



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 25, 2013

Title	Agenda Item Type
Appellate Procedure: Defaults in Procuring the Record and Completion of the Record in Civil Appeals	Action Required
	Effective Date
	January 1, 2014
Rules, Forms, Standards, or Statutes Affected	Date of Report
Adopt Cal. Rules of Court, rule 8.149; amend rules 8.122, 8.140, 8.832, 8.840, and 8.842	August 2, 2013
Recommended by	Contact
Appellate Advisory Committee	Heather Anderson, 415-865-7691
Hon. Raymond J. Ikola, Chair	heather.anderson@jud.ca.gov

Executive Summary

The Appellate Advisory Committee recommends amending the rules relating to preparation of clerk's transcripts in civil appeals to give trial court clerks the option, in certain cases, of waiting to determine whether the appeal will proceed before preparing such a transcript. The committee also recommends adopting new rule provisions establishing when the record in a civil appeal is considered complete and ready to be transmitted to the reviewing court. These rule amendments should result in significant cost savings for some trial and appellate courts.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2014:

1. Amend rules 8.122 and 8.832, relating to clerk's transcripts in civil appeals, to:

- Provide that if an appellant has designated a reporter's transcript, the clerk has the option of waiting until 30 days after the appellant deposits the funds for the reporter's transcript or one of the authorized substitutes for this deposit to complete the clerk's transcript;
 - Clarify that the clerk will issue a default notice if an appellant fails to make the required deposit for a clerk's transcript or to submit a fee waiver application or order granting a fee waiver;
 - Clarify that the clerk must prepare copies of the transcript not only for parties who have made a deposit for the transcript, but also for those who have requested a copy and have been granted a fee waiver;
 - Clarify that if an appellant submits a preexisting fee waiver order that waives the fee for the clerk's transcript, the time to prepare the transcript begins when that order is submitted; and
 - Make other minor clarifying changes.
2. Amend rules 8.140 and 8.840, relating to defaults in the procurement of the record in civil appeals, to specifically provide that the reviewing court will notify the trial court if the appeal is dismissed; and
 3. Adopt new rule 8.149 and amend rule 8.842 to specify when the record on appeal in a civil case is considered complete and ready for transmittal to the reviewing court.

The text of the proposed rules is attached at pages 8–14.

Previous Council Action

The predecessor to rule 8.122, regarding clerk's transcripts in civil appeals in the Court of Appeal, was adopted by the Judicial Council effective July 1, 1943. The original rule required that the clerk's transcript in such appeals be prepared within 30 days after the appellant paid the costs of preparing the transcript. Effective January 1, 2002, as part of the overall project to update the appellate rules, this rule was amended to alert indigent parties that, as a substitute for depositing the cost of the clerk's transcript, they could submit an application for, or an order granting, a waiver of that cost. Although rule 8.122 has been renumbered and revised in other ways, the deadline for preparation of the clerk's transcript in this rule has remained unchanged since January 1, 2002.

The predecessor to rule 8.832, relating to clerks' transcripts in civil appeals to the superior court appellate division, was adopted effective September 15, 1945. It also set the time for preparing clerks' transcripts based on when the appellant paid the costs of preparing the transcript, but it gave the clerk 10, rather than 30, days to complete such transcripts. When current rule 8.832 was adopted by the council effective January 1, 2009 as part of the overall revision of the appellate

division rules, it was modeled on rule 8.122. Among other things, this rule extended the time period for the clerk to prepare a transcript in a limited civil case to 30 days after the appellant deposited payment for the transcript and clarified that, as a substitute for depositing the cost of the clerk's transcript, parties could submit an application for, or an order granting, a waiver of that cost.

Rationale for Recommendation

Preparation of clerk's transcripts and defaults in procurement of the record

Rules 8.120–8.163 and 8.830–8.843 of the California Rules of Court address records in civil appeals in the Court of Appeal and the superior court appellate division, respectively. Parties in these appeals are responsible for taking various steps to procure the record in these appeals, including timely filing a notice designating the record under rule 8.121 or 8.831, timely paying the superior court for the cost of any designated clerk's transcript under rule 8.122 or 8.832 or obtaining a fee waiver for this cost, and timely paying for the cost of any designated reporter's transcript or submitting a permissible substitute for this payment under rule 8.130 or 8.834. Rules 8.122 and 8.832 both provide that the clerk must complete preparation of the clerk's transcript within 30 days after the appellant makes the required deposit for the clerk's transcript or the court waives the fee for this transcript.

