



**Judicial Council of California**  
ADMINISTRATIVE OFFICE OF THE COURTS

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## REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 29, 2010

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Title	Agenda Item Type
Appellate Procedure: Clerk's Transcript in Civil Appeals	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 8.122 and 8.832	January 1, 2011
Recommended by	Date of Report
Appellate Advisory Committee	September 10, 2010
Hon. Kathryn Doi Todd, Chair	Contact
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### **Executive Summary**

The Appellate Advisory Committee recommends amending the rules relating to clerk's transcripts in civil appeals to eliminate the requirement that these transcripts contain the supporting and opposing memoranda and attachments relating to certain posttrial motions. While the motions themselves are typically needed to determine the timeliness of the appeal, the associated memoranda and attachments, which are often quite lengthy, are not typically necessary to determine the appeal's timeliness and may not be relevant to the issues on appeal. These amendments would reduce litigation costs and make proceedings more efficient by allowing the parties to designate these memoranda and attachments for inclusion in the clerk's transcript only if they are needed, rather than requiring their inclusion in every case.

### **Recommendation**

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2011, amend rules 8.122 and 8.832 of the California Rules of Court to eliminate the requirement that clerk's transcripts in civil appeals contain the supporting and opposing memoranda and

attachments relating to 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.

The text of the proposed rules is attached at pages 6–8.

### **Previous Council Action**

The predecessor to rule 8.122, regarding the contents of clerk’s transcripts in civil appeals in the Court of Appeal, was adopted by the Judicial Council effective July 1, 1943. At that time, this rule required that, in all civil appeals in the Court of Appeal, the clerk’s transcript contain the judgment role, if any; the notice of appeal; and notices or stipulations to prepare the clerk’s and reporter’s transcripts, if any. The predecessor to rule 8.832, which was adopted effective December 15, 1945, required that these same documents be included in the clerk’s transcript in all civil appeals from municipal courts. Effective January 1, 1951, the Judicial Council amended the Court of Appeal rule to require that clerk’s transcripts in civil appeals include “any notice of intention to move for a new trial or motion to vacate the judgment, and the ruling thereon, if any.” Effective January 5, 1953, this same change was made to the rule on civil appeals from the municipal court. In July 2001, the council amended the Court of Appeal rule, effective January 1, 2002, to require that the clerk’s transcript in civil appeals also contain any motion for judgment notwithstanding the verdict or for reconsideration of an appealed order, any ruling thereon, and any notice of entry of these rulings. The Court of Appeal rule was subsequently renumbered as rule 8.122 and amended effective January 1, 2008, to require that the memoranda and attachments relating to these motions also be included in the clerk’s transcripts in all unlimited civil appeals. The rationale given for this amendment was to “make the language concerning . . . motions in clerk’s transcripts more consistent with the language in rule 8.320 relating to clerk’s transcripts in felony appeals.” Rule 8.122 was then used as the model for rule 8.832, the rule regarding the contents of clerk’s transcripts in limited civil appeals in the new appellate division rules, which were adopted by the council in February 2008 and took effect January 1, 2009.

### **Rationale for Recommendation**

Rules 8.122 and 8.832 of the California Rules of Court address the contents of clerk’s transcripts in civil appeals in the Court of Appeal and in the superior court appellate division, respectively. These rules require that certain documents be included in clerk’s transcripts in all cases and permit the parties to designate additional documents that they want included in these transcripts. Rule 8.122 also governs the contents of any appendix used in lieu of a clerk’s transcript because rule 8.124 provides that an appendix must contain all documents that are required to be included in a clerk’s transcript under rule 8.122.

Currently, both rules 8.122 and 8.832 require that the clerk’s transcript contain 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, with supporting and opposing

memoranda and attachments, and any order on such motion and any notice of its entry. The filing of these notices and motions, their procedural validity, and the date that the trial court notified the parties of its order on such motions are important in determining the timeliness of an appeal under rules 8.108 and 8.823. However, the supporting and opposing memoranda and attachments to these motions, which can often be voluminous, may not be necessary for determining the timeliness of the appeal or relevant to the issues being raised on appeal.

