

COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION TWO

MISCELLANEOUS ORDERS

2018

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COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION TWO

MISCELLANEOUS ORDER 18-1

Court of Appeal
Fourth Appellate District
Division Two
ELECTRONICALLY FILED

10:03 am, Mar 09, 2018

By: S. DeLeon

FILING OF NOTICES OF APPEAL BY SUPERIOR COURT CLERK

THE COURT:

The superior court clerk is DIRECTED to receive any and all documents purporting or represented to be, or that could be interpreted as, a notice of appeal regardless of form as long as the document has sufficient information to determine by reasonable research the case in which the document is to be filed. “Notice of appeal” includes, without limitation, a statement or application for a certificate of probable cause. (Pen. Code, § 1237.5; Cal. Rules of Court, rule 8.304(b).) If the nature of the document as a notice of appeal is uncertain and the superior court clerk intends to reject it or take no action respecting it, the superior court clerk is DIRECTED to contact the clerk of this court and ask for instructions before the rejection or decision to take no action. In no case may the superior court clerk reject, or take no action respecting, a document purporting or represented to be, or interpretable as, a notice of appeal because it is untimely or a notice of appeal was previously filed, or because of technical defects, such as, for example without limitation, being handwritten or on paper without numbered lines.

Immediately upon the physical receipt of any document purporting to be, or interpretable as, a notice of appeal by any member of the superior court clerk’s office

in any courtroom or clerk’s office of any superior court branch, district or division, the superior court clerk is further DIRECTED to stamp on the document both (1) that the document has been received and (2) the date of receipt. This direction applies, for example and without limitation, to a statement or application for certificate of probable cause, which must be so stamped even before it is submitted to a judge for decision. This direction also applies, for example and without limitation, to a branch superior court clerk’s office that does not regularly process appeals, in which case the document must be so stamped before it is transmitted to the appropriate office. Good cause appears in that the date of actual receipt is critical to the determination whether this court has jurisdiction over the appeal and in that it is the duty of an appellate court to determine whether it has jurisdiction in a case. (See, e.g., *Jennings v. Marralle* (1994) 8 Cal.4th 121, 126 [reviewing court must take initiative in determining jurisdiction “whenever a doubt exists”].)

The order is effective on the date of its filing and remains effective unless and until the order is vacated or superseded by an order of this court.

RAMIREZ

Presiding Justice

COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION TWO

MISCELLANEOUS ORDER 18-2

CLERK'S TRANSCRIPTS TO INCLUDE *BENOIT* ORDERS

Court of Appeal
Fourth Appellate District
Division Two
ELECTRONICALLY FILED

10:04 am, Mar 09, 2018

By: S. DeLeon

THE COURT:

The superior court clerk is DIRECTED to include in the clerk's transcript for any criminal appeal a copy of any order, by this court or the superior court, directing the superior court clerk to permit the filing of a late notice of appeal. (See, e.g., *In re Benoit* (1973) 10 Cal.3d 72, 86-89.)

Good cause appears in that either appellant's or respondent's counsel may not be aware that an untimely notice of appeal was the subject of such an order, and unnecessarily expend time and resources addressing the late notice.

The order is effective on the date of its filing and remains effective unless and until the order is vacated or superseded by an order of this court.

RAMIREZ

Presiding Justice

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION TWO
MISCELLANEOUS ORDER 18-3

Court of Appeal
Fourth Appellate District
Division Two
ELECTRONICALLY FILED
10:05 am, Mar 09, 2018
By: S. DeLeon

AUTOMATIC EXTENSIONS TO FILE REPORTER'S TRANSCRIPTS

THE COURT:

Except in cases excluded below, all certified shorthand reporters are GRANTED a 60-day extension to file the reporter's transcript in all civil cases and criminal cases. (Cal. Rules of Court, rules 8.60(b), 8.130(f)(1), 8.336(d)(3), (e)(2).) In civil cases, the extension is of the 30-day time limit (Cal. Rules of Court, rule 8.130(f)(1)) automatically extending the time to file a reporter's transcript to 90 days. In criminal cases, the extension is of the 20-day time limit (Cal. Rules of Court, rule 8.336(d)(3)) automatically extending the time to file a reporter's transcript to 80 days.

