's or reporter's  
33 transcript sent to the reviewing court under rule 8.150. If the appellant has  
34 elected under rule 8.121 to use neither a clerk's transcript nor a reporter's  
35 transcript, the superior court clerk must transmit any administrative record  
36 designated by a party to the reviewing court no later than 45 days after the  
37 respondent files a designation under (b)(2) or the time for filing it expires,  
38 whichever first occurs.

1 **(e) Return by reviewing court**

2  
3 On request, the reviewing court may return an administrative record to the  
4 superior court. When the remittitur issues, the reviewing court must return  
5 any administrative record to the superior court.  
6

7  
8 **Rule 8.124. Appendixes ~~instead of clerk's transcript~~**

9  
10 **(a) Notice of election**

11  
12 (1) ~~Within 10 days after the notice of appeal is filed, any party electing to~~  
13 ~~proceed by~~ If in the notice designating the record on appeal under rule  
14 8.121, the appellant elects to use an appendix under this rule, instead of  
15 ~~by a clerk's transcript under rule 8.120 must serve and file a notice of~~  
16 ~~election in superior court. The notice must state the date the notice of~~  
17 ~~appeal was filed. or if, within 10 days after the notice of appeal is filed,~~  
18 the respondent serves and files a notice in the superior court electing to  
19 use an appendix under this rule, This rule then governs unless the  
20 superior court orders otherwise on a motion served and filed within 10  
21 days after the notice of election is served.  
22

23 ~~(2) A party may combine a notice of election with any notice designating a~~  
24 ~~reporter's transcript under rule 8.130(a)(1), and may combine both with~~  
25 ~~the notice of appeal.~~  
26

27 ~~(3)~~(2) When a party files a notice of election electing to use an appendix  
28 under this rule, the superior court clerk must promptly:

29  
30 ~~(A) Send a copy of the notice to the reviewing court; and~~

31  
32 ~~(B) send a copy of the register of actions, if any, to the attorney of~~  
33 ~~record for each party and to any unrepresented party.~~  
34

35 ~~(4)~~(3) The parties may prepare separate appendixes, but are encouraged to  
36 stipulate to a joint appendix.  
37

38 **(b) Contents of appendix**

39  
40 (1) A joint appendix or an appellant's appendix must contain:  
41

- 1 (A) All items required by rule ~~8.120~~ 8.122(b)(1), showing the dates  
2 required by rule ~~8.120~~ 8.122(b)(2);  
3  
4 (B) Any item listed in rule ~~8.120~~ 8.122(b)(3) that is necessary for  
5 proper consideration of the issues, including, for an appellant's  
6 appendix, any item that the appellant should reasonably assume the  
7 respondent will rely on;  
8  
9 (C) The notice of election; and  
10  
11 (D) For a joint appendix, the stipulation designating its contents.

12  
13 (2) An appendix must not:

14  
15 (A) Contain documents or portions of documents filed in superior  
16 court that are unnecessary for proper consideration of the issues.

17  
18 ~~(3)~~(B) ~~An appendix must not~~ Contain transcripts of oral proceedings  
19 that may be designated under rule 8.130.

20  
21 (C) Contain the record of an administrative proceeding that was  
22 admitted in evidence, refused, or lodged in the trial court. Any  
23 such administrative record must be transmitted to the reviewing  
24 court as specified in rule 8.123.

25  
26 ~~(4)~~(D) ~~An appendix must not~~ Incorporate any document by reference  
27 except the record on appeal in another case pending in the  
28 reviewing court or the record in a prior appeal in the same case.

29  
30 ~~(5)~~(3) All exhibits admitted in evidence, refused, or lodged are deemed part  
31 of the record, whether or not the appendix contains copies of them.

32  
33 ~~(6)~~(4) A respondent's appendix may contain any document that could have  
34 been included in the appellant's appendix or a joint appendix.

35  
36 ~~(7)~~(5) An appellant's reply appendix may contain any document that could  
37 have been included in the respondent's appendix.

38  
39 (c)-(g) \* \* \*  
40

1  
2  
3 **Advisory Committee Comment**

4 **Subdivision (a).** Under this provision either party may elect to have the appeal proceed by way  
5 of an appendix. A respondent’s timely election to use an appendix will govern unless the  
6 superior court orders otherwise. This election procedure differs from all other appellate rules  
7 governing designation of a record on appeal. In those rules, the appellant’s designation, or the  
8 stipulation of the parties, determines the type of record on appeal.

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

13  
14 **Subdivision (b).** Under subdivision (b)(1)(A), a joint appendix or an appellant’s appendix must  
15 contain any register of actions that the clerk sent to the parties under subdivision (a)(~~3~~)(~~B~~)(2).  
16 This provision is intended to assist the reviewing court in determining the accuracy of the  
17 appendix. The provision is derived from rule 30-1.3(a)(ii) of the United States Circuit Rules (9th  
18 Cir.).

19  
20 In support of or opposition to pleadings or motions, the parties may have filed a number of  
21 lengthy documents in the proceedings in superior court, including, for example, declarations,  
22 memorandums, trial briefs, documentary exhibits (e.g., insurance policies, contracts, deeds), and  
23 photocopies of judicial opinions or other publications. Subdivision (b)(2)(A) prohibits the  
24 inclusion of such documents in an appendix when they are not necessary for proper consideration  
25 of the issues raised in the appeal. Even if a document is otherwise includable in an appendix, the  
26 rule prohibits the inclusion of any substantial *portion* of the document that is not necessary for  
27 proper consideration of the issues raised in the appeal. The prohibition is intended to simplify and  
28 therefore expedite the preparation of the appendix, to reduce its cost to the parties, and to relieve  
29 the courts of the burden of reviewing a record containing redundant, irrelevant, or immaterial  
30 documents. The provision is adapted from rule 30-1.4 of the United States Circuit Rules (9th  
31 Cir.).

32  
33 Subdivision (b)(~~3~~)(2)(B) prohibits the inclusion in an appendix of transcripts of oral proceedings  
34 that may be made part of a reporter’s transcript. (Compare rule 8.130(e)(3) [the reporter must not  
35 copy into the reporter’s transcript any document includable in the clerk’s transcript under rule  
36 ~~8.1208.122~~].) The prohibition is intended to prevent a party filing an appendix from evading the  
37 requirements and safeguards imposed by rule 8.130 on the process of designating and preparing a  
38 reporter’s transcript, or the requirements imposed by rule 8.144(d) on the use of daily or other  
39 transcripts instead of a reporter’s transcript (i.e., renumbered pages, required indexes). In  
40 addition, if an appellant were to include in its appendix a transcript of less than all the  
41 proceedings, the respondent would not learn of any need to designate additional proceedings  
42 (under rule 8.130(a)(~~2~~)(3)) until the appellant had served its appendix with its brief, when it  
43 would be too late to designate them. Note also that a party may file a certified transcript of  
44 designated proceedings instead of a deposit for the reporter’s fee (rule 8.130(b)(3)).

45  
46 **Subdivision (d).** \* \* \*

47  
48 **Subdivision (e).** Subdivision (e)(2) requires a joint appendix to be filed with the appellant’s  
49 opening brief. The provision is intended to improve the briefing process by enabling the

1 appellant's opening brief to include citations to the record. To provide for the case in which a  
2 respondent concludes in light of the appellant's opening brief that the joint appendix should have  
3 included additional documents, subdivision (b)(~~6~~)(4) permits such a respondent to present in an  
4 appendix filed with its respondent's brief (see subd.-(e)(3)) any document that could have been  
5 included in the joint appendix.

