Title 8. Appellate Rules

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

Chapter 1. General Provisions

Article 1. In General

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Rule 8.1. Title

The rules in this title may be referred to as the Appellate Rules. All references in this title to "these rules" are to the Appellate Rules.

Rule 8.1 adopted effective January 1, 2007.

Rule 8.4. Application of division

The rules in this division apply to:

(1) Appeals from the superior courts, except appeals to the appellate divisions of the superior courts;

(2) Original proceedings, motions, applications, and petitions in the Courts of Appeal and the Supreme Court; and

(3) Proceedings for transferring cases within the appellate jurisdiction of the superior court to the Court of Appeal for review, unless rules 8.1000–8.1018 provide otherwise.

Rule 8.4 amended and renumbered effective January 1, 2007; repealed and adopted as rule 53 effective January 1, 2005.

Rule 8.7. Construction

The rules of construction stated in rule 1.5 apply to these rules. In addition, in these rules the headings of divisions, chapters, articles, rules, and subdivisions are substantive.

Rule 8.7 adopted effective January 1, 2007.

Rule 8.10. Definitions and use of terms

Unless the context or subject matter requires otherwise, the definitions and use of terms in rule 1.6 apply to these rules. In addition, the following apply:

(1) "Appellant" means the appealing party.

(2) "Respondent" means the adverse party.

(3) "Party" includes any attorney of record for that party.

(4) "Judgment" includes any judgment or order that may be appealed.

(5) "Superior court" means the court from which an appeal is taken.

(6) "Reviewing court" means the Supreme Court or the Court of Appeal to which an appeal is taken, in which an original proceeding is begun, or to which an appeal or original proceeding is transferred.

(7) The word "briefs" includes petitions for rehearing, petitions for review, and answers thereto. It does not include petitions for extraordinary relief in original proceedings.

Rule 8.10 amended and renumbered effective January 1, 2007; repealed and adopted as rule 40 effective January 1, 2005.

Rule 8.13. Amendments to rules

Only the Judicial Council may amend these rules, except the rules in division 5, which may be amended only by the Supreme Court. An amendment by the Judicial Council must be published in the advance pamphlets of the Official Reports and takes effect on the date ordered by the Judicial Council.

Rule 8.13 amended and renumbered effective January 1, 2007; repealed and adopted as rule 54 effective January 1, 2005.

Rule 8.16. Amendments to statutes

In these rules, a reference to a statute includes any subsequent amendment to the statute.

Rule 8.16 adopted effective January 1, 2007.

Rule 8.18. Documents violating rules not to be filed

Except as these rules provide otherwise, the reviewing court clerk must not file any record or other document that does not conform to these rules.

Rule 8.18 amended and renumbered effective January 1, 2007; repealed and adopted as rule 46 effective January 1, 2005.

Advisory Committee Comment

The exception in this rule acknowledges that there are different rules that apply to certain nonconforming documents. For example, this rule does not apply to nonconforming or late briefs, which are addressed by rules 8.204(e) and 8.220(a), respectively, or to nonconforming supporting documents accompanying a writ petition under chapter 7, which are addressed by rule 8.486(c)(2).

Rule 8.20. California Rules of Court prevail

A Court of Appeal must accept for filing a record, brief, or other document that complies with the California Rules of Court despite any local rule imposing other requirements.

Rule 8.20 amended and renumbered effective January 1, 2007; repealed and adopted as rule 80 effective January 1, 2005.

Rule 8.23. Sanctions to compel compliance

The failure of a court reporter or clerk to perform any duty imposed by statute or these rules that delays the filing of the appellate record is an unlawful interference with the reviewing court's proceedings. It may be treated as an interference in addition to or instead of any other sanction that may be imposed by law for the same breach of duty. This rule does not limit the reviewing court's power to define and remedy any other interference with its proceedings.

Rule 8.23 renumbered effective January 1, 2007; repealed and adopted as rule 46.5 effective January 1, 2005.

Article 2. Service, Filing, Form, and Number of Documents

Rule 8.25. Service and filing
Rule 8.26. Waiver of fees and costs
Rule 8.29. Service on nonparty public officer or agency
Rule 8.32. Address and telephone number of record; notice of change
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Rule 8.46. Sealed records

Rule 8.25. Service and filing

(a) Service

(1) Before filing any document, a party must serve, by any method permitted by the Code of Civil Procedure, one copy of the document on the attorney for each party separately represented, on each unrepresented party, and on any other person or entity when required by statute or rule.

(2) The party must attach to the document presented for filing a proof of service showing service on each person or entity required to be served under (1). The proof must name each party represented by each attorney served.

(Subd (a) amended effective January 1, 2007.)

(b) Filing

(1) A document is deemed filed on the date the clerk receives it.

(2) Unless otherwise provided by these rules or other law, a filing is not timely unless the clerk receives the document before the time to file it expires.

(3) A brief, a petition for rehearing, an answer to a petition for rehearing, a petition for transfer of an appellate division case to the Court of Appeal, an answer to such a petition for transfer, a petition for review, an answer to a petition for review, or a reply to an answer to a petition for review is timely if the time to file it has not expired on the date of:

(A) Its mailing by priority or express mail as shown on the postmark or the postal receipt; or

(B) Its delivery to a common carrier promising overnight delivery as shown on the carrier's receipt.

(4) The provisions of (3) do not apply to original proceedings.

(5) If the clerk receives a document by mail from an inmate or a patient in a custodial institution after the period for filing the document has expired but the envelope shows that the document was mailed or delivered to custodial officials for mailing within the period for filing the document, the document is deemed timely. The clerk must retain in the case file the envelope in which the document was received.

(Subd (b) amended effective January 1, 2011; previously amended effective January 1, 2007, January 1, 2009, and July 1, 2010.)

Rule 8.25 amended effective January 1, 2011; adopted as rule 40.1 effective January 1, 2005; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2009, and July 1, 2010.

Advisory Committee Comment

Subdivision (a). Subdivision (a)(1) requires service "by any method permitted by the Code of Civil Procedure." The reference is to the several permissible methods of service provided in Code of Civil Procedure sections 1010–1020. *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) provides additional information about how to serve documents and how to provide proof of service.

Subdivision (b). In general, to be filed on time, a document must be received by the clerk before the time for filing that document expires. There are, however, some limited exceptions to this general rule. For example, (5) provides that if the clerk receives a document by mail from a custodial institution after the deadline for filing the document has expired but the envelope shows that the document was mailed or delivered to custodial officials for mailing before the deadline expired, the document is deemed timely. This provision applies to notices of appeal as well as to other documents mailed from a custodial institution and reflects the "prison-delivery" exception articulated by the California Supreme Court in *In re Jordan* (1992) 4 Cal.4th 116 and *Silverbrand v. County of Los Angeles* (2009) 46 Cal.4th 106.

Note that if a deadline runs from the date of filing, it runs from the date that the document is actually received and deemed filed under (b)(1); neither (b)(3) nor (b)(5) changes that date. Nor do these provisions extend the date of finality of an appellate opinion or any other deadline that is based on finality, such as the deadline for the court to modify its opinion or order rehearing. Subdivision (b)(5) is also not intended to limit a criminal defendant's appeal rights under the case law of constructive filing. (See, e.g., *In re Benoit* (1973) 10 Cal.3d 72.)

Rule 8.26. Waiver of fees and costs

(a) Application form

An application for initial waiver of court fees and costs in the Supreme Court or Court of Appeal must be made on *Request to Waive Court Fees* (form FW-001). The clerk must provide *Request to Waive Court Fees* (form FW-001) and the *Information Sheet on Waiver of Fees and Costs (Supreme Court, Court of Appeal, or Appellate Division)* (form APP-015/FW-015-INFO) without charge to any person who requests any fee waiver application or states that he or she is unable to pay any court fee or cost.

(b) Filing the application

(1) *Appeals*

The appellant should submit any application for initial waiver of court fees and costs for an appeal with the notice of appeal in the superior court that issued the judgment or order being appealed. The respondent should submit any application for initial waiver of the court fees and costs for an appeal at the time the fees are to be paid to the court.

(2) *Writ proceedings*

The petitioner should submit the application for waiver of the court fees and costs for a writ proceeding with the writ petition.

(3) *Petitions for review*

The petitioner should submit the application for waiver of the court fees and costs for a petition for review in the Supreme Court with the petition.

(c) Procedure for determining application

The application must be considered and determined as required by Government Code section 68634.5. An order from the Supreme Court or Court of Appeal determining the application for initial fee waiver or setting a hearing on the application in the Supreme Court or Court of Appeal may be made on *Order on Court Fee Waiver (Court of Appeal or Supreme Court)* (form APP-016/FW-016.)

(d) Application granted unless acted on by the court

The application for initial fee waiver is deemed granted unless the court gives notice of action on the application within five court days after the application is filed.

(e) Court fees and costs waived

Court fees and costs that must be waived on granting an application for initial waiver of court fees and costs in the Supreme Court or Court of Appeal include:

(1) The fee for filing the notice of appeal under Government Code section 68926;

(2) The fee for filing an original proceeding required under Government Code section 68926;

(3) The fee for filing a petition for review required by Government Code section 68927; and

(4) Any court fee for telephonic oral argument.

(f) Denial of the application

If an application is denied, the applicant must pay the court fees and costs or submit the new application or additional information requested by the court within 10 days after the clerk gives notice of the denial.

(g) Confidential records

(1) No person may have access to an application for an initial fee waiver submitted to the court except the court and authorized court personnel, any persons authorized by the applicant, and any persons authorized by order of the court. No person may reveal any information contained in the application except as authorized by law or order of the court. An order granting access to an application or financial information may include limitations on who may access the information and on the use of the information after it has been released.

(2) Any person seeking access to an application or financial information provided to the court by an applicant must make the request by motion, supported by a declaration showing good cause as to why the confidential information should be released.

Rule 8.26 adopted effective July 1, 2009.

Advisory Committee Comment

Subdivision (a). The waiver of court fees and costs is called an "initial" waiver because, under Government Code section 68630 and following, any such waiver may later be modified, terminated, or retroactively withdrawn if the court determines that the applicant was not or is no longer eligible for a waiver. The court may, at a later time, order that the previously waived fees be paid.

Subdivision (b)(1). If an applicant is requesting waiver of both Court of Appeal fees, such as the fee for filing the notice of appeal, and superior court fees, such as the fee for preparing, certifying, copying, and transmitting the clerk's transcript, the clerk of the superior court may ask the applicant to provide two signed copies of *Request to Waive Court Fees* (form FW-001).

Subdivision (e). The parties in an appeal may also ask the superior court to waive the deposit required under Government Code section 68926.1 and the fees under rule 8.122 for preparing, certifying, copying, and transmitting the clerk's transcript to the reviewing court and to the requesting party.

Rule 8.29. Service on nonparty public officer or agency

(a) Proof of service

When a statute or this rule requires a party to serve any document on a nonparty public officer or agency, the party must file proof of such service with the document unless a statute permits service after the document is filed, in which case the proof of service must be filed immediately after the document is served on the public officer or agency.

(Subd (a) relettered effective January 1, 2007; adopted as subd (b).)

(b) Identification on cover

When a statute or this rule requires a party to serve any document on a nonparty public officer or agency, the cover of the document must contain a statement that identifies the statute or rule requiring service of the document on the public officer or agency in

substantially the following form: “Service on [insert name of the officer or agency] required by [insert citation to the statute or rule].”

(Subd (b) relettered effective January 1, 2007; adopted as subd (c).)

(c) Service on the Attorney General

In addition to any statutory requirements for service of briefs on public officers or agencies, a party must serve its brief or petition on the Attorney General if the brief or petition:

(1) Questions the constitutionality of a state statute; or

(2) Is filed on behalf of the State of California, a county, or an officer whom the Attorney General may lawfully represent in:

(A) A criminal case;

(B) A case in which the state or a state officer in his or her official capacity is a party; or

(C) A case in which a county is a party, unless the county’s interest conflicts with that of the state or a state officer in his or her official capacity.

(Subd (c) adopted effective January 1, 2007.)

Rule 8.29 amended and renumbered effective January 1, 2007; adopted as rule 44.5 effective January 1, 2004; previously amended effective July 1, 2004.

Advisory Committee Comment

Rule 8.29 refers to statutes that require a party to serve documents on a nonparty public officer or agency. For a list of examples of such statutory requirements, please see the *Civil Case Information Statement* (form APP-004).

Rule 8.32. Address and telephone number of record; notice of change

(a) Address and telephone number of record

In any case pending before the court, the court will use the address and telephone number that an attorney or unrepresented party provides on the first document filed in that case as the address and telephone number of record unless the attorney or unrepresented party files a notice under (b).

(Subd (a) adopted effective January 1, 2007.)

(b) Notice of change

(1) An attorney or unrepresented party whose address or telephone number changes while a case is pending must promptly serve and file a written notice of the change in the reviewing court in which the case is pending.

(2) The notice must specify the title and number of the case or cases to which it applies. If an attorney gives the notice, the notice must include the attorney's California State Bar number.

(Subd (b) amended effective July 1, 2008; adopted as subd (a); previously amended and relettered effective January 1, 2007.)

(c) Matters affected by notice

If the notice under (b) does not identify the case or cases in which the new address or telephone number applies, the clerk may use the new address or telephone number as the person's address and telephone number of record in all pending and concluded cases.

(Subd (c) amended and relettered effective January 1, 2007; adopted as subd (b).)

(d) Multiple addresses

If an attorney or an unrepresented party has more than one address, only one address for that attorney or unrepresented party may be used in a given case.

(Subd (d) amended effective July 1, 2008; adopted as subd (c); previously amended and relettered effective January 1, 2007; previously amended effective January 1, 2008.)

Rule 8.32 amended effective July 1, 2008; repealed and adopted as rule 40.5 effective January 1, 2005; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2008.

Rule 8.36. Substituting parties; substituting or withdrawing attorneys

(a) Substituting parties

Substitution of parties in an appeal or original proceeding must be made by serving and filing a motion in the reviewing court. The clerk of that court must notify the superior court of any ruling on the motion.

(b) Substituting attorneys

A party may substitute attorneys by serving and filing in the reviewing court a substitution signed by the party represented and the new attorney. In all appeals and in original proceedings related to a superior court proceeding, the party must also serve the superior court.

(c) Withdrawing attorney

(1) An attorney may request withdrawal by filing a motion to withdraw. Unless the court orders otherwise, the motion need be served only on the party represented and the attorneys directly affected.

(2) The proof of service need not include the address of the party represented. But if the court grants the motion, the withdrawing attorney must promptly provide the court and the opposing party with the party's current or last known address and telephone number.

(3) In all appeals and in original proceedings related to a superior court proceeding, the reviewing court clerk must notify the superior court of any ruling on the motion.

(4) If the motion is filed in any proceeding pending in the Supreme Court after grant of review, the Supreme Court clerk must also notify the Court of Appeal of any ruling on the motion.

Rule 8.36 renumbered effective January 1, 2007; repealed and adopted as rule 48 effective January 1, 2005.

Rule 8.40. Form of filed documents

(a) Form

Except as these rules provide otherwise, documents filed in a reviewing court may be either produced on a computer or typewritten and must comply with the relevant provisions of rule 8.204(b).

(Subd (a) amended effective January 1, 2007.)

(b) Cover color

(1) As far as practicable, the covers of briefs and petitions must be in the following colors:

Appellant's opening brief or appendix	green
Respondent's brief or appendix	yellow
Appellant's reply brief or appendix	tan
Joint appendix	white
Amicus curiae brief	gray
Answer to amicus curiae brief	blue
Petition for rehearing	orange
Answer to petition for rehearing	blue
Petition for original writ	red
Answer (or opposition) to petition for original writ	red

Reply to answer (or opposition) to petition for original writ	red
Petition for transfer of appellate division case to Court of Appeal	white
Answer to petition for transfer of appellate division case to Court of Appeal	blue
Petition for review	white
Answer to petition for review	blue
Reply to answer to petition for review	white
Opening brief on the merits	white
Answer brief on the merits	blue
Reply brief on the merits	white

(2) In appeals under rule 8.216, the cover of a combined respondent's brief and appellant's opening brief must be yellow, and the cover of a combined reply brief and respondent's brief must be tan.

(3) A brief or petition not conforming to (1) or (2) must be accepted for filing, but in case of repeated violations by an attorney or party the court may proceed as provided in rule 8.204(e)(2).

(Subd (b) amended effective January 1, 2011; adopted as subd (c); previously amended and relettered effective January 1, 2007.)

(c) Cover information

The cover—or first page if there is no cover—of every document filed by an attorney in a reviewing court must comply with rule 8.204(b)(10)(D).

(Subd (c) amended and relettered effective January 1, 2007; adopted as subd (d).)

Rule 8.40 amended effective January 1, 2011; repealed and adopted as rule 44 effective January 1, 2005; previously amended effective January 1, 2006; previously amended and renumbered effective January 1, 2007.

Rule 8.44. Number of copies of filed documents

Except as these rules provide otherwise, the number of copies of every brief, petition, motion, application, or other document that must be filed in a reviewing court is as follows:

(a) Documents filed in the Supreme Court

(1) Except as provided in (4), an original and 13 copies of a petition for review, an answer, a reply, a brief on the merits, an amicus curiae brief, an answer to an amicus curiae brief, a petition for rehearing, or an answer to a petition for rehearing;

(2) Unless the court orders otherwise, an original and 10 copies of a petition for a writ within the court's original jurisdiction, an opposition or other response to the petition, or a reply;

(3) Unless the court orders otherwise, an original and 2 copies of any supporting document accompanying a petition for writ of habeas corpus, an opposition or other response to the petition, or a reply;

(4) An original and 8 copies of a petition for review to exhaust state remedies under rule 8.508, an answer, or a reply, or an amicus curiae letter under rule 8.500(g);

(5) An original and 8 copies of a motion or an opposition or other response to a motion; and

(6) An original and 1 copy of an application, including an application to extend time, or any other document.

(b) Documents filed in a Court of Appeal

(1) An original and 4 copies of a brief, an amicus curiae brief, or an answer to an amicus curiae brief, and, in civil appeals, proof of delivery of 4 copies to the Supreme Court;

(2) An original of a petition for writ of habeas corpus filed under rule 8.380 by a person who is not represented by an attorney and 1 set of any supporting documents;

(3) An original and 4 copies of any other petition, an answer, opposition or other response to a petition, or a reply;

(4) Unless the court orders otherwise, an original and 1 copy of a motion or an opposition or other response to a motion;

(5) Unless the court provides otherwise by local rule or order, 1 set of any separately bound supporting documents accompanying a document filed under (3) or (4);

(6) An original and 1 copy of an application, other than an application to extend time, or any other document; and

(7) An original and 1 copy of an application to extend time. In addition, 1 copy for each separately represented and unrepresented party must be provided to the court.

(Subd (b) amended effective January 1, 2011.)

Rule 8.44 amended effective January 1, 2011; adopted effective January 1, 2007; previously amended effective January 1, 2007.

Advisory Committee Comment

The initial sentence of this rule acknowledges that there are exceptions to this rule's requirements concerning the number of copies; see, for example, rule 8.150, which specifies the number of copies of the record that must be filed.

Rule 8.46. Sealed records

(a) Application

This rule applies to sealed records and records proposed to be sealed on appeal and in original proceedings, but does not apply to records required to be kept confidential by law.

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 2006.)

(b) Definitions

(1) "Record" means all or part of a document, paper, exhibit, transcript, or other thing filed or lodged with the court.

(2) A "sealed" record is a record closed to public inspection by court order.

(3) A "lodged" record is a record temporarily deposited with the court but not filed.

(c) Record sealed by the trial court

If a record sealed by the trial court is part of the record on appeal:

(1) The sealed record must be filed under seal in the reviewing court and remain sealed unless that court orders otherwise under (f).

(2) The record on appeal must include:

(A) The motion or application to seal;

(B) All documents filed in the trial court supporting or opposing the motion or application; and

(C) The order sealing the record.

(3) The reviewing court may examine the sealed record.

(Subd (c) amended effective January 1, 2007; previously amended effective January 1, 2004.)

(d) Record not sealed by the trial court

A record filed or lodged publicly in the trial court and not ordered sealed by that court must not be filed under seal in the reviewing court.

(e) Record not filed in the trial court; motion or application to file under seal

(1) A record not filed in the trial court may be filed under seal in the reviewing court only by order of that court; it must not be filed under seal solely by stipulation or agreement of the parties.

(2) To obtain an order under (1), a party must serve and file a motion or application in the reviewing court, accompanied by a declaration containing facts sufficient to justify the sealing. At the same time, the party must lodge the record under (3), unless good cause is shown not to lodge it.

(3) To lodge a record, the party must put the record in an envelope or other appropriate container, seal it, and attach a cover sheet that complies with rule 8.40(c) and labels the contents as "CONDITIONALLY UNDER SEAL."

(4) If necessary to prevent disclosure, any motion or application, any opposition, and any supporting documents must be filed in a public redacted version and lodged in a complete version conditionally under seal. Unless the court orders otherwise, any party that already possesses copies of the records to be placed under seal must be served with a complete, unredacted version of all papers as well as a redacted version.

(5) On receiving a lodged record, the clerk must note the date of receipt on the cover sheet and retain but not file the record. The record must remain conditionally under seal pending determination of the motion or application.

(6) The court may order a record filed under seal only if it makes the findings required by rule 2.550(d)–(e).

(7) If the court denies the motion or application, the clerk must not place the lodged record in the case file but must return it to the submitting party unless that party notifies the clerk in writing within 10 days after the order denying the motion or application that the record is to be filed.

(8) An order sealing the record must direct the sealing of only those documents and pages or, if reasonably practical, portions of those documents and pages, that contain the material that needs to be placed under seal. All other portions of each document or page must be included in the public file.

(9) Unless the sealing order provides otherwise, it prohibits the parties from disclosing the contents of any materials that have been sealed in any subsequently filed records or papers.

(Subd (e) amended effective January 1, 2007; previously amended effective July 1, 2002, and January 1, 2004.)

(f) Unsealing a record in the reviewing court

(1) A sealed record must not be unsealed except on order of the reviewing court.

(2) Any person or entity may serve and file a motion, application, or petition in the reviewing court to unseal a record. If necessary to preserve confidentiality, the motion, application, or petition; any opposition; and any supporting documents must be filed in both a public redacted version and a sealed complete version.

(3) If the reviewing court proposes to order a record unsealed on its own motion, the court must mail notice to the parties. Any party may serve and file an opposition within 10 days after the notice is mailed or as the court specifies. Any other party may file a response within 5 days after an opposition is filed.

(4) In determining whether to unseal a record, the court must consider the matters addressed in rule 2.550(c)–(e).

(5) The order unsealing a record must state whether the record is unsealed entirely or in part. If the order unseals only part of the record or unseals the record only as to certain persons, the order must specify the particular records that are unsealed, the particular persons who may have access to the record, or both.

(6) If, in addition to the records in the sealed envelope or container, a court has previously ordered the sealing order, the register of actions, or any other court records relating to the case to be sealed, the unsealing order must state whether these additional records are unsealed.

(Subd (f) amended effective January 1, 2007; previously amended effective January 1, 2004.)

(g) Disclosure of nonpublic material in public records prohibited

A record filed publicly in the reviewing court must not disclose material contained in a record that is sealed, lodged conditionally under seal, or otherwise subject to a pending motion to file under seal.

(Subd (g) amended effective January 1, 2007.)

Rule 8.46 renumbered effective January 1, 2010; repealed and adopted as rule 12.5 effective January 1, 2002; previously amended effective July 1, 2002, January 1, 2004, and January 1, 2006; previously amended and renumbered as rule 8.160 effective January 1, 2007.

Advisory Committee Comment

This rule and rules 2.550–2.551 for the trial courts provide a standard and procedures for courts to use when a request is made to seal a record. The standard is based on *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178. The sealed records rules apply to civil and criminal cases. They recognize the First Amendment right of access to documents used at trial or as a basis of adjudication.

The rules do not apply to records that courts must keep confidential by law. Examples of confidential records to which public access is restricted by law are records of the family conciliation court (Fam. Code, § 1818, subd. (b)) and in forma pauperis applications (Cal. Rules of Court, rule 8.26). Except as otherwise expressly provided in rule 8.46, motions in a reviewing court relating to the sealing or unsealing of a record must follow rule 8.54.

Article 3. Applications and Motions; Extending and Shortening Time

Rule 8.50. Applications
Rule 8.54. Motions
Rule 8.57. Motions before the record is filed
Rule 8.60. Extending time
Rule 8.63. Policies and factors governing extensions of time
Rule 8.66. Extending time because of public emergency
Rule 8.68. Shortening time

Rule 8.50. Applications

(a) Service and filing

Except as these rules provide otherwise, parties must serve and file all applications in the reviewing court, including applications to extend the time to file records, briefs, or other documents, and applications to shorten time. For good cause, the Chief Justice or presiding justice may excuse advance service.

(Subd (a) amended effective January 1, 2007.)

(b) Contents

The application must state facts showing good cause–or making an exceptional showing of good cause, when required by these rules–for granting the application and must identify any previous application filed by any party.

(Subd (b) amended effective January 1, 2007.)

(c) Envelopes

An application to a Court of Appeal must be accompanied by addressed, postage-prepaid envelopes for the clerk's use in mailing copies of the order on the application to all parties.

(d) Disposition

Unless the court determines otherwise, the Chief Justice or presiding justice may rule on the application.

Rule 8.50 amended and renumbered effective January 1, 2007; repealed and adopted as rule 43 effective January 1, 2005.

Advisory Committee Comment

Rule 8.50 addresses applications generally. Rules 8.60, 8.63, and 8.68 address applications to extend or shorten time.

Subdivision (b): An exceptional showing of good cause is required in applications in certain juvenile proceedings under rules 8.416, 8.450, 8.452, and 8.454.

Rule 8.54. Motions

(a) Motion and opposition

(1) Except as these rules provide otherwise, a party wanting to make a motion in a reviewing court must serve and file a written motion stating the grounds and the relief requested and identifying any documents on which the motion is based.

(2) A motion must be accompanied by a memorandum and, if it is based on matters outside the record, by declarations or other supporting evidence.

(3) Any opposition must be served and filed within 15 days after the motion is filed.

(Subd (a) amended effective January 1, 2007.)

(b) Disposition

(1) The court may rule on a motion at any time after an opposition or other response is filed or the time to oppose has expired.

(2) On a party's request or its own motion, the court may place a motion on calendar for a hearing. The clerk must promptly send each party a notice of the date and time of the hearing.

(c) Failure to oppose motion

A failure to oppose a motion may be deemed a consent to the granting of the motion.

Rule 8.54 amended and renumbered effective January 1, 2007; repealed and adopted as rule 41 effective January 1, 2005.

Advisory Committee Comment

Subdivision (c). Subdivision (c) provides that a "failure to oppose a motion" may be deemed a consent to the granting of the motion. The provision is not intended to indicate a position on the question whether there is an implied right to a hearing to oppose a motion to dismiss an appeal.

Rule 8.57. Motions before the record is filed

(a) Motion to dismiss appeal

A motion to dismiss an appeal before the record is filed in the reviewing court must be accompanied by a certificate of the superior court clerk, a declaration, or both, stating:

(1) The nature of the action and the relief sought by the complaint and any cross-complaint or complaint in intervention;

(2) The names, addresses, and telephone numbers of all attorneys of record—stating whom each represents—and unrepresented parties;

(3) A description of the judgment or order appealed from, its entry date, and the service date of any written notice of its entry;

(4) The factual basis of any extension of the time to appeal under rule 8.108;

(5) The filing dates of all notices of appeal and the courts in which they were filed;

(6) The filing date of any document necessary to procure the record on appeal; and

(7) The status of the record preparation process, including any order extending time to prepare the record.

(Subd (a) amended effective January 1, 2007.)

(b) Other motions

Any other motion filed before the record is filed in the reviewing court must be accompanied by a declaration or other evidence necessary to advise the court of the facts relevant to the relief requested.

Rule 8.57 amended and renumbered effective January 1, 2007; repealed and adopted as rule 42 effective January 1, 2005.

Rule 8.60. Extending time

(a) Computing time

The Code of Civil Procedure governs computing and extending the time to do any act required or permitted under these rules.

(b) Extending time

Except as these rules provide otherwise, for good cause–or on an exceptional showing of good cause, when required by these rules–the Chief Justice or presiding justice may extend the time to do any act required or permitted under these rules.

(Subd (b) amended effective January 1, 2007.)

(c) Application for extension

(1) An application to extend time must include a declaration stating facts, not mere conclusions, and must be served on all parties. For good cause, the Chief Justice or presiding justice may excuse advance service.

(2) The application must state:

(A) The due date of the document to be filed;

(B) The length of the extension requested;

(C) Whether any earlier extensions have been granted and, if so, their lengths and whether granted by stipulation or by the court; and

(D) Good cause–or an exceptional showing of good cause, when required by these rules–for granting the extension, consistent with the factors in rule 8.63(b).

(Subd (c) amended and relettered effective January 1, 2007; adopted as subd (d).)

(d) Relief from default

For good cause, a reviewing court may relieve a party from default for any failure to comply with these rules except the failure to file a timely notice of appeal or a timely statement of reasonable grounds in support of a certificate of probable cause.

(Subd (d) relettered effective January 1, 2007; adopted as subd (e).)

(e) No extension by superior court

Except as these rules provide otherwise, a superior court may not extend the time to do any act to prepare the appellate record.

(Subd (e) relettered effective January 1, 2007; adopted as subd (f).)

(f) Notice to party

(1) In a civil case, counsel must deliver to his or her client or clients a copy of any stipulation or application to extend time that counsel files. Counsel must attach evidence of such delivery to the stipulation or application, or certify in the stipulation or application that the copy has been delivered.

(2) In a class action, the copy required under (1) need be delivered to only one represented party.

(3) The evidence or certification of delivery under (1) need not include the address of the party notified.

(Subd (f) amended and relettered effective January 1, 2007; adopted as subd (g).)

Rule 8.60 amended and renumbered effective January 1, 2007; repealed and adopted as rule 45 effective January 1, 2005.

Advisory Committee Comment

Subdivisions(b) and (c): An exceptional showing of good cause is required in applications in certain juvenile proceedings under rules 8.416, 8.450, 8.452, and 8.454.

Rule 8.63. Policies and factors governing extensions of time

(a) Policies

(1) The time limits prescribed by these rules should generally be met to ensure expeditious conduct of appellate business and public confidence in the efficient administration of appellate justice.

(2) The effective assistance of counsel to which a party is entitled includes adequate time for counsel to prepare briefs or other documents that fully advance the party's interests. Adequate time also allows the preparation of accurate, clear, concise, and complete submissions that assist the courts.

(3) For a variety of legitimate reasons, counsel may not always be able to prepare briefs or other documents within the time specified in the rules of court. To balance the competing policies stated in (1) and (2), applications to extend time in the reviewing courts must demonstrate good cause–or an exceptional showing of good cause, when required by these rules–under (b). If good cause is shown, the court must extend the time.

(Subd (a) amended effective January 1, 2007.)

(b) Factors considered

In determining good cause–or an exceptional showing of good cause, when required by these rules–the court must consider the following factors when applicable:

(1) The degree of prejudice, if any, to any party from a grant or denial of the extension. A party claiming prejudice must support the claim in detail.

(2) In a civil case, the positions of the client and any opponent with regard to the extension.

(3) The length of the record, including the number of relevant trial exhibits. A party relying on this factor must specify the length of the record. In a civil case, a record containing one volume of clerk's transcript or appendix and two volumes of reporter's transcript is considered an average-length record.

(4) The number and complexity of the issues raised. A party relying on this factor must specify the issues.

(5) Whether there are settlement negotiations and, if so, how far they have progressed and when they might be completed.

(6) Whether the case is entitled to priority.

(7) Whether counsel responsible for preparing the document is new to the case.

(8) Whether other counsel or the client needs additional time to review the document.

(9) Whether counsel responsible for preparing the document has other time-limited commitments that prevent timely filing of the document. Mere conclusory statements that more time is needed because of other pressing business will not suffice. Good cause requires a specific showing of other obligations of counsel that:

(A) Have deadlines that as a practical matter preclude filing the document by the due date without impairing its quality; or

(B) Arise from cases entitled to priority.

(10) Illness of counsel, a personal emergency, or a planned vacation that counsel did not reasonably expect to conflict with the due date and cannot reasonably rearrange.

(11) Any other factor that constitutes good cause in the context of the case.

(Subd (b) amended effective January 1, 2007.)

Rule 8.63 amended and renumbered effective January 1, 2007; repealed and adopted as rule 45.5 effective January 1, 2005.

Advisory Committee Comment

An exceptional showing of good cause is required in applications in certain juvenile proceedings under rules 8.416, 8.450, 8.452, and 8.454.

Rule 8.66. Extending time because of public emergency

(a) Emergency extensions of time

If made necessary by the occurrence or danger of an earthquake, fire, or other public emergency, or by the destruction of or danger to a building housing a reviewing court, the Chair of the Judicial Council, notwithstanding any other rule in this title, may:

(1) Extend by no more than 14 additional days the time to do any act required or permitted under these rules; or

(2) Authorize specified courts to extend by no more than 30 additional days the time to do any act required or permitted under these rules.

(Subd (a) amended effective January 1, 2007.)

(b) Applicability of order

(1) An order under (a) must specify whether it applies throughout the state, only to specified courts, or only to courts or attorneys in specified geographic areas, or applies in some other manner.

(2) An order of the Chair of the Judicial Council under (a)(2) must specify the length of the authorized extension.

(c) Additional extensions

If made necessary by the nature or extent of the public emergency, the Chair of the Judicial Council may extend or renew an order issued under (a) for an additional period of:

(1) No more than 14 days for an order under (a)(1); or

(2) No more than 30 days for an order under (a)(2).

(Subd (c) amended effective January 1, 2007.)

Rule 8.66 amended and renumbered effective January 1, 2007; repealed and adopted as rule 45.1 effective January 1, 2005.

Advisory Committee Comment

The Chief Justice of California is the Chair of the Judicial Council (see rule 10.2).

Rule 8.68. Shortening time

For good cause and except as these rules provide otherwise, the Chief Justice or presiding justice may shorten the time to do any act required or permitted under these rules.

Rule 8.68 adopted effective January 1, 2007.

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

Chapter 1. General Provisions

Article 4. E-filing Pilot Project in Second Appellate District

Rule 8.70. Purpose, application, construction, and definitions
Former rule 8.71. Definitions [Repealed]
Rule 8.71. Electronic service
Rule 8.72. Documents that may be filed electronically
Rule 8.73. Court order requiring electronic service or filing
Rule 8.74. Responsibilities of court
Rule 8.75. Contracts with electronic filing service providers
Rule 8.76. Responsibilities of electronic filer
Rule 8.77. Requirements for signatures on documents
Rule 8.78. Payment of filing fees
Rule 8.79. Actions by court on receipt of electronic filing
Rule 8.80. [Renumbered as rule 8.71]

Rule 8.70. Purpose, application, construction, and definitions

(a) Purpose

The purpose of the rules in this article is to facilitate the implementation and testing of an e-filing project in the Court of Appeal, Second Appellate District.

(b) Application

Notwithstanding any other rules to the contrary, the rules in this article govern filing and service by electronic means in the Court of Appeal, Second Appellate District.

(c) Construction

The rules in this article must be construed to authorize and permit filing and service by electronic means to the extent feasible.

(d) Definitions

As used in this article, unless the context otherwise requires:

(1) "The court" is the Court of Appeal, Second Appellate District.

(2) A document may be in paper or electronic form. A "document" is:

(A) Any filing submitted to the reviewing court, including a brief, a petition, an appendix, or a motion;

(B) Any document transmitted by a trial court to the reviewing court, including a notice or a clerk's or reporter's transcript; or

(C) Any writing prepared by the reviewing court, including an opinion, an order, or a notice.

(3) "Electronic service" is service of a document on a party or other person by either electronic transmission or electronic notification. Electronic service may be performed directly by a party, by an agent of a party including the party's attorney, through an electronic filing service provider, or by a court.

(4) "Electronic transmission" means the transmission of a document by electronic means to the electronic service address at or through which a party or other person has authorized electronic service.

(5) "Electronic notification" means the notification of a party or other person that a document is served by sending an electronic message to the electronic service address at or through which the party or other person has authorized electronic service, specifying the exact name of the document served and providing a hyperlink at which the served document can be viewed and downloaded.

(6) "Electronic service address" of a party means the electronic address at or through which the party has authorized electronic service.

(7) An "electronic filer" is a party filing a document in electronic form directly with the court, by an agent, or through an electronic filing service provider.

(8) "Electronic filing" is the electronic transmission to a court of a document in electronic form.

(9) An "electronic filing service provider" is a person or entity that receives an electronic filing from a party for retransmission to the court or for electronic service on other parties, or both. In submission of filings, the electronic filing service provider does so on behalf of the electronic filer and not as an agent of the court.

(Subd (d) adopted effective January 1, 2011.)

Rule 8.70 amended effective January 1, 2011; adopted effective July 1, 2010.

Advisory Committee Comment

The definition of "electronic service" has been amended to provide that a party may effectuate service not only by the electronic transmission of a document, but also by providing electronic notification of where a

document served electronically may be located and downloaded. This amendment is intended to modify the rules on electronic service to expressly authorize electronic notification as a legally effective alternative means of service to electronic transmission. This rules amendment is consistent with the amendment of Code of Civil Procedure section 1010.6, effective January 1, 2011, to authorize service by electronic notification. (See Stats. 2010, ch. 156 (Sen. Bill 1274).) The amendments change the law on electronic service as understood by the appellate court in *Insyst, Ltd. v. Applied Materials, Inc*. (2009) 170 Cal.App.4th 1129, which interpreted the rules as authorizing electronic transmission as the only effective means of electronic service.

Former rule 8.71. Definitions [Repealed]
Rule 8.71 repealed effective January 1, 2011; adopted effective July 1, 2010.

Rule 8.71. Electronic service

(a) Consent to electronic service

(1) When a document may be served by mail, express mail, overnight delivery, or fax transmission, electronic service of the document is permitted when authorized by these rules.

(2) A party indicates that the party agrees to accept electronic service by:

(A) Serving a notice on all parties that the party accepts electronic service and filing the notice with the court. The notice must include the electronic service address at which the party agrees to accept service; or

(B) Electronically filing any document with the court. The act of electronic filing is evidence that the party agrees to accept service at the electronic service address that the party has furnished to the court under rule 8.76(a)(4).

(3) A party that has consented to electronic service under (2) and has used an electronic filing service provider to serve and file documents in a case consents to service on that electronic filing service provider as the designated agent for service for the party in the case, until such time as the party designates a different agent for service.

(Subd (a) amended effective January 1, 2011.)

(b) Maintenance of electronic service lists

When the court orders or permits electronic filing in a case, it must maintain and make available electronically to the parties an electronic service list that contains the parties' current electronic service addresses, as provided by the parties that have filed electronically in the case.

(Subd (b) amended effective January 1, 2011.)

(c) Service by the parties

(1) Notwithstanding (b), parties are responsible for electronic service on all other parties in the case. A party may serve documents electronically directly, by an agent, or through a designated electronic filing service provider.

(2) A document may not be electronically served on a nonparty unless the nonparty consents to electronic service or electronic service is otherwise provided for by law or court order.

(Subd (c) amended effective January 1, 2011.)

(d) Change of electronic service address

(1) A party whose electronic service address changes while the appeal or original proceeding is pending must promptly file a notice of change of address electronically with the court and must serve this notice electronically on all other parties.

(2) A party's election to contract with an electronic filing service provider to electronically file and serve documents or to receive electronic service of documents on the party's behalf does not relieve the party of its duties under (1).

(3) An electronic service address is presumed valid for a party if the party files electronic documents with the court from that address and has not filed and served notice that the address is no longer valid.

(Subd (d) amended effective January 1, 2011.)

(e) Reliability and integrity of documents served by electronic notification

A party that serves a document by means of electronic notification must:

(1) Ensure that the documents served can be viewed and downloaded using the hyperlink provided;

(2) Preserve the document served without any change, alteration, or modification from the time the document is posted until the time the hyperlink is terminated; and

(3) Maintain the hyperlink until the case is final.

(Subd (e) adopted effective January 1, 2011.)

(f) Proof of service

(1) Proof of electronic service may be by any of the methods provided in Code of Civil Procedure section 1013a, except that the proof of service must state:

(A) The electronic service address of the person making the service, in addition to that person's residence or business address;

(B) The date and time of the electronic service, instead of the date and place of deposit in the mail;

(C) The name and electronic service address of the person served, in place of that person's name and address as shown on the envelope; and

(D) That the document was served electronically, in place of the statement that the envelope was sealed and deposited in the mail with postage fully prepaid.

(2) Proof of electronic service may be in electronic form and may be filed electronically with the court.

(3) The party filing the proof of electronic service must maintain the printed form of the document bearing the declarant's original signature and must make the document available for inspection and copying on the request of the court or any party to the action or proceeding in which it is filed, in the manner provided in rule 8.77(c).

(Subd (f) amended effective January 1, 2011.)

(g) Electronic service by court

The court may electronically serve any notice, order, opinion, or other document issued by the court in the same manner that parties may serve documents by electronic service.

Rule 8.71 amended and renumbered effective January 1, 2011; adopted as rule 8.80 effective July 1, 2010.

Rule 8.72. Documents that may be filed electronically

(a) In general

The court may permit electronic filing of a document by a party or trial court in any appeal or original proceeding unless the rules in this article or other legal authority expressly prohibit electronic filing.

(b) Application for waiver of court fees and costs

The court may permit electronic filing of an application for waiver of court fees and costs in any proceeding in which the court accepts electronic filings.

(c) Orders, opinions, and notices

The court may electronically file any notice, order, opinion, or other document prepared by the court.

(d) Effect of document filed electronically

(1) A document that the court, a party, or a trial court files electronically under the rules in this article has the same legal effect as a document in paper form.

(2) Filing a document electronically does not alter any filing deadline.

Rule 8.72 adopted effective July 1, 2010.

Rule 8.73. Court order requiring electronic service or filing

(a) Court order

(1) The court may, on the motion of any party or on its own motion, provided that the order would not cause undue hardship or significant prejudice to any party, order all parties to:

(A) Serve all documents electronically, except when personal service is required by statute or rule;

(B) File all documents electronically; or

(C) Serve and file all documents electronically, except when personal service is required by statute or rule.

(2) The court will not:

(A) Order a self-represented party to electronically serve or file documents;

(B) Order a party to electronically serve or file documents if the party would be required to pay a fee to an electronic filing service provider to file or serve the documents and the party objects to paying this fee in its opposition to the motion under (1); or

(C) Order a trial court to electronically serve or file documents.

(3) If the reviewing court proposes to make an order under (1) on its own motion, the court must mail notice to the parties. Any party may serve and file an opposition within 10 days after the notice is mailed or as the court specifies.

(Subd (a) amended effective January 1, 2011.)

(b) Additional provisions of order

The court's order may also provide that documents previously filed in paper form may be resubmitted in electronic form.

(c) Filing in paper form

When it is not feasible for a party to convert a document to electronic form by scanning, imaging, or another means, the court may allow that party to serve, file, or serve and file the document in paper form.

Rule 8.73 amended effective January 1, 2011; adopted effective July 1, 2010.

Rule 8.74. Responsibilities of court

(a) Publication of electronic filing requirements

When the court permits electronic filing it will publish, in both electronic and print formats, the court's electronic filing requirements.

(b) Problems with electronic filing

If the court is aware of a problem that impedes or precludes electronic filing, it must promptly take reasonable steps to provide notice of the problem.

Rule 8.74 adopted effective July 1, 2010.

Rule 8.75. Contracts with electronic filing service providers

(a) Right to contract

(1) The court may contract with one or more electronic filing service providers to furnish and maintain an electronic filing system for the court.

(2) If the court contracts with an electronic filing service provider, the court may require electronic filers to transmit the documents to the provider.

(3) If the court contracts with an electronic service provider or the court has an in-house system, the provider or system must accept filing from other electronic filing service providers to the extent the provider or system is compatible with them.

(Subd (a) amended effective January 1, 2011.)

(b) Provisions of contract

The court's contract with an electronic filing service provider may allow the provider to charge electronic filers a reasonable fee in addition to the court's filing fee. The contract may also allow the electronic filing service provider to make other reasonable requirements for use of the electronic filing system.

(c) Transmission of filing to court

An electronic filing service provider must promptly transmit any electronic filing and any applicable filing fee to the court.

(Subd (c) amended effective January 1, 2011.)

(d) Confirmation of receipt and filing of document

(1) An electronic filing service provider must promptly send to an electronic filer its confirmation of the receipt of any document that the filer has transmitted to the provider for filing with the court.

(2) The electronic filing service provider must send its confirmation to the filer's electronic service address and must indicate the date and time of receipt, in accordance with rule 8.79(a).

(3) After reviewing the documents, the court must promptly transmit to the electronic filing service provider and the electronic filer the court's confirmation of filing or notice of rejection of filing, in accordance with rule 8.79.

(Subd (d) amended effective January 1, 2011.)

(e) Ownership of information

All contracts between the court and electronic filing service providers must acknowledge that the court is the owner of the contents of the filing system and has the exclusive right to control the system's use.

Rule 8.75 amended effective January 1, 2011; adopted effective July 1, 2010.

Rule 8.76. Responsibilities of electronic filer

(a) Conditions of filing

Each electronic filer must:

(1) Comply with any court requirements designed to ensure the integrity of electronic filing and to protect sensitive personal information;

(2) Furnish information that the court requires for case processing;

(3) Take all reasonable steps to ensure that the filing does not contain computer code, including viruses, that might be harmful to the court's electronic filing system and to other users of that system;

(4) Furnish one or more electronic service addresses, in the manner specified by the court, at which the electronic filer agrees to accept service; and

(5) Immediately provide the court and all parties with any change to the electronic filer's electronic service address.

(Subd (a) amended effective January 1, 2011.)

(b) Format of documents to be filed electronically

A document that is filed electronically with the court must be in a format specified by the court unless it cannot be created in that format. The format adopted by a court must meet the following requirements:

(1) The software for creating and reading documents must be in the public domain or generally available at a reasonable cost.

(2) The printing of documents must not result in the loss of document text, format, or appearance.

If a document is filed electronically under the rules in this article and cannot be formatted to be consistent with a formatting rule elsewhere in the California Rules of Court, the rules in this article prevail.

Rule 8.76 amended effective January 1, 2011; adopted effective July 1, 2010.

Rule 8.77. Requirements for signatures on documents

(a) Documents signed under penalty of perjury

If a document to be filed must be signed under penalty of perjury, the document may be filed electronically provided that the original, signed verification page or pages are filed with the court within 5 calendar days.

(b) Documents not signed under penalty of perjury

If a document does not require a signature under penalty of perjury, the document is deemed signed by the party if the document is filed electronically.

(c) Documents requiring signatures of opposing parties

When a document to be filed electronically, such as a stipulation, requires the signatures of opposing parties, the following procedure applies:

(1) The party filing the document must obtain the signatures of all parties on a printed form of the document. By electronically filing the document, the electronic filer

indicates that all parties have signed the document and that the filer has the signed original in his or her possession.

(2) The party filing the document must maintain the original, signed document and must make it available for inspection and copying at the request of the court or any other party.

(3) At any time after the document is filed, any other party may serve a demand for production of the original signed document. The demand must be served on all other parties but need not be filed with the court.

(4) Within five days of service of the demand under (3), the party on whom the demand is made must make the original signed document available for inspection and copying by all other parties.

(5) At any time after the document is filed, the court may order the filing party to produce the original signed document in court for inspection and copying by the court. The order must specify the date, time, and place for the production and must be served on all parties.

(d) Digital signature

A party is not required to use a digital signature on an electronically filed document.

(e) Judicial signatures

If a document requires a signature by a court or a judicial officer, the document may be electronically signed in any manner permitted by law.

Rule 8.77 adopted effective July 1, 2010.

Rule 8.78. Payment of filing fees

(a) Use of credit cards and other methods

The court may permit the use of credit cards, debit cards, electronic fund transfers, or debit accounts for the payment of filing fees associated with electronic filing, as provided in Government Code section 6159 and other applicable law. The court may also authorize other methods of payment.

(b) Fee waivers

Eligible persons may seek a waiver of court fees and costs, as provided in Government Code section 68634.5 and rule 8.26.

Rule 8.78 adopted effective July 1, 2010.

Advisory Committee Comment

Subdivision (b). A fee charged by an electronic filing service provider under rule 8.75(b) is not a court fee that can be waived under Government Code section 68634.5 and rule 8.26.

Rule 8.79. Actions by court on receipt of electronic filing

(a) Confirmation of receipt and filing of document

(1) *Confirmation of receipt*

When the court receives an electronically submitted document, the court must promptly send the electronic filer confirmation of the court's receipt of the document, indicating the date and time of receipt. A document is considered received at the date and time the confirmation of receipt is created.

(2) *Confirmation of filing*

If the document received by the court under (1) complies with filing requirements, the court must promptly send the electronic filer confirmation that the document has been filed. The filing confirmation must indicate the date and time of filing and is proof that the document was filed on the date and at the time specified. The filing confirmation must also specify:

(A) Any transaction number associated with the filing;

(B) The titles of the documents as filed by the court; and

(C) The fees assessed for the filing.

(3) *Transmission of confirmations*

The court must send receipt and filing confirmation to the electronic filer at the electronic service address that the filer furnished to the court under rule 8.76(a)(4). The court must maintain a record of all receipt and filing confirmations.

(4) *Filer responsible for verification*

In the absence of the court's confirmation of receipt and filing, there is no presumption that the court received and filed the document. The electronic filer is responsible for verifying that the court received and filed any document that the electronic filer submitted to the court electronically.

(Subd (a) amended effective January 1, 2011.)

(b) Notice of rejection of document for filing

If the clerk does not file a document because it does not comply with applicable filing requirements, the court must promptly send notice of the rejection of the document for filing to the electronic filer. The notice must state the reasons that the document was rejected for filing.

(c) Document received after close of business

A document that is received electronically by the court after 11:59 p.m. is deemed to have been received on the next court day.

(Subd (c) amended effective January 1, 2011.)

(d) Delayed delivery

If a technical problem with a court's electronic filing system prevents the court from accepting an electronic filing on a particular court day, and the electronic filer demonstrates that he or she attempted to electronically file the document on that day, the court must deem the document as filed on that day.

(e) Endorsement

(1) The court's endorsement of a document electronically filed must contain the following: "Electronically filed by California Court of Appeal, Second Appellate District, on _____ (date)," followed by the name of the court clerk.

(2) The endorsement required under (1) has the same force and effect as a manually affixed endorsement stamp with the signature and initials of the court clerk.

(3) A record on appeal, brief, or petition in an appeal or original proceeding that is filed and endorsed electronically may be printed and served on the appellant or respondent in the same manner as if it had been filed in paper form.

Rule 8.79 amended effective January 1, 2011; adopted effective July 1, 2010.

Rule 8.80. Renumbered effective January 1, 2011
Rule 8.80 renumbered as rule 8.71.

Chapter 2. Civil Appeals

Article 1. Taking the Appeal

Rule 8.100. Filing the appeal
Rule 8.104. Time to appeal
Rule 8.108. Extending the time to appeal
Rule 8.112. Petition for writ of supersedeas
Rule 8.116. Request for writ of supersedeas or temporary stay

Rule 8.100. Filing the appeal

(a) Notice of appeal

(1) To appeal from a superior court judgment or an appealable order of a superior court, other than in a limited civil case, an appellant must serve and file a notice of appeal in that superior court. The appellant or the appellant's attorney must sign the notice.

(2) The notice of appeal must be liberally construed. The notice is sufficient if it identifies the particular judgment or order being appealed. The notice need not specify the court to which the appeal is taken; the appeal will be treated as taken to the Court of Appeal for the district in which the superior court is located.

(3) Failure to serve the notice of appeal neither prevents its filing nor affects its validity, but the appellant may be required to remedy the failure.

(b) Fee and deposit

(1) Unless otherwise provided by law, the notice of appeal must be accompanied by a $655 filing fee under Government Code sections 68926 and 68926.1(b), an application for a waiver of court fees and costs on appeal under rule 8.26, or an order granting such an application. The fee should be paid by check or money order payable to "Clerk, Court of Appeal"; if the fee is paid in cash, the clerk must give a receipt.

(2) The appellant must also deposit $100 with the superior court clerk under Government Code section 68926.1, unless otherwise provided by law or the superior court waives the deposit.

(3) The clerk must file the notice of appeal even if the appellant does not present the filing fee, the deposit, or an application for, or order granting, a waiver of fees and costs.

(Subd (b) amended effective July 1, 2009; previously amended effective August 17, 2003, and January 1, 2007.)

(c) Failure to pay filing fee

(1) The reviewing court clerk must promptly notify the appellant in writing if:

(A) The reviewing court receives a notice of appeal without the filing fee required by (b)(1), a certificate of cash payment under (e)(5), or an application for, or order granting, a fee waiver under rule 8.26;

(B) A check for the filing fee is dishonored; or

(C) An application for a waiver under rule 8.26 is denied.

(2) A clerk's notice under (1)(A) or (B) must state that the court may dismiss the appeal unless, within 15 days after the notice is sent, the appellant either:

(A) Pays the fee; or

(B) Files an application for a waiver under rule 8.26 if the appellant has not previously filed such an application.

(3) If the appellant fails to take the action specified in a notice given under (2), the reviewing court may dismiss the appeal, but may vacate the dismissal for good cause.

(Subd (c) amended effective July 1, 2009; previously amended effective January 1, 2007, and January 1, 2008.)

(d) Failure to pay deposit

(1) If the appellant fails to pay the deposit to the superior court required under (b)(2), the superior court clerk must promptly notify the appellant in writing that the reviewing court may dismiss the appeal unless, within 15 days after the notice is sent, the appellant either:

(A) Makes the deposit; or

(B) Files an application in the superior court for a waiver of fees and costs if the appellant has not previously filed such an application or an order granting such an application.

(2) If the appellant fails to take the action specified in a notice given under (1), the superior court clerk must notify the reviewing court of the default.

(3) If the superior court clerk notifies the reviewing court of a default under (2), the reviewing court may dismiss the appeal, but may vacate the dismissal for good cause.

(Subd (d) amended effective July 1, 2009; adopted effective January 1, 2008.)

(e) Superior court clerk's duties

(1) The superior court clerk must promptly mail a notification of the filing of the notice of appeal to the attorney of record for each party, to any unrepresented party, and to the reviewing court clerk.

(2) The notification must show the date it was mailed and must state the number and title of the case and the date the notice of appeal was filed. If the information is available, the notification must include:

(A) The name, address, telephone number, and California State Bar number of each attorney of record in the case;

(B) The name of the party each attorney represented in the superior court; and

(C) The name, address, and telephone number of any unrepresented party.

(3) A copy of the notice of appeal is sufficient notification under (1) if the required information is on the copy or is added by the superior court clerk.

(4) The mailing of a notification under (1) is a sufficient performance of the clerk's duty despite the death of the party or the discharge, disqualification, suspension, disbarment, or death of the attorney.

(5) With the notification of the appeal, the superior court clerk must send the reviewing court the filing fee or an application for, or order granting, a waiver of that fee. If the fee was paid in cash, the clerk must send the reviewing court a certificate of payment and thereafter a check for the amount of the fee.

(6) Failure to comply with any provision of this subdivision does not affect the validity of the notice of appeal.

(f) Notice of cross-appeal

As used in this rule, "notice of appeal" includes a notice of cross-appeal and "appellant" includes a respondent filing a notice of cross-appeal.

(Subd (f) relettered effective January 1, 2008; adopted as subd (e).)

(g) Civil case information statement

(1) On receiving notice of the filing of a notice of appeal under (e)(1), the reviewing court clerk must promptly mail the appellant a copy of the *Civil Case Information Statement* (form APP-004) and a notice that the statement must be filed within 10 days.

(2) Within 10 days after the clerk mails the notice required by (1), the appellant must serve and file in the reviewing court a completed *Civil Case Information Statement*, attaching a copy of the judgment or appealed order that shows the date it was entered.

(3) If the appellant fails to timely file a case information statement under (2), the reviewing court clerk must notify the appellant by mail that the appellant must file

the statement within 15 days after the clerk's notice is mailed and that if the appellant fails to comply, the court may either impose monetary sanctions or dismiss the appeal. If the appellant fails to file the statement as specified in the notice, the court may impose the sanctions specified in the notice.

(Subd (g) amended and relettered effective January 1, 2008; adopted as subd (f) effective January 1, 2003; previously amended effective January 1, 2007.)

Rule 8.100 amended effective July 1, 2009; repealed and adopted as rule 1 effective January 1, 2002; previously amended effective January 1, 2003, August 17, 2003, and January 1, 2008; previously amended and renumbered effective January 1, 2007.

Advisory Committee Comment

Subdivision (a). In subdivision (a)(1), the reference to "judgment" is intended to include part of a judgment. Subdivision (a)(1) includes an explicit reference to "appealable order" to ensure that litigants do not overlook the applicability of this rule to such orders.

Subdivision (b). In the interest of consistency, subdivision (b)(1) recommends a preferred wording—"Clerk, Court of Appeal"—for the name of the payee of checks or money orders for the filing fee. The provision is not mandatory.

Subdivision (c)(2). This subdivision addresses the content of a clerk's notice that a check for the filing fee has been dishonored or that the reviewing court has received a notice of appeal without the filing fee, a certificate of cash payment, or an application for, or order granting, a fee waiver. Rule 8.26(f) addresses what an appellant must do when a fee waiver application is denied.

Subdivision (e). Under subdivision (e)(2), a notification of the filing of a notice of appeal must show the date that the clerk mailed the document. This provision is intended to establish the date when the 20-day extension of the time to file a cross-appeal under rule 8.108(e) begins to run.

Subdivision (e)(1) requires the clerk to mail a notification of the filing of the notice of appeal to the appellant's attorney or to the appellant if unrepresented. Knowledge of the date of that notification allows the appellant's attorney or the appellant to track the running of the 20-day extension of time to file a cross-appeal under rule 8.108(e).

Rule 8.104. Time to appeal

(a) Normal time

Unless a statute or rule 8.108 provides otherwise, a notice of appeal must be filed on or before the earliest of:

(1) 60 days after the superior court clerk serves the party filing the notice of appeal with a document entitled "Notice of Entry" of judgment or a file-stamped copy of the judgment, showing the date either was served;

(2) 60 days after the party filing the notice of appeal serves or is served by a party with a document entitled "Notice of Entry" of judgment or a file-stamped copy of the judgment, accompanied by proof of service; or

(3) 180 days after entry of judgment.

(4) Service under (1) and (2) may be by any method permitted by the Code of Civil Procedure, including electronic service when permitted under Code of Civil Procedure section 1010.6 and rules 2.250–2.261.

(Subd (a) amended effective January 1, 2010; previously amended effective January 1, 2007.)

(b) No extension of time; late notice of appeal

Except as provided in rule 8.66, no court may extend the time to file a notice of appeal. If a notice of appeal is filed late, the reviewing court must dismiss the appeal.

(Subd (b) amended effective January 1, 2007; adopted effective January 1, 2005.)

(c) What constitutes entry

For purposes of this rule:

(1) The entry date of a judgment is the date the judgment is filed under Code of Civil Procedure section 668.5, or the date it is entered in the judgment book.

(2) The entry date of an appealable order that is entered in the minutes is the date it is entered in the permanent minutes. But if the minute order directs that a written order be prepared, the entry date is the date the signed order is filed; a written order prepared under rule 3.1312 or similar local rule is not such an order prepared by direction of a minute order.

(3) The entry date of an appealable order that is not entered in the minutes is the date the signed order is filed.

(4) The entry date of a decree of distribution in a probate proceeding is the date it is entered at length in the judgment book or other permanent court record.

(Subd (c) relettered effective January 1, 2011; adopted as subd (c); relettered as subd (d) effective January 1, 2005; previously amended effective January 1, 2007.)

(d) Premature notice of appeal

(1) A notice of appeal filed after judgment is rendered but before it is entered is valid and is treated as filed immediately after entry of judgment.

(2) The reviewing court may treat a notice of appeal filed after the superior court has announced its intended ruling, but before it has rendered judgment, as filed immediately after entry of judgment.

(Subd (d) relettered effective January 1, 2011; adopted as subd (d); previously relettered as subd (e) effective January 1, 2005.)

(e) Appealable order

As used in (a) and (e), "judgment" includes an appealable order if the appeal is from an appealable order.

(Subd (e) relettered effective January 1, 2011; adopted as subd (f); previously amended effective January 1, 2005.)

Rule 8.104 amended effective January 1, 2011; repealed and adopted as rule 2 effective January 1, 2002; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2005, and January 1, 2010.

Advisory Committee Comment

Subdivision (a). Under subdivision (a)(1), a notice of entry of judgment (or a copy of the judgment) must show the date on which the clerk served the document. The proof of service establishes the date that the 60-day period under subdivision (a)(1) begins to run.

Subdivision (a)(2) requires that a notice of entry of judgment (or a copy of the judgment) served by or on a party be accompanied by proof of service. The proof of service establishes the date that the 60-day period under subdivision (a)(2) begins to run. Although the general rule on service (rule 8.25(a)) requires proof of service for all documents served by parties, the requirement is reiterated here because of the serious consequence of a failure to file a timely notice of appeal (see subd. (e)).

Subdivision (b). See rule 8.25(b)(5) for provisions concerning the timeliness of documents mailed by inmates and patients from custodial institutions. Subdivision (b) is declarative of the case law, which holds that the reviewing court lacks jurisdiction to excuse a late-filed notice of appeal. (*Hollister Convalescent Hosp., Inc. v. Rico* (1975) 15 Cal.3d 660, 666–674; *Estate of Hanley* (1943) 23 Cal.2d 120, 122–124.)

In criminal cases, the time for filing a notice of appeal is governed by rule 8.308 and by the case law of "constructive filing." (See, e.g., *In re Benoit* (1973) 10 Cal.3d 72.)

Rule 8.108. Extending the time to appeal

(a) Extension of time

This rule operates only to extend the time to appeal otherwise prescribed in rule 8.104(a); it does not shorten the time to appeal. If the normal time to appeal stated in rule 8.104(a) is longer than the time provided in this rule, the time to appeal stated in rule 8.104(a) governs.

(Subd (a) adopted effective January 1, 2008.)

(b) Motion for new trial

If any party serves and files a valid notice of intention to move for a new trial, the time to appeal from the judgment is extended for all parties as follows:

(1) If the motion is denied, until the earliest of:

(A) 30 days after the superior court clerk or a party serves an order denying the motion or a notice of entry of that order;

(B) 30 days after denial of the motion by operation of law; or

(C) 180 days after entry of judgment.

(2) If any party serves an acceptance of a conditionally ordered additur or remittitur of damages pursuant to a trial court finding of excessive or inadequate damages, until 30 days after the date the party serves the acceptance.

(Subd (b) amended effective January 1, 2011; adopted as subd (a); previously amended and relettered effective January 1, 2008.)

(c) Motion to vacate judgment

If, within the time prescribed by rule 8.104 to appeal from the judgment, any party serves and files a valid notice of intention to move—or a valid motion—to vacate the judgment, the time to appeal from the judgment is extended for all parties until the earliest of:

(1) 30 days after the superior court clerk or a party serves an order denying the motion or a notice of entry of that order;

(2) 90 days after the first notice of intention to move—or motion—is filed; or

(3) 180 days after entry of judgment.

(Subd (c) amended effective January 1, 2011; adopted as subd (b); previously amended effective January 1, 2007; previously relettered effective January 1, 2008.)

(d) Motion for judgment notwithstanding the verdict

(1) If any party serves and files a valid motion for judgment notwithstanding the verdict and the motion is denied, the time to appeal from the judgment is extended for all parties until the earliest of:

(A) 30 days after the superior court clerk or a party serves an order denying the motion or a notice of entry of that order;

(B) 30 days after denial of the motion by operation of law; or

(C) 180 days after entry of judgment.

(2) Unless extended by (e)(2), the time to appeal from an order denying a motion for judgment notwithstanding the verdict is governed by rule 8.104.

(Subd (d) amended effective January 1, 2011; adopted as subd (c); previously amended effective January 1, 2007; previously relettered effective January 1, 2008.)

(e) Motion to reconsider appealable order

If any party serves and files a valid motion to reconsider an appealable order under Code of Civil Procedure section 1008, subdivision (a), the time to appeal from that order is extended for all parties until the earliest of:

(1) 30 days after the superior court clerk or a party serves an order denying the motion or a notice of entry of that order;

(2) 90 days after the first motion to reconsider is filed; or

(3) 180 days after entry of the appealable order.

(Subd (e) amended effective January 1, 2011; adopted as subd (d); previously relettered effective January 1, 2008.)

(f) Public entity actions under Government Code section 962, 984, or 985

If a public entity defendant serves and files a valid request for a mandatory settlement conference on methods of satisfying a judgment under Government Code section 962, an election to pay a judgment in periodic payments under Government Code section 984 and rule 3.1804, or a motion for a posttrial hearing on reducing a judgment under Government Code section 985, the time to appeal from the judgment is extended for all parties until the earliest of:

(1) 90 days after the superior court clerk serves the party filing the notice of appeal with a document entitled “Notice of Entry” of judgment, or a file-stamped copy of the judgment, showing the date either was served;

(2) 90 days after the party filing the notice of appeal serves or is served by a party with a document entitled “Notice of Entry” of judgment or a file-stamped copy of the judgment, accompanied by proof of service; or

(3) 180 days after entry of judgment.

(Subd (f) adopted effective January 1, 2011.)

(g) Cross-appeal

(1) If an appellant timely appeals from a judgment or appealable order, the time for any other party to appeal from the same judgment or order is extended until 20 days after the superior court clerk serves notification of the first appeal.

(2) If an appellant timely appeals from an order granting a motion for new trial, an order granting—within 150 days after entry of judgment—a motion to vacate the judgment, or a judgment notwithstanding the verdict, the time for any other party to appeal from the original judgment or from an order denying a motion for judgment notwithstanding the verdict is extended until 20 days after the clerk serves notification of the first appeal.

(Subd (g) amended and relettered effective January 1, 2011; adopted as subd (e); previously relettered as subd (f) effective January 1, 2008.)

(h) Service; proof of service

Service under this rule may be by any method permitted by the Code of Civil Procedure, including electronic service when permitted under Code of Civil Procedure section 1010.6 and rules 2.250–2.261. An order or notice that is served must be accompanied by proof of service.

(Subd (h) amended and relettered effective January 1, 2011; adopted as subd (f); previously relettered as subd (g) effective January 1, 2008.)

Rule 8.108 amended effective January 1, 2011; repealed and adopted as rule 3 effective January 1, 2002; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2008.

Advisory Committee Comment

Subdivisions (b)–(f) operate only when a party serves and files a "valid" motion, election, request, or notice of intent to move for the relief in question. As used in these provisions, the word "valid" means only that the motion, election, request, or notice complies with all procedural requirements; it does not mean that the motion, election, request, or notice must also be substantively meritorious. For example, under the rule a timely new trial motion on the ground of excessive damages (Code Civ. Proc., § 657) extends the time to appeal from the judgment even if the trial court ultimately determines the damages were not excessive. Similarly, a timely motion to reconsider (*id*., § 1008) extends the time to appeal from an appealable order for which reconsideration was sought even if the trial court ultimately determines the motion was not "based upon new or different facts, circumstances, or law," as subdivision (a) of section 1008 requires.

Subdivision (b). Subdivision (b)(1) provides that the denial of a motion for new trial triggers a 30-day extension of the time to appeal from the judgment beginning on the date that the superior court clerk or a

party serves either the order of denial or a notice of entry of that order. This provision is intended to eliminate a trap for litigants and to make the rule consistent with the primary rule on the time to appeal from the judgment (rule 8.104(a)).

Subdivision (c). The Code of Civil Procedure provides two distinct statutory motions to vacate a judgment: (1) a motion to vacate a judgment and enter "another and different judgment" because of judicial error (*id*., § 663), which requires a notice of intention to move to vacate (*id*., § 663a); and (2) a motion to vacate a judgment because of mistake, inadvertence, surprise, or neglect, which requires a motion to vacate but not a notice of intention to so move (*id*., § 473, subd. (b)). The courts also recognize certain nonstatutory motions to vacate a judgment, e.g., when the judgment is void on the face of the record or was obtained by extrinsic fraud. (See 8 Witkin, Cal. Procedure (4th ed. 1997) Attack on Judgment in Trial Court, §§ 222–236, pp. 726–750.) Subdivision (c) is intended to apply to all such motions.

In subdivision (c) the phrase "within the time prescribed by rule 8.104 to appeal from the judgment" is intended to incorporate in full the provisions of rule 8.104(a).

Under subdivision (c)(1), the 30-day extension of the time to appeal from the judgment begins when the superior court clerk or a party serves the order denying the motion or notice of entry of that order. This provision is discussed further under subdivision (b) of this comment.

Subdivision (d). Subdivision (d)(1) provides an extension of time after an order denying a motion for judgment notwithstanding the verdict regardless of whether the moving party also moved unsuccessfully for a new trial.

Subdivision (d) further specifies the times to appeal when, as often occurs, a motion for judgment notwithstanding the verdict is joined with a motion for new trial and both motions are denied. Under subdivision (b), the appellant has 30 days after notice of the denial of the new trial motion to appeal from the judgment. Subdivision (d) allows the appellant the longer time provided by rule 8.104 to appeal from the order denying the motion for judgment notwithstanding the verdict, subject to that time being further extended in the circumstances covered by subdivision (g)(2).

Under subdivision (d)(1)(A), the 30-day extension of the time to appeal from the judgment begins when the superior court clerk or a party serves the order denying the motion or notice of entry of that order. This provision is discussed further under subdivision (b) of this comment.

Subdivision (e). The scope of subdivision (e) is specific. It applies to any "appealable order," whether made before or after judgment (see Code Civ. Proc., § 904.1, subd. (a)(2)–(12)), but it extends only the time to appeal "from that order." The subdivision thus takes no position on whether a judgment is subject to a motion to reconsider (see, e.g., *Ramon v. Aerospace Corp.* (1996) 50 Cal.App.4th 1233, 1236–1238 [postjudgment motion to reconsider order granting summary judgment did not extend time to appeal from judgment because trial court had no power to rule on such motion after entry of judgment]), or whether an order denying a motion to reconsider is itself appealable (compare *Santee v. Santa Clara County Office of Education* (1990) 220 Cal.App.3d 702, 710–711 [order appealable if motion based on new facts] with *Rojes v. Riverside General Hospital* (1988) 203 Cal.App.3d 1151, 1160–1161 [order not appealable under any circumstances]). Both these issues are legislative matters.

Subdivision (e) applies only when a "party" makes a valid motion to "reconsider" an appealable order under subdivision (a) of Code of Civil Procedure section 1008; it therefore does not apply when a court reconsiders an order on its own motion (*id.*, subd. (d)) or when a party makes "a subsequent application

for the same order" (*id.*, subd. (c)). The statute provides no time limits within which either of the latter events must occur.

Under subdivision (e)(1), the 30-day extension of the time to appeal from the order begins when the superior court clerk or a party serves the order denying the motion or notice of entry of that order. The purpose of this provision is discussed further under subdivision (b) of this comment.

Among its alternative periods of extension of the time to appeal, subdivision (e) provides in paragraph (2) for a 90-day period beginning on the filing of the motion to reconsider or, if there is more than one such motion, the filing of the first such motion. The provision is consistent with subdivision (c)(2), governing motions to vacate judgment; as in the case of those motions, there is no time limit for a ruling on a motion to reconsider.

Subdivision (g). Consistent with case law, subdivision (g)(1) extends the time to appeal after another party appeals only if the later appeal is taken "from the same order or judgment as the first appeal." (*Commercial & Farmers Nat. Bank v. Edwards* (1979) 91 Cal.App.3d 699, 704.)

The former rule (former rule 3(c), second sentence) provided an extension of time for filing a protective cross-appeal from the judgment when the trial court granted a motion for new trial or a motion to vacate the judgment, but did not provide the same extension when the trial court granted a motion for judgment notwithstanding the verdict. One case declined to infer that the omission was unintentional, but suggested that the Judicial Council might consider amending the rule to fill the gap. (*Lippert v. AVCO Community Developers, Inc.* (1976) 60 Cal.App.3d 775, 778 & fn. 3.) Rule 8.108(e)(2) fills the gap thus identified.

Subdivision (h). Under subdivision (h), an order or notice that is served under this rule must be accompanied by proof of service. The date of the proof of service establishes the date when an extension of the time to appeal begins to run after service of such an order or notice.

Rule 8.112. Petition for writ of supersedeas

(a) Petition

(1) A party seeking a stay of the enforcement of a judgment or order pending appeal may serve and file a petition for writ of supersedeas in the reviewing court.

(2) The petition must bear the same title as the appeal and, if known, the appeal's docket number.

(3) The petition must explain the necessity for the writ and include a memorandum.

(4) If the record has not been filed in the reviewing court:

(A) The petition must include a statement of the case sufficient to show that the petitioner will raise substantial issues on appeal, including a fair summary of the material facts and the issues that are likely to be raised on appeal.

(B) The petitioner must file the following documents with the petition:

(i) The judgment or order, showing its date of entry;

(ii) The notice of appeal, showing its date of filing;

(iii) A reporter's transcript of any oral statement by the court supporting its rulings related to the issues that are likely to be raised on appeal, or, if a transcript is unavailable, a declaration fairly summarizing any such statements;

(iv) Any application for a stay filed in the trial court, any opposition to that application, and a reporter's transcript of the oral proceedings concerning the stay or, if a transcript is unavailable, a declaration fairly summarizing the proceedings, including the parties' arguments and any statement by the court supporting its ruling; and

(v) Any other document from the trial court proceeding that is necessary for proper consideration of the petition.

(C) The documents listed in (B) must comply with the following requirements:

(i) They must be bound together at the end of the petition or in a separate volumes not exceeding 300 pages each. The pages must be consecutively numbered;

(ii) They must be index-tabbed by number or letter, and

(iii) They must begin with a table of contents listing each document by its title and its index-tab number or letter.

(5) The petition must be verified.

(Subd (a) amended effective January 1, 2010; previously amended effective January 1, 2007, and January 1, 2008.)