As noted above, the requirement to include the supporting and opposing memoranda and attachments in the clerk's transcript was added to rule 8.122 effective January 2008 as part of an effort to make language in the rules on civil and criminal appeals more consistent. Based on comments received since this change took effect, the committee is concerned that the costs of including these items in the clerk's transcript in every civil appeal outweigh the assistance the documents provide the court when it is determining timeliness in some appeals. The longer a clerk's transcript is, the more time it takes the trial court clerk to prepare the transcript, the more it costs the parties to obtain a copy of the transcript, and the more it costs the Court of Appeal to store the record in the case. To reduce these costs, this proposal would amend rules 8.122 and 8.832 to eliminate the requirement that supporting and opposing memoranda and attachments to these motions be included in the clerk's transcript in all civil appeals and instead allow the parties to designate these items for inclusion in the transcript if necessary. This proposal would also amend the advisory committee comment accompanying rule 8.122 and add a comment to rule 8.832 clarifying that these supporting and opposing memoranda and attachments need not be included in the clerk's transcript under this particular provision but can be designated for inclusion by a party or included in the record on motion of a party or the court under the augmentation rules.

### **Comments, Alternatives Considered, and Policy Implications**

The proposed amendments to rules 8.122 and 8.832 were circulated for public comment between April 19 and June 18, 2010, as part of the regular spring comment cycle. Thirteen individuals or organizations submitted comments on this proposal. Seven commentators agreed with the proposal, five agreed with the proposal if modified, and one did not agree with the proposal. The full text of the comments received and the committee's responses are set out in the attached comment chart at pages 9–18, and the significant substantive comments are discussed below.

#### **Appropriate documents to include in clerk's transcript**

Two commentators made suggestions for modifying the proposed language concerning what documents are required to be included in the clerk's transcript, and the comments of two others also implicate this issue. One commentator suggested that rules 8.122 and 8.832 be amended to require inclusion only of the notices of motions to vacate, for judgment notwithstanding the verdict, and for reconsideration, rather than the motions themselves, because it is the notices of these motions that are critical to determining timeliness of the appeal. Another commentator, in

contrast, suggested including everything but attachments to these motions in the clerk's transcript. This commentator noted that, in his experience, counsel generally do not present a document labeled "motion" but draft a single document consisting of a notice of motion and a memorandum of points and authorities, and that, because the notice of motion is often brief, it is frequently necessary to read the memorandum of points and authorities to truly understand the nature of the motion. Two other commentators suggested that all memoranda and attachments to these motions should be included in the clerk's transcript in some or all cases.

The committee considered but decided not to make these suggested changes. With respect to the suggestions that the memoranda and attachments always be included in the clerk's transcript, for the reasons discussed above the committee believes that the costs of including these materials in the clerk's transcript in every appeal outweigh the benefits. The committee notes that the requirement to include the memoranda and attachments was added very recently (January 1, 2008), and that courts were generally able to determine timeliness of the appeal without these materials before this change was made. With respect to the other comments, in the experience of committee members and court staff, the notice of motion and motion are typically drafted as a single document, but the memorandum of points and authorities, while it may be attached to the notice and motion, is typically identifiable as a separate document. Therefore, the committee concluded that it would generally not be possible for the clerk to separate the notice and include only that in the clerk's transcript, but that it generally would be possible for the clerk to separate the notice and motion from the memoranda. If, in a particular case, the memorandum was not separable, the committee assumes that the clerk would err on the side of including the full, commingled document. The committee notes that the requirement that copies of some of these motions be included in the clerk's transcript has been in effect since 1953, and, to the committee's knowledge, trial court clerks have been able to comply with this requirement.

One commentator suggested that the advisory committee comment indicate that the memoranda and attachments relating to these postjudgment motions can be designated by a party for inclusion in the clerk's transcript. The committee agreed with this suggestion and revised the proposed advisory committee comment to clarify this, as well as that these documents can be included in the record on motion of either a party or the court under the rules relating to augmentation of the record.

