JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
455 Golden Gate Avenue
San Francisco, California 94102-3688

Report Summary

TO: Members of the Judicial Council

FROM: Appellate Advisory Committee
Hon. Kathryn Doi Todd, Chair
Heather Anderson, Senior Attorney, 415-865-7691,
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DATE: February 6, 2008

SUBJECT: Appellate Procedure: Rules and Forms for the Superior Court Appellate Divisions (repeal Cal. Rules of Court, rules 8.700–8.793; renumber rules 8.900–8.916 as rules 8.950–8.966; adopt new rules 8.800–8.936 and 10.1100–10.1108; repeal Judicial Council forms CR-130, TR-150, TR-155, TR-160, and TR-165; and approve new forms APP-101-INFO, APP-102, APP-103, APP-104, APP-105, and APP-106 relating to appeals in limited civil cases; APP-150-INFO and APP-151 relating to petitions for extraordinary writs; CR-131-INFO, CR-132, CR-133, CR-134, CR-135, CR-136, and CR-137 relating to appeals in misdemeanor cases; and CR-141-INFO, CR-142, CR-143, CR-144, and CR-145 relating to appeals in infraction cases) (Action Required)

Issue Statement
The existing rules for the superior court appellate divisions have not been comprehensively reviewed and updated since their adoption in 1945. Many of the rules use language that is outdated and difficult to understand and embody procedures that do not reflect current practice. There are gaps in the current rules; for example, there are no rules concerning writ proceedings in the appellate division. In addition, there are currently only a few forms to assist litigants in appellate division proceedings, many of whom are self-represented.

Recommendation
The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2009:

1. Repeal rules 8.700–8.793 of the California Rules of Court;

2. Renumber rules 8.900–8.916 as rules 8.950–8.966;

3. Adopt rules 8.800–8.936 and 10.1100–10.1108;

4. Revoke Judicial Council forms CR-130 , TR-150, TR-155, TR-160, and TR-165; and

5. Approve forms APP-101-INFO, APP-102, APP-103, APP-104, APP-105, and APP 106 relating to appeals in limited civil cases; APP-150-INFO and APP-151 relating to petitions for extraordinary writs in the appellate division; CR-131-INFO, CR-132, CR-133, CR-134, CR-135, CR-136, and CR-137 relating to appeals in misdemeanor cases; and CR-141-INFO, CR-142, CR-143, CR-144, and CR-145 relating to appeals in infraction cases.

The text of the proposed rules and forms are attached beginning on page 62. Because of the extensive revisions and rearranging of subdivisions, revisions to the rules are *not* indicated by the usual underscoring and strikethrough of the text. Instead, the committee is recommending that all of the current appellate division rules be repealed and replaced with the new rules.

Please note that the substantive changes being recommended by the committee include increasing the basic period for filing a notice of appeal in limited civil and misdemeanor cases from 30 to 60 days and also increasing the additional time provided to file a notice of appeal in limited civil cases when there is a new trial motion or certain other filings (see discussion on pages 13-16 of the report). The council's Rules and Projects Committee did not take a position on these proposed changes in the notice of appeal period, but specifically recommended that they be discussed by the council. With the exception of the changes in the notice of appeal period, the Rules and Projects Committee recommended adoption of this proposal.

Rationale for Recommendation

The committee recommends that the current outdated rules relating to the superior court appellate divisions be replaced with new rules in order to: (1) eliminate outdated rule language; (2) update the remaining language so it is similar to the recently revised rules for the Court of Appeal; (3) reflect current practices; (4) fill in gaps in the rules; (5) improve the record preparation process; and (6) place the rules in a more logical order.

To assist litigants, particularly self-represented litigants, in these proceedings, the committee also recommends approval of a complete package of new forms for civil and criminal appeals and writ proceedings in the appellate divisions.

Alternative Actions Considered

The committee did not consider alternatives to the overall project of reviewing and revising the appellate division rules because it believed these rules needed updating. As it reviewed each rule, however, the committee considered whether it should mirror the equivalent Court of Appeal rule, retain provisions from the current appellate division rules, or be revised in other ways. For example, the committee considered whether the time for filing a notice of appeal should be increased to 60 days to make it equivalent to the period in Court of Appeal matters or whether it should remain at the 30 days provided in the current appellate division rules. The committee ultimately decided to recommend increasing the period in limited civil and misdemeanor cases but keep it unchanged in infraction cases.

In terms of organization of the rules, the committee considered whether appeals in all criminal cases should be addressed in a single set of rules, as they are in the current appellate division rules, or whether misdemeanor and infraction cases should be addressed separately. The committee ultimately decided it would be easier for rule users to find the applicable rules and the rules would be clearer if misdemeanors and infractions were addressed separately.

In the record preparation area, the committee also considered recommending that the appellant be able to ask the trial court judge to prepare the initial draft of a settled statement. The committee ultimately decided against this approach because of the additional work that it might impose on judges and because the appellant is the one who knows what issues he or she intends to raise on appeal and therefore is in the best position to identify what part of the oral proceedings need to be summarized.

Comments From Interested Parties

The committee sought input at several stages during the development of this proposal, both through the formal public comment process and through more informal solicitations of input from Judicial Council committees and task forces and other interested parties.

Before the proposal was sent out for formal public comment, the committee sought preliminary input on a draft proposal from the Civil and Small Claims Advisory Committee's Small Claims and Limited Civil Cases Subcommittee,

Criminal Law Advisory Committee, Traffic Advisory Committee, Trial Court Presiding Judges Advisory Committee, and Task Force on Self-Represented Litigants. The committee received helpful input from several members of these groups and made many changes to the proposal in response to this input before the proposal was circulated for public comment.

These proposed amendments were circulated during a special comment cycle between May and July 2007. Eighteen individuals or organizations submitted comments on this proposal during that public comment process. The committee supplemented this public comment process by seeking additional input from the Civil and Small Claims Advisory Committee's Small Claims and Limited Civil Cases Subcommittee, Traffic Advisory Committee, and Trial Court Presiding Judges and Court Executive Officers Advisory Committees' Joint Rules Subcommittee. The committee received helpful input during this supplemental comment process. The full text of all these comments and the committee's responses are attached beginning on page 332.

By far the greatest number of comments focused on the proposal to increase the time for filing a notice of appeal. Seventeen individuals or groups commented on this proposed change—five commentators supported the change, five specifically opposed changing the time for filing an appeal in traffic cases but did not comment on other types of cases, five commentators generally opposed this change in all appellate division cases, and two submitted comments but did not express a position. Based on these comments, the committee modified its proposal to recommend keeping the current 30-day notice of appeal period in infraction appeals.

The committee also received many comments on various aspects of the proposed new rules, particularly those relating to preparation of the record on appeal, and on the proposed new forms. The committee made many changes in the proposal in response to these comments.

Implementation Requirements and Costs

Adopting new rules and forms that more clearly lay out the procedures in the appellate division should make these procedures easier for litigants, particularly self-represented litigants, to understand and use. This should reduce burdens on litigants, the trial courts, and the appellate divisions associated with procedural mistakes in these proceedings and requests for relief from default.

The recommended changes to the rules concerning records on appeal may increase requests for transcripts, particularly requests from indigent criminal defendants for free transcripts. Depending on local record preparation practices, this could

increase costs for the courts and burdens on court reporters associated with preparing such transcripts. To minimize these potential impacts, the proposed rules are drafted to give courts local control over many aspects of the record preparation process, such as whether to permit the use of official electronic recordings themselves as the record of the oral proceedings and whether to authorize judicial officers to order the preparation of a transcript in lieu of correcting a proposed settled statement. In addition, there may be off setting savings for the courts. To the extent that the number of transcripts or official electronic recordings used increases, the number of settled statements that need to be prepared will decrease, thus decreasing the time both litigants and trial court judicial officers must spend preparing such statements.

The revision, reorganization, and renumbering of the appellate division rules will also impose some implementation costs on courts and the public. All local court rules and forms that contain references to the appellate division rules will need to be revised. Publications that address appellate division procedures will need to be updated. To make this implementation process easier, the committee is recommending that these rule changes take effect on January 1, 2009, so that courts and others will have ten months to make necessary changes. In addition, conversion tables showing new and old rule numbers are being made available.[1]

[1] Copies of the conversion tables are attached to the report at pages 222–232.

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Background

The existing rules for the superior court appellate divisions were originally adopted in 1945, along with the rest of the appellate rules. Since then, while specific provisions have been amended over the years, these rules have not been comprehensively reviewed and updated. Many of the rules use language that is outdated and difficult to understand and embody procedures that do not reflect current practice. The appellate division rules also contain outdated references to the former municipal and justice courts.

Until recently, the rules relating to the Supreme Court and Court of Appeal were similarly outdated and difficult to understand. To update and improve these rules, the Appellate Rules Project Task Force was formed. For five years, that task force,

working under the direction of the Appellate Advisory Committee, reviewed the Supreme Court and Court of Appeal rules and, working in installments, developed proposals to reorganize and update them. The goals of this earlier project were to clarify the meaning of the rules and facilitate their use by practitioners, parties, and court personnel by removing the many ambiguous, inconsistent, obsolete, and redundant provisions that had accumulated in the rules since they were originally enacted. On January 1, 2005, the fourth and final installment of revisions to the California Rules of Court relating to the Supreme Court and Court of Appeal took effect.

Late in 2003, the Appellate Advisory Committee began the task of developing a similar set of proposed revisions to the appellate division rules. The committee formed a working group—the Appellate Division Rules Working Group—composed of committee members and others with knowledge of appellate division procedures and practices to develop proposed revisions to these rules (a roster of the working group is attached at page 60). As the working group considered revisions to the appellate division rules, the members came to the conclusion that forms could be very helpful in assisting appellate division litigants, particularly self-represented litigants, through some of the basic steps in the appellate process, such as preparing a notice of appeal and designating the record on appeal. There are currently only a few forms relating to these proceedings, primarily focused on appeals in traffic cases. The working group therefore developed not only a proposal for comprehensively revising all of the appellate division rules, but also proposed new plain English Judicial Council forms, including information sheets, for civil and criminal appeals and writ proceedings that are intended to help litigants better understand and follow the applicable appellate division procedures. The working group presented its original proposal to the advisory committee in December 2006 and its members have continued to work with the committee in reviewing and responding to public comments on the proposal.

Both this appellate division rules and forms project and the earlier appellate rules project are part of a larger judicial branch effort to make the California Rules of Court, Judicial Council forms, and other information about the law in California clearer and more accessible. In 2006, the council approved the reorganization of the California Rules of Court, designed to make the rules clearer, better organized, and easier to read. The council has also adopted civil and criminal jury instructions written in plain English. Many Judicial Council forms used extensively by self-represented litigants have been completely revised in plain-language format. In addition, extensive legal information is now available through the California Courts Online Self-Help Center. This appellate division rules and forms project is intended to be one more step in the larger effort by making

information about proceedings in the appellate division clearer and more accessible.

Premises Underlying the Proposal

Many of the procedures followed in superior court appellate division proceedings are similar to, if not exactly the same as, the procedures followed in Court of Appeal proceedings. Because of the work done by the Appellate Rules Project Task Force, the rules for the Court of Appeal were recently updated. In developing its proposed revisions to the appellate division rules, the advisory committee therefore took as its starting premise that the language of the Court of Appeal rules should be used as a model for revisions to equivalent provisions in the appellate division rules. This includes incorporating contemporary rule style, such as replacing "shall" with "must."

There are, however, some important substantive differences between proceedings in the appellate divisions and in the Court of Appeal. For example, because of jurisdictional distinctions, civil matters in the appellate divisions involve smaller amounts in controversy and criminal matters involve lesser penalties than matters in the Court of Appeal. Unlike in Court of Appeal matters, in appellate division matters a reporter's transcript may not be available as the record of the oral proceedings in the trial court, but an official electronic recording may be available. Also, unlike in criminal matters in the Court of Appeal, criminal defendants in appellate division matters are not always entitled to either appointed counsel or free records. Where required to reflect such substantive differences between the appellate division and the Court of Appeal proceedings, the proposed appellate division rules differ from the Court of Appeal rules.

In addition, to reflect the fact that these are "smaller" matters and often involve unrepresented litigants, the committee took as its second premise that these appellate division procedures should be kept as simple as possible. The committee therefore chose not to include in the proposed appellate division rules some provisions currently found in the Court of Appeal rules. To facilitate resolution of these smaller matters as quickly as possible, the committee also chose not to recommend extending some of the time frames in the appellate division rules to correspond with those in the Court of Appeal.

Finally, unlike the work of the Appellate Rules Project Task Force, with this appellate division project the committee did not confine itself to recommending only nonsubstantive changes to the rules. In addition to changes intended only to clarify existing procedures, the committee is also recommending many substantive changes intended to improve appellate division procedures. Some of these proposed substantive changes incorporate changes that were made over the years

to the Court of Appeal rules, but not to the appellate division rules. Others are new proposals generated by the working group and the Appellate Advisory Committee.

Comments From Interested Parties

The committee sought input on this proposal at several stages during its development, both through the formal public comment process and through more informal solicitations of input from other Judicial Council committees and task forces and interested parties.

Before the proposal was sent out for formal public comment, the committee sought preliminary input on a draft proposal from the Civil and Small Claims Advisory Committee's Small Claims and Limited Civil Cases Subcommittee, Criminal Law Advisory Committee, Traffic Advisory Committee, Trial Court Presiding Judges Advisory Committee, and Task Force on Self-Represented Litigants. The committee received helpful input from several members of these groups and made many changes to the proposal in response to this input before the proposal was circulated for public comment.

In late April 2007, the council's Rules and Projects Committee approved circulating the committee's revised proposal for public comment in a special cycle. The invitation to comment on this proposal was distributed through *Court News Update*, along with the other special cycle proposals, on May 22. The comment period remained open through July 13. Eighteen individuals or organizations submitted the comments on the proposal during this public comment process.

To ensure that potentially interested parties had a sufficient opportunity to consider the proposal, after the public comment period closed the committee sought supplemental comments from the Civil and Small Claims Advisory Committee's Small Claims and Limited Civil Cases Subcommittee, Traffic Advisory Committee, and Trial Court Presiding Judges and Court Executives Advisory Committees' Joint Rules Subcommittee. The committee again received helpful input from several members of these groups.

The full text of both the comments received during the regular public comment process and the supplemental comments are included in the comment chart beginning on page 332. The committee's responses to all of these comments are also included in that chart. The comments on the main substantive changes being recommended by the committee, and the committee's responses to these comments, are discussed in the section of this report that begins on page 13. Additional comments on each chapter of the proposed rules and on the proposed forms are discussed in the sections that begin on pages 37 and 51, respectively.

In addition to these comments, the committee sought input on the draft appellate division forms from several sources. While the proposal was out for public comment, the draft forms were reviewed by a plain language editor. This editor provided many helpful suggestions for making the forms easier to read and understand. In addition, staff at the Superior Courts of San Bernardino and San Francisco Counties and JusticeCorps volunteers at the Superior Court of Los Angeles County reviewed the forms and provided helpful input. These comments on the proposed forms are discussed in the section of this report concerning the forms that begins on page 51.

Both the rules and the forms were substantially revised based on the public comments and other input received by the committee.

Overview of the Proposal

This overview describes the overall structure of the proposal. The main substantive changes being recommended and the individual rules and forms are discussed in subsequent sections of this report.

Rules

The first part of this proposal addresses the appellate division rules. This part begins with a table of contents of the rules, showing both the current chapters and rule numbers in strikeouts and the new chapters and rule numbers for all of the proposed new appellate division rules in underlining. This table of contents is helpful in seeing the overall structure of the proposed new rules.

Currently, the appellate division rules begin with a chapter that contains rules applicable to both civil and criminal appeals, including rules relating to briefing and decisions, as well as rules relating to administration of the appellate divisions. This is followed by separate chapters relating to civil and criminal appeals, some of which duplicate or refer back to rules in the first chapter.

The proposed new rules would be placed in a more logical sequence, following the order of events in a typical appeal, and duplicative provisions would be eliminated. Rules applicable to limited civil cases, misdemeanors, and infractions would also be more clearly identified.

The main body of the proposed new rules is divided into six chapters in title 8, division 2, titled “Rules Relating to the Superior Court Appellate Division.”

- Chapter 1. General Rules Applicable to Appellate Division Proceedings. This chapter addresses general issues applicable in all appellate division

proceedings, such as definitions and extensions of time. These rules are discussed on pages 37–38 of this report.

- Chapter 2. Appeals and Records in Limited Civil Cases. This chapter addresses filing appeals and record preparation in limited civil cases. These rules are discussed on pages 13–21, 25–32, and 38–41 of this report.

- Chapter 3. Appeals and Records in Misdemeanor Cases. This chapter addresses filing appeals and record preparation in misdemeanor cases. These rules are discussed on pages 13–32 and 41–44 of this report.

- Chapter 4. Briefs, Hearing, and Decision in Limited Civil and Misdemeanor Appeals. This chapter addresses briefing, oral argument, and decisions in limited civil and misdemeanor cases. Because the rules for these aspects of appeals in civil and misdemeanor cases are almost identical, the committee is recommending that they be addressed together. These rules are discussed on pages 32–36 and 44–48 of this report.

- Chapter 5. Appeals in Infraction Cases. This chapter addresses filing appeals, record preparation, briefing, oral argument, and decisions in infraction cases. Because there are many substantive differences between the proposed rules for appeals in limited civil and misdemeanor cases and those for appeals in infraction cases, including differences relating to appointment of counsel and the time for filing the notice of appeal, the committee is recommending that the rules for appeals in infraction cases be in a separate chapter. These rules are discussed on pages 13–36 and 49–50 of this report.

- Chapter 6. Writ Proceedings. This chapter addresses writ proceedings in the appellate divisions. The content is all new, since there are currently no rules addressing writ proceedings in the appellate division. These rules are discussed on pages 36–37 and 50 of this report.

As in the overall reorganization of the rules that took effect on January 1, 2007, the rules regarding administration of the appellate divisions that are currently in title 8 would be moved to title 10 of the rules, which generally addresses administrative matters. These rules would be placed in division 5, chapter 2, titled "Rules Relating to the Superior Court Appellate Division." These rules are discussed on pages 35 and 50–51 of this report.

The committee believes that this proposed new organization will make it easier for rule users to find applicable rules and should reduce confusion about what rules apply, particularly in infraction appeals.

The rules table of contents is followed by the proposed text of the new rules, beginning on page 62 of this report. Because of the extensive revisions and rearranging of subdivisions, revisions to the rules are *not* indicated by the usual underscoring and strikethrough of the text. Instead, the committee is recommending that all of the current appellate division rules be repealed and replaced with the new rules.

Following the text of all the proposed rules, beginning on page 180, are the current appellate division rules that the committee is recommending be repealed (these are shown in strikeout text).

After the rules the committee is recommending be repealed are two conversion tables. The first table, beginning on page 222, lists the current rule numbers and the corresponding new rule numbers. The second table, beginning on page 226, lists the new rule numbers and the corresponding current rule numbers.

Finally, on page 233, there is a list of the Court of Appeal rules for which no corresponding appellate division rule is being recommended.

Forms

The second part of this proposal consists of proposed new Judicial Council forms relating to appellate division proceedings. This part begins with a table of contents of the forms listing all of the proposed new forms.

The proposed forms are grouped together in packets based on the type of case in which they would be used: appeals in limited civil cases (APP-101-INFO through APP-106), appeals in misdemeanor cases (CR-131-INFO through CR-137), appeals in infraction cases (CR-141-INFO through CR-145), and writ proceedings (APP-15-INFO and APP-151). Within each packet, the proposed forms appear in the order in which they would likely be used in a typical proceeding, starting with an information sheet that explains each type of proceeding. These forms are discussed on pages 51–56 of this report.

Some of these proposed forms are designed to replace existing Judicial Council forms. For example, the proposed *Notice of Appeal (Misdemeanor*) (form CR-132) is designed to replace current *Notice of Appeal—Misdemeanor (Defendant*) (form CR-130). The committee is recommending that these existing forms be repealed.

The Main Substantive Changes Recommended

The committee's proposal would make many substantive changes in the appellate division rules and procedures. The main substantive changes and the public comments on these changes are discussed here. Additional changes are discussed in the sections concerning each chapter of the proposed new rules and the new forms, which begin on pages 37 and 51 of this report, respectively.

Time to file a notice of appeal

The committee is recommending that the time to file a notice of appeal in a limited civil case be increased from 30 to 60 days after mailing or service of notice of entry of the judgment or order being appealed and, similarly, that the time for filing a notice of appeal in a misdemeanor case be increased from 30 to 60 days after rendition of the judgment. This would make the time frame for filing a notice of appeal in these appellate division matters the same as for filing a notice of appeal in Court of Appeal matters. This change is being proposed to make the time for filing a notice of appeal more uniform and to eliminate a trap for the unwary. For the reasons discussed below on pages 15-16, however, the committee is recommending that the current 30-day period for filing a notice of appeal in infraction cases remain unchanged.

One of the reasons that the committee first began to examine the appellate division rules was that it received, in short succession, two different suggestions for making the time to file a notice of appeal the same in appellate division and Court of Appeal matters. Both of these suggestions came from individuals—one a judge and one a respected appellate attorney—who had been involved in cases in which litigants had mistakenly believed that there was the same 60-day period for filing a notice of appeal in an appellate division matter as in a Court of Appeal matter. Since the time to file a notice of appeal is jurisdictional, these mistakes resulted in the appeals being dismissed. Based on these experiences, both the judge and the attorney recommended that the rules should be amended to make the time for filing a notice of appeal the same in both types of matters.

In the experience of both working group and committee members, litigants currently make this error with some frequency and it is a common reason that appellate division appeals are dismissed (see comment to similar effect from the Los Angeles Superior Court in the attached comment chart at page 342). The attorney who proposed making the notice of appeal periods the same believed that the frequency of this type of error has increased since the advent of trial court unification. Before unification, appellate jurisdiction was determined based on which trial court originally heard the matter. Municipal court matters were appealed to the appellate division and superior court matters were appealed to the Court of Appeal. After unification, all trial court matters are heard in the superior

court, so litigants and attorneys can no longer determine what court has appellate jurisdiction, and thus which set of rules apply, simply based on where the trial was held.

The committee believes that establishing a uniform notice of appeal period will reduce errors concerning this deadline and make the appellate process easier for both litigants and attorneys to navigate. The committee also understands, however, that these potential benefits need to be balanced against concerns that the change from a 30- to a 60- day notice of appeal period will extend the time for resolving these "smaller" appellate division matters and will make record preparation in some of these matters more difficult. Because the trial court proceedings in some of these matters are neither recorded by a court reporter nor officially electronically recorded in the superior courts, preparing a settled statement is the only option for providing a record of the oral proceedings in these matters. Extending the deadline for filing the notice of appeal in these matters could mean that the trial court judicial officers who heard these cases must try to recall events in these cases for 30 days longer than is currently required. This may be difficult given the relatively large volume of these matters on many court calendars.

In the invitation to comment on the proposal, the committee suggested changing the time for filing a notice of appeal in all appellate division appeals, including infraction cases. The committee also specifically solicited public comment on whether the proposal appropriately balanced the potential benefits and burdens associated with changing the time for filing the notice of appeal and about whether the notice of appeal period in infraction cases should remain 30 days.

This proposed change received by far the greatest number of comments, both during the public comment period and in the supplemental comments received from members of other Judicial Council entities. Seventeen individuals or groups commented on this proposed change. Five commentators supported the change; one of these supported the change in civil and misdemeanor cases but suggested that the proposal to change the time in traffic cases be reconsidered, and one supported the change in civil cases and did not comment on other types of cases. Five commentators specifically opposed changing the time for filing an appeal in traffic cases, but did not comment on other types of cases. Five other commentators, including the Presiding Judges and Court Executives Advisory Committees' Joint Rules Working Group, generally opposed this change in all appellate division cases but several of these commentators also emphasized that the change raised the greatest concerns in traffic cases. Two commentators did not state a position on the change, but provided other input. One of these commentators noted that 60 days seemed like a long time, given the short duration of most misdemeanor proceedings and the fact that most people want infractions

disposed of quickly. The other indicated that in his court's experience, attorneys are more likely than self-represented litigants to incorrectly assume that the rules applicable to the Court of Appeal apply to appeals to the appellate division.

Most of the commentators who opposed this change expressed concern about its impact on judicial officers' ability to prepare settled statements, particularly in infraction matters. According to commentators, infraction cases are the least likely to be recorded by a court reporter or official electronic recording equipment and thus are the cases in which litigants are most likely to need to use a settled statement as the record of the oral proceedings. Because of the large number of cases on many traffic calendars, judicial officers handling these infraction cases are most likely to experience greater difficulties in recalling what happened in a case if the time to file the notice of appeal were extended. Some of the commentators who opposed this change also suggested that the change is not necessary. These commentators believed that mistakes about the time for filing the notice of appeal are not very common, particularly in infraction cases. Several commentators suggested that it is not self-represented litigants but attorneys who also handle matters in the Court of Appeal who are most likely to make mistakes about the time for filing a notice of appeal. Since defendants in most traffic matters, which make up the bulk of infractions, are self-represented, commentators suggested that this type of mistake about the time for filing the notice of appeal does not occur very often in infraction cases. Several commentators also suggested that, by more clearly identifying what rules apply to infractions and other case types, this proposal will eliminate mistakes about the applicable notice of appeal period, making the change in the notice of appeal period unnecessary.

These public comments suggest that, of the matters that go to the appellate division, infraction cases are the ones in which it is least likely that litigants will mistakenly think the deadline for filing the notice of appeal is the same as in Court of Appeal matters and also are the cases in which record preparation would most likely become more difficult if the time for filing the notice of appeal were extended. In addition, these comments also suggest that the desire for swift disposition may be greatest in infraction cases. Based on these comments, the committee concluded that the burdens of changing the notice of appeal time in infraction cases would outweigh the benefits and revised its proposal to maintain the current 30-day notice of appeal period in infraction cases.

The committee continues to believe, however, that the benefits of increasing the notice of appeal period in limited civil and misdemeanor cases outweigh the burdens and is therefore recommending that the period be increased to 60 days in those cases. More of the commentators expressed support for increasing the notice of appeal period in these types of cases. They also noted that these cases are more

likely to involve attorneys who also handle matters in the Court of Appeal and who may therefore be more likely to make mistakes about the deadline for filing a notice of appeal. In addition, these proceedings are more likely to be recorded either by a court reporter or on official electronic recording equipment, thereby reducing concerns about the impact of this change on record preparation. The committee also notes that while this new rule will extend the outer limit for filing a notice of appeal, not all appellants will wait until the end of this period to file. As is the case now, many litigants may file their notice of appeal immediately after judgment. Thus the potential record preparation and time to disposition impacts will not occur in all cases.

Record preparation

The current appellate division rules relating to record preparation are particularly archaic and confusing. For example, the rules relating to records in criminal appeals do not refer to clerk's transcripts at all; the elements of the record that must be prepared by the clerk are identified as part of a general rule relating to the contents of the record. These rules also do not include separate provisions relating to reporter's transcripts in criminal appeals; reporter's transcripts are treated as part of proposed statements that must be "settled."

Because the rules regarding record preparation are currently so confusing, the committee is recommending many changes to these rules. Among other things, these changes are intended to make it easier for litigants to understand what their record preparation options and responsibilities are. While these changes are also intended to bring the appellate division rules more in line with the Court of Appeal rules, as discussed in more detail below, litigants in appellate division proceedings have different record preparation options and responsibilities than litigants in the Court of Appeal. For example, unlike in unlimited civil and felony cases, by statute (Government Code section 69957), limited civil, misdemeanor, and infraction proceedings can be officially recorded on approved electronic recording equipment. If such official recordings have been made, both this statute and current rules (California Rules of Court, rule 2.952) authorize the record of the oral proceedings for the appellate division to be prepared from these official recordings. Also unlike in unlimited civil and felony cases, in many appellate division cases, particularly infraction cases, the trial court proceedings are not recorded either by a court reporter or through official electronic recording. In these cases, the usual procedure for producing a record of the oral proceedings is a settled statement. In unlimited civil and felony cases, in contrast, a settled statement can only be used with the specific permission of the court when a reporter's transcript is unavailable. Because of these substantive differences, the proposed new record preparation rules for appellate division cases differ in many ways from the record preparation rules for Court of Appeal cases.

These recommended record preparation rules may have financial implications for the courts. Because the proposed new rules clarify the availability of transcripts (either reporter's transcripts or transcripts prepared from official electronic recordings) as a possible option for the record of the oral proceedings, these rules may increase requests for such transcripts, particularly requests from indigent criminal defendants for free transcripts. Depending on the courts' record preparation practices, this could increase transcript preparation costs for the courts and burdens on court reporters. To try to mitigate these potential cost increases, the committee has drafted the proposed rules with the goal of providing flexibility and local control over many aspects of the record preparation process. For example, under the proposed rules, the court can adopt a local rule permitting (on the parties' stipulation) the use of an official electronic recording itself as the record, rather than preparing a transcript (see proposed rules see 8.835 (limited civil cases), 8.868 (misdemeanors), and 8.917 (infractions)). In addition, there may be other time and cost savings associated with these proposed changes. For example, to the extent that the number of transcripts or official electronic recordings used increases, the number of settled statements that need to be prepared will decrease, thus decreasing the time that both litigants and trial court judicial officers must spend preparing such statements.

Overall, the committee believes that the changes it is recommending in the record preparation rules will make this process easier for both litigants and the courts to understand and navigate. This should reduce errors and delays in this area of appellate proceedings and reduce the time that both litigants and courts spend on dealing with these errors and requests for relief from default.

Choices about the record on appeal. The committee is recommending adoption of new rules that would more clearly identify the different forms of the record that can be used in appellate division proceedings, such as reporter's transcripts, official electronic recordings, and statements on appeal (see proposed rules 8.830 (civil cases), 8.860 (misdemeanors), and 8.910 (infractions)). The committee is also proposing new rules that would require appellants to notify the court whether they want to proceed with or without a record of the oral proceedings and to choose the form of the record of the oral proceedings they want to use (see proposed rules 8.831 (civil cases), 8.864 (misdemeanors), and 8.915 (infractions)). To assist appellants with these choices, the committee is also proposing new forms:

- *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103)*;*
- *Notice Regarding Record of Oral Proceedings (Misdemeanor)* (form CR-134)*;* and
- *Notice of Appeal and Record of Oral Proceedings (Infraction)* (form CR-142).

These proposed appellate division rules and forms are similar to revised rules 8.120 and 8.121 and the revised *Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) for record designation in civil appeals in the Court of Appeal, which were approved by the council at its October 2007 meeting. The proposed rules and forms for misdemeanor and infraction proceedings differ from those for civil proceedings, however. As in felony appeals in the Court of Appeal, in misdemeanor and infraction appeals, the appellant is not required to designate a clerk's transcript. Under the proposed rules for misdemeanor and infraction cases, the trial court automatically prepares either a clerk's transcript or the original trial court file. The proposed rules and forms for misdemeanor and infraction appeals therefore only address notifying the court about appellants' choices concerning the record of the oral proceedings. (Note that because a free reporter's transcript is prepared in all the felony appeals, there are no equivalent Court of Appeal rules or forms relating to appellants' choices concerning the record of the oral proceedings in felony appeals.)

The proposed new rules and forms for misdemeanor appeals also differ from those proposed for infraction appeals. The proposed rules for misdemeanor appeals build in time for appellants to request appointment of counsel before they are required to notify the trial court of their choices concerning the oral proceedings. In the proposed rules, the notice regarding the oral proceedings in misdemeanor cases must be filed within 20 days after the notice of appeal is filed or, if it is later, within 10 days after the court decides whether to grant an appellant's request for appointment of counsel (if one is filed within 20 days after the notice of appeal is filed). Because there is no right to appointed counsel in infraction appeals, no extra time for requesting appointment of counsel is needed in infraction appeals. The proposed rules for infraction appeal therefore require that appellants notify the court about their choices concerning the record of the oral proceedings at the time they file the notice of appeal and the proposed new form for infraction appeals, *Notice of Appeal and Record of Oral Proceedings (Infraction)* (form CR-142), combines the notice of appeal and the notice regarding the record of the oral proceedings in a single form.

The committee believes that these proposed new rules and forms will help litigants understand and choose among the different forms of the record that may be available in an appellate division matter.

There were no major substantive comments concerning the proposed rules or forms relating to designating the record.

Copy of the record for prosecuting attorney in infraction appeals. The committee is recommending the adoption of new rule 8.911, which would establish a procedure for a prosecuting attorney to notify the court if he or she does not want to receive the record on appeal in an infraction case.

In the experience of members of the working group and committee, prosecuting attorneys frequently do not appear either at trial or on appeal in infraction cases. Under the current rules, a copy of the record is sent to the prosecuting attorney in all infraction cases. These attorneys often do not want to receive copies of the record in these matters and, if copies are sent, they are thrown away. Preparing and sending unwanted copies of these records is a waste of court resources. To prevent this waste, proposed new rule 8.911 would give the prosecuting attorney the option when he or she is notified that an appeal has been filed in an infraction case of serving and filing a notice indicating that he or she does not want to receive a copy of the record.

The proposal circulated for public comment included a somewhat different approach to addressing this problem. Under that proposal, if the prosecuting attorney did not appear in the trial court proceedings, a copy of the record would be sent to the prosecuting attorney only if it was specifically requested. Several commentators expressed concern about this proposal. They noted that although prosecuting attorneys may not appear at trial in infraction cases, they may still want to participate on appeal. These commentators expressed concern about prosecutors having to affirmatively request copies of the record in these circumstances. In response to these comments, the committee revised its proposal to instead provide that the records in these appeals will be sent to the prosecuting attorney unless he or she requests otherwise.

Clerk's transcript. The committee is recommending new rules that would more clearly lay out the documents that must be included in a clerk's transcript in civil and criminal appeals.

Currently, the requirements for clerk's transcripts in limited civil appeals are spread out in several subdivisions of rule 8.754. Proposed new rule 8.832, which is based on Court of Appeal rule 8.122, consolidates these provisions so that the documents that must be included in the clerk's transcript and those additional documents that will be included if designated by a party are clearly identified. Like rule 8.122, proposed rule 8.832 also requires that the clerk provide an estimate of the transcript cost within 30 days after the designation is filed and gives the trial court 30 days after the appellant deposits this amount to prepare the transcript, rather than the 10 days provided under current rule 8.754.

The current rules concerning criminal appeals in the appellate division do not even refer to clerk's transcripts. Current rule 8.783, which generally addresses the contents of the record in criminal appeals, includes provisions that identify the elements of the record that must be prepared by the clerk. Proposed new rules 8.861 (misdemeanors) and 8.912 (infractions) would identify these elements as the contents of the clerk's transcript. These new rules would be structured to be similar to rule 8.320(b), which relates to the contents of clerk's transcripts in felony appeals in the Court of Appeal. The documents to be included in a clerk's transcript under these new rules would differ somewhat from those under rule 8.320, however, because they would be tailored to misdemeanor and infraction cases. Some of the documents listed in rule 8.320, such as the certificate of probable cause, are not filed in misdemeanor or infraction cases and so are not listed in either proposed rule 8.861 or 8.912. In addition, there are no jury trials in infraction cases, so the items to be included in the clerk's transcript in infraction appeals under proposed rule 8.912 do not include jury instructions or any other jury-related items. Like rule 8.320, these proposed new appellate division rules also specifically authorize the parties to stipulate that part of the normal clerk's transcript is not needed, in which case it will not be included in the transcript (see proposed rules 8.860(b) (misdemeanors) and 8.910(b) (infractions)).

There were no major substantive comments concerning these proposed rules.

Original trial court file in lieu of a clerk's transcript. The committee is recommending new rules that would allow the original trial court file to be used in lieu of a clerk's transcript if there is a local rule for the appellate division authorizing this use (see proposed rules 8.833 (limited civil cases), 8.863 (misdemeanors), and 8.914 (infractions)).

These new rules are modeled on rule 8.128, which provides for using the original trial court file instead of a clerk's transcript in civil appeals in the Court of Appeal. However, rule 8.128 provides for use of the original file only on stipulation of the parties. In contrast, these proposed new appellate division rules would not require the parties' stipulation. The committee believes that it is consistent with current appellate division rules and court practice not to require such a stipulation as a prerequisite to using the original trial court file. Current rule 8.754(d) provides that in limited civil appeals, the clerk's transcript may consist "of either copies or originals" of documents. Similarly, current rule 8.783(b) provides for transmitting original documents in criminal appeals when possible. Thus the current appellate division rules appear to contemplate that documents in the original trial court file can be used as the record on appeal without the stipulation of the parties.

If the trial court adopted this procedure, it would change what the parties receive from the court. While the current appellate division rules do not address this, it is the committee's understanding that in practice, a copy of the clerk's transcript is sent to the parties (in civil appeals, the parties must pay for this copy). If the trial court opted to use the trial court file in lieu of a clerk's transcript under this proposed rule, parties would instead receive a copy of the index to the original trial court file, which lists the documents in chronological order and gives their page numbers. The parties would use this index to paginate their copies of the documents to conform to what was transmitted to the appellate division. If a party did not have a copy of a document listed in the index, the party could request a copy of the document from the court.

Two commentators expressed support for these proposed rules. Another expressed some concern about the use of the original file in lieu of a clerk's transcript in some cases. The committee notes that these proposed rules provide that this option can be used only if the court has adopted a local rule for the appellate division authorizing its use. Therefore, the local court can determine whether this option is appropriate given its individual circumstances. In addition, even if the there is a local rule generally authorizing the use of this option, proposed rules 8.833, 8.863, and 8.914 permit, rather than require, that the court use the original file, so the court is free to order a different approach in an individual case.

Reporter's transcripts in criminal appeals. The committee is recommending adoption of new rules that establish the normal contents of reporter's transcripts in criminal appeals and the process for preparing these transcripts (see proposed rules 8.865–8.866 (misdemeanors) and 8.918–8.919 (infractions)).

Under the current rules concerning criminal appeals in the appellate division, a reporter's transcript is authorized only as part of a settled statement. Rule 8.784 permits the appellant to "give notice in his proposed statement that he intends to file a reporter's transcript of the evidence and proceedings so reported, and to make the same a part of the statement…" The rule then provides for incorporation of any reporter's transcript into the proposed statement and the respondent's review of and the trial judge's "settlement" of that reporter's transcript as part of this statement. These current rules do not address what proceedings would normally be included in a reporter's transcript, who pays for the reporter's transcript, or the time within which the transcript is to be prepared.

The new rules concerning reporter's transcripts recommended by the committee are modeled on a combination of the rules relating to reporter's transcripts in criminal cases and those relating to civil appeals in the Court of Appeal.

Contents. Like rule 8.320(b), which relates to the contents of reporter's transcripts in felony appeals in the Court of Appeal, these proposed new appellate division rules list the oral proceedings that must normally be included in a reporter's transcript (see proposed rules 8.865 (misdemeanors) and 8.918 (infractions)). Like both the current appellate division rules (see rule 8.783(12)) and the rules applicable in felony appeals in the Court of Appeal (see rule 8.320(d)), these proposed rules provide for more limited reporter's transcripts when the People are appealing from a demurrer or either party is appealing from an order other than a ruling on a motion for a new trial (see proposed rules 8.867 (misdemeanors) and 8.920 (infractions)). Like the rules applicable in felony appeals in the Court of Appeal (see rule 8.320(f)), these proposed new appellate division rules also specifically authorize the parties to stipulate that part of the normal reporter's transcript is not needed, in which case it will not be included in the transcript (see proposed rules 8.860(b) (misdemeanors) and 8.910(b) (infractions)).

Unlike in felony appeals, these proposed new rules specifically provide that the trial court can order that items normally included in the reporter's transcript are not necessary for the proper determination of the appeal. This provision is intended to recognize case law holding that while an indigent appellant in a criminal case is constitutionally entitled, at public expense, to a record of sufficient completeness to permit proper consideration of the issues on appeal, it does not necessarily mean that a full verbatim transcript is needed in all cases (see *Mayer v. City of Chicago* (1971) 404 U.S. 189, 92 S.Ct. 410 and *March v. Municipal Court* (1972) 7 Cal.3d 422). In some cases, a partial transcript or a settled statement may provide an acceptable alternative to a full transcript. The minimum record that is constitutionally required depends on what issues are being raised on appeal. These proposed new appellate division rules recognize that a court could conclude that a full reporter's transcript is not necessary in a given case and order that a settled statement or partial transcript be prepared instead of a full transcript (this is also explained in the proposed new information sheets concerning misdemeanor and felony appeals).

Payment for transcripts. In felony appeals, reporter's transcripts are provided to all parties at public expense, regardless of the parties' ability to pay. In misdemeanor and infraction appeals, however, transcripts are only provided at public expense to indigent defendants and the prosecuting attorney. Nonindigent defendants are not constitutionally entitled to free transcripts (*Andrus v. Municipal Court* (1983) 143 Cal.App.3d 1041, 1054) and, in practice, courts regularly require such defendants to pay for reporter's transcripts. To reflect this, proposed rules 8.866 and 8.919 establish procedures, similar to those in civil appeals in the Court of Appeal, for providing defendants who are appealing with an estimate of the cost of reporter's transcripts and for these defendants to deposit this estimated

amount with the court. Because misdemeanor defendants who were represented by the public defender or other appointed counsel in the trial court are considered indigent, and thus eligible for a free transcript, in misdemeanor appeals, estimates of transcript costs would only be provided in cases where the defendant was not represented by appointed counsel in the trial court. These rules also give defendants the option of choosing, after they have received the estimated cost of the reporter's transcript, to use a settled statement as the record of the oral proceedings rather than the reporter's transcript.

In addition, the proposed rules and forms establish procedures for defendants who were not represented by appointed counsel to establish that they are indigent. This is done by filing *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement* (form MC-210). Proposed *Notice Regarding Record of Oral Proceedings (Misdemeanor)* (form CR-134) and *Notice of Appeal and Record of Oral Proceedings (Infraction)* (form CR-142) include boxes defendants can check to request a free transcript on the basis of indigency and to indicate that they have attached a completed form MC-210.

Preparation. Since reporter's transcripts are prepared for all felony appeals in the Court of Appeal at no cost to the parties, court reporters are generally required to begin preparing a reporter's transcript in a felony case as soon as they are notified that a notice of appeal has been filed. This approach will not work in misdemeanor and infraction cases, however, because, as noted above, reporter's transcripts are not used in all cases and nonindigent defendants must pay for a reporter's transcript if they want one. The proposed new rules therefore generally require that, if the defendant is the appellant, the court reporter must begin preparing the transcript only when the defendant has either deposited the required fee or obtained an order providing for a free transcript. To help speed up the process of getting a reporter's transcript in those cases where these transcripts are generally provided at public expense, however, the proposed new rules also provide that, unless otherwise ordered by the court, the reporter must begin preparing a transcript as soon as he or she is notified that a transcript has been requested in a case in which the People are the appellant or in a misdemeanor appeal in which the defendant who is appealing was represented by appointed counsel at trial and thus is considered indigent.

The proposed new rules also separate the process of preparing a reporter's transcripts from the process of preparing a settled statement. As in felony appeals in the Court of Appeal, a full reporter's transcript would serve as an alternative, rather than a supplement, to a settled statement. Appellants would no longer be required to prepare a proposed settled statement and request a reporter's transcript in that proposed statement. Instead, a request for a reporter's transcript would be

made in the appellant's notice regarding the record of the oral proceedings. In addition, reporter's transcripts would no longer be incorporated into a proposed statement and reviewed and "settled" as part of such a statement. As in felony appeals in the Court of Appeal, under these proposed new rules, the court reporter would be responsible for completing a reporter's transcript in 20 days and would also be responsible for certifying the transcript as correct.

The committee made several changes to these rules in response to the public comments received.

As circulated for comment, these rules did not specifically provide for the trial court to order that items normally included in the reporter's transcript are not necessary for the proper determination of the appeal. In addition, the rules did not specifically provide that the court could order the court reporter to do something other than immediately begin preparing a transcript when a defendant who was represented by appointed counsel in the trial court requested a transcript. One commentator expressed concern that, as circulated, these rules would have entitled an indigent defendant to a full reporter's transcript without any showing of need.

As discussed above, while an indigent appellant in a criminal case is constitutionally entitled, at public expense, to a record of sufficient completeness to permit proper consideration of the issues on appeal, this does not necessarily mean that a full verbatim transcript is needed in all cases. The commentator noted that, in determining constitutional entitlement to a transcript, the initial burden of showing a "colorable need" for a full transcript rests on the indigent defendant. This burden is met if the issues on appeal include sufficiency of the evidence or prejudicial misconduct during the trial (see *March v. Municipal Court* (1972) 7 Cal.3d 422). As soon as this colorable need is shown, the burden shifts to the court to show that an alternative to a full transcript would provide a sufficient record. This commentator suggested that producing the full transcripts outlined in the proposed rule without any showing of specific need might result in wasted resources.

In response to this comment, the committee revised its proposal to specifically provide that the trial court may order that items normally included in the reporter's transcript are not necessary for the proper determination of the appeal. This change is intended to recognize that a court may constitutionally provide an indigent defendant with an alternative to a full reporter's transcript in some cases if that would provide the defendant with a sufficient record. In addition, the committee added the specific exception "unless otherwise ordered by the court" to the general rule that the reporter must immediately begin preparing a transcript when one is requested by a defendant who was represented by appointed counsel

in the trial court. Both of these changes should accommodate those courts that wish to make a determination of need before authorizing the preparation of a full transcript at public expense.

The rules are also drafted to recognize, however, that case law does not prevent a court, in the interests of improving the administration of justice, from choosing to provide full transcripts in additional circumstances. The committee understands that courts have implemented a variety of different practices with regard to providing reporter's transcripts in misdemeanor and infraction cases. The committee understands that some courts generally provide transcripts to indigent defendants on request if such a record is available. These courts may have concluded, for example, that it is less costly and time-consuming for both litigants and the court to have a full transcript prepared when one is available than it is to hold a hearing to determine if there is a need for the full transcript or to prepare a settled statement as an alternative to such a transcript. Like the current appellate division rules, the proposed rules therefore do not specifically require indigent appellants to make a showing of "colorable need" for a transcript nor do they specifically require a court to make a finding of need before providing a full transcript. This leaves the area open for local rule making and should accommodate the diversity of practices in the courts.

Even though the new rules recommended by the committee are designed to accommodate courts that wish to make a determination of need before authorizing the preparation of a full transcript, these rules may require those courts to implement some new procedures for this purpose. As noted above, the current appellate division rules require that a request for a reporter's transcript be made in a proposed settled statement. The current rules also require that a proposed statement indicate the issues that the appellant wants to raise on appeal. To the extent that these current rules are being followed, in at least some cases, a court may now be able to determine if a defendant has made the initial showing of "colorable need" for a full transcript based on the issues identified in the proposed statement. Under the proposed new rules, however, a request for a reporter's transcript would not be embedded in a proposed settled statement. Courts will therefore not be able to look to such a proposed statement for an articulation of the issues on appeal. Courts that wish to make a determination of need for a full transcript may therefore need to adopt new procedures for appellants to identify the issues they wish to raise on appeal.

Official electronic recordings or transcripts from these recordings. The committee is recommending the adoption of new rules that reiterate the existing authority in current statutes and rules to use transcripts prepared from official electronic recordings of the trial court proceedings in limited civil, misdemeanor,

and infraction proceedings as the record of the oral proceedings on appeal in the appellate division (see proposed rules 8.835 (limited civil cases), 8.868 (misdemeanors), and 8.917 (infractions)). In addition, consistent with these existing rules, if the court had adopted a local rule for appellate division permitting this practice, the proposed new appellate division rules would permit the use of the official electronic recording itself as the record of the oral proceedings.

Government Code section 69957 permits use of official electronic recording in limited civil, misdemeanor, and infraction cases whenever an official court reporter or official reporter pro tempore is unavailable to report the proceedings. Rules 2.952 and 2.954 of the California Rules of Court implement this statutory authorization. Both Government Code section 69957 and rule 2.952 specifically provide that a transcript prepared from an official electronic recording can be used as the record of the oral proceedings. Rule 2.952 also permits the official electronic recording itself to be used as the record of the oral proceedings on the stipulation of the parties approved by the reviewing court. The current appellate division rules, however, do not mention either transcripts prepared from official electronic recordings or the use of an official electronic recording itself as the record of the oral proceedings. Parties in appellate division proceedings therefore may not be aware that these record preparation options may be available.

The new rules recommended by the committee would reiterate this existing authority in the appellate division rules, where parties on appeal in a limited civil, misdemeanor, or infraction case would more logically find this authorization. The proposed new rules focus only on the use of already authorized official recordings for record preparation purposes; they do not address when official electronic recordings can be made.

Rule 2.952 authorizes the use of the recording itself, instead of a transcript prepared from that recording, only if the parties' stipulation has been approved by the court. These proposed rules would instead provide that the recording itself can be used as the record only if the court has adopted a local rule for appellate division authorizing this procedure. This local rule approach should reduce the delay and burden on the appellate division associated with having to approve individual stipulations while still ensuring that the electronic recording itself is used as the record only in those appellate divisions that want to use such recordings.

Two commentators expressed specific support for these proposed provisions reserving to individual courts the option of allowing the use of official electronic recordings as the official record of oral proceedings by local rule.

As discussed in more detail below, the committee is also recommending new provisions concerning the use of official electronic recordings as the record on appeal in the rules relating to settled statements (see proposed rules 8.837(d)(6) (limited civil cases), 8.869(d)(6) (misdemeanors), and 8.916(d)(6) (infractions)). Under these proposed rules, if the court has adopted a local rule for appellate division authorizing the use of official electronic recordings themselves as the record of the oral proceedings, a trial court judicial officer would be authorized to send the appellate division such an electronic recording in lieu of reviewing and correcting a proposed settled statement.

Statements on appeal (settled statements). The committee is recommending a complete revision of the rules relating to settled statements in appellate division proceedings (see proposed rules 8.837 (limited civil cases), 8.869 (misdemeanors), and 8.916 (infractions)). Among other things, in the proposed new rules these statements are renamed "statements on appeal," rather than "settled statements." The confusing terminology about "settling" and "engrossing" such statements is replaced with language that is easier to understand. The committee is also recommending the repeal of current rule 8.789, titled "Experimental rule on use of recordings to facilitate settlement of statements" (although some provisions of this rule, such as the provision that no hearing will be held to review an appellant's proposed statement unless ordered by the court, would be incorporated into the proposed new rules).

Preparation of proposed statements. As under the current appellant division rules, an appellant using the statement on appeal procedure would be required to prepare a proposed statement for review by the other parties and the trial court judicial officer who conducted the proceedings. Under the proposed new rules, however, self-represented appellants would be required to use the new "proposed statement on appeal" forms to prepare these proposed statements (see proposed rules 8.837(b)(2) (limited civil cases), 8.869(b)(2) (misdemeanors), and 8.916(b)(2) (infractions)).

The requirement that self-represented appellants use these proposed Judicial Council forms is modeled on a similar requirement that self-represented petitioners seeking writs of habeas corpus use the *Petition for Writ of Habeas Corpus* form (see rule 8.380). The intent of this requirement is to make the process of preparing proposed statements easier for litigants and to improve the quality and completeness of the statements that are produced. Currently, many self-represented litigants find it very difficult to prepare such proposed statements and courts, in turn, find it difficult to review proposed statements that do not contain necessary information. The proposed forms are designed to be easy to use and to

prompt appellants to provide all the information that should be contained in a proposed statement.

The committee received four comments concerning the requirement that self-represented appellants use these forms; three commentators supported the requirement and one opposed it. The commentator who opposed the requirement expressed concern about treating self-represented litigants differently from those who are represented by attorneys and suggested that these litigants be encouraged, rather than required, to use the forms. The committee believes that these rules appropriately recognize that self-represented litigants face special challenges in preparing proposed statements and that it is preferable to require use of these forms.

Hearings to review proposed statements. The current appellate division rules require the court to set a hearing to review and correct ("settle") a proposed statement. In limited civil cases, the rules require this hearing to be set not more than 10 days after the respondent files proposed amendments to the statement or the time for doing so expires. In misdemeanor and infraction cases, the rules require this hearing to be set "as early as the business of the court will permit." Under both the civil and criminal rules, the court must give parties 5 days' notice of this hearing.

The committee is recommending that trial court judicial officers not be required to hold a hearing to review and correct the proposed statement in all cases. Instead, the judicial officer would have discretion to order a hearing if needed (see proposed rules 8.837(d)(2) (limited civil cases), 8.869(d)(2) (misdemeanors), 8.916(d)(2) (infractions)). The committee understands that currently, in many cases, the respondent does not submit any proposed amendments to the proposed statement and there is no factual dispute about any material aspect of the proceedings. The committee thinks it is not an efficient use of judicial resources to require a hearing in such circumstances. The proposed new rule would give the court discretion to set a hearing only when one is needed. This provision is modeled, in part, on current rule 8.789, which provides that no hearing will be held to review an appellant's proposed statement unless ordered by the court.

One commentator expressed concern about eliminating the requirement to hold a hearing. This commentator suggested that basic considerations of due process should enable a party to obtain a hearing, particularly if a material aspect of trial court proceedings is factually disputed. The committee believes that the proposed rules are consistent with due process considerations. Due process requires that a person be given notice and an opportunity to be heard appropriate to the rights that are at stake. The proposed rules give parties the opportunity to submit a proposed

statement and proposed amendments, modifications, and objections in writing. The committee believes that these proposed provisions provide parties with an appropriate opportunity to be heard concerning what happened in the trial court proceedings without the necessity of holding a hearing in all cases. Based on this comment, however, the committee modified its proposal to add a provision indicating that the judge will not ordinarily order a hearing unless there is a factual dispute about a material aspect of the trial court proceedings.

Based on another comment, the committee also revised its proposal to set a specific time frame for parties to request a hearing on a proposed statement. The proposed rules provide that any party can request a hearing within 10 days after the respondent files proposed amendments to the statement or the time for doing so expires. If the court sets a hearing to review and correct the proposed statement, the proposed rules require the court to give the parties 5 days' notice of this hearing.

Use of official electronic recording or transcript in lieu of correcting a proposed statement. Under the current appellate division rules, the judicial officer who conducted the trial court proceedings in a case is required to review the appellant's proposed statement and any proposed amendments submitted by the respondent and make any corrections necessary to provide a complete and accurate summary of the trial court proceedings. The committee is recommending that the rules specifically authorize an alternative procedure in those cases in which the trial court proceedings were either officially electronically recorded or recorded by a court reporter and the trial court judicial officer determines that using the recording or a transcript would save court time and resources (see proposed rules 8.837(d)(6) (limited civil cases), 8.869(d)(6) (misdemeanors), and 8.916(d)(6) (infractions)). Under these proposed rules, if the proceedings were officially electronically recorded and the court has a local rule permitting the use of an official electronic recording itself as the record of the oral proceedings, instead of reviewing and correcting a proposed statement, the judicial officer could order that the original electronic recording or a copy be transmitted to the appellate division as the record of these oral proceedings. In addition, under these proposed rules, unless there is a local rule providing otherwise, if proceedings were either officially electronically recorded or recorded by a court reporter, instead of reviewing and correcting a proposed statement, the judicial officer could order that a transcript be prepared at the court's expense.

These proposed rules are intended to save both the courts and litigants time and money. The committee understands that, in many cases, proposed statements prepared by appellants are not complete and accurate and must be completely rewritten by the trial court judicial officer (see, for example, the general comments

of Commissioner Glenn Mondo of the Superior Court of Orange County concerning settled statements). These revised statements must then be reviewed by the parties and the final statement prepared and certified by the trial court judicial officer. In such circumstances, if the trial court proceedings were electronically recorded or reported by a court reporter, it may be quicker, simpler, and ultimately less costly to use the official electronic recording or have a transcript prepared instead of having the judicial officer take the time to review a proposed statement, make corrections, have it sent to the parties, have the parties review it, have the judicial officer review any objections submitted by the parties, and prepare and certify the final statement. The committee believes that this procedure will have the benefit of freeing up time that judicial officers can use to focus on hearings in other cases that need their attention.

The committee made several changes in the procedure in response to public comments. As circulated for public comment, these proposed rules would have established a uniform authorization for trial court judicial officers to order a transcript in lieu of reviewing and correcting a proposed statement. Two commentators specifically expressed support for these rules, suggesting that they would promote judicial economy. However, the Presiding Judges and Court Executives Advisory Committees' Joint Rules Working Group expressed concern that these rules would have significant operational and fiscal impacts. This Joint Rules Working Group suggested that there are not sufficient court reporting resources currently available and court reporters already struggle to meet statutorily required timelines for transcript preparation. To address these concerns, the committee revised its proposal to:

- Permit a trial court judicial officer, in lieu of reviewing and correcting a proposed statement, to order the use of an official electronic recording itself, rather than a transcript, as the record on appeal. This should alleviate concerns about placing additional strains on court reporter resources and offer the courts a lower-cost option for creating the record when the proceedings were officially electronically recorded. To ensure local control over the use of this option, the rule provides that this option can only be used if the court has adopted a local rule for the appellate division permitting the use of official electronic recordings as the record on appeal.
- Provide that the option of ordering a transcript in lieu of correcting a proposed statement is available *unless the court has adopted a local rule providing otherwise.* This will allow courts to determine what approach would work best given their local conditions and resources. Any court that determines that preparation of a transcript in lieu of correcting a proposed statement would strain local court reporter or other resources could adopt a local rule eliminating this option in that court.

- Specifically provide that these alternatives may be ordered by the trial court judicial officer only if he or she *determines that it would save court time and resources.*

Preparation of final statement. The current appellate division rules provide that, after the trial court judicial officer reviews the proposed statement and any proposed amendments, the appellant must "engross" the statement as directed by the trial court judicial officer. Essentially, this means that the appellant is required to prepare the final statement incorporating the changes ordered by the trial court judicial officer. The new rules recommended by the committee instead provide that the trial court judicial officer is responsible for preparing the final statement on appeal (see proposed rules 8.837(f)(2) (limited civil cases), 8.869(f)(2) (misdemeanors), and 8.916(f)(2) (infractions)). In the appellate division context, where many litigants are self-represented, the committee believes it will generally be more efficient and effective for the trial court judicial officer to prepare the final statement, rather than requiring this statement to be prepared by the appellant.

Two commentators expressed concern about this change, noting that there may be some cases, such as those where the parties are represented or where the corrections are minor, in which it would be appropriate for the court to ask a party to prepare the final statement. While these rules do eliminate the global requirement that the final statement be prepared by a party, the committee does not believe that they would prevent a judge from directing a party in a particular case to make the corrections to a statement. As with the preparation of orders, the committee believes that the judicial officer could delegate the job of correcting a statement to a party when that was appropriate.

Correcting the record. The current appellate division rules include, as part of the normal record preparation process in every case, steps at which the parties and trial court review and correct the record, including any reporter's transcripts. As noted above, under the current appellate division rules for misdemeanor and infraction cases, reporter's transcripts are treated as part of a proposed statement on appeal and thus are subject to review by the parties and "settlement" by the judge as part of that statement. Similarly, under the current appellate division rules for limited civil cases the completed record must be sent to the parties for their review, the parties have 10 days to submit requests for corrections, and if any party submits such a request the court must hold a hearing to consider these corrections (see rule 8.757).

The committee is recommending that these automatic correction procedures be eliminated. Similar provisions were eliminated from the Court of Appeal rules in

1989 as part of the Judicial Council's effort to reduce delay in appellate proceedings. Rather than presuming that every reporter's transcript needs to be corrected, the committee believes that it is more appropriate to presume that transcripts certified by the court reporter are correct. As in the Court of Appeal rules, the reviewing court would be authorized to order a transcript (or any other part of the record) corrected if necessary, including ordering the trial court to settle disputes about omissions or errors in the record (see proposed rules 8.841 (limited civil cases), 8.873 (misdemeanors), and 8.923 (infractions)).

Briefs

The committee is recommending several changes to the rules relating to briefs in the appellate division.

Obligation to file respondent's brief. The current appellate division rules provide that the respondent "shall" file a brief (see rule 8.706). This is similar to the Court of Appeal rules, which provide that the respondent "must" file a brief (see rules 8.212 and 8.360). In practice, however, the respondent in many appellate division matters does not file a brief; as noted above, in many infraction cases, the prosecuting attorney does not even appear in the appellate proceedings. The committee is recommending that the appellate division rules recognize this practice by eliminating the mandate that a respondent's brief be filed. Instead of requiring that the respondent's brief must be filed by a specified deadline, the proposed new appellate division rules provide that "*[a]ny* respondent's brief" must be filed by the deadline (emphasis added) (see proposed rules 8.882(a) (limited civil and misdemeanor cases) and 8.927(a) (infractions)).

Time to file briefs. Under the current appellate division rules, the appellant's opening brief must be filed within 20 days after the record is filed in the appellate division, the respondent's brief must be filed within 20 days after the appellant's opening brief is filed, and any reply brief must be filed within 10 days after the respondent's brief is filed (see rule 8.706). The committee is recommending that the period for filing each of these briefs be lengthened by 10 days, so that the new time periods would be 30, 30, and 20 days, respectively (see proposed rules 8.882(a) (limited civil and misdemeanor cases) and 8.927(a) (infractions)).

Two commentators expressed concern about lengthening these time periods. One suggested this increase was unnecessary because the appellate division liberally grants extensions in briefing time. Both commentators expressed concern about the cumulative effect of this additional briefing time on the overall time to disposition in appellate division matters.

The committee believes that the additional briefing time will be helpful to both self-represented litigants and attorneys in preparing satisfactory briefs, will reduce the need for parties to file and the court to consider applications for extensions of briefing time, and will reduce the number of defaults for failure to timely file briefs. The new time periods are taken from rule 8.212(a), which establishes the time for filing briefs in civil appeals in the Court of Appeal. The time frames for the respondent's and reply briefs are also the same as those in rule 8.360(c), relating to briefs in felony appeals in the Court of Appeal, but the time for the appellant's opening brief in a criminal appeal in the Court of Appeal is longer—40 days after the filing of the record instead of 30.

The committee considered recommending that the current shorter briefing schedule in infraction appeals be retained. The committee ultimately decided not to make this recommendation, however, based on the concern that having different briefing deadlines for misdemeanors and infractions would create additional work for appellate division clerks, who would have to track the different deadlines in determining when to send default notices.

Notice of default and grace period. Since their adoption in 1943, the Court of Appeal rules have provided that when a party fails to timely file its principal brief, the clerk must send the party notice of this default, inform the party of the "grace period" to cure the default, and let the party know what the consequences are likely to be if the brief is not filed within that grace period (see rules 8.212 and 8.360). In civil appeals, the grace period to correct the default is 15 days, the potential consequence for the appellant is dismissal, and potential consequences for the respondent are that the court may decide the appeal on the record, the appellant's opening brief, and any oral argument by the appellant. In felony appeals, the grace period is 30 days and the potential consequences for a defendant-appellant represented by appointed counsel are that new counsel will be appointed.

The committee is recommending new appellate division rules that also contain similar notice requirements, grace periods, and potential consequences for failing to timely file a brief (see proposed rules 8.882(c) (limited civil and misdemeanor cases) and 8.927(b) (infractions)). The committee believes that these notices and grace periods will help appellants, particularly those who are self-represented, avoid having their appeals dismissed for failure to file a brief and will reduce the need for parties to file and the courts to consider requests for relief from default and requests for reinstatement of appeals.

One commentator noted that in many infraction and some misdemeanor appeals the People do not file respondent's briefs and expressed concern that requiring the

clerk to send a notice in these circumstances would be pointless. In response to this comment, the committee modified its proposal to eliminate the requirement that the clerk send notice of default to the respondent when the respondent is the prosecuting attorney.