(b) Opposition

(1) Unless otherwise ordered, any opposition must be served and filed within 15 days after the petition is filed.

(2) An opposition must state any material facts not included in the petition and include a memorandum.

(3) The court may not issue a writ of supersedeas until the respondent has had the opportunity to file an opposition.

(Subd (b) amended effective January 1, 2007.)

(c) Temporary stay

(1) The petition may include a request for a temporary stay under rule 8.116 pending the ruling on the petition.

(2) A separately filed request for a temporary stay must be served on the respondent. For good cause, the Chief Justice or presiding justice may excuse advance service.

(Subd (c) amended effective January 1, 2007.)

(d) Issuing the writ

(1) The court may issue the writ on any conditions it deems just.

(2) The court must hold a hearing before it may issue a writ staying an order that awards or changes the custody of a minor.

(3) The court must notify the superior court, under rule 8.489, of any writ or temporary stay that it issues.

(Subd (d) amended effective January 1, 2009; previously amended effective January 1, 2007, and January 1, 2008.)

Rule 8.112 amended effective January 1, 2010; repealed and adopted as rule 49 effective January 1, 2005; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2008, and January 1, 2009.

Advisory Committee Comment

Subdivision (a). If the preparation of a reporter's transcript has not yet been completed at that time a petition for a writ of supersedeas is filed, that transcript is "unavailable" within the meaning of (a)(4)(B).

Rule 8.116. Request for writ of supersedeas or temporary stay

(a) Information on cover

If a petition for original writ, petition for review, or any other document requests a writ of supersedeas or temporary stay from a reviewing court, the cover of the document must:

(1) Prominently display the notice "STAY REQUESTED"; and

(2) Identify the nature and date of the proceeding or act sought to be stayed.

(Subd (a) amended effective January 1, 2007.)

(b) Additional information

The following information must appear either on the cover or at the beginning of the text:

(1) The trial court and department involved; and

(2) The name and telephone number of the trial judge whose order the request seeks to stay.

(Subd (b) amended effective January 1, 2007.)

(c) Sanction

If the document does not comply with (a) and (b), the reviewing court may decline to consider the request for writ of supersedeas or temporary stay.

Rule 8.116 amended and renumbered effective January 1, 2007; repealed and adopted as rule 49.5 effective January 1, 2005.

Article 2. Record on Appeal

Rule 8.120. Record on appeal
Rule 8.121. Notice designating the record on appeal
Rule 8.122. Clerk's transcript
Rule 8.123. Record of administrative proceedings
Rule 8.124. Appendixes
Rule 8.128. Superior court file instead of clerk's transcript
Rule 8.130. Reporter's transcript
Rule 8.134. Agreed statement
Rule 8.137. Settled statement
Rule 8.140. Failure to procure the record
Rule 8.144. Form of the record
Rule 8.147. Record in multiple or later appeals in same case
Rule 8.150. Filing the record
Rule 8.153. Lending the record
Rule 8.155. Augmenting and correcting the record
Rule 8.160. [Renumbered as rule 8.46]
Rule 8.163. Presumption from the record

Rule 8.120. Record on appeal

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

(a) Record of written documents

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

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

(B) An appendix under rule 8.124;

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

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

(E) A settled statement under rule 8.137.

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

(b) Record of the oral proceedings

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

(1) A reporter's transcript under rule 8.130;

(2) An agreed statement under rule 8.134; or

(3) A settled statement under rule 8.137.

Rule 8.120 adopted effective January 1, 2008.

Rule 8.121. Notice designating the record on appeal

(a) Time to file

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

(b) Contents

(1) The notice must:

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

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

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

(2) If an appellant intends to raise any issue that requires consideration of the record of an administrative proceeding that was admitted in evidence, refused, or lodged in the superior court, the notice must also request that this administrative record be transmitted to the reviewing court under rule 8.123.

(c) Copy to the reviewing court

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

Rule 8.121 adopted effective January 1, 2008.

Advisory Committee Comment

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

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

Rule 8.122. Clerk's transcript

(a) Designation

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

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

(3) Except as provided in (b)(4), all exhibits admitted in evidence, refused, or lodged are deemed part of the record, but a party wanting a copy of an exhibit included in the transcript must specify that exhibit by number or letter in its notice of designation. If the superior court has returned a designated exhibit to a party, the party in possession of the exhibit must deliver it to the superior court clerk within 10 days after the notice designating the exhibit is served.

(Subd (a) amended effective January 1, 2010; previously amended effective January 1, 2005, January 1, 2007, and January 1, 2008.)

(b) Contents of transcript

(1) The transcript must contain:

(A) The notice of appeal;

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

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

(D) 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, and any order on such motion and any notice of its entry;

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

(F) The register of actions, if any.

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

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

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

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

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

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

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

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

(Subd (b) amended effective January 1, 2011; previously amended effective January 1, 2007, and January 1, 2008.)

(c) Deposit for cost of transcript

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

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

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

(2) A notice under (1) must show the date it was sent.

(3) 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 deposit the estimated cost with the clerk, unless otherwise provided by law or the party submits an application for, or an order granting, a waiver of the cost.

(Subd (c) amended effective July 1, 2009; previously amended effective January 1, 2007, and January 1, 2008.)

(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 clerk must:

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

(B) Prepare additional copies for which the parties have made deposits.

(2) If the appeal is abandoned or dismissed before the clerk has completed preparation of the transcript, the clerk must refund any portion of the deposit under (c) exceeding the preparation cost actually incurred.

(Subd (d) amended effective January 1, 2007; previously amended effective January 1, 2003.)

Rule 8.122 amended effective January 1, 2011; repealed and adopted as rule 5 effective January 1, 2002; previously amended and renumbered as rule 8.120 effective January 1, 2007, and as rule 8.122 effective January 1, 2008; previously amended effective January 1, 2003, January 1, 2005, July 1, 2009; and January 1, 2010.

Advisory Committee Comment

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

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) but may be included by designation of a party under (b)(3) or on motion of a party or the reviewing court under rule 8.155.

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

Subdivision (c). Under subdivision (c)(2), a clerk who sends a notice under subdivision (c)(1) must include a certificate stating the date on which the clerk sent it. This provision is intended to establish the date when the 10-day period for depositing the cost of the clerk's transcript under this rule begins to run.

The superior court will make the determination on any application to waive the fees for preparing, certifying, copying, and transmitting the clerk's transcript.

Rule 8.123. Record of administrative proceedings

(a) Application

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

(b) Designation

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

(2) If an appellant does not request that an administrative record admitted in evidence, refused, or lodged in the superior court be transmitted to the reviewing court, the

respondent, within 10 days after the appellant serves its notice designating the record on appeal, may serve and file in the superior court a notice requesting that this administrative record be transmitted to the reviewing court.

(c) Administrative records returned to parties

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

(d) Transmittal to the reviewing court

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

(e) Return by reviewing court

On request, the reviewing court may return an administrative record to the superior court. When the remittitur issues, the reviewing court must return any administrative record to the superior court.

Rule 8.123 adopted effective January 1, 2008.

Rule 8.124. Appendixes

(a) Notice of election

(1) Unless the superior court orders otherwise on a motion served and filed within 10 days after the notice of election is served, this rule governs if:

(A) The appellant elects to use an appendix under this rule in the notice designating the record on appeal under rule 8.121; or

(B) The respondent serves and files a notice in the superior court electing to use an appendix under this rule within 10 days after the notice of appeal is filed and no waiver of the fee for a clerk's transcript is granted to the appellant.

(2) When a party files a notice electing to use an appendix under this rule, the superior court clerk must promptly send a copy of the register of actions, if any, to the attorney of record for each party and to any unrepresented party.

(3) The parties may prepare separate appendixes, but are encouraged to stipulate to a joint appendix.

(Subd (a) amended effective January 1, 2010; previously amended effective January 1, 2005, January 1, 2007, and January 1, 2008.)

(b) Contents of appendix

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

(A) All items required by rule 8.122(b)(1), showing the dates required by rule 8.122(b)(2);

(B) Any item listed in rule 8.122(b)(3) that is necessary for proper consideration of the issues, including, for an appellant's appendix, any item that the appellant should reasonably assume the respondent will rely on;

(C) The notice of election; and

(D) For a joint appendix, the stipulation designating its contents.

(2) An appendix may incorporate by reference all or part of the record on appeal in another case pending in the reviewing court or in a prior appeal in the same case.

(A) The other appeal must be identified by its case name and number. If only part of a record is being incorporated by reference, that part must be identified by citation to the volume and page numbers of the record where it appears and either the title of the document or documents or the date of the oral proceedings to be incorporated. The parts of any record incorporated by reference must be identified both in the body of the appendix and in a separate section at the end of the index.

(B) If the appendix incorporates by reference any such record, the cover of the appendix must prominently display the notice "Record in case number:____ incorporated by reference," identifying the number of the case from which the record is incorporated.

(C) On request of the reviewing court or any party, the designating party must provide a copy of the materials incorporated by reference to the court or another party or lend them for copying as provided in (c).

(3) An appendix must not:

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

(B) Contain transcripts of oral proceedings that may be designated under rule 8.130.

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

(D) Incorporate any document by reference except as provided in (2).

(4) All exhibits admitted in evidence, refused, or lodged are deemed part of the record, whether or not the appendix contains copies of them.

(5) A respondent's appendix may contain any document that could have been included in the appellant's appendix or a joint appendix.

(6) An appellant's reply appendix may contain any document that could have been included in the respondent's appendix.

(Subd (b) amended effective January 1, 2010; previously amended January 1, 2007, and January 1, 2008.)

(c) Document or exhibit held by other party

If a party preparing an appendix wants it to contain a copy of a document or an exhibit in the possession of another party:

(1) The party must first ask the party possessing the document or exhibit to provide a copy or lend it for copying. All parties should reasonably cooperate with such requests.

(2) If the attempt under (1) is unsuccessful, the party may serve and file in the reviewing court a notice identifying the document or specifying the exhibit's trial court designation and requesting the party possessing the document or exhibit to deliver it to the requesting party or, if the possessing party prefers, to the reviewing court. The possessing party must comply with the request within 10 days after the notice was served.

(3) If the party possessing the document or exhibit sends it to the requesting party, that party must copy and return it to the possessing party within 10 days after receiving it.

(4) If the party possessing the document or exhibit sends it to the reviewing court, that party must:

(A) Accompany the document or exhibit with a copy of the notice served by the requesting party; and

(B) Immediately notify the requesting party that it has sent the document or exhibit to the reviewing court.

(5) On request, the reviewing court may return a document or an exhibit to the party that sent it. When the remittitur issues, the reviewing court must return all documents or exhibits to the party that sent them.

(Subd (c) amended effective January 1, 2010; adopted effective January 1, 2005; previously amended effective January 1, 2007.)

(d) Form of appendix

(1) An appendix must comply with the requirements of rule 8.144(a)–(c) for a clerk's transcript.

(2) In addition to the information required on the cover of a brief by rule 8.204(b)(10), the cover of an appendix must prominently display the title "Joint Appendix" or "Appellant's Appendix" or "Respondent's Appendix" or "Appellant's Reply Appendix."

(3) An appendix must not be bound with a brief.

(Subd (d) amended effective January 1, 2007; adopted as subd (c); relettered effective January 1, 2005.)

(e) Service and filing

(1) A party preparing an appendix must:

(A) Serve the appendix on each party, unless otherwise agreed by the parties or ordered by the reviewing court; and

(B) File the appendix in the reviewing court.

(2) A joint appendix or an appellant's appendix must be served and filed with the appellant's opening brief.

(3) A respondent's appendix, if any, must be served and filed with the respondent's brief.

(4) An appellant's reply appendix, if any, must be served and filed with the appellant's reply brief.

(Subd (e) amended effective January 1, 2007; adopted as subd (d); relettered effective January 1, 2005.)

(f) Cost of appendix

(1) Each party must pay for its own appendix.

(2) The cost of a joint appendix must be paid:

(A) By the appellant;

(B) If there is more than one appellant, by the appellants equally; or

(C) As the parties may agree.

(Subd (f) amended effective January 1, 2007; adopted as subd (e); relettered effective January 1, 2005.)

(g) Inaccurate or noncomplying appendix

Filing an appendix constitutes a representation that the appendix consists of accurate copies of documents in the superior court file. The reviewing court may impose monetary or other sanctions for filing an appendix that contains inaccurate copies or otherwise violates this rule.

(Subd (g) relettered effective January 1, 2005; adopted as subd (f).)

Rule 8.124 amended effective January 1, 2010; repealed and adopted as rule 5.1 effective January 1, 2002; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2005, and January 1, 2008.

Advisory Committee Comment

Subdivision (a). Under this provision either party may elect to have the appeal proceed by way of an appendix. If the appellant's fees for a clerk's transcript are not waived and the respondent timely elects to use an appendix, that election will govern unless the superior court orders otherwise. This election procedure differs from all other appellate rules governing designation of a record on appeal. In those rules, the appellant's designation, or the stipulation of the parties, determines the type of record on appeal. Before making this election, respondents should check whether the appellant has been granted a fee waiver that is still in effect. If the trial court has granted appellant a fee waiver for the clerk's transcript, or grants such a waiver after the notice of appeal is filed, respondent cannot elect to proceed by way of an appendix.

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

Subdivision (b). Under subdivision (b)(1)(A), a joint appendix or an appellant's appendix must contain any register of actions that the clerk sent to the parties under subdivision (a)(2). This provision is intended

to assist the reviewing court in determining the accuracy of the appendix. The provision is derived from rule 30-1.3(a)(ii) of the United States Circuit Rules (9th Cir.).

In support of or opposition to pleadings or motions, the parties may have filed a number of lengthy documents in the proceedings in superior court, including, for example, declarations, memorandums, trial briefs, documentary exhibits (e.g., insurance policies, contracts, deeds), and photocopies of judicial opinions or other publications. Subdivision (b)(3)(A) prohibits the inclusion of such documents in an appendix when they are not necessary for proper consideration of the issues raised in the appeal. Even if a document is otherwise includable in an appendix, the rule prohibits the inclusion of any substantial *portion* of the document that is not necessary for proper consideration of the issues raised in the appeal. The prohibition is intended to simplify and therefore expedite the preparation of the appendix, to reduce its cost to the parties, and to relieve the courts of the burden of reviewing a record containing redundant, irrelevant, or immaterial documents. The provision is adapted from rule 30-1.4 of the United States Circuit Rules (9th Cir.).

Subdivision (b)(3)(B) prohibits the inclusion in an appendix of transcripts of oral proceedings that may be made part of a reporter's transcript. (Compare rule 8.130(e)(3) [the reporter must not copy into the reporter's transcript any document includable in the clerk's transcript under rule 8.122].) The prohibition is intended to prevent a party filing an appendix from evading the requirements and safeguards imposed by rule 8.130 on the process of designating and preparing a reporter's transcript, or the requirements imposed by rule 8.144(d) on the use of daily or other transcripts instead of a reporter's transcript (i.e., renumbered pages, required indexes). In addition, if an appellant were to include in its appendix a transcript of less than all the proceedings, the respondent would not learn of any need to designate additional proceedings (under rule 8.130(a)(3)) until the appellant had served its appendix with its brief, when it would be too late to designate them. Note also that a party may file a certified transcript of designated proceedings instead of a deposit for the reporter's fee (rule 8.130(b)(3)).

Subdivision (d). In current practice, served copies of filed documents often bear no clerk's date stamp and are not conformed by the parties serving them. Consistently with this practice, subdivision (d) does not require such documents to be conformed. The provision thereby relieves the parties of the burden of obtaining conformed copies at the cost of considerable time and expense and expedites the preparation of the appendix and the processing of the appeal. It is to be noted, however, that under subdivision (b)(1)(A) each document necessary to determine the timeliness of the appeal must show the date required under rule 8.104 or 8.108. Note also that subdivision (g) of rule 8.124 provides that a party filing an appendix represents under penalty of sanctions that its copies of documents are accurate.

Subdivision (e). Subdivision (e)(2) requires a joint appendix to be filed with the appellant's opening brief. The provision is intended to improve the briefing process by enabling the appellant's opening brief to include citations to the record. To provide for the case in which a respondent concludes in light of the appellant's opening brief that the joint appendix should have included additional documents, subdivision (b)(5) permits such a respondent to present in an appendix filed with its respondent's brief (see subd. (e)(3)) any document that could have been included in the joint appendix.

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

Subdivision (g). Under subdivision (g), sanctions do not depend on the degree of culpability of the filing party—i.e., on whether the party's conduct was willful or negligent—but on the nature of the inaccuracies and the importance of the documents they affect.

Rule 8.128. Superior court file instead of clerk's transcript

(a) Stipulation; time to file

(1) If a local rule of the reviewing court permits, the parties may stipulate to use the original superior court file instead of a clerk's transcript under rule 8.122. This rule and any supplemental provisions of the local rule then govern unless the superior court orders otherwise after notice to the parties.

(2) Parties intending to proceed under this rule must file their stipulation in superior court with the appellant's notice designating the record on appeal under rule 8.121. The parties must serve the reviewing court with a copy of the stipulation.

(Subd (a) amended effective January 1, 2008; previously amended effective January 1, 2007.)

(b) Cost estimate; preparation of file; transmittal

(1) Within 10 days after a stipulation under (a) is filed, the superior court clerk must mail the appellant an estimate of the cost to prepare the file, including the cost of sending the index under (3). The appellant must deposit the cost or file an application for, or an order granting, a waiver of the cost within 10 days after the clerk mails the estimate.

(2) Within 10 days after the appellant deposits the cost or the court files an order waiving that cost, the superior court clerk must put the superior court file in chronological order, number the pages, and attach a chronological index and a list of all attorneys of record, the parties they represent, and any unrepresented parties.

(3) The clerk must send copies of the index to all attorneys of record and any unrepresented parties for their use in paginating their copies of the file to conform to the index.

(4) The clerk must send the prepared file to the reviewing court with the reporter's transcript. If the appellant elected to proceed without a reporter's transcript, the clerk must immediately send the prepared file to the reviewing court.

(Subd (b) amended effective July 1, 2009.)

Rule 8.128 amended effective July 1, 2009; repealed and adopted as rule 5.2 effective January 1, 2002; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2008.

Advisory Committee Comment

Subdivision (b). The superior court will make the determination on any application to waive the fees for preparing and transmitting the trial court file.

Rule 8.130. Reporter's transcript

(a) Notice

(1) If in the notice designating the record on appeal under rule 8.121, the appellant elects to use a reporter's transcript, in that notice the appellant must specify the date of each proceeding to be included in the transcript, and may specify portions of designated proceedings that are not to be included.

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

(3) If the appellant serves and files a notice designating a reporter's transcript, the respondent may, within 10 days after such service, serve and file a notice in superior court designating any additional proceedings the respondent wants included in the transcript.

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

(5) Any notice of designation must be served on each known reporter of the designated proceedings.

(Subd (a) amended effective January 1, 2008; previously amended effective January 1, 2005, and January 1, 2007.)

(b) Deposit or substitute for cost of transcript

(1) With its notice of designation, a party must deposit with the superior court clerk the approximate cost of transcribing the proceedings it designates, using either:

(A) The reporter's written estimate; or

(B) An amount calculated at $325 per fraction of the day's proceedings that did not exceed three hours, or $650 per day or fraction that exceeded three hours.

(2) If the reporter believes the deposit is inadequate, within 15 days after the clerk mails the notice under (d)(1) the reporter may file with the clerk and mail to the designating party an estimate of the transcript's total cost, showing the additional

deposit required. The party must deposit the additional sum within 10 days after the reporter mails the estimate.

(3) Instead of a deposit, the party may substitute the reporter's written waiver of a deposit, a copy of a Transcript Reimbursement Fund application filed under (c)(1), or a certified transcript of the designated proceedings. A reporter may waive the deposit for—and a party may submit a certified transcript of—a part of the designated proceedings, but such a waiver or transcript replaces the deposit for only that part.

(Subd (b) amended effective January 1, 2010; previously amended effective January 1, 2007.)

(c) Transcript Reimbursement Fund application

(1) With its notice of designation, a party may serve and file a copy of its application to the Court Reporters Board for payment or reimbursement from the Transcript Reimbursement Fund under Business and Professions Code section 8030.2 et seq.

(2) If the Court Reporters Board approves the application for payment or reimbursement, the reporter's time to prepare the transcript under (f)(1) begins when the reporter receives notice of the approval.

(3) If the Court Reporters Board denies the application for payment or reimbursement, the party's time to deposit the reporter's fee or substitute under (b), or to file an agreed or settled statement under rule 8.134 or 8.137, is extended until 30 days after the board mails notice of the denial.

(Subd (c) amended effective January 1, 2007.)

(d) Superior court clerk's duties

(1) If a party designates proceedings to be included in a reporter's transcript and has presented the fee deposit or a substitute under (b)(3), the clerk must promptly mail the reporter notice of the designation and of the deposit or substitute. The notice must show the date it was mailed.

(2) If a party does not present the deposit or a substitute with its notice of designation, the clerk must file the notice and promptly issue a notice of default under rule 8.140.

(3) The clerk must promptly notify the reporter if a check for a deposit is dishonored or an appeal is abandoned or is dismissed before the reporter has filed the transcript.

(Subd (d) amended effective January 1, 2008; previously amended effective January 1, 2007.)

(e) Contents of transcript

(1) The reporter must transcribe all designated proceedings for which a certified transcript has not been substituted under (b)(3), and must note in the transcript where any proceedings were omitted and the nature of those proceedings. The reporter must also note where any exhibit was marked for identification and where it was admitted or refused, identifying such exhibits by number or letter.

(2) If a party designates a portion of a witness's testimony to be transcribed, the reporter must transcribe the witness's entire testimony unless the parties stipulate otherwise.

(3) The reporter must not copy any document includable in the clerk's transcript under rule 8.122.

(Subd (e) amended effective January 1, 2008; previously amended effective January 1, 2007.)

(f) Filing the transcript; copies; payment

(1) Within 30 days after notice is received under (c)(2) or mailed under (d)(1), the reporter must prepare and certify an original of the transcript and file it in superior court. The reporter must also file one copy of the original transcript, or more than one copy if multiple appellants equally share the cost of preparing the record (see rule 8.147(a)(2)). Only the reviewing court can extend the time to prepare the reporter's transcript (see rule 8.60).

(2) When the transcript is completed, the reporter must bill each designating party at the statutory rate and send a copy of the bill to the superior court clerk. The clerk must pay the reporter from that party's deposited funds and refund any excess deposit or notify the party of any additional funds needed. In a multiple reporter case, the clerk must pay each reporter who certifies under penalty of perjury that his or her transcript portion is completed.

(3) If the appeal is abandoned or is dismissed before the reporter has filed the transcript, the reporter must inform the superior court clerk of the cost of the portion of the transcript that the reporter has completed. The clerk must pay that amount to the reporter from the appellant's deposited funds and refund any excess deposit.

(4) On request, and unless the superior court orders otherwise, the reporter must provide any party with a copy of the reporter's transcript in computer-readable format. Each computer-readable copy must comply with the format, labeling, content, and numbering requirements of Code of Civil Procedure section 271(b).

(Subd (f) amended effective July 1, 2008; previously amended effective January 1, 2007.)

(g) Agreed or settled statement when proceedings cannot be transcribed

(1) If any portion of the designated proceedings cannot be transcribed, the superior court clerk must so notify the designating party by mail; the notice must show the date it

was mailed. The party may then substitute an agreed or settled statement for that portion of the designated proceedings by complying with either (A) or (B):

(A) Within 10 days after the notice is mailed, the party may file in superior court, under rule 8.134, an agreed statement or a stipulation that the parties are attempting to agree on a statement. If the party files a stipulation, within 30 days thereafter the party must file the agreed statement, move to use a settled statement under rule 8.137, or proceed without such a statement; or

(B) Within 10 days after the notice is mailed, the party may move in superior court to use a settled statement. If the court grants the motion, the statement must be served, filed, and settled as rule 8.137 provides, but the order granting the motion must fix the times for doing so.

(2) If the agreed or settled statement contains all the oral proceedings, it will substitute for the reporter's transcript; if it contains a portion of the proceedings, it will be incorporated into that transcript.

(3) This remedy supplements any other available remedies.

(Subd (g) amended effective January 1, 2007.)

Rule 8.130 amended effective January 1, 2010; repealed and adopted as rule 4 effective January 1, 2002; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2005, January 1, 2008, and July 1, 2008.

Advisory Committee Comment

Under rule 8.121 an appellant may serve and file a notice *designating* a reporter's transcript and the notice must identify the proceedings to be *included*. The wording recognizes that under rule 8.130(b)(3) the appellant, instead of depositing the reporter's cost to transcribe the proceedings, may substitute certified transcripts of proceedings that have already been transcribed (e.g., daily transcripts) and hence need only be designated for inclusion in the transcript.

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

As used in subdivision (a)(1), the phrase "oral proceedings" includes all instructions that the court gives, whether or not submitted in writing, and any instructions that counsel orally propose but the court refuses; all such instructions are included in the reporter's transcript if designated under this rule. All instructions that counsel submit in writing, whether or not given to the jury, are lodged with the superior court clerk and are included in the clerk's transcript if designated under rule 8.122.

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

Subdivision (b). To eliminate any ambiguity, subdivision (b)(3) recognizes, first, that a party may substitute a waiver or a certified transcript for part of the designated proceedings and, second, that in such event the waiver or transcript replaces the deposit for only that part.

Subdivision (c). Under subdivision (c), an application to the Court Reporters Board for payment or reimbursement of the cost of the reporter's transcript from the Transcript Reimbursement Fund (Bus. & Prof. Code, § 8030.8) is a permissible substitute for the required deposit of the reporter's fee (subd. (b)(3)) and thereby prevents issuance of a notice of default (subd. (d)(4)).

Business and Professions Code sections 8030.6 and 8030.8 use the term "reimbursement" to mean not only a true reimbursement, i.e., repaying a party who has previously paid the reporter out of the party's own funds (see *id*., § 8030.8, subd. (d)), but also a direct payment to a reporter who has not been previously paid by the party (see *id.*, § 8030.6, subds. (b) and (d)). Subdivision (f) recognizes this special dual meaning by consistently using the compound phrase "payment or reimbursement."

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

Subdivision (e). Subdivision (e)(3) is not intended to relieve the reporter of the duty to report all oral proceedings, including the reading of instructions or other documents.

Subdivision (f). Subdivision (f)(1) requires the reporter to prepare and file additional copies of the record "if multiple appellants equally share the cost of preparing the record. . . ." The reason for the requirement is explained in the comment to rule 8.147(a)(2).

Implementing statutory provisions (e.g., Code Civ. Proc., § 269, subd. (c); Gov. Code, § 69954), subdivision (f)(4) requires the reporter to provide a party, on request, with a copy of the reporter's transcript in computer-readable format. But in recognition of the fact that in some instances the reporter may be unable to provide a copy in that format, the subdivision also authorizes the reporter to apply to the superior court for relief from this requirement.

Rule 8.134. Agreed statement

(a) Contents of statement

(1) The record on appeal may consist wholly or partly of an agreed statement. The statement must explain the nature of the action, the basis of the reviewing court's jurisdiction, and how the superior court decided the points to be raised on appeal. The statement should recite only those facts needed to decide the appeal and must be signed by the parties.

(2) If the agreed statement replaces a clerk's transcript, the statement must be accompanied by copies of all items required by rule 8.122(b)(1), showing the dates required by rule 8.122(b)(2).

(3) The statement may be accompanied by copies of any document includable in the clerk's transcript under rule 8.122(b)(3) and (4).

(Subd (a) amended effective January 1, 2008; previously amended effective January 1, 2007.)

(b) Time to file; extension of time

(1) An appellant intending to proceed under this rule must file either an agreed statement or a stipulation that the parties are attempting to agree on a statement in superior court with its notice designating the record on appeal under rule 8.121.

(2) If the appellant files the stipulation and the parties can agree on the statement, the appellant must file the statement within 40 days after filing the notice of appeal.

(3) If the appellant files the stipulation and the parties cannot agree on the statement, the appellant must file a new notice designating the record on appeal under rule 8.121 within 50 days after filing the notice of appeal.

(Subd (b) amended effective January 1, 2008; previously amended effective January 1, 2007.)

Rule 8.134 amended effective January 1, 2008; repealed and adopted as rule 6 effective January 1, 2002; previously amended and renumbered effective January 1, 2007.

Advisory Committee Comment

Subdivision (b). Subdivision (b)(1) requires the appellant to file, with the appellant's notice designating the record under rule 8.121, either an agreed statement or a stipulation that the parties are attempting to agree on a statement. The provision is intended to prevent issuance of a notice of default while the parties are preparing an agreed statement.

Rule 8.137. Settled statement

(a) Motion to use settled statement

(1) An appellant intending to proceed under this rule must serve and file in superior court with its notice designating the record on appeal under rule 8.121 a motion to use a settled statement instead of a reporter's transcript or both reporter's and clerk's transcripts.

(2) The motion must be supported by a showing that:

(A) A substantial cost saving will result and the statement can be settled without significantly burdening opposing parties or the court;

(B) The designated oral proceedings were not reported or cannot be transcribed; or

(C) The appellant is unable to pay for a reporter's transcript and funds are not available from the Transcript Reimbursement Fund (see rule 8.130(c)). A party proceeding in forma pauperis is deemed unable to pay for a transcript.

(3) If the court denies the motion, the appellant must file a new notice designating the record on appeal under rule 8.121 within 10 days after the superior court clerk mails, or a party serves, the order of denial.

(Subd (a) amended effective January 1, 2008; previously amended effective January 1, 2007.)

(b) Time to file; contents of statement

(1) Within 30 days after the superior court clerk mails, or a party serves, an order granting a motion to use a settled statement, the appellant must serve and file in superior court a condensed narrative of the oral proceedings that the appellant believes necessary for the appeal. Subject to the court's approval in settling the statement, the appellant may present some or all of the evidence by question and answer.

(2) If the condensed narrative describes less than all the testimony, the appellant must state the points to be raised on appeal; the appeal is then limited to those points unless, on motion, the reviewing court permits otherwise.

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

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

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

(Subd (b) amended effective January 1, 2008; previously amended effective January 1, 2007.)

(c) Settlement, preparation, and certification

(1) The clerk must set a date for a settlement hearing by the trial judge that is no later than 10 days after the respondent files proposed amendments or the time to do so expires, whichever is earlier, and must give the parties at least five days' notice of the hearing date.

(2) At the hearing, the judge must settle the statement and fix the times within which the appellant must prepare, serve, and file it.

(3) If the respondent does not object to the prepared statement within five days after it is filed, it will be deemed properly prepared and the clerk must present it to the judge for certification.

(4) The parties' stipulation that the statement as originally served or as prepared is correct is equivalent to the judge's certification.

Rule 8.137 amended effective January 1, 2008; repealed and adopted as rule 7 effective January 1, 2002; previously amended and renumbered effective January 1, 2007.

Rule 8.140. Failure to procure the record

(a) Notice of default

If a party fails to timely do an act required to procure the record, the superior court clerk must promptly notify the 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 one of the following sanctions:

(1) If the defaulting party is the appellant, the court may dismiss the appeal; or

(2) If the defaulting party is the respondent, the court may proceed with the appeal on the record designated by the appellant.

(Subd (a) amended effective January 1, 2008; previously amended effective January 1, 2007.)

(b) Sanctions

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

(1) If the defaulting party is the appellant, the reviewing court may dismiss the appeal, but may vacate the dismissal for good cause; or

(2) If the defaulting party is the respondent, the reviewing court may order the appeal to proceed on the record designated by the appellant, but the respondent may obtain relief from default under rule 8.60(d).

(Subd (b) amended effective January 1, 2008; previously amended effective January 1, 2007.)

(c) Motion for sanctions

If the superior court clerk fails to give a notice required by (a), a party may serve and file a motion for sanctions under (b) in the reviewing court, but the motion must be denied if the defaulting party cures the default within 15 days after the motion is served.

Rule 8.140 amended effective January 1, 2008; adopted as rule 8 effective January 1, 2002; previously amended and renumbered effective January 1, 2007.

Advisory Committee Comment

Subdivision (a). In subdivision (a), the reference to a failure to "timely" do a required act is intended to include any valid extension of that time.

Rule 8.144. Form of the record

(a) Paper and format

(1) In the clerk's and reporter's transcripts:

(A) The paper must be white or unbleached, recycled, 8½ by 11 inches, and of at least 20-pound weight;

(B) The text must be reproduced as legibly as printed matter;

(C) The contents must be arranged chronologically;

(D) The pages must be consecutively numbered, except as provided in (e);

(E) The margin must be at least 1¼ inches on the bound edge of the page.

(2) In the clerk's transcript only one side of the paper may be used; in the reporter's transcript both sides may be used, but the margins must then be 1¼ inches on each edge.

(3) In the reporter's transcript the lines on each page must be consecutively numbered, and must be double-spaced or one-and-a-half-spaced; double-spaced means three lines to a vertical inch.

(Subd (a) amended effective January 1, 2007.)

(b) Indexes

At the beginning of the first volume of each:

(1) The clerk's transcript must contain alphabetical and chronological indexes listing each document and the volume and page where it first appears;

(2) The reporter's transcript must contain alphabetical and chronological indexes listing the volume and page where each witness's direct, cross, and any other examination, begins; and

(3) The reporter's transcript must contain an index listing the volume and page where any exhibit is marked for identification and where it is admitted or refused. The index must identify each exhibit by number or letter and a brief description of the exhibit.

(Subd (b) amended effective January 1, 2008; previously amended effective January 1, 2007.)

(c) Binding and cover

(1) Clerk's and reporter's transcripts must be bound on the left margin in volumes of no more than 300 sheets.

(2) Each volume's cover, preferably of recycled stock, must state the title and trial court number of the case, the names of the trial court and each participating trial judge, the names and addresses of appellate counsel for each party, the volume number, and the inclusive page numbers of that volume.

(3) In addition to the information required by (2), the cover of each volume of the reporter's transcript must state the dates of the proceedings reported in that volume.

(d) Daily transcripts

Daily or other certified transcripts may be used for all or part of the reporter's transcript, but the pages must be renumbered consecutively and the required indexes and covers must be added.

(e) Pagination in multiple reporter cases

(1) In a multiple reporter case, each reporter must estimate the number of pages in each segment reported and inform the designated primary reporter of the estimate. The primary reporter must then assign beginning and ending page numbers for each segment.

(2) If a segment exceeds the assigned number of pages, the reporter must number the additional pages with the ending page number, a hyphen, and a new number, starting with 1 and continuing consecutively.

(3) If a segment has fewer than the assigned number of pages, the reporter must add a hyphen to the last page number used, followed by the segment's assigned ending page number, and state in parentheses "(next page number is ____)."

(f) Agreed or settled statements

Agreed or settled statements must conform with this rule insofar as practicable.

Rule 8.144 amended effective January 1, 2008; repealed and adopted as rule 9 effective January 1, 2002; previously amended and renumbered effective January 1, 2007.

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

(a) Multiple appeals

(1) If more than one appeal is taken from the same judgment or a related order, only one record need be prepared, which must be filed within the time allowed for filing the record in the latest appeal.

(2) If there is more than one separately represented appellant, they must equally share the cost of preparing the record, unless otherwise agreed by the appellants or ordered by the superior court. Appellants equally sharing the cost are each entitled to a copy of the record.

(b) Later appeal

In an appeal in which the parties are using either a clerk's transcript under rule 8.122 or a reporter's transcript under rule 8.130:

(1) A party wanting to incorporate by reference all or parts of a record in a prior appeal in the same case must specify those parts in its designation of the record.

(A) The prior appeal must be identified by its case name and number. If only part of a record is being incorporated by reference, that part must be identified by citation to the volume and page numbers of the record where it appears and either the title of the document or documents or the date of the oral proceedings to be incorporated. The parts of any record incorporated by reference must be identified in a separate section at the end of the designation of the record.

(B) If the transcript incorporates by reference any such record, the cover of the transcript must prominently display the notice "Record in case number: ___ incorporated by reference," identifying the number of the case from which the record is incorporated.

(C) On request of the reviewing court or any party, the designating party must provide a copy of the materials incorporated by reference to the reviewing court or another party or lend them as provided in rule 8.153.

(2) A party wanting any parts of a clerk's transcript or other record of the written documents from a prior appeal in the same case to be copied into the clerk's transcript in a later appeal must specify those parts in its designation of the record as provided in (1). The estimated cost of copying these materials must be included in the clerk's estimate of the cost of preparing the transcript under rule 8.122(c)(1). On request of the trial court clerk, the designating party must provide a copy of or lend the materials to be copied to the clerk. The parts of any record from a prior appeal that are copied into a clerk's transcript under this rule must be placed in a separate section at the end of the transcript and identified in a separate section at the end of the indexes.

(Subd (b) amended effective January 1, 2010; previously amended effective January 1, 2007, and January 1, 2008.)

Rule 8.147 amended effective January 1, 2010; repealed and adopted as rule 10 effective January 1, 2002; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2008.

Advisory Committee Comment

Subdivision (a). Subdivision (a)(1) provides broadly for a single record whenever there are multiple appeals "from the same judgment or a related order." Multiple appeals from the *same judgment* include all cases in which opposing parties, or multiple parties on the same side of the case, appeal from the judgment. Multiple appeals from a judgment *and a related order* include all cases in which one party appeals from the judgment and another party appeals from any appealable order arising from or related to the judgment, i.e., not only orders contemplated by rule 8.108 (e.g., denying a motion for judgment notwithstanding the verdict) but also, for example, posttrial orders granting or denying attorney fees. The purpose is to encourage, when practicable, the preparation of a single record for all appeals taken in the same case. In specifying that "only one *record* need be prepared," of course, the rule does not depart from the basic requirement that an *original* and at least one *copy* of the record be prepared.

The second sentence of subdivision (a)(2) applies when multiple appellants equally share the cost of preparing the record and that cost includes the cost of a copy for each appellant. An appellant wanting the reporter to prepare an additional copy of the record—i.e., additional to the copy required by rule 8.130(f)(1)—must make a timely deposit adequate to cover the cost of that copy.

Rule 8.150. Filing the record

(a) Superior court clerk's duties

When the record is complete, the superior court clerk must promptly send the original to the reviewing court and the copy to the appellant.

(Subd (a) amended effective January 1, 2007.)

(b) Reviewing court clerk's duties

On receiving the record, the reviewing court clerk must promptly file the original and mail notice of the filing date to the parties.

(Subd (b) amended and lettered effective January 1, 2007; adopted as part of subd (a) effective January 1, 2002.)

Rule 8.150 amended and renumbered effective January 1, 2007; repealed and adopted as rule 11 effective January 1, 2002.

Rule 8.153. Lending the record

(a) Request

Within 20 days after the record is filed in the reviewing court, a party that has not purchased its own copy of the record may request another party, in writing, to lend it that party's copy of the record. The other party must then lend its copy of the record when it serves its brief.

(b) Time to return

The borrowing party must return the copy of the record when it serves its brief or the time to file its brief has expired.

(c) Cost

The borrowing party must bear the cost of sending the copy of the record to and from the borrowing party.

Rule 8.153 adopted effective January 1, 2007.

Rule 8.155. Augmenting and correcting the record

(a) Augmentation

(1) At any time, on motion of a party or its own motion, the reviewing court may order the record augmented to include:

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

(B) A certified transcript—or agreed or settled statement—of oral proceedings not designated under rule 8.130. Unless the court orders otherwise, the appellant is responsible for the cost of any additional transcript the court may order under this subdivision.

(2) A party must attach to its motion a copy, if available, of any document or transcript that it wants added to the record. The pages of the attachments must be consecutively numbered, beginning with the number one. If the reviewing court grants the motion it may augment the record with the copy.

(3) If the party cannot attach a copy of the matter to be added, the party must identify it as required under rules 8.122 and 8.130.

(Subd (a) amended effective January 1, 2008; previously amended effective January 1, 2007.)

(b) Omissions

(1) If a clerk or reporter omits a required or designated portion of the record, a party may serve and file a notice in superior court specifying the omitted portion and requesting that it be prepared, certified, and sent to the reviewing court. The party must serve a copy of the notice on the reviewing court.

(2) The clerk or reporter must comply with a notice under (1) within 10 days after it is filed. If the clerk or reporter fails to comply, the party may serve and file a motion to augment under (a), attaching a copy of the notice.

(c) Corrections

(1) On motion of a party, on stipulation, or on its own motion, the reviewing court may order the correction or certification of any part of the record.

(2) The reviewing court may order the superior court to settle disputes about omissions or errors in the record.

(d) Notice

The reviewing court clerk must send all parties notice of the receipt and filing of any matter under this rule.

Rule 8.155 amended effective January 1, 2008; repealed and adopted as rule 12 effective January 1, 2002; previously amended and renumbered effective January 1, 2007.

Advisory Committee Comment

Subdivision (a). Subdivision (a)(1) makes it clear that a party may apply for—and the reviewing court may order—augmentation of the record at any time. Whether the motion is made within a reasonable time and is not for the purpose of delay, however, are among the factors the reviewing court may consider in ruling on such a motion.

Former rule 8.160. Renumbered effective January 1, 2010

Rule 8.160 renumbered as rule 8.46.

Rule 8.163. Presumption from the record

The reviewing court will presume that the record in an appeal includes all matters material to deciding the issues raised. If the appeal proceeds without a reporter's transcript, this presumption applies only if the claimed error appears on the face of the record.

Rule 8.163 amended and renumbered effective January 1, 2007; repealed and adopted as rule 52 effective January 1, 2005.

Advisory Committee Comment

The intent of rule 8.163 is explained in the case law. (See, e.g., *Dumas v. Stark* (1961) 56 Cal.2d 673, 674.)

Article 3. Briefs in the Court of Appeal

Rule 8.200. Briefs by parties and amici curiae
Rule 8.204. Contents and form of briefs
Rule 8.208. Certificate of Interested Entities or Persons
Rule 8.212. Service and filing of briefs
Rule 8.216. Appeals in which a party is both appellant and respondent
Rule 8.220. Failure to file a brief
Rule 8.224. Transmitting exhibits

Rule 8.200. Briefs by parties and amici curiae

(a) Parties' briefs

(1) Each appellant must serve and file an appellant's opening brief.

(2) Each respondent must serve and file a respondent's brief.

(3) Each appellant may serve and file a reply brief.

(4) No other brief may be filed except with the permission of the presiding justice, unless it qualifies under (b) or (c)(6).

(5) Instead of filing a brief, or as part of its brief, a party may join in or adopt by reference all or part of a brief in the same or a related appeal.

(Subd (a) amended effective January 1, 2003.)

(b) Supplemental briefs after remand or transfer from Supreme Court

(1) Within 15 days after finality of a Supreme Court decision remanding or order transferring a cause to a Court of Appeal for further proceedings, any party may serve and file a supplemental opening brief in the Court of Appeal. Within 15 days after such a brief is filed, any opposing party may serve and file a supplemental responding brief.

(2) Supplemental briefs must be limited to matters arising after the previous Court of Appeal decision in the cause, unless the presiding justice permits briefing on other matters.

(3) Supplemental briefs may not be filed if the previous decision of the Court of Appeal was a denial of a petition for a writ within its original jurisdiction without issuance of an alternative writ or order to show cause.

(Subd (b) adopted effective January 1, 2003.)

(c) Amicus curiae briefs

(1) Within 14 days after the last appellant's reply brief is filed or could have been filed under rule 8.212, whichever is earlier, any person or entity may serve and file an application for permission of the presiding justice to file an amicus curiae brief. For good cause, the presiding justice may allow later filing.

(2) The application must state the applicant's interest and explain how the proposed amicus curiae brief will assist the court in deciding the matter.

(3) The application must also identify:

(A) Any party or any counsel for a party in the pending appeal who:

(i) Authored the proposed amicus brief in whole or in part; or

(ii) Made a monetary contribution intended to fund the preparation or submission of the brief; and

(B) Every person or entity who made a monetary contribution intended to fund the preparation or submission of the brief, other than the amicus curiae, its members, or its counsel in the pending appeal.

(4) The proposed brief must be served and must accompany the application, and may be combined with it.

(5) The covers of the application and proposed brief must identify the party the applicant supports, if any.

(6) If the court grants the application, any party may file an answer within the time the court specifies. The answer must be served on all parties and the amicus curiae.

(7) The Attorney General may file an amicus curiae brief without the presiding justice's permission, unless the brief is submitted on behalf of another state officer or agency. The Attorney General must serve and file the brief within 14 days after the last appellant's reply brief is filed or could have been filed under rule 8.212, whichever is earlier, and must provide the information required by (2) and comply with (5). Any party may serve and file an answer within 14 days after the brief is filed.

(Subd (c) amended effective January 1, 2009; adopted as subd (b); previously relettered effective January 1, 2003; previously amended effective January 1, 2007, and January 1, 2008.)

Rule 8.200 amended effective January 1, 2009; repealed and adopted as rule 13 effective January 1, 2002; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2003, and January 1, 2008.

Advisory Committee Comment

Subdivision (b). After the Supreme Court remands or transfers a cause to the Court of Appeal for further proceedings (i.e., under rules 8.528(c)–(e) or 10.1000(a)(1)(B)), the parties are permitted to file supplemental briefs. The first 15-day briefing period begins on the day of *finality* (under rule 8.532) of the Supreme Court decision remanding or order transferring the cause to the Court of Appeal. The rule specifies that "any party" may file a supplemental opening brief, and if such a brief is filed, "any opposing party" may file a supplemental responding brief. In this context the phrase "any party" is intended to mean any *or all* parties. Such a decision or order of transfer to the Court of Appeal thus triggers, first, a 15-day period in which any or all parties may file supplemental opening briefs and, second—if any party files such a brief—an additional 15-day period in which any opposing party may file a supplemental responding brief.

Subdivision (c)(1). The time within which a reply brief "could have been filed under rule 8.212" includes any authorized extension of the deadline specified in rule 8.212.

Rule 8.204. Contents and form of briefs

(a) Contents

(1) Each brief must:

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

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

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

(2) An appellant's opening brief must:

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

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

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

(Subd (a) amended effective January 1, 2006.)

(b) Form

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

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

(3) The type style must be roman; but for emphasis, italics or boldface may be used or the text may be underscored. Case names must be italicized or underscored. Headings may be in uppercase letters.

(4) Except as provided in (11), the type size, including footnotes, must not be smaller than 13-point, and both sides of the paper may be used.

(5) The lines of text must be unnumbered and at least one-and-a-half-spaced. Headings and footnotes may be single-spaced. Quotations may be block-indented and single-spaced. Single-spaced means six lines to a vertical inch.

(6) The margins must be at least 1½ inches on the left and right and 1 inch on the top and bottom.

(7) The pages must be consecutively numbered. The tables and the body of the brief may have different numbering systems.

(8) The brief must be bound on the left margin. If the brief is stapled, the bound edge and staples must be covered with tape.

(9) The brief need not be signed.

(10) The cover, preferably of recycled stock, must be in the color prescribed by rule 8.40(b) and must state:

(A) The title of the brief;

(B) The title, trial court number, and Court of Appeal number of the case;

(C) The names of the trial court and each participating trial judge;

(D) The name, address, telephone number, and California State Bar number of each attorney filing or joining in the brief, but the cover need not state the bar number of any supervisor of the attorney responsible for the brief; and

(E) The name of the party that each attorney on the brief represents.

(11) If the brief is produced on a typewriter:

(A) A typewritten original and carbon copies may be filed only with the presiding justice's permission, which will ordinarily be given only to unrepresented parties proceeding in forma pauperis. All other typewritten briefs must be filed as photocopies.

(B) Both sides of the paper may be used if a photocopy is filed; only one side may be used if a typewritten original and carbon copies are filed.

(C) The type size, including footnotes, must not be smaller than standard pica, 10 characters per inch. Unrepresented incarcerated litigants may use elite type, 12 characters per inch, if they lack access to a typewriter with larger characters.

(Subd (b) amended effective January 1, 2007; previously amended effective January 1, 2004, July 1, 2004, and January 1, 2006.)

(c) Length

(1) A brief produced on a computer must not exceed 14,000 words, including footnotes. Such a brief must include a certificate by appellate counsel or an unrepresented party stating the number of words in the brief. The person certifying may rely on the word count of the computer program used to prepare the brief.

(2) A brief produced on a typewriter must not exceed 50 pages.

(3) The tables required under (a)(1), the cover information required under (b)(10), the Certificate of Interested Entities or Persons required under rule 8.208, a certificate under (1), any signature block, and any attachment under (d) are excluded from the limits stated in (1) or (2).

(4) A combined brief in an appeal governed by rule 8.216 must not exceed double the limits stated in (1) or (2).

(5) On application, the presiding justice may permit a longer brief for good cause.

(Subd (c) amended effective January 1, 2011; previously amended effective January 1, 2007.)

(d) Attachments to briefs

A party filing a brief may attach copies of exhibits or other materials in the appellate record or copies of relevant local, state, or federal regulations or rules, out-of-state statutes, or other similar citable materials that are not readily accessible. These attachments must not exceed a combined total of 10 pages, but on application the presiding justice may permit additional pages of attachments for good cause. A copy of an opinion required to be attached to the brief under rule 8.1115(c) does not count toward this 10-page limit.

(Subd (d) amended effective January 1, 2007.)

(e) Noncomplying briefs

If a brief does not comply with this rule:

(1) The reviewing court clerk may decline to file it, but must mark it "received but not filed" and return it to the party; or

(2) If the brief is filed, the reviewing court may, on its own or a party's motion, with or without notice:

(A) Order the brief returned for corrections and refiling within a specified time;

(B) Strike the brief with leave to file a new brief within a specified time; or

(C) Disregard the noncompliance.

(Subd (e) amended effective January 1, 2006.)

Rule 8.204 amended effective January 1, 2011; repealed and adopted as rule 14 effective January 1, 2002; previously amended effective January 1, 2004, July 1, 2004, and January 1, 2006; previously amended and renumbered effective January 1, 2007.

Advisory Committee Comment

Subdivision (b). The first sentence of subdivision (b)(1) confirms that any method of reproduction is acceptable provided it results in a clear black image of letter quality. The provision is derived from subdivision (a)(1) of rule 32 of the Federal Rules of Appellate Procedure (28 U.S.C.) (FRAP 32).

Paragraphs (2), (3), and (4) of subdivision (b) state requirements of *typeface*, *type style*, and *type size* (see also subd. (b)(11)(C)). The first two terms are defined in *The Chicago Manual of Style* (15th ed., 2003) p. 839. Note that computer programs often refer to typeface as "font."

Subdivision (b)(2) allows the use of any conventional typeface—e.g., Times New Roman, Courier, Arial, Helvetica, etc.—and permits the typeface to be either proportionally spaced or monospaced.

Subdivision (b)(3) requires the type style to be roman, but permits the use of italics, boldface, or underscoring for emphasis; it also requires case names to be italicized or underscored. These provisions are derived from FRAP 32(a)(6).

Subdivision (b)(5) allows headings to be single-spaced; it is derived from FRAP 32(a)(4). The provision also permits quotations of any length to be block-indented and single-spaced at the discretion of the brief writer.

See also rule 1.200 concerning the format of citations. Brief writers are encouraged to follow the citation form of the *California Style Manual* (4th ed., 2000).

Subdivision (c). Subdivision (c) governs the maximum permissible length of a brief. It is derived from the federal procedure of measuring the length of a brief produced on a computer by the number of words in the brief. (FRAP 32(a)(7).) Subdivision (c)(1), like FRAP 32(a)(7)(B)(i), imposes a limit of 14,000

words if the brief is produced on a computer. Subdivision (c)(1) implements this provision by requiring the writer of a brief produced on a computer to include a certificate stating the number of words in the brief, but allows the writer to rely on the word count of the computer program used to prepare the brief. This requirement, too, is adapted from the federal rule. (FRAP 32(a)(7)(C).) For purposes of this rule, a "brief produced on a computer" includes a commercially printed brief.

Subdivision (c)(3) specifies certain items that are not counted toward the maximum brief length. Signature blocks, as referenced in this provision, include not only the signatures, but also the printed names, titles, and affiliations of any attorneys filing or joining in the brief, which may accompany the signature.

Subdivision (c)(5) clarifies that a party seeking permission to exceed the page or word limits stated in subdivision (c)(1) and (2) must proceed by application under rule 8.50, rather than by motion under rule 8.54, and must show good cause.

Subdivision (d). Subdivision (d) permits a party filing a brief to attach copies of exhibits or other materials, provided they are part of the record on appeal and do not exceed a total of 10 pages. If the brief writer attaches, under rule 8.1115(c), a copy of an unpublished opinion or an opinion available only in computerized form, that opinion does not count toward the 10-page limit stated in rule 8.204(d).

Subdivision (e). Subdivision (e) states the consequences of submitting briefs that do not comply with this rule: (e)(1) recognizes the power of the reviewing court clerk to decline to file such a brief, and (e)(2) recognizes steps the reviewing court may take to obtain a brief that does comply with the rule. Subdivision (e)(2) does not purport to limit the inherent power of the reviewing court to fashion other sanctions for such noncompliance.

Rule 8.208. Certificate of Interested Entities or Persons

(a) Purpose and intent

The California Code of Judicial Ethics states the circumstances under which an appellate justice must disqualify himself or herself from a proceeding. The purpose of this rule is to provide justices of the Courts of Appeal with additional information to help them determine whether to disqualify themselves from a proceeding.

(b) Application

This rule applies in appeals in civil cases other than family, juvenile, guardianship, and conservatorship cases.

(Subd (b) adopted effective January 1, 2008.)

(c) Definitions

For purposes of this rule:

(1) "Certificate" means a Certificate of Interested Entities or Persons signed by appellate counsel or an unrepresented party.

(2) "Entity" means a corporation, a partnership, a firm, or any other association, but does not include a governmental entity or its agencies or a natural person.

(Subd (c) relettered effective January 1, 2008; adopted as subd (b).)

(d) Serving and filing a certificate

(1) Except as otherwise provided in this rule, if a party files a motion, an application, or an opposition to such motion or application in the Court of Appeal before filing its principal brief, the party must serve and file its certificate at the time it files the first such motion, application, or opposition and must include a copy of this certificate in the party's principal brief. If no motion, application, or opposition to such motion or application is filed before the parties file their principal briefs, each party must include its certificate in its principal brief. The certificate must appear after the cover and before the tables.

(2) If the identity of any party or any entity or person subject to disclosure under this rule has not been publicly disclosed in the proceedings and a party wants to keep that identity confidential, the party may serve and file an application for permission to file its certificate under seal separately from its principal brief, motion, application, or opposition. If the application is granted, the party must file the certificate under seal and without service within 10 days of the court's order granting the application.

(3) If a party fails to file a certificate as required under (1), the clerk must notify the party by mail that the party must file the certificate within 15 days after the clerk's notice is mailed and that if the party fails to comply, the court may impose one of the following sanctions:

(A) If the party is the appellant, the court may strike the document or dismiss the appeal; or

(B) If the party is the respondent, the court may strike the document or decide the appeal on the record, the opening brief, and any oral argument by the appellant.

(4) If the party fails to file the certificate as specified in the notice under (2), the court may impose the sanctions specified in the notice.

(Subd (d) amended effective January 1, 2009; adopted as subd (c); previously amended and relettered effective January 1, 2008.)

(e) Contents of certificate

(1) If an entity is a party, that party's certificate must list any other entity or person that the party knows has an ownership interest of 10 percent or more in the party.

(2) If a party knows of any person or entity, other than the parties themselves, that has a financial or other interest in the outcome of the proceeding that the party reasonably believes the justices should consider in determining whether to disqualify themselves under canon 3E of the Code of Judicial Ethics, the party's certificate must list that entity or person and identify the nature of the interest of the person or entity. For purposes of this subdivision:

(A) A mutual or common investment fund's ownership of securities or bonds issued by an entity does not constitute a financial interest in that entity.

(B) An interest in the outcome of the proceeding does not arise solely because the entity or person is in the same industry, field of business, or regulatory category as a party and the case might establish a precedent that would affect that industry, field of business, or regulatory category.

(C) A party's insurer does not have a financial interest in the outcome of the proceeding solely on the basis of its status as insurer for that party.

(3) If the party knows of no entity or person that must be listed under (1) or (2), the party must so state in the certificate.

(Subd (e) amended effective January 1, 2009; adopted as subd (d); previously amended effective January 1, 2007; previously relettered effective January 1, 2008.)

(f) Supplemental information

A party that learns of changed or additional information that must be disclosed under (e) must promptly serve and file a supplemental certificate in the reviewing court.

(Subd (f) amended and relettered effective January 1, 2008; adopted as subd (e).)

Rule 8.208 amended effective January 1, 2009; adopted as rule 14.5 effective July 1, 2006; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2008.

Advisory Committee Comment

The Judicial Council has adopted an optional form, *Certificate of Interested Entities or Persons* (form APP-008), that can be used to file the certificate required by this rule.

Subdivision (e). This subdivision requires a party to list on its certificate entities or persons that the party *knows* have specified interests. This subdivision does not impose a duty on a party to gather information not already known by that party.

Rule 8.212. Service and filing of briefs

(a) Time to file

(1) An appellant must serve and file its opening brief within:

(A) 40 days after the record—or the reporter's transcript, after a rule 8.124 election—is filed in the reviewing court; or

(B) 70 days after the filing of a rule 8.124 election, if the appeal proceeds without a reporter's transcript.

(2) A respondent must serve and file its brief within 30 days after the appellant files its opening brief.

(3) An appellant must serve and file its reply brief, if any, within 20 days after the respondent files its brief.

(Subd (a) amended effective January 1, 2010; previously amended effective January 1, 2007.)

(b) Extensions of time

(1) The parties may extend each period under (a) by up to 60 days by filing one or more stipulations in the reviewing court before the brief is due. Stipulations must be signed by and served on all parties. The original signature of at least one party must appear on the stipulation filed in the reviewing court; the signatures of the other parties may be in the form of copies of the signed signature page of the stipulation.

(2) A stipulation under (1) is effective on filing. The reviewing court may not shorten a stipulated extension.

(3) Before the brief is due, a party may apply to the presiding justice for an extension of each period under (a), or under rule 8.200(c)(6) or (7), on a showing that there is good cause and that:

(A) The applicant was unable to obtain—or it would have been futile to seek—the extension by stipulation; or

(B) The parties have stipulated to the maximum extension permitted under (1) and the applicant seeks a further extension.

(4) A party need not apply for an extension or relief from default if it can file its brief within the time prescribed by rule 8.220. The clerk must file a brief submitted within that time if it otherwise complies with these rules.

(Subd (b) amended effective January 1, 2011; previously amended effective January 1, 2003, July 1, 2005, January 1, 2007, and January 1, 2010.)

(c) Service

(1) One copy of each brief must be served on the superior court clerk for delivery to the trial judge.

(2) One electronic copy or four paper copies of each brief must be served on the Supreme Court as provided in either (A) or (B).

(A) One copy of each brief may be served on the Supreme Court electronically by sending the copy to the Supreme Court's electronic notification address.

(i) The copy must be a single computer file in text-searchable Portable Document Format (PDF), and it must exactly duplicate the appearance of the paper copy, including the order and pagination of all of the brief's components. By electronically serving the copy, the filer certifies that the copy complies with these requirements and that all reasonable steps have been taken to ensure that the copy does not contain computer code, including viruses, that might be harmful to the court's electronic filing system and to other users of that system.

(ii) If the Court of Appeal has ordered the brief sealed, the party serving the brief must include as the first page in the PDF document a cover sheet that contains the information required by rule 8.204(b)(10) and labels the contents as "CONDITIONALLY UNDER SEAL." The Court of Appeal clerk must promptly notify the Supreme Court of any court order unsealing the brief. In the absence of such notice, the Supreme Court clerk must keep all copies of the brief under seal.

(B) Instead of serving an electronic copy, four paper copies of each brief may be served on the Supreme Court. If the Court of Appeal has ordered the brief sealed, the party serving the brief must place all four copies of the brief in a sealed envelope and attach a cover sheet that contains the information required by rule 8.204(b)(10) and labels the contents as "CONDITIONALLY UNDER SEAL." The Court of Appeal clerk must promptly notify the Supreme Court of any court order unsealing the brief. In the absence of such notice the Supreme Court clerk must keep all copies of the brief under seal.

(3) One copy of each brief must be served on a public officer or agency when required by rule 8.29.

(Subd (c) amended effective January 1, 2008; previously amended effective January 1, 2004, January 1, 2005, and January 1, 2007.)

Rule 8.212 amended effective January 1, 2011; repealed and adopted as rule 15 effective January 1, 2002; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2003, January 1, 2004, January 1, 2005, July 1, 2005, January 1, 2008, and January 1, 2010.

Advisory Committee Comment

Subdivision (b). In criminal cases, stipulated extensions of time to file briefs are prohibited by rule. (See rule 8.360(c)(4).)

Subdivision (b)(2) clarifies that a party seeking an extension of time from the presiding justice must proceed by application under rule 8.50 rather than by motion under rule 8.54.

Subdivision (c). In subdivision (c)(2) the word "brief" means only (1) an appellant's opening brief, (2) a respondent's brief, (3) an appellant's reply brief, (4) a petition for rehearing, (5) an answer thereto, or (6) an amicus curiae brief. It follows that no other documents or papers filed in the Court of Appeal, whatever their nature, should be served on the Supreme Court. Further, only briefs filed in the Court of Appeal "in a civil appeal" must be served on the Supreme Court. It follows that no briefs filed in the Court of Appeal in criminal appeals or in original proceedings should be served on the Supreme Court.

Subdivision (c). "Electronic notification address" is defined in rule 2.250. The Supreme Court's electronic filing address can be found on the California Courts Web site at *www.courtinfo.ca.gov/courts/supreme*.

Rule 8.216. Appeals in which a party is both appellant and respondent

(a) Briefing sequence and time to file briefs

In an appeal in which any party is both an appellant and a respondent:

(1) The parties must jointly—or separately if unable to agree—submit a proposed briefing sequence to the reviewing court within 20 days after the second notice of appeal is filed.

(2) After receiving the proposal, the reviewing court must order a briefing sequence and prescribe briefing periods consistent with rule 8.212(a).

(3) Extensions of time are governed by rule 8.212(b).

(Subd (a) amended effective January 1, 2007.)

(b) Contents of briefs

(1) A party that is both an appellant and a respondent must combine its respondent's brief with its appellant's opening brief or its reply brief, if any, whichever is appropriate under the briefing sequence that the reviewing court orders.

(2) A combined brief must address the points raised in each appeal separately but may include a single summary of the significant facts.

(3) A party must confine a reply brief, or the reply portion of a combined brief, to points raised in its appeal.

(Subd (b) amended effective January 1, 2009; previously amended effective January 1, 2007.)

Advisory Committee Comment

Rule 8.216 applies, first, to all cases in which opposing parties both appeal from the judgment. In addition, it applies to all cases in which one party appeals from the judgment and another party appeals from any appealable order arising from or related to the judgment, i.e., not only orders contemplated by rule 8.108 (denying a motion for judgment notwithstanding the verdict) but also, for example, posttrial orders granting or denying attorney fees. The purpose of the rule is to provide, in all such appeals, a single unified procedure for resolving uncertainties as to the order in which the parties must file their briefs.

As used in this rule, "appellant" includes cross-appellant and "respondent" includes cross-respondent. (Compare rule 8.100(e).)

Subdivision (a). Subdivision (a) implements the above-stated purpose by providing a procedure for determining both the briefing *sequence*—i.e., the order in which the parties must file their briefs—and the briefing *periods*—i.e., the periods of time (e.g., 30 days or 70 days, etc.) within which the briefs must be filed. Subdivision (a)(1) places the burden on the parties in the first instance to propose a briefing sequence, jointly if possible but separately if not. The purpose of this requirement is to assist the reviewing court by giving it the benefit of the parties' views on what is the most efficient briefing sequence in the circumstances of the case. Subdivision (a)(2) then prescribes the role of the reviewing court: after considering the parties' proposal, the court will decide on the briefing sequence, prescribe the briefing periods, and notify the parties of both. The reviewing court, of course, may thereafter modify its order just as it may do in a single-appeal case. Extensions of time are governed by rule 8.212(b).

Subdivision (b). The purpose of subdivision (b)(3) is to ensure that in its reply brief a party addresses only issues germane to its own appeal. For example, a cross-appellant may not use its *cross-appellant's* reply brief to answer points raised in the *appellant's* reply brief.

Rule 8.220. Failure to file a brief

(a) Notice to file

If a party fails to timely file an appellant's opening brief or a respondent's brief, the reviewing court clerk must promptly notify the party by mail that the brief must be filed within 15 days after the notice is mailed and that if the party fails to comply, the court may impose one of the following sanctions:

(1) If the brief is an appellant's opening brief, the court may dismiss the appeal;

(2) If the brief is a respondent's brief, the court may decide the appeal on the record, the opening brief, and any oral argument by the appellant.

(Subd (a) amended effective January 1, 2008; previously amended effective January 1, 2007.)

(b) Combined brief

A party that is both an appellant and a respondent under rule 8.216 may file its combined respondent's brief and appellant's reply brief within the period specified in the notice under (a).

(Subd (b) amended effective January 1, 2007.)

(c) Sanction

If a party fails to file the brief as specified in a notice under (a), the court may impose the sanction specified in the notice.

(Subd (c) amended effective January 1, 2008.)

(d) Extension of time

Within the period specified in the notice under (a), a party may apply to the presiding justice for an extension of that period for good cause. If the extension is granted and the brief is not filed within the extended period, the court may impose the sanction under (c) without further notice.

Rule 8.220 amended effective January 1, 2008; repealed and adopted as rule 17 effective January 1, 2002; previously amended and renumbered effective January 1, 2007.

Rule 8.224. Transmitting exhibits

(a) Notice of designation

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

(2) Within 10 days after a notice under (1) is served, any other party wanting the reviewing court to consider additional exhibits must serve and file a notice in superior court designating such exhibits.

(3) A party filing a notice under (1) or (2) must serve a copy on the reviewing court.

(Subd (a) amended effective January 1, 2008; previously amended effective January 1, 2007.)

(b) Transmittal

Unless the reviewing court orders otherwise, within 20 days after the first notice under (a) is filed:

(1) The superior court clerk must put any designated exhibits in the clerk's possession into numerical or alphabetical order and send them to the reviewing court with two copies of a list of the exhibits sent. If the reviewing court clerk finds the list correct, the clerk must sign and return one copy to the superior court clerk.

(2) Any party in possession of designated exhibits returned by the superior court must put them into numerical or alphabetical order and send them to the reviewing court with two copies of a list of the exhibits sent. If the reviewing court clerk finds the list correct, the clerk must sign and return one copy to the party.

(c) Application for later transmittal

After the periods specified in (a) have expired, a party may apply to the reviewing court for permission to send an exhibit to that court.

(d) Request and return by reviewing court

At any time the reviewing court may direct the superior court or a party to send it an exhibit. On request, the reviewing court may return an exhibit to the superior court or to the party that sent it. When the remittitur issues, the reviewing court must return all exhibits to the superior court or to the party that sent them.

Rule 8.224 amended effective January 1, 2008; repealed and adopted as rule 18 effective January 1, 2002; previously amended and renumbered effective January 1, 2007.

Advisory Committee Comment

Subdivision (b). Subdivision (b)(2) provides a procedure by which parties send designated exhibits directly to the reviewing court in cases in which the superior court has returned the exhibits to the parties under Code of Civil Procedure section 1952 or other provision. (See also rule 8.122(a)(3).)

Subdivision (c). Subdivision (c) addresses the case in which a party's need to designate a certain exhibit does not arise until after the period specified in subdivision (a) has expired—for example, when the appellant makes a point in its reply brief that the respondent reasonably believes justifies the reviewing court's consideration of an exhibit it had not previously designated. In that event, the subdivision authorizes the party to apply to the reviewing court for permission to send the exhibit on a showing of good cause.

Article 4. Hearing and Decision in the Court of Appeal

Rule 8.240. Calendar preference
Rule 8.244. Settlement, abandonment, voluntary dismissal, and compromise
Rule 8.248. Prehearing conference
Rule 8.252. Judicial notice; findings and evidence on appeal
Rule 8.256. Oral argument and submission of the cause
Rule 8.260. Opinions [Reserved]
Rule 8.264. Filing, finality, and modification of decision
Rule 8.268. Rehearing
Rule 8.272. Remittitur
Rule 8.276. Sanctions

Rule 8.278. Costs on appeal

Rule 8.240. Calendar preference

A party seeking calendar preference must promptly serve and file a motion for preference in the reviewing court. As used in this rule, "calendar preference" means an expedited appeal schedule, which may include expedited briefing and preference in setting the date of oral argument.

Rule 8.240 amended and renumbered effective January 1, 2007; repealed and adopted as rule 19 effective January 1, 2003.

Advisory Committee Comment

Rule 8.240 requires a party claiming preference to file a motion for preference in the reviewing court. The motion requirement relieves the reviewing court of the burden of searching the record to determine if preference should be ordered. The requirement is not intended to bar the court from ordering preference without a motion when the ground is apparent on the face of the appeal, e.g., in appeals from judgments of dependency (Welf. & Inst. Code, § 395).

The rule is broad in scope: it includes motions for preference on the grounds (1) that a statute provides for preference in the reviewing court (e.g., Code Civ. Proc., §§ 44 [probate proceedings, contested elections, libel by public official), 45 [judgment freeing minor from parental custody]); (2) that the reviewing court should exercise its discretion to grant preference when a statute provides for trial preference (e.g., id., §§ 35 [certain election matters], 36 [party over 70 and in poor health; party with terminal illness; minor in wrongful death action]; see Warren v. Schecter (1997) 57 Cal.App.4th 1189, 1198–1199); and (3) that the reviewing court should exercise its discretion to grant preference on a nonstatutory ground (e.g., economic hardship).

Because valid grounds for preference could arise after the filing of the reply brief, e.g., a diagnosis of terminal illness, the rule requires the motion to be filed "promptly," i.e., as soon as the ground for preference arises.

Rule 8.244. Settlement, abandonment, voluntary dismissal, and compromise

(a) Notice of settlement

(1) If a civil case settles after a notice of appeal has been filed either as a whole or as to any party, the appellant who has settled must immediately serve and file a notice of settlement in the Court of Appeal. If the parties have designated a clerk's or a reporter's transcript and the record has not been filed in the Court of Appeal, the appellant must also immediately serve a copy of the notice on the superior court clerk.

(2) If the case settles after the appellant receives a notice setting oral argument or a prehearing conference, the appellant must also immediately notify the Court of Appeal of the settlement by telephone or other expeditious method.

(3) Within 45 days after filing a notice of settlement—unless the court has ordered a longer time period on a showing of good cause—the appellant who filed the notice of settlement must file either an abandonment under (b), if the record has not yet been filed in the Court of Appeal, or a request to dismiss under (c), if the record has already been filed in the Court of Appeal.

(4) If the appellant does not file an abandonment, a request to dismiss, or a letter stating good cause why the appeal should not be dismissed within the time period specified under (3), the court may dismiss the appeal as to that appellant and order each side to bear its own costs on appeal.

(5) This subdivision does not apply to settlements requiring findings to be made by the Court of Appeal under Code of Civil Procedure section 128(a)(8).

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 2006.)

(b) Abandonment

(1) Before the record is filed in the Court of Appeal, the appellant may serve and file in superior court an abandonment of the appeal or a stipulation to abandon the appeal. The filing effects a dismissal of the appeal and restores the superior court's jurisdiction.

(2) The superior court clerk must promptly notify the Court of Appeal and the parties of the abandonment or stipulation.

(c) Request to dismiss

(1) After the record is filed in the Court of Appeal, the appellant may serve and file in that court a request or a stipulation to dismiss the appeal.

(2) On receipt of a request or stipulation to dismiss, the court may dismiss the appeal and direct immediate issuance of the remittitur.

(d) Approval of compromise

If a guardian or conservator seeks approval of a proposed compromise of a pending appeal, the Court of Appeal may, before ruling on the compromise, direct the trial court to determine whether the compromise is in the minor's or the conservatee's best interests and to report its findings.

Rule 8.244 amended and renumbered effective January 1, 2007; repealed and adopted as rule 20 effective January 1, 2003; previously amended effective January 1, 2006.

Rule 8.248. Prehearing conference

(a) Statement and conference

After the notice of appeal is filed in a civil case, the presiding justice may:

(1) Order one or more parties to serve and file a concise statement describing the nature of the case and the issues presented; and

(2) Order all necessary persons to attend a conference to consider a narrowing of the issues, settlement, and other relevant matters.

(Subd (a) amended effective January 1, 2007.)

(b) Agreement

An agreement reached in a conference must be signed by the parties and filed. Unless the Court of Appeal orders otherwise, the agreement governs the appeal.

(c) Proceedings after conference

(1) Unless allowed by a filed agreement, no matter recited in a statement under (a)(1) or discussed in a conference under (a)(2) may be considered in any subsequent proceeding in the appeal other than in another conference.

(2) Neither the presiding officer nor any court personnel present at a conference may participate in or influence the determination of the appeal.

(d) Time to file brief

The time to file a party's brief under rule 8.212(a) is tolled from the date the Court of Appeal mails notice of the conference until the date it mails notice that the conference is concluded.

(Subd (d) amended effective January 1, 2007.)

Rule 8.248 amended and renumbered effective January 1, 2007; repealed and adopted as rule 21 effective January 1, 2003.

Advisory Committee Comment

Subdivision (a). Subdivision (a)(1) requires each party to *serve* any statement it files. (Cf. rule 3.1380(c) [pretrial settlement conference statement must be served on each party].) The service requirement is not intended to prohibit the presiding justice from ordering the parties to submit additional, confidential material in appropriate cases.

Subdivision (d). If a prehearing conference is ordered before the due date of the appellant's opening brief, the time to file the brief is not *extended* but *tolled*, in order to avoid unwarranted lengthening of the briefing process. For example, if the conference is ordered 15 days after the start of the normal 30-day briefing period, the rule simply *suspends* the running of that period; when the period resumes, the party

will not receive an automatic extension of a full 30 days but rather the remaining 15 days of the original briefing period, unless the period is otherwise extended.

Under subdivision (d) the tolling period continues "until the date [the Court of Appeal] mails notice that the conference is *concluded"* (italics added). This provision is intended to accommodate the possibility that the conference may not conclude on the date it begins.