This automatic extension means that the reporter must deliver the reporter's transcript to the superior court clerk in time for the superior court clerk, appeals division, to file the reporter's transcript with the clerk of this court no later than the 91st day in civil cases and the 81st day in criminal cases. Thus, if the reporter's transcript is delivered on the 80th (criminal) or 90th (civil) day: (1) to the San Bernardino County Superior Court Clerk, it must be delivered to the Appeals Division at 8303 N. Haven Ave., Rancho Cucamonga, CA 91730; (2) to the Riverside County Superior Court Clerk, it must be delivered to the Appeals Division in the Hall of

Justice in Riverside; to the Inyo County Superior Court Clerk, it must be delivered as directed by the superior court clerk.

However, if the reporter's transcript is delivered to a superior court location other than those designated in the preceding sentence, then the transcript must be delivered by the time prescribed by the superior court clerk. Thus, the superior court clerk may shorten the extension as many days as necessary to ensure that delivery by the reporter to an undesignated court location will still result in timely delivery of the record to the clerk of this court.

This automatic extension also means that a reporter need not file a written extension request unless the reporter intends to exceed the 90-day period in civil cases or the 80-day period in criminal cases.

A. Because the following proceedings are generally short, the extension granted by this order does not apply in the following civil cases in which the appeal is from a judgment or order:

1. of dismissal after the sustaining of a demurrer without leave to amend;
2. granting or denying a special motion to strike for bringing a strategic lawsuit against public participation (Code Civ. Proc. § 425.16) or a SLAPPback action (Code Civ. Proc., § 425.18);
3. based on an order granting summary judgment;
4. of dismissal for failure to proceed timely;
5. based on a default;

6. on an order to show cause in a family law proceeding;
7. after a judgment;
8. granting a motion to quash service;
9. granting or denying a motion to stay or dismiss for inconvenient forum;
10. granting, dissolving, or denying a temporary restraining order, preliminary injunction, or injunction;
11. appointing a receiver.

B. Because the following proceedings are entitled to calendar preference (see generally Eisenberg et al., Cal. Prac. Guide: Civil Appeals & Writs (The Rutter Group 2016) ¶ 5:204, pp. 5-76 to 5-77), the extension granted by this order does not apply in the following juvenile and civil cases in which the appeal is from a judgment or order:

1. in a juvenile case (Code Civ. Proc., § 45; Welf. & Inst. Code, §§ 395, 800);
2. in an action to free a child from parental custody and control under Family Code section 7800 et seq. (Cal. Rules of Court, rule 8.416(a)(1)(A));
3. in a proceeding under the Uniform Child Custody Jurisdiction and Enforcement Act (Fam. Code, § 3454).
4. made appealable by the Probate Code (Code Civ. Proc., § 44);
5. pertaining to arbitration (Code Civ. Proc., §§ 1291.2);
6. granting or denying the recovery of possession of real property (Code Civ. Proc., § 1179a);

7. in an eminent domain proceeding (Code Civ. Proc., § 1260.010);
8. for declaratory relief in medical malpractice insurance cases (Code Civ. Proc., § 1062.5);
9. in a contested election proceeding (Code Civ. Proc., § 44);
10. in a specified proceeding involving environmental impact (see Pub. Res. Code, § 21167.1);
11. in a specified proceeding involving a general plan (see Gov. Code, § 65752);
12. in a specified proceeding involving property taxation or assessment (see Rev. & Tax. Code, § 5149);
13. on a writ petition deciding a trial court labor relations dispute (see Gov. Code, §§ 71639.5, 71825.2; Cal. Rules of Court, rule 10.660);
14. on a writ petition for release of budget and management information by the Judicial Council (see Gov. Code, § 71675, subd. (b); Cal. Rules of Court, rules 10.500(j)(1), 10.803).

C. Because the following proceedings are generally short, the extension granted by this order does not apply in the following criminal cases in which the appeal is from a judgment or order:

1. entered on a plea of guilty or nolo contendere;
2. resentencing the defendant on remand from an appellate court;
3. revoking probation;
4. of conviction pronounced after revocation of probation.

If the transcript has not been filed with the appeals division of the superior court on or before the expiration of the time provided by this order, this court may issue an order requiring the responsible reporter to show cause why the reporter should not be declared in contempt of this order and incompetent to act as an official reporter. (Code Civ. Proc., § 1209, subd. (a)(5); Gov. Code, § 69944.)