This commentator also expressed concern about the cumulative expansion of total briefing time when this proposed grace period is added to the proposed increase in basic briefing time. The committee acknowledges that providing this grace period is likely to expand the overall briefing time in many cases. However, the committee also believes that this change will reduce the time to disposition in those cases in which litigants would otherwise have had to ask the court for relief from default or in which the appellant would have had to ask the court to reinstate an appeal that was dismissed because the appellant inadvertently failed to timely file the opening brief.

Length of briefs. Under the current appellate division rules, the maximum length of the briefs permitted in all appellate division matters is 15 pages, which is equivalent to 4,200 words. The committee recommends that, as in the Court of Appeal rules, the length limit for briefs produced on computers be stated in terms of the permissible number of words (page-based limits would be retained for typewritten briefs). Using a word limit discourages gamesmanship in brief formatting and is not difficult for computer users to implement since word-processing systems can easily provide a word count. The committee also recommends that the current length limit be increased slightly to 20 pages (6,800 words) in limited civil and misdemeanor cases (see proposed rule 8.883(b)). This increase is intended to reduce the burden on litigants of having to seek permission to file longer briefs in these matters and on courts of having to consider these requests. These briefs would still be much shorter than the length of briefs in the Court of Appeal in civil appeals (50 pages (14,000 words)) and criminal appeals (75 pages (25,500 words)).

As circulated for comment, the proposal would have increased the brief length in all appellate division cases. Two commentators suggested that no increase in the length of briefs is necessary because, in their experience, the number of requests for over-length briefs is small and these requests are liberally granted. The committee understands that appellate division practices with regard to requests for over-length briefs vary and that these requests are not liberally granted in all courts. However, in response to these comments, the committee revised its proposal to retain the shorter 15-page brief limit for infraction appeals. Infraction cases are typically less complex than limited civil and misdemeanor cases and therefore are less likely to need additional briefing.

Calendaring and oral argument
The committee is recommending a few changes to the current rules relating to calendaring and oral argument in the appellate division.

Calendaring cases for oral argument. The current appellate division rules require that the appellate division hold one or more sessions each month (see rule 8.702). These rules also require that, unless otherwise ordered, the clerk must place on the calendar for hearing at each regular session all appeals in which the record on appeal was filed not less than 50 days before the date of the session (see rule 8.704).

The committee is recommending that the rules be revised to require the appellate division to hold a session at least once a quarter, if there is any matter pending (see proposed rule 10.1108). This would make the requirements for the appellate divisions similar to those for the Court of Appeal, which must hold a session at least once each quarter (see rule 8.256). It would also better reflect the fact that in many courts there is only a small number of appeals and it is therefore not necessary for the appellate division to hold a session every month. Courts would, of course, be free to hold sessions more frequently if needed.

The committee is also recommending that the appellate division not set the date for oral argument until after all the briefs are filed or the deadline for filing them has passed. Under the proposed new rules (see proposed rules 8.885 (limited civil and misdemeanor cases) and 8.929 (infraction cases)), 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 would be placed on the calendar for that session. The change from calendaring based on when the record is filed to calendaring based on when briefing is completed is intended to reduce the number of matters in which oral argument must be rescheduled because of delays in briefing.

Several commentators indicated that this new rule would require their courts to change calendaring practices. The proposal, as circulated for comment, would have required all appeals that were fully briefed no less than 30 days before a scheduled session to be placed on calendar for that session. Two commentators expressed concern that the proposed timeline would not give the courts sufficient time to plan their calendars. Based on these concerns, the committee modified its proposal to lengthen the proposed time between the completion of briefing and calendaring for oral argument to 45 days.

Length of oral argument. The committee is recommending adoption of new rules specifying the length of oral argument. Under these proposed new rules, unless otherwise ordered by the court, each side in a limited civil case or a misdemeanor case will have 10 minutes for argument (see proposed rule 8.885(d)) and each side in an infraction case will have 5 minutes for argument (see proposed rule 8.929(d)). These rules are modeled on rule 8.256(c), which specifies the length of oral argument in the Court of Appeal. However, the proposed oral argument time frames are much shorter than in the Court of Appeal, where each side has up to 30 minutes for oral argument.

One commentator suggested that it is undesirable and unnecessary for the rules to set the time for oral argument, since the presiding judge can always terminate oral argument when necessary. The committee believes that it is helpful to litigants, particularly self-represented litigants, to understand the expectation about the typical length of oral argument. Without such an understanding, litigants may think they have an unlimited opportunity to address the court and could be dissatisfied with the judicial process if the judge limits oral argument. As provided in the rule, the court can always order a different amount of time where appropriate.

As circulated for public comment, the proposed rules would have allowed 15 minutes of argument for each party in every case. Another commentator indicated that, in his court's experience, 5 minutes per side is more than adequate for oral argument in infractions. This commentator also suggested that each side be given 10 minutes for argument in other cases. Based on this comment, the committee modified its proposal to provide for 5 minutes of argument per side in infraction cases and 10 minutes per side in limited civil and misdemeanor cases.

Writ proceedings

Currently, there are no rules addressing writ proceedings in the appellate division. The committee is recommending adoption of a whole new chapter of rules to govern proceedings in the appellate division for writs of mandate, certiorari, or prohibition or other writs within the original jurisdiction of the appellate division.

These proposed new rules are generally modeled on rule 8.490, which governs writ proceedings in the Supreme Court and Court of Appeal. However, unlike in rule 8.490, the appellate division rules recommended by the committee would require self-represented petitioners to use the proposed new *Petition for Writ* (form APP-151) to prepare a petition (see proposed rule 8.931(a)). Like the similar recommendation that self-represented appellants be required to use the proposed new statement on appeal forms, the requirement that self-represented appellants use these Judicial Council petition form is modeled on a similar requirement that

self-represented petitioners seeking writs of habeas corpus use the Judicial Council *Petition for Writ of Habeas Corpus* form (see rule 8.380). The intent of this requirement is to make the process of preparing these petitions easier for litigants and to improve the quality and completeness of the petitions that are produced. The proposed forms are designed to be easy to use and to prompt petitioners to provide all the information that should be contained in a petition.

The committee received three comments on the requirement that self-represented petitioners use the petition form; two commentators supported the requirement and one opposed it. The commentator who opposed the requirement expressed concern about treating self-represented litigants differently from those who are represented by attorneys and suggested that these litigants be encouraged, rather than required, to use the form. The committee believes that these rules appropriately recognize that self-represented litigants face special challenges in preparing petitions and that it is preferable to require use of this form.

The Proposed New Rules – By Chapter

This section describes, chapter by chapter, the new rules recommended by the committee. Many of the proposed new rules were discussed above in the context of the principal substantive changes being recommended by the committee. This section does not duplicate the discussion of those rules but supplements it with information about the other rules in each chapter.

Chapter 1. General Rules Applicable to Appellate Division Proceedings

This chapter contains rules of construction (rule 8.802) and definitions (rule 8.804) that are based on rules 1.5 and 1.6 from title 1 of the California Rules of Court. To make it easier for litigants, particularly self-represented litigants, to understand these provisions, the committee is recommending that applicable definitions and rules of construction be repeated here, rather than simply cross-referencing rules 1.5 and 1.6. One commentator suggested that the definitions in rule 8.804 be placed in alphabetical order. As in rule 1.6, these definitions are currently grouped by topic. The committee concluded that, to maintain consistency with rule 1.6, it was preferable to keep the definitions in their topical groupings, rather than to place them in alphabetical order.

This chapter also contains rules relating to applications (rule 8.806), motions (rule 8.808), extensions of time (rule 8.810), relief from default (rule 8.812), shortening time (rule 8.813), and substituting parties and attorneys (rule 8.814). All of these topics are covered in the current appellate division rules, but the committee is recommending that these rules be revised and restructured so that they are similar to the Court of Appeal rules that address these same subjects. Most of these

revisions are nonsubstantive and simply modernize the rule language and format. There are some substantive changes, however, including:

- Lengthening the time for filing opposition to a motion from the current 7 days specified in rule 8.705 to 15 days after the motion is filed (rule 8.808(a)(3)). This new time period is modeled on rule 8.54 relating to motions in the Court of Appeal;
- Deleting the provision found in rule 8.767 limiting extensions of time to no more than 10 days each and the total extensions to no more than 60 days (rule 8.810);
- Adding new provisions addressing applications for extensions of time and notice to parties of such extensions. These provisions are modeled on provisions in rule 8.50, relating to applications in the Court of Appeal; and
- Clarifying that substitution of parties must be made by way of motion. This is modeled on rule 8.36 relating to substitution of parties and attorneys in the Court of Appeal.

Unlike in the Court of Appeal rules, however, these appellate division rules would continue to permit the trial court presiding judge or his or her designee to extend the time to do any act to prepare the record on appeal (rule 8.810(b)). Based on public comments received, the committee also revised several of these proposed rules and accompanying advisory committee comments to clarify that the presiding judge may delegate his or her responsibilities under these rules and that, where appropriate, that may include delegation to the trial court judge.

In addition to revising the existing appellate division rules, the committee is recommending adoption of two new rules:

- A rule setting out the policies and factors governing extensions of time (rule 8.811). This rule is modeled on rule 8.63 in the Court of Appeal rules; and
- A rule regarding party and attorney addresses and telephone numbers of record (rule 8.816). This rule is modeled on rule 8.32 in the Court of Appeal rules.

There were no major substantive comments concerning these proposed new rules.

Chapter 2. Appeals and Records in Limited Civil Cases

This chapter is divided into two articles: article 1 addresses taking civil appeals and article 2 addresses the record in civil appeals.

In article 1, in addition to the rule setting the time for filing the notice of appeal (rule 8.822), which was discussed earlier in the section on the main substantive changes recommended, there are rules concerning the notice of appeal and filing fee (rule 8.821), extension of time to file the notice of appeal (rule 8.823), writs of supersedeas (rule 8.824), and abandonment of appeals (rule 8.825). All of these

topics are covered in the current appellate division rules, but the proposed rules have been revised and restructured so that they are now similar to the Court of Appeal rules that address these same subjects. As with the rules in chapter 1, most of the revisions to these rules are nonsubstantive and simply modernize the rule language and format. The substantive changes include:

- Clarifying that notices of appeal must be served (rule 8.821(a)(1)). This is modeled on rule 8.100, which addresses notice of appeal in unlimited civil cases;
- Providing that failure to serve the notice of appeal does not prevent its filing or affect its validity (rule 8.821(a)(3)). This is modeled on rule 8.100(a)(3);
- Specifying the amount of the fee for filing a notice of appeal in the rule (rule 8.821(b)). This is modeled on rule 8.100(b);
- Establishing new procedures providing for a clerk's notice and an opportunity to correct when an appellant fails to pay the fee for filing a notice of appeal (rule 8.821(c)). This is modeled on rule 8.100(c);
- Specifically stating that if a notice of appeal is filed late, the appellate division must dismiss the appeal (rule 8.822(d)). This is modeled on rule 8.104(b), which addresses late notices of appeal in unlimited civil cases;
- Clarifying that the rule on extending the time to appeal operates only to increase the time, not shorten it (rule 8.823(a)). This is modeled on rule 8.108(a), which addresses extending the time to file a notice of appeal in unlimited civil cases;
- Lengthening the amount of additional time a party has to file a notice of appeal after a motion for a new trial from 15 days after a denial of the motion or 90 days after entry of judgment to 30 and 180 days, respectively (rule 8.823(b)). This is modeled on rule 8.108(b)(1);
- Establishing the time to file a notice of appeal if a party serves an acceptance of an additur or a remittitur of damages conditionally ordered by the trial court (rule 8.823(b)(2)). This is modeled on rule 8.108(b)(2);
- Lengthening the amount of additional time a party has to file a notice of appeal after a motion to vacate judgment from 15 days after service or mailing of notice of entry of an order denying the motion, 75 days after notice of intention to move or a motion is filed, or 90 days after entry of judgment, to 30, 90, and 180 days, respectively (rule 8.823(c)). This is modeled on rule 8.108(c);
- Establishing the time to file a notice of appeal after a motion for judgment notwithstanding the verdict or a motion to reconsider an appealable order (rule 8.823(d) and (e)). These provisions are modeled on rule 8.108(d) and (e);
- Lengthening the amount of additional time a party has to file a notice of appeal after a cross-appeal is filed from 10 to 20 days after notification of the first appeal (rule 8.823(f)). This is modeled on rule 8.108(f);
- Expanding and clarifying what must be filed with a petition for a writ of supersedeas if the record has not yet been filed in the reviewing court (rule

8.824(a)(4)). This is modeled on rule 8.112(a), which addresses petitions for writs of supersedeas in the Court of Appeal;
- Providing for opposition to a petition for writ of supersedeas (rule 8.824(b)). This is modeled on rule 8.112(b);
- Providing that a request for a stay that is filed separately from a petition for a writ of supersedeas must be served on the respondent (rule 8.824(c)). This is modeled on rule 8.112(c);
- Requiring parties to provide the court with a notice of settlement (rule 8.825(a)). This is modeled on rule 8.244(a), which addresses a notice of settlement in the Court of Appeal; and
- Requiring that all abandonments be served and filed in the appellate division and that the clerk notify the trial court (rule 8.825(b)). This is different from both the current appellate division rules and the Court of Appeal rules, which require abandonments to be filed in the trial court if the record has not yet been filed in the reviewing court. The committee believes that it will be easier for litigants to follow a rule that requires all abandonments to be filed in the appellate division. Since the appellate division is within the same superior court and the clerk for the appellate division is often the same as the clerk for the trial court, the committee also believes that this procedure makes more sense in the appellate division context.

There were no major substantive comments concerning these provisions.

In article 2 of chapter 2, in addition to those rules regarding the record that are discussed above in the section on the main substantive changes recommended, there are rules concerning agreed statements (rule 8.836), the form of the record (rule 8.838), the record in multiple appeals (rule 8.839), filing the record (rule 8.840), augmenting and correcting the record (rule 8.841), and failure to procure the record (rule 8.842). All of these topics are covered in the current appellate division rules, but the committee is recommending that these rules be revised and restructured so that they are similar to the Court of Appeal rules that address the same subjects. The substantive changes made as part of this revision include:
- Setting a 30-day time frame for the clerk to provide the appellant with an estimate of the cost of a clerk's transcript (the current rules do not establish any time frame) (rule 8.832(c)). This time frame is modeled on rule 8.122(c), which addresses clerk's transcripts in unlimited civil cases;
- Increasing the time frame for the clerk to prepare the clerk's transcript from 10 to 30 days after the appellant deposits the estimated cost of the transcript (rule 8.832(d)). This time frame is modeled on rule 8.122(d);
- Clarifying that an agreed statement can be used not only to replace the reporter's transcript but also to replace the clerk's transcript if the required

documents are attached to the statement (rule 8.836). This is modeled on rule 8.134(a), which addresses agreed statements in unlimited civil cases;
- Adding a requirement that the cover of each volume of a reporter's transcript state the dates of the proceedings included in that volume (rule 8.838(c)). This is modeled on rule 8.144(c), which addresses the format of the record on appeal in the Court of Appeal;
- Requiring that a party attach copies of any materials it wants added to the record to its motion to augment the record (rule 8.841(a)(2) and (3)). This is modeled on rule 8.155(a), which addresses augmenting the record in the Court of Appeal;
- Adding new provisions addressing omissions from the record and notice to other parties of matters relating to augmentation or correction of the record (rule 8.841(c) and (d)). This is modeled on rule 8.155(b); and
- Establishing a new procedure to provide parties with notice of and an opportunity to correct any failure to do an act required to procure the record (rule 8.842). This is modeled on rule 8.140, which addresses failure to procure the record in unlimited civil cases.

The committee is also recommending retaining several provisions in the current appellate division rule relating to reporter's transcripts in civil appeals rather than making the rule exactly the same as the Court of Appeal rule. Under current rule 8.753, within 10 days after the appellant designates a reporter's transcript, the reporter must provide the clerk or the appellant with an estimate of the cost of the transcript. The appellant must then deposit the estimated amount with the clerk within 10 days after the estimate is provided and the reporter must prepare the transcript within 20 days after the deposit is made. In contrast, in unlimited civil cases in the Court of Appeal, the appellant must make a deposit for the clerk's transcript at the time the designation is filed and the court reporter must prepare the transcript within 30 days after the deposit is made. This deposit is based on either an estimate obtained from the court reporter or a calculation based on the number of days of proceedings to be transcribed. The committee believes that the current appellate division practice in this area works well and therefore is recommending that these procedures be retained.

Chapter 3. Appeals and Records in Misdemeanor Cases
This chapter is divided into two articles: article 1 addresses taking appeals in misdemeanor cases and article 2 addresses the record on appeal in misdemeanor cases.

In addition to the rule relating to the time for filing the notice of appeal (rule 8.853), which is discussed above, article 1 in this chapter contains rules concerning appointment of appellate counsel (rule 8.851), the notice of appeal

(rule 8.852), and abandoning the appeal (rule 8.855). All of these topics are covered in the current appellate division rules, but the committee is recommending that these rules be revised and restructured so that they are similar to the Court of Appeal rules that address the same subjects. The substantive changes made as part of this revision include:

- In the rule concerning appointment of counsel, providing that the defendant can submit a declaration of indigency in the form required by the Judicial Council, rather than establishing indigency "as in the Court of Appeal." This change was made in response to public comments. An advisory committee comment identifying the applicable Judicial Council form has also been added (rule 8.851);
- Requiring that the clerk's notification of an appeal show the date it was mailed and also providing that a copy of the notice of appeal can be used for the clerk's notification if it includes all of the required information (rule 8.852(b)). These provisions are modeled on rule 8.304(c)), which addresses the clerk's notification of an appeal in a felony case;
- Requiring that the clerk's notification of an appeal show whether the defendant was represented by appointed counsel (rule 8.852(b)). This is a new provision recommended by the committee to identify whether the defendant is indigent for purposes of appointment of counsel and payment for the preparation of a reporter's transcript or other form of the record of the oral proceedings;
- Adding a provision extending the time to file a notice of appeal when there is a cross-appeal (rule 8.853(b)). This provision is modeled on rule 8.308(b), relating to the time for filing a notice of appeal in a felony case;
- Adding a provision that notices of appeal received from custodial institutions are to be treated as timely filed if timely mailed from the custodial institution (rule 8.853(e)). This provision is modeled on rule 8.308(e); and
- Requiring that all abandonments be filed in the appellate division and that the clerk notify the trial court (rule 8.855(b)). As with the proposed new rule on abandonments in limited civil cases, this is different from both the current appellate division rules and the Court of Appeal rules, which require abandonments to be filed in the trial court if the record has not yet been filed in the reviewing court. The committee believed that it would be easier for litigants to follow a rule that required all abandonments to be filed in the appellate division. Since the appellate division is within the same superior court and the clerk for the appellate division is often the same as the clerk for the trial court, the committee also believed that this procedure made more sense in the appellate division context.

In addition to revising these existing appellate division rules, the committee is recommending adoption of a new rule regarding stays of execution and release on appeal (rule 8.854). This rule, which is modeled on rule 8.312 of the rules for

felony appeals in the Court of Appeal, provides that a party may apply to the appellate division for a stay of execution after conviction or for bail, to reduce bail, or for release on other conditions. The rule requires that the defendant's application show that relief was sought in the trial court and that the court unjustifiably denied that relief. One commentator expressed concern that, based on this rule, all defendants will apply for this relief, creating a lot of work for the appellate division. The commentator also questioned whether the appellate division should be deciding probation, bail, or release issues. Because this proposed rule is not intended to create any new authority but only to implement the appellate division's existing authority to consider requests for such stays, the committee does not anticipate that it will stimulate a large number of new requests for stays. Penal Code section 1467 specifically recognizes that the appellate division has authority to stay execution of judgment on appeal.[2] This rule is intended only to establish the procedure for applying for such a stay in the appellate division.

Another commentator submitted comprehensive comments concerning the criteria for appointment of appellate counsel. The committee is not recommending any changes to those criteria at this time but plans to consider whether to propose changes in those criteria during the next committee year.

In addition to those rules regarding the record on appeal discussed above, article 2 of chapter 3 contains a rule concerning augmenting or correcting the record in the appellate division (rule 8.873). This topic is covered in the current appellate division rules, but the committee is recommending that this rule be revised and restructured to be similar to the Court of Appeal rule that addresses this subject. The substantive changes to rule 8.873 include:

- Requiring the automatic augmentation of the record, without any need for a motion, with any order made by the trial court after the record is prepared. This provision is modeled on rule 8.340(a), which addresses augmenting and correcting the record in felony appeals in the Court of Appeal;
- Requiring that when the clerk or reporter learns that matters that are supposed to be in the record were omitted, they are to be prepared without the need for a court order. This provision is modeled on rule 8.340(b); and
- Providing that, on motion of a party or the court's own motion, the appellate division can order the record augmented or corrected as provided in the rules for civil appeals. This provision is modeled on rule 8.340(c).

The committee is also recommending the adoption of several new rules.

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[2] Penal Code section 1467 provides, in relevant part: "An appeal from a judgment of conviction [in a misdemeanor or infraction case] does not stay the execution of the judgment in any case unless the trial *or a reviewing court* shall so order." (Emphasis added.)

Proposed new rule 8.870, which is modeled on rules 8.224 and 8.320(e) of the Court of Appeal rules, provides that at the time of briefing a party can request that original exhibits be transmitted to the appellate division. As in the Court of Appeal rules, this new appellate division rule would provide that this is the only way for exhibits in misdemeanor cases to be transmitted to the reviewing court; exhibits would not be included in the clerk's transcript in these cases. In the proposal that was circulated for public comment, this rule would have required the parties to identify the exhibits they wanted to be transmitted to the appellate division much earlier—around the time the appellant made his or her election regarding the record of the oral proceedings. The committee received several comments indicating that this was too early to identify needed exhibits and suggesting that exhibits be identified later. In response to these comments, the committee modified the proposal to provide that the exhibits be identified at the time of briefing, as is the case in the Court of Appeal.

Proposed new rule 8.871, which is modeled on rule 8.332 of the Court of Appeal rules, requires that juror-identifying information in clerk's transcripts, reporter's transcripts, or other documents be replaced with an identifying number. This rule implements the requirements of Code of Civil Procedure section 237.

Proposed new rule 8.872 establishes procedures for sending and filing the record in the appellate division. This rule is generally modeled on rules 8.150 and 8.336(f), which address sending and filing the record in Court of Appeal matters. However, proposed rule 8.872 contains new provisions addressing when the record is considered complete that are not in the equivalent Court of Appeal rule.

There were no major substantive comments concerning proposed rules 8.871, 8.872, or 8.873.

Chapter 4. Briefs, Hearing, and Decision in Limited Civil and Misdemeanor Appeals

In the proposal circulated for public comment, this was chapter 5 and it addressed briefs, hearing, and decision in all appellate division appeals, including appeals in infraction cases. Following the public comment process, the committee revised its proposal to make several changes in the rules relating to infraction appeals, including changing the length of briefs and the time for oral argument. With these changes, the committee concluded that it would be clearer to separate the rules on briefs, hearing, and decision in infractions from the rules relating to limited civil and misdemeanor cases. The committee therefore revised its proposal to create a single chapter—chapter 5— addressing all aspects of appeals in infraction cases. This chapter was renumbered as chapter 4.

In addition to those rules regarding briefs (rule 8.882) and oral argument (rule 8.885) which are discussed above in the section on the main substantive changes being recommended, this chapter contains rules concerning notice of briefing schedule (rule 8.881), amicus curiae briefs (rule 8.882(d)), the contents and form of briefs (rule 8.883), decisions (rule 8.887), finality and modification of decisions (rule 8.888), rehearing (rule 8.889), remittitur (rule 8.890), and costs and sanctions in civil appeals (rule 8.891). All of these topics are covered in the current appellate division rules, but these proposed rules have been revised and restructured so that they are now generally similar to the Court of Appeal rules that address these same subjects. A number of substantive changes were made as part of this revision, including:

- A new provision has been added specifying the time within which an application to file an amicus curiae brief must be served and filed (rule 8.882(d)). New provisions specifying the content of such an application and specifically requiring that the proposed brief must accompany the application have also been added. These provisions are modeled on rule 8.200(c) relating to amicus briefs in the Court of Appeal;
- The current provisions relating to service of briefs have been replaced with a cross-reference to rule 8.25, which generally addresses service of documents in appellate proceedings (rule 8.882(e)(1));
- The current provision relating to service of briefs in unfair competition cases has been replaced with a cross-reference to rule 8.29, which generally addresses service of documents on a nonparty public officer or agency in appellate proceedings (rule 8.882(e)(4));
- New provisions describing what must be contained in an appellant's opening brief have been added (rule 8.883(a)(2)). These provisions are modeled on rule 8.204(a)(2) relating to briefs in the Court of Appeal;
- The current cross-reference to the Court of Appeal rule concerning the form of briefs has been replaced by the actual provisions from that cross-referenced rule (rule 8.883(c)). This is intended to make it easier for rule users to find and comply with these format requirements;
- As in rule 8.204(e) relating to briefs in the Court of Appeal, the proposed new rules provide that the clerk "may" decline to file a noncomplying brief (rule 8.883(d)(1)). Under the current appellate division rule, the clerk "shall not file" such a brief except on order of the presiding judge. The proposed new rules also require that if the clerk declines to file a brief, that brief must be marked "received but not filed" and returned to the appellant;
- As in rule 8.204(e), the actions the presiding judge may take when a noncomplying brief is filed are listed in the proposed new appellate division rule (rule 8.883(d)(2));

- A new provision specifically stating that parties may waive oral argument has been added; there is no equivalent provision in the Court of Appeal rules (rule 8.885(c));
- A new provision regarding the conduct of oral argument has been added (rule 8.885(d)). This provision is modeled on rule 8.256, which addresses oral argument in the Court of Appeal;
- A new provision has been added requiring appellate division opinions to identify the participating judges (rule 8.887(a)). This provision is modeled on rule 8.264(a)(2), which addresses decisions in the Court of Appeal;
- A new provision has been added requiring the clerk to file all opinions or orders of the appellate division and to send copies to the parties showing the filing date (rule 8.887(b)). This provision is modeled on rule 8.264(a)(1);
- The basic period of finality of appellate division decisions has been changed from 15 days after judgment is pronounced to 30 days after the decision is filed (rule 8.888(a)(1)). The new provision is modeled on rule 8.264(b)(1), which addresses the finality of decisions in the Court of Appeal;
- The provision in current rule 8.708(a)(2), which extends the time for finality if a petition for rehearing is filed, would be deleted. Because the basic finality period would be extended from 15 to 30 days, as in the Court of Appeal, a petition for rehearing could be filed before the appellate division decision becomes final, and thus the extension provided under the current rule is not necessary;
- A new provision has been added providing that when a decision is certified for publication after it is filed but before it is final, the finality period runs from the date the order of publication is filed (rule 8.888(a)(2)). This provision is modeled on rule 8.264(b)(5);
- A new provision has been added identifying appellate division decisions that are final when filed (rule 8.888(a)(3)). This provision is modeled on rule 8.264(b)(2);
- The provision regarding the court's authority to order rehearing clarifies that the appellate division can order rehearing only of matters that are not final immediately and that, if finality falls on a day the clerk's office is closed, a petition for rehearing can be filed on the next day that the clerk's office is open (rule 8.889(a)). These provisions are modeled on rule 8.268(a), which addresses rehearing in the Court of Appeal;
- New provisions setting the time for filing a petition for rehearing after a publication order or a consent to a remittitur or additur of damages have been added (rule 8.889(b)(1)). These provisions are modeled on rule 8.268(b)(1);
- The provision relating to answers to petitions for rehearing has been modified to provide that an answer must not be filed unless requested by the appellate division (rule 8.889(b)(2)). This provision is modeled on rule 8.268(b)(2);

- A new provision has been added specifically providing that before a decision is final, the presiding judge may relieve a party from failure to timely file a petition for rehearing or an answer to such a petition (rule 8.889(b)(4)). This provision is modeled on rule 8.268(b)(4);
- A new provision has been added providing that if the appellate division does not rule on a petition for rehearing before the decision is final, the petition is deemed denied (rule 8.889(c)). This provision is modeled on rule 8.268(c);
- A new provision has been added providing that an order granting rehearing vacates the decision in the case (rule 8.889(d)). This provision is modeled on rule 8.268(d);
- A new provision has been added specifically stating that the appellate division must issue a remittitur after a decision in an appeal (rule 8.890(a)). This provision is modeled on rule 8.272(a)(1), which addresses remittitur in the Court of Appeal;
- The provision concerning the clerk's duties with regard to remittitur has been revised to clarify the procedures when an appellate division decision has and has not been transferred to the Court of Appeal (rule 8.890(b)). This provision is modeled on rule 8.272(b). However, the proposed new rule would retain provisions from the current appellate division rules addressing return of documents to the trial court;
- A new provision has been added specifically stating an order recalling a remittitur issued after a decision by opinion does not supersede the opinion or affect its publication status (rule 8.890(c)(3)). This provision is modeled on rule 8.272(c)(3). However, this provision reflects the law on the effect of recall of the remittitur and is not intended to be a substantive change;
- A new provision has been added requiring the clerk to send the parties notice of issuance of the remittitur (rule 8.890(d)). This provision is modeled on rule 8.272(d)(1);
- The time period for claiming costs has been changed so that it runs from the date the clerk sends notice of issuance of the remittitur, rather than from the date the remittitur is filed (rule 8.891(c)). This provision is modeled on rule 8.278(c), which addresses costs on appeal in the Court of Appeal;
- Filing fees, costs to print or reproduce briefs or other papers, and costs of surety bonds have been added to the lists of recoverable costs on appeal (rule 8.891(d)(1)). This provision is modeled on rule 8.278(d);
- A new provision has been added stating that unless the court orders otherwise, an award of costs neither includes attorney's fees nor precludes a party for seeking attorney's fees (rule 8.891(d)(2)). This provision is modeled on rule 8.278(d)(2); and
- The language of the rule regarding sanctions has been modified to clarify that the appellate division can impose sanctions on its own motion (rule 8.891(e)).

Two commentators expressed concern about the proposal to provide that an answer to a petition for rehearing is not to be filed unless the appellate division requests an answer (see proposed rule 8.889(b)(2)). As noted above, this provision is modeled on rule 8.268(b)(2), which addresses answers to petitions for rehearing in the Court of Appeal. This rule was modified by the Judicial Council several years ago to provide that answers to petitions for rehearing are not to be filed unless requested by the Court of Appeal. This provision was adopted to address concerns about litigants and counsel expending time and resources preparing answers to petitions for rehearing when these answers were not necessary for the court to make its decision on the petition. Under this procedure, litigants need spend these resources only when the court is considering granting the petition for rehearing. The committee believes it is appropriate for the appellate division and Court of Appeal rules to address this issue in the same manner.

Some provisions from the current appellate division rules have been retained in the proposed new rules, rather than being changed to be similar to the Court of Appeal rules. These include:

- Rule 8.882 retains the provision from current appellate division rule 8.706(e) that only the original brief need be filed in the appellate division. The committee is recommending adding language providing that the appellate division may provide otherwise by local rule or order;
- Rule 8.887 retains the provision from current appellate division rule 8.707 that provides that appellate division judges are not required to prepare written opinions but may do so when they deem it advisable or in the public interest. This rule also retains the current provisions relating to appellate division opinions that are certified for publication; and
- Rule 8.891 retains current rule 8.764's 30-day period for claiming costs, rather than increasing this period to 40 days as in the Court of Appeal.

Two commentators suggested modifications to the rule that appellate division judges are not required to prepare written opinions. One suggested that opinions should be prepared on the request of the parties and the other suggested that there should be presumption in favor of preparing opinions. Modifying this rule would involve important policy questions that the committee did not discuss and on which public comment was not sought. The committee is therefore not recommending any change at this time but will consider these commentators' suggestions next year.

In addition to revising the existing appellate division rules, the committee is recommending adoption of two new rules. Proposed new rule 8.884, which is modeled on rule 8.216 relating to cross-appeals in the Court of Appeal, addresses the sequencing and contents of briefs when there is a cross-appeal. Proposed rule

8.886, which is modeled on rule 8.256, addresses when a cause is considered submitted and how a court can vacate submission. There were no substantive comments on these new rules.

Chapter 5. Appeals in Infraction Cases
This chapter contains three articles: article 1 addresses taking appeals in infraction cases; article 2 addresses the record on appeal in infraction cases; and article 3 addresses briefs, hearing, and decision in infraction appeals. In the proposal that was circulated for public comment, chapter 4 addressed taking appeals and the record on appeal in infraction cases. As noted above, following the public comment process, the committee revised its proposal to make several changes in the rules relating to infraction appeals, including changing the length of briefs and the time for oral argument. With these changes, the committee concluded that it would be clearer to separate the rules on briefs, hearing, and decision in infractions from the rules relating to limited civil and misdemeanor cases. The committee therefore revised its proposal to create this chapter addressing all aspects of appeals in infraction cases. The committee believes that this will make the rules concerning infraction cases easier to find and understand.

In addition to the rules relating to the time for filing the notice of appeal and the record on appeal, which are discussed in the section above on the main substantive changes being recommended, articles 1 and 2 in this chapter contain rules concerning the notice of appeal (rule 8.901), stay of execution on appeal (rule 8.903), abandoning the appeal (rule 8.904), a limited normal record in certain appeals (rule 8.920), exhibits (rule 8.921), sending and filing the record in the appellate division (rule 8.922), and augmenting or correcting the record in the appellate division (rule 8.923). These rules include the same substantive changes discussed above in connection with the equivalent rules in chapter 3. In response to public comments, however, the rules in chapter 5 relating to the record of the oral proceedings appear in a different order than they do in chapter 3. As circulated for public comment, the rules concerning appeals in infraction cases listed reporter's transcripts as the first option for the record of the oral proceedings and statements on appeal as the last option. Several commentators noted that statements on appeal are the typical record used in infraction proceedings, rather than reporter's transcripts. One commentator suggested that listing reporter's transcripts as the first option in infraction proceedings would be misleading. Based on these comments, the committee revised its proposal to put statements on appeal as the first option in the infraction rules and reporter's transcripts as the last option. (The committee made this same change in the forms for infraction appeals.)

Article 3 does not contain a separate, full set of rules on briefs, oral argument, and decisions. Instead, rule 8.925 provides that the rules in chapter 4 generally apply to infraction appeals unless otherwise provided. Article 3 contains specific rules on the length of briefs and oral argument in infraction cases that are discussed in the section of this report on the main substantive changes being recommended. In addition, this article contains two rules—a rule concerning notice of the briefing schedule (rule 8.926) and a rule on the contents and form of briefs (rule 8.928). The rules in this article include all of the same substantive changes that were discussed above in connection with the rules on briefs and oral argument in chapter 4.

Chapter 6. Writ Proceedings

As noted above, there are currently no rules addressing writ proceedings in the appellate division. All of the rules in this chapter are therefore new. These proposed new rules are generally modeled on rule 8.490, which governs writ proceedings in the Supreme Court and Court of Appeal. Rule 8.490 is currently very long and unwieldy, however. To make it easier to find relevant provisions in these proposed appellate division writ rules, some of the topics that are covered in subdivisions within rule 8.490 have been broken out into separate rules: the petition (rules 8.931 and 8.932), opposition (rule 8.933), notice to the trial court (rule 8.934), finality and remittitur (rule 8.935), and costs (rule 8.936).[3]

As noted above, unlike in the Court of Appeal, these proposed rules would require self-represented petitioners to use the proposed new *Petition for Writ* (form APP-151) to prepare a petition (see proposed rule 8.931(a)). The public comments on this provision were discussed above in the section on the main substantive changes being recommended. There were no other major substantive comments concerning these proposed rules.

Title 10, Division 5, Chapter 2

This chapter contains three rules relating to administration of the appellate divisions.

Rule 10.1100 addresses assignments to the appellate division. This rule is almost identical to current appellate division rule 8.701. The committee is recommending that an advisory committee comment be added to provide information about the basis for appellate division appointments. Article VI, section 4 of the California Constitution provides in relevant part: “In each superior court there is an appellate division. The Chief Justice shall assign judges to the appellate division for specified terms pursuant to rules, not inconsistent with statute, adopted by the

[3] The committee plans to develop a proposal to similarly break rule 8.490 into a series of shorter rules.

Judicial Council to promote the independence of the appellate division." One commentator suggested that the Judicial Council should consider whether this rule should specifically address whether a judge may sit in the appellate division in the court to which that judge is assigned. The committee is not making any recommendation concerning this issue at this time but will consider the issue raised by this comment during the upcoming committee year.

Rule 10.1104 addresses the powers and responsibilities of the presiding judge. Rule 8.703 currently addresses this subject. This rule has been revised and restructured so that it is similar to rule 10.1004, which addresses the designation and responsibilities of administrative presiding justices in the Court of Appeal. New language, modeled on 10.1004(a), has been added regarding the appellate division presiding judge designating an acting presiding judge. In addition, an advisory committee comment has added to provide information about the basis for the appointment of the appellate division presiding judge. The substance is taken from Code of Civil Procedure section 77(a), which provides in relevant part: "The Chief Justice shall designate one of the judges of each appellate division as the presiding judge of the division."

Rule 10.1108 addresses the scheduling of sessions in the appellate division. This rule was discussed above in the section on the main substantive changes being recommended.

The Proposed New Forms

This section describes the new forms recommended by the committee. For discussion purposes, the forms have been grouped by their function; for example, the proposed information sheets for appeals in limited civil, misdemeanor, and infraction cases and for writ proceedings are discussed together.

The proposed new appellate division forms are intended to be easy to understand and use, particularly for self-represented litigants. The forms are in the plain language format that has been used for other forms that are often used by self-represented litigants, such as small claims and domestic violence forms. While this proposal was out for public comment, the draft forms were reviewed by a plain language editor. This editor provided many helpful suggestions for making the forms easier to read and understand. In addition, staff at the Superior Courts of San Bernardino and San Francisco Counties and JusticeCorps volunteers at the Superior Court of Los Angeles County also reviewed the forms and provided helpful input. The forms were substantially revised based on this input.

One commentator objected to the use of the plain language format for these forms. This commentator noted that plain language forms are longer than conventional

Judicial Council forms, suggested that this format makes it more difficult for clerks to find critical information, and stated that these forms are harder for self-represented litigants to use than conventional council forms. The committee believes that, for these appellate division forms, the plain language will be easier for litigants to understand and use. These forms are laid out so that it is clear what information form users need to provide, and the directions to litigants are in simple language. While these forms are longer than similar forms in conventional format, the committee believes that the critical information in these forms is easily located.

Information sheets
The committee is recommending adoption of four new Judicial Council forms to provide basic information to litigants about appeals and writ proceedings in the superior court appellate divisions:

- *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO);
- *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO);
- *Information on Appeal Procedures for Infractions* (form CR-141-INFO); and
- *Information on Writ Proceedings in Limited Civil, Misdemeanor, and Infraction Cases* (form APP-150-INFO).

These information sheets are intended to help litigants, particularly self-represented litigants, understand what appeals and writ proceedings are and are not and to understand the main steps in these review processes. Proposed form CR-141-INFO would replace current form TR-150, *Instructions on Appeal Procedures for Infractions*, which the committee recommends be revoked.

The general comments received on these forms indicate that commentators found them helpful and informative. Commentators also made many suggestions for minor changes or additions to these forms. As reflected in the comment chart, the committee incorporated almost all of these suggested changes into the recommended information sheets. In addition, the plain language editors and reviewers from the courts suggested many nonsubstantive changes designed to make these forms easier to read and understand, including simplifying some of the language used, providing additional definitions of legal terms, breaking up longer sentences and paragraphs, and adding more headings. Again, the committee has incorporated almost all of these suggested changes into the information sheets it is recommending for adoption.

There were a few changes suggested by reviewers that the committee is not recommending. On the information sheets concerning appeals—APP-101-INFO, CR-131-INFO, and CR-141-INFO—the plain language editors suggested deleting the provisions indicating that an appeal is not a new trial and discussing what the

reviewing court will not consider. The committee believes that it is very important to include this information in these information sheets. Based on input from judicial officers and court personnel, the committee understands that litigants often mistakenly believe that the reviewing court will hear new evidence or reconsider the credibility of witnesses. These types of misunderstandings about the appellate process can lead to frustrations for both the litigants and the court and can contribute to diminishing public trust and confidence in the judicial system. The committee believes that including this information in these forms will help litigants better understand what to realistically expect and not expect from the appellate process and thereby reduce frustrations and improve public trust and confidence in the judicial system.

Several reviewers also suggested that the information sheets include a glossary of legal terms. The committee agreed in concept that the forms should include definitions of legal terms that might not be familiar to litigants. However, instead of creating a glossary, the committee revised the forms to include definitions of legal terms at the point those terms are used in the text. The committee believes that this approach will be easier for litigants than having to refer to a glossary for definitions.

Even with all of the changes made by the committee, these information sheets may still be difficult for some users to understand. The procedures these forms are describing, particularly the appellate record preparation and writ procedures, are complex, and the language used in the forms is still at a higher reading level than would be ideal for some litigants. The committee believes, however, that these information sheets will be very helpful to the majority of appellate division litigants and recommends that they be adopted by the council.

Notice of appeal

The committee recommends adoption of three new notice of appeal forms:

- *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (form APP-102);
- *Notice of Appeal (Misdemeanor)* (form CR-132); and
- *Notice of Appeal and Record of Oral Proceedings (Infraction)* (form CR-142).

The proposed new *Notice of Appeal (Misdemeanor*) (form CR-132) is designed to replace current—*Notice of Appeal—Misdemeanor (Defendant*) (form CR-130), and the proposed *Notice of Appeal and Record of Oral Proceedings (Infraction)* (form CR-142*)* is designed to replace the current *Notice of Appeal (Infraction)* (form TR-155). The committee recommends that CR-130 and TR-155 be revoked.

These forms are designed to elicit, in an easy-to-follow format, all of the information that needs to be included in a notice of appeal. They include check-off

boxes that appellants can use to indicate the judgment or order being appealed and reminders of the deadline for filing the notice of appeal and record designation.

Appointment of counsel
The committee recommends adoption of a new form for indigent defendants or their trial counsel to use to request appointment of counsel in a misdemeanor appeal: *Request for Court-Appointed Lawyer in Misdemeanor Appeal* (form CR-133). This form is designed to elicit the information a court needs to determine whether to appoint appellate counsel for a defendant, including information about whether the defendant is indigent and about the sentence imposed.

Designation of the record
The committee recommends adoption of three new forms designed to assist appellants in designating the record on appeal:

- *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103);
- *Notice Regarding Record of Oral Proceedings (Misdemeanor)* (form CR-134); and
- *Notice of Appeal and Record of Oral Proceedings (Infraction)* (form CR-142).

These forms are designed to help litigants identify the form of the record that they want to use, designate any documents or proceedings in civil cases that they want included in the record, and inform the court about whether they intend to pay for the record or are asking for a free record based on indigency. *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) is similar to the existing form for designating the record in unlimited civil cases, *Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003). It contains space for appellants to identify the documents that they want to be included in the clerk's transcript or to indicate that they plan to use an agreed statement in lieu of a clerk's transcript. All three forms include check-off boxes that appellants can use to indicate whether they want to proceed with or without a record of the oral proceedings and what form of the record they would like to use. The forms also includes information about the implications of proceeding with or without a record of the oral proceedings to help litigants in making an informed choice.

Notice of Appeal and Record of Oral Proceedings (Infraction) (form CR-142), the form for infraction appeals, differs from *Notice Regarding Record of Oral Proceedings (Misdemeanor)* (form CR-134), the form for misdemeanor appeals, in several ways. First, it combines the notice of appeal with the form for record designation. This reflects the fact that, under the proposed new appellate division rules, appellants in infraction appeals must notify the court about their choices concerning the record of the oral proceedings at the time they file the notice of

appeal, while in misdemeanor appeals the rules give appellants time to request appointed counsel before their notice concerning the record of the oral proceedings is due. Second, the available options for the record of the oral proceedings are listed in a different order in the infraction and misdemeanor forms. As circulated for public comment, both forms listed reporter's transcripts as the first record option and statements on appeal as the last record option. As noted above, in response to public comments noting that statements on appeal are the typical record used in infraction proceedings, the committee revised proposed form
CR-142 for infraction appeals to put statements on appeal as the first record option and reporter's transcripts as the last option.

Statement on appeal
The committee recommends adoption of three new forms designed to assist appellants in preparing proposed statements on appeal:

- *Proposed Statement on Appeal (Limited Civil Case)* (form APP-104);
- *Proposed Statement on Appeal (Misdemeanor* (form CR-135); and
- *Proposed Statement on Appeal (Infraction)* (form CR-143).

Form CR-143 is designed to replace the current *Proposed Statement on Appeal (Infraction)* (form TR-160), which the committee recommends be revoked. As noted above in the section on the main substantive changes being recommended, under the proposed new rules self-represented appellants would be required to use these new forms to prepare proposed statements on appeal.

These forms are designed to elicit, in an easy-to-follow format, all of the information that needs to be included in a proposed statement on appeal, including a summary of the trial court proceedings and a statement of the issues the appellant wants to raise on appeal. These forms include spaces that appellants can use to describe any motions made and the court's order on each motion, the testimony of witnesses at any trial, and the court's findings and decision. They also include space for appellants to describe the error or errors that they believe were made in the trial court proceedings. This portion of the forms includes information about the kinds of errors that the appellate division can consider and the types of things that the appellate division cannot consider. As in the information sheets, the committee believes that including this information in these forms will help litigants better understand what to realistically expect and not expect from the appellate process and thereby reduce frustrations about the appellate process.

Orders concerning statements on appeal
The committee recommends adoption of three new forms designed to assist trial court judicial officers in preparing orders following their review of proposed statements on appeal:

- *Order Concerning Appellant's Proposed Statement on Appeal (Limited Civil Case)* (form APP-105);
- *Order Concerning Appellant's Proposed Statement on Appeal (Misdemeanor* (form CR-136); and
- *Order Concerning Appellant's Proposed Statement on Appeal (Infraction)* (form CR-144).

These optional order forms include check-off boxes that judicial officers can used to indicate whether the appellant's proposed statement is acceptable as drafted, if the proposed statement needs to be corrected, or if an available official electronic recording or transcript will be used in lieu of correcting the proposed statement.

When the proposal was circulated for public comment, the form for the judicial officer's order following review of a proposed statement on appeal was part of the proposed statement on appeal forms. The committee received two comments, including one from the Presiding Judges & Court Executive Officers Joint Rules Working Group, suggesting that this order should be a separate form. Based on these comments, the committee revised its proposal to create separate order forms.

Abandonment of appeals
The committee recommends adoption of three new forms that appellants can use to abandon their appeals:

- *Abandonment of Appeal (Limited Civil Case)* (form APP-105);
- *Abandonment of Appeal (Misdemeanor)* (form CR-136); and
- *Abandonment of Appeal (Infraction)* (form CR-144).

Form CR-144 is designed to replace current form, *Abandonment of Appeal (Infraction)* (form TR-165), which the committee recommends be revoked.

Petition for Extraordinary Writ
The committee recommends adoption of a new form designed to assist petitioners in preparing a petition for an extraordinary writ in the appellate division: *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151). As discussed above, under the new rules recommended by the committee, self-represented litigants would be required to use this new form to prepare a petition for an extraordinary writ in the appellate division.

This form is designed to elicit, in an easy-to-follow format, all of the information that needs to be included in a petition for an extraordinary writ, including a description of what trial court order or action is being challenged and the basis for the challenge, an explanation of why the petitioner has no adequate remedy at law, a description of the remedy the petitioner is seeking, and a verification. The form also prompts the petitioner about the supporting documents that must be filed with the petition and provides space for an explanation if these documents are not attached.

Alternative Actions Considered

The committee did not consider alternatives to the overall project of reviewing and revising the appellate division rules because it believed these rules needed updating. As it reviewed each rule, however, the committee considered whether it should mirror the equivalent Court of Appeal rule, should retain provisions from the current appellate division rules, or should be revised in other ways. For example, the committee considered whether the time for filing a notice of appeal should be increased to 60 days to make it equivalent to the period in Court of Appeal matters or should remain at the 30 days provided in the current appellate division rules. The committee ultimately decided to recommend increasing the period in limited civil and misdemeanor cases but to keep it unchanged in infraction cases.

In terms of organization of the rules, the committee considered whether appeals in all criminal cases should be addressed in a single set of rules, as they are in the current appellate division rules, or whether misdemeanor and infraction cases should be addressed separately. The committee ultimately decided it would be easier for rule users to find the applicable rules and the rules would be clearer if misdemeanors and infractions were addressed separately.

In the record preparation area, the committee considered recommending that the appellant be able to ask the trial court judge to prepare the initial draft of a settled statement but ultimately decided against this approach because only the appellant knows what issues he or she intends to raise on appeal and therefore what portion of the oral proceedings need to be summarized.

Implementation Requirements and Costs

The adoption of new rules and forms that more clearly lay out the procedures in the appellate division should make these procedures easier for litigants, particularly self-represented litigants, to understand and use. The new rules and forms should reduce burdens on litigants, the trial courts, and the appellate divisions associated with mistakes and requests for relief from default.

The new record preparation rules recommended by the committee may have financial implications for the courts. Because the proposed new rules clarify the availability of transcripts (either reporter's transcripts or transcripts prepared from official electronic recordings) as a possible option for the record of the oral proceedings, these rules may increase requests for such transcripts, particularly requests from indigent criminal defendants for free transcripts. If a court does not adopt local rules opting out of this procedure, the proposed new rules would also permit judges to order transcripts (where available) in lieu of reviewing and correcting a proposed statement on appeal.

Because the courts' record preparation practices vary, the actual impact of these rules is difficult to assess. In some courts, the current practice may already be to prepare full transcripts in misdemeanor or infraction cases on the appellant's request where such transcripts are available. In such courts, the proposed new record preparation rules would not impose new costs but would simply reflect current practice. In other courts where transcripts are not routinely being prepared but where these proceedings are recorded by either a court reporter or official electronic recording equipment, these proposed new rules might increase transcript preparation costs for the courts and burdens on court reporters. To try to mitigate these potential cost increases, the committee has drafted the proposed rules with the goal of providing flexibility and local control over many aspects of the record preparation process. For example, under the proposed rules, the court can adopt a local rule permitting (on the parties' stipulation) the use of an official electronic recording itself as the record, rather than preparing a transcript. The proposed rules also allow a court to adopt a local rule eliminating judicial officers' option to order transcripts in lieu of correcting a proposed settled statement. The committee also believes that there may be other, off-setting time and cost savings associated with these proposed rule changes. For example, to the extent that the number of transcripts or official electronic recordings used increases, the number of settled statements that need to be prepared will decrease, thus decreasing the time that both litigants and trial court judicial officers must spend preparing such statements.

The revision, reorganization, and renumbering of the appellate division rules will also impose some implementation costs on courts and the public. All local court rules and forms that contain references to the appellate division rules will need to be revised. Publications that address appellate division procedures will need to be updated. To make this implementation process easier, the committee is recommending that these rule changes take effect on January 1, 2009, so that

courts and others will have ten months to make necessary changes. In addition, conversion tables showing new and old rule numbers are being made available.[4]

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council effective January 1, 2009:

1. Repeal rules 8.700–8.793 of the California Rules of Court;

2. Renumber rules 8.900–8.916 as rules 8.950–8.966;

3. Adopt rules 8.800–8.936 and 10.1100–10.1108;

4. Revoke Judicial Council forms CR-130 , TR-150, TR-155, TR-160, and TR-165; and

5. Approve forms APP-101-INFO, APP-102, APP-103, APP-104, APP-105, and APP-106 relating to appeals in limited civil cases; APP-150-INFO and APP-151 relating to petitions for extraordinary writs in the appellate division; CR-131-INFO, CR-132, CR-133, CR-134, CR-135, CR-136, and CR-137 relating to appeals in misdemeanor cases; and CR-141-INFO, CR-142, CR-143, CR-144, and CR-145 relating to appeals in infraction cases

The text of the proposed rules and forms are attached beginning on page 62.

Attachments

[4] Copies of the conversion tables are attached to the report at pages 222–232.

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REORGANIZED APPELLATE DIVISION RULES

Title 8. Appellate Rules

~~Division 2. Rules on Appeal to the Superior Court~~

~~Chapter 1. Appellate Division Rules~~

~~Rule 8.700. Appellate rules~~

~~Rule 8.701. Appellate division assignments~~

~~Rule 8.702. Sessions~~

~~Rule 8.703. Powers of presiding judge~~

~~Rule 8.704. Calendars and notice of hearing~~

~~Rule 8.705. Motions~~

~~Rule 8.706. Briefs and records~~

~~Rule 8.707. Decisions~~

~~Rule 8.708. Finality, modification, and rehearing~~

~~Rule 8.709. Consent to modification~~

~~Chapter 2. Appeals to the Appellate Division in Limited Civil Cases~~

~~Rule 8.750. Filing notice of appeal~~

~~Rule 8.751. Time of filing notice of appeal~~

~~Rule 8.752. Extension of time and cross-appeal~~

~~Rule 8.753. Reporter's transcript~~

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~~Rule 8.784. Statement or transcript~~

~~Rule 8.785. Amendments to statement or transcript~~

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~~Rule 8.787. Extensions of time and relief from default~~

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Division 2. Rules Relating to the Superior Court Appellate Division

Chapter 1. General Rules Applicable to Appellate Division Proceedings

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Division 5. Appellate Court Administration

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Rule 10.1100. Assignments to the appellate division

Rule 10.1104. Presiding judge

Rule 10.1108. Sessions

Division 2. Rules Relating to the Superior Court Appellate Division

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

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 8.802. 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 8.804. 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.

Advisory Committee Comment

Item (18). See rule 1.21 for general requirements relating to service, including proof of service.

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.

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.

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 8.810. 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.

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 8.812. 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 8.813. 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 8.814. 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 8.816. 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.

Chapter 2. Appeals and Records in Limited Civil Cases

Article 1. Taking Civil Appeals

Rule 8.820. Application of chapter

The rules in this chapter apply to appeals in limited civil cases, except small claims cases.

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 rules 3.50–3.63, or an order granting such an application. 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 under rules 3.50–3.63.

(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 fee waiver under rules 3.50–3.63;

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

(C) An application for a waiver under rules 3.50–3.63 is denied.

(2) A clerk's notice under (1) 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 rules 3.50–3.63 if the appellant has not previously filed 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.

(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.

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.

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) 60 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) 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 the entry of judgment.

(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.

Advisory Committee Comment

Under rule 8.804(23), the term "judgment" includes any order that may be appealed.

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

(C) 180 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 30 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) 30 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) 90 days after the first notice of intention to move or motion is filed; or

(3) 180 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) 30 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) 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 8.822.

(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) 30 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) 90 days after the first motion to reconsider is filed; or

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

(f) 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 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 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 mails notification of the first appeal.

(g) Showing date of order or notice; proof of service

An order or notice mailed by the clerk under this rule must show the date it was mailed. An order or notice served by a party must be accompanied by proof of service.

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, the issues that are likely to be raised on appeal, and any oral statement by the court supporting its rulings related to these issues.

(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) Any application for a stay filed in the trial court and any opposition to that application; and

(iv) 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.

(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 8.825. 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.

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

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.

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).

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, with supporting and opposing memoranda and attachments, and any order on such motion and any notice of its entry;

(E) The notices 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.

(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 promptly deliver it to the trial court clerk.

(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, or an order granting, a waiver of the cost under rules 3.50–3.63.

(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 8.833 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, or an order granting, a waiver of the cost under rules 3.50–3.63.

(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.

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 8.835. 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), 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.

(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 8.836. 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 8.837. 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.

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 8.839. 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 8.840. 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 8.841. 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 8.842. 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 8.60(d).

Chapter 3. Appeals and Records in Misdemeanor Cases

Article 1. Taking Appeals in Misdemeanor Cases

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.

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.

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* (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.

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 60 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 60 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 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.

(e) Receipt by mail from custodial institution

If the trial court clerk receives a notice of appeal by mail from a custodial institution after the period specified in (a) has expired but the envelope shows that the notice was mailed or delivered to custodial officials for mailing within the period specified in (a), the notice is deemed timely. The clerk must retain in the case file the envelope in which the notice was received.

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.

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.

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

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 or counsel for the appellant and the People 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.

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; and

(D) The probation officer's report.

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) 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 prosecuting attorney. 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.

(d) Certification

The clerk must certify as correct the original and all copies of the clerk's transcript.

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 prosecuting attorney 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.

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) 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.

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 8.866. 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.

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* (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 8.868. 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)(5), 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.

(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.

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* (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 appellant. 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.

(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.

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 8.871. 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).

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 8.873. 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.

Chapter 4. Briefs, Hearing, and Decision in Limited Civil and Misdemeanor 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 8.881. 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 8.882. 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) 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.

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

(4) 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.

(d) 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 8.883. 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 certificate under (1) and any attachment under (d) 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.

(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 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 8.884. 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 each appeal separately.

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) Notice of argument

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.

(c) Waiver of argument

Parties may waive oral argument.

(d) 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. 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.

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 8.887. 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) To the Reporter of Decisions: two paper copies and one electronic copy in a format approved by the Reporter.

(B) To the Courts of Appeal for the district: one copy bearing the notation "To be published in the Official Reports." The Courts of Appeal clerk must promptly file that copy or make a docket entry showing its receipt.

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 8.889. 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 8.890. 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(c) expires;

(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.

(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 8.891. 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 3.1702(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.

(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.

Division 3. Trial of Small Claims Cases on Appeal

Rule ~~8.900~~ 8.950. Application

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Rule ~~8.902~~ 8.952. Definitions

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Rule ~~8.904~~ 8.954. Filing the appeal

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Rule ~~8.907~~ 8.957. Record on appeal

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Rule ~~8.910~~ 8.960. Continuances

***

Rule ~~8.913~~ 8.963. Abandonment, dismissal, and judgment for failure to bring to trial

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Rule ~~8.916~~ 8.966. Examination of witnesses

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Chapter 5. Appeals in Infraction Cases

Article 1. Taking Appeals in Infraction Cases

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.

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.

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.

(e) Receipt by mail from custodial institution

If the trial court clerk receives a notice of appeal by mail from a custodial institution after the period specified in (a) has expired but the envelope shows that the notice was mailed or delivered to custodial officials for mailing within the period specified in (a), the notice is deemed timely. The clerk must retain in the case file the envelope in which the notice was received.

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.

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.

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

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, or counsel for the appellant, and the People 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.

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 8.912. 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 8.913 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.

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.

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) 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.

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 appellant. 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) 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.

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(b), 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.

(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.

Advisory Committee Comment

Subdivision (d). The appellant must use *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement* (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 8.919 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.

Advisory Committee Comment

Subdivision (a). The appellant must use *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement* (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 8.921. 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 8.922. 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 8.923. 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.

Article 3. Briefs, Hearing, and Decision in Infraction Appeals

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 8.926. 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 8.927. 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 8.928. 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 certificate under (1) and any attachment under (d) 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.

(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 8.929. 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) Notice of argument

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.

(c) Waiver of argument

Parties may waive oral argument.

(d) 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. 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.

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

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.

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 at 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) If a transcript or electronic recording under (1)(D) is unavailable, the record must include a declaration by counsel or, if the petitioner is unrepresented, 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; 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.

(3) A declaration under (2) 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.

(4) In extraordinary 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.

(5) 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.

(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 orders otherwise by local rule or in the specific case, only one set of any separately bound supporting documents needs to be filed in support of a petition, answer, opposition, or reply.

(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.

(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 five 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.

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 Extraordinary 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 8.933. 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 8.934. 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 8.935. 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 8.936. 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.

Title 10. Judicial Administration Rules

Division 5. Appellate Court Administration

Chapter 2. Rules Relating to the Superior Court Appellate Division

Rule 10.1100. Assignments to the appellate division

(a) Goal

In making assignments to the appellate division, the Chief Justice will consider the goal of promoting the independence and the quality of the appellate division.

(b) Factors considered

Factors considered in making the assignments may include:

(1) Length of service as a judge;

(2) Reputation in the judicial community;

(3) Degree of separateness of the appellate division work from the judge's regular assignments; and

(4) Any recommendation of the presiding judge.

(c) Who may be assigned

Judges assigned may include judges from another county, judges retired from the superior court or a court of higher jurisdiction, or a panel of judges from different superior courts who sit in turn in each of those superior courts.

(d) Terms of service

In specifying terms of service to the appellate division, the Chief Justice will consider the needs of the court.

Advisory Committee Comment

The Chief Justice is responsible for assigning judges to the appellate division as provided in article VI, section 4 of the California Constitution and by statute.

Rule 10.1104. Presiding judge

(a) Designation of acting presiding judge

(1) The presiding judge of the appellate division must designate another member of the appellate division to serve as acting presiding judge in the absence of the presiding judge. If the presiding judge does not make that designation, the appellate division judge among those present who has the greatest seniority in the appellate division must act as presiding judge. When the judges are of equal seniority in the appellate division, the judge who is also senior in service in the superior court must act as presiding judge.

(2) As used in these rules, "presiding judge" includes acting presiding judge.

(b) Responsibilities

The presiding judge of the appellate division may convene the appellate division at any time and must supervise the business of the division.

Advisory Committee Comment

Under Code of Civil Procedure section 77(a), the Chief Justice is responsible for designating one of the judges of each appellate division as the presiding judge.

Rule 10.1108. Sessions

The appellate division of each superior court must hold a session at least once each quarter unless there are no matters set for oral argument that quarter. The time and place of any session is determined by the presiding judge of the appellate division.

Division 2. Rules on Appeal to the Superior Court
Chapter 1. Appellate Division Rules

Rule 8.700. Appellate rules

All references in the California Rules of Court to "appellate department" mean "appellate division." Rules that apply to an appeal taken from a municipal court judgment to the appellate division of the superior court apply to an appeal taken from a unified superior court (trial court) judgment to the appellate division of the unified superior court (reviewing court).

Rule 8.701. Appellate division assignments

(a) Goal

The Chief Justice, in making appointments to the appellate division of the superior or unified court, will consider the goal of promoting the independence and the quality of the appellate division.

(b) Factors considered

Factors to be used in making the appointments may include:

(1) Length of service as a judge;

(2) Reputation within the judicial community;

(3) Degree of separateness of the appellate division work from the judge's regular assignments; and

(4) Any recommendation of the presiding judge.

(c) Judges assigned

Judges assigned may include judges from another county; judges retired from the superior or unified court, or court of higher jurisdiction; or a panel of judges from different superior or unified courts who sit in turn in each of those superior or unified courts.

(d) Terms of service

In specifying terms of service to the appellate division, the Chief Justice will consider the needs of the court.

Rule 8.702. Sessions

The appellate department of a superior court shall hold one or more regular sessions each month at a time or times and at a place to be determined by the judges of the department by order entered in the minutes. The department may hold sessions at any other time and place found necessary or convenient.

Rule 8.703. Powers of presiding judge

The presiding judge of the appellate department may convene the court at any time and shall supervise the business of the department. Except as otherwise provided in these rules, applications to extend time for filing briefs, applications to extend or shorten time for opposing a motion, and applications relating to other matters of routine shall be served and filed; but the presiding judge of the reviewing court may require an additional showing to be made and for good cause may excuse advance service. The application may be granted or denied by the presiding judge, unless the court otherwise determines.

In the absence of the presiding judge, the regular judge of the department among those present who is senior in service thereon shall act as presiding judge, and in the case of equal seniority then the judge who is also senior in service in the superior court shall act as presiding judge. The words "presiding judge," wherever used in these rules, include the acting presiding judge.

Rule 8.704. Calendars and notice of hearing

(a) Calendar

The clerk of the court, unless otherwise ordered, shall place upon the calendar for hearing at each regular session all appeals of which such department has jurisdiction, wherein the records on appeal were filed not less than 50 days prior to the date of the session. Any appeal may, by order of the presiding judge or the department, be placed on the calendar for hearing at any session of the department.