Whether or not the conference concludes on the date it begins, subdivision (d) requires the Court of Appeal clerk to mail the parties a notice that the conference is concluded. This provision is intended to facilitate the calculation of the new briefing due dates.

Rule 8.252. Judicial notice; findings and evidence on appeal

(a) Judicial notice

(1) To obtain judicial notice by a reviewing court under Evidence Code section 459, a party must serve and file a separate motion with a proposed order.

(2) The motion must state:

(A) Why the matter to be noticed is relevant to the appeal;

(B) Whether the matter to be noticed was presented to the trial court and, if so, whether judicial notice was taken by that court; and

(C) Whether the matter to be noticed relates to proceedings occurring after the order or judgment that is the subject of the appeal.

(3) If the matter to be noticed is not in the record, the party must serve and file a copy with the motion or explain why it is not practicable to do so.

(Subd (a) amended effective January 1, 2009.)

(b) Findings on appeal

A party may move that the reviewing court make findings under Code of Civil Procedure section 909. The motion must include proposed findings.

(c) Evidence on appeal

(1) A party may move that the reviewing court take evidence.

(2) An order granting the motion must:

(A) State the issues on which evidence will be taken;

(B) Specify whether the court, a justice, or a special master or referee will take the evidence; and

(C) Give notice of the time and place for taking the evidence.

(3) For documentary evidence, a party may offer the original, a certified copy, or a photocopy. The court may admit the document in evidence without a hearing.

(Subd (c) amended effective January 1, 2007.)

Rule 8.252 amended effective January 1, 2009; repealed and adopted as rule 22 effective January 1, 2003; previously amended and renumbered effective January 1, 2007.

Advisory Committee Comment

Subdivisions (b) and (c). Although appellate courts are authorized to take evidence and make findings of fact on appeal by Code of Civil Procedure section 909 and this rule, this authority should be exercised sparingly. (See *In re Zeth S.* (2003) 31 Cal.4th 396.)

Rule 8.256. Oral argument and submission of the cause

(a) Frequency and location of argument

(1) Each Court of Appeal and division must hold a session at least once each quarter.

(2) A Court of Appeal may hold sessions at places in its district other than the court's permanent location.

(3) Subject to approval by the Chair of the Judicial Council, a Court of Appeal may hold a session in another district to hear a cause transferred to it from that district.

(b) Notice of argument

The Court of Appeal clerk must send a notice of the time and place of oral argument to all parties at least 20 days before the argument date. The presiding justice may shorten the notice period for good cause; in that event, the clerk must immediately notify the parties by telephone or other expeditious method.

(c) Conduct of argument

Unless the court provides otherwise by local rule or order:

(1) The appellant, petitioner, or moving party has the right to open and close. If there are two or more such parties, the court must set the sequence of argument.

(2) Each side is allowed 30 minutes for argument. If multiple parties are represented by separate counsel, or if an amicus curiae—on written request—is granted permission to argue, the court may apportion or expand the time.

(3) Only one counsel may argue for each separately represented party.

(d) When the cause is submitted

(1) A cause is submitted when the court has heard oral argument or approved its waiver and the time has expired to file all briefs and papers, including any supplemental brief permitted by the court.

(2) If the Supreme Court transfers a cause to the Court of Appeal and supplemental briefs may be filed under rule 8.200(b), the cause is submitted when the last such brief is or could be timely filed. The Court of Appeal may order the cause submitted at an earlier time if the parties so stipulate.

(Subd (d) amended effective January 1, 2007.)

(e) Vacating submission

(1) Except as provided in (2), the court may vacate submission only by an order stating its reasons and setting a timetable for resubmission.

(2) If a cause is submitted under (d)(2), an order setting oral argument vacates submission and the cause is resubmitted when the court has heard oral argument or approved its waiver.

(Subd (e) amended effective January 1, 2007.)

Rule 8.256 amended and renumbered effective January 1, 2007; repealed and adopted as rule 23 effective January 1, 2003.

Rule 8.260. Opinions [Reserved]

Rule 8.260 adopted effective January 1, 2007.

Rule 8.264. Filing, finality, and modification of decision

(a) Filing the decision

(1) The Court of Appeal clerk must promptly file all opinions and orders of the court and promptly send copies showing the filing date to the parties and, when relevant, to the lower court or tribunal.

(2) A decision by opinion must identify the participating justices, including the author of the majority opinion and of any concurring or dissenting opinion, or the justices participating in a "by the court" opinion.

(b) Finality of decision

(1) Except as otherwise provided in this rule, a Court of Appeal decision in a civil appeal, including an order dismissing an appeal involuntarily, is final in that court 30 days after filing.

(2) The following Court of Appeal decisions are final in that court on filing:

(A) The denial of a petition for writ of supersedeas; and

(B) The dismissal of an appeal on request or stipulation.

(3) If a Court of Appeal certifies its opinion for publication or partial publication after filing its decision and before its decision becomes final in that court, the finality period runs from the filing date of the order for publication.

(Subd (b) amended effective January 1, 2009; previously amended effective January 1, 2007.)

(c) Modification of decision

(1) A reviewing court may modify a decision until the decision is final in that court. If the clerk's office is closed on the date of finality, the court may modify the decision on the next day the clerk's office is open.

(2) An order modifying an opinion must state whether it changes the appellate judgment. A modification that does not change the appellate judgment does not extend the finality date of the decision. If a modification changes the appellate judgment, the finality period runs from the filing date of the modification order.

(d) Consent to increase or decrease in amount of judgment

If a Court of Appeal decision conditions the affirmance of a money judgment on a party's consent to an increase or decrease in the amount, the judgment is reversed unless, before the decision is final under (b), the party serves and files two copies of a consent in the Court of Appeal. If a consent is filed, the finality period runs from the filing date of the consent. The clerk must send one file-stamped copy of the consent to the superior court with the remittitur.

Rule 8.264 amended effective January 1, 2009; repealed and adopted as rule 24 effective January 1, 2003; previously amended and renumbered effective January 1, 2007.

Advisory Committee Comment

Subdivision (b). As used in subdivision (b)(1), "decision" includes all interlocutory orders of the Court of Appeal. (See Advisory Committee Comment to rule 8.500(a) and (e).) This provision addresses the finality of decisions in civil appeals and, through a cross-reference in rule 8.470, in juvenile appeals. See rule 8.366 for provisions addressing the finality of decisions in proceedings under chapter 3, relating to criminal appeals; rule 8.387 for provisions addressing finality of decisions under chapter 4, relating to habeas corpus proceedings; and rule 8.490 for provisions addressing the finality of decisions in proceedings under chapter 7, relating to writs of mandate, certiorari, and prohibition.

Subdivision (b)(3) provides that a postfiling decision of the Court of Appeal to publish its opinion in whole under rule 8.1105(c) or in part under rule 8.1100(a) restarts the 30-day finality period. This provision is based on rule 40-2 of the United States Circuit Rules (9th Cir.). It is intended to allow parties sufficient time to petition the Court of Appeal for rehearing and/or the Supreme Court for review—and to allow potential amici curiae sufficient time to express their views—when the Court of Appeal changes the publication status of an opinion. The rule thus recognizes that the publication status of an opinion may affect a party's decision whether to file a petition for rehearing and/or a petition for review.

Rule 8.268. Rehearing

(a) Power to order rehearing

(1) On petition of a party or on its own motion, a reviewing court may order rehearing of any decision that is not final in that court on filing.

(2) An order for rehearing must be filed before the decision is final. If the clerk's office is closed on the date of finality, the court may file the order on the next day the clerk's office is open.

(b) Petition and answer

(1) A party may serve and file a petition for rehearing within 15 days after:

(A) The filing of the decision;

(B) A publication order restarting the finality period under rule 8.264(b)(3), if the party has not already filed a petition for rehearing;

(C) A modification order changing the appellate judgment under rule 8.264(c)(2); or

(D) The filing of a consent under rule 8.264(d).

(2) A party must not file an answer to a petition for rehearing unless the court requests an answer. The clerk must promptly send to the parties copies of any order requesting an answer and immediately notify the parties by telephone or another expeditious method. Any answer must be served and filed within 8 days after the order is filed unless the court orders otherwise. A petition for rehearing normally will not be granted unless the court has requested an answer.

(3) The petition and answer must comply with the relevant provisions of rule 8.204.

(4) Before the decision is final and for good cause, the presiding justice may relieve a party from a failure to file a timely petition or answer.

(Subd (b) amended effective January 1, 2009; previously amended effective January 1, 2004, and January 1, 2007.)

(c) No extension of time

The time for granting or denying a petition for rehearing in the Court of Appeal may not be extended. If the court does not rule on the petition before the decision is final, the petition is deemed denied.

(d) Effect of granting rehearing

An order granting a rehearing vacates the decision and any opinion filed in the case and sets the cause at large in the Court of Appeal.

Rule 8.268 amended effective January 1, 2009; repealed and adopted as rule 25 effective January 1, 2003; previously amended effective January 1, 2004; previously amended and renumbered effective January 1, 2007.

Rule 8.272. Remittitur

(a) Issuance of remittitur

A Court of Appeal must issue a remittitur after a decision in an appeal.

(Subd (a) amended effective January 1, 2008; previously amended effective January 1, 2007.)

(b) Clerk's duties

(1) If a Court of Appeal decision is not reviewed by the Supreme Court:

(A) The Court of Appeal clerk must issue a remittitur immediately after the Supreme Court denies review, or the period for granting review expires, or the court dismisses review under rule 8.528(b); and

(B) The clerk must send the lower court or tribunal the Court of Appeal remittitur and a file-stamped copy of the opinion or order.

(2) After Supreme Court review of a Court of Appeal decision:

(A) On receiving the Supreme Court remittitur, the Court of Appeal clerk must issue a remittitur immediately if there will be no further proceedings in the Court of Appeal; and

(B) The clerk must send the lower court or tribunal the Court of Appeal remittitur, a copy of the Supreme Court remittitur, and a file-stamped copy of the Supreme Court opinion or order.

(Subd (b) amended effective January 1, 2007.)

(c) Immediate issuance, stay, and recall

(1) A Court of Appeal may direct immediate issuance of a remittitur only on the parties' stipulation or on dismissal of the appeal under rule 8.244(c)(2).

(2) On a party's or its own motion or on stipulation, and for good cause, the court may stay a remittitur's issuance for a reasonable period or order its recall.

(3) An order recalling a remittitur issued after a decision by opinion does not supersede the opinion or affect its publication status.

(Subd (c) amended effective January 1, 2007.)

(d) Notice

(1) The remittitur is deemed issued when the clerk enters it in the record. The clerk must immediately send the parties notice of issuance of the remittitur, showing the date of entry.

(2) If, without requiring further proceedings in the trial court, the decision changes the length of a state prison sentence, applicable credits, or the maximum permissible confinement to the Department of Corrections and Rehabilitation, Division of Juvenile Justice, the clerk must send a copy of the remittitur and opinion or order to either the Department of Corrections and Rehabilitation or the Division of Juvenile Justice.

(Subd (d) amended effective January 1, 2007.)

Rule 8.272 amended effective January 1, 2008; repealed and adopted as rule 26 effective January 1, 2003; previously amended effective January 1, 2007.

Advisory Committee Comment

See rule 8.386 for provisions addressing remittitur in habeas corpus proceedings and rule 8.490 for provisions addressing remittitur in other writ proceedings.

Rule 8.276. Sanctions

(a) Grounds for sanctions

On motion of a party or its own motion, a Court of Appeal may impose sanctions, including the award or denial of costs under rule 8.278, on a party or an attorney for:

(1) Taking a frivolous appeal or appealing solely to cause delay;

(2) Including in the record any matter not reasonably material to the appeal's determination;

(3) Filing a frivolous motion; or

(4) Committing any other unreasonable violation of these rules.

(Subd (a) amended and relettered effective January 1, 2008; adopted as subd (e); previously amended effective January 1, 2007.)

(b) Motions for sanctions

(1) A party's motion under (a) must include a declaration supporting the amount of any monetary sanction sought and must be served and filed before any order dismissing the appeal but no later than 10 days after the appellant's reply brief is due.

(2) If a party files a motion for sanctions with a motion to dismiss the appeal and the motion to dismiss is not granted, the party may file a new motion for sanctions within 10 days after the appellant's reply brief is due.

(Subd (b) amended and lettered effective January 1, 2008; adopted as part of subd (e); previously amended effective January 1, 2007.)

(c) Notice

The court must give notice in writing if it is considering imposing sanctions.

(Subd (c) amended and lettered effective January 1, 2008; adopted as part of subd (e); previously amended effective January 1, 2007.)

(d) Opposition

Within 10 days after the court sends such notice, a party or attorney may serve and file an opposition, but failure to do so will not be deemed consent. An opposition may not be filed unless the court sends such notice.

(Subd (d) amended and lettered effective January 1, 2008; adopted as part of subd (e); previously amended effective January 1, 2007.)

(e) Oral argument

Unless otherwise ordered, oral argument on the issue of sanctions must be combined with oral argument on the merits of the appeal.

(Subd (e) amended and lettered effective January 1, 2008; adopted as part of subd (e); previously amended effective January 1, 2007.)

Rule 8.276 amended effective January 1, 2008; repealed and adopted as rule 27 effective January 1, 2003; previously amended and renumbered effective January 1, 2007.

Rule 8.278. Costs on appeal

(a) Award of costs

(1) Except as provided in this rule, the party prevailing in the Court of Appeal in a civil case other than a juvenile case is entitled to costs on appeal.

(2) The prevailing party is the respondent if the Court of Appeal affirms the judgment without modification or dismisses the appeal. The prevailing party is the appellant if the court reverses the judgment in its entirety.

(3) If the Court of Appeal reverses the judgment in part or modifies it, or if there is more than one notice of appeal, the opinion must specify the award or denial of costs.

(4) In probate cases, the prevailing party must be awarded costs unless the Court of Appeal orders otherwise, but the superior court must decide who will pay the award.

(5) In the interests of justice, the Court of Appeal may also award or deny costs as it deems proper.

(b) Judgment for costs

(1) The Court of Appeal clerk must enter on the record, and insert in the remittitur, a judgment awarding costs to the prevailing party under (a)(2) or as directed by the court under (a)(3), (a)(4), or (a)(5).

(2) If the clerk fails to enter judgment for costs, the court may recall the remittitur for correction on its own motion, or on a party's motion made not later than 30 days after the remittitur issues.

(c) Procedure for claiming or opposing costs

(1) Within 40 days after the clerk sends notice of issuance of the remittitur, a party claiming costs awarded by a reviewing court must serve and file in the superior court a verified memorandum of costs under rule 3.1700.

(2) A party may serve and file a motion in the superior court to strike or tax costs claimed under (1) in the manner required by rule 3.1700.

(3) An award of costs is enforceable as a money judgment.

(d) Recoverable costs

(1) A party may recover only the following costs, if reasonable:

(A) Filing fees;

(B) The amount the party paid for any portion of the record, whether an original or a copy or both. The cost to copy parts of a prior record under rule 8.147(b)(2) is not recoverable unless the Court of Appeal ordered the copying;

(C) The cost to produce additional evidence on appeal;

(D) The costs to notarize, serve, mail, and file the record, briefs, and other papers;

(E) The cost to print and reproduce any brief, including any petition for rehearing or review, answer, or reply; and

(F) The cost to procure a surety bond, including the premium and the cost to obtain a letter of credit as collateral, unless the trial court determines the bond was unnecessary.

(2) Unless the court orders otherwise, an award of costs neither includes attorney's fees on appeal nor precludes a party from seeking them under rule 3.1702.

Rule 8.278 adopted effective January 1, 2008.

Advisory Committee Comment

This rule is not intended to expand the categories of appeals subject to the award of costs. See rule 8.493 for provisions addressing costs in writ proceedings.

Subdivision (c). Subdivision (c)(2) provides the procedure for a party to move in the trial court to strike or tax costs that another party has claimed under subdivision (c)(1). It is not intended that the trial court's authority to strike or tax unreasonable costs be limited by any failure of the moving party to move for sanctions in the Court of Appeal under rule 8.276; a party may seek to strike or tax costs on the ground that an opponent included unnecessary materials in the record even if the party did not move the Court of Appeal to sanction the opponent under that rule.

Subdivision (d). Subdivision (d)(1)(B) is intended to refer not only to a normal record prepared by the clerk and the reporter under rules 8.122 and 8.130 but also, for example, to an appendix prepared by a party under rule 8.124 and to a superior court file to which the parties stipulate under rule 8.128.

Chapter 3. Criminal Appeals

Article 1. Taking the Appeal

Rule 8.300. Appointment of appellate counsel by the Court of Appeal
Rule 8.304. Filing the appeal; certificate of probable cause
Rule 8.308. Time to appeal
Rule 8.312. Stay of execution and release on appeal
Rule 8.316. Abandoning the appeal

Rule 8.300. Appointment of appellate counsel by the Court of Appeal

(a) Procedures

(1) Each Court of Appeal must adopt procedures for appointing appellate counsel for indigents not represented by the State Public Defender in all cases in which indigents are entitled to appointed counsel.

(2) Each court's appointments must be based on criteria approved by the Judicial Council or its designated oversight committee.

(Subd (b) amended effective January 1, 2007.)

(b) List of qualified attorneys

(1) The Court of Appeal must evaluate the attorney's qualifications for appointment and, if the attorney is qualified, place the attorney's name on a list to receive appointments in appropriate cases.

(2) Each court's appointments must be based on criteria approved by the Judicial Council or its designated oversight committee.

(Subd (b) amended effective January 1, 2007.)

(c) Demands of the case

In matching counsel with the demands of the case, the Court of Appeal should consider:

(1) The length of the sentence;

(2) The complexity or novelty of the issues;

(3) The length of the trial and of the reporter's transcript; and

(4) Any questions concerning the competence of trial counsel.

(Subd (c) amended effective January 1, 2007.)

(d) Evaluation

The court must review and evaluate the performance of each appointed counsel to determine whether counsel's name should remain on the list at the same level, be placed on a different level, or be deleted from the list.

(e) Contracts to perform administrative functions

(1) The court may contract with an administrator having substantial experience in handling appellate court appointments to perform any of the duties prescribed by this rule.

(2) The court must provide the administrator with the information needed to fulfill the administrator's duties.

Rule 8.300 amended and renumbered effective January 1, 2007; repealed and adopted as rule 76.5 effective January 1, 2005.

Advisory Committee Comment

Subdivision (b). The "designated oversight committee" referred to in subdivision (b)(2) is currently the Appellate Indigent Defense Oversight Advisory Committee. The criteria approved by this committee can be found on the judicial branch's public website at www.courtinfo.ca.gov.

Rule 8.304. Filing the appeal; certificate of probable cause

(a) Notice of appeal

(1) To appeal from a judgment or an appealable order of the superior court in a felony case—other than a judgment imposing a sentence of death—the defendant or the People must file a notice of appeal in that superior court. To appeal after a plea of guilty or nolo contendere or after an admission of probation violation, the defendant must also comply with (b).

(2) As used in (1), "felony case" means any criminal action in which a felony is charged, regardless of the outcome. A felony is "charged" when an information or indictment accusing the defendant of a felony is filed or a complaint accusing the defendant of a felony is certified to the superior court under Penal Code section 859a. A felony case includes an action in which the defendant is charged with:

(A) A felony and a misdemeanor or infraction, but is convicted of only the misdemeanor or infraction;

(B) A felony, but is convicted of only a lesser offense; or

(C) An offense filed as a felony but punishable as either a felony or a misdemeanor, and the offense is thereafter deemed a misdemeanor under Penal Code section 17(b).

(3) If the defendant appeals, the defendant or the defendant's attorney must sign the notice of appeal. If the People appeal, the attorney for the People must sign the notice.

(4) The notice of appeal must be liberally construed. Except as provided in (b), the notice is sufficient if it identifies the particular judgment or order being appealed. The notice need not specify the court to which the appeal is taken; the appeal will be treated as taken to the Court of Appeal for the district in which the superior court is located.

(Subd (a) amended effective January 1, 2007.)

(b) Appeal after plea of guilty or nolo contendere or after admission of probation violation

(1) Except as provided in (4), to appeal from a superior court judgment after a plea of guilty or nolo contendere or after an admission of probation violation, the defendant must file in that superior court—with the notice of appeal required by (a)—the statement required by Penal Code section 1237.5 for issuance of a certificate of probable cause.

(2) Within 20 days after the defendant files a statement under (1), the superior court must sign and file either a certificate of probable cause or an order denying the certificate.

(3) If the defendant does not file the statement required by (1) or if the superior court denies a certificate of probable cause, the superior court clerk must mark the notice of appeal "Inoperative," notify the defendant, and send a copy of the marked notice of appeal to the district appellate project.

(4) The defendant need not comply with (1) if the notice of appeal states that the appeal is based on:

(A) The denial of a motion to suppress evidence under Penal Code section 1538.5; or

(B) Grounds that arose after entry of the plea and do not affect the plea's validity.

(5) If the defendant's notice of appeal contains a statement under (4), the reviewing court will not consider any issue affecting the validity of the plea unless the defendant also complies with (1).

(Subd (b) amended effective July 1, 2007; previously amended effective January 1, 2007.)

(c) Notification of the appeal

(1) When a notice of appeal is filed, the superior court clerk must promptly mail a notification of the filing to the attorney of record for each party, to any unrepresented defendant, to the reviewing court clerk, to each court reporter, and to any primary reporter or reporting supervisor. If the defendant also files a statement under (b)(1), the clerk must not mail the notification unless the superior court files a certificate under (b)(2).

(2) The notification must show the date it was mailed, the number and title of the case, and the dates the notice of appeal and any certificate under (b)(2) were filed. If the information is available, the notification must also include:

(A) The name, address, telephone number, and California State Bar number of each attorney of record in the case;

(B) The name of the party each attorney represented in the superior court; and

(C) The name, address, and telephone number of any unrepresented defendant.

(3) The notification to the reviewing court clerk must also include a copy of the notice of appeal, any certificate filed under (b), and the sequential list of reporters made under rule 2.950.

(4) A copy of the notice of appeal is sufficient notification under (1) if the required information is on the copy or is added by the superior court clerk.

(5) The mailing of a notification under (1) is a sufficient performance of the clerk's duty despite the discharge, disqualification, suspension, disbarment, or death of the attorney.

(6) Failure to comply with any provision of this subdivision does not affect the validity of the notice of appeal.

(Subd (c) amended effective January 1, 2007.)

Rule 8.304 amended effective July 1, 2007; repealed and adopted as rule 30 effective January 1, 2004; previously amended and renumbered effective January 1, 2007.

Advisory Committee Comment

Subdivision (a). Penal Code section 1235(b) provides that an appeal from a judgment or appealable order in a "felony case" is taken to the Court of Appeal, and Penal Code section 691(f) defines "felony case" to mean "a criminal action in which a felony is charged. . . ." Rule 8.304(a)(2) makes it clear that a "felony case" is an action in which a felony is charged *regardless of the outcome of the action*. Thus the question whether to file a notice of appeal under this rule or under the rules governing appeals to the appellate

division of the superior court (rule 8.700 et seq.) is answered simply by examining the accusatory pleading: if that document charged the defendant with at least one count of felony (as defined in Penal Code, section 17(a)), the Court of Appeal has appellate jurisdiction and the appeal must be taken under this rule *even if the prosecution did not result in a punishment of imprisonment in a state prison*.

It is settled case law that an appeal is taken to the Court of Appeal not only when the defendant is charged with and convicted of a felony, but also when the defendant is charged with both a felony and a misdemeanor (Pen. Code, § 691(f)) but is convicted of only the misdemeanor (e.g., *People v. Brown* (1970) 10 Cal.App.3d 169); when the defendant is charged with a felony but is convicted of only a lesser offense (Pen. Code, § 1159; e.g., *People v. Spreckels* (1954) 125 Cal.App.2d 507); and when the defendant is charged with an offense filed as a felony but punishable as either a felony or a misdemeanor, and the offense is thereafter deemed a misdemeanor under Penal Code section 17(b) (e.g., *People v. Douglas* (1999) 20 Cal.4th 85; *People v. Clark* (1971) 17 Cal.App.3d 890).

Trial court unification did not change this rule: after as before unification, "Appeals in felony cases lie to the [C]ourt of [A]ppeal, regardless of whether the appeal is from the superior court, the municipal court, or the action of a magistrate. *Cf.* Cal. Const. art. VI, § 11(a) [except in death penalty cases, Courts of Appeal have appellate jurisdiction when superior courts have original jurisdiction 'in causes of a type within the appellate jurisdiction of the [C]ourts of [A]ppeal on June 30, 1995. . . .']." ("Recommendation on Trial Court Unification" (July 1998) 28 *Cal. Law Revision Com. Rep.* 455–56.)

Subdivision (b). Under (b)(1), the defendant is required to file both a notice of appeal and the statement required by Penal Code section 1237.5(a) for issuance of a certificate of probable cause. Requiring a notice of appeal in all cases simplifies the rule, permits compliance with the signature requirement of rule 8.304(a)(3), ensures that the defendant's intent to appeal will not be misunderstood, and makes the provision consistent with the rule in civil appeals and with current practice as exemplified in the Judicial Council form governing criminal appeals.

Because of the drastic consequences of failure to file the statement required for issuance of a certificate of probable cause in an appeal after a plea of guilty or nolo contendere or after an admission of probation violation, (b)(5) alerts appellants to a relevant rule of case law, i.e., that although such an appeal may be maintained without a certificate of probable cause if the notice of appeal states the appeal is based on the denial of a motion to suppress evidence or on grounds arising after entry of the plea and not affecting its validity (rule 8.304(b)(4)), no *issue* challenging the validity of the plea is cognizable on that appeal without a certificate of probable cause. (*People v. Mendez* (1999) 19 Cal.4th 1084, 1104.)

Rule 8.308. Time to appeal

(a) Normal time

Except as provided in (b) or as otherwise provided by law, a notice of appeal and any statement required by Penal Code section 1237.5 must be filed within 60 days after the rendition of the judgment or the making of the order being appealed. Except as provided in rule 8.66, no court may extend the time to file a notice of appeal.

(Subd (a) amended effective July 1, 2007; previously amended effective January 1, 2005, and January 1, 2007.)

(b) Cross-appeal

If the defendant or the People timely appeals from a judgment or appealable order, the time for any other party to appeal from the same judgment or order is either the time specified in (a) or 30 days after the superior court clerk mails notification of the first appeal, whichever is later.

(Subd (b) amended effective January 1, 2008; adopted effective January 1, 2007.)

(c) Premature notice of appeal

A notice of appeal filed before the judgment is rendered or the order is made is premature, but the reviewing court may treat the notice as filed immediately after the rendition of judgment or the making of the order.

(Subd (c) relettered effective January 1, 2007; adopted as subd (b).)

(d) Late notice of appeal

The superior court clerk must mark a late notice of appeal "Received [date] but not filed," notify the party that the notice was not filed because it was late, and send a copy of the marked notice of appeal to the district appellate project.

(Subd (d) relettered effective January 1, 2007; adopted as subd (c).)

Rule 8.308 amended effective July 1, 2010; adopted as rule 30.1 effective January 1, 2004; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2005, July 1, 2007, and January 1, 2008.

Advisory Committee Comment

Subdivision (c). The subdivision requires the clerk to send a copy of a late notice of appeal, marked with the date it was received but not filed, to the appellate project for the district; that entity is charged with the duty, among others, of dealing with indigent criminal appeals that suffer from procedural defect, but it can do so efficiently only if it is promptly notified of such cases.

Subdivision (d). See rule 8.25(b)(5) for provisions concerning the timeliness of documents mailed by inmates or patients from custodial institutions.

Rule 8.312. Stay of execution and release on appeal

(a) Application

Pending appeal, the defendant may apply to the reviewing court:

(1) For a stay of execution after a judgment of conviction or an order granting probation; or

(2) For bail, to reduce bail, or for release on other conditions.

(Subd (a) amended effective January 1, 2007.)

(b) Showing

The application must include a showing that the defendant sought relief in the superior court and that the court unjustifiably denied the application.

(c) Service

The application must be served on the district attorney and on the Attorney General.

(d) Interim relief

Pending its ruling on the application, the reviewing court may grant the relief requested. The reviewing court must notify the superior court under rule 8.489 of any stay that it grants.

(Subd (d) amended effective January 1, 2009; previously amended effective January 1, 2007.)

Rule 8.312 amended effective January 1, 2009; adopted as rule 30.2 effective January 1, 2004; previously amended and renumbered effective January 1, 2007.

Advisory Committee Comment

Subdivision (a). The remedy of an application for bail under (a)(2) is separate from but consistent with the statutory remedy of a petition for habeas corpus under Penal Code section 1490. (*In re Brumback* (1956) 46 Cal.2d 810, 815, fn. 3.)

An order of the Court of Appeal denying bail or reduction of bail, or for release on other conditions, is final on filing. (See rule 8.366(b)(2)(A).)

Subdivision (d). The first sentence of (d) recognizes the case law holding that a reviewing court may grant bail or reduce bail, or release the defendant on other conditions, pending its ruling on an application for that relief. (See, e.g., *In re Fishman* (1952) 109 Cal.App.2d 632, 633; *In re Keddy* (1951) 105 Cal.App.2d 215, 217.) The second sentence of the subdivision requires the reviewing court to notify the superior court under rule 8.489 when it grants either (1) a stay to preserve the status quo pending its ruling on a stay application or (2) the stay requested by that application.

Rule 8.316. Abandoning the appeal

(a) How to abandon

An appellant may abandon the appeal at any time by filing an abandonment of the appeal signed by the appellant or the appellant's attorney of record.

(b) Where to file; effect of filing

(1) If the record has not been filed in the reviewing court, the appellant must file the abandonment in the superior court. The filing effects a dismissal of the appeal and restores the superior court's jurisdiction.

(2) If the record has been filed in the reviewing court, the appellant must file the abandonment in that court. The reviewing court may dismiss the appeal and direct immediate issuance of the remittitur.

(c) Clerk's duties

(1) The clerk of the court in which the appellant files the abandonment must immediately notify the adverse party of the filing or of the order of dismissal. If the defendant abandons the appeal, the clerk must notify both the district attorney and the Attorney General.

(2) If the appellant files the abandonment in the superior court, the clerk must immediately notify the reviewing court.

(3) The clerk must immediately notify the reporter if the appeal is abandoned before the reporter has filed the transcript.

Rule 8.316 renumbered effective January 1, 2007; adopted as rule 30.3 effective January 1, 2004.

Article 2. Record on Appeal

Rule 8.320. Normal record; exhibits
Rule 8.324. Application in superior court for addition to normal record
Rule 8.328. Confidential records
Rule 8.332. Juror-identifying information
Rule 8.336. Preparing, certifying, and sending the record
Rule 8.340. Augmenting or correcting the record in the Court of Appeal
Rule 8.344. Agreed statement
Rule 8.346. Settled statement

Rule 8.320. Normal record; exhibits

(a) Contents

If the defendant appeals from a judgment of conviction, or if the People appeal from an order granting a new trial, the record must contain a clerk's transcript and a reporter's transcript, which together constitute the normal record.

(b) Clerk's transcript

The clerk's transcript must contain:

(1) The accusatory pleading and any amendment;

(2) Any demurrer or other plea;

(3) All court minutes;

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

(5) Any written communication between the court and the jury or any individual juror;

(6) Any verdict;

(7) Any written opinion of the court;

(8) The judgment or order appealed from and any abstract of judgment or commitment;

(9) Any motion for new trial, with supporting and opposing memoranda and attachments;

(10) The notice of appeal and any certificate of probable cause filed under rule 8.304(b);

(11) Any transcript of a sound or sound-and-video recording furnished to the jury or tendered to the court under rule 2.1040;

(12) Any application for additional record and any order on the application;

(13) And, if the appellant is the defendant:

(A) Any written defense motion denied in whole or in part, with supporting and opposing memoranda and attachments;

(B) If related to a motion under (A), any search warrant and return and the reporter's transcript of any preliminary examination or grand jury hearing;

(C) Any document admitted in evidence to prove a prior juvenile adjudication, criminal conviction, or prison term. If a record was closed to public inspection in the trial court because it is required to be kept confidential by law, it must remain closed to public inspection in the reviewing court unless that court orders otherwise;

(D) The probation officer's report; and

(E) Any court-ordered diagnostic or psychological report required under Penal Code section 1203.03(b) or 1369.

(Subd (b) amended effective January 1, 2010; previously amended effective January 1, 2005, January 1, 2007, and January 1, 2008.)

(c) Reporter's transcript

The reporter's transcript must contain:

(1) The oral proceedings on the entry of any plea other than a not guilty plea;

(2) The oral proceedings on any motion in limine;

(3) The oral proceedings at trial, but excluding the voir dire examination of jurors and any opening statement;

(4) All instructions given orally;

(5) Any oral communication between the court and the jury or any individual juror;

(6) Any oral opinion of the court;

(7) The oral proceedings on any motion for new trial;

(8) The oral proceedings at sentencing, granting or denying of probation, or other dispositional hearing;

(9) And, if the appellant is the defendant:

(A) The oral proceedings on any defense motion denied in whole or in part except motions for disqualification of a judge and motions under Penal Code section 995;

(B) The closing arguments; and

(C) Any comment on the evidence by the court to the jury.

(Subd (c) amended effective January 1, 2007.)

(d) Limited normal record in certain appeals

If the People appeal from a judgment on a demurrer to the accusatory pleading, or if the defendant or the People appeal from an appealable order other than a ruling on a motion for new trial, the normal record is composed of a reporter's transcript of any oral

proceedings incident to the judgment or order being appealed and a clerk's transcript containing:

(1) The accusatory pleading and any amendment;

(2) Any demurrer or other plea;

(3) Any written motion or notice of motion granted or denied by the order appealed from, with supporting and opposing memoranda and attachments;

(4) The judgment or order appealed from and any abstract of judgment or commitment;

(5) Any court minutes relating to the judgment or order appealed from; and

(6) The notice of appeal.

(Subd (d) amended effective January 1, 2007.)

(e) Exhibits

Exhibits admitted in evidence, refused, or lodged are deemed part of the record, but may be transmitted to the reviewing court only as provided in rule 8.224.

(Subd (e) amended effective January 1, 2007.)

(f) Stipulation for partial transcript

If counsel for the defendant and the People stipulate in writing before the record is certified that any part of the record is not required for proper determination of the appeal, that part must not be prepared or sent to the reviewing court.

(g) Form of record

The clerk's and reporter's transcripts must comply with rules 8.144, 8.328, and 8.336.

(Subd (g) amended effective January 1, 2010; previously amended effective January 1, 2007.)

Rule 8.320 amended effective January 1, 2010; repealed and adopted as rule 31 effective January 1, 2004; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2005, and January 1, 2008.

Advisory Committee Comment

Subdivision (b)(13). Rule 8.336(g) addresses the appropriate handling of probation officers' reports and court-ordered diagnostic reports that must be included in the clerk's transcript under (b)(13)(D) or (E).

Rule 8.324. Application in superior court for addition to normal record

(a) Appeal by the People

The People, as appellant, may apply to the superior court for inclusion in the record of any item that would be part of the normal record in a defendant's appeal.

(b) Application by either party

Either the People or the defendant may apply to the superior court for inclusion in the record of any of the following items:

(1) In the clerk's transcript: any written defense motion granted in whole or in part or any written motion by the People, with supporting and opposing memoranda and attachments;

(2) In the reporter's transcript:

(A) The voir dire examination of jurors;

(B) Any opening statement; and

(C) The oral proceedings on motions other than those listed in rule 8.320(c).

(Subd (b) amended effective January 1, 2007.)

(c) Application

(1) An application for additional record must describe the material to be included and explain how it may be useful in the appeal.

(2) The application must be filed in the superior court with the notice of appeal or as soon thereafter as possible, and will be treated as denied if it is filed after the record is sent to the reviewing court.

(3) The clerk must immediately present the application to the trial judge.

(d) Order

(1) Within five days after the application is filed, the judge must order that the record include as much of the additional material as the judge finds proper to fully present the points raised by the applicant. Denial of the application does not preclude a motion in the reviewing court for augmentation under rule 8.155.

(2) If the judge does not rule on the application within the time prescribed by (1), the requested material—other than exhibits—must be included in the clerk's transcript or the reporter's transcript without a court order.

(3) The clerk must immediately notify the reporter if additions to the reporter's transcript are required under (1) or (2).

(Subd (d) amended effective January 1, 2007.)

Rule 8.324 amended and renumbered effective January 1, 2007; adopted as rule 31.1 effective January 1, 2004.

Rule 8.328. Confidential records

(a) Application

This rule applies to records required to be kept confidential by law but does not apply to records sealed under rules 2.550–2.551 or records proposed to be sealed under rule 8.46.

(Subd (a) amended effective January 1, 2011; adopted effective January 1, 2007.)

(b) *Marsden* hearing

(1) The reporter's transcript of any hearing held under *People v. Marsden* (1970) 2 Cal.3d 118 must be kept confidential. The chronological index to the reporter's transcript must include the *Marsden* hearing but list it as "CONFIDENTIAL" or the equivalent.

(2) The superior court clerk must send the original and one copy of the confidential transcript to the reviewing court with the record.

(3) The superior court clerk must send one copy of the confidential transcript to the defendant's appellate counsel or, if the defendant is not yet represented by appellate counsel, to the appellate project for the district.

(4) If the defendant raises a *Marsden* issue in the opening brief, the defendant must serve and file with the brief a notice stating whether the confidential transcript contains any confidential material not relevant to the issues on appeal. If the defendant states that the transcript contains confidential material not relevant to the issues on appeal, the notice must identify the page and line numbers of the transcript containing this irrelevant material.

(5) If the defendant serves and files a notice under (4), stating that the transcript contains confidential material not relevant to the issues on appeal, the People may move to obtain a copy of any relevant portion of the confidential transcript. If the defendant serves and files a notice under (4), stating that no such irrelevant material is contained in the transcript, the reviewing court clerk must send a copy of the confidential transcript to the People.

(6) If the defendant raises a *Marsden* issue in the opening brief but does not serve and file a notice under (4), on written application the People may request a copy of the confidential transcript. Within 10 days after the application is filed, the defendant may serve and file opposition to this application on the basis that the transcript contains confidential material not relevant to the issues on appeal. Any such opposition must identify the page and line numbers of the transcript containing this irrelevant material. If the defendant does not timely serve and file opposition to the application, the reviewing court clerk must send a copy of the confidential transcript to the People.

(Subd (b) amended and relettered effective January 1, 2007; adopted as subd (a).)

(c) Other in-camera proceedings and confidential records

(1) Any party may apply to the superior court for an order that the record include:

(A) A confidential, separately paginated reporter's transcript of any in-camera proceeding at which a party was not allowed to be represented; and

(B) Any item that the trial court withheld from a party on the ground that it was confidential.

(2) The application and any ruling under (1) must comply with rule 8.324.

(3) If the court grants an application for a reporter's transcript of any in-camera proceeding, it may order the reporter who attended the in-camera proceeding to personally prepare the transcript. The chronological index to the reporter's transcript must include the proceeding but list it as "CONFIDENTIAL–MAY NOT BE EXAMINED WITHOUT COURT ORDER" or the equivalent.

(4) The superior court clerk must send the transcript of the in-camera proceeding or the confidential item to the reviewing court in a sealed envelope labeled "CONFIDENTIAL—MAY NOT BE EXAMINED WITHOUT COURT ORDER." The reviewing court clerk must file the envelope and store it separately from the remainder of the record.

(5) The superior court clerk must prepare an index of any material sent to the reviewing court under (4), except confidential material relating to a request for funds under Penal Code section 987.9, showing the date and the names of all parties present at each proceeding, but not disclosing the substance of the sealed matter, and send the index:

(A) To the People; and

(B) To the defendant's appellate counsel or, if the defendant is not yet represented by appellate counsel, to the appellate project for the district.

(6) Unless the reviewing court orders otherwise, confidential material sent to the reviewing court under (4) may be examined only by a reviewing court justice personally; but parties and their attorneys who had access to the material in the trial court may also examine it.

(Subd (c) amended and relettered effective January 1, 2007; adopted as subd (b); previously amended effective January 1, 2005.)

(d) Omissions

If at any time the superior court clerk or the reporter learns that the record omits material that any rule requires to be included and that this rule requires to be kept confidential:

(1) The clerk and the reporter must comply with rule 8.340(b); and

(2) The clerk must comply with the provisions of this rule requiring that the record be kept confidential and prescribing which party's counsel, if any, must receive a copy of sealed material.

(Subd (d) amended and relettered effective January 1, 2007; adopted as subd (c).)

Rule 8.328 amended effective January 1, 2011; adopted as rule 31.2 effective January 1, 2004; previously amended effective January 1, 2005; previously amended and renumbered effective January 1, 2007.

Advisory Committee Comment

Subdivision (c). Subdivision (c)(5) requires the clerk to prepare and send to the parties an index of any confidential materials sent to the reviewing court, showing the date and the names of all parties present. The purpose of this provision is to assist the parties in making–and the court in adjudicating–motions to unseal portions of the record. To protect confidentiality until a record is unsealed, however, the index must endeavor to identify the sealed matter without disclosing its substance.

Rule 8.332. Juror-identifying information

(a) Application

A clerk's transcript, a reporter's transcript, or any other document in the record that contains juror-identifying information must comply with this rule.

(Subd (a) amended effective January 1, 2007.)

(b) Juror names, addresses, and telephone numbers

(1) The name of each trial juror or alternate sworn to hear the case must be replaced with an identifying number wherever it appears in any document. The superior court clerk must prepare and keep under seal in the case file a table correlating the jurors' names

with their identifying numbers. The clerk and the reporter must use the table in preparing all transcripts or other documents.

(2) The addresses and telephone numbers of trial jurors and alternates sworn to hear the case must be deleted from all documents.

(c) Potential jurors

Information identifying potential jurors called but not sworn as trial jurors or alternates must not be sealed unless otherwise ordered under Code of Civil Procedure section 237(a)(1).

Rule 8.332 amended and renumbered effective January 1, 2007; adopted as rule 31.3 effective January 1, 2004.

Advisory Committee Comment

Rule 8.332 implements Code of Civil Procedure section 237.

Rule 8.336. Preparing, certifying, and sending the record

(a) Immediate preparation when appeal is likely

(1) The reporter and the clerk must begin preparing the record immediately after a verdict or finding of guilt of a felony is announced following a trial on the merits, unless the judge determines that an appeal is unlikely under (2).

(2) In determining the likelihood of an appeal, the judge must consider the facts of the case and the fact that an appeal is likely if the defendant has been convicted of a crime for which probation is prohibited or is prohibited except in unusual cases, or if the trial involved a contested question of law important to the outcome.

(3) A determination under (2) is an administrative decision intended to further the efficient operation of the court and not intended to affect any substantive or procedural right of the defendant or the People. The determination cannot be cited to prove or disprove any legal or factual issue in the case and is not reviewable by appeal or writ.

(b) Appeal after plea of guilty or nolo contendere or after admission of probation violation

In an appeal under rule 8.304(b)(1), the time to prepare, certify, and file the record begins when the court files a certificate of probable cause under rule 8.304(b)(2).

(Subd (b) amended effective January 1, 2007.)

(c) Clerk's transcript

(1) Except as provided in (a) or (b), the clerk must begin preparing the clerk's transcript immediately after the notice of appeal is filed.

(2) Within 20 days after the notice of appeal is filed, the clerk must complete preparation of an original and two copies of the clerk's transcript, one for defendant's counsel and one for the Attorney General or the district attorney, whichever is the counsel for the People on appeal.

(3) On request, the clerk must prepare an extra copy for the district attorney or the Attorney General, whichever is not counsel for the People on appeal.

(4) If there is more than one appealing defendant, the clerk must prepare an extra copy for each additional appealing defendant represented by separate counsel.

(5) The clerk must certify as correct the original and all copies of the clerk's transcript.

(Subd (c) amended effective January 1, 2007.)

(d) Reporter's transcript

(1) Except as provided in (a) or (b), the reporter must begin preparing the reporter's transcript immediately on being notified by the clerk under rule 8.304(c)(1) that the notice of appeal has been filed.

(2) The reporter must prepare an original and the same number of copies of the reporter's transcript as (c) requires of the clerk's transcript, and must certify each as correct.

(3) The reporter must deliver the original and all copies to the superior court clerk as soon as they are certified, but no later than 20 days after the notice of appeal is filed.

(4) Any portion of the transcript transcribed during trial must not be retyped unless necessary to correct errors, but must be repaginated and bound with any portion of the transcript not previously transcribed. Any additional copies needed must not be retyped but must be prepared by photocopying or an equivalent process.

(5) In a multireporter case, the clerk must accept any completed portion of the transcript from the primary reporter one week after the time prescribed by (3) even if other portions are uncompleted. The clerk must promptly pay each reporter who certifies that all portions of the transcript assigned to that reporter are completed.

(Subd (d) amended effective January 1, 2007.)

(e) Extension of time

(1) The superior court may not extend the time for preparing the record.

(2) The reviewing court may order one or more extensions of time for preparing the record, not exceeding a total of 60 days, on receipt of:

(A) An affidavit showing good cause; and

(B) In the case of a reporter's transcript, certification by the superior court presiding judge, or a court administrator designated by the presiding judge, that an extension is reasonable and necessary in light of the workload of all reporters in the court.

(Subd (e) amended effective January 1, 2007.)

(f) Sending the transcripts

(1) When the clerk and reporter's transcripts are certified as correct, the clerk must promptly send:

(A) The original transcripts to the reviewing court, noting the sending date on each original;

(B) One copy of each transcript to appellate counsel for each defendant represented by separate counsel and to the Attorney General or the district attorney, whichever is counsel for the People on appeal; and

(C) One copy of each transcript to the district attorney or Attorney General if requested under (c)(3).

(2) If the defendant is not represented by appellate counsel when the transcripts are certified as correct, the clerk must send that defendant's counsel's copy of the transcripts to the district appellate project.

(Subd (f) amended effective January 1, 2007.)

(g) Probation officer's reports and court-ordered diagnostic reports

A probation officer's report or court-ordered diagnostic report included in the clerk's transcript under rule 8.320(b)(13)(D) or (E) must appear in only the copies of the appellate record that are sent to the reviewing court, to appellate counsel for the People, and to appellate counsel for the defendant who was the subject of the report. The reviewing court's copy of the report must be placed in a sealed envelope marked "CONFIDENTIAL—MAY NOT BE EXAMINED WITHOUT COURT ORDER."

(Subd (g) amended effective January 1, 2010; previously amended effective January 1, 2007.)

(h) Supervision of preparation of record

Each Court of Appeal clerk, under the supervision of the administrative presiding justice or the presiding justice, must take all appropriate steps to ensure that superior court clerks and reporters promptly perform their duties under this rule. This provision does not affect the superior courts' responsibility for the prompt preparation of appellate records.

Rule 8.336 amended effective January 1, 2010; repealed and adopted as rule 32 effective January 1, 2004; previously amended and renumbered effective January 1, 2007.

Advisory Committee Comment

Subdivision (a). Subdivision (a) implements Code of Civil Procedure section 269(b).

Rule 8.340. Augmenting or correcting the record in the Court of Appeal

(a) Subsequent trial court orders

(1) If, after the record is certified, the trial court amends or recalls the judgment or makes any other order in the case, including an order affecting the sentence or probation, the clerk must promptly certify and send a copy of the amended abstract of judgment or other order—as an augmentation of the record—to:

(A) The reviewing court, the probation officer, the defendant,

(B) The defendant's appellate counsel for each defendant represented by separate counsel, and the Attorney General or the district attorney, whichever is counsel for the People on appeal; and

(C) The district attorney or Attorney General, whichever is not counsel for the People on appeal, if he or she requested a copy of the clerk's transcript under 8.336(c)(3).

(2) If there is any additional document or transcript related to the amended judgment or new order that any rule or order requires be included in the record, the clerk must send this document or transcript with the amended abstract of judgment or other order. The clerk must promptly copy and certify any such document, and the reporter must promptly prepare and certify any such transcript.

(Subd (a) amended effective January 1, 2007.)

(b) Omissions

(1) If, after the record is certified, the superior court clerk or the reporter learns that the record omits a document or transcript that any rule or order requires to be included, the clerk must promptly copy and certify the document or the reporter must promptly prepare and certify the transcript. Without the need for a court order, the clerk must

promptly send the document or transcript—as an augmentation of the record—to all those who are listed under (a)(1).

(Subd (b) amended effective January 1, 2007.)

(c) Augmentation or correction by the reviewing court

At any time, on motion of a party or on its own motion, the reviewing court may order the record augmented or corrected as provided in rule 8.155. The clerk must send any document or transcript added to the record to all those who are listed under (a)(1).

(Subd (c) amended and relettered effective January 1, 2007; adopted as subd (d).)

(d) Defendant not yet represented

If the defendant is not represented by appellate counsel when the record is augmented or corrected, the clerk must send that defendant's counsel's copy of the augmentations or corrections to the district appellate project.

(Subd (d) adopted effective January 1, 2007.)

Rule 8.340 amended and renumbered effective January 1, 2007; adopted as rule 32.1 effective January 1, 2004.

Advisory Committee Comment

Subdivision (b). The words "or order" in the first sentence of (b) are intended to refer to any court order to include additional material in the record, e.g., an order of the superior court under rule 8.324(d)(1).

Rule 8.344. Agreed statement

If the parties present the appeal on an agreed statement, they must comply with the relevant provisions of rule 8.134, but the appellant must file an original and three copies of the statement in superior court within 25 days after filing the notice of appeal.

Rule 8.344 amended and renumbered effective January 1, 2007; adopted as rule 32.2 effective January 1, 2004.

Rule 8.346. Settled statement

(a) Application

As soon as a party learns that any portion of the oral proceedings cannot be transcribed, the party may serve and file in superior court an application for permission to prepare a settled statement. The application must explain why the oral proceedings cannot be transcribed.

(b) Order and proposed statement

The judge must rule on the application within five days after it is filed. If the judge grants the application, the parties must comply with the relevant provisions of rule 8.137, but the applicant must deliver a proposed statement to the judge for settlement within 30 days after it is ordered, unless the reviewing court extends the time.

(Subd (b) amended effective January 1, 2007.)

(c) Serving and filing the settled statement

The applicant must prepare, serve, and file in superior court an original and three copies of the settled statement.

Rule 8.346 amended and renumbered effective January 1, 2007; adopted as rule 32.3 effective January 1, 2004.

Article 3. Briefs, Hearing, and Decision

Rule 8.360. Briefs by parties and amici curiae
Rule 8.361. Certificate of interested entities or persons
Rule 8.366. Hearing and decision in the Court of Appeal
Rule 8.368. Hearing and decision in the Supreme Court

Rule 8.360. Briefs by parties and amici curiae

(a) Contents and form

Except as provided in this rule, briefs in criminal appeals must comply as nearly as possible with rules 8.200 and 8.204.

(Subd (a) amended effective January 1, 2007.)

(b) Length

(1) A brief produced on a computer must not exceed 25,500 words, including footnotes. Such a brief must include a certificate by appellate counsel or an unrepresented defendant stating the number of words in the brief; the person certifying may rely on the word count of the computer program used to prepare the brief.

(2) A typewritten brief must not exceed 75 pages.

(3) The tables required under rule 8.204(a)(1), the cover information required under rule 8.204(b)(10), any Certificate of Interested Entities or Persons required under rule

8.361, a certificate under (1), any signature block, and any attachment permitted under rule 8.204(d) are excluded from the limits stated in (1) or (2).

(4) A combined brief in an appeal governed by (e) must not exceed double the limit stated in (1) or (2).

(5) On application, the presiding justice may permit a longer brief for good cause.

(Subd (b) amended effective January 1, 2011; previously amended effective January 1, 2007.)

(c) Time to file

(1) The appellant's opening brief must be served and filed within 40 days after the record is filed in the reviewing court.

(2) The respondent's brief must be served and filed within 30 days after the appellant's opening brief is filed.

(3) The appellant must serve and file a reply brief, if any, within 20 days after the respondent files its brief.

(4) The time to serve and file a brief may not be extended by stipulation, but only by order of the presiding justice under rule 8.60.

(5) If a party fails to timely file an appellant's opening brief or a respondent's brief, the reviewing court clerk must promptly notify the party by mail that the brief must be filed within 30 days after the notice is mailed, and that failure to comply may result in one of the following sanctions:

(A) If the brief is an appellant's opening brief:

(i) If the appellant is the People, the court will dismiss the appeal;

(ii) If the appellant is the defendant and is represented by appointed counsel on appeal, the court will relieve that appointed counsel and appoint new counsel;

(iii) If the appellant is the defendant and is not represented by appointed counsel, the court will dismiss the appeal; or

(B) If the brief is a respondent's brief, the court will decide the appeal on the record, the opening brief, and any oral argument by the appellant.

(6) If a party fails to comply with a notice under (5), the court may impose the sanction specified in the notice.

(Subd (c) amended effective January 1, 2007.)

(d) Service

(1) Defendant's appellate counsel must serve each brief for the defendant on the People and the district attorney, and must send a copy of each to the defendant personally unless the defendant requests otherwise.

(2) The proof of service under (1) must state that a copy of the defendant's brief was sent to the defendant, or counsel must file a signed statement that the defendant requested in writing that no copy be sent.

(3) For each appealing defendant, the People must serve two copies of their briefs on the defendant's appellate counsel and one copy on the district appellate project.

(4) A copy of each brief must be served on the superior court clerk for delivery to the trial judge.

(e) When a defendant and the People appeal

When both a defendant and the People appeal, the defendant must file the first opening brief unless the reviewing court orders otherwise, and rule 8.216(b) governs the contents of the briefs.

(Subd (e) amended effective January 1, 2007.)

(f) Amicus curiae briefs

Amicus curiae briefs may be filed as provided in rule 8.200(c).

(Subd (f) amended effective January 1, 2007.)

Rule 8.360 amended effective January 1, 2011; repealed and adopted as rule 33 effective January 1, 2004; previously amended and renumbered effective January 1, 2007.

Advisory Committee Comment

Subdivision (b). Subdivision (b)(1) states the maximum permissible length of a brief produced on a computer in terms of word count rather than page count. This provision tracks a provision in rule 8.204(c) governing Court of Appeal briefs and is explained in the comment to that provision. The word count assumes a brief using one-and-one-half spaced lines of text, as permitted by rule 8.204(b)(5). Subdivision (b)(3) specifies certain items that are not counted toward the maximum brief length. Signature blocks as referenced in this provision, include not only the signatures, but also the printed names, titles, and affiliations of any attorneys filing or joining in the brief, which may accompany the signature.

The maximum permissible length of briefs in death penalty appeals is prescribed in rule 8.630.

Rule 8.361. Certificate of interested entities or persons

In criminal cases in which an entity is a defendant, that defendant must comply with the requirements of rule 8.208 concerning serving and filing a certificate of interested entities or persons.

Rule 8.361 adopted effective January 1, 2009.

Advisory Committee Comment

Under rule 8.208(c), for purposes of certificates of interested entities or persons, an "entity" means a corporation, a partnership, a firm, or any other association but does not include a governmental entity or its agencies or a natural person.

Rule 8.366. Hearing and decision in the Court of Appeal

(a) General application of rules 8.252–8.272

Except as provided in this rule, rules 8.252–8.272 govern the hearing and decision in the Court of Appeal of an appeal in a criminal case.

(Subd (a) amended and lettered effective January 1, 2009; adopted as unlettered subd effective January 1, 2004.)

(b) Finality

(1) Except as otherwise provided in this rule, a Court of Appeal decision in a proceeding under this chapter, including an order dismissing an appeal involuntarily, is final in that court 30 days after filing.

(2) The following Court of Appeal decisions are final in that court on filing:

(A) The denial of an application for bail or to reduce bail pending appeal; and

(B) The dismissal of an appeal on request or stipulation.

(3) If a Court of Appeal certifies its opinion for publication or partial publication after filing its decision and before its decision becomes final in that court, the finality period runs from the filing date of the order for publication.

(4) If an order modifying an opinion changes the appellate judgment, the finality period runs from the filing date of the modification order.

(Subd (b) adopted effective January 1, 2009.)

(c) Sanctions

Except for (a)(1), rule 8.276 applies in criminal appeals.

(Subd (c) amended and lettered effective January 1, 2009; adopted as unlettered subd effective January 1, 2004.)

Rule 8.366 amended effective January 1, 2009; adopted as rule 33.1 effective January 1, 2004; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2008.

Advisory Committee Comment

Subdivision (b). As used in subdivision (b)(1), "decision" includes all interlocutory orders of the Court of Appeal. (See Advisory Committee Comment to rule 8.500(a) and (e).) This provision addresses the finality of decisions in criminal appeals. See rule 8.264(b) for provisions addressing the finality of decisions in proceedings under chapter 2, relating to civil appeals, and rule 8.490 for provisions addressing the finality of proceedings under chapter 7, relating to writs of mandate, certiorari, and prohibition.

Rule 8.368. Hearing and decision in the Supreme Court

Rules 8.500 through 8.552 govern the hearing and decision in the Supreme Court of an appeal in a criminal case.

Rule 8.368 amended and renumbered effective January 1, 2007; adopted as rule 33.2 effective January 1, 2004.

Chapter 4. Habeas Corpus Appeals and Writs

Rule 8.380. Petition for writ of habeas corpus filed by petitioner not represented by an attorney
Rule 8.384. Petition for writ of habeas corpus filed by an attorney for a party
Rule 8.385. Proceedings after the petition is filed
Rule 8.386. Proceedings if the return is ordered to be filed in the reviewing court
Rule 8.387. Decision in habeas corpus proceedings
Rule 8.388. Appeal from order granting relief by writ of habeas corpus

Rule 8.380. Petition for writ of habeas corpus filed by petitioner not represented by an attorney

(a) Required Judicial Council form

A person who is not represented by an attorney and who petitions a reviewing court for writ of habeas corpus seeking release from, or modification of the conditions of, custody of a person confined in a state or local penal institution, hospital, narcotics treatment facility, or other institution must file the petition on *Petition for Writ of Habeas Corpus* (form MC-275). For good cause the court may permit the filing of a petition that is not on that form.

(Subd (a) amended effective January 1, 2009; previously amended effective January 1, 2006, and January 1, 2007.)

(b) Form and content

A petition filed under (a) need not comply with the provisions of rules 8.40, 8.204, or 8.486 that prescribe the form and content of a petition and require the petition to be accompanied by a memorandum.

(Subd (b) amended and lettered effective January 1, 2009; adopted as part of subd (a) effective January 1, 2005.)

(c) Number of copies

In the Court of Appeal, the petitioner must file the original of the petition under (a) and one set of any supporting documents. In the Supreme Court, the petitioner must file an original and 10 copies of the petition and an original and 2 copies of any supporting document accompanying the petition unless the court orders otherwise.

(Subd (c) amended and lettered effective January 1, 2009; adopted as part of subd (a) effective January 1, 2005.)

Rule 8.380 amended effective January 1, 2009; repealed and adopted as rule 60 effective January 1, 2005; previously amended effective January 1, 2006; previously amended and renumbered effective January 1, 2007.

Rule 8.384. Petition for writ of habeas corpus filed by an attorney for a party

(a) Form and content of petition and memorandum

(1) A petition for habeas corpus filed by an attorney need not be filed on *Petition for Writ of Habeas Corpus* (form MC-275) but must contain the information requested in that form. All petitions filed by attorneys, whether or not on form MC-275, must be either typewritten or produced on a computer, and must comply with this rule and rules 8.40(b)–(c) relating to document covers and 8.204(a)(1)(A) relating to tables of contents and authorities. A petition that is not on form MC-275 must also comply with the remainder of rule 8.204(a) and 8.204(b).

(2) Any memorandum accompanying the petition must comply with rule 8.204(a)–(b). Except in habeas corpus proceedings related to sentences of death, any memorandum must also comply with the length limits in rule 8.204(c).

(3) The petition and any memorandum must support any reference to a matter in the supporting documents by a citation to its index tab and page.

(Subd (a) amended and lettered effective January 1, 2009; adopted as part of subd (b) effective January 1, 2006.)

(b) Supporting documents

(1) The petition must be accompanied by a copy of any petition—excluding exhibits—pertaining to the same judgment and petitioner that was previously filed in any state court or any federal court. If such documents have previously been filed in the same Court of Appeal where the petition is filed or in the Supreme Court and the petition so states and identifies the documents by case name and number, copies of these documents need not be included in the supporting documents.

(2) If the petition asserts a claim that was the subject of an evidentiary hearing, the petition must be accompanied by a certified transcript of that hearing.

(3) Rule 8.486(c)(1) and (2) govern the form of any supporting documents accompanying the petition.

(Subd (b) amended effective January 1, 2009; previously amended effective January 1, 2007.)

(c) Number of copies

If the petition is filed in the Supreme Court, the attorney must file the number of copies of the petition and supporting documents required by rule 8.44(a). If the petition is filed in the Court of Appeal, the attorney must file the number of copies of the petition and supporting documents required by rule 8.44(b).

(Subd (c) amended and lettered effective January 1, 2009; adopted as part of subd (b) effective January 1, 2006.)

(d) Noncomplying petitions

The clerk must file an attorney's petition not complying with (a)–(c) if it otherwise complies with the rules of court, but the court may notify the attorney that it may strike the petition or impose a lesser sanction if the petition is not brought into compliance within a stated reasonable time of not less than five days.

(Subd (d) amended and lettered effective January 1, 2009; adopted as part of subd (b) effective January 1, 2006.)

Rule 8.384 amended effective January 1, 2009; adopted as rule 60.5 effective January 1, 2006; previously amended and renumbered effective January 1, 2007.

Rule 8.385. Proceedings after the petition is filed

(a) Record

Before ruling on the petition, the court may order the custodian of any relevant record to produce the record or a certified copy to be filed with the court.

(b) Informal response

(1) Before ruling on the petition, the court may request an informal written response from the respondent, the real party in interest, or an interested person. The court must send a copy of any request to the petitioner.

(2) The response must be served and filed within 15 days or as the court specifies.

(3) If a response is filed, the court must notify the petitioner that a reply may be served and filed within 15 days or as the court specifies. The court may not deny the petition until that time has expired.

(c) Petition filed in an inappropriate court

(1) A Court of Appeal may deny without prejudice a petition for writ of habeas corpus that is based primarily on facts occurring outside the court's appellate district, including petitions that question:

(A) The validity of judgments or orders of trial courts located outside the district; or

(B) The conditions of confinement or the conduct of correctional officials outside the district.

(2) A Court of Appeal must deny without prejudice a petition for writ of habeas corpus that challenges the denial of parole or the petitioner's suitability for parole if the issue was not first adjudicated by the trial court that rendered the underlying judgment.

(3) If the court denies a petition solely under (1), the order must state the basis of the denial and must identify the appropriate court in which to file the petition.

(d) Order to show cause

If the petitioner has made the required prima facie showing that he or she is entitled to relief, the court must issue an order to show cause. An order to show cause does not grant the relief sought in the petition.

(e) Return to the superior court

The reviewing court may order the respondent to file a return in the superior court. The order vests jurisdiction over the cause in the superior court, which must proceed under rule 4.551.

(f) Return to the reviewing court

If the return is ordered to be filed in the Supreme Court or the Court of Appeal, rule 8.386 applies and the court in which the return is ordered filed must appoint counsel for any unrepresented petitioner who desires but cannot afford counsel.

Rule 8.385 adopted effective January 1, 2009.

Advisory Committee Comment

Subdivision (c). Except for subdivision (c)(2), rule 8.385(c) restates former section 6.5 of the Standards of Judicial Administration. Subdivision (c)(2) is based on the California Supreme Court decision in *In re Roberts* (2005) 36 Cal.4th 575, which provides that petitions for writ of habeas corpus challenging denial or suitability for parole are first to be adjudicated in the trial court that rendered the underlying judgment.

Subdivision (d). Case law establishes the specificity of the factual allegations and support for these allegations required in a petition for a writ of habeas corpus (see, e.g., *People v. Duvall* (1995) 9 Cal.4th 464, 474–475, and *Ex parte Swain* (1949) 34 Cal.2d 300, 303–304). A court evaluating whether a petition meeting these requirements makes a prima facie showing asks whether, assuming the petition's factual allegations are true, the petitioner would be entitled to relief (*People v. Duvall,* supra).

Issuing an order to show cause is just one of the actions a court might take on a petition for a writ of habeas corpus. Examples of other actions that a court might take include denying the petition summarily, requesting an informal response from the respondent under (b), or denying the petition without prejudice under (c) because it is filed in an inappropriate court.

Rule 8.386. Proceedings if the return is ordered to be filed in the reviewing court

(a) Application

This rule applies if the Supreme Court orders the return to be filed in the Supreme Court or the Court of Appeal or if the Court of Appeal orders the return to be filed in the Court of Appeal.

(b) Serving and filing return

(1) Unless the court orders otherwise, any return must be served and filed within 30 days after the court issues the order to show cause.

(2) If the return is filed in the Supreme Court, the attorney must file the number of copies of the return and any supporting documents required by rule 8.44(a). If the return is filed in the Court of Appeal, the attorney must file the number of copies of the return and any supporting documents required by rule 8.44(b). Two copies of the return and any supporting documents must be served on the petitioner's counsel, and if the return is to the Court of Appeal and the petitioner is not represented by privately retained counsel, one copy must be served on the district appellate project.

(c) Form and content of return

(1) The return must be either typewritten or produced on a computer and must comply with Penal Code section 1480 and rules 8.40(b)–(c) and 8.204(a)–(b). Except in habeas corpus proceedings related to sentences of death, any return must also comply with the length limits in rule 8.204(c).

(2) Rule 8.486(c)(1) and (2) govern the form of any supporting documents accompanying the return. The return must support any reference to a matter in the supporting documents by a citation to its index tab and page.

(3) Any material allegation of the petition not controverted by the return is deemed admitted for purposes of the proceeding.

(d) Traverse

(1) Unless the court orders otherwise, within 30 days after the respondent files a return, the petitioner may serve and file a traverse.

(2) Any traverse must be either typewritten or produced on a computer and must comply with Penal Code section 1484 and rules 8.40(b)–(c) and 8.204(a)–(b). Except in habeas corpus proceedings related to sentences of death, any traverse must also comply with the length limits in rule 8.204(c).

(3) Any material allegation of the return not denied in the traverse is deemed admitted for purposes of the proceeding.

(4) If the return is filed in the Supreme Court, the attorney must file the number of copies of the traverse required by rule 8.44(a). If the return is filed in the Court of Appeal, the attorney must file the number of copies of the traverse required by rule 8.44(b).

(e) Judicial notice

Rule 8.252(a) governs judicial notice in the reviewing court.

(f) Evidentiary hearing ordered by the reviewing court

(1) An evidentiary hearing is required if, after considering the verified petition, the return, any traverse, any affidavits or declarations under penalty of perjury, and matters of which judicial notice may be taken, the court finds there is a reasonable likelihood that the petitioner may be entitled to relief and the petitioner's entitlement to relief depends on the resolution of an issue of fact.

(2) The court may appoint a referee to conduct the hearing and make recommended findings of fact.

(g) Oral argument and submission of the cause

Unless the court orders otherwise:

(1) Rule 8.256 governs oral argument and submission of the cause in the Court of Appeal.

(2) Rule 8.524 governs oral argument and submission of the cause in the Supreme Court.

Rule 8.386 adopted effective January 1, 2009.

Rule 8.387. Decision in habeas corpus proceedings

(a) Filing the decision

(1) Rule 8.264(a) governs the filing of the decision in the Court of Appeal.

(2) Rule 8.532(a) governs the filing of the decision in the Supreme Court.

(Subd (a) adopted effective January 1, 2009.)

(b) Finality of decision in the Court of Appeal

(1) *General finality period*

Except as otherwise provided in this rule, a Court of Appeal decision in a habeas corpus proceeding is final in that court 30 days after filing.

(2) *Denial of a petition for writ of habeas corpus without issuance of an order to show cause*

(A) Except as provided in (B), a Court of Appeal decision denying a petition for writ of habeas corpus without issuance of an order to show cause is final in the Court of Appeal upon filing.

(B) A Court of Appeal decision denying a petition for writ of habeas corpus without issuing an order to show cause is final in that court on the same day that its decision in a related appeal is final if the two decisions are filed on the same day. If the Court of Appeal orders rehearing of the decision in the appeal, its decision denying the petition for writ of habeas corpus is final when its decision on rehearing is final.

(3) *Decision in a habeas corpus proceeding after issuance of an order to show cause*

(A) If necessary to prevent mootness or frustration of the relief granted or to otherwise promote the interests of justice, a Court of Appeal may order early finality in that court of a decision in a habeas corpus proceeding after issuing

an order to show cause. The decision may provide for finality in that court on filing or within a stated period of less than 30 days.

(B) If a Court of Appeal certifies its opinion for publication or partial publication after filing its decision and before its decision becomes final in that court, the finality period runs from the filing date of the order for publication.

(Subd (b) adopted effective January 1, 2009.)

(c) Finality of decision in the Supreme Court

Rule 8.532(b) governs finality of a decision in the Supreme Court.

(Subd (c) adopted effective January 1, 2009.)

(d) Modification of decision

(1) A reviewing court may modify a decision until the decision is final in that court. If the clerk's office is closed on the date of finality, the court may modify the decision on the next day the clerk's office is open.

(2) An order modifying an opinion must state whether it changes the appellate judgment. A modification that does not change the appellate judgment does not extend the finality date of the decision. If a modification changes the appellate judgment, the finality period runs from the filing date of the modification order.

(Subd (d) adopted effective January 1, 2009.)

(e) Rehearing

(1) Rule 8.268 governs rehearing in the Court of Appeal.

(2) Rule 8.536 governs rehearing in the Supreme Court.

(Subd (e) adopted effective January 1, 2009.)

(f) Remittitur

A Court of Appeal must issue a remittitur in a habeas corpus proceeding under this chapter except when the court denies the petition without issuing an order to show cause or orders the return filed in the superior court. Rule 8.272(b)–(d) governs issuance of a remittitur by a Court of Appeal in habeas corpus proceedings.

(Subd (f) amended and lettered effective January 1, 2009; adopted as unlettered subd effective January 1, 2008.)

Rule 8.387 amended and renumbered effective January 1, 2009; adopted as rule 8.386 effective January 1, 2008.

Advisory Committee Comment

A party may seek review of a Court of Appeal decision in a habeas corpus proceeding by way of a petition for review in the Supreme Court under rule 8.500.

Rule 8.388. Appeal from order granting relief by writ of habeas corpus

(a) Application

Except as otherwise provided in this rule, rules 8.304–8.368 and 8.508 govern appeals under Penal Code section 1506 or 1507 from orders granting all or part of the relief sought in a petition for writ of habeas corpus.

(Subd (a) amended effective January 1, 2007.)

(b) Contents of record

In an appeal under this rule, the record must contain:

(1) The petition, the return, and the traverse;

(2) The order to show cause;

(3) All court minutes;

(4) All documents and exhibits submitted to the court;

(5) The reporter's transcript of any oral proceedings;

(6) Any written opinion of the court;

(7) The order appealed from; and

(8) The notice of appeal.

(Subd (b) amended effective January 1, 2007.)

Rule 8.388 amended and renumbered effective January 1, 2007; repealed and adopted as rule 39.2 effective January 1, 2005.

Chapter 5. Juvenile Appeals and Writs

Article 1. General provisions

Title 8, Appellate Rules—Division 1, Rules Relating to the Supreme Court and Courts of Appeal—Chapter 5, Juvenile Appeals and Writs—Article 1, General Provisions; adopted effective July 1, 2010.

Rule 8.400. Application
Rule 8.401. Confidentiality

Rule 8.400. Application

The rules in this chapter govern:

(1) Appeals from judgments or appealable orders in:

(A) Cases under Welfare and Institutions Code sections 300, 601, and 602; and

(B) Actions to free a child from parental custody and control under Family Code section 7800 et seq.; and

(2) Writ petitions under Welfare and Institutions Code sections 366.26 and 366.28.

Rule 8.400 amended effective July 1, 2010; adopted as rule 37 effective January 1, 2005; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2006, and January 1, 2008.

Rule 8.401. Confidentiality

(a) Access to filed documents

(1) Except as provided in (3), the record on appeal and documents filed by the parties in proceedings under this chapter may be inspected only by the reviewing court and appellate project personnel, the parties or their attorneys, and other persons the court may designate.

(2) To protect anonymity, a party must be referred to by first name and last initial in all filed documents and court orders and opinions; but if the first name is unusual or other circumstances would defeat the objective of anonymity, the party's initials may be used.

(3) Filed documents that protect anonymity as required by (2) may be inspected by any person or entity that is considering filing an amicus curiae brief.

(b) Access to oral argument

The court may limit or prohibit public admittance to oral argument.

Rule 8.401 adopted effective July 1, 2010.

Article 2. Appeals

Title 8, Appellate Rules—Division 1, Rules Relating to the Supreme Court and Courts of Appeal—Chapter 5, Juvenile Appeals and Writs—Article 2, Appeals; renumbered effective July 1, 2010; adopted as Article 1 effective January 1, 2007.

Rule 8.403 Right to appointment of appellate counsel and prerequisites for appeal
Rule 8.404. [Renumbered as rule 8.407]
Rule 8.404. Stay pending appeal
Rule 8.405. Filing the appeal
Rule 8.406. [Renumbered as rule 8.408]
Rule 8.406. Time to appeal
Rule 8.407. Record on appeal
Rule 8.408. [Renumbered as rule 8.409]
Rule 8.408. Record in multiple appeals in the same case
Rule 8.409. Preparing and sending the record
Rule 8.410. Augmenting and correcting the record in the reviewing court
Rule 8.411. Abandoning the appeal
Rule 8.412. Briefs by parties and amici curiae
Rule 8.416. Appeals from all terminations of parental rights; dependency appeals in Orange, Imperial, and San Diego Counties and in other counties by local rule

Rule 8.403 Right to appointment of appellate counsel and prerequisites for appeal

(a) Welfare and Institutions Code section 601or 602 proceedings

In appeals of proceedings under Welfare and Institutions Code section 601 or 602, the child is entitled to court-appointed counsel. If the court determines that the parent or guardian can afford counsel but has not retained counsel for the child, the court must appoint counsel for the child at the expense of the parent or guardian.