The order is effective on the date of its filing and remains effective unless and until the order is vacated or superseded by an order of this court.

RAMIREZ

Presiding Justice

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION TWO
MISCELLANEOUS ORDER 18-4

Court of Appeal
Fourth Appellate District
Division Two
ELECTRONICALLY FILED
10:06 am, Mar 09, 2018
By: S. DeLeon

ACCESS TO CONFIDENTIAL SUPERIOR COURT FILES BY APPELLATE
DEFENDERS, INC., AND APPOINTED APPELLATE COUNSEL

THE COURT:

The superior court clerk is DIRECTED to permit representatives of Appellate Defenders' Inc. (ADI), and any counsel appointed by this court, to view and copy the superior court file of their clients' cases, and any related cases, to the same extent that their clients or their trial counsel would be permitted to view and copy the file. If the superior court clerk considers a denial of access necessary, the superior court clerk is DIRECTED to discuss by telephone the denial of access with the clerk of this court first before denying access.

These cases include all criminal, juvenile dependency, and juvenile delinquency cases, as well as all cases concerning the commitment of persons with intellectual disabilities (Welf. & Inst. Code, § 6500 et seq.), all cases under the Sexually Violent Predators Act (Welf. & Inst. Code, § 6600 et seq.), all cases concerning the possible freeing of children from parental custody and control under part 4 (commencing with section 7800) of division 12 of the Family Code, all cases in which a birth parent has petitioned to withdraw consent to an adoption under Family Code section 9005, and all LPS Conservatorship cases (Welf. & Inst. Code, §5150 et seq.).

ADI and counsel appointed by this court shall be permitted to view and copy all portions of the file, including sealed and confidential documents, to the same extent as the party (or party's trial counsel) on whose behalf ADI requests access to the file. Access to the superior court file shall be permitted as provided above to a person who presents a personal identification document with a photograph (such as a driver's license) and either a business card showing that they are employed by ADI or a copy of this court's order appointing them as counsel.

Good cause appears in that ADI has contracted with the State of California on behalf of indigent parties to investigate the viability of writ petitions and appeals, and to arrange appointment of, assist, and supervise appellate counsel. Good cause appears also in that this court's appointment gives appointed appellate counsel the same authority to act on behalf of the party on appeal as trial counsel had to act on behalf of the same party in the superior court proceedings.

The order is effective on the date of its filing and remains effective unless and until the order is vacated or superseded by an order of this court.

RAMIREZ

Presiding Justice

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION TWO
MISCELLANEOUS ORDER 18-5

Court of Appeal
Fourth Appellate District
Division Two
ELECTRONICALLY FILED

10:06 am, Mar 09, 2018

By: S. DeLeon

CRIMINAL AND JUVENILE TRIAL COUNSEL NOT TO REPRESENT CLIENTS

ON APPEAL

THE COURT:

In criminal and juvenile appeals, the court will not appoint the appellant’s trial attorney to represent the appellant on appeal, because trial counsel is not able to objectively review the record to determine if trial counsel committed ineffective assistance of counsel. (*People v. Bailey* (1992) 9 Cal.App.4th 1252, 1254-1255 [trial counsel may not be appointed to represent on appeal the defendant he represented at trial]. See *People v. Kipp* (2001) 26 Cal.4th 1100, 1139 [“representation by the same attorney at trial and on appeal” entails “‘an inherent conflict’ because counsel ‘is in the untenable position of urging his own incompetency’” citing *Bailey* with approval].) If trial counsel wants the appeal to raise a particular issue, trial counsel may discuss the issue with appointed appellate counsel.

Furthermore and for the same reason, in criminal and juvenile appeals, the court discourages the appellant’s trial attorney, whether retained or appointed by the trial court, from representing appellant on appeal beyond filing the notice of appeal. By “retained” the court refers to all counsel who are not appointed by a court, including without limitation those who have been paid a retainer or fees, those who have

received a promise to pay a retainer or fees, and those who have performed or intend to perform appellate attorney services for no compensation.

Furthermore and for the same reason, this court discourages the public defender's office from representing on appeal a client the public defender's office represented at trial. Even though Government Code section 27706, subdivision (a), authorizes the public defender to represent on appeal clients the public defender represented at trial, that authorization does not remove the inherent conflict of interest. If the public defender's office nevertheless decides to represent on appeal a defendant the public defender's office represented in the trial court, this court urges the public defender's office to use counsel other than the counsel who represented the appellant in the trial court.