6  
7 Under subdivision (e)(2)–(4) an appendix is required to be filed “with” the associated brief. This  
8 provision is intended to clarify that an extension of a briefing period ipso facto extends the filing  
9 period of an appendix associated with the brief.

10  
11 **Subdivision (g).** \* \* \*

12  
13  
14 **Rule 8.128. Superior court file instead of clerk's transcript**

15  
16 **(a) Stipulation; time to file**

- 17  
18 (1) If a local rule of the reviewing court permits, the parties may stipulate to  
19 use the original superior court file instead of a clerk's transcript under  
20 rule ~~8.120~~ 8.122. This rule and any supplemental provisions of the local  
21 rule then govern unless the superior court orders otherwise after notice  
22 to the parties.
- 23  
24 (2) Parties ~~wanting~~ intending to proceed under this rule must file their  
25 stipulation in superior court ~~within 10 days after the filing of a notice of~~  
26 appeal with the appellant's notice designating the record on appeal  
27 under rule 8.121. The parties must serve the reviewing court with a  
28 copy of the stipulation ~~and of any notice designating a reporter's~~  
29 transcript.

30  
31 **(b)** \* \* \*

32  
33  
34 **Rule 8.130. Reporter's transcript**

35  
36 **(a) Notice**

- 37  
38 (1) ~~Within 10 days after filing the notice of appeal, an appellant must serve~~  
39 ~~and file in superior court either a notice designating a reporter's~~  
40 ~~transcript or a notice of intent to proceed without a reporter's transcript,~~  
41 ~~unless the appellant proceeds by agreed or settled statement under rule~~  
42 ~~8.134 or 8.137.~~

1 ~~(1)(4)~~—A notice designating a reporter’s transcript must state the date the  
2 notice of appeal was filed and If in the notice designating the record on  
3 appeal under rule 8.121, the appellant elects to use a reporter’s  
4 transcript, in that notice the appellant must specify the date of each  
5 proceeding to be included in the transcript, and may specify portions of  
6 designated proceedings that are not to be included.

7  
8 ~~(2)(5)~~ If the appellant designates less than all the testimony, the notice must  
9 state the points to be raised on appeal; the appeal is then limited to those  
10 points unless, on motion, the reviewing court permits otherwise.

11  
12 ~~(3)(2)~~ If the appellant serves and files a notice designating a reporter’s  
13 transcript, the respondent may, within 10 days after such service, serve  
14 and file a notice in superior court designating any additional  
15 proceedings the respondent wants included in the transcript.

16  
17 ~~(4)(3)~~ If the appellant elects to proceed without a reporter’s transcript, the  
18 respondent cannot require that a reporter’s transcript be prepared. But  
19 the reviewing court, on its own or the respondent’s motion, may order  
20 the record augmented under rule 8.155 to prevent a miscarriage of  
21 justice. Unless the court orders otherwise, the appellant is responsible  
22 for the cost of any reporter’s transcript the court may order under this  
23 subdivision.

24  
25 ~~(5)(6)~~ Any notice of designation must be served on each known reporter of  
26 the designated proceedings.

27  
28 **(b)–(c) \* \* \***

29  
30 **(d) Superior court clerk’s duties**

31  
32 ~~(1)~~—The clerk must promptly send the reviewing court a copy of any notice  
33 filed under ~~(a)(1)~~.

34  
35 ~~(2)(1)~~ \* \* \*

36  
37 ~~(3)(2)~~ \* \* \*

38  
39 ~~(4)(3)~~ \* \* \*

1 (e) Contents of transcript

2  
3 (1)–(2) \* \* \*

4  
5 (3) The reporter must not copy any document includable in the clerk’s  
6 transcript under rule ~~8.120~~ 8.122.

7  
8 (f)–(g) \* \* \*

9  
10 **Advisory Committee Comment**

11  
12 Under rule ~~8.130~~ 8.121 an appellant may serves and files a notice *designating* a reporter’s  
13 transcript ~~((a)(1))~~ and the notice ~~identifies~~ must identify the proceedings to be *included* ~~((a)(4))~~.  
14 The wording recognizes that under rule 8.130(b)(3) the appellant, instead of depositing the  
15 reporter’s cost to transcribe the proceedings, may substitute certified transcripts of proceedings  
16 that have already been transcribed (e.g., daily transcripts) and hence need only be designated for  
17 inclusion in the transcript.

18  
19 **Subdivision (a).** ~~Subdivision (a)(1) makes the filing of one of two notices—either to prepare a~~  
20 ~~reporter’s transcript or to proceed without one—an “act required to procure the record” within the~~  
21 ~~meaning of rule 8.140(a). Under that rule, a failure to file such a notice triggers the clerk’s duty to~~  
22 ~~issue a 15-day notice of default and thereby allows the appellant to cure the default in superior~~  
23 ~~court.~~

24  
25 Subdivision (a)~~(4)~~(1) requires that every notice designating a reporter’s transcript identify which  
26 proceedings are to be included, and that it do so by specifying the date or dates on which those  
27 proceedings took place; if the appellant does not want a portion of the proceedings on a given  
28 date to be included, the notice should identify that portion by means of a descriptive reference  
29 (e.g., “August 3, 2004, but not the proceedings on defendant’s motion to tax costs”).

30  
31 As used in subdivision (a)~~(4)~~(1), the phrase “oral proceedings” includes all instructions that the  
32 court gives, whether or not submitted in writing, and any instructions that counsel orally propose  
33 but the court refuses; all such instructions are included in the reporter’s transcript if designated  
34 under this rule. All instructions that counsel submit in writing, whether or not given to the jury,  
35 are lodged with the superior court clerk and are included in the clerk’s transcript if designated  
36 under rule ~~8.120~~ 8.122.

37  
38 Under subdivision (a), portions of depositions read in open court but not reported, or not read but  
39 lodged with the superior court clerk, are included in the clerk’s transcript if designated under rule  
40 ~~8.120~~ 8.122.

41  
42 **Subdivision (b).** \* \* \*

43  
44 **Subdivision (c).** \* \* \*

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

4  
5 **Subdivision (e).**\* \* \*

6  
7 **Subdivision (f).**\* \* \*

8  
9  
10 **Rule 8.134. Agreed statement**

11  
12 **(a) Contents of statement**

- 13  
14 (1) The record on appeal may consist wholly or partly of an agreed  
15 statement. The statement must explain the nature of the action, the basis  
16 of the reviewing court’s jurisdiction, and how the superior court decided  
17 the points to be raised on appeal. The statement should recite only those  
18 facts needed to decide the appeal and must be signed by the parties.  
19  
20 (2) If the agreed statement replaces a clerk’s transcript, the statement must  
21 be accompanied by copies of all items required by rule ~~8.120~~  
22 8.122(b)(1), showing the dates required by rule ~~8.120~~ 8.122(b)(2).  
23  
24 (3) The statement may be accompanied by copies of any document  
25 includable in the clerk’s transcript under rule ~~8.120~~ 8.122(b)(3) and (4).  
26

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

- 28  
29 (1) ~~Within 10 days after filing the notice of appeal, An appellant wanting~~  
30 intending to proceed under this rule must file ~~in superior court~~ either an  
31 agreed statement or a stipulation that the parties are attempting to agree  
32 on a statement in superior court with its notice designating the record on  
33 appeal under rule 8.121.  
34  
35 (2) If the appellant files the stipulation and the parties can agree on the  
36 statement, the appellant must file the statement within 40 days after  
37 filing the notice of appeal.  
38  
39 (3) If the appellant files the stipulation and the parties cannot agree on the  
40 statement, the appellant must file ~~the notices provided for in rule 8.120~~  
41 8.124, or 8.130, or the stipulation provided for in rule 8.128, or a  
42 motion under rule 8.137, a new notice designating the record on appeal  
43 under rule 8.121 within 50 days after filing the notice of appeal.