(b) Welfare and Institutions Code section 300 proceedings

(1) Any judgment, order, or decree setting a hearing under Welfare and Institutions Code section 366.26 may be reviewed on appeal following the order at the Welfare and Institutions Code section 366.26 hearing only if:

(A) The procedures in rules 8.450 and 8.452 regarding writ petitions in these cases have been followed; and

(B) The petition for an extraordinary writ was summarily denied or otherwise not decided on the merits.

(2) The reviewing court may appoint counsel to represent an indigent child, parent, or guardian.

(3) Rule 5.661 governs the responsibilities of trial counsel in Welfare and Institutions Code section 300 proceedings with regard to appellate representation of the child.

Rule 8.403 adopted effective July 1, 2010.

Advisory Committee Comment

The right to appeal in Welfare and Institutions Code section 601 or 602 (juvenile delinquency) cases is established by Welfare and Institutions Code section 800 and case law (see, for example, *In re Michael S.* (2007) 147 Cal.App.4th 1443, *In re Jeffrey M.* (2006) 141 Cal.App.4th 1017 and *In re Sean R.* (1989) 214 Cal.App.3d 662). The right to appeal in Welfare and Institutions Code section 300 (juvenile dependency) cases is established by Welfare and Institutions Code section 395 and case law (see, for example, *In re Aaron R.* (2005) 130 Cal.App.4th 697, and *In re Merrick V.* (2004) 122 Cal.App.4th 235).

Subdivision (b)(1). Welfare and Institutions Code section 366.26(*l*) establishes important limitations on appeals of judgments, orders, or decrees setting a hearing under section 366.26, including requirements for the filing of a petition for an extraordinary writ and limitations on the issues that can be raised on appeal.

Former rule 8.404. Renumbered effective July 1, 2010

Rule 8.404 renumbered as rule 8.407.

Rule 8.404. Stay pending appeal

The court must not stay an order or judgment pending an appeal unless suitable provision is made for the maintenance, care, and custody of the child.

Rule 8.404 adopted effective July 1, 2010.

Rule 8.405. Filing the appeal

(a) Notice of appeal

(1) To appeal from a judgment or appealable order under these rules, the appellant must file a notice of appeal in the superior court. Any notice of appeal on behalf of the child in a Welfare and Institutions Code section 300 proceeding must be authorized by the child or the child's CAPTA guardian ad litem.

(2) The appellant or the appellant's attorney must sign the notice of appeal.

(3) The notice of appeal must be liberally construed, and is sufficient if it identifies the particular judgment or order being appealed. The notice need not specify the court to which the appeal is taken; the appeal will be treated as taken to the Court of Appeal for the district in which the superior court is located.

(b) Superior court clerk's duties

(1) When a notice of appeal is filed, the superior court clerk must immediately:

(A) Mail a notification of the filing to:

(i) Each party other than the appellant, including the child if the child is 10 years of age or older;

(ii) The attorney of record for each party;

(iii) Any person currently awarded by the juvenile court the status of the child's de facto parent;

(iv) Any Court Appointed Special Advocate (CASA) volunteer;

(v) If the court knows or has reason to know that an Indian child is involved, the Indian custodian, if any, and tribe of the child or the Bureau of Indian Affairs, as required under Welfare and Institutions Code section 224.2; and

(vi) The reviewing court clerk; and

(B) Notify the reporter by telephone and in writing to prepare a reporter's transcript and deliver it to the clerk within 20 days after the notice of appeal is filed.

(2) The notification must show the name of the appellant, the date it was mailed, the number and title of the case, and the date the notice of appeal was filed. If the information is available, the notification must also include:

(A) The name, address, telephone number, and California State Bar number of each attorney of record in the case;

(B) The name of the party that each attorney represented in the superior court; and

(C) The name, address, and telephone number of any unrepresented party.

(3) The notification to the reviewing court clerk must also include a copy of the notice of appeal and any sequential list of reporters made under rule 2.950.

(4) A copy of the notice of appeal is sufficient notification if the required information is on the copy or is added by the superior court clerk.

(5) The mailing of a notification is a sufficient performance of the clerk's duty despite the discharge, disqualification, suspension, disbarment, or death of the attorney.

(6) Failure to comply with any provision of this subdivision does not affect the validity of the notice of appeal.

Rule 8.405 adopted effective July 1, 2010.

Advisory Committee Comment

Subdivision (a). *Notice of Appeal—Juvenile (California Rules of Court, Rule 8.400)* (form JV-800) may be used to file the notice of appeal required under this rule. This form is available at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*.

Former rule 8.406. Renumbered effective July 1, 2010

Rule 8.406 renumbered as rule 8.408.

Rule 8.406. Time to appeal

(a) Normal time

(1) Except as provided in (2) and (3), a notice of appeal must be filed within 60 days after the rendition of the judgment or the making of the order being appealed.

(2) In matters heard by a referee not acting as a temporary judge, a notice of appeal must be filed within 60 days after the referee's order becomes final under rule 5.540(c).

(3) When an application for rehearing of an order of a referee not acting as a temporary judge is denied under rule 5.542, a notice of appeal from the referee's order must be filed within 60 days after that order is served under rule 5.538(b)(3) or 30 days after entry of the order denying rehearing, whichever is later.

(b) Cross-appeal

If an appellant timely appeals from a judgment or appealable order, the time for any other party to appeal from the same judgment or order is either the time specified in (a) or 20 days after the superior court clerk mails notification of the first appeal, whichever is later.

(c) No extension of time; late notice of appeal

Except as provided in rule 8.66, no court may extend the time to file a notice of appeal. The superior court clerk must mark a late notice of appeal "Received [date] but not filed," notify the party that the notice was not filed because it was late, and send a copy of the marked notice of appeal to the district appellate project.

(Subd (c) relettered effective July 1, 2010; adopted as subd (d) effective July 1, 2010.)

(d) Premature notice of appeal

A notice of appeal is premature if filed before the judgment is rendered or the order is made, but the reviewing court may treat the notice as filed immediately after the rendition of judgment or the making of the order.

(Subd (d) relettered effective July 1, 2010; adopted as subd (e) effective July 1, 2010.)

Rule 8.406 amended effective July 1, 2010; adopted effective July 1, 2010.

Advisory Committee Comment

Subdivision (c). See rule 8.25(b)(5) for provisions concerning the timeliness of documents mailed by inmates or patients from custodial institutions.

Rule 8.407. Record on appeal

(a) Normal record: clerk's transcript

The clerk's transcript must contain:

(1) The petition;

(2) Any notice of hearing;

(3) All court minutes;

(4) Any report or other document submitted to the court;

(5) The jurisdictional and dispositional findings and orders;

(6) The judgment or order appealed from;

(7) Any application for rehearing;

(8) The notice of appeal and any order pursuant to the notice;

(9) Any transcript of a sound or sound-and-video recording tendered to the court under rule 2.1040;

(10) Any application for additional record and any order on the application;

(11) Any opinion or dispositive order of a reviewing court in the same case and;

(12) Any written motion or notice of motion by any party, with supporting and opposing memoranda and attachments, and any written opinion of the court.

(Subd (a) amended effective July 1, 2010; previously amended effective January 1, 2007.)

(b) Normal record: reporter's transcript

The reporter's transcript must contain:

(1) Except as provided in (2), the oral proceedings at any hearing that resulted in the order or judgment being appealed;

(2) In appeals from dispositional orders, the oral proceedings at hearings on

(A) Jurisdiction and disposition; and

(B) Any motion by the appellant that was denied in whole or in part; and

(3) Any oral opinion of the court.

(Subd (b) amended effective January 1, 2007.)

(c) Application in superior court for addition to normal record

(1) Any party or Indian tribe that has intervened in the proceedings may apply to the superior court for inclusion of any oral proceedings in the reporter's transcript.

(2) An application for additional record must describe the material to be included and explain how it may be useful in the appeal.

(3) The application must be filed in the superior court with the notice of appeal or as soon thereafter as possible, and will be treated as denied if it is filed after the record is sent to the reviewing court.

(4) The clerk must immediately present the application to the trial judge.

(5) Within five days after the application if filed, the judge must order that the record include as much of the additional material as the judge finds proper to fully present the points raised by the applicant. Denial of the application does not preclude a motion in the reviewing court for augmentation under rule 8.155.

(6) If the judge does not rule on the application within the time prescribed by (5), the requested material–other than exhibits–must be included in the clerk's transcript or the reporter's transcript without a court order.

(7) The clerk must immediately notify the reporter if additions to the reporter's transcript are required under (5) or (6).

(Subd (c) amended effective July 1, 2010; previously amended effective January 1, 2007.)

(d) Agreed or settled statement

To proceed by agreed or settled statement, the parties must comply with rule 8.344 or 8.346, as applicable.

(Subd (d) amended effective January 1, 2007.)

(e) Form of record

Except in cases governed by rule 8.416(b), the clerk's and reporter's transcripts must comply with rule 8.144.

(Subd (e) amended effective January 1, 2007.)

(f) Transmitting exhibits

Exhibits that were admitted in evidence, refused, or lodged may be transmitted to the reviewing court as provided in rule 8.224.

(Subd (f) amended effective January 1, 2007.)

Rule 8.407 amended and renumbered effective July 1, 2010; adopted as rule 37.1 effective January 1, 2005; previously amended and renumbered as rule 8.404 effective January 1, 2007.

Advisory Committee Comment

Subdivision (b). Subdivision (b)(1) provides that only the reporter's transcript of a hearing that resulted in the order being appealed must be included in the normal record. This provision is intended to achieve consistent record requirements in all appeals of cases under Welfare and Institutions Code section 300, 601, or 602 and to reduce the delays and expense caused by transcribing proceedings not necessary to the appeal.

Subdivision (b)(2)(A) recognizes that findings made in a jurisdictional hearing are not separately appealable and can be challenged only in an appeal from the ensuing dispositional order. The rule therefore specifically provides that a reporter's transcript of jurisdictional proceedings must be included in the normal record on appeal from a dispositional order.

Subdivision (b)(2)(B) specifies that the oral proceedings on any motion by the appellant that was denied in whole or in part must be included in the normal record on appeal from a disposition order. Rulings on such motions usually have some impact on either the jurisdictional findings or the subsequent disposition order. Routine inclusion of these proceedings in the record will promote expeditious resolution of appeals of cases under Welfare and Institutions Code section 300, 601, or 602.

Former rule 8.408. Renumbered effective July 1, 2010

Rule 8.408 renumbered as rule 8.409.

Rule 8.408. Record in multiple appeals in the same case

If more than one appeal is taken from the same judgment or related order, only one appellate record need be prepared, which must be filed within the time allowed for filing the record in the latest appeal.

Rule 8.408 renumbered effective July 1, 2010; adopted as rule 8.406 effective January 1, 2007.

Rule 8.409. Preparing and sending the record

(a) Application

Except as provided in 8.416(c)(1), this rule does not apply to cases under rule 8.416.

(Subd (a) amended effective July 1, 2010; previously amended effective January 1, 2007.)

(b) Preparing and certifying the transcripts

Within 20 days after the notice of appeal is filed:

(1) The clerk must prepare and certify as correct an original of the clerk's transcript and sufficient copies to comply with (d); and

(2) The reporter must prepare, certify as correct, and deliver to the clerk an original of the reporter's transcript and the same number of copies as (1) requires of the clerk's transcript.

(Subd (b) amended effective January 1, 2007.)

(c) Extension of time

(1) The superior court may not extend the time to prepare the record.

(2) The reviewing court may order one or more extensions of time, not exceeding a total of 60 days, on receipt of:

(A) A declaration showing good cause; and

(B) In the case of a reporter's transcript, certification by the superior court presiding judge, or a court administrator designated by the presiding judge, that an extension is reasonable and necessary in light of the workload of all reporters in the court.

(Subd (c) amended effective January 1, 2007.)

(d) Sending the record

(1) When the transcripts are certified as correct, the superior court clerk must immediately send:

(A) The original transcripts to the reviewing court, noting the sending date on each original; and

(B) One copy of each transcript to the appellate counsel for the appellant, the respondent, and the minor.

(2) If appellate counsel has not yet been retained or appointed when the transcripts are certified as correct, the clerk must send that counsel's copy of the transcripts to the district appellate project.

(3) The clerk must not send a copy of the transcripts to the Attorney General or the district attorney unless that office represents a party.

(Subd (d) amended effective January 1, 2007.)

Rule 8.409 amended and renumbered effective July 1, 2010; adopted as rule 37.2 effective January 1, 2005; previously amended and renumbered as rule 8.408 effective January 1, 2007.

Advisory Committee Comment

Subdivision (a). Subdivision (a) calls litigants' attention to the fact that a different rule (rule 8.416) governs *sending* the record in appeals from judgments or orders terminating parental rights and in dependency appeals in certain counties. Rule 8.408(b) governs *preparing and certifying* the record in those appeals. (See rule 8.416(c)(1) ["The record must be prepared and certified as provided in rule 8.409(b)"].)

Rule 8.410. Augmenting and correcting the record in the reviewing court

(a) Omissions

If, after the record is certified, the superior court clerk or the reporter learns that the record omits a document or transcript that any rule or order requires to be included, without the need for a motion or court order, the clerk must promptly copy and certify the document or the reporter must promptly prepare and certify the transcript and the clerk must promptly send the document or transcript—as an augmentation of the record—to all those who are listed under 8.409(d).

(b) Augmentation or correction by the reviewing court

(1) On motion of a party or on its own motion, the reviewing court may order the record augmented or corrected as provided in rule 8.155(a) and (c).

(2) If, after the record is certified, the trial court amends or recalls the judgment or makes any other order in the case, the trial court clerk must notify each entity and person to whom the record is sent under rule 8.409(d).

Rule 8.410 adopted effective July 1, 2010.

Rule 8.411. Abandoning the appeal

(a) How to abandon

An appellant may abandon the appeal at any time by filing an abandonment of the appeal. The abandonment must be authorized by the appellant and signed by either the appellant or the appellant's attorney of record. In a Welfare and Institutions Code section 300 proceeding in which the child is the appellant, the abandonment must be authorized by the child or, if the child is not capable of giving authorization, by the child's CAPTA guardian ad litem.

(b) Where to file; effect of filing

(1) If the record has not been filed in the reviewing court, the appellant must file the abandonment in the superior court. The filing effects a dismissal of the appeal and restores the superior court's jurisdiction.

(2) If the record has been filed in the reviewing court, the appellant must file the abandonment in that court. The reviewing court may dismiss the appeal and direct immediate issuance of the remittitur.

(c) Clerk's duties

(1) If the abandonment is filed in the superior court, the clerk must immediately mail a notification of the abandonment to:

(A) Every other party;

(B) The reviewing court; and

(C) The reporter if the appeal is abandoned before the reporter has filed the transcript.

(2) If the abandonment is filed in the reviewing court and the reviewing court orders the appeal dismissed, the clerk must immediately mail a notification of the order of dismissal to every party.

Rule 8.411 adopted effective July 1, 2010.

Advisory Committee Comment

The Supreme Court has held that appellate counsel for an appealing minor has the power to move to dismiss a dependency appeal based on counsel's assessment of the child's best interests, but that the motion to dismiss requires the authorization of the child or, if the child is incapable of giving

authorization, the authorization of the child's CAPTA guardian ad litem *(In re Josiah Z.* (2005) 36 Cal.4th 664).

Rule 8.412. Briefs by parties and amici curiae

(a) Contents, form, and length

(1) Rule 8.200 governs the briefs that may be filed by parties and amici curiae.

(2) Except as provided in (3), rule 8.204 governs the form and contents of briefs. Rule 8.216 also applies in appeals in which a party is both appellant and respondent.

(3) Rule 8.360 (b) governs the length of briefs.

(Subd (a) amended effective July 1, 2010; previously amended effective January 1, 2007.)

(b) Time to file

(1) Except in appeals governed by rule 8.416, the appellant must serve and file the appellant's opening brief within 40 days after the record is filed in the reviewing court.

(2) The respondent must serve and file the respondent's brief within 30 days after the appellant's opening brief is filed.

(3) The appellant must serve and file any reply brief within 20 days after the respondent's brief is filed.

(4) In dependency cases in which the child is not an appellant but has appellate counsel, the child must serve and file any brief within 10 days after the respondent's brief is filed.

(5) Rule 8.220 applies if a party fails to timely file an appellant's opening brief or a respondent's brief, but the period specified in the notice required by that rule must be 30 days.

(Subd (b) amended effective July 1, 2010; previously amended effective January 1, 2007.)

(c) Extensions of time

The superior court may not order any extensions of time to file briefs. Except in appeals governed by rule 8.416, the reviewing court may order extensions of time for good cause.

(Subd (c) amended effective July 1, 2010; previously amended effective January 1, 2007.)

(d) Failure to file a brief

(1) Except in appeals governed by rule 8.416, if a party fails to timely file an appellant's opening brief or a respondent's brief, the reviewing court clerk must promptly notify the party's counsel or the party, if not represented, by mail that the brief must be filed within 30 days after the notice is mailed and that failure to comply may result in one of the following sanctions:

(A) If the brief is an appellant's opening brief:

(i) If the appellant is the county, the court will dismiss the appeal;

(ii) If the appellant is other than the county and is represented by appointed counsel on appeal, the court will relieve that appointed counsel and appoint new counsel;

(iii) If the appellant is other than the county and is not represented by appointed counsel, the court will dismiss the appeal.

(B) If the brief is a respondent's brief, the court will decide the appeal on the record, the opening brief, and any oral argument by the appellant.

(2) If a party fails to comply with a notice under (1), the court may impose the sanction specified in the notice.

(3) Within the period specified in the notice under (1), a party may apply to the presiding justice for an extension of that period for good cause. If an extension is granted beyond the 30-day period and the brief is not filed within the extended period, the court may impose the sanction under (2) without further notice.

(Subd (d) amended effective July 1, 2010; adopted effective January 1, 2007.)

(e) Additional service requirements

(1) A copy of each brief must be served on the superior court clerk for delivery to the superior court judge.

(2) A copy of each brief must be served on the child's trial counsel, or, if the child is not represented by trial counsel, on the child's guardian ad litem appointed under rule 5.662.

(3) If the Court of Appeal has appointed counsel for any party:

(A) The county child welfare department and the People must serve two copies of their briefs on that counsel; and

(B) Each party must serve a copy of its brief on the district appellate project.

(4) In delinquency cases the parties must serve copies of their briefs on the Attorney General and the district attorney. In all other cases the parties must not serve copies of their briefs on the Attorney General or the district attorney unless that office represents a party.

(5) The parties must not serve copies of their briefs on the Supreme Court under rule 8.44(b)(1).

(Subd (e) amended effective July 1, 2007; adopted as subd (d) effective January 1, 2005; previously amended and relettered effective January 1, 2007.)

Rule 8.412 amended effective July 1, 2010; adopted as rule 37.3 effective January 1, 2005; previously amended and renumbered effective January 1, 2007; previously amended effective July 1, 2007.

Advisory Committee Comment

Subdivision (b). Subdivision (b)(1) calls litigants' attention to the fact that a different rule (rule 8.416(e)) governs the time to file an appellant's opening brief in appeals from judgments or orders terminating parental rights and in dependency appeals in certain counties.

Subdivision (c). Subdivision (c) calls litigants' attention to the fact that a different rule (rule 8.416(f)) governs the showing required for extensions of time to file briefs in appeals from judgments or orders terminating parental rights and in dependency appeals in certain counties.

Rule 8.416. Appeals from all terminations of parental rights; dependency appeals in Orange, Imperial, and San Diego Counties and in other counties by local rule

(a) Application

(1) This rule governs:

(A) Appeals from judgments or appealable orders of all superior courts terminating parental rights under Welfare and Institutions Code section 366.26 or freeing a child from parental custody and control under Family Code section 7800 et seq.; and

(B) Appeals from judgments or appealable orders in all juvenile dependency cases of:

(i) The Superior Courts of Orange, Imperial, and San Diego Counties; and

(ii) Other superior courts when the superior court and the District Court of Appeal with jurisdiction to hear appeals from that superior court have agreed and have adopted local rules providing that this rule will govern appeals from that superior court.

(2) In all respects not provided for in this rule, rules 8.403–8.412 apply.

(Subd (a) amended effective July 1, 2010; previously amended effective January 1, 2007.)

(b) Cover of record

(1) In appeals under (a)(1)(A), the cover of the record must prominently display the title "Appeal From [Judgment or Order] Terminating Parental Rights Under [Welfare and Institutions Code Section 366.26 or Family Code Section 7800 et seq.]," whichever is appropriate.

(2) In appeals under (a)(1)(B), the cover of the record must prominently display the title "Appeal From [Judgment or Order] Under [Welfare and Institutions Code Section 300 et seq. or Family Code Section 7800 et seq.]," whichever is appropriate.

(Subd (b) amended effective July 1, 2010.)

(c) Preparing, certifying, and sending the record

(1) The record must be prepared and certified as provided in rule 8.409(b).

(2) When the clerk's and reporter's transcripts are certified as correct, the clerk must immediately send:

(A) The original transcripts to the reviewing court by the most expeditious method, noting the sending date on each original; and

(B) One copy of each transcript to the attorneys of record for the appellant, the respondent, and the child, and to the district appellate project, by any method as fast as United States Postal Service express mail.

(3) If appellate counsel has not yet been retained or appointed when the transcripts are certified as correct, the clerk must send that counsel's copies of the transcripts to the district appellate project.

(Subd (c) amended effective July 1, 2010; previously amended effective January 1, 2007.)

(d) Augmenting or correcting the record

(1) Except as provided in (2) and (3), rule 8.410 governs any augmentation or correction of the record.

(2) An appellant must serve and file any motion for augmentation or correction within 15 days after receiving the record. A respondent must serve and file any such motion within 15 days after the appellant's opening brief is filed.

(3) The clerk and the reporter must prepare any supplemental transcripts within 20 days, giving them the highest priority.

(4) The clerk must certify and send any supplemental transcripts as required by (c).

(Subd (d) amended effective July 1, 2010; previously amended effective January 1, 2007.)

(e) Time to file briefs

(1) To permit determination of the appeal within 250 days after the notice of appeal is filed, the appellant must serve and file the appellant's opening brief within 30 days after the record is filed in the reviewing court.

(2) Rule 8.412(b) governs the time for filing other briefs.

(Subd (e) amended effective July 1, 2010.)

(f) Extensions of time

The superior court may not order any extensions of time to prepare the record or to file briefs; the reviewing court may order extensions of time, but must require an exceptional showing of good cause.

(g) Failure to file a brief

Rule 8.412(d) applies if a party fails to timely file an appellant's opening brief or a respondent's brief, but the period specified in the notice required by that rule must be 15 days.

(Subd (g) amended effective July 1, 2010; adopted effective January 1, 2007.)

(h) Oral argument and submission of the cause

(1) Unless the reviewing court orders otherwise, counsel must serve and file any request for oral argument no later than 15 days after the appellant's reply brief is filed or due to be filed. Failure to file a timely request will be deemed a waiver.

(2) The court must hear oral argument within 60 days after the appellant's last reply brief is filed or due to be filed, unless the court extends the time for good cause or counsel waive argument.

(3) If counsel waive argument, the cause is deemed submitted no later than 60 days after the appellant's reply brief is filed or due to be filed.

(Subd (h) relettered effective January 1, 2007; adopted as subd (g) effective January 1, 2005.)

Rule 8.416 amended effective July 1, 2010; adopted as rule 37.4 effective January 1, 2005; previously amended and renumbered effective January 1, 2007.

Advisory Committee Comment

Subdivision (g). Effective January 1, 2007, revised rule 8.416 incorporates a new subdivision (g) to address a failure to timely file a brief in all termination of parental rights cases and in dependency appeals in Orange, Imperial, and San Diego Counties. Under the new subdivision, appellants would not have the full 30-day grace period given in rule 8.412(d) in which to file a late brief, but instead would have the standard 15-day grace period that is given in civil cases. The intent of this revision is to balance the need to determine the appeal within 250 days with the need to protect appellants' rights in this most serious of appeals.

Subdivision (h). Subdivision (h)(1) recognizes certain reviewing courts' practice of requiring counsel to file any request for oral argument within a time period other than 15 days after the appellant's reply brief is filed or due to be filed. The reviewing court is still expected to determine the appeal "within 250 days after the notice of appeal is filed." (*Id*., Subd 8.416(e).)

Article 3. Writs

Title 8, Appellate Rules—Division 1, Rules Relating to the Supreme Court and Courts of Appeal—Chapter 5, Juvenile Appeals and Writs—Article 3, Writs; renumbered effective July 1, 2010; adopted as Article 2 effective January 1, 2007.

Rule 8.450. Notice of intent to file writ petition to review order setting hearing under Welfare and Institutions Code section 366.26
Rule 8.452. Writ petition to review order setting hearing under Welfare and Institutions Code section 366.26
Rule 8.454. Notice of intent to file writ petition under Welfare and Institutions Code section 366.28 to review order designating specific placement of a dependent child after termination of parental rights
Rule 8.456. Writ petition under Welfare and Institutions Code section 366.28 to review order designating or denying specific placement of a dependent child after termination of parental rights

Rule 8.450. Notice of intent to file writ petition to review order setting hearing under Welfare and Institutions Code section 366.26

(a) Application

Rules 8.450–8.452 and 8.490 govern writ petitions to review orders setting a hearing under Welfare and Institutions Code section 366.26.

(Subd (a) amended effective July 1, 2010; previously amended effective January 1, 2006, July 1, 2006, January 1, 2007, and January 1, 2009.)

(b) Purpose

Rules 8.450–8.452 are intended to encourage and assist the reviewing courts to determine on their merits all writ petitions filed under these rules within the 120-day period for holding a hearing under Welfare and Institutions Code section 366.26.

(Subd (b) amended effective January 1, 2007.)

(c) Who may file

The petitioner's trial counsel, or, in the absence of trial counsel, the party, is responsible for filing any notice of intent and writ petition under rules 8.450–8.452. Trial counsel is encouraged to seek assistance from or consult with attorneys experienced in writ procedure.

(Subd (c) amended effective January 1, 2008; previously amended effective January 1, 2007.)

(d) Extensions of time

The superior court may not extend any time period prescribed by rules 8.450–8.452. The reviewing court may extend any time period but must require an exceptional showing of good cause.

(Subd (d) amended effective July 1, 2010; previously amended effective January 1, 2007.)

(e) Notice of intent

(1) A party seeking writ review under rules 8.450–8.452 must file in the superior court a notice of intent to file a writ petition and a request for the record.

(2) The notice must include all known dates of the hearing that resulted in the order under review.

(3) The notice must be authorized by the party intending to file the petition and must be signed by that party or by the attorney of record for that party.

(4) The date of the order setting the hearing is the date on which the court states the order on the record orally, or issues an order in writing, whichever occurs first. The notice of intent must be filed according to the following timeline requirements:

(A) If the party was present at the hearing when the court ordered a hearing under Welfare and Institutions Code section 366.26, the notice of intent must be filed within 7 days after the date of the order setting the hearing.

(B) If the party was notified of the order setting the hearing only by mail, the notice of intent must be filed within 12 days after the date the clerk mailed the notification.

(C) If the party was notified of the order setting the hearing by mail, and the notice was mailed to an address outside California but within the United States, the notice of intent must be filed within 17 days after the date the clerk mailed the notification.

(D) If the party was notified of the order setting the hearing by mail, and the notice was mailed to an address outside the United States, the notice of intent must be filed within 27 days after the date the clerk mailed the notification.

(E) If the order was made by a referee not acting as a temporary judge, the party has an additional 10 days to file the notice of intent as provided in rule 5.540(c).

(Subd (e) amended effective July 1, 2010; previously amended effective January 1, 2007, and July 1, 2010.)

(f) Sending the notice of intent

(1) When the notice of intent is filed, the superior court clerk must immediately mail a copy of the notice to:

(A) The attorney of record for each party;

(B) Each party, including the child if the child is 10 years of age or older;

(C) Any known sibling of the child who is the subject of the hearing if that sibling either is the subject of a dependency proceeding or has been adjudged to be a dependent child of the juvenile court as follows:

(i) If the sibling is under 10 years of age, on the sibling's attorney;

(ii) If the sibling is 10 years of age or over, on the sibling and the sibling's attorney.

(D) The mother, the father, and any presumed and alleged parents;

(E) The child's legal guardian, if any;

(F) Any person currently awarded by the juvenile court the status of the child's de facto parent;

(G) The probation officer or social worker;

(H) Any Court Appointed Special Advocate (CASA) volunteer;

(I) The grandparents of the child, if their address is known and if the parents' whereabouts are unknown; and

(J) If the court knows or has reason to know that an Indian child is involved, the Indian custodian, if any, and tribe of the child or the Bureau of Indian Affairs as required under Welfare and Institutions Code section 224.2.

(2) The clerk must promptly send by first-class mail or fax a copy of the notice of intent and a list of those to whom the notice of intent was sent to:

(A) The reviewing court; and

(B) The petitioner if the clerk mailed the notice of intent to the Indian custodian, tribe of the child, or the Bureau of Indian Affairs.

(3) If the party was notified of the order setting the hearing only by mail, the clerk must include the date that the notification was mailed.

(Subd (f) amended effective July 1, 2010; previously amended effective January 1, 2006, July 1, 2006, and January 1, 2007.)

(g) Preparing the record

When the notice of intent is filed, the superior court clerk must:

(1) Immediately notify each court reporter by telephone and in writing to prepare a reporter's transcript of the oral proceedings at each session of the hearing that resulted in the order under review and deliver the transcript to the clerk within 12 calendar days after the notice of intent is filed; and

(2) Within 20 days after the notice of intent is filed, prepare a clerk's transcript that includes the notice of intent, proof of service, and all items listed in rule 8.404(a).

(Subd (g) amended effective July 1, 2010; previously amended effective January 1, 2006, January 1, 2007, and January 1, 2008.)

(h) Sending the record

When the transcripts are certified as correct, the superior court clerk must immediately send:

(1) The original transcripts to the reviewing court by the most expeditious method, noting the sending date on each original, and

(2) One copy of each transcript to each counsel of record and any unrepresented party by any means as fast as United States Postal Service express mail.

(Subd (h) amended effective January 1, 2007.)

(i) Reviewing court clerk's duties

(1) The reviewing court clerk must immediately lodge the notice of intent. When the notice is lodged, the reviewing court has jurisdiction of the writ proceedings.

(2) When the record is filed in the reviewing court, that court's clerk must immediately notify the parties, stating the date on which the 10-day period for filing the writ petition under rule 8.452(c)(1) will expire.

(Subd (i) amended effective January 1, 2007.)

Rule 8.450 amended effective July 1, 2010; adopted as rule 38 effective January 1, 2005; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2006, July 1, 2006, January 1, 2008, January 1, 2009, and July 1, 2010.

Advisory Committee Comment

Subdivision (d). The case law generally recognizes that the reviewing courts may grant extensions of time under these rules for exceptional good cause. (See, e.g., *Jonathan M. v. Superior Court* (1995) 39 Cal.App.4th 1826, and *In re Cathina W.* (1998) 68 Cal.App.4th 716 [recognizing that a late notice of intent may be filed on a showing of exceptional circumstances not under the petitioner's control].)

Subdivision (e)(4). See rule 8.25(b)(5) for provisions concerning the timeliness of documents mailed by inmates or patients from custodial institutions.

Rule 8.452. Writ petition to review order setting hearing under Welfare and Institutions Code section 366.26

(a) Petition

(1) The petition must be liberally construed and must include:

(A) The identities of the parties;

(B) The date on which the superior court made the order setting the hearing;

(C) The date on which the hearing is scheduled to be held;

(D) A summary of the grounds of the petition; and

(E) The relief requested.

(2) The petition must be accompanied by a memorandum.

(Subd (a) amended effective July 1, 2010; previously amended effective January 1, 2007.)

(b) Contents of the memorandum

(1) The memorandum must provide a summary of the significant facts, limited to matters in the record.

(2) The memorandum must state each point under a separate heading or subheading summarizing the point and support each point by argument and citation of authority.

(3) The memorandum must support any reference to a matter in the record by a citation to the record. The memorandum should explain the significance of any cited portion of the record and note any disputed aspects of the record.

(Subd (b) amended effective January 1, 2007.)

(c) Serving and filing the petition and response

(1) The petition must be served and filed within 10 days after the record is filed in the reviewing court. The petitioner must serve a copy of the petition on:

(A) Each attorney of record;

(B) Any unrepresented party, including the child if the child is 10 years of age or older;

(C) Any known sibling of the child who is the subject of the hearing if that sibling either is the subject of a dependency proceeding or has been adjudged to be a dependent child of the juvenile court as follows:

(i) If the sibling is under 10 years of age, on the sibling's attorney;

(ii) If the sibling is 10 years of age or over, on the sibling and the sibling's attorney.

(D) The child's Court Appointed Special Advocate (CASA) volunteer;

(E) Any person currently awarded by the juvenile court the status of the child's de facto parent; and

(F) If the court sent the notice of intent to file the writ petition to an Indian custodian, tribe, or Bureau of Indian Affairs, then to that Indian custodian, tribe of the child, or the Bureau of Indian Affairs as required under Welfare and Institutions Code section 224.2.

(2) Any response must be served on each of the people and entities listed above and filed:

(A) Within 10 days—or, if the petition was served by mail, within 15 days—after the petition is filed; or

(B) Within 10 days after a respondent receives a request from the reviewing court for a response, unless the court specifies a shorter time.

(Subd (c) amended effective July 1, 2010; previously amended effective January 1, 2007.)

(d) Order to show cause or alternative writ

If the court intends to determine the petition on the merits, it must issue an order to show cause or alternative writ.

(Subd (d) relettered effective July 1, 2010; adopted as subd (d) effective January 1, 2005; previously relettered as subd (e) effective January 1, 2006.)

(e) Augmenting or correcting the record in the reviewing court

(1) Except as provided in (2) and (3), rule 8.410 governs any augmentation or correction of the record.

(2) The petitioner must serve and file any request for augmentation or correction within 5 days—or, if the record exceeds 300 pages, within 7 days; or, if the record exceeds 600 pages, within 10 days—after receiving the record. A respondent must serve and file any such request within 5 days after the petition is filed or an order to show cause has issued, whichever is later.

(3) A party must attach to its motion a copy, if available, of any document or transcript that the party wants added to the record. The pages of the attachment must be consecutively numbered, beginning with the number one. If the reviewing court grants the motion, it may augment the record with the copy.

(4) If the party cannot attach a copy of the matter to be added, the party must identify it as required under rules 8.122 and 8.130.

(5) An order augmenting or correcting the record may grant no more than 15 days for compliance. The clerk and the reporter must give the order the highest priority.

(6) The clerk must certify and send any supplemental transcripts as required by rule 8.450(h). If the augmentation or correction is ordered, the time to file any petition or response is extended by the number of additional days granted to augment or correct the record.

(Subd (e) amended and relettered effective July 1, 2010; adopted as subd (e) effective January 1, 2005; previously relettered as subd (f) effective January 1, 2006; previously amended effective January 1, 2007.)

(f) Stay

The reviewing court may stay the hearing set under Welfare and Institutions Code section 366.26, but must require an exceptional showing of good cause.

(Subd (f) relettered effective July 1, 2010; adopted as subd (f) effective January 1, 2005; previously relettered as subd (g) effective January 1, 2006.)

(g) Oral argument

(1) The reviewing court must hear oral argument within 30 days after the response is filed or due to be filed, unless the court extends the time for good cause or counsel waive argument.

(2) If argument is waived, the cause is deemed submitted not later than 30 days after the response is filed or due to be filed.

(Subd (g) relettered effective July 1, 2010; adopted as subd (g) effective January 1, 2005; previously relettered as subd (h) effective January 1, 2006.)

(h) Decision

(1) Absent exceptional circumstances, the reviewing court must decide the petition on the merits by written opinion.

(2) The reviewing court clerk must promptly notify the parties of any decision and must promptly send a certified copy of any writ or order to the court named as respondent.

(3) If the writ or order stays or prohibits proceedings set to occur within 7 days or requires action within 7 days—or in any other urgent situation—the reviewing court clerk must make a reasonable effort to notify the clerk of the respondent court by telephone. The clerk of the respondent court must then notify the judge or officer most directly concerned.

(4) The reviewing court clerk need not give telephonic notice of the summary denial of a writ, unless a stay previously issued will be dissolved.

(Subd (h) relettered effective July 1, 2010; adopted as subd (h) effective January 1, 2005; relettered as subd (i) effective January 1, 2006; previously amended effective January 1, 2007.)

(i) Filing, modification, finality of decision, and remittitur

Rule 8.490 governs the filing, modification, finality of decisions, and remittitur in writ proceedings under this rule.

(Subd (i) adopted effective July 1, 2010.)

Rule 8.452 amended effective July 1, 2010; adopted as rule 38.1 effective January 1, 2005; previously amended effective January 1, 2006; previously amended and renumbered effective January 1, 2007.

Advisory Committee Comment

Subdivision (d). Subdivision (d) tracks the second sentence of former rule 39.1B(*l*). (But see *Maribel M. v. Superior Court* (1998) 61 Cal.App.4th 1469, 1471–1476.)

Subdivision (h). Subdivision (h)(1) tracks former rule 39.1B(o). (But see *Maribel M. v. Superior Court* (1998) 61 Cal.App.4th 1469, 1471–1476.)

Rule 8.454. Notice of intent to file writ petition under Welfare and Institutions Code section 366.28 to review order designating specific placement of a dependent child after termination of parental rights

(a) Application

Rules 8.454–8.456 and 8.490 govern writ petitions to review placement orders following termination of parental rights entered on or after January 1, 2005. "Posttermination placement order" as used in this rule and rule 8.456 refers to orders following termination of parental rights.

(Subd (a) amended effective July 1, 2010; previously amended effective January 1, 2007, and January 1, 2009.)

(b) Purpose

The purpose of this rule is to facilitate and implement Welfare and Institutions Code section 366.28. Delays caused by appeals from court orders designating the specific placement of a dependent child after parental rights have been terminated may cause a substantial detriment to the child.

(c) Who may file

The petitioner's trial counsel, or, in the absence of trial counsel, the party, is responsible for filing any notice of intent and writ petition under rules 8.454–8.456. Trial counsel is encouraged to seek assistance from, or consult with, attorneys experienced in writ procedure.

(Subd (c) amended effective January 1, 2008; previously amended effective January 1, 2007.)

(d) Extensions of time

The superior court may not extend any time period prescribed by rules 8.454–8.456. The reviewing court may extend any time period, but must require an exceptional showing of good cause.

(Subd (d) amended effective January 1, 2007.)

(e) Notice of intent

(1) A party seeking writ review under rules 8.454–8.456 must file in the superior court a notice of intent to file a writ petition and a request for the record.

(2) The notice must include all known dates of the hearing that resulted in the order under review.

(3) The notice must be authorized by the party intending to file the petition and signed by the party or by the attorney of record for that party.

(4) The notice must be served and filed within 7 days after the date of the posttermination placement order or, if the order was made by a referee not acting as a temporary judge, within 7 days after the referee's order becomes final under rule 5.540(c). The date of the posttermination placement order is the date on which the court states the order on the record orally or in writing, whichever first occurs.

(5) If the party was notified of the posttermination placement order only by mail, the notice of intent must be filed within 12 days after the date that the clerk mailed the notification.

(Subd (e) amended effective July 1, 2010; previously amended effective January 1, 2007.)

(f) Premature or late notice of intent to file writ petition

(1) A notice of intent to file a writ petition under Welfare and Institutions Code section 366.28 is premature if filed before a date for a postdetermination placement order has been made. The reviewing court may treat the notice as filed immediately after the postdetermination order has been made.

(2) The superior court clerk must mark a late notice of intent to file a writ petition under section 366.28 "Received [date] but not filed," notify the party that the notice was not filed because it was late, and send a copy of the marked notice to the party's counsel of record, if applicable.

(Subd (f) amended effective January 1, 2007; adopted effective January 1, 2006.)

(g) Sending the notice of intent

(1) When the notice of intent is filed, the superior court clerk must immediately mail a copy of the notice to:

(A) The attorney of record for each party;

(B) Each party, including the child if the child is 10 years of age or older;

(C) Any known sibling of the child who is the subject of the hearing if that sibling either is the subject of a dependency proceeding or has been adjudged to be a dependent child of the juvenile court as follows:

(i) If the sibling is under 10 years of age, on the sibling's attorney;

(ii) If the sibling is 10 years of age or over, on the sibling and the sibling's attorney;

(D) Any prospective adoptive parent;

(E) The child's legal guardian if any;

(F) Any person currently awarded by the juvenile court the status of the child's de facto parent;

(G) The probation officer or social worker;

(H) The child's Court Appointed Special Advocate (CASA) volunteer, if any; and

(I) If the court knows or has reason to know that an Indian child is involved, the Indian custodian, if any, and tribe of the child or the Bureau of Indian Affairs as required under Welfare and Institutions Code section 224.2.

(2) The clerk must promptly send by first-class mail or fax a copy of the notice of intent and a list of those to whom the notice of intent was sent to:

(A) The reviewing court; and

(B) The petitioner if the clerk mailed a copy of the notice of intent to the Indian custodian, tribe of the child, or the Bureau of Indian Affairs.

(3) If the party was notified of the post placement order only by mail, the clerk must include the date that the notification was mailed.

(Subd (g) amended effective July 1, 2010; adopted as subd (f) effective January 1, 2005; previously relettered effective January 1, 2006; previously amended effective January 1, 2007.)

(h) Preparing the record

When the notice of intent is filed, the superior court clerk must:

(1) Immediately notify each court reporter by telephone and in writing to prepare a reporter's transcript of the oral proceedings at each session of the hearing that resulted in the order under review and to deliver the transcript to the clerk within 12 calendar days after the notice of intent is filed; and

(2) Within 20 days after the notice of intent is filed, prepare a clerk's transcript that includes the notice of intent, proof of service, and all items listed in rule 8.404(a).

(Subd (h) amended effective July 1, 2010; adopted as subd (g) effective January 1, 2005; previously amended and relettered effective January 1, 2006; previously amended effective July 1, 2006, January 1, 2007, and January 1, 2008.)

(i) Sending the record

When the transcripts are certified as correct, the superior court clerk must immediately send:

(1) The original transcripts to the reviewing court by the most expeditious method, noting the sending date on each original; and

(2) One copy of each transcript to each counsel of record and any unrepresented party and unrepresented custodian of the dependent child by any means as fast as United States Postal Service express mail.

(Subd (i) amended effective January 1, 2007; adopted as subd (h) effective January 1, 2005; previously relettered effective January 1, 2006.)

(j) Reviewing court clerk's duties

(1) The reviewing court clerk must promptly lodge the notice of intent. When the notice is lodged, the reviewing court has jurisdiction over the writ proceedings.

(2) When the record is filed in the reviewing court, that court's clerk must immediately notify the parties, stating the date on which the 10-day period for filing the writ petition under rule 8.456(c)(1) will expire.

(Subd (j) amended effective January 1, 2007; adopted as subd (i) effective January 1, 2005; previously relettered effective January 1, 2006.)

Rule 8.454 amended effective July 1, 2010; adopted as rule 38.2 effective January 1, 2005; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2006, July 1, 2006, January 1, 2008, and January 1, 2009.

Advisory Committee Comment

Subdivision (f)(2). See rule 8.25(b)(5) for provisions concerning the timeliness of documents mailed by inmates or patients from custodial institutions.

Rule 8.456. Writ petition under Welfare and Institutions Code section 366.28 to review order designating or denying specific placement of a dependent child after termination of parental rights

(a) Petition

(1) The petition must be liberally construed and must include:

(A) The identities of the parties;

(B) The date on which the superior court made the posttermination placement order;

(C) A summary of the grounds of the petition; and

(D) The relief requested.

(2) The petition must be accompanied by a memorandum.

(Subd (a) amended effective July 1, 2010; previously amended effective January 1, 2007.)

(b) Contents of memorandum

(1) The memorandum must provide a summary of the significant facts, limited to matters in the record.

(2) The memorandum must state each point under a separate heading or subheading summarizing the point and support each point by argument and citation of authority.

(3) The memorandum must support any reference to a matter in the record by a citation to the record. The memorandum should explain the significance of any cited portion of the record and note any disputed aspects of the record.

(Subd (b) amended effective January 1, 2007.)

(c) Serving and filing the petition and response

(1) The petition must be served and filed within 10 days after the record is filed in the reviewing court. The petitioner must serve the petition on:

(A) Each attorney of record;

(B) Any unrepresented party, including the child if the child is 10 years of age or older;

(C) Any known sibling of the child who is the subject of the hearing if that sibling either is the subject of a dependency proceeding or has been adjudged to be a dependent child of the juvenile court as follows:

(i) If the sibling is under 10 years of age, on the sibling's attorney;

(ii) If the sibling is 10 years of age or over, on the sibling and the sibling's attorney;

(D) Any prospective adoptive parent;

(E) The child's Court Appointed Special Advocate (CASA) volunteer;

(F) Any person currently awarded by the juvenile court the status of the child's de facto parent; and

(G) If the court sent the notice of intent to file the writ petition to an Indian custodian, tribe, or Bureau of Indian Affairs, then to that Indian custodian, tribe, or the Bureau of Indian Affairs as required under Welfare and Institutions Code section 224.2.

(2) Any response must be served on each of the people and entities listed in (1) and filed:

(A) Within 10 days–or, if the petition was served by mail, within 15 days–after the petition is filed; or

(B) Within 10 days after a respondent receives a request from the reviewing court for a response, unless the court specifies a shorter time.

(Subd (c) amended effective July 1, 2010; previously amended effective January 1, 2006, and January 1, 2007.)

(d) Order to show cause or alternative writ

If the court intends to determine the petition on the merits, it must issue an order to show cause or alternative writ.

(Subd (d) relettered effective July 1, 2010; adopted as subd (d) effective January 1, 2005; previously relettered as subd (e) effective January 1, 2006.)

(e) Augmenting or correcting the record in the reviewing court

(1) Except as provided in (2) and (3), rule 8.410 governs augmentation or correction of the record.

(2) The petitioner must serve and file any request for augmentation or correction within 5 days—or, if the record exceeds 300 pages, within 7 days; or, if the record exceeds 600 pages, within 10 days—after receiving the record. A respondent must serve and file any such request within 5 days after the petition is filed or an order to show cause has issued, whichever is later.

(3) A party must attach to its motion a copy, if available, of any document or transcript that it wants added to the record. The pages of the attachment must be consecutively numbered, beginning with the number one. If the reviewing court grants the motion, it may augment the record with the copy.

(4) If the party cannot attach a copy of the matter to be added, the party must identify it as required under rules 8.122 and 8.130.

(5) An order augmenting or correcting the record may grant no more than 15 days for compliance. The clerk and the reporter must give the order the highest priority.

(6) The clerk must certify and send any supplemental transcripts as required by rule 8.454(i). If the augmentation or correction is ordered, the time to file any petition or response is extended by the number of additional days granted to augment or correct the record.

(Subd (e) amended and relettered effective July 1, 2010; adopted as subd (e) effective January 1, 2005; previously relettered as subd (f) effective January 1, 2006; previously amended effective January 1, 2007.)

(f) Stay

A request by petitioner for a stay of the posttermination placement order will not be granted unless the writ petition shows that implementation of the superior court's placement order pending the reviewing court's decision is likely to cause detriment to the child if the order is ultimately reversed.

(Subd (f) relettered effective July 1, 2010; adopted as subd (f) effective January 1, 2005; previously relettered as subd (g) effective January 1, 2006; previously amended effective February 24, 2006.)

(g) Oral argument

(1) The reviewing court must hear oral argument within 30 days after the response is filed or due to be filed, unless the court extends the time for good cause or counsel waive argument.

(2) If argument is waived, the cause is deemed submitted not later than 30 days after the response is filed or due to be filed.

(Subd (g) relettered effective July 1, 2010; adopted as subd (g) effective January 1, 2005; previously relettered as subd (h) effective January 1, 2006.)

(h) Decision

(1) Absent exceptional circumstances, the reviewing court must review the petition and decide it on the merits by written opinion.

(2) The reviewing court clerk must promptly notify the parties of any decision and must promptly send a certified copy of any writ or order to the court named as respondent.

(3) If the writ or order stays or requires action within 7 days—or in any other urgent situation—the reviewing court clerk must make a reasonable effort to notify the clerk of the respondent court by telephone. The clerk of the respondent court must then notify the judge or officer most directly concerned.

(4) The reviewing court clerk need not give telephonic notice of the summary denial of a writ, unless a stay previously issued and will be dissolved.

(5) Rule 8.490 governs the filing, modification, finality of decisions, and remittitur in writ proceedings under this rule.

(Subd (h) amended and relettered effective July 1, 2010; adopted as subd (h) effective January 1, 2005; previously relettered as subd (i) effective January 1, 2006; previously amended effective January 1, 2007.)

(i) Right to appeal other orders

This section does not affect the right of a parent, a legal guardian, or the child to appeal any order that is otherwise appealable and that is issued at a hearing held under Welfare and Institutions Code section 366.26.

(Subd (i) relettered effective July 1, 2010; adopted as subd (i) effective January 1, 2005; previously relettered as subd (j) effective January 1, 2006; previously amended effective January 1, 2007.)

Rule 8.456 amended effective July 1, 2010; adopted as rule 38.3 effective January 1, 2005; previously amended effective January 1, 2006, and February 24, 2006; previously amended and renumbered effective January 1, 2007.

Article 4. Hearing and Decision

Division 1, Rules Relating to the Supreme Court and Courts of Appeal—Chapter 5, Juvenile Appeals and Writs—Article 4, Hearing and Decision, renumbered effective January 1, 2011.

Rule 8.470. Hearing and decision in the Court of Appeal
Rule 8.472. Hearing and decision in the Supreme Court
Rule 8.474. Procedures and data

Rule 8.470. Hearing and decision in the Court of Appeal

Except as provided in rules 8.400–8.456, rules 8.252–8.272 govern hearing and decision in the Court of Appeal in juvenile cases.

Rule 8.470 amended and renumbered effective January 1, 2007; adopted as rule 38.4 effective January 1, 2005; previously amended effective July 1, 2005.

Rule 8.472. Hearing and decision in the Supreme Court

Rules 8.500–8.552 govern hearing and decision in the Supreme Court in juvenile cases.

Rule 8.472 amended and renumbered effective January 1, 2007; adopted as rule 38.5 effective January 1, 2005; previously amended effective July 1, 2005.

Rule 8.474. Procedures and data

(a) Procedures

The judges and clerks of the superior courts and the reviewing courts must adopt procedures to identify the records and expedite the processing of all appeals and writs in juvenile cases.

(b) Data

The clerks of the superior courts and the reviewing courts must the provide data required to assist the Judicial Council in evaluating the effectiveness of the rules governing appeals and writs in juvenile cases.

Rule 8.474 renumbered effective January 1, 2007; adopted as rule 38.6 effective January 1, 2005.

Chapter 6. Conservatorship Appeals

Rule 8.480. Appeal from order establishing conservatorship
Rule 8.482. Appeal from judgment authorizing conservator to consent to sterilization of conservatee

Rule 8.480. Appeal from order establishing conservatorship

(a) Application

Except as otherwise provided in this rule, rules 8.304–8.368 and 8.508 govern appeals from orders establishing conservatorships under Welfare and Institutions Code section 5350 et seq.

(Subd (a) amended effective January 1, 2007.)

(b) Clerk's transcript

The clerk's transcript must contain:

(1) The petition;

(2) Any demurrer or other plea;

(3) Any written motion with supporting and opposing memoranda and attachments;

(4) Any filed medical or social worker reports;

(5) All court minutes;

(6) All instructions submitted in writing, each noting the party requesting it;

(7) Any verdict;

(8) Any written opinion of the court;

(9) The judgment or order appealed from;

(10) The notice of appeal; and

(11) Any application for additional record and any order on the application.

(Subd (b) amended effective January 1, 2007.)

(c) Reporter's transcript

The reporter's transcript must contain all oral proceedings, excluding the voir dire examination of jurors and any opening statement.

(d) Sending the record

The clerk must not send a copy of the record to the Attorney General or the district attorney unless that office represents a party.

(e) Briefs

The parties must not serve copies of their briefs:

(1) On the Attorney General or the district attorney, unless that office represents a party; or

(2) On the Supreme Court under rule 8.44(b)(1).

(Subd (e) amended effective January 1, 2007.)

Rule 8.480 amended and renumbered effective January 1, 2007; repealed and adopted as rule 39 effective January 1, 2005.

Rule 8.482. Appeal from judgment authorizing conservator to consent to sterilization of conservatee

(a) Application

Except as otherwise provided in this rule, rules 8.304–8.368 and 8.508 govern appeals from judgments authorizing a conservator to consent to the sterilization of a developmentally disabled adult conservatee.

(Subd (a) amended effective January 1, 2007.)

(b) When appeal is taken automatically

An appeal from a judgment authorizing a conservator to consent to the sterilization of a developmentally disabled adult conservatee is taken automatically, without any action by the conservatee, when the judgment is rendered.

(c) Superior court clerk's duties

After entering the judgment, the clerk must immediately:

(1) Begin preparing a clerk's transcript and notify the reporter to prepare a reporter's transcript; and

(2) Mail certified copies of the judgment to the Court of Appeal and the Attorney General.

(Subd (c) amended effective January 1, 2007.)

(d) Clerk's transcript

The clerk's transcript must contain:

(1) The petition and notice of hearing;

(2) All court minutes;

(3) Any application, motion, or notice of motion, with supporting and opposing memoranda and attachments;

(4) Any report or other document submitted to the court;

(5) Any transcript of a proceeding pertaining to the case;

(6) The statement of decision; and

(7) The judgment or order appealed from.

(Subd (d) amended effective January 1, 2007.)

(e) Reporter's transcript

The reporter's transcript must contain all oral proceedings, including:

(1) All proceedings at the hearing on the petition, with opening statements and closing arguments;

(2) All proceedings on motions;

(3) Any comments on the evidence by the court; and

(4) Any oral opinion or oral statement of decision.

(Subd (e) amended effective January 1, 2007.)

(f) Preparing and sending transcripts

(1) The clerk and the reporter must prepare and send an original and two copies of each of the transcripts as provided in rule 8.336.

(2) Probate Code section 1963 governs the cost of preparing the record on appeal.

(Subd (f) amended effective January 1, 2007.)

(g) Confidential material

(1) Written reports of physicians, psychologists, and clinical social workers, and any other matter marked confidential by the court, may be inspected only by court personnel, the parties and their counsel, the district appellate project, and other persons designated by the court.

(2) Material under (1) must be sent to the reviewing court in a sealed envelope marked "CONFIDENTIAL—MAY NOT BE EXAMINED WITHOUT COURT ORDER."

(h) Trial counsel's continuing representation

To expedite preparation and certification of the record, the conservatee's trial counsel must continue to represent the conservatee until appellate counsel is retained or appointed.

(i) Appointment of appellate counsel

If appellate counsel has not been retained for the conservatee, the reviewing court must appoint such counsel.

Rule 8.482 amended and renumbered effective January 1, 2007; repealed and adopted as rule 39.1 effective January 1, 2005.

Chapter 7. Writs of Mandate, Certiorari, and Prohibition in the Supreme Court and Court of Appeal

Title 8, Appellate Rules—Division 1, Rules Relating to the Supreme Court and Courts of Appeal—Chapter 7, Writs of Mandate, Certiorari, and Prohibition in the Supreme Court and Court of Appeal adopted effective January 1, 2009.

Rule 8.485 Application
Rule 8.486. Petitions
Rule 8.487. Opposition and Attorney General amicus briefs
Rule 8.488. Certificate of Interested Entities or Persons
Rule 8.489. Notice to trial court
Rule 8.490. Filing, finality, and modification of decisions; remittitur
Rule 8.491. Responsive pleading under Code of Civil Procedure section 418.10
Rule 8.492. Sanctions
Rule 8.493. Costs

Rule 8.485 Application

(a) Writ proceedings governed

Except as provided in (b), the rules in this chapter govern petitions to the Supreme Court and Court of Appeal for writs of mandate, certiorari, or prohibition, or other writs within the original jurisdiction of these courts. In all respects not provided for in these rules, rule 8.204 governs the form and content of documents in the proceedings governed by this chapter.

(b) Writ proceedings not governed

These rules do not apply to petitions for writs of mandate, certiorari, or prohibition in the appellate division of the superior court under rules 8.930–8.936, petitions for writs of supersedeas under rule 8.116, petitions for writs of habeas corpus except as provided in rule 8.384, or petitions for writs of review under rules 8.495–8.498.

Rule 8.485 adopted effective January 1, 2009.

Rule 8.486. Petitions

(a) Contents of petition

(1) If the petition could have been filed first in a lower court, it must explain why the reviewing court should issue the writ as an original matter.

(2) If the petition names as respondent a judge, court, board, or other officer acting in a public capacity, it must disclose the name of any real party in interest.

(3) If the petition seeks review of trial court proceedings that are also the subject of a pending appeal, the notice "Related Appeal Pending" must appear on the cover of the petition and the first paragraph of the petition must state:

(A) The appeal's title, trial court docket number, and any reviewing court docket number; and

(B) If the petition is filed under Penal Code section 1238.5, the date the notice of appeal was filed.

(4) The petition must be verified.

(5) The petition must be accompanied by a memorandum, which need not repeat facts alleged in the petition.

(6) Rule 8.204(c) governs the length of the petition and memorandum, but, in addition to the exclusions provided in that rule, the verification and any supporting documents are excluded from the limits stated in rule 8.204(c)(1) and (2).

(7) If the petition requests a temporary stay, it must comply with the following or the reviewing court may decline to consider the request for a temporary stay:

(A) The petition must explain the urgency.

(B) The cover of the petition must prominently display the notice "STAY REQUESTED" and identify the nature and date of the proceeding or act sought to be stayed.

(C) The trial court and department involved and the name and telephone number of the trial judge whose order the request seeks to stay must appear either on the cover or at the beginning of the text.

(Subd (a) amended effective January 1, 2011; adopted as subd (b); previously amended effective January 1, 2006, and January 1, 2007; previously amended and relettered effective January 1, 2009.)

(b) Contents of supporting documents

(1) A petition that seeks review of a trial court ruling must be accompanied by an adequate record, including copies of:

(A) The ruling from which the petition seeks relief;

(B) All documents and exhibits submitted to the trial court supporting and opposing the petitioner's position;

(C) Any other documents or portions of documents submitted to the trial court that are necessary for a complete understanding of the case and the ruling under review; and

(D) A reporter's transcript of the oral proceedings that resulted in the ruling under review.

(2) In exigent circumstances, the petition may be filed without the documents required by (1)(A)–(C) if counsel or, if the petitioner is unrepresented, the petitioner files a declaration that explains the urgency and the circumstances making the documents unavailable and fairly summarizes their substance.

(3) If a transcript under (1)(D) is unavailable, the record must include a declaration by counsel or, if the petitioner is unrepresented, the petitioner:

(A) Explaining why the transcript is unavailable and fairly summarizing the proceedings, including the parties' arguments and any statement by the court supporting its ruling. This declaration may omit a full summary of the proceedings if part of the relief sought is an order to prepare a transcript for use by an indigent criminal defendant in support of the petition and if the declaration demonstrates the petitioner's need for and entitlement to the transcript; or

(B) Stating that the transcript has been ordered, the date it was ordered, and the date it is expected to be filed, which must be a date before any action requested of the reviewing court other than issuance of a temporary stay supported by other parts of the record.

(4) If the petitioner does not submit the required record or explanations or does not present facts sufficient to excuse the failure to submit them, the court may summarily deny a stay request, the petition, or both.

(Subd (b) amended effective July 1, 2009; adopted as subd (c); previously amended effective January 1, 2006, July 1, 2006, and January 1, 2007; previously amended and relettered effective January 1, 2009.)

(c) Form of supporting documents

(1) Documents submitted under (b) must comply with the following requirements:

(A) They must be bound together at the end of the petition or in separate volumes not exceeding 300 pages each. The pages must be consecutively numbered.

(B) They must be index-tabbed by number or letter.

(C) They must begin with a table of contents listing each document by its title and its index-tab number or letter. If a document has attachments, the table of contents must give the title of each attachment and a brief description of its contents.

(2) The clerk must file any supporting documents not complying with (1), but the court may notify the petitioner that it may strike or summarily deny the petition if the documents are not brought into compliance within a stated reasonable time of not less than 5 days.

(3) Rule 8.44(a) governs the number of copies of supporting documents to be filed in the Supreme Court. Rule 8.44(b) governs the number of supporting documents to be filed in the Court of Appeal.

(Subd (c) amended and relettered effective January 1, 2009; adopted as subd (d); previously amended effective January 1, 2006, and January 1, 2007.)

(d) Sealed records

Rule 8.46 applies if a party seeks to lodge or file a sealed record or to unseal a record.

(Subd (d) amended effective January 1, 2011; adopted as subd (e); previously amended effective January 1, 2007; previously relettered effective January 1, 2009.)

(e) Service

(1) If the respondent is the superior court or a judge of that court, the petition and one set of supporting documents must be served on any named real party in interest, but only the petition must be served on the respondent.

(2) If the respondent is not the superior court or a judge of that court, both the petition and one set of supporting documents must be served on the respondent and on any named real party in interest.

(3) In addition to complying with the requirements of rule 8.25, the proof of service must give the telephone number of each attorney served.

(4) The petition must be served on a public officer or agency when required by statute or rule 8.29.

(5) The clerk must file the petition even if its proof of service is defective, but if the petitioner fails to file a corrected proof of service within 5 days after the clerk gives notice of the defect the court may strike the petition or impose a lesser sanction.

(6) The court may allow the petition to be filed without proof of service.

(Subd (e) relettered effective January 1, 2009; adopted as subd (f); previously amended effective January 1, 2007.)

Rule 8.486 amended effective January 1, 2011; repealed and adopted as rule 56 effective January 1, 2005; previously amended and renumbered as rule 8.490 effective January 1, 2007, and as rule 8.486 effective January 1, 2009; previously amended effective July 1, 2005, January 1, 2006, July 1, 2006, January 1, 2008, and July 1, 2009.

Advisory Committee Comment

Subdivision (a). Because of the importance of the point, rule 8.486(a)(6) explicitly states that the provisions of rule 8.204(c)—and hence the word-count limits imposed by that rule—apply to a petition for original writ.

Subdivision (e). Rule 8.25, which generally governs service and filing in reviewing courts, also applies to the original proceedings covered by this rule.

Rule 8.487. Opposition and Attorney General amicus briefs

(a) Preliminary opposition

(1) Within 10 days after the petition is filed, the respondent or any real party in interest, separately or jointly, may serve and file a preliminary opposition.

(2) A preliminary opposition must contain a memorandum and a statement of any material fact not included in the petition.

(3) Within 10 days after a preliminary opposition is filed, the petitioner may serve and file a reply.

(4) Without requesting preliminary opposition or waiting for a reply, the court may grant or deny a request for temporary stay, deny the petition, issue an alternative writ or order to show cause, or notify the parties that it is considering issuing a peremptory writ in the first instance.

(b) Return or opposition; reply

(1) If the court issues an alternative writ or order to show cause, the respondent or any real party in interest, separately or jointly, may serve and file a return by demurrer, verified answer, or both. If the court notifies the parties that it is considering issuing a peremptory writ in the first instance, the respondent or any real party in interest may serve and file an opposition.

(2) Unless the court orders otherwise, the return or opposition must be served and filed within 30 days after the court issues the alternative writ or order to show cause or notifies the parties that it is considering issuing a peremptory writ in the first instance.

(3) Unless the court orders otherwise, the petitioner may serve and file a reply within 15 days after the return or opposition is filed.

(4) If the return is by demurrer alone and the demurrer is not sustained, the court may issue the peremptory writ without granting leave to answer.

(c) Attorney General's amicus curiae brief

(1) If the court issues an alternative writ or order to show cause, the Attorney General may file an amicus curiae brief without the permission of the Chief Justice or presiding justice, unless the brief is submitted on behalf of another state officer or agency.

(2) The Attorney General must serve and file the brief within 14 days after the return is filed or, if no return is filed, within 14 days after the date it was due.

(3) The brief must provide the information required by rule 8.200(c)(2) and comply with rule 8.200(c)(4).

(4) Any party may serve and file an answer within 14 days after the brief is filed.

Rule 8.487 adopted effective January 1, 2009.

Advisory Committee Comment

Subdivision (a). Consistent with practice, rule 8.487 draws a distinction between a "preliminary opposition," which the respondent or a real party in interest may file before the court takes any action on the petition ((a)(1)), and a more formal "opposition," which the respondent or a real party in interest may file if the court notifies the parties that it is considering issuing a peremptory writ in the first instance ((b)(1)).

Subdivision (a)(1) allows the respondent or any real party in interest to serve and file a preliminary opposition within 10 days after the petition is filed. The reviewing court retains the power to act in any case without obtaining preliminary opposition ((a)(4)).

Subdivision (a)(3) allows a petitioner to serve and file a reply within 10 days after a preliminary opposition is filed. To permit prompt action in urgent cases, however, the provision recognizes that the reviewing court may act on the petition without waiting for a reply.

Subdivision (a)(4) recognizes that the reviewing court may "grant or deny a request for temporary stay" without requesting preliminary opposition or waiting for a reply.

The several references in rule 8.487 to the power of the court to issue a peremptory writ in the first instance after notifying the parties that it is considering doing so ((a)–(b)) implement the rule of *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171.

Subdivision (b). Subdivision (b)(2) requires that the return or opposition be served and filed within 30 days after the court issues the alternative writ or order to show cause or notifies the parties that it is

considering issuing a peremptory writ in the first instance. To permit prompt action in urgent cases, however, the provision recognizes that the reviewing court may order otherwise.

Subdivision (b)(3) formalizes the common practice of permitting petitioners to file replies to returns and specifies that such a reply must be served and filed within 15 days after the return is filed. To permit prompt action in urgent cases, however, the provision recognizes that the reviewing court may order otherwise.

Rule 8.488. Certificate of Interested Entities or Persons

(a) Application

This rule applies in writ proceedings in criminal cases in which an entity is the defendant and in civil cases other than family, juvenile, guardianship, and conservatorship cases.

(b) Compliance with rule 8.208

Each party in a civil case and any entity that is a defendant in a criminal case must comply with the requirements of rule 8.208 concerning serving and filing a certificate of interested entities or persons.

(c) Placement of certificates

(1) The petitioner's certificate must be included in the petition.

(2) The certificates of the respondent and real party in interest must be included in their preliminary opposition or, if no such opposition is filed, in their return, if any.

(3) The certificate must appear after the cover and before the tables.

(4) If the identity of any party has not been publicly disclosed in the proceedings, the party may file an application for permission to file its certificate under seal separately from the petition, preliminary opposition, or return.

(d) Failure to file a certificate

(1) If a party fails to file a certificate as required under (b) and (c), the clerk must notify the party by mail that the party must file the certificate within 10 days after the clerk's notice is mailed and that if the party fails to comply, the court may impose one of the following sanctions:

(A) If the party is the petitioner, the court may strike the petition; or

(B) If the party is the respondent or the real party in interest, the court may strike that party's document.

(2) If the party fails to file the certificate as specified in the notice under (1), the court may impose the sanctions specified in the notice.

Rule 8.488 adopted effective January 1, 2009.

Advisory Committee Comment

The Judicial Council has adopted an optional form, *Certificate of Interested Entities or Persons* (form APP-008), that can be used to file the certificate required by this provision.

Subdivision (a). Under rule 8.208(c), for purposes of certificates of interested entities or persons, an "entity" means a corporation, a partnership, a firm, or any other association, but does not include a governmental entity or its agencies or a natural person.

Rule 8.489. Notice to trial court

(a) Notice if writ issues

If a writ or order issues directed to any judge, court, board, or other officer, the reviewing court clerk must promptly send a certified copy of the writ or order to the person or entity to whom it is addressed.

(b) Notice by telephone

(1) If the writ or order stays or prohibits proceedings set to occur within 7 days or requires action within 7 days—or in any other urgent situation—the reviewing court clerk must make a reasonable effort to notify the clerk of the respondent court by telephone. The clerk of the respondent court must then notify the judge or officer most directly concerned.

(2) The clerk need not give telephonic notice of the summary denial of a writ, whether or not a stay previously issued.

Rule 8.489 adopted effective January 1, 2009.

Rule 8.490. Filing, finality, and modification of decisions; remittitur

(a) Filing and modification of decisions

Rule 8.264(a) and (c) govern the filing and modification of decisions in writ proceedings.

(b) Finality of decision

(1) The denial of a petition for a writ within the court's original jurisdiction without issuance of an alternative writ or order to show cause is final in that court when filed.

(2) Except as otherwise provided in this rule, a decision in a writ proceeding is final 30 days after the decision is filed.

(3) If necessary to prevent mootness or frustration of the relief granted or to otherwise promote the interests of justice, the court may order early finality in that court of a decision granting a petition for a writ within its original jurisdiction or denying such a petition after issuing an alternative writ or order to show cause. The decision may provide for finality in that court on filing or within a stated period of less than 30 days.

(4) If a Court of Appeal certifies its opinion for publication or partial publication after filing its decision and before its decision becomes final in that court, the finality period runs from the filing date of the order for publication.

(5) If an order modifying an opinion changes the appellate judgment, the finality period runs from the filing date of the modification order.

(c) Remittitur

A Court of Appeal must issue a remittitur in a writ proceeding under this chapter except when the court denies the petition without issuing an alternative writ or order to show cause. Rule 8.272(b)–(d) governs issuance of a remittitur by a Court of Appeal in writ proceedings under this chapter.

Rule 8.490 adopted effective January 1, 2009.

Advisory Committee Comment

Subdivision (b). This provision addresses the finality of decisions in proceedings relating to writs of mandate, certiorari, and prohibition. See rule 8.264(b) for provisions addressing the finality of decisions in proceedings under chapter 2, relating to civil appeals, and rule 8.366 for provisions addressing the finality of decisions in proceedings under chapter 3, relating to criminal appeals.

Rule 8.491. Responsive pleading under Code of Civil Procedure section 418.10

If the Court of Appeal denies a petition for writ of mandate brought under Code of Civil Procedure section 418.10(c) and the Supreme Court denies review of the Court of Appeal's decision, the time to file a responsive pleading in the trial court is extended until 10 days after the Supreme Court files its order denying review.

Rule 8.491 adopted effective January 1, 2009.

Rule 8.492. Sanctions

(a) Grounds for sanctions

On motion of a party or its own motion, a Court of Appeal may impose sanctions, including the award or denial of costs under rule 8.493, on a party or an attorney for:

(1) Filing a frivolous petition or filing a petition solely to cause delay; or

(2) Committing any other unreasonable violation of these rules.

(b) Notice

The court must give notice in writing if it is considering imposing sanctions.

(c) Opposition

Within 10 days after the court sends such notice, a party or attorney may serve and file an opposition, but failure to do so will not be deemed consent. An opposition may not be filed unless the court sends such notice.

(d) Oral argument

Unless otherwise ordered, oral argument on the issue of sanctions must be combined with any oral argument on the merits of the petition.

Rule 8.492 adopted effective January 1, 2009.

Rule 8.493. Costs

(a) Award of costs

(1) Except in a criminal or juvenile or other proceeding in which a party is entitled to court-appointed counsel:

(A) Unless otherwise ordered by the court under (B), the prevailing party in an original proceeding is entitled to costs if the court resolves the proceeding by written opinion after issuing an alternative writ, an order to show cause, or a peremptory writ in the first instance.

(B) In the interests of justice, the court may also award or deny costs as it deems proper in the proceedings listed in (A) and in other circumstances.

(2) The opinion or order resolving the proceeding must specify the award or denial of costs.

(b) Procedures for recovering costs

Rule 8.278(b)–(d) governs the procedure for recovering costs under this rule.

Rule 8.493 adopted effective January 1, 2009.

Chapter 8. Miscellaneous Writs of Review

Title 8, Appellate Rules—Division 1, Rules Relating to the Supreme Court and Courts of Appeal—Chapter 8, Miscellaneous Writs of Review amended and renumbered effective January 1, 2009; adopted as chapter 7 effective January 1, 2007.

Rule 8.495. Review of Workers' Compensation Appeals Board cases
Rule 8.496. Review of Public Utilities Commission cases
Rule 8.498. Review of Agricultural Labor Relations Board and Public Employment Relations Board cases
Rule 8.499. Filing, modification, and finality of decision; remittitur

Rule 8.495. Review of Workers' Compensation Appeals Board cases

(a) Petition

(1) A petition to review an order, award, or decision of the Workers' Compensation Appeals Board must include:

(A) The order, award, or decision to be reviewed; and

(B) The workers' compensation judge's minutes of hearing and summary of evidence, findings and opinion on decision, and report and recommendation on the petition for reconsideration.

(2) If the petition claims that the board's ruling is not supported by substantial evidence, it must fairly state and attach copies of all the relevant material evidence.

(3) The petition must be accompanied by proof of service of two copies of the petition on the Secretary of the Workers' Compensation Appeals Board in San Francisco and one copy on each party who appeared in the action and whose interest is adverse to the petitioner. Service on the board's local district office is not required.

(Subd (a) amended effective January 1, 2007.)

(b) Answer and reply

(1) Within 25 days after the petition is filed, the board or any real party in interest may serve and file an answer and any relevant exhibits not included in the petition.

(2) Within 15 days after an answer is filed, the petitioner may serve and file a reply.

(c) Certificate of Interested Entities or Persons

(1) Each party other than the board must comply with the requirements of rule 8.208 concerning serving and filing a Certificate of Interested Entities or Persons.

(2) The petitioner's certificate must be included in the petition and the real party in interest's certificate must be included in the answer. The certificate must appear after the cover and before the tables.

(3) If a party fails to file a certificate as required under (1) and (2), the clerk must notify the party by mail that the party must file the certificate within 10 days after the clerk's notice is mailed and that failure to comply will result in one of the following sanctions:

(A) If the party is the petitioner, the court will strike the petition; or

(B) If the party is the real party in interest, the court will strike the document.

(4) If the party fails to comply with the notice under (3), the court may impose the sanctions specified in the notice.

(Subd (c) amended effective January 1, 2007; adopted effective July 1, 2006.)