The order is effective on the date of its filing and remains effective unless and until the order is vacated or superseded by an order of this court.

RAMIREZ

Presiding Justice

COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION TWO

MISCELLANEOUS ORDER 18-6

ORAL ARGUMENT LIMITED TO 15 MINUTES

Court of Appeal
Fourth Appellate District
Division Two
ELECTRONICALLY FILED

10:06 am, Mar 09, 2018

By: S. DeLeon

THE COURT:

Since the tentative opinion focuses oral argument, no more than 15 minutes of oral argument is allowed for each side, except for good cause. (Cal. Rules of Court, rule 8.256(c).) The court is not unalterably bound by the tentative opinion, will thoughtfully consider all oral arguments made, and is willing to amend or discard the tentative opinion if counsel's arguments persuade the court that the tentative opinion is incorrect in any way. (See *People v. Pena* (2004) 32 Cal.4th 389, 399-400.)

Counsel may request additional time by serving and filing a letter application with the clerk of this court on or before 15 days after the date of mailing of the formal calendar, which notifies counsel when oral argument is set. Good cause for additional time is shown when the issues counsel still contests after reviewing the tentative opinion are more numerous or complex, or both, than in most orally argued cases.

Counsel is encouraged to reserve any response to the tentative opinion for oral argument, including applications for permission to file supplemental briefing.

However, counsel should notify the court and opposing counsel in writing prior to oral argument of any relevant new authority. (See Cal. Rules of Court, rule 8.254 [procedure for informing court of new authority].)

The order is effective on the date of its filing and remains effective unless and until the order is vacated or superseded by an order of this court.

RAMIREZ

Presiding Justice

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION TWO
MISCELLANEOUS ORDER 18-7

Court of Appeal
Fourth Appellate District
Division Two
ELECTRONICALLY FILED

10:07 am, Mar 09, 2018

By: S. DeLeon

NO SUBSTITUTION OF APPOINTED COUNSEL WITHOUT COURT ORDER

THE COURT:

Counsel appointed by this court are DIRECTED not to execute any substitution of attorney except upon the order of this court. A substitution of attorney, even if properly executed, cannot substitute retained counsel for appointed counsel, because the order appointing counsel must be vacated by a new order to discharge appointed counsel from the responsibility of representing the party in the appeal.

Upon receipt of a substitution of attorney, counsel appointed by this court are DIRECTED (1) immediately to telephone the clerk of this court and (2) to take no action based on the substitution of attorney.

The clerk of this court is DIRECTED to include a copy of this order with the copy of the order appointing counsel.

The order is effective on the date of its filing and remains effective unless and until the order is vacated or superseded by an order of this court.

RAMIREZ

Presiding Justice

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION TWO
MISCELLANEOUS ORDER 18-8

Court of Appeal
Fourth Appellate District
Division Two
ELECTRONICALLY FILED
10:08 am, Mar 09, 2018
By: S. DeLeon

SENDING CLERK'S TRANSCRIPT WHEN REPORTER'S TRANSCRIPT
DELIVERED IN JUVENILE WRIT PROCEEDINGS

THE COURT:

In all juvenile court writ proceedings under California Rules of Court, rules 8.450-8.456, upon receipt of a notice of intent, the superior court clerk is DIRECTED to prepare the clerk's transcript immediately and to send it to the clerk of this court with the reporter's transcript as soon as the reporter delivers the reporter's transcript to the superior court clerk within 12 days after the notice of intent is filed. (See Cal. Rules of Court, rules 8.450(h), 8.454(h) [time periods for preparing clerk's and reporter's transcripts].)

The order is effective on the date of its filing and remains effective unless and until the order is vacated or superseded by an order of this court.

RAMIREZ

Presiding Justice

COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION TWO

MISCELLANEOUS ORDER 18-9

Court of Appeal
Fourth Appellate District
Division Two
ELECTRONICALLY FILED

10:08 am, Mar 09, 2018

By: S. DeLeon

REPORTER'S TRANSCRIPT PAGE LIMIT, COVERS, APPEARANCE INDEX,

AND MASTER INDEX; SEPARATE PAGINATION OF CONFIDENTIAL

REPORTER'S TRANSCRIPT

THE COURT:

Page Limit

Paper reporter's transcripts must be bound in volumes of 300 pages or less (Cal. Rules of Court, rule 8.144(c)(1)), unless permission is obtained from the clerk of this court to exceed the page limit.