(b) Notice of hearing

~~As soon as the record on appeal in any case is filed, the clerk shall mail to the attorney appearing of record for each party, or if any party has appeared without attorney, then to such party personally, at the address of such attorney, or party appearing in the record, a notice stating that said record has been filed and giving the date at which the appeal will be heard and the dates when each party must file briefs, as provided in these rules. Failure of the clerk to mail any such notice shall not affect the jurisdiction of the appellate department.~~

~~Rule 8.705. Motions~~

~~(a) Motions and opposition~~

~~Except as otherwise provided in these rules all motions in the reviewing court shall be made by the filing of a typewritten motion, with proof of service on all other parties, stating the grounds of the motion, the papers, if any, on which it is based, and the order or other relief requested. Each copy of the motion shall be accompanied by a memorandum of points and authorities, and if the motion is based on matters not appearing of record by affidavits or other evidence in support thereof. Any showing in opposition to the motion shall be served and filed within 7 days after the filing of the motion.~~

~~(b) Disposition of motion~~

~~Motions may be disposed of after opposition has been filed or the time for filing opposition has expired. The reviewing court may place any motion on the calendar for hearing or may otherwise dispose of the motion as it may determine. When a motion has been placed on the calendar for hearing, the clerk shall mail to each party a notice showing the date and time designated for the hearing.~~

~~Rule 8.706. Briefs and records~~

~~(a) Time for filing~~

~~In civil and criminal cases the appellant shall file an opening brief within 20 days after the filing of record on appeal; the respondent shall file a brief within 20 days after the filing of appellant's opening brief, and the appellant may file a reply brief within 10 days after the filing of respondent's brief, but not later than the time of the hearing. Any party may join another party or~~

~~other parties in a brief or may adopt by reference any brief in the same or a companion case.~~

~~(b) Brief of amicus curiae~~

~~A brief of amicus curiae may be filed on permission first obtained from the presiding judge, subject to conditions he or she may prescribe. If the brief is in support of the position of one of the parties, that fact shall be noted in the brief's heading.~~

~~The Attorney General may file an amicus curiae brief without obtaining the presiding judge's permission, unless the Attorney General is presenting the brief on behalf of another state officer or agency; but the presiding judge may prescribe reasonable conditions for filing and answering the brief.~~

~~(c) Contents of briefs~~

~~Each brief shall state concisely the propositions of both law and fact relied on by the party filing it, with reference (by line and page, if possible) to the parts of the record supporting such propositions of fact and citations of the authorities for such propositions of law. Each point to be made, with the argument in support thereof, shall be presented separately under an appropriate heading with subheadings if desired, showing its nature. No quotation or extract from the record or from any legal authority shall exceed 15 full lines of typewriting, and no brief shall exceed 15 pages in length, except by permission of the presiding judge.~~

~~(d) Format~~

~~All briefs shall be prepared as provided in rule 8.204(b), except that such briefs shall be bound at the top.~~

~~(e) Service and filing~~

~~Every brief shall, before filing, be served by the party filing it on each adverse party who has appeared separately, and every brief of amicus curiae shall, before filing, be served on all parties to the appeal. The original brief, with proof of service thereof, shall be filed with the clerk. The clerk shall not file any brief which does not conform to these rules or which is tendered to him for filing after the time fixed by these rules or by any order extending or fixing the time therefor, unless by order of the presiding judge. The presiding judge may make such order, in his discretion, where the infraction of the rules is of minor character and will not affect the rights of the parties or~~

~~seriously hamper the court in its examination of the appeal. Service in unfair competition cases under Business and Professions Code section 17209 must also comply with rule 8.212(c).~~

~~(f) Copy for trial judge~~

~~No brief shall be filed without proof of the deposit of one copy with the clerk of the trial court for delivery to the judge who presided at the trial of the case. The clerk shall deliver the brief to the judge and need not maintain a copy in the court file.~~

~~(g) Use of recycled paper for records on appeal from limited civil cases and for briefs filed in the appellate divisions~~

~~The use of recycled paper is required for the original record on appeal from a limited civil case and for any brief filed with the court in a matter to be heard in the appellate division. The use of recycled paper is required for all copies of these documents filed with the court or served on other parties.~~

~~(h) Unfair competition cases~~

~~In an unfair competition proceeding under Business and Professions Code section 17200 et seq., each brief and each petition shall contain the following statement on the front cover: "Unfair competition case. (See Bus. & Prof. Code, § 17209 and Cal. Rules of Court, rule 8.212(c).)"~~

~~Rule 8.707. Decisions~~

~~(a) Time to decide~~

~~The appellate division must hear and decide, or take under submission, each appeal at the session in which it was set for hearing unless, for good cause entered in the minutes, the court continues the case to another date or orders it submitted on briefs to be filed.~~

~~(b) 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. Appellate division opinions certified for publication must comply to the extent practicable with the *California Style Manual*.~~

(c) Transmitting opinions

When the judgment is final as to the appellate division in a case in which the opinion is certified for publication, the clerk must immediately send to the Reporter of Decisions two paper copies and one electronic copy in a format approved by the Reporter, and to the Court of Appeal for the district another copy bearing the notation "To be published in the Official Reports." The Court of Appeal clerk must promptly file that copy or make a docket entry showing its receipt.

Rule 8.708. Finality, modification, and rehearing

(a) When judgment is final

An appellate division judgment is final:

(1) 15 days after judgment is pronounced; or

(2) If a party timely files a petition for rehearing or application for certification, 30 days after judgment is pronounced or when all such petitions or applications are denied, whichever is earlier.

(b) Modification of judgment

The appellate division may modify its judgment until the judgment is final in that court. 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 time for the judgment's finality. If a modification changes the appellate judgment, the finality period runs from the filing date of the modification order.

(c) Rehearing

(1) On petition of a party or on its own motion, the appellate division may order rehearing at any time before its judgment is final.

(2) A party may serve and file a petition for rehearing within 15 days after judgment is pronounced or a modification order changing the appellate judgment is filed.

(3) Any answer to the petition must be served and filed within 8 days after the petition is filed.

(4) The petition and answer must comply as nearly as possible with rules 8.500 and 8.504.

(5) If the appellate division orders rehearing, it may place the case on calendar for further argument or submit it for decision.

(d) Extensions of time

The periods specified in this rule may not be extended except as provided in Code of Civil Procedure section 12a.

Rule 8.709. Consent to modification

If the appellate department orders that a judgment be reversed and a new trial granted or that, in the alternative, the judgment be affirmed on condition that the party in whose favor judgment has been rendered consent to a remission of a portion thereof, or on condition that the party against whom the judgment has been rendered consent to an addition thereto, then, unless otherwise ordered, the judgment of reversal and granting of a new trial shall become effective unless within 15 days after the filing of the decision two copies of a written consent by such party to the remission or addition is filed in the appellate department, and becomes final as provided in rule 8.708. The filing of written consent is not a modification of the judgment, within the meaning of rule 8.708. A copy of the consent shall be transmitted with the remittitur to the trial court.

Chapter 2. Appeals to the Appellate Division in Limited Civil Cases

Rule 8.750. Filing notice of appeal

(a) Form of notice

An appeal in a civil case, except a small claims case, from a judgment of a municipal or justice court or from a particular part thereof is taken by filing with the clerk of that court a notice of appeal therefrom. The notice shall be signed by the appellant or by his attorney and shall be sufficient if it states in substance that the appellant appeals from a specified judgment or a particular part thereof. A notice of appeal shall be liberally construed in favor of its sufficiency.

~~(b) Notification by clerk~~

~~The clerk of the trial court shall forthwith mail a notification of the filing of the notice of appeal to the attorney of record of each party other than the appellant, or if the party is not represented by an attorney, then to the party at his last known address. The notification shall state the number and title of the action or proceeding and the date the notice of appeal was filed. Such mailing is a sufficient performance of the clerk's duty notwithstanding the death of the party or the death, discharge, suspension, disbarment or disqualification of his attorney prior to the giving of the notification. The failure of the clerk to give such notification shall not affect the validity of the appeal.~~

~~(c) Payment of filing fee in civil appeals~~

~~At the time of filing the notice of appeal or within 10 days thereafter the appellant shall pay to the clerk of the municipal or justice court the filing fee prescribed by section 26824 of the Government Code. The filing fee shall be nonrefundable.~~

~~(d) Excuse from payment of filing fee~~

~~If the appellant is indigent, payment of the filing fee may be excused on the same basis as payment of a filing fee in the trial court is excused.~~

~~(e) Notice of cross appeal~~

~~As used in this rule, "notice of appeal" includes notice of cross appeal, and "appellant" includes any party who files a cross appeal.~~

~~Rule 8.751. Time of filing notice of appeal~~

~~(a) Normal time~~

~~Except as otherwise provided by statute or rule 8.752, a notice of appeal shall be filed on or before the earliest of the following dates:~~

~~(1) 30 days after the date of mailing by the clerk of the court of a document entitled "notice of entry" of judgment or appealable order;~~

(2) 30 days after the date of service of a document entitled "notice of entry" of judgment or appealable order by any party upon the party filing the notice of appeal, or by the party filing the notice of appeal; or

(3) 90 days after the date of entry of the judgment.

For the purposes of this subdivision, a file-stamped copy of the judgment or appealable order may be used in place of the document entitled "notice of entry."

(b) What constitutes entry

For the purposes of this rule:

(1) The date of entry of a judgment shall be the date of its entry in the minute book or docket unless the entry expressly directs that a written order be prepared, signed and filed, in which case the date of entry shall be the date of filing of the signed order.

(2) The date of entry of an order which is not entered in the minutes or docket shall be the date of filing of the order signed by the court.

(c) Premature notice

A notice of appeal filed prior to entry of the judgment, but after its rendition, shall be valid and shall be deemed to have been filed immediately after entry. A notice of appeal filed prior to rendition of the judgment, but after the judge has announced his intended ruling, may, in the discretion of the reviewing court for good cause, be treated as filed immediately after entry of the judgment.

Rule 8.752. Extension of time and cross-appeal

(a) New trial proceeding

When a valid notice of intention to move for a new trial is served and filed by any party within the time in which, under rule 8.751, a notice of appeal may be filed, and the motion is denied, the time for filing the notice of appeal from the judgment is extended for all parties until 15 days after either entry of the order denying the motion or denial thereof by operation of law, but in no event may such notice of appeal be filed later than 90 days after the

~~date of entry of the judgment whether or not the motion for new trial has been determined.~~

~~(b) Motion to vacate~~

~~When a valid notice of intention to move to vacate a judgment or to vacate a judgment and enter another and different judgment is served and filed by any party on any ground within the time in which, under rule 8.751, a notice of appeal from the judgment may be filed, or such shorter time as may be prescribed by statute, and the motion is denied or not decided by the trial court within 75 days after entry of the judgment, the time for filing the notice of appeal from the judgment is extended for all parties until 15 days after entry of the order denying the motion to vacate or until 90 days after entry of the judgment, whichever shall be less.~~

~~(c) Cross-appeal~~

~~When a timely notice of appeal is filed under subdivision (a) of rule 8.751 or under subdivision (a) or (b) of this rule, any other party may file a notice of appeal within 10 days after mailing of notification by the trial court clerk of such first appeal or within the time otherwise prescribed by the applicable subdivision, whichever period last expires. If a timely notice of appeal is filed from an order granting a motion for a new trial or granting, within 75 days after entry of judgment, a motion to vacate the judgment or to vacate judgment and enter another and different judgment, any party other than the appellant, within 10 days after mailing of notification by the trial court clerk of such appeal, may file a notice of appeal from the judgment or from an order denying a motion for judgment notwithstanding the verdict, and on that appeal may present any question which he might have presented on an appeal from the judgment as originally entered or from the order denying a motion for judgment notwithstanding the verdict.~~

~~(d) Notification of cross-appeal~~

~~On the filing by a party of a notice of cross-appeal, the trial court clerk shall mail a notification thereof as provided in subdivision (b) of rule 8.750.~~

~~Rule 8.753. Reporter's transcript~~

~~(a) Notice to prepare transcript~~

~~When an appellant desires to present any point which requires a consideration of the oral proceedings, including oral instructions given or refused by the court, he shall serve on the respondent and file with the clerk of the trial court, within 10 days after filing of the notice of appeal, a notice to prepare a reporter's transcript of the oral proceedings and such oral instructions given or refused as he shall desire transcribed. A copy of this notice shall be transmitted by the clerk without delay to the reporter who shall within 10 days thereafter file his estimate with the clerk or notify the clerk in writing of the date that he notified the appellant directly of the estimated cost of preparing the reporter's transcript on appeal. The voir dire examination of jurors, the opening statements, the arguments to the jury, and the proceedings on a motion for new trial shall not be transcribed as part of the oral proceedings unless they are specified in the notice to the clerk. The oral proceedings shall include such portions of depositions as have been received in evidence and such portions thereof as shall have been offered and rejected. The portions rejected and the objections thereto shall be clearly indicated.~~

~~(b) Partial transcript by stipulation or designation~~

~~The parties, by stipulation filed with the clerk of the trial court within the time prescribed for filing the notice to prepare a reporter's transcript, may direct that any part of the oral proceedings be not transcribed. If the appellant, in his notice to the clerk, states the points to be raised by him on the appeal, he may designate the portions of the oral proceedings to be transcribed, or direct the omission of any portions which he deems unnecessary, and in such event shall be precluded from presenting any grounds for reversal not embraced within the points stated by him, unless the reviewing court on motion shall permit the appellant to present additional errors or grounds of appeal on such terms as it may prescribe. Within 10 days after the service of the appellant's notice to prepare the reporter's transcript pursuant to this rule, or to prepare the clerk's transcript pursuant to subdivision (a) of rule 8.754, the respondent may serve and file a notice designating the oral proceedings, including oral instructions given or refused not designated in the appellant's notice, which he desires transcribed. Only those portions of the oral proceedings and instructions designated in the notices of the parties shall be transcribed; provided, however, that if any portion of the testimony of a witness is designated by either party for inclusion in the reporter's transcript, the whole of his testimony shall be included unless the parties otherwise stipulate.~~

(c) Deposit or waiver of reporter's charges

The notice given by the appellant under the foregoing provisions of this rule shall not be effective for any purpose unless, within 10 days after notification from the clerk of his estimate of the cost of preparing the reporter's transcript as designated by the notices of the parties, or within 10 days after being notified directly by the reporter, the appellant shall either deposit with the clerk an amount of cash equal to the estimated cost with directions to apply the same to the fees of the reporter or file with the clerk a waiver of such deposit signed by the reporter. When the appellant has complied with the provisions hereof, the clerk shall forthwith direct the reporter to prepare the reporter's transcript in accordance with the notices of the parties.

(d) Preparation of transcript

Within 20 days after direction from the clerk or the receipt of the fees from the appellant the reporter shall complete and file with the clerk an original reporter's transcript as directed, and certify the same as correct. One week after the deadline for filing the transcript, the clerk shall accept completed portions of the transcript from the lead reporter in a multi-reporter case even if not all portions of the transcript are complete. The clerk shall pay promptly each reporter who certifies under penalty of perjury that all of his or her portions of the transcript are completed. The reporter shall note in the transcript all places where omissions of any oral proceedings occur (and the nature of the omitted matter) and shall also indicate the place where exhibits were received in evidence or were offered and marked for identification, and shall identify the exhibits so received or so offered. The reporter shall not transcribe or copy in the reporter's transcript any documents which, under the provisions of rule 8.754, may be included in the clerk's transcript on appeal.

(e) Settled statement where transcript unavailable

If, without fault of the appellant, the reporter refuses or becomes unable or fails to transcribe all or any portion of the oral proceedings designated by the parties, any party may, within 15 days after the expiration of the time allowed by this rule for such transcription, or of any lawful extension thereof, and on 5 days' written notice, make a motion for leave to prepare a statement of the portions of the oral proceedings which the reporter refuses, is unable, or fails to transcribe. If the trial court grants the motion, proceedings for the settlement of the statement shall be had as provided in

rule 8.756, except that the party making the motion shall serve and file his proposed statement within 20 days after the making of the order granting leave therefor and the adverse party shall serve and file his proposed amendments to such statement within 10 days after service of the statement. If the settled statement contains all the oral proceedings, it shall become a part of the record on appeal in lieu of the reporter's transcript, but if it contains only a portion of the oral proceedings, it shall be incorporated in the reporter's transcript. This remedy is in addition to any remedy given by law.

Rule 8.754. Clerk's transcript and original papers

(a) Appellant's designation of papers or records

Within 10 days after filing the notice of appeal, the appellant shall serve on the respondent and file with the clerk of the trial court a notice designating the papers or records on file or lodged with the clerk, including the clerk's minutes and any written opinion of the trial court and exhibits either admitted in evidence or rejected, and any notices, affidavits, orders, and written instructions given or refused, which he desires incorporated in the record on appeal. The notice designating papers and records and the notice to prepare the reporter's transcript may be included in the same document, and both notices may be included in the document containing the notice of appeal.

(b) Designation by respondent or by stipulation

Within 10 days after service of the appellant's notice, the respondent may serve on the appellant and file with the clerk a notice designating additional papers or records, including the clerk's minutes, any written opinion of the trial court, and exhibits either admitted in evidence or rejected, and any notices, affidavits, orders, and written instructions given or refused, to be included in the record on appeal. In lieu of such individual notices the parties, within 10 days after the filing of the notice of appeal, may file a written stipulation designating the papers or records to be included in the record on appeal.

(c) Clerk's charges

The notice given by the appellant under the foregoing provisions of this Rule shall not be effective for any purpose unless, within 10 days after notification from the clerk of his estimate of the cost of preparing the transcript, the appellant shall make arrangements with the clerk for the payment thereof.

(d) Preparation of clerk's transcript

Within 10 days after the appellant has arranged for payment of the cost of the transcript, as provided in (c), the clerk shall prepare and certify a transcript consisting of either copies or originals, as specified in (e), of:

The following whether designated in the notices or stipulations or referred to in the statements of the parties or not:

(1) The notice of appeal;

(2) The notices or stipulations to prepare the clerk's transcript and the reporter's transcript, if any, and the notices or stipulations for the preparation of a settled statement or agreed statement, if any;

(3) The judgment appealed from with an endorsement by the clerk showing the date notice of entry thereof was mailed by the clerk or served by a party; and

(4) Any notice of intention to move for a new trial or motion to vacate the judgment, and the ruling thereon, if any; and

The following, if they have been designated by any of the parties:

(5) The judgment roll, or such parts thereof as have been designated by the parties; and

(6) Any other papers or records, including exhibits admitted in evidence or rejected, notices, affidavits, orders, and written instructions given or refused, on file or lodged with the clerk.

(e) Matters not to be copied

Except when the record on appeal is prepared by a photocopying process as provided in subdivision (a) of rule 8.144, captions and formal parts of papers and verifications and proofs of service of such papers shall be omitted unless one of the parties expressly requests their inclusion, but the clerk shall state in his transcript the nature of such omitted matters. No exhibit admitted in evidence or rejected, notice, affidavit, pleading, order, written instructions given or refused, or other paper on file or lodged with the clerk (except the notice of appeal) shall be copied if it is possible for the clerk to transmit the original to the reviewing court, but where such matters are properly

designated by the parties in either notice or stipulation, or referred to in the list accompanying an agreed statement, or are otherwise required by these rules, the clerk shall include the originals thereof in the record on appeal, and transmit them to the reviewing court. The notice of appeal, matters appearing only in the minutes or other records of the trial court, and anything properly designated or referred to, the original of which it is not possible to transmit, shall be copied by the clerk, and the copies made part of the record on appeal. In no event shall the clerk copy in his transcript or transmit to the reviewing court (except by order of that court or stipulation of the parties) the original of any deposition.

(f) Appeal on judgment roll

Where the appellant has designated only a clerk's transcript consisting of part or all of the matters specified in (a) and (b) and has not given notice to prepare a reporter's transcript, the respondent may not require the preparation of a reporter's transcript but he may counterdesignate any exhibits, affidavits, papers or records which may properly be included in a clerk's transcript. Where the appellant has designated only the papers and records constituting the judgment roll and has not given notice to prepare a reporter's transcript, the judgment roll shall constitute the record on appeal, and the respondent may not require any addition thereto: In either case, however, on motion of the respondent the reviewing court may allow augmentation of the record whenever it is necessary to prevent a miscarriage of justice.

Rule 8.755. Agreed statement

(a) Contents of agreed statement

An appeal may be presented on a record consisting in whole or in part of an agreed statement. Within 30 days after filing the notice of appeal, the appellant shall file with the clerk of the trial court the original statement signed by the parties. The statement shall show the nature of the controversy, the basis on which it is claimed that the reviewing court has jurisdiction and how the questions arose in and were decided by the trial court, and should set forth only such facts alleged and proved, or sought to be proved, as are necessary to a determination of the questions on appeal. The statement shall contain a copy of the judgment and a copy of the notice of appeal with its filing date, together with any notice of intention to move for a new trial or motion to vacate the judgment, the ruling thereon, if any, and a recital or resumé of any oral proceedings thereon. The statement shall be accompanied

by a list of such exhibits admitted in evidence or rejected, notices, affidavits, orders, instructions given or refused, or other papers on file or lodged with the clerk, as the parties desire to have transmitted to the reviewing court, with the statement.

(b) Extension of time

Within 10 days after filing the notice of appeal, the parties may file with the clerk of the trial court a preliminary stipulation stating that they are attempting to prepare an agreed statement. This stipulation shall have the effect of extending for a period of 40 days from the date of filing of the notice of appeal the time for service and filing of the notices of the appellant provided for in rules 8.753, 8.754, and 8.756 in the event that the parties are unable to agree on a statement.

Rule 8.756. Settled statement

(a) Proposal of narrative statement

If, in lieu of a reporter's transcript, the appellant desires to set forth the oral proceedings by a settled statement, he shall serve and file a notice so stating within 10 days after filing the notice of appeal. Within 20 days thereafter the appellant shall serve and file a condensed statement in narrative form of all or such portions of the oral proceedings as he deems material to the determination of the points on appeal. Where necessary for the purposes of accuracy, clarity or convenience, portions of the evidence may be set forth by question and answer, subject to the approval of the court in settling the statement. If the condensed statement purports to cover only a portion of the oral proceedings, the appellant shall state the points to be raised by him on appeal, and in such event shall be precluded from presenting any grounds for reversal not embraced within the points stated by him unless the reviewing court, on motion, shall permit him to present additional errors or grounds of appeal on such terms as it may prescribe. Within 10 days after service of said narrative statement the respondent may serve and file his proposed amendments thereto. The appellant in his condensed statement and the respondent in his proposed amendments may incorporate any oral instructions given or refused which such party deems material.

(b) Appellant's transcript available to respondent

If the appellant has prepared his proposed statement from an entire or partial transcript of the oral proceedings, and after service of his proposed statement

declines to make such transcript available to the respondent, the municipal court, on such terms and conditions as it deems just, may direct the appellant to make his copy of the transcript available to the respondent. If the appellant fails to comply with such direction, the court on motion of the respondent shall strike the proposed statement from the files.

(c) Settlement and engrossment

On the filing by the respondent of his proposed amendments or on the expiration of the time therefor (whichever shall first occur), the clerk shall set a time not more than 10 days thereafter for settlement of the statement by the judge who tried the case, and shall give not less than 5 days' notice by mail to all parties of the time set. At the time set, or at the time to which the judge may continue the hearing, he shall settle the statement and fix the time within which the appellant shall engross it as settled. Within the time so fixed the appellant shall engross the statement in accordance with the order of the judge and shall serve and file the engrossed statement. If the respondent does not serve and file objections to the engrossed statement within five days thereafter, it shall be presumed that it is engrossed in accordance with the order of the judge and shall be presented by the clerk to the judge for certification. If the parties stipulate that the statement as originally served or as engrossed is correct, such stipulation shall have the same effect as certification thereof by the judge.

Rule 8.757. Correction and certification of record

(a) Request for correction of record

Immediately on the completion of the clerk's and reporter's transcripts the clerk shall mail notice thereof to all parties, and within 10 days after mailing of such notice, any party may file a request for correction of such transcripts. If no request for correction is filed within such time, the clerk shall certify the record as correct.

(b) Hearing and certification

If any party files a request for correction of the transcripts within such time, the clerk shall set a time not more than 10 days thereafter for certification of the transcripts by the judge who tried the case, and shall give not less than 5 days' notice thereof by mail to all parties. At the time set or at the time to which the judge may continue the hearing, he shall determine the request for correction, and if none is allowed, shall certify the transcripts as correct. If

~~corrections are allowed by the judge, he shall fix the time within which they shall be made by the clerk or reporter, and on the transcripts being corrected as directed, shall certify them as correct. If no time for correction is fixed by the trial judge, the corrections shall be made by the clerk or reporter within 30 days after their allowance. The parties at any time may stipulate that the whole or any portion of the record is correct, and such stipulation shall render unnecessary the certification by either the clerk or judge of the record or the portion stipulated to by the parties.~~

~~Rule 8.758. Form of record~~

~~(a) Size of paper, etc.~~

~~The reporter's transcript shall be prepared as provided in subdivision (b) of rule 8.144. All papers copied by the clerk for the record shall be prepared as provided in subdivision (a) of rule 8.144.~~

~~(b) Indexes~~

~~The clerk shall include at the beginning of each volume of his transcript an alphabetical and a chronological index referring to each paper or record therein, and he shall also include a list of original exhibits, notices, affidavits, orders, written instructions given or refused, and other papers included in the record with a brief description of each of them. The reporter shall include at the beginning of each volume of his transcript an alphabetical and a chronological index referring to the page at which the direct examination, the cross-examination, the redirect examination, and the recall of each witness begins. He shall also indicate in a separate table in the first volume of the reporter's transcript the page at which any exhibit or other document copied therein appears, and the page at which he has noted the omission of any exhibit or other document. The contents of each transcript shall be arranged chronologically. So far as practicable the arrangement and indexing of an agreed or settled statement shall conform to the foregoing requirements.~~

~~(c) Binding and cover~~

~~The reporter's transcript shall be bound in volumes of not more than 300 pages. The cover of each volume shall be of the same size as the pages therein, and there shall be endorsed thereon the title of the case, the name of the trial judge and judicial district, and the names and addresses of the attorneys representing the parties on the appeal.~~

Rule 8.759. Transmission and filing of record

When the appellant has paid or been excused from paying the filing fee and the record on appeal has been completed in accordance with these rules, the clerk of the trial court shall forthwith transmit the record to the county clerk for filing, and may be compelled to do so by order of the reviewing court, made on motion.

Rule 8.760. Record on cross-appeal

Where several parties appeal from the same judgment or any part or parts thereof, or where there is a cross-appeal pursuant to rule 8.752, a single record on appeal shall be prepared and filed within the time prescribed for filing the record in the latest appeal. Such record shall be prepared in accordance with rules 8.753 and 8.754 unless all appellants give notice of intention to proceed under rule 8.756, or unless the parties stipulate to proceed under rule 8.755. Unless the trial court orders otherwise, the initial expense of preparing the record shall be borne equally by the parties appealing.

Rule 8.761. Augmentation and correction of record

(a) Augmentation

On suggestion of any party or on its own motion, the reviewing court, on such terms as it deems proper, may order that the original or a copy of a paper, record or exhibit offered at or used on the trial or hearing below and on file in or lodged with the trial court be transmitted to it, or that portions of the oral proceeding be transcribed, certified and transmitted to it, or that an agreed or settled statement of portions of the oral proceedings be prepared and transmitted to it; and when so transmitted they shall be deemed part of the record on appeal.

(b) Correction

If any material part of the record is incorrect in any respect, or lacks proper certification, the reviewing court, on suggestion of any party or on its own motion, may direct that it be corrected or certified.

(c) Correction by trial court or parties

The reviewing court may submit to the trial court for settlement any differences of the parties with respect to alleged omissions or errors in the record, and the trial court shall make the record conform to the truth. The reviewing court may also direct that omissions or errors be corrected pursuant to the stipulation of the parties filed with the clerk of that court.

Rule 8.762. Abandonment and dismissal

(a) Before record filed

At any time before the filing of the record in the reviewing court, the appellant may file in the office of the clerk of the trial court a written abandonment of the appeal; or the parties may file in said office a stipulation for abandonment. The filing of either document shall operate to dismiss the appeal and to restore the jurisdiction of the trial court. Upon such a dismissal, the appellant shall be entitled to the return of that portion of any deposit in excess of the actual cost of preparation of the record on appeal up to that time.

(b) After record filed

After the filing of the record in the reviewing court an appeal may be dismissed by that court on written request of the appellant or stipulation of the parties filed with the clerk of the reviewing court.

(c) Dismissal by court

If the appellant shall fail to perform any act necessary to procure the preparation or filing of the record on appeal or shall otherwise fail to prosecute his appeal with diligence, and such failure is the fault of the appellant and not of any court officer or any other party, the appeal may be dismissed by the reviewing court on motion of the respondent or on its own motion.

(d) Notification by clerk

The clerk of the court in which an abandonment is filed shall immediately notify the adverse party of the filing thereof. The clerk of the reviewing court shall immediately notify the parties of any order of dismissal made by that court.

(e) Approval of compromise

Whenever the guardian of a minor or of an insane or incompetent person seeks approval of a proposed compromise of a case pending on appeal, the reviewing court may, by order, refer the matter to the trial court with instructions to hear the same and determine whether the proposed compromise is for the best interests of the ward, and to report its findings. On receipt of the report, the reviewing court shall make its order approving or disapproving the compromise.

Rule 8.763. Hearing

Appeals in civil cases shall be calendared, argued and determined, notice of hearings shall be given, and petitions for rehearing and answers thereto shall be filed and acted upon as prescribed in chapter 1 of this division (commencing with rule 8.700).

Rule 8.764. Costs on appeal

(a) Rights to costs

Except as provided in this rule, the prevailing party shall be entitled to costs on appeal from a municipal or justice court as an incident to the judgment on appeal. In the case of a general and unqualified affirmance of the judgment, or the dismissal of an appeal, the respondent shall be deemed the prevailing party; in the case of a reversal, in whole or in part, or of a modification of the judgment, the appellant shall be deemed the prevailing party. In any case in which the interests of justice require it, the reviewing court may make any award or apportionment of costs which it deems proper. If the appeal is frivolous or taken solely for the purpose of delay or if any party has required in the record on appeal the inclusion of any matter not reasonably material to the determination of the appeal, or has been guilty of any other unreasonable infraction of the rules governing appeals, the reviewing court may impose upon offending attorneys or parties those penalties, including the withholding or imposing of costs, that the circumstances of the case and the discouragement of like conduct may require.

(b) Entry of judgment for costs

In any case on appeal from a municipal or justice court in which the reviewing court directs the manner in which costs shall be awarded or denied, the clerk shall enter on the record and insert in the remittitur a judgment in accordance with those directions. In the absence of those directions by the reviewing court, the clerk shall enter on the record and insert in the remittitur to the municipal or justice court a judgment for costs as follows:

(1) In the case of a general and unqualified affirmance of the judgment, for the respondent;

(2) In the case of a dismissal of the appeal, for the respondent;

(3) In the case of a modification of the judgment, for the appellant; and

(4) In the case of a reversal of the judgment, in whole or in part, with or without directions, for the appellant.

If the clerk fails to enter judgment for costs as provided in this subdivision, the reviewing court, on motion made not later than 30 days after issuance of the remittitur, or on its own motion, may recall it for correction.

(c) Items recoverable as costs

The party to whom costs are awarded may recover only the following, if actually incurred:

(1) The cost of preparation of an original and one copy of any type of record on appeal authorized by these rules if that party is the appellant, or one copy of the record if the party is the respondent, subject to reduction by order of the reviewing court pursuant to subdivision (a) of this rule; but the expense of any method of preparation in excess of the cost of preparing the record in typewriting shall not be recoverable as costs, unless the parties so stipulate;

(2) The cost of production of additional evidence; and

(3) Filing and notary fees and expense of service, transmission, and filing of the record, briefs, and other papers.

(d) Procedure for claiming costs

If costs are awarded to a party by a reviewing court and the party claims those costs, the party shall, within 30 days after the remittitur is filed with the trial court, serve on all parties and file with the clerk of the trial court a memorandum of costs, verified as prescribed by rule 3.1700(a)(1).

A party may move to have costs taxed in the same manner and within a like time after service of a copy of the memorandum of costs, as prescribed by rule 3.1700(b). After the costs have been taxed, or after the time for taxing the costs has expired, the award of costs may be enforced in the same manner as a money judgment.

(e) Procedure for imposing sanctions

(1) A party seeking monetary sanctions on the ground that the appeal is frivolous or taken solely for purposes of delay or that there has been an unreasonable infraction of the rules governing appeals shall serve and file a motion under rule 8.705 no later than 10 days after the time the appellant's reply brief is due or at the time of filing a motion to dismiss the appeal.

(2) A party who filed a motion to dismiss the appeal before filing a brief may make or renew the motion for sanctions up to 10 days after the time the appellant's reply brief is due.

(3) A motion under (1) or (2) shall include a declaration supporting the amount of sanctions being sought.

(4) The court shall notify a party or an attorney if it is considering imposing sanctions on its own motion or on motion of a party.

(5) The party or attorney against whom sanctions are sought may serve and file a written opposition within 10 days after notice from the court that it is considering imposing sanctions; failure to do so shall not be deemed consent to the award of sanctions. An opposition should not ordinarily be filed unless the court has sent notice that it is considering imposing sanctions or requests the party's or attorney's views.

(6) Unless otherwise ordered, the issue of sanctions and their amount will be argued at the time of oral argument on the merits of the appeal.

~~Rule 8.765. Definitions~~

~~In this chapter, unless the context or subject matter otherwise requires:~~

~~(1) The past, present and future tenses shall each include the other; the masculine, feminine and neuter gender shall each include the other; and the singular and plural number shall each include the other.~~

~~(2) "Trial court" means the municipal or justice court from which an appeal is taken pursuant to these rules; "reviewing court" applies to the court in which an appeal is pending, and means the appellate department of the superior court.~~

~~(3) The party appealing is known as the "appellant," and the adverse party as the "respondent."~~

~~(4) "Shall" is mandatory and "may" is permissive.~~

~~(5) "Party," "appellant," "respondent," "petitioner," or other designation of a party include such party's attorney of record. Whenever under these rules a notice is required to be given to or served on a party, such notice or service shall be made on his attorney of record, if he has one.~~

~~(6) "Serve and file" mean that a document filed in a court is to be accompanied by proof of prior service in a manner permitted by law of one copy of the document on counsel for each adverse party who is represented by separate counsel.~~

~~(7) "Judgment" includes any judgment, order or decree from which an appeal lies.~~

~~(8) "Judgment roll" with respect to a justice court consists of the same papers as in the municipal court.~~

~~(9) "Presiding judge" includes the acting presiding judge.~~

~~(10) "Clerk" with respect to a justice court means the judge if there be no clerk.~~

~~(11)"Written," "writing," "typewriting" and "typewritten" include other methods of duplication equivalent in legibility to typewriting.~~

~~(12) Rule and subdivision headings do not in any manner affect the scope, meaning or intent of the provisions of these rules.~~

~~Rule 8.766. Applications on routine matters~~

~~Except as otherwise provided in these rules, applications to extend time for filing briefs, applications to shorten time, and applications relating to other matters of routine shall be served and filed; but the presiding judge of the reviewing court may require an additional showing to be made and for good cause may excuse advance service. The application shall set forth facts showing:~~

~~(1) Good cause for granting the application; and~~

~~(2) Any previous applications granted or denied to any party after filing of the notice of appeal.~~

~~The application may be granted or denied by the presiding judge, unless the court otherwise determines. The applicant shall provide to the clerk addressed, postage-prepaid envelopes and sufficient additional copies of the application for later mailing by the clerk to all other parties of a copy of the order granting or denying the application, together with a copy of the application.~~

~~Rule 8.767. Extension and shortening of time~~

~~(a) Computation of time~~

~~The time for doing any act required or permitted under these rules shall be computed and extended in the manner provided by the Code of Civil Procedure.~~

~~(b) Extension by trial court~~

~~The presiding judge of the trial court, or a judge designated by him, for good cause shown on application made as provided in rule 8.766, may extend the time for doing any act involved in the preparation of the record on appeal in a civil case, prior to the expiration of such time or any valid extension thereof; provided, however, that the time specified for payment of the fee for filing the record in the reviewing court may not be extended by the trial court. Such extensions granted to any party shall not exceed 60 days in the aggregate for any and all acts in preparation of the record, and no single extension shall be for a period in excess of 10 days. Anything in these rules to the contrary notwithstanding, the initial extension granted to any party by the trial court may be granted ex parte.~~

(c) Extension by presiding judge

The presiding judge of the reviewing court, for good cause shown, may extend the time for doing any act required or permitted under these rules, except the time for filing a notice of appeal. An application for extension of time shall be made as provided in rule 8.766.

(d) Shortening time

The presiding judge of the reviewing court, for good cause shown, may shorten the time for serving or filing a paper incident to an appeal. An application to shorten time shall be made as provided in rule 8.766.

Rule 8.768. Substitution of parties and attorneys

(a) Parties

Whenever a substitution of parties to a pending appeal is necessary, it shall be made by proper proceedings instituted for that purpose in the trial court. On suggestion thereof and the presentation of a certified copy of the order of substitution made by the trial court, a like order of substitution shall be made in the reviewing court.

(b) Attorneys

Withdrawal or substitution of attorneys may be effected by serving and filing a stipulation in the reviewing court, signed by the party, the retiring attorney and any substituted attorney. In the absence of stipulation, withdrawal or substitution may be effected only by an order made pursuant to a motion in the reviewing court; except that unless otherwise ordered by the court, service of the motion need be made only on the party and the attorneys directly affected thereby. A notification of any withdrawal or substitution shall be given by the clerk of the reviewing court to the clerk of the trial court, and substituted counsel shall forthwith give notice thereof to all parties.

Rule 8.769. Writ of supersedeas

A petition for a writ of supersedeas shall bear the same title as the appeal, and shall be served and filed in the reviewing court in which the appeal is pending. The petition shall be verified, and shall contain a statement of the necessity for the

writ, and supporting points and authorities. If the record on appeal has not been filed with the reviewing court, the petition shall contain a description of the judgment, the date of its entry, the fact and date of filing of the notice of appeal, and a statement of the subject matter of the appeal sufficient to advise the reviewing court of the question involved. A request for a temporary stay pending the granting or denial of the writ may be included in the petition, or may be made separately and without service on the respondent. The writ may be issued on any conditions which the reviewing court deems just.

If the writ or stay issues, the reviewing court shall notify the trial court pursuant to rule 8.490(k).

Rule 8.770. Substitute judge where trial judge unavailable

Whenever by these rules any act is required to be done by the judge who tried the case, and such judge is unavailable or unable to act at the time fixed therefor, the act shall be done by another judge of the same court, to be designated by the presiding judge thereof, or if there is no judge of the court available to act, then the act shall be done by a judge designated by the Chairman of the Judicial Council.

Rule 8.771. Presumption where record not complete

If a record on appeal does not contain all of the papers, records and oral proceedings, but is certified by the judge or the clerk, or stipulated to by the parties, in accordance with these rules, it shall be presumed in the absence of proceedings for augmentation that it includes all matters material to a determination of the points on appeal. On an appeal on the judgment roll alone, or on a partial or complete clerk's transcript, the foregoing presumption shall not apply unless the error claimed by appellant appears on the face of the record.

Rule 8.772. Scope and construction

(a) Courts and proceedings covered

This chapter applies to appeals from municipal and justice courts in civil cases, except small claims cases. The rules shall be liberally construed to secure the just and speedy determination of appeals.

b) Relief from default

The reviewing court for good cause may relieve a party from a default occasioned by any failure to comply with these rules, except the failure to give timely notice of appeal.

Rule 8.773. Remittitur

(a) Issuance and transmission

Upon the expiration of the period during which a transfer may be ordered, the clerk of the superior court shall remit to the court from which the appeal was taken a certified copy of the judgment of the superior court and of its opinion, if any, and also all the original exhibits, orders, affidavits, papers, and documents which were sent to the superior court in connection with the appeal, except the statement or transcript on appeal and the notice of appeal. After the certified copy of the judgment has been remitted to the court below, the superior court has no further jurisdiction of the appeal or of the proceedings thereon, and the lower court shall make all orders necessary to carry its judgment or order into effect or otherwise proceed in conformity to the decision on appeal.

(b) Issuance forthwith

The court may direct the immediate issuance of the remittitur on stipulation of the parties.

(c) Stay of issuance

The court, for good cause, may stay the issuance of the remittitur for a reasonable period.

(d) Recall of remittitur

A remittitur may be recalled by order of the court on its own motion, on motion after notice supported by affidavits, or on stipulation setting forth the facts which would justify the granting of a motion.

Chapter 3. Appeals to the Appellate Division in Criminal Cases

Rule 8.780. Applicability to felonies, misdemeanors, infractions

(a) Rules applicable to felonies and superior courts

Rule 8.300 et seq. applies to appeals from the judgments and appealable orders of all courts in felony cases, and to appeals from the judgments and appealable orders of superior courts in all criminal cases. References in those rules to "superior court" mean "the court that pronounced judgment or issued the appealable order," and include a municipal or justice court that pronounced judgment or issued an appealable order in a felony case.

(b) Rules applicable to misdemeanors and infractions

Rule 8.781 et seq. applies to appeals from the judgments and appealable orders of municipal and justice courts in misdemeanor and infraction cases.

Rule 8.781. Definitions

The definitions in rules 1.5, 1.6, and 8.10 apply to this chapter unless the context otherwise requires.

Rule 8.782. Notice of appeal

(a) Time for filing

An appeal in a criminal case from a judgment or appealable order of a municipal or justice court is taken by filing with the clerk of that court a written notice of appeal signed by the appellant or appellant's attorney. The notice shall specify the judgment or order or part thereof from which the appeal is taken. The notice shall be liberally construed in favor of its sufficiency.

The notice of appeal shall be filed within 30 days after the rendition of the judgment or the making of the order; but if the defendant is committed before final judgment for insanity or narcotics addiction or indeterminately as a mentally disordered sex offender, the notice of appeal shall be filed within 30 days after the commitment.

If the notice of appeal is not filed within the time prescribed, the appeal shall be void and of no effect. A notice received after the expiration of the time prescribed shall be marked by the clerk "Received (date) but not filed", and the clerk shall advise the party seeking to file the notice that it was received but not filed because the period for filing had elapsed.

A notice of appeal filed prior to the time prescribed is premature but may, in the discretion of the reviewing court for good cause, be treated as filed immediately after the rendition of the judgment or the making of the order.

References in this subdivision to the clerk apply to the judge of a justice court, in the absence of a clerk.

(b) Notification by clerk

The clerk of the trial court, or the judge thereof if there is no clerk, shall forthwith mail a notification of the filing of the notice of appeal to each party other than the appellant. The notification shall state the number and title of the case and the date the notice of appeal was filed. The failure of the clerk or judge to give such notification shall not affect the validity of the appeal.

Rule 8.783. Record on appeal

(a) The record on an appeal to a Superior Court from a municipal or an inferior court in a criminal case shall consist of the following items, or so many thereof as may exist in the particular case:

(1) The complaint;

(2) The plea or pleas of the defendant;

(3) All written instructions given, or requested and refused;

(4) The verdict, or if a jury was waived, the entry of such waiver in the minutes or docket, and the finding of the court upon the issues;

(5) Any written motion or notice of motion for new trial, in arrest of judgment or to dismiss or otherwise terminate the action, or the entry in the minutes or docket of any oral motion to the same effect, and the order of the court thereon;

(6) Any demurrer to the complaint, and the order of the court thereon;

(7) All other minutes of the court relating to the action;

(8) The judgment, and the order appealed from, if the appeal is from an order;

(9) The notice of appeal;

(10) Any statement or transcript on appeal, or both, settled and certified by the trial judge as hereinafter provided for in rules 8.784 and 8.788;

(11) All exhibits, instructions, orders, affidavits, papers and documents properly referred to and identified in such statement or transcript, as provided in rule 8.784;

(12) If the appeal is from an order made after judgment, items 2, 3, 4, 5, 6 and 7 may be omitted, and the record shall include any written motion and any written notice of motion, the denial or granting of which is the order appealed from, or the entry in the minutes or docket of any such oral motion, and all minutes of the court relating to such motion.

(b) The matters included in the foregoing item 1 to 9 inclusive, 11 and 12 of subdivision (a), or so many of them as may be pertinent to the appeal taken, shall be prepared by the clerk of the trial court, or by the judge thereof if there is no clerk. The notice of appeal, matters appearing in the minutes or docket of the trial court and any other part of the record, the original of which it is not possible to transmit to the superior court, shall be copied as provided in subdivision (a) of rule 8.144 and the copies made part of the record on appeal; but the originals of all other matters shall be included in the record. As soon as the statement on appeal, including the transcript, if any, has been settled and certified, or the right of the appellant to have a statement settled and certified shall have terminated, as elsewhere provided in these rules, the clerk of the trial court, or the judge thereof if there is no clerk, shall forthwith transmit the record on appeal, with his certificate that the parts thereof are originals or copies, as the case may be, to the clerk of the superior court to which the appeal is taken.

Rule 8.784. Statement or transcript

(a) Where a consideration of the evidence or any part thereof, or of any proceedings which do not otherwise constitute a part of the record on appeal as defined in rule 8.783, is necessary to a determination of the appeal, the

same must be set forth in a statement on appeal settled and certified as provided in these rules, and if not so set forth, it shall be presumed that they were such as to support the judgment or order appealed from. If all or any part of such evidence or other proceedings was reported by an official reporter, the appellant may give notice in his proposed statement that he intends to file a reporter's transcript of the evidence and proceedings so reported, and to make the same a part of the statement, and if he gives such notice he may omit any other statement of the evidence and proceedings so reported from his proposed statement.

(b) In every such statement the appellant shall specify the grounds on which he intends to rely upon appeal and set forth so much of the evidence and other proceedings as are necessary for a decision upon said grounds. Said grounds of appeal shall be stated with sufficient particularity to apprise the court and the opposing party of the rulings or other matters of which the appellant intends to complain, but this may be done by any general description calling attention to the points to be made, without specifying each separate ruling or other matter to be complained of. If one of said grounds of appeal is insufficiency of the evidence, the particulars in which it is insufficient shall also be stated, unless a reporter's transcript containing the whole thereof is to be made a part of the statement. No ground of appeal not so specified shall be considered by the superior court unless it shall appear to the satisfaction of said Court that the record on appeal fairly and fully presents the evidence and other proceedings necessary for a decision thereon.

(c) It shall not be necessary in any such statement or transcript to copy any exhibit, instruction, order, affidavit, paper or document on file with the trial court, but the same may be merely referred to by any designation sufficient to identify it. If any point is to be made on appeal as to the giving, refusal or modification of instructions, it shall be necessary to show by said statement or transcript whether any oral instructions were given and, if so, what they were, and by whom requested, and if the written instructions included in the record under rule 8.783 do not show by whom requested, or what modifications were made in instructions given as modified, these facts shall be set forth in the statement.

(d) An appellant who desires to have a statement settled shall, within 15 days after filing notice of appeal, serve on the respondent and file with the trial court a proposed statement on appeal. If in such proposed statement appellant gives notice that a reporter's transcript is to be filed and made a part thereof, as provided in subdivision (a) of this rule, appellant may file, within 15 days after the filing of the proposed statement, a transcript of the evidence or other proceedings reported by an official reporter, certified by

~~that reporter to be correct, and shall within five days after such filing, notify the respondent thereof. Any such transcript, when settled and certified as provided in rule 8.788, shall become a part of the statement. If the transcript is not filed or notice is not given of its filing within the time limited by these rules or any lawful extension thereof, the appellant's right to have the transcript settled and certified as a part of the statement shall terminate and the trial court shall proceed upon the other parts of the proposed statement as provided in rule 8.788. If the failure to file such transcript in time results from the refusal, failure or inability of the reporter to make all or any part of the transcript, the appellant may, within five days after expiration of the time for filing such transcript, move the trial court for leave to file amendments to the statement to cover the matters originally proposed to be in the transcript. If the trial court grants the motion, the appellant shall serve and file amendments within 15 days after the making of the order and such amendments and the original statement shall be settled and certified as provided in rule 8.788. If the appellant fails to serve and file a proposed statement on appeal within the time limited by these rules, or any lawful extension thereof, the right to have a statement settled and certified shall forthwith terminate.~~

~~Rule 8.785. Amendments to statement or transcript~~

~~The respondent may within 15 days after such statement is filed, or notice is given of the filing of such transcript, serve on the appellant and file proposed amendments to the statement or transcript, or both.~~

~~Rule 8.786. Counsel on appeal~~

~~(a) Standards for appointment~~

~~On application of defendant-appellant, the appellate department shall appoint counsel on appeal for any defendant-appellant convicted of a misdemeanor who 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, if the defendant-appellant was represented by appointed counsel in the trial court. On application, the appellate department shall appoint counsel for any other such defendant-appellants who establish their indigency as in the Courts of Appeal. A defendant is subject to incarceration or a fine if the incarceration or fine is in a sentence, or is a condition of probation, or may be ordered if~~

the defendant violates probation. The appellate department may appoint counsel for any other indigent defendant-appellant.

(b) Application; duty of trial counsel

If defense trial counsel believes that the client is indigent and will file an appeal, counsel shall prepare and file in the trial court an application to the appellate department for appointment of counsel. If the defendant-appellant was represented by appointed counsel in the trial court, the application shall include counsel's declaration to that effect. If the defendant-appellant was not represented by appointed counsel in the trial court, the application shall include a declaration of indigency supported by evidence in the form required by the Court of Appeal for the district where the court is located. The trial court shall transmit the application to the appellate department along with the record on appeal. A defendant-appellant may, however, apply directly to the appellate department for appointment of counsel at any time after the notice of appeal is filed.

The appellate department may take a reasonable time to confirm that the defendant-appellant still seeks the appointment of counsel. In the case of a defendant-appellant not represented by appointed counsel in the trial court, the appellate department may take a reasonable time to confirm the facts stated in the declaration of indigency.

(c) Defendant found able to pay in trial court

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 the trial counsel in proceedings under Penal Code section 987.8 or 987.81, the findings in those proceedings shall be included in the record of any appeal by the defendant or, if made after the record on appeal is transmitted to the appellate department, shall be transmitted to the appellate department as an augmentation of the record. In those cases, the appellate department shall conduct appropriate proceedings to determine the defendant's ability to pay or contribute to the expense of counsel on appeal, and if it finds that the defendant is able, shall order the defendant to pay all or part of the cost.

Rule 8.787. Extensions of time and relief from default

(a) Extensions of time

The court from which the appeal is taken, or a judge thereof, may for good cause shown by affidavit make an order granting not more than a total of 15 days additional to the time limited in these rules for serving and filing the statement, or for filing the transcript and giving notice thereof, or for proposing amendments thereto, or for engrossing the statement or transcript, or both, and presenting the same for certification. The superior court to which an appeal is taken, or if the appeal is to be heard in an appellate department, the presiding judge thereof, may, for good cause shown by affidavit, further extend the time for doing any act required by these rules, except the time for filing the notice of appeal. Every such extension shall be made upon application as provided in rule 8.766 before the time extended, including any previous extensions thereof, has expired.

(b) Relief from default

The superior court may for good cause relieve a party from a default occasioned by any failure to comply with these rules, except failure to give timely notice of appeal.

Rule 8.788. Settlement of statement or transcript

Upon the filing of such proposed amendments or the expiration of the time for filing them, the trial judge shall forthwith fix a time for settlement of the statement or transcript, or both, which time shall be as early as the business of the court will permit, either in chambers or in open court, and cause notice to be mailed, at least five days before the time fixed, to each party, or, if any party appears by attorney, then to the attorney, if the mailing address of the party or attorney appears in the files of the case in which the appeal is taken. The trial judge shall at the time fixed, or any other time to which the matter may be continued, settle the statement or transcript, or both, and the amendments proposed, if any, correcting, altering, or rewriting the statement or transcript, or both, as may be necessary to make it set forth fairly and truly the evidence and proceedings relating to the specified grounds of appeal or the matters set forth by the appellant in support of it.

The appellant's specifications of grounds of appeal shall not in any case be eliminated from the settled statement. At the time of settlement the judge may direct the appellant to engross the statement or transcript, or both, as settled. Thereupon the appellant shall engross the statement or transcript, or both, as corrected and settled and present it to the judge for certification within five days from the date of settlement, and if the appellant fails to do so within that period or any lawful extension, the right to have the statement or transcript settled or certified shall terminate. If a statement or transcript is settled and engrossed, if

~~engrossment is ordered, the trial judge shall certify to its correctness. A judge may settle and certify the statement or transcript after or before ceasing to be the trial judge. If the trial judge dies, is removed from office, becomes disqualified, or is absent from the state at the time for settling or certifying a statement or transcript, it may be settled or certified by any other judge of the court qualified to act.~~

~~The clerk of the trial court shall promptly mail copies of the statement, as settled and certified by the judge, to counsel for the parties and to unrepresented parties, unless the judge certifies that the statement proposed and filed by the appellant was settled without significant change.~~

~~Rule 8.789. Experimental rule on use of recordings to facilitate settlement of statements~~

~~(a) Scope of experiment~~

~~Notwithstanding any other rule, a municipal of justice court may provide by local rule that this rule applies to every appeal in a misdemeanor case in which all or part of the proceedings were officially recorded electronically.~~

~~(b) Appellate counsel~~

~~Counsel retained for the appeal shall file notice of his or her appearance in the trial court. The clerk of the reviewing court shall send the trial court notice of the appointment of counsel on appeal, which shall be filed as an appearance by the trial court.~~

~~(c) Trial court clerk's duties~~

~~(1) The clerk of the trial court shall retain custody of the original sound recording, unless ordered to deliver it to the reviewing court.~~

~~(2) To the extent feasible, the clerk shall make the original sound recording available to the parties and counsel for listening in court facilities during normal business hours.~~

~~(3) Within ten days after the notice of appeal is filed, the clerk of the trial court shall prepare and label one copy of the original sound recording for each party and a copy for the court's file; the copies shall be on standard audio cassette tapes or on CD-ROM.~~

(4) The clerk shall promptly mail a copy of the sound recording to counsel on appeal, if known to the clerk, for each party to the appeal. If the clerk has not received notice of the appointment or retention of counsel on appeal, the copy shall be mailed to trial counsel and to each party unrepresented at trial and on appeal. Each copy shall be accompanied by a copy of this rule and an information leaflet published by the Administrative Office of the Courts.

(d) Proposed statement

Counsel for the appellant (or the appellant, if unrepresented at trial and on the appeal) shall prepare a proposed statement of the case which shall include:

(1) A summary of the grounds of the appeal complying with rule 8.784(b).

(2) A narrative statement summarizing the basic events in the case, and as much of the evidence and rulings of the court as are relevant to the appeal. Any portion of the statement may be in the form of a verbatim transcription of the sound recording. The proposed statement shall, within 30 days after the mailing of the copy of the sound recording, be served on the opposing counsel of record or on the opposing party if unrepresented and filed in the trial court. If the proposed statement is not served and filed within that time, or any extension, the appellant may not proceed with the appeal unless relieved from the default.

(e) Obligation of counsel

Unless counsel on appeal has been appointed or retained, the preparation, service and filing of the proposed statement as set forth in subdivision (e), and the other obligations imposed on counsel by this rule, are part of the obligation of representing a party at trial.

If counsel on appeal has been appointed or retained, that counsel has the primary responsibility for complying with subdivision (d) and fulfilling the other obligations imposed on counsel by this rule; and trial counsel has the duty to cooperate fully with appellate counsel to facilitate compliance.

(f) Proposed corrections and additions

Within 20 days after service of the proposed statement, counsel for the respondent (or the respondent, if unrepresented) shall serve on the person who served the proposed statement and file either a written acceptance of the

proposed statement as accurate or proposed corrections and additions to the proposed statement. Unless good cause is shown in a motion for an order permitting late filing, failure to timely serve and file proposed corrections and additions is deemed an acceptance.

If proposed corrections and additions are served and filed, counsel for the parties have an obligation to confer in person or by telephone and seek to arrive at a stipulated final statement or to narrow the area of disagreement. This obligation is not applicable when a party is unrepresented.

A stipulated final statement, or stipulated summary of remaining points of disagreement, shall be prepared and filed in the trial court by the appellant within 10 days after service of proposed corrections and additions.

(g) Resolution of disputes

If the respondent files proposed corrections and additions, the clerk shall refer the file to the judge who tried the case or, in the judge's absence, to another judge of the court:

(1) Forthwith after a stipulated summary of points of disagreement is filed; or

(2) Forthwith after the respondent files proposed corrections and additions, if one of the parties was unrepresented at trial and remains unrepresented; or

(3) Twenty days after the respondent files proposed corrections and additions, if no stipulated final statement nor stipulated summary of points of disagreement has been filed.

The judge shall resolve all disputed issues of fact, using the available sound recordings of the proceedings to supplement the judge's memory and notes of the case. No hearing or conference shall be held unless ordered by the judge. A party may suggest that a hearing be ordered.

Within 20 days from the date the file is referred by the clerk, the judge shall certify in writing the resolution of the disputed issues. The clerk shall promptly file the judge's certificate and mail copies to counsel for the parties and to unrepresented parties

(h) Certification and transmittal

The clerk of the trial court shall certify and transmit to the reviewing court as part of the trial court file, pursuant to subdivision (j), either:

(1) A proposed statement which has been expressly accepted and the respondent's acceptance forthwith upon filing of the acceptance; or

(2) A proposed statement as to which no proposed correction and additions have been timely filed promptly after expiration of time within which to file proposed corrections and additions, along with the clerk's certificate that corrections and additions were not proposed. If the respondent has moved for an order permitting late filing of proposed corrections and additions, the clerk shall defer certification and transmittal until the motion is decided; and if it is denied, the clerk shall thereupon certify and transmit the file, including the proposed statement and all papers pertaining to the motion; or

(3) A stipulated final statement forthwith upon its filing; or

(4) The judge's certificate resolving disputed issues pursuant to subdivision (g) and all proposed statements, proposed corrections and additions, and stipulations of the parties forthwith upon filing the judge's certificate resolving disputed issues.

(i) Returning of copy of the sound recording

Upon signing a stipulated final statement, or upon receiving a copy of the judge's certificate resolving disputed issues, or upon receiving notice of the filing of the record in the reviewing court, or at the request of the reviewing court, trial counsel and any unrepresented party without counsel on appeal shall deliver the copy of the sound recording to the clerk of the superior court appellate division for the use of any counsel on appeal; or, if trial counsel is in the same law office as counsel on appeal, shall deliver the copy to counsel on appeal and promptly file a notice with the appellate division stating that it has been delivered or will be delivered to counsel on appeal when the appeal is assigned.

(j) In lieu of the clerk's record on appeal specified in rule 8.783, the clerk shall transmit to the reviewing court the complete trial court file on the case with a copy of all docket entries in the trial court. The original or a copy of the docket entries shall be retained in the trial court. The file copy of the sound recording shall be transmitted as part of the file.

(k) The provisions of rule 8.761 concerning augmentation and correction of the record apply. The reviewing court may order from the trial court the original sound recording to clarify any question concerning the trial court proceedings. The clerk of the reviewing court shall return the original sound recording to the trial court as soon as possible but no later than the time when the decision of the reviewing court is final.

(*l*) The provisions of rule 8.787 concerning extensions of time and relief from default apply to this rule.

(m) This rule does not limit a court's power to order a full verbatim transcript of the proceedings. If a transcript is ordered, this rule is inapplicable to the case.

Rule 8.790. Abandonment of appeal

An appellant may at any time abandon his appeal by filing a written abandonment thereof. Such abandonment shall be filed in the trial court if the record has not yet been filed in the superior court, or in the superior court if the record has been filed in that court. Upon the filing of a written abandonment in the trial court the jurisdiction of that court shall thereby be restored and it shall at once take such proceedings as may be necessary to enforce its judgment or order as if no such appeal had been taken. Upon the filing of such abandonment in the superior court, that court shall dismiss the appeal and issue its remittitur forthwith.

Rule 8.791. Additions to record

On a sufficient showing by affidavit, or otherwise, that evidence was taken or proceedings were had in the trial court or that papers are there on file which are material to a disposition of the appeal and are not included in the record on appeal, and a showing of good cause why the same have not been included in said record, the superior court may authorize the trial judge to make a further certificate as to such evidence or other proceedings or papers, and direct the same, when so certified, to be added to the record.

Rule 8.792. Hearings and dismissals

Appeals to the superior court in criminal cases shall be calendared, argued and determined, notice of hearings shall be given, and petitions for rehearing and answers thereto shall be filed and acted upon as prescribed in the rules adopted by the Judicial Council for appellate departments of the superior court.

If the appeal is not brought to a hearing within the time limited, or the appellant otherwise fails to prosecute it with diligence, or if the appeal is irregular in any substantial respect, the superior court may, on motion of the respondent or on its own motion, after written notice to the appellant, order it dismissed.

Rule 8.793. Remittiturs

(a) Issuance and transmission

Upon the expiration of the period during which a transfer may be ordered, unless a new trial is to be had in the superior court, the clerk of the superior court shall remit to the court from which the appeal was taken a certified copy of the judgment of the superior court and of its opinion, if any, and also all the original exhibits, orders, affidavits, papers and documents which were sent to said superior court in connection with said appeal, except the statement or transcript on appeal and the notice of appeal. After such certified copy of the judgment has been remitted to the court below, the superior court has no further jurisdiction of the appeal or of the proceedings thereon, and the lower court shall make all orders necessary to carry its judgment or order into effect or otherwise proceed in conformity to the decision on appeal.

(b) Issuance forthwith

The court may direct the immediate issuance of the remittitur on stipulation of the parties.

(c) Stay of issuance

The court, for good cause, may stay the issuance of the remittitur for a reasonable period.