Some appellants may designate a reporter's transcript without realizing the cost for such a transcript or without realizing that a fee waiver does not waive this cost. Often, this misunderstanding results in the appellant failing to pay for the reporter's transcript. Rules 8.140 and 8.842 generally provide for what happens if a party fails to take a required action to procure the record on appeal. Under these rules, the clerk of the superior court must issue a default notice to the appellant, and if the appellant does not timely pay for the reporter's transcript, the reviewing court may dismiss the appeal. In the meantime, while the appellant and the court are trying to sort out the issues relating to the designated reporter's transcript, if the appellant designated a clerk's transcript and was granted a fee waiver, the superior court clerk will most likely have begun preparing that transcript. If the appeal is ultimately abandoned or dismissed because the appellant does not pay for a designated reporter's transcript, the cost of preparing the unused clerk's transcript in such a case will be borne by the superior court.

To reduce costs associated with unnecessary preparation of clerk's transcripts in cases that are ultimately abandoned or dismissed, this proposal would amend the rules relating to when the superior court clerk must complete a clerk's transcript in civil appeals. Under this proposal, if an appellant has designated a reporter's transcript, the clerk would have the option of waiting until 30 days after the appellant deposited the funds for the reporter's transcript or one of the authorized substitutes for this deposit to complete the clerk's transcript. This amendment would permit, but not require, the clerk to hold off on beginning the preparation of the clerk's transcript until the appeal is more certain to proceed.

This proposal would also make several other nonsubstantive changes to rules 8.122 and 8.832 that are meant to clarify existing requirements, including amending these rules to specifically provide that:

- The clerk will issue a default notice if an appellant fails to make the required deposit for a clerk’s transcript or to submit a fee waiver application or order granting a fee waiver. Rules 8.140 and 8.842 already require the clerk to promptly send a default notice to a party that fails to timely do an act required to procure the record. This proposal would simply make clear the application of these default rules when an appellant fails to make a required deposit or substitute for a clerk’s transcript.
- The clerk must prepare copies of the transcript not only for parties other than the appellant who have made a deposit for the transcript, but also for those who requested a copy of the clerk’s transcript and have been granted a fee waiver. Note that rule 3.55 lists “clerk’s fees for preparing, copying, certifying, and transmitting the clerk’s transcript on appeal to the reviewing court and the party” among the fees that must be waived when the superior court grants an application for an initial fee waiver. Additionally, rules 8.122(c)(3) and 8.832(c)(3) provide that any party wanting to purchase a copy of the clerk’s transcript must deposit the estimated cost with the clerk, unless the party submits an application for, or an order granting, a waiver of the cost.
- The normal 30-day period for completing the clerk’s transcript runs from:
 - The date the appellant deposits the estimated cost of the transcript;
 - The date the appellant submits a preexisting fee waiver order granting a waiver of the cost for a clerk’s transcript; or
 - The date that the court grants a fee waiver application that was submitted with the appellant’s designation of the record.

Rules 8.122(d) and 8.832(d) currently provide that the transcript must be completed “30 days after the appellant deposits the estimated cost of the transcript or the court files an order waiving that cost.” Although this current language does not explicitly address situations in which an appellant submits a preexisting fee waiver order, as noted above, rules 8.122(c)(3) and 8.832(c)(3) already provide for submission of such an order in lieu of a deposit for a clerk’s transcript. The committee’s understanding is that the general practice is for clerks to begin preparing a transcript when such an order is submitted. Thus this amendment is intended to reflect and clarify current practice.

In addition, this proposal would amend rules 8.140 and rule 8.842, relating to defaults in the procurement of the record in civil appeals, to specifically provide that the reviewing court must promptly notify the trial court if the appeal is dismissed. This practice would allow superior courts to save costs by quickly halting any preparation of the record in an appeal that has been dismissed by the reviewing court.