Covers

Each paper reporter's transcript volume front cover may be clear making visible a title page containing the information required on a cover. (Compare Cal. Rules of Court, rule 8.144(c)(2).)

Appearance Index

In addition to the indices required in reporter's transcripts (Cal. Rules of Court, rule 8.144(b)(2), (3)), reporter's transcripts must contain a chronological appearance

index showing the date of each hearing or day of trial and the volume and page number where the transcription of that day's oral proceedings commences.

Master Index

For reporter's transcripts of one volume, the required indices must be included in the front of the volume.

For reporter's transcripts of two volumes or more, a separately bound master index volume containing the required indices must be submitted, and no indices of any kind need be included in the other volume or volumes. (Compare Cal. Rules of Court, rule 8.144(b)(2), (3).)

Separate Pagination of Confidential Reporter's Transcripts

All confidential reporter's transcripts, including without limitation reporter's transcripts of both (1) hearings under *People v. Marsden* (1970) 2 Cal.3d 118 (Cal. Rules of Court, rule 8.47(b)) and (2) in-camera proceedings (*ibid.*), shall be separately paginated. (See Cal. Rules of Court, rule 8.45(c)(1) [sealed reporter's transcript kept separate from unsealed reporter's transcript] (c)(1)(D) [sealed index for sealed reporter's transcript].)

Violation of This Order

If a transcript does not comply with this order, this court may issue an order requiring the responsible reporter to show cause why the reporter should not be declared in contempt of this order and incompetent to act as an official reporter. (Code Civ. Proc., § 1209, subd. (a)(5); Gov. Code, § 69944.)

Effective date

The order is effective on the date of its filing and remains effective unless and until the order is vacated or superseded by an order of this court.

RAMIREZ

Presiding Justice

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION TWO
MISCELLANEOUS ORDER 18-10

Court of Appeal
Fourth Appellate District
Division Two
ELECTRONICALLY FILED
10:09 am, Mar 09, 2018
By: S. DeLeon

DETERMINATION BY APPELLATE DEFENDERS, INC., WHETHER PARTY
REPRESENTED BY RETAINED COUNSEL

THE COURT:

In any appeal in which this court could appoint counsel for an indigent party and a nonappointed attorney (the attorney) indicates that he or she has been retained to represent that party, Appellate Defenders, Inc., (ADI) is DIRECTED to determine whether that party has in fact retained the attorney as counsel for the appeal. ADI is DIRECTED to mail a copy of this order to the attorney.

The attorney is DIRECTED, within 10 days after the date of mailing of the copy of this order to the attorney, (1) to confirm in writing to ADI that the attorney has been retained by a party and (2) to otherwise cooperate with ADI (a) in verifying that the attorney has been retained by the party and (b) in transmitting and receiving the record.

The attorney is further DIRECTED not to submit a substitution of counsel to appointed counsel. Instead, the attorney is DIRECTED to comply with the directions in the preceding paragraph.

The attorney is NOTIFIED that a substitution of counsel does not confirm that the attorney is retained unless the substitution is signed by the party (see Cal. Rules of Court, rule 8.36(b) [“signed by the party”]) and that a substitution of attorney, even if

properly executed, cannot substitute retained counsel for appointed counsel, because the order appointing counsel must be vacated by a new order to discharge appointed counsel from the responsibility of representing the party in the appeal. The clerk of this court is DIRECTED not to file any substitution of counsel purporting to substitute retained for appointed counsel, and instead to forward the substitution of counsel to ADI as documentation indicating the retaining of counsel subject to ADI's verification.

If ADI determines that counsel has been retained, ADI is DIRECTED to file immediately with the clerk of this court a notice that counsel has been retained. Upon receipt, the clerk of this court is DIRECTED to present the notice to the court so that the court may file an order vacating the order of appointment. If ADI determines that counsel has not been retained, ADI is DIRECTED to determine whether the party is indigent, and, if so, to file with the clerk of this court an application for appointment of counsel and proposed order appointing counsel selected by Appellate Defenders, Inc.