#### **Alternative of attaching documents to the *Civil Case Information Statement* (form APP-004)**

The committee specifically solicited comments about whether, in appeals to the Court of Appeal, it would be better to require that the copies of the notices and motions and related materials that now are required to be included in the clerk's transcript instead be attached to the *Civil Case*

*Information Statement* (form APP-004).<sup>1</sup> Only 6 of the 13 commentators specifically addressed this issue, and the views expressed varied. Based on the limited number and mixed nature of these responses, the committee decided not to recommend this change at this time but will consider it further during another committee year.

### **Implementation Requirements, Costs, and Operational Impacts**

These amendments should reduce costs for both the trial and appellate courts associated with preparing and storing clerk's transcripts by reducing the length of these transcripts. They should also reduce litigation costs for appellants by reducing the fees paid for clerk's transcripts or the costs of preparing appendixes in lieu of clerk's transcripts.

### **Relevant Strategic Plan Goals and Operational Plan Objectives**

Because this proposal recommends amendment of rules of court to improve practices and procedures, it supports the policies of promoting innovative and effective practices for processing cases and ensuring that statewide rules promote the fair, timely, effective, and efficient processing of cases underlying Goal III, Modernization of Management and Administration (Goal III.B., Policies 1 and 2).

### **Attachments**

1. Cal. Rules of Court, amended rules 8.122 and 8.832, at pages 6–8
2. Chart of comments, at pages 9–18

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<sup>1</sup> In civil appeals to the Court of Appeal, the appellant is required to complete and submit a *Civil Case Information Statement* shortly after filing the notice of appeal. This form requests information to help the Court of Appeal determine the timeliness of the appeal, including information about any notice of intention to move for a new trial and any motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order.



Rules 8.122 and 8.832 of the California Rules of Court is amended, effective January 1, 2011, to read:

1  
2 **Rule 8.122. Clerk’s transcript**  
3

4 **(a) \* \* \***  
5

6 **(b) Contents of transcript**  
7

8 (1) The transcript must contain:  
9

10 (A) The notice of appeal;  
11

12 (B) Any judgment appealed from and any notice of its entry;  
13

14 (C) Any order appealed from and any notice of its entry;  
15

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

21 (E) Any notices or stipulations to prepare clerk’s or reporter’s transcripts or to  
22 proceed by agreed or settled statement; and  
23

24 (F) The register of actions, if any.  
25

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

29 (3) Except as provided in (4), if designated by any party, the transcript must also  
30 contain:  
31

32 (A) Any other document filed or lodged in the case in superior court;  
33

34 (B)–(C) \* \* \*  
35

36 (4) \* \* \*  
37

38 **(c)–(d) \* \* \***  
39

40 **Advisory Committee Comment**  
41

42 **Subdivision (a). \* \* \***  
43

1 **Subdivision (b).** The supporting and opposing memoranda and attachments to any motion to vacate the  
2 judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order are not  
3 required to be included in the clerk's transcript under subdivision (b)(1)(D) but may be included by  
4 designation of a party under (b)(3) or on motion of a party or the reviewing court under rule 8.155.  
5

6 Subdivision (b)(1)(F) requires the clerk's transcript to include the register of actions, if any. This  
7 provision is intended to assist the reviewing court in determining the accuracy of the clerk's transcript.  
8

9 **Subdivision (c).** \* \* \*  
10  
11

## 12 **Division 2. Rules Relating to the Superior Court Appellate Division**

### 13 **Chapter 2. Appeals and Records in Limited Civil Cases**

#### 14 **Rule 8.832. Clerk's transcript**

##### 15 **(a) Contents of clerk's transcript**

16  
17 (1) The clerk's transcript must contain:

18  
19 (A) The notice of appeal;

20  
21 (B) Any judgment appealed from and any notice of its entry;