Completion of the record

Rules 8.150 and 8.840 provide that when the record for a civil appeal is complete, it must be sent to the Court of Appeal or superior court appellate division, respectively. These rules do not indicate when such a record should be considered complete and thus when the record should be transmitted to the reviewing court. If only portions of a record are transmitted to the reviewing court, confusion about whether the case is ready to proceed may result. For example, if only the clerk's transcript is sent to the reviewing court when an appellant has failed to pay for a reporter's transcript, the reviewing court may be unsure whether to proceed without a record of the oral proceedings or to dismiss the appeal. By contrast, rules 8.872 and 8.922 relating to appeals in misdemeanor and infraction cases define when the record is considered complete and thus ready for transmission to the reviewing court.

This proposal would add new rule 8.149 and add new provisions to rule 8.840 to define when the record relating to civil appeals is complete and thus ready for transmission to the reviewing court. These provisions should eliminate any potential confusion about whether the reviewing court has received the complete record and the case is ready to proceed.

Comments, Alternatives Considered, and Policy Implications

Comments

This proposal was circulated for public comment between April 19 and June 19, 2013, as part of the regular spring 2013 comment cycle. Ten individuals or organizations submitted comments on this proposal. Six commentators agreed with the proposal, one agreed with the proposal if modified, two did not state a position on the proposal, and one opposed the proposal. The full text of the comments received and the committee's responses are set out in the attached comment chart at pages 15–22. The main substantive comments and the committee's responses are discussed below.

Records of administrative proceedings

Two commentators suggested that proposed new rule 8.149, specifying when the record on appeal is complete, should be revised to address situations where an administrative record is to be included as part of the record on appeal. Under rule 8.123, such records are separate from the clerk's transcript, and if a designated administrative record is in the possession of the court, the court is required to transmit that record to the reviewing court. Based on this comment, the committee revised proposed new rule 8.149 to encompass situations in which an administrative record in the superior court's possession has been designated as part of the record on appeal.

Potential benefits and burdens of proposed amendments

The Joint Rules Working Group of the Trial Court Presiding Judges and the Court Executives Advisory Committees (joint rules working group) initially opposed the proposal because they thought that the operational impacts would outweigh the benefits that the proposal would bring. The joint rules working group's comments describe the potential impacts that implementation of this proposal, particularly the change in the rule on the time to complete preparation of the clerk's transcript, might have on courts with particular case management systems.

The committee's intent is that the change in the rule on the time to complete clerks' transcripts would be permissive: that it would permit, but not require, superior courts to complete preparation of the clerk's transcript 30 days after the appellant has made the required deposit for any designated reporter's transcript. The comments of the joint rules working group indicate that this intent was not sufficiently clear. The committee therefore revised the proposal to make it clearer that the implementation of a new deadline for completing preparation of clerk's transcripts is permissive. Thus, if a particular court determines that the costs of altering its current practices outweigh the likely savings associated with not preparing clerk's transcripts in cases that are abandoned or dismissed, the court could choose not to make a change in its current practices. Other courts, however, could modify their practices if the benefits outweigh the costs for those individual courts. The committee presented the revised version of the proposal to the joint rules working group and that group withdrew its opposition to the proposal.

Other alternatives considered

The committee considered amending the rules regarding defaults in the procurement of the record to provide that when the appellant defaults in the procurement of a reporter's transcript or other designated record of the oral proceedings, as an alternative to dismissing the appeal, the reviewing court could proceed with the appeal on the clerk's transcript or other record of the documents from the trial court proceedings alone. To implement this approach, the committee also considered requiring, in at least some cases, that the clerk complete the clerk's transcript and transmit it to the reviewing court even if the appellant defaults in the procurement of a reporter's transcript or other designated record of the oral proceedings. Ultimately, however, the committee concluded that the appellant is in the best position to determine whether the issues on appeal can be determined without a record of the oral proceedings, and therefore that it would be preferable to give the appellant in such circumstances the opportunity to decide whether to proceed without such a record.