Rule 8.495 renumbered effective January 1, 2009; repealed and adopted as rule 57 effective January 1, 2005; previously amended effective July 1, 2006; previously amended and renumbered as rule 8.494 effective January 1, 2007.

Advisory Committee Comment

Subdivision (a). Subdivision (a)(3) specifies that the petition must be served on the Secretary of the Workers' Compensation Appeals Board in San Francisco. Neither the petition nor a courtesy copy should be served on the local district office of the board.

Subdivision (b). To clarify that a respondent may rely on exhibits filed with the petition without duplicating them in the answer, (b)(1) specifies that exhibits filed with an answer must be limited to exhibits "not included in the petition."

Rule 8.496. Review of Public Utilities Commission cases

(a) Petition

(1) A petition to review an order or decision of the Public Utilities Commission must be verified and must be served on the executive director and general counsel of the commission and any real parties in interest.

(2) A real party in interest is one who was a party of record to the proceeding and took a position adverse to the petitioner.

(b) Answer and reply

(1) Within 35 days after the petition is filed, the commission or any real party in interest may serve and file an answer.

(2) Within 25 days after an answer is filed, the petitioner may serve and file a reply.

(c) Certificate of Interested Entities or Persons

(1) Each party other than the commission must comply with the requirements of rule 8.208 concerning serving and filing a Certificate of Interested Entities or Persons.

(2) The petitioner's certificate must be included in the petition and the real party in interest's certificate must be included in the answer. The certificate must appear after the cover and before the tables.

(3) If a party fails to file a certificate as required under (1) and (2), the clerk must notify the party by mail that the party must file the certificate within 10 days after the clerk's notice is mailed and that failure to comply will result in one of the following sanctions:

(A) If the party is the petitioner, the court will strike the petition; or

(B) If the party is the real party in interest, the court will strike the document.

(4) If the party fails to comply with the notice under (3), the court may impose the sanctions specified in the notice.

(Subd (c) amended effective January 1, 2007; adopted effective July 1, 2006.)

Rule 8.496 amended and renumbered effective January 1, 2007; repealed and adopted as rule 58 effective January 1, 2005; previously amended effective July 1, 2006.

Rule 8.498. Review of Agricultural Labor Relations Board and Public Employment Relations Board cases

(a) Petition

(1) A petition to review an order or decision of the Agricultural Labor Relations Board or the Public Employment Relations Board must be filed in the Court of Appeal and served on the executive secretary of the Agricultural Labor Relations Board or the general counsel of the Public Employment Relations Board in Sacramento and on any real parties in interest.

(2) A real party in interest is a party of record to the proceeding.

(3) The petition must be verified.

(b) Record

Within the time permitted by statute, the board must file the certified record of the proceedings and simultaneously file and serve on all parties an index to that record.

(c) Briefs

(1) The petitioner must serve and file its brief within 35 days after the index is filed.

(2) Within 35 days after the petitioner's brief is filed, the board must—and any real party in interest may—serve and file a respondent's brief.

(3) Within 25 days after the respondent's brief is filed, the petitioner may serve and file a reply brief.

(d) Certificate of Interested Entities or Persons

(1) Each party other than the board must comply with the requirements of rule 8.208 concerning serving and filing a Certificate of Interested Entities or Persons.

(2) The petitioner's certificate must be included in the petition and the real party in interest's certificate must be included in the answer. The certificate must appear after the cover and before the tables.

(3) If a party fails to file a certificate as required under (1) and (2), the clerk must notify the party by mail that the party must file the certificate within 10 days after the clerk's notice is mailed and that failure to comply will result in one of the following sanctions:

(A) If the party is the petitioner, the court will strike the petition; or

(B) If the party is the real party in interest, the court will strike the document.

(4) If the party fails to comply with the notice under (3), the court may impose the sanctions specified in the notice.

(Subd (d) amended effective January 1, 2007; adopted effective July 1, 2006.)

Rule 8.498 amended and renumbered effective January 1, 2007; repealed and adopted as rule 59 effective January 1, 2005; previously amended effective July 1, 2006.

Rule 8.499. Filing, modification, and finality of decision; remittitur

(a) Filing of decisions

Rule 8.264(a) governs the filing of decisions in writ proceedings under this chapter in the Court of Appeal and rule 8.532(a) governs the filing of decisions in the Supreme Court.

(Subd (a) adopted effective January 1, 2011.)

(b) Modification of decisions

Rule 8.264(c) governs the modification of decisions in writ proceedings under this chapter.

(Subd (b) adopted effective January 1, 2011.)

(c) Finality of decision

(1) A court's denial of a petition for a writ under this chapter without issuance of a writ of review is final in that court when filed.

(2) Except as otherwise provided in this rule, a decision in a writ proceeding under this chapter is final in that court 30 days after the decision is filed.

(3) If necessary to prevent mootness or frustration of the relief granted or to otherwise promote the interests of justice, the court may order early finality in that court of a decision granting a petition for a writ under this chapter or denying such a petition after issuing a writ of review. The decision may provide for finality in that court on filing or within a stated period of less than 30 days.

(4) If a Court of Appeal certifies its opinion for publication or partial publication after filing its decision and before its decision becomes final in that court, the finality period runs from the filing date of the order for publication.

(5) If an order modifying an opinion changes the appellate judgment, the finality period runs from the filing date of the modification order.

(Subd (c) adopted effective January 1, 2011.)

(d) Remittitur

A Court of Appeal must issue a remittitur in a writ proceeding under this chapter except when the court denies the petition without issuing a writ of review. Rule 8.272(b)–(d) governs issuance of a remittitur in writ proceedings under this chapter.

(Subd (d) lettered and amended effective January 1, 2011; adopted as unlettered subd.)

Rule 8.499 amended effective January 1, 2011; adopted effective January 1, 2008.

Chapter 9. Proceedings in the Supreme Court

Title 8, Appellate Rules—Division 1, Rules Relating to the Supreme Court and Courts of Appeal—Chapter 9, Proceedings in the Supreme Court renumbered effective January 1, 2009; adopted as chapter 8 effective January 1, 2007.

Rule 8.500. Petition for review
Rule 8.504. Form and contents of petition, answer, and reply
Rule 8.508. Petition for review to exhaust state remedies
Rule 8.512. Ordering review
Rule 8.516. Issues on review
Rule 8.520. Briefs by parties and amici curiae; judicial notice
Rule 8.524. Oral argument and submission of the cause
Rule 8.528. Disposition
Rule 8.532. Filing, finality, and modification of decision
Rule 8.536. Rehearing
Rule 8.540. Remittitur
Rule 8.544. Costs and sanctions
Rule 8.548. Decision on request of a court of another jurisdiction
Rule 8.552. Transfer for decision

Rule 8.500. Petition for review

(a) Right to file a petition, answer, or reply

(1) A party may file a petition in the Supreme Court for review of any decision of the Court of Appeal, including any interlocutory order, except the denial of a transfer of a case within the appellate jurisdiction of the superior court.

(2) A party may file an answer responding to the issues raised in the petition. In the answer, the party may ask the court to address additional issues if it grants review.

(3) The petitioner may file a reply to the answer.

(Subd (a) amended effective January 1, 2004.)

(b) Grounds for review

The Supreme Court may order review of a Court of Appeal decision:

(1) When necessary to secure uniformity of decision or to settle an important question of law;

(2) When the Court of Appeal lacked jurisdiction;

(3) When the Court of Appeal decision lacked the concurrence of sufficient qualified justices; or

(4) For the purpose of transferring the matter to the Court of Appeal for such proceedings as the Supreme Court may order.

(Subd (b) amended effective January 1, 2007.)

(c) Limits of review

(1) As a policy matter, on petition for review the Supreme Court normally will not consider an issue that the petitioner failed to timely raise in the Court of Appeal.

(2) A party may petition for review without petitioning for rehearing in the Court of Appeal, but as a policy matter the Supreme Court normally will accept the Court of Appeal opinion's statement of the issues and facts unless the party has called the Court of Appeal's attention to any alleged omission or misstatement of an issue or fact in a petition for rehearing.

(d) Petitions in nonconsolidated proceedings

If the Court of Appeal decides an appeal and denies a related petition for writ of habeas corpus without issuing an order to show cause and without formally consolidating the two proceedings, a party seeking review of both decisions must file a separate petition for review in each proceeding.

(e) Time to serve and file

(1) A petition for review must be served and filed within 10 days after the Court of Appeal decision is final in that court. For purposes of this rule, the date of finality is not extended if it falls on a day on which the clerk's office is closed.

(2) The time to file a petition for review may not be extended, but the Chief Justice may relieve a party from a failure to file a timely petition for review if the time for the court to order review on its own motion has not expired.

(3) If a petition for review is presented for filing before the Court of Appeal decision is final in that court, the Supreme Court clerk must accept it and file it on the day after finality.

(4) Any answer to the petition must be served and filed within 20 days after the petition is filed.

(5) Any reply to the answer must be served and filed within 10 days after the answer is filed.

(Subd (e) amended effective January 1, 2009; previously amended effective January 1, 2007.)

(f) Additional requirements

(1) The petition must also be served on the superior court clerk and the Court of Appeal clerk.

(2) A copy of each brief must be served on a public officer or agency when required by statute or by rule 8.29.

(3) The Supreme Court clerk must file the petition even if its proof of service is defective, but if the petitioner fails to file a corrected proof of service within 5 days after the clerk gives notice of the defect the court may strike the petition or impose a lesser sanction.

(Subd (f) amended effective January 1, 2007; previously amended effective January 1, 2004.)

(g) Amicus curiae letters

(1) Any person or entity wanting to support or oppose a petition for review or for an original writ must serve on all parties and send to the Supreme Court an amicus curiae letter rather than a brief.

(2) The letter must describe the interest of the amicus curiae. Any matter attached to the letter or incorporated by reference must comply with rule 8.504(e).

(3) Receipt of the letter does not constitute leave to file an amicus curiae brief on the merits under rule 8.520(f).

(Subd (g) amended effective January 1,2007; previously amended effective July 1, 2004.)

Rule 8.500 amended effective January 1, 2009; repealed and adopted as rule 28 effective January 1, 2003; previously amended effective January 1, 2004, and July 1, 2004; previously amended and renumbered effective January 1, 2007.

Advisory Committee Comment

Subdivision (a). Subdivision (a)(1) makes it clear that any interlocutory order of the Court of Appeal—such as an order denying an application to appoint counsel, to augment the record, or to allow oral argument—is a "decision" that may be challenged by petition for review.

Subdivision (e). Subdivision (e)(1) provides that a petition for review must be served and filed within 10 days after the Court of Appeal decision is *final in that court*. Finality in the Court of Appeal is generally governed by rules 8.264(b) (civil appeals), 8.366(b) (criminal appeals), 8.387(b) (habeas corpus proceedings), and 8.490(b) (proceedings for writs of mandate, certiorari, and prohibition). These rules declare the general rule that a Court of Appeal decision is final in that court 30 days after filing. They then carve out specific exceptions—decisions that they declare to be final immediately on filing (see rules 8.264(b)(2), 8.366(b)(2), and 8.490(b)(1)). The plain implication is that all other Court of Appeal orders—specifically, interlocutory orders that may be the subject of a petition for review—are *not* final on filing. This implication is confirmed by current practice, in which parties may be allowed to apply for—and the Courts of Appeal may grant—reconsideration of such interlocutory orders; reconsideration, of course, would be impermissible if the orders were in fact final on filing.

Contrary to paragraph (2) of subdivision (e), paragraphs (4) and (5) do not prohibit extending the time to file an answer or reply; because the subdivision thus expressly forbids an extension of time only with respect to the petition for review, by clear negative implication it permits an application to extend the time to file an answer or reply under rule 8.50.

See rule 8.25(b)(5) for provisions concerning the timeliness of documents mailed by inmates or patients from custodial institutions.

Subdivision (f). The general requirements relating to service of documents in the appellate courts are established by rule 8.25. Subdivision (f)(1) requires that the petition (but not an answer or reply) be served on the Court of Appeal clerk. To assist litigants, (f)(1) also states explicitly what is impliedly required by rule 8.212(c), i.e., that the petition must also be served on the superior court clerk (for delivery to the trial judge).

Rule 8.504. Form and contents of petition, answer, and reply

(a) In general

Except as provided in this rule, a petition for review, answer, and reply must comply with the relevant provisions of rule 8.204.

(Subd (a) amended effective January 1, 2007.)

(b) Contents of a petition

(1) The body of the petition must begin with a concise, nonargumentative statement of the issues presented for review, framing them in terms of the facts of the case but without unnecessary detail.

(2) The petition must explain how the case presents a ground for review under rule 8.500(b).

(3) If a petition for rehearing could have been filed in the Court of Appeal, the petition for review must state whether it was filed and, if so, how the court ruled.

(4) If the petition seeks review of a Court of Appeal opinion, a copy of the opinion showing its filing date and a copy of any order modifying the opinion or directing its publication must be bound at the back of the original petition and each copy filed in the Supreme Court.

(5) If the petition seeks review of a Court of Appeal order, a copy of the order showing the date it was entered must be bound at the back of the original petition and each copy filed in the Supreme Court.

(6) The title of the case and designation of the parties on the cover of the petition must be identical to the title and designation in the Court of Appeal opinion or order that is the subject of the petition.

(7) Rule 8.508 governs the form and content of a petition for review filed by the defendant in a criminal case for the sole purpose of exhausting state remedies before seeking federal habeas corpus review.

(Subd (b) amended effective January 1, 2009; previously amended effective January 1, 2004, and January 1, 2007.)

(c) Contents of an answer

An answer that raises additional issues for review must contain a concise, nonargumentative statement of those issues, framing them in terms of the facts of the case but without unnecessary detail.

(d) Length

(1) If produced on a computer, a petition or answer must not exceed 8,400 words, including footnotes, and a reply must not exceed 4,200 words, including footnotes. Each petition, answer, or reply must include a certificate by appellate counsel or an unrepresented party stating the number of words in the document. The person certifying may rely on the word count of the computer program used to prepare the document.

(2) If typewritten, a petition or answer must not exceed 30 pages and a reply must not exceed 15 pages.

(3) The tables, the cover information required under rule 8.204(b)(10), the Court of Appeal opinion, a certificate under (1), any signature block, and any attachment under (e)(1) are excluded from the limits stated in (1) and (2).

(4) On application and for good cause, the Chief Justice may permit a longer petition, answer, reply, or attachment.

(Subd (d) amended effective January 1, 2011; adopted as subd (e); previously relettered effective January 1, 2004; previously amended effective January 1, 2007.)

(e) Attachments and incorporation by reference

(1) No attachments are permitted except:

(A) An opinion or order required to be attached under (b)(4) or (5);

(B) Exhibits or orders of a trial court or Court of Appeal that the party considers unusually significant;

(C) Copies of relevant local, state, or federal regulations or rules, out-of-state statutes, or other similar citable materials that are not readily accessible; and

(D) An opinion required to be attached under rule 8.1115(c).

(2) The attachments under (1)(B)–(C) must not exceed a combined total of 10 pages.

(3) No incorporation by reference is permitted except a reference to a petition, an answer, or a reply filed by another party in the same case or filed in a case that raises the same or similar issues and in which a petition for review is pending or has been granted.

(Subd (e) amended effective January 1, 2009; adopted as subd (f); previously relettered effective January 1, 2004; previously amended effective January 1, 2007.)

Rule 8.504 amended effective January 1, 2011; adopted as rule 28.1 effective January 1, 2003; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2004, and January 1, 2009.

Advisory Committee Comment

Subdivision (d). Subdivision (d) states in terms of word counts rather than page counts the maximum permissible lengths of a petition for review, answer, or reply produced on a computer. This provision tracks a provision in rule 8.204(c) governing Court of Appeal briefs and is explained in the advisory committee comment to that provision. Subdivision (d)(3) specifies certain items that are not counted toward the maximum length of a petition, answer, or reply. Signature blocks, as referenced in this provision include not only the signatures, but also the printed names, titles, and affiliations of any attorneys filing or joining in the petition, answer, or reply, which may accompany the signature.

Rule 8.508. Petition for review to exhaust state remedies

(a) Purpose

After decision by the Court of Appeal in a criminal case, a defendant may file an abbreviated petition for review in the Supreme Court for the sole purpose of exhausting state remedies before presenting a claim for federal habeas corpus relief.

(b) Form and contents

(1) The words “Petition for Review to Exhaust State Remedies” must appear prominently on the cover of the petition.

(2) Except as provided in (3), the petition must comply with rule 8.504.

(3) The petition need not comply with rule 8.504(b)(1)–(2) but must include:

(A) A statement that the case presents no grounds for review under rule 8.500(b) and the petition is filed solely to exhaust state remedies for federal habeas corpus purposes;

(B) A brief statement of the underlying proceedings, including the nature of the conviction and the punishment imposed; and

(C) A brief statement of the factual and legal bases of the claim.

(Subd (b) amended effective January 1, 2007.)

(c) Service

The petition must be served on the Court of Appeal clerk but need not be served on the superior court clerk.

Rule 8.508 amended and renumbered effective January 1, 2007; adopted as rule 33.3 effective January 1, 2004.

Advisory Committee Comment

Subdivision (b). Although a petition under this rule must state that "the case presents no grounds for review under rule 8.500(b)" (see (b)(3)(A)), this does not mean the Supreme Court cannot order review if it determines the case warrants review. The list of grounds for granting review in rule 8.500(b) is not intended to be exclusive, and from time to time the Supreme Court has exercised its discretion to order review in a case that does not present one of the listed grounds. (Compare U.S. Supreme Court Rule 10 [the listed grounds for granting certiorari, "although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers"].)

Subdivision (b)(3)(C) requires the petition to include a statement of the factual and legal bases of the claim. This showing is required by federal law: "for purposes of exhausting state remedies, a claim for relief [in state court] . . . must include reference to a specific federal constitutional guarantee, as well as a statement of the facts that entitle the petitioner to relief." (*Gray v. Netherland* (1996) 518 U.S. 152, 162–163, citing *Picard v. Connor* (1971) 404 U.S. 270.) The federal courts will decide whether a petition filed in compliance with this rule satisfies federal exhaustion requirements, and practitioners should consult federal law to determine whether the petition's statement of the factual and legal bases for the claim is sufficient for that purpose.

Rule 8.512. Ordering review

(a) Transmittal of record

On receiving a copy of a petition for review or on request of the Supreme Court, whichever is earlier, the Court of Appeal clerk must promptly send the record to the Supreme Court. If the petition is denied, the Supreme Court clerk must promptly return the record to the Court of Appeal.

(b) Determination of petition

(1) The court may order review within 60 days after the last petition for review is filed. Before the 60-day period or any extension expires, the court may order one or more extensions to a date not later than 90 days after the last petition is filed.

(2) If the court does not rule on the petition within the time allowed by (1), the petition is deemed denied.

(Subd (b) amended effective January 1, 2004.)

(c) Review on the court's own motion

(1) If no petition for review is filed, the Supreme Court may, on its own motion, order review of a Court of Appeal decision within 30 days after the decision is final in that court. Before the 30-day period or any extension expires, the Supreme Court may order one or more extensions to a date not later than 90 days after the decision is final in the Court of Appeal. If any such period ends on a day on which the clerk's office is closed, the court may order review on its own motion on the next day the clerk's office is open.

(2) If a petition for review is filed, the Supreme Court may deny the petition but order review on its own motion within the periods prescribed in (b)(1).

(Subd (c) amended and relettered effective January 1, 2004; adopted as subd (d).)

(d) Order; grant and hold

(1) An order granting review must be signed by at least four justices; an order denying review may be signed by the Chief Justice alone.

(2) On or after granting review, the court may order action in the matter deferred until the court disposes of another matter or pending further order of the court.

(Subd (d) adopted effective January 1, 2004.)

Rule 8.512 renumbered effective January 1, 2007; adopted as rule 28.2 effective January 1, 2003; previously amended effective January 1, 2004.

Advisory Committee Comment

Subdivision (b). The Supreme Court deems the 60-day period within which it may grant review to begin on the filing date of the last petition for review that either (1) is timely in the sense that it is filed within the rule time for such petitions (i.e., 10 days after finality of the Court of Appeal decision) or (2) is treated as timely—although presented for filing after expiration of the rule time—in the sense that it is filed with permission of the Chief Justice on a showing of good cause for relief from default. In each circumstance it is the filing of the petition that triggers the 60-day period.

Rule 8.516. Issues on review

(a) Issues to be briefed and argued

(1) On or after ordering review, the Supreme Court may specify the issues to be briefed and argued. Unless the court orders otherwise, the parties must limit their briefs and arguments to those issues and any issues fairly included in them.

(2) Notwithstanding an order specifying issues under (1), the court may, on reasonable notice, order oral argument on fewer or additional issues or on the entire cause.

(b) Issues to be decided

(1) The Supreme Court may decide any issues that are raised or fairly included in the petition or answer.

(2) The court may decide an issue that is neither raised nor fairly included in the petition or answer if the case presents the issue and the court has given the parties reasonable notice and opportunity to brief and argue it.

(3) The court need not decide every issue the parties raise or the court specifies.

Rule 8.516 renumbered effective January 1, 2007; repealed and adopted as rule 29 effective January 1, 2003.

Rule 8.520. Briefs by parties and amici curiae; judicial notice

(a) Parties' briefs; time to file

(1) Within 30 days after the Supreme Court files the order of review, the petitioner must serve and file in that court either an opening brief on the merits or the brief it filed in the Court of Appeal.

(2) Within 30 days after the petitioner files its brief or the time to do so expires, the opposing party must serve and file either an answer brief on the merits or the brief it filed in the Court of Appeal.

(3) The petitioner may file a reply brief on the merits or the reply brief it filed in the Court of Appeal. A reply brief must be served and filed within 20 days after the opposing party files its brief.

(4) A party filing a brief it filed in the Court of Appeal must attach to the cover a notice of its intent to rely on the brief in the Supreme Court.

(5) The time to serve and file a brief may not be extended by stipulation but only by order of the Chief Justice under rule 8.60.

(6) The court may designate which party is deemed the petitioner or otherwise direct the sequence in which the parties must file their briefs.

(Subd (a) amended effective January 1, 2007.)

(b) Form and content

(1) Briefs filed under this rule must comply with the relevant provisions of rule 8.204.

(2) The body of the petitioner's brief on the merits must begin by quoting either:

(A) Any order specifying the issues to be briefed; or, if none,

(B) The statement of issues in the petition for review and, if any, in the answer.

(3) Unless the court orders otherwise, briefs on the merits must be limited to the issues stated in (2) and any issues fairly included in them.

(Subd (b) amended effective January 1, 2007.)

(c) Length

(1) If produced on a computer, an opening or answering brief on the merits must not exceed 14,000 words, including footnotes, and a reply brief on the merits must not exceed 8,400 words, including footnotes. Each brief must include a certificate by appellate counsel or an unrepresented party stating the number of words in the brief. The person certifying may rely on the word count of the computer program used to prepare the brief.

(2) If typewritten, an opening or answering brief on the merits must not exceed 50 pages and a reply brief on the merits must not exceed 30 pages.

(3) The tables required under rule 8.204(a)(1), the cover information required under rule 8.204(b)(10), a certificate under (1), any signature block, any attachment under (h), and any quotation of issues required by (b)(2) are excluded from the limits stated in (1) and (2).

(4) On application and for good cause, the Chief Justice may permit a longer brief.

(Subd (c) amended effective January 1, 2011; previously amended effective January 1, 2007, and January 1, 2009.)

(d) Supplemental briefs

(1) A party may file a supplemental brief limited to new authorities, new legislation, or other matters that were not available in time to be included in the party's brief on the merits.

(2) A supplemental brief must not exceed 2,800 words, including footnotes, if produced on a computer or 10 pages if typewritten, and must be served and filed no later than 10 days before oral argument.

(Subd (d) amended effective January 1, 2007.)

(e) Briefs on the court's request

The court may request additional briefs on any or all issues, whether or not the parties have filed briefs on the merits.

(f) Amicus curiae briefs

(1) After the court orders review, any person or entity may serve and file an application for permission of the Chief Justice to file an amicus curiae brief.

(2) The application must be filed no later than 30 days after all briefs that the parties may file under this rule—other than supplemental briefs—have been filed or were required to be filed. For good cause, the Chief Justice may allow later filing.

(3) The application must state the applicant's interest and explain how the proposed amicus curiae brief will assist the court in deciding the matter.

(4) The application must also identify:

(A) Any party or any counsel for a party in the pending appeal who:

(i) Authored the proposed amicus brief in whole or in part; or

(ii) Made a monetary contribution intended to fund the preparation or submission of the brief; and

(B) Every person or entity who made a monetary contribution intended to fund the preparation or submission of the brief, other than the amicus curiae, its members, or its counsel in the pending appeal.

(5) The proposed brief must be served. It must accompany the application and may be combined with it.

(6) The covers of the application and proposed brief must identify the party the applicant supports, if any.

(7) If the court grants the application, any party may file either an answer to the individual amicus curiae brief or a consolidated answer to multiple amicus curiae briefs filed in the case. The answer must be filed within 30 days after either the court rules on the last timely filed application to file an amicus curiae brief or the time for filing applications to file an amicus curiae brief expires, whichever is later. The answer must be served on all parties and the amicus curiae.

(8) The Attorney General may file an amicus curiae brief without the Chief Justice's permission unless the brief is submitted on behalf of another state officer or agency. The Attorney General must serve and file the brief within the time specified in (2) and must provide the information required by (3) and comply with (6). Any answer must comply with (7).

(Subd (f) amended effective January 1, 2011; previously amended effective January 1, 2008, and January 1, 2009.)

(g) Judicial notice

To obtain judicial notice by the Supreme Court under Evidence Code section 459, a party must comply with rule 8.252(a).

(Subd (g) amended effective January 1, 2007.)

(h) Attachments

A party filing a brief may attach copies of relevant local, state, or federal regulations or rules, out-of-state statutes, or other similar citable materials that are not readily accessible. These attachments must not exceed a combined total of 10 pages. A copy of an opinion required to be attached to the brief under rule 8.1115(c) does not count toward this 10-page limit.

(Subd (h) adopted effective January 1, 2007.)

Rule 8.520 amended effective January 1, 2011; adopted as rule 29.1 effective January 1, 2003; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2008, and January 1, 2009.

Advisory Committee Comment

Subdivisions (c) and (d). Subdivisions (c) and (d) state in terms of word count rather than page count the maximum permissible lengths of Supreme Court briefs produced on a computer. This provision tracks an identical provision in rule 8.204(c) governing Court of Appeal briefs and is explained in the advisory committee comment to that provision. Subdivision (c)(3) specifies certain items that are not counted toward the maximum brief length. The signature block referenced in this provision includes not only the signatures, but also the printed names, titles, and affiliations of any attorneys filing or joining in the brief, which may accompany the signature.

Rule 8.524. Oral argument and submission of the cause

(a) Application

This rule governs oral argument in the Supreme Court unless the court provides otherwise in its Internal Operating Practices and Procedures or by order.

(b) Place of argument

The Supreme Court holds regular sessions in San Francisco, Los Angeles, and Sacramento on a schedule fixed by the court, and may hold special sessions elsewhere.

(c) Notice of argument

The Supreme Court clerk must send notice of the time and place of oral argument to all parties at least 20 days before the argument date. The Chief Justice may shorten the notice period for good cause; in that event, the clerk must immediately notify the parties by telephone or other expeditious method.

(d) Sequence of argument

The petitioner for Supreme Court relief has the right to open and close. If there are two or more petitioners—or none—the court must set the sequence of argument.

(e) Time for argument

Each side is allowed 30 minutes for argument.

(f) Number of counsel

(1) Only one counsel on each side may argue—regardless of the number of parties on the side—unless the court orders otherwise on request.

(2) Requests to divide oral argument among multiple counsel must be filed within 10 days after the date of the order setting the case for argument.

(3) Multiple counsel must not divide their argument into segments of less than 10 minutes per person, except that one counsel for the opening side—or more, if authorized by the Chief Justice on request—may reserve any portion of that counsel's time for rebuttal.

(g) Argument by amicus curiae

An amicus curiae is not entitled to argument time but may ask a party for permission to use a portion or all of the party's time, subject to the 10-minute minimum prescribed in (f)(3). If permission is granted, counsel must file a request under (f)(2).

(h) Submission of the cause

(1) A cause is submitted when the court has heard oral argument or approved its waiver and the time has expired to file all briefs and papers, including any supplemental brief permitted by the court.

(2) The court may vacate submission only by an order stating the court's reasons and setting a timetable for resubmission.

Rule 8.524 renumbered effective January 1, 2007; repealed and adopted as rule 29.2 effective January 1, 2003.

Advisory Committee Comment

Subdivision (d). In subdivision (d), "The petitioner for Supreme Court relief" can be a petitioner for review, a petitioner for transfer (rule 8.552), a petitioner in an original proceeding in the Supreme Court, or a party designated as petitioner in a proceeding on request of a court of another jurisdiction (rule 8.548(b)(1)).

The number of petitioners is "none" when the court grants review on its own motion or transfers a cause to itself on its own motion.

Subdivision (e). The time allowed for argument in death penalty appeals is prescribed in rule 8.638.

Subdivision (f). The number of counsel allowed to argue on each side in death penalty appeals is prescribed in rule 8.638.

Rule 8.528. Disposition

(a) Normal disposition

After review, the Supreme Court normally will affirm, reverse, or modify the judgment of the Court of Appeal, but may order another disposition.

(b) Dismissal of review

(1) The Supreme Court may dismiss review. The Supreme Court clerk must promptly send an order dismissing review to all parties and the Court of Appeal.

(2) When the Court of Appeal receives an order dismissing review, the decision of that court is final and its clerk must promptly issue a remittitur or take other appropriate action.

(3) After an order dismissing review, the Court of Appeal opinion remains unpublished unless the Supreme Court orders otherwise.

(c) Remand for decision on remaining issues

If it decides fewer than all the issues presented by the case, the Supreme Court may remand the cause to a Court of Appeal for decision on any remaining issues.

(d) Transfer without decision

After ordering review, the Supreme Court may transfer the cause to a Court of Appeal without decision but with instructions to conduct such proceedings as the Supreme Court orders.

(e) Retransfer without decision

After transferring to itself, before decision, a cause pending in the Court of Appeal, the Supreme Court may retransfer the cause to a Court of Appeal without decision.

(f) Court of Appeal briefs after remand or transfer

Any supplemental briefing in the Court of Appeal after remand or transfer from the Supreme Court is governed by rule 8.200(b).

(Subd (f) amended effective January 1, 2007.)

Rule 8.528 amended and renumbered effective January 1, 2007; repealed and adopted as rule 29.3 effective January 1, 2003.

Advisory Committee Comment

Subdivision (a). Subdivision (a) serves two purposes. First, it declares that the Supreme Court's normal disposition of a cause after completing its review is to affirm, reverse, or modify *the judgment of the Court of Appeal*. Second, the subdivision recognizes that, when necessary, the Supreme Court may order "another disposition" appropriate to the circumstances. Subdivisions (b)–(e) provide examples of such "other dispositions," but the list is not intended to be exclusive.

As used in subdivision (a), "the judgment of the Court of Appeal" includes a decision of that court denying a petition for original writ without issuing an alternative writ or order to show cause. The Supreme Court's method of disposition after reviewing such a decision, however, has evolved. In earlier cases the Supreme Court itself denied or granted the requested writ, in effect treating the matter as if it were an original proceeding in the Supreme Court. (E.g., *City of San Jose v. Superior Court* (1993) 5 Cal.4th 47, 58 ["The alternative writ of mandate is discharged and the petition for a peremptory writ of mandate is denied."].) By contrast, current Supreme Court practice is to affirm or reverse the judgment of the Court of Appeal summarily denying the writ petition. (E.g., *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703, 742–743 ["The judgment of the Court of Appeal is reversed with directions to vacate its order denying the petition, and to issue a writ of mandate. . . ."]; *State Comp. Ins. Fund v. Superior Court* (2001) 24 Cal.4th 930, 944 ["The judgment of the Court of Appeal summarily denying the petition for writ of mandate is affirmed and the order to show cause . . . is discharged."].) As the cited cases illustrate, if the Supreme Court affirms such a judgment it will normally discharge any alternative writ or order to show cause it issued when granting review; if the court reverses the judgment it will normally include a direction to the Court of Appeal, e.g., to issue the requested writ or to reconsider the petition.

Subdivision (b). An earlier version of this rule purported to limit Supreme Court *dismissals of review* to cases in which the court had "improvidently" granted review. In practice, however, the court may dismiss review for a variety of other reasons. For example, after the court decides a "lead" case, its current practice is to dismiss review in any pending companion case (i.e., a "grant and hold" matter under rule 8.512(c)) that appears correctly decided in light of the lead case and presents no additional issue requiring resolution by the Supreme Court or the Court of Appeal. The Supreme Court may also dismiss review

when a supervening event renders the case moot for any reason, e.g., when the parties reach a settlement, when a party seeking personal relief dies, or when the court orders review to construe a statute that is then repealed before the court can act. Reflecting this practice, the Supreme Court now dismisses review—even in the rare case in which the grant of review was arguably "improvident"—by an order that says simply that "review is dismissed."

An order of review ipso facto transfers jurisdiction of the cause to the Supreme Court. By the same token, an order dismissing review ipso facto retransfers jurisdiction to the Court of Appeal. The Court of Appeal has no discretion to exercise after the Supreme Court dismisses review: the Supreme Court clerk must promptly send the dismissal order to the Court of Appeal; when the Court of Appeal clerk files that order, the Court of Appeal decision immediately becomes final.

If the decision of the Court of Appeal made final by (b)(2) requires issuance of a remittitur under rule 8.272(a), the clerk must issue the remittitur; if the decision does not require issuance of a remittitur—e.g., if the decision is an interlocutory order (see rule 8.500(a)(1))—the clerk must take whatever action is appropriate in the circumstances.

Subdivision (d). Subdivision (d) is intended to apply primarily to two types of cases: (1) those in which the court granted review "for the purpose of transferring the matter to the Court of Appeal for such proceedings as the Supreme Court may order" (rule 8.500(b)(4)) and (2) those in which the court, after deciding a "lead case," determines that a companion "grant and hold" case (rule 8.512(c)) should be reconsidered by the Court of Appeal in light of the lead case or presents an additional issue or issues that require resolution by the Court of Appeal.

Subdivision (e). Subdivision (e) is intended to apply to cases in which the Supreme Court, after *transferring* to itself before decision a cause pending in the Court of Appeal, *retransfers* the matter to that court without decision and with or without instructions.

Rule 8.532. Filing, finality, and modification of decision

(a) Filing the decision

The Supreme Court clerk must promptly file all opinions and orders issued by the court and promptly send copies showing the filing date to the parties and, when relevant, to the lower court or tribunal.

(b) Finality of decision

(1) Except as provided in (2), a Supreme Court decision is final 30 days after filing unless:

(A) The court orders a shorter period; or

(B) Before the 30-day period or any extension expires the court orders one or more extensions, not to exceed a total of 60 additional days.

(2) The following Supreme Court decisions are final on filing:

(A) The denial of a petition for review of a Court of Appeal decision;

(B) A disposition ordered under rule 8.528(b), (d), or (e);

(C) The denial of a petition for a writ within the court's original jurisdiction without issuance of an alternative writ or order to show cause; and

(D) The denial of a petition for writ of supersedeas.

(Subd (b) amended effective January 1, 2007.)

(c) Modification of decision

The Supreme Court may modify a decision as provided in rule 8.264(c).

(Subd (c) amended effective January 1, 2007.)

Rule 8.532 amended and renumbered effective January 1, 2007; repealed and adopted as rule 29.4 effective January 1, 2003.

Advisory Committee Comment

Subdivision (b). Subdivision (b)(2)(A) recognizes the general rule that the denial of a petition for review of a Court of Appeal decision is final on filing. Subdivision (b)(2)(B)–(D) recognizes several additional types of Supreme Court decisions that are final on filing. Thus (b)(2)(B) recognizes that a dismissal, a transfer, and a retransfer under (b), (d), and (e), respectively, of rule 8.528 are decisions final on filing. A remand under rule 8.528(c) is not a decision final on filing because it is not a separately filed order; rather, as part of its appellate judgment at the end of its opinion in such cases the Supreme Court simply orders the cause remanded to the Court of Appeal for disposition of the remaining issues in the appeal.

Subdivision (b)(2)(C) recognizes that an order denying a petition for a writ within the court's original jurisdiction without issuance of an alternative writ or order to show cause is final on filing. The provision reflects the settled Supreme Court practice, since at least 1989, of declining to file petitions for rehearing in such matters. (See, e.g., *In re Hayes* (S004421) Minutes, Cal. Supreme Ct., July 28, 1989 ["The motion to vacate this court's order of May 18, 1989 [denying a petition for habeas corpus without opinion] is denied. Because the California Rules of Court do not authorize the filing of a petition for rehearing of such an order, the alternate request to consider the matter as a petition for rehearing is denied."].)

Subdivision (b)(2)(D) recognizes that an order denying a petition for writ of supersedeas is final on filing.

Rule 8.536. Rehearing

(a) Power to order rehearing

The Supreme Court may order rehearing as provided in rule 8.268(a).

(Subd (a) amended effective January 1, 2007.)

(b) Petition and answer

A petition for rehearing and any answer must comply with rule 8.268(b)(1) and (3). Any answer to the petition must be served and filed within eight days after the petition is filed. Before the Supreme Court decision is final and for good cause, the Chief Justice may relieve a party from a failure to file a timely petition or answer.

(Subd (b) amended effective January 1, 2007; previously amended effective January 1, 2004.)

(c) Extension of time

The time for granting or denying a petition for rehearing in the Supreme Court may be extended under rule 8.532(b)(1)(B). If the court does not rule on the petition before the decision is final, the petition is deemed denied.

(Subd (c) amended effective January 1, 2007.)

(d) Determination of petition

An order granting a rehearing must be signed by at least four justices; an order denying rehearing may be signed by the Chief Justice alone.

(e) Effect of granting rehearing

An order granting a rehearing vacates the decision and any opinion filed in the case and sets the cause at large in the Supreme Court.

Rule 8.536 amended and renumbered effective January 1, 2007; repealed and adopted as rule 29.5 effective January 1, 2003; previously amended effective January 1, 2004.

Rule 8.540. Remittitur

(a) Proceedings requiring issuance of remittitur

The Supreme Court must issue a remittitur after a decision in:

(1) A review of a Court of Appeal decision; or

(2) An appeal from a judgment of death or in a cause transferred to the court under rule 8.552.

(Subd (a) amended effective January 1, 2007.)

(b) Clerk's duties

(1) The clerk must issue a remittitur when a decision of the court is final. The remittitur is deemed issued when the clerk enters it in the record.

(2) After review of a Court of Appeal decision, the Supreme Court clerk must address the remittitur to the Court of Appeal and send that court two copies of the remittitur and two file-stamped copies of the Supreme Court opinion or order.

(3) After a decision in an appeal from a judgment of death or in a cause transferred to the court under rule 8.552, the clerk must send the remittitur and a file-stamped copy of the Supreme Court opinion or order to the lower court or tribunal.

(4) The clerk must comply with the requirements of rule 8.272(d).

(Subd (b) amended effective January 1, 2007.)

(c) Immediate issuance, stay, and recall

(1) The Supreme Court may direct immediate issuance of a remittitur on the parties' stipulation or for good cause.

(2) On a party's or its own motion and for good cause, the court may stay a remittitur's issuance for a reasonable period or order its recall.

(3) An order recalling a remittitur issued after a decision by opinion does not supersede the opinion or affect its publication status.

Rule 8.540 amended and renumbered effective January 1, 2007; repealed and adopted as rule 29.6 effective January 1, 2003.

Rule 8.544. Costs and sanctions

In a civil case, the Supreme Court may direct the Court of Appeal to award costs, if any; or may order the parties to bear their own costs; or may make any other award of costs the Supreme Court deems proper. The Supreme Court may impose sanctions on a party or an attorney under rule 8.276 for committing any unreasonable violation of these rules.

Rule 8.544 amended effective July 1, 2008; adopted as rule 29.7 effective January 1, 2003; previously amended and renumbered effective January 1, 2007.

Advisory Committee Comment

If the Supreme Court makes an award of costs, the party claiming such costs must proceed under rule 8.278(c).

Rule 8.548. Decision on request of a court of another jurisdiction

(a) Request for decision

On request of the United States Supreme Court, a United States Court of Appeals, or the court of last resort of any state, territory, or commonwealth, the Supreme Court may decide a question of California law if:

(1) The decision could determine the outcome of a matter pending in the requesting court; and

(2) There is no controlling precedent.

(Subd (a) amended effective January 1, 2007.)

(b) Form and contents of request

The request must take the form of an order of the requesting court containing:

(1) The title and number of the case, the names and addresses of counsel and any unrepresented party, and a designation of the party to be deemed the petitioner if the request is granted;

(2) The question to be decided, with a statement that the requesting court will accept the decision;

(3) A statement of the relevant facts prepared by the requesting court or by the parties and approved by the court; and

(4) An explanation of how the request satisfies the requirements of (a).

(Subd (b) amended effective January 1, 2007.)

(c) Supporting materials

Copies of all relevant briefs must accompany the request. At any time, the Supreme Court may ask the requesting court to furnish additional record materials, including transcripts and exhibits.

(d) Serving and filing the request

The requesting court clerk must file an original and 10 copies of the request in the Supreme Court with a certificate of service on the parties.

(e) Letters in support or opposition

(1) Within 20 days after the request is filed, any party or other person or entity wanting to support or oppose the request must send a letter to the Supreme Court, with service on the parties and on the requesting court.

(2) Within 10 days after service of a letter under (1), any party may send a reply letter to the Supreme Court, with service on the other parties and the requesting court.

(3) A letter or reply asking the court to restate the question under (f)(5) must propose new wording.

(f) Proceedings in the Supreme Court

(1) In exercising its discretion to grant or deny the request, the Supreme Court may consider whether resolution of the question is necessary to secure uniformity of decision or to settle an important question of law, and any other factor the court deems appropriate.

(2) An order granting the request must be signed by at least four justices; an order denying the request may be signed by the Chief Justice alone.

(3) If the court grants the request, the rules on review and decision in the Supreme Court govern further proceedings in that court.

(4) If, after granting the request, the court determines that a decision on the question may require an interpretation of the California Constitution or a decision on the validity or meaning of a California law affecting the public interest, the court must direct the clerk to send to the Attorney General—unless the Attorney General represents a party to the litigation—a copy of the request and the order granting it.

(5) At any time, the Supreme Court may restate the question or ask the requesting court to clarify the question.

(6) After filing the opinion, the clerk must promptly send file-stamped copies to the requesting court and the parties and must notify that court and the parties when the decision is final.

(7) Supreme Court decisions pursuant to this rule are published in the Official Reports and have the same precedential effect as the court's other decisions.

(Subd (f) amended effective January 1, 2007.)

Rule 8.548 amended and renumbered effective January 1, 2007; adopted as rule 29.8 effective January 1, 2003.

Rule 8.552. Transfer for decision

(a) Time of transfer

On a party's petition or its own motion, the Supreme Court may transfer to itself, for decision, a cause pending in a Court of Appeal.

(b) When a cause is pending

For purposes of this rule, a cause within the appellate jurisdiction of the superior court is not pending in the Court of Appeal until that court orders it transferred under rule 8.1002. Any cause pending in the Court of Appeal remains pending until the decision of the Court of Appeal is final in that court.

(Subd (b) amended effective January 1, 2009; previously amended effective January 1, 2007.)

(c) Grounds

The Supreme Court will not order transfer under this rule unless the cause presents an issue of great public importance that the Supreme Court must promptly resolve.

(d) Petition and answer

A party seeking transfer under this rule must promptly serve and file in the Supreme Court a petition explaining how the cause satisfies the requirements of (c). Within 20 days after the petition is filed, any party may serve and file an answer. The petition and any answer must conform to the relevant provisions of rule 8.504.

(Subd (d) amended effective January 1, 2007.)

(e) Order

Transfer under this rule requires a Supreme Court order signed by at least four justices; an order denying transfer may be signed by the Chief Justice alone.

Rule 8.552 amended effective January 1, 2009; repealed and adopted as rule 29.9 effective January 1, 2003; previously amended and renumbered effective January 1, 2007.

Advisory Committee Comment

Rule 8.552 applies only to causes that the Supreme Court transfers to itself for the purpose of reaching a decision on the merits. The rule implements a portion of article VI, section 12(a) of the Constitution. As used in article VI, section 12(a) and the rule, the term "cause" is broadly construed to include " 'all cases, matters, and proceedings of every description' " adjudicated by the Courts of Appeal and the Supreme Court. (*In re Rose* (2000) 22 Cal.4th 430, 540, quoting *In re Wells* (1917) 174 Cal. 467, 471.)

Subdivision (b). For provisions addressing the finality of Court of Appeal decisions, see rules 8.264(b) (civil appeals), 8.366(b) (criminal appeals), 8.490 (proceedings for writs of mandate, certiorari, and prohibition), and 8.1018(a) (transfer of appellate division cases).

Chapter 10. Appeals From Judgments of Death

Title 8, Appellate Rules—Division 1, Rules Relating to the Supreme Court and Courts of Appeal—Chapter 10, Appeals From Judgments of Death amended and renumbered effective January 1, 2009; adopted as chapter 9 effective January 1, 2007.

Article 1. General Provisions

Rule 8.600. In general
Rule 8.605. Qualifications of counsel in death penalty appeals and habeas corpus proceedings

Rule 8.600. In general

(a) Automatic appeal to Supreme Court

If a judgment imposes a sentence of death, an appeal by the defendant is automatically taken to the Supreme Court.

(b) Copies of judgment

When a judgment of death is rendered, the superior court clerk must immediately send certified copies of the commitment to the Supreme Court, the Attorney General, the Governor, and the California Appellate Project in San Francisco.

(c) Extensions of time

When a rule in this part authorizes a trial court to grant an extension of a specified time period, the court must consider the relevant policies and factors stated in rule 8.63.

(Subd (c) amended effective January 1, 2007.)

(d) Supervising preparation of record

The Supreme Court clerk, under the supervision of the Chief Justice, must take all appropriate steps to ensure that superior court clerks and reporters promptly perform their duties under the rules in this part. This provision does not affect the superior courts' responsibility for the prompt preparation of appellate records in capital cases.

(e) Definitions

For purposes of this part:

(1) The delivery date of a transcript sent by mail is the mailing date plus five days; and

(2) "Trial counsel" means both the defendant's trial counsel and the prosecuting attorney.

(Subd (e) amended effective January 1, 2007.)

Rule 8.600 amended and renumbered effective January 1, 2007; repealed and adopted as rule 34 effective January 1, 2004.

Rule 8.605. Qualifications of counsel in death penalty appeals and habeas corpus proceedings

(a) Purpose

This rule defines the minimum qualifications for attorneys appointed by the Supreme Court in death penalty appeals and habeas corpus proceedings related to sentences of death. An attorney is not entitled to appointment simply because the attorney meets these minimum qualifications.

(b) General qualifications

The Supreme Court may appoint an attorney only if it has determined, after reviewing the attorney's experience, writing samples, references, and evaluations under (d) through (f), that the attorney has demonstrated the commitment, knowledge, and skills necessary to competently represent the defendant. An appointed attorney must be willing to cooperate with an assisting counsel or entity that the court may designate.

(c) Definitions

As used in this rule:

(1) "Appointed counsel" or "appointed attorney" means an attorney appointed to represent a person in a death penalty appeal or death penalty–related habeas corpus proceedings in the Supreme Court. Appointed counsel may be either lead counsel or associate counsel.

(2) "Lead counsel" means an appointed attorney or an attorney in the Office of the State Public Defender, the Habeas Corpus Resource Center, or the California Appellate Project in San Francisco who is responsible for the overall conduct of the case and for supervising the work of associate and supervised counsel. If two or more attorneys are appointed to represent a defendant jointly in a death penalty appeal, in death penalty–related habeas corpus proceedings, or in both classes of proceedings together, one such attorney will be designated as lead counsel.

(3) "Associate counsel" means an appointed attorney who does not have the primary responsibility for the case but nevertheless has casewide responsibility to perform the duties for which that attorney was appointed, whether they are appellate, habeas corpus, or appellate and habeas corpus duties. Associate counsel must meet the same minimum qualifications as lead counsel.

(4) "Supervised counsel" means an attorney who works under the immediate supervision and direction of lead or associate counsel but is not appointed by the Supreme Court. Supervised counsel must be an active member of the State Bar of California.

(5) "Assisting counsel or entity" means an attorney or entity designated by the Supreme Court to provide appointed counsel with consultation and resource assistance. Entities that may be designated include the Office of the State Public Defender, the Habeas Corpus Resource Center, and the California Appellate Project in San Francisco.

(d) Qualifications for appointed appellate counsel

An attorney appointed as lead or associate counsel in a death penalty appeal must have at least the following qualifications and experience:

(1) Active practice of law in California for at least four years.

(2) Either:

(A) Service as counsel of record for a defendant in seven completed felony appeals, including one murder case; or

(B) Service as counsel of record for a defendant in five completed felony appeals and as supervised counsel for a defendant in two death penalty appeals in which the opening brief has been filed. Service as supervised counsel in a death penalty appeal will apply toward this qualification only if lead or associate counsel in that appeal attests that the supervised attorney performed substantial work on the case and recommends the attorney for appointment.

(3) Familiarity with Supreme Court practices and procedures, including those related to death penalty appeals.

(4) Within three years before appointment, completion of at least nine hours of Supreme Court–approved appellate criminal defense training, continuing education, or course of study, at least six hours of which involve death penalty appeals. If the Supreme Court has previously appointed counsel to represent a defendant in a death penalty appeal or a related habeas corpus proceeding, and counsel has provided active representation within three years before the request for a new appointment, the court, after reviewing counsel's previous work, may find that such representation constitutes compliance with this requirement.

(5) Proficiency in issue identification, research, analysis, writing, and advocacy, taking into consideration all of the following:

(A) Two writing samples—ordinarily appellate briefs—written by the attorney and presenting an analysis of complex legal issues;

(B) If the attorney has previously been appointed in a death penalty appeal or death penalty–related habeas corpus proceeding, the evaluation of the assisting counsel or entity in that proceeding;

(C) Recommendations from two attorneys familiar with the attorney's qualifications and performance; and

(D) If the attorney is on a panel of attorneys eligible for appointments to represent indigents in the Court of Appeal, the evaluation of the administrator responsible for those appointments.

(Subd (d) amended effective January 1, 2007.)

(e) Qualifications for appointed habeas corpus counsel

An attorney appointed as lead or associate counsel to represent a person in death penalty–related habeas corpus proceedings must have at least the following qualifications and experience:

(1) Active practice of law in California for at least four years.

(2) Either:

(A) Service as counsel of record for a defendant in five completed felony appeals or writ proceedings, including one murder case, and service as counsel of record for a defendant in three jury trials or three habeas corpus proceedings involving serious felonies; or

(B) Service as counsel of record for a defendant in five completed felony appeals or writ proceedings and service as supervised counsel in two death penalty–related habeas corpus proceedings in which the petition has been filed. Service as supervised counsel in a death penalty–related habeas corpus proceeding will apply toward this qualification only if lead or associate counsel in that proceeding attests that the attorney performed substantial work on the case and recommends the attorney for appointment.

(3) Familiarity with the practices and procedures of the California Supreme Court and the federal courts in death penalty–related habeas corpus proceedings.

(4) Within three years before appointment, completion of at least nine hours of Supreme Court–approved appellate criminal defense or habeas corpus defense training, continuing education, or course of study, at least six hours of which address death penalty habeas corpus proceedings. If the Supreme Court has previously appointed counsel to represent a defendant in a death penalty appeal or a related habeas corpus proceeding, and counsel has provided active representation within three years before the request for a new appointment, the court, after reviewing counsel's previous

work, may find that such representation constitutes compliance with this requirement.

(5) Proficiency in issue identification, research, analysis, writing, investigation, and advocacy, taking into consideration all of the following:

(A) Three writing samples—ordinarily two appellate briefs and one habeas corpus petition—written by the attorney and presenting an analysis of complex legal issues;

(B) If the attorney has previously been appointed in a death penalty appeal or death penalty–related habeas corpus proceeding, the evaluation of the assisting counsel or entity in that proceeding;

(C) Recommendations from two attorneys familiar with the attorney's qualifications and performance; and

(D) If the attorney is on a panel of attorneys eligible for appointments to represent indigent appellants in the Court of Appeal, the evaluation of the administrator responsible for those appointments.

(Subd (e) amended effective January 1, 2007.)

(f) Alternative qualifications

The Supreme Court may appoint an attorney who does not meet the requirements of (d)(1) and (2) or (e)(1) and (2) if the attorney has the qualifications described in (d)(3)–(5) or (e)(3)–(5) and:

(1) The court finds that the attorney has extensive experience in another jurisdiction or a different type of practice (such as civil trials or appeals, academic work, or work for a court or prosecutor) for at least four years, providing the attorney with experience in complex cases substantially equivalent to that of an attorney qualified under (d) or (e).

(2) Ongoing consultation is available to the attorney from an assisting counsel or entity designated by the court.

(3) Within two years before appointment, the attorney has completed at least 18 hours of Supreme Court–approved appellate criminal defense or habeas corpus defense training, continuing education, or course of study, at least nine hours of which involve death penalty appellate or habeas corpus proceedings. The Supreme Court will determine in each case whether the training, education, or course of study completed by a particular attorney satisfies the requirements of this subdivision in light of the attorney's individual background and experience. If the Supreme Court has previously appointed counsel to represent a defendant in a death penalty appeal or a related habeas corpus proceeding, and counsel has provided active

representation within three years before the request for a new appointment, the court, after reviewing counsel's previous work, may find that such representation constitutes compliance with this requirement.

(g) Attorneys without trial experience

If an evidentiary hearing is ordered in a death penalty–related habeas corpus proceeding and an attorney appointed under either (e) or (f) to represent a defendant in that proceeding lacks experience in conducting trials or evidentiary hearings, the attorney must associate an attorney who has such experience.

(h) Use of supervised counsel

An attorney who does not meet the qualifications described in (d), (e), or (f) may assist lead or associate counsel, but must work under the immediate supervision and direction of lead or associate counsel.

(i) Appellate and habeas corpus appointment

(1) An attorney appointed to represent a defendant in both a death penalty appeal and death penalty–related habeas corpus proceedings must meet the minimum qualifications of both (d) and (e) or of (f).

(2) Notwithstanding (1), two attorneys together may be eligible for appointment to represent a defendant jointly in both a death penalty appeal and death penalty–related habeas corpus proceedings if the Supreme Court finds that their qualifications in the aggregate satisfy the provisions of both (d) and (e) or of (f).

(j) Designated entities as appointed counsel

(1) Notwithstanding any other provision of this rule, the State Public Defender is qualified to serve as appointed counsel in death penalty appeals, the Habeas Corpus Resource Center is qualified to serve as appointed counsel in death penalty–related habeas corpus proceedings, and the California Appellate Project in San Francisco is qualified to serve as appointed counsel in both classes of proceedings.

(2) When serving as appointed counsel in a death penalty appeal, the State Public Defender or the California Appellate Project in San Francisco must not assign any attorney as lead counsel unless it finds the attorney qualified under (d)(1)–(5) or the Supreme Court finds the attorney qualified under (f).

(3) When serving as appointed counsel in a death penalty–related habeas corpus proceeding, the Habeas Corpus Resource Center or the California Appellate Project in San Francisco must not assign any attorney as lead counsel unless it finds the attorney qualified under (e)(1)–(5) or the Supreme Court finds the attorney qualified under (f).

(k) Attorney appointed by federal court

Notwithstanding any other provision of this rule, the Supreme Court may appoint an attorney who is under appointment by a federal court in a death penalty–related habeas corpus proceeding for the purpose of exhausting state remedies in the Supreme Court and for all subsequent state proceedings in that case, if the Supreme Court finds that attorney has the commitment, proficiency, and knowledge necessary to represent the defendant competently in state proceedings.

Rule 8.605 amended and renumbered effective January 1, 2007; repealed and adopted as rule 76.6 effective January 1, 2005.

Advisory Committee Comment

Subdivision (c). The definition of "associate counsel" in (c)(3) is intended to make it clear that although appointed lead counsel has overall and supervisory responsibility in a capital case, appointed associate counsel also has casewide responsibility to perform the duties for which he or she was appointed, whether they are appellate duties, habeas corpus duties, or appellate *and* habeas corpus duties.

Article 2. Record on Appeal

Rule 8.610. Contents and form of the record
Rule 8.613. Preparing and certifying the record of preliminary proceedings
Rule 8.616. Preparing the trial record
Rule 8.619. Certifying the trial record for completeness
Rule 8.622. Certifying the trial record for accuracy
Rule 8.625. Certifying the record in pre-1997 trials

Rule 8.610. Contents and form of the record

(a) Contents of the record

(1) The record must include a clerk's transcript containing:

(A) The accusatory pleading and any amendment;

(B) Any demurrer or other plea;

(C) All court minutes;

(D) All instructions submitted in writing, each one indicating the party requesting it;

(E) Any written communication between the court and the jury or any individual juror;

(F) Any verdict;

(G) Any written opinion of the court;

(H) The judgment or order appealed from and any abstract of judgment or commitment;

(I) Any motion for new trial, with supporting and opposing memoranda and attachments;

(J) Any transcript of a sound or sound-and-video recording furnished to the jury or tendered to the court under rule 2.1040;

(K) Any application for additional record and any order on the application;

(L) Any written defense motion or any written motion by the People, with supporting and opposing memoranda and attachments;

(M) If related to a motion under (L), any search warrant and return and the reporter's transcript of any preliminary examination or grand jury hearing;

(N) Any document admitted in evidence to prove a prior juvenile adjudication, criminal conviction, or prison term;

(O) The probation officer's report; and

(P) Any other document filed or lodged in the case, including each juror questionnaire, whether or not the juror was selected.

(2) The record must include a reporter's transcript containing:

(A) The oral proceedings on the entry of any plea other than a not guilty plea;

(B) The oral proceedings on any motion in limine;

(C) The voir dire examination of jurors;

(D) Any opening statement;

(E) The oral proceedings at trial;

(F) All instructions given orally;

(G) Any oral communication between the court and the jury or any individual juror;

(H) Any oral opinion of the court;

(I) The oral proceedings on any motion for new trial;

(J) The oral proceedings at sentencing, granting or denying of probation, or other dispositional hearing;

(K) The oral proceedings on any motion under Penal Code section 1538.5 denied in whole or in part;

(L) The closing arguments;

(M) Any comment on the evidence by the court to the jury;

(N) The oral proceedings on motions in addition to those listed above; and

(O) Any other oral proceedings in the case, including any proceedings that did not result in a verdict or sentence of death because the court ordered a mistrial or a new trial.

(3) All exhibits admitted in evidence, refused, or lodged are deemed part of the record, but may be transmitted to the reviewing court only as provided in rule 8.634.

(4) The superior court or the Supreme Court may order that the record include additional material.

(Subd (a) amended effective January 1, 2007.)

(b) Confidential records

(1) All documents filed or lodged confidentially under Penal Code section 987.9 or 987.2 must be sealed. Documents filed or lodged under Penal Code section 987.9 must be bound separately from documents filed under Penal Code section 987.2. Unless otherwise ordered, copies must be provided only to the Supreme Court and to counsel for the defendant to whom the documents relate.

(2) All reporter's transcripts of in camera proceedings must be sealed. Unless otherwise ordered, copies must be provided only to the Supreme Court and to counsel for parties present at the proceedings.

(3) Records sealed under this rule must comply with rule 8.328.

(Subd (b) amended effective January 1, 2007.)

(c) Juror-identifying information

Any document in the record containing juror-identifying information must be edited in compliance with rule 8.332. Unedited copies of all such documents and a copy of the table required by the rule, under seal and bound together, must be included in the record sent to the Supreme Court.

(Subd (c) amended effective January 1, 2007.)

(d) Form of record

The clerk's transcript and the reporter's transcript must comply with rule 8.144, but the indexes for the clerk's transcript must separately list all sealed documents in that transcript, and the indexes for the reporter's transcript must separately list all sealed reporter's transcripts with the date and the names of all parties present. The indexes must not list any confidential material relating to a request for funds under Penal Code section 987.9 or disclose the substance of any sealed matter.

(Subd (d) amended effective January 1, 2007; previously amended effective January 1, 2005.)

Rule 8.610 amended and renumbered effective January 1, 2007; adopted as rule 34.1 effective January 1, 2004; previously amended effective January 1, 2005.

Advisory Committee Comment

Subdivision (a). Subdivision (a) restates Penal Code section 190.7(a).

Subdivision (b). Under the third sentence of (b)(1), copies of sealed documents must be given only to the Supreme Court and to the defendant concerned "[u]nless otherwise ordered." The qualification recognizes the statutory right of the Attorney General to request, under certain circumstances, copies of documents filed confidentially under Penal Code section 987.9(d). To facilitate compliance with such requests, the second sentence of rule 8.610(b)(1) requires such documents to be bound separately from documents filed confidentially under Penal Code section 987.2.

Subdivision (d). Subdivision (d) requires that the master indexes of the clerk and reporter's transcripts separately list all documents and transcripts each contains that were filed in sealed form under subdivision (b). The purpose of this provision is to assist the parties in making—and the court in adjudicating—motions to unseal portions of the record. To protect confidentiality until a record is unsealed, however, each index must endeavor to identify the sealed matter it lists without disclosing its substance.

Rule 8.613. Preparing and certifying the record of preliminary proceedings

(a) Definitions

For purposes of this rule:

(1) The “preliminary proceedings” are all proceedings held before and including the filing of the information or indictment, whether in open court or otherwise, and include the preliminary examination or grand jury proceeding;

(2) The “record of the preliminary proceedings” is the court file and the reporter’s transcript of the preliminary proceedings;

(3) The “responsible judge” is the judge assigned to try the case or, if none is assigned, the presiding superior court judge or designee of the presiding judge; and

(4) The “designated judge” is the judge designated by the presiding judge to supervise preparation of the record of preliminary proceedings.

(Subd (a) amended effective January 1, 2007.)

(b) Notice of intent to seek death penalty

In any case in which the death penalty may be imposed:

(1) If the prosecution notifies the responsible judge that it intends to seek the death penalty, the judge must notify the presiding judge and the clerk. The clerk must promptly enter the information in the court file.

(2) If the prosecution does not give notice under (1)—and does not give notice to the contrary—the clerk must notify the responsible judge 60 days before the first date set for trial that the prosecution is presumed to seek the death penalty. The judge must notify the presiding judge, and the clerk must promptly enter the information in the court file.

(c) Assignment of judge designated to supervise preparation of record of preliminary proceedings

(1) Within five days after receiving notice under (b), the presiding judge must designate a judge to supervise preparation of the record of the preliminary proceedings.

(2) If there was a preliminary examination, the designated judge must be the judge who conducted it.

(d) Notice to prepare transcript

Within five days after receiving notice under (b)(1) or notifying the judge under (b)(2), the clerk must notify each reporter who reported a preliminary proceeding to prepare a transcript of the proceeding. If there is more than one reporter, the designated judge may assign a reporter or another designee to perform the functions of the primary reporter.

(e) Reporter’s duties

(1) The reporter must prepare an original and five copies of the reporter's transcript and two additional copies for each codefendant against whom the death penalty is sought. The transcript must include the preliminary examination or grand jury proceeding unless a transcript of that examination or proceeding has already been filed in superior court for inclusion in the clerk's transcript.

(2) The reporter must certify the original and all copies of the reporter's transcript as correct.

(3) Within 20 days after receiving the notice to prepare the reporter's transcript, the reporter must deliver the original and all copies of the transcript to the clerk.

(f) Review by counsel

(1) Within five days after the reporter delivers the transcript, the clerk must deliver the original to the designated judge and one copy to each trial counsel. If a different attorney represented the defendant or the People in the preliminary proceedings, both attorneys must perform the tasks required by (2).

(2) Each trial counsel must promptly:

(A) Review the reporter's transcript for errors or omissions;

(B) Review the docket sheets and minute orders to determine whether all preliminary proceedings have been transcribed;

(C) Consult with opposing counsel to determine whether any other proceedings or discussions should have been transcribed; and

(D) Review the court file to determine whether it is complete.

(Subd (f) amended effective January 1, 2007.)

(g) Declaration and request for corrections or additions

(1) Within 30 days after the clerk delivers the transcript, each trial counsel must serve and file a declaration stating that counsel or another person under counsel's supervision has performed the tasks required by (f), and must serve and file either:

(A) A request for corrections or additions to the reporter's transcript or court file; or

(B) A statement that counsel does not request any corrections or additions.

(2) If a different attorney represented the defendant in the preliminary proceedings, that attorney must also file the declaration required by (1).

(3) A request for additions to the reporter's transcript must state the nature and date of the proceedings and, if known, the identity of the reporter who reported them.

(4) If any counsel fails to timely file a declaration under (1), the designated judge must not certify the record and must set the matter for hearing, require a showing of good cause why counsel has not complied, and fix a date for compliance.

(Subd (g) amended effective January 1, 2007.)

(h) Corrections or additions to the record of preliminary proceedings

If any counsel files a request for corrections or additions:

(1) Within 15 days after the last request is filed, the designated judge must hold a hearing and order any necessary corrections or additions.

(2) If any portion of the proceedings cannot be transcribed, the judge may order preparation of a settled statement under rule 8.346.

(3) Within 20 days after the hearing under (1), the original reporter's transcript and court file must be corrected or augmented to reflect all corrections or additions ordered. The clerk must promptly send copies of the corrected or additional pages to trial counsel.

(4) The judge may order any further proceedings to correct or complete the record of the preliminary proceedings.

(5) When the judge is satisfied that all corrections and additions ordered have been made and copies of all corrected or additional pages have been sent to the parties, the judge must certify the record of the preliminary proceedings as complete and accurate.

(6) The record of the preliminary proceedings must be certified as complete and accurate within 120 days after the presiding judge orders preparation of the record.

(Subd (h) amended effective January 1, 2007.)

(i) Computer-readable copies

(1) When the record of the preliminary proceedings is certified as complete and accurate, the clerk must promptly notify the reporter to prepare five computer-readable copies of the transcript and two additional computer-readable copies for each codefendant against whom the death penalty is sought.

(2) Each computer-readable copy must comply with the format, labeling, content, and numbering requirements of Code of Civil Procedure section 271(b) and any additional requirements prescribed by the Supreme Court, and must be further labeled to show the date it was made.

(3) A computer-readable copy of a sealed transcript must be placed on a separate disk and clearly labeled as confidential.

(4) The reporter is to be compensated for computer-readable copies as provided in Government Code section 69954(b).

(5) Within 20 days after the clerk notifies the reporter under (1), the reporter must deliver the computer-readable copies to the clerk.

(Subd (i) amended effective January 1, 2007.)

(j) Delivery to the superior court

Within five days after the reporter delivers the computer-readable copies, the clerk must deliver to the responsible judge, for inclusion in the record:

(1) The certified original reporter's transcript of the preliminary proceedings and the copies that have not been distributed to counsel, including the computer-readable copies; and

(2) The complete court file of the preliminary proceedings or a certified copy of that file.

(Subd (j) amended effective January 1, 2007.)

(k) Extension of time

(1) Except as provided in (2), the designated judge may extend for good cause any of the periods specified in this rule.

(2) The period specified in (h)(6) may be extended only as follows:

(A) The designated judge may request an extension of the period by presenting a declaration to the responsible judge explaining why the time limit cannot be met; and

(B) The responsible judge may order an extension not exceeding 90 additional days; in an exceptional case the judge may order an extension exceeding 90 days, but must state on the record the specific reason for the greater extension.

(Subd (k) amended effective January 1, 2007.)

(*l*) Notice that the death penalty is no longer sought

After the presiding judge has ordered preparation of the pretrial record, if the death penalty is no longer sought, the clerk must promptly notify the reporter that this rule does not apply.

(Subd (l) amended effective January 1, 2007.)

Rule 8.613 amended and renumbered effective January 1, 2007; adopted as rule 34.2 effective January 1, 2004.

Advisory Committee Comment

Rule 8.613 implements Penal Code section 190.9(a). Rules 8.613–8.622 govern the process of preparing and certifying the record in any appeal from a judgment of death imposed after a trial that began on or after January 1, 1997; specifically, rule 8.613 provides for the record of the preliminary proceedings in such an appeal. Rule 8.625 governs the process of certifying the record in any appeal from a judgment of death imposed after a trial that began before January 1, 1997.

Subdivision (f). As used in subdivision (f)—as in all rules in this chapter—trial counsel "means both the defendant's trial counsel and the prosecuting attorney." (Rule 8.600(e)(2).)

Subdivision (i). Subdivision (i)(4) restates a provision of former rule 35(b), second paragraph, as it was in effect on December 31, 2003.

Rule 8.616. Preparing the trial record

(a) Clerk's duties

(1) The clerk must promptly—and no later than five days after the judgment of death is rendered—notify the reporter to prepare the reporter's transcript.

(2) The clerk must prepare an original and eight copies of the clerk's transcript and two additional copies for each codefendant sentenced to death.

(3) The clerk must certify the original and all copies of the clerk's transcript as correct.

(b) Reporter's duties

(1) The reporter must prepare an original and five copies of the reporter's transcript and two additional copies for each codefendant sentenced to death.

(2) Any portion of the transcript transcribed during trial must not be retyped unless necessary to correct errors, but must be repaginated and bound with any portion of the transcript not previously transcribed. Any additional copies needed must not be retyped but must be prepared by photocopying or an equivalent process.

(3) The reporter must certify the original and all copies of the reporter's transcript as correct and deliver them to the clerk.

(c) Sending the record to trial counsel

Within 30 days after the judgment of death is rendered, the clerk must deliver one copy of the clerk's and reporter's transcripts to each trial counsel, retaining the original transcripts and the remaining copies. If counsel does not receive the transcripts within that period, counsel must promptly notify the superior court.

(d) Extension of time

(1) On request of the clerk or a reporter and for good cause, the superior court may extend the period prescribed in (c) for no more than 30 days. For any further extension the clerk or reporter must file a request in the Supreme Court, showing good cause.

(2) A request under (1) must be supported by a declaration explaining why the extension is necessary. The court may presume good cause if the clerk's and reporter's transcripts combined will likely exceed 10,000 pages.

(3) If the superior court orders an extension under (1), the order must specify the reason justifying the extension. The clerk must promptly send a copy of the order to the Supreme Court.

Rule 8.616 renumbered effective January 1, 2007; repealed and adopted as rule 35 effective January 1, 2004.

Advisory Committee Comment

Rule 8.616 implements Penal Code section 190.8(b).

Rule 8.619. Certifying the trial record for completeness

(a) Review by counsel during trial

During trial, counsel must call the court's attention to any errors or omissions they may find in the transcripts. The court must periodically ask counsel for lists of any such errors or omissions and may hold hearings to verify them.

(b) Review by counsel after trial

When the clerk delivers the clerk's and reporter's transcripts to trial counsel, each counsel must promptly:

(1) Review the docket sheets and minute orders to determine whether the reporter's transcript is complete;

(2) Consult with opposing counsel to determine whether any other proceedings or discussions should have been transcribed; and

(3) Review the court file to determine whether the clerk's transcript is complete.

(Subd (b) amended effective January 1, 2007.)

(c) Declaration and request for additions or corrections

(1) Within 30 days after the clerk delivers the transcripts, each trial counsel must serve and file a declaration stating that counsel or another person under counsel's supervision has performed the tasks required by (b), and must serve and file either:

(A) A request to include additional materials in the record or to correct errors that have come to counsel's attention; or

(B) A statement that counsel does not request any additions or corrections.

(2) A request for additions to the reporter's transcript must state the nature and date of the proceedings and, if known, the identity of the reporter who reported them.

(3) If any counsel fails to timely file a declaration under (1), the judge must not certify the record and must set the matter for hearing, require a showing of good cause why counsel has not complied, and fix a date for compliance.

(Subd (c) amended effective January 1, 2007.)

(d) Completion of the record

If any counsel files a request for additions or corrections:

(1) The clerk must promptly deliver the original transcripts to the judge who presided at the trial.

(2) Within 15 days after the last request is filed, the judge must hold a hearing and order any necessary additions or corrections. The order must require that any additions or corrections be made within 10 days of its date.

(3) The clerk must promptly—and in any event within five days—notify the reporter of an order under (2). If any portion of the proceedings cannot be transcribed, the judge may order preparation of a settled statement under rule 8.346.

(4) The original transcripts must be augmented or corrected to reflect all additions or corrections ordered. The clerk must promptly send copies of the additional or corrected pages to trial counsel.

(5) Within five days after the augmented or corrected transcripts are filed, the judge must set another hearing to determine whether the record has been completed or corrected as ordered. The judge may order further proceedings to complete or correct the record.

(6) When the judge is satisfied that all additions or corrections ordered have been made and copies of all additional or corrected pages have been sent to trial counsel, the judge must certify the record as complete and redeliver the original transcripts to the clerk.

(7) The judge must certify the record as complete within 90 days after the judgment of death is rendered.

(Subd (d) amended effective January 1, 2007.)

(e) Computer-readable copies

(1) When the record is certified as complete, the clerk must promptly notify the reporter to prepare five computer-readable copies of the transcript and two additional computer-readable copies for each codefendant sentenced to death.

(2) Each computer-readable copy must comply with the format, labeling, content, and numbering requirements of Code of Civil Procedure section 271(b) and any additional requirements prescribed by the Supreme Court, and must be further labeled to show the date it was made.

(3) A computer-readable copy of a sealed transcript must be placed on a separate disk and clearly labeled as confidential.

(4) The reporter is to be compensated for computer-readable copies as provided in Government Code section 69954(b).

(5) Within 10 days after the clerk notifies the reporter under (1), the reporter must deliver the computer-readable copies to the clerk.

(f) Extension of time

(1) The court may extend for good cause any of the periods specified in this rule.

(2) An application to extend the 30-day period to review the record under (c) must be served and filed within that period. If the clerk's and reporter's transcripts combined exceed 10,000 pages, the court may grant an additional three days for each 1,000 pages over 10,000.