1  
2 **Advisory Committee Comment**  
3

4 **Subdivision (b).** Subdivision (b)(1) requires the appellant to file, ~~within 10 days after the notice~~  
5 ~~of appeal is filed~~ with the appellant's notice designating the record under rule 8.121, either an  
6 agreed statement or a stipulation that the parties are attempting to agree on a statement. The  
7 provision is intended to prevent issuance of a notice of default while the parties are preparing an  
8 agreed statement.  
9

10  
11 **Rule 8.137. Settled statement**  
12

13 **(a) Motion to use settled statement**  
14

15 (1) ~~Within 10 days after filing the notice of appeal,~~ An appellant wanting  
16 intending to proceed under this rule must serve and file in superior court  
17 with its notice designating the record on appeal under rule 8.121 a  
18 motion to use a settled statement instead of a reporter's transcript or  
19 both reporter's and clerk's transcripts.  
20

21 (2) \* \* \*

22  
23 (3) If the court denies the motion, the appellant must file ~~the notices~~  
24 ~~provided for in rule 8.120, 8.124, or 8.130, or the stipulation provided~~  
25 ~~for in rule 8.128,~~ a new notice designating the record on appeal under  
26 rule 8.121 within 10 days after the superior court clerk mails, or a party  
27 serves, the order of denial.  
28

29 **(b) Time to file; contents of statement**  
30

31 (1)-(2) \* \* \*

32  
33 (3) An appellant ~~wanting~~ intending to use a settled statement instead of  
34 both reporter's and clerk's transcripts must accompany the condensed  
35 narrative with copies of all items required by rule ~~8.120~~ 8.122(b)(1),  
36 showing the dates required by rule ~~8.120~~ 8.122(b)(2).  
37

38 (4) Within 20 days after the appellant serves the condensed narrative, the  
39 respondent may serve and file proposed amendments.  
40

41 (5) The proposed statement and proposed amendments may be  
42 accompanied by copies of any document includable in the clerk's  
43 transcript under rule ~~8.120~~ 8.122(b)(3) and (4).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42

(c) \* \* \*

**Rule 8.144. Form of the record**

(a) \* \* \*

**(b) Indexes**

At the beginning of the first volume of each:

- (1) The clerk’s transcript must contain alphabetical and chronological indexes listing each document and the volume and page where it first appears;
- (2) The reporter’s transcript must contain alphabetical and chronological indexes listing the volume and page where each witness’s direct, cross, and any other examination, begins; and
- (3) The reporter’s transcript must contain an index listing the volume and page where any exhibit is marked for identification and where it is admitted or refused. The index must identify each exhibit by number or letter and a brief description of the exhibit.

(c)–(f) \* \* \*

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

(a) \* \* \*

**(b) Later appeal**

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

(1)–(2) \* \* \*

**Rule 8.224. Transmitting exhibits**

(a) **Notice of designation**

1  
2 (1) Within 10 days after the last respondent’s brief is filed or could be filed  
3 under rule 8.220, a party wanting the reviewing court to consider any  
4 original exhibits that were admitted in evidence, refused, or lodged but  
5 that were not copied in the clerk’s transcript under rule ~~8.120~~ 8.122 or  
6 the appendix under rule 8.124 must serve and file a notice in superior  
7 court designating such exhibits.

8  
9 (2)–(3) \* \* \*

10  
11 (b)–(d) \* \* \*

12  
13 **Advisory Committee Comment**

14  
15 **Subdivision (b).** Subdivision (b)(2) provides a procedure by which parties send designated  
16 exhibits directly to the reviewing court in cases in which the superior court has returned the  
17 exhibits to the parties under Code of Civil Procedure section 1952 or other provision. (See also  
18 rule 8.120(a)~~(5)~~(3).)

19  
20  
21 **Chapter 3. Criminal Appeals**

22  
23 **Rule 8.320. Normal record; exhibits**

24  
25 (a) \* \* \*

26  
27 (b) **Clerk’s transcript**

28  
29 The clerk’s transcript must contain:

30  
31 (1)–(3)

32  
33 (4) All jury instructions that any party submitted in writing, each one and  
34 the cover page required by rule 2.1055(b)(2) indicating the party  
35 requesting it each instruction, and any written jury instructions given by  
36 the court;

37  
38 (5)–(13)

39  
40 (c)–(g) \* \* \*

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>APPELLANT'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 <i>Information on Appeal Procedures for Unlimited Civil Cases (form APP-001)</i> before completing this form. This form must be filed in the superior court, not in the Court of Appeal.</b>	

**RECORD OF THE DOCUMENTS FILED IN THE TRIAL COURT**

1. I elect to use the following method of providing the Court of Appeal with a record of the documents filed in the trial court *(check a, b, c, d, or e and fill in any required information):*
- a.  A clerk's transcript under rule 8.122 *(You must check (1) or (2) and fill out the clerk's transcript section on page 2 of this form.)*
    - (1)  I will pay the trial court clerk for this transcript myself when I receive the clerk's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the Court of Appeal.
    - (2)  I am asking that the clerk's transcript be provided to me at no cost because I cannot afford to pay this cost. I have attached the following document *(check (a) or (b))*:
      - (a)  An order granting a waiver of 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 Application for Waiver of Court Fees and Costs (form FW-001) to prepare and file this application.)*
  - b.  An appendix under rule 8.124.
  - c.  The original superior court file under rule 8.128. *(NOTE: Local rules in the Court of Appeal, First, Third, 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).)*

**RECORD OF ORAL PROCEEDINGS IN THE TRIAL COURT**

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

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

**NOTICE DESIGNATING CLERK'S TRANSCRIPT**

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

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

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

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

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

- h.
- i.
- j.

See additional pages

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

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

- a.
- b.
- c.

See additional pages

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

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

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

**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 trial court. Please remember that you must pay for the cost of preparing the reporter's transcript.

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

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

	Date	Department	Full/Partial Day	Description of Proceedings	Reporter's Name
a.					
b.					
c.					
d.					
e.					
f.					
g.					
h.					
i.					
j.					

See additional pages

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

\_\_\_\_\_  
(TYPE OR PRINT NAME)

▶

\_\_\_\_\_  
(SIGNATURE OF APPELLANT OR ATTORNEY)

SPR07-02

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

**List of All Commentators, Overall Positions on the Proposal, and General Comments**

	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee response</b>
1.	Appellate Court Committee of the San Diego County Bar Association Lisa W. Cooney, Chair	AM	Y	See comments on specific provisions below.	
2.	California Appellate Court Clerks' Association Deena C. Fawcett, President	AM	Y	See comments on specific provisions below.	
3.	Mary Carnahan Criminal Division Program Manager Superior Court of Solano County	A	N	No narrative comments submitted.	No response required.
4.	Court of Appeal, Second Appellate District Hon. Roger W. Boren Administrative Presiding Justice	A	Y	No narrative comments submitted.	No response required.
5.	Joseph A. Lane Clerk Court of Appeal, Second Appellate District, Division One	N	N	See comments on specific provisions below.	
6.	Pam Moraida Program Manager Superior Court of Solano County	A	N	No narrative comments submitted.	No response required.