Generally, the appellant is not required to identify the issues on appeal until the time of briefing (except if the record of the oral proceedings designated by the appellant includes less than all of the proceedings). If the issues on appeal have not been identified by the appellant, the reviewing court would generally not be able to determine whether the appeal could be decided based only on a record of the documents in the case. The committee's view was that if the reviewing court would not be able to address the appeal on its merits without a record of the oral proceedings, to require that the clerk's transcript be completed and transmitted to the reviewing court would be a waste of resources.

The committee also considered not recommending any changes to the rules on clerk's transcripts or defaults in procurement of the record but concluded that amending these rules would allow some superior courts to reduce costs and, therefore, that proposing these amendments would be preferable.

Implementation Requirements, Costs, and Operational Impacts

Because the proposed amendments relating to the duties of the superior courts are permissive or simply clarify existing duties (as discussed above in the Comments section), it is the committee's view that this proposal should impose no significant implementation burdens on any superior courts and should provide significant cost savings for some superior courts.

Relevant Strategic Plan Goals and Operational Plan Objectives

This proposal will further the Judicial Council's Strategic Plan Goal: III. Modernization of management and administration and Operational Plan Objective: 5. Develop and implement effective trial and appellate case management rules, procedures, techniques, and practices to promote the fair, timely, consistent, and efficient processing of all types of cases.

Attachments

1. Cal. Rules of Court, rules 8.122, 8.140, 8.149, 8.832, 8.840, and 8.842, at pages 8–14
2. Comments chart, at page 15–22

Rule 8.149 of the California Rules of Court is adopted, and rules 8.122, 8.140, 8.832, 8.840, and 8.842 are amended, effective January 1, 2014, to read:

Title 8. Appellate Rules

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

Chapter 2. Civil Appeals

Article 2. Record on Appeal

Rule 8.122. Clerk’s transcript

(a)–(b) * * *

(c) Deposit for cost of transcript

(1)–(2) * * *

(3) Unless otherwise provided by law, within 10 days after the clerk sends a notice under (1), the appellant and any party wanting to purchase a copy of the clerk’s transcript must either deposit the estimated cost specified in the notice under (1) with the clerk, unless otherwise provided by law or the party submits an application for, or an order granting, a waiver of the cost.

(4) If the appellant does not submit a required deposit or an application for, or an order granting, a waiver of the cost within the required period, the clerk must promptly issue a notice of default under rule 8.140.

(d) Preparation of transcript

(1) ~~Within 30 days after the appellant deposits the estimated cost of the transcript or the court files an order waiving that cost~~ the time specified in (2), the clerk must:

(A) ~~Prepare an original and one copy of the transcript, and certify the original transcript;~~

(B) Prepare one copy of the transcript for the appellant; and

~~(B)~~(C) Prepare additional copies for which the parties that have requested a copy of the clerk’s transcript and have made deposits as provided in (c)(3) or received an order waiving the cost.

(2) Except as provided in (3), the clerk must complete preparation of the transcripts required under (1) within 30 days after either:

1 **(b) Sanctions**

2
3 If a party fails to take the action specified in a notice given under (a), the superior court
4 clerk must promptly notify the reviewing court of the default, and the reviewing court may
5 impose one of the following sanctions:
6

7 (1) If the defaulting party is the appellant, the reviewing court may dismiss the appeal.
8 If the appeal is dismissed, the reviewing court must promptly notify the superior
9 court. The reviewing court ~~but~~ may vacate the dismissal for good cause.~~or~~

10
11 (2) * * *

12
13 (c) * * *

14
15
16 **Rule 8.149. When the record is complete**

17
18 **(a) Record of written documents**

19
20 If the appellant elected to proceed without a record of the oral proceedings in the trial
21 court and the parties are not proceeding by appendix under rule 8.124, the record is
22 complete:
23

24 (1) If a clerk's transcript will be used, when the clerk's transcript is certified under rule
25 8.122(d);

26
27 (2) If the original superior court file will be used instead of the clerk's transcript, when
28 that original file is ready for transmission as provided under rule 8.128(b);

29
30 (3) If an agreed statement will be used instead of the clerk's transcript, when the
31 appellant files the agreed statement under rule 8.134(b);