22  
23 (C) Any order appealed from and any notice of its entry;

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

29  
30 (E) The notice designating the record on appeal; and

31  
32 (F) The register of actions, if any.  
33

34  
35 (2) Each document listed in (1)(A), (B), (C), and (D) must show the date necessary to  
36 determine the timeliness of the appeal under rule 8.822 or 8.823.  
37

38  
39 (3) If designated by any party, the clerk's transcript must also contain:

40  
41 (A) Any other document filed or lodged in the case in the trial court;

42  
43 (B)–(C) \* \* \*  
44

45  
46 **(b)–(d)** \* \* \*  
47

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**Advisory Committee Comment**

**Subdivision (a).** The supporting and opposing memoranda and attachments to any motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order are not required to be included in the clerk's transcript under subdivision (a)(1)(D) but may be included by designation of a party under (a)(3) or on motion of a party or the reviewing court under rule 8.841.



**SPR10-06****Appellate Procedure: Clerks Transcript in Civil Appeals** (amend Cal. Rules of Court, rules 8.122 and 8.832)

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Proposed Committee Response</b>
1.	Appellate Court Committee San Diego County Bar Association by Kevin K. Green Chair	AM	<p>The invitation to comment for SPR10-06 notes that rules 8.122 and 8.832 currently require certain (potentially voluminous) documents to be included in the clerk's transcript.</p> <p>These are mandated even though the documents may be unnecessary to determining the appeal's timeliness, and even irrelevant to the issues raised. The invitation to comment seeks input on amendments which would eliminate the requirement that certain documents be included in the clerk's transcript, while preserving the right to designate the documents if they are otherwise pertinent to the appeal.</p> <p>We support this change. The referenced documents should be eliminated from among those mandated for the clerk's transcript solely to determine timeliness. In our view, this strikes the right balance between the costs associated with the clerk's transcript and ensuring the reviewing court's ability to determine timeliness.</p> <p>However, to clarify the text regarding the precise documents required to be included (and not included), our committee suggests that the proposed language, and Advisory Committee Comments, be revised slightly. The current proposed text of rule 8.122(b)(1)(D) is as follows:</p>	No response required.

**SPR10-06**

**Appellate Procedure: Clerks Transcript in Civil Appeals** (amend Cal. Rules of Court, rules 8.122 and 8.832)

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	Commentator	Position	Comment	Proposed Committee Response
			<p>(D) Any notice of intention to move for a new trial, or motion to vacate the judgment, or judgment notwithstanding the verdict, or for reconsideration of an appealed order, <del>with supporting and opposing memoranda and attachments</del>, and any order on such motion and any notice of its entry;</p> <p>We believe the following alternative more clearly specifies that only the <u>notice</u> of motion is to be included in the record, and that supporting and opposing memoranda and attachments should be excluded:</p> <p>(D) Any notice of intention to move for a new trial, or <i>notice of motion</i> to vacate the judgment, or <i>notice of motion</i> for judgment notwithstanding the verdict, or <i>notice of motion</i> for reconsideration of an appealed order, (<i>but not the</i> <del>with</del> supporting and opposing memoranda and attachments); and any order on such motion and any notice of its entry;</p> <p>Similarly, the current proposed text of the Advisory Committee Comment to rule 8.122(b) is:</p> <p>Subdivision (b): The supporting and opposing memoranda and attachments to any motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order are not required to be included in the clerk's transcript under subdivision (b)(1)(D).</p>	<p>The committee considered but decided not to make these suggested changes. In the experience of committee members and court staff, the notice of motion and motion are typically drafted as a single document, so it would generally not be possible for the clerk to separate the notice and only include that in the clerk's transcript. The requirement that copies of some of these motions be included in the clerk's transcript has been in effect since 1953, and, to the committee's knowledge, has not been problematic.</p> <p>The committee believes it is appropriate to clarify in the accompanying advisory committee comment, rather than in the rule text, that the memoranda and attachments are not required to be included in the transcript under this rule provision. However, the committee has modified the proposed advisory committee comment, as suggested by the commentator, to clarify that these documents can be designated for inclusion in the clerk's transcript by a party and also that</p>

