

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
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Report

TO: Members of the Judicial Council

FROM: Appellate Advisory Committee
Hon. Joyce L. Kennard, Chair
Heather Anderson, Senior Attorney, 415-865-7691

DATE: September 27, 2005

SUBJECT: Appellate Procedure: Citations to the Record in Briefs (amend Cal.
Rules of Court, rule 14) (Action Required)

Issue Statement

Rule 14(a)(1), which addresses the contents of briefs, currently provides that each brief must support any reference to a matter in the record with a citation to the record. The Los Angeles County Bar Association Committee on Appellate Courts has identified three recurring problems with citations to the record under this rule. First, many records contain multiple volumes so that a simple citation to a page is not helpful in locating the relevant portion of the record. Second, in appeals from summary judgments, citations are being made not to where the evidence appears in the record, but only to the separate statement required under Code of Civil Procedure section 437c that summarizes information contained in the record. This, again, makes it difficult to locate the original source material in the record. Third, some documents in the record contain their own separate pagination; citations to these documents sometimes reference the document name and the separate pagination, rather than providing the location of the document within the record.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2006, amend rule 14 to:

1. Require that citations to the record include the volume number and page number of the record where the matter appears;
2. Require that if any part of the record is submitted in electronic format, citations to that part identify, with the same specificity required for the printed records, the place in the record where the matter appears; and
3. Make other nonsubstantive changes to conform the rule to current rule format.

The text of the amended rule is attached at pages 4–6.

Rationale for Recommendation

The requirement that the citation include the volume number should make it easier to locate materials in multivolume records. The requirement that the citations be to the volume and page number *of the record* where the matter appears should address the problems of litigants' citing only to separate statements under Code of Civil Procedure section 437c or to the page numbers of the original document rather than the page numbers of the record.

Alternative Actions Considered

Because records that are in electronic format typically do not contain volume numbers, the committee was concerned that the requirement for citation to the volume number would be problematic in any case in which a part of the record was submitted in electronic format. Based on this concern, the committee initially considered not including the requirement for citation to the volume number. Ultimately, the committee decided to include this requirement but also added a new provision addressing citations to records submitted in electronic format.

Comments From Interested Parties

These proposed amendments were circulated as part of the spring 2005 comment cycle. Nine individuals and organizations submitted comments on this proposal. Six commentators agreed with the proposal, two agreed with the proposal only if it is modified, and one did not agree with the proposal.

The California Appellate Court Clerks' Association did not agree with the proposal, specifically suggesting deletion of the provision regarding citations to records in electronic format. They noted that the rules do not currently provide for electronic forms of the record and expressed concern that including a provision regarding records in electronic format would therefore create confusion. The committee considered deleting this provision from this proposal but ultimately decided to retain it. While the California Rules of Court do not currently provide for reporter's or clerk's transcripts to be filed in electronic format, the Courts of Appeal do still sometimes receive portions of the record, such as some exhibits, in electronic format. The committee believes that providing some guidance concerning citations in such situations is important. The committee did, however, clarify that this provision applies when any part of the record is submitted in electronic format.

The State Bar of California's Committee on Appellate Courts indicated that it does not support the proposed requirement of citing to the volume number. They stated that court clerks in some counties do not put volume numbers on multivolume records, and therefore they believe that imposing a requirement that attorneys cite a volume number may be unworkable and result in needless confusion. The committee notes that rule

9(c)(2) of the California Rules of Court requires that the cover of each volume of a clerk's or reporter's transcript include "the volume number, and the inclusive page numbers of that volume." The State Bar committee's comments suggest that some clerks may not be aware of this requirement. The committee will bring this comment to the attention of the CJER staff who work on educational programs for trial court clerks. If counsel receive a multivolume clerk's or reporter's transcript that does not comply with rule 9(c)(2), counsel may also want to bring this to the attention of the trial court clerk.

The State Bar committee also suggested that the proposed amendments to rule 14 will not be adequate to make clear that citations must be to the record itself, not to the separate statement under Code of Civil Procedure section 437c. They suggested adding a comment to further clarify this issue. The Appellate Advisory Committee believes that the rule language is sufficiently clear and is therefore not recommending inclusion of an advisory committee comment.

Finally, Mr. Lance E. Winters suggested that the requirement to cite the volume of the record should not apply in smaller cases—those with fewer than 1,000 pages of transcript. While including the volume number in citations to the record is most critical in cases with very large records, the committee believes that including the volume number will help both the other litigants and courts find cited materials in any case in which there is a multivolume clerk's or reporter's transcript. Therefore, the committee is not recommending that the application of this provision be limited to cases with larger records.

The full text of the comments received and the committee's responses is attached on pages 7–10.