~~(d) Recall of remittitur~~

~~A remittitur may be recalled by order of the court on its own motion, on motion after notice supported by affidavits, or on stipulation setting forth the facts which would justify the granting of a motion.~~

Disposition Table
Appellate Rules 8.700 – 8.793
Numerically by Old Rule Numbers

Current Rule	Revised Rule
8.700	8.802(d)
8.701(a)	10.1100(a)
8.701(b)	10.1100(b)
8.701(c)	10.1100(c)
8.701(d)	10.1100(d)
8.702	10.1108
8.703, paragraph 1	10.1104(b)
8.703, paragraph 2	10.1104(a)
8.704(a)	8.885(a) and 8.929(a)
8.704(b)	8.881, 8.885(b), 8.926, and 8.929(b)
8.705(a)	8.808(a)
8.705(b)	8.808(b)
8.706(a)	8.882(a)(1), (2), and (3), (5) and 8.927(a)(1), (2), (3), and (5)
8.706(b)	8.882(d)
8.706(c)	8.883(a) and (b) and 8.928(a) and (b)
8.706(d)	8.883(c) and 8.928(c)
8.706(e)	8.882(c)(1), (2) and (4) and 8.882(d) and 8.927(c)(1), (2) and (4) and 8.928(d)
8.706(f)	8.882(c)(3) and 8.927(c)(3)
8.706(g)	DELETED
8.706(h)	DELETED
8.707(a)	8.886(a)
8.707(b)	8.887(a)
8.707(c)	8.887(c)
8.708(a)(1)	8.888(a)(1)
8.708(a)(b)	DELETED
8.708(b)	8.888(b)
8.708(c)(1)	8.889(a)(1)
8.708(c)(2)	8.889(b)(1)
8.708(c)(3)	8.889(b)(1) and (2)
8.708(c)(4)	8.889(b)(1) and (3)
8.708(c)(5)	8.889(d)
8.708(d)	8.889(c)
8.709	8.888(c)
8.750(a)	8.821(a)(1) and (2)
8.750(b)	8.821(d)
8.750(c)	8.821(b)(1)
8.750(d)	8.821(b)(1)
8.750(e)	8.821(e)
8.751(a)	8.822(a)
8.751(b)	8.822(b)
8.751(c)	8.822(c)
8.752(a)	8.823(b) and (b)(1)
8.752(b)	8.823(c)
8.752(c)	8.823(f)
8.752(d)	DELETED
8.753(a)	8.831 and 8.834(a)(4), (b)(1) and (c)(2)
8.753(b)	8.834(a)(2) and (3) and (c)(3)

Current Rule	Revised Rule
8.753(c)	8.834(b)(2)
8.753(d)	8.834(c)(1) and (4) and (d)(1) and (2)
8.753(e)	8.834(e)
8.754(a)	8.831
8.754(b)	8.832(b)(1)
8.754(c)	8.832(c)(3)
8.754(d)	8.832(d)(1)
8.754(e)	DELETED
8.754(f)	DELETED
8.755(a)	8.836(b) and
8.755(b)	8.831 and 8.836(c)
8.756(a)	8.831 and 8.837(b)(1) and (c)
8.756(b)	DELETED
8.756(c)	8.837(d)(1) and (3), (e), and (f)
8.757	DELETED
8.758(a)	8.838(a)
8.758(b)	8.838(b)
8.758(c)	8.838(c)
8.759	8.840
8.760	8.839
8.761(a)	8.841(a)
8.761(b)	8.841(b)
8.761(c)	8.841(b)
8.762(a)	8.825(b)(1), (2), (4), and (5) and (d)(2) and (3)
8.762(b)	8.825(b)(1) and (2)
8.762(c)	8.842(b)(1)
8.762(d)	8.825(b)(3)
8.762(e)	8.825(c)
8.763	DELETED
8.764(a)	8.891(a)
8.764(b)	8.891(b)
8.764(c)	8.891(d)
8.764(d)	8.891(c)
8.764(e)	8.891(e)
8.765(1)	8.802(c)(1), (2), and (3)
8.765(2)	8.804(21) and (22)
8.765(3)	8.804(11) and (12)
8.765(4)	8.802(b)(1) and (2)
8.765(5)	8.804(13)
8.765(6)	8.804(18)
8.765(7)	8.804(23)
8.765(8)	DELETED
8.765(9)	8.804(8)
8.765(10)	DELETED
8.765(11)	DELETED
8.765(12)	8.802(c)(4)
8.766	8.806
8.767(a)	8.810(a)
8.767(b)	8.810(b)
8.767(c)	8.810(c)
8.767(d)	8.813
8.768(a)	8.814(a)

Current Rule	Revised Rule
8.768(b)	8.814(b) and (c)
8.769 paragraph 1	8.824(a), (c), and (d)(1)
8.769 paragraph 2	8.824(d)(2)
8.770	DELETED
8.771	8.830(b)
8.772(a)	8.800, 8.802(a), and 8.820
8.772(b)	8.812
8.773(a)	8.890(b)(1)
8.773(b)	8.890(c)(1)
8.773(c)	8.890(c)(3)
8.773(d)	8.890(c)(2)
8.780(a)	DELETED
8.780(b)	8.800, 8.850, and 8.900
8.781	DELETED, see 8.804
8.782(a) Paragraph 1	8.852(a) and 8.901(a)
8.782(a) Paragraph 2	8.853(a) and 8.902(a)
8.782(a) Paragraph 3	8.853(d) and 8.902(d)
8.782(a) Paragraph 4	8.853(c) and 8.902(c)
8.782(b)	8.852(b)(1), (2), and (6) and 8.901(b)(1), (2) and (6)
8.783	8.860(a) and 8.910(a)
8.783(a)(1)	8.861(1) and 8.912(1)
8.783(a)(2)	8.861(2) and 8.912(2)
8.783(a)(3)	8.861(4)
8.783(a)(4)	8.912(4) and 8.861(6) and (7)
8.783(a)(5)	8.912(6) and 8.861(9)
8.783(a)(6)	8.861(2) and 8.912(2)
8.783(a)(7)	8.861(3) and 8.912(3)
8.783(a)(8)	8.861(8) and 8.912(5)
8.783(a)(9)	8.912(8) and 8.861(11)
8.783(a)(10)	DELETED, see 8.860(a)(2) and 8.910(a)(2)
8.783(a)(11)	DELETED, see 8.870 and 8.921
8.783(a)(12)	8.867 and 8.920
8.783(b)	8.913(b) and (d) and 8.862(b) and (d)
8.784(a)	8.837(c)(2)(B), 8.860(a)(2), 8.869(c)(2)(B), 8.910(a)(2), and 8.916(c)(2)(B)
8.784(b)	8.837(c)(2), 8.837(c)(2)(A) and (C), 8.869(c), 8.869(c)(2)(A) and (C), 8.916(c) and 8.916(c)(2) (A) and (C).
8.784(c)	8.837(c)(2)(D) and 8.869(c)(2)(D)
8.784(d)	8.869(b)(1) and 8.916(b)(1)
8.785	8.869(d)(1) and 8.916(d)(1)
8.786(a)	8.851(a)
8.786(b)	8.851(b)
8.786(c)	8.851(c)
8.787(a)	8.810(b) and (c), 8.869(g), and 8.916(g)
8.787(b)	8.812
8.788 paragraph 1	8.869(d)(3) and 8.916(d)(3)
8.788 paragraph 2	8.869(d)(4) and (5) and (f) and 8.916(d)(4) and (5) and (f)
8.788 paragraph 3	DELETED, see 8.872 and 8.922
8.789(a)	DELETED
8.789(b)	DELETED
8.789(c)	DELETED

Current Rule	Revised Rule
8.789(d)	8.869(b)(1) and 8.916(b)(1)
8.789(e)	DELETED
8.789(f) paragraph 1	8.869(d)(1) and 8.916(d)(1)
8.789(f) paragraph 2	DELETED
8.789(g) paragraph 1	DELETED
8.789(g) paragraph 2	8.869(d)(2) and (4) and 8.916(d)(2) and (4)
8.789(g) paragraph 3	8.869(d)(4) and 8.916(d)(4)
8.789(h)	8.869(f) and 8.916(f)
8.789(i)	DELETED
8.789(j)	8.863 and 8.914
8.789(k)	8.873(c)
8.789(l)	DELETED
8.789(m)	DELETED
8.790	8.855(a) and (b)
8.791	8.873(c) and 8.923(c)
8.792	8.880 and 8.881
8.793(a)	8.880 and 8.890(b)(1)
8.793(b)	8.890(c)(1)
8.793(c)	8.890(c)(3)
8.793(d)	8.890(c)(2)

Disposition Table
Appellate Rules 8.800–8.936 and 10.1100–10.1108
Numerically by Revised Rule Number

Revised Rule	Current Rule
8.800	8.772(a) and 8.780(b)
8.802(a)	8.772(a)
8.802(b)(1) and (2)	8.765(4)
8.802(b)(3), (4), and (5)	NEW
8.802(c)(1), (2), and (3)	8.765(1)
8.802(c)(4)	8.765(12)
8.802(d)	8.700
8.804	8.765 and 8.781
8.804(1), (2), (3), (4), (5), (6), and (7)	NEW
8.804(8)	8.765(9)
8.804(9) and (10)	NEW
8.804(11) and (12)	8.765(3)
8.804(13)	8.765(5)
8.804(14), (15), (16), and (17)	NEW
8.804(18)	8.765(6)
8.804(19) and (20)	NEW
8.804(21) and (22)	8.765(2)
8.804(23)	8.765(7)
8.806	8.766
8.808(a)	8.705(a)
8.808(b)	8.705(b)
8.810(a)	8.767(a)
8.810(b)	8.767(b) and 8.787(a)
8.810(c)	8.767(c), and 8.787(a)
8.810(d)	8.766
8.810(e)	NEW
8.811	NEW
8.812	8.772(b) and 8.787(b)
8.813	8.767(d)
8.814(a)	8.768(a)
8.814(b)	8.768(b)
8.814(c)	8.768(b)
8.816	NEW
8.820	8.772(a)
8.821(a)(1) and (2)	8.750(a)
8.821(a)(3)	NEW
8.821(b)(1)	8.750(c) and (d)
8.821(b)(2)	NEW
8.821(c)	NEW
8.821(d)	8.750(b)
8.821(e)	8.750(e)
8.822(a)	8.751(a)
8.822(b)	8.751(b)
8.822(c)	8.751(c)
8.822(d)	NEW
8.823(a)	NEW
8.823(b)	8.752(a)
8.823(b)(1)	8.752(a)
8.823(b)(2)	NEW

Revised Rule	Current Rule
8.823(c)	8.752(b)
8.823(d)	NEW
8.823(e)	NEW
8.823(f)	8.752(c)
8.823(g)	NEW
8.824(a)	8.769 paragraph 1
8.824(b)	NEW
8.824(c)	8.769 paragraph 1
8.824(d)(1)	8.769 paragraph 1
8.824(d)(2)	8.769 paragraph 2
8.825(a)	NEW
8.825(b)(1) and (2)	8.762(a) and (b)
8.825(b)(3)	8.762(d)
8.825(b)(4) and (5)	8.762(a)
8.825(c)	8.762(e)
8.830(a)	NEW
8.830(b)	8.771
8.831	8.753(a), 8.754(a), 8.755(b), and 8.756(a)
8.832(a)	8.754(d)
8.832(b)(1)	8.754(b)
8.832(b)(2)	NEW
8.832(b)(3)	NEW
8.832(c)(1) and (2)	NEW
8.832(c)(3)	8.754(c)
8.832(d)(1)	8.754(d)
8.832(d)(2)	8.762(a)
8.833	NEW
8.834(a)(1)	NEW
8.834(a)(2)	8.753(b)
8.834(a)(3)	8.753(b)
8.834(a)(4)	8.753(a)
8.834(b)(1)	8.753(a)
8.834(b)(2)	8.753(c)
8.834(c)(1)	8.753(d)
8.834(c)(2)	8.753(a)
8.834(c)(3)	8.753(b)
8.834(c)(4)	8.753(d)
8.834(d)(1)	8.753(d)
8.834(d)(2)	8.753(d)
8.834(d)(3)	8.762(a)
8.834(e)	8.753(e)
8.835	NEW
8.836(a)	NEW
8.836(b)	8.755(a)
8.836(c)	8.755(b)
8.837(a)	NEW
8.837(b)(1)	8.756(a)
8.837(b)(2)	NEW
8.837(c)(1)	8.756(a)
8.837(c)(2)	8.756(a) and 8.784(b)
8.837(c)(2)(A)	8.784(b)
8.837(c)(2)(B)	8.784(a)

Revised Rule	Current Rule
8.837(c)(2)(C)	8.784(b)
8.837(c)(2)(D)	8.784(c)
8.837(d)(1)	8.756(c)
8.837(d)(2)	NEW
8.837(d)(3)	8.756(c)
8.837(d)(4), (5) and (6)	NEW
8.837(e)	8.756(c)
8.837(f)	8.756(c)
8.838(a)	8.758(a)
8.838(b)	8.758(b)
8.838(c)	8.758(c)
8.839	8.760
8.840	8.759
8.841(a)	8.761(a)
8.841(b)	8.761(b) and (c)
8.841(c)	NEW
8.841(d)	NEW
8.842(a)	NEW
8.842(b)(1)	8.762(c)
8.842(b)(2)	NEW
8.850	8.780(b)
8.851(a)	8.786(a)
8.851(b)	8.786(b)
8.851(c)	8.786(c)
8.852(a)	8.782(a) paragraph 1
8.852(b)(1) and (2)	8.782(b)
8.852(b)(3), (4), and (5)	NEW
8.852(b)(6)	8.782(b)
8.853(a)	8.782(a) paragraph 2
8.853(b)	NEW
8.853(c)	8.782(a) paragraph 4
8.853(d)	8.782(a) paragraph 3
8.853(e)	NEW
8.854	NEW
8.855(a)	8.790
8.855(b)	8.790
8.855(c)	NEW
8.860(a)	8.783
8.860(b)	NEW
8.861(1)	8.783(a)(1)
8.861(2)	8.783(a)(2) and (6)
8.861(3)	8.783(a)(7)
8.861(4)	8.783(a)(3)
8.861(5)	NEW
8.861(6)	8.783(a)(4)
8.861(7)	8.783(a)(4)
8.861(8)	8.783(a)(8)
8.861(9)	8.783(a)(5)
8.861(10)	NEW
8.861(11)	8.783(a)(9)
8.861(12)	NEW
8.862(a)	NEW

Revised Rule	Current Rule
8.862(b)	8.783(b)
8.862(c)	NEW
8.862(d)	8.783(b)
8.863	8.789(j)
8.864	NEW
8.865	NEW
8.866	NEW
8.867	8.783(a)(12)
8.868	NEW
8.869(a)	NEW
8.869(b)(1)	8.784(d) and 8.789(d)
8.869(b)(2) and (3)	NEW
8.869(c)(1)	8.756(a)
8.869(c)(2)	8.756(a) and 8.784(b)
8.869(c)(2)(A)	8.784(b)
8.869(c)(2)(B)	8.784(a)
8.869(c)(2)(C)	8.784(b)
8.869(c)(2)(D)	8.784(c)
8.869(d)(1)	8.785 and 8.789(f) paragraph 1
8.869(d)(2)	8.789(g) paragraph 2
8.869(d)(3)	8.788 paragraph 1
8.869(d)(4)	8.788 paragraph 2 and 8.789(g) paragraphs 2 and 3
8.869(d)(5)	8.788 paragraph 2
8.869(d)(6)	NEW
8.869(e)	NEW
8.869(f)	8.788 paragraph 2 and 8.789(h)
8.869(g)	8.787(a)
8.870	NEW
8.871	NEW
8.872	NEW
8.873(a)	NEW
8.873(b)	NEW
8.873(c)	8.789(k) and 8.791
8.880	8.792 and 8.793
8.881	8.704(b) and 8.792
8.882(a)(1), (2), and (3)	8.706(a)
8.882(a)(4)	NEW
8.882(a)(5)	8.706(a)
8.882(b)	NEW
8.882(c)	NEW
8.882(d)	8.706(b)
8.882(c)(1) and (2)	8.706(e)
8.882(c)(3)	8.706(f)
8.882(c)(4)	8.706(e)
8.883(a)	8.706(c)
8.883(b)	8.706(c)
8.883(c)	8.706(d)
8.883(d)	8.706(e)
8.884	NEW
8.885(a)	8.704(a)
8.885(b)	8.704(b)
8.885(c)	NEW

Revised Rule	Current Rule
8.885(d)	NEW
8.886(a)	8.707(a)
8.886(b)	NEW
8.887(a)	8.707(b)
8.887(b)	NEW
8.887(c)	8.707(c)
8.888(a)(1)	8.708(a)(1)
8.888(a)(2) and (3)	NEW
8.888(b)	8.708(b)
8.888(c)	8.709
8.889(a)(1)	8.708(c)(1)
8.889(a)(2)	NEW
8.889(b)(1)	8.708(c)(2), (3), and (4)
8.889(b)(2)	8.708(c)(3)
8.889(b)(3)	8.708(c)(4)
8.889(b)(4)	NEW
8.889(c)	8.708(d)
8.889(d)	8.708(c)(5)
8.890(a)	NEW
8.890(b)(1)	8.773(a) and 8.793(a)
8.890(b)(2)	NEW
8.890(c)(1)	8.773(b) and 8.793(b)
8.890(c)(2)	8.773(d) and 8.793(d)
8.890(c)(3)	8.773(c) and 8.793(c)
8.8890(d)	NEW
8.891(a)	8.764(a)
8.891(b)	8.764(b)
8.891(c)	8.764(d)
8.891(d)	8.764(c)
8.891(e)	8.764(e)
8.900	8.780(b)
8.901(a)	8.782(a) paragraph 1
8.901(b)(1) and (2)	8.782(b)
8.901(b)(3), (4), and (5)	NEW
8.901(b)(6)	8.782(b)
8.902(a)	8.782(a) paragraph 2
8.902(b)	NEW
8.902(c)	8.782(a) paragraph 4
8.902(d)	8.782(a) paragraph 3
8.902(e)	NEW
8.903	NEW
8.904(a)	8.790
8.904(b)	8.790
8.904(c)	NEW
8.910(a)	8.783
8.910(b)	NEW
8.911	NEW
8.912(1)	8.783(a)(1)
8.912(2)	8.783(a)(2) and (6)
8.912(3)	8.783(a)(7)
8.912(4)	8.783(a)(4)
8.912(5)	8.783(a)(8)

Revised Rule	Current Rule
8.912(6)	8.783(a)(5)
8.912(7)	NEW
8.912(8)	8.783(a)(9)
8.912(9)	NEW
8.913(a)	NEW
8.913(b)	8.783(b)
8.913(c)	NEW
8.913(d)	8.783(b)
8.914	8.789(j)
8.915	NEW
8.916(a)	NEW
8.916(b)(1)	8.784(d) and 8.789(d)
8.916(b)(2) and (3)	NEW
8.916(c)(1)	8.756(a)
8.916(c)(2)	8.756(a) and 8.784(b)
8.916(c)(2)(A)	8.784(b)
8.916(c)(2)(B)	8.784(a)
8.916(c)(2)(C)	8.784(b)
8.916(d)(1)	8.785 and 8.789(f) paragraph 1
8.916(d)(2)	8.789(g) paragraph 2
8.916(d)(3)	8.788 paragraph 1
8.916(d)(4)	8.788 paragraph 2 and 8.789(g) paragraphs 2 and 3
8.916(d)(5)	8.788 paragraph 2
8.916(d)(6)	NEW
8.916(e)	NEW
8.916(f)	8.788 paragraph 2 and 8.789(h)
8.916(g)	8.787(a)
8.917	NEW
8.918	NEW
8.919	NEW
8.920	8.783(a)(12)
8.921	NEW
8.922	NEW
8.923(a)	NEW
8.923(b)	NEW
8.923(c)	8.789(k) and 8.791
8.925	NEW
8.926	8.704(b)
8.927(a)(1), (2), and (3)	8.706(a)
8.927(a)(4)	NEW
8.927(a)(5)	8.706(a)
8.927(b)	NEW
8.927(c)(1) and (2)	8.706(e)
8.927(c)(3)	8.706(f)
8.927(c)(4)	8.706(e)
8.928(a)	8.706(c)
8.928(b)	8.706(c)
8.928(c)	8.706(d)
8.928(d)	8.706(e)
8.929(a)	8.704(a)
8.929(b)	8.704(b)
8.929(c)	NEW

Revised Rule	Current Rule
8.929(d)	NEW
8.930.	NEW
8.931.	NEW
8.932.	NEW
8.933.	NEW
8.934.	NEW
8.935.	NEW
8.936.	NEW
10.1100(a)	8.701(a)
10.1100(b)	8.701(b)
10.1100(c)	8.701(c)
10.1100(d)	8.701(d)
10.1104(a)	8.703 paragraph 2
10.1104(b)	8.703 paragraph 1
10.1108.	8.702

COURT OF APPEAL RULES WITHOUT COUNTERPARTS IN THE APPELLATE DIVISION RULES

General Provisions

Rule 8.1 Title

Rule 8.13. Amendments to rules

Rule 8.16. Amendments to statutes

Rule 8.18. Documents violating rules not to be filed

Rule 8.20. California Rules of Court prevail

Rule 8.23. Sanctions to compel compliance

Rule 8.25. Service and filing

Rule 8.29. Service on a non-party public officer or agency

Rule 8.40. Form of filed documents

Rule 8.44. Number of copies of filed documents

Rule 8.57. Motions before the record is filed

Rule 8.66. Extending time because of public emergency

Civil Appeals

Rule 8.208. Certificate of Interested Entities or Persons

Rule 8.124. Appendixes instead of clerk's transcript

Rule 8.153. Lending the record

Rule 8.160. Sealed records

Rule 8.224. Transmitting exhibits

Rule 8.240. Calendar preference

Rule 8.248. Prehearing conference

Rule 8.252. Judicial notice; findings and evidence on appeal

Criminal Appeals

Rule 8.316. Abandoning the appeal

Rule 8.424. Application in superior court for addition to normal record

Rule 8.428. Confidential records

Rule 8.444. Agreed statement

Appellate Division Forms

LIMITED CIVIL CASES

APP-101-INFO	Information on Appeal Procedures for Limited Civil Cases
APP-102	Notice of Appeal/Cross-Appeal (Limited Civil Case)
APP-103	Notice Designating Record on Appeal (Limited Civil Case)
APP-104	Proposed Statement on Appeal (Limited Civil Case)
APP-105	Order Concerning Appellant's Proposed Statement on Appeal (Limited Civil Case)
APP-106	Abandonment of Appeal (Limited Civil Case)

MISDEMEANORS

CR-131-INFO	Information on Appeal Procedures for Misdemeanors
CR-132	Notice of Appeal (Misdemeanor)
CR-133	Request for Court-Appointed Lawyer in Misdemeanor Appeal
CR-134	Notice Regarding Record of Oral Proceedings (Misdemeanor)
CR-135	Proposed Statement on Appeal (Misdemeanor)
CR-136	Order Concerning Appellant's Proposed Statement on Appeal (Misdemeanor)
CR-137	Abandonment of Appeal (Misdemeanor)

INFRACTIONS

CR-141-INFO	Information on Appeal Procedures for Infractions
CR-142	Notice of Appeal and Record of Oral Proceedings (Infraction)
CR-143	Proposed Statement on Appeal (Infraction)
CR-144	Order Concerning Appellant's Proposed Statement on Appeal (Infraction)
CR-145	Abandonment of Appeal (Infraction)

EXTRAORDINARY WRITS

APP-150-INFO	Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases
APP-151	Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)

APP-101-INFO Information on Appeal Procedures for Limited Civil Cases

GENERAL INFORMATION

1 What does this information sheet cover?

This information sheet tells you about appeals in limited civil cases. These are civil cases in which the amount of money claimed is $25,000 or less.

If you are the party who is appealing (asking for the trial court's decision to be reviewed), you are called the APPELLANT, and you should read Information for the Appellant, starting on page 2. If you received notice that another party in your case is appealing, you are called the RESPONDENT and you should read Information for the Respondent, starting on page 10.

This information sheet does not cover everything you may need to know about appeals in limited civil cases. It is meant only to give you a general idea of the appeal process. To learn more, you should read rules 8.800–8.843 and 8.880–8.891 of the California Rules of Court, which set out the procedures for limited civil appeals. You can get these rules at any courthouse or county law library or online at *www.courtinfo.ca.gov/rules*.

2 What is an appeal?

An appeal is a request to a higher court to review a decision made by a judge or jury in a lower court. **In a limited civil case, the court hearing the appeal is the appellate division of the superior court and the lower court—called the "trial court" in this information sheet—is the superior court.**

It is important to understand that **an appeal is NOT a new trial**. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits. The appellate division's job is to review a record of what happened in the trial court and the trial court's decision to see if certain kinds of legal errors were made:

- ***Prejudicial error:*** The appellant (the party who is appealing) may ask the appellate division to determine if an error was made about either the law or court procedures in the case that caused substantial harm to the appellant (this is called "prejudicial error").

  Prejudicial error can include things like errors made by the judge about the law, errors or misconduct by the lawyers, incorrect instructions given to the jury, and misconduct by the jury that harmed the appellant. When it conducts its review, the appellate division presumes that the judgment, order, or other decision being appealed is correct. It is the responsibility of the appellant to show the appellate division that an error was made and that the error was harmful.

- ***No substantial evidence:*** The appellant may also ask the appellate division to determine if there was substantial evidence supporting the judgment, order, or other decision being appealed. When it conducts its review, the appellate division only looks to see if there was evidence that reasonably supports the decision. The appellate division generally will not reconsider the jury's or trial court's conclusion about which side had more or stronger evidence or whether witnesses were telling the truth or lying.

The appellate division generally will not overturn the judgment, order, or other decision being appealed unless the record clearly shows that one of these legal errors was made.

For information about appeal procedures in other kinds of cases, see:

- *Information on Appeal Procedures for Unlimited Civil Cases* (form APP-001)
- *Information on Appeal Procedures for Infractions* (form CR-141-INFO)
- *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO)

You can get these forms at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*.

3 Do I need a lawyer to represent me in an appeal?

You do not *have* to have a lawyer; if you are an individual (rather than a corporation, for example), you are allowed to represent yourself in an appeal in a limited civil case. But appeals can be complicated and you will have to follow the same rules that lawyers have

to follow. If you have any questions about the appeal procedures, you should talk to a lawyer.

If you decide not to use a lawyer, you must let the court know if your address, telephone number, or other contact information changes so that the court can contact you if needed.

4 Where can I find a lawyer to help me with my appeal?

You have to hire your own attorney if you want one. You can get information about finding an attorney on the California Courts Online Self-Help Center at *www.courtinfo.ca.gov/selfhelp/lowcost*.

INFORMATION FOR THE APPELLANT

This part of the information sheet is written for the appellant—the party who is appealing the trial court's decision. It explains some of the rules and procedures relating to appealing a decision in a limited civil case. The information may also be helpful to the respondent. Additional information for respondents can be found starting on page 10 of this information sheet.

5 Who can appeal?

Only a party in the trial court case can appeal a decision in that case. You may not appeal on behalf of a friend, a spouse, a child, or another relative unless you are a legally appointed representative of that person (such as the person's guardian or convervator).

6 Can I appeal *any* decision the trial court made?

No. Generally, you can only appeal the final judgment—the decision at the end that decides the whole case. Other rulings made by the trial court before the final judgment generally cannot be separately appealed but can be reviewed only later as part of an appeal of the final judgment. There are a few exceptions to this general rule. Code of Civil Procedure section 904.2 lists a few types of orders in a limited civil case that can be appealed right away. These include orders that:

- Change or refuse to change the place of trial (venue)
- Grant a motion to quash service of summons or grant a motion to stay or dismiss the action on the ground of inconvenient forum
- Grant a new trial or deny a motion for judgment notwithstanding the verdict
- Discharge or refuse to discharge an attachment or grant a right to attach
- Grant or dissolve an injunction or refuse to grant or dissolve an injunction
- Appoint a receiver
- Are made after final judgment in the case

(You can get a copy of Code of Civil Procedure section 904.2 at *www.leginfo.ca.gov/calaw.html*.)

7 How do I start my appeal?

First you must serve and file a notice of appeal. The notice of appeal tells the other party or parties in the case and the trial court that you are appealing the trial court's decision. You may use *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (form APP-102) to prepare a notice of appeal in a limited civil case. You can get form APP-102 at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*.

8 How do I "serve and file" the notice of appeal?

"Serve and file" means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the notice of appeal to the other party or parties in the way required by law.
- Make a record that the notice of appeal has been served. This record is called a "proof of service." The proof of service must show who served the notice of appeal, who was served with the notice of appeal, how the notice of appeal was served (by mail or in person), and the date the notice of appeal was served.

- Bring or mail the original notice of appeal and the proof of service to the trial court that issued the judgment, order, or other decision you are appealing. You should make a copy of the notice of appeal you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the notice of appeal to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service on the California Courts Online Self-Help Center at *www.courtinfo.ca.gov /selfhelp/lowcost/getready.htm#serving*.

9 Is there a deadline to file my notice of appeal?

Yes. In a limited civil case, except in the very limited circumstances listed in rule 8.823, you must file your notice of appeal within **60 days** after the trial court clerk mails or a party serves either a document called a "Notice of Entry" of the trial court judgment or a file-stamped copy of the judgment or within 180 days after entry of the judgment, whichever is earlier. **This deadline for filing the notice of appeal cannot be extended. If your notice of appeal is late, the appellate division will not be able to consider your appeal.**

10 Do I have to pay to file an appeal?

Yes. Unless the court waives this fee, you must pay a $180 filing fee if the amount claimed in your case was $10,000 or less, or a $300 filing fee if the amount claimed in your case was more than $10,000. (See Government Code section 70621; you can get a copy of this law at *www.leginfo.ca.gov.calaw.html.*) If you cannot afford to pay the fee, you can ask the court to waive it. To do this, you must fill out and file an *Application for Waiver of Court Fees and Costs* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at *www.courtinfo.ca .gov/forms*. You can file this application either before you file your notice of appeal or with your notice of appeal. The court will review this application to determine if you are eligible for a fee waiver.

11 If I file a notice of appeal, do I still have to do what the trial court ordered me to do?

Filing a notice of appeal does NOT automatically postpone most judgments or orders, such as those requiring you to pay another party money or to deliver property to another party (see Code of Civil Procedure sections 917.1–917.9 and 1176; you can get a copy of these laws at *www.leginfo.ca.gov.calaw.html*). These kinds of judgments or orders will be postponed, or "stayed," only if you request a stay and the court grants your request. In most cases, other than unlawful detainer cases in which the trial court's judgment gives a party possession of the property, if the trial court denies your request for a stay, you can apply to the appellate division for a stay. If you do not get a stay and you do not do what the trial court ordered you to do, court proceedings to collect the money or otherwise enforce the judgment or order may be started against you.

12 What do I need to do after I file my notice of appeal?

You must ask the clerk of the trial court to prepare and send the official record of what happened in the trial court in your case to the appellate division.

Since the appellate division judges were not there to see what happened in the trial court, an official record of what happened must be prepared and sent to the appellate division for its review. You can use *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) to ask the trial court to prepare this record. You can get form APP-103 at any courthouse or county law library or online at *www.courtinfo.ca.gov /forms*.

You must serve and file this notice designating the record on appeal within 10 days after you file your notice of appeal. "Serving and filing" this notice means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the notice to the other party or parties in the way required by law.

- Make a record that the notice has been served. This record is called a "proof of service." The proof of service must show who served the notice, who was served with the notice, how the notice was served

(by mail or in person), and the date the notice was served.

- Bring or mail the original notice and the proof of service to the trial court that issued the judgment, order, or other decision you are appealing. You should make a copy of the notice you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the notice to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service on the California Courts online Self-Help Center at *ww.courtinfo.ca.gov/selfhelp /lowcost/getready.htm#serving*

(13) What is the official record of the trial court proceedings?

There are three parts of the official record:

a. A record of the documents filed in the trial court (other than exhibits)

b. A record of what was said in the trial court (this is called the "oral proceedings")

c. Exhibits that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court

Read below for more information about these parts of the record.

a. Record of the documents filed in the trial court

The first part of the official record of the trial court proceedings is a record of the documents that were filed in the trial court. There are three ways in which a record of the documents filed in the trial court can be prepared for the appellate division:

(1) A *clerk's transcript*

(2) The original *trial court file* or

(3) An *agreed statement*

Read below for more information about these options.

(1) Clerk's transcript

Description: A clerk's transcript is a record of the documents filed in the trial court prepared by the clerk of the trial court.

Contents: Certain documents, such as the notice of appeal and the trial court judgment or order being appealed, must be included in the clerk's transcript. These documents are listed in rule 8.832(a) of the California Rules of Court and in *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103).

If you want any documents other than those listed in rule 8.832(a) to be included in the clerk's transcript, you must tell the trial court in your notice designating the record on appeal. You can use form APP-103 to do this. You will need to identify each document you want included in the clerk's transcript by its title and filing date or, if you do not know the filing date, the date the document was signed.

If you—the appellant—request a clerk's transcript, the respondent also has the right to ask the clerk to include additional documents in the clerk's transcript. If this happens, you will be served with a notice saying what other documents the respondent wants included in the clerk's transcript.

***Cost*:** The appellant is responsible for paying for preparing a clerk's transcript. The trial court clerk will send you a bill for the cost of preparing an original and one copy of the clerk's transcript. You must do one of the following things within 10 days after the clerk sends this bill or the appellate division may dismiss your appeal:

- Pay the bill.

- Ask the court to waive the cost because you cannot afford to pay. To do this, you must fill out and file an *Application for Waiver of Court Fees and Costs* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at

www.courtinfo.ca.gov/forms. The court will review this application to determine if you are eligible for a fee waiver.

- Give the court a copy of a court order showing that your fees in this case have already been waived by the court.

Completion and delivery: After the cost of preparing the clerk's transcript has been paid or waived, the trial court clerk will compile the requested documents into a transcript format and forward the original clerk's transcript to the appellate division for filing. The trial court clerk will send you a copy of the transcript. If the respondent bought a copy, the clerk will also send a copy of the transcript to the respondent.

(2) Trial court file

When available: If the appellate division has a local rule allowing this, the clerk can send the appellate division the original trial court file instead of a clerk's transcript (see rule 8.833 of the California Rules of Court).

Cost: As with a clerk's transcript, the appellant is responsible for paying for preparing the trial court file. The trial court clerk will send you a bill for this preparation cost. You must do one of the following things within 10 days after the clerk sends this bill or the appellate division may dismiss your appeal:

- Pay the bill.
- Ask the court to waive the cost because you cannot afford to pay. To do this, you must fill out and file an *Application for Waiver of Court Fees and Costs* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at *www .courtinfo.ca.gov/forms*. The court will review this application to determine if you are eligible for a fee waiver.
- Give the court a copy of a court order showing that your fees in this case have already been waived by the court.

Completion and delivery: After the cost of preparing the trial court file has been paid or waived, the trial court clerk will send the file and a list of the documents in the file to the appellate division. The trial court clerk will also send a copy of the list of documents to the appellant and respondent so that you can put your own files of documents from the trial court in the correct order.

(3) Agreed statement

Description: An agreed statement is a summary of the trial court proceedings agreed to by the parties (see rule 8.836 of the California Rules of Court).

When available: If you and the respondent agree to this, you can use an agreed statement instead of a clerk's transcript. To do this, you must attach to your agreed statement all of the documents that are required to be included in a clerk's transcript. If you choose this alternative, you must file with your notice designating the record on appeal either the agreed statement or a written agreement with the respondent (a "stipulation"), stating that you are trying to agree on a statement. Within the next 30 days, you must then file the agreed statement or tell the court that you were unable to agree on a statement and file a new notice designating the record.

b. Record of what was said in the trial court (the "oral proceedings")

The second part of the official record of the trial court proceedings is a record of what was said in the trial court (this is called a record of the "oral proceedings"). You do not *have* to send the appellate division a record of the oral proceedings. But if you want to raise any issue in your appeal that would require the appellate division to consider what was said in the trial court, the appellate division will need a record of those oral proceedings. For example, if you are claiming that there was not substantial evidence supporting the judgment, order, or other decision you are appealing, the appellate division will need a record of the oral proceedings.

You are responsible for deciding how the record of the oral proceedings will be provided and, depending on

what option you select and your circumstances, you may also be responsible for paying for preparing this record or for preparing an initial draft of the record. If you do not take care of these responsibilities, a record of the oral proceedings in the trial court will not be prepared and sent to the appellate division. **If the appellate division does not receive this record, it will not be able to review any issues that are based on what was said in the trial court.**

In a limited civil case, you can use *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) to tell the court whether you want a record of the oral proceedings and, if so, the form of the record that you want to use. You can get form APP-103 at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*.

There are four ways in which a record of the oral proceedings can be prepared for the appellate division:

(1) If you or the other party arranged to have a court reporter there during the trial court proceedings, the reporter can prepare a record, called a *"reporter's transcript."*

(2) If the proceedings were officially electronically recorded, the trial court can have a transcript prepared from that recording or, if the appellate division has a local rule permitting this and you and the other party agree ("stipulate") to this, you can use the *official electronic recording* itself instead of a transcript.

(3) You can use an *agreed statement.*

(4) You can use a *statement on appeal.*

Read below for more information about these options.

(1) Reporter's transcript

Description: A reporter's transcript is a written record (sometimes called a "verbatim" record) of the oral proceedings in the trial court prepared by a court reporter. Rule 8.834 of the California Rules of Court establishes the requirements relating to reporter's transcripts.

When available: If a court reporter was there in the trial court and made a record of the oral proceedings, you can choose ("elect") to have the court reporter prepare a reporter's transcript for the appellate division. In most limited civil cases, however, a court reporter will not have been there unless you or another party in your case made specific arrangements to have a court reporter there. Check with the court to see if a court reporter made a record of the oral proceedings in your case before choosing this option.

Contents: If you elect to use a reporter's transcript, you must identify by date (this is called "designating") what proceedings you want to be included in the reporter's transcript. You can use the same form you used to tell the court you wanted to use a reporter's transcript— *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103)—to do this.

If you elect to use a reporter's transcript, the respondent also has the right to designate additional proceedings to be included in the reporter's transcript. If you elect to proceed without a reporter's transcript, however, the respondent may not designate a reporter's transcript without first getting an order from the appellate division.

Cost: The appellant is responsible for paying for preparing a reporter's transcript. The trial court clerk or the court reporter will notify you of the cost of preparing an original and one copy of the reporter's transcript. You must deposit payment for this cost with the trial court clerk within 10 days after this notice is sent.

Unlike the fee for filing the notice of appeal and the costs for preparing a clerk's transcript, the court cannot waive the fee for preparing a reporter's transcript. If you are represented by a lawyer in your appeal, a special fund, called the Transcript Reimbursement Fund, may be able to help pay for the transcript. However, there is no financial help available for parties who are not represented by lawyers. If you are unable to pay the cost of a reporter's transcript, a record of the oral proceedings can be prepared in other ways, by using an agreed statement or a statement on appeal, which are described below.

Completion and delivery: After the cost of preparing the reporter's transcript has been deposited, the court reporter will prepare the transcript and submit it to the trial court clerk. The trial court clerk will submit the original transcript to the appellate division and send you a copy of the transcript. If the respondent has purchased it, a copy of the reporter's transcript will also be mailed to the respondent.

(2) Official electronic recording or transcript

***When available*:** In some limited civil cases, the trial court proceedings were officially recorded on approved electronic recording equipment. If your case was officially recorded, you can choose ("elect") to have a transcript prepared from the recording. Check with the trial court to see if the oral proceedings in your case were officially electronically recorded before you choose this option. If the appellate division has a local rule permitting this and all the parties agree ("stipulate"), a copy of an official electronic recording itself can be used as the record, instead of preparing a transcript. If you choose this option, you must attach a copy of this agreement ("stipulation") to your notice designating the record on appeal.

Cost: The appellant is responsible for paying for preparing this transcript or making a copy of the official electronic recording. If you cannot afford to pay this cost, you can ask the court to waive it. To do this, you must fill out and file an *Application for Waiver of Court Fees and Costs* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*. The court will review this application to determine if you are eligible for a fee waiver.

Completion and delivery: After the estimated cost of the transcript or official electronic recording has been paid or waived, the clerk will have the transcript or copy of the recording prepared. When the transcript is completed or the copy of the official electronic recording is prepared, the clerk will send it to the appellate division.

(3) Agreed statement

***Description*:** An agreed statement is a written summary of the trial court proceedings agreed to by all the parties.

When available: If the trial court proceedings were not recorded either by a court reporter or by official electronic recording equipment or if you do not want to use one of these options, you can choose ("elect") to use an agreed statement as the record of the oral proceedings (please note that it may take more of your time to prepare an agreed statement than to use either a reporter's transcript or official electronic recording, if they are available).

Contents: An agreed statement must explain what the trial court case was about, describe why the appellate division is the right court to consider an appeal in this case (why the appellate division has "jurisdiction"), and describe the rulings of the trial court relating to the points to be raised on appeal. The statement should include only those facts that you and the other parties think are needed to decide the appeal.

Preparation: If you elect to use this option, you must file the agreed statement with your notice designating the record on appeal or, if you and the other parties need more time to work on the statement, you can file a written agreement with the other parties (called a "stipulation") stating that you are trying to agree on a statement. If you file this stipulation, within the next 30 days you must either file the agreed statement or tell the court that you and the other parties were unable to agree on a statement and file a new notice designating the record.

(4) Statement on appeal

Description: A statement on appeal is a summary of the trial court proceedings that is approved by the trial court judge who conducted those proceedings (the term "judge" includes commissioners and temporary judges).

When available: If the trial court proceedings were not recorded either by a court reporter or by official electronic recording equipment or if you

do not want to use one of these options, you can choose ("elect") to use a statement on appeal as the record of the oral proceedings (please note that it may take more of your time to prepare a statement on appeal than to use either a reporter's transcript or official electronic recording, if they are available).

Contents: A statement on appeal must include a summary of the oral proceedings that the appellant believes necessary for the appeal and a summary of the trial court's decision. It must also include a statement of the points the appellant is raising on appeal (see rule 8.837 of the California Rules of Court for more information about what must be included in a statement on appeal and the procedures for preparing a statement.

You can get a copy of this rule at any courthouse or county law library or online at *www.courtinfo.ca.gov/rules*).

Preparing proposed statement: If you elect to use a statement on appeal, you must prepare a proposed statement. If you are not represented by a lawyer, you must use *Proposed Statement on Appeal (Limited Civil Case)* (form APP-104) to prepare your proposed statement. You can get form APP-104 at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*.

Serving and filing a proposed statement: You must serve and file the proposed statement with the trial court within 20 days after you file your notice designating the record. "Serve and file" means that you must:

Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the proposed statement to the respondent in the way required by law.

- Make a record that the proposed statement has been served. This record is called a "proof of service." The proof of service must show who served the proposed statement, who was served with the proposed statement, how the proposed statement was served (by mail or in person), and the date the proposed statement was served.

- File the original proposed statement and the proof of service with the trial court. You should make a copy of the proposed statement you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the proposed statement to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and about proof of service on the California Courts Online Self-Help Center at *www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving*.

Review and modifications: The respondent has 10 days from the date you serve your proposed statement to serve and file proposed changes (called "amendments") to this statement. The trial court judge then reviews both your proposed statement and any proposed amendments filed by the respondent and makes any corrections or modifications to the statement that are needed to make sure that the statement provides a complete and accurate summary of the trial court proceedings.

Completion and certification: If the judge makes any corrections or modifications to the proposed statement, the corrected or modified statement will be sent to you and the respondent for your review. If you disagree with anything in the judge's statement, you have 10 days from the date the statement is sent to you to serve and file objections to the statement. The judge then reviews any objections, makes any additional corrections to the statement, and certifies the statement as a complete and accurate summary of the trial court proceedings.

Sending statement to the appellate division: Once the trial court judge certifies the statement on appeal, the trial court clerk will send the statement to the appellate division along with any record of the documents filed in the trial court.

c. Exhibits

The third part of the official record of the trial court proceeding is the exhibits, such as photographs, documents, or other items that were admitted in evidence, refused, or lodged

(temporarily placed with the court) in the trial court. Exhibits are considered part of the record on appeal, but the clerk will not include any exhibits in the clerk's transcript unless you ask that they be included in your notice designating the record on appeal. *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103), includes a space for you to make this request.

Sometimes, the trial court returns an exhibit to a party at the end of the trial. If the trial court returned an exhibit to you or another party and you or the other party ask for that exhibit to be included in the clerk's transcript, you must deliver that exhibit to the trial court clerk as soon as possible.

14 What happens after the official record has been prepared?

As soon as the record on appeal is complete, the clerk of the trial court will send it to the appellate division. When the appellate division receives the record, it will send you a notice telling you when you must file your brief in the appellate division.

15 What is a brief?

Description: A "brief" is a party's written description of the facts in the case, the law that applies, and the party's argument about the issues being appealed. If you are represented by a lawyer in your appeal, your lawyer will prepare your brief. If you are not represented by a lawyer, you will have to prepare your brief yourself. You should read rules 8.882–8.884 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in limited civil appeals, including requirements for the format and length of these briefs. You can get copies of these rules at any courthouse or county law library or online at *www.courtinfo.ca.gov/rules*.

Contents: If you are the appellant, your brief, called an "appellant's opening brief," must clearly explain what you believe are the legal errors made in the trial court. Your brief must refer to the exact places in the clerk's transcript and the reporter's transcript (or the other forms of the record you are using) that support your argument. Remember that an appeal is not a new trial. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits so do not include any new evidence in your brief.

Serving and filing: You must serve and file your brief in the appellate division by the deadline the court set in the notice it sent you, which is usually 30 days after the record is filed in the appellate division. "Serve and file" means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the brief to the other parties in the way required by law.
- Make a record that the brief has been served. This record is called a "proof of service." The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail or in person), and the date the brief was served.
- File the original brief and the proof of service with the appellate division. You should make a copy of the brief you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and about proof of service on the California Courts Online Self-Help Center at *www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving*.

If you do not file your brief by the deadline set by the appellate division, the court may dismiss your appeal.

16 What happens after I file my brief?

Within 30 days after you serve and file your brief, the respondent may, but is not required to, respond by serving and filing a respondent's brief. If the respondent does not file a brief, the appellant does not automatically win the appeal. The court will decide the appeal on the record, the appellant's brief, and any oral argument by the appellant.

If the respondent files a brief, within 20 days after the respondent's brief was filed, you may, but are not required to, file another brief replying to the respondent's brief. This is called a "reply brief."

17 What happens after all the briefs have been filed?

Once all the briefs have been filed or the time to file them has passed, the appellate division will notify you of the date for oral argument in your case.

18 What is "oral argument?"

"Oral argument" is the parties' chance to explain their arguments to the appellate division judges in person. You do not have to participate in oral argument if you do not want to; you can notify the appellate division that you want to "waive" oral argument. But if one party waives oral argument and another party or parties does not, the appellate division will hold oral argument with the party or parties who did not waive it. If all parties waive oral argument, the judges will decide your appeal based on the briefs and the record that were submitted.

If you do choose to participate in oral argument, you will have up to 10 minutes for your argument unless the appellate division orders otherwise. Remember that the judges will have already read the briefs, so you do not need to read your brief to the judges. It is more helpful to tell the judges what you think is most important in your appeal or ask the judges if they have any questions you could answer.

19 What happens after oral argument?

After oral argument is held (or the date it was scheduled passes if all the parties waive oral argument), the judges of the appellate division will make a decision about your appeal. The appellate division has 90 days after the date scheduled for oral argument to decide the appeal. The clerk of the court will mail you a notice of the appellate division's decision.

20 What should I do if I want to give up my appeal?

If you decide you do not want to continue with your appeal, you must file a written document with the appellate division notifying it that you are giving up (this is called "abandoning") your appeal. You can use *Abandonment of Appeal (Limited Civil Case)* (form APP-106) to file this notice in a limited civil case. You can get form APP-106 at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*.

INFORMATION FOR THE RESPONDENT

This section of this information sheet is written for the respondent—the party responding to an appeal filed by another party. It explains some of the rules and procedures relating to responding to an appeal in a limited civil case. The information may also be helpful to the appellant.

21 I have received a notice of appeal from another party. Do I need to do anything?

You do not *have* to do anything. The notice of appeal simply tells you that another party is appealing the trial court's decision. However, this would be a good time to get advice from a lawyer, if you want it. You do not *have* to have a lawyer; if you are an individual (not a corporation, for example), you are allowed to represent yourself in an appeal in a limited civil case. But appeals can be complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about the appeal procedures, you should talk to a lawyer. You must hire your own lawyer if you want one. You can get information about finding a lawyer on the California Courts Online Self-Help Center at *www.courtinfo.ca.gov/selfhelp/lowcost/*.

22 If the other party appealed, can I appeal too?

Yes. Even if another party has already appealed, you may still appeal the same judgment or order. This is called a "cross-appeal." To cross-appeal, you must serve and file a notice of appeal. You can use *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (form APP-102) to file this notice in a limited civil case. Please read the information for appellants about filing a notice of appeal, starting on page 2 of this information sheet, if you are considering filing a cross-appeal.

23 Is there a deadline to file a cross-appeal?

Yes. You must serve and file your notice of appeal within either the regular time for filing a notice of appeal (generally 60 days after mailing or service of Notice of Entry of the judgment or a file-stamped copy of the judgment) or within 20 days after the clerk of the trial court mails notice of the first appeal, whichever is later.

(24) I have received a notice designating the record on appeal from another party. Do I need to do anything?

You do not *have* to do anything. A notice designating the record on appeal lets you know what kind of official record the appellant has asked to be sent to the appellate division. Depending on the kind of record chosen by the appellant, however, you may have the option to:

- Add to what is included in the record
- Participate in preparing the record *or*
- Ask for a copy of the record

Look at the appellant's notice designating the record on appeal to see what kind of record the appellant has chosen and read about that form of the record in the response to question (13) above. Then read below for what your options are when the appellant has chosen that form of the record.

(a) Clerk's transcript

If the appellant is using a clerk's transcript, you have the option of asking the clerk to include additional documents in the clerk's transcript. To do this, within 10 days after the appellant serves its notice designating the record on appeal, you must serve and file a notice designating additional documents to be included in the clerk's transcript.

Whether or not you ask for additional documents to be included in the clerk's transcript, you must pay a fee if you want a copy of the clerk's transcript. The trial court clerk will send you a notice indicating the cost for a copy of the clerk's transcript. If you want a copy, you must deposit this amount with the court within 10 days after the clerk's notice was sent. If you cannot afford to pay this cost, you can ask the court to waive it. To do this, you must fill out and file an *Application for Waiver of Court Fees and Costs* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*. The court will review this application and determine if you are eligible for a fee waiver.

The clerk will not prepare a copy of the clerk's transcript for you unless you deposit payment for the cost or obtain a fee waiver.

(b) Reporter's transcript

If the appellant is using a reporter's transcript, you have the option of asking for additional proceedings to be included in the reporter's transcript. To do this, within 10 days after the appellant files its notice designating the record on appeal, you must serve and file a notice designating additional proceedings to be included in the reporter's transcript.

Whether or not you ask for additional proceedings to be included in the reporter's transcript, you must pay a fee if you want a copy of the reporter's transcript. The trial court clerk or reporter will send you a notice indicating the cost of preparing a copy of the reporter's transcript. If you want a copy of the reporter's transcript, you must deposit this amount with the court within 10 days after the clerk's notice was sent. The reporter will not prepare a copy of the reporter's transcript for you unless you pay this deposit.

If the appellant elects not to use a reporter's transcript, you may not designate a reporter's transcript without first getting an order from the appellate division.

(c) Agreed statement

If you and the appellant agree to prepare an agreed statement (a summary of the trial court proceedings that is agreed to by the parties), you and the appellant will need to reach an agreement on that statement within 30 days after the appellant files its notice designating the record.

(d) Statement on appeal

If the appellant elects to use a statement on appeal (a summary of the trial court proceedings that is approved by the trial court), the appellant will send you a proposed statement to review. You will have 10 days from the date the appellant sent you this proposed statement to

serve and file suggested changes (called "amendments") that you think are needed to make sure that the statement provides a complete and accurate summary of the trial court proceedings. "Serve and file" means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the proposed amendments to the appellant in the way required by law.
- Make a record that the proposed amendments have been served. This record is called a "proof of service." The proof of service must show who served the proposed amendments, who was served with the proposed amendments, how the proposed amendments were served (by mail or in person), and the date the proposed amendments were served.
- File the original proposed amendments and the proof of service with the trial court. You should make a copy of the proposed amendments you are planning to file for your own records before you file them with the court. It is a good idea to bring or mail an extra copy of the proposed amendments to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service on the California Courts Online Self-Help Center at *www.courtinfo.ca.gov /selfhelp/lowcost/getready.htm#serving*.

25 What happens after the official record has been prepared?

As soon as the record on appeal is complete, the clerk of the trial court will send it to the appellate division. When the appellate division receives this record, it will send you a notice telling you when you must file your brief in the appellate division.

A brief is a party's written description of the facts in the case, the law that applies, and the party's argument about the issues being appealed. If you are represented by a lawyer, your lawyer will prepare your brief. If you are not represented by a lawyer in your appeal, you will have to prepare your brief yourself. You should read rules 8.882–8.884 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in limited civil appeals, including requirements for the format and length of these briefs. You can get these rules at any courthouse or county law library or online at *www.courtinfo.ca.gov/rules*.

The appellant serves and files the first brief, called an "appellant's opening brief." You may, but are not required to, respond by serving and filing a respondent's brief within 30 days after the appellant's opening brief is filed. "Serve and file" means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the brief to the other parties in the way required by law.
- Make a record that the brief has been served. This record is called a "proof of service." The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail or in person), and the date the brief was served.
- File the original brief and the proof of service with the appellate division. You should make a copy of the brief you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service on the California Courts Online Self-Help Center at *www.courtinfo.ca.gov /selfhelp/lowcost/getready.htm#serving*.

If you do not file a respondent's brief, the appellant does not automatically win the appeal. The court will decide the appeal on the record, the appellant's brief, and any oral argument by the appellant. Remember that an appeal is not a new trial. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits, so do not include any new evidence in your brief.

If you file a respondent's brief, the appellant then has an opportunity to serve and file another brief within 20 days replying to your brief.

26 What happens after all the briefs have been filed?

Once all the briefs have been filed or the time to file them has passed, the court will notify you of the date for oral argument in your case.

"Oral argument" is the parties' chance to explain their arguments to appellate division judges in person. You do not have to participate in oral argument if you do not want to; you can notify the appellate division that you want to "waive" oral argument. But if one party waives oral argument and another party or parties does not, the appellate division will hold oral argument with the party or parties who did not waive it. If all parties waive oral argument, the judges will decide the appeal based on the briefs and the record that were submitted.

If you do choose to participate in oral argument, you will have up to 10 minutes for your argument unless the appellate division orders otherwise. Remember that the judges will have already read the briefs, so you do not need to read your brief to the judges. It is more helpful to tell the judges what you think is most important in the appeal or ask the judges if they have any questions you could answer.

After oral argument is held (or the scheduled date passes if all parties waive argument), the judges of the appellate division will make a decision about the appeal. The appellate division has 90 days after oral argument to decide the appeal. The clerk of the court will mail you a notice of the appellate division's decision.

APP-102 Notice of Appeal/Cross-Appeal (Limited Civil Case)

Clerk stamps date here when form is filed.

Instructions

- This form is only for appealing in a **limited civil case.** You can get other forms for appealing in criminal cases at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*.
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*.
- You must serve and file this form **no later than 60 days** after the trial court mails or a party serves a document called a Notice of Entry of the trial court judgment or a file-stamped copy of the judgment or 180 days after entry of judgment, whichever is earlier (see rule 8.823 of the California Rules of Court for very limited exceptions). **If your notice of appeal is late, your appeal will be dismissed.**
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service on the California Courts Online Self-Help Center at *www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving*.
- Take or mail the original completed form and proof of service on the other parties to the clerk's office for the same court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

Superior Court of California, County of

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

Trial Court Case Number:

Trial Court Case Name:
The People of the State of California
v. _____

The clerk will fill in the number below:

Appellate Division Case Number:

1 Your Information

a. Name of appellant (the party who is filing this appeal):

_____

b. Appellant's contact information *(skip this if the appellant has a lawyer for this appeal):*

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

Phone: ( ) _____ E-mail *(optional):* _____

c. Appellant's lawyer *(skip this if the appellant does not have a lawyer for this appeal):*

Name: _____ State Bar number: _____

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

Phone: ( ) _____ E-mail *(optional):* _____

Fax *(optional):* ( ) _____

Trial Court Case Name: _____

Trial Court Case Number:

2 This is *(check a or b):*

a. ☐ The first appeal in this case.

b. ☐ A cross-appeal (an appeal filed after the first appeal in this case *(complete (1), (2), and (3)).*

(1) The notice of appeal in the first appeal was filed on *(fill in the date that the other party filed its notice of appeal in this case):* _____

(2) The trial court clerk mailed notice of the first appeal on *(fill in the date that the clerk mailed the notice of the other party's appeal in this case):* _____

(3) The appellate division case number for the first appeal is *(fill in the appellate division case number of the other party's appeal, if you know it):* _____

3 Judgment or Order You Are Appealing

I am /My client is appealing *(check a or b):*

a. ☐ The final judgment in the trial court case identified in the box on page 1 of this form.
The date the trial court entered this judgment was *(fill in the date):* _____

b. ☐ Other:

(1) ☐ An order made after final judgment in the case.
The date the trial court entered this order was *(fill in the date):* _____

(2) ☐ An order changing or refusing to change the place of trial (venue).
The date the trial court entered this order was *(fill in the date):* _____

(3) ☐ An order granting a motion to quash service of summons.
The date the trial court entered this order was *(fill in the date):* _____

(4) ☐ An order granting a motion to stay or dismiss the action on the ground of inconvenient forum.
The date the trial court entered this order was *(fill in the date):* _____

(5) ☐ An order granting a new trial.
The date the trial court entered this order was *(fill in the date):* _____

(6) ☐ An order denying a motion for judgment notwithstanding the verdict.
The date the trial court entered this order was *(fill in the date):* _____

(7) ☐ An order granting or dissolving an injunction or refusing to grant or dissolve an injunction.
The date the trial court entered this order was *(fill in the date):* _____

Trial Court Case Name: _____

Trial Court Case Number:

3 *(continued)*

(8) ☐ An order appointing a receiver.
The date the trial court entered this order was *(fill in the date):* _____

(9) ☐ Other action *(please describe and indicate the date the trial court took the action you are appealing):*

_____
_____
_____
_____
_____

4 Record Preparation Election

Complete this section only if you are filing the first appeal in this case. If you are filing a cross-appeal, skip this section and go to the signature line.

Check a or b if you are filing the first appeal in this case:

a. ☐ I have/My client has completed *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) and attached it to this notice of appeal.

b. ☐ I/My client will complete *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) later. I understand that I must file this notice in the trial court within 10 days of the date I file this notice of appeal.

REMINDER: Except in the very limited circumstances listed in rule 8.823, you must serve and file this form no later than (1) 60 days after the trial court clerk mails or a party serves either a document called a Notice of Entry of the trial court judgment or a file-stamped copy of the judgment or (2) within 180 days after entry of judgment, whichever is earlier. If your notice of appeal is late, your appeal will be dismissed.

Date: _____

_____ ▶ _____

Type or print your name *Signature of appellant/cross-appellant or attorney*

APP-103 Notice Designating Record on Appeal (Limited Civil Case)

Clerk stamps date here when form is filed.

Instructions

- This form is only for choosing ("designating") the record on appeal in a **limited civil case.**
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*.
- This form can be attached to your notice of appeal. If it is not attached to your notice of appeal, you must serve and file this form within 10 days after you file your notice of appeal. **If you do not file this form on time, the court may dismiss your appeal.**
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service on the California Courts Online Self-Help Center site at *www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving*.
- Take or mail the original completed form and proof of service on the other parties to the clerk's office for the same court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

Superior Court of California, County of

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

Trial Court Case Number:

Trial Court Case Name:
The People of the State of California
v. _____

You fill in the appellate division case number (if you know it):

Appellate Division Case Number:

1 Your Information

a. Name of appellant (the party who is filing this appeal):

_____

b. Appellant's contact information *(skip this if the appellant has a lawyer for this appeal):*

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

Phone: ( ) _____ E-mail *(optional):* _____

c. Appellant's lawyer *(skip this if the appellant does not have a lawyer for this appeal):*

Name: _____ State Bar number: _____

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

Phone: ( ) _____ E-mail *(optional):* _____

Fax *(optional):* ( ) _____

Trial Court Case Name: _____

Trial Court Case Number:

Information About Your Appeal

2 On *(fill in the date):* _____ I/my client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.

Record of the Documents Filed in the Trial Court

3 I elect (choose)/My client elects to use the following record of the documents filed in the trial court *(check a or b and fill in any required information):*

a. ☐ **Clerk's Transcript.** *(Fill out (1)–(4).) Note that, if the appellate division has adopted a local rule permitting this, the clerk may prepare and send the original court file to the appellate division instead of a clerk's transcript.*

(1) **Required documents.** *The clerk will automatically include the following items in the clerk's transcript but you must provide the date each document was filed:*

Document Title and Description	Date of Filing
(1) Notice of appeal	
(2) Notice designating record on appeal (this document)	
(3) Judgment or order appealed from	
(4) Notice of entry of judgment (if any)	
(5) Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order (if any)	
(6) Ruling on any item included under 5	
(7) Register of actions or docket	

(2) **Additional documents.** *If you want any documents in addition to the required documents listed above to be included in the clerk's transcript, you must identify those documents here.*

☐ I would like the clerk to include in the transcript the following documents that were filed in the trial court. *(Identify each document you want included by its title and provide the date it was filed, if you know it.)*

Document Title and Description	Date of Filing
(1)	
(2)	
(3)	
(4)	
(5)	

☐ *Check here if you need more space to list other documents and attach a separate page or pages listing those documents. At the top of each page, write "APP-103, item 3a(2)."*

Trial Court Case Name: _____

Trial Court Case Number:

3 a. (continued)

(3) **Exhibits.**

☐ I would like the clerk to include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the trial court. *(For each exhibit, give the exhibit number (such as Plaintiff's #1 or Defendant's A) and a brief description of the exhibit and indicate whether or not the court admitted the exhibit into evidence. If the trial court has returned a designated exhibit to a party, the party who has that exhibit must deliver it to the trial court clerk as soon as possible.)*

Exhibit Number	Description	Admitted Into Evidence
		☐ Yes ☐ No
		☐ Yes ☐ No
		☐ Yes ☐ No
		☐ Yes ☐ No
		☐ Yes ☐ No

☐ *Check here if you need more space to list other exhibits and attach a separate page or pages listing those exhibits. At the top of each page, write "APP-103, item 3a(3)."*

(4) **Payment for clerk's transcript.** *(Check a or b.)*

(a) ☐ I will pay the trial court clerk for this transcript myself when I receive the clerk's estimate of the costs of the transcript. I understand that if I do not pay for the transcript, it will not be prepared and provided to the appellate division.

(b) ☐ I am asking that the clerk's transcript be provided at no cost to me because I cannot afford to pay this cost. I have attached *(check (i) or (ii) and attach the checked document):*

(i) ☐ An order granting a waiver of the cost under rules 3.50–3.63

(ii) ☐ An application for a waiver of court fees and costs under rules 3.50–3.63 (use *Application for Waiver of Court Fees and Costs* (form FW-001)).

OR

b. ☐ **Agreed statement.** *(You must complete item 5 d below and attach to your agreed statement copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in 3a(1) above and in rule 8.832 of the California Rules of Court.)*

Record of Oral Proceedings in the Trial Court

You do not have to provide the appellate division with a record of what was said in the trial court (this is called a record of the "oral proceedings"). But, if you do not, the appellate division will not be able to consider what was said during the trial court proceedings in deciding whether a legal error was made in those proceedings.

4 I elect (choose)/My client elects to proceed *(check a or b):*

a. ☐ WITHOUT a record of the oral proceedings in the trial court (*skip 5; sign and date this form*). I understand that if I elect to proceed without a record of the oral proceedings in the trial court the appellate division will not be able to consider what was said during those proceedings in determining whether a legal error was made.

(Write initials here): _____

4 (continued)

b. ☐ WITH a record of the oral proceedings in the trial court *(complete item 5 below)*. I understand that, if I elect (choose) to proceed WITH a record of the oral proceedings in the trial court, I have to choose the record I want to use and take the actions described below to make sure that this record is provided to the appellate division. I understand that if I do not take the actions described below and the appellate division does not receive this record, I am not likely to succeed in my appeal.

(Write initials here): _____

5 I want to use the following record of what was said in the trial court proceedings in my case *(check and complete **only one** of the following below—a, b, c, d, or e):*

a. ☐ **Reporter's Transcript.** *This option is available only if there was a court reporter in the trial court who made a record of what was said in court. Check with the trial court to see if there was a court reporter in your case before choosing this option. (Complete (1) and (2)):*

(1) **Designation of proceedings to be included in reporter's transcript.** I would like the following proceedings in the trial court to be included in the reporter's transcript.
(*You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings [for example the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions], and, if you know it, the name of the court reporter who recorded the proceedings.*)

Date	Department	Description	Court Reporter's Name
(1)			
(2)			
(3)			
(4)			
(5)			
(6)			
(7)			

☐ *Check here if you need more space to list other proceedings and attach a separate page or pages listing those proceedings. At the top of each page, write "APP-103, item 5a."*

(2) **Payment for reporter's transcript.** I will pay the trial court clerk's office for this transcript myself when I receive the court reporter's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the appellate division.

(Write initials here): _____

OR

5 (continued)

b. ☐ **Transcript From Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. (Check and complete (1) or (2)):*

(1) ☐ I will pay the trial court clerk for this transcript myself when I receive the clerk's estimate of the costs of the transcript. I understand that if I do not pay for the transcript, it will not be prepared and provided to the appellate division.