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	Commentator	Position	Comment	Proposed Committee Response
			<p>We propose the following alternative to clarify the papers that should generally be excluded unless relevant to an issue on appeal, and to highlight that litigants are free to and should designate any such materials that are relevant to the substantive issues on appeal:</p> <p>Subdivision (b): The supporting and opposing memoranda and attachments to any motion to vacate the judgment, <i>motion</i> for judgment notwithstanding the verdict, or <i>motion</i> for reconsideration of an appealed order are not required to be included in the clerk's transcript under subdivision (b)(1)(D). <i>If a party would like any of these documents included in the clerk's transcript because otherwise relevant to the appeal, the party must designate them for inclusion.</i></p> <p>If any of these suggestions are adopted, the same changes would need to be made to rule 8.832(a)(1)(D) and its accompanying Advisory Committee Comment.</p> <p>The invitation to comment for SPR10-06 also seeks input on whether it would be an improvement to require that notices of motion, motions and related materials not mandated for the clerk's transcript instead be attached to the <i>Civil Case Information Statement</i> (form APP-004). We believe this idea makes sense. Our committee views this potential change as distinct from, and fully consistent with, the</p>	<p>they can included in the record through augmentation of the record on motion of a party or the court.</p> <p>Because the committee received limited feedback on the idea of requiring that the notices and motions be attached to the <i>Civil Case Information Statement</i> instead of being included in the clerk's transcript, the committee decided not to recommend this change at this time, but will consider it further during another committee year.</p>

**SPR10-06****Appellate Procedure: Clerks Transcript in Civil Appeals** (amend Cal. Rules of Court, rules 8.122 and 8.832)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Proposed Committee Response</b>
			<p>proposed revision to rules 8.122 and 8.832 and their Advisory Committee Comments discussed above. We support both changes since greater background in the Civil Case Information Statement will enable the reviewing court, at early stages of an appeal, to make threshold jurisdictional determinations. However, we suggest that merely the "notice" (and not the supporting "motion") be filed with the Civil Case Information Statement, since the notice should suffice for the reviewing court's task. Limiting the new and additional attachments in this manner would significantly reduce the volume of paper that appellants might be tempted, or feel obligated, to include when preparing the Civil Case Information Statement. To date, this document has been a straightforward one of just a few pages and there are benefits in retaining this basic simplicity.</p> <p>To the extent anything beyond the notice of motion would be necessary to assess timeliness, the adversary process has a role to play in putting the relevant documents before the reviewing court. If appellate jurisdiction is truly lacking, the respondent has an incentive to call this problem to the reviewing court's attention in a motion to dismiss the appeal, perhaps recovering costs of the motion if it is granted.</p>	

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Proposed Committee Response</b>
2.	California Appellate Court Clerk's Association by Joseph Lane	A	We agree that the proposal strikes the appropriate balance and oppose any move that would require the documents to be attached to the Case Information Statement.	Because the committee received limited feedback on the idea of requiring that the notices and motions be attached to the <i>Civil Case Information Statement</i> instead of being included in the clerk's transcript, the committee decided not to recommend this change at this time, but will consider it further during another committee year.
3.	California Judges Association by Jordan O. Posamentier Legislative Counsel San Francisco	AM	We agree that it can be voluminous and unnecessary to include all of the memoranda and attachments for purposes of determining the timeliness of an appeal. But these papers may nevertheless be critical for making that determination. Courts of Appeal cannot review what they do not have, so it would be problematic to eliminate completely the requirement that those documents be included, as this proposal suggests. We would therefore instead recommend a change that would allow parties to stipulate to include what information is material to determining timeliness.	The committee considered but decided not to make this change. This proposal would not exclude these materials from the clerk's transcript; it only provides that these materials are not required to be included clerk's transcript in every appeal. It is the committee's understanding that the memoranda and attachments are rarely relevant to determining whether a valid motion to vacate, for JNOV, or for reconsideration was filed and thus to whether the notice of appeal was timely-filed. If a party believes that a memorandum or attachment to a particular motion is important to determining timeliness, the party is free to designate that document for inclusion in the clerk's transcript. The committee does not believe the parties should be required to stipute in order to include such material in the transcript. Similarly, the court is free to augment the record with these documents. However, the committee has revised the proposed advisory committee comment accompanying this provision to clarify that these documents can be designated for inclusion in the clerk's transcript