32
33 (4) If a settled statement will be used instead of the clerk's transcript, when the
34 statement has been certified by the trial court under rule 8.137(c); or

35
36 (5) If any party requested that a record of an administrative proceeding held by the
37 superior court be transmitted to the reviewing court, when that record of that
38 administrative proceeding is ready for transmittal to the reviewing court and any
39 clerk's transcript or other record of the documents from the trial court is complete as
40 provided in (1)–(4).
41
42

1 **(b) Record of the oral proceedings**

2
3 (1) If the parties are not proceeding by appendix under rule 8.124 and the appellant
4 elected to proceed with a record of the oral proceedings in the trial court, the record
5 is complete when the clerk’s transcript or other record of the documents from the
6 trial court is complete as provided in (a) and:

7
8 (A) If the appellant elected to use a reporter’s transcript, when the certified
9 reporter’s transcript is delivered to the court under rule 8.130;

10
11 (B) If an agreed statement will be used instead of the reporter’s transcript, when
12 the appellant files the agreed statement under rule 8.134(b); or

13
14 (C) If a settled statement will be used instead of the reporter’s transcript, when the
15 statement has been certified by the trial court under rule 8.137(c).

16
17 (2) If the parties are proceeding by appendix under rule 8.124 and the appellant elected
18 to proceed with a record of the oral proceedings in the trial court, the record is
19 complete when the record of the oral proceedings is complete—as provided in
20 (1)(A), (B), or (C)—and the record of any administrative proceeding held by the
21 superior court that a party requested be transmitted to the reviewing court is ready
22 for transmittal to the reviewing court.

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25
26 **Division 2. Rules Relating to the Superior Court Appellate Division**

27
28 **Chapter 2. Appeals and Records in Limited Civil Cases**

29
30 **Article 2. Record in Civil Appeals**

31
32 **Rule 8.832. Clerk’s transcript**

33
34 **(a)–(b) * * ***

35
36 **(c) Deposit for cost of clerk’s transcript**

37
38 **(1)–(2) * * ***

39
40 **(3) Unless otherwise provided by law, within 10 days after the clerk sends a notice under**
41 **(1), the appellant and any party wanting to purchase a copy of the clerk’s transcript**
42 **must either deposit the estimated cost specified in the notice under (1) with the clerk,**
43 **unless otherwise provided by law or the party submits an application for a waiver of**
44 **the cost under rule 8.818 or an order granting a waiver of this cost.**
45

1 In cases in which a reporter's transcript has been designated, subdivision (d)(3) gives the clerk the option
2 of waiting until the deposit for the reporter's transcript has been made before beginning preparation of the
3 clerk's transcript.

4
5
6 **Rule 8.840. Completion and filing of the record**

7
8 **(a) When the record is complete**

- 9
10 (1) If the appellant elected under rule 8.831 or 8.834(b) to proceed without a record of
11 the oral proceedings in the trial court, the record is complete:
12
13 (A) If a clerk's transcript will be used, when the clerk's transcript is certified under
14 rule 8.832(d);
15
16 (B) If the original trial court file will be used instead of the clerk's transcript, when
17 that original file is ready for transmission as provided under rule 8.833(b); or
18
19 (C) If an agreed statement will be used instead of the clerk's transcript, when the
20 appellant files the agreed statement under rule 8.836(b).
21
22 (2) If the appellant elected under rule 8.831 to proceed with a record of the oral
23 proceedings in the trial court, the record is complete when the clerk's transcript or
24 other record of the documents from the trial court is complete as provided in (1) and:
25
26 (A) If the appellant elected to use a reporter's transcript, when the certified
27 reporter's transcript is delivered to the court under rule 8.834(d);
28
29 (B) If the appellant elected to use a transcript prepared from an official electronic
30 recording, when the transcript has been prepared under rule 8.835;
31
32 (C) If the parties stipulated to the use of an official electronic recording of the
33 proceedings, when the electronic recording has been prepared under rule
34 8.835; or
35
36 (D) If the appellant elected to use a statement on appeal, when the statement on
37 appeal has been certified by the trial court or a transcript or an official
38 electronic recording has been prepared under rule 8.837(d)(6).