(2) ☐ I am asking that the transcript be provided at no cost to me because I cannot afford to pay this cost. I have attached *(check (a) or (b) and attach the appropriate document):*

(a) ☐ An order granting a waiver of the cost under rules 3.50–3.63

(b) ☐ An application for a waiver of court fees and costs under rules 3.50–3.63 *(use* Application for Waiver of Court Fees and Costs *(form FW-001). The court will review this form to decide if you are eligible for a fee waiver)*.

OR

c. ☐ **Copy of Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court, the court has a local rule for the appellate division authorizing parties to use the official electronic recording itself as the record of the court proceedings, and all of the parties have agreed (stipulated) that they want to use the recording itself as the record of what was said in the case. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. You must attach a copy of your agreement (stipulation) with the other parties to this notice. (Check and complete (1) or (2)):*

(1) ☐ I will pay the trial court clerk for this copy of the recording myself when I receive the clerk's estimate of the costs of this copy. I understand that if I do not pay for this copy of the recording, it will not be prepared and provided to the appellate division.

(2) ☐ I am asking that a copy of the recording be provided at no cost to me because I cannot afford to pay this cost. I have attached *(check (a) or (b) and attach the appropriate document):*

(a) ☐ An order granting a waiver of the cost under rules 3.50–3.63

(b) ☐ An application for a waiver of court fees and costs under rules 3.50–3.63 *(use* Application for Waiver of Court Fees and Costs *(form FW-001). The court will review this form to decide if you are eligible for a fee waiver.)*

OR

d. ☐ **Agreed Statement.** I want to use an agreed statement (a summary of the trial court proceedings agreed to by the parties) as the record of what was said in my case. *(Check (1) or (2)):*

(1) ☐ I have attached an agreed statement to this notice.

(2) ☐ All the parties have agreed in writing (stipulated) to try to agree on a statement *(you must attach a copy of this agreement (stipulation) to this notice)*. I understand that, within 30 days after I file this notice, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.

Trial Court Case Name: _____

Trial Court Case Number:

5 (continued)

OR

e. ☐ **Statement on Appeal.** I want to use a statement on appeal (a summary of the trial court proceedings approved by the trial court) as the record of what was said in my case. (*Check (1) or (2)):*

(1) ☐ I have attached my proposed statement on appeal to this notice of appeal. (*If you are not represented by a lawyer in this appeal, you must use* Proposed Statement on Appeal (Limited Civil Case) *(form APP-104) to prepare and file this proposed statement. You can get a copy of form APP-104 at any courthouse or county law library or online at* www.courtinfo.ca.gov/forms.)

(2) ☐ I have NOT attached my proposed statement. I understand that I must serve and file this proposed statement in the trial court within 20 days of the date I file this notice and that if I do not file the proposed statement on time, the court may dismiss my appeal.

Date: _____

_____ ▶ _____

Type or print your name *Signature of appellant or attorney*

APP-104 Proposed Statement on Appeal (Limited Civil Case)

Clerk stamps date here when form is filed.

Instructions

- This form is only for preparing a proposed statement on appeal in a **limited civil case.**
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*.
- This form can be attached to your *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103). If it is not attached to that notice, this form must be filed **no later than 20 days after you file that notice.**
- **If you have chosen to prepare a statement on appeal and do not file this form on time, the court may dismiss your appeal.**
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service on the California Courts Online Self-Help Center at *www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving.*
- Take or mail the original completed form and proof of service on the other parties to the clerk's office for the same court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

Superior Court of California, County of

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

Trial Court Case Number:

Trial Court Case Name:
The People of the State of California
v. _____

You fill in the appellate division case number (if you know it):

Appellate Division Case Number:

1 Your Information

a. Name of appellant (the party who is filing this appeal):

_____

b. Appellant's contact information *(skip this if the appellant has a lawyer for this appeal):*

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

Phone: ( ) _____ E-mail *(optional):* _____

c. Appellant's lawyer *(skip this if the appellant does not have a lawyer for this appeal):*

Name: _____ State Bar number: _____

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

Phone: ( ) _____ E-mail *(optional):* _____

Fax *(optional):* ( ) _____

Trial Court Case Name: _____

Trial Court Case Number:

Information About Your Appeal

(2) On *(fill in the date):* _____ I/My client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.

(3) On *(fill in the date):* _____ I/My client filed a notice designating the record on appeal, electing to use a statement on appeal.

Proposed Statement

(4) The Dispute

a. In the trial court, I/my client was the *(check one):*

☐ plaintiff (the party who filed the complaint in the case).

☐ defendant (the party against whom the complaint was filed).

b. The plaintiff's complaint in this case was about *(briefly describe what was claimed in the complaint filed with the trial court):* _____

c. The defendant's response to this complaint was *(briefly describe how the defendant responded to the complaint filed with the trial court):* _____

☐ *Check here if you need more space to describe the dispute and attach a separate page or pages describing it. At the top of each page, write "APP-104, Item 4."*

(5) Summary of Any Motions

a. Were any motions (requests for the trial court to issue an order) filed in this case?

☐ Yes *(fill out b)*

☐ No *(skip to (6)).*

b. *In the spaces below, please describe the motions (requests for orders) that were made in the trial court. Write a complete and accurate summary of what was said at any hearings on these motions and indicate how the trial court ruled on these motions.*

(1) *Describe the first motion:* _____

5 b.(1) (continued)

The motion was filed by the ☐ plaintiff. ☐ defendant.

There ☐ was ☐ was not a hearing on this motion.

(If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing): _____

The trial court ☐ granted this motion. ☐ did not grant this motion.

☐ Other *(describe any other action the trial court took concerning this motion):* _____

☐ *Check here if you need more space to describe this motion and attach a separate page or pages describing this motion. At the top of each page, write "APP-104, Item 5b(1)."*

(2) *Describe the second motion:* _____

The motion was filed by the ☐ plaintiff. ☐ defendant.

There ☐ was ☐ was not a hearing on this motion.

(If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing): _____

The trial court ☐ granted this motion. ☐ did not grant this motion.

☐ Other *(describe any other action the trial court took concerning this motion):* _____

☐ *Check here if you need more space to describe this motion and attach a separate page or pages describing this motion. At the top of each page, write "APP-104, Item 5b(2)."*

☐ *Check here if any other motions were filed and attach a separate page or pages describing each motion, identifying who made the motion and whether there was a hearing on the motion, summarizing what was said at the hearing on the motion, and indicating whether the trial court granted or denied the motion. At the top of each page, write "APP-104, Item 5b(3)."*

6 Summary of Testimony

a. Was there a trial in your case?

No ☐ *(skip items b, c, and d and go to item 7)*

Yes ☐ *(check (1) or (2) and complete items b, c, and d)*

(1) ☐ Jury trial

(2) ☐ Trial by judge only

b. Did you/your client testify at the trial?

No ☐

Yes ☐ *(Write a complete and accurate summary of the testimony you/your client gave. Include only what you actually said; do not comment or give your opinion about what was said):*

_____

_____

_____

_____

☐ *Check here if you need more space to summarize your/your client's testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write "APP-104, Item 6b."*

c. Did anyone else testify at the trial?

No ☐

Yes ☐ *(complete items (1), (2), and (3)):*

(1) The witness's name is *(fill in the witness's name):* _____

(2) The witness testified on behalf of the *(check one):* ☐ plaintiff. ☐ defendant.

(3) This witness testified that *(write a complete and accurate summary of the witness's testimony. Include only what the witness actually said; do not comment on or give your opinion about what the witness said):*

_____

_____

_____

_____

☐ *Check here if you need more space to summarize this witness's testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write "APP-104, Item 6c."*

☐ *Check here if any other witnesses testified at the trial and attach a separate page or pages identifying each witness, who the witness testified for, and summarizing what that witness said in his or her testimony. At the top of each page, write "APP-104, Item 6d."*

Tiral Court Case Name: _____

Trial Court Case Number:

7 The Trial Court's Findings

Did the trial court make findings in the case?

No ☐

Yes ☐ *(describe the findings made by the trial court):*

_____

_____

_____

_____

_____

☐ *Check here if you need more space to describe the trial court's findings and attach a separate page or pages describing these findings. At the top of each page, write "APP-104, Item 7."*

8 The Trial Court's Judgment or Order

The trial court issued the following judgment or order *(check all that apply and fill in any required information):*

a. I/My client was required to:

☐ pay the other party damages of *(fill in the amount of the damages):* $ _____

☐ do the following *(describe what you were ordered to do):* _____

_____

b. The other party was required to:

☐ pay me/my client damages of *(fill in the amount of the damages):* $ _____

☐ do the following *(describe what the other party was ordered to do):* _____

_____

c. ☐ Other *(describe):* _____

_____

_____

☐ *Check here if you need more space to describe the trial court's judgment or order and attach a separate page or pages describing this judgment or order. At the top of each page, write "APP-104, Item 8."*

9 Reasons for Your Appeal

Remember, in an appeal, the appellate division can only review a case for whether certain kinds of legal errors were made (read form APP–101-INFO to learn about these legal errors):

- *There was not "substantial evidence" supporting the judgment, order, or other decision you are appealing*
- *A "prejudicial error" was made during the trial court proceedings.*

The appellate division:

- *Cannot retry your case or take new evidence*
- *Cannot consider whether witnesses were telling the truth or lying*
- *Cannot consider whether there was more or stronger evidence supporting your position than there was supporting the trial court's decision.*

Appellate Division Case Name: _____

Appellate Division Case Number:

9 (continued)

(Check all that apply and describe in detail the legal error or errors you believe were made that are the reason for this appeal.)

a. ☐ There was not substantial evidence that supported the judgment, order, or other decision I am appealing in this case *(explain why you think the decision was not supported by substantial evidence):*

_____

_____

_____

_____

b. ☐ The following error or errors about either the law or court procedure was/were made that caused substantial harm to me/my client. *(describe each error and how you/your client were harmed by that error):*

(1) *Describe the error:* _____

_____

_____

Describe how you were/your client was harmed by the error: _____

_____

_____

(2) *Describe the error:* _____

_____

_____

Describe how you were/your client was harmed by the error: _____

_____

_____

(3) *Describe the error:* _____

_____

_____

Describe how you were/your client was harmed by the error: _____

_____

_____

☐ *Check here if you need more space to describe these or other errors and attach a separate page or pages describing the errors. At the top of each page, write "APP-104, item 9."*

Date: _____

_____ ▶ _____

Type or print your name *Signature of appellant or attorney*

APP-105 Order Concerning Appellant's Proposed Statement on Appeal (Limited Civil Case)

Clerk stamps date here when form is filed.

(1) The court has received and reviewed the *Proposed Statement on Appeal* (form APP-104) filed by the appellant on *(fill in date):* _____

(2) The court makes the following order:

a. ☐ The court certifies that parts (4) through (8) of the statement as proposed by the appellant are a complete and accurate summary of the trial court proceedings. This statement is ready to be sent to the appellate division.

b. ☐ The following corrections are needed in order for parts (4) through (8) of the statement proposed by the appellant to be a complete and accurate summary of the trial court proceedings.

(1) _____

(2) _____

(3) _____

This modified statement must be sent to the parties.

c. ☐ More corrections than could be listed above were needed in order for parts (4) through (8) of the statement proposed by the appellant to be a complete and accurate summary of the trial court proceedings. A corrected statement is attached to this order. This modified statement must be sent to the parties.

d. ☐ The trial court proceedings in this case were reported by a court reporter or officially recorded electronically under Government Code section 69957. Instead of correcting this statement, the court orders under rule 8.837(d)(6)(B) that a transcript be prepared as the record of these proceedings. *(Check the court's local rules to make sure the court has not adopted a rule providing that this option is not available.)*

e. ☐ The appellate division of this superior court has a local rule authorizing the use of an official electronic recording instead of correcting a proposed statement on appeal. The trial court proceedings in this case were officially electronically recorded. Instead of correcting this statement, the court orders that a copy of that electronic recording be prepared as the record of these proceedings at the court's expense.

Clerk fills in the name and street address of the court:

Superior Court of California, County of

Clerk fills in the number and name of the case:

Trial Court Case Number:

Trial Court Case Name:

Clerk fills in the number below:

Appellate Division Case Number:

Date: _____

_____
Signature of trial court judicial officer

APP-106 Abandonment of Appeal (Limited Civil Case)

Clerk stamps date here when form is filed.

Instructions

- This form is only for abandoning (giving up) an appeal in **a limited civil case.**
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*.
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service on the California Courts Online Self-Help Center at *www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving.*
- Take or mail the completed form and proof of service on the other parties to the appellate division clerk's office. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

Superior Court of California, County of

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

Trial Court Case Number:

Trial Court Case Name:

You fill in the appellate division case number (if you know it):

Appellate Division Case Number:

1 Your Information

a. Name of appellant (the party who is filing this appeal):

_____

b. Appellant's contact information *(skip this if the appellant has a lawyer for this appeal):*

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

Phone: ( ) _____ E-mail *(optional):* _____

c. Appellant's lawyer *(skip this if the appellant does not have a lawyer for this appeal):*

Name: _____ State Bar number: _____

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

Phone: ( ) _____ E-mail *(optional):* _____

Fax *(optional):* ( ) _____

Appellate Division Case Name: _____

Appellate Division Case Number:

2 On *(fill in the date)* _____, I/my client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.

3 By signing and filing this form, I abandon/my client abandons that appeal.

Date: _____

_____ ▶ _____

Type or print your name *Signature of appellant or attorney*

CR-131-INFO Information on Appeal Procedures for Misdemeanors

1 What does this information sheet cover?

This information sheet tells you about appeals in misdemeanor cases. It is meant to give you only a general idea of the appeal process, so it does not cover everything you may need to know about appeals in misdemeanor cases. To learn more, you should read rules 8.800–8.816 and 8.850–8.890 of the California Rules of Court, which set out the procedures for misdemeanor appeals. You can get these rules at any courthouse or county law library or online at *www.courtinfo.ca.gov/rules*.

For information about appeal procedures in other cases, see:

- *Information on Appeal Procedures for Infractions* (form CR-141-INFO)
- *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO)

You can get these forms at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*.

2 What is a misdemeanor?

A misdemeanor is a crime that can be punished by jail time of up to one year, but not by time in state prison. (See Penal Code sections 17 and 19.2. You can get a copy of these laws at *www.leginfo.ca.gov/calaw.html*.) If you were also charged with or convicted of a felony, then your case is a felony case, not a misdemeanor case.

3 What is an appeal?

An appeal is a request to a higher court to review a decision made by a lower court. **In a misdemeanor case, the court hearing the appeal is the appellate division of the superior court and the lower court—called the "trial court" in this information sheet—is the superior court.**

It is important to understand that **an appeal is NOT a new trial**. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits. The appellate division's job is to review a record of what happened in the trial court and the trial court's decision to see if certain kinds of legal errors were made in the case:

- ***Prejudicial error:*** The party that appeals (called the "appellant") may ask the appellate division to determine if an error was made about either the law or court procedures in the case that caused substantial harm to the appellant (this is called "prejudicial error"). Prejudicial error can include things like errors made by the judge about the law, errors or misconduct by the lawyers, incorrect instructions given to the jury, and misconduct by the jury that harmed the appellant. When it conducts its review, the appellate division presumes that the judgment, order, or other decision being appealed is correct. It is the responsibility of the appellant to show the appellate division that an error was made and that the error was harmful.
- ***No substantial evidence:*** The appellant may also ask the appellate division to determine if there was substantial evidence supporting the judgment, order, or other decision being appealed. When it conducts its review, the appellate division only looks to see if there was evidence that reasonably supports the decision. The appellate division generally will not reconsider the jury's or trial court's conclusion about which side had more or stronger evidence or whether witnesses were telling the truth or lying.

The appellate division generally will not overturn the judgment, order, or other decision being appealed unless the record clearly shows that one of these legal errors was made.

4 Do I need a lawyer to appeal?

You do not *have* to have a lawyer; you are allowed to represent yourself in an appeal in a misdemeanor case. But appeals can be complicated, and you will have to follow the same rules that lawyers have to follow. If you have any questions about the appeal procedures, you should talk to a lawyer.

If you are representing yourself, you must inform the court if your address, telephone number, or other contact information changes so that the court can contact you if needed.

5 How do I get a lawyer to represent me?

The court is required to appoint a lawyer to represent you if you are indigent (you cannot afford to pay for a lawyer) and:

- Your punishment includes going to jail or paying a fine of more than $500 (including penalty and other assessments) or
- You are likely to suffer other significant harm as a result of being convicted.

The court may, but is not required to, appoint a lawyer to represent you on appeal in other circumstances if you are indigent. You are automatically considered indigent if you were represented by the public defender or other court-appointed lawyer in the trial court. You will also be considered indigent if you can show that your income and assets are too low to pay for a lawyer.

If you think you are indigent, you can ask the court to appoint a lawyer to represent you for your appeal. You may use *Request for Court-Appointed Lawyer in Misdemeanor Appeal* (form CR-133) to ask the court to appoint a lawyer to represent you on appeal in a misdemeanor case. You can get form CR-133 at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*.

If you want a lawyer and you are not indigent or if the court turns down your request to appoint a lawyer, you must hire a lawyer at your own expense. You can get information about finding a lawyer on the California Courts Online Self-Help Center at *www.courtinfo.ca.gov /selfhelp/lowcost.*

6 Who can appeal?

Only a party in the trial court case can appeal a decision in that case. You may not appeal on behalf of a friend, a spouse, a child, or another relative.

The party that is appealing is called the APPELLANT; in a misdemeanor case, this is usually the party convicted of committing the misdemeanor. The other party is called the RESPONDENT; in a misdemeanor case, this is usually the government agency that filed the criminal charges (on court papers, this party is called the People of the State of California).

7 Can I appeal *any* decision that the trial court made?

No. Generally, you may appeal only the final judgment —the decision at the end that decides the whole case. The final judgment includes the punishment that the court imposed. Other rulings made by the trial court before final judgment generally cannot be separately appealed, but can be reviewed only later as part of an appeal of the final judgment. In a misdemeanor case, the party convicted of committing a misdemeanor usually appeals that conviction or the sentence (punishment) ordered by the trial court. In a misdemeanor case, a party can also appeal from:

- An order granting or denying a motion to suppress evidence (Penal Code section 1538.5(j))
- An order made by the trial court after judgment that affects a substantial right of the appellant (Penal Code section 1466(2)(B))

You can get a copy of these laws at *www.leginfo.ca.gov /calaw.html*.

8 How do I start my appeal?

First, you must file a notice of appeal. The notice of appeal tells the other party in the case and the trial court that you are appealing the trial court's decision. You may use *Notice of Appeal (Misdemeanor)* (form CR-132) to prepare and file a notice of appeal in a misdemeanor case. You can get form CR-132 at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms.*

9 Is there a deadline for filing my notice of appeal?

Yes. Except in the very limited circumstances listed in rule 8.853(b), in a misdemeanor case, you must file your notice of appeal within **60 days** after the trial court makes ("renders") its final judgment in your case or issues the order you are appealing. (You can get a copy of rule 8.853 at any courthouse or county law library or online at *www.courtinfo.ca.gov/rules*.) The date the trial court makes its judgment is normally the date the trial court issues its order saying what your punishment is (sentences you). **This deadline for filing the notice of appeal cannot be extended. If your notice of appeal is**

late, the appellate division will not be able to consider your appeal.

10 How do I file my notice of appeal?

To file the notice of appeal in a misdemeanor case, you must bring or mail the original notice of appeal to the clerk of the trial court that made the judgment or issued the order you are appealing. It is a good idea to bring or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

There is no fee for filing the notice of appeal in a misdemeanor case. You can ask the clerk of that court if there are any other requirements for filing your notice of appeal.

After you file your notice of appeal, the clerk will send a copy of your notice of appeal to the office of the prosecuting attorney (for example, the district attorney, county counsel, city attorney, or state Attorney General).

11 If I file a notice of appeal, do I still have to go to jail or complete other parts of my punishment?

Filing the notice of appeal does NOT automatically postpone your punishment, such as serving time in jail, paying fines, or probation conditions.

If you have been sentenced to jail in a misdemeanor case, you have a right to be released either with or without bail while your appeal is waiting to be decided, but you must ask the court to set bail or release you. If the trial court has not set bail or released you after your notice of appeal has been filed, you must ask the trial court to set bail or release you. If the trial court denies your release or sets the bail amount higher than you think it should be, you can apply to the appellate division for release or for lower bail.

Other parts of your punishment, such as fines or probation conditions, will be postponed ("stayed"), only if you request a stay and the court grants your request. If you want a stay, you must first ask the trial court for a stay. You can also apply to the appellate division for a stay, but you must show in your application to appellate division that you first asked the trial court a stay and that the trial court unjustifiably denied your request. If you do not get a stay and you do not pay your fine or complete another part of your punishment by the date ordered by the court, a warrant may be issued for your arrest or a civil collections process may be started against you, which could result in a civil penalty being added to your fine.

12 What do I need to do after I file my appeal?

You must tell the trial court whether you want a record of what was said in the trial court (this is called a record of the "oral proceedings") sent to the appellate division and, if so, what form of that record you want to use. You may use *Notice Regarding Record of Oral Proceedings (Misdemeanor)* (form CR-134) for this notice. (You can get form CR-134 at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*.) You must file this notice either:

(1) within 20 days after you file your notice of appeal, or, if it is later

(2) within 10 days after the court decides whether to appoint a lawyer to represent you (if you ask the court to appoint a lawyer within 20 days after you file your notice of appeal).

13 In what cases does the appellate division need a record of what was said in the trial court?

You do not *have* to send the appellate division a record of what was said in the trial court. But if you want to raise any issue in your appeal that would require the appellate division to consider what was said in the trial court, the appellate division will need a record of these oral proceedings. For example, if you are claiming that there was not substantial evidence supporting the judgment, order, or other decision you are appealing, the appellate division will need a record of the oral proceedings. Since the appellate division judges were not there for the proceedings in the trial court, an official record of these oral proceedings must be prepared and sent to the appellate division for its review.

Depending on what form of the record you choose to use, you will be responsible for paying to have the official record of the oral proceedings prepared (unless you are indigent) or for preparing an initial draft of this record yourself. If you do not take care of these responsibilities, a record of the oral proceedings in the

trial court will not be prepared and sent to the appellate division. If the appellate division does not receive this record, it will not be able to consider what was said in the trial court in deciding whether a legal error was made.

14 What are the different forms of the record?

There are three ways a record of the oral proceedings in the trial court can be prepared and provided to the appellate division in a misdemeanor case:

a. If a court reporter was there during the trial court proceedings, the reporter can prepare a record called a *"reporter's transcript."*

b. If the proceedings were officially electronically recorded, the trial court can have a transcript prepared from that recording; or if the court has a local rule permitting this and you and the respondent (the prosecuting agency) agree ("stipulate") to this, you can use the *official electronic recording* itself as the record, instead of a transcript.

c. You can use a *statement on appeal.*

Read below for more information about these options.

a. Reporter's transcript

When available: In some misdemeanor cases, a court reporter is there in the trial court and makes a record of the oral proceedings. If a court reporter made a record of your case, you can ask to have the court reporter prepare a transcript of those oral proceedings, called a "reporter's transcript." You should check with the trial court to see if a court reporter made a record of your case before you choose this option.

Cost: Ordinarily, the appellant must pay for preparing a reporter's transcript. The court reporter will provide the clerk of the trial court with an estimate of the cost of preparing the transcript and the clerk will notify you of this estimate. If you want the reporter to prepare a transcript, you must deposit this estimated amount with the clerk within 10 days after the clerk sends you the estimate.

If, however, you are indigent (you cannot afford to pay the cost of a reporter's transcript), you may be able to get a free transcript. If you were represented by the public defender or another court-appointed lawyer in the trial court, you are automatically considered indigent. If you were not represented by a court-appointed lawyer in the trial court, you can complete and file *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement* (form MC-210), to show that you are indigent. You can get form MC-210 at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*. The court will review this form to decide whether you are indigent.

If you are indigent, a court reporter made a record of your case, and you show that you need a transcript, the court must provide you with a free transcript. Whether you need a transcript depends on the issues you are raising on appeal. If the issues you are raising on appeal include that there was not substantial evidence supporting the judgment, order, or other decision you are appealing or that there was misconduct in your case that harmed you, that is generally enough to show that you need a transcript. If you ask for a reporter's transcript, the court may ask you what issues you are raising on appeal and may decide that a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising.

Completion and delivery: Once you deposit the estimated cost of the transcript or show the court you are indigent and need a transcript, the clerk will notify the reporter to prepare the transcript. When the reporter completes the transcript, the clerk will send the reporter's transcript to the appellate division.

b. Official electronic recording or transcript from an official recording

When available: In some misdemeanor cases, the trial court proceedings are officially recorded on approved electronic recording equipment. If your case was officially recorded, you can ask to have a transcript prepared from that official electronic recording. You should check with the trial court to

see if your case was officially electronically recorded before you choose this option.

If the court has a local rule for the appellate division permitting this and all the parties agree ("stipulate"), a copy of the official electronic recording itself can be used as the record of the oral proceedings instead of preparing a transcript. You should check with the trial court to see if your case was officially electronically recorded and check to make sure there is a local rule permitting the use of the recording itself before choosing this option. If you choose this option, you must attach a copy of your agreement with the other parties (called a "stipulation") to your notice regarding the oral proceedings.

Cost: Ordinarily, the appellant must pay for preparing a transcript or making a copy of the official electronic recording. If, however, you are indigent (you cannot afford to pay the cost of the transcript or recording), you may be able to get a free transcript or recording. If you were represented by the public defender or another court-appointed attorney in the trial court, you are automatically considered indigent. If you were not represented by a court-appointed lawyer in the trial court, you can complete and file *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement* (form MC-210) to show that you are indigent. You can get form MC-210 at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*. The court will review this form to decide whether you are indigent.

If you are indigent, an official electronic recording of your case was made, and you show that you need a transcript, the court must provide you with a free transcript. Whether you need a transcript depends on the issues you are raising on appeal. If the issues you are raising on appeal include that there was not substantial evidence supporting the judgment, order, or other decision you are appealing or that there was misconduct in your case that harmed you, that is generally enough to show that you need a transcript. If you ask for a transcript, the court may ask you what issues you are raising on appeal and may decide that a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising.

Completion and delivery: Once you deposit the estimated cost of the transcript or the official electronic recording with the clerk or show the court you are indigent and need a transcript, the clerk will have the transcript or copy of the recording prepared. When the transcript is completed or the copy of the official electronic recording is prepared, the clerk will send the transcript or recording to the appellate division.

c. Statement on appeal

Description: A statement on appeal is a summary of the trial court proceedings approved by the trial court judge who conducted those proceedings (note that the term "judge" includes a commissioner or a temporary judge).

When available: If the trial court proceedings were not recorded either by a court reporter or by official electronic recording equipment, or if you do not want to use either of these forms of the record, you can choose ("elect") to use a statement on appeal as the record of the oral proceedings in the trial court (please note that it may take more of your time to prepare a statement on appeal than to use either a reporter's transcript or electronic recording, if they are available).

Contents: A statement on appeal must include a summary of the oral proceedings that the appellant believes necessary for the appeal and a summary of the trial court's decision. It must also include a statement of the points the appellant is raising on appeal. (See rule 8.869 of the California Rules of Court for more information about what must be included in a statement on appeal and the procedures for preparing a statement. You can get this rule at any courthouse or county law library or online at *www.courtinfo.ca.gov/rules*.)

Preparing a proposed statement: If you choose to use a statement on appeal, you must prepare a proposed statement. If you are not represented by a lawyer, you must use *Proposed Statement on Appeal (Misdemeanor)* (form CR-135) to prepare your proposed statement. You can get form

CR-135 at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms.*

Serving and filing a proposed statement: You must serve and file your proposed statement in the trial court within 20 days after you file your notice regarding the record of the oral proceedings. "Serve and file" means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") a copy of the proposed statement to the prosecuting attorney and any other party in the way required by law.

- Make a record that the proposed statement has been served. This record is called a "proof of service." The proof of service must show who served the proposed statement, who was served with the proposed statement, how the proposed statement was served (by mail or in person), and the date the proposed statement was served.

- File the original proposed statement and the proof of service with the trial court. You should make a copy of the proposed statement you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the proposed statement to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service on the California Courts Online Self-Help Center at *www.courtinfo .ca.gov/selfhelp/lowcost/getready.htm#serving.*

Review and modifications: The prosecuting attorney and any other party have 10 days from the date you serve your proposed statement to serve and file proposed changes (called "amendments") to this statement. The trial court judge then reviews both your proposed statement and any proposed amendments and makes any corrections or modifications to the statement needed to make sure that the statement provides a complete and accurate summary of the trial court proceedings.

Completion and certification: If the judge makes any corrections or modifications to the proposed statement, the corrected or modified statement will be sent to you, the prosecuting attorney, and any other party for your review. If you disagree with anything in the judge's statement, you will have 10 days from the date the statement is sent you to serve and file objections to the statement. The judge then reviews any objections, makes any additional corrections to the statement, and certifies the statement as a complete and accurate summary of the trial court proceedings.

Sending the statement to appellate division: Once the trial court judge certifies the statement on appeal, the trial court clerk will send the statement to the appellate division along with the clerk's transcript.

15 Is there any other part of the record that needs to be sent to the appellate division?

Yes. There are two other parts of the official record that need to be sent to the appellate division:

- ***Documents filed in the trial court:*** The trial court clerk is responsible for preparing a record of the written documents filed in your case, called a "clerk's transcript," and sending this to the appellate division. (The documents the clerk must include in this transcript are listed in rule 8.861 of the California Rules of Court. You can get a copy of this rule at any courthouse or county law library or online at *www.courtinfo.ca.gov/rules.*)

- ***Exhibits submitted during trial:*** Exhibits, such as photographs, that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court are considered part of the record on appeal. If you want the appellate division to consider such an exhibit, however, you must ask the trial court clerk to send the original exhibit to the appellate division within 10 days after the last respondent's brief is filed in the appellate division. (See rule 8.870 of the California Rules of Court for more information about this procedure. You can get a copy of this rule at any courthouse or county law library or online at *www.courtinfo.ca.gov/rules.*)

  Sometimes, the trial court returns an exhibit to a party at the end of the trial. If the trial court returned an exhibit to you or another party and you or the other party ask for the exhibit to be sent to the

appellate division, the party who has the exhibit must deliver that exhibit to the appellate division as soon as possible.

16 What happens after the record is prepared?

As soon as the record of the oral proceeding is ready, the clerk of the trial court will send it to the appellate division along with the clerk's transcript. When the appellate division receives this record, it will send you a notice telling you when you must file your brief in the appellate division.

17 What is a brief?

A brief is a party's written description of the facts in the case, the law that applies, and the party's argument about the issues being appealed. If you are represented by a lawyer in your appeal, your lawyer will prepare your brief. If you are not represented by a lawyer in your appeal, you will have to prepare your brief yourself. You should read rules 8.880–8.891 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in misdemeanor appeals, including requirements for the format and length of those briefs. You can get copies of these rules at any courthouse or county law library or online at *www.courtinfo.ca.gov/rules.*

Contents: If you are the appellant (the party who is appealing), your brief, called the "appellant's opening brief," must clearly explain what you believe are the legal errors made in the trial court. Your brief must refer to the exact places in the clerk's transcript and the reporter's transcript (or other record of the oral proceedings) that support your argument. Remember that an appeal is not a new trial. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits, so do not include any new evidence in your brief.

Serving and filing: You must serve and file your brief in the appellate division by the deadline the court set in the notice it sent you, which is usually 30 days after the record is filed in the appellate division. "Serve and file" means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the brief to the respondent (the prosecuting agency) and any other party in the way required by law.
- Make a record that the brief has been served. This record is called a "proof of service." The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail or in person), and the date the brief was served.
- File the original brief and the proof of service with the appellate division. You should make a copy of the brief you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service at *www.courtinfo.ca.gov /selfhelp/lowcost/getready.htm#serving.*

If you do not file your brief by the deadline set by the appellate division, the court may dismiss your appeal.

18 What happens after I file my brief?

Within 30 days after you serve and file your brief, the respondent (the prosecuting agency) may, but is not required to, respond by serving and filing a respondent's brief. If the respondent does not file a brief, the appellant does not automatically win the appeal. The court will decide the appeal on the record, the appellant's brief, and any oral argument by the appellant.

If the respondent serves and files a brief, within 20 days after the respondent's brief was served, you may, but are not required to, serve and file another brief replying to the respondent's brief. This is called a "reply brief."

19 What happens after all the briefs have been filed?

Once all the briefs have been served and filed or the time to serve and file them has passed, the court will notify you of the date for oral argument in your case.

20 What is oral argument?

"Oral argument" is the parties' chance to explain their arguments to the appellate division judges in person. You do not have to participate in oral argument if you do not want to; you can notify the appellate division that you want to "waive" oral argument. But if one party waives oral argument and another party or parties does not, the appellate division will hold oral argument with the party or parties who did not waive it. If all parties waive oral argument, the judges will decide your appeal based on the briefs and the record that were submitted.

If you choose to participate in oral argument, you will have up to 10 minutes for your argument, unless the court orders otherwise. Remember that the judges will already have read the briefs, so you do not need to read your brief to the judges. It is more helpful to tell the judges what you think is most important in your appeal or ask the judges if they have any questions you could answer.

21 What happens after oral argument?

After the oral argument is held (or the date it was scheduled passes if all the parties waive oral argument), the judges of the appellate division will make a decision about your appeal. The appellate division has 90 days after the date scheduled for oral argument to decide the appeal. The clerk of the court will mail you a notice of that decision.

22 What should I do if I want to give up my appeal?

If you decide you do not want to continue with your appeal, you must file a written document with the appellate division notifying it that you are giving up (this is called "abandoning") your appeal. You can use *Abandonment of Appeal (Misdemeanor)* (form CR-137) to file this notice in a misdemeanor case. You can get form CR-137 at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms.*

If you decide not to continue your appeal and it is dismissed, you will (with only very rare exceptions) permanently give up the chance to raise any objections to your conviction, sentence, or other matter that you could have raised on the appeal. If you were released from custody with or without bail or your sentence or any probation conditions were stayed during the appeal, you may be required to start serving your sentence or complying with your probation conditions immediately after your appeal is dismissed.

CR-132 Notice of Appeal (Misdemeanor)

Clerk stamps date here when form is filed.

Instructions

- This form is only for appealing in a **misdemeanor case.** You can get other forms for appealing in a civil or infraction case at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms.*
- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO) to know your rights and responsibilities. You can get form CR-131-INFO at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms.*
- You must file this form **no later than 60 days after the trial court issued the judgment or order you are appealing** (see rule 8.853(b) of the California Rules of Court for very limited exceptions). **If your notice of appeal is late, the court will not take your appeal.**
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk's office for the same trial court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

Superior Court of California, County of

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

Trial Court Case Number:

Trial Court Case Name:
The People of the State of California
v. _____

The clerk will fill in the number below:

Appellate Division Case Number:

1 Your Information

a. Name of appellant (the party who is filing this appeal):

_____

b. Appellant's contact information:

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

Phone: ( ) _____ E-mail *(optional):* _____

c. Appellant's lawyer *(skip this if the appellant is filling out this form):*

The lawyer filling out this form *(check (1) or (2)):*

(1) ☐ was the appellant's lawyer in the trial court.

(2) ☐ is the appellant's lawyer for this appeal.

Name: _____ State Bar number: _____

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

Phone: ( ) _____ E-mail *(optional):* _____

Fax *(optional):* ( ) _____

Trial Court Case Name:_____ | **Trial Court Case Number:**

2 Judgment or Order You Are Appealing

I am/My client is appealing *(check one):*

a. ☐ the final judgment of conviction in this case (Penal Code section 1466(2)(A)).
The trial court issued (rendered) this judgment on *(fill in the date):*_____

b. ☐ an order that denied a motion to suppress evidence in this case (Penal Code section 1538.5(j)).
The trial court issued this order on *(fill in the date):*_____

c. ☐ an order made after judgment in this case that affects an important right of mine/my client (for example, an order after a probation violation) (Penal Code section 1466(2)(B)).
The trial court issued this order on *(fill in the date):*_____

d. ☐ other action *(describe the action you are appealing and give the date the trial court took the action):*

_____
_____
_____
_____

3 Record of the Oral Proceedings

(See form CR-131-INFO for information about the record of the oral proceedings.)

(Check a or b):

a. ☐ I have attached a completed *Notice Regarding Record of Oral Proceedings (Misdemeanor)* (form CR-134).

b. ☐ I have **not** attached a *Notice Regarding Record of Oral Proceedings (Misdemeanor)* (form CR-134). I understand that I must file this notice in the trial court within either: (1) 20 days after I file this notice of appeal; or, if it is later, (2)10 days after the court decides whether to appoint a lawyer for me (if I file a request for a court-appointed lawyer within 20 days after I file my notice of appeal). I also understand that if I do not file the notice on time, the court will not be able to consider what was said in the trial court in deciding whether an error was made in the trial court proceedings.

4 Court-Appointed Lawyer

a. I/My client ☐ was ☐ was not represented by the public defender or another court-appointed lawyer in the trial court.

b. I am/My client is *(check (1) or (2)):*

(1) ☐ asking the court to appoint a lawyer to represent me/my client in this appeal. I have completed *Request for Court-Appointed Lawyer in Misdemeanor Appeal* (form CR-133), and attached it to this notice of appeal.

(2) ☐ **not** asking the court to appoint a lawyer to represent me/my client in this appeal.

REMINDER—Except in the very limited circumstances listed in rule 8.853(b), you must file this form no later than 60 days after the trial court issued the judgment or order you are appealing in your case. If your notice of appeal is late, the court will not take your appeal.

Date:_____

_____ ▶ _____

Type or print your name | *Signature of appellant or attorney*

CR-133 Request for Court-Appointed Lawyer in Misdemeanor Appeal

Clerk stamps date here when form is filed.

Instructions

- This form is only for requesting that the court appoint a lawyer to represent a person who is appealing in a **misdemeanor** case.
- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO) to know your rights and responsibilities. You can get form CR-131-INFO at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms.*
- The court is required to appoint a lawyer to represent you on appeal only if you cannot afford to hire a lawyer and
  - your punishment includes going to jail or paying a fine of more than $500 (including penalty and other assessments), or
  - you are likely to suffer other significant harm as a result of being convicted.
- This form can be filed at the same time as your notice of appeal.
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk's office for the same court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

Superior Court of California, County of

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

Trial Court Case Number:

Trial Court Case Name:
The People of the State of California
v. _____

You fill in the appellate division case number (if you know it):

Appellate Division Case Number:

1 Your Information

a. Name of appellant (the party who is filing this appeal):

_____

b. Appellant's contact information:

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

Phone: ( ) _____ E-mail *(optional):* _____

c. Appellant's lawyer in the trial court *(skip this if the appellant is filling out this form):*

Name: _____ State Bar number: _____

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

Phone: ( ) _____ E-mail *(optional):* _____

Fax *(optional):* ( ) _____

Trial Court Case Name:_____

Trial Court Case Number:

Information About Your Case

2 Were you/was your client represented by the public defender or another court-appointed lawyer in the trial court? *(Check a or b.)*

a. ☐ Yes

b. ☐ No *(Complete and attach* Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement *(form MC-210) showing that you/your client cannot afford to hire a lawyer. You can get form MC-210 at any courthouse or county law library or online at* www.courtinfo.ca.gov/forms.*)*

3 Describe the punishment the trial court gave you/your client in this case *(check all that apply and fill in any required information):*

a. ☐ Jail time

b. ☐ A fine (including penalty and other assessments) *(fill in the amount of the fine):* $_____

c. ☐ Restitution *(fill in the amount of the restitution):* $ _____

d. ☐ Probation *(fill in the amount of time on probation):* _____

e. ☐ Other punishment *(describe any other punishment that the trial court gave you/your client in this case):*

_____

_____

_____

4 Describe any significant harm that you are/your client is likely to suffer because of this conviction:

_____

_____

_____

_____

_____

Date:_____

_____ ▶ _____

Type or print your name *Signature of appellant or attorney*

CR-134 Notice Regarding Record of Oral Proceedings (Misdemeanor)

Clerk stamps date here when form is filed.

Instructions

- This form is only for giving the court notice about the record of the oral proceedings in an appeal of a **misdemeanor** case.
- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO) to know your rights and responsibilities. You can get form CR-131 INFO at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms.*
- This form can be filed with your notice of appeal. If it is not filed with your notice of appeal, this form must be filed within either:
  (1) 20 days after you file your notice of appeal, or, if it is later
  (2) 10 days after the court decides whether to grant your request for a court-appointed lawyer (if you file a request within 20 days after you file your notice of appeal).

  If you do not file this form on time, the court will not be able to consider what was said in the trial court in deciding whether a legal error was made in the trial court proceedings.
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk's office for the same trial court where you filed your notice of appeal. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

Superior Court of California, County of

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

Trial Court Case Number:

Trial Court Case Name:
The People of the State of California
v. _____

You fill in the appellate division case number (if you know it):

Appellate Division Case Number:

1 Your Information

a. Name of appellant (the party who is filing this appeal):

_____

b. Appellant's contact information:

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

Phone: ( ) _____ E-mail *(optional):* _____

c. Appellant's lawyer *(skip this if the appellant is filling out this form):*

The lawyer filling out this form *(check (1) or (2)):*

(1) ☐ was the appellant's lawyer in the trial court. (2) ☐ is the appellant's lawyer for this appeal.

Name: _____ State Bar number: _____

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

Phone: ( ) _____ E-mail *(optional):* _____

Fax *(optional):* ( ) _____

Trial Court Case Name: _____

Trial Court Case Number:

Information About Your Appeal

(2) On *(fill in the date):* _____ I/my client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.

Your Choices (Election) about the Record of the Oral Proceedings

You do not have to provide the appellate division with a record of what was said in the trial court (this is called a record of the "oral proceedings"). But if you do not, the appellate division will not be able to consider what was said during those proceedings in deciding whether a legal error was made in the trial court proceedings.

(3) I elect (choose)/My client elects to proceed *(check a or b):*

a. ☐ WITHOUT a record of the oral proceedings in the trial court *(skip item (4); sign and date this form).* I understand that if I proceed without a record of the oral proceedings, the appellate division will not be able to consider what was said during those proceedings in deciding whether a legal error was made.

(Write initials here): _____

b. ☐ WITH a record of the oral proceedings in the trial court *(complete item (4) below).* I understand that if I elect (choose) to proceed WITH a record of the oral proceeding in the trial court, I have to choose the record I want to use and take the actions described below to make sure this record is provided to the appellate division. I understand that if I do not take the actions described below and the appellate division does not receive this record, I am not likely to succeed in my appeal.

(Write initials here): _____

(4) I want to use the following record of what was said in the trial court proceedings in my case *(check and complete **only one**—a, b, c, or d):*

a. ☐ **Reporter's Transcript.** *This option is available only if there was a court reporter in the trial court who made a record of what was said in court. Check with the trial court to see if there was a court reporter in your case before choosing this option. (Check and complete (1) or (2)):*

(1) ☐ I will pay the trial court clerk's office for this transcript myself when I receive the court reporter's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the appellate division.

(2) ☐ I am asking that this transcript be prepared at no cost to me because I cannot afford to pay this cost.

(a) ☐ I was represented by the public defender or another court-appointed lawyer at my trial.

(b) ☐ I was not represented by the public defender or another court-appointed lawyer at my trial, but I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement* (form MC-210). *(You can get form MC-210 at any courthouse or county law library or online at* www.courtinfo.ca.gov/forms. *The court will review this form to decide if you are eligible for a free reporter's transcript.)*

OR

4 *(continued)*

b. ☐ **Transcript From Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. (Check and complete (1) or (2)):*

(1) ☐ I will pay the trial court clerk's office for this transcript myself. I understand that if I do not pay for this transcript, it will not be prepared and provided to the appellate division.

(2) ☐ I am asking that this transcript be provided at no cost to me because I cannot afford to pay this cost.

(a) ☐ I was represented by the public defender or another court-appointed lawyer at trial.

(b) ☐ I was not represented by the public defender or another court-appointed lawyer at my trial, but I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement* (form MC-210). *(You can get form MC-210 at any courthouse or county law library or online at* www.courtinfo.ca.gov/forms. *The court will review this form to decide whether you are eligible for a free transcript.)*

OR

c. ☐ **Copy of Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court, the court has a local rule for the appellate division permitting the use of the official electronic recording itself as the record of the proceedings, and you and the respondent (the prosecuting agency) have agreed (stipulated) that you want to use the official electronic recording itself as the record of what was said in your case. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. You must attach a copy of the agreement (stipulation) between you and the respondent to this notice. (Check and complete (1) or (2)).*

(1) ☐ I will pay the trial court clerk's office for this official electronic recording myself. I understand that if I do not pay for this recording, it will not be prepared and provided to the appellate division.

(2) ☐ I am asking that this official electronic recording be provided at no cost to me because I cannot afford to pay this cost.

(a) ☐ I was represented by the public defender or another court-appointed lawyer at my trial.

(b) ☐ I was not represented by the public defender or another court-appointed lawyer at my trial, but I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement* (form MC-210). *(You can get form MC-210 at any courthouse or county law library or online at* www.courtinfo.ca.gov/forms. *The court will review this form to decide whether you are eligible for a free copy of the official electronic recording.)*

OR

Trial Court Case Name:_____

Trial Court Case Number:

4 *(continued)*

d. ☐ **Statement on Appeal.** *A statement on appeal is a summary of the trial court proceedings approved by the trial court. See form CR-131-INFO for information about preparing a proposed statement. (Check and complete (1) or (2)):*

(1) ☐ I have attached my proposed statement on appeal. (*If you are not represented by a lawyer in this appeal, you must use* Proposed Statement on Appeal (Misdemeanor) *(form CR-135) to prepare and file this proposed statement. You can get form CR-135 at any courthouse or county law library or online at* www.courtinfo.ca.gov/forms.)

(2) ☐ I have NOT attached my proposed statement on appeal. I understand that I must file this proposed statement in the trial court within 20 days of the date I file this notice and that if I do not file the proposed statement on time, the court may dismiss my appeal.

Date:_____

_____ ▶ _____

Type or print your name *Signature of appellant or attorney*

CR-135 Proposed Statement on Appeal (Misdemeanor)

Clerk stamps date here when form is filed.

Instructions

- This form is only for preparing a proposed statement on appeal in a **misdemeanor.**
- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO) to know your rights and responsibilities. You can get form CR-131-INFO at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*.
- This form can be attached to your *Notice Regarding Record of Oral Proceedings (Misdemeanor)* (form CR-134). If it is not attached to that notice, this form must be filed **no later than 20 days after you file that notice.**
- **If you have chosen to prepare a statement on appeal and do not file this form on time, the court may dismiss your appeal.**
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service on the California Courts Online Self-Help Center at *www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving.*
- Take or mail the original completed form and proof of service on the other parties to the clerk's office for the same court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

Superior Court of California, County of

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

Trial Court Case Number:

Trial Court Case Name:
The People of the State of California
v. _____

You fill in the appellate division case number (if you know it):

Appellate Division Case Number:

1 Your Information

a. Name of appellant (the party who is filing this appeal):

_____

b. Appellant's contact information:

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

Phone: ( ) _____ E-mail *(optional):* _____

c. Appellant's lawyer *(skip this if the appellant does not have a lawyer for this appeal):*

Name: _____ State Bar number: _____

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

Phone: ( ) _____ E-mail *(optional):* _____

Fax *(optional):* ( ) _____

Trial Court Case Name: _____

Trial Court Case Number:

Information About Your Appeal

(2) On *(fill in the date):* _____, I/my client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.

(3) On *(fill in the date):* _____, I/my client filed a *Notice Regarding Record of Oral Proceedings,* choosing to use a statement on appeal as the record of what was said in this case.

Proposed Statement

(4) The Charges Against Me/My Client

a. The charges against me/my client were *(list all of the charges indicated on the complaint or citation filed with the court by the prosecutor):* _____

b. I/My client *(check (1), (2), or (3)):*

(1) ☐ pleaded not guilty to all the charges.

(2) ☐ pleaded guilty to only the following charges: _____

(3) ☐ pleaded guilty to all of these charges.

(5) Summary of Any Motions

a. Were any motions (requests for the trial court to issue an order) filed in this case?

☐ Yes (*fill out b*) ☐ No (*skip to* (6)).

b. *In the spaces below, please describe any motions (requests for orders) that were made in the trial court. Write a complete and accurate summary of what was said at any hearings on these motions and indicate how the trial court ruled on these motions.*

(1) *Describe the first motion:* _____

The motion was filed by the ☐ prosecutor. ☐ defendant.

There ☐ was ☐ was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing:

5 b. (continued)

The trial court ☐ granted this motion. ☐ did not grant this motion.

☐ Other *(describe any other action the trial court took concerning this motion):* _____

_____

_____

☐ *Check here if you need more space to describe this motion and attach a separate page or pages describing it. At the top of each page, write "CR-135, item 5b(1)."*

(2) *Describe the second motion:* _____

_____

_____

The motion was filed by the ☐ prosecutor. ☐ defendant.

There ☐ was ☐ was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: _____

_____

_____

_____

_____

The trial court ☐ granted this motion. ☐ did not grant this motion.

☐ Other *(describe any other action the trial court took concerning this motion):* _____

_____

_____

☐ *Check here if you need more space to describe this motion and attach a separate page or pages describing it. At the top of each page, write "CR-135, item 5b(2)."*

☐ *Check here if any other motions were filed, and attach a separate page or pages describing each motion, identifying who made the motion and whether there was a hearing on the motion, summarizing what was said at the hearing on the motion, and indicating whether the trial court granted or denied the motion. At the top of each page, write "CR-135, item 5b(3)."*

Trial Court Case Name:_____

Trial Court Case Number:

6 Summary of Testimony

a. Was there a trial in your case?

No ☐ *(skip items b, c, and d and go to item 7)*

Yes ☐ *(check (1) or (2) and complete items b, c, and d)*

(1) ☐ Jury trial

(2) ☐ Trial by judge only

b. Did you/your client testify at the trial?

☐ No

☐ Yes *(write a complete and accurate summary of the testimony you/your client gave. Include only what you actually said; do not comment on or give your opinion about what you said):*

_____

_____

_____

_____

☐ *Check here if you need more space to summarize your/your client's testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write "CR-135, item 6b."*

c. Did an officer from the police department, sheriff's office, or other government agency that charged you/your client testify at the trial? *(check one):*

☐ No

☐ Yes *(complete (1) and (2)):*

(1) The name of the officer who testified is *(fill in the officer's name):*_____

(2) This officer testified that *(write a complete and accurate summary of the officer's testimony. Include only what the officer actually said; do not comment on or give your opinion about what the officer said):*

_____

_____

_____

_____

☐ *Check here if you need more space to summarize the officer's testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write "CR-135, item 6c."*

d. Were there any other witnesses at the trial?

☐ No

☐ Yes *(fill out (1)–(4)):*

(1) The witness's name is *(fill in the witness's name):*_____

(2) This witness ☐ was ☐ was not an officer from the police department, sheriff's office, or other government agency that charged me/my client.

(3) This witness testified on behalf of ☐ me/my client. ☐ the prosecution.

6 d. (continued)

(4) This witness testified that *(write a complete and accurate summary of the witness's testimony. Include only what the witness actually said; do not comment on or give your opinion about what the witness said):*

_____

_____

_____

_____

☐ *Check here if you need more space to summarize this witness's testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write "CR-135, item 6d."*

☐ *Check here if any other witnesses testified at the trial. Attach a separate page or pages identifying each witness, whether the witness testified on your/your client's behalf or the prosecution's behalf, and summarizing what that witness said in his or her testimony. At the top of each page, write "CR-135, item 6e"*

7 The Trial Court's Findings

a. ☐ I/My client was found guilty of the following offenses *(list all of the offenses for which you were/your client was found guilty):* _____

_____

_____

_____

b. ☐ I/My client was found not guilty of the following offenses *(list all of the offenses for which you were/your client was found not guilty):* _____

_____

_____

_____

8 The Sentence

The trial court ordered the following punishment for me/my client in this case *(check all that apply and fill in any required information):*

a. ☐ Jail time *(fill in the amount of time you are/your client is required to spend in jail):* _____

_____

b. ☐ A fine (including penalty and other assessments) *(fill in the amount of the fine):* $_____

c. ☐ Restitution *(fill in the amount of the restitution):* $_____

d. ☐ Probation *(fill in the amount of time you are/your client is required to be on probation):* _____

_____

e. ☐ Other punishment *(describe any other punishment that the trial court imposed in this case):*

_____

_____

_____

9 Reasons for Your Appeal

Remember, in an appeal, the appellate division can only review a case for whether certain kinds of legal errors were made in the trial court proceedings (read form CR–131-INFO to learn about these legal errors):

- *There was not "substantial evidence" supporting the judgment, order, or other decision you are appealing*
- *A "prejudicial error" was made during the trial court proceedings.*

The appellate division:

- *Cannot retry your case or take new evidence*
- *Cannot consider whether witnesses were telling the truth or lying*
- *Cannot consider whether there was more or stronger evidence supporting your position than there was supporting the trial court's decision*

(Check all that apply and describe in detail the legal error or errors you believe were made that are the reason for this appeal.)

a. ☐ There was not substantial evidence that supported the judgment, order, or other decision I am/my client is appealing in this case. *(Explain why you think the judgment, order, or other decision was not supported by substantial evidence):*

_____
_____
_____
_____
_____

b. ☐ The following error or errors about either the law or court procedure was/were made that caused substantial harm to me/my client. *(Describe each error and how you were/your client was harmed by that error):*

(1) *Describe the error:* _____
_____
_____
_____

Describe how this error harmed you/your client: _____
_____
_____
_____

Trial Court Case Name: _____

Trial Court Case Number:

9 b. (continued)

(2) *Describe the error:* _____

Describe how this error harmed you/your client: _____

(3) *Describe the error:* _____

Describe how this error harmed you/your client: _____

☐ *Check here if you need more space to describe these or other errors, and attach a separate page or pages describing the errors. At the top of each page, write "CR-135, item 9."*

REMINDER: You must file this form no later than 20 days after you file your notice regarding the oral proceedings. If you do not file this form on time, the court may dismiss your appeal.

Date: _____

_____ ▶ _____

Type or print name *Signature of appellant or attorney*

CR-136 Order Concerning Appellant's Proposed Statement on Appeal (Misdemeanor)

Clerk stamps date here when form is filed.

(1) The court has received and reviewed the *Proposed Statement on Appeal* (form CR-135) filed by the appellant on *(fill in date):* _____

(2) The court makes the following order:

a. ☐ The court certifies that parts (4) through (8) of the statement as proposed by the appellant are a complete and accurate summary of the trial court proceedings. This statement is ready to be sent to the appellate division.

b. ☐ The following corrections are needed in order for parts (4) through (8) of the statement proposed by the appellant to be a complete and accurate summary of the trial court proceedings.

(1) _____

_____

_____

_____

(2) _____

_____

_____

_____

(3) _____

_____

_____

_____

This modified statement must be sent to the parties.

Clerk fills in the name and street address of the court:

Superior Court of California, County of

Clerk fills in the number and name of the case:

Trial Court Case Number:

Trial Court Case Name:
The People of the State of California
v.
_____

Clerk fills in the number below:

Appellate Division Case Number:

c. ☐ More corrections than could be listed above were needed in order for parts (4) through (8) of the statement proposed by the appellant to be a complete and accurate summary of the trial court proceedings. A corrected statement is attached to this order. This modified statement must be sent to the parties.

d. ☐ The trial court proceedings in this case were reported by a court reporter or officially recorded electronically under Government Code section 69957. Instead of correcting this statement, the court orders under rule 8.837(d)(6)(B) that a transcript be prepared as the record of these proceedings. *(Check the court's local rules to make sure the court has not adopted a rule providing that this option is not available.)*

e. ☐ The appellate division of this superior court has a local rule authorizing the use of an official electronic recording instead of correcting a proposed statement on appeal. The trial court proceedings in this case were officially electronically recorded. Instead of correcting this statement, the court orders that a copy of that electronic recording be prepared as the record of these proceedings at the court's expense.

Date: _____

_____
Signature of trial court judicial officer

CR-137 Abandonment of Appeal (Misdemeanor)

Clerk stamps date here when form is filed.

Instructions

- This form is only for abandoning (giving up) an appeal in a **misdemeanor** case.
- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO) to know your rights and responsibilities. You can get form CR-131-INFO at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*.
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the appellate division clerk's office. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

Superior Court of California, County of

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

Trial Court Case Number:

Trial Court Case Name:
The People of the State of California
v. _____

You fill in the appellate division case number (if you know it):

Appellate Division Case Number:

1 Your Information

a. Name of appellant (the party who filed this appeal):

_____

b. Appellant's contact information:

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

Phone: ( ) _____ E-mail *(optional):* _____

c. Appellant's lawyer *(skip this if the appellant does not have a lawyer for this appeal):*

Name: _____ State Bar number: _____

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

Phone: ( ) _____ E-mail *(optional):* _____

Fax *(optional):* ( ) _____

Appellate Division Case Name: _____

Appellate Division Case Number:

2 On *(fill in the date):* _____ I/my client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.

3 By signing and filing this form, I abandon/my client abandons that appeal.

Date: _____

_____ ▶ _____

Type or print your name *Signature of appellant or attorney*

CR-141-INFO Information on Appeal Procedures for Infractions

1 What does this information sheet cover?

This information sheet tells you about appeals in infraction cases. It is only meant to give you a general idea of the appeal process, so it does not cover everything you may need to know about appeals in infraction cases. To learn more, you should read rules 8.900–8.929 of the California Rules of Court, which set out the procedures for infraction appeals. You can get these rules at any courthouse or county law library or online at *www.courtinfo.ca.gov/rules*.

For information about appeal procedures in other cases, see:

- *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO)
- *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO)

You can get these forms at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*.

2 What is an infraction?

Infractions are crimes that can be punished by a fine, traffic school, or some form of community service but not by time in jail or prison. (See Penal Code sections 17, 19.6, and 19.8. You can get a copy of these laws at *www.leginfo.ca.gov/calaw.html*.) Examples of infractions are many traffic violations for which you can get a ticket or violations of some city or county ordinances for which you can get a citation. If you were also charged with or convicted of a misdemeanor, then your case is a misdemeanor case, not an infraction case.

3 What is an appeal?

An appeal is a request to a higher court to review a ruling or decision made by a lower court. **In an infraction case, the court hearing the appeal is the appellate division of the superior court, and the lower court—called the "trial court" in this information sheet—is the superior court.**

It is important to understand that **an appeal is NOT a new trial**. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits. The appellate division's job is to review a record of what happened in the trial court and the trial court's decision to see if certain kinds of legal errors were made in the case:

- ***Prejudicial error:*** The party that appeals (called the "appellant") may ask the appellate division to determine if an error was made about either the law or court procedures in the case that caused substantial harm to the appellant (this is called "prejudicial error"). Prejudicial error can include things like errors made by the judge about the law or errors or misconduct by the lawyers that harmed the appellant. When it conducts its review, the appellate division presumes that the judgment, order, or other decision being appealed is correct. It is the responsibility of the appellant to show the appellate division that an error was made and that the error was harmful.
- ***No substantial evidence:*** The appellant may also ask the appellate division to determine if there was substantial evidence supporting the judgment, order, or other decision being appealed. When it conducts its review, the appellate division only looks to see if there was evidence that reasonably supports the decision. The appellate division generally will not reconsider the trial court's conclusion about which side had more or stronger evidence or whether witnesses were telling the truth or lying.

The appellate division generally will not overturn the judgment, order, or other decision being appealed unless the record clearly shows that one of these legal errors was made.

4 Do I need a lawyer to appeal?

You do not *have* to have a lawyer; you are allowed to represent yourself in an appeal in an infraction case. But appeals can be complicated, and you will have to follow the same rules that lawyers have to follow. If you have any questions about the appeal procedures, you should talk to a lawyer. You will need to hire a lawyer yourself if you want one. You can get information about finding a lawyer on the California Courts Online Self-Help Center at *www.courtinfo.ca.gov/selfhelp/lowcost.*

If you are representing yourself, you must inform the court if your address, telephone number, or other contact information changes so that the court can contact you if needed.

5 Who can appeal?

Only a party in the trial court case can appeal a decision in that case. You may not appeal on behalf of a friend, a spouse, a child, or another relative.

The party that is appealing is called the APPELLANT; in an infraction case, this is usually the party convicted of committing the infraction. The other party is called the RESPONDENT; in an infraction case, this is usually the government agency that filed the criminal charges (on court papers, this party is called the People of the State of California).

6 Can I appeal any decision that the trial court made?

No. Generally, you may appeal only a final judgment of the trial court—the decision at the end that decides the whole case. The final judgment includes the punishment that the court imposed. Other rulings made by the trial court before final judgment cannot be separately appealed, but can be reviewed only later as part of an appeal at the final judgment. In an infraction case, the party that was convicted of committing an infraction usually appeals that conviction or the sentence (the fine or other punishment) ordered by the trial court. In an infraction case, a party can also appeal from an order made by the trial court after judgment that affects a substantial right of the appellant (Penal Code section 1466(2)(B). You can get a copy of this law at *www.leginfo.ca.gov/calaw.html*.)

7 How do I start my appeal?

First, you must file a notice of appeal. The notice of appeal tells the other party in the case and the trial court that you are appealing the trial court's decision. You may use *Notice of Appeal and Record of Oral Proceedings (Infraction)* (form CR-142) to prepare and file a notice of appeal in an infraction case. You can get form CR-142 at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms.*

8 Is there a deadline for filing my notice of appeal?

Yes. In an infraction case, you must file your notice of appeal within **30 days** after the trial court makes ("renders") its judgment in your case or issues the order you are appealing. The date the trial court makes its judgment is normally the date the trial court orders you to pay a fine or orders other punishment in your case (sentences you). **This deadline for filing the notice of appeal cannot be extended. If your notice of appeal is late, the appellate division will not be able to consider your appeal.**

9 How do I file my notice of appeal?

To file the notice of appeal in an infraction case, you must bring or mail the original notice of appeal to the clerk of the trial court in which you were convicted of the infraction. It is a good idea to bring or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

There is no fee for filing the notice of appeal in an infraction case. You can ask the clerk of that court if there are any other requirements for filing your notice of appeal.

After you file your notice of appeal, the clerk will send a copy of your notice to the office of the prosecuting attorney (for example, the district attorney, county counsel, city attorney, or state Attorney General).

10 If I file a notice of appeal, do I still have to pay my fine or complete other parts of my punishment?

Filing the notice of appeal does NOT automatically postpone the deadline for paying your fine or completing any other part of your sentence. To postpone your sentence, you must ask the trial court for a "stay" of the judgment. If you want a stay, you must first ask the trial court for a stay. You can also apply to the appellate division for a stay, but you must show in your application to appellate division that you first asked the trial court a stay and that the trial court unjustifiably denied your request. Your fine or other parts of your punishment will not be postponed unless the trial court or appellate division grants a stay. If you do not get a

stay and you do not pay your fine or satisfy another part of your sentence by the date ordered by the court, a warrant may be issued for your arrest or a civil collections process may be started against you, which could result in a civil penalty being added to your fine.

11 Is there anything else I need to do when I file my notice of appeal?

Yes. When you file your notice of appeal, you must tell the trial court whether you want a record of what was said in the trial court (this is called a record of the "oral proceedings") sent to the appellate division and, if so, what form of that record you want to use. *Notice of Appeal and Record of Oral Proceedings (Infraction)* (form CR-142) includes boxes you can check to tell the court whether and how you want to provide this record.

12 In what cases does the appellate division need a record of the oral proceedings?

You do not *have* to send the appellate division a record of what was said in the trial court. But if you want to raise any issue in your appeal that would require the appellate division to consider what was said in the trial court, the appellate division will need a record of these oral proceedings. For example, if you are claiming that there was not substantial evidence supporting the judgment, order, or other decision you are appealing, the appellate division will need a record of the oral proceedings. Since the appellate division judges were not there for the proceedings in the trial court, an official record of these proceedings must be prepared and sent to the appellate court for its review.