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Proposed Committee Response</b>
				by a party or included in the record on motion or a party or the court.
4.	Committee on Appellate Courts State Bar of California by T. Peter Pierce, Chair San Francisco	AM	<p>This proposal would amend the rules relating clerk’s transcripts in civil appeals to eliminate the requirement that these transcripts contain the supporting and opposing memoranda and attachments relating to certain post-trial motions. The Appellate Advisory Committee also seeks comments about whether it would be better to require that the copies of the notices and motions and related materials that now are required to be included in the clerk’s transcript instead be attached to the Civil Case Information Statement (form APP-004).</p> <p>The Committee supports this alternative proposal. This would facilitate earlier determination about the timeliness of an appeal. The additional cost to the appellant would be minimal. The Committee believes that these changes would strike the proper balance between minimizing costs and facilitating the court's ability to determine the timeliness of appeals.</p>	<p>Because the committee received limited feedback on the idea of requiring that the notices and motions be attached to the <i>Civil Case Information Statement</i> instead of being included in the clerk’s transcript, the committee decided not to recommend this change at this time, but will consider it further during another committee year.</p>
5.	Donald A. Davio, Jr. Riverside	AM	<p>I support having the documents eliminated from the clerk's transcript but submitted with the civil case information statement. These documents would be helpful in assessing timeliness at the civil case information statement stage, which is when this court (4th/2) does its jurisdictional screening. The</p>	<p>Because the committee received limited feedback on the idea of requiring that the notices and motions be attached to the <i>Civil Case Information Statement</i> instead of being included in the clerk’s transcript, the committee decided not to recommend this change at this time, but will consider it further during another committee</p>

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Proposed Committee Response</b>
			copies submitted should show or indicate the date filed with the superior court. Rule 8.108(b)-(e) requires "valid" notices or motions to extend time, and we must do an order to obtain the necessary documents to make that determination. Consideration might be given to limiting submission of these documents to appellants relying on rule 8.108(b)-(e) for the timeliness of their appeals.	year.
6.	Hon. Craig Riemer Superior Court of Riverside County	AM	The proposal seems to contemplate that the "motion" is a separate document from the memorandum of points and authorities supporting the motion. In my experience, counsel generally do not present a document labeled "motion." Instead, they tend to draft a single document consisting of a notice of motion and a memorandum of points and authorities supporting that motion. And even if they do have a portion of that document labelled "motion," it is generally sandwiched between the notice and the memorandum. Moreover, because the notice of motion is often very cursory, it is frequently necessary to read the memorandum of points and authorities to truly understand the nature of the motion, i.e., both the relief sought and the grounds relied upon. If you are concerned about voluminous attachments, I would draw the distinction between the motion and the attachments, not between the motion and the supporting memoranda.	In the experience of committee members and court staff, the notice of motion and motion are typically drafted as a single document, but the memorandum of points and authorities, while it may be attached to the notice and motion, is typically identifiable as a separate document. If, in a particular case, the memorandum was not separable, the committee assumes that the clerk would err on the side of including the full, co-mingled document. The requirement that copies of some of these motions be included in the clerk's transcript has been in effect since 1953, and, to the committee's knowledge, trial court clerks were able to comply with this requirement. The requirement to include the memoranda and attachments was only added effective January 1, 2008.