39
40 **(b) Filing the record**

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42 When the record is complete, the trial court clerk must promptly send the original to the
43 appellate division and send to the appellant and respondent copies of any certified
44 statement on appeal and any copies of transcripts or official electronic recordings that they
45 have purchased. The appellate division clerk must promptly file the original and mail
46 notice of the filing date to the parties.

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Rule 8.842. Failure to procure the record

(a) Notice of default

Except as otherwise provided by these rules, if a party fails to do any act required to procure the record, the trial court clerk must promptly notify that party by mail that it must do the act specified in the notice within 15 days after the notice is mailed and that, if it fails to comply, the reviewing court may impose the following sanctions:

(1)-(2) * * *

(b) Sanctions

If the party fails to take the action specified in a notice given under (a), the trial court clerk must promptly notify the appellate division of the default, and the appellate division may impose one of the following sanctions:

(1) If the defaulting party is the appellant, the reviewing court may dismiss the appeal. If the appeal is dismissed, the reviewing court must promptly notify the superior court. The reviewing court ~~but~~ may vacate the dismissal for good cause.~~;~~~~or~~

(2) * * *

SPR13-04**Appellate Court Procedure: Defaults in Procuring Record and Completion of the Record in Civil Appeals** (Adopt Cal. Rules of Court, rule 8.149; amend rules 8.122, 8.140, 8.832, 8.840, and 8.842)

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

	Commentator	Position	Comment	Committee Response
1.	Appellate Court Committee San Diego Bar Association By: Rupa G. Singh, Chair	NI	<p>This proposed change appears to be largely a cost-saving measure related to the unnecessary preparation of transcripts in cases ultimately abandoned or dismissed. There is a typo in the proposed language of amended Rule 8.122 (d)(2)(A)(i). The term "pre-exitsting" should be "pre-existing."</p> <p>Also, for the sake of consistency, the proposed Rule 8.149(a)(2) should use the term "original superior court file" instead of "original trial court file," as the former phrase is used in other rules. Also, references to "trial court" should be changed to "superior court" for the same reason.</p> <p>One small point of substance: The benefit of the new rule is that the Court of Appeal will know the record is complete when it receives the record from a superior court under Rule 8.150. After implementation of the new rule, the Court of Appeal will presumably know that the appeal can move forward. But, at least one other rule speaks to when a superior court has to send parts of the record to the Court of Appeal. Rule 8.123 concerns administrative records, and is not addressed in the proposed rule.</p> <p>Under Rule 8.123 a superior court must send the administrative record to the Court of Appeal when it sends the clerk's transcript or reporter's transcript, or, if neither of those is being used, within 45 days of the respondent designating the admin record. Proposed Rule 8.149 does not</p>	<p>The committee appreciates the commentator pointing out this typographical error and has revised the proposal to correct this error.</p> <p>The committee has revised the proposal as suggested to refer to the superior court file. However, the committee has not modified the references to the oral proceedings in the "trial court" because this is the term used in rule 8.121 and other rules.</p> <p>Based on this and another comment, the committee has revised the proposal to address in proposed new rule 8.149 situations where an administrative record is to be included as part of the record on appeal.</p>

SPR13-04**Appellate Court Procedure: Defaults in Procuring Record and Completion of the Record in Civil Appeals** (Adopt Cal. Rules of Court, rule 8.149; amend rules 8.122, 8.140, 8.832, 8.840, and 8.842)

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

	Commentator	Position	Comment	Committee Response
			address this situation. For the sake of clarity and completeness, the proposed rule should also address a situation in which the parties are proceeding with a record on appeal that includes an administrative record. A rule that addresses this would seem to more effectively meet the Judicial Council's goal of establishing a single rule that specifically addresses the question of when the record is complete.	
2.	California Academy of Appellate Lawyers By: Robert A. Olson, President Los Angeles, California	A	The Academy understands that this proposal is also a cost-savings measure intended to clarify steps to procure the clerk's and reporter's transcripts, and to signal that the record on appeal is completed. We support this proposal and commend the effort to simplify the process for record preparation. We make just one observation. There is a typographical mistake in the proposed language of amended rule 8.1 2(d)(2)(A)(i). The word "pre-exitsting" should be "pre-existing."	The committee notes the commentator's support for the proposal. The committee appreciates the commentator pointing out this typographical error and has revised the proposal to correct this error.
3.	California Appellate Court Clerks Association By: Charlene Ynson, President	NI	No Comment.	No response required.
4.	Committee on Appellate Courts State Bar of California By: Kira Klatchko, Acting Chair 2012-2013 San Francisco, California	A	The committee supports this proposal.	The committee notes the commentator's support for the proposal.