Depending on what form of the record you choose to use, you will be responsible for paying to have the official record of the oral proceedings prepared (unless you are indigent) or for preparing an initial draft of the record yourself. If you do not take care of these responsibilities, a record of the oral proceedings in the trial court will not be prepared and sent to the appellate division. If the appellate division does not receive the record, it will not be able to consider what was said in the trial court in deciding whether a legal error was made.

13 What are the different forms of the record?

There are three ways a record of the oral proceedings in a trial court can be prepared and provided to the appellate division in an infraction case:

a. You can use a *statement on appeal*.

b. If the proceedings were officially electronically recorded, the trial court can have a transcript prepared from the recording or, if the court has a local rule permitting this and all the parties agree ("stipulate"), you can use the official electronic recording itself as the record, instead of a transcript.

c. If a court reporter was there during the trial court proceedings, the reporter can prepare a record called a *"reporter's transcript."*

Read below for more information about these options.

a. Statement on appeal

Description: A statement on appeal is a summary of the trial court proceedings approved by the trial court judge who conducted the trial court proceedings (note that the term "judge" includes a commissioner or temporary judge).

When available: If the trial court proceedings were not recorded either by a court reporter or by official electronic recording equipment or if you do not want to use either of these forms of the record, you can choose ("elect") to use a statement on appeal as the record of the oral proceedings in the trial court (please note that it may take more of your time to prepare a statement on appeal than to use either a reporter's transcript or electronic recording, if they are available).

Contents: A statement on appeal must include a summary of the oral proceedings that the appellant believes necessary for the appeal and a summary of the trial court's decision. It must also include a statement of the points the appellant is raising on appeal (see rule 8.916 of the California Rules of Court for more information about what must be included in a statement on appeal and the procedures for preparing a statement. You can get a copy of this

rule at any courthouse or county law library or online at *www.courtinfo.ca.gov/rules.*)

Preparing a proposed statement: If you choose to use a statement on appeal, you must prepare a proposed statement. If you are not represented by a lawyer, you must use *Proposed Statement on Appeal (Infraction)* (form CR-143) to prepare your proposed statement. You can get form CR-143 at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms.*

Serving and filing a proposed statement: You must serve and file your proposed statement within 20 days after you file your notice of appeal. "Serve and file" means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the proposed statement to the prosecuting attorney and any other party in the way required by law. If the prosecuting attorney did not appear in your case, you do not need to serve the prosecuting attorney.

- Make a record that the proposed statement has been served. This record is called a "proof of service." The proof of service must show who served the proposed statement, who was served with the proposed statement, how the proposed statement was served (by mail or in person), and the date the proposed statement was served.

- File the original proposed statement and the proof of service with the trial court. You should make a copy of the proposed statement you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the proposed statement to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service on the California Courts Online Self-Help Center at *www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving.*

Review and modifications: The prosecuting attorney and any other party have 10 days from the date you serve your proposed statement to serve and file proposed changes (called "amendments") to this statement. The trial judge then reviews both your proposed statement and any proposed amendments and makes any corrections or modifications to the proposed statement that are needed to make sure that the statement provides a complete and accurate summary of the trial court proceedings.

Completion and certification: If the judge makes any corrections or modifications to the proposed statement, the corrected or modified statement will be sent to you, the prosecuting attorney, and any other party for your review. If you disagree with anything in the judge's statement, you will have 10 days from the date the statement is sent to you to serve and file objections to the statement. The judge then reviews any objections, makes any additional corrections to the statement, and certifies the statement as a complete and accurate summary of the trial court proceedings.

Sending the statement to the appellate division: Once the trial judge certifies the statement on appeal, the trial court clerk will send the statement to the appellate division along with the clerk's transcript.

b. Official electronic recording or transcript from official recording

When available: In some infraction cases, the trial court proceedings are officially recorded on approved electronic recording equipment. If your case was officially recorded, you can ask to have a transcript prepared for the appellate division from the official electronic recording of the proceedings. You should check with the trial court to see if your case was officially electronically recorded before you choose this option.

If the court has a local rule for the appellate division permitting this and all the parties agree ("stipulate"), a copy of the official electronic recording itself can be used as the record of these oral proceedings instead of preparing a transcript. You should check with the trial court to see if your case was officially electronically recorded and check to make sure that there is a local rule permitting the use of the recording itself before choosing this option. If you choose this option, you must attach a copy of your agreement with the other parties (called a

"stipulation") to your notice regarding the oral proceedings.

Cost: Ordinarily, the appellant must pay for preparing the transcript or making a copy of the official electronic recording. If, however, you are indigent (you cannot afford to pay the cost of the transcript or electronic recording), you may be able to get a free transcript or official electronic recording. You can complete and file *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement* (form MC-210) to show that you are indigent. You can get form MC-210 at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms.* The court will review this form to decide whether you are indigent.

If you are indigent, an official electronic recording of your case was made, and you show that you need a transcript, the court must provide you with a free transcript. Whether you need a transcript depends on the issues you are raising on appeal. If the issues you are raising on appeal include that there was not substantial evidence supporting the judgment, order, or other decision you are appealing or that there was misconduct in your case that harmed you, that is generally enough to show that you need a transcript. If you ask for a transcript, the court may ask you what issues you are raising on appeal and may decide that a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising.

Completion and delivery: Once you deposit the estimated cost of the transcript or official electronic recording with the clerk or show the court you are indigent and need a transcript, the clerk will have the transcript or copy of the recording prepared. When the transcript is completed or the copy of the official electronic recording is prepared, the clerk will send the transcript or recording to the appellate division along with the clerk's transcript.

c. Reporter's transcript

When available: In some infraction cases, a court reporter is there in the trial court and makes a record of the oral proceedings. If a court reporter made a record of your case, you can ask to have the court reporter prepare a transcript of those oral proceedings, called a "reporter's transcript." You should check with the trial court to see if a court reporter made a record of your case before you choose this option.

Cost: Ordinarily, the appellant must pay for preparing a reporter's transcript. The court reporter will provide the clerk of the trial court with an estimate of the cost of preparing the transcript, and the clerk will notify you of this estimate. If you want the reporter to prepare the transcript, you must deposit this estimated amount with the clerk within 10 days after the clerk sends you the estimate.

If, however, you are indigent (you cannot afford to pay the cost of the reporter's transcript), you may be able to get a free transcript. You can complete and file *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement* (form MC-210) to show that you are indigent. You can get form MC-210 at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms.* The court will review this form to decide whether you are indigent.

If you are indigent, a court reporter made a record of your case, and you show that you need a transcript, the court must provide you with a free transcript. Whether you need a transcript depends on the issues you are raising on appeal. If the issues you are raising on appeal include that there was not substantial evidence supporting the judgment, order, or other decision you are appealing or that there was misconduct in your case that harmed you, that is generally enough to show that you need a transcript. If you ask for a reporter's transcript, the court may ask you what issues you are raising on appeal and may decide that a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising.

Completion and delivery: Once you deposit the estimated cost of the transcript or show the court you are indigent and need a transcript, the clerk will notify the reporter to prepare the transcript. When the reporter completes the transcript, the clerk will send both the reporter's transcript and clerk's transcript to the appellate division.

14 Is there any other part of the record that needs to be sent to the appellate division?

Yes. There are two other parts of the official record that need to be sent to the appellate division:

- ***Documents filed in the trial court:*** The trial court clerk is responsible for preparing a record of the written documents filed in your case, called a "clerk's transcript," and sending this to the appellate division. (The documents the clerk must include in this transcript are listed in rule 8.912 of the California Rules of Court. You can get a copy of this rule at any courthouse or county law library or online at *www.courtinfo.ca.gov/rules.*)

- ***Exhibits submitted during trial:*** Exhibits, such as photographs or maps, that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court are considered part of the record on appeal. If you want the appellate division to consider an exhibit, however, you must ask the trial court clerk to send the original exhibit to the appellate division within 10 days after the last respondent's brief is filed in the appellate division. (See rule 8.921 of the California Rules of Court for more information about this procedure. You can get a copy of this rule at any courthouse or county law library or online at *www.courtinfo.ca.gov/rules.*)

  Sometimes, the trial court returns an exhibit to a party at the end of the trial. If the trial court returned an exhibit to you or another party and you or the other party ask for the exhibit to be sent to the appellate division, the party who has the exhibit must deliver that exhibit to the appellate division as soon as possible.

15 What happens after the record is prepared?

As soon as the record of the oral proceeding is ready, the clerk of the trial court will send it to the appellate division along with the clerk's transcript. When the appellate division receives this record, it will send you a notice telling you when you must file your brief in the appellate division.

16 What is a brief?

A brief is a party's written description of the facts in the case, the law that applies, and the party's argument about the issues being appealed. If you are represented by a lawyer in your appeal, your lawyer will prepare your brief. If you are not represented by a lawyer in your appeal, you will have to prepare your brief yourself. You should read rules 8.927–8.928 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in infraction appeals, including requirements for the format and length of these briefs. You can get these rules at any courthouse or county law library or online at *www.courtinfo.ca.gov /rules.*

Contents: If you are the appellant (the party who is appealing), your brief, called the "appellant's opening brief," must clearly explain what you believe are the legal errors made in the trial court. Your brief must refer to the exact places in the clerk's transcript and the reporter's transcript (or other record of the oral proceedings) that support your argument. Remember that an appeal is not a new trial. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits, so do not include any new evidence in your brief.

Serving and filing: You must serve and file your brief in the appellate division by the deadline the court set in the notice it sent you, which is usually 30 days after the record is filed in the appellate division. "Serve and file" means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the brief to the respondent (the prosecuting agency) and any other party in the way required by law.

- Make a record that the brief has been served. This record is called a "proof of service." The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail or in person), and the date the brief was served.

- File the original brief and the proof of service with the appellate division. You should make a copy of the brief you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to

stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service at *www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving.*

If you do not file your brief by the deadline set by the appellate division, the court may dismiss your appeal.

17 What happens after I file my brief?

Within 30 days after you serve and file your brief, the respondent (the prosecuting agency) may, but is not required to, respond by serving and filing a respondent's brief. If the respondent does not file a brief, the appellant does not automatically win the appeal. The court will decide the appeal on the record, the appellant's brief, and any oral argument by the appellant.

If the respondent serves and files a brief, within 20 days after the respondent's brief was served, you may, but are not required to, serve and file another brief replying to the respondent's brief. This is called a "reply brief."

18 What happens after all the briefs have been filed?

Once all the briefs have been served and filed or the time to serve and file them has passed, the court will notify you of the date for oral argument in your case.

19 What is oral argument?

"Oral argument" is the parties' chance to explain their arguments to the appellate division judges in person. You do not have to participate in oral argument, if you do not want to; you can notify the appellate division that you want to "waive" oral argument. But if one party waives oral argument and another party or parties does not, the appellate division will hold oral argument with the party or parties who did not waive it. If all parties waive oral argument, the judges will decide your appeal based on the briefs and the record that were submitted.

If you do choose to participate in oral argument, you will have up to five minutes for your argument, unless the court orders otherwise. Remember that the judges will already have read the briefs, so you do not need to read your brief to the judges. It is more helpful to tell the judges what you think is most important in your appeal or ask the judges if they have any questions you could answer.

20 What happens after oral argument?

After oral argument is held (or the date it was scheduled passes if all the parties waive oral argument), the judges of the appellate division will make a decision about your appeal. The appellate division has 90 days after the date scheduled for oral argument to decide the appeal. The clerk of the court will mail you a notice of that decision.

21 What should I do if I want to give up my appeal?

If you decide you do not want to continue with your appeal, you must file a written document with the appellate division notifying it that you are giving up (this is called "abandoning") your appeal. You can use *Abandonment of Appeal (Infraction)* (form CR-145) to file this notice in an infraction case. You can get form CR-145 at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms.*

If you decide not to continue your appeal and it is dismissed, you will (with only very rare exceptions) permanently give up the chance to raise any objections to your conviction, sentence, or other matter that you could have raised in the appeal. If your punishment was stayed during the appeal, you may be required to start complying with your punishment immediately after your appeal is dismissed.

CR-142 Notice of Appeal and Record of Oral Proceedings (Infraction)

Clerk stamps date here when form is filed.

Instructions

- This form is only for appealing in an **infraction** case, such as a case about a traffic ticket. You can get other forms for appealing in a civil or misdemeanor case at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*.
- Before you fill out this form, read *Information on Appeal Procedures for Infractions* (form CR-141-INFO) to know your rights and responsibilities. You can get form CR-141-INFO at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*.
- You must file this form **no later than 30 days after the trial court issued the judgment or order you are appealing** (see rule 8.902(b) of the California Rules of Court for very limited exceptions). **If your notice of appeal is late, the court will not take your appeal.**
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk's office for the same trial court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

Superior Court of California, County of

You fill in the number and name of the case in which you are filing this appeal:

Trial Court Case Number:

Trial Court Case Name:
The People of the State of California
v. _____

The clerk will fill in the number below:

Appellate Division Case Number:

1 Your Information

a. Name of appellant (the party who is filing this appeal):

_____

b. Appellant's contact information:

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

Phone: ( ) _____ E-mail *(optional):* _____

c. Appellant's lawyer *(skip this if the appellant is filling out this form):*

The lawyer filling out this form *(check (1) or (2)):*

(1) ☐ was the appellant's lawyer in the trial court.

(2) ☐ is the appellant's lawyer for this appeal.

Name: _____ State Bar number: _____

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

Phone: ( ) _____ E-mail *(optional):* _____

Fax *(optional):* ( ) _____

Trial Court Case Name:_____

Trial Court Case Number:

2 Judgment or Order You Are Appealing

I am/My client is appealing *(check a, b, or c):*

a. ☐ the final judgment of conviction in the case (Penal Code section 1466(2)(A)).

The trial court issued (rendered) this judgment on *(fill in the date):* _____

b. ☐ an order made by the trial court after judgment that affects an important (substantial) right of mine/my client (Penal Code section 1466 (2)(B)).

The trial court issued this order on *(fill in the date):* _____

c. ☐ other *(describe the action you are appealing and indicate the date the trial court took the action):*

_____

_____

_____

_____

Record of the Oral Proceedings

You do not have to provide the appellate division with a record of what was said in the trial court (this is called a record of the "oral proceedings"). But if you do not, the appellate division will not be able to consider what was said during those proceedings in determining whether an error was made in the trial court proceedings.

3 I elect (choose)/My client elects to proceed *(check a or b):*

a. ☐ WITHOUT a record of the oral proceedings in the trial court *(skip item 4 ; sign and date this form).* I understand that if I proceed without a record of the oral proceedings, the appellate division will not be able to consider what was said during those proceedings in deciding whether a legal error was made.

(Write initials here): _____

b. ☐ WITH a record of the oral proceedings in the trial court *(complete item 4 below).* I understand that, if I elect (choose) to proceed WITH a record of the oral proceedings in the trial court, I have to choose the record I want and take the actions described below to make sure this record is provided to the appellate division. I understand that if I do not take the actions described below and the appellate division does not receive this record, I am not likely to succeed in my appeal.

(Write initials here): _____

4 I want to use the following record of what was said in the trial court proceedings in my case *(check and complete **only one**—a, b, c, or d):*

a. ☐ **Statement on Appeal.** *A statement on appeal is a summary of the trial court proceedings approved by the trial court. See form CR-141-INFO for information about preparing a proposed statement. (Check (1) or (2)):*

(1) ☐ I have attached my proposed statement on appeal to this notice of appeal. (*If you are not represented by an attorney in this appeal, you must use* Proposed Statement on Appeal (Infraction) *(form CR-143) to prepare and file this proposed statement. You can get form CR-143 at any courthouse or county law library or online at* www.courtinfo.ca.gov/forms.)

4 a. (continued)

(2) ☐ I have NOT attached my proposed statement. I understand that I must serve and file this proposed statement in the trial court within 20 days of the date I file this notice of appeal and that if I do not file the proposed statement on time, the court may dismiss my appeal.

OR

b. ☐ **Transcript From Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. (Check (1) or (2)):*

(1) ☐ I will pay the trial court clerk's office for this transcript myself. I understand that if I do not pay for this transcript, it will not be prepared and provided to the appellate division.

(2) ☐ I am asking that this transcript be prepared at no cost to me because I cannot afford to pay this cost. I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement* (form MC-210). *(You can get form MC-210 at any courthouse or county law library or online at* www.courtinfo.ca.gov/forms. *The court will review this form to decide if you are eligible for a free transcript.)*

OR

c. ☐ **Copy of Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court, the court has a local rule for the appellate division permitting the use of the official electronic recording itself as the record of the proceedings, and you and the respondent (the prosecuting agency) have agreed (stipulated) that you want to use the actual official electronic recording that was made as the record of what was said in your case. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. You must attach a copy of the agreement (stipulation) between you and the respondent (the prosecuting agency) to this notice. (Check (1) or (2)):*

(1) ☐ I will pay the trial court clerk's office for this official electronic recording myself. I understand that if I do not pay for this recording, it will not be provided to the appellate division.

(2) ☐ I am asking that this official electronic recording be provided at no cost to me because I cannot afford to pay this cost. I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement* (form MC-210). *(You can get form MC-210 at any courthouse or county law library or online at* www.courtinfo.ca.gov/forms. *The court will review this form to decide if you are eligible for a free copy of the official electronic recording.)*

OR

Trial Court Case Name:_____

Trial Court Case Number:

4 (continued)

d. ☐ **Reporter's transcript.** *This option is available only if there was a court reporter in the trial court who made a record of what was said in court. Check with the trial court to see if there was a court reporter in your case before choosing this option. (Check (1) or (2)):*

(1) ☐ I will pay the trial court clerk's office for this transcript myself when I receive the court reporter's estimate of the cost of the transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the appellate division.

(2) ☐ I am asking that this transcript be prepared at no cost to me because I cannot afford to pay the cost. I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement* (form MC-210). *(You can get form MC-210 at any courthouse or county law library or online at* www.courtinfo.ca.gov/forms. *The court will review this form to decide if you are eligible for a free reporter's transcript.)*

REMINDER: Except in the very limited circumstances listed in rule 8.902(b), you must file this form no later than 30 days after the trial court issued the judgment or order you are appealing in your case. If your notice of appeal is late, the court will not take your appeal.

Date:_____

_____ ▶ _____

Type or print your name *Signature of appellant or attorney*

CR-143 Proposed Statement on Appeal (Infraction)

Clerk stamps date here when form is filed.

Instructions

- This form is only for preparing a statement on appeal in an **infraction** case, such as a case about a traffic ticket.
- Before you fill out this form, read *Information on Appeal Procedures for Infractions* (form CR-141-INFO) to know your rights and responsibilities. You can get form CR-141-INFO at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*.
- This form can be filed at the same time as your notice of appeal. If it is not filed with your notice of appeal, this form must be filed **no later than 20 days after you file your notice of appeal.**
- **If you have chosen to use a statement on appeal and do not file this form on time, the court may dismiss your appeal.**
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- You must serve a copy of the completed form on each of the other parties in the case and keep proof of this service. You can get information about how to serve court papers and proof of service on the California Courts Online Self-Help Center at *www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving.*
- Take or mail the completed form and proof of service on each of the other parties to the clerk's office for the same trial court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

Superior Court of California, County of

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

Trial Court Case Number:

Trial Court Case Name:
The People of the State of California
v. _____

The clerk will fill in the number below:

Appellate Division Case Number:

1 Your Information

a. Name of appellant (the party who is filing this appeal):

_____

b. Appellant's contact information *(skip this if the appellant has a lawyer for this appeal):*

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

Phone: ( ) _____ E-mail *(optional):* _____

c. Appellant's lawyer *(skip this if the appellant does not have a lawyer for this appeal):*

Name: _____ State Bar number: _____

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

Phone: ( ) _____ E-mail *(optional):* _____

Fax *(optional):* ( ) _____

Trial Court Case Name: _____

Trial Court Case Number:

Information About Your Appeal

(2) On *(fill in the date):* _____, I/my client filed a *Notice of Appeal and Record of Oral Proceedings (Infraction),* choosing to use a statement on appeal as the record of what was said in this case.

Proposed Statement

(3) The Charges Against Me/My Client

a. If the charges against you/your client are based on a citation (ticket) you received, provide the citation number *(fill in the citation number from your ticket):* _____

b. The charges against me/my client were *(list all of the charges indicated on the citation or complaint filed by the prosecutor with the court):* _____

_____

_____

c. I/My client *(check (1), (2), or (3))*

(1) ☐ pleaded not guilty to all of the charges.

(2) ☐ pleaded guilty to only the following charges: _____

_____

(3) ☐ pleaded guilty to all of the charges.

(4) Summary of Any Motions

a. Were any motions (requests for the trial court to issue an order) made in this case?

☐ Yes *(fill out b)* ☐ No *(go to item (5))*

b. *In the spaces below, describe any motions (requests for orders) made in the trial court. Write a complete and accurate summary of what was said at any hearings on these motions and indicate how the trial court ruled on these motions:*

(1) ☐ I/My client made the following requests (motions) in the trial court *(check all that apply):*

(a) ☐ To submit a photograph or photographs as evidence *(describe the photographs):*

_____

_____

There ☐ was ☐ was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: _____

_____

_____

_____

The court ☐ did ☐ did not accept the photographs.

☐ *Check here if you need more space to describe the motion and attach a separate page or pages describing it. At the top of each page write "CR-143, item 4b(1)(a)."*

4 b(1) (continued)

(b) ☐ To submit a map or maps as evidence *(describe the maps):*

_____

_____

There ☐ was ☐ was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: _____

_____

_____

_____

The court ☐ did ☐ did not accept the maps.

☐ *Check here if you need more space to describe the motion and attach a separate page or pages describing it. At the top of each page write "CR-143, item 4b(1)(b)."*

(c) ☐ To submit other material as evidence *(describe what you asked to submit as evidence in the trial court):* _____

_____

_____

There ☐ was ☐ was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: _____

_____

_____

_____

The court ☐ did ☐ did not accept this material.

☐ *Check here if you need more space to describe the motion and attach a separate page or pages describing it. At the top of each page write "CR-143, item 4b(1)(c)."*

(d) ☐ Other *(describe any other request you made in the trial court and whether the court granted or denied this request):* _____

_____

_____

_____

☐ *Check here if you need more space to describe the motion and attach a separate page or pages describing it. At the top of each page write "CR-143, item 4b(1)(d)."*

(2) ☐ The prosecutor made the following request (motion) in the trial court *(describe any request the prosecutor made in the trial court and whether the court granted or denied this request):*

_____

_____

_____

4 b(2) (continued)

There ☐ was ☐ was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: _____

The trial court ☐ granted this motion. ☐ did not grant this motion.

☐ Other *(describe any other action the trial court took concerning this motion):* _____

☐ *Check here if you need more space to describe this motion and attach a separate page or pages describing it. At the top of each page, write "CR-143, item 4b(2)."*

☐ *Check here if other motions were filed, and attach a separate page or pages describing these other motions, identifying who made them and whether there was a hearing on the motion, summarizing what was said at the hearing on the motion, and indicating whether the trial court granted or denied the motion. At the top of each page, write CR-143, item 4b(3).*

5 Summary of Testimony

a. Was there a trial in your case?

No ☐ *(skip items b, c, and d and go to item 6)*

Yes ☐ *(complete items b, c, and d)*

b. Did you/your client testify at the trial?

☐ No

☐ Yes *(write a complete and accurate summary of the testimony you/your client gave. Include only what you actually said; do not comment on or give your opinion about what you said):*

☐ *Check here if you need more space to summarize your/your client's testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write "CR-143, Item 5b."*

c. Did an officer from the police department, sheriff's office, or other government agency that charged you/your client testify at the trial? *(Check one):*

☐ No

☐ Yes *(complete (1) and (2)):*

(1) The name of the officer who testified is *(fill in the officer's name):* _____

5 c. (continued)

(2) This officer testified that *(write a complete and accurate summary of the officer's testimony. Include only what the officer actually said; do not comment on or give your opinion about what the officer said):*

_____

_____

_____

_____

☐ *Check here if you need more space to summarize the officer's testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write "CR-143, Item 5c."*

d. ☐ Were there any other witnesses at the trial?

☐ No

☐ Yes *(fill out (1)–(4))*:

(1) The witness's name is *(fill in the witness's name):*

_____

(2) The witness ☐ was ☐ was not an officer from the government agency that charged me/my client.

(3) The witness testified on behalf of ☐ me/my client. ☐ the prosecution.

(4) This witness testified that *(write a complete and accurate summary of the witness's testimony. Include only what the witness actually said; do not comment on or give your opinion about what the witness said):*_____

_____

_____

_____

_____

☐ *Check here if other witnesses testified at the trial. Attach a separate page or pages identifying each other witness that testified at your trial, stating whether that witness testified on your/your client's behalf or the prosecution's behalf, and summarizing what that witness said in his or her testimony. At the top of each page, write "CR-143, item 5e."*

The Trial Court's Findings

6 a. I/My client was found guilty of the following offenses *(list all of the offenses for which you were/your client was found guilty):*_____

_____

_____

_____

b. I/My client was found not guilty of the following offenses *(list all of the offenses for which you were/your client was found not guilty):*_____

_____

_____

_____

6 (continued)

c. The following charges were dismissed after proof of correction was shown to the judge *(list all of the charges that were dismissed):*

_____

_____

_____

_____

7 The Sentence

The trial court imposed the following fine or other punishment on me/my client *(check all that apply and fill in any required information):*

a. ☐ A fine of *(fill in the amount of the fine):* $_____

b. ☐ Traffic school

c. ☐ Community service *(fill in the number of hours):*_____

d. ☐ Other punishment *(describe any other punishment that the court imposed on you):*

_____

_____

_____

8 Reasons for Your Appeal

Remember, in an appeal, the appellate division can only review a case for whether certain kinds of legal errors were made in the trial court proceedings (read form CR-141-INFO to learn about these legal errors):

- *There was not "substantial evidence" supporting the judgment, order, or other decision you are appealing*
- *A "prejudicial error" was made during the trial court proceedings.*

The appellate division:

- *Cannot retry your case or take new evidence*
- *Cannot consider whether witnesses were telling the truth or lying*
- *Cannot consider whether there was more or stronger evidence supporting your position than there was supporting the trial court's decision*

Check all that apply and describe the legal error or errors you believe were made that are the reason for this appeal.

a. ☐ There was not substantial evidence that supported the judgment, order, or other decision I am/my client is appealing in this case. *(Explain why you think the judgment, order, or other decision was not supported by substantial evidence):* _____

_____

_____

_____

_____

_____

Trial Court Case Name: _____

Trial Court Case Number:

8 (continued)

b. ☐ The following error or errors about either the law or court procedure was/were made that caused substantial harm to me/my client. *(Describe each error and how you were/your client was harmed by that error.)*

(1) *Describe the error:* _____

Describe how this error harmed you/your client: _____

(2) *Describe the error:* _____

Describe how this error harmed you/your client: _____

(3) *Describe the error:* _____

Describe how this error harmed you/your client: _____

☐ *Check here if you need more space to describe these or other errors and attach a separate page or pages describing the errors. At the top of each page, write "CR-143, item 8."*

REMINDER: You must file this form no later than 20 days after you file your notice of appeal. If you do not file this form on time, the court may dismiss your appeal.

Date: _____

_____ ▶ _____

Type or print name *Signature of appellant or attorney*

CR-144 Order Concerning Appellant's Proposed Statement on Appeal (Infraction)

Clerk stamps date here when form is filed.

(1) The court has received and reviewed the *Proposed Statement on Appeal* (form CR-143) filed by the appellant on *(fill in date):* _____

(2) The court makes the following order:

a. ☐ The court certifies that parts (3) through (7) of the statement as proposed by the appellant are a complete and accurate summary of the trial court proceedings. This statement is ready to be sent to the appellate division.

b. ☐ The following corrections are needed in order for parts (3) through (7) of the statement proposed by the appellant to be a complete and accurate summary of the trial court proceedings.

(1) _____

(2) _____

(3) _____

This modified statement must be sent to the parties.

c. ☐ More corrections than could be listed above were needed in order for parts (3) through (7) of the statement proposed by the appellant to be a complete and accurate summary of the trial court proceedings. A corrected statement is attached to this order. This modified statement must be sent to the parties.

d. ☐ The trial court proceedings in this case were reported by a court reporter or officially recorded electronically under Government Code section 69957. Instead of correcting this statement, the court orders under rule 8.837(d)(6)(B) that a transcript be prepared as the record of these proceedings. *(Check the court's local rules to make sure the court has not adopted a rule providing that this option is not available.)*

e. ☐ The appellate division of this superior court has a local rule authorizing the use of an official electronic recording instead of correcting a proposed statement on appeal. The trial court proceedings in this case were officially electronically recorded. Instead of correcting this statement, the court orders that a copy of that electronic recording be prepared as the record of these proceedings at the court's expense.

Clerk fills in the name and street address of the court:

Superior Court of California, County of

Clerk fills in the number and name of the case:

Trial Court Case Number:

Trial Court Case Name:
The People of the State of California
v. _____

Clerk fills in the number below:

Appellate Division Case Number:

Date: _____

_____
Signature of trial court judicial officer

CR-145 Abandonment of Appeal (Infraction)

Clerk stamps date here when form is filed.

Instructions

- This form is only for abandoning (giving up) an appeal in an **infraction** case, such as a case about a traffic ticket.
- Before you fill out this form, read *Information on Appeal Procedures for Infractions* (form CR-141-INFO) to know your rights and responsibilities. You can get form CR-141-INFO at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*.
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the appellate division clerk's office. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

Superior Court of California, County of

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

Trial Court Case Number:

Trial Court Case Name:
The People of the State of California
v. _____

You fill in the appellate division case number (if you know it):

Appellate Division Case Number:

1 Your Information

a. Name of appellant (the party who filed this appeal):

_____

b. Appellant's contact information:

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

Phone: ( ) _____ E-mail *(optional):* _____

c. Appellant's lawyer *(skip this if the appellant does not have a lawyer for this appeal):*

Name: _____ State Bar number: _____

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

Phone: ( ) _____ E-mail *(optional):* _____

Fax *(optional):* ( ) _____

(2) On *(fill in the date):* _____ I/my client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.

(3) By signing and filing this form, I abandon/my client abandons that appeal.

Date: _____

_____ ▶ _____

Type or print your name *Signature of appellant or attorney*

APP-150-INFO Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases

GENERAL INFORMATION

1 What does this information sheet cover?

This information sheet provides general information about **writ proceedings**—proceedings in which a person is asking for a writ of mandate, prohibition, or review—in misdemeanor, infraction, and limited civil cases. Please read this information sheet before you complete *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151). The information sheet is not intended to cover everything you may need to know about writ proceedings. It is only meant to give you an overview of the writ process. You should read rules 8.930–8.936 of the California Rules of Court, which set out the procedures for writ proceedings in the appellate division. You can get these rules at any courthouse or county law library or online at *www.courtinfo.ca.gov /rules*.

This information sheet does NOT provide information about appeals or proceedings for writs of supersedeas or habeas corpus.

- For information about appeals, please see the box on the top of this page.
- For information about writs of habeas corpus, please see rules 4.550–4.552 of the California Rules of Court and *Petition for Writ of Habeas Corpus* (form MC-275).
- For information about writs of supersedeas, please see rule 8.824 of the California Rules of Court.

You can get these rules and forms at any courthouse or county law library or online at *www.courtinfo.ca.gov /rules* for the rules or *www.courtinfo.ca.gov/forms* for the forms.

2 What is a writ?

A writ is an order from a higher court telling a lower court to do something the law says the lower court must do or not to do something the law says the lower court does not have the power to do. In writ proceedings in the appellate division, the lower court is the superior court that took the action or issued the order being challenged.

For information about appeal procedures, see:

- *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO)
- *Information on Appeal Procedures for Infractions* (form CR-141-INFO)
- *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO)

You can get these forms at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*.

In this information sheet, we call the lower court the "trial court."

3 Are there different kinds of writs?

Yes. There are three main kinds of writs:

- Writs of mandate (sometimes called "mandamus"), which are orders telling the trial court to do something.
- Writs of prohibition, which are orders telling the trial court not to do something.
- Writs of review (sometimes called "certiorari"), which are orders telling the trial court that the appellate division will review certain kinds of actions already taken by the trial court.

There are laws (statutes) that you should read concerning each type of writ: see California Code of Civil Procedure sections 1084–1097 about writs of mandate, sections 1102–1105 about writs of prohibition, and sections 1067–1077 about writs of review. You can get copies of these statutes at any county law library or online at *www.leginfo.ca.gov/calaw.html.*

4 Is a writ proceeding the same as an appeal?

No. In an **appeal,** the appellate division *must* consider the parties' arguments and decide whether the trial court made the legal error claimed by the appealing party and

whether the trial court's decision should be overturned based on that error (this is called a "decision on the merits"). In a **writ proceeding,** the appellate division is *not* required to make a decision on the merits; even if the trial court made a legal error, the appellate division can decide not to consider that error now, but to wait and consider the error as part of any appeal from the final judgment. Most requests for writs are denied without a decision on the merits (this is called a "summary denial"). Because of this, appeals are the ordinary way that decisions made by a trial court are reviewed and writ proceedings are often called proceedings for "extraordinary" relief.

Appeals and writ proceedings are also used to review different kinds of decisions by the trial court. Appeals can be used only to review a trial court's final judgment and a few kinds of orders. Most rulings made by a trial court before it issues its final judgment cannot be appealed right away; they can only be appealed after the trial court case is over, as part of an appeal of the final judgment. Unlike appeals, writ proceedings can be used to ask for review of certain kinds of important rulings made by a trial court before it issues its final judgment.

5 Is a writ proceeding a new trial?

No. **A writ proceeding is NOT a new trial**. The appellate division will not consider new evidence, such as the testimony of new witnesses. Instead, if it does not summarily deny the request for a writ, the appellate division reviews a record of what happened in the trial court and the trial court's ruling to see if the trial court made the legal error claimed by the person asking for the writ. When it conducts its review, the appellate division presumes that the trial court's ruling is correct; the person who requests the writ must show the appellate division that the trial court made the legal error the person is claiming.

6 Can a writ be used to address *any* errors made by a trial court?

No.

Writs can only address certain legal errors: Writs can only address the following types of legal errors made by a trial court:

- The trial court has a legal duty to act but:
  - Refuses to act
  - Has not done what the law says it must do
  - Has acted in a way the law says it does not have the power to act

- The trial court has performed or says it is going to perform a judicial function (like deciding a person's rights under law in a particular case) in a way that the court does not have the legal power to do.

There must be no other adequate remedy: The trial court's error must also be something that can be fixed only with a writ. The person asking for the writ must show the appellate division that there is no adequate way to address the trial court's error other than with the writ (this is called having "no adequate remedy at law"). As mentioned above, appeals are the ordinary way that trial court decisions are reviewed. If the trial court's ruling can be appealed, the appellate division will generally consider an appeal to be good enough (an "adequate remedy") unless the person asking for the writ can show the appellate division that he or she will be harmed in a way that cannot be fixed by the appeal if the appellate division does not issue the writ (this is called "irreparable" injury or harm).

Statutory writs: There are laws (statutes) that provide that certain kinds of rulings can or must be challenged using a writ proceeding. These are called "statutory writs." Here is a list of some of the most common rulings that a statute says can or must be challenged using a writ:

- A ruling on a motion to disqualify a judge (see California Code of Civil Procedure section 170.3(d))

- Denial of a motion for summary judgment (see California Code of Civil Procedure section 437c(m)(l))

- A ruling on a motion for summary adjudication of issues (see California Code of Civil Procedure section 437c(m)(l))

- Denial of a stay in an unlawful detainer matter (see California Code of Civil Procedure section 1176)

- An order disqualifying the prosecuting attorney (see California Penal Code section 1424)

You can get copies of these statutes at any county law library or online at *www.leginfo.ca.gov/calaw.html*. You will need to check whether there is a statute providing that the specific ruling you want to challenge can or must be reviewed using a writ proceeding. (Note that just because there is a statute requiring or allowing you to ask for a writ to challenge a ruling does not mean that the court must grant your request; the appellate division can still deny a request for a statutory writ.)

Common law writs: Even if there is not a statute specifically providing for a writ proceeding to challenge a particular ruling, most trial court rulings other than the final judgment can potentially be challenged using a writ proceeding if the trial court made the type of legal error described above and the petitioner has no other adequate remedy at law. These writs are called "common law" writs.

7 Can the appellate division consider a request for a writ in *any* case?

No. Different courts have the power (called "jurisdiction") to consider requests for writs in different types of cases. The appellate division can only consider requests for writs in limited civil, misdemeanor, and infraction cases. A limited civil case is a civil case in which the amount claimed is $25,000 or less (see California Code of Civil Procedure sections 85 and 88). Misdemeanor cases are cases in which a person has been charged with or convicted of a crime for which the punishment can include jail time of up to one year but not time in state prison (see California Penal Code sections 17 and 19.2). (If the person was also charged with or convicted of a felony in the same case, it is considered a felony case, not a misdemeanor case.) Infraction cases are cases in which a person has been charged with or convicted of a crime for which the punishment can be a fine, traffic school, or some form of community service but cannot include any time in jail or prison (see California Penal Code sections 17 and 19.8). Examples of infractions include traffic tickets or citations for violations of some city or county ordinances. (If a person was also charged with or convicted of a misdemeanor in the same case, it is considered a misdemeanor case, not an infraction case.)

You can get copies of these statutes at any county law library or online at *www.leginfo.ca.gov/calaw.html*.

The appellate division does NOT have jurisdiction to consider requests for writs in either unlimited civil cases (civil cases in which the amount claimed is more than $25,000) or felony cases (cases in which a person has been charged with or convicted of a crime for which the punishment can include time in state prison). Requests for writs in these cases can be made in the Court of Appeal. The appellate division also does NOT have the jurisdiction to consider requests for writs of habeas corpus; requests for these writs can be made in the superior court.

8 Who are the parties in a writ proceeding?

If you are asking for the writ, you are called the PETITIONER. You should read "Information for the Petitioner," beginning on page 4.

The court the petitioner is asking to be ordered to do or not to do something is called the RESPONDENT. In appellate division writ proceedings, the trial court is the respondent.

Any other party in the trial court case who would be affected by a ruling regarding the request for a writ is a REAL PARTY IN INTEREST. If you are a real party in interest, you should read "Information for a Real Party in Interest," beginning on page 9.

9 Do I need a lawyer to represent me in a writ proceeding?

You do not *have* to have a lawyer; you are allowed to represent yourself in a writ proceeding in the appellate division. But writ proceedings can be very complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about the writ procedures, you should talk to a lawyer. In limited civil cases and infraction cases, you must hire a lawyer at your own expense if you want one (the court cannot provide one). You can get information about finding a lawyer on the California Courts Online Self-Help Center at *www.courtinfo.ca.gov/selfhelp/lowcost.*

INFORMATION FOR THE PETITIONER

This part of the information sheet is written for the petitioner—the party asking for the writ. It explains some of the rules and procedures relating to asking for a writ. The information may also be helpful to a real party in interest. There is more information for a real party in interest starting on page 9 of this information sheet.

(10) Who can ask for a writ?

Only a party in the trial court proceeding—the plaintiff or defendant in a civil case or the defendant or prosecuting agency in a misdemeanor or infraction case—can ask for a writ challenging a ruling on a motion to disqualify a judge (see California Code of Civil Procedure section 170.3(d)). Parties are also usually the only ones that ask for writs challenging other kinds of trial court rulings. However, in most cases, a person who was not a party does have the legal right to ask for a writ if that person has a "beneficial interest" in the trial court's ruling. A "beneficial interest" means that the person has a specific right or interest affected by the ruling that goes beyond the general rights or interests the public may have in the ruling.

(11) How do I ask for a writ?

To ask for a writ you must serve and file a petition for a writ (see below for an explanation of how to "serve and file" a petition). A petition is a formal request that the appellate division issue a writ. A petition for a writ explains to the appellate division what happened in the trial court, what legal error you (the petitioner) believe the trial court made, why you have no other adequate remedy at law, and what order you are requesting the appellate division to make.

(12) How do I prepare a writ petition?

If you are represented by a lawyer, your lawyer will prepare your petition for a writ. If you are not represented by a lawyer, you must use *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151) to prepare your petition. You can get form APP-151 at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*. This form asks you to fill in the information that needs to be in a writ petition.

a. Description of your interest in the trial court's ruling

Your petition needs to tell the appellate division why you have a right to ask for a writ in the case. As discussed above, usually only a person who was a party in the trial court case—the plaintiff or defendant in a civil case or the defendant or prosecuting agency in a misdemeanor or infraction case—asks for a writ challenging a ruling in that case. If you were a party in the trial court case, say that in your petition. If you were not a party, you will need to describe what "beneficial interest" you have in the trial court's ruling. A "beneficial interest" means that you have a specific right or interest affected by the ruling that goes beyond the general rights or interests the public may have in the ruling. To show the appellate division that you have a beneficial interest in the ruling you want to challenge, you must describe how the ruling will affect you in a direct and negative way.

b. Description of the legal error you believe the trial court made

Your petition will need to tell the appellate division what legal error you believe the trial court made. Not every mistake a trial court might make can be addressed by a writ. You must show that the trial court made one of the following types of legal errors:

- The trial court has a legal duty to act but:
  - Refuses to act
  - Has not done what the law says it must do
  - Has acted in a way the law says it does not have the power to act
- The trial court has performed or says it is going to perform a judicial function (like deciding a person's rights under law in a particular case) in a way that the court does not have the legal power to do.

To show the appellate division that the trial court made one of these legal errors, you will need to:

- Show that the trial court has the legal duty or the power to act or not act in a particular way. You will need to tell the appellate division what legal

authority—what constitutional provision, statute, rule, or published court decision—establishes the trial court's legal duty or power to act or not act in that way.

- Show the appellate division that the trial court has not acted in the way that this legal authority says the court is required to act. You will need to tell the appellate division exactly where in the record of what happened in the trial court it shows that the trial court did not act in the way it was required to.

c. Description of why you need the writ

Your petition needs to show that a writ is the only way to fix the trial court's error. One of the most important parts of your petition is explaining to the appellate division why you need the writ you have requested. Remember, the appellate division does not have to grant your petition just because the trial court made an error. You must convince the appellate division that it is important for it to issue the writ. To do this, you will need to show the appellate division that you have no way to fix the trial court's error other than through a writ (this is called having "no adequate remedy at law").

This will be hard if the trial court's ruling can be appealed. If the ruling you are challenging can be appealed, either immediately or as part of an appeal of the final judgment in your case, the appellate division will generally consider this appeal to be a good enough way to fix the trial court's ruling (an "adequate remedy"). To be able to explain to the appellate division why you do not have an adequate remedy at law, you will need to find out if the ruling you want to challenge can be appealed, either immediately or as part of an appeal of the final judgment.

Here are some trial court rulings that can be appealed: There are laws (statutes) that say that certain kinds of trial court rulings ("orders") can be appealed immediately. In limited civil cases, California Code of Civil Procedure section 904.2 lists orders that can be appealed immediately, including orders:

- Changing or refusing to change the place of trial (venue)
- Granting a motion to quash service of summons
- Granting a motion to stay or dismiss the action on the ground of inconvenient forum
- Granting a new trial
- Denying a motion for judgment notwithstanding the verdict
- Granting or dissolving an injunction or refusing to grant or dissolve an injunction
- Appointing a receiver
- Made after final judgment in the case

In misdemeanor and infraction cases, orders made after the final judgment that affect the substantial rights of the defendant can be appealed immediately (California Penal Code section 1466).

In misdemeanor cases, orders granting or denying a motion to suppress evidence can also be appealed immediately (California Penal Code section 1538.5(j)).

You can get copies of these statutes at any county law library or online at *www.leginfo.ca.gov/calaw.html*. You should also check to see if there are published court decisions that indicate whether you can or must use an appeal or a writ petition to challenge the type of ruling you want to challenge in your case.

If the ruling can be appealed, you will need to show that an appeal will not fix the trial court's error. If the trial court ruling you want to challenge can be appealed, you will need to show the appellate division why that appeal is not good enough to fix the trial court's error. To do that, you will need to show the appellate division how you will be harmed by the trial court's error in a way that cannot be fixed by the appeal if it does not issue the writ (this is called "irreparable" injury or harm). For example, because of the time it takes for an appeal, the harm you want to prevent may happen before an appeal can be finished.

d. Description of the order you want the appellate division to make

Your petition needs to describe what you are asking the appellate division to order the trial court to do or not do. Writ petitions usually ask that the trial court be ordered to cancel ("vacate") its ruling, issue a new ruling, or not take any steps to enforce its ruling.

If you want the appellate division to order the trial court not to do anything more until the appellate division decides whether to grant the writ you are requesting, you must ask for a "stay." If you want a stay, you should first ask the trial court for a stay. You should tell the appellate division whether you asked the trial court for a stay. If you did not ask the trial court for a stay, you should tell the appellate division why you did not do this.

If you ask the appellate division for a stay, make sure you also fill out the "Stay requested" box on the first page of the *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151).

e. Verifying the petition

Petitions for writs must be "verified." This means that either the petitioner or the petitioner's attorney must declare under penalty of perjury that the facts stated in the petition are true and correct, must sign the petition, and must indicate the date that the petition was signed. On the last page of the *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151), there is a place for you to verify your petition.

13 Is there anything else that I need to serve and file with my petition?

Yes. Along with the petition, you must serve and file a record of what happened in the trial court (see below for an explanation of how to serve and file the petition). Since the appellate division judges were not there in the trial court, a record of what happened must be sent to the appellate division for its review. The materials that make up this record are called "supporting documents."

What needs to be in the supporting documents: The supporting documents must include:

- A record of what was said in the trial court about the ruling that you are challenging (this is called the "oral proceedings") and
- Copies of certain important documents from the trial court.

Read below for more information about these two parts of the supporting documents.

Record of the oral proceedings: There are several ways a record of what was said in the trial court may be provided to the appellate division:

- **A transcript**—A transcript is a written record (often called the "verbatim" record) of the oral proceedings in the trial court. If a court reporter was in the trial court and made a record of the oral proceedings, you can have the court reporter prepare a transcript of those oral proceedings, called a "reporter's transcript," for the appellate division. If a reporter was not there, but the oral proceedings were officially recorded on approved electronic recording equipment, you can have a transcript prepared for the appellate division from the official electronic recording of these proceedings. You (the petitioner) must pay for preparing a transcript, unless the court orders otherwise.
- **A copy of an electronic recording**—If the oral proceedings were officially recorded on approved electronic recording equipment, the court has a local rule for the appellate division permitting this recording to be used as the record of the oral proceedings, and all the parties agree ("stipulate"), a copy of the official electronic recording itself can be used as the record of the oral proceedings instead of a transcript. You (the petitioner) must pay for preparing a copy of the official electronic recording, unless the court orders otherwise.
- **A summary**—If a transcript or official electronic recording of what was said in the trial court is not available, your petition must include a declaration (a statement signed by the petitioner under penalty of perjury) either:
  - Explaining why the transcript or official electronic recording is not available and providing a fair summary of the proceedings,

including the petitioner's arguments and any statement by the court supporting its ruling or
- Stating that the transcript or electronic recording has been ordered, the date it was ordered, and the date it is expected to be filed.

Copies of documents from the trial court: Copies of the following documents from the trial court must also be included in the supporting documents:

- The trial court ruling being challenged in the petition
- All documents and exhibits submitted to the trial court supporting and opposing the petitioner's position
- Any other documents or portions of documents submitted to the trial court that are necessary for a complete understanding of the case and of the ruling being challenged

What if I cannot get copies of the documents from the trial court because of an emergency? Rule 8.931 of the California Rules of Court provides that in extraordinary circumstances the petition may be filed without copies of the documents from the trial court. If the petition is filed without these documents, you must explain in your petition the urgency and the circumstances making the documents available.

***Format of the supporting documents*:** Supporting documents must be put in the format required by rule 8.931 of the California Rules of Court. Among other things, there must be a tab for each document and an index listing the documents that are included. You should carefully read rule 8.931. You can get a copy of rule 8.931 at any courthouse or county law library or online at *www.courtinfo.ca.gov/rules.*

(14) Is there a deadline to ask for a writ?

Yes. For statutory writs, the statute usually sets the deadline for serving and filing the petition. Here is a list of the deadlines for filing petitions for some of the most common statutory writs (you can get copies of these statutes at any county law library or online at *www.leginfo.ca.gov/calaw.html*).

Statutory Writ	Filing Deadline
Writ challenging a ruling on a motion to disqualify a judge (see California Code of Civil Procedure section 170.3(d))	10 days after notice to the parties of the decision
Writ challenging the denial of a motion for summary judgment (see California Code of Civil Procedure section 437c(m)(l))	20 days after service of written notice of entry of the order
Writ challenging a ruling on a motion for summary adjudication of issues (see California Code of Civil Procedure section 437c(m)(l))	20 days after service of written notice of entry of the order

For common law writs or statutory writs where the statute does not set a deadline, you should file the petition as soon as possible and not later than 60 days after the court makes the ruling that you are challenging in the petition. While there is no absolute deadline for filing these petitions, writ petitions are usually used when it is urgent that the trial court's error be fixed. Remember, the court is not required to grant your petition even if the trial court made an error. If you delay in filing your petition, it may make the appellate division think that it is not really urgent that the trial court's error be fixed and the appellate division may deny your petition. If there are extraordinary circumstances that delayed the filing of your petition, you should explain these circumstances to the appellate division in your petition.

(15) How do I "serve" my petition?

Rule 8.931(d) requires that the petition and one set of supporting documents be served on any named real party in interest and that just the petition be served on the respondent trial court. "Serving" a petition on a party means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve")

the petition to the real party in interest and the respondent court in the way required by law.

- Make a record that the petition has been served. This record is called a "proof of service." The proof of service must show who served the petition, who was served with the petition, how the petition was served (by mail or in person), and the date the petition was served.

You can get more information about how to serve court documents and proof of service on the California Courts Online Self-Help Center at *www.courtinfo.ca.gov /selfhelp/lowcost/getready.htm#serving.*

(16) How do I file my petition?

To file a petition for a writ in the appellate division, you must bring or mail the original petition, including the supporting documents, and the proof of service to the clerk for the appellate division of the superior court that made the ruling you are challenging. If the superior court has more than one courthouse location, you should call the clerk at the courthouse where the ruling you are challenging was made to ask where to file your petition. You should make a copy of all the documents you are planning to file for your own records before you file them with the court. It is a good idea to bring or mail an extra copy of the petition to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

(17) Do I have to pay to file a petition?

There is no fee to file a petition for a writ in a misdemeanor or infraction case, but there is a fee to file a petition for a writ in a limited civil case. You should ask the clerk for the appellate division where you are filing the petition what this fee is. If you cannot afford to pay this filing fee, you can ask the court to waive this fee. To do this, you must fill out an *Application for Waiver of Court Fees and Costs* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms.* You can file this application either before you file your petition or with your petition. The court will review this application and decide whether to waive the filing fee.

(18) What happens after I file my petition?

Within 10 days after you serve and file your petition, the respondent or any real party in interest can serve and file preliminary opposition to the petition. Within 10 days after an opposition is filed, you may serve and file a reply to that opposition.

The appellate division does not have to wait for an opposition or reply before it can act on a petition for a writ, however. Without waiting, the appellate division can:

a. Issue a stay

b. Summarily deny the petition

c. Issue an alternative writ or order to show cause

d. Notify the parties that it is considering issuing a preemptory writ in the first instance

Read below for more information about these options.

a. Stay of trial court proceedings

A stay is an order from the appellate division telling the trial court not to do anything more until the appellate division decides whether to grant your petition. A stay puts the trial court proceedings on temporary hold.

b. Summary denial

A "summary denial" means that the appellate division denies the petition without deciding whether the trial court made the legal error claimed by the petitioner or whether the writ requested by the petitioner should be issued based on that error. Remember, even if the trial court made a legal error, the appellate division can decide not to consider that error now but to wait and consider the error as part of any appeal from the final judgment. No reasons need to be given for a summary denial. Most petitions for writs are denied in this way.

c. Alternative writ or order to show cause

An "alternative writ" is an order telling the trial court either to do what the petitioner has requested in the petition (or some modified form of what the petitioner

requested) or to show the appellate division why the trial court should not be ordered to do what the petitioner requested. An "order to show cause" is similar; it is an order telling the trial court to show the appellate division why the trial court should not be ordered to do what the petitioner requested in the petition (or some modified form of what the petitioner requested). The appellate division will issue an alternative writ or an order to show cause only if the petitioner has shown that he or she has no adequate remedy at law and the appellate division has decided that the petitioner may have shown that the trial court made a legal error that needs to be fixed.

If the appellate division issues an alternative writ and the trial court does what the petitioner requested (or a modified form of what the petitioner requested as ordered by the appellate division), then no further action by the appellate division is needed and the appellate division may dismiss the petition.

If the trial court does not comply with an alternative writ, however, or if the appellate division issues an order to show cause, then the respondent court or a real party in interest can file a response to the appellate division's order (called a "return") that explains why the trial court should not be ordered to do what the petitioner requested. The return must be served and filed within the time specified by the appellate division or, if no time is specified, within 30 days from the date the alternative writ or order to show cause was issued. The petitioner will then have an opportunity to serve and file a reply within 15 days after the return is filed. The appellate division may set the matter for oral argument. When all the papers have been served and filed (or the time to serve and file them has passed) and oral argument is completed, the appellate division will decide the case.

d. Peremptory writ in the first instance

A "peremptory writ in the first instance" is an order telling the trial court to do what the petitioner has requested (or some modified form of what the petitioner requested) that is issued without the appellate division first issuing an alternative writ or order to show cause. It is very rare for the appellate division to issue a peremptory writ in the first instance, and it will not do so without first notifying the parties and giving the respondent court and any real party in interest a chance to file an opposition.

The respondent court or a real party in interest can file a response to the appellate division's notice (called an "opposition") that explains why the trial court should not be ordered to do what the petitioner has requested. The opposition must be served and filed within the time specified by the appellate division or, if no time is specified, within 30 days from the date the notice was issued. The petitioner will then have a chance to serve and file a reply within 15 days after the opposition is filed. The appellate division may then set the matter for oral argument. When all the papers have been served and filed (or the time to serve and file them has passed) and oral argument is completed, the appellate division will decide the case.

19 What should I do if the court denies my petition?

If the court denies your petition, it may be helpful to talk to a lawyer. In a limited civil or infraction case, you must hire a lawyer at your own expense if you want one (the court cannot provide one). You can get information about finding an attorney on the California Courts Online Self-Help Center at *www.courtinfo.ca.gov /selfhelp/lowcost.*

INFORMATION FOR A REAL PARTY IN INTEREST

This part of the information sheet is written for a real party in interest—a party from the trial court case other than the petitioner who will be affected by a ruling on a petition for a writ. It explains some of the rules and procedures relating to responding to a petition for a writ. The information may also be helpful to the petitioner.

20 I have received a copy of a petition for a writ in a case in which I am a party. Do I need to do anything?

You do not *have* to do anything. The California Rules of Court give you the right to file a preliminary opposition to a petition for a writ within 10 days after the petition is served and filed, but you are not required to do this. The appellate division can take certain actions without waiting for any opposition, including:

- Summarily denying the petition
- Issuing an alternative writ or order to show cause
- Notifying the parties that it is considering issuing a peremptory writ in the first instance

Read the response to question (18) for more information about these options.

Most petitions for writs are summarily denied, often within a few days after they are filed. If you have not already received something from the appellate division saying what action it is taking on the petition, it is a good idea to call the appellate division to see if the petition has been denied before you decide whether and how to respond.

This would also be a good time to talk to a lawyer. You do not *have* to have a lawyer; you are allowed to represent yourself in a writ proceeding in the appellate division. But writ proceedings can be very complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about writ proceedings or about whether and how you should respond to a writ petition, you should talk to a lawyer. In a limited civil case or infraction case, you must hire a lawyer at your own expense if you want one (the court cannot provide one). You can get information about finding an attorney on the California Courts Online Self-Help Center at *www.courtinfo.ca.gov/selfhelp/lowcost.*

If the petition has not already been summarily denied, you may, but are not required to, serve and file a preliminary opposition to the petition within 10 days after the petition was served and filed. In general, it is a good idea to consider filing a preliminary opposition if the petition misstates the facts or if you think the petition shows that the trial court made a legal error that may need to be fixed. However, the appellate division will not grant a writ without first issuing an alternative writ, an order to show cause, or a notice that it is considering issuing a peremptory writ. In all these circumstances, you will get notice from the court and have a chance to file a response. A preliminary opposition is therefore typically used to explain to the appellate division why you believe it should not grant an alternative writ or order to show cause.

If you decide to file a preliminary opposition, you must serve that preliminary opposition on all the other parties to the writ proceeding. "Serving and filing" an opposition means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the preliminary opposition to the other parties in the way required by law.
- Make a record that the preliminary opposition has been served. This record is called a "proof of service." The proof of service must show who served the preliminary opposition, who was served with the preliminary opposition, how the preliminary opposition was served (by mail or in person), and the date the preliminary opposition was served.
- File the original preliminary opposition and the proof of service with the appellate division. You should make a copy of the preliminary opposition you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the preliminary opposition to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court documents and proof of service on the California Courts Online Self-Help Center at *www.courtinfo.ca.gov /selfhelp/lowcost/getready.htm#serving.*

(21) I have received a copy of an alternative writ or an order to show cause issued by the appellate division. Do I need to do anything?

Yes. Unless the trial court has already done what the alternative writ told it to do, you should serve and file a response called a "return."

As explained above, the appellate division will issue an alternative writ or an order to show cause only if the appellate division has decided that the petitioner may have shown that the trial court made a legal error that needs to be fixed. An "alternative writ" is an order telling the trial court either to do what the petitioner has requested in the petition (or some modified form of what

the petitioner requested) or to show the appellate division why the trial court should not be ordered to do what the petitioner requested. An "order to show cause" is similar; it is an order telling the trial court to show the appellate division why the trial court should not be ordered to do what the petitioner requested in the petition (or some modified form of what the petitioner requested).

If the appellate division issues an alternative writ and the trial court does what the petitioner requested (or a modified form of what the petitioner requested as ordered by the appellate division), then no further action by the appellate division is needed and the appellate division may dismiss the petition. If the trial court does not comply with an alternative writ, however, or if the appellate division issues an order to show cause, then the respondent court or the real party in interest may serve and file a response to the appellate division's order, called a "return."

A return is your argument to the appellate division about why the trial court should not be ordered to do what the petitioner has requested. If you are represented by a lawyer in the writ proceeding, your lawyer will prepare your return. If you are not represented by a lawyer, you will need to prepare your own return. A return is usually a legal response called an "answer." An answer is used to admit or deny the facts alleged in the petition, to add to or correct the facts, and to explain any legal defenses to the legal arguments made by the petitioner. You should read California Code of Civil Procedure sections 430.10–430.80 for more information about answers. You can get copies of these statutes at any county law library or online at *www.leginfo.ca.gov/calaw.html*. A return can also include additional supporting documents not already filed by the petitioner.

If you do not file a return when the appellate division issues an alternative writ or order to show cause, it does not mean that the appellate division is required to issue the writ requested by the petitioner. However, the appellate division will treat the facts stated by the petitioner in the petition as true, which makes it more likely the appellate division will issue the requested writ. Unless the appellate division sets a different filing deadline in its alternative writ or order to show cause, you must serve and file your return within 30 days after the appellate division issues the alternative writ or order to show cause. The return must be served on all the other parties to the writ proceeding. "Serving and filing" the return means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the return to the other parties in the way required by law.
- Make a record that the return has been served. This record is called a "proof of service." The proof of service must show who served the return, who was served with the return, how the return was served (by mail or in person), and the date the return was served.
- File the original return and the proof of service with the appellate division. You should make a copy of the return you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the return to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court documents and proof of service on the California Courts Online Self-Help Center at *www.courtinfo.ca.gov /selfhelp/lowcost/getready.htm#serving.*

(22) I have received a copy of a notice from the appellate division indicating it is considering issuing a peremptory writ in the first instance. Do I need to do anything?

Yes. You should serve and file a response called an "opposition."

As explained in question (18) a "peremptory writ in the first instance" is an order telling the trial court to do what the petitioner has requested (or some modified form of what the petitioner requested as ordered by the appellate division) that is issued without the appellate division first issuing an alternative writ or order to show cause. The appellate division will not issue a peremptory writ in the first instance without first giving the parties notice and a chance to file an opposition. However,

when the appellate division issues such a notice, it means that the appellate division is strongly considering granting the writ requested by the petitioner.

An opposition is your argument to the appellate division about why the trial court should not be ordered to do what the petitioner has requested. If you are represented by a lawyer in the writ proceeding, your lawyer will prepare your opposition. If you are not represented by a lawyer, you will need to prepare your own opposition. Like a return discussed above, an opposition is usually a legal response called an "answer." An answer is used to admit or deny the facts alleged in the petition, to add to or correct the facts, and to explain any legal defenses to the legal arguments made by the petitioner. You should read California Code of Civil Procedure sections 430.10–430.80 for more information about answers. You can get copies of these statutes at any county law library or online at *www.leginfo.ca.gov/calaw.html.*

Unless the appellate division sets a different deadline in its notice that it is considering issuing a peremptory writ, you must serve and file your opposition within 30 days after the appellate division issues the notice. The opposition must be served on all the other parties to the writ proceeding. "Serving and filing" the opposition means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the opposition to the other parties in the way required by law.
- Make a record that the opposition has been served. This record is called a "proof of service." The proof of service must show who served the opposition, who was served with the opposition, how the opposition was served (by mail or in person), and the date the opposition was served.
- File the original opposition and the proof of service with the appellate division. You should make a copy of the opposition you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the opposition to the clerk when you file your original, and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court documents and proof of service on the California Courts Online Self-Help Center at *www.courtinfo.ca.gov /selfhelp/lowcost/getready.htm#serving.*

23 What happens after I serve and file my return or opposition?

After you file a return or opposition, the petitioner has 15 days to serve and file a reply. The appellate division may also set the matter for oral argument. When all the papers have been filed (or the time to file them has passed) and oral argument is completed, the appellate division will decide the case.

APP-151 Petition for Writ (Misdemeanor, (Infraction, or Limited Civil Case)

Clerk stamps date here when form is filed.

_____

Petitioner
(fill in the name of the person asking for the writ)

v.

Superior Court of California, County of _____

_____

Respondent
(fill in the name of the court whose action or ruling you are challenging)

_____

Real Party in Interest
(fill in the name of any other parties in the trial court case)

Clerk will fill in the number below:

Appellate Division Case Number:

☐ **Stay requested**
(see item 12 c. on page 6)

Instructions

- This form is only for requesting a **writ** in a misdemeanor, infraction, or limited civil case. You can get forms for other writs and for appeals at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms.*
- Before you fill out this form, read *Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases* (form APP-150-INFO) to know your rights and responsibilities. You can get form APP-150-INFO at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*.
- Unless a special statute sets an earlier deadline, you should file this form no later than **60 days** after the date the superior court took the action or issued the ruling you are challenging in this petition (see form APP-150-INFO, page 7, for more information about the deadline for filing a writ petition). It is your responsibility to find out if a special statute sets an earlier deadline. If your petition is filed late, the appellate division may deny it.
- Fill out this form and make a copy of the completed form for your records and for the respondent and each of the real parties in interest.
- Serve a copy of the completed form on the respondent (the trial court whose action or ruling you are challenging) and on each real party in interest (the other party or parties in the trial court case) and keep proof of this service. You can get information about how to serve court papers and proof of service on the California Courts Online Self-Help Center at *www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving*.
- Take or mail the completed form and your proof of service on the respondent and each real party in interest to the clerk's office for the appellate division of the superior court that took the action or issued the ruling you are challenging.