(3) If the court orders an extension of time, the order must specify the justification for the extension. The clerk must promptly send a copy of the order to the Supreme Court.

(g) Sending the certified record

When the record is certified as complete, the clerk must promptly send:

(1) To each defendant's appellate counsel and each defendant's habeas corpus counsel: one paper copy of the entire record and one computer-readable copy of the reporter's transcript. If either counsel has not been retained or appointed, the clerk must keep that counsel's copies until counsel is retained or appointed.

(2) To the Attorney General, the Habeas Corpus Resource Center, and the California Appellate Project in San Francisco: one paper copy of the clerk's transcript and one computer-readable copy of the reporter's transcript.

(h) Notice of delivery

When the clerk sends the record to the defendant's appellate counsel, the clerk must serve a notice of delivery on the Supreme Court clerk.

Rule 8.619 amended and renumbered effective January 1, 2007; adopted as rule 35.1 effective January 1, 2004.

Advisory Committee Comment

Rule 8.619 implements Penal Code section 190.8(c)–(e).

Subdivision (e)(4) restates a provision of former rule 35(b), second paragraph, as it was in effect on December 31, 2003.

Rule 8.622. Certifying the trial record for accuracy

(a) Request for corrections or additions

(1) Within 90 days after the clerk delivers the record to defendant's appellate counsel, any party may serve and file a request for corrections or additions.

(2) A request for additions to the reporter's transcript must state the nature and date of the proceedings and, if known, the identity of the reporter who reported them.

(b) Correction of the record

(1) If any counsel files a request for corrections or additions, the procedures and time limits of rule 8.619(d)(1)–(5) must be followed.

(2) When the judge is satisfied that all corrections or additions ordered have been made, the judge must certify the record as accurate and redeliver the record to the clerk.

(3) The judge must certify the record as accurate within 120 days after it is delivered to appellate counsel.

(Subd (b) amended effective January 1, 2007.)

(c) Computer-readable copies

(1) When the record is certified as accurate, the clerk must promptly notify the reporter to prepare six computer-readable copies of the reporter's transcript and two additional computer-readable copies for each codefendant sentenced to death.

(2) In preparing the computer-readable copies, the procedures and time limits of rule 8.619(e)(2)–(5) must be followed.

(Subd (c) amended effective January 1, 2007.)

(d) Extension of time

(1) The court may extend for good cause any of the periods specified in this rule.

(2) An application to extend the 90-day period to request corrections or additions under (a) must be served and filed within that period. If the clerk's and reporter's transcripts combined exceed 10,000 pages, the court may grant an additional 15 days for each 1,000 pages over 10,000.

(3) If the court orders an extension of time, the order must specify the justification for the extension. The clerk must promptly send a copy of the order to the Supreme Court.

(4) If the court orders an extension of time, the court may conduct a status conference or require the counsel who requested the extension to file a status report on counsel's progress in reviewing the record.

(e) Sending the certified record

When the record is certified as accurate, the clerk must promptly send:

(1) To the Supreme Court: the corrected original record, including the judge's certificate of accuracy, and a computer-readable copy of the reporter's transcript.

(2) To each defendant's appellate counsel, each defendant's habeas corpus counsel, the Attorney General, the Habeas Corpus Resource Center, and the California Appellate Project in San Francisco: a copy of the order certifying the record and a computer-readable copy of the reporter's transcript.

(3) To the Governor: the copies of the transcripts required by Penal Code section 1218, with copies of any corrected or augmented pages inserted.

Rule 8.622 amended and renumbered effective January 1, 2007; adopted as rule 35.2 effective January 1, 2004.

Advisory Committee Comment

Rule 8.622 implements Penal Code section 190.8(g).

Rule 8.625. Certifying the record in pre-1997 trials

(a) Application

This rule governs the process of certifying the record in any appeal from a judgment of death imposed after a trial that began before January 1, 1997.

(b) Sending the transcripts to counsel for review

(1) When the clerk and the reporter certify that their respective transcripts are correct, the clerk must promptly send a copy of each transcript to each defendant's trial counsel, to the Attorney General, to the district attorney, to the California Appellate Project in San Francisco, and to the Habeas Corpus Resource Center, noting the sending date on the originals.

(2) The copies of the reporter's transcript sent to the California Appellate Project and the Habeas Corpus Resource Center must be computer-readable copies complying with the format, labeling, content, and numbering requirements of Code of Civil Procedure section 271(b) and any additional requirements prescribed by the Supreme Court, and must be further labeled to show the date they were made.

(3) When the clerk is notified of the appointment or retention of each defendant's appellate counsel, the clerk must promptly send that counsel copies of the clerk's transcript and the reporter's transcript, noting the sending date on the originals. The clerk must notify the Supreme Court, the Attorney General, and each defendant's appellate counsel in writing of the date the transcripts were sent to appellate counsel.

(c) Correcting, augmenting, and certifying the record

(1) Within 90 days after the clerk delivers the transcripts to each defendant's appellate counsel, any party may serve and file a request for correction or augmentation of the record. Any request for extension of time must be served and filed in the Supreme Court no later than five days before the 90-day period expires.

(2) If no party files a timely request for correction or augmentation, the clerk must certify on the original transcripts that no party objected to the accuracy or completeness of the record within the time allowed by law.

(3) Within 10 days after any party files a timely request for correction or augmentation, the clerk must deliver the request and the transcripts to the trial judge.

(4) Within 60 days after receiving a request and transcripts under (3), the judge must order the reporter, clerk, or party to make any necessary corrections or do any act necessary to complete the record, fixing the time for performance. If any portion of

the oral proceedings cannot be transcribed, the judge may order preparation of a settled statement under rule 8.346.

(5) The clerk must promptly send a copy of any order under (4) to the parties and to the Supreme Court, but any request for extension of time to comply with the order must be addressed to the trial judge.

(6) The original transcripts must be corrected or augmented to reflect all corrections or augmentations ordered. The clerk must promptly send copies of all corrected or augmented pages to the parties.

(7) The judge must allow the parties a reasonable time to review the corrections or augmentations. If no party objects to the corrections or augmentations as prepared, the judge must certify that the record is complete and accurate. If any party objects, the judge must resolve the objections before certifying the record.

(8) If the record is not certified within 90 days after the clerk sends the transcripts to appellate counsel under (b)(2), the judge must monitor preparation of the record to expedite certification and report the status of the record monthly to the Supreme Court.

(Subd (c) amended effective January 1, 2007.)

(d) Sending the certified record

When the clerk certifies that no party objected to the record or the judge certifies that the record is complete and accurate, the clerk must promptly send:

(1) To the Supreme Court: the original record, including the original certification by the trial judge.

(2) To each defendant's appellate counsel, the Attorney General, and the California Appellate Project in San Francisco: a copy of the order certifying the record.

(3) To the Governor: the copies of the transcripts required by Penal Code section 1218, with copies of any corrected or augmented pages inserted.

(e) Subsequent trial court orders; omissions

(1) If, after the record is certified, the trial court amends or recalls the judgment or makes any other order in the case, including an order affecting the sentence, the clerk must promptly certify and send a copy of the amended abstract of judgment or other order—as an augmentation of the record—to the persons and entities listed in (d).

(2) If, after the record is certified, the superior court clerk or the reporter learns that the record omits a document or transcript that any rule or court order requires to be included, the clerk must promptly copy and certify the document or the reporter must

promptly prepare and certify the transcript. Without the need for further court order, the clerk must send the document or transcript—as an augmentation of the record—to the persons and entities listed in (d).

Rule 8.625 amended and renumbered effective January 1, 2007; adopted as rule 35.3 effective January 1, 2004.

Article 3. Briefs, Hearing, and Decision

Rule 8.630. Briefs by parties and amici curiae
Rule 8.631. Applications to file overlength briefs in appeals from a judgment of death
Rule 8.634. Transmitting exhibits; augmenting the record in the Supreme Court
Rule 8.638. Oral argument and submission of the cause
Rule 8.642. Filing, finality, and modification of decision; rehearing; remittitur

Rule 8.630. Briefs by parties and amicus curiae

(a) Contents and form

Except as provided in this rule, briefs in appeals from judgments of death must comply as nearly as possible with rules 8.200 and 8.204.

(Subd (a) amended effective January 1, 2007.)

(b) Length

(1) A brief produced on a computer must not exceed the following limits, including footnotes:

(A) Appellant's opening brief: 102,000 words.

(B) Respondent's brief: 102,000 words. If the Chief Justice permits the appellant to file an opening brief that exceeds the limit set in (1)(A) or (3)(A), respondent's brief may not exceed the length of appellant's opening brief approved by the Chief Justice.

(C) Reply brief: 47,600 words.

(D) Petition for rehearing and answer: 23,800 words each.

(2) A brief under (1) must include a certificate by appellate counsel stating the number of words in the brief; counsel may rely on the word count of the computer program used to prepare the brief.

(3) A typewritten brief must not exceed the following limits:

(A) Appellant's opening brief: 300 pages.

(B) Respondent's brief: 300 pages. If the Chief Justice permits the appellant to file an opening brief that exceeds the limit set in (1)(A) or (3)(A), respondent's brief may not exceed the length of appellant's opening brief approved by the Chief Justice.

(C) Reply brief: 140 pages.

(D) Petition for rehearing and answer: 70 pages each.

(4) The tables required under rule 8.204(a)(1), the cover information required under rule 8.204(b)(10), a certificate under (2), any signature block, and any attachment permitted under rule 8.204(d) are excluded from the limits stated in (1) and (3).

(5) On application, the Chief Justice may permit a longer brief for good cause. An application in any case in which the certified record is filed in the California Supreme Court on or after January 1, 2008, must comply with rule 8.631.

(Subd (b) amended effective January 1, 2011; previously amended effective January 1, 2007, and January 1, 2008.)

(c) Time to file

(1) Except as provided in (2), the times to file briefs in an appeal from a judgment of death are as follows:

(A) The appellant's opening brief must be served and filed within 210 days after the record is certified as complete or the superior court clerk delivers the completed record to the defendant's appellate counsel, whichever is later. The Supreme Court clerk must promptly notify the defendant's appellate counsel and the Attorney General of the due date for the appellant's opening brief.

(B) The respondent's brief must be served and filed within 120 days after the appellant's opening brief is filed. The Supreme Court clerk must promptly notify the defendant's appellate counsel and the Attorney General of the due date for the respondent's brief.

(C) If the clerk's and reporter's transcripts combined exceed 10,000 pages, the time limits stated in (A) and (B) are extended by 15 days for each 1,000 pages of combined transcript over 10,000 pages.

(D) The appellant must serve and file a reply brief, if any, within 60 days after the respondent files its brief.

(2) In any appeal from a judgment of death imposed after a trial that began before January 1, 1997, the time to file briefs is governed by rule 8.360(c).

(3) The Chief Justice may extend the time to serve and file a brief for good cause.

(Subd (c) amended effective January 1, 2007.)

(d) Supplemental briefs

Supplemental briefs may be filed as provided in rule 8.520(d).

(Subd (d) amended effective January 1, 2007.)

(e) Amicus curiae briefs

Amicus curiae briefs may be filed as provided in rule 8.520(f).

(Subd (e) amended effective January 1, 2007.)

(f) Briefs on the court's request

The court may request additional briefs on any or all issues.

(g) Service

(1) The Supreme Court Policy on Service of Process by Counsel for Defendant governs service of the defendant's briefs.

(2) The Attorney General must serve two copies of the respondent's brief on each defendant's appellate counsel and, for each defendant sentenced to death, one copy on the California Appellate Project in San Francisco.

(3) A copy of each brief must be served on the superior court clerk for delivery to the trial judge.

(h) Judicial notice

To obtain judicial notice by the Supreme Court under Evidence Code section 459, a party must comply with rule 8.252(a).

(Subd (h) amended effective January 1, 2007.)

Rule 8.630 amended effective January 1, 2011; repealed and adopted as rule 36 effective January 1, 2004; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2008.

Advisory Committee Comment

Subdivision (b). Subdivision (b)(1) states the maximum permissible lengths of briefs produced on a computer in terms of word count rather than page count. This provision tracks a provision in rule 8.204(c) governing Court of Appeal briefs and is explained in the comment to that provision. Each word count assumes a brief using one-and-one-half spaced lines of text, as permitted by rule 8.204(b)(5).

Subdivision (b)(4) specifies certain items that are not counted toward the maximum brief length. Signature blocks, as referenced in this provision includes not only the signatures, but also the printed names, titles, and affiliations of any attorneys filing or joining in the brief, which may accompany the signature.

Subdivision (g). Subdivision (g)(1) is a cross-reference to Policy 4 of the Supreme Court Policies Regarding Cases Arising From Judgments of Death.

Rule 8.631. Applications to file overlength briefs in appeals from a judgment of death

(a) Cases in which this rule applies

This rule applies in appeals from a judgment of death in which the certified record is filed in the California Supreme Court on or after January 1, 2008.

(b) Policies

(1) The brief limits set by rule 8.630 are substantially higher than for other appellate briefs in recognition of the number, significance, and complexity of the issues generally presented in appeals from judgments of death and are designed to be sufficient to allow counsel to prepare adequate briefs in the majority of such appeals.

(2) In a small proportion of such appeals, counsel may not be able to prepare adequate briefs within the limits set by rule 8.630. In those cases, necessary additional briefing will be permitted.

(3) A party may not file a brief that exceeds the limit set by rule 8.630 unless the court finds that good cause has been shown in an application filed within the time limits set in (d).

(c) Factors considered

The court will consider the following factors in determining whether good cause exists to grant an application to file a brief that exceeds the limit set by rule 8.630:

(1) The unusual length of the record. A party relying on this factor must specify the length of each of the following components of the record:

(A) The reporter's transcript;

(B) The clerk's transcript; and

(C) The portion of the clerk's transcript that is made up of juror questionnaires.

(2) The number of codefendants in the case and whether they were tried separately from the appellant;

(3) The number of homicide victims in the case and whether the homicides occurred in more than one incident;

(4) The number of other crimes in the case and whether they occurred in more than one incident;

(5) The number of rulings by the trial court on unusual, factually intensive, or legally complex motions that the party may assert are erroneous and prejudicial. A party relying on this factor must briefly describe the nature of these motions;

(6) The number of rulings on objections by the trial court that the party may assert are erroneous and prejudicial;

(7) The number and nature of unusual, factually intensive, or legally complex hearings held in the trial court that the party may assert raise issues on appeal; and

(8) Any other factor that is likely to contribute to an unusually high number of issues or unusually complex issues on appeal. A party relying on this factor must briefly specify those issues.

(d) Time to file and contents of application

(1) An application to file a brief that exceeds the limits set by rule 8.630 must be served and filed as follows:

(A) For an appellant's opening brief or respondent's brief:

(i) If counsel has not filed an application requesting an extension of time to file the brief, no later than 45 days before the brief is due.

(ii) If counsel has filed an application requesting an extension of time to file the brief, within the time specified by the court in its order regarding the extension of time.

(B) For an appellant's reply brief:

(i) If counsel has not filed an application requesting an extension of time to file the brief, no later than 30 days before the brief is due.

(ii) If counsel has filed an application requesting an extension of time to file the brief, within the time specified by the court in its order regarding the extension of time.

(2) After the time specified in (1), an application to file a brief that exceeds the applicable limit may be filed only under the following circumstances:

(A) New authority substantially affects the issues presented in the case and cannot be adequately addressed without exceeding the applicable limit. Such an application must be filed within 30 days of finality of the new authority; or

(B) Replacement counsel has been appointed to represent the appellant and has determined that it is necessary to file a brief that exceeds the applicable limit. Such an application must be filed within the time specified by the court in its order setting the deadline for replacement counsel to file the appellant's brief.

(3) The application must:

(A) State the number of additional words or typewritten pages requested.

(B) State good cause for granting the additional words or pages requested, consistent with the factors in (c). The number of additional words or pages requested must be commensurate with the good cause shown. The application must explain why the factors identified demonstrate good cause in the particular case. The application must not state mere conclusions or make legal arguments regarding the merits of the issues on appeal.

(C) Not exceed 5,100 words if produced on a computer or 15 pages if typewritten.

Rule 8.631 adopted effective January 1, 2008.

Advisory Committee Comment

Subdivision (a). In all cases in which a judgment of death was imposed after a trial that began after January 1, 1997, the record filed with the Supreme Court will be the record that has been certified for accuracy under rule 8.622. In cases in which a judgment of death was imposed after a trial that began before January 1, 1997, the record filed with the Supreme Court will be the certified record under rule 8.625.

Subdivision (c)(1)(A). As in guideline 8 of the Supreme Court's Guidelines for Fixed Fee Appointments, juror questionnaires generally will not be taken into account in considering whether the length of the record is unusual unless these questionnaires are relevant to an issue on appeal. A record of 10,000 pages or less, excluding juror questionnaires, is not considered a record of unusual length; 70 percent of the records in capital appeals filed between 2001 and 2004 were 10,000 pages or less, excluding juror questionnaires.

Subdivision (c)(1)(E). Examples of unusual, factually intensive, or legally complex motions include motions to change venue, admit scientific evidence, or determine competency.

Subdivisions (c)(1)(E)–(I). Because an application must be filed before briefing is completed, the issues identified in the application will be those that the party anticipates *may* be raised on appeal. If the party does not ultimately raise all of these issues on appeal, the party is expected to have reduced the length of the brief accordingly.

Subdivision (c)(1)(I). Examples of unusual, factually intensive, or legally complex hearings include jury composition proceedings and hearings to determine the defendant's competency or sanity, whether the defendant is mentally retarded, and whether the defendant may represent himself or herself.

Subdivision (d)(1)A)(ii). To allow the deadline for an application to file an overlength brief to be appropriately tied to the deadline for filing that brief, if counsel requests an extension of time to file a brief, the court will specify in its order regarding the request to extend the time to file the brief, when any application to file an overlength brief is due. Although the order will specify the deadline by which an application must be filed, counsel are encouraged to file such applications sooner, if possible.

Subdivision (d)(3). These requirements apply to applications filed under either (d)(1) or (d)(2).

Rule 8.634. Transmitting exhibits; augmenting the record in the Supreme Court

(a) Application

Except as provided in (b), rule 8.224 governs the transmission of exhibits to the Supreme Court.

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 2004.)

(b) Time to file notice of designation

No party may file a notice designating exhibits under rule 8.224(a) until the Supreme Court clerk notifies the parties of the time and place of oral argument.

(Subd (b) amended effective January 1, 2007.)

(c) Augmenting the record in the Supreme Court

At any time, on motion of a party or on its own motion, the Supreme Court may order the record augmented or corrected as provided in rule 8.155.

(Subd (c) amended effective January 1, 2007; adopted effective January 1, 2004.)

Rule 8.634 amended and renumbered effective January 1, 2007; adopted as rule 36.1 effective January 1, 2003; previously amended effective January 1, 2004.

Rule 8.638. Oral argument and submission of the cause

(a) Application

Except as provided in (b), rule 8.524 governs oral argument and submission of the cause in the Supreme Court unless the court provides otherwise in its Internal Operating Practices and Procedures or by order.

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 2004.)

(b) Procedure

(1) The appellant has the right to open and close.

(2) Each side is allowed 45 minutes for argument.

(3) Two counsel may argue on each side if, within 10 days after the date of the order setting the case for argument, they notify the court that the case requires it.

(Subd (b) amended effective January 1, 2004.)

Rule 8.638 amended and renumbered effective January 1, 2007; adopted as rule 36.2 effective January 1, 2003; previously amended effective January 1, 2004.

Rule 8.642. Filing, finality, and modification of decision; rehearing; remittitur

Rules 8.532 through 8.540 govern the filing, finality, and modification of decision, rehearing, and issuance of remittitur by the Supreme Court in an appeal from a judgment of death.

Rule 8.642 amended and renumbered effective January 1, 2007; adopted as rule 36.3 effective January 1, 2004.

Division 2. Rules Relating to the Superior Court Appellate Division

Title 8, Appellate Rules–Division 2, Rules Relating to the Superior Court Appellate Division amended effective January 1, 2009.

Advisory Committee Comment

Division 2. *The rules relating to the superior court appellate division begin with Chapter 1, which contains general rules applicable to appeals in all three types of cases within the jurisdiction of the appellate division—limited civil, misdemeanor, and infraction. Because the procedures relating to taking appeals and preparing the record in limited civil, misdemeanor, and infraction appeals differ, there are separate chapters addressing these topics: Chapter 2 addresses taking appeals and record preparation in limited civil cases, and Chapter 3 addresses taking appeals and record preparation in misdemeanor cases. Because the procedures for briefing and rendering decisions are generally the same in limited civil and misdemeanor appeals, Chapter 4 addresses these procedures in appeals of both types of cases. To make the distinct procedures for appeals in infraction proceedings easier to find and understand, these procedures are located in a separate chapter—Chapter 5. Chapter 6 addresses writ proceedings in the appellate division.*

Chapter 1. General Rules Applicable to Appellate Division Proceedings

Title 8, Appellate Rules–Division 2, Rules Relating to the Superior Court Appellate Division–Chapter 1, General Rules Applicable to Appellate Division Proceedings amended effective January 1, 2009.

Rule 8.800. Application of division
Rule 8.802. Construction
Rule 8.804. Definitions
Rule 8.805. Amendments to rules and statutes
Rule 8.806. Applications
Rule 8.808. Motions
Rule 8.809. Judicial notice
Rule 8.810. Extending time
Rule 8.811. Policies and factors governing extensions of time
Rule 8.812. Relief from default
Rule 8.813. Shortening time
Rule 8.814. Substituting parties; substituting or withdrawing attorneys
Rule 8.816. Address and telephone number of record; notice of change
Rule 8.817. Service and filing
Rule 8.818. Waiver of fees and costs
Rule 8.819. Sealed records

Rule 8.800. Application of division

The rules in this division apply to:

(1) Appeals in the appellate division of the superior court; and

(2) Writ proceedings, motions, applications, and petitions in the appellate division of the superior court.

Rule 8.800 adopted effective January 1, 2009.

Rule 8.802. Construction

(a) Construction

The rules in this division must be construed to ensure that the proceedings they govern will be justly and speedily determined.

(b) Terminology

As used in this division:

(1) "Must" is mandatory;

(2) "May" is permissive;

(3) "May not" means is not permitted to;

(4) "Will" expresses a future contingency or predicts action by a court or person in the ordinary course of events, but does not signify a mandatory duty; and

(5) "Should" expresses a preference or a nonbinding recommendation.

(c) Construction of additional terms

In the rules:

(1) Each tense (past, present, or future) includes the others;

(2) Each gender (masculine, feminine, or neuter) includes the others;

(3) Each number (singular or plural) includes the other; and

(4) The headings of divisions, chapters, articles, rules, and subdivisions are substantive.

Rule 8.802 adopted effective January 1, 2009.

Rule 8.804. Definitions

As used in this division, unless the context or subject matter otherwise requires:

(1) "Action" includes special proceeding.

(2) "Case" includes action or proceeding.

(3) "Civil case" means a case prosecuted by one party against another for the declaration, enforcement, or protection of a right or the redress or prevention of a wrong. Civil cases include all cases except criminal cases.

(4) "Unlimited civil cases" and "limited civil cases" are defined in Code of Civil Procedure section 85 et seq.

(5) "Criminal case" means a proceeding by which a party charged with a public offense is accused and brought to trial and punishment.

(6) "Rule" means a rule of the California Rules of Court.

(7) "Local rule" means every rule, regulation, order, policy, form, or standard of general application adopted by a court to govern practice and procedure in that court or by a judge of the court to govern practice or procedure in that judge's courtroom.

(8) "Presiding judge" includes the acting presiding judge or the judge designated by the presiding judge.

(9) "Judge" includes, as applicable, a judge of the superior court, a commissioner, or a temporary judge.

(10) "Person" includes a corporation or other legal entity as well as a natural person.

(11) "Appellant" means the appealing party.

(12) "Respondent" means the adverse party.

(13) "Party" is a person appearing in an action. Parties include both self-represented persons and persons represented by an attorney of record. "Party," "applicant," "petitioner," or any other designation of a party includes the party's attorney of record.

(14) "Attorney" means a member of the State Bar of California.

(15) "Counsel" means an attorney.

(16) "Prosecuting attorney" means the city attorney, county counsel, or district attorney prosecuting an infraction or misdemeanor case.

(17) "Complaint" includes a citation.

(18) "Service" means service in the manner prescribed by a statute or rule.

(19) "Declaration" includes "affidavit."

(20) "Recycled" as applied to paper means "recycled printing and writing paper" as defined by Public Contract Code section 12209.

(21) "Trial court" means the superior court from which an appeal is taken.

(22) "Reviewing court" means the appellate division of the superior court.

(23) "Judgment" includes any judgment or order that may be appealed.

Rule 8.804 adopted effective January 1, 2009.

Advisory Committee Comment

Item (18). See rule 1.21 for general requirements relating to service, including proof of service.

Rule 8.805. Amendments to rules and statutes

(a) Amendments to rules

Only the Judicial Council may amend these rules, except the rules in division 5, which may be amended only by the Supreme Court. An amendment by the Judicial Council must be

published in the advance pamphlets of the Official Reports and takes effect on the date ordered by the Judicial Council.

(b) Amendments to statutes

In these rules, a reference to a statute includes any subsequent amendment to the statute.

Rule 8.805 adopted effective January 1, 2009.

Rule 8.806. Applications

(a) Service and filing

Except as these rules provide otherwise, parties must serve and file all applications, including applications to extend time to file records, briefs, or other documents and applications to shorten time. Applications to extend the time to prepare the record on appeal may be filed in either the trial court or the appellate division. All other applications must be filed in the appellate division. For good cause, the presiding judge of the court where the application was filed, or his or her designee, may excuse advance service.

(b) Contents

The application must:

(1) State facts showing good cause to grant the application; and

(2) Identify any previous applications relating to the same subject filed by any party in the same appeal or writ proceeding.

(c) Envelopes

An application must be accompanied by addressed, postage-prepaid envelopes for the clerk's use in mailing copies of the order on the application to all parties.

(d) Disposition

Unless the court determines otherwise, the presiding judge of the court in which the application was filed, or his or her designee, may rule on the application.

Rule 8.806 adopted effective January 1, 2009.

Advisory Committee Comment

Subdivision (a). See rule 1.21 for the meaning of "serve and file," including the requirements for proof of service.

Subdivisions (a) and (d). These provisions permit the presiding judge to designate another judge, such as the trial judge, to handle applications.

Rule 8.808. Motions

(a) Motion and opposition

(1) Except as these rules provide otherwise, to make a motion in the appellate division a party must serve and file a written motion, stating the grounds and the relief requested and identifying any documents on which it is based.

(2) A motion must be accompanied by a memorandum and, if it is based on matters outside the record, by declarations or other supporting evidence.

(3) Any opposition to the motion must be served and filed within 15 days after the motion is filed.

(b) Disposition

(1) The court may rule on a motion at any time after an opposition or other response is filed or the time to oppose has expired.

(2) On a party's request or its own motion, the appellate division may place a motion on calendar for a hearing. The clerk must promptly send each party a notice of the date and time of the hearing.

Rule 8.808 adopted effective January 1, 2009.

Advisory Committee Comment

Subdivision (a)(1). See rule 1.21 for the meaning of "serve and file," including the requirements for proof of service.

Subdivision (b). Although a party may request a hearing on a motion, a hearing will be held only if the court determines that one is needed.

Rule 8.809. Judicial notice

(a) Motion required

(1) To obtain judicial notice by a reviewing court under Evidence Code section 459, a party must serve and file a separate motion with a proposed order.

(2) The motion must state:

(A) Why the matter to be noticed is relevant to the appeal;

(B) Whether the matter to be noticed was presented to the trial court and, if so, whether judicial notice was taken by that court; and

(C) Whether the matter to be noticed relates to proceedings occurring after the order or judgment that is the subject of the appeal.

(b) Copy of matter to be judicially noticed

If the matter to be noticed is not in the record, the party must serve and file a copy with the motion or explain why it is not practicable to do so.

Rule 8.809 adopted effective January 1, 2011.

Rule 8.810. Extending time

(a) Computing time

The Code of Civil Procedure governs computing and extending the time to do any act required or permitted under these rules.

(b) Extension by trial court

(1) For good cause and except as these rules provide otherwise, the presiding judge of the trial court, or his or her designee, may extend the time to do any act to prepare the record on appeal.

(2) The trial court may not extend the time to do an act if that time—including any valid extension—has expired.

(3) Notwithstanding anything in these rules to the contrary, the trial court may grant an initial extension to any party to do any act to prepare the record on appeal on an ex parte basis.

(c) Extension by appellate division

For good cause and except as these rules provide otherwise, the presiding judge of the appellate division, or his or her designee, may extend the time to do any act required or permitted under these rules, except the time to file a notice of appeal.

(d) Application for extension

(1) An application to extend time must include a declaration stating facts, not mere conclusions, and must be served on all parties. For good cause, the presiding judge of the appellate division, or his or her designee, may excuse advance service.

(2) The application must state:

(A) The due date of the document to be filed;

(B) The length of the extension requested;

(C) Whether any earlier extensions have been granted and, if so, their lengths; and

(D) Good cause for granting the extension, consistent with the policies and factors stated in rule 8.811.

(e) Notice to party

(1) In a civil case, counsel must deliver to his or her client or clients a copy of any stipulation or application to extend time that counsel files. Counsel must attach evidence of such delivery to the stipulation or application or certify in the stipulation or application that the copy has been delivered.

(2) The evidence or certification of delivery under (1) need not include the address of the party notified.

Rule 8.810 adopted effective January 1, 2009.

Advisory Committee Comment

Subdivision (b)(1). This provision permits the presiding judge to designate another judge, such as the trial judge, to handle applications to extend time.

Rule 8.811. Policies and factors governing extensions of time

(a) Policies

(1) The time limits prescribed by these rules should generally be met to ensure expeditious conduct of appellate business and public confidence in the efficient administration of appellate justice.

(2) The effective assistance of counsel to which a party is entitled includes adequate time for counsel to prepare briefs or other documents that fully advance the party's interests. Adequate time also allows the preparation of accurate, clear, concise, and complete submissions that assist the courts.

(3) For a variety of legitimate reasons, counsel or self-represented litigants may not always be able to prepare briefs or other documents within the time specified in the rules of court. To balance the competing policies stated in (1) and (2), applications to extend time in the appellate division must demonstrate good cause under (b). If good cause is shown, the court must extend the time.

(b) Factors considered

In determining good cause, the court must consider the following factors when applicable:

(1) The degree of prejudice, if any, to any party from a grant or denial of the extension. A party claiming prejudice must support the claim in detail.

(2) In a civil case, the positions of the client and any opponent with regard to the extension.

(3) The length of the record, including the number of relevant trial exhibits. A party relying on this factor must specify the length of the record.

(4) The number and complexity of the issues raised. A party relying on this factor must specify the issues.

(5) Whether there are settlement negotiations and, if so, how far they have progressed and when they might be completed.

(6) Whether the case is entitled to priority.

(7) Whether counsel responsible for preparing the document is new to the case.

(8) Whether other counsel or the client needs additional time to review the document.

(9) Whether counsel or a self-represented party responsible for preparing the document has other time-limited commitments that prevent timely filing of the document. Mere conclusory statements that more time is needed because of other pressing business will not suffice. Good cause requires a specific showing of other obligations of counsel or a self-represented party that:

    (A) Have deadlines that as a practical matter preclude filing the document by the due date without impairing its quality; or

    (B) Arise from cases entitled to priority.

(10) Illness of counsel or a self-represented party, a personal emergency, or a planned vacation that counsel or a self-represented party did not reasonably expect to conflict with the due date and cannot reasonably rearrange.

(11) Any other factor that constitutes good cause in the context of the case.

Rule 8.811 adopted effective January 1, 2009.

Rule 8.812. Relief from default

For good cause, the presiding judge of the appellate division, or his or her designee, may relieve a party from a default for any failure to comply with these rules, except the failure to file a timely notice of appeal.

Rule 8.812 adopted effective January 1, 2009.

Rule 8.813. Shortening time

For good cause and except as these rules provide otherwise, the presiding judge of the appellate division, or his or her designee, may shorten the time to do any act required or permitted under these rules.

Rule 8.813 adopted effective January 1, 2009.

Rule 8.814. Substituting parties; substituting or withdrawing attorneys

(a) Substituting parties

Substitution of parties in an appeal or original proceeding must be made by serving and filing a motion in the appellate division. The clerk of the appellate division must notify the trial court of any ruling on the motion.

(b) Substituting attorneys

A party may substitute attorneys by serving and filing in the appellate division a stipulation signed by the party represented and the new attorney.

(c) Withdrawing attorney

(1) An attorney may request withdrawal by filing a motion to withdraw. Unless the court orders otherwise, the motion need be served only on the party represented and the attorneys directly affected.

(2) The proof of service need not include the address of the party represented. But if the court grants the motion, the withdrawing attorney must promptly provide the court and the opposing party with the party's current or last known address and telephone number.

(3) In all appeals and in original proceedings related to a trial court proceeding, the appellate division clerk must notify the trial court of any ruling on the motion.

Rule 8.814 adopted effective January 1, 2009.

Rule 8.816. Address and telephone number of record; notice of change

(a) Address and telephone number of record

In any case pending before the appellate division, the appellate division will use the address and telephone number that an attorney or unrepresented party provides on the first

document filed in that case as the address and telephone number of record unless the attorney or unrepresented party files a notice under (b).

(b) Notice of change

(1) An attorney or unrepresented party whose address or telephone number changes while a case is pending must promptly serve and file a written notice of the change in the appellate division in which the case is pending.

(2) The notice must specify the title and number of the case or cases to which it applies. If an attorney gives the notice, the notice must include the attorney's California State Bar number.

(c) Matters affected by notice

If the notice under (b) does not identify the case or cases in which the new address or telephone number applies, the clerk may use the new address or telephone number as the person's address and telephone number of record in all pending and concluded cases.

(d) Multiple addresses

If an attorney or unrepresented party has more than one address, only one address may be used in a given case.

Rule 8.816 adopted effective January 1, 2009.

Rule 8.817. Service and filing

(a) Service

(1) Before filing any document, a party must serve, by any method permitted by the Code of Civil Procedure, one copy of the document on the attorney for each party separately represented, on each unrepresented party, and on any other person or entity when required by statute or rule.

(2) The party must attach to the document presented for filing a proof of service showing service on each person or entity required to be served under (1). The proof must name each party represented by each attorney served.

(b) Filing

(1) A document is deemed filed on the date the clerk receives it.

(2) Unless otherwise provided by these rules or other law, a filing is not timely unless the clerk receives the document before the time to file it expires.

(3) A brief, a petition for rehearing, or an answer to a petition for rehearing is timely if the time to file it has not expired on the date of:

(A) Its mailing by priority or express mail as shown on the postmark or the postal receipt; or

(B) Its delivery to a common carrier promising overnight delivery as shown on the carrier's receipt.

(4) The provisions of (3) do not apply to original proceedings.

(5) If the clerk receives a document by mail from an inmate or a patient in a custodial institution after the period for filing the document has expired but the envelope shows that the document was mailed or delivered to custodial officials for mailing within the period for filing the document, the document is deemed timely. The clerk must retain in the case file the envelope in which the document was received.

(Subd (b) amended effective July 1, 2010.)

Rule 8.817 amended effective July 1, 2010; adopted effective January 1, 2009.

Advisory Committee Comment

Subdivision (a). Subdivision (a)(1) requires service "by any method permitted by the Code of Civil Procedure." The reference is to the several permissible methods of service provided in Code of Civil Procedure sections 1010–1020. *What Is Proof of Service?* (form APP-109-INFO) provides additional information about how to serve documents and how to provide proof of service.

Subdivision (b). In general, to be filed on time, a document must be received by the clerk before the time for filing that document expires. There are, however, some limited exceptions to this general rule. For example, (5) provides that if the superior court clerk receives a document by mail from a custodial institution after the deadline for filing the document has expired but the envelope shows that the document was mailed or delivered to custodial officials for mailing before the deadline expired, the document is deemed timely. This provision reflects the "prison-delivery" exception articulated by the California Supreme Court in *In re Jordan* (1992) 4 Cal.4th 116 and *Silverbrand v. County of Los Angeles* (2009) 46 Cal.4th 106.

Note that if a deadline runs from the date of filing, it runs from the date that the document is actually received and deemed filed under (b)(1); neither (b)(3) nor (b)(5) changes that date. Nor do these provisions extend the date of finality of an appellate opinion or any other deadline that is based on finality, such as the deadline for the court to modify its opinion or order rehearing. Subdivision (b)(5) is also not intended to limit a criminal defendant's appeal rights under the case law of constructive filing. (See, e.g., *In re Benoit* (1973) 10 Cal.3d 72.)

Rule 8.818. Waiver of fees and costs

(a) Applications for waiver of fees and costs

(1) *Appeals*

(A) If the trial court previously issued an order granting a party's request to waive court fees and costs in a case, and that fee waiver is still in effect, all of the court fees for an appeal to the appellate division in that case that are listed in (d) are waived by that order, and the party is not required to file a new application for waiver of court fees and costs for an appeal to the appellate division in that case.

(B) If the trial court did not previously issue an order granting a party's request to waive court fees and costs in a case or an order that was previously issued is no longer in effect, an application for initial waiver of court fees and costs for an appeal must be made on *Request to Waive Court Fees* (form FW-001). The appellant should file the application with the notice of appeal in the trial court that issued the judgment or order being appealed. The respondent should file any application at the time the fees are to be paid to the court.

(2) *Writ proceedings*

To request the waiver of fees and costs in a writ proceeding, the petitioner must complete *Request to Waive Court Fees* (form FW-001). The petitioner should file the application with the writ petition.

(3) *Forms*

The clerk must provide *Request to Waive Court Fees* (form FW-001) and *Information Sheet on Waiver of Fees and Costs (Supreme Court, Court of Appeal, Appellate Division)* (form APP-015/FW-015-INFO) without charge to any person who requests any fee waiver application or states that he or she is unable to pay any court fee or cost.

(b) Procedure for determining application

The application must be considered and determined as required by Government Code section 68634.5. An order determining the application for initial fee waiver or setting a hearing on the application may be made on *Order on Court Fee Waiver (Superior Court)* (form FW-003).

(c) Application granted unless acted on by the court

The application for initial fee waiver is deemed granted unless the court gives notice of action on the application within five court days after the application is filed.

(d) Court fees and costs waived

Court fees and costs that must be waived upon granting an application for initial waiver of court fees and costs include:

(1) The fee for filing the notice of appeal;

(2) The clerk's fees for preparing and certifying the clerk's transcript on appeal and for copying and transmitting a copy of this transcript to the applicant;

(3) The fee for preparing a transcript of an official electronic recording under rule 8.835 or a copy of such an electronic recording; and

(4) Any court fee for telephonic oral argument.

(e) Denial of the application

If an application is denied, the applicant must pay the court fees and costs or submit the new application or additional information requested by the court within 10 days after the clerk gives notice of the denial.

(f) Confidential records

(1) No person may have access to an application for an initial fee waiver submitted to the court except the court and authorized court personnel, any person authorized by the applicant, and any persons authorized by order of the court. No person may reveal any information contained in the application except as authorized by law or order of the court. An order granting access to an application or financial information may include limitations on who may access the information and on the use of the information after it has been released.

(2) Any person seeking access to an application or financial information provided to the court by an applicant must make the request by motion, supported by a declaration showing good cause as to why the confidential information should be released.

Rule 8.818 adopted effective July 1, 2009.

Advisory Committee Comment

Subdivision (a)(1)(B). The waiver of court fees and costs is called an "initial" waiver because, under Government Code section 68630 and following, any such waiver may later be modified, ended, or retroactively withdrawn if the court determines that the applicant was not or is no longer eligible for a waiver. The court may, at a later time, order that the previously waived fees be paid.

Rule 8.819. Sealed records

Rule 8.46 governs records sealed by court order under rules 2.550–2.551 and records proposed to be sealed in the appellate division.

Rule 8.819 adopted effective January 1, 2010.

Chapter 2. Appeals and Records in Limited Civil Cases

Title 8, Appellate Rules–Division 2, Rules Relating to the Superior Court Appellate Division–Chapter 2, Appeals and Records in Limited Civil Cases amended effective January 1, 2009.

Article 1. Taking Civil Appeals

Title 8, Appellate Rules–Division 2, Rules Relating to the Superior Court Appellate Division–Chapter 2, Appeals and Records in Limited Civil Cases–Article 1, Taking Civil Appeals adopted effective January 1, 2009.

Rule 8.820. Application of chapter
Rule 8.821. Notice of appeal
Rule 8.822. Time to appeal
Rule 8.823. Extending the time to appeal
Rule 8.824. Writ of supersedeas
Rule 8.825. Abandonment, voluntary dismissal, and compromise

Rule 8.820. Application of chapter

The rules in this chapter apply to appeals in limited civil cases, except small claims cases.

Rule 8.820 adopted effective January 1, 2009.

Advisory Committee Comment

Chapters 1 and 4 of this division also apply in appeals in limited civil cases.

Rule 8.821. Notice of appeal

(a) Notice of appeal

(1) To appeal from a judgment or appealable order in a limited civil case, except a small claims case, an appellant must serve and file a notice of appeal in the superior court that issued the judgment or order being appealed. The appellant or the appellant's attorney must sign the notice.

(2) The notice of appeal must be liberally construed and is sufficient if it identifies the particular limited civil case judgment or order being appealed.

(3) Failure to serve the notice of appeal neither prevents its filing nor affects its validity, but the appellant may be required to remedy the failure.

(b) Filing fee

(1) Unless otherwise provided by law, the notice of appeal must be accompanied by the filing fee required under Government Code section 70621, an application for a waiver of court fees and costs on appeal under rule 8.818, or an order granting an application for a waiver of court fees and costs. The filing fee is nonrefundable.

(2) The clerk must file the notice of appeal even if the appellant does not present the filing fee or an application for, or order granting, a waiver of court fees and costs.

(Subd (b) amended effective July 1, 2009.)

(c) Failure to pay filing fee

(1) The clerk must promptly notify the appellant in writing if:

(A) The court receives a notice of appeal without the filing fee required by (b) or an application for, or order granting, a waiver of court fees and costs;

(B) A check for the filing fee is dishonored; or

(C) An application for a waiver under rule 8.818 is denied.

(2) A clerk's notice under (1)(A) or (B) must state that the court may dismiss the appeal unless, within 15 days after the notice is sent, the appellant either:

(A) Pays the fee; or

(B) Files an application for a waiver under rule 8.818 if the appellant has not previously filed such an application or an order granting such an application.

(3) If the appellant fails to take the action specified in the notice given under (2), the appellate division may dismiss the appeal, but may vacate the dismissal for good cause.

(Subd (c) amended effective July 1, 2009.)

(d) Notification of the appeal

(1) When the notice of appeal is filed, the trial court clerk must promptly mail a notification of the filing of the notice of appeal to the attorney of record for each party and to any unrepresented party. The clerk must also mail or deliver this notification to the appellate division clerk.

(2) The notification must show the date it was mailed and must state the number and title of the case and the date the notice of appeal was filed.

(3) A copy of the notice of appeal is sufficient notification under (1) if the required information is on the copy or is added by the trial court clerk.

(4) The mailing of a notification under (1) is a sufficient performance of the clerk's duty despite the death of the party or the discharge, disqualification, suspension, disbarment, or death of the attorney.

(5) Failure to comply with any provision of this subdivision does not affect the validity of the notice of appeal.

(e) Notice of cross-appeal

As used in this rule, "notice of appeal" includes a notice of cross-appeal and "appellant" includes a respondent filing a notice of cross-appeal.

Rule 8.821 amended effective July 1, 2009; adopted effective January 1, 2009.

Advisory Committee Comment

Subdivision (a). *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (form APP-102) may be used to file the notice of appeal required under this rule. This form is available at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*.

Subdivision (b). The filing fee required under Government Code section 70621 is $180 if the amount claimed in the case is $10,000 or less and $300 if the amount claimed in the case is more than $10,000.

Subdivision (c)(2). This subdivision addresses the content of a clerk's notice that a check for the filing fee has been dishonored or that the reviewing court has received a notice of appeal without the filing fee, a certificate of cash payment, or an application for, or order granting, a fee waiver. Rule 8.818(e) addresses what an appellant must do when a fee waiver application is denied.

Rule 8.822. Time to appeal

(a) Normal time

Unless a statute or rule 8.823 provides otherwise, a notice of appeal must be filed on or before the earliest of:

(1) 30 days after the trial court clerk mails the party filing the notice of appeal a document entitled "Notice of Entry" of judgment or a file-stamped copy of the judgment, showing the date either was mailed;

(2) 30 days after the party filing the notice of appeal serves or is served by a party with a document entitled "Notice of Entry" of judgment or a file-stamped copy of the judgment, accompanied by proof of service; or

(3) 90 days after the entry of judgment.

(4) Service under (1) and (2) may be by any method permitted by the Code of Civil Procedure, including electronic service when permitted under Code of Civil Procedure section 1010.6 and rules 2.250-2.261.

(Subd (a) amended effective January 1, 2011.)

(b) What constitutes entry

For purposes of this rule:

(1) The entry date of a judgment is the date the judgment is filed under Code of Civil Procedure section 668.5 or the date it is entered in the judgment book.

(2) The date of entry of an appealable order that is entered in the minutes is the date it is entered in the permanent minutes. But if the minute order directs that a written order be prepared, the entry date is the date the signed order is filed; a written order prepared under rule 3.1312 or similar local rule is not such an order prepared by direction of a minute order.

(3) The entry date of an order that is not entered in the minutes is the date the signed order is filed.

(c) Premature notice of appeal

(1) A notice of appeal filed after judgment is rendered but before it is entered is valid and is treated as filed immediately after entry of judgment.

(2) The appellate division may treat a notice of appeal filed after the trial court has announced its intended ruling, but before it has rendered judgment, as filed immediately after entry of judgment.

(d) Late notice of appeal

If a notice of appeal is filed late, the appellate division must dismiss the appeal.

Rule 8.822 amended effective January 1, 2011; adopted effective January 1, 2009.

Advisory Committee Comment

Under rule 8.804(23), the term "judgment" includes any order that may be appealed.

Subdivision (d). See rule 8.817(b)(5) for provisions concerning the timeliness of documents mailed by inmates or patients from custodial institutions.

Rule 8.823. Extending the time to appeal

(a) Extension of time

This rule operates only to increase the time to appeal otherwise prescribed in rule 8.822(a); it does not shorten the time to appeal. If the normal time to appeal stated in rule 8.822(a) would be longer than the time provided in this rule, the time to appeal stated in rule 8.822(a) governs.

(b) Motion for a new trial

If any party serves and files a valid notice of intention to move for a new trial, the time to appeal from the judgment is extended for all parties as follows:

(1) If the motion is denied, until the earliest of:

(A) 15 days after the trial court clerk mails, or a party serves, an order denying the motion or a notice of entry of that order;

(B) 15 days after denial of the motion by operation of law; or

(C) 90 days after entry of judgment; or

(2) If any party serves an acceptance of a conditionally ordered additur or remittitur of damages under a trial court finding of excessive or inadequate damages, until 15 days after the date the party serves the acceptance.

(c) Motion to vacate judgment

If, within the time prescribed by rule 8.822 to appeal from the judgment, any party serves and files a valid notice of intention to move to vacate the judgment or a valid motion to vacate the judgment, the time to appeal from the judgment is extended for all parties until the earliest of:

(1) 15 days after the trial court clerk mails, or a party serves, an order denying the motion or a notice of entry of that order;

(2) 45 days after the first notice of intention to move or motion is filed; or

(3) 90 days after entry of judgment.

(d) Motion for judgment notwithstanding the verdict

(1) If any party serves and files a valid motion for judgment notwithstanding the verdict and the motion is denied, the time to appeal from the judgment is extended for all parties until the earliest of:

(A) 15 days after the trial court clerk mails, or a party serves, an order denying the motion or a notice of entry of that order;

(B) 15 days after denial of the motion by operation of law; or

(C) 90 days after entry of judgment.

(2) Unless extended by (e)(2), the time to appeal from an order denying a motion for judgment notwithstanding the verdict is governed by rule 8.822.

(e) Motion to reconsider appealable order

If any party serves and files a valid motion to reconsider an appealable order under Code of Civil Procedure section 1008(a), the time to appeal from that order is extended for all parties until the earliest of:

(1) 15 days after the superior court clerk mails, or a party serves, an order denying the motion or a notice of entry of that order;

(2) 45 days after the first motion to reconsider is filed; or

(3) 90 days after entry of the appealable order.

(f) Public entity actions under Government Code section 962, 984, or 985

If a public entity defendant serves and files a valid request for a mandatory settlement conference on methods of satisfying a judgment under Government Code section 962, an election to pay a judgment in periodic payments under Government Code section 984 and rule 3.1804, or a motion for a posttrial hearing on reducing a judgment under Government Code section 985, the time to appeal from the judgment is extended for all parties until the earliest of:

(1) 60 days after the superior court clerk serves the party filing the notice of appeal with a document entitled "Notice of Entry" of judgment or a file-stamped copy of the judgment, showing the date either was served;

(2) 60 days after the party filing the notice of appeal serves or is served by a party with a document entitled "Notice of Entry" of judgment or a file-stamped copy of the judgment, accompanied by proof of service; or

(3) 90 days after entry of judgment.

(Subd (f) adopted effective January 1, 2011.)

(g) Cross-appeal

(1) If an appellant timely appeals from a judgment or appealable order, the time for any other party to appeal from the same judgment or order is extended until 10 days after the trial court clerk mails notification of the first appeal.

(2) If an appellant timely appeals from an order granting a motion for a new trial, an order granting—within 75 days after entry of judgment—a motion to vacate the judgment, or a judgment notwithstanding the verdict, the time for any other party to appeal from the original judgment or from an order denying a motion for judgment notwithstanding the verdict is extended until 10 days after the clerk mails notification of the first appeal.

(Subd (g) relettered effective January 1, 2011; adopted as subd (f).)

(h) Showing date of order or notice; proof of service

(1) An order or notice mailed by the clerk under this rule must show the date it was mailed.

(2) Service under this rule may be by any method permitted by the Code of Civil Procedure, including electronic service when permitted under Code of Civil Procedure section 1010.6 and rules 2.250–2.261. An order or notice served by a party must be accompanied by proof of service.

(Subd (h) amended and relettered effective January 1, 2011; adopted as subd (g).)

Rule 8.823 amended effective January 1, 2011; adopted effective January 1, 2009.

Rule 8.824. Writ of supersedeas

(a) Petition

(1) A party seeking a stay of the enforcement of a judgment or order pending appeal may serve and file a petition for writ of supersedeas in the appellate division.

(2) The petition must bear the same title as the appeal.

(3) The petition must explain the necessity for the writ and include a memorandum.

(4) If the record has not been filed in the reviewing court:

(A) The petition must include a statement of the case sufficient to show that the petitioner will raise substantial issues on appeal, including a fair summary of the material facts and the issues that are likely to be raised on appeal.

(B) The petitioner must file the following documents with the petition:

(i) The judgment or order, showing its date of entry;

(ii) The notice of appeal, showing its date of filing;

(iii) A reporter's transcript of any oral statement by the court supporting its rulings related to the issues that are likely to be raised on appeal, or, if a transcript is unavailable, a declaration fairly summarizing any such statements;

(iv) Any application for a stay filed in the trial court, any opposition to that application, and a reporter's transcript of the oral proceedings concerning the stay or, if a transcript is unavailable, a declaration fairly summarizing the proceedings, including the parties' arguments and any statement by the court supporting its ruling; and

(v) Any other document from the trial court proceeding that is necessary for proper consideration of the petition.

(C) The documents listed in (B) must comply with the following requirements:

(i) They must be bound together at the end of the petition or in separate volumes not exceeding 300 pages each. The pages must be consecutively numbered;

(ii) They must be index-tabbed by number or letter; and

(iii) They must begin with a table of contents listing each document by its title and its index-tab number or letter.

(5) The petition must be verified.

(Subd (a) amended effective January 1, 2010.)

(b) Opposition

(1) Unless otherwise ordered, any opposition must be served and filed within 15 days after the petition is filed.

(2) An opposition must state any material facts not included in the petition and include a memorandum.

(3) The court may not issue a writ of supersedeas until the respondent has had the opportunity to file an opposition.

(c) Temporary stay

(1) The petition may include a request for a temporary stay pending the ruling on the petition.

(2) A separately filed request for a temporary stay must be served on the respondent. For good cause, the presiding judge may excuse advance service.

(d) Issuing the writ

(1) The court may issue the writ on any conditions it deems just.

(2) The court must notify the trial court, under rule 8.904, of any writ or stay that it issues.

Rule 8.824 amended effective January 1, 2010; adopted effective January 1, 2009.

Advisory Committee Comment

Subdivision (a). If the preparation of a reporter's transcript has not yet been completed at that time a petition for a writ of supersedeas is filed, that transcript is "unavailable" within the meaning of (a)(4)(B).

Rule 8.825. Abandonment, voluntary dismissal, and compromise

(a) Notice of settlement

(1) If a civil case settles after a notice of appeal has been filed, either as a whole or as to any party, the appellant who has settled must immediately serve and file a notice of settlement in the appellate division. If the parties have designated a clerk's or a reporter's transcript and the record has not been filed in the appellate division, the appellant must also immediately serve a copy of the notice on the trial court clerk.

(2) If the case settles after the appellant receives a notice setting oral argument, the appellant must also immediately notify the appellate division of the settlement by telephone or other expeditious method.

(3) Within 45 days after filing a notice of settlement—unless the court has ordered a longer time period on a showing of good cause—the appellant who filed the notice of settlement must file an abandonment under (b).

(4) If the appellant does not file an abandonment or a letter stating good cause why the appeal should not be dismissed within the time period specified under (3), the court may dismiss the appeal as to that appellant and order each side to bear its own costs on appeal.

(5) Subdivision (a) does not apply to settlements requiring findings to be made by the Court of Appeal under Code of Civil Procedure section 128(a)(8).

(b) Abandonment

(1) The appellant may serve and file an abandonment of the appeal or a stipulation to abandon the appeal in the appellate division.

(2) If the record has not been filed in the appellate division, the filing of an abandonment effects a dismissal of the appeal and restores the trial court's jurisdiction. If the record has been filed in the appellate division, the appellate division may dismiss the appeal and direct immediate issuance of the remittitur.

(3) The clerk must promptly notify the adverse party of an abandonment. If the record has not been filed in the appellate division, the clerk must also immediately notify the trial court.

(4) If the appeal is abandoned before the clerk has completed preparation of the transcript, the clerk must refund any portion of a deposit exceeding the preparation cost actually incurred.

(5) If the appeal is abandoned before the reporter has filed the transcript, the reporter must inform the trial court clerk of the cost of the portion of the transcript that the reporter has completed. The clerk must pay that amount to the reporter from the appellant's deposited funds and refund any excess deposit.

(c) Approval of compromise

If a guardian or conservator seeks approval of a proposed compromise of a pending appeal, the appellate division may, before ruling on the compromise, direct the trial court to determine whether the compromise is in the minor's or the conservatee's best interest and to report its findings.

Rule 8.825 adopted effective January 1, 2009.

Advisory Committee Comment

Abandonment of Appeal (Limited Civil Case) (form APP-106) may be used to file an abandonment under this rule. This form is available at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*.

Article 2. Record in Civil Appeals

Title 8, Appellate Rules–Division 2, Rules Relating to the Superior Court Appellate Division–Chapter 2, Appeals and Records in Limited Civil Cases–Article 2, Record in Civil Appeals adopted effective January 1, 2009.

Rule 8.830. Record on appeal
Rule 8.831. Notice designating the record on appeal
Rule 8.832. Clerk's transcript
Rule 8.833. Trial court file instead of clerk's transcript
Rule 8.834. Reporter's transcript

Rule 8.835. Record when trial proceedings were officially electronically recorded
Rule 8.836. Agreed statement
Rule 8.837. Statement on appeal
Rule 8.838. Form of the record
Rule 8.839. Record in multiple appeals
Rule 8.840. Filing the record
Rule 8.841. Augmenting and correcting the record in the appellate division
Rule 8.842. Failure to procure the record
Rule 8.843. Transmitting exhibits

Rule 8.830. Record on appeal

(a) Normal record

Except as otherwise provided in this chapter, the record on an appeal to the appellate division in a civil case must contain the following, which constitute the normal record on appeal:

(1) A record of the written documents from the trial court proceedings in the form of one of the following:

(A) A clerk's transcript under rule 8.832;

(B) If the court has a local rule for the appellate division electing to use this form of the record, the original trial court file under rule 8.833; or

(C) An agreed statement under rule 8.836.

(2) If an appellant wants to raise any issue that requires consideration of the oral proceedings in the trial court, the record on appeal must include a record of these oral proceedings in the form of one of the following:

(A) A reporter's transcript under rule 8.834 or a transcript prepared from an official electronic recording under rule 8.835;

(B) If the court has a local rule for the appellate division permitting this form of the record, an official electronic recording of the proceedings under rule 8.835;

(C) An agreed statement under rule 8.836; or

(D) A statement on appeal under rule 8.837.

(b) Presumption from the record

The appellate division will presume that the record in an appeal includes all matters material to deciding the issues raised. If the appeal proceeds without a reporter's transcript, this presumption applies only if the claimed error appears on the face of the record.

Rule 8.830 adopted effective January 1, 2009.

Advisory Committee Comment

Subdivision (a). The options of using the original trial court file instead of a clerk's transcript under (1)(B) or an electronic recording itself, rather than a transcript, under (2)(B) are available only if the court has local rules for the appellate division authorizing these options.

Rule 8.831. Notice designating the record on appeal

(a) Time to file

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

(b) Contents

The notice must specify:

(1) The date the notice of appeal was filed;

(2) Which form of the record of the written documents from the trial court proceedings listed in rule 8.830(a)(1) the appellant elects to use. If the appellant elects to use a clerk's transcript, the notice must also:

(A) Provide the filing date of each document that is required to be included in the clerk's transcript under 8.832(a)(1) or, if the filing date is not available, the date it was signed; and

(B) Designate, as provided under 8.832(b), any documents in addition to those required under 8.832(a)(1) that the appellant wants included in the clerk's transcript;

(3) Whether the appellant elects to proceed with or without a record of the oral proceedings in the trial court;

(4) If the appellant elects to proceed with a record of the oral proceedings in the trial court, the notice must specify which form of the record listed in rule 8.830(a)(2) the appellant elects to use;

(5) If the appellant elects to use a reporter's transcript, the notice must designate the proceedings to be included in the transcript as required under rule 8.834;

(6) If the appellant elects to use an official electronic recording, the appellant must attach a copy of the stipulation required under rule 8.835(c); and

(7) If the appellant elects to use an agreed statement, the appellant must attach to the notice either the agreed statement or stipulation as required under rule 8.836(c)(1).

Rule 8.831 adopted effective January 1, 2009.

Advisory Committee Comment

Notice Designating Record on Appeal (Limited Civil Case) (form APP-103) may be used to file the designation required under this rule. This form is available at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*. To assist parties in making appropriate choices, courts are encouraged to include information about whether the proceedings were recorded by a court reporter or officially electronically recorded in any information that the court provides to parties concerning their appellate rights.

If the appellant designates a clerk's transcript or reporter's transcript under this rule, the respondent will have an opportunity to designate additional documents to be included in the clerk's transcript under rule 8.832(b)(2) or additional proceedings to be included in the reporter's transcript under rule 8.834(a)(3).

Rule 8.832. Clerk's transcript

(a) Contents of clerk's transcript

(1) The clerk's transcript must contain:

(A) The notice of appeal;

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

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

(D) 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, and any order on such motion and any notice of its entry;

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

(F) The register of actions, if any.

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

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

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

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

(C) Any jury instructions that any party submitted in writing, the cover page required by rule 2.1055(b)(2), and any written jury instructions given by the court.

(Subd (a) amended effective January 1, 2011.)

(b) Notice of designation

(1) Within 10 days after the appellant serves a notice under rule 8.831 indicating that the appellant elects to use a clerk's transcript, the respondent may serve and file a notice in the trial court designating any additional documents the respondent wants included in the clerk's transcript.

(2) A notice designating documents to be included in a clerk's transcript must identify each designated document by its title and filing date or, if the filing date is not available, the date it was signed. A notice designating documents in addition to those listed in (a)(1) may specify portions of designated documents that are not to be included in the clerk's transcript. For minute orders or jury instructions, it is sufficient to collectively designate all minute orders or all minute orders entered between specified dates, or all written instructions given, refused, or withdrawn.

(3) All exhibits admitted in evidence, refused, or lodged are deemed part of the record, but a party wanting an exhibit included in the transcript must specify that exhibit by number or letter in its designation. If the trial court has returned a designated exhibit to a party, the party in possession of the exhibit must deliver it to the trial court clerk within 10 days after the notice designating the exhibit is served.

(Subd (b) amended effective January 1, 2010.)

(c) Deposit for cost of clerk's transcript

(1) Within 30 days after the respondent files a designation under (b)(1) or the time to file it expires, whichever first occurs, the trial court clerk must send:

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

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

(2) A notice under (1) must show the date it was sent.

(3) 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 deposit the estimated cost with the clerk, unless otherwise provided by law or the party submits an application for a waiver of the cost under rule 8.818 or an order granting a waiver of this cost.

(Subd (c) amended effective July 1, 2009.)

(d) Preparing the clerk's 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 clerk must:

(A) Prepare an original and one copy of the clerk's transcript and certify the original; and

(B) Prepare any additional copies for which the parties have made deposits.

(2) If the appeal is abandoned or dismissed before the clerk has completed preparation of the transcript, the clerk must refund any portion of the deposit under (c)(3) exceeding the preparation cost actually incurred.

Rule 8.832 amended effective January 1, 2011; adopted effective January 1, 2009; previously amended effective July 1, 2009, and January 1, 2010.

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.

Rule 8.833. Trial court file instead of clerk's transcript

(a) Application

If the court has a local rule for the appellate division electing to use this form of the record, the original trial court file may be used instead of a clerk's transcript. This rule and any supplemental provisions of the local rule then govern unless the trial court orders otherwise after notice to the parties.

(b) Cost estimate; preparation of file; transmittal

(1) Within 10 days after the appellant serves a notice under rule 8.831 indicating that the appellant elects to use a clerk's transcript, the trial court clerk may mail the appellant a notice indicating that the appellate division for that court has elected by local court rule to use the original trial court file instead of a clerk's transcript and providing the

appellant with an estimate of the cost to prepare the file, including the cost of sending the index under (4).

(2) Within 10 days after the clerk mails the estimate under (1), the appellant must deposit the estimated cost with the clerk, unless otherwise provided by law or the party submits an application for a waiver of the cost under rule 8.818 or an order granting a waiver of this cost.

(3) Within 10 days after the appellant deposits the cost or the court files an order waiving that cost, the trial court clerk must put the trial court file in chronological order, number the pages, and attach a chronological index and a list of all attorneys of record, the parties they represent, and any unrepresented parties.

(4) The clerk must send copies of the index to all attorneys of record and any unrepresented parties for their use in paginating their copies of the file to conform to the index.

(5) If the appellant elected to proceed with a reporter's transcript, the clerk must send the prepared file to the appellate division with the reporter's transcript. If the appellant elected to proceed without a reporter's transcript, the clerk must immediately send the prepared file to the appellate division.

(Subd (b) amended effective July 1, 2009.)

Rule 8.833 amended effective July 1, 2009; adopted effective January 1, 2009.

Rule 8.834. Reporter's transcript

(a) Notice

(1) A notice designating a reporter's transcript under rule 8.831 must specify the date of each proceeding to be included in the transcript and may specify portions of the designated proceedings that are not to be included.

(2) If the appellant designates less than all the testimony, the notice must state the points to be raised on the appeal; the appeal is then limited to those points unless, on motion, the appellate division permits otherwise.

(3) If the appellant serves and files a notice under 8.831 designating a reporter's transcript, the respondent may, within 10 days after such service, serve and file a notice in the trial court designating any additional proceedings the respondent wants included in the reporter's transcript.

(4) The clerk must promptly mail a copy of each notice to the reporter. The copy must show the date it was mailed.

(b) Deposit or waiver

(1) Within 10 days after the clerk mails a notice under (a)(4), the reporter must file the estimate with the clerk—or notify the clerk in writing of the date that he or she notified the appellant directly—of the estimated cost of preparing the reporter's transcript.

(2) Within 10 days after the clerk notifies the appellant of the estimated cost of preparing the reporter's transcript or within 10 days after the reporter notifies the appellant directly—the appellant must deposit with the clerk an amount equal to the estimated cost or file with the clerk a waiver of the deposit signed by the reporter. The clerk must then promptly notify the reporter to prepare the transcript.

(c) Contents of reporter's transcript

(1) The reporter must transcribe all designated proceedings and must note in the transcript where any proceedings were omitted and the nature of those proceedings. The reporter must also note where any exhibit was marked for identification and where it was admitted or refused, identifying such exhibits by number or letter.

(2) The reporter must not transcribe the voir dire examination of jurors, any opening statement, or the proceedings on a motion for new trial, unless they are designated.

(3) If a party designates a portion of a witness's testimony to be transcribed, the reporter must transcribe the witness's entire testimony unless the parties stipulate otherwise.

(4) The reporter must not copy any document includable in the clerk's transcript under rule 8.832.

(d) Filing the reporter's transcript; copies; payment

(1) Within 20 days after the clerk notifies the reporter to prepare the transcript under (b)(2)—or the reporter receives the fees from the appellant—the reporter must prepare and certify an original of the reporter's transcript and file it in the trial court. The reporter must also file one copy of the original transcript or more than one copy if multiple appellants equally share the cost of preparing the record.

(2) When the transcript is completed, the reporter must bill each designating party at the statutory rate and send a copy of the bill to the clerk. The clerk must pay the reporter from that party's deposited funds and refund any excess deposit or notify the party of any additional funds needed. In a multiple reporter case, the clerk must pay each reporter who certifies under penalty of perjury that his or her transcript portion is completed.

(3) If the appeal is abandoned or is dismissed before the reporter has filed the transcript, the reporter must inform the clerk of the cost of the portion of the transcript that the

reporter has completed. The clerk must pay that amount to the reporter from the appellant's deposited funds and refund any excess deposit.

(e) Notice when proceedings cannot be transcribed

(1) If any portion of the designated proceedings were not reported or cannot be transcribed, the trial court clerk must so notify the designating party by mail; the notice must show the date it was mailed.

(2) Within 10 days after the notice under (1) is mailed, the designating party must notify the court whether the party elects to proceed with or without a record of the oral proceedings that were not reported or cannot be transcribed. If the party elects to proceed with a record of these oral proceedings, the notice must specify which form of the record listed in rule 8.830(a)(2) other than a reporter's transcript the party elects to use. The party must comply with the requirements applicable to the form of the record elected.

(3) This remedy supplements any other available remedies.

Rule 8.834 adopted effective January 1, 2009.

Rule 8.835. Record when trial proceedings were officially electronically recorded

(a) Application

This rule applies only if:

(1) The trial court proceedings were officially recorded electronically under Government Code section 69957; and

(2) The electronic recording was prepared in compliance with applicable rules regarding electronic recording of court proceedings.

(b) Transcripts from official electronic recording

Written transcripts of official electronic recordings may be prepared under rule 2.952. A transcript prepared and certified as provided in that rule is prima facie a true and complete record of the oral proceedings it purports to cover and satisfies any requirement in these rules or in any statute for a reporter's transcript of oral proceedings.

(c) Use of official recording as record of oral proceedings

If the court has a local rule for the appellate division permitting this, on stipulation of the parties or on order of the trial court under rule 8.837(d)(6), the original of an official electronic recording of the trial court proceedings, or a copy made by the court, may be transmitted as the record of these oral proceedings without being transcribed. Such an

official electronic recording satisfies any requirement in these rules or in any statute for a reporter's transcript of these proceedings.

(Subd (c) amended effective July 1, 2010.)

(d) Notice when proceedings were not officially electronically recorded or cannot be transcribed

(1) If the appellant elects under rule 8.831 to use a transcript prepared from an official electronic recording or the recording itself, the trial court clerk must notify the appellant by mail if any portion of the designated proceedings was not officially electronically recorded or cannot be transcribed. The notice must show the date it was mailed.

(2) Within 10 days after the notice under (1) is mailed, the appellant must notify the court whether the appellant elects to proceed with or without a record of the oral proceedings that were not recorded or cannot be transcribed. If the party elects to proceed with a record of these oral proceedings, the notice must specify which form of the record listed in rule 8.830(a)(2) other than an electronic recording the appellant elects to use. The appellant must comply with the requirements applicable to the form of the record elected.

Rule 8.835 amended effective July 1, 2010; adopted effective January 1, 2009.

Rule 8.836. Agreed statement

(a) What is an agreed statement

An agreed statement is a summary of the trial court proceedings that is agreed to by the parties. If the parties have prepared an agreed statement or stipulated to prepare one, the appellant can elect under rule 8.831 to use an agreed statement as the record of the documents filed in the trial court, replacing the clerk's transcript, and as the record of the oral proceedings in the trial court, replacing the reporter's transcript.

(b) Contents of an agreed statement

(1) The agreed statement must explain the nature of the action, the basis of the appellate division's jurisdiction, and the rulings of the trial court relating to the points to be raised on appeal. The statement should recite only those facts that a party considers relevant to decide the appeal and must be signed by the parties.

(2) If the agreed statement replaces a clerk's transcript, the statement must be accompanied by copies of all items required by rule 8.832(a)(1), showing the dates required by rule 8.832(a)(2).

(3) The statement may be accompanied by copies of any document includable in the clerk's transcript under rule 8.832(a)(3).

(c) Time to file; extension of time

(1) If an appellant indicates on its notice designating the record under rule 8.831 that it elects to use an agreed statement under this rule, the appellant must file with the notice designating the record either the agreed statement or a stipulation that the parties are attempting to agree on a statement.

(2) If the appellant files a stipulation under (1), within 30 days after filing the notice of designation under rule 8.831, the appellant must either:

(A) File the statement if the parties were able to agree on the statement; or

(B) File both a notice stating that the parties were not able to agree on the statement and a new notice designating the record under rule 8.831. In the new notice designating the record, the appellant may not elect to use an agreed statement.

Rule 8.836 adopted effective January 1, 2009.

Rule 8.837. Statement on appeal

(a) Description

A statement on appeal is a summary of the trial court proceedings that is approved by the trial court. An appellant can elect under rule 8.831 to use a statement on appeal as the record of the oral proceedings in the trial court, replacing the reporter's transcript.

(b) Preparing the proposed statement

(1) If the appellant elects in its notice designating the record under rule 8.831 to use a statement on appeal, the appellant must serve and file a proposed statement within 20 days after filing the notice under rule 8.831. If the appellant does not file a proposed statement within this time, the trial court clerk must promptly notify the appellant by mail that it must file the proposed statement within 15 days after the notice is mailed and that failure to comply will result in the appeal being dismissed.

(2) Appellants who are not represented by an attorney must file their proposed statement on *Statement on Appeal (Limited Civil Case)* (form APP-104). For good cause, the court may permit the filing of a statement that is not on form APP-104.

(c) Contents of the proposed statement

The proposed statement must contain:

(1) A condensed narrative of the oral proceedings that the appellant believes necessary for the appeal and a summary of the trial court's holding and judgment. Subject to

the court's approval, the appellant may present some or all of the evidence by question and answer.

(2) A statement of the points the appellant is raising on appeal. If the condensed narrative under (A) covers only a portion of the oral proceedings, then the appeal is limited to the points identified in the statement unless, on motion, the appellate division permits otherwise.

(A) The statement must specify the intended grounds of appeal by clearly stating each point to be raised but need not identify each particular ruling or matter to be challenged.

(B) The statement must include as much of the evidence or proceeding as necessary to support the stated grounds. Any evidence or portion of a proceeding not included will be presumed to support the judgment or order appealed from.

(C) If one of the grounds of appeal is insufficiency of the evidence, the statement must specify how it is insufficient.

(D) If one of the grounds of appeal challenges the giving, refusal, or modification of a jury instruction, the statement must include any instructions submitted orally and identify the party that requested the instruction and any modification.

(d) Review of the appellant's proposed statement

(1) Within 10 days after the appellant files the proposed statement, the respondent may serve and file proposed amendments to that statement.

(2) No later than 10 days after the respondent files proposed amendments or the time to do so expires, a party may request a hearing to review and correct the proposed statement. No hearing will be held unless ordered by the trial court judge, and the judge will not ordinarily order a hearing unless there is a factual dispute about a material aspect of the trial court proceedings.

(3) If a hearing is ordered, the court must promptly set the hearing date and provide the parties with at least 5 days' written notice of the hearing date.

(4) Except as provided in (6), if no hearing is ordered, no later than 10 days after the time for requesting a hearing expires, the trial court judge must review the proposed statement and any proposed amendments and make any corrections or modifications to the statement necessary to ensure that it is an accurate summary of the trial court proceedings. If a hearing is ordered, the trial court judge must make any corrections or modifications to the statement within 10 days after the hearing.

(5) The trial court judge must not eliminate the appellant's specification of grounds of appeal from the proposed statement.

(6) If the trial court proceedings were reported by a court reporter or officially electronically recorded under Government Code section 69957 and the trial court judge determines that it would save court time and resources, instead of correcting a proposed statement on appeal:

(A) If the court has a local rule for the appellate division permitting the use of an official electronic recording as the record of the oral proceedings, the trial court judge may order that the original of an official electronic recording of the trial court proceedings, or a copy made by the court, be transmitted as the record of these oral proceedings without being transcribed. The court will pay for any copy of the official electronic recording ordered under this subdivision; or

(B) Unless the court has a local rule providing otherwise, the trial court judge may order that a transcript be prepared as the record of the oral proceedings. The court will pay for any transcript ordered under this subdivision.

(e) Review of the corrected statement

(1) If the trial court judge makes any corrections or modifications to the proposed statement under (d), the clerk must send copies of the corrected or modified statement to the parties.

(2) Within 10 days after the statement is sent to the parties, any party may serve and file proposed modifications or objections to the statement.

(f) Certification of the statement on appeal

(1) If the trial court judge does not make any corrections or modifications to the proposed statement under (d)(4) and does not order either the use of an official electronic recording or the preparation of a transcript in lieu of correcting the proposed statement under (d)(6), the judge must promptly certify the statement.