The order is effective on the date of its filing and remains effective unless and until the order is vacated or superseded by an order of this court.

RAMIREZ

Presiding Justice

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION TWO
MISCELLANEOUS ORDER 18-11

Court of Appeal
Fourth Appellate District
Division Two
ELECTRONICALLY FILED
10:09 am, Mar 09, 2018
By: S. DeLeon

POLICE REPORTS INCLUDED IN CLERK’S TRANSCRIPT

THE COURT:

Because of the reliance of trial courts and counsel on police reports as a factual basis for guilty pleas, because of this court’s duty to review the trial courts’ findings of an adequate factual basis supporting a guilty plea when reviewing a record generally and pursuant to *People v. Wende* (1979) 25 Cal.3d 436, and because of the confidentiality of some of the information contained in police reports, including confidential, personal information about victims and witnesses, the provisions of this order provide for the confidential treatment of police reports as a part of the record on appeal. (See Pen. Code, § 964 [protection of confidential information in police reports].)

The superior court clerk, appeals division, is DIRECTED to send with the clerk’s transcript as a confidential item in a sealed envelope (see Cal. Rules of Court, rule 8.45(c)(1)(A), (C)) a copy of any police report offered as the factual basis for a guilty plea to one or more allegations in a complaint, information, or indictment. (See Pen. Code, § 1192.5, [court must inquire whether “a factual basis for the plea” exists]; Cal. Rules of Court, rules 8.155(a)(1), (c)(1), 8.340(c); *People v. Gaston* (1978) 20 Cal.3d 476, 482-484 [useful documents may be augmented].) The superior court clerk,

appeals division, is further DIRECTED to send a copy of the police report to the same counsel and in the same manner that a copy of the probation report would be sent. Counsel are DIRECTED *not* to transmit or reveal to anyone, including appellant, any confidential information in the police report concerning any victim or witness. (See Pen. Code, § 964, subds. (a), (b).)

This direction applies both to guilty pleas before a magistrate after the reading of the complaint prior to the filing of an information or indictment (Pen. Code, § 859a, subd. (a)) and to guilty pleas before a judge upon or after arraignment on an information or indictment.

The order is effective on the date of its filing and remains effective unless and until the order is vacated or superseded by an order of this court.

RAMIREZ

Presiding Justice

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION TWO
MISCELLANEOUS ORDER 18-12

Court of Appeal
Fourth Appellate District
Division Two
ELECTRONICALLY FILED
10:09 am, Mar 09, 2018
By: S. DeLeon

CLERK’S AND REPORTER’S TRANSCRIPTS IN NON-CAPITAL, MULTIPLE
DEFENDANT CRIMINAL APPEALS

THE COURT:

Introduction

This order applies to clerk’s and reporter’s transcripts in non-capital, multiple defendant criminal cases. The purpose of this order is to facilitate appellate review by producing a core, initial clerk’s and reporter’s transcript for all defendants, eliminating duplicate transcription of the same proceedings for each defendant, and minimizing supplemental records for defendants appealing after the first appeal. The term “proceedings” includes all oral proceedings required to be included in the normal record in a particular case. (See Cal. Rules of Court, rule 8.320(c) [oral proceedings included in normal record].) The term “reporter” includes all reporters reporting any proceedings in the particular case.

Notifying reporters

1. When the first notice of appeal is filed, the appeals division must send a notice to the reporter for the dates of all proceedings for all defendants, including any who have not filed an appeal in the case.

2. Each time a notice of appeal is subsequently filed prior to the certification of the initial record to the court of appeal, and only if there were proceedings after those included in the initial notice, the appeals division must send the reporter an “amended notice” listing both the dates in the initial notice and the dates for all defendants of all proceedings that were not included in the initial notice. These additional proceedings must be included by the reporter in the initial reporter’s transcript unless the appeals division, after consultation with the court of appeal clerk’s office, gives permission to include the additional proceedings in a supplemental reporter’s transcript.

3. Each time a notice of appeal is filed after the certification of the initial record, and only if there were any proceedings after those included in the initial notice and any amended notice, the appeals division must send the reporter a “supplemental notice” listing only the dates for all defendants of all proceedings that were not included in the initial and any amended notices; these proceedings must be transcribed in a supplemental reporter’s transcript.