Implementation Requirements and Costs

Including the volume number in citations to the record will place some small additional burden on counsel. By improving the accuracy of these citations, however, this proposal should reduce the time required for both opposing counsel and the courts to find the cited material and thus reduce costs.

Attachments

Rule 14 is amended, effective January 1, 2006, to read:

1 **Rule 14. Contents and form of briefs**

2
3 **(a) Contents**

4
5 (1) Each brief must:

6
7 (A) Begin with a table of contents and a table of authorities separately
8 listing cases, constitutions, statutes, court rules, and other
9 authorities cited;

10
11 (B) State each point under a separate heading or subheading
12 summarizing the point, and support each point by argument and, if
13 possible, by citation of authority; and

14
15 (C) Support any reference to a matter in the record by a citation to the
16 volume and page number of the record where the matter appears.
17 If any part of the record is submitted in an electronic format,
18 citations to that part must identify, with the same specificity
19 required for the printed record, the place in the record where the
20 matter appears.

21
22 (2) An appellant's opening brief must:

23
24 (A) State the nature of the action, the relief sought in the trial court,
25 and the judgment or order appealed from;

26
27 (B) State that the judgment appealed from is final, or explain why the
28 order appealed from is appealable; and

29
30 (C) Provide a summary of the significant facts limited to matters in the
31 record.

32
33 **(b) Form**

34
35 (1) A brief may be reproduced by any process that produces a clear, black
36 image of letter quality. The paper must be white or unbleached,
37 recycled, 8½ by 11 inches, and of at least 20-pound weight.

38
39 (2) Any conventional typeface may be used. The typeface may be either
40 proportionally spaced or monospaced.
41

- 1 (3) The type style must be roman; but for emphasis, italics or boldface may
2 be used, or the text may be underscored. Case names must be italicized
3 or underscored. Headings may be in uppercase letters.
4
- 5 (4) Except as provided in (11), the type size, including footnotes, must not
6 be smaller than 13-point, and both sides of the paper may be used.
7
- 8 (5) The lines of text must be unnumbered and at least one-and-a-half-
9 spaced. Headings and footnotes may be single-spaced. Quotations may
10 be block-indented and single-spaced. Single-spaced means six lines to a
11 vertical inch.
12
- 13 (6) The margins must be at least 1½ inches on the left and right and 1 inch
14 on the top and bottom.
15
- 16 (7) The pages must be consecutively numbered. The tables and the body of
17 the brief may have different numbering systems.
18
- 19 (8) The brief must be bound on the left margin. If the brief is stapled, the
20 bound edge and staples must be covered with tape.
21
- 22 (9) The brief need not be signed.
23
- 24 (10) The cover, preferably of recycled stock, must be in the color prescribed
25 by rule 44(c) and must state:
26
- 27 (A) The title of the brief;
28
- 29 (B) The title, trial court number, and Court of Appeal number of the
30 case;
31
- 32 (C) The names of the trial court and each participating trial judge;
33
- 34 (D) The name, address, telephone number, and California State Bar
35 number of each attorney filing or joining in the brief, but the cover
36 need not state the bar number of any supervisor of the attorney
37 responsible for the brief; and
38
- 39 (E) The name of the party that each attorney on the brief represents.
40
- 41 (11) If the brief is produced on a typewriter:
42

- 1 (A) A typewritten original and carbon copies may be filed only with
2 the presiding justice’s permission, which will ordinarily be given
3 only to unrepresented parties proceeding in forma pauperis. All
4 other typewritten briefs must be filed as photocopies.
5
6 (B) Both sides of the paper may be used if a photocopy is filed; only
7 one side may be used if a typewritten original and carbon copies
8 are filed.
9
10 (C) The type size, including footnotes, must not be smaller than
11 standard pica, 10 characters per inch. Unrepresented incarcerated
12 litigants may use elite type, 12 characters per inch, if they lack
13 access to a typewriter with larger characters.
14

15 (c) * * *

16
17 (d) * * *

18
19 (e) **Noncomplying briefs**

20
21 If a brief does not comply with this rule:

- 22
23 (1) The reviewing court clerk may decline to file it, but must mark it
24 “received but not filed” and return it to the party; or
25
26 (2) If the brief is filed, the reviewing court may, on its own or a party’s
27 motion, with or without notice:
28
29 (A) Order the brief returned for corrections and refiling within a
30 specified time;
31
32 (B) Strike the brief with leave to file a new brief within a specified
33 time; or
34
35 (C) Disregard the noncompliance.