(2) If the trial court judge corrects or modifies an appellant's proposed statement under (d), within five days after the time for filing proposed modifications or objections has expired, the judge must review any proposed modifications or objections to the statement filed by the parties, make any corrections or modifications to the statement necessary to ensure that it is an accurate summary of the trial court proceedings, and certify the statement.

Rule 8.837 adopted effective January 1, 2009.

Advisory Committee Comment

Subdivision (b). *Proposed Statement on Appeal (Limited Civil Case)* (form AP-104) is available at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*.

Subdivision (d). Under rule 8.804, the term "judge" includes a commissioner or a temporary judge.

Rule 8.838. Form of the record

(a) Paper and format

Except as otherwise provided in this rule, clerk's and reporter's transcripts must comply with the paper and format requirements of rule 8.144(a).

(b) Indexes

At the beginning of the first volume of each:

(1) The clerk's transcript must contain alphabetical and chronological indexes listing each document and the volume and page where it first appears;

(2) The reporter's transcript must contain alphabetical and chronological indexes listing the volume and page where each witness's direct, cross, and any other examination, begins; and

(3) The reporter's transcript must contain an index listing the volume and page where any exhibit is marked for identification and where it is admitted or refused.

(c) Binding and cover

(1) Clerk's and reporter's transcripts must be bound on the left margin in volumes of no more than 300 sheets, except that transcripts may be bound at the top if required by a local rule of the appellate division.

(2) Each volume's cover, preferably of recycled stock, must state the title and trial court number of the case, the names of the trial court and each participating trial judge, the names and addresses of appellate counsel for each party, the volume number, and the inclusive page numbers of that volume.

(3) In addition to the information required by (2), the cover of each volume of the reporter's transcript must state the dates of the proceedings reported in that volume.

Rule 8.838 adopted effective January 1, 2009.

Rule 8.839. Record in multiple appeals

(a) Single record

If more than one appeal is taken from the same judgment or a related order, only one record need be prepared, which must be filed within the time allowed for filing the record in the latest appeal.

(b) Cost

If there is more than one separately represented appellant, they must equally share the cost of preparing the record, unless otherwise agreed by the appellants or ordered by the trial court. Appellants equally sharing the cost are each entitled to a copy of the record.

Rule 8.839 adopted effective January 1, 2009.

Rule 8.840. Filing the record

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

Rule 8.840 adopted effective January 1, 2009.

Rule 8.841. Augmenting and correcting the record in the appellate division

(a) Augmentation

(1) At any time, on motion of a party or its own motion, the appellate division may order the record augmented to include:

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

(B) A certified transcript—or agreed statement or a statement on appeal—of oral proceedings not designated under rule 8.831.

(2) A party must attach to its motion a copy, if available, of any document or transcript that it wants added to the record. The pages of the attachments must be consecutively numbered, beginning with the number 1. If the appellate division grants the motion, it may augment the record with the copy.

(3) If the party cannot attach a copy of the matter to be added, the party must identify it as required under rules 8.831.

(b) Correction

(1) On agreement of the parties, motion of a party, or on its own motion, the appellate division may order the correction or certification of any part of the record.

(2) The appellate division may order the trial court to settle disputes about omissions or errors in the record or to make corrections pursuant to stipulation filed by the parties in that court.

(c) Omissions

(1) If a clerk or reporter omits a required or designated portion of the record, a party may serve and file a notice in the trial court specifying the omitted portion and requesting that it be prepared, certified, and sent to the appellate division. The party must serve a copy of the notice on the appellate division.

(2) The clerk or reporter must comply with a notice under (1) within 10 days after it is filed. If the clerk or reporter fails to comply, the party may serve and file a motion to augment under (a), attaching a copy of the notice.

(d) Notice

The appellate division clerk must send all parties notice of the receipt and filing of any matter under this rule.

Rule 8.841 adopted effective January 1, 2009.

Rule 8.842. Failure to procure the record

(a) Notice of default

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) If the defaulting party is the appellant, the court may dismiss the appeal; or

(2) If the defaulting party is the respondent, the court may proceed with the appeal on the record designated by the appellant.

(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 but may vacate the dismissal for good cause; or

(2) If the defaulting party is the respondent, the reviewing court may order the appeal to proceed on the record designated by the appellant, but the respondent may obtain relief from default under rule 8.812.

(Subd (b) amended effective January 1, 2011.)

Rule 8.842 amended effective January 1, 2011; adopted effective January 1, 2009.

Rule 8.843. Transmitting exhibits

(a) Notice of designation

(1) If a party wants the appellate division to consider any original exhibits that were admitted in evidence, refused, or lodged but that were not copied in the clerk's transcript under rule 8.832 or included in the original file under rule 8.833, within 10 days after the last respondent's brief is filed or could be filed under rule 8.882 the party must serve and file a notice in the trial court designating such exhibits.

(2) Within 10 days after a notice under (1) is served, any other party wanting the appellate division to consider additional exhibits must serve and file a notice in the trial court designating such exhibits.

(3) A party filing a notice under (1) or (2) must serve a copy on the appellate division.

(b) Application for later transmittal

After the periods specified in (a) have expired, a party may apply to the appellate division for permission to send an exhibit to that court.

(c) Request by appellate division

At any time the appellate division may direct the trial court or a party to send it an exhibit.

(d) Transmittal

Unless the appellate division orders otherwise, within 20 days after notice under (a) is filed or after the appellate division directs that an exhibit be sent:

(1) The trial court clerk must put any designated exhibits in the clerk's possession into numerical or alphabetical order and send them to the appellate division with two copies of a list of the exhibits sent. If the appellate division clerk finds the list correct, the clerk must sign and return one copy to the trial court clerk.

(2) Any party in possession of designated exhibits returned by the trial court must put them into numerical or alphabetical order and send them to the appellate division with two copies of a list of the exhibits sent. If the appellate division clerk finds the list correct, the clerk must sign and return one copy to the party.

(e) Return by appellate division

On request, the appellate division may return an exhibit to the trial court or to the party that sent it. When the remittitur issues, the appellate division must return all exhibits to the trial court or to the party that sent them.

Rule 8.843 adopted effective January 1, 2009.

Chapter 3. Appeals and Records in Misdemeanor Cases

Title 8, Appellate Rules–Division 2, Rules Relating to the Superior Court Appellate Division–Chapter 3, Appeals and Records in Misdemeanor Cases amended effective January 1, 2009.

Article 1. Taking Appeals in Misdemeanor Cases

Title 8, Appellate Rules–Division 2, Rules Relating to the Superior Court Appellate Division–Chapter 3, Appeals and Records in Misdemeanor Cases–Article 1, Taking Appeals in Misdemeanor Cases adopted effective January 1, 2009.

Rule 8.850. Application of chapter
Rule 8.851. Appointment of appellate counsel
Rule 8.852. Notice of appeal
Rule 8.853. Time to appeal
Rule 8.854. Stay of execution and release on appeal
Rule 8.855. Abandoning the appeal

Rule 8.850. Application of chapter

The rules in this chapter apply only to appeals in misdemeanor cases. In postconviction appeals, misdemeanor cases are cases in which the defendant was convicted of a misdemeanor and was not charged with any felony. In preconviction appeals, misdemeanor cases are cases in which the defendant was charged with a misdemeanor but was not charged with any felony. A felony is "charged" when an information or indictment accusing the defendant of a felony is filed or a complaint accusing the defendant of a felony is certified to the superior court under Penal Code section 859a.

Rule 8.850 adopted effective January 1, 2009.

Advisory Committee Comment

Chapters 1 and 4 of this division also apply in appeals from misdemeanor cases. The rules that apply in appeals in felony cases are located in chapter 3 of division 1 of this title.

Penal Code section 1466 provides that an appeal in a "misdemeanor or infraction case" is to the appellate division of the superior court, and Penal Code section 1235(b), in turn, provides that an appeal in a "felony case" is to the Court of Appeal. Penal Code section 691(g) defines "misdemeanor or infraction

case" to mean "a criminal action in which a misdemeanor or infraction is charged *and does not include a criminal action in which a felony is charged* in conjunction with a misdemeanor or infraction" (emphasis added), and section 691(f) defines "felony case" to mean "a criminal action in which a felony is charged *and includes a criminal action in which a misdemeanor or infraction is charged in conjunction with a felony*" (emphasis added).

As rule 8.304 from the rules on felony appeals provides, the following types of cases are felony cases, not misdemeanor cases: (1) an action in which the defendant is charged with a felony and a misdemeanor, but is convicted of only the misdemeanor; (2) an action in which the defendant is charged with felony, but is convicted of only a lesser offense; or (3) an action in which the defendant is charged with an offense filed as a felony but punishable as either a felony or a misdemeanor, and the offense is thereafter deemed a misdemeanor under Penal Code section 17(b). Rule 8.304 makes it clear that a "felony case" is an action in which a felony is charged *regardless of the outcome of the action*. Thus the question of which rules apply—these rules governing appeals in misdemeanor cases or the rules governing appeals in felony cases—is answered simply by examining the accusatory pleading: if that document charged the defendant with at least one count of felony (as defined in Penal Code, section 17(a)), the Court of Appeal has appellate jurisdiction and the appeal must be taken under the rules on felony appeals *even if the prosecution did not result in a punishment of imprisonment in a state prison*.

It is settled case law that an appeal is taken to the Court of Appeal not only when the defendant is charged with and convicted of a felony, but also when the defendant is charged with both a felony and a misdemeanor (Pen. Code, § 691(f)) but is convicted of only the misdemeanor (e.g., *People v. Brown* (1970) 10 Cal.App.3d 169); when the defendant is charged with a felony but is convicted of only a lesser offense (Pen. Code, § 1159; e.g., *People v. Spreckels* (1954) 125 Cal.App.2d 507); and when the defendant is charged with an offense filed as a felony but punishable as either a felony or a misdemeanor, and the offense is thereafter deemed a misdemeanor under Penal Code section 17(b) (e.g., *People v. Douglas* (1999) 20 Cal.4th 85; *People v. Clark* (1971) 17 Cal.App.3d 890).

Trial court unification did not change this rule: after as before unification, "Appeals in felony cases lie to the [C]ourt of [A]ppeal, regardless of whether the appeal is from the superior court, the municipal court, or the action of a magistrate. *Cf.* Cal. Const. art. VI, § 11(a) [except in death penalty cases, Courts of Appeal have appellate jurisdiction when superior courts have original jurisdiction 'in causes of a type within the appellate jurisdiction of the [C]ourts of [A]ppeal on June 30, 1995. . . .']." ("Recommendation on Trial Court Unification" (July 1998) 28 *Cal. Law Revision Com. Rep.* 455–56.)

Rule 8.851. Appointment of appellate counsel

(a) Standards for appointment

(1) On application, the appellate division must appoint appellate counsel for a defendant convicted of a misdemeanor who:

(A) Is subject to incarceration or a fine of more than $500 (including penalty and other assessments), or who is likely to suffer significant adverse collateral consequences as a result of the conviction; and

(B) Was represented by appointed counsel in the trial court or establishes indigency.

(2) On application, the appellate division may appoint counsel for any other indigent defendant convicted of a misdemeanor.

(3) A defendant is subject to incarceration or a fine if the incarceration or fine is in a sentence, is a condition of probation, or may be ordered if the defendant violates probation.

(b) Application; duties of trial counsel and clerk

(1) If defense trial counsel has reason to believe that the client is indigent and will file an appeal, counsel must prepare and file in the trial court an application to the appellate division for appointment of counsel.

(2) If the defendant was represented by appointed counsel in the trial court, the application must include trial counsel's declaration to that effect. If the defendant was not represented by appointed counsel in the trial court, the application must include a declaration of indigency in the form required by the Judicial Council.

(3) When the trial court receives an application, the clerk must promptly send it to the appellate division. A defendant may, however, apply directly to the appellate division for appointment of counsel at any time after filing the notice of appeal.

(c) Defendant found able to pay in trial court

(1) If a defendant was represented by appointed counsel in the trial court and was found able to pay all or part of the cost of counsel in proceedings under Penal Code section 987.8 or 987.81, the findings in those proceedings must be included in the record or, if the findings were made after the record is sent to the appellate division, must be sent as an augmentation of the record.

(2) In cases under (1), the appellate division may determine the defendant's ability to pay all or part of the cost of counsel on appeal, and if it finds the defendant able, may order the defendant to pay all or part of that cost.

Rule 8.851 adopted effective January 1, 2009.

Advisory Committee Comment

Request for Court-Appointed Lawyer in Misdemeanor Appeal (form CR-133) may be used to request that appellate counsel be appointed in a misdemeanor case. If the appellant was not represented by the public defender or other appointed counsel in the trial court, the appellant must use *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210) to show indigency. These forms are available at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*.

Rule 8.852. Notice of appeal

(a) Notice of appeal

(1) To appeal from a judgment or an appealable order of the trial court in a misdemeanor case, the defendant or the People must file a notice of appeal in the trial court. The notice must specify the judgment or order—or part of it—being appealed.

(2) If the defendant appeals, the defendant or the defendant's attorney must sign the notice of appeal. If the People appeal, the attorney for the People must sign the notice.

(3) The notice of appeal must be liberally construed in favor of its sufficiency.

(b) Notification of the appeal

(1) When a notice of appeal is filed, the trial court clerk must promptly mail a notification of the filing to the attorney of record for each party and to any unrepresented defendant. The clerk must also mail or deliver this notification to the appellate division clerk.

(2) The notification must show the date it was mailed or delivered, the number and title of the case, the date the notice of appeal was filed, and whether the defendant was represented by appointed counsel.

(3) The notification to the appellate division clerk must also include a copy of the notice of appeal.

(4) A copy of the notice of appeal is sufficient notification under (1) if the required information is on the copy or is added by the trial court clerk.

(5) The mailing of a notification under (1) is a sufficient performance of the clerk's duty despite the discharge, disqualification, suspension, disbarment, or death of the attorney.

(6) Failure to comply with any provision of this subdivision does not affect the validity of the notice of appeal.

Rule 8.852 adopted effective January 1, 2009.

Advisory Committee Comment

Notice of Appeal (Misdemeanor) (form CR-132) may be used to file the notice of appeal required under this rule. This form is available at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms.*

Subdivision (a). The only orders that a defendant can appeal in a misdemeanor case are (1) orders granting or denying a motion to suppress evidence (Penal Code section 1538.5(j)); and (2) orders made after the final judgment that affects the substantial rights of the defendant (Penal Code section 1466).

Rule 8.853. Time to appeal

(a) Normal time

A notice of appeal must be filed within 30 days after the rendition of the judgment or the making of the order being appealed. If the defendant is committed before final judgment for insanity or narcotics addiction, the notice of appeal must be filed within 30 days after the commitment.

(b) Cross-appeal

If the defendant or the People timely appeal from a judgment or appealable order, the time for any other party to appeal from the same judgment or order is either the time specified in (a) or 15 days after the trial court clerk mails notification of the first appeal, whichever is later.

(c) Premature notice of appeal

A notice of appeal filed before the judgment is rendered or the order is made is premature, but the appellate division may treat the notice as filed immediately after the rendition of the judgment or the making of the order.

(d) Late notice of appeal

The trial court clerk must mark a late notice of appeal "Received [date] but not filed" and notify the party that the notice was not filed because it was late.

Rule 8.853 amended effective July 1, 2010; adopted effective January 1, 2009.

Advisory Committee Comment

Subdivision (d). See rule 8.817(b)(5) for provisions concerning the timeliness of documents mailed by inmates or patients from custodial institutions.

Rule 8.854. Stay of execution and release on appeal

(a) Application

Pending appeal, the defendant may apply to the appellate division:

(1) For a stay of execution after a judgment of conviction or an order granting probation; or

(2) For bail for release from custody, to reduce bail for release from custody, or for release on other conditions.

(b) Showing

The application must include a showing that the defendant sought relief in the trial court and that the court unjustifiably denied the application.

(c) Service

The application must be served on the prosecuting attorney.

(d) Interim relief

Pending its ruling on the application, the appellate division may grant the relief requested. The appellate division must notify the trial court of any stay that it grants.

Rule 8.854 adopted effective January 1, 2009.

Advisory Committee Comment

Subdivision (c). As defined in rule 8.804, the "prosecuting attorney" may be the city attorney, county counsel, district attorney, or state Attorney General, depending on what government agency filed the criminal charges.

Rule 8.855. Abandoning the appeal

(a) How to abandon

An appellant may abandon the appeal at any time by filing an abandonment of the appeal signed by the appellant or the appellant's attorney of record.

(b) Where to file; effect of filing

(1) The appellant must file the abandonment in the appellate division.

(2) If the record has not been filed in the appellate division, the filing of an abandonment effects a dismissal of the appeal and restores the trial court's jurisdiction.

(3) If the record has been filed in the appellate division, the appellate division may dismiss the appeal and direct immediate issuance of the remittitur.

(c) Clerk's duties

(1) The appellate division clerk must immediately notify the adverse party of the filing or of the order of dismissal.

(2) If the record has not been filed in the appellate division, the clerk must immediately notify the trial court.

(3) If a reporter's transcript has been requested, the clerk must immediately notify the reporter if the appeal is abandoned before the reporter has filed the transcript.

Rule 8.855 adopted effective January 1, 2009.

Advisory Committee Comment

Abandonment of Appeal (Misdemeanor) (form CR-137) may be used to file an abandonment under this rule. This form is available at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms.*

Article 2. Record in Misdemeanor Appeals

Title 8, Appellate Rules–Division 2, Rules Relating to the Superior Court Appellate Division–Chapter 3, Appeals and Records in Misdemeanor Cases–Article 2, Record in Misdemeanor Appeals adopted effective January 1, 2009.

Rule 8.860. Normal record on appeal
Rule 8.861. Contents of clerk's transcript
Rule 8.862. Preparation of clerk's transcript
Rule 8.863. Trial court file instead of clerk's transcript
Rule 8.864. Record of oral proceedings
Rule 8.865. Contents of reporter's transcript
Rule 8.866. Preparation of reporter's transcript
Rule 8.867. Limited normal record in certain appeals
Rule 8.868. Record when trial proceedings were officially electronically recorded
Rule 8.869. Statement on appeal
Rule 8.870. Exhibits
Rule 8.871. Juror-identifying information
Rule 8.872. Sending and filing the record in the appellate division
Rule 8.873. Augmenting or correcting the record in the appellate division

Rule 8.860. Normal record on appeal

(a) Contents

Except as otherwise provided in this chapter, the record on an appeal to a superior court appellate division in a misdemeanor criminal case must contain the following, which constitute the normal record on appeal:

(1) A record of the written documents from the trial court proceedings in the form of one of the following:

(A) A clerk's transcript under rule 8.861 or 8.867; or

(B) If the court has a local rule for the appellate division electing to use this form of the record, the original trial court file under rule 8.863.

(2) If an appellant wants to raise any issue that requires consideration of the oral proceedings in the trial court, the record on appeal must include a record of the oral proceedings in the form of one of the following:

(A) A reporter's transcript under rules 8.865–8.867 or a transcript prepared from an official electronic recording under rule 8.868;

(B) If the court has a local rule for the appellate division permitting this form of the record, an official electronic recording of the proceedings under rule 8.868; or

(C) A statement on appeal under rule 8.869.

(b) Stipulation for limited record

If, before the record is certified, the appellant and the respondent stipulate in writing that any part of the record is not required for proper determination of the appeal and file that stipulation in the trial court, that part of the record must not be prepared or sent to the appellate division.

(Subd (b) amended effective July 1, 2009.)

Rule 8.860 amended effective July 1, 2009; adopted effective January 1, 2009.

Rule 8.861. Contents of clerk's transcript

Except in appeals covered by rule 8.867 or when the parties have filed a stipulation under rule 8.860(b) that any of these items is not required for proper determination of the appeal, the clerk's transcript must contain:

(1) The complaint, including any notice to appear, and any amendment;

(2) Any demurrer or other plea;

(3) All court minutes;

(4) Any jury instructions that any party submitted in writing, the cover page required by rule 2.1055(b)(2), and any written jury instructions given by the court;

(5) Any written communication between the court and the jury or any individual juror;

(6) Any verdict;

(7) Any written findings or opinion of the court;

(8) The judgment or order appealed from;

(9) Any motion or notice of motion for new trial, in arrest of judgment, or to dismiss the action, with supporting and opposing memoranda and attachments;

(10) Any transcript of a sound or sound-and-video recording furnished to the jury or tendered to the court under rule 2.1040; and

(11) The notice of appeal; and

(12) If the appellant is the defendant:

(A) Any written defense motion denied in whole or in part, with supporting and opposing memoranda and attachments;

(B) If related to a motion under (A), any search warrant and return;

(C) Any document admitted in evidence to prove a prior juvenile adjudication, criminal conviction, or prison term. If a record was closed to public inspection in the trial court because it is required to be kept confidential by law, it must remain closed to public inspection in the appellate division unless that court orders otherwise;

(D) The probation officer's report; and

(E) Any court-ordered psychological report required under Penal Code section 1369.

Rule 8.861 amended effective January 1, 2010; adopted effective January 1, 2009.

Advisory Committee Comment

Rule 8.862(c) addresses the appropriate handling of probation officers' reports that must be included in the clerk's transcript under (12)(D).

Rule 8.862. Preparation of clerk's transcript

(a) When preparation begins

Unless the original court file will be used in place of a clerk's transcript under rule 8.863, the clerk must begin preparing the clerk's transcript immediately after the notice of appeal is filed.

(b) Format of transcript

The clerk's transcript must comply with rule 8.144.

(c) Probation officer's reports

A probation officer's report included in the clerk's transcript under rule 8.861(12)(D) must appear in only the copies of the appellate record that are sent to the reviewing court, to appellate counsel for the People, and to appellate counsel for the defendant who was the subject of the report or to the defendant if he or she is self-represented. The reviewing court's copy of the report must be placed in a sealed envelope marked "CONFIDENTIAL—MAY NOT BE EXAMINED WITHOUT COURT ORDER—PROBATION OFFICER REPORT."

(Subd (c) adopted effective January 1, 2010.)

(d) When preparation must be completed

Within 20 days after the notice of appeal is filed, the clerk must complete preparation of an original clerk's transcript for the appellate division, one copy for the appellant, and one copy for the respondent. If there is more than one appellant, the clerk must prepare an extra copy for each additional appellant who is represented by separate counsel or self-represented.

(Subd (d) relettered effective January 1, 2010; adopted as subd (c); previously amended effective July 1, 2009.)

(e) Certification

The clerk must certify as correct the original and all copies of the clerk's transcript.

(Subd (e) relettered effective January 1, 2010; adopted as subd (d).)

Rule 8.862 amended effective January 1, 2010; adopted effective January 1, 2009; previously amended effective July 1, 2009.

Advisory Committee Comment

Rule 8.872 addresses when the clerk's transcript is sent to the appellate division in misdemeanor appeals.

Rule 8.863. Trial court file instead of clerk's transcript

(a) Application

If the court has a local rule for the appellate division electing to use this form of the record, the original trial court file may be used instead of a clerk's transcript. This rule and any supplemental provisions of the local rule then govern unless the trial court orders otherwise after notice to the parties.

(b) When original file must be prepared

Within 20 days after the filing of the notice of appeal, the trial court clerk must put the trial court file in chronological order, number the pages, and attach a chronological index and a list of all attorneys of record, the parties they represent, and any unrepresented parties.

(c) Copies

The clerk must send a copy of the index to the appellant and the respondent for use in paginating their copies of the file to conform to the index. If there is more than one appellant, the clerk must prepare an extra copy of the index for each additional appellant who is represented by separate counsel or self-represented.

(Subd (c) amended effective July 1, 2009.)

Rule 8.863 amended effective July 1, 2009; adopted effective January 1, 2009.

Advisory Committee Comment

Rule 8.872 addresses when the original file is sent to the appellate division in misdemeanor appeals.

Rule 8.864. Record of oral proceedings

(a) Appellant's election

The appellant must notify the trial court whether he or she elects to proceed with or without a record of the oral proceedings in the trial court. If the appellant elects to proceed with a record of the oral proceedings in the trial court, the notice must specify which form of the record of the oral proceedings in the trial court the appellant elects to use:

(1) A reporter's transcript under rules 8.865–8.867 or a transcript prepared from an official electronic recording of the proceedings under rule 8.868(b). If the appellant elects to use a reporter's transcript, the clerk must promptly mail a copy of appellant's notice making this election and the notice of appeal to each court reporter;

(2) An official electronic recording of the proceedings under rule 8.868(c). If the appellant elects to use the official electronic recording itself, rather than a transcript prepared from that recording, the appellant must attach a copy of the stipulation required under rule 8.868(c); or

(3) A statement on appeal under rule 8.869.

(b) Time for filing election

The notice of election required under (a) must be filed no later than the following:

(1) If no application for appointment of counsel is filed, 20 days after the notice of appeal is filed; or

(2) If an application for appointment of counsel is filed before the period under (A) expires, either 10 days after the court appoints counsel to represent the defendant on appeal or denies the application for appointment of counsel or 20 days after the notice of appeal is filed, whichever is later.

(c) Failure to file election

If the appellant does not file an election within the time specified in (b), the trial court clerk must promptly notify the appellant by mail that the election must be filed within 15 days after the notice is mailed and that failure to comply will result in the appeal proceeding without a record of the oral proceedings.

(Subd (c) adopted effective January 1, 2010.)

(d) Statement on appeal when proceedings cannot be transcribed or were not recorded

1) If the appellant elects under (a) to use a reporter's transcript or a transcript prepared from an official electronic recording or the recording itself, the trial court clerk must notify the appellant within 10 days after the appellant files this election if any portion of the oral proceedings listed in rule 8.865 was not reported or officially recorded electronically or cannot be transcribed. The notice must indicate that the appellant may use a statement on appeal as the record of the portion of the proceedings that was not recorded or cannot be transcribed.

(2) Within 15 days after this notice is mailed by the clerk, the appellant must file a notice with the court stating whether the appellant elects to use a statement on appeal as the record of the portion of the proceedings that was not recorded or cannot be transcribed.

(Subd (d) relettered effective January 1, 2010; adopted as subd (c).)

Rule 8.864 amended effective January 1, 2010; adopted effective January 1, 2009.

Advisory Committee Comment

Notice Regarding Record of Oral Proceedings (Misdemeanor) (form CR-134) may be used to file the election required under this rule. This form is available at any courthouse or county law library or online at *www.courtinfo.ca gov/forms*. To assist parties in making an appropriate election, courts are encouraged to include information about whether the proceedings were recorded by a court reporter or officially electronically recorded in any information that the court provides to parties concerning their appellate rights.

Rule 8.865. Contents of reporter's transcript

Except in appeals covered by rule 8.867 or when the parties have filed a stipulation under rule 8.860(b) or the trial court has ordered that any of these items is not required for proper determination of the appeal, the reporter's transcript must contain:

(1) The oral proceedings on the entry of any plea other than a not guilty plea;

(2) The oral proceedings on any motion in limine;

(3) The oral proceedings at trial, but excluding the voir dire examination of jurors and any opening statement;

(4) Any jury instructions given orally;

(5) Any oral communication between the court and the jury or any individual juror;

(6) Any oral opinion of the court;

(7) The oral proceedings on any motion for new trial;

(8) The oral proceedings at sentencing, granting or denying probation, or other dispositional hearing;

(9) If the appellant is the defendant, the reporter's transcript must also contain:

(A) The oral proceedings on any defense motion denied in whole or in part except motions for disqualification of a judge;

(B) Any closing arguments; and

(C) Any comment on the evidence by the court to the jury.

Rule 8.865 adopted effective January 1, 2009.

Rule 8.866. Preparation of reporter's transcript

(a) When preparation begins

(1) Unless the court has a local rule providing otherwise, the reporter must immediately begin preparing the reporter's transcript if the notice sent to the reporter by the clerk under rule 8.864(a)(1) indicates either:

(A) That the defendant was represented by appointed counsel at trial; or

(B) That the appellant is the People.

(2) If the notice sent to the reporter by the clerk under rule 8.864(a)(1) indicates that the appellant is the defendant and that the defendant was not represented by appointed counsel at trial:

(A) Within 10 days after the date the clerk mailed the notice under rule 8.864(a)(1), the reporter must file with the clerk the estimated cost of preparing the reporter's transcript; and

(B) The clerk must promptly notify the appellant and his or her counsel of the estimated cost of preparing the reporter's transcript. The notification must show the date it was mailed.

(C) Within 10 days after the date the clerk mailed the notice under (B), the appellant must do one of the following:

(i) Deposit with the clerk an amount equal to the estimated cost of preparing the transcript;

(ii) File a declaration of indigency supported by evidence in the form required by the Judicial Council; or

(iii) Notify the clerk that he or she will be using a statement on appeal instead of a reporter's transcript.

(D) The clerk must promptly notify the reporter to begin preparing the transcript when:

(i) The clerk receives the required deposit under (C)(i); or

(ii) The trial court determines that the defendant is indigent and orders that the defendant receive the transcript without cost.

(b) Format of transcript

The reporter's transcript must comply with rule 8.144.

(c) Copies and certification

The reporter must prepare an original and the same number of copies of the reporter's transcript as rule 8.862 requires of the clerk's transcript and must certify each as correct.

(d) When preparation must be completed

The reporter must deliver the original and all copies to the trial court clerk as soon as they are certified but no later than 20 days after the reporter is required to begin preparing the transcript under (a).

(e) Multi-reporter cases

In a multi-reporter case, the clerk must accept any completed portion of the transcript from the primary reporter one week after the time prescribed by (d) even if other portions are uncompleted. The clerk must promptly pay each reporter who certifies that all portions of the transcript assigned to that reporter are completed.

Rule 8.866 adopted effective January 1, 2009.

Advisory Committee Comment

Subdivision (a). If the appellant was not represented by the public defender or other appointed counsel in the trial court, the appellant must use *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210) to show indigency. This form is available at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*.

Rule 8.867. Limited normal record in certain appeals

If the People appeal from a judgment on a demurrer to the complaint, including any notice to appear, or if the defendant or the People appeal from an appealable order other than a ruling on a motion for new trial, the normal record is composed of:

(1) *Record of the documents filed in the trial court*

A clerk's transcript or original trial court file containing:

(A) The complaint, including any notice to appear, and any amendment;

(B) Any demurrer or other plea;

(C) Any motion or notice of motion granted or denied by the order appealed from, with supporting and opposing memoranda and attachments;

(D) The judgment or order appealed from and any abstract of judgment or commitment;

(E) Any court minutes relating to the judgment or order appealed from; and

(F) The notice of appeal.

(2) *Record of the oral proceedings in the trial court*

If an appellant wants to raise any issue which requires consideration of the oral proceedings in the trial court, a reporter's transcript, transcript prepared under rule 8.866 or a settled statement under rule 8.869 summarizing any oral proceedings incident to the judgment or order being appealed.

Rule 8.867 adopted effective January 1, 2009.

Rule 8.868. Record when trial proceedings were officially electronically recorded

(a) Application

This rule applies only if:

(1) The trial court proceedings were officially recorded electronically under Government Code section 69957; and

(2) The electronic recording was prepared in compliance with applicable rules regarding electronic recording of court proceedings.

(b) Transcripts from official electronic recording

Written transcripts of an official electronic recording may be prepared under rule 2.952. A transcript prepared and certified as provided in that rule is prima facie a true and complete record of the oral proceedings it purports to cover, and satisfies any requirement in these rules or in any statute for a reporter's transcript of oral proceedings.

(c) Use of official recording as record of oral proceedings

If the court has a local rule for the appellate division permitting this, on stipulation of the parties or on order of the trial court under rule 8.869(d)(6), the original of an official electronic recording of the trial court proceedings, or a copy made by the court, may be transmitted as the record of these oral proceedings without being transcribed. Such an electronic recording satisfies any requirement in these rules or in any statute for a reporter's transcript of these proceedings.

(Subd (c) amended effective July 1, 2010.)

(d) When preparation begins

(1) If the appellant files an election under rule 8.864 to use a transcript of an official electronic recording or a copy of the official electronic recording as the record of the oral proceedings, unless the trial court has a local rule providing otherwise, preparation of a transcript or a copy of the recording must begin immediately if either:

(A) The defendant was represented by appointed counsel at trial; or

(B) The appellant is the People.

(2) If the appellant is the defendant and the defendant was not represented by appointed counsel at trial:

(A) Within 10 days after the date the defendant files the election under rule 8.864(a)(1), the clerk must notify the appellant and his or her counsel of the estimated cost of preparing the transcript or the copy of the recording. The notification must show the date it was mailed.

(B) Within 10 days after the date the clerk mailed the notice under (A), the appellant must do one of the following:

(i) Deposit with the clerk an amount equal to the estimated cost of preparing the transcript or the copy of the recording;

(ii) File a declaration of indigency supported by evidence in the form required by the Judicial Council; or

(iii) Notify the clerk that he or she will be using a statement on appeal instead of a transcript or copy of the recording.

(C) Preparation of the transcript must begin when:

(i) The clerk receives the required deposit under (B)(i); or

(ii) The trial court determines that the defendant is indigent and orders that the defendant receive the transcript or the copy of the recording without cost.

Rule 8.868 amended effective July 1, 2010; adopted effective January 1, 2009.

Advisory Committee Comment

Subdivision (d). If the appellant was not represented by the public defender or other appointed counsel in the trial court, the appellant must use *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210) to show indigency. This form is available at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*.

Rule 8.869. Statement on appeal

(a) Description

A statement on appeal is a summary of the trial court proceedings that is approved by the trial court. An appellant can elect under rule 8.864 to use a statement on appeal as the record of the oral proceedings in the trial court, replacing the reporter's transcript.

(b) Preparing the proposed statement

(1) If the appellant elects under rule 8.864 to use a statement on appeal, the appellant must prepare, serve, and file a proposed statement within 20 days after filing the record preparation election.

(2) Appellants who are not represented by an attorney must file their proposed statement on *Proposed Statement on Appeal (Misdemeanor)* (form CR-135). For good cause, the court may permit the filing of a statement that is not on form CR-135.

(3) If the appellant does not file a proposed statement within the time specified in (1), the trial court clerk must promptly notify the appellant by mail that the proposed statement must be filed within 15 days after the notice is mailed and that failure to comply will result in the appeal being dismissed.

(c) Contents of the proposed statement on appeal

A proposed statement prepared by the appellant must contain:

(1) A condensed narrative of the oral proceedings that the appellant believes necessary for the appeal and a summary of the trial court's holding and the sentence imposed on the defendant. Subject to the court's approval, the appellant may present some or all of the evidence by question and answer; and

(2) A statement of the points the appellant is raising on appeal. The appeal is then limited to those points unless the appellate division determines that the record permits the full consideration of another point.

(A) The statement must specify the intended grounds of appeal by clearly stating each point to be raised but need not identify each particular ruling or matter to be challenged.

(B) The statement must include as much of the evidence or proceeding as necessary to support the stated grounds. Any evidence or portion of a proceeding not included will be presumed to support the judgment or order appealed from.

(C) If one of the grounds of appeal is insufficiency of the evidence, the statement must specify how it is insufficient.

(D) If one of the grounds of appeal challenges the giving, refusal, or modification of a jury instruction, the statement must include any instructions submitted orally and identify the party that requested the instruction and any modification.

(Subd (c) amended effective July 1, 2009.)

(d) Review of the appellant's proposed statement

(1) Within 10 days after the appellant files the proposed statement, the respondent may serve and file proposed amendments to that statement.

(2) No later than 10 days after either the respondent files proposed amendments or the time to do so expires, a party may request a hearing to review and correct the proposed statement. No hearing will be held unless ordered by the trial court judge, and the judge will not ordinarily order a hearing unless there is a factual dispute about a material aspect of the trial court proceedings.

(3) If a hearing is ordered, the court must promptly set the hearing date and provide the parties with at least 5 days' written notice.

(4) Except as provided in (6), if no hearing is ordered, no later than 10 days after the time for requesting a hearing expires, the trial court judge must review the proposed statement and any proposed amendments and make any corrections or modifications to the statement necessary to ensure that it is an accurate summary of the trial court proceedings. If a hearing is ordered, the trial court judge must make any corrections or modifications to the statement within 10 days after the hearing.

(5) The trial court judge must not eliminate the appellant's specification of grounds of appeal from the proposed statement.

(6) If the trial court proceedings were reported by a court reporter or officially recorded electronically under Government Code section 69957 and the trial court judge determines that it would save court time and resources, instead of correcting a proposed statement on appeal:

(A) If the court has a local rule for the appellate division permitting the use of an official electronic recording as the record of the oral proceedings, the trial court judge may order that the original of an official electronic recording of the trial court proceedings, or a copy made by the court, be transmitted as the record of these oral proceedings without being transcribed. The court will pay for any copy of the official electronic recording ordered under this subdivision; or

(B) Unless the court has a local rule providing otherwise, the trial court judge may order that a transcript be prepared as the record of the oral proceedings. The court will pay for any transcript ordered under this subdivision.

(e) Review of the corrected statement

(1) If the trial court judge makes any corrections or modifications to the statement under (d), the clerk must send copies of the corrected or modified statement to the parties.

(2) Within 10 days after the statement is sent to the parties, any party may serve and file proposed modifications or objections to the statement.

(f) Certification of the statement on appeal

(1) If the trial court judge does not make any corrections or modifications to the proposed statement under (d)(4) and does not order either the use of an official electronic recording or preparation of a transcript in lieu of correcting the proposed statement under (d)(6), the judge must promptly certify the statement.

(2) If the trial court judge corrects or modifies an appellant's proposed statement under (d), within five days after the time for filing proposed modifications or objections under (e) has expired, the judge must review any proposed modifications or objections to the statement filed by the parties, make any corrections or modifications to the statement necessary to ensure that it is an accurate summary of the trial court proceedings, and certify the statement.

(g) Extensions of time

For good cause, the trial court may grant an extension of not more than 15 days to do any act required or permitted under this rule.

Rule 8.869 amended effective July 1, 2009; adopted effective January 1, 2009.

Advisory Committee Comment

Rules 8.806, 8.810, and 8.812 address applications for extensions of time and relief from default.

Subdivision (b). *Proposed Statement on Appeal (Misdemeanor)* (form CR-135) is available at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*.

Subdivision (d). Under rule 8.804, the term "judge" includes a commissioner or a temporary judge.

Rule 8.870. Exhibits

(a) Exhibits deemed part of record

Exhibits admitted in evidence, refused, or lodged are deemed part of the record, but may be transmitted to the appellate division only as provided in this rule.

(b) Notice of designation

(1) Within 10 days after the last respondent's brief is filed or could be filed under rule 8.882, if the appellant wants the appellate division to consider any original exhibits that were admitted in evidence, refused, or lodged, the appellant must serve and file a notice in the trial court designating such exhibits.

(2) Within 10 days after a notice under (1) is served, any other party wanting the appellate division to consider additional exhibits must serve and file a notice in trial court designating such exhibits.

(3) A party filing a notice under (1) or (2) must serve a copy on the appellate division.

(c) Request by appellate division

At any time, the appellate division may direct the trial court or a party to send it an exhibit.

(d) Transmittal

Unless the appellate division orders otherwise, within 20 days after the first notice under (b) is filed or after the appellate division directs that an exhibit be sent:

(1) The trial court clerk must put any designated exhibits in the clerk's possession into numerical or alphabetical order and send them to the appellate division with two copies of a list of the exhibits. If the appellate division clerk finds the list correct, the clerk must sign and return one copy to the trial court clerk.

(2) Any party in possession of designated exhibits returned by the trial court must put them into numerical or alphabetical order and send them to the appellate division with two copies of a list of the exhibits sent. If the appellate division clerk finds the list correct, the clerk must sign and return one copy to the party.

(e) Return by appellate division

On request, the appellate division may return an exhibit to the trial court or to the party that sent it. When the remittitur issues, the appellate division must return all exhibits to the trial court or to the party that sent them.

Rule 8.870 adopted effective January 1, 2009.

Rule 8.871. Juror-identifying information

(a) Applicability

In a criminal case, a clerk's transcript, a reporter's transcript, or any other document in the record that contains juror-identifying information must comply with this rule.

(b) Juror names, addresses, and telephone numbers

(1) The name of each trial juror or alternate sworn to hear the case must be replaced with an identifying number wherever it appears in any document. The trial court clerk must prepare and keep under seal in the case file a table correlating the jurors' names with their identifying numbers. The clerk and the reporter must use the table in preparing all transcripts or other documents.

(2) The addresses and telephone numbers of trial jurors and alternates sworn to hear the case must be deleted from all documents.

(c) Potential jurors

Information identifying potential jurors called but not sworn as trial jurors or alternates must not be sealed unless otherwise ordered under Code of Civil Procedure section 237(a)(1).

Rule 8.871 adopted effective January 1, 2009.

Advisory Committee Comment

This rule implements Code of Civil Procedure section 237.

Rule 8.872. Sending and filing the record in the appellate division

(a) When the record is complete

(1) If the appellant elected under rule 8.864 to proceed without a record of the oral proceedings in the trial court, the record is complete when the clerk's transcript is certified as correct or, if the original trial court file will be used instead of the clerk's transcript, when that original file is ready for transmission as provided under rule 8.863(b).

(2) If the appellant elected under rule 8.864 to proceed with a record of the oral proceedings in the trial court, the record is complete when the clerk's transcript is certified as correct or the original file is ready for transmission as provided in (1) and:

(A) If the appellant elected to use a reporter's transcript, the certified reporter's transcript is delivered to the court under rule 8.866;

(B) If the appellant elected to use a transcript prepared from an official electronic recording, the transcript has been prepared under rule 8.868;

(C) If the parties stipulated to the use of an official electronic recording of the proceedings, the electronic recording has been prepared under rule 8.868; or

(D) If the appellant elected to use a statement on appeal, the statement on appeal has been certified by the trial court or a transcript or an official electronic recording has been prepared under rule 8.869(d)(6).

(b) Sending the record

When the record is complete, the clerk must promptly send:

(1) The original record to the appellate division;

(2) One copy of the clerk's transcript or index to the original court file and one copy of any record of the oral proceedings to each appellant who is represented by separate counsel or is self-represented; and

(3) One copy of the clerk's transcript or index to the original court file and one copy of any record of the oral proceedings to the respondent.

(c) Filing the record

On receipt, the appellate division clerk must promptly file the original record and mail notice of the filing date to the parties.

Rule 8.872 adopted effective January 1, 2009.

Rule 8.873. Augmenting or correcting the record in the appellate division

(a) Subsequent trial court orders

If, after the record is certified, the trial court amends or recalls the judgment or makes any other order in the case, including an order affecting the sentence or probation, the clerk must promptly certify and send a copy of the amended abstract of judgment or other order as an augmentation of the record to all those who received the record under rule 8.872(b). If there is any additional document or transcript related to the amended judgment or new order that any rule or order requires be included in the record, the clerk must send these documents or transcripts with the amended abstract of judgment or other order. The clerk must promptly copy and certify any such document and the reporter must promptly prepare and certify any such transcript.

(b) Omissions

If, after the record is certified, the trial court clerk or the reporter learns that the record omits a document or transcript that any rule or order requires to be included, the clerk must promptly copy and certify the document or the reporter must promptly prepare and certify the transcript. Without the need for a court order, the clerk must promptly send the document or transcript as an augmentation of the record to all those who received the record under rule 8.872(b).

(c) Augmentation or correction by the appellate division

At any time, on motion of a party or on its own motion, the appellate division may order the record augmented or corrected as provided in rule 8.841.

Rule 8.873 adopted effective January 1, 2009.

Chapter 4. Briefs, Hearing, and Decision in Limited Civil and Misdemeanor Appeals

Title 8, Appellate Rules–Division 2, Rules Relating to the Superior Court Appellate Division–Chapter 4, Briefs, Hearing, and Decision in Limited Civil and Misdemeanor Appeals adopted effective January 1, 2009.

Rule 8.880. Application
Rule 8.881. Notice of briefing schedule
Rule 8.882. Briefs by parties and amici curiae
Rule 8.883. Contents and form of briefs
Rule 8.884. Appeals in which a party is both appellant and respondent
Rule 8.885. Oral argument
Rule 8.886. Submission of the cause
Rule 8.887. Decisions
Rule 8.888. Finality and modification of decision
Rule 8.889. Rehearing
Rule 8.890. Remittitur
Rule 8.891. Costs and sanctions in civil appeals

Rule 8.880. Application

Except as otherwise provided, the rules in this chapter apply to both civil and misdemeanor appeals in the appellate division.

Rule 8.880 adopted effective January 1, 2009.

Rule 8.881. Notice of briefing schedule

When the record is filed, the clerk of the appellate division must promptly mail a notice to each appellate counsel or unrepresented party giving the dates the briefs are due.

Rule 8.881 adopted effective January 1, 2009.

Rule 8.882. Briefs by parties and amici curiae

(a) Briefs by parties

(1) The appellant must serve and file an appellant's opening brief within 30 days after the record is filed in the appellate division.

(2) Any respondent's brief must be served and filed within 30 days after the appellant files its opening brief.

(3) Any appellant's reply brief must be served and filed within 20 days after the respondent files its brief.

(4) No other brief may be filed except with the permission of the presiding judge.

(5) Instead of filing a brief, or as part of its brief, a party may join in a brief or adopt by reference all or part of a brief in the same or a related appeal.

(b) Extensions of time

(1) In a civil case, the parties may extend each period under (a) by up to 30 days by filing one or more stipulations in the appellate division before the brief is due. Stipulations must be signed by and served on all parties. The original signature of at least one party must appear on the stipulation filed in the appellate division; the signatures of the other parties may be in the form of fax copies of the signed signature page of the stipulation.

(2) A stipulation under (1) is effective on filing. The appellate division may not shorten such a stipulated extension.

(3) Before the brief is due, a party may apply to the presiding judge of the appellate division for an extension of the time period for filing a brief under (a). The application must show that there is good cause to grant an extension under rule 8.811(b). In civil appeals, the application must also show that:

(A) The applicant was unable to obtain—or it would have been futile to seek—the extension by stipulation; or

(B) The parties have stipulated to the maximum extension permitted under (1) and the applicant seeks a further extension.

(4) A party need not apply for an extension or relief from default if it can file its brief within the time prescribed by (c). The clerk must file a brief submitted within that time if it otherwise complies with these rules.

(Subd (b) amended effective January 1, 2010; adopted effective January 1, 2009.)

(c) Failure to file a brief

(1) If a party in a civil appeal fails to timely file an appellant's opening brief or a respondent's brief, the appellate division clerk must promptly notify the party by mail that the brief must be filed within 15 days after the notice is mailed and that if the party fails to comply, the court may impose one of the following sanctions:

(A) If the brief is an appellant's opening brief, the court may dismiss the appeal; or

(B) If the brief is a respondent's brief, the court may decide the appeal on the record, the appellant's opening brief, and any oral argument by the appellant.

(2) If the appellant in a misdemeanor appeal fails to timely file an opening brief, the appellate division clerk must promptly notify the appellant by mail that the brief must be filed within 30 days after the notice is mailed and that if the appellant fails to comply, the court may impose one of the following sanctions:

(A) If the appellant is the defendant and is represented by appointed counsel on appeal, the court may relieve that appointed counsel and appoint new counsel; or

(B) In all other cases, the court may dismiss the appeal.

(3) If the respondent in a misdemeanor appeal is the defendant and the respondent fails to timely file a brief, the appellate division clerk must promptly notify the respondent by mail that the brief must be filed within 30 days after the notice is mailed and that if the respondent fails to comply, the court will decide the appeal on the record, the appellant's opening brief, and any oral argument by the appellant.

(4) If a party fails to comply with a notice under (1), (2), or (3), the court may impose the sanction specified in the notice.

(Subd (c) relettered effective January 1, 2009; adopted as subd (b).)

(d) Amicus curiae briefs

(1) Within 14 days after the appellant's reply brief is filed or was required to be filed, whichever is earlier, any person or entity may serve and file an application for permission of the presiding judge to file an amicus curiae brief. For good cause, the presiding judge may allow later filing.

(2) The application must state the applicant's interest and explain how the proposed amicus curiae brief will assist the court in deciding the matter.

(3) The application must also identify:

(A) Any party or any counsel for a party in the pending appeal who:

(i) Authored the proposed amicus brief in whole or in part; or

(ii) Made a monetary contribution intended to fund the preparation or submission of the brief; and

(B) Every person or entity who made a monetary contribution intended to fund the preparation or submission of the brief, other than the amicus curiae, its members, or its counsel in the pending appeal.

(4) The proposed brief must be served and must accompany the application and may be combined with it.

(5) The Attorney General may file an amicus curiae brief without the presiding judge's permission, unless the brief is submitted on behalf of another state officer or agency; but the presiding judge may prescribe reasonable conditions for filing and answering the brief.

(Subd (d) amended and relettered effective January 1, 2009; adopted as subd (c).)

(e) Service and filing

(1) Copies of each brief must be served as required by rule 8.25.

(2) Unless the court provides otherwise by local rule or order in the specific case, only the original brief, with proof of service, must be filed in the appellate division.

(3) A copy of each brief must be served on the trial court clerk for delivery to the judge who tried the case.

(4) A copy of each brief must be served on a public officer or agency when required by rule 8.29.

(Subd (e) amended and relettered effective January 1, 2009; adopted as subd (d).)

Rule 8.882 amended effective January 1, 2010; adopted effective January 1, 2009; previously amended effective January 1, 2009.

Rule 8.883. Contents and form of briefs

(a) Contents

(1) Each brief must:

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

(B) Support any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears.

(2) An appellant's opening brief must:

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

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

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

(b) Length

(1) A brief produced on a computer must not exceed 6,800 words, including footnotes. Such a brief must include a certificate by appellate counsel or an unrepresented party stating the number of words in the brief. The person certifying may rely on the word count of the computer program used to prepare the brief.

(2) A brief produced on a typewriter must not exceed 20 pages.

(3) The cover information listed in rule 8.204(b)(10), any table of contents or table of authorities, the certificate under (1), and any signature block are excluded from the limits stated in (1) or (2).

(4) On application, the presiding judge may permit a longer brief for good cause. A lengthy record or numerous or complex issues on appeal will ordinarily constitute good cause. If the court grants an application to file a longer brief, it may order that the brief include a table of contents and a table of authorities.

(Subd (b) amended effective January 1, 2011.)

(c) Form

(1) A brief may be reproduced by any process that produces a clear, black image of letter quality. The paper must be white or unbleached, recycled, 8½ by 11 inches, and of at least 20-pound weight. Both sides of the paper may be used if the brief is not bound at the top.

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

(3) The type style must be roman; but for emphasis, italics or boldface may be used or the text may be underscored. Case names must be italicized or underscored. Headings may be in uppercase letters.

(4) Except as provided in (10), the type size, including footnotes, must not be smaller than 13-point.

(5) The lines of text must be at least one-and-a-half-spaced. Headings and footnotes may be single-spaced. Quotations may be block-indented and single-spaced. Single-spaced means six lines to a vertical inch.

(6) The margins must be at least 1½ inches on the left and right and 1 inch on the top and bottom.

(7) The pages must be consecutively numbered.

(8) The brief must be bound on the left margin, except that briefs may be bound at the top if required by a local rule of the appellate division. If the brief is stapled, the bound edge and staples must be covered with tape.

(9) The brief need not be signed.

(10) If the brief is produced on a typewriter:

(A) A typewritten original and carbon copies may be filed only with the presiding judge's permission, which will ordinarily be given only to unrepresented parties proceeding in forma pauperis. All other typewritten briefs must be filed as photocopies.

(B) Both sides of the paper may be used if a photocopy is filed; only one side may be used if a typewritten original and carbon copies are filed.

(C) The type size, including footnotes, must not be smaller than standard pica, 10 characters per inch. Unrepresented incarcerated litigants may use elite type, 12 characters per inch, if they lack access to a typewriter with larger characters.

(Subd (c) amended effective January 1, 2011.)

(d) Noncomplying briefs

If a brief does not comply with this rule:

(1) The reviewing court clerk may decline to file it, but must mark it "received but not filed" and return it to the party; or

(2) If the brief is filed, the presiding judge may with or without notice:

(A) Order the brief returned for corrections and refiling within a specified time;

(B) Strike the brief with leave to file a new brief within a specified time; or

(C) Disregard the noncompliance.

Rule 8.883 amended effective January 1, 2011; adopted effective January 1, 2009.

Advisory Committee Comment

Subdivision (b). Subdivision (b)(1) states the maximum permissible lengths of briefs produced on a computer in terms of word count rather than page count. This provision tracks a provision in rule 8.204(c) governing Court of Appeal briefs and is explained in the comment to that provision. Subdivision (b)(3) specifies certain items that are not counted toward the maximum brief length. Signature blocks, as referenced in this provision, include not only the signatures, but also the printed names, titles, and affiliations of any attorneys filing or joining in the brief, which may accompany the signature.

Rule 8.884. Appeals in which a party is both appellant and respondent

(a) Briefing sequence and time to file briefs

In an appeal in which any party is both an appellant and a respondent:

(1) The parties must jointly—or separately if unable to agree—submit a proposed briefing sequence to the appellate division within 20 days after the second notice of appeal is filed.

(2) After receiving the proposal, the appellate division must order a briefing sequence and prescribe briefing periods consistent with rule 8.882(a).

(b) Contents of briefs

(1) A party that is both an appellant and a respondent must combine its respondent's brief with its appellant's opening brief or its reply brief, if any, whichever is appropriate under the briefing sequence that the appellate division orders under (a).

(2) A party must confine a reply brief to points raised in its own appeal.

(3) A combined brief must address the points raised in each appeal separately but may include a single summary of the significant facts.

(Subd (b) amended effective January 1, 2009.)

Rule 8.884 amended effective January 1, 2009; adopted effective January 1, 2009.

Rule 8.885. Oral argument

(a) Calendaring and sessions

Unless otherwise ordered, all appeals in which the last reply brief was filed or the time for filing this brief expired 45 or more days before the date of a regular appellate division session must be placed on the calendar for that session by the appellate division clerk. By order of the presiding judge or the division, any appeal may be placed on the calendar for oral argument at any session.

(b) Oral argument by videoconference

(1) Oral argument may be conducted by videoconference if:

(A) It is ordered by the presiding judge of the appellate division or the presiding judge's designee on application of any party or on the court's own motion. An application from a party requesting that oral argument be conducted by videoconference must be filed within 10 days after the court sends notice of oral argument under (c)(1); or

(B) A local rule authorizes oral argument to be conducted by videoconference consistent with these rules.

(2) If oral argument is conducted by videoconference:

(A) Each judge of the appellate division panel assigned to the case must participate in the entire oral argument either in person at the superior court that issued the judgment or order that is being appealed or by videoconference from another court.

(B) Unless otherwise allowed by local rule or ordered by the presiding judge of the appellate division or the presiding judge's designee, all the parties must appear at oral argument in person at the superior court that issued the judgment or order that is being appealed.

(C) The oral argument must be open to the public at the superior court that issued the judgment or order that is being appealed. If provided by local rule or ordered by the presiding judge of the appellate division or the presiding judge's designee, oral argument may also be open to the public at any of the locations from which a judge of the appellate division is participating in oral argument.

(D) The appellate division must ensure that:

(i) During oral argument, the participants in oral argument are visible and their statements are audible to all other participants, court staff, and any members of the public attending the oral argument;

(ii) Participants are identified when they speak; and

(iii) Only persons who are authorized to participate in the proceedings speak.

(E) A party must not be charged any fee to participate in oral argument by videoconference if the party participates from the superior court that issued the judgment or order that is being appealed or from a location from which a judge of the appellate division panel is participating in oral argument.

(Subd (b) adopted effective January 1, 2010.)

(c) Notice of argument

(1) As soon as all parties' briefs are filed or the time for filing these briefs has expired, the appellate division clerk must send a notice of the time and place of oral argument to all parties. The notice must be sent at least 20 days before the date for oral argument. The presiding judge may shorten the notice period for good cause; in that event, the clerk must immediately notify the parties by telephone or other expeditious method.

(2) If oral argument will be conducted by videoconference under (b), the clerk must specify, either in the notice required under (1) or in a supplemental notice sent to all parties at least 5 days before the date for oral argument, the location from which each judge of the appellate division panel assigned to the case will participate in oral argument.

(Subd (c) amended and relettered effective January 1, 2010; adopted as subd (b).)

(d) Waiver of argument

Parties may waive oral argument.

(Subd (d) relettered effective January 1, 2010; adopted as subd (c).)

(e) Conduct of argument

Unless the court provides otherwise:

(1) The appellant, petitioner, or moving party has the right to open and close. If there are two or more such parties, the court must set the sequence of argument.

(2) Each side is allowed 10 minutes for argument. The appellant may reserve part of this time for reply argument. If multiple parties are represented by separate counsel, or if an amicus curiae—on written request—is granted permission to argue, the court may apportion or expand the time.

(3) Only one counsel may argue for each separately represented party.

(Subd (e) amended and relettered effective January 1, 2010; adopted as subd (d).)

Rule 8.885 amended effective January 1, 2010; adopted effective January 1, 2009.

Advisory Committee Comment

Subdivision (a). Under rule 10.1108, the appellate division must hold a session at least once each quarter, unless no matters are set for oral argument that quarter, but may choose to hold sessions more frequently.

Rule 8.886. Submission of the cause

(a) When the cause is submitted

A cause is submitted when the court has heard oral argument or approved its waiver and the time has expired to file all briefs and papers, including any supplemental brief permitted by the court. The appellate division may order the cause submitted at an earlier time if the parties so stipulate.

(b) Vacating submission

The court may vacate submission only by an order stating its reasons and setting a timetable for resubmission.

Rule 8.886 adopted effective January 1, 2009.

Rule 8.887. Decisions

(a) Written opinions

Appellate division judges are not required to prepare a written opinion in any case but may do so when they deem it advisable or in the public interest. A decision by opinion must identify the participating judges, including the author of the majority opinion and of any concurring or dissenting opinion, or the judges participating in a "by the court" opinion.

(b) Filing the decision

The appellate division clerk must promptly file all opinions and orders of the court and promptly send copies showing the filing date to the parties and, when relevant, to the trial court.

(c) Opinions certified for publication

(1) Opinions certified for publication must comply to the extent practicable with the *California Style Manual*.

(2) When the decision is final as to the appellate division in a case in which the opinion is certified for publication, the clerk must immediately send:

(A) Two paper copies and one electronic copy to the Reporter of Decisions in a format approved by the Reporter.

(B) One copy to the Court of Appeal for the district. The copy must bear the notation "This opinion has been certified for publication in the Official Reports. It is being sent to assist the Court of Appeal in deciding whether to order the case transferred to the court on the court's own motion under rules

8.1000–8.1018." The Court of Appeal clerk must promptly file that copy or make a docket entry showing its receipt.

(Subd (c) amended effective January 1, 2011.)

Rule 8.887 amended effective January 1, 2011; adopted effective January 1, 2009.

Rule 8.888. Finality and modification of decision

(a) Finality of decision

(1) Except as otherwise provided in this rule, an appellate division decision, including an order dismissing an appeal involuntarily, is final 30 days after the decision is filed.

(2) If the appellate division certifies a written opinion for publication or partial publication after its decision is filed and before its decision becomes final in that court, the finality period runs from the filing date of the order for publication.

(3) The following appellate division decisions are final in that court when filed:

(A) The denial of a petition for writ of supersedeas;

(B) The denial of an application for bail or to reduce bail pending appeal; and

(C) The dismissal of an appeal on request or stipulation.

(b) Modification of judgment

(1) The appellate division may modify its decision until the decision is final in that court. If the clerk's office is closed on the date of finality, the court may modify the decision on the next day the clerk's office is open.

(2) An order modifying a decision must state whether it changes the appellate judgment. A modification that does not change the appellate judgment does not extend the finality date of the decision. If a modification changes the appellate judgment, the finality period runs from the filing date of the modification order.

(c) Consent to increase or decrease in amount of judgment

If an appellate division decision conditions the affirmance of a money judgment on a party's consent to an increase or decrease in the amount, the judgment is reversed unless, before the decision is final under (a), the party serves and files two copies of a consent in the appellate division. If a consent is filed, the finality period runs from the filing date of the consent. The clerk must send one file-stamped copy of the consent to the trial court with the remittitur.

Rule 8.888 adopted effective January 1, 2009.

Rule 8.889. Rehearing

(a) Power to order rehearing

(1) On petition of a party or on its own motion, the appellate division may order rehearing of any decision that is not final in that court on filing.

(2) An order for rehearing must be filed before the decision is final. If the clerk's office is closed on the date of finality, the court may file the order on the next day the clerk's office is open.

(b) Petition and answer

(1) A party may serve and file a petition for rehearing within 15 days after:

(A) The decision is filed;

(B) A publication order restarting the finality period under rule 8.888(a)(2), if the party has not already filed a petition for rehearing;

(C) A modification order changing the appellate judgment under rule 8.888(b); or

(D) The filing of a consent under rule 8.888(c).

(2) A party must not file an answer to a petition for rehearing unless the court requests an answer. The clerk must promptly send to the parties copies of any order requesting an answer and immediately notify the parties by telephone or another expeditious method. Any answer must be served and filed within 8 days after the order is filed unless the court orders otherwise. A petition for rehearing normally will not be granted unless the court has requested an answer.

(3) The petition and answer must comply with the relevant provisions of rule 8.883.

(4) Before the decision is final and for good cause, the presiding judge may relieve a party from a failure to file a timely petition or answer.

(c) No extensions of time

The time for granting or denying a petition for rehearing in the appellate division may not be extended. If the court does not rule on the petition before the decision is final, the petition is deemed denied.

(d) Effect of granting rehearing

An order granting a rehearing vacates the decision and any opinion filed in the case. If the appellate division orders rehearing, it may place the case on calendar for further argument or submit it for decision.

Rule 8.889 adopted effective January 1, 2009.

Rule 8.890. Remittitur

(a) Proceedings requiring issuance of remittitur

An appellate division must issue a remittitur after a decision in an appeal.

(b) Clerk's duties

(1) If an appellate division case is not transferred to the Court of Appeal under rule 8.1000 et seq., the appellate division clerk must:

(A) Issue a remittitur immediately after the Court of Appeal denies transfer or the period for granting transfer under rule 8.1008(a) expires if there will be no further proceedings in the appellate division;

(B) Send the remittitur to the trial court with a file-stamped copy of the opinion or order; and

(C) Return to the trial court with the remittitur all original records, exhibits, and documents sent to the appellate division in connection with the appeal, except any certification for transfer under rule 8.1005, the transcripts or statement on appeal, briefs, and the notice of appeal.

(2) If an appellate division case is transferred to a Court of Appeal under rule 8.1000 et seq., on receiving the Court of Appeal remittitur, the appellate division clerk must issue a remittitur and return documents to the trial court as provided in rule 8.1018.

(Subd (b) amended effective January 1, 2011.)

(c) Immediate issuance, stay, and recall

(1) The appellate division may direct immediate issuance of a remittitur only on the parties' stipulation or on dismissal of the appeal on the request or stipulation of the parties under rule 8.825(c)(2).

(2) On a party's or its own motion or on stipulation, and for good cause, the court may stay a remittitur's issuance for a reasonable period or order its recall.

(3) An order recalling a remittitur issued after a decision by opinion does not supersede the opinion or affect its publication status.

(d) Notice

The remittitur is deemed issued when the clerk enters it in the record. The clerk must immediately send the parties notice of issuance of the remittitur, showing the date of entry.

Rule 8.890 amended effective January 1, 2011; adopted effective January 1, 2009.

Rule 8.891. Costs and sanctions in civil appeals

(a) Right to costs

(1) Except as provided in this rule, the prevailing party in a civil appeal is entitled to costs on appeal.

(2) The prevailing party is the respondent if the appellate division affirms the judgment without modification or dismisses the appeal. The prevailing party is the appellant if the appellate division reverses the judgment in its entirety.

(3) If the appellate division reverses the judgment in part or modifies it, or if there is more than one notice of appeal, the appellate division must specify the award or denial of costs in its decision.

(4) In the interests of justice, the appellate division may also award or deny costs as it deems proper.

(b) Judgment for costs

(1) The appellate division clerk must enter on the record and insert in the remittitur judgment awarding costs to the prevailing party under (a).

(2) If the clerk fails to enter judgment for costs, the appellate division may recall the remittitur for correction on its own motion or on a party's motion made not later than 30 days after the remittitur issues.

(c) Procedure for claiming or opposing costs

(1) Within 30 days after the clerk sends notice of issuance of the remittitur, a party claiming costs awarded by the appellate division must serve and file in the trial court a verified memorandum of costs under rule 3.1700(a)(1).

(2) A party may serve and file a motion in the trial court to strike or tax costs claimed under (1) in the manner required by rule 3.1700.

(3) An award of costs is enforceable as a money judgment.

(Subd (c) amended effective January 1, 2011.)

(d) Recoverable costs

(1) A party may recover only the costs of the following, if reasonable:

(A) Filing fees;

(B) The amount the party paid for any portion of the record, whether an original or a copy or both, subject to reduction by the appellate division under subdivision (e);

(C) The cost to produce additional evidence on appeal;

(D) The costs to notarize, serve, mail, and file the record, briefs, and other papers;

(E) The cost to print and reproduce any brief, including any petition for rehearing or review, answer, or reply; and

(F) The cost to procure a surety bond, including the premium and the cost to obtain a letter of credit as collateral, unless the trial court determines the bond was unnecessary.

(2) Unless the court orders otherwise, an award of costs neither includes attorney's fees on appeal nor precludes a party from seeking them under rule 3.1702.

(e) Sanctions

(1) On motion of a party or its own motion, the appellate division may impose sanctions, including the award or denial of costs, on a party or an attorney for:

(A) Taking a frivolous appeal or appealing solely to cause delay; or

(B) Committing any unreasonable violation of these rules.

(2) A party's motion under (1) must include a declaration supporting the amount of any monetary sanction sought and must be served and filed before any order dismissing the appeal but no later than 10 days after the appellant's reply brief is due. If a party files a motion for sanctions with a motion to dismiss the appeal and the motion to dismiss is not granted, the party may file a new motion for sanctions within 10 days after the appellant's reply brief is due.

(3) The court must give notice in writing if it is considering imposing sanctions. Within 10 days after the court sends such notice, a party or attorney may serve and file an opposition, but failure to do so will not be deemed consent. An opposition may not be filed unless the court sends such notice.

(4) Unless otherwise ordered, oral argument on the issue of sanctions must be combined with oral argument on the merits of the appeal.

Rule 8.891 amended effective January 1, 2011; adopted effective January 1, 2009.

Chapter 5. Appeals in Infraction Cases

Title 8, Appellate Rules–Division 2, Rules Relating to the Superior Court Appellate Division–Chapter 5, Appeals in Infraction Cases adopted effective January 1, 2009.

Article 1. Taking Appeals in Infraction Cases

Title 8, Appellate Rules–Division 2, Rules Relating to the Superior Court Appellate Division–Chapter 5, Appeals in Infraction Cases–Article 1, Taking Appeals in Infraction Cases adopted effective January 1, 2009.

Rule 8.900. Application of chapter
Rule 8.901. Notice of appeal
Rule 8.902. Time to appeal
Rule 8.903. Stay of execution on appeal
Rule 8.904. Abandoning the appeal

Rule 8.900. Application of chapter

The rules in this chapter apply only to appeals in infraction cases. An infraction case is a case in which the defendant was convicted only of an infraction and was not charged with any felony. A felony is "charged" when an information or indictment accusing the defendant of a felony is filed or a complaint accusing the defendant of a felony is certified to the superior court under Penal Code section 859a.

Rule 8.900 adopted effective January 1, 2009.

Advisory Committee Comment

Chapter 1 of this division also applies in appeals from infraction cases. Chapters 3 and 4 of this division apply to appeals in misdemeanor cases. The rules that apply in appeals in felony cases are located in chapter 3 of division 1 of this title.

Penal Code section 1466 provides that an appeal in a "misdemeanor or infraction case" is to the appellate division of the superior court, and Penal Code section 1235(b), in turn, provides that an appeal in a "felony case" is to the Court of Appeal. Penal Code section 691(g) defines "misdemeanor or infraction case" to mean "a criminal action in which a misdemeanor or infraction is charged *and does not include a criminal action in which a felony is charged* in conjunction with a misdemeanor or infraction" (emphasis added), and section 691(f) defines "felony case" to mean "a criminal action in which a felony is charged *and includes a criminal action in which a misdemeanor or infraction is charged in conjunction with a felony*" (emphasis added).

As rule 8.304 from the rules on felony appeals makes clear, a "felony case" is an action in which a felony is charged *regardless of the outcome of the action*. Thus the question of which rules apply—these appellate division rules or the rules governing appeals in felony cases—is answered simply by examining the accusatory pleading: if that document charged the defendant with at least one count of felony (as defined in Penal Code, section 17(a)), the Court of Appeal has appellate jurisdiction and the appeal must be taken under the rules on felony appeals *even if the prosecution did not result in a punishment of imprisonment in a state prison*.

It is settled case law that an appeal is taken to the Court of Appeal not only when the defendant is charged with and convicted of a felony, but also when the defendant is charged with both a felony and a misdemeanor (Pen. Code, § 691(f)) but is convicted of only the misdemeanor (e.g., *People v. Brown* (1970) 10 Cal.App.3d 169); when the defendant is charged with a felony but is convicted of only a lesser offense (Pen. Code, § 1159; e.g., *People v. Spreckels* (1954) 125 Cal.App.2d 507); and when the defendant is charged with an offense filed as a felony but punishable as either a felony or a misdemeanor, and the offense is thereafter deemed a misdemeanor under Penal Code section 17(b) (e.g., *People v. Douglas* (1999) 20 Cal.4th 85; *People v. Clark* (1971) 17 Cal.App.3d 890).

Trial court unification did not change this rule: after as before unification, "Appeals in felony cases lie to the [C]ourt of [A]ppeal, regardless of whether the appeal is from the superior court, the municipal court, or the action of a magistrate. *Cf.* Cal. Const. art. VI, § 11(a) [except in death penalty cases, Courts of Appeal have appellate jurisdiction when superior courts have original jurisdiction 'in causes of a type within the appellate jurisdiction of the [C]ourts of [A]ppeal on June 30, 1995. . . .']." ("Recommendation on Trial Court Unification" (July 1998) 28 *Cal. Law Revision Com. Rep.* 455–56.)

Rule 8.901. Notice of appeal

(a) Notice of appeal

(1) To appeal from a judgment or an appealable order in an infraction case, the defendant or the People must file a notice of appeal in the trial court that issued the judgment or order being appealed. The notice must specify the judgment or order—or part of it—being appealed.

(2) If the defendant appeals, the defendant or the defendant's attorney must sign the notice of appeal. If the People appeal, the attorney for the People must sign the notice.

(3) The notice of appeal must be liberally construed in favor of its sufficiency.

(b) Notification of the appeal

(1) When a notice of appeal is filed, the trial court clerk must promptly mail a notification of the filing to the attorney of record for each party and to any unrepresented defendant. The clerk must also mail or deliver this notification to the appellate division clerk.

(2) The notification must show the date it was mailed or delivered, the number and title of the case, and the date the notice of appeal was filed.

(3) The notification to the appellate division clerk must also include a copy of the notice of appeal.

(4) A copy of the notice of appeal is sufficient notification under (1) if the required information is on the copy or is added by the trial court clerk.

(5) The mailing of a notification under (1) is a sufficient performance of the clerk's duty despite the discharge, disqualification, suspension, disbarment, or death of the attorney.

(6) Failure to comply with any provision of this subdivision does not affect the validity of the notice of appeal.

Rule 8.901 adopted effective January 1, 2009.

Advisory Committee Comment

Notice of Appeal and Record of Oral Proceedings (Infraction) (form CR-142) may be used to file the notice of appeal required under this rule. This form is available at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms.*

Rule 8.902. Time to appeal

(a) Normal time

A notice of appeal must be filed within 30 days after the rendition of the judgment or the making of the order being appealed. If the defendant is committed before final judgment for insanity or narcotics addiction, the notice of appeal must be filed within 30 days after the commitment.

(b) Cross-appeal

If the defendant or the People timely appeals from a judgment or appealable order, the time for any other party to appeal from the same judgment or order is either the time specified in (a) or 30 days after the trial court clerk mails notification of the first appeal, whichever is later.

(c) Premature notice of appeal

A notice of appeal filed before the judgment is rendered or the order is made is premature, but the appellate division may treat the notice as filed immediately after the rendition of the judgment or the making of the order.

(d) Late notice of appeal

The trial court clerk must mark a late notice of appeal "Received [date] but not filed" and notify the party that the notice was not filed because it was late.

Rule 8.902 amended effective July 1, 2010; adopted effective January 1, 2009.

Advisory Committee Comment

Subdivision (d). See rule 8.817(b)(5) for provisions concerning the timeliness of documents mailed by inmates or patients from custodial institutions.

Rule 8.903. Stay of execution on appeal

(a) Application

Pending appeal, the defendant may apply to the appellate division for a stay of execution after a judgment of conviction.

(b) Showing

The application must include a showing that the defendant sought relief in the trial court and that the court unjustifiably denied the application.

(c) Service

The application must be served on the prosecuting attorney.

(d) Interim relief

Pending its ruling on the application, the appellate division may grant the relief requested. The appellate division must notify the trial court of any stay that it grants.

Rule 8.903 adopted effective January 1, 2009.

Advisory Committee Comment

Subdivision (c). Under rule 8.804, the prosecuting attorney means the city attorney, county counsel, or district attorney prosecuting the infraction.

Rule 8.904. Abandoning the appeal

(a) How to abandon

An appellant may abandon the appeal at any time by filing an abandonment of the appeal signed by the appellant or the appellant's attorney of record.

(b) Where to file; effect of filing

(1) The appellant must file the abandonment in the appellate division.

(2) If the record has not been filed in the appellate division, the filing of an abandonment effects a dismissal of the appeal and restores the trial court's jurisdiction.

(3) If the record has been filed in the appellate division, the appellate division may dismiss the appeal and direct immediate issuance of the remittitur.

(c) Clerk's duties

(1) The appellate division clerk must immediately notify the adverse party of the filing or of the order of dismissal.

(2) If the record has not been filed in the appellate division, the clerk must immediately notify the trial court.