4. Amended and supplemental notices must direct the reporter to comply with the requirements for originals and copies of initial and supplemental reporter’s transcripts. (See below “Originals and Copies.”)

All Defendants’ Names on Covers

1. The names of all defendants, including any who have not filed an appeal, must appear on the covers for the initial and any supplemental clerk’s and reporter’s transcripts.

2. The name or names of the defendant or defendants who have filed a notice of appeal must be highlighted or the print bolded on the covers of the initial and any supplemental clerk's and reporter's transcripts.

Originals and Copies

An original and two copies must be prepared of the initial and any supplemental clerk's and reporter's transcripts for the first defendant who appealed; an additional copy of the initial and any supplemental clerk's and reporter's transcripts must be prepared for each defendant who subsequently has filed a notice of appeal.

Due Date for Initial Reporter's Transcript

When each subsequent notice of appeal is filed prior to the delivery of the initial reporter's transcript, the due date for the initial reporter's transcript is

1. the original due date plus
2. the difference in days between
 - a. the filing date of the first notice of appeal and
 - b. the filing date of the subsequent notice of appeal,
3. but if the difference exceeds 30 days, add only 30 days to the original due date.

Example A:

First Appeal: Filed January 1, 2008 – Due 80 days, March 21, 2008

2nd Appeal: Filed January 15, 2008

To the original due date of March 21, 2008 we add the difference between January 1 and January 15, which is 14 days. Thus March 21 plus 14 days is April 4, the new due date.

Example B:

Same January 1, 2008, filing date for first appeal, so same original due date of March 21, 2008, but the second appeal is filed February 15, 2008.

The difference between January 1 and February 15 is over 30 days.

So, the original due date of March 21 would be extended only 30 days to April 20, 2008.

Problem Cases

If the procedure described in this order is not the most efficient way to achieve the purpose of this rule, the clerk may confer with the primary reporter and appeals supervisor, who may contact the court of appeal for directions.

Effective Date

The order is effective on the date of its filing and remains effective unless and until the order is vacated or superseded by an order of this court.

RAMIREZ

Presiding Justice

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION TWO
MISCELLANEOUS ORDER 18-13

Court of Appeal
Fourth Appellate District
Division Two
ELECTRONICALLY FILED
10:10 am, Mar 09, 2018
By: S. DeLeon

NO AUTOMATIC APPOINTMENT OF NON-APPEALING MINOR’S COUNSEL

THE COURT:

No counsel will be appointed for a non-appealing minor except when the court determines that, in the context of a particular appeal, the best interests of the minor require the appointment. (See Cal. Rules of Court, rule 5.661(c)(1) [minor’s trial counsel or guardian ad litem to recommend appointment of appellate counsel if minor’s “best interests cannot be protected without the appointment”], (c)(2), (f) [factors to be considered].)

Any party or counsel in trial or appellate proceedings may inform the court of any factors known to them that would indicate appointment of counsel to be in the minor’s best interests. However, the rule places the burden especially on the minor’s trial counsel to make a timely recommendation no more than 20 days after the filing of the last appellant’s opening brief. (Cal. Rules of Court, rule 5.661(d).) Because waiting until the filing of the last appellant’s opening brief would most likely result in the delay of the appeal, and because minor’s trial counsel are mailed a copy of the notification of filing of notice of appeal (Cal. Rules of Court, rule 8.405(b)(1)(A)(ii) [notification mailed “to all attorneys of record”]), minor’s trial counsel should consider

submitting a request for appointment of appellate counsel and, if appropriate, submit the request as early in the appellate process as possible.

Therefore, the court REQUESTS all counsel who represent minors in juvenile court proceedings to consider appointment of appellate counsel and, if in the best interests of the minor, to recommend appointment on or before 10 days after the mailing of the notification of filing of notice of appeal.

The order is effective on the date of its filing and remains effective unless and until the order is vacated or superseded by an order of this court.