SPR07-02

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee response</b>
7.	Orange County Bar Association Joseph Chairez, President	AM	Y	See comments on specific provisions below.	
8.	The State Bar of California Committee on Appellate Courts Saul Bercovitch, Staff Attorney	AM	Y	See comments on specific provisions below.	
9.	Sharol Strickland Executive Officer Superior Court of Butte County	A	N	No narrative comments submitted.	No response required.
10.	Superior Court of Los Angeles County (no name attached)	AM	Y	See comments on specific provisions below.	
11.	Superior Court of San Diego County Michael Roddy, Executive Officer	A	Y	No narrative comments submitted.	No response required.

SPR07-02

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

**Rules 8.120 and 8.121 – Forms of the Record on Appeal and Notice Designating the Record on Appeal**

	<b>Commentator</b>	<b>Comment</b>	<b>Committee response</b>
<b>Rules 8.120 and 8.121</b>	Appellate Court Committee of the San Diego County Bar Association Lisa W. Cooney, Chair	<p>We applaud the creation in a single rule of a menu of options in rule 8.120, accompanied by references to the relevant rules, for designating the record on appeal. This new rule should particularly benefit non-specialists and pro se litigants seeking to understand what they need to do to designate their appellate record.</p> <p>Likewise, new rule 8.121 is a logical addition, elaborating in one place the required contents of the notice designating the record and when the notice must be filed. We have one suggestion here. Because Judicial Council form APP-003, Notice Designating Record on Appeal, is also being revised, there may be some benefit in expressly referencing this new form in new rule 8.121. Parties designating a record thus are made aware the form exists and may be used. By way of comparison, current rule 8.100(f)(1) specifically references form APP-004, the Civil Case Information Statement. A short sentence could be added to new rule 8.121(a) as follows:</p> <p><b><u>Rule 8.121. Notice designating the record on appeal</u></b></p> <p><b><u>(a) Time to file</u></b>  <u>Within 10 days after filing the notice of appeal, an appellant must serve and file a notice in the superior court designating the record on appeal. Form APP-003 (Appellant’s Notice Designating Record on Appeal) may be used. The appellant may combine its notice designating the record with its notice of appeal.</u></p>	<p>No response required.</p> <p>The committee agrees in concept with this suggestion and has added a cross-reference to form APP-003 in the proposed advisory committee comment to rule 8.121</p>

SPR07-02

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

	<b>Commentator</b>	<b>Comment</b>	<b>Committee response</b>
<b>Rules 8.120 and 8.121</b>	California Appellate Court Clerks' Association Deena C. Fawcett, President	<b>Rule 8.120:</b> Agree with proposed changes.  <b>Rule 8.121:</b> Subsections (b)(3) and (5) do not fit the general flow of this section. Each should begin with the word "specify" to be consistent with the introductory phrase and the other three subsections or they should have their own new subsection, (c).	No response required.  The version of this rule that was circulated for public comment does not have subsections (b)(3) or (5). All of the subsections of (b)(1) begin with the word "specify."
<b>Rules 8.120 and 8.121</b>	The State Bar of California Committee on Appellate Courts Saul Bercovitch, Staff Attorney	<b>Rules 8.120 and 8.121</b> The Committee supports these user-friendly additions. Although lawyers practicing regularly in the appellate courts may be acquainted with the options for designating the appellate record, these rules should particularly benefit non-specialists and self-represented litigants.	No response required.

SPR07-02

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

**Rule 8.122 – Clerk’s Transcript**

	<b>Commentator</b>	<b>Comment</b>	<b>Committee response</b>
<b>Rule 8.122</b>	<p>Appellate Court Committee of the San Diego County Bar Association Lisa W. Cooney, Chair</p>	<p>New rule 8.122 governs the clerk’s transcript on appeal. Although a few modifications are proposed, this rule largely re-codifies the substance of current rule 8.120 governing the clerk’s transcript. The change is necessary to make room for new rules 8.120 and 8.121, discussed above. Revised rule 8.124 governs appendixes when chosen in lieu of a clerk’s transcript.</p> <p>We have a general observation about clerk’s transcripts, appendixes and the superior court’s obligations when a particular scenario arises in designating the record. At present, the rules do not address what the superior court clerk may, or should, do if there are multiple appellants represented by separate counsel, or there is a cross-appellant, and these parties elect different modes of designating the documentary record on appeal.</p> <p>Although the rules allow the parties to rely on the original superior court file, or an agreed or settled statement, the conundrum arises most often when one appellant elects the clerk’s transcript but another prefers to proceed by appendix. For example, assume that the first appellant to designate a record elects the clerk’s transcript. A subsequent appellant, however, or a cross-appellant, chooses an appendix. In the experience of members of our Committee, the superior court clerk in that situation will advise the parties that all of them must proceed by appendix, simply because one party has chosen that mode.</p> <p>To foster predictability and uniformity, the Appellate Advisory</p>	<p>Because this would be an important substantive change to the rule, the committee believes public comment should be sought before this change is considered for adoption. The committee will consider this suggestion during the next rules cycle.</p>

SPR07-02

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

	Commentator	Comment	Committee response
		<p>Committee may want to consider modifications to Chapter 2, governing civil appeals, to guide the superior court clerk on what to do when this scenario arises. It may be desirable for all appellants to be governed by the mode selected by the first appellant. Or, it may be desirable to encourage the parties to coordinate where they can agree on the same mode. Or, perhaps the choice should simply be left to the individual appellant, unencumbered by what other appellants prefer.</p> <p>The type of record selected may have financial and practical consequences for the parties. In some instances a clerk’s transcript is a more desirable option. For example, in certain appeals a clerk’s transcript may be less expensive than an appendix when considering the costs associated with assembling the documents and making multiple copies for filing and service. Additionally, the parties or their counsel (particularly if there is new counsel for the appeal) may not have copies of all relevant documents. In other circumstances an appendix will be preferable, such as where a party believes the case may settle before merits briefing and the cost of preparing a clerk’s transcript (which occurs relatively early in the appellate process) is incurred.</p> <p>For these reasons, we believe that the adoption of a rule governing this situation would be helpful, although we defer the precise parameters of such a rule for the Appellate Advisory Committee’s consideration.</p>	