Appellate Division Case Name: _____

Appellate Division Case Number:

1 Your Information

a. Name of petitioner (the party who is asking for the writ):

_____

b. Petitioner's contact information:

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

Phone: ( ) _____ E-mail *(optional):* _____

c. Petitioner's lawyer *(skip this if the appellant does not have a lawyer for this petition):*

Name: _____ State Bar number: _____

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

Phone: ( ) _____ E-mail *(optional):* _____

Fax *(optional):* ( ) _____

The Trial Court Action or Ruling You Are Challenging

2 I am/My client is filing this petition to challenge an action taken or ruling made by the trial court in the following case:

a. Case name *(fill in the trial court case name):* _____

b. Case number *(fill in the trial court case number):* _____

3 The trial court action or ruling I am/my client is challenging is *(describe the action taken or ruling made by the trial court):* _____

_____

_____

_____

_____

4 The trial court took this action or made this ruling on the following date *(fill in the date):* _____

5 *If you are filing this petition more than 60 days after the date that you listed in 4, explain the extraordinary circumstances that caused the delay in filing this petition:*

_____

_____

_____

_____

Appellate Division Case Name: _____

Appellate Division Case Number:

The Parties in the Trial Court Case

6 I/My client *(check a or b):*

a. ☐ was a party in the case identified in **2**.

b. ☐ was not a party in the case identified in **2** but will be directly and negatively affected in the following way by the action taken or ruling made by the trial court *(describe how you/your client will be directly and negatively affected by the trial court's action or ruling):*

_____

_____

_____

7 The other party or parties in the case identified in **2** was/were *(fill in the names of the parties):*

_____

Appeals or Other Petitions for Writs in This Case

8 Did you or anyone else file an appeal about the same trial court action or ruling you are challenging in this petition? *(Check a or b):*

a. ☐ No

b. ☐ Yes *(fill in the appellate division case number of the appeal):* _____

9 Have you filed a previous petition for a writ challenging this trial court action or ruling? *(Check a or b and provide the requested information):*

a. ☐ No

b. ☐ Yes *(Please provide the following information about this previous petition. If you/your client filed more than one previous petition, please attach another page providing this information for each additional petition. At the top of each page, write "APP-151, item 9.")*

(1) Petition title *(fill in the title of the petition):* _____

(2) Date petition filed *(fill in the date you filed this petition):* _____

(3) Case number *(fill in the case number of the petition):* _____

Reasons for This Petition

10 The trial court made the following legal error or errors when it took the action or made the ruling described in **3** *(check at least one and provide the requested information):*

a. ☐ The trial court has not done or has refused to do something that the law says it *must* do.

(1) *Describe what you believe the law says the trial court must do:* _____

_____

_____

_____

(2) *Identify the law (the section of the Constitution or statute, published court decision, or other legal authority) that says the trial court must do this:* _____

_____

_____

_____

10 (continued)

(3) *Identify where in the supporting documents (the record of what was said in the trial court and the documents from the trial court) it shows that the court did not do or refused to do this:*

_____

_____

_____

☐ *Check here if you need more space to describe the reason for your petition and attach a separate page or pages describing it. At the top of each page, write "APP-151, item 10a."*

b. ☐ The trial court has done something that the law says the court *cannot or must not* do.

(1) *Describe what the trial court did:* _____

_____

_____

_____

(2) *Identify where in the supporting documents (the record of what was said in the trial court and the documents from the trial court) it shows that the court did this:* _____

_____

_____

_____

(3) *Identify the law (the section of the Constitution or statute, published court decision, or other legal authority) that says the trial court cannot or must not do this:* _____

_____

_____

_____

☐ *Check here if you need more space to describe the reason for your petition and attach a separate page or pages describing it. At the top of each page, write "APP-151, item 10b."*

c. ☐ The trial court has performed or said it is going to perform a judicial function (like deciding a person's rights under law in a particular situation) in a way the court does not have the legal power to do.

(1) *Describe what the trial court did or said it is going to do:* _____

_____

_____

_____

(2) *Identify where in the supporting documents (the record of what was said in the trial court and the documents from the trial court) it shows that the court did or said it was going to do this:*

_____

_____

_____

10 (continued)

(3) *Identify the law (the section of the Constitution or statute, published court decision, or other legal authority) that says the trial court does not have the power to do this:*

_____

_____

_____

☐ *Check here if you need more space to describe this reason for your petition and attach a separate page or pages describing it. At the top of each page, write "APP-151, item 10c."*

☐ *Check here if there are more reasons for this petition and attach an additional page or pages describing these reasons. At the top of each page, write "APP-151, item 10d."*

11 This petition will be granted only if there is no other adequate way to address the trial court's action or ruling other than by issuing the requested writ.

a. *Explain why there is no way other than through this petition for a writ—through an appeal, for example— for your arguments to be adequately presented to the appellate division:*

_____

_____

_____

_____

b. *Explain how you/your client will be irreparably harmed if the appellate division does not issue the writ you are requesting:* _____

_____

_____

_____

_____

Order You Are Asking the Appellate Division to Make

12 I request that this court *(check all that apply and provide the requested information):*

a. ☐ order the trial court to do the following *(describe what, if anything, you want the trial court to be ordered to do):* _____

_____

_____

_____

b. ☐ order the trial court not to do the following *(describe what, if anything, you want the trial court to be ordered NOT to do)*: _____

_____

_____

_____

12 (continued)

c. ☐ issue a stay ordering the trial court not to take any further action in this case until this court decides whether to grant or deny this petition *(describe below why it is urgent that the trial court not take any further action and check the Stay requested box on page 1 of this form):*

_____

_____

_____

_____

I/My client:

(1) ☐ asked the trial court to stay these proceedings, but the trial court denied this request *(include in your supporting documents a copy of the trial court's order denying your request for a stay).*

(2) ☐ did not ask the trial court to stay these proceedings for the following reasons *(describe below why you did not ask the trial court to stay these proceedings):*

_____

_____

_____

_____

d. ☐ take other action *(describe):* _____

_____

_____

_____

_____

e. ☐ grant any additional relief that the appellate division decides is fair and appropriate.

Supporting Documents

13 Is a record of what was said in the trial court about the action or ruling you are challenging attached as required by rule 8.931(b)(1)(D) of the California Rules of Court?

a. ☐ Yes, a transcript or an official electronic recording of what was said in the trial court is attached.

b. ☐ No, a transcript or official electronic recording is not attached, but I have attached a declaration (a statement signed under penalty of perjury) *(Check (1) or (2):*

(1) ☐ stating the transcript or electronic recording has been ordered, the date it was ordered, and the date it is expected to be filed

(2) ☐ explaining why the transcript or official electronic recording is not available and providing a fair summary of what was said in the trial court, including the petitioner's arguments and any statement by the trial court supporting its ruling.

Appellate Division Case Name: _____

Appellate Division Case Number:

14 Are the following documents attached as required by rule 8.931(b)(1)(A)–(C):

- The trial court ruling being challenged in this petition
- All documents and exhibits submitted to the trial court supporting and opposing the petitioner's position
- 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 being challenged? *(Check a or b):*

a. ☐ Yes, these documents are attached.

b. ☐ No, these documents are not attached for the following reasons *(explain why these documents are not attached and give a fair summary of the substance of these documents. Note that rule 8.931 provides that, in extraordinary circumstances, the petition may be filed without these documents, but the petitioner must explain the urgency and the circumstances making the documents unavailable):*

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Verification

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

_____ ▶ _____

Type or print your name *Signature of petitioner or attorney*

List of All Commentators, Overall Positions on the Proposal, and General Comments

	Commentator	Position	Comment on behalf of group?	Comment	Proposed Committee Response
1.	Appellate Court Committee of the San Diego County Bar Association Lisa Willhelm Cooney Chair	No position stated	Y	The Appellate Court Committee of the San Diego County Bar Association regularly comments on proposed revisions to the California Rules of Court and, in particular, changes to rules governing appellate practice. We appreciate the opportunity to comment on the significant revision of the rules and forms governing appeals before the Superior Court Appellate Divisions. The collection of new rules and forms in SP07-18 was, of course, years in the making. The sound final product reflects the extensive effort, and we generally applaud the result. As intended, the new rules should simplify appeals to the Appellate Division, make the process more user-friendly to self-represented litigants, and bring the rules into the modern era by modeling them on the current rules governing the California appellate courts. We comment on select aspects of SP07-18, as set forth below. (see comments throughout chart) The San Diego County Bar Association Appellate Court Committee commends the Judicial Council, the Appellate Advisory Committee, and the Appellate Division Rules Working Group in particular, for their extensive effort to craft the new rules and forms for Superior Court Appellate Divisions. The new framework will have a	

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on behalf of group?	Comment	Proposed Committee Response
				widespread, and we anticipate positive, impact on the lives of millions of Californians who seek to vindicate their legal rights before the Appellate Division of their superior court.	
2.	Kim Baskett Commissioner Superior Court of Santa Cruz County (Member, Traffic Advisory Committee)	AM	N	(see comments regarding time for filing notice of appeal below)	
3.	Mark Borrell Commissioner Superior Court of Ventura County (Member, Traffic Advisory Committee)	AM	N	(see comments regarding time for filing notice of appeal below)	
4.	Leonard D. Goldkind Commissioner Butte County Superior Court	AM	N	(see comments regarding time for filing notice of appeal and notification of prosecuting attorney below)	
5.	Hon. Charles Margines Presiding Judge Appellate Division Superior Court of Orange County	AM	N	(see comments regarding time for filing notice of appeal below)	
6.	Amy Carlson McConnell Staff Attorney Appellate Division Superior Court of San Francisco County	AM	N	(see comments throughout chart)	

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on behalf of group?	Comment	Proposed Committee Response
7.	Glen Mondo Commissioner Superior Court of Orange County (Member, Traffic Advisory Committee)	AM	N	(see comments regarding time for filing notice of appeal below)	
8.	Jamie Morell Senior Research Attorney Superior Court of Orange County	AM	N	(see comments throughout chart)	
9.	Andrea Nelson Interim Assistant CEO/Director of Operations Superior Court of Butte County	N	N	Very informative; will be very helpful to both the litigant and as a training tool for staff. (see comments throughout chart)	
10.	Orange County Bar Association Joseph L. Chairez President	AM	Y	Overall, a good job. But we think that the rules in some places unduly emphasize speed over practical realities and the convenience of the parties when it comes to time limits. [And] given the length of the proposal, we have not had time to exhaustively study the entire proposal and suggest extending the comment period. (see comments throughout chart)	
11.	Presiding Judges & Court Executive Officers Joint Rules Working Group Hon. George C. Hernandez, Jr. and Mary Beth Todd, Co-Chairs	AM	Y	(see comments throughout chart)	

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on behalf of group?	Comment	Proposed Committee Response
12.	Public Counsel Law Center, et. Al[1]	AM	Y	Our comments are confined to the proposals affecting civil appeals. We note that the Appellate Advisory Committee has "propos[ed] a wide variety of substantive changes that are intended to improve appellate division procedures" as well as changes intended to clarify existing procedures. (Invitation to Comment at 3.) Likewise, the comments below include both substantive and procedural suggestions that, in our view, would improve the ability of self-represented and other indigent litigants to navigate the appellate divisions of the State's superior courts. (see comments throughout chart)	
13.	Deborah Ryan Commissioner Superior Court of Santa Clara County (Member, Traffic Advisory Committee)	AM	N	(see comments regarding time for filing notice of appeal below)	
14.	Leonard Sacks Attorney	A	N	Appellate division appeal rules need revision.	
15.	Charles Sevilla Attorney Private Practice	A	N	Revision of the rules for misdemeanor appeals is long overdue and I hope these changes are promptly put into effect to reform the currently archaic rules. I usually represent appellants on criminal appeals and, ironically, it is far easier to do so in felony cases	

[1] These "Public Counsel Law Center" entries were submitted by the following: Daniel Grunfeld and Lisa Jaskol of Public Counsel; Mitchell A. Kamin and Wendy Levine of Bet Tzedek Legal Services; and Denise McGranahan of Legal Aid Foundation of Los Angeles.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on behalf of group?	Comment	Proposed Committee Response
				than misdemeanors based on the problems (aggravated by existing misdemeanor rules) on settling the record, time for oral argument, length of briefs, to name a few. Thanks to the committee for doing this good work.	
16.	Patrick Singer Commissioner Superior Court of San Bernardino County (Member, Traffic Advisory Committee)	AM	N	(see comments regarding time for filing notice of appeal below)	
17.	Michael B. Stone Attorney	N	N	Unfortunately, this well-intentioned proposal poorly serves both the courts and self-represented litigants. The reason: laypeople don't "get" that an appeal is usually available only from a trial court's errors of law. They don't understand the distinction between "issues of law" and "issues of fact." Laypeople think an appeal means what we lawyers know as a "trial de novo." They know this is true, because they saw it on TV. Therefore, the appellate division will be (as it is now to some extent) burdened with legally frivolous appeals. (The Court of Appeal has chosen, instead, to address the issue of self-represented litigants by jacking the filing fee up to $655.) Additionally, litigants are poorly served by being told (implicitly, by the adoption of yet another set of	The committee believes that the proposed new information sheets – APP-101, CR-131, and CR-141 – will help litigants better understand the appellate process and thereby reduce the number of cases in which litigants mistakenly seek relief that is not available through an appeal.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on behalf of group?	Comment	Proposed Committee Response
				new Judicial Council forms) that perfecting their appeal is as simple as filling out the form. Litigants will thus lose their cases through nonmeritorious pro per filings in matters where they would have been better served by retaining attorneys.	
18.	Superior Court of Los Angeles County (no specified individual)	AM	Y	(see comments throughout chart)	
19.	Superior Court of Orange County (no specified individual)	AM	Y	(see comments throughout chart)	
20.	Superior Court of Sacramento County Dennis B. Jones Executive Officer	AM	Y	(see comments throughout chart)	
21.	Superior Court of San Diego County Mike Roddy Executive Officer	No position stated	Y	As a preliminary note, our court would like to acknowledge the tremendous amount of effort and research that has gone into the production of the proposed changes to the rules and forms for Superior Court Appellate Divisions. The proposal is extraordinarily well considered and organized, and it addresses many of the problems our court has encountered in this area. We especially applaud the Committee's simplification of the rules for the benefit of unrepresented litigants. The resulting benefit to the court cannot be overstated. (see comments throughout chart)	

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on behalf of group?	Comment	Proposed Committee Response
22.	Superior Court of San Francisco County Malea Chavez Staff Attorney	A	Y	(see comments throughout chart)	
23.	Hon. Sharon Waters Superior Court of Riverside County	A	N	Having struggled with the archaic rules both as an appellate attorney and as a member of our court's appellate division, I applaud the changes you are recommending. They are long overdue and address many of the problems that previously existed in the rules. Again, good work on the proposed amendments.	
24.	Tamara Wheeler Founder/Resource and Program Director Stolen Seeds, Inc.	No position stated	N	The only concern I have with your changes is the language deleting and additions. I don't think any language should be altered unless it's substituted with the exact concept behind it and the rights of the people are not diminished in any way.	

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

Comments on the Proposed Rules

Time for Filing the Notice of Appeal

Rule/Issue	Commentator	Comment	Proposed Committee Response
Time to File Notice of Appeal - General	Leonard D. Goldkind Commissioner Butte County Superior Court	I oppose extending the time for appeal to 60 days. Notes on a trial can only go so far, and I take extensive notes. If the time is going to be extended, then the State must provide funding for recording trials either electronically or by way of a court reporter.	In response to this and other comments, the committee has modified its proposal to keep the current 30-day period for filing the notice of appeal in infraction cases, rather extending this period to 60 days. The comments received indicate that, of the matters that go to the appellate division, infraction cases are the least likely to raise concerns about litigants' missing the deadline for filing the notice of appeal. Because of the volume of these matters and the infrequency with which they are recorded by a court reporter or official electronic recording equipment, however, these cases are the most likely to raise concerns about record preparation if the time to file the notice of appeal were extended. These are also the cases in which a shorter timeline to resolution seems most appropriate. Based on both the desire for uniformity in procedures and to decrease dismissals based on mistakes about the time for filing the notice of appeal, the committee is still recommending that the time for filing the notice of appeal in limited civil and misdemeanor cases be extended to 60 days.
Time to File Notice of Appeal – General	Hon. Charles Margines Superior Court of Orange County	Please add my voice to those who oppose the proposal to increase the time to file a notice of appeal from limited jurisdiction cases from 30 to 60 days. I am the presiding judge of the Orange County Superior Court's Appellate Division. As a member of the Appellate Division for the past four and one-half years, I respectfully	See response to Commissioner Leonard D. Goldkind, above. In response to this and other comments, the committee has modified its proposal to keep the current 30-day period for filing the notice of appeal in infraction cases. The committee is still recommending that the time for filing the notice of appeal in limited civil and misdemeanor cases be

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

Rule/Issue	Commentator	Comment	Proposed Committee Response
		disagree with the Appellate Advisory Committee's observation that it is "with some frequency" that litigants mistakenly believe that they have 60 days to file a notice of appeal. While I have seen a few cases, the number is too small to cause concern that the problem is systemic or widespread. Moreover, I have difficulty accepting the "trap for the unwary" rationale of the committee. Why would pro se litigants, who constitute the vast majority of traffic appellants and a not insignificant percentage of civil appellants, assume that the time to file a notice of appeal is 60 days? By hypothesis, they have little or no appellate experience and would have no knowledge that in other jurisdictions, the time period is 60 days (or any number of days). As for attorneys making that mistake, the continuing existence of a separate set of rules for appeals to the appellate division of the superior court means that counsel are expected to follow those specific rules and not any others. Why create an exception to this knowledge requirement for the time to file the notice of appeal? The committee may respond—Because, unlike with other rules, the failure to timely file the notice is fatal to the appeal. However, since we expect attorneys to be familiar with the rules for appeals to the appellate division, it is not unreasonable to expect such familiarity to begin before the notice of appeal is filed. As against the minor benefit of conforming the time to file the notice of appeal to that for unlimited jurisdiction matters, there is a significant disadvantage. Permitting a notice of appeal to be filed up tot 60 days after completion	extended to 60 days.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

Rule/Issue	Commentator	Comment	Proposed Committee Response
		of a trial will increase the difficulty of preparing an accurate record on appeal, a task which is ultimately the judicial officer's, in those cases (i.e., all traffic matters, virtually all civil matters, and some criminal matters) where there is no court reporter's transcript or electronic recording, because memories fade over time. This is an especially acute problem in the traffic trial arena, where judicial officers try dozens of cases every week, many involving similar charges and fact patterns. My conversations with judicial officers in our county who handle traffic calendars confirm that even with the current time limit for filing a notice of appeal, they have difficulty in recollecting evidence presented weeks earlier. They have expressed a concern to me that adoption of the proposed rule will have a detrimental impact on their ability to certify statements on appeal which are accurate and sufficiently detailed to provide for meaningful reviews by the Appellate Division. Finally, I'd like to point out that extending the time to 60 days is inconsistent with one of the stated goals of the proposed changes, "to facilitate resolution of [limited jurisdiction] matters as quickly as possible."	
Time to File Notice of Appeal – General	Orange County Bar Association Joseph L. Chairez President	We do agree with the 60-day period within which to file a notice of appeal, up from 30 days.	See response to Commissioner Leonard D. Goldkind, above. In response to other comments, the committee has modified its proposal to keep the current 30-day period for filing the notice of appeal in infraction cases. The committee is still recommending that the time for filing the notice of appeal in limited civil and misdemeanor cases be extended to 60 days.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

Rule/Issue	Commentator	Comment	Proposed Committee Response
Time to File Notice of Appeal – General	Presiding Judges & Court Executive Officers Joint Rules Working Group Hon. George C. Hernandez, Jr. and Mary Beth Todd, Co-Chairs	Proposed Rules # 8.822, 8.853, and 8.882. We recommend no increase in the time for filing a notice of appeal in misdemeanor, infraction, and limited civil cases from 30 to 60 days after notice of entry of judgment. The Working Group did not find the increased in time to file an appeal necessary. The new forms and instructions will make the time for appeal very clear. Extending the time would increase accounting and records retention workload and make it more difficult for judges recalling facts presented at trial when settling the statement on appeal.	See response to Commissioner Leonard D. Goldkind, above. In response to this and other comments, the committee has modified its proposal to keep the current 30-day period for filing the notice of appeal in infraction cases. The committee is still recommending that the time for filing the notice of appeal in limited civil and misdemeanor cases be extended to 60 days.
Time to File Notice of Appeal – General	Superior Court of Los Angeles County (no specified individual)	Changing the appeal period from 30 days to 60 days would be beneficial. Pro Per appellants and attorneys often mistake the filing period for 60 days and their appeals are filed late and dismissed. Changing to 60 days would assist in alleviating this common misunderstanding. On Infraction cases, 60 days should also apply in keeping this consistent with all appeal filings. Some appellants do not know how to distinguish an Infraction from a Misdemeanor, and for this reason may be under the impression that they have more time to file their appeal. Allowing the extra time for filing a Notice of Appeal on Infraction cases will make it more difficult for judicial officers to recall traffic matters. If the new changes go into effect where a transcript of the proceedings is ordered by the court that should solve this problem.	See response to Commissioner Leonard D. Goldkind, above. In response to this and other comments, the committee has modified its proposal to keep the current 30-day period for filing the notice of appeal in infraction cases. The committee is still recommending that the time for filing the notice of appeal in limited civil and misdemeanor cases be extended to 60 days.
Time to File Notice of Appeal – General	Superior Court of Orange County Rules & Forms Committee Hon. Ronald Bauer Chair	We oppose the proposed change to extend the time to file a notice of appeal from 30 days to 60 days in rules 8.822, 8.853, and 8.882. We feel this would delay the appeal and hamper preparation of a settled statement. The volume of cases that are heard would impose a burden on the trial	See response to Commissioner Leonard D. Goldkind, above. In response to this and other comments, the committee has modified its proposal to keep the current 30-day period for filing the notice of appeal in infraction cases. The committee is still

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

Rule/Issue	Commentator	Comment	Proposed Committee Response
		courts to recall cases with sufficient accuracy to prepare settled statements. We recommend leaving the time to appeal at 30 days.	recommending that the time for filing the notice of appeal in limited civil and misdemeanor cases be extended to 60 days.
Time to File Notice of Appeal – General	Superior Court of Sacramento County Dennis B. Jones Executive Officer	The committee requested comments regarding the proposed change of time to file notice of appeal from 30 days to 60 days after entry of judgment. Comments—The "Reviser's Notes" indicate that the time for filing a notice of appeal is changing to "eliminate a trap for the unwary." The "Reviser's Notes" also suggest that the change is designed to particularly assist self-represented litigants. From this court's experience, attorneys are more likely than self-represented litigants to incorrectly assume that the rules applicable to the Courts of Appeal apply to appeals to the Appellate Division. Self-represented litigants who have never filed an appeal usually ask about, or look up the applicable time limits. The committee requested comments on whether the time for filing a notice of appeal for infractions should remain at 30 days, even if all other time limits are enlarged. Comments—Creating a separate time limit for infractions appears inconsistent with the committee's stated goal of assisting self-represented litigants since appellants convicted of infractions are not entitled to appointed counsel and make up a large portion of the self-represented litigants.	See response to Commissioner Leonard D. Goldkind, above. In response to this and other comments, the committee has modified its proposal to keep the current 30-day period for filing the notice of appeal in infraction cases. The committee is still recommending that the time for filing the notice of appeal in limited civil and misdemeanor cases be extended to 60 days.
Time to File Notice of Appeal – General	Superior Court of San Diego County Mike Roddy Executive Officer	Time to File Notices of Appeal. [Rules 8.822, 8.853 & 8.882.] This court supports the increase of the time in which to file notices of appeal in limited civil and misdemeanor appeals to 60 days, but suggests further consideration of the	See response to Commissioner Leonard D. Goldkind, above. In response to this and other comments, the committee has modified its proposal to keep the current 30-day period for filing the notice of appeal

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Rule/Issue	Commentator	Comment	Proposed Committee Response
		retention of the 30-day period in infraction cases. It is this court's experience that most late appeal filings occur in limited civil and misdemeanor appeals and are by counsel who also prosecute appeals in the Courts of Appeal. The former language of the rules also contributed to the confusion. Infraction appellants are expressly told they have 30 days in which to appeal. The concerns expressed by the Committee regarding the delay in the preparation of the record further supports the retention of the 30-day limit in these cases. However, since the proposed provisions allowing for the preparation of a transcript of proceedings mitigate this concern to some extent, this court would not object to a uniform notice of appeal period in all three types of cases if the Committee feels the benefits of uniformity outweigh the preceding considerations.	in infraction cases. The committee is still recommending that the time for filing the notice of appeal in limited civil and misdemeanor cases be extended to 60 days.
Time to File Notice of Appeal – General	Hon. Sharon Waters Superior Court of Riverside County	It is true that extending the time for filing notices of appeal from 30 to 60 days may present some challenges for judicial officers in cases in which the only record is a settled statement. Nonetheless, I believe the policy of insuring a meaningful right to appeal outweighs the added burden on judicial officers in these types of cases.	See response to Commissioner Leonard D. Goldkind, above. In response to other comments, the committee has modified its proposal to keep the current 30-day period for filing the notice of appeal in infraction cases. The committee is still recommending that the time for filing the notice of appeal in limited civil and misdemeanor cases be extended to 60 days.
Time to File Notice of Appeal – Civil Cases	Jamie Morell Senior Research Attorney Superior Court of Orange County	Rule 8.822(a): While it might be true that some appeals might be saved by extending the filing deadlines to comport with those of the Court of Appeal, it is also true that such an extension would not only extend the length of the appeal process but would also substantially increase the difficulty of preparing an accurate record on appeal, particularly in traffic cases where there is no court reporter or electronic recording and where the trial judge may try dozens of cases each week. Counsel are presumptively aware of the applicable rules, and inasmuch as the filing deadlines are	See response to Commissioner Leonard D. Goldkind, above. In response to this and other comments, the committee has modified its proposal to keep the current 30-day period for filing the notice of appeal in infraction cases. The committee is still recommending that the time for filing the notice of appeal in limited civil and misdemeanor cases be extended to 60 days.

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Rule/Issue	Commentator	Comment	Proposed Committee Response
		highlighted in the forms to be provided for use by appellants in pro per, it would seem preferable to maintain the current deadlines while finding ways to ensure greater availability of the forms to persons contemplating an appeal.	
Time to File Notice of Appeal – Civil Cases	Public Counsel Law Center, et. al	Rule 8.822: We support the proposal to increase the time to file a notice of appeal in limited civil appeals from 30 to 60 days. We agree that this change will eliminate a trap for unwary litigants, who may assume the 60-day rule in unlimited civil cases applies in their limited civil case. We believe the benefit of this change will outweigh any potential burden that might result from increasing the time that elapses between the trial court proceedings and the preparation of a settled statement (or "statement on appeal").	See response to Commissioner Leonard D. Goldkind, above. In response to other comments, the committee has modified its proposal to keep the current 30-day period for filing the notice of appeal in infraction cases. The committee is still recommending that the time for filing the notice of appeal in limited civil and misdemeanor cases be extended to 60 days.
Time to File Notice of Appeal – Misdemeanors and Infractions	Amy Carlson McConnell Staff Attorney, Appellate Division Superior Court of San Francisco County	Rule 8.853(a): 60 days to appeal seems like a long time to give an appellant in a misdemeanor case because many misdemeanor cases only last 30 days in their entirety. Rule 8.882(a): 60 days to appeal is a long time to give an appellant in an infraction case given that most people want infractions disposed of quickly.	See response to Commissioner Leonard D. Goldkind, above. In response to this and other comments, the committee has modified its proposal to keep the current 30-day period for filing the notice of appeal in infraction cases. The committee is still recommending that the time for filing the notice of appeal in limited civil and misdemeanor cases be extended to 60 days.
Time to File Notice of Appeal – Misdemeanors and Infractions	Glenn Mondo Commissioner Superior Court of Orange County (Member, Traffic Advisory Committee)	There are a number of reasons which support the [Traffic Advisory] committee's decision to oppose extending the time for filing a notice of appeal from 30 to 60 days in traffic cases. First, there is no "trap for the unwary." Virtually all traffic appeals are by pro pers, who have no idea what the appeal period is for felonies or misdemeanors. As for represented defendants, any competent attorney can easily determine the relevant deadlines. As for the public	See response to Commissioner Leonard D. Goldkind, above. In response to this and other comments, the committee has modified its proposal to keep the current 30-day period for filing the notice of appeal in infraction cases. The committee is still recommending that the time for filing the notice of appeal in limited civil and misdemeanor cases be extended to 60 days.

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Rule/Issue	Commentator	Comment	Proposed Committee Response
		comments, I believe staff said there were only 18 received (of some 35 million residents). Two judges (one tenth of one percent of those serving) had contrary suggestions, one making the deadline 30 days in all cases, the other suggesting 60 as to all cases. The one "prominent" appellate attorney who raised the "trap for the unwary" argument is one of 200,000 or so attorneys licensed in CA. In other words, the public comments do not support a conclusion that an extension of time for filing notices of appeals is necessary or of great interest to the bar or bench. Second, there is no record, at least in Orange County, in traffic cases. Also, any settled statements received are usually of little value, typically falling into one of two categories: the officer lied or the judge was wrong. As a practical matter, even without the language that would allow the defendant to request the court to prepare the settled statement, it is the court which will be preparing the settled statement. Last month the two courtrooms here that do traffic trials averaged 170 trials each. If an additional 30 days is allowed for appeals, the difficulty of preparing a settled statement on one of over 340 cases heard in the past 60 days should be apparent. In Orange County, misdemeanor cases have electronic recording only. In my experience, the transcripts of these tapes are often of poor quality. While not as bad as in traffic, I believe extending the time on misdemeanor cases is also unnecessary and will impose additional difficulties on trial judges absent additional funding for court reporters in misdemeanor cases.	

Rule/Issue	Commentator	Comment	Proposed Committee Response
Time to File Notice of Appeal - Infractions	Kim Baskett Commissioner Superior Court of Santa Cruz County (Member, Traffic Advisory Committee)	I agree with Commissioner Mondo that there really is no "trap for the unwary" as far as the appeal period for minor violations is concerned for all the reasons that he states. Furthermore, in our court the judicial officer provides the notice of the thirty day period for appeal in the speech to all defendants appearing at trial right before trial. I am the sole judicial officer in Santa Cruz County hearing minor traffic violations. I hear approximately 3000 trials per year. The normal delay from trial to the settled statement hearing is already nearly three months. It is hard enough to recreate the evidence upon which the trial court relied without the further delay an extended appeal period would cause. Typically, as judges do not often handle traffic calendars in the absence of the assigned judicial officer, and as the judicial council does not provide visiting judicial officers to cover the traffic calendar of a commissioner in her absence, we rely heavily on volunteer attorneys to sit as pro tems and hear these trials. Extending the appeal period for these cases makes the job of volunteering even less attractive than it already is as it puts even more pressure on these busy professionals to recall details months after trial.	See response to Commissioner Leonard D. Goldkind, above. In response to this and other comments, the committee has modified its proposal to keep the current 30-day period for filing the notice of appeal in infraction cases. The committee is still recommending that the time for filing the notice of appeal in limited civil and misdemeanor cases be extended to 60 days.
Time to File Notice of Appeal - Infractions	Mark Borrell Commissioner Superior Court of Ventura County (Member, Traffic Advisory Committee)	I polled the present members of our appellate division, as well as some former members. Collectively the span of the tenure of these judges on the appellate division covers most of the last ten years. I also polled our clerks handling the filing of notices of appeal. None advised me that they were aware of a single instance where an infraction defendant missed the time to file a notice of appeal due to the erroneous perception that the filing time was sixty days. In addition, all of the judges who expressed opinions on the	See response to Commissioner Leonard D. Goldkind, above. In response to this and other comments, the committee has modified its proposal to keep the current 30-day period for filing the notice of appeal in infraction cases. The committee is still recommending that the time for filing the notice of appeal in limited civil and misdemeanor cases be extended to 60 days.

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Rule/Issue	Commentator	Comment	Proposed Committee Response
		subject stated their opposition to extending the time for filing infraction appeals to sixty days.	
Time to File Notice of Appeal – Infractions	Deborah Ryan Commissioner Superior Court of Santa Clara County (Member, Traffic Advisory Committee)	[I agree] with the rest of the [Traffic Advisory] committee that extending the deadline for filing a traffic appeal from 30 to 60 days is not necessary and would further elongate the process without any real benefits. In Santa Clara, defendants are advised of their right to appeal within 30 days in the arraignment advisement and then again, at least on minute orders, on the back of the document they receive when they leave court. At the beginning of a trial calendar, defendants are again advised of the 30 day appeal process. This would not cause confusion to defendants who generally are pro per throughout the process. In Santa Clara, arraignments and trials are electronically recorded and this helps in recreating the record where it is needed. However, given the volume of cases it would not be helpful to extend the time period from 30 to 60 days particularly in those cases where you need to rely on notes and/or memory to recreate the record.	See response to Commissioner Leonard D. Goldkind, above. In response to this and other comments, the committee has modified its proposal to keep the current 30-day period for filing the notice of appeal in infraction cases. The committee is still recommending that the time for filing the notice of appeal in limited civil and misdemeanor cases be extended to 60 days.
Time to File Notice of Appeal – Infractions	Patrick Singer Commissioner Superior Court of San Bernardino County (Member, Traffic Advisory Committee)	I concur with Commissioners Mondo and Ryan. After discussing this with the other Commissioners who handle large traffic calendars in San Bernardino County, all are in agreement that the appeal period should remain at 30 days. No one sees any benefit in extending the period to 60 days and everyone agrees the added time would present difficulties unnecessarily.	See response to Commissioner Leonard D. Goldkind, above. In response to this and other comments, the committee has modified its proposal to keep the current 30-day period for filing the notice of appeal in infraction cases. The committee is still recommending that the time for filing the notice of appeal in limited civil and misdemeanor cases be extended to 60 days.

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Record Preparation

Rule/Issue	Commentator	Comment	Proposed Committee Response
Record Preparation - General	Superior Court of Sacramento County Dennis B. Jones Executive Officer	The committee requested comments regarding changes to the rules on record preparation. Comments—The proposed rules use the word "must" (defined as "mandatory" by proposed rule 8.802) in describing some of the clerk's duties and trial court's duties in record preparation. For instance, proposed rule 8.832(d)(1) provides that "within 30 days after the appellant deposits the estimated cost of the transcript...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." (Similar language is used in proposed rules 8.862(c) and 8.892(c).) Also, proposed Rule 8.833 uses "must" when describing the clerk's duty to number and index and court file within 10 days when the appellant elects to proceed by court file and deposits costs. (Proposed Rule 8.893 uses similar language.) In addition, proposed rule 8.357 uses the word "must" to describe the trial court's duty to correct or modify a proposed statement on appeal within 10 days after respondent files proposed amendments. (Proposed rule 8.897(d) uses similar language.) The current rules (which, at most, utilize the word "shall") do not impose a mandatory time requirement on the clerk's office for acts involved in the preparation of the record because "shall" with regard to a time limit with no stated consequence, is usually interpreted as directory. (*Cal. Corr. Peace Officers Ass'n v. State Pers. Bd*. (1995) 10 Cal. 4th 1133, 1143.) Similarly, under the current rules, the trial court has no mandatory time limit for settling statements. Moreover, the proposed rules do not indicate what happens if the clerk or trial court fails to	The updated California Rules of Court no longer use the term "shall;" the term "must" is used to indicate something that is mandatory, the term "may" to indicate something that is permissive, and the term "will" to indicate something that will happen in the ordinary course of events (California Rules of Court, rule 1.5). As indicated in the invitation to comment, the committee used the language of the rules relating to proceedings in the Court of Appeal as the base for its proposed revision to the appellate division rules. The rules relating to record preparation in those Court of Appeal proceedings use the term "must" for these duties of the trial court clerk, including the rules that set timeframes for the clerk's duties. The committee is not aware of any problems associated with the use of "must" in those rules. The committee therefore does not believe it will be problematic to use this term for the same functions performed by the trial court clerk in the preparation of records for appellate division proceedings.

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Rule/Issue	Commentator	Comment	Proposed Committee Response
		complete the record preparation in a timely manner. This is confusing and may lead to unnecessary requests by litigants for relief that does not exist except, perhaps, by way of petition for writ of mandate. Therefore, it seems that "shall" or "will" should replace "must" in the proposed rules describing the clerk's duties and trial court duties that have specific date requirements.	
Record Preparation - Clerk's Transcript/File	Appellate Court Committee of the San Diego County Bar Association Lisa Willhelm Cooney Chair	As to preparation of the record in civil cases (rules 8.833, 8.835 and 8.837), misdemeanor cases (rules 8.863, 8.868 and 8.869), and infraction cases (rules 8.893, 8.898 and 8.899), we support the provisions reserving to individual courts the option of using the trial court file rather than a clerk's transcript	No response required.
Record Preparation - Clerk's Transcript/File	Superior Court of San Diego County Mike Roddy Executive Officer	Record Preparation Issues. [Rules 8.833, 8.835 & 8.837 (civil); 8.863, 8.868 & 8.869 (misdemeanor); and 8.893, 8.898 & 8.899 (infractions).] This court strongly supports the provisions reserving to individual courts the option of allowing the use of the trial court file in lieu of a clerk's transcript.	No response required.
Record Preparation - Clerk's Transcript/File	Superior Court of Los Angeles County (no specified individual)	The use of a trial court file instead of preparing a Clerk's Transcript could in some instances be helpful, and in others, it could be burdensome to the Appellate Division. There are many documents in the files that are not required to be sent with the record on appeal, although, many courts send all documents. If the trial court file is more than one volume, it would create a problem with storage and handling. The new format for the Clerk's Transcript could present a problem if they are bound on the left margin, as the	This option is only available if the appellate division adopts a local rule providing for this option. Therefore, the local court can determine whether this option is appropriate given its individual circumstances. Even if the court does adopt a local rule authorizing this procedure, under rules 8.833, 8.863, and 8.893, the court can order a different approach in an individual case. As the commentator notes, rule 8.838 permits courts to adopt a local rule providing for an exception to the

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Rule/Issue	Commentator	Comment	Proposed Committee Response
		appellate file folders are bound at the top. The new rule, 8.838(c)((1) states that the Clerk's Transcript may be bound at the top if required by local rule of the Appellate Division. L.A. County Court Rules, Superior Court, 2007 Edition, Rule 11.5(b) states that Briefs must be bound at the top, without a cover, and only one side of the page is to be used. Some of the new suggested changes on Briefs vary from this.	general rule concerning binding of clerk's transcripts.
Record Preparation - Electronic Recording	Appellate Court Committee of the San Diego County Bar Association Lisa Willhelm Cooney Chair	As to preparation of the record in civil cases (rules 8.833, 8.835 and 8.837), misdemeanor cases (rules 8.863, 8.868 and 8.869), and infraction cases (rules 8.893, 8.898 and 8.899), we support the use of official electronic recordings as the official record of oral proceedings by local rule.	No response required.
Record Preparation - Electronic Recording	Jamie Morell Senior Research Attorney Superior Court of Orange County	Rules 8.835(b) and 8.837(g)(2), : These types of transcripts (which, at least in Orange County, are generally not prepared by licensed court reporters) often contain blank spaces where the recorded content is "[unintelligible]" or simply omitted. There needs to be some procedure (as currently exists under CRC rules 8.756 and 8.757) for review and correction in the trial court. In the absence of such procedure, it appears the transcript would be transmitted to the appellate division as a final (not "prima facie") verbatim record of trial court proceedings, necessitating frequent remands for augmentation. (What is the appellate division supposed to do with a transcript which is merely "prima facie" accurate, anyway?)	The committee believes that, with the use of official electronic recording equipment and qualified transcribers, this should not be a widespread problem. In addition, under proposed rule 8.841, the appellate division has the authority to order the correction of any part of the record, including ordering the trial court to settle disputes about omissions or errors in the record, if necessary.

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Rule/Issue	Commentator	Comment	Proposed Committee Response
Record Preparation - Electronic Recording	Superior Court of San Diego County Mike Roddy Executive Officer	Record Preparation Issues. [Rules 8.833, 8.835 & 8.837 (civil); 8.863, 8.868 & 8.869 (misdemeanor); and 8.893, 8.898 & 8.899 (infractions).] This court strongly supports the provisions reserving to individual courts the option of allowing the use of official electronic recordings as the official record of oral proceedings by local rule.	No response required.
Record Preparation - Reporter's Transcripts	Jamie Morell Senior Research Attorney Superior Court of Orange County	Rules 8.864(c)(3) and 8.894(c)(3) [Note that similar provision appears in rules on civil appeals - 8.834(e)(2)]: For practical reasons perhaps best appreciated by court reporters, it would seem preferable to simply provide for such a statement on appeal to be included in the record separately (with an explanation) rather than to be "incorporated into" a partial reporter's transcript.	Based on this comment, the committee has revised its proposal to eliminate these provisions.
Record Preparation - Statements on Appeal – General	Glenn Mondo Commissioner Superior Court of Orange County (Member, Traffic Advisory Committee)	Second, there is no record, at least in Orange County, in traffic cases. Also, any settled statements received are usually of little value, typically falling into one of two categories: the officer lied or the judge was wrong. As a practical matter, even without the language that would allow the defendant to request the court to prepare the settled statement, it is the court which will be preparing the settled statement.	The committee believes that the new *Proposed Statement on Appeal* form that it is recommending will assist litigants in preparing proposed statements.
Record Preparation - Statements on Appeal – Time to Prepare Proposed Statement	Jamie Morell Senior Research Attorney Superior Court of Orange County	Rules 8.869(b)(1) and 8.899(b)(1): Appellants currently have 15 days to file a proposed statement (proposed rule 8.784(d)), and it might be reasonable to allow 20 days, but 30 days is seems unnecessary and is unjustified in light of the goal of expediting appellate division appeals. *[Staff Note: similar provision appears in rules for civil appeals – 8.837(b)(1)]*	In response to this comment, the committee is recommending that the time for preparing a proposed statement on appeal in both civil and criminal appeals be 20 days.

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Rule/Issue	Commentator	Comment	Proposed Committee Response
Record Preparation - Statements on Appeal – Default Notice to Appellant	Jamie Morell Senior Research Attorney Superior Court of Orange County	Rule 8.869(b)(2): [Notice to appellant that failure to prepare proposed statement appeal will result in appeal being dismissed] This is a very good idea, in order to avoid devoting appellate division time and resources to fatally defective appeals. *[Staff Note: similar provisions appear in both proposed rules for civil appeals – 8.837(b)(1) – and the rules for infraction appeals – 8.899(b)(2)]*	No response required.
Record Preparation - Statements on Appeal - Required Use of Form by Pro Pers	Appellate Court Committee of the San Diego County Bar Association Lisa Willhelm Cooney Chair	We also support the repeal of current rule 8.789, as well as the requirement that unrepresented appellants use Form CR-143.	No response required.
Record Preparation - Statements on Appeal - Required Use of Form by Pro Pers	Public Counsel Law Center, et. al	Rule 8.837(b)(2): To avoid giving the impression that self-represented appellants are treated differently from appellants with counsel, we suggest that rather than requiring self-represented appellants to use the proposed Judicial Council form for the statement on appeal, the rule encourage (or strongly encourage) self-represented appellants to use the form. Alternatively, the rule could be revised to require all appellants to use the Judicial Council form. If the drafters find it necessary to impose stricter rules on self-represented appellants, then at a minimum the rule should specify the procedure a self-represented appellant must follow to establish "good cause" to permit the filing of a statement on appeal that is not on the form. *[Staff Note that similar requirement appears in rules on misdemeanor appeals – rule 8.869(b)(3) – and infraction appeals – rule 8.899(b)(3)]*	The committee believes that these rules appropriately recognize that self-represented litigants face special challenges in preparing proposed statements on appeal and believes that it is preferable to include a requirement, similar to that relating to petitions for writs of habeas corpus, that self-represented litigants use the Judicial Council form. The goal of this form is to assist self-represented litigants in preparing a proposed statement. Currently, many self-represented litigants find it very difficult to prepare such proposed statements and courts, in turn, find it difficult to review proposed statements that do not contain necessary information. The committee's intent is to make the process of preparing these statements easier for both litigants and the courts. As litigants and courts gain experience with

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Rule/Issue	Commentator	Comment	Proposed Committee Response
			this form, the committee would welcome suggestions for improving either the form or the rule.
Record Preparation - Statements on Appeal - Required Use of Form by Pro Pers	Superior Court of San Diego County Mike Roddy Executive Officer	The requirement that unrepresented appellants use Form CR-143 is also supported.	No response required.
Record Preparation - Statements on Appeal - Required Use of Form by Pro Pers	Superior Court of Los Angeles County (no specified individual)	A Judicial Council form should be required for pro per appellants to file their Proposed Statement. This would greatly assist the court in distinguishing the facts in the matter and give the appellants added insight as to what information is being requested to help with determining appeal issues.	No response required.
Record Preparation - Statements on Appeal – Q & A Format	Jamie Morell Senior Research Attorney Superior Court of Orange County	Rules 8.837(c)(1)(A), 8.869(c)(1), and 8.899(c)(1): It is unclear why the court's approval should be required in order for appellant to include verbatim questions and answers in the proposed statement.	This requirement is in the current rules relating to settled statements in both the appellate division and the Court of Appeal. Rule 8.756(a), relating to settled statements in civil appeals in the appellate division provides, in relevant part, "Where necessary for the purposes of accuracy, clarity or convenience, portions of the evidence may be set forth by question and answer, subject to the approval of the court in settling the statement." Rule 8.137(b)(1), relating to settled statements in civil appeals in the Court of Appeal (and which applies in felony appeals also), provides, in relevant part, "Subject to the court's approval in settling the statement, the appellant may present some or all of the

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Rule/Issue	Commentator	Comment	Proposed Committee Response
			evidence by question and answer." The committee did not consider changing this current requirement.
Record Preparation - Statements on Appeal – Limiting Appeal to Issues Identified in Proposed Statement	Jamie Morell Senior Research Attorney Superior Court of Orange County	Rules 8.869(c)(2) and 8.899(c)(2): It is unclear why appellate counsel should be required to seek approval in order to argue a point not identified by trial counsel, particularly where a basis for the argument exists in the record (if it does not exist there, the argument will necessarily fail anyway unless augmentation is ordered). This would simply create more work for the appellate division in the form of motions to be brought and granted. It should be the goal of the appellate division, particularly in criminal cases, to correct trial court errors rather than to compound them by creating new ways for incompetent counsel to waive issues on appeal. *[Staff Note: similar provision appears in proposed rules for civil appeals – 8.837(c)(1)(B)]*	Based on this comment, the committee has revised its proposal to retain the provision in the current appellate division rules relating to settled statements in criminal cases that allows consideration of issues that were not specified in the statement on appeal so long as the appellate division concludes that the record on appeal fairly and fully presents the evidence and other proceedings necessary for a decision on these issues.
Record Preparation - Statements on Appeal - Judge's Option to Order Transcript	Presiding Judges & Court Executive Officers Joint Rules Working Group Hon. George C. Hernandez, Jr. and Mary Beth Todd, Co-Chairs	Proposed Rules # 8.837, 8.869, and 8.899 The Working Group expressed concern with the requirement that the court may elect to have a copy of the transcript prepared instead of correcting the settled statement on appeal. This requirement will have significant operational and fiscal impacts. There are not sufficient court reporting resources currently available and court reporters already struggle to meet statutorily required timelines for transcript preparation	Based on this comment, the committee revised its proposal to: (1) Permit a judge to order the use of an official electronic recording as the record on appeal where the appellate division has adopted a local rule permitting this. This should alleviate concerns about placing additional strains on court-reporter resources and offer the courts a lower-cost option for creating the record when the proceedings were officially electronically recorded; and (2) Provide that the option of ordering a transcript in lieu of correcting a proposed statement on appeal is available *unless the court has adopted a local rule providing otherwise.* This should allow courts to determine what approach would work best given their local conditions and resources.

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Rule/Issue	Commentator	Comment	Proposed Committee Response
Record Preparation - Statements on Appeal - Judge's Option to Order Transcript	Appellate Court Committee of the San Diego County Bar Association Lisa Willhelm Cooney Chair	We further agree that the provisions giving trial court judges the option of ordering the preparation of a transcript, instead of reviewing and correcting proposed statements on appeal, would promote judicial economy.	Based on the comments of the Presiding Judges & Court Executive Officers Joint Rules Working Group above, the committee revised its proposal to: (1) Permit a judge to order the use of an official electronic recording as the record on appeal where the appellate division has adopted a local rule permitting this. This should alleviate concerns about placing additional strains on court-reporter resources and offer the courts a lower-cost option for creating the record when the proceedings were officially electronically recorded; and (2) Provide that the option of ordering a transcript in lieu of correcting a proposed statement on appeal is available *unless the court has adopted a local rule providing otherwise*. Under this revision, the San Diego Superior Court could still choose to permit judges to order transcripts in lieu of correcting a proposed statement on appeal where they concluded that this would promote judicial economy.
Record Preparation - Statements on Appeal – Judge's Option to Order Transcript	Superior Court of San Diego County Mike Roddy Executive Officer	The provisions giving trial court judges the option of ordering the preparation of a transcript instead of reviewing and correcting proposed statements on appeal would promote the judicial economy raised by the Committee.	See response to comments of the Appellate Court Committee of the San Diego County Bar Association, above.
Record Preparation - Statements on Appeal - Hearings to Review Proposed	Amy Carlson McConnell Staff Attorney Appellate Division Superior Court of San Francisco County	Rule 8.837(d)(3): This proposed rule should give a time in which the party must request a hearing and a time in which the judge must decide whether a hearing will be held in order to prevent delayed requests for a hearing. *[Staff Note that similar requirement appears in rules on misdemeanor appeals – rule 8.869(d)(3) – and infraction*	Based on this comment, the committee has revised its proposal to provide that a hearing must be requested within 10 days after the respondent files proposed amendments or the time for doing so has expired and to provide that the court must promptly set the hearing date if the judge orders a hearing. The committee also revised the timeframes for correcting the statement to

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Rule/Issue	Commentator	Comment	Proposed Committee Response
Statement		*appeals – rule 8.899(d)(3)]*	correspond with these other changes.
Record Preparation - Statements on Appeal - Hearings to Review Proposed Statement	Jamie Morell Senior Research Attorney Superior Court of Orange County	Rules 8.837(d)(3), 8.869(d)(3), and 8.899(d)(3): Basic considerations of due process should enable a party to obtain (not merely request) a hearing, particularly where a material aspect of trial court proceedings is factually disputed. In the absence of a hearing, writ review of the statement preparation procedure (generally the only avenue of review available) would be effectively precluded.	Due process requires that a person be given notice and an opportunity to be heard appropriate to the rights that are at stake. The committee believes that the proposed rule provisions giving the parties the opportunity to submit a proposed statement and proposed amendments, modifications, and objections in writing provide parties with an appropriate opportunity to be heard concerning what happened in the trial court proceedings without the necessity of holding a hearing in all cases. It is also the committee's understanding that, in many cases, the respondent does not submit any proposed amendments and there is not any factual dispute about any material aspect of the proceedings. The committee thinks it is not an efficient use of judicial resources to require a hearing in such circumstances. Based on this comment and others, however, the committee has modified its proposal to add a specific timeframe for requesting a hearing and a provision indicating that the judge will not ordinarily order a hearing unless there is a factual dispute about a material aspect of the trial court proceedings.
Record Preparation - Statements on Appeal – Availability of Electronic Recording to Assist in Preparation of	Superior Court of Los Angeles County (no specified individual)	Judicial officers should order transcripts, at the court's expense to assist with settling the Proposed Statement filed by pro per appellants. This procedure would be of great benefit to the judicial officers handling traffic infractions. There are so many traffic infraction matters handled each day that it is difficult for the judicial officers to remember the specific circumstances in each matter. Many appeal matters are delayed for this very reason.	If an official electronic recording is available, the committee believes it is likely to take fewer court resources to use that recording or a transcript prepared from that recording as the record, rather than using the recording to help prepare a statement on appeal. The committee therefore believes that the rules should authorize use of the recording or transcript in lieu of correcting a proposed statement. However, this new rule is not intended to prevent a court from ordering a

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Rule/Issue	Commentator	Comment	Proposed Committee Response
Statement			transcript or listening to an official electronic recording to assist the court in reviewing a proposed statement.
Record Preparation - Statements on Appeal - Availability of Electronic Recording to Assist in Preparation of Statement	Superior Court of San Diego County Mike Roddy Executive Officer	The repeal of current rule 8.789 [the rule on the experimental use of electronic recordings to assist in preparation of settled statements]. . . is also supported.	No response required.
Record Preparation - Statements on Appeal – Opportunities to Respond/ Object to Statement	Jamie Morell Senior Research Attorney Superior Court of Orange County	Rules 8.837(e)(2), 8.869(e)(2), and 8.889(e)(2): The parties should be permitted to file proposed modifications as well as objections. Rules 8.837(f)(2), 8.869(f)(2) & (g)(2), and 8.899(f)(2): Again, considerations of due process (as well as a desire to ensure the factual accuracy of the record on appeal) favor giving the parties a further opportunity to respond to a tentative statement prepared by the trial court (and a hearing would seem to be more efficient than a prolonged exchange of written objections).	The committee agrees with this suggestion and has modified its proposal to permit parties to file proposed modifications. The current rules relating to settled statements in civil appeals in both the appellate division and in the Court of Appeal do not provide a further opportunity for parties to give input on a statement after the judge has "settled" the statement except to make sure that an appellant that was ordered to finalize the statement did so accurately. In criminal appeals in the appellate division, neither rule 8.788 nor 8.799(g), relating to the settlement of statements, permit parties to file objections or proposed modifications once a statement has been "settled" by the judge. In addition, none of these rules include any provision for a subsequent hearing if there are objections to the statement after it has been "settled." The committee

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Rule/Issue	Commentator	Comment	Proposed Committee Response
			did not believe that the rules should be amended to provide more party input that is provided for in these current rules.
Record Preparation - Statements on Appeal – Preparation of Final Statement by Party	Jamie Morell Senior Research Attorney Superior Court of Orange County	Rules 8.837(f)(2), 8.869(f)(2) & (g)(2), and 8.899(f)(2): While it may be true that in practice most settled statements are prepared by the trial court, the trial court should be permitted to delegate responsibility for preparation of a revised statement to one of the parties if it desires to do so.	While these rules do eliminate the global requirement that the final statement be prepared by a party, the committee does not believe that they would prevent a judge from directing a party in a particular case to make the corrections to a statement where that was appropriate.
Record Preparation - Statements on Appeal – Preparation of Final Statement by Party	Superior Court of San Diego County Mike Roddy Executive Officer	Rule 8.869. Statement on appeal. In the case of misdemeanor appeals, counsel often make corrections or modifications to settled statements/statements on appeal as directed by the trial court. This court would like to retain that option in appropriate cases, e.g. where corrections are minor and the preparation of a complete transcript is unnecessary. The same request is made with respect to Rule 8.899 applicable to infractions.	See response to comments of Jamie Morrell, immediately above.
Record Preparation - Certification of the Record	Jamie Morell Senior Research Attorney Superior Court of Orange County	Rules 8.840, 8.872(b), and 8.901(b): Current rules require the record on appeal to be certified, and there would seem to be no reason to abandon this requirement.	As in the rules for the Courts of Appeal, the proposed appellate division rules relating to clerk's and reporter's transcripts require the clerks and reporters who prepare these transcripts to certify them, but do not require that the trial court judge certify these transcripts.
Record Preparation - Exhibits	Appellate Court Committee of the San Diego County Bar Association Lisa Willhelm Cooney Chair	**A. Rules 8.870 and 8.900** Proposed rules 8.870 and 8.900 govern designation of exhibits in misdemeanor appeals and infraction appeals, respectively. As elaborated below, we are concerned that these rules, as currently proposed, would require parties to identify exhibits too early in the appellate process, before	Based on this and other comments, the committee has modified its proposal so that, as in the Court of Appeal, the appellant may designate exhibits for transmittal to the appellate division within 10 days after the last respondent's brief was filed or could have been filed.

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Rule/Issue	Commentator	Comment	Proposed Committee Response
		there is an intelligent understanding of what exhibits are relevant to the appeal. The Reviser's Notes following rules 8.870 and 8.900 are virtually identical. The Reviser's Notes explain that these new provisions are based on current rule 8.224, and by reference, 8.320(e), which govern designation of exhibits in civil and criminal cases, respectively, in the Courts of Appeal. Although drawing on these rules by analogy, proposed rules 8.870 and 8.900 would adopt an earlier deadline for designating exhibits in cases in the Appellate Division than applies in the Courts of Appeal. The stated objective is to ensure that the Appellate Division has the exhibits when the briefs are filed. This is a laudable goal, but perhaps it is not an appropriate one. In our view, proposed rules 8.870(a) and 8.900(a) are helpful because they clarify that all exhibits admitted, refused or lodged with the court part of the record, but subject to the transmission procedure adopted in each rule. Limiting the transmission of those exhibits to the Appellate Division prevents the superior court from being inundated with unnecessary evidence and properly requires the parties to request transmission of necessary exhibits. The timing requirements adopted in each rule, however, do not provide sufficient opportunity for the parties to familiarize themselves with the issues on appeal in order to make an intelligent designation of necessary exhibits. Proposed rules 8.870(b)(1) and 8.900(b)(1), for example, do not provide the appellant with an opportunity to designate exhibits based on the respondent's legal arguments. Proposed rules 8.870(b)(2) and 8.900(b)(2),	

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Rule/Issue	Commentator	Comment	Proposed Committee Response
		governing the respondent's designation of additional exhibits, is similarly problematic. It requires the respondent to serve and file notice of any additional exhibits only ten days after the appellant designates the record. The respondent's designation must be made prior to the preparation of a transcript, prior to the settlement of the statement of facts and prior to receipt of the appellant's brief. If a government agency is the responding party, there may not yet be an assigned attorney, let alone one who is familiar with the case. A 10-day turnaround to designate additional exhibits leaves the respondent virtually unable to determine which exhibits, if any, will be needed. Such a stringent timing requirement will present particular difficulties for prosecuting agencies participating in the appeal but not present at trial. In short, if adopted as currently written, proposed rules 8.870 and 8.900 are likely to require significant guesswork on the exhibits that will be pertinent. To err on the side of caution and inclusion, many litigants might simply designate all exhibits. This would increase the work for the superior court clerk and would almost certainly ensure transmission of many irrelevant exhibits. One of SP07-18's overriding purposes—increasing the efficiency and speed with which Appellate Division matters are resolved—would actually be undermined, not advanced. Such an early deadline for designating exhibits is not followed in the Courts of Appeal, and we perceive no practical reason why it should be followed in the Appellate Division. In the Courts of Appeal, rule 8.224 generally allows either party to designate exhibits within	

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Rule/Issue	Commentator	Comment	Proposed Committee Response
		ten days following the filing of the respondent's brief. In this manner, the parties have enough information to make an informed designation of exhibits in response to the opposing party's arguments on appeal. In our view, the timing expressed in rule 8.224 strikes the right balance. Parties do not have to speculate shortly after the appeal is taken what exhibits might be relevant, and the appellate panel deciding the matter will have the exhibits at approximately the same time the appellate briefing is completed. We believe this should be the standard under proposed rules 8.870 and 8.900 governing misdemeanor appeals and infraction appeals, respectively, in the Appellate Division.	
Record Preparation - Exhibits	Amy Carlson McConnell Staff Attorney Appellate Division Superior Court of San Francisco County	Rule 8.870(b)(3) This proposed rule is unnecessary. There is no reason the appellate division needs to receive notice of the designation of exhibits before the record is certified to it. This should be worked out at the trial court. *[Staff Note -similar provision appears in rules on infraction appeals – rule 8.900(b)(3)]:* Rule 8.870(d)(2) This rule should give the parties a timeline in which to give the appellate division any exhibits. If there is no timeline, the parties may take years to send the exhibits (it happens) if they do so at all. *[Staff Note -similar provisions appears in rules on infraction appeals – rule 8.900(d)(3)]*	Based on this and other comments, the committee has modified its proposal so that, as in the Court of Appeal, the appellant may designate exhibits for transmittal to the appellate division within 10 days after the last respondent's brief was filed or could have been filed. Based on this comment, the committee has modified its proposal to incorporate a provision, modeled on rule 8.224, requiring that the exhibits be sent within 20 days after the party files the notice designating them or the court directs that they be transmitted.
Record Preparation – Exhibits	Jamie Morell Senior Research Attorney Superior Court of Orange County	Rules 8.870(c) & (d)(2) and 8.900(c) & (d)(2): As a general proposition, it seems inappropriate and unwise to permit parties to transmit trial exhibits directly to the appellate division without opportunity for review and verification by the opposing party and the trial court.	This procedure is used in the Court of Appeal under rule 8.224 and the committee is not aware that it has been problematic.

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Rule/Issue	Commentator	Comment	Proposed Committee Response
Record Preparation – Augmentation	Jamie Morell Senior Research Attorney Superior Court of Orange County	Rule 8.841(b): It would be useful to specify the circumstances under which remand of the matter to the trial court (for augmentation) should be ordered.	The committee considered, but ultimately decided not to make this suggested change. The rules applicable in the Court of Appeal do not specify these circumstances and the committee believes it is important to maintain uniformity between these rules and the Court of Appeal rules. In addition, the committee believes that, because these circumstances are so case specific, it would be very difficult for a rule to accurately capture these circumstances..
Record Preparation – Augmentation	Superior Court of San Diego County Mike Roddy Executive Officer	Rule 8.841. Augmenting and correcting the record… This court requests consideration of the insertion the word "conformed" before "copy" in subs.(a)(2) and (3) in all three instances. This request is intended to address recurring problems this court has encountered with litigants submitting copies of pleadings and other documents for augmentation that were never filed in the trial court, a fact that is often not evident from the face of the documents submitted. This problem has not been limited to pro per litigants and has been encountered in a significant percentage of augmentation requests. It is not the court's intention to increase the burden on litigants, but feels the problem arises with sufficient frequency that it should be addressed by the rule.	The committee considered, but ultimately decided not to make this suggested change. The rules applicable in the Court of Appeal do not currently require conformed copies and the committee believes it is important to maintain uniformity between these rules and the Court of Appeal rules. In addition, committee members noted that it is sometimes difficult for litigants to obtain conformed copies in a timely manner and courts can, if needed, check the document against the docket and documents in the court file.

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Chapter 1 - General Rules Applicable to Civil and Criminal Appeals

Rule/Issue	Commentator	Comment	Proposed Committee Response
8.804	Superior Court of San Diego County Mike Roddy Executive Officer	Rule 8.804. Definitions. It would be helpful if the definitions were in alphabetical order. Subs.(8): It does not appear it would be necessary to reference "presiding justices" in appellate division matters.	This rule is modeled on rule 1.6. The definitions in that rule are not in alphabetical order, but are instead grouped into categories. The committee believes it would be preferable for this rule to be consistent with the format of rule 1.6.
8.806	Amy Carlson McConnell Staff Attorney Appellate Division Superior Court of San Francisco County	Rule 8.806(b)(2): Many previous applications will be irrelevant to the current application. The proposed rule should be modified so that an applicant identifies previous applications relating to the same subject matter. Rule 8.806(d): The proposed rule does not define the "court" that may determine otherwise. In addition, the rule seems inconsistent with proposed rule 8.806(a), which allows the trial judge to rule on an application to extend the time to prepare the record on appeal.	Based on this comment, the committee has revised its proposal to provide that previous applications "relating to the same subject" must be identified. Based on this comment, the committee has revised its proposal to clarify that the judge "of the court where the application was filed" that can make this determination.
8.806	Jamie Morell Senior Research Attorney Superior Court of Orange County	Rules 8.806 and 8.808: It is unclear why these are two separate rules, and whether and distinction between "applications" and "motions" is intended (and, if so, what the procedural significance of that distinction might be)—if no distinction is intended, use of the two terms is unnecessarily confusing.	Under these rules, motions must be accompanied by a memorandum, the respondent may file opposition to the motion, and the court must rule on the motion. In contrast, applications need not be accompanied by a memorandum and the presiding judge may rule on the application without waiting for any opposition.
8.806	Superior Court of San Diego County Mike Roddy Executive Officer	Rule 8.806. Applications. The trial court is in a better position than the appellate division to determine whether it is appropriate to extend the time to prepare the record. Consequently, the deletion of the words "or the appellate division" is recommended in the second sentence of subs.(a). It is also recommended that the words "the presiding judge of" be deleted from the final sentence giving courts the flexibility to have such applications heard	The committee believes that it may be helpful to permit the appellate division to rule on such extensions, particularly once the appellate division has begun to review the record or take up other matters in the case. The rules applicable to appeals in the Court of Appeal generally allow *only* the Court of Appeal, not the trial court, to rule on such extensions (see rule 8.60(e)).