RAMIREZ

Presiding Justice

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION TWO
MISCELLANEOUS ORDER 18-14

Court of Appeal
Fourth Appellate District
Division Two
ELECTRONICALLY FILED
10:10 am, Mar 09, 2018
By: S. DeLeon

COURT REPORTER NOTICE OF NO NOTES, OR THAT NOT NORMAL
RECORD, OR OF NONPREPARATION, OR OF PAGE ESTIMATE

THE COURT:

Notice by Reporter When Notified to Prepare Transcript

On or before five court days after the superior court clerk notifies a court reporter of the dates of the oral proceedings for which a reporter's transcript is to be prepared, the reporter is DIRECTED to notify:

1. the superior court clerk, appeals division, of the dates of any of the noticed proceedings for which the reporter has no notes or which are not part of the normal record, such as voir dire;
2. the superior court clerk, appeals division, that the reporter will not prepare the reporter's transcript for a reason other than those listed in item 1 but including for example illness, injury, or retirement;
3. the primary reporter of the reporter's estimate of the number of pages they reported for each individual date they were noticed to prepare.

Notice by Reporter After Notified to Prepare Transcript

If, at any time after a court reporter has been notified to prepare a reporter's transcript, the reporter determines that he or she will not do so for a reason described in item 2, the reporter is DIRECTED to notify the superior court clerk, appeals division, on or before five court days after the determination is made.

Failure by Reporter to Give Notice When or After Notified to Prepare Transcript

If notice pursuant to this order is not timely given, this court may issue an order requiring the responsible reporter to show cause why the reporter should not be declared in contempt of this order and incompetent to act as an official reporter. (Code Civ. Proc., § 1209, subd. (a)(5); Gov. Code, § 69944.)

Effective Date

The order is effective on the date of its filing and remains effective unless and until the order is vacated or superseded by an order of this court.

RAMIREZ

Presiding Justice

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION TWO
MISCELLANEOUS ORDER 18-15

Court of Appeal
Fourth Appellate District
Division Two
ELECTRONICALLY FILED
10:10 am, Mar 09, 2018
By: S. DeLeon

VEXATIOUS LITIGANT NOTICES OF APPEAL AND APPLICATIONS

THE COURT:

When the superior court clerk receives from a vexatious litigant subject to a prefiling order (Code Civ. Proc., § 391.7) a notice of appeal or application for permission to file a notice of appeal, the superior court clerk is DIRECTED to mark the document “Received [date] but not filed” and to send the document to the clerk of this court immediately.

The order is effective on the date of its filing and remains effective unless and until the order is vacated or superseded by an order of this court.

RAMIREZ

Presiding Justice

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION TWO
MISCELLANEOUS ORDER 18-16

Court of Appeal
Fourth Appellate District
Division Two
ELECTRONICALLY FILED

10:10 am, Mar 09, 2018

By: S. DeLeon

FORMAT FOR ATTACHED MULTI-DOCUMENT AUGMENT MOTIONS AND
JUDICIAL NOTICE REQUESTS

THE COURT:

When a party attaches to its motion to augment or request for judicial notice more than one document to be added to the record or judicially noticed, the attached documents must be formatted as follows: (a) the documents must be arranged either (i) chronologically by filing date if they were filed in the superior court or (ii) if not, in any reasonable order; (b) the pages must be numbered consecutively; and (c) two indices must be included at the beginning of the attached documents indicating the pages on which each document begins, (i) the first being an index of the documents in order as chronologically or otherwise arranged in the attachments, and (ii) the second being an alphabetical index of the documents by their titles.

Good cause for this order exists. Augmentation and generally judicial notice are in the court's discretion, and chronological or other reasonable arrangement and indices make reference to and review of the attached documents more efficient. (See Evid. Code, § 459, subd. (a) [appellate court judicial notice generally discretionary, but mandatory when properly noticed, or required to be noticed, by trial court]; Cal. Rules of Court, rules 8.155(a) [court *may* order augmentation]; *Ragland v. U.S. Bank*

National Assn. (2012) 209 Cal.App.4th 182, 193 [the appellate court *may* take judicial notice of matters not appearing in appellate record or augmentable]; *Russi v. Bank of America* (1945) 69 Cal.App.2d 100, 102 [discretionary character of augmentation]. See also Cal. Rules of Court, rules 8.155(a)(2) [requiring copies of added documents to be attached and consecutively numbered], 8.144(a)(1)(C), (D) [requiring chronological arrangement of documents and consecutively numbered pages in clerk’s transcripts], 8.144(b)(1) [requiring chronological indices in clerk’s transcripts], 8.252(a)(3) [requiring attachment of documents to judicial notice request.]

The order is effective on the date of its filing and remains effective unless and until the order is vacated or superseded by an order of this court.

RAMIREZ

Presiding Justice