SPR07-02

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

	<b>Commentator</b>	<b>Comment</b>	<b>Committee response</b>
<b>Rule 8.122</b>	Orange County Bar Association Joseph Chairez, President	Rule 8.122(b)(1)(D) should not <i>require</i> a clerk’s transcript to include memoranda and attachments supporting and opposing posttrial motions. They may well be unnecessary to the appeal. And taken literally, this change could require litigants to include copies of cases that are completely unnecessary.	The committee believes that these memoranda and attachments are important to understanding the motions that are required to be included in the clerk’s transcript.
<b>Rule 8.122</b>	The State Bar of California Committee on Appellate Courts Saul Bercovitch, Staff Attorney	The Committee supports these proposed amendments. The Committee notes, however, that under the amendment proposed for rule 8.122(b)(3)(C), the clerk’s transcript in a civil appeal would be required to contain: “Any <u>jury</u> instruction that a party submitted in writing, <u>each one indicating the party requesting it, and any written jury instructions given by the court.</u> ” This language differs slightly from a similar amendment proposed for rule 8.320(b)(4), governing the clerk’s transcript in a criminal appeal. Under that proposal, the transcript would be required to contain: “All <u>jury</u> instructions <u>that any party</u> submitted in writing, each one indicating the party requesting it, and any written jury instructions given by the court.” Although the linguistic difference is minor, the Committee believes the language in both rules should be made the same, given that both would be amended in any event.	The committee agrees that the language of these provisions should be the same unless a different meaning is intended. The committee therefore recommends that rule 8.122(b)(3)(C) be amended to provide that, if designated, the clerk’s transcript must contain “Any <u>jury</u> instruction that <u>any</u> party.” The committee does not recommend that the rule be amended to provide that “all” jury instructions be included in the clerk’s transcript because, unlike in felony appeals, a particular jury instruction will only be included in the transcript if it is designated by a party. As indicated in the response to the comments of Superior Court of Los Angeles County, the committee also recommends replacing the language requiring that each jury instruction indicate the party requesting it with a requirement the the transcript include the cover page required by rule 2.1055, which identifies the party requesting each set of jury instructions.
<b>Rule 8.122</b>	Superior Court of Los Angeles County (no name provided)	<b>Rule 8.122(a)(1)] Removal of 10 day Notice to File Designation</b>  The proposed change to this rule has the following language removed:	The requirement in proposed new rule 8.121 that within 10 days after filing the notice of appeal, an appellant must serve and file a notice in the superior court designating the record on appeal is intended to replace the current requirement in rule 8.120 for designating a clerk’s transcript.

SPR07-02

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

	Commentator	Comment	Committee response
		<p><b>“within 10 days after filing the notice of appeal, an appellant must serve and file a notice in superior court designating the documents to be included in the clerk’s transcript”.</b></p> <p>If the intention of the proposed change is to require appellants to file their designation on the same day as their “Notice of Appeal” then there is not an objection. However, the language of the proposed change does not clearly reflect this intention. It is proposed that the rule should specifically state when the “Designation” must be filed. For example, rule 8.122(a)(1) could read as follows:</p> <p><b>“A notice designating documents to be included in a clerk’s transcript must be filed with the Notice of Appeal ...”</b></p> <p>However, if the proposed change to Rule 8.120 (Proposed New Rule #8.122) is not intended to remove the 10 day requirement to file the appellant’s designation, then said language should remain part of the rule.</p> <p>In either case, it is necessary that a deadline exist for the submission of the “designation”. When a “Notice of Appeal” is filed by a party in a civil proceeding the Clerk’s Office commences the preparation of the certification process. However, the “Notice of Designation” is the actual document that lists the specific items to be included in the Clerk’s Transcript. If the appellant is not required to submit said document either immediately, or within a specific time period from the filing of the Notice of Appeal, the Clerk’s Office is unable to process the appeal, or in the alternative, place the appellant in default. Therefore, in order to accurately and</p>	

SPR07-02

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

	Commentator	Comment	Committee response
		<p>timely certify a record on appeal it’s imperative that clear and precise language exist that reflects when the designation must be filed.</p> <p><b>8.122(b)(3)(C): <u>Jury Instructions</u></b></p> <p>The proposed change to this rule includes the following specific language: “<u>each one (jury instruction) indicating the party requesting it</u>”. The addition of this specific language would not be objectionable if the history section of the submitted jury instructions always listed this information, however, the party requesting the instructions is often not reflected.</p> <p>If the rule is amended to include this specific language, it may cause a significant delay in the appeal certification process.</p>	<p>In response to this comment, the committee recommends replacing the language requiring that each jury instruction indicate the party requesting it with a requirement that the transcript include the cover page required by rule 2.1055. Rule 2.1055(b)(2) requires that “[e]ach set of proposed jury instructions must have a cover page . . . stating the name of the party proposing the instructions.” Including this cover page in the transcript would serve the purpose of identifying who requested a particular jury instruction without placing the burden on the trial court clerk to ensure that this information is on each jury instruction.</p>

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

**Rule 8.123 – Transmitting an Administrative Record**

	<b>Commentator</b>	<b>Comment</b>	<b>Committee response</b>
<b>Rule 8.123</b>	California Appellate Court Clerks' Association Deena C. Fawcett, President	<p><b>Subsection (c).</b> This section needs a date specific, e.g., 15 days from the date the trial court notices the party that the administrative record is needed, and is to be returned to it, to comply. Having a specific date, rather than just saying “promptly” makes issuance of a default notice under rule 8.140(a), if the record is not produced by the party in possession, much easier to justify. Human nature deals better with specifics. A party could argue what “promptly” means in frivolous motions to the reviewing court in order to delay the appeal, but “15 days from the date of the notice” or “15 days from the date of the mailing of the notice” is precise, thus reducing the chances of any substantive motions on the topic.</p> <p><b>Subsection (d):</b> Why does this proposal give the trial court clerk up to 60 days to send the administrative record to the reviewing court (?)—notwithstanding the explanation provided at the top of page 4. Per subsection (b)(2), respondent has 10 days after appellant’s designation is filed to request the administrative record. Why not have the record sent to the reviewing court within 30 days of any respondent’s designation or expiration of time? Tying delivery time to the 70-day period for filing the AOB/ Appendix, as the explanatory paragraph does, means nothing to a trial court clerk; that is not a time period they monitor. Why not encourage the trial court clerk to get the administrative record to the Court of Appeal as soon as possible? What happens if the admin. record is not here when the AOB/Appendix arrives? Nothing in the Rules of Court prohibits the appellant from filing the AOB/Appendix before the 70-day window has expired. Is the appellate court then expected to stay respondent’s time to file the RB because the</p>	<p>The committee agrees with this suggestion and recommends requiring that any designated administrative record be returned to the court within 15 days after a party serves the notice designating the record.</p> <p>The committee agrees that 60 days is too long and recommends requiring that the administrative record be transmitted to the reviewing court within 45 days after the respondent files its designation or the time to file respondent’s designation expires. This should give the trial court sufficient time to retrieve the record if it was returned to a party and still ensure that the record is transmitted to the reviewing court in before briefs are filed.</p>