SPR13-04**Appellate Court Procedure: Defaults in Procuring Record and Completion of the Record in Civil Appeals** (Adopt Cal. Rules of Court, rule 8.149; amend rules 8.122, 8.140, 8.832, 8.840, and 8.842)

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

	Commentator	Position	Comment	Committee Response
5.	Court of Appeal Fourth District, Division One By: Hon. Judith McConnell, Presiding Justice San Diego, California	AM	We generally support the proposed revisions to rules 8.122, 8.140 and rule 8.149 relating to the preparation of the record (although we note that there is a typographical error as to the spelling of “pre-existing” in revised rule 8.122(d)(2)(A)(i) and suggest that the Appellate Advisory Committee may wish to consider further revisions to rule 8.149 to address situations where an administrative record is to be included as part of the record on appeal.	The committee notes the commentator’s support for the proposal. The committee appreciates the commentator pointing out this typographical error and has revised the proposal to correct this error. Based on this and another comment, the committee has also revised the proposal to address in proposed new rule 8.149 situations where an administrative record is to be included as part of the record on appeal.
6.	Fred Garcia Joshua Tree, CA	A	Good proposal.	The committee notes the commentator’s support for the proposal.
7.	Orange County Bar Association By: Wayne R. Gross, President Newport Beach, California	A	No additional comments.	The committee notes the commentator’s support for the proposal.
8.	Superior Court of Los Angeles County	A	Currently, LASC civil appeals unit does not begin preparation of the clerk's transcript until all issues surrounding designation of record and reporter transcripts have been resolved. Generally, the clerk's transcript can be prepared in five days or less. LASC currently operates in accordance with the change proposed in SPR 13-04.	The committee notes the commentator’s support for the proposal.
9.	Superior Court of San Diego County By: Mike Roddy, Executive Officer	A	No additional comments.	The committee notes the commentator’s support for the proposal.
10.	TCPJAC/CEAC Joint Rules Working Group	N	Based on their review of this proposal, the JRWG believes that the operational impacts will	The committee’s intent is that no court would be required by this proposal to alter its current

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Appellate Court Procedure: Defaults in Procuring Record and Completion of the Record in Civil Appeals (Adopt Cal. Rules of Court, rule 8.149; amend rules 8.122, 8.140, 8.832, 8.840, and 8.842)

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

	Commentator	Position	Comment	Committee Response
			<p>outweigh the minimal benefits that this proposal will bring. Given the reductions in staffing in the trial courts, the JRWG does not agree with going forward with this proposal. The JRWG does support the concept for reducing the need for transcripts of the oral record, but cannot support implementing this proposal at this time.</p> <p><u>Operational impacts identified by the working group:</u></p> <ol style="list-style-type: none"> 1. Cause a Potential Fiscal Impact Courts using the Sustain case management system would need to update their systems with new timelines and default forms. Re-training of court staff would be required. Courts using other court management systems may also need to be updated, but SMEs in civil case management, V3, and court SMEs indicated that there would be no fiscal impact. 2. Create an Impact on Existing Automated Systems Not all courts use the CMS to track Appeal timelines. For those courts that do use this functionality, the timelines will need to be updated. In addition, a new default form will need to be configured. <p>Courts who track this timeline via their Case Management System would need to</p>	<p>practices with regard to the deadline for preparing clerk’s transcripts. These comments indicate that the committee’s intent was not sufficiently clear. The committee has therefore modified the proposal to make it clearer that it would permit, but not require, courts to make changes in practices with regard to the deadline for preparing clerk’s transcripts. In cases in which a reporter’s transcript is designated, courts could choose to complete the clerk’s transcript by the deadline established in the current rules (30 days after the party makes the required deposit or the court waives that cost) or the court could choose to wait until 30 days after the court receives the required deposit for the reporter’s transcript or permissible substitute. Thus, if a particular court determined that the costs of altering its current practices outweighed the likely savings associated with not preparing clerk’s transcripts in cases that are abandoned or dismissed, the court could choose not to make a change in its current practices. However, the proposed amendment would allow other courts to make changes if the benefits outweigh the costs for those individual courts. In addition, as reflected in the comments of the Superior Court of Los Angeles County, for some courts, this alternate time period may reflect current practice, so there will be no implementation costs.</p>