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Proposed Committee Response</b>
7.	Hon. Judith D.McConnell Administrative Presiding Justice Court of Appeal, Fourth Appellate District	A	I agree with the proposed revision to the rule 8.122 that deletes the requirement that a clerk's transcript include a supporting or opposing papers filed in the trial court relating to motions for a new trial, to vacate judgment, for judgment notwithstanding the verdict or for reconsideration. Moreover, as discussed in part II above, I support the Committee's suggestion that the remaining related material (i.e., notices of intent, motions, orders thereon and notices of entry) be required as attachments to the appellant's Civil Case Information Statement, rather than as inclusions in the clerk's transcript. As implicitly recognized by the Committee, in many cases such materials are helpful in determining the timeliness of an appeal at its early stages, but are not necessary to resolve the merits of the parties' appellate contentions, and thus should be made part of the record earlier in the process.	No response required.  Because the committee received limited feedback on the idea of requiring that the notices and motions be attached to the <i>Civil Case Information Statement</i> instead of being included in the clerk's transcript, the committee decided not to recommend this change at this time, but will consider it further during another committee year.
8.	Orange County Bar Association by Lei Lei Wang Ekvall Newport Beach	A	No additional comment.	No response required.
9.	Superior Court of Los Angeles County	A	No additional comment.	No response required.
10.	Superior Court of Sacramento County by Robert Turner ASO II Finance Division	N	Currently, California Rules of Court, Rules 8.122 and 8.832 require the clerk's transcript to automatically include typically post judgment motions (new trial, vacate judgment,	

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Proposed Committee Response</b>
			<p>JNOV, reconsideration), the opposition and P's &amp; A's to those motions, and the orders on those motions. The proposed rule would eliminate the requirement that the clerks automatically include the supporting documents and oppositions as part of the CT. This is apparently to save money on copying the documents.</p> <p>Generally, in Sacramento Superior Court Appellate Division civil appeals, if someone made a post judgment motion, the appellant usually will attempt to raise an issue regarding that motion on appeal. And in Sacramento, the unlawful detainer cases are paperless and on their own system and are not easily accessible. As such, I would be opposed to this proposed rule change.</p> <p>The committee is also considering having these documents attached to the "Civil Case Information Sheet" judicial council form, rather than incorporated into the CT. If the rule is not changed to eliminate the documents from the CT, there is no need to require</p>	<p>If a party raises an issue about a particular post judgment motion on appeal in a limited civil case, the parties would generally need to designate all relevant documents, including supporting memoranda and attachments, for inclusion in the clerk's transcript. This proposal would not interfere with such a designation, it would simply provide that these documents are not mandatory elements of the clerks transcript in every appeal. To clarify this, the committee has revised the proposed advisory committee comment accompanying this provision to clarify that these documents can be designated for inclusion in the clerk's transcript by a party or included in the record through augmentation on motion or a party or the court.</p> <p>Because the committee received limited feedback on the idea of requiring that the notices and motions be attached to the <i>Civil Case Information Statement</i> instead of being included in the clerk's transcript, the committee decided not to recommend this change at this time, but</p>

**SPR10-06****Appellate Procedure: Clerks Transcript in Civil Appeals** (amend Cal. Rules of Court, rules 8.122 and 8.832)

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Proposed Committee Response</b>
			litigants to supply copies with their civil case information sheet. However, if the committee does eliminate the supporting documents and oppositions from the CT, then I would be in favor of requiring litigants to attach these documents to their civil case information sheet.	will consider it further during another committee year.
11.	Superior Court of San Bernardino County by Debra Meyers Deputy Court Executive Officer/General Counsel	A	No additional comment.	No response required.
12.	Superior Court of San Diego County by Michael M. Roddy Court Executive Officer	A	Our court would like to expressly thank the Appellate Advisory Committee for their hard work and well-considered proposals. This proposal will save time and costs while reducing the amount of paper being used.	No response required.
13.	Superior Court of Yolo County by James B. Perry, CEO	A	Yolo Superior Court agrees with the proposed changes. These changes will help the Court streamline the preparation of the clerk's transcript in civil appeals.	No response required.