SPR07-02

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

	Commentator	Comment	Committee response
		record is incomplete?	
<b>Rule 8.123</b>	The State Bar of California Committee on Appellate Courts Saul Bercovitch, Staff Attorney	<p><b>Rule 8.123 (and Related Provisions in Rules 8.120(a)(2), 8.121(b)(2), 8.122(b)(4)(B) and 8.124(b)(2)(C))</b></p> <p>The Committee supports the creation of a rule instructing how to designate an administrative record as part of the record on appeal. At present, no rule provides specific guidance.</p> <p>The Committee comments on one aspect of this proposal. Proposed rule 8.123 forecloses the option of including an administrative record in a party’s appendix, in favor of a mandatory designation and transmittal procedure via the superior court. The Discussion of SPR07-02 indicates that the Appellate Advisory Committee considered the appendix option (currently allowed in some districts/divisions) but chose to preclude this option. Thus, proposed rule 8.120 would require transmittal of the entire administrative record if an appellant intends to raise “any issue” that requires consideration of the administrative record.</p> <p>In the experience of members of the Committee, the appendix option, even for an administrative record, can at times be more efficient and convenient for both the appellate court and the parties. For example, the only issue raised on appeal may be whether something was timely, and a determination of that issue could require review of very few documents from the administrative record. Thus, the Committee poses for further consideration whether the new rules should preclude the appendix option.</p>	The committee believes that it is preferable to transmit the entire original administrative record to the reviewing court. In the experience of committee members, the scope of the administrative record is often an issue that is before the trial court and the reviewing court often wants to see the entire administrative record to provide context for the issues on appeal. The committee noted that the rules do not allow parties to designate portions of an exhibit for transmittal to the court; the entire exhibit is sent if it is designated (although parties may designate only some exhibits for transmittal). As the State Bar committee points out, administrative records can be lengthy. Including such records in appendixes would mean recopying these potentially lengthy records, which would be costly, time-consuming, and wasteful. Instead, as is required with exhibits in criminal cases, the committee recommends that the original administrative record be transmitted to the reviewing court.
<b>Rule 8.123</b>	Superior Court of Los Angeles County	There is an objection to the proposed addition of Rule 8.123(d) which states the following:	The proposal is not intended to require that the administrative record be included in the clerk’s

SPR07-02

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

	<b>Commentator</b>	<b>Comment</b>	<b>Committee response</b>
	(no name provided)	<p>“The superior court clerk must include any administrative record designated by a party in the record on appeal...”</p> <p>Administrative Records are very similar to civil exhibits because they’re usually admitted by reference and then returned to the offering party. If the Clerk’s Office is required to retrieve these records from the offering party and include them in the Clerk’s Transcript it will necessitate an extensive amount of time to this process, since these records are typically very large (often 20 to 30 volumes). Currently, if an appellant wishes to have these records considered in conjunction with their appeal they are merely lodged with the reviewing court, and not made part of the certified record. We respectfully object to this proposed rule based upon the time consuming factor involved in making Administrative Records part of the record on appeal.</p>	<p>transcript; it is only intended to require that the administrative record be transmitted to the court at the same time as the other parts of the record on appeal. Based on this commentators concerns, the committee is recommending changing the language of proposed subdivision (d) to clarify this intent.</p> <p>As indicated in the invitation to comment, it is the committee’s understanding that the practices relating to administrative records vary from court to court. Some courts already require that, like exhibits, the original administrative record be transmitted to the reviewing court. The committee believes that, as with exhibits, it is not inappropriate for the court to be responsible for transmitting the original administrative record to the reviewing court.</p>

SPR07-02

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

**Rule 8.124 – Appendixes**

	<b>Commentator</b>	<b>Comment</b>	<b>Committee response</b>
<b>Rule 8.124</b>	California Appellate Court Clerks' Association Deena C. Fawcett, President	Appendixes instead of clerk's transcript. Although subsection (b)(2)(D) has only a minor proposed change, we suggest that if the party filing the appendix is, in fact, incorporating by reference "the record on appeal in another case pending in the reviewing court or the record in a prior appeal in the same case" that the party be required to indicate that information on the cover of the appendix. There is no other expeditious way the appellate clerk will know about the incorporation and be able to flag the other file(s) to retain it (them) on site (in the case of a "prior appeal") until the present case is concluded. Form APP-003 does not provide this information (it's an optional form in any event) and the appellate clerks do not read an appendix beyond checking for the documents required to be in it by the Rules of Court.	Because this would be a substantive change to the rule, the committee believes public comment should be sought before this change is considered for adoption. The committee will consider this suggestion during the next rules cycle.
<b>Rule 8.124</b>	Orange County Bar Association Joseph Chairez, President	Rule 8.124 appears to introduce an unintended substantive change. Under current rule 8.124, a <i>respondent</i> may elect an appendix, in which case, the appellant must use an appendix as well. The revised language changing "any party" to "appellant" seems to take away this option for respondents. If this change is intended, the Judicial Council should highlight it and seek comments. If the change is not intended, then this draft needs fixing.	The committee did not intend to make such a substantive change and recommends amending rule 8.124 to clarify that the respondent may also elect to proceed by way of appendix.
<b>Rule 8.124</b>	The State Bar of California Committee on Appellate Courts Saul Bercovitch, Staff Attorney	If rules 8.120, 8.121, 8.122 and 8.123 are adopted as proposed, some technical and otherwise non-substantive amendments will be required to rule 8.124 (appendix). The Committee supports these amendments, assuming the other changes are made.	No response required.

SPR07-02

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

**Rule 8.128 – Superior Court File**

	<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
<b>Rule 8.128</b>	California Appellate Court Clerks' Association Deena C. Fawcett, President	Rule 8.128(a)(2). Superior court file instead of clerk's transcript. We recommend that the last sentence of this subsection "The parties must serve the reviewing court with a copy of the stipulation" be removed. Rule 8.121(c) requires the trial court clerk to send the notice of designation of record to the Court of Appeal. Revised form APP-003, 1.c., includes notice of stipulation to use the superior court file and requires that a copy of the stipulation be attached. Thus, requiring service of the stipulation on the reviewing court in this rule is duplicative and unnecessary.	Form APP-003 is an optional form and therefore may not be used by all appellants. The committee therefore believes that it is important to retain the requirement in this rule that a copy of the stipulation to use an agreed statement be served on the reviewing court.

SPR07-02

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

**Rule 8.130 – Reporter’s Transcript**

	<b>Commentator</b>	<b>Comment</b>	<b>Committee response</b>
<b>Rule 8.130</b>	California Appellate Court Clerks’ Association Deena C. Fawcett, President	Rule 8.130. Agree with proposed changes. .	No response required.
<b>Rule 8.130</b>	The State Bar of California Committee on Appellate Courts Saul Bercovitch, Staff Attorney	If rules 8.120, 8.121, 8.122 and 8.123 are adopted as proposed, some technical and otherwise non-substantive amendments will be required to rule 8.130 (reporter’s transcript). The Committee supports these amendments, assuming the other changes are made.	No response required.

SPR07-02

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

**Rule 8.134 – Agreed Statements**

	<b>Commentator</b>	<b>Comment</b>	<b>Committee response</b>
<b>Rule 8.134</b>	California Appellate Court Clerks' Association Deena C. Fawcett, President	Rule 8.134. Agree with proposed changes.	No response required.

SPR07-02

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

**Rule 8.137 – Settled Statements**

	<b>Commentator</b>	<b>Comment</b>	<b>Committee response</b>
<b>Rule 8.137</b>	California Appellate Court Clerks' Association Deena C. Fawcett, President	Agree with proposed changes.	No response required.
<b>Rule 8.137</b>	The State Bar of California Committee on Appellate Courts Saul Bercovitch, Staff Attorney	If rules 8.120, 8.121, 8.122 and 8.123 are adopted as proposed, some technical and otherwise non-substantive amendments will be required to rule 8.137 (settled statement). The Committee supports these amendments, assuming the other changes are made.	No response required.
<b>Rule 8.137</b>	Superior Court of Los Angeles County (no name provided)	<b>8.137(a)(1) Settled Statement</b> [See Objection to Rule 8.122(a)(1)]  There is an objection to this proposed rule change for the exact same reasons reflected in the objection to Rule 8.122(a)(1). If the intention of this rule change is to require the appellant to <u>immediately</u> file their request to proceed by way of Settled Statement then please disregard this objection. Having a deadline for submission of this document is crucial to the timely certification process. Therefore, it is respectfully requested that the timeline for filing said document be specifically stated in the rule, or state that it must be filed immediately along with the notice of appeal.	Proposed rule 8.137 requires that the motion be filed with the notice designating the record on appeal. Proposed new rule 8.121 requires that the notice designating the record on appeal be served and filed within 10 days after filing the notice of appeal.