(3) If a reporter's transcript has been requested, the clerk must immediately notify the reporter if the appeal is abandoned before the reporter has filed the transcript.

Rule 8.904 adopted effective January 1, 2009.

Advisory Committee Comment

Abandonment of Appeal (Infraction) (form CR-145) may be used to file an abandonment under this rule. This form is available at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*.

Article 2. Record in Infraction Appeals

Title 8, Appellate Rules–Division 2, Rules Relating to the Superior Court Appellate Division–Chapter 5, Appeals in Infraction Cases–Article 2, Record in Infraction Cases adopted effective January 1, 2009.

Rule 8.910. Normal record on appeal
Rule 8.911. Prosecuting attorney's notice regarding the record
Rule 8.912. Contents of clerk's transcript
Rule 8.913. Preparation of clerk's transcript
Rule 8.914. Trial court file instead of clerk's transcript
Rule 8.915. Record of oral proceedings
Rule 8.916. Statement on appeal
Rule 8.917. Record when trial proceedings were officially electronically recorded
Rule 8.918. Contents of reporter's transcript
Rule 8.919. Preparation of reporter's transcript
Rule 8.920. Limited normal record in certain appeals
Rule 8.921. Exhibits
Rule 8.922. Sending and filing the record in the appellate division

Rule 8.923. Augmenting or correcting the record in the appellate division

Rule 8.910. Normal record on appeal

(a) Contents

Except as otherwise provided in this chapter, the record on an appeal to a superior court appellate division in an infraction criminal case must contain the following, which constitute the normal record on appeal:

(1) A record of the written documents from the trial court proceedings in the form of one of the following:

(A) A clerk's transcript under rule 8.912 or 8.920; or

(B) If the court has a local rule for the appellate division electing to use this form of the record, the original trial court file under rule 8.914.

(2) If an appellant wants to raise any issue that requires consideration of the oral proceedings in the trial court, the record on appeal must include a record of the oral proceedings in the form of one of the following:

(A) A statement on appeal under rule 8.916;

(B) If the court has a local rule for the appellate division permitting this form of the record, an official electronic recording of the proceedings under rule 8.917; or

(C) A reporter's transcript under rules 8.918–8.920 or a transcript prepared from an official electronic recording under rule 8.917.

(b) Stipulation for limited record

If before the record is certified, the appellant and the respondent stipulate in writing that any part of the record is not required for proper determination of the appeal and file the stipulation in the trial court, that part of the record must not be prepared or sent to the appellate division.

(Subd (b) amended effective January 1, 2010.)

Rule 8.910 amended effective January 1, 2010; adopted effective January 1, 2009.

Rule 8.911. Prosecuting attorney's notice regarding the record

If the prosecuting attorney does not want to receive a copy of the record on appeal, within 10 days after the notification of the appeal under rule 8.901(b) is mailed to the prosecuting attorney,

the prosecuting attorney must serve and file a notice indicating that he or she does not want to receive the record.

Rule 8.911 adopted effective January 1, 2009.

Rule 8.912. Contents of clerk's transcript

Except in appeals covered by rule 8.920 or when the parties have filed a stipulation under rule 8.910(b) that any of these items is not required for proper determination of the appeal, the clerk's transcript must contain:

(1) The complaint, including any notice to appear, and any amendment;

(2) Any demurrer or other plea;

(3) All court minutes;

(4) Any written findings or opinion of the court;

(5) The judgment or order appealed from;

(6) Any motion or notice of motion for new trial, in arrest of judgment, or to dismiss the action, with supporting and opposing memoranda and attachments;

(7) Any transcript of a sound or sound-and-video recording tendered to the court under rule 2.1040;

(8) The notice of appeal; and

(9) If the appellant is the defendant:

(A) Any written defense motion denied in whole or in part, with supporting and opposing memoranda and attachments; and

(B) If related to a motion under (A), any search warrant and return.

Rule 8.912 adopted effective January 1, 2009.

Rule 8.913. Preparation of clerk's transcript

(a) When preparation begins

Unless the original court file will be used in place of a clerk's transcript under rule 8.914, the clerk must begin preparing the clerk's transcript immediately after the notice of appeal is filed.

(b) Format of transcript

The clerk's transcript must comply with rule 8.144.

(c) When preparation must be completed

Within 20 days after the notice of appeal is filed, the clerk must complete preparation of an original clerk's transcript for the appellate division and one copy for the appellant. If there is more than one appellant, the clerk must prepare an extra copy for each additional appellant who is represented by separate counsel or self-represented. If the defendant is the appellant, a copy must also be prepared for the prosecuting attorney unless the prosecuting attorney has notified the court under rule 8.911 that he or she does not want to receive the record. If the People are the appellant, a copy must also be prepared for the respondent.

(d) Certification

The clerk must certify as correct the original and all copies of the clerk's transcript.

Rule 8.913 adopted effective January 1, 2009.

Advisory Committee Comment

Rule 8.922 addresses when the clerk's transcript is sent to the appellate division in infraction appeals.

Rule 8.914. Trial court file instead of clerk's transcript

(a) Application

If the court has a local rule for the appellate division electing to use this form of the record, the original trial court file may be used instead of a clerk's transcript. This rule and any supplemental provisions of the local rule then govern unless the trial court orders otherwise after notice to the parties.

(b) When original file must be prepared

Within 20 days after the filing of the notice of appeal, the trial court clerk must put the trial court file in chronological order, number the pages, and attach a chronological index and a list of all attorneys of record, the parties they represent, and any unrepresented parties.

(c) Copies

The clerk must send a copy of the index to the appellant for use in paginating his or her copy of the file to conform to the index. If there is more than one appellant, the clerk must prepare an extra copy of the index for each additional appellant who is represented by separate counsel or self-represented. If the defendant is the appellant, a copy must also be prepared for the prosecuting attorney unless the prosecuting attorney has notified the court

under rule 8.911 that he or she does not want to receive the record. If the People are the appellant, a copy must also be prepared for the respondent.

Rule 8.914 adopted effective January 1, 2009.

Advisory Committee Comment

Rule 8.922 addresses when the original file is sent to the appellate division in infraction appeals.

Rule 8.915. Record of oral proceedings

(a) Appellant's election

The appellant must notify the trial court whether he or she elects to proceed with or without a record of the oral proceedings in the trial court. If the appellant elects to proceed with a record of the oral proceedings in the trial court, the notice must specify which form of the record of the oral proceedings in the trial court the appellant elects to use:

(1) A statement on appeal under rule 8.916;

(2) If the court has a local rule for the appellate division permitting this, an official electronic recording of the proceedings under rule 8.917(c). The appellant must attach to the notice a copy of the stipulation required under rule 8.917(c); or

(3) A reporter's transcript under rules 8.918–8.920 or a transcript prepared from an official electronic recording of the proceedings under rule 8.917(b). If the appellant elects to use a reporter's transcript, the clerk must promptly mail a copy of appellant's notice making this election and the notice of appeal to each court reporter.

(b) Time for filing election

The notice of election required under (a) must be filed with the notice of appeal.

(c) Failure to file election

If the appellant does not file an election within the time specified in (b), the trial court clerk must promptly notify the appellant by mail that the election must be filed within 15 days after the notice is mailed and that failure to comply will result in the appeal proceeding without a record of the oral proceedings.

(Subd (c) adopted effective January 1, 2010.)

(d) Statement on appeal when proceedings cannot be transcribed or were not recorded

(1) If the appellant elects under (a) to use a reporter's transcript or a transcript prepared from an official electronic recording or the recording itself, the trial court clerk must

notify the appellant within 10 days after the appellant files this election if any portion of the oral proceedings listed in rule 8.918 was not reported or officially recorded electronically or cannot be transcribed. The notice must indicate that the appellant may use a statement on appeal as the record of the portion of the proceedings that was not recorded or cannot be transcribed.

(2) Within 15 days after this notice is mailed by the clerk, the appellant must serve and file a notice with the court stating whether the appellant elects to use a statement on appeal as the record of the portion of the proceedings that was not recorded or cannot be transcribed.

(Subd (d) relettered effective January 1, 2010; adopted as subd (c).)

Rule 8.915 amended effective January 1, 2010; adopted effective January 1, 2009.

Advisory Committee Comment

Notice of Appeal and Record of Oral Proceedings (Infraction) (form CR-142) may be used to file the election required under this rule. This form is available at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*. To assist appellants in making an appropriate election, courts are encouraged to include information about whether the proceedings were recorded by a court reporter or officially electronically recorded in any information that the court provides to parties concerning their appellate rights.

Rule 8.916. Statement on appeal

(a) Description

A statement on appeal is a summary of the trial court proceedings that is approved by the trial court.

(b) Preparing the proposed statement

(1) If the appellant elects under rule 8.915 to use a statement on appeal, the appellant must prepare and file a proposed statement within 20 days after filing the record preparation election. If the defendant is the appellant and the prosecuting attorney appeared in the case, the defendant must serve a copy of the proposed statement on the prosecuting attorney. If the People are the appellant, the prosecuting attorney must serve a copy of the proposed statement on the respondent.

(2) Appellants who are not represented by an attorney must file their proposed statements on *Proposed Statement on Appeal (Infraction)* (form CR-143). For good cause, the court may permit the filing of a statement that is not on form CR-143.

(3) If the appellant does not file a proposed statement within the time specified in (1), the trial court clerk must promptly notify the appellant by mail that the proposed

statement must be filed within 15 days after the notice is mailed and that failure to comply will result in the appeal being dismissed.

(c) Contents of the proposed statement on appeal

A proposed statement prepared by the appellant must contain:

(1) A condensed narrative of the oral proceedings that the appellant believes necessary for the appeal and a summary of the trial court's holding and the sentence imposed on the defendant. Subject to the court's approval, the appellant may present some or all of the evidence by question and answer; and

(2) A statement of the points the appellant is raising on appeal. The appeal is then limited to those points unless the appellate division determines that the record permits the full consideration of another point.

(A) The statement must specify the intended grounds of appeal by clearly stating each point to be raised but need not identify each particular ruling or matter to be challenged.

(B) The statement must include as much of the evidence or proceeding as necessary to support the stated grounds. Any evidence or portion of a proceeding not included will be presumed to support the judgment or order appealed from.

(C) If one of the grounds of appeal is insufficiency of the evidence, the statement must specify how it is insufficient.

(Subd (c) amended effective July 1, 2009.)

(d) Review of the appellant's proposed statement

(1) Within 10 days after the appellant files the proposed statement, the respondent may serve and file proposed amendments to that statement.

(2) No later than 10 days after the respondent files proposed amendments or the time to do so expires, a party may request a hearing to review and correct the proposed statement. No hearing will be held unless ordered by the trial court judge, and the judge will not ordinarily order a hearing unless there is a factual dispute about a material aspect of the trial court proceedings.

(3) If a hearing is ordered, the court must promptly set the hearing date and provide the parties with at least 5 days' written notice of the hearing date.

(4) Except as provided in (6), if no hearing is ordered, no later than 10 days after the time for requesting a hearing expires, the trial court judge must review the proposed statement and any proposed amendments and make any corrections or modifications

to the statement necessary to ensure that it is an accurate summary of the trial court proceedings. If a hearing is ordered, the trial court judge must make any corrections or modifications to the statement within 10 days after the hearing.

(5) The trial court judge must not eliminate the appellant's specification of grounds of appeal from the proposed statement.

(6) If the trial court proceedings were reported by a court reporter or officially recorded electronically under Government Code section 69957 and the trial court judge determines that it would save court time and resources, instead of correcting a proposed statement on appeal:

(A) If the court has a local rule for the appellate division permitting the use of an official electronic recording as the record of the oral proceedings, the trial court judge may order that the original of an official electronic recording of the trial court proceedings, or a copy made by the court, be transmitted as the record of these oral proceedings without being transcribed. The court will pay for any copy of the official electronic recording ordered under this subdivision; or

(B) Unless the court has a local rule providing otherwise, the trial court judge may order that a transcript be prepared as the record of the oral proceedings. The court will pay for any transcript ordered under this subdivision.

(e) Review of the corrected statement

(1) If the trial court judge makes any corrections or modifications to the statement under (d), the clerk must send copies of the corrected or modified statement to the parties. If the prosecuting attorney did not appear at the trial, the clerk will not send a copy of the statement to the prosecuting attorney.

(2) Within 10 days after the statement is sent to the parties, any party may serve and file proposed modifications or objections to the statement.

(f) Certification of the statement on appeal

(1) If the trial court judge does not make any corrections or modifications to the proposed statement under (d)(4) and does not direct the preparation of a transcript in lieu of correcting the proposed statement under (d)(6), the judge must promptly certify the statement.

(2) If the trial court judge corrects or modifies an appellant's proposed statement under (d), within five days after the time for filing proposed modifications or objections under (e) has expired, the judge must review any proposed modifications or objections to the statement filed by the parties, make any corrections or

modifications to the statement necessary to ensure that it is an accurate summary of the trial court proceedings, and certify the statement.

(g) Extensions of time

For good cause, the trial court may grant an extension of not more than 15 days to do any act required or permitted under this rule.

Rule 8.916 amended effective July 1, 2009; adopted effective January 1, 2009.

Advisory Committee Comment

Rules 8.806, 8.810, and 8.812 address applications for extensions of time and relief from default.

Subdivision (b). *Proposed Statement on Appeal (Infraction)* (form CR-143) is available at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*.

Subdivision (d). Under rule 8.804, the term "judge" includes a commissioner or a temporary judge.

Rule 8.917. Record when trial proceedings were officially electronically recorded

(a) Application

This rule applies only if:

(1) The trial court proceedings were officially recorded electronically under Government Code section 69957; and

(2) The electronic recording was prepared in compliance with applicable rules regarding electronic recording of court proceedings.

(b) Transcripts from official electronic recording

Written transcripts of official electronic recordings may be prepared under rule 2.952. A transcript prepared and certified as provided in that rule is prima facie a true and complete record of the oral proceedings it purports to cover, and satisfies any requirement in these rules or in any statute for a reporter's transcript of oral proceedings.

(c) Use of official recording as record of oral proceedings

If the court has a local rule for the appellate division permitting this, on stipulation of the parties or on order of the trial court under rule 8.916(d)(6), the original of an official electronic recording of the trial court proceedings, or a copy made by the court, may be transmitted as the record of these oral proceedings without being transcribed. This official electronic recording satisfies any requirement in these rules or in any statute for a reporter's transcript of these proceedings.

(Subd (c) amended effective July 1, 2010.)

(d) When preparation begins

(1) If the appellant is the People, preparation of a transcript or a copy of the recording must begin immediately after the appellant files an election under rule 8.915(a) to use a transcript of an official electronic recording or a copy of the official electronic recording as the record of the oral proceedings.

(2) If the appellant is the defendant:

(A) Within 10 days after the date the appellant files the election under rule 8.915(a), the clerk must notify the appellant and his or her counsel of the estimated cost of preparing the transcript or the copy of the recording. The notification must show the date it was mailed.

(B) Within 10 days after the date the clerk mailed the notice under (A), the appellant must do one of the following:

(i) Deposit with the clerk an amount equal to the estimated cost of preparing the transcript or the copy of the recording;

(ii) File a declaration of indigency supported by evidence in the form required by the Judicial Council; or

(iii) Notify the clerk that he or she will be using a statement on appeal instead of a transcript or copy of the recording.

(C) Preparation of the transcript must begin when:

(i) The clerk receives the required deposit under (B)(i); or

(ii) The trial court determines that the defendant is indigent and orders that the defendant receive the transcript or the copy of the recording without cost.

Rule 8.917 amended effective July 1, 2010; adopted effective January 1, 2009.

Advisory Committee Comment

Subdivision (d). The appellant must use *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public* Expense (form MC-210) to show indigency. This form is available at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*.

Rule 8.918. Contents of reporter's transcript

Except in appeals covered by rule 8.920 or when the parties have filed a stipulation under rule 8.910(b) or the trial court has ordered that any of these items is not required for proper determination of the appeal, the reporter's transcript must contain:

(1) The oral proceedings on the entry of any plea other than a not guilty plea;

(2) The oral proceedings on any motion in limine;

(3) The oral proceedings at trial, but excluding any opening statement;

(4) Any oral opinion of the court;

(5) The oral proceedings on any motion for new trial;

(6) The oral proceedings at sentencing or other dispositional hearing;

(7) If the appellant is the defendant, the reporter's transcript must also contain:

(A) The oral proceedings on any defense motion denied in whole or in part except motions for disqualification of a judge; and

(B) The closing arguments.

Rule 8.918 adopted effective January 1, 2009.

Rule 8.919. Preparation of reporter's transcript

(a) When preparation begins

(1) The reporter must immediately begin preparing the reporter's transcript if the notice sent to the reporter by the clerk under rule 8.915(a)(3) indicates that the appellant is the People.

(2) If the notice sent to the reporter by the clerk under rule 8.915(a)(3) indicates that the appellant is the defendant:

(A) Within 10 days after the date the clerk mailed the notice under rule 8.915(a)(3), the reporter must file with the clerk the estimated cost of preparing the reporter's transcript; and

(B) The clerk must promptly notify the appellant and his or her counsel of the estimated cost of preparing the reporter's transcript. The notification must show the date it was mailed.

(C) Within 10 days after the date the clerk mailed the notice under (B), the appellant must do one of the following:

(i) Deposit with the clerk an amount equal to the estimated cost of preparing the transcript;

(ii) File a declaration of indigency supported by evidence in the form required by the Judicial Council; or

(iii) Notify the clerk that he or she will be using a statement on appeal instead of a reporter's transcript.

(D) The clerk must promptly notify the reporter to begin preparing the transcript when:

(i) The clerk receives the required deposit under (C)(i); or

(ii) The trial court determines that the defendant is indigent and orders that the defendant receive the transcript without cost.

(b) Format of transcript

The reporter's transcript must comply with rule 8.144.

(c) Copies and certification

The reporter must prepare an original and the same number of copies of the reporter's transcript as rule 8.913(c) requires of the clerk's transcript and must certify each as correct.

(d) When preparation must be completed

The reporter must deliver the original and all copies to the trial court clerk as soon as they are certified but no later than 20 days after the reporter is required to begin preparing the transcript under (a).

(e) Multi-reporter cases

In a multi-reporter case, the clerk must accept any completed portion of the transcript from the primary reporter one week after the time prescribed by (d) even if other portions are uncompleted. The clerk must promptly pay each reporter who certifies that all portions of the transcript assigned to that reporter are completed.

Rule 8.919 adopted effective January 1, 2009.

Advisory Committee Comment

Subdivision (a). The appellant must use *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210) to show indigency. This form is available at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*.

Rule 8.920. Limited normal record in certain appeals

If the People appeal from a judgment on a demurrer to the complaint, including any notice to appear, or if the defendant or the People appeal from an appealable order other than a ruling on a motion for new trial, the normal record is composed of:

(1) *Record of the documents filed in the trial court*

A clerk's transcript or original trial court file containing:

(A) The complaint, including any notice to appear, and any amendment;

(B) Any demurrer or other plea;

(C) Any motion or notice of motion granted or denied by the order appealed from, with supporting and opposing memoranda and attachments;

(D) The judgment or order appealed from and any abstract of judgment;

(E) Any court minutes relating to the judgment or order appealed from; and

(F) The notice of appeal.

(2) *Record of the oral proceedings in the trial court*

If an appellant wants to raise any issue that requires consideration of the oral proceedings in the trial court, a reporter's transcript, transcript prepared under rule 8.918, or a settled statement under rule 8.915 summarizing any oral proceedings incident to the judgment or order being appealed.

Rule 8.920 adopted effective January 1, 2009.

Rule 8.921. Exhibits

(a) Exhibits deemed part of record

Exhibits admitted in evidence, refused, or lodged are deemed part of the record but may be transmitted to the appellate division only as provided in this rule.

(b) Notice of designation

(1) Within 10 days after the last respondent's brief is filed or could be filed under rule 8.927, if the appellant wants the appellate division to consider any original exhibits that were admitted in evidence, refused, or lodged, the appellant must serve and file a notice in the trial court designating such exhibits.

(2) Within 10 days after a notice under (1) is served, any other party wanting the appellate division to consider additional exhibits must serve and file a notice in trial court designating such exhibits.

(3) A party filing a notice under (1) or (2) must serve a copy on the appellate division.

(c) Request by appellate division

At any time the appellate division may direct the trial court or a party to send it an exhibit.

(d) Transmittal

Unless the appellate division orders otherwise, within 20 days after notice under (b) is filed or after the appellate division directs that an exhibit be sent:

(1) The trial court clerk must put any designated exhibits in the clerk's possession into numerical or alphabetical order and send them to the appellate division with two copies of a list of the exhibits sent. If the appellate division clerk finds the list correct, the clerk must sign and return one copy to the trial court clerk.

(2) Any party in possession of designated exhibits returned by the trial court must put them into numerical or alphabetical order and send them to the appellate division with two copies of a list of the exhibits sent. If the appellate division clerk finds the list correct, the clerk must sign and return one copy to the party.

(e) Return by appellate division

On request, the appellate division may return an exhibit to the trial court or to the party that sent it. When the remittitur issues, the appellate division must return all exhibits to the trial court or to the party that sent them.

Rule 8.921 adopted effective January 1, 2009.

Rule 8.922. Sending and filing the record in the appellate division

(a) When the record is complete

(1) If the appellant elected under rule 8.915 to proceed without a record of the oral proceedings in the trial court, the record is complete when the clerk's transcript is certified as correct or, if the original trial court file will be used instead of the clerk's transcript, when that original file is ready for transmission as provided under rule 8.914(b).

(2) If the appellant elected under rule 8.915 to proceed with a record of the oral proceedings in the trial court, the record is complete when the clerk's transcript is certified as correct or the original file is ready for transmission as provided in (1) and:

(A) If the appellant elected to use a reporter's transcript, the certified reporter's transcript is delivered to the court under rule 8.919;

(B) If the appellant elected to use a transcript prepared from an official electronic recording, the transcript has been prepared under rule 8.917;

(C) If the parties stipulated to the use of an official electronic recording of the proceedings, the electronic recording has been prepared under rule 8.917; or

(D) If the appellant elected to use a statement on appeal, the statement on appeal has been certified by the trial court or a transcript or copy of an official electronic recording has been prepared under rule 8.916(d)(6).

(b) Sending the record

When the record is complete, the clerk must promptly send:

(1) The original record to the appellate division;

(2) One copy of the clerk's transcript or index to the original court file and one copy of any record of the oral proceedings to each appellant who is represented by separate counsel or is self-represented;

(3) If the defendant is the appellant, one copy of the clerk's transcript or index to the original court file and one copy of any record of the oral proceedings to the prosecuting attorney unless the prosecuting attorney has notified the court under rule 8.911 that he or she does not want to receive the record; and

(4) If the People are the appellant, a copy of the clerk's transcript or index to the original court file and one copy of any record of the oral proceedings to the respondent.

(c) Filing the record

On receipt, the appellate division clerk must promptly file the original record and mail notice of the filing date to the parties.

Rule 8.922 adopted effective January 1, 2009.

Rule 8.923. Augmenting or correcting the record in the appellate division

(a) Subsequent trial court orders

If, after the record is certified, the trial court amends or recalls the judgment or makes any other order in the case, including an order affecting the sentence or probation, the clerk must promptly certify and send a copy of the amended abstract of judgment or other order as an augmentation of the record to all those who received the record under rule 8.872(b).

If there is any additional document or transcript related to the amended judgment or new order that any rule or order requires be included in the record, the clerk must send these documents or transcripts with the amended abstract of judgment or other order. The clerk must promptly copy and certify any such document and the reporter must promptly prepare and certify any such transcript.

(b) Omissions

If, after the record is certified, the trial court clerk or the reporter learns that the record omits a document or transcript that any rule or order requires to be included, the clerk must promptly copy and certify the document or the reporter must promptly prepare and certify the transcript. Without the need for a court order, the clerk must promptly send the document or transcript as an augmentation of the record to all those who received the record under rule 8.922(b).

(c) Augmentation or correction by the appellate division

At any time, on motion of a party or on its own motion, the appellate division may order the record augmented or corrected as provided in rule 8.841.

Rule 8.923 adopted effective January 1, 2009.

Article 3. Briefs, Hearing, and Decision in Infraction Appeals

Title 8, Appellate Rules–Division 2, Rules Relating to the Superior Court Appellate Division–Chapter 5, Appeals in Infraction Cases–Article 3, Briefs, Hearing, and Decision in Infraction Appeals adopted effective January 1, 2009.

Rule 8.925. General application of chapter 4
Rule 8.926. Notice of briefing schedule
Rule 8.927. Briefs
Rule 8.928. Contents and form of briefs
Rule 8.929. Oral argument

Rule 8.925. General application of chapter 4

Except as provided in this article, rules 8.880–8.890 govern briefs, hearing, and decision in the appellate division in infraction cases.

Rule 8.925 adopted effective January 1, 2009.

Rule 8.926. Notice of briefing schedule

When the record is filed, the clerk of the appellate division must promptly mail, to each appellate counsel or unrepresented party, a notice giving the dates the briefs are due.

Rule 8.926 adopted effective January 1, 2009.

Rule 8.927. Briefs

(a) Time to file briefs

(1) The appellant must serve and file an appellant's opening brief within 30 days after the record is filed in the appellate division.

(2) Any respondent's brief must be served and filed within 30 days after the appellant files its opening brief.

(3) Any appellant's reply brief must be served and filed within 20 days after the respondent files its brief.

(4) No other brief may be filed except with the permission of the presiding judge.

(5) Instead of filing a brief, or as part of its brief, a party may join in a brief or adopt by reference all or part of a brief in the same or a related appeal.

(b) Failure to file a brief

(1) If the appellant fails to timely file an opening brief, the appellate division clerk must promptly notify the appellant by mail that the brief must be filed within 20 days after the notice is mailed and that if the appellant fails to comply, the court may dismiss the appeal.

(2) If the respondent is the defendant and the respondent fails to timely file a brief, the appellate division clerk must promptly notify the respondent by mail that the brief must be filed within 20 days after the notice is mailed and that if the respondent fails to comply, the court will decide the appeal on the record, the appellant's opening brief, and any oral argument by the appellant.

(3) If a party fails to comply with a notice under (1) or (2), the court may impose the sanction specified in the notice.

(c) Service and filing

(1) Copies of each brief must be served as required by rule 8.25.

(2) Unless the appellate division provides otherwise by local rule or order in the specific case, only the original brief, with proof of service, must be filed in the appellate division.

(3) A copy of each brief must be served on the trial court clerk for delivery to the judge who tried the case.

(4) A copy of each brief must be served on a public officer or agency when required by rule 8.29.

Rule 8.927 adopted effective January 1, 2009.

Rule 8.928. Contents and form of briefs

(a) Contents

(1) Each brief must:

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

(B) Support any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears.

(2) An appellant's opening brief must:

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

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

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

(b) Length

(1) A brief produced on a computer must not exceed 5,100 words, including footnotes. Such a brief must include a certificate by appellate counsel or an unrepresented party stating the number of words in the brief. The person certifying may rely on the word count of the computer program used to prepare the brief.

(2) A brief produced on a typewriter must not exceed 15 pages.

(3) The cover information listed in rule 8.204(b)(10), any table of contents or table of authorities, the certificate under (1), and any signature block are excluded from the limits stated in (1) or (2).

(4) On application, the presiding judge may permit a longer brief for good cause. A lengthy record or numerous or complex issues on appeal will ordinarily constitute good cause.

(Subd (b) amended effective January 1, 2011.)

(c) Form

(1) A brief may be reproduced by any process that produces a clear, black image of letter quality. The paper must be white or unbleached, recycled, 8½ by 11 inches, and of at least 20-pound weight. Both sides of the paper may be used if the brief is not bound at the top.

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

(3) The type style must be roman; but for emphasis, italics or boldface may be used or the text may be underscored. Case names must be italicized or underscored. Headings may be in uppercase letters.

(4) Except as provided in (10), the type size, including footnotes, must not be smaller than 13-point.

(5) The lines of text must be unnumbered and at least one-and-a-half-spaced. Headings and footnotes may be single-spaced. Quotations may be block-indented and single-spaced. Single-spaced means six lines to a vertical inch.

(6) The margins must be at least 1½ inches on the left and right and 1 inch on the top and bottom.

(7) The pages must be consecutively numbered.

(8) The brief must be bound on the left margin, except that briefs may be bound at the top if required by a local rule of the appellate division. If the brief is stapled, the bound edge and staples must be covered with tape.

(9) The brief need not be signed.

(10) If the brief is produced on a typewriter:

(A) A typewritten original and carbon copies may be filed only with the presiding justice's permission, which will ordinarily be given only to unrepresented parties proceeding in forma pauperis. All other typewritten briefs must be filed as photocopies.

(B) Both sides of the paper may be used if a photocopy is filed; only one side may be used if a typewritten original and carbon copies are filed.

(C) The type size, including footnotes, must not be smaller than standard pica, 10 characters per inch. Unrepresented incarcerated litigants may use elite type, 12 characters per inch, if they lack access to a typewriter with larger characters.

(d) Noncomplying briefs

If a brief does not comply with this rule:

(1) The reviewing court clerk may decline to file it, but must mark it "received but not filed" and return it to the party; or

(2) If the brief is filed, the presiding judge may with or without notice:

(A) Order the brief returned for corrections and refiling within a specified time;

(B) Strike the brief with leave to file a new brief within a specified time; or

(C) Disregard the noncompliance.

Rule 8.928 amended effective January 1, 2011; adopted effective January 1, 2009.

Advisory Committee Comment

Subdivision (b). Subdivision (b)(1) states the maximum permissible lengths of briefs produced on a computer in terms of word count rather than page count. This provision tracks a provision in rule 8.204(c) governing Court of Appeal briefs and is explained in the comment to that provision. Subdivision (b)(3) specifies certain items that are not counted toward the maximum brief length. Signature blocks, as referenced in this provision include not only the signatures, but also the printed names, titles, and affiliations of any attorneys filing or joining in the brief, which may accompany the signature.

Rule 8.929. Oral argument

(a) Calendaring and sessions

Unless otherwise ordered, all appeals in which the last reply brief was filed or the time for filing this brief expired 45 or more days before the date of a regular appellate division session must be placed on the calendar for that session by the appellate division clerk. By order of the presiding judge or the appellate division, any appeal may be placed on the calendar for oral argument at any session.

(b) Oral argument by videoconference

(1) Oral argument may be conducted by videoconference if:

(A) It is ordered by the presiding judge of the appellate division or the presiding judge's designee on application of any party or on the court's own motion. An application from a party requesting that oral argument be conducted by videoconference must be filed within 10 days after the court sends notice of oral argument under (c)(1); or

(B) A local rule authorizes oral argument to be conducted by videoconference consistent with these rules.

(2) If oral argument is conducted by videoconference:

(A) Each judge of the appellate division panel assigned to the case must participate in the entire oral argument either in person at the superior court that issued the judgment or order that is being appealed or by videoconference from another court.

(B) Unless otherwise allowed by local rule or ordered by the presiding judge of the appellate division or the presiding judge's designee, all of the parties must appear at oral argument in person at the superior court that issued the judgment or order that is being appealed.

(C) The oral argument must be open to the public at the superior court that issued the judgment or order that is being appealed. If provided by local rule or ordered by the presiding judge of the appellate division or the presiding judge's designee, oral argument may also be open to the public at any of the locations from which a judge of the appellate division is participating in oral argument.

(D) The appellate division must ensure that:

(i) During oral argument, the participants in oral argument are visible and their statements are audible to all other participants, court staff, and any members of the public attending the oral argument;

(ii) Participants are identified when they speak; and

(iii) Only persons who are authorized to participate in the proceedings speak.

(E) A party must not be charged any fee to participate in oral argument by videoconference if the party participates from the superior court that issued the judgment or order that is being appealed or from a location from which a judge of the appellate division panel is participating in oral argument.

(Subd (b) adopted effective January 1, 2010.)

(c) Notice of argument

(1) As soon as all parties' briefs are filed or the time for filing these briefs has expired, the appellate division clerk must send a notice of the time and place of oral argument to all parties. The notice must be sent at least 20 days before the date for oral argument. The presiding judge may shorten the notice period for good cause; in that event, the clerk must immediately notify the parties by telephone or other expeditious method.

(2) If oral argument will be conducted by videoconference under (b), the clerk must specify, either in the notice required under (1) or in a supplemental notice sent to all parties at least 5 days before the date for oral argument, the location from which each judge of the appellate division panel assigned to the case will participate in oral argument.

(Subd (c) amended and relettered effective January 1, 2010; adopted as subd (b).)

(d) Waiver of argument

Parties may waive oral argument.

(Subd (d) relettered effective January 1, 2010; adopted as subd (c).)

(e) Conduct of argument

Unless the court provides otherwise:

(1) The appellant, petitioner, or moving party has the right to open and close. If there are two or more such parties, the court must set the sequence of argument.

(2) Each side is allowed 5 minutes for argument. The appellant may reserve part of this time for reply argument. If multiple parties are represented by separate counsel, or if an amicus curiae—on written request—is granted permission to argue, the court may apportion or expand the time.

(3) Only one counsel may argue for each separately represented party.

(Subd (e) amended and relettered effective January 1, 2010; adopted as subd (d).)

Rule 8.929 amended effective January 1, 2010; adopted effective January 1, 2009.

Advisory Committee Comment

Subdivision (a). Under rule 10.1108, the appellate division must hold a session at least once each quarter, unless no matters are set for oral argument that quarter, but may choose to hold sessions more frequently.

Chapter 6. Writ Proceedings

Title 8, Appellate Rules–Division 2, Rules Relating to the Superior Court Appellate Division–Chapter 6, Writ Proceedings adopted effective January 1, 2009.

Rule 8.930. Application
Rule 8.931. Petitions filed by persons not represented by an attorney
Rule 8.932. Petitions filed by an attorney for a party

Rule 8.933. Opposition
Rule 8.934. Notice to trial court
Rule 8.935. Finality and remittitur
Rule 8.936. Costs

Rule 8.930. Application

(a) Writ proceedings governed

Except as provided in (b), the rules in this chapter govern proceedings in the appellate division for writs of mandate, certiorari, or prohibition, or other writs within the original jurisdiction of the appellate division. In all respects not provided for in this chapter, rule 8.883, regarding the form and content of briefs, applies.

(b) Writ proceedings not governed

The rules in this chapter do not apply to petitions for writs of supersedeas under rule 8.824 or writs not within the original jurisdiction of the appellate division.

Rule 8.930 adopted effective January 1, 2009.

Advisory Committee Comment

Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases (form APP-150-INFO) provides additional information about proceedings for writs in the appellate division of the superior court. This form is available at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*.

Subdivision (b). The superior courts, not the appellate divisions, have original jurisdiction in habeas corpus proceedings (see Cal. Const., art. VI, §10). Habeas corpus proceedings in the superior courts are governed by rules 4.550 et. seq.

Rule 8.931. Petitions filed by persons not represented by an attorney

(a) Petitions

A person who is not represented by an attorney and who petitions the appellate division for a writ under this chapter must file the petition on *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151). For good cause the court may permit an unrepresented party to file a petition that is not on form APP-151.

(b) Contents of supporting documents

(1) The petition must be accompanied by an adequate record, including copies of:

(A) The ruling from which the petition seeks relief;

(B) All documents and exhibits submitted to the trial court supporting and opposing the petitioner's position;

(C) Any other documents or portions of documents submitted to the trial court that are necessary for a complete understanding of the case and the ruling under review; and

(D) A reporter's transcript or electronic recording of the oral proceedings that resulted in the ruling under review.

(2) In extraordinary circumstances, the petition may be filed without the documents required by (1)(A)–(C) if the petitioner files a declaration that explains the urgency and the circumstances making the documents unavailable and fairly summarizes their substance.

(3) If a transcript or electronic recording under (1)(D) is unavailable, the record must include a declaration by the petitioner:

(A) Explaining why the transcript or electronic recording is unavailable and fairly summarizing the proceedings, including the petitioner's arguments and any statement by the court supporting its ruling. This declaration may omit a full summary of the proceedings if part of the relief sought is an order to prepare a transcript for use by an indigent criminal defendant in support of the petition and if the declaration demonstrates the petitioner's need for and entitlement to the transcript; or

(B) Stating that the transcript or electronic recording has been ordered, the date it was ordered, and the date it is expected to be filed, which must be a date before any action requested of the appellate division other than issuance of a temporary stay supported by other parts of the record.

(4) If the petitioner does not submit the required record or explanations or does not present facts sufficient to excuse the failure to submit them, the court may summarily deny a stay request, the petition, or both.

(Subd (b) amended effective January 1, 2009.)

(c) Form of supporting documents

(1) Documents submitted under (b) must comply with the following requirements:

(A) They must be bound together at the end of the petition or in separate volumes not exceeding 300 pages each. The pages must be consecutively numbered.

(B) They must be index-tabbed by number or letter.

(C) They must begin with a table of contents listing each document by its title and its index-tab number or letter. If a document has attachments, the table of contents must give the title of each attachment and a brief description of its contents.

(2) The clerk must file any supporting documents not complying with (1), but the court may notify the petitioner that it may strike or summarily deny the petition if the documents are not brought into compliance within a stated reasonable time of not less than five days.

(3) Unless the court provides otherwise by local rule or order, only one set of any separately bound supporting documents needs to be filed in support of a petition, an answer, an opposition, or a reply.

(Subd (c) amended effective January 1, 2011.)

(d) Service

(1) The petition and one set of supporting documents must be served on any named real party in interest, but only the petition must be served on the respondent.

(2) The proof of service must give the telephone number of each attorney or unrepresented party served.

(3) The petition must be served on a public officer or agency when required by statute or rule 8.29.

(4) The clerk must file the petition even if its proof of service is defective, but if the petitioner fails to file a corrected proof of service within five days after the clerk gives notice of the defect the court may strike the petition or impose a lesser sanction.

(5) The court may allow the petition to be filed without proof of service.

Rule 8.931 amended effective January 1, 2011; adopted effective January 1, 2009; previously amended effective January 1, 2009.

Advisory Committee Comment

Subdivision (a). *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151) is available at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms.*

Subdivision (d). Rule 8.25, which generally governs service and filing in appellate divisions, also applies to the original proceedings covered by this rule.

Rule 8.932. Petitions filed by an attorney for a party

(a) General application of rule 8.931

Except as provided in this rule, rule 8.931 applies to any petition for an extraordinary writ filed by an attorney.

(b) Form and content of petition

(1) A petition for an extraordinary writ filed by an attorney may, but is not required to be, filed on *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151).

(2) The petition must disclose the name of any real party in interest.

(3) If the petition seeks review of trial court proceedings that are also the subject of a pending appeal, the notice "Related Appeal Pending" must appear on the cover of the petition, and the first paragraph of the petition must state the appeal's title and any appellate division docket number.

(4) The petition must be verified.

(5) The petition must be accompanied by a memorandum, which need not repeat facts alleged in the petition.

(6) Rule 8.883(b) governs the length of the petition and memorandum, but the verification and any supporting documents are excluded from the limits stated in rule 8.883(b)(1) and (2).

(7) If the petition requests a temporary stay, it must explain the urgency.

Rule 8.932 adopted effective January 1, 2009.

Rule 8.933. Opposition

(a) Preliminary opposition

(1) Within 10 days after the petition is filed, the respondent or any real party in interest, separately or jointly, may serve and file a preliminary opposition.

(2) An opposition must contain a memorandum and a statement of any material fact not included in the petition.

(3) Within 10 days after an opposition is filed, the petitioner may serve and file a reply.

(4) Without requesting opposition or waiting for a reply, the court may grant or deny a request for temporary stay, deny the petition, issue an alternative writ or order to show cause, or notify the parties that it is considering issuing a peremptory writ in the first instance.

(b) Return or opposition; reply

(1) If the court issues an alternative writ or order to show cause, the respondent or any real party in interest, separately or jointly, may serve and file a return by demurrer, verified answer, or both. If the court notifies the parties that it is considering issuing a peremptory writ in the first instance, the respondent or any real party in interest may serve and file an opposition.

(2) Unless the court orders otherwise, the return or opposition must be served and filed within 30 days after the court issues the alternative writ or order to show cause or notifies the parties that it is considering issuing a peremptory writ in the first instance.

(3) Unless the court orders otherwise, the petitioner may serve and file a reply within 15 days after the return or opposition is filed.

(4) If the return is by demurrer alone and the demurrer is not sustained, the court may issue the peremptory writ without granting leave to answer.

Rule 8.933 adopted effective January 1, 2009.

Rule 8.934. Notice to trial court

(a) Notice if writ issues

If a writ or order issues directed to any judge, court, or other officer, the appellate division clerk must promptly send a certified copy of the writ or order to the person or entity to whom it is directed.

(b) Notice by telephone

(1) If the writ or order stays or prohibits proceedings set to occur within seven days or requires action within seven days—or in any other urgent situation—the appellate division clerk must make a reasonable effort to notify the clerk of the respondent court by telephone. The clerk of the respondent court must then notify the judge or officer most directly concerned.

(2) The clerk need not give notice by telephone of the summary denial of a writ, whether or not a stay previously issued.

Rule 8.934 adopted effective January 1, 2009.

Rule 8.935. Finality and remittitur

(a) Finality of decision

(1) Except as otherwise provided in this rule, an appellate division decision in a writ proceeding is final 30 days after the decision is filed.

(2) The denial of a petition for a writ within the appellate division's original jurisdiction without issuance of an alternative writ or order to show cause is final in that court when filed.

(3) If necessary to prevent mootness or frustration of the relief granted or to otherwise promote the interests of justice, an appellate division may order early finality in that court of a decision granting a petition for a writ within its original jurisdiction or denying such a petition after issuing an alternative writ or order to show cause. The decision may provide for finality in that court on filing or within a stated period of less than 30 days.

(b) Remittitur

The appellate division must issue a remittitur after a decision in a writ proceeding, except when the court denies a writ petition without issuing an alternative writ or order to show cause. Rule 8.890 governs issuance of a remittitur in these proceedings.

Rule 8.935 adopted effective January 1, 2009.

Rule 8.936. Costs

(a) Entitlement to costs

Except in a criminal proceeding or other proceeding in which a party is entitled to court-appointed counsel, the prevailing party in an original proceeding is entitled to costs if the court resolves the proceeding after issuing an alternative writ, an order to show cause, or a peremptory writ in the first instance.

(b) Award of costs

(1) In the interests of justice, the court may award or deny costs as it deems proper.

(2) The opinion or order resolving the proceeding must specify the award or denial of costs.

(3) Rule 8.891(b)–(d) governs the procedure for recovering costs under this rule.

Rule 8.936 adopted effective January 1, 2009.

Division 3. Trial of Small Claims Cases on Appeal

Rule 8.950. Application
Rule 8.952. Definitions

Rule 8.954. Filing the appeal
Rule8.957. Record on appeal
Rule 8.960. Continuances
Rule 8.963. Abandonment, dismissal, and judgment for failure to bring to trial
Rule 8.966. Examination of witnesses

Rule 8.950. Application

The rules in this division supplement article 7 of the Small Claims Act, Code of Civil Procedure sections 116.710 et seq., providing for new trials of small claims cases on appeal, and must be read in conjunction with those statutes.

Rule 8.950 renumbered effective January 1, 2009; adopted as rule 151 effective July 1, 1964; previously amended effective January 1, 1977, and January 1, 2005; previously amended and renumbered as rule 8.900 effective January 1, 2007.

Rule 8.952. Definitions

The definitions in rule 1.6 apply to these rules unless the context or subject matter requires otherwise. In addition, the following definitions apply to these rules:

(1) "Small claims court" means the trial court from which the appeal is taken.

(2) "Appeal" means a new trial before a different judge on all claims, whether or not appealed.

(3) "Appellant" means the party appealing; "respondent" means the adverse party. "Plaintiff" and "defendant" refer to the parties as they were designated in the small claims court.

Rule 8.952 renumbered effective January 1, 2009; adopted as rule 158 effective July 1, 1964; previously amended and renumbered as rule 156 effective July 1, 1991, and as rule 8.902 effective January 1, 2007; previously amended effective January 1, 2005.

Rule 8.954. Filing the appeal

(a) Notice of appeal

To appeal from a judgment in a small claims case, an appellant must file a notice of appeal in the small claims court. The appellant or the appellant's attorney must sign the notice. The notice is sufficient if it states in substance that the appellant appeals from a specified judgment or, in the case of a defaulting defendant, from the denial of a motion to vacate the judgment. A notice of appeal must be liberally construed.

(Subd (a) amended effective January 1, 2007; previously amended effective July 1, 1973, January 1, 1977, January 1, 1979, January 1, 1984, July 1, 1991, and January 1, 2005.)

(b) Notification by clerk

(1) The clerk of the small claims court must promptly mail a notification of the filing of the notice of appeal to each other party at the party's last known address.

(2) The notification must state the number and title of the case and the date the notice of appeal was filed. If a party dies before the clerk mails the notification, the mailing is a sufficient performance of the clerk's duty.

(3) A failure of the clerk to give notice of the judgment or notification of the filing of the notice of appeal does not extend the time for filing the notice of appeal or affect the validity of the appeal.

(Subd (b) amended effective January 1, 2007; previously amended and relettered effective January 1, 1977; previously amended effective July 1, 1991, and January 1, 2005.)

(c) Premature notice of appeal

A notice of appeal filed after judgment is rendered but before it is entered is valid and is treated as filed immediately after entry. A notice of appeal filed after the judge has announced an intended ruling but before judgment is rendered may, in the discretion of the reviewing court be treated as filed immediately after entry of the judgment.

(Subd (c) amended effective January 1, 2007; adopted as subd (d); relettered effective January 1, 1977; previously amended effective July 1, 1991, and January 1, 2005.)

Rule 8.954 renumbered effective January 1, 2009; adopted as rule 152 effective July 1, 1964; previously amended effective July 1, 1973, January 1, 1977, January 1, 1979, January 1, 1984, July 1, 1991, and January 1, 2005; previously amended and renumbered as rule 8.904 effective January 1, 2007.

Rule 8.957. Record on appeal

Within five days after the filing of the notice of appeal and the payment of any fees required by law, the clerk of the small claims court must transmit the file and all related papers, including the notice of appeal, to the clerk of the court assigned to hear the appeal.

Rule 8.957 renumbered effective January 1, 2009; adopted as rule 153 effective July 1, 1964; previously amended effective July 1, 1972, July 1, 1973, January 1, 1977, and January 1, 2005; amended and renumbered as rule 8.907 effective January 1, 2007.

Rule 8.960. Continuances

For good cause, the court assigned to hear the appeal may continue the trial. A request for a continuance may be presented by one party or by stipulation. The court may grant a continuance not to exceed 30 days, but in a case of extreme hardship the court may grant a continuance exceeding 30 days.

Rule 8.960 renumbered effective January 1, 2009; adopted as rule 154 effective July 1, 1964; previously amended effective January 1, 1977, July 1, 1991, and January 1, 2005; previously renumbered as rule 8.910 effective January 1, 2007.

Rule 8.963. Abandonment, dismissal, and judgment for failure to bring to trial

(a) Before the record is filed

Before the record has been transmitted to the court assigned to hear the appeal, the appellant may file in the small claims court an abandonment of the appeal or a stipulation to abandon the appeal. Either filing operates to dismiss the appeal and return the case to the small claims court.

(Subd (a) amended effective January 1, 2007; previously amended effective July 1, 1972, January 1, 1977, and January 1, 2005.)

(b) After the record is filed

After the record has been transmitted to the court assigned to hear the appeal, the court may dismiss the appeal on the appellant's written request or the parties' stipulation filed in that court.

(Subd (b) amended effective January 1, 2007; previously amended effective January 1, 2005.)

(c) Dismissal or judgment by the court

(1) The court must dismiss the appeal if the case is not brought to trial within one year after the date of filing the appeal. If a new trial is ordered, the court must dismiss the appeal if the case is not brought to trial within one year after the entry date of the new trial order.

(2) Notwithstanding (1), the court must not order dismissal or enter judgment if there was in effect a written stipulation extending the time for trial or on a showing that the appellant exercised reasonable diligence to bring the case to trial.

(3) Notwithstanding (1) and (2), the court must dismiss the appeal if the case is not brought to trial within three years after either the notice of appeal is filed or the most recent new trial order is entered in the court assigned to hear the appeal.

(Subd (c) amended effective January 1, 2007; previously amended effective January 1, 1977, July 1, 1991, and January 1, 2005.)

(d) Notification by clerk

If an appellant files an abandonment, the clerk of the court in which it is filed must immediately notify the adverse party of the filing. The clerk of the court assigned to hear

the appeal must immediately notify the parties of any order of dismissal or any judgment for defendant made by the court under (c).

(Subd (d) amended effective January 1, 2007; previously amended effective January 1, 2005.)

(e) Return of papers

If an appeal is dismissed, the clerk of the court assigned to hear the appeal must promptly transmit to the small claims court a copy of the dismissal order and all original papers and exhibits sent to the court assigned to hear the appeal. The small claims court must then proceed with the case as if no appeal had been taken.

(Subd (e) amended effective January 1, 2007; previously amended effective January 1, 2005.)

(f) Approval of compromise

If a guardian or conservator seeks approval of a proposed compromise of a pending appeal in which a new trial has been ordered, the court assigned to hear the appeal may, before ruling on the compromise, hear and determine whether the proposed compromise is for the best interest of the ward or conservatee.

(Subd (f) amended effective January 1, 2007; previously amended effective January 1, 2005.)

Rule 8.963 renumbered effective January 1, 2009; adopted as rule 157 effective July 1, 1964; amended and renumbered as rule 155 effective July 1, 1991; previously amended effective January 1, 1972, July 1, 1972, and January 1, 2005; previously amended and renumbered as rule 8.913 effective January 1, 2007.

Rule 8.966. Examination of witnesses

The court may allow parties or attorneys representing parties to the appeal to conduct direct and cross-examination, subject to the court's discretion to control the manner, mode, and duration of examination in keeping with informality and the circumstances.

Rule 8.966 renumbered effective January 1, 2009; adopted as rule 157 effective July 1, 1999; previously amended and renumbered as rule 8.916 effective January 1, 2007.

Division 4. Transfer of Appellate Division Cases to the Court of Appeal

Rule 8.1000. Application
Rule 8.1002. Transfer authority
Rule 8.1005. Certification for transfer by the appellate division
Rule 8.1006. Petition for transfer
Rule 8.1007. Transmitting record to Court of Appeal
Rule 8.1008. Order for transfer
Rule 8.1010. [Renumbered as rule 8.1007]
Rule 8.1012. Briefs and argument

Rule 8.1014. Proceedings in the appellate division after certification or transfer
Rule 8.1016. Disposition of transferred case
Rule 8.1018. Finality and remittitur

Rule 8.1000. Application

Rules 8.1000–8.1018 govern the transfer of cases within the appellate jurisdiction of the superior court—other than appeals in small claims cases—to the Court of Appeal. Unless the context requires otherwise, the term "case" as used in these rules means cases within that jurisdiction.

Rule 8.1000 amended effective January 1, 2011; repealed and adopted as rule 61 effective January 1, 2003; previously amended and renumbered effective January 1, 2007.

Advisory Committee Comment

The rules in this division implement the authority of the Court of Appeal under Code of Civil Procedure section 911 and Penal Code section 1471 to order any case on appeal to a superior court in its district transferred to the Court of Appeal if it determines that transfer is necessary to secure uniformity of decision or to settle important questions of law.

Rule 8.1002. Transfer authority

A Court of Appeal may order a case transferred to it for hearing and decision if it determines that transfer is necessary to secure uniformity of decision or to settle an important question of law. Transfer may be ordered on:

(1) Certification of the case for transfer by the superior court appellate division under rule 8.1005;

(2) Petition for transfer under rule 8.1006; or

(3) The Court of Appeal's own motion.

Rule 8.1002 amended effective January 1, 2011; repealed and adopted as rule 62 effective January 1, 2003; previously amended and renumbered effective January 1, 2007.

Rule 8.1005. Certification for transfer by the appellate division

(a) Authority to certify

(1) The appellate division may certify a case for transfer to the Court of Appeal on its own motion or on a party's application if it determines that transfer is necessary to secure uniformity of decision or to settle an important question of law.

(2) Except as provided in (3), a case may be certified for transfer by a majority of the appellate division judges to whom the case has been assigned or who decided the appeal or, if the case has not yet been assigned, by any two appellate division judges.

(3) If an appeal from a conviction of a traffic infraction is assigned to a single appellate division judge under Code of Civil Procedure section 77, the case may be certified for transfer by that judge.

(4) If an assigned or deciding judge is unable to act on the certification for transfer, a judge designated or assigned to the appellate division by the chair of the Judicial Council may act in that judge's place.

(Subd (a) amended effective January 1, 2011; previously amended effective January 1, 2007.)

(b) Application for certification

(1) A party may serve and file an application asking the appellate division to certify a case for transfer at any time after the record on appeal is filed in the appellate division but no later than 15 days after:

(A) The decision is filed;

(B) A publication order restarting the finality period under rule 8.888(a)(2);

(C) A modification order changing the appellate judgment under rule 8.888(b); or

(D) The filing of a consent under rule 8.888(c).

(2) The party may include the application in a petition for rehearing.

(3) The application must explain why transfer is necessary to secure uniformity of decision or to settle an important question of law.

(4) Within five days after the application is filed, any other party may serve and file an answer.

(5) No hearing will be held on the application. Failure to certify the case within the time specified in (c) is deemed a denial of the application.

(Subd (b) amended effective January 1, 2011.)

(c) Time to certify

The appellate division may certify a case for transfer at any time after the record on appeal is filed in the appellate division and before the appellate division decision is final in that court.

(Subd (c) amended and relettered effective January 1, 2011; adopted as subd (d).)

(d) Contents of order certifying case for transfer

An order certifying a case for transfer must:

(1) Clearly state that the appellate division is certifying the case for transfer to the Court of Appeal;

(2) Briefly describe why transfer is necessary to secure uniformity of decision or to settle an important question of law; and

(3) State whether there was a decision on appeal and, if so, its date and disposition.

(Subd (d) amended and relettered effective January 1, 2011; adopted as subd (e); previously amended effective January 1, 2007.)

(e) Superior court clerk's duties

(1) If the appellate division orders a case certified for transfer, the clerk must promptly send a copy of the certification order to the Court of Appeal clerk, the parties, and, in a criminal case, the Attorney General.

(2) If the appellate division denies a certification application by order, the clerk must promptly send a copy of the order to the parties.

(Subd (e) amended and relettered effective January 1, 2011; adopted as subd (f).)

Rule 8.1005 amended effective January 1, 2011; repealed and adopted as rule 63 effective January 1, 2003; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2010.

Rule 8.1006. Petition for transfer

(a) Right to file petition

A party may file a petition in the Court of Appeal asking for an appellate division case to be transferred to that court only if an application for certification for transfer was first filed in the appellate division and denied.

(b) Time to file petition

(1) The petition must be served and filed in the Court of Appeal after the appellate division issues its decision in the case but no later than 15 days after the decision is final in that court. A copy of the petition must also be served on the appellate division.

(2) The time to file a petition for transfer may not be extended, but the presiding justice may relieve a party from a failure to file a timely petition for transfer if the time for the Court of Appeal to order transfer on its own motion has not expired.

(c) Form and contents of petition

(1) Except as provided in this rule, a petition must comply with the form and contents requirements of rule 8.204(a)(1), (b), and (d).

(2) The body of the petition must begin with a concise, nonargumentative statement of the issues presented for review, framing them in terms of the facts of the case but without unnecessary detail.

(3) The petition must explain why transfer is necessary to secure uniformity of decision or to settle an important question of law.

(4) The petition must not exceed 5,600 words, including footnotes, if produced on a computer, and 20 pages if typewritten. A petition produced on a computer must include a certificate by counsel or an unrepresented party stating the number of words in the document. The person certifying may rely on the word count of the computer program used to prepare the document. A certificate stating the number of words, the tables required by rule 8.204(a)(1), the cover information required under rule 8.204(b)(10), any signature block, and any attachment permitted under rule 8.204(d) are excluded from these length limits.

(d) Answer to petition

(1) Any answer must be served and filed within 10 days after the petition is filed unless the court orders otherwise.

(2) Except as provided in this rule, any answer must comply with the form and contents requirements of rule 8.204(a)(1), (b), and (d).

(3) An answer must comply with the length requirements of (c)(4).

Rule 8.1006 adopted effective January 1, 2011.

Advisory Committee Comment

See rule 8.40 for requirements regarding the covers of documents filed in the appellate courts and rule 8.44(b) for the number of copies of documents that must be provided to the Court of Appeal.

Rule 8.1007. Transmitting record to Court of Appeal

(a) Clerks' duties

(1) To assist the Court of Appeal in determining whether to order transfer, the superior court clerk must send the record specified in (b) to the Court of Appeal within five days after:

(A) The appellate division certifies a case for transfer under rule 8.1005;

(B) The superior court clerk sends a copy of an appellate division opinion certified for publication to the Court of Appeal under rule 8.887;

(C) The superior court clerk receives a copy of a petition for transfer under rule 8.1006; or

(D) The superior court receives a request for the record from the Court of Appeal.

(2) The Court of Appeal clerk must promptly notify the parties when the clerk files the record.

(Subd (a) amended and relettered effective January 1, 2011; adopted as subd (b); previously amended effective January 1, 2007, and July 1, 2009.)

(b) Contents

The record sent to the Court of Appeal under (a) must contain:

(1) The original record on appeal prepared under rules 8.830–8.843, 8.860–8.873, or 8.910–8.923;

(2) Any briefs filed in the appellate division;

(3) The decision of the appellate division; and

(4) Any application for certification for transfer, any answer to that application, and the appellate division's order on the application.

(Subd (b) amended and relettered effective January 1, 2011; adopted as subd (a); previously amended effective January 1, 2007, and July 1, 2009.)

Rule 8.1007 amended and renumbered effective January 1, 2011; repealed and adopted as rule 65 effective January 1, 2003; previously amended and renumbered as rule 8.1010 effective January 1, 2007; previously amended effective July 1, 2009.

Rule 8.1008. Order for transfer

(a) Time to transfer

(1) The Court of Appeal may order transfer

(A) After the appellate division certifies the case for transfer or on petition for transfer, within 20 days after the record sent under rule 8.1007 is filed in the Court of Appeal; or

(B) On its own motion, within 30 days after the appellate division decision is final in that court.

(2) Within either period specified in (1), the Court of Appeal may order an extension not exceeding 20 days.

(3) If the Court of Appeal does not timely order transfer, transfer is deemed denied.

(Subd (a) amended and relettered effective January 1, 2011; adopted as subd (c); previously amended effective January 1, 2007.)

(b) Court of Appeal clerk's duties

(1) When a transfer order is filed, the clerk must promptly send a copy of the order to the superior court clerk, the parties, and, in a criminal case, the Attorney General.

(2) With the copy of the transfer order sent to the parties and the Attorney General, the clerk must send notice of the time to serve and file any briefs ordered under rule 8.1012 and, if specified by the Court of Appeal, the issues to be briefed and argued.

(3) If the court denies transfer after the appellate division certifies a case for transfer or after a party files a petition for transfer, the clerk must promptly send notice of the denial to the parties, the appellate division, and, in a criminal case, the Attorney General.

(4) Failure to send any order or notice under this subdivision does not affect the jurisdiction of the Court of Appeal.

(Subd (b) amended and relettered effective January 1, 2011; adopted as subd (f); previously amended effective January 1, 2007.)

Rule 8.1008 amended effective January 1, 2011; repealed and adopted as rule 64 effective January 1, 2003; previously amended and renumbered effective January 1, 2007; previously amended effective July 1, 2003, and January 1, 2008.

Rule 8.1010. Renumbered effective January 1, 2011
Rule 8.1010 renumbered as rule 8.1007

Rule 8.1012. Briefs and argument

(a) When briefs permitted

(1) After the Court of Appeal orders transfer, the parties may file briefs in the Court of Appeal only if ordered by the court. The court may order briefs either on a party's application or the court's own motion. The court must prescribe the briefing sequence in any briefing order.

(2) Instead of filing a brief, or as part of its brief, a party may join in or adopt by reference all or part of a brief filed in the Court of Appeal in the same or a related case.

(Subd (a) amended effective January 1, 2011.)

(b) Time to file briefs

Unless otherwise provided in the court's order under (a):

(1) The opening brief must be served and filed within 20 days after entry of the briefing order.

(2) The responding brief must be served and filed within 20 days after the opening brief is filed.

(3) Any reply brief must be served and filed within 10 days after the responding brief is filed.

(Subd (b) amended effective January 1, 2011.)

(c) Additional service requirements

(1) Any brief of a defendant in a criminal case must be served on the prosecuting attorney and the Attorney General.

(2) Every brief must be served on the appellate division from which the case was transferred.

(Subd (c) amended effective January 1, 2011.)

(d) Form and contents of briefs

(1) Except as provided in this rule, briefs must comply with the form and contents requirements of rule 8.204(a)(1), (b), and (d).

(2) No brief may exceed 5,600 words if produced on a computer or 20 pages if typewritten. The person certifying may rely on the word count of the computer program used to prepare the document. A certificate stating the number of words, the tables required by rule 8.204(a)(1), the cover information required under rule 8.204(b)(10), any signature block, and any attachment permitted under rule 8.204(d) are excluded from these length limits.

(Subd (d) amended effective January 1, 2011; previously amended effective January 1, 2007.)

(e) Limitation of issues

(1) On or after ordering transfer, the Court of Appeal may specify the issues to be briefed and argued. Unless the court orders otherwise, the parties must limit their briefs and arguments to those issues and any issues fairly included in those issues.

(2) Notwithstanding an order specifying issues under (1), the court may, on reasonable notice, order oral argument on fewer or additional issues or on the entire case.

(Subd (e) adopted effective January 1, 2011.)

Rule 8.1012 amended effective January 1, 2011; repealed and adopted as rule 66 effective January 1, 2003; previously amended and renumbered effective January 1, 2007.

Rule 8.1014. Proceedings in the appellate division after certification or transfer

When the appellate division certifies a case for transfer or the Court of Appeal orders transfer, further action by the appellate division is limited to preparing and sending the record under rule 8.1007 until termination of the proceedings in the Court of Appeal.

Rule 8.1014 amended effective January 1, 2011; repealed and adopted as rule 67 effective January 1, 2003; previously renumbered effective January 1, 2007.

Rule 8.1016. Disposition of transferred case

(a) Decision on limited issues

The Court of Appeal may decide fewer than all the issues raised and may retransfer the case to the appellate division for decision on any remaining issues.

(b) Retransfer without decision

The Court of Appeal may vacate a transfer order without decision and retransfer the case to the appellate division with or without directions to conduct further proceedings.

(Subd (b) amended effective January 1, 2011; previously amended effective January 1, 2007.)

Rule 8.1016 amended effective January 1, 2011; repealed and adopted as rule 68 effective January 1, 2003; previously amended and renumbered effective January 1, 2007.

Rule 8.1018. Finality and remittitur

(a) When transfer is denied

If the Court of Appeal denies transfer of a case from the appellate division of the superior court after the appellate division certifies the case for transfer or after a party files a petition for transfer, the denial is final immediately. On receiving notice under rule 8.1008(b) that the Court of Appeal has denied transfer or if the period for ordering transfer under rule 8.1008(a) expires, the appellate division clerk must promptly issue a remittitur if there will be no further proceedings in that court.

(Subd (a) amended effective January 1, 2011; adopted effective January 1, 2009.)

(b) When transfer order is vacated

If the appellate division issued a decision before transfer and the Court of Appeal vacates its transfer order under rule 8.1016(b) and retransfers the case without directing further proceedings, the appellate division's decision is final when the appellate division receives the order vacating transfer. The appellate division clerk must promptly issue a remittitur.

(Subd (b) adopted effective January 1, 2011.)

(c) When the Court of Appeal issues a decision

If the Court of Appeal issues a decision on a case it has ordered transferred from the appellate division of the superior court, filing, finality, and modification of that decision are governed by rule 8.264 and remittitur is governed by rule 8.272, except that the clerk must address the remittitur to the appellate division and send that court two copies of the remittitur and two file-stamped copies of the Court of Appeal opinion or order. On receipt of the Court of Appeal remittitur, the appellate division clerk must promptly issue a remittitur if there will be no further proceedings in that court.

(Subd (c) amended and relettered effective January 1, 2011; adopted as subd (a); previously relettered as subd (b) effective January 1, 2009.)

(d) Documents to be returned

When the Court of Appeal denies or vacates transfer or issues a remittitur under (c), the Court of Appeal clerk must return to the appellate division the record sent to the Court of Appeal under rule 8.1007 and any exhibits.

(Subd (d) amended effective January 1, 2011; adopted as subd (c); previously relettered effective January 1, 2009.)

Rule 8.1018 amended effective January 1, 2011; repealed and adopted as rule 69 effective January 1, 2003; previously renumbered effective January 1, 2007; previously amended effective January 1, 2009.

Advisory Committee Comment

Subdivision (a). The finality of Court of Appeal decisions in appeals is generally addressed in rules 8.264 (civil appeals) and 8.366 (criminal appeals).

Division 5. Publication of Appellate Opinions

Rule 8.1100. Authority
Rule 8.1105. Publication of appellate opinions
Rule 8.1110. Partial publication
Rule 8.1115. Citation of opinions
Rule 8.1120. Requesting publication of unpublished opinions
Rule 8.1125. Requesting depublication of published opinions

Rule 8.1100. Authority

The rules governing the publication of appellate opinions are adopted by the Supreme Court under section 14 of article VI of the California Constitution and published in the California Rules of Court at the direction of the Judicial Council.

Rule 8.1100 adopted effective January 1, 2007.

Rule 8.1105. Publication of appellate opinions

(a) Supreme Court

All opinions of the Supreme Court are published in the Official Reports.

(b) Courts of Appeal and appellate divisions

Except as provided in (e), an opinion of a Court of Appeal or a superior court appellate division is published in the Official Reports if a majority of the rendering court certifies the opinion for publication before the decision is final in that court.

(Subd (b) amended effective July 23, 2008; adopted effective April 1, 2007.)

(c) Standards for certification

An opinion of a Court of Appeal or a superior court appellate division—whether it affirms or reverses a trial court order or judgment—should be certified for publication in the Official Reports if the opinion:

(1) Establishes a new rule of law;

(2) Applies an existing rule of law to a set of facts significantly different from those stated in published opinions;

(3) Modifies, explains, or criticizes with reasons given, an existing rule of law;

(4) Advances a new interpretation, clarification, criticism, or construction of a provision of a constitution, statute, ordinance, or court rule;

(5) Addresses or creates an apparent conflict in the law;

(6) Involves a legal issue of continuing public interest;

(7) Makes a significant contribution to legal literature by reviewing either the development of a common law rule or the legislative or judicial history of a provision of a constitution, statute, or other written law;

(8) Invokes a previously overlooked rule of law, or reaffirms a principle of law not applied in a recently reported decision; or

(9) Is accompanied by a separate opinion concurring or dissenting on a legal issue, and publication of the majority and separate opinions would make a significant contribution to the development of the law.

(Subd (c) amended effective April 1, 2007; previously amended effective January 1, 2007.)

(d) Factors not to be considered

Factors such as the workload of the court, or the potential embarrassment of a litigant, lawyer, judge, or other person should not affect the determination of whether to publish an opinion.

(Subd (d) adopted effective April 1, 2007.)

(e) Changes in publication status

(1) Unless otherwise ordered under (2), an opinion is no longer considered published if the Supreme Court grants review or the rendering court grants rehearing.

(2) The Supreme Court may order that an opinion certified for publication is not to be published or that an opinion not certified is to be published. The Supreme Court may also order publication of an opinion, in whole or in part, at any time after granting review.

(Subd (e) relettered effective April 1, 2007; adopted as subd (d).)

(f) Editing

(1) Computer versions of all opinions of the Supreme Court and Courts of Appeal must be provided to the Reporter of Decisions on the day of filing. Opinions of superior court appellate divisions certified for publication must be provided as prescribed in rule 8.887.

(2) The Reporter of Decisions must edit opinions for publication as directed by the Supreme Court. The Reporter of Decisions must submit edited opinions to the courts for examination, correction, and approval before finalization for the Official Reports.

(Subd (f) amended effective July 1, 2009; adopted as subd (e); previously amended effective January 1, 2007; previously relettered effective April 1, 2007.)

Rule 8.1105 amended effective July 1, 2009; repealed and adopted as rule 976 effective January 1, 2005; previously amended and renumbered effective January 1, 2007; previously amended effective April 1, 2007, and July 23, 2008.

Rule 8.1110. Partial publication

(a) Order for partial publication

A majority of the rendering court may certify for publication any part of an opinion meeting a standard for publication under rule 8.1105.

(Subd (a) amended effective January 1, 2007.)

(b) Opinion contents

The published part of the opinion must specify the part or parts not certified for publication. All material, factual and legal, including the disposition, that aids in the application or interpretation of the published part must be published.

(c) Construction

For purposes of rules 8.1105, 8.1115, and 8.1120, the published part of the opinion is treated as a published opinion and the unpublished part as an unpublished opinion.

(Subd (c) amended effective January 1, 2007.)

Rule 8.1110 amended and renumbered effective January 1, 2007; repealed and adopted as rule 976.1 effective January 1, 2005.

Rule 8.1115. Citation of opinions

(a) Unpublished opinion

Except as provided in (b), an opinion of a California Court of Appeal or superior court appellate division that is not certified for publication or ordered published must not be cited or relied on by a court or a party in any other action.

(b) Exceptions

An unpublished opinion may be cited or relied on:

(1) When the opinion is relevant under the doctrines of law of the case, res judicata, or collateral estoppel; or

(2) When the opinion is relevant to a criminal or disciplinary action because it states reasons for a decision affecting the same defendant or respondent in another such action.

(Subd (b) amended effective January 1, 2007.)

(c) Citation procedure

A copy of an opinion citable under (b) or of a cited opinion of any court that is available only in a computer-based source of decisional law must be furnished to the court and all parties by attaching it to the document in which it is cited or, if the citation will be made orally, by letter within a reasonable time in advance of citation.

(d) When a published opinion may be cited

A published California opinion may be cited or relied on as soon as it is certified for publication or ordered published.

Rule 8.1115 amended and renumbered effective January 1, 2007; repealed and adopted as rule 977 effective January 1, 2005.

Advisory Committee Comment

A footnote to a previous version of this rule stated that a citation to an opinion ordered published by the Supreme Court after grant of review should include a reference to the grant of review and to any subsequent Supreme Court action in the case. This footnote has been deleted because it was not part of the rule itself and the event it describes rarely occurs in practice.

Rule 8.1120. Requesting publication of unpublished opinions

(a) Request

(1) Any person may request that an unpublished opinion be ordered published.

(2) The request must be made by a letter to the court that rendered the opinion, concisely stating the person's interest and the reason why the opinion meets a standard for publication.

(3) The request must be delivered to the rendering court within 20 days after the opinion is filed.

(4) The request must be served on all parties.

(b) Action by rendering court

(1) If the rendering court does not or cannot grant the request before the decision is final in that court, it must forward the request to the Supreme Court with a copy of its opinion, its recommendation for disposition, and a brief statement of its reasons. The rendering court must forward these materials within 15 days after the decision is final in that court.

(2) The rendering court must also send a copy of its recommendation and reasons to all parties and any person who requested publication.

(c) Action by Supreme Court

The Supreme Court may order the opinion published or deny the request. The court must send notice of its action to the rendering court, all parties, and any person who requested publication.

(d) Effect of Supreme Court order to publish

A Supreme Court order to publish is not an expression of the court's opinion of the correctness of the result of the decision or of any law stated in the opinion.

Rule 8.1120 renumbered effective January 1, 2007; repealed and adopted as rule 978 effective January 1, 2005.

Advisory Committee Comment

Subdivision (a). This rule previously required generally that a publication request be made "promptly," but in practice the term proved so vague that requests were often made after the Court of Appeal had lost jurisdiction. To assist persons intending to request publication and to give the Court of Appeal adequate time to act, this rule was revised to specify that the request must be made within 20 days after the opinion is filed. The change is substantive.

Subdivision (b). This rule previously did not specify the time within which the Court of Appeal was required to forward to the Supreme Court a publication request that it had not or could not have granted. In practice, however, it was not uncommon for the court to forward such a request after the Supreme Court had denied a petition for review in the same case or, if there was no such petition, had lost jurisdiction to grant review on its own motion. To assist the Supreme Court in timely processing publication requests, therefore, this rule was revised to require the Court of Appeal to forward the request within 15 days after the decision is final in that court. The change is substantive.

Rule 8.1125. Requesting depublication of published opinions

(a) Request

(1) Any person may request the Supreme Court to order that an opinion certified for publication not be published.

(2) The request must not be made as part of a petition for review, but by a separate letter to the Supreme Court not exceeding 10 pages.

(3) The request must concisely state the person's interest and the reason why the opinion should not be published.

(4) The request must be delivered to the Supreme Court within 30 days after the decision is final in the Court of Appeal.

(5) The request must be served on the rendering court and all parties.

(b) Response

(1) Within 10 days after the Supreme Court receives a request under (a), the rendering court or any person may submit a response supporting or opposing the request. A response submitted by anyone other than the rendering court must state the person's interest.

(2) A response must not exceed 10 pages and must be served on the rendering court, all parties, and any person who requested depublication.

(c) Action by Supreme Court

(1) The Supreme Court may order the opinion depublished or deny the request. It must send notice of its action to the rendering court, all parties, and any person who requested depublication.

(2) The Supreme Court may order an opinion depublished on its own motion, notifying the rendering court of its action.

(d) Effect of Supreme Court order to depublish

A Supreme Court order to depublish is not an expression of the court's opinion of the correctness of the result of the decision or of any law stated in the opinion.

Rule 8.1125 renumbered effective January 1, 2007; repealed and adopted as rule 979 effective January 1, 2005.

Advisory Committee Comment

Subdivision (a). This subdivision previously required depublication requests to be made "by letter to the Supreme Court," but in practice many were incorporated in petitions for review. To clarify and emphasize the requirement, the subdivision was revised specifically to state that the request "must not be made as part of a petition for review, but by a separate letter to the Supreme Court not exceeding 10 pages." The change is not substantive.