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Appellate Procedure: Citations to the record in brief (amend Cal. Rules of Court, rule 14)

	Commentator	Position	Comment on behalf of group?	Comment	Proposed Committee Response
1.	Mr. Saul Bercovitch Committee on Appellate Courts State Bar of California San Francisco	AM	Y	<p>The proposed amendments to rule 14(a)(1)(C) are designed to address several issues. Because many records contain multiple volumes, the Appellate Advisory Committee proposes amending the rule to require citation to “the volume and page number” to assist in locating the relevant portion of the record. The Committee does not support the proposed requirement of citing to the volume number. In some counties, the court clerks do not put volume numbers on multi-record cases. Imposing a requirement that attorneys cite a volume number may therefore be unworkable and result in needless confusion.</p> <p>The Appellate Advisory Committee also proposes adding a requirement that briefs cite to the record “where the matter appears.” Although the Committee has no objection to the proposed new language, it does not believe it will solve the identified problem. The Committee believes the new language will not adequately alert those attorneys who would cite to a separate statement for “evidence” that they should instead cite to the actual evidence in the record. Upon reading the rule, some attorneys may believe the “matter appears” in the separate statement, and the current citation practice would continue.</p>	<p>Rule 9(c)(2) requires that the cover of each volume of a clerk’s or reporter’s transcript include “the volume number, and the inclusive page numbers of that volume.” The State Bar committee’s comments suggest that some clerks may not be aware of this requirement. The committee will bring this comment to the attention of the CJER staff who work on educational programs for trial court clerks. In addition, if counsel receive a multi-volume clerk’s or reporter’s transcript that does not comply with this requirement, counsel may want to bring this to the attention of the trial court clerk.</p> <p>The committee believes that when all of the proposed amendments are read together, it should be clear that the citations must be to the volume and page <i>of the record</i> where the matter appears.</p>

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				The Committee believes that adding a comment to the rule would be a more effective way of addressing the problem. The comment could state the general rule that a brief should cite to primary source material in the record, where relevant, and not secondary documents such as separate statements or points and authorities. The comment could provide the example of appeals from summary judgment motions. The comment could note that an argument about the existence of evidence must cite the evidence itself, and not a separate statement that refers to the evidence, but an assertion that a fact is undisputed may cite to a separate statement of a party opposing summary judgment that states the fact is undisputed. The Committee appreciates that this would be more like a “practice pointer” than a typical comment to a rule of court but, short of spelling out the necessary level of detail in the rule itself, believes a comment would be the only effective way of dealing with the issue presented.	
2.	Hon. Roger Boren Administrative Presiding Justice Court of Appeal, Second Appellate District Los Angeles	A	N	Agree with proposed changes.	No response needed.
3.	Ms. Deena C. Fawcett President California Appellate Court Clerks’	N	Y	CACCA does not agree with proposed change. The last sentence in rule 14(a)(C) should be	The committee has deleted this sentence as suggested by the association.

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	Association Sacramento			deleted: “If the record is submitted in an electronic format, the citation must identify the place in the record where the matter appears with equivalent specificity.” The rules do not allow for electronic filings nor do the courts of appeal accept electronic filings. This sentence will encourage much confusion. In the future, when the rules are changed and the courts accept electronic filings, we would support the idea of revisiting this proposal.	
4.	Ms. Linda A. Gorham Court Manager Superior Court of California, County of San Francisco San Francisco	A	N	Agree with proposed changes.	No response needed.
5.	Mr. Stephen V. Love Executive Officer Superior Court of San Diego County San Diego	A	N	Agree with proposed changes. No additional comments.	No response needed.
6.	Hon. Kathleen R. O’Connor Judge Superior Court of Yuba County Marysville	A	N	Agree with proposed changes. The reference to volume is an excellent revision.	No response needed.
7.	Mr. Lance E. Winters Los Angeles	AM	N	Agree with proposed changes only if modified. Many criminal appeals involve small records with only a few volumes of reporter’s transcript.	While most critical where there are very large records, the committee believes including the volume number will help both the other

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				One can easily find page cites in shorter record cases, even without a citation to the volume. I would suggest that the proposal requiring citation to the volume number of the reporter's transcript be limited to cases involving more than 1,000 pages of transcript. With that modification, I would support the proposal.	litigants and courts find original citations in the record in any case in which there is a multi-volume clerk's or reporter's transcript.
8.	Mr. Brian P. Worthington Chair, Appellate Court Committee, San Diego County Bar Association San Diego	A	Y	We support this proposal, which is intended to address imprecision in citing to the record. We are in agreement with the concerns voiced by the Los Angeles County Bar Association Appellate Courts Committee. The proposed amendments to rule 14 would enable both the appellate practitioner and the Court of Appeal to more quickly locate original source material in the record. The time savings gained by requiring more precise citation outweigh the de minimis effort needed to include a volume number in the citation.	No response needed.
9.	Mr. Dean Zipser President Orange County Bar Association Irvine	A	Y	Agree with proposed changes.	No response needed.