SPR07-02

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

**Rule 8.144 – Format of Record**

	<b>Commentator</b>	<b>Comment</b>	<b>Committee response</b>
<p><b>Rule 8.144</b></p>	<p>Appellate Court Committee of the San Diego County Bar Association Lisa W. Cooney, Chair</p>	<p>SPR07-02 proposes a sensible addition to rule 8.144(b)(3) requiring the reporter’s transcript index to be more detailed: <u>“Each exhibit must be identified by number or letter and a brief description of the exhibit.”</u> While amending this rule, the Appellate Advisory Committee might also consider a similar addition to rule 8.144(b)(1), to facilitate greater specificity in the clerk’s transcript index.</p> <p>Valuable guidance is found in the procedures governing the supporting record in writ proceedings. Current rule 8.490(d)(1)(C) instructs that the supporting documents submitted with a writ petition “must begin with a table of contents listing each document by its title and its index-tab number or letter. If a document has attachments, the table of contents must give the title of each attachment and a brief description of its contents.”</p> <p>This language could serve as a model for revising rule 8.144(b)(1) as follows, consistent with the greater specificity mandated for the reporter’s transcript index:</p> <p><b>Rule 8.144. Form of the record</b></p> <p>(a) * * *</p> <p>(b) <b>Indexes</b> At the beginning of the first volume of each:</p> <p>(1) The clerk’s transcript must contain alphabetical and chronological indexes listing each document and the volume</p>	<p>Because these would be substantive changes to the rule, the committee believes public comment should be sought before these change are considered for adoption. The committee will consider these suggestions during the next rules cycle.</p>

SPR07-02

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

	<b>Commentator</b>	<b>Comment</b>	<b>Committee response</b>
		<p>and page where it first appears <i>and, if the document has attachments, the indexes must give the title of each attachment;</i></p> <p>* * *</p> <p>An index containing the “title of each attachment” would make it easier for appellate courts and litigants to navigate the clerk’s transcript, especially if there are multiple volumes. To take account of the burden on superior court clerks, however, we do not suggest that the index also require, as to each attachment, “a brief description of its contents.” This compromise approach recognizes that different purposes may be served by requiring parties seeking writ relief to provide more specificity in their index than is found in a clerk’s transcript index.</p>	
<b>Rule 8.144</b>	California Appellate Court Clerks’ Association Deena C. Fawcett, President	Agree with proposed changes.	No response required.
<b>Rule 8.144</b>	The State Bar of California Committee on Appellate Courts Saul Bercovitch, Staff Attorney	The Committee supports this helpful amendment. The additional specificity in the index will make it easier for parties, and the appellate court, to navigate the reporter’s transcript on appeal.	No response required.

SPR07-02

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

**Rule 8.147 – Record in Multiple or Later Appeals**

	<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
<b>Rule 8.147</b>	California Appellate Court Clerks' Association Deena C. Fawcett, President	Rule 8.147. Agree with proposed changes. .	No response required.
<b>Rule 8.147</b>	The State Bar of California Committee on Appellate Courts Saul Bercovitch, Staff Attorney	If rules 8.120, 8.121, 8.122 and 8.123 are adopted as proposed, some technical and otherwise non-substantive amendments will be required to rule 8.147 (record in multiple or later appeals in same case). The Committee supports these amendments, assuming the other changes are made.	No response required.

SPR07-02

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

**Rule 8.224 – Transmitting Exhibits**

	<b>Commentator</b>	<b>Comment</b>	<b>Committee response</b>
<b>Rule 8.224</b>	California Appellate Court Clerks' Association Deena C. Fawcett, President	Rule 8.224. Agree with proposed changes.	No response required.
<b>Rule 8.224</b>	The State Bar of California Committee on Appellate Courts Saul Bercovitch, Staff Attorney	If rules 8.120, 8.121, 8.122 and 8.123 are adopted as proposed, some technical and otherwise non-substantive amendments will be required to rule 8.224 (transmitting exhibits). The Committee supports these amendments, assuming the other changes are made.	No response required.

SPR07-02

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

**Rule 8.320 – Clerk’s Transcripts in Felony Appeals**

	<b>Commentator</b>	<b>Comment</b>	<b>Committee response</b>
<b>Rule 8.320</b>	Appellate Court Committee of the San Diego County Bar Association Lisa W. Cooney, Chair	<p>The Appellate Advisory Committee proposes to amend rule 8.320(b)(4) to provide that the clerk’s transcript in criminal appeals must contain: “All <u>jury</u> instructions <u>that any party</u> submitted in writing, each one indicating the party requesting it, and <u>any written jury instructions given by the court.</u>” We simply observe that the language differs slightly from a proposed amendment to rule 8.122(b)(3)(C), governing the clerk’s transcript in civil appeals.</p> <p>Under that rule, the transcript in a civil appeal must contain: “Any <u>jury</u> instruction that a party submitted in writing, <u>each one indicating the party requesting it, and any written jury instructions given by the court.</u>” Although a minor linguistic difference, to avoid uncertainty it may be advisable to conform the language used in these analogous rules. This would further the stated purpose, in the introductory remarks to SPR07-02, “to make the language regarding jury instructions . . . in both rules consistent.”</p> <p>In addition, some criminal cases generate court-ordered diagnostic or other psychological reports, such as those required by Penal Code sections 1203.03, subdivision (b), and 1369. We sometimes encounter difficulties obtaining these records, particularly the section 1203.03 diagnostic records, and believe that this could be remedied by amending rule 8.320. We therefore suggest adding the following language, perhaps as a new subdivision (E), to rule 8.320(b)(13): “<i>Any diagnostic report, including but not limited to those required under Penal Code section 1203.03(b).</i>”</p>	<p>See response under the State Bar Committee’s comments to rule 8.122.</p> <p>Because this would be a substantive change to the rule, the committee believes public comment should be sought before this change is considered for adoption. The committee will consider this suggestion during the next rules cycle.</p>
<b>Rule</b>	California Appellate Court	<b>Rule 8.320:</b> Agree with proposed changes.	No response required.

SPR07-02

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

	<b>Commentator</b>	<b>Comment</b>	<b>Committee response</b>
<b>8.320</b>	Clerks' Association Deena C. Fawcett, President		
<b>Rule 8.320</b>	The State Bar of California Committee on Appellate Courts Saul Bercovitch, Staff Attorney	The Committee supports these proposed amendments. The Committee notes, however, that under the amendment proposed for rule 8.122(b)(3)(C), the clerk's transcript in a civil appeal would be required to contain: "Any jury instruction that a party submitted in writing, each one indicating the party requesting it, and any written jury instructions given by the court." This language differs slightly from a similar amendment proposed for rule 8.320(b)(4), governing the clerk's transcript in a criminal appeal. Under that proposal, the transcript would be required to contain: "All jury instructions that any party submitted in writing, each one indicating the party requesting it, and any written jury instructions given by the court." Although the linguistic difference is minor, the Committee believes the language in both rules should be made the same, given that both would be amended in any event.	See response under the State Bar Committee's comments to rule 8.122.