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			<p>update their system to follow the new rule.</p> <p>Some additional tracking may need to be implemented to outline the new time requirements. The existing case management system for some courts may be adequate to track some basic actions in a Civil appeal such as the deposit of the clerk and reporter transcript deposits. It is not anticipated that any additional programming enhancements for these particular changes are needed.</p> <p>3. Raise Any Trial Court Labor or Employment Related Concerns No impact identified.</p> <p>4. Require Development of Local Rules or Forms No impact identified.</p> <p>5. Create the Need for Additional Training, Which Requires the Commitment of Staff Time and Court Resources The new conditions that will be added to the rules will require the clerk to verify certain information prior to preparing the clerk's transcript. This will require additional training for all clerical staff working on limited and unlimited civil appeals. The training should be minimal to identify the new requirements for preparation of clerk's</p>	

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			<p>transcript. The training would include updating written procedures, staff meetings and perhaps some one-on-one training time between supervisors and staff, as needed.</p> <p>Written correspondence to staff of the change may be sufficient. Courts could write out visual examples of the new timelines relating to when the superior court clerk must complete a clerk’s transcript in civil appeal.</p> <p>6. Increase Court Staff Workload It is unknown whether there would be impacts to court staff workload. The increased tracking time is minimal and would not create a significant increase in staff workload. It is anticipated that any additional staff time that would be required to track deposits and waivers for the clerk and reporter transcript may be recovered if the clerk does not need to spend time preparing the clerk’s transcript when a party fails to deposit or obtain a waiver.</p> <p>Requiring the clerk to send a notice of default will increase staff workload and we recommend that this requirement be eliminated.</p> <p>7. Change the Responsibilities of the Presiding Judge and/or Supervising Judge</p>	<p>The proposal is not intended to effect any substantive change in when courts must send default notices, but only to clarify the existing rules. Rules 8.140 and 8.842 already require the clerk to promptly send a default notice to a party that fails to timely do an act required to procure the record. This proposal would simply make clear that these default rules apply when an</p>

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			<p>No impact identified.</p> <p>8. Create an Impact on Court Security No impact identified.</p> <p>9. Create an Impact on Local or Statewide Justice Partners No impact identified.</p> <p>10. Implementation From a civil case management perspective, the proposal could be implemented within a two month time period.</p> <p>For V3 courts, the proposal could be implemented within a two month time period as it may require local configuration changes to clocks or work queues, but should not require program changes.</p> <p>From an operational perspective, unless the rule proposal changes substantially by October, courts should be able to implement the rule during a two month implementation period. With advance knowledge of the general provisions of the rule change, courts will be able to prepare for some of the changes before the rule is adopted.</p> <p><i>However, it may be challenging with current staffing reductions.</i> Written procedures will need to be updated and time is needed to train not just the Appeals clerks</p>	<p>appellant fails to make a required deposit or substitute for a clerk’s transcript.</p>

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			<p>but the court reporters and other related staff on the new requirements.</p> <p>11. Any Other Major Fiscal or Operational Impacts JRWG supports the rule proposal for its potential cost-savings and effectiveness. JRWG also recommends that the benefits of the proposal be weighed against RUPRO's policy of limiting rule proposals to critical rule and form proposals that are mandated by statute or case law, or are otherwise deemed urgent and necessary.</p> <p>12. Request for Specific Comments None provided.</p>	