SPR07-02

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

**Form APP-003 – Notice Designating the Record on Appeal**

	<b>Commentator</b>	<b>Comment</b>	<b>Committee response</b>
<b>Form APP-003</b>	California Appellate Court Clerks' Association Deena C. Fawcett, President	<p>Proposed changes to APP-003. The CACCA organization takes no position on the proposed changes except as follows:</p> <p>Item 6 must be eliminated. The drafters seem to misinterpret (and create confusion for users of the form) by including this section which clearly contravenes the plain language of rule 8.224(a)(1). It states: “Within 10 days after the last respondent’s brief is filed or could be filed under rule 8.220, a party wanting the reviewing court to consider any original exhibits . . . must serve and file a notice in superior court designating such exhibits.” (Emphasis supplied.) By inclusion of item 6, the drafters effectively give the burden to the trial court of monitoring an appeal until “the last respondent’s brief is filed” so that exhibits may then be sent to the reviewing court. The appellate courts will not likely accept exhibits designated on this form prior to the filing of the respondent’s brief due to a lack of space. This is not a burden properly placed on the trial courts. Indeed, rule 8.224, as written, places the burden where it properly belongs, on the parties.</p> <p>There are a number of good practical reasons for waiting until the respondent’s brief is filed to designate and forward exhibits: (a) the case settles or is dismissed; a party’s time is wasted completing this section, the trial court clerk’s time is wasted pulling and preparing exhibits or monitoring briefing, the appellate court clerk’s time is wasted processing in, and returning, exhibits that will never be reviewed; all involve unnecessary costs to two courts; (b) this section will encourage designation of unneeded exhibits, including large physical objects, that in most instances are of no use to a court of review</p>	The committee has revised its proposal to delete item 6 from the proposed revisions to form APP-003.

SPR07-02

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

	Commentator	Comment	Committee response
		<p>because the issues on appeal are honed by briefing and typically eliminate the need for many exhibits; (c) the appellate courts are not equipped to handle large quantities of exhibits; by waiting until the RB has been filed, a natural control for a reduced flow of exhibits to and from the trial court is maintained.</p> <p>In addition, the Second and Sixth Districts believe that items 1(c),1(d), and 1(e), on form APP-003, are unnecessary because they are seldom used options in those districts. The Third District believes item 1(c) is necessary but takes no position as to the necessity, or not, of including the remaining two items.</p>	<p>See response to Court of Appeal, Second District’s comments below.</p>
<p><b>Form APP-003</b></p>	<p>California Court Reporters Association Sandy Bunch VanderPol, President</p>	<p>Appellate procedure: Records in civil and criminal cases, specifically the revision of the Notice designating record on appeal (form APP-003). This proposal applies to civil and criminal case and would add a new rule that clearly lays out all the different options for providing the record of the documents and the oral proceedings from the trial court in a civil appeal, among other things.</p> <p>Proposed Amendment: Add the caveat “if available” when designating a computer copy of a transcript on appeal.</p> <p>Rationale: Although the vast majority of official reporters are on computer systems, there may still be a handful that are not. Additionally, when it comes to anything digital, difficulties must be anticipated at times which could render a computerized record unavailable.</p>	<p>The committee believes the commentator’s concerns about individual situations in which a computer-readable transcript is not available can best be addressed by the court in the individual case. This proposed addition to the form is simply intended to implement existing statutory and rule provisions authorizing parties to request computer-readable versions of reporter’s transcripts. Code of Civil Procedure section 271(a) provides, in relevant part: “Any court, party, or other person entitled to a transcript may request that it be delivered in computer-readable form, except that an original transcript shall be on paper.” Rule 8.130(f)(4), in turn, provides: “On request, and unless the superior court orders otherwise, the reporter must provide any party with a copy of the reporter’s transcript in computer-readable format.” Under this rule, if a computer-readable transcript was not available, the court could</p>

SPR07-02

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

	<b>Commentator</b>	<b>Comment</b>	<b>Committee response</b>
			order that a paper copy be provided to the party.
<b>Form APP-003</b>	Court of Appeal, Second Appellate, District Division One Joseph Lane, Clerk	This Court is opposed to the changes. The additions apply to very few cases. One section applies to just one of the 6 Courts of appeal, that court, the Third District has fewer than 600 civil appeals, less than 10% of the statewide total and no more than 20% of their appeals use the superior court file so the change at best affects less than 2% of the cases statewide. The figures for use of a settled and agreed statement are even FAR FEWER.  The changes make the form too cluttered and would be much better in a separate form of addendum.	Local rules in four out of the six Court of Appeal Districts—the First, Third, Fourth, and Fifth—currently permit the use of the original superior court file in place of a clerk’s transcript. The committee therefore believes it is appropriate for this option to be included on a statewide form. Similarly, the use of agreed and settled statements is currently permitted in all Court of Appeal districts under rules 8.134 and 8.137 of the California Rules of Court, therefore, the committee believes that it is appropriate for these options to be included on this form.
<b>Form APP-003</b>	The State Bar of California Committee on Appellate Courts Saul Bercovitch, Staff Attorney	The Committee supports the proposed revisions to Form APP-003 with one exception. In the section of the form covering notice designating a reporter’s transcript, Paragraph No. 9 states that the user of the form “must identify” each proceeding by date, department, description and, if known, court reporter’s name. Although this information may be helpful, it goes beyond what is required by rule 8.130. The form should be modified so the user “must identify” only what is required by the rule, and perhaps allow a place to provide the other information, with an appropriate explanation in the instructions of its optional nature.	The committee notes that current form APP-003 requires users to provide the reporter’s name, the department, the date, and the nature of the proceedings. The only new information that would be required under the proposed revisions to this form is whether the proceedings to be transcribed are a full or partial day.  The commentator is correct that some of the information required—the department, the description of the proceedings, and whether the proceedings are a full or partial day—is not explicitly required by rule 8.130. Rule 8.130(a)(4) requires that a notice designating a reporter’s transcript identify the date of each proceeding and the portions to be included in the transcript. Rule 8.130(a)(6) also requires that the notice be served on

SPR07-02

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

	Commentator	Comment	Committee response
			<p>each known reporter of the designated proceedings, so the name of the known court reporters must already be identified. All of this information, except whether the proceedings requested are full or partial days, is currently required to be included in notices designating the reporter’s transcript in the Second District, however, under that district’s local rule 3. Furthermore, as acknowledged by the commentator, this information is helpful to the court in fulfilling its responsibilities relating to procuring reporter’s transcripts, and thus to the parties in timely receiving these transcripts. Judicial Council forms are generally designed to help facilitate the efficient and effective handling of court proceedings. To do this, these forms often “fill in the blanks” in the rules, addressing issues and eliciting information that are not explicitly addressed/required in the rules. Describing the proceedings to be transcribed and identifying the department in which these proceedings took place helps the court and the court reporter ensure that the correct proceedings are transcribed. Identifying whether the designated proceedings are full are partial days will help ensure that the appropriate deposit is made for the transcript.</p>