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Rule/Issue	Commentator	Comment	Proposed Committee Response
		by trial judges rather than presiding judges. See also comment to Rule 8.810. The inclusion of the provision found at Rule 8.808(a)(3) pertaining to motions specifying the time for filing opposition would also be helpful here. Re subs.(d) [Disposition]. The trial judge is in a better position than the presiding judge of the trial court to rule on routine applications. In view of the number of such requests received by this court, it would also be unduly burdensome to shift this responsibility to the presiding judge. If presiding judges in smaller counties typically rule on such applications and the phrase "unless the court determines otherwise" is intended to give trial courts flexibility in determining who should rule on them, this court withdraws its objection to this portion of the rule. The addition of a proof of service requirement to subs.(b) would also be helpful.	 One of the features intended to distinguish between applications and motions is that a party is not entitled to file opposition to an application; the presiding judge may rule on the application without waiting for opposition. Based on this comment, the committee has revised its proposal to specifically provide that the presiding judge "or his or her designee" may rule on these applications. The general rule defining "serve and file" in Title 1 of the California Rules of Court, rule 1.21, clarifies that proof of service is required and also defines proof of service. To make sure that litigants are aware of this provision, the committee has modified its proposal to add an advisory committee comment referring to rule 1.21.
8.808	Jamie Morell Senior Research Attorney Superior Court of Orange County	Rule 8.808(b): In contrast to proposed rule 8.806(d) (authorizing the presiding judge to rule on "applications"), this provision authorizes "the court" to rule on "motions" and (apparently in its discretion) to calendar them for hearing. Assuming an intended distinction between "applications" and "motions" (above), it is unclear whether	The committee has already undertaken a separate project to consider clarifying when an application can be used and when a motion is required.

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Rule/Issue	Commentator	Comment	Proposed Committee Response
		and to what extent the presiding judge may rule on motions himself. It might be useful to specify certain types of motions (e.g., motions to dismiss on jurisdictional grounds, motions to vacate dismissal, and motions to recall remittitur) which are (presumptively) to be calendared for hearing by the entire panel unless the presiding judge orders otherwise, and to require the remaining "routine" motions (current rule 8.703) to be ruled on by the presiding judge.	
8.808	Orange County Bar Association Joseph L. Chairez President	Rule 8.808 requires an opposition to a motion to be filed within 7 days after the motion is *filed* (not served, so additional time by mail would not apply). This is too short, particularly given the vagaries of the mail. A party may have just a few days to file opposition. We therefore suggest a 15-day period, the same as specified in rule 8.54(a)(3).	Based on this comment, the committee has revised the proposal as suggested by the commentator to require that opposition be filed within 15 days.
8.808	Superior Court of San Diego County Mike Roddy Executive Officer	Rule 8.808. Motions. The addition of an express proof of service requirement would also be helpful here. Recommended edit: Insert "of points and authorities" after "memorandum" in subs.(a)(2).	The general rule defining "serve and file" in Title 1 of the California Rules of Court, rule 1.21, clarifies that proof of service is required and also defines proof of service. To make sure that litigants are aware of this provision, the committee has modified its proposal to add an advisory committee comment referring to rule 1.21. In the recent revisions to the California Rules of Court, all references to "memorandum of points and authorities" were shortened to "memorandum" and a definition of memorandum was incorporated into rule 1.6.
8.810	Amy Carlson McConnell Staff Attorney Appellate Division	Rule 8.810(b)(4): This rule would be more clear if it stated, "Notwithstanding anything in these rules to the contrary, the trial court may grant an initial extension to any party *to*	Based on this comment the committee has revised its proposal to insert the language suggested by the commentator.

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Rule/Issue	Commentator	Comment	Proposed Committee Response
	Superior Court of San Francisco County	*do any act to prepare the record on appeal* on an ex parte basis."	
8.810	Orange County Bar Association Joseph L. Chairez President	Rule 8.810(b) rigidly limits extensions 10 days at a time. Why would it do so, if there is a good reason for a longer time? Give the court discretion so that the parties do not need to keep corning back. Rule 8.60 does not contain any limitation; if there were to be one in rule 8.810(b), we suggest that it be 30 days per extension.	Based on this comment, the committee has revised its proposal to delete this provision.
8.810	Superior Court of San Diego County Mike Roddy Executive Officer	Rule 8.810. Extending time. See comment to Rule 8.806. The trial judge is in a better position than the presiding judge of the trial court to determine whether it is appropriate to extend the time to prepare the record on appeal. If the words "or his or her designee" are intended to give trial court presiding judges the discretion to delegate this function to trial judges, it would be helpful if the rule was more specific in this regard. We also recommend replacing the phrase "presiding judge of the appellate division" in subs.(d)(1) with "court" and the reference to rule 8.63 with rule 8.811 in subs.(d)(2)(D).	Based on this comment, the committee has revised its proposal to add and advisory committee comment indicating that this provision permits the presiding judge to designate another judge, such as the trial judge, to handle these applications to extend time. Based on this comment, the committee has revised its proposal to add a reference to the presiding judge's designee and to correct the cross-reference as suggested by the commentator.
8.811	Public Counsel Law Center, et. al	Rule 8.811(b)(9): As currently phrased, the last sentence of this subdivision appears to limit a showing of "good cause" to cases in which a party is represented by counsel. Perhaps the sentence could be prefaced by the phrase, "In cases in which a party is represented by counsel," so the sentence would read: "In cases in which a party is represented by counsel, good cause requires a specific showing of other obligations of counsel that: . . . ."	Based on this comment, the committee has revised its proposal to add a reference to self-represented litigants.

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Rule/Issue	Commentator	Comment	Proposed Committee Response
8.812	Jamie Morell Senior Research Attorney Superior Court of Orange County	Rule 8.812: As stated above, it would be useful to clarify whether the presiding judge also has the authority to grant relief from dismissal, or whether only the entire panel can order such relief after a hearing.	This rule give allows the presiding judge to grant that relief.
8.814	Amy Carlson McConnell Staff Attorney Appellate Division Superior Court of San Francisco County	Rule 8.814(c)(2): The proof of service on a motion to withdraw as counsel should include the address of the party represented so that the appellate division may give notice to that party of any hearing on the motion to withdraw.	This language is modeled on rule 8.36, which applies in Court of Appeal cases. The rule requires that the withdrawing attorney provide the party's address if the motion is granted.
8.814	Jamie Morell Senior Research Attorney Superior Court of Orange County	Rule 8.814(c)(2): It is unclear why the proof of service on motions to withdraw as counsel should not include the address of the represented party. (Cf. rule 3.1362(d).)	See response to the comments of Amy McConnell, immediately above.

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Chapter 2 – Appeals and Records in Limited Civil Cases

Rule/Issue	Commentator	Comment	Proposed Committee Response
8.821	Public Counsel Law Center, et. al	Rule 8.821 (and other rules): We agree that "forms could be very helpful in assisting appellate division litigants, particularly self-represented litigants, through some of the basic steps in the appellate process . . ." (Invitation to Comment at 4.) We therefore suggest that the rules to which Judicial Council forms correspond, such as Rule 8.821 governing the notice of appeal, cross-reference the relevant Judicial Council forms. This will alert litigants that applicable forms exist, making it more likely that they will use the forms.	Based on this comment, the committee has revised its proposal to include advisory committee comments referencing the applicable Judicial Council forms.
8.822	Appellate Court Committee of the San Diego County Bar Association Lisa Willhelm Cooney Chair	In rule 8.822(a)(1)–(3), regarding the time to appeal, we suggest adding the words "or appealable order" after "judgment."	Proposed rule 8.804 (as well as rule 8.10) defines "judgment" to include any order that may be appealed.
8.822	Public Counsel Law Center, et. al	Rule 8.822, Reviser's Notes, paragraph 1, second sentence: insert "mailing or service of notice of' before "entry of judgment" so the sentence reads: "This restructuring includes increasing the time to file the notice of appeal from 30 days to 60 days after the mailing or service of notice of entry of judgment . . ."	The reviser's notes that were in the invitation to comment will not be part of the rule or comment text recommended for adoption by the Judicial Council.
8.822	Superior Court of San Diego County Mike Roddy Executive Officer	Rule 8.822. Time to appeal. The words "or appealable order" should be added after "judgment" in subs.(a)(1), (2) and (3).	Proposed rule 8.804 (as well as rule 8.10) defines "judgment" to include any order that may be appealed.

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Rule/Issue	Commentator	Comment	Proposed Committee Response
8.824	Appellate Court Committee of the San Diego County Bar Association Lisa Willhelm Cooney Chair	In rule 8.824, we suggest adding the phrase "of points and authorities" at the end of subsections (a)(3) and (b)(2). The same addition would also make sense in rule 8.112(a)(2), as to the appeal case number.	In the recent revisions to the California Rules of Court, all references to "memorandum of points and authorities" were shortened to "memorandum" and a definition of memorandum was incorporated into rule 1.6.
8.824	Superior Court of San Diego County Mike Roddy Executive Officer	Rule 8.824. Writ of supersedeas. Recommend adding: "of points and authorities" to the end of subs.(a)(3) and (b)(2). The inclusion of analogous provisions to those of Rule 8.112(a)(2) regarding the appeal case number is also requested.	Please see response to the comments of the Appellate Court Committee of the San Diego County Bar Association, immediately above.
8.825	Jamie Morell Senior Research Attorney Superior Court of Orange County	Rules 8.825(b) & (c): It would be helpful to clarify where abandonments and requests for dismissal (or stipulations thereon) are to be filed if the record has previously been filed with the appellate division but the matter is on remand to the trial court (e.g., for augmentation of the record on appeal) when the filing occurs.	The committee has modified its proposal to require that all abandonments be filed in the appellate division. If the trial court is working on an augmentation request at the time an abandonment is filed, the appellate division should, of course, notify the trial court so that they can avoid unnecessary work on that request.
8.831 & 8.833	Jamie Morell Senior Research Attorney Superior Court of Orange County	Rules 8.831(b)(2) and 8.833: Although proposed rule 8.831(b)(2) purports to allow appellant to elect any of the forms of record specified in proposed rule 8.830(a)(1), it appears from proposed rule 8.833 that the original trial court file could only be used if the appellate division authorizes its use by local rule and appellant if appellant has elected (instead) to use a clerk's transcript. There would seem to be a potential waiver problem if an erroneous election is made by an appellant desiring to use the original file in a county where local rules do not permit it.	Based on this comment, the committee has revised its proposal to clarify that this option is only available if the reviewing court has adopted a local rule permitting it.

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Rule/Issue	Commentator	Comment	Proposed Committee Response
8.837	Jamie Morell Senior Research Attorney Superior Court of Orange County	Rule 8.837(c)(3) should be 8.837(c)(2).	Based on other comments, the committee has revised its proposal to delete this provision.
8.842	Superior Court of San Diego County Mike Roddy Executive Officer	Rule 8.842. Failure to procure the record. Delete semicolon between "may" and "impose" in subs.(b).	The committee has incorporated this correction in its revised proposal.
	Appellate Court Committee of the San Diego County Bar Association Lisa Willhelm Cooney Chair	Curiously, while proposed rules 8.870 and 8.900 are based on a Court of Appeal rule for civil cases (rule 8.224), there is no corresponding rule regarding transmission of exhibits in civil appeals before the Appellate Division. As the rules currently read, it appears the only way for parties in a civil appeal to request consideration of exhibits is to designate them as part of the clerk's transcript. Addressing the contents of the clerk's transcript in a civil appeal, proposed rule 8.832(a)(3)(B) simply states that the clerk's transcript must include any exhibit admitted in evidence, refused or lodged, if designated by any party. Later, proposed rule 8.832(b)(3), states, "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 it by number or letter in the designation. . . ." (Emphasis added.) Without a rule setting forth a transmission procedure similar to proposed rules 8.870 or 8.900, parties in civil cases will be required to designate and pay for copying any relevant exhibits as part of the clerk's transcript rather than simply transmitting them as is allowed for criminal and infraction appeals. In certain civil appeals the judgment amount is	This would be a policy change that was not circulated for public comment. The committee will consider this suggestion during the next committee year.

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Rule/Issue	Commentator	Comment	Proposed Committee Response
		limited (e.g. the value of a car in a lemon law case), but the size of exhibits may be voluminous (e.g. operator manuals, warranty documentation, service receipts etc.). If clerks are required to copy exhibits as part of the clerk's transcript, this will significantly increase the expense of the appeals in civil cases. The cost, in some cases, may preclude parties from requesting consideration of trial court exhibits that could be helpful to the Appellate Division in makings its determination. Therefore, subject to the comments expressed with respect to proposed rules 8.870 and 8.900 regarding the timing of designation, we recommend adding a similar rule, perhaps as rule 8.843, to allow for transmission of exhibits in civil cases: **Proposed Rule 8.843 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*, a party wanting 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	

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Rule/Issue	Commentator	Comment	Proposed Committee Response
		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: (1) The trial court clerk must put any designated exhibits in the clerk's possession into numerical or alphabetical order. The clerk must send the exhibits and two copies of a list of the exhibits to the appellate division when it sends the record under rule 8.872. 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**	

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Rule/Issue	Commentator	Comment	Proposed Committee Response
		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.	

Chapter 3 - Appeals and Records in Misdemeanor Cases

Rule/Issue	Commentator	Comment	Proposed Committee Response
Chapter Heading	Superior Court of San Diego County Mike Roddy Executive Officer	The Invitation also seeks comments regarding the proposed reorganization of the rules and the inclusion of the word "criminal" in chapter titles. The proposed reorganization of the rules is very helpful. We recommend deleting the word "criminal" in chapter titles. The term is redundant in the case of misdemeanors as well as infractions. In addition, most infraction appeals are pursued by unrepresented litigants, many of whom express the need to vindicate their honor as law abiding citizens. The elimination of this word may mitigate that component of the process.	Based on this comment, the committee has revised the chapter headings to eliminate the word 'criminal."
8.851	Appellate Court Committee of the San Diego County Bar Association Lisa Willhelm Cooney Chair	**Rule 8.851** **A. Appointing Counsel in "Any Circumstances"** The Appellate Advisory Committee seeks comments on whether the current standards governing appointment of appellate counsel in misdemeanor cases should be retained, or whether the trial court should be authorized to appoint counsel in any circumstances. Proposed rule 8.851 (a)(1) provides that the Appellate Division must appoint counsel for a defendant convicted of	The committee appreciates these comprehensive comments on the standards governing appointment of counsel and will consider whether to recommend changes to these standards during the next committee year.

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Rule/Issue	Commentator	Comment	Proposed Committee Response
		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 in the manner required in the Courts of Appeal. A defendant is subject to incarceration or a fine—proposed rule 8.851(a)(3) explains—"if the incarceration or fine is in a sentence, is a condition of probation, or may be ordered if the defendant violates probation." In our view, the standard set forth in subsection (A) encompasses nearly every possible category of indigent misdemeanor defendant, except a defendant who is denied a grant of probation and ordered to pay only a fine of less than $500 (including penalty and other assessments). This scenario is unlikely to present itself often, particularly in light of the court's statutory authority to reduce many minor misdemeanor charges to infractions. (Penal Code, § 17, subd. (d).) Under proposed rule 8.851, even this narrow category of defendants must be afforded appointed counsel if the defendant is "likely to suffer significant adverse collateral consequences" due to the conviction. Proposed rule 8.851, however, does not define the phrase "significant adverse collateral consequences." The Appellate Advisory Committee may want to consider adding a definition. For example, "significant adverse collateral consequences" could be defined as consequences	

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Rule/Issue	Commentator	Comment	Proposed Committee Response
		impacting a substantial right, benefit, or privilege, including, but not limited to, a defendant's immigration or employment status and/or his or her driving privileges. Proposed rule 8.851(a)(2) provides that the Appellate Division may appoint counsel, on application, for any other indigent misdemeanor defendant. Thus, taken together, under rule 8.851's various provisions, the Appellate Division is required to appoint counsel in nearly all misdemeanor appeals in which the defendant is indigent, and is otherwise permitted to appoint counsel, on application, in any other misdemeanor appeal where the defendant is indigent. It is unclear from the invitation to comment whether the Appellate Advisory Committee is considering replacing these standards, currently found in rule 8.786, with a single standard authorizing the trial court to appoint counsel in any circumstances. Such a modification would necessitate the removal of the proposed rule's mandatory language, which requires the appointment of appellate counsel to indigent defendants who are subject to substantial fines, incarceration, or other significant adverse consequences. In our view, appointment of appellate counsel for these individuals should continue to be mandatory, whether counsel is actually appointed by the Appellate Division or by the trial court. If the Appellate Advisory Committee is considering adding a new standard, authorizing the trial court, as well as the Appellate Division, to appoint counsel in any circumstances, such a modification does little to serve, in the words of the invitation to comment, "the interests of saving time." Rather, it permits the trial court to appoint	

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Rule/Issue	Commentator	Comment	Proposed Committee Response
		counsel for non-indigent misdemeanor defendants and for misdemeanor defendants who are not subject to substantial fines, incarceration, or other significant adverse consequences. Given the breadth of the standards in their current form, which encompass every category of misdemeanor appeal, as well as the potential for draining the limited resources of the courts and agencies providing legal representation for indigent appellants, we believe such a revision would be ill advised. **B. Standard for Determining Indigency** If the indigency prerequisite for appointed counsel is retained, we think that rule 8.851 should provide a clearer standard for determining whether the defendant is indigent. As proposed, rule 8.851(a)(1)(B) instructs the defendant to "establish[] indigency in the manner required by the Courts of Appeal." In our experience, the standards for establishing indigency in the various Courts of Appeal can vary widely. Nor may the defendant have an easy means to determine the particular benchmark for a particular Court of Appeal. In the interest of uniformity and to explain the standard, rule 8.851 should codify the strictures or requirements for establishing indigency in the Appellate Division. **C. Constitutional and Statutory Right to Counsel** Finally, as to indigent defendants, we question whether rule 8.851 should impose the $500 fine threshold for triggering the mandatory appointment of counsel in cases where a fine is imposed. Although the $500 floor has been in place since the 1990s, it seems inconsistent with the following legal authorities.	Based on this and other comments, the committee has revised its proposal to eliminate the reference to establishing indigency "in the manner required by the Courts of Appeal." Proposed subdivision (b) and the accompanying advisory committee comment already clarify that the defendant must use *Defendant's Financial Statement and Notice to Defendant* (form MC-210) to show indigency. As indicated above, the committee appreciates these comprehensive comments on the standards governing appointment of counsel and will consider whether to recommend changes to these standards during the next committee year.

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Rule/Issue	Commentator	Comment	Proposed Committee Response
		An indigent defendant in a misdemeanor appeal has a constitutional right to court-appointed counsel. Due process and equal protection accord to an indigent the right to appointed counsel on his or her first appeal as of right. (Douglas v. California (1963) 372 U.S. 353, 357 ["where the merits of the one and only appeal an indigent has as of right are decided without benefit of counsel, we think an unconstitutional line has been drawn between rich and poor"]; see also Halbert v. Michigan (2005) 545 U.S. 605 [right to appointed counsel to argue an application for leave to appeal]; Evitts v. Lucey (1985) 469 U.S. 387 [right to effective assistance of counsel on appeal]; Mayer v. Chicago (1971) 404 U.S. 189 and Williams v. Oklahoma City (1969) 395 U.S. 458 [indigent appealing misdemeanor conviction entitled to free transcript regardless of punishment]; Griffin v. Illinois (1956) 351 U.S. 12, 20 [indigent felon's right to free transcript on appeal].) In California, the right to appeal from a misdemeanor conviction is granted by statute. (Pen. Code, § 1466, subd. (2).) Having given the defendant that right, the state is required to provide an indigent the right to appointed counsel. (In re Henderson (1964) 61 Cal.2d 541, 543-544; see also People v. Fields (1965) 62 Cal.2d 538, 542-543; Erwin v. Appellate Department (1983) 146 Cal.App.3d 715, 718; accord, In re Olsen (1986) 176 Cal.App.3d 386 [because defendant has right to effective assistance of counsel on misdemeanor appeal, People v. Wende (1979) 25 Cal.3d 436 applies], cited for this proposition in In re Sade C. (1996) 13 Cal.4th 952, 962; People v. Hackett (1995) 36 Cal.App.4th 1297, 1303; People v. Placencia (1992) 9 Cal.App.4th 422, 426; and People v. Woodard (1986) 184 Cal.App.3d 944, 946.)	

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Rule/Issue	Commentator	Comment	Proposed Committee Response
		Indeed, under California law, a crime's status as a misdemeanor, rather than an infraction, is not affected by the actual or potential punishment. Under Penal Code section 17, subdivision (a), any crime not punishable by imprisonment in state prison or declared an infraction is a misdemeanor. An offense punishable only by a fine is a misdemeanor when the Legislature has not specifically designated it as an infraction. Defendants in such cases are statutorily entitled to appointed counsel at trial. (Pen. Code, § 686; see Tracy v. Municipal Court (1978) 22 Cal.3d 760, 766 [defendant entitled to appointed counsel in trial involving possession of less than an ounce of marijuana, even though subject only to a fine of $100 or less]; see also In re Kevin G. (1985) 40 Cal.3d 644, 648 [minor charged with traffic misdemeanor]; cf. Scott v. Illinois (1979) 440 U.S. 367, 373 [no federal constitutional right to appointed counsel at trial if defendant not punished by incarceration], distinguished in Salas v. Cortez (1979) 24 Cal.3d 22, 27, fn. 2 ["Scott is not the law in California. In this state, a person charged with a misdemeanor has a right to counsel regardless of whether a jail term actually is, or even could be, imposed"].) To conform to these authorities, we suggest revising proposed rule 8.851 to require the appellate division to appoint counsel for indigent appellants in all misdemeanor appeals, upon request.	
8.851	Superior Court of Los Angeles County (no specified individual)	Time would be saved to appoint counsel in the trial courts. If counsel had already been appointed when the record on appeal was sent to the Appellate Division, the matter could immediately proceed to setting briefing dates without going through the process of appointing counsel and delaying the process.	Based on other comments, the committee decided not to recommend altering the current rule to authorize appointment of counsel by the trial court.

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Rule/Issue	Commentator	Comment	Proposed Committee Response
		The trial court should be authorized to appoint counsel to save time and to eliminate confusion. It appears that the proposed misdemeanor forms are based on the assumption that the trial court will appoint counsel on appeal.	
8.851	Superior Court of Sacramento County Dennis B. Jones Executive Officer	The committee requested comments regarding whether the trial court should be permitted to appoint appellate counsel for misdemeanor cases. Comments—Co-extensive authority to appoint counsel could be confusing in courts like Sacramento where the trial court might not have access to the appellate database (ACT) and may not timely inform the appellate division that counsel has already been appointed.	Based on this comment, the committee decided not to recommend altering the current rule to authorize appointment of counsel by the trial court.
8.851	Superior Court of San Diego County Mike Roddy Executive Officer	Appointment of Counsel. [Rule 8.851.] This court requests that any rule addressing this issue define the limits of the court's discretion in the appointment of counsel in misdemeanor cases. To this end, this court requests the Committee's consideration of comments being submitted by the Appellate Court Committee of the San Diego County Bar Association with respect to this rule. If the Committee elects to promulgate a rule authorizing the appointment of counsel "in any circumstances," the rule should be expressly limited to indigent appellants. Regardless of the substance of the rule finally adopted, the words, "in the manner required in the Courts of Appeal" should be deleted from Rule 8.851(a)(1)(B). This court has been advised by our Court of Appeal that they do not have a procedure or "required manner" for presenting such requests other than a form establishing indigency. Proposed Form CR-133 and MC-210 referenced therein appear to serve this purpose.	The committee appreciates the comments submitted by the Appellate Court Committee of the San Diego County Bar Association and will consider whether to recommend any changes in the standards for appointment of counsel during the next committee year. Based on this and other comments, the committee has revised its proposal to eliminate this provision.

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Rule/Issue	Commentator	Comment	Proposed Committee Response
8.854	Amy Carlson McConnell Staff Attorney Appellate Division Superior Court of San Francisco County	Rule 8.854: This rule is basically creating a form of statutory writ to review trial court determinations for stays of execution, orders granting probation, and bail and release conditions. Everyone will apply for this relief if they disagree with the trial court on any of these issues. This will create a lot of work for the appellate division. In addition, the appellate division should not be deciding probation, bail, or release issues because the trial court is really in the best position to determine those items. If the appellate division does decide any of these issues, a subsection should be added to the rule requiring the applicant to submit all reporter's transcripts and documents from the trial court level relating to these issues, just like a writ.	This proposed rule is not intended to create any new authority, but only to implement the appellate division's existing authority to consider requests for such stays. Penal Code section 1467 specifically recognizes the appellate division has authority to stay execution of judgment on appeal. Section 1467 provides, in relevant part: "An appeal from a judgment of conviction [in a misdemeanor or infraction case] does not stay the execution of the judgment in any case unless the trial *or a reviewing court* shall so order." (emphasis added). This rule is intended only to establish the procedure for applying for such a stay in the appellate division. It is modeled on rule 8.312, which similarly implements the Court of Appeal's authority to issue stays of execution in felony matters under Penal Code section 1243. The committee does not believe that the rule in felony cases has been problematic and does not anticipate that similar rules for the appellate division will stimulate a large number of new requests for stays in misdemeanor or infraction cases.
8.865	Superior Court of Sacramento County Dennis B. Jones Executive Officer	Proposed Rule 8.865 specifies that "the reporter's transcript must contain" a number of proceedings including all motions in limine, all instructions given orally, the oral proceedings on any motion for new trial, and all proceedings at sentencing." This proposed rule basically entitles misdemeanor appellants to complete reporter's transcripts without any showing of need for the RT. However, in misdemeanor appeals, the court will provide a reporter's transcript only if the appellant shows indigency and the colorable need for the transcript. (*March v. Municipal Court* (1972) 7 Cal.3d 422, 428.) A bare request	In response to this comment, the committee has revised its proposal to provide that the proceedings listed in rule 8.865 will be included in the reporter's transcript except under certain circumstances, including when the appellate division has ordered or the parties have filed a stipulation under rule 8.860(b) providing that any of these items is not required for proper determination of the appeal. The committee notes that the proposal only provides for free transcripts where the appellant is indigent.

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Rule/Issue	Commentator	Comment	Proposed Committee Response
		by an indigent defendant for a verbatim record on appeal without a statement of the grounds to be raised on appeal or statement of colorable need is insufficient to shift the burden to the state to show that another alternative would be adequate or to trigger the state's obligation to pay for the reporter's transcript. (*Eyrich v. Municipal Court* (1985) 165 Cal.App.3d 1138, 1141.) Not every misdemeanor appeal will raise issues related to jury instructions or closing arguments or sentencing. Therefore, transcripts of these proceedings will not always be necessary. Producing the transcripts described by this rule, regardless of any showing of specific need may result in wasted resources.	The committee acknowledges that caselaw indicates a court is not constitutionally required, at the time of an appeal, to provide a transcript or other verbatim record of the trial court proceedings unless the appellant shows a colorable need for that transcript or record. However, this caselaw does not prevent the court, or the judicial branch as a whole, from choosing to provide transcripts or verbatim records in additional circumstances. For example, since the 1920's, the state has chosen to provide reporter's transcripts to all defendants in felony appeals, regardless of whether they are indigent. In the misdemeanor context, a court might conclude, for example, that preparing such transcripts if requested by the appellant will be more efficient and cost-effective than holding a hearing concerning whether an appellant has shown a colorable need for the transcript. The current appellate division rules provide that an appellant can simply notify the court, as part of the appellant's a proposed statement on appeal, that he/she intends to use a reporter's transcript. The current rules do not indicate that the appellant must make any showing of colorable need for the transcript nor do they indicate that a non-indigent appellant must pay for a transcript. To the extent that courts are requiring a showing of colorable need before providing a transcript requested by an appellant in a criminal case, they are doing so under local rules or procedures. The new rules proposed by the committee will allow courts to continue these local practices.

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Rule/Issue	Commentator	Comment	Proposed Committee Response
8.865	Superior Court of San Diego County Mike Roddy Executive Officer	Rule 8.865. Contents of reporter's transcript. Recommend deleting "and motions under Penal Code section 995" in subs.(9)(A) since such motions are not filed in these cases. The same correction is needed in Rule 8.895(7)(A).	Based on this comment, the committee has revised its proposal to eliminate the reference to Penal Code 995 motions in this rule.
8.872	Superior Court of San Diego County Mike Roddy Executive Officer	Rule 8.872. Sending and filing the record… Recommend replacing "prosecuting attorney" with "respondent" in subs.(b)(3). The rule as currently worded appears to assume defendants are always the appellants.	Based on this comment, the committee has revised its proposal to replace the reference to prosecuting attorney" in this proposed rule with "respondent."

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Chapter 4 - Briefs, Hearing, and Decision in Civil and Criminal Appeals
(Note – As circulated for public comment, this chapter was chapter 5 and the rules were numbered as rules 8.910-8.921)

Rule/Issue	Commentator	Comment	Proposed Committee Response
Briefs – Time for Filing Rule 8.882 (8.912 as circulated for comment)	Jamie Morell Senior Research Attorney Superior Court of Orange County	Rule 8.912(a): Lengthening the time for filing briefs is unnecessary in light of the liberal availability of extensions of time when needed, and undesirable in light of the goal of expediting appellate division appeals (which are generally less complex than Court of Appeal cases).	It is the committee's understanding that different appellate divisions have different practices with regard to extensions of time. Some appellate divisions may not liberally grant these extensions. The committee believes that the additional briefing time will be helpful to self-represented litigants and attorneys, will reduce the need for parties to seek and the court to consider requests for extensions of time, and will reduce the number of defaults for failure to timely file a brief.
Briefs – Time for Filing Rule 8.882 (8.912 as circulated for comment)	Orange County Bar Association Joseph L. Chairez President	The parties should be permitted, as is the case in the court of appeal, to stipulate to additional time to file briefs (rule 8.912).	This would be a policy change that was not circulated for public comment. The committee will consider this suggestion during the next committee year.
Briefs – Time for Filing Rule 8.882 (8.912 as circulated for comment)	Superior Court of Sacramento County Dennis B. Jones Executive Officer	Proposed Rule 8.912 radically changes briefing practices in the appellate division. Proposed Rule 8.912 extends the current briefing schedule from 50 days to 80 days. Proposed rule 8.912(b) requires the clerk to "promptly notify the party by mail" if appellant or respondent fails to timely file an opening brief, and to notify the party that they have an additional 15 or 30 days to file the brief. i) Currently, the Sacramento clerk's office does not send a notice of default if a respondent fails to file an opening brief. In most Sacramento traffic appeals, the People do not file respondents' brief. In addition, in Sacramento, the People do not file respondents' briefs when the appellant	The committee believes that the additional basic briefing time, notice of default, and grace period to cure the default will be helpful to self-represented litigants and attorneys, will reduce the need for parties to seek and the court to consider requests for extensions of time, and will reduce the number of defaults for failure to timely file a brief. In response to this comment, the committee has modified its proposal to eliminate the requirement that the court notify the respondent when the respondent is the prosecuting attorney.

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Rule/Issue	Commentator	Comment	Proposed Committee Response
		has filed a *Wende* brief. Therefore, in Sacramento, this proposed change will create a new clerk's responsibility with regard to all respondents' briefs. In addition, it will require the clerk to issue a pointless notice with regard to respondents' briefs in traffic and *Wende* appeals. ii) In addition, according to proposed rule 8.802, the word "must" is mandatory. Proposed rule 8.912 states that "The appellant must serve and file an appellant's opening brief within 30 days ..." and "Any respondent's brief must be served and filed within 30 days..." However, if the parties fail to timely file their briefs, the only consequence is that the clerk "must" inform them that they have 15 (or 30) more days to file the brief. Because the parties suffer no consequence for failing to timely file a brief, use of the word "must" appears improper with regard to the parties' obligation to timely file a brief by the first deadline. iii) In addition, under proposed rule 8.912(b), in criminal cases, the Appellate Division will have a new responsibility of relieving counsel and appointing new counsel if the appellant/defendant fails to timely file the brief after the clerk's warning notice. In Sacramento, the list of appointed counsel for misdemeanor appeals is small and appointing new counsel would be cumbersome.	This language, including the use of "must" in these provisions, is modeled on language from rules 8.212 and 8.360 applicable, respectively, to briefs in civil and felony appeals in the Courts of Appeal. The committee believes that the use of "must" is appropriate here. At the point that the clerk sends the notice required under rule 8.882(b) (8.912(b) as circulated for comment), the party is technically in default for failure to meet the required deadline for filing the brief but is given a grace period to cure that default. This language is modeled on language from rule 8.360 applicable to briefs in felony appeals in the Courts of Appeal. Effective January 1, 2008, rule 8.360 was amended to clarify that imposition of the sanctions is permissive. The committee has also revised this proposal to similarly clarify that the imposition of sanctions is permissive - that the court can choose to take other action if it believes that is appropriate. The committee continues to believe that relieving appointed counsel, rather than dismissing a criminal defendant's appeal, is the appropriate ultimate sanction if appointed counsel has failed to file a brief and thus is not providing effective representation.

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Rule/Issue	Commentator	Comment	Proposed Committee Response
		iv) As discussed above, under the proposed rule, the briefing schedule is initially expanded from 50 days to 80 days by proposed rule 8.912(a). Then, because it is likely that the parties will utilize the non-punitive automatic relief from default provided in proposed rule 8.912(b), the briefing schedule in civil appeals is expanded to 110 days and for criminal appeals, a whopping 140 days. This more than doubles the briefing schedule for civil appeals and almost triples the briefing schedule for criminal appeals. In this court's experience, such extreme expansion of the briefing schedule is unnecessary. Moreover, nothing in subdivision (b) precludes obtaining more relief from default if briefs are not timely filed, even after the clerk's warning notice, because the proposed rule uses "will" rather than "must" when it describes the consequences to the parties if they fail to timely file a brief after the clerk's warning. Therefore, this proposed rule change seems to encourage inefficient resolution of appeals.	The committee believes that both the additional briefing time and the default notice procedure will be helpful to self-represented litigants and attorneys, will reduce the need for parties to seek and the court to consider requests for extensions of time, and will reduce the number of defaults for failure to timely file a brief. Rule 8.882(b) (8.912(b) as circulated for comment), is modeled on rules 8.212 and 8.360 applicable, respectively, to briefs in civil and felony appeals in the Courts of Appeal. Effective January 1, 2008, these rules were amended – the "will" in the sanctions provision was replaced with "may" to clarify that imposition of the sanctions is permissive. The committee has also revised this proposal to similarly clarify that the imposition of sanctions is permissive - that the court can choose to take other action if it believes that is appropriate.
Briefs – Copies Rule 8.882 (8.912 as circulated for comment)	Amy Carlson McConnell Staff Attorney Appellate Division Superior Court of San Francisco County	Rule 8.912(d)(2): Because many courts possess local rules requiring courtesy copies, why stress that those copies are not required unless a local rule provides as much. Many pro per Appellants will not know the local rules or how to access them, so this proposed rule seems to raise more confusion than if it did not exist at all.	The committee believes that the rules should address the number of copies to be filed. This rule provides litigants with the default number and alerts them that they should check with the court to determine if any additional copies are necessary.
Briefs – Length Rule 8.883 (8.913 as circulated for comment)	Amy Carlson McConnell Staff Attorney Appellate Division Superior Court of San Francisco County	Rule 8.913(b)(4): The language in this proposed rule stating, "A lengthy record or numerous or complex issues on appeal will ordinarily constitute good cause" seems to limit the presiding judge's discretion on this issue. Most appellants think their appeals are complex. Stating "A lengthy record or numerous or complex issues on appeal	The proposed language is not intended to limit the presiding judge's discretion. If the presiding judge does not consider a matter complex, he or she need not grant the extension.

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Rule/Issue	Commentator	Comment	Proposed Committee Response
		may constitute good cause" will give the presiding judge more discretion and deference over such applications.	
Briefs – Length Rule 8.883 (8.913 as circulated for comment)	Jamie Morell Senior Research Attorney Superior Court of Orange County	Rule 8.913(b)(1): The need for a word limit is unclear. Word limitation seems unduly burdensome as well as (practically) unenforceable—a page limit has always sufficed. Rule 8.913(b)(2): Fifteen pages has almost always proven sufficient, and requests to file oversize briefs are liberally granted when requested (rarely). Inasmuch as attorneys are prone to maximizing their opportunity to argue, the proposed 20-page limit would likely add 15 pages of unnecessary reading on a fully briefed appeal.	The word count limit is modeled on rule 8.204 applicable to briefs in the Court of Appeal. The committee understands that this approach has not been problematic in those Courts and that it helps address some of the gamesmanship that may occur in terms of formatting in order to squeeze more text into a page-based length limit. It is the committee's understanding that different appellate divisions have different practices with regard to granting over-length briefs. Some may not liberally grant these exceptions. However, in response to this and other comments, the committee has revised its proposal to retain the shorter 15-page brief limit for infraction appeals.
Briefs – Length Rule 8.883 (8.913 as circulated for comment)	Superior Court of Sacramento County Dennis B. Jones Executive Officer	Proposed rule 8.913 increases the page limit for briefs from 15 pages to 20 pages. In Sacramento, requests for permission to file oversized briefs are not common. In this court's experience, this change is unnecessary.	It is the committee's understanding that different appellate divisions have different practices with regard to granting over-length briefs. Some may not liberally grant these exceptions. However, in response to this and other comments, the committee has revised its proposal to retain the shorter 15-page brief limit for infraction appeals.
Briefs – Format Rule 8.883 (8.913 as circulated for comment)	Jamie Morell Senior Research Attorney Superior Court of Orange County	Rule 8.913(a): Tables of contents and authorities can occasionally be useful.	In response to this and other comments, the committee has revised its proposal to provide that if the appellate division grants an application to file a longer brief, it may order that the brief include a table of contents and table of authorities.

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Rule/Issue	Commentator	Comment	Proposed Committee Response
		Rule 8.913(c)(5): The numbering of text lines has proven very useful when reference to a specific portion of a brief is necessary—at least, line numbering should not be prohibited. (Please!)	Based on this comment, the committee has revised its proposal to eliminate this prohibition.
Briefs – Format Rule 8.883 (8.913 as circulated for comment)	Superior Court of San Diego County Mike Roddy Executive Officer	Rule 8.913. Contents and form of briefs. It would be helpful if a table of contents and a table of authorities were required for all briefs exceeding 3,400 words or 10 typewritten pages.	In response to this and other comments, the committee has revised its proposal to provide that if the appellate division grants an application to file a longer brief, it may order that the brief include a table of contents and table of authorities.
Briefs – Noncomplying Rule 8.883 (8.913 as circulated for comment)	Amy Carlson McConnell Staff Attorney Appellate Division Superior Court of San Francisco County	Rule 8.913(d)(1)–(2): Subdivision (1) should be revised to state, "The reviewing court clerk must decline to file it." Subdivision (2) should be omitted entirely. The proposed rule, as written, invites people, including attorneys, to disregard the rules on contents and form of briefs and for the presiding judge to have to spend a lot of time making exceptions for people who choose to disregard the rules. Why have the rules if parties are not required to follow them?	This rule, which is modeled on rule 8.204 relating to briefs in civil appeals in the Court of Appeal, is designed to give the clerk and the presiding judge discretion to take the most appropriate action in a given case. The rule allows the clerk to decline to file a brief if that is appropriate. If an attorney or litigant knowingly violates the rules, the court always has the ability to sanction the attorney or litigant under proposed rule 8.891.
Briefs – Noncomplying Rule 8.883 (8.913 as circulated for comment)	Jamie Morell Senior Research Attorney Superior Court of Orange County	Rule 8.883(e): Why should the appellate division not be permitted to reject (at the filing window) briefs which do not comply with the rules? It is certainly more burdensome to attempt to enforce the rule requirements once filing has occurred.	Subdivision (d)(1) permits the clerk to decline to file a non-conforming brief.
Briefs – Rule 8.884 (8.914 as circulated for comment)	Superior Court of San Diego County Mike Roddy Executive Officer	Rule 8.914. [Cross appeals]. The reason for the reference to Rule 8.882(a) in subs.(a)(2) is unclear. Did the Committee intend to reference Rule 8.912(a) instead?	The committee has revised its proposal to correct this cross-reference.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

Rule/Issue	Commentator	Comment	Proposed Committee Response
Oral Argument - Calendaring Rule 8.885 (8.915 as circulated for comment)	Jamie Morell Senior Research Attorney Superior Court of Orange County	In addition, permitting the reply brief to be filed as few as 10 days prior to the hearing (proposed rule 8.915(a)) could unnecessarily constrain case preparation within the appellate division (in Orange County, for example, the deadline for the appellate research attorneys to submit worked up cases to the appellate panel is six days prior to oral argument, which is ordinarily heard on the last Thursday of the month).	The intent of proposed rule 8.885 (8.915 as circulated for comment) is that cases that have been fully briefed or in which the time for filing all briefs has past at least 30 days before a scheduled oral argument session be set for argument at that session. The committee has revised its proposal to try to make this intent clearer and has also lengthened the period after full briefing to 45 days in order to provide the court more time to prepare for oral argument. Thus there would be a minimum of 45 days between when the last brief is filed and when a case heard.
Oral Argument - Calendaring Rule 8.885 (8.915 as circulated for comment)	Superior Court of Los Angeles County (no specified individual)	The new procedure regarding calendaring of all appeal matters that have been fully briefed may create a burden on the appellate judges. At present, there is a list of cases prepared that are ready for oral argument. The judges draw from that list, a specific number of cases per judge for the upcoming calendar. The last list prepared for the draw had approximately 80 appeals briefed and ready for oral argument. A new procedure would have to be worked out in order to set all of these matters for calendar.	It is possible that this new rule would require adjustments in the courts' calendaring practices. The committee believes, however, that the proposed rule will provide more flexibility that the current rule, which requires the court to set a calendar every month. The proposed rule also allows the court to order a case to be heard on a different calendar.
Oral Argument - Calendaring Rule 8.885 (8.915 as circulated for comment)	Superior Court of Sacramento County Dennis B. Jones Executive Officer	Under proposed rule 8.915(a), "unless otherwise ordered" appeals "must be placed on the calendar" of the closest session that accommodates thirty days after the briefing schedule expires. This rule mandates that the clerk always schedule appeals for a particular calendar absent an order from the court. Comments—The Sacramento Appellate Division already schedules appeals to be heard at the closest session that accommodates the briefing schedule plus thirty days. However, on occasion, appeals are scheduled for other sessions. The proposed rule would require a court order to place an appeal on a calendar other than the one thirty days	This language is based on current appellate division rule 8.704, which provides that "unless otherwise ordered" the clerk "shall" place on the calendar all appeals in which the record is filed not less than 50 days before the scheduled session. In order to ensure that cases are heard promptly, the committee believes that it is appropriate to require that cases ordinarily be placed on the next calendar after they are fully briefed. Like the current rule, however, the proposed rule also provides the courts with flexibility to set matters on another calendar if

Rule/Issue	Commentator	Comment	Proposed Committee Response
		after the briefing schedule. This formality seems unnecessary. The proposed rule should utilize "will" or "shall" rather than "must."	needed.
		Under proposed new rule 8.915(b), the clerk will send out the notice of hearing only after the briefing schedule has expired. As discussed above, under the new briefing rules, parties are entitled to one automatic relief from default. Therefore, the date that the briefing schedule will expire is fluid and it is impossible for the court to predict how many cases are scheduled for a particular session until thirty days before that session. This could cause last minute congestion.	The new grace period would need to be taken into account in determining whether the time to file an appellant's opening brief or respondent's brief had expired, and thus when any reply brief was due. To provide the court more time to plan for oral argument, the committee has modified its proposal to lengthen the minimum period between full briefing and oral argument to 45 days.
		The current rules give the Appellate Division more notice of how many cases are scheduled for each session and allow the Appellate Division to better plan for upcoming workload. For instance, under the current rules, the Sacramento clerk's office issues a notice of hearing when the record is complete and transmitted. Therefore, the court can estimate of the number of appeals scheduled for any calendar approximately 80 days in advance. In order to allow the Appellate Division to plan for its workload, proposed rule 8.915(b) should be amended to allow the clerk to issue the notice of hearing once the record is transmitted. However, because parties will likely utilize the non-punitive automatic relief from default provision of proposed rule 8.912(b), and because proposed rule 8.912 (a) already expands the initial briefing schedule from 50 days to 80 days, the hearing date would be much later than what Sacramento currently sets. Civil cases would be set on the closest calendar after 140 days (80+15+15+30), and criminal cases for the closest calendar	It is the committee's understanding that, in many courts, scheduling oral argument based on when the record was filed resulted in less predictability because many cases were not briefed at all or not briefed in time for the oral argument date. The committee therefore believes that setting oral argument after cases are fully briefed should increase predictability and the courts' ability to plan their calendars. However, as noted above, the committee has modified its proposal to lengthen the period after full briefing to 45 days in order to provide the court more time to plan for oral argument.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

Rule/Issue	Commentator	Comment	Proposed Committee Response
		after 170 (80+30+30+30) days. This is the practical result of the briefing schedule expansion proposed in rule 8.912.	
Oral Argument - Calendaring Rule 8.885 (8.915 as circulated for comment)	Superior Court of San Diego County Mike Roddy Executive Officer	Rule 8.915. Oral argument. Recommended modification to last sentence of subs.(a): "By order of the presiding judge or for the appellate division, any appeal may be placed…"	The committee has revised its proposal as suggested by this commentator.
Oral Argument - Length Rule 8.885 (8.915 as circulated for comment)	Jamie Morell Senior Research Attorney Superior Court of Orange County	Rule 8.915(d)(2): The time limitation on argument seems unnecessary (the presiding judge can terminate oral argument when necessary), undesirable (particularly when the panel judges have significant questions about a case), and arbitrary.	The committee believes it is helpful to litigants, particularly self-represented litigants to understand the general expectation about the typical length of oral argument. Without such an understanding, litigants may think they have an unlimited opportunity to address the court and could be dissatisfied with the judicial process if the judge limits oral argument. As provided in the rule, the court can always order a different amount of time where appropriate. Note that in response to other comments, the committee has revised its proposal to provide for 10 minutes of oral argument in limited civil and misdemeanor appeals and 5 minutes in infraction appeals.
Oral Argument - Length Rule 8.885 (8.915 as circulated for comment)	Superior Court of San Diego County Mike Roddy Executive Officer	With respect to subs.(d), it is this court's experience that 5 minutes per side is more than adequate for oral argument in infractions and most other cases heard on the appellate division calendar. While this court recognizes that the rule gives it discretion to limit the time for argument, the 15 minutes proposed in the rule creates a presumption that 15 minutes is a reasonable standard. We request that the time be reduced to 5 minutes per side in infractions and 10 minutes per side in other cases. The adoption of this change	Based on this comment, the committee has revised its proposal to provide for 10 minutes of oral argument in limited civil and misdemeanor appeals and 5 minutes in infraction appeals.

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Rule/Issue	Commentator	Comment	Proposed Committee Response
		would require corresponding modifications to Forms APP-101-INFO, CR-131 & CR-141.	
Decisions – Rule 8.887 (8.917 as circulated for comment)	Appellate Court Committee of the San Diego County Bar Association Lisa Willhelm Cooney Chair	As proposed, rule 8.917(a) would provide: "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." While this rule reflects current rule 8.707(b), for several reasons, we believe that litigants, upon request, should be able to receive a memorandum decision in all matters before the Appellate Division except infraction case. This would improve the appearance to litigants that they are receiving full and fair process and would also create a better record for the Court of Appeal in cases involving more vexing issues. At present, a written opinion is not required. In many circumstances, however, a simple "AFFIRMED" or "REVERSED" can leave the parties, and the trial court if further proceedings are necessary, uncertain about the issues that have been decided on appeal. For example, if an appellant raises four claims of error before the Appellate Division, consisting of three substantive assertions and the denial of his or her motion for attorney fees, and the result is "REVERSED," does this mean the appellant necessarily is entitled to a fee award on remand? Or, would it mean the judgment on review was reversed on one of the substantive grounds, without reaching the question of entitlement to fees? In this scenario—a real one, in our experience—the parties and the court below are left to speculate because the Appellate Division has set aside the ruling without clear guidance on what should happen next. Additionally, without a written decision, it is difficult for the Court of Appeal to determine whether or not transfer of the matter is necessary or appropriate, pursuant to rule 8.1002, to secure uniformity	This would be an important policy change that was not circulated for public comment. The committee will consider this suggestion during the next committee year.

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Rule/Issue	Commentator	Comment	Proposed Committee Response
		of decision or to settle an important question of law. An objection to requiring written opinions may be that such opinions would be too time consuming. There are two answers to this objection. First, presumably the court has some written summary of the case and recommended disposition at the time of oral argument. This could fairly easily be revised for a written opinion, particularly if the court knew ahead of time that the parties desire a written determination. Second, many superior courts, in disposing of law and motion matters, provide at least some written explanation for the ruling. The Appellate Division should be able to provide at least the same level of analysis, particularly when important issues are involved. To be sure, in some appeals before the Appellate Division, a lengthy explication of reasons may not be a sound use of judicial resources. We suggest that infraction cases be excluded on this basis Further, some pro per appellants prefer to hear the disposition of their case from the bench as opposed to waiting for a written decision. However, in other types matters, we believe parties should be able to request a memorandum decision, concisely setting forth the reasons for the outcome. We use the adjective "memorandum" deliberately, so that Appellate Division judges are not obligated to write lengthy opinions. If our suggestion is adopted, litigants in the Appellate Division will need to be prominently advised of the requirement to make a request. They could be advised in the "Notice of Hearing," for instance, that any request for a memorandum decision must be made within 15 days of the date of the notice. In our view, the request should come no later, and ideally well before, submission of the cause.	

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Rule/Issue	Commentator	Comment	Proposed Committee Response
Decisions – Rule 8.887 (8.917 as circulated for comment)	Public Counsel Law Center, et. al	Rule 8.917(a): Mirroring current rule 8.707(b), the proposed rule does not require appellate division judges to prepare written opinions when deciding appeals, and instead gives them the option of preparing opinions "when they deem it advisable or in the public interest." We believe the rule should be modified to create a presumption, particularly in cases affecting important rights such as housing and public benefits, that the appellate division judges will prepare a written opinion explaining their reasoning in resolving the appeal.	This would be an important policy change that was not circulated for public comment. The committee will consider this suggestion during the next committee year.
Rehearing – Rule 8.889 (8.919 as circulated for comment)	Amy Carlson McConnell Staff Attorney Appellate Division Superior Court of San Francisco County	Rule 8.919(b)(2): This proposed rule should allow a party to file an answer without the court requesting them to do so. In addition. the rule does not provide much time for the court to request an answer, consider the answer 8 days later, and then decide the application for rehearing given that a party may request a rehearing up to 15 days after the judgment is filed and the court must decide whether to order a rehearing within 30 days after the judgment is filed.	This requirement is based on rule 8.268 relating to petitions for rehearing in the Courts of Appeal. This provision was adopted to address concerns about litigants and counsel expending time and resources preparing answers to petitions for rehearing when these were not necessary for the court to make its decision. The time available for a court to consider a petition for rehearing is limited because the court must act on any such petition before the decision becomes final in that court. The timeframe provided is intended to balance the time needed for a party to appropriately consider whether to filed a petition for rehearing and to prepare the petition and the time for the court to consider such a petition.
Rehearing – Rule 8.889 (8.919 as circulated for comment)	Jamie Morell Senior Research Attorney Superior Court of Orange County	Rule 8.919(b)(2): Requiring authorization for the filing of answers to petitions for rehearing would seem to be unnecessary, impractical (there are normally only 15 days to decide whether to order rehearing), unwise, and (arguably) violative of due process.	Please see response to the comment of Amy McConnell immediately above.

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Rule/Issue	Commentator	Comment	Proposed Committee Response
Rehearing – Rule 8.889 (8.919 as circulated for comment)	Public Counsel Law Center, et. al	Rule 8.919: We suggest that subdivision (b) contain a provision, similar to rule 8.268(b)(4), specifically allowing the presiding appellate division judge to relieve a party from failure to file a timely petition for rehearing or answer to petition for rehearing.	The committee has revised its proposal to include a provision similar to rule 8.268(b)(4).
Rehearing – Rule 8.889 (8.919 as circulated for comment)	Superior Court of San Diego County Mike Roddy Executive Officer	Rule 8.919. Rehearing. Recommended edit: Delete "on filing" at end of subs.(a)(1). The references to Rule 8.888 in subs.(b) appear to be incorrect. Did the Committee intend to reference Rule 8.918 instead? The reference to Rule 8.883 in subs.(b)(3) also appears to be in error.	This provision is based on the language in rule 8.268 and makes petitions for rehearing unavailable for those decisions that are final on filing, such as a summary denial of a writ petition (see proposed rule 8.888(a)(3)). The committee has revised its proposal to correct the cross-reference to the appropriate rule numbers.
Costs – Rule 8.891 (8.921 as circulated for comment)	Jamie Morell Senior Research Attorney Superior Court of Orange County	Rule 8.921(a)(2): It has not been our practice to identify prevailing parties on civil appeals, and we should not be precluded from relying on the well established "default" definition merely because other courts have elected to include such identification in their decisions.	The committee has revised its proposal to include the "default" definitions of prevailing party.
Costs – Rule 8.891 (8.921 as circulated)	Superior Court of San Diego County Mike Roddy Executive Officer	Rule 8.921. Costs and sanctions in civil appeals. It appears the reference to Rule 3.1702 in subs.(d)(1) should be to Rule 3.1700.	Since this provision is referring to claiming attorneys' fees, the reference to rule 3.1702 is appropriate.

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Chapter 5 - Appeals and Records in Infraction Cases
(Note – As circulated for public comment, this chapter was chapter 4 and the rules were numbered as rules 8.880-8.902)

Rule/Issue	Commentator	Comment	Proposed Committee Response
General	Jamie Morell Senior Research Attorney Superior Court of Orange County	Given the massive overlap, I see little advantage in having a separate chapter devoted to infraction appeals. It would be somewhat burdensome (for the court, as well as the parties) to have to utilize a parallel set of rules in such appeals.	There are important differences in the rights and procedures in misdemeanors and infractions that impact appellate procedure, including that there is no right to appointed counsel or a jury trial in infractions. Based on other comments, the committee has also revised its proposal so that there are additional differences in the proposed procedures for infractions and misdemeanors, including differences in the time for filing the notice of appeal, the time for filing briefs, and the length of briefs and oral argument. Given these differences, the committee believes that it will be easier for litigants in infraction proceedings, who are typically self-represented, to understand the rules applicable in infraction proceedings if these rules are separated out into their own chapter. The Traffic Advisory Committee also specifically recommended that the infraction rules be in a separate chapter when it reviewed a preliminary draft of the proposal before it was circulated for public comment.
General	Hon. Sharon Waters Superior Court of Riverside County	I remain hopeful that someday we will find a way to take traffic out of the appellate division completely. The vast majority of the appellants in traffic appeals appear to want an independent review of the evidence submitted at trial and do not understand the substantial evidence principle. They leave the process convinced that we are simply protecting a colleague or law enforcement. Public trust and confidence in the judicial branch is harmed. I hope the appellate advisory committee will continue to explore ways to give these litigants something more akin to the trial de novo	No response required.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

Rule/Issue	Commentator	Comment	Proposed Committee Response
		available to small claims litigants—perhaps by use of a videotape of the proceedings and specific authority to review such a record under the independent review standard. Something like might give the traffic litigants the fresh look at the evidence they seem to want while not burdening law enforcement with having to appear twice on each case.	
8.901 (8.881 as circulated for comment)	Superior Court of San Diego County Mike Roddy Executive Officer	Rule 8.881. Notice of appeal. Recommend deleting "appointed" in subs.(b)(2) since counsel are not appointed in these cases.	As suggested by the commentator, the committee has revised its proposal to delete this reference from this proposed rule.
8.902 (8.882 as circulated for comment)	Jamie Morell Senior Research Attorney Superior Court of Orange County	Rule 8.882(e): Shouldn't this be eliminated, since infractions are not custodial offenses?	Although infractions are not custodial offenses, a defendant in an infraction case could be in custody on other charges. The committee therefore believes that this provision should not be deleted.
8.904 (8.884 as circulated for comment)	Jamie Morell Senior Research Attorney Superior Court of Orange County	Rule 8.884(b): It would be helpful to clarify where abandonments and requests for dismissal (or stipulations thereon) are to be filed if the record has previously been filed with the appellate division but the matter is on remand to the trial court (e.g., for augmentation of the record on appeal) when the filing occurs. Rule 8.884(b)(2): Abandonment of criminal appeals should not require appellate division approval ("may dismiss"), inasmuch as there is no issue of costs or attorney fees involved in criminal appeals and the appellate division has little interest in perpetuating unnecessary cases. (See current rule 8.790, requiring that criminal appeals "shall" be dismissed upon the filing of a written abandonment in the appellate division.)	The committee has modified its proposal to require that all abandonments be filed in the appellate division. If the trial court is working on an augmentation request at the time an abandonment is filed, the appellate division should, of course, notify the trial court so that they can avoid unnecessary work on that request. This provision is modeled on rule 8.316 relating to felony appeals. Rule 8.316 also provides that the court "may" dismiss felony appeals. The committee therefore believes that it is appropriate to use this same language in connection with misdemeanor appeals.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

Rule/Issue	Commentator	Comment	Proposed Committee Response
8.913 (8.892 as circulated for comment)	Leonard D. Goldkind Commissioner Butte County Superior Court	The prosecuting attorney's office must be notified of appeals because, at least in this county, they appear on all traffic appeals.	The prosecuting attorney will receive a copy of the notice of appeal under rule 8.901(b). The committee has also modified its proposal so that the prosecuting attorney will receive the notice designating the record of the oral proceedings under rule 8.894 and the record unless he or she serves and files a notice that he or she does not want to receive the record (see proposed new rule 8.911)
8.913 (8.892 as circulated for comment)	Superior Court of Los Angeles County (no specified individual)	A copy of the record should continue to be given to the prosecuting agencies when the prosecuting agency does not appear in the trial court proceedings. We have a great problem now with the prosecuting agencies requesting copies of records on appeal. It is not customary for a prosecuting agency to be present in the trial court when hearing infraction matters. This does not mean that the appellate branch of these prosecuting agencies are not going to prosecute the appeal, they usually do. Therefore, they do need a copy of the record. If not furnished to them by the trial courts, the prosecuting agencies will be seeking the Appellate Division to provide them with these copies, and it overburdens the appellate staff.	The committee has modified its proposal so that the prosecuting attorney will receive the record unless he or she serves and files a notice that he or she does not want to receive the record. (see proposed new rule 8.911)
8.913 (8.892 as circulated for comment)	Superior Court of San Diego County Mike Roddy Executive Officer	Copies of the Record. [Rules 8.892, 8.893 & 8.901.] This court does not object to the provisions of Rule 8.892(c), which provide that a copy of the clerk's transcript would not be sent to a prosecuting attorney that did not appear in the case unless it was requested. The prosecuting attorneys in this county do not typically appear at infraction trials. Thankfully, however, they usually participate in the appellate process. Local prosecutors expressed concern over having to submit a request for a copy of the clerk's	The committee has modified its proposal so that the prosecuting attorney will receive the record unless he or she serves and files a notice that he or she does not want to receive the record. (see proposed new rule 8.911)

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Rule/Issue	Commentator	Comment	Proposed Committee Response
		transcript in every infraction appeal. It would be helpful if the rule included a provision permitting blanket requests by prosecuting agencies to eliminate this concern. Rules 8.893(c) & 8.901 raise similar or related issues. See also comment to Rule 8.899 below.	
8.915 (8.894 as circulated for comment)	Amy Carlson McConnell Staff Attorney Appellate Division Superior Court of San Francisco County	Rule 8.894(c)(1): Hearings for infractions are almost never recorded, so the trial court clerk is going to spend a lot of time explaining to pro per Appellants that their hearings were not recorded.	Based on this comment, the committee has revised the proposal in several ways: (1) The order of the record options has been reversed in both the rule and accompanying form for designating the record in infraction proceedings, so that the statement on appeal is listed as the first option and a transcript is listed as the last option; (2) An advisory committee comment has been added suggesting that the trial court inform litigants about whether their proceedings were recorded by a court reporter or officially electronically recorded as part of any information that the court provides concerning appeals from these proceedings; and (3) The forms for designating the record have been further revised to encourage appellants to check with the trial court before selecting either a transcript or an official electronic recording as their record option.
8.915 (8.894 as circulated for comment)	Jamie Morell Senior Research Attorney Superior Court of Orange County	Rule 8.894(a)(1)–(2): Requiring infraction appellants (who are generally in pro per and unaware of trial court arrangements with regard to production of a verbatim record) to make an "election" between a reporter's transcript and a transcript prepared from an electronic recording seems unnecessary and potentially confusing, and could result in unintended waiver of a verbatim transcript—would any trial court have both a court reporter and electronic recording of infraction proceedings??	In response to this comment, the committee has revised its proposal to try to clarify that, in a particular case, the proceedings may have been recorded either by a court reporter or by electronic recording, but not by both.

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Rule/Issue	Commentator	Comment	Proposed Committee Response
8.916 (8.899 as circulated for comment)	Superior Court of San Diego County Mike Roddy Executive Officer	Rule 8.899. Statement on appeal. As noted in the discussion above regarding rules pertaining to copies of the record, prosecutors in this county routinely participate in appeals even though they did not appear at trial. The following modification to subs.(b)(1) of this rule is recommended: "If the defendant is the appellant and the prosecuting attorney either appeared in the case or a local rule so requires, the defendant must serve a copy of the proposed statement on the prosecuting attorney." The proposed modification addresses the problem faced by prosecutors in counties that do not appear at trial, but participate in the appellate process. In the absence of such a provision, the prosecuting attorney respondents will be unable to file proposed amendments contemplated by subs.(d). Alternatively, a provision could be added to subs.(b) requiring court clerks to forward copies of proposed statements to prosecuting attorneys that have requested copies of clerk's transcripts or trial court file indices pursuant to Rules 8.892(c) or 8.893(c). The following addition to subs.(e) is also recommended: "If the prosecuting attorney did not appear at the trial or request a copy of the clerk's transcript under Rule 8.892(c) or the index of the court file under Rule 8.893(c), the clerk will not send a copy of the statement to the prosecuting attorney."	As noted in response to other comments from the San Diego Superior Court, the committee has revised its proposal so that the prosecuting attorney will receive the appellant's election concerning the record and will also receive a copy of the record unless the prosecuting attorney serves and files a notice indicating that he/she does not want to receive the record. The committee also considered, but ultimately decided not to recommend these additional suggested changes requiring prosecuting attorneys who were not present for the trial court proceedings to receive proposed statements on appeal. The committee believes that, at this stage in the development of the statement on appeal, the purpose of sending a proposed statement on appeal to others is so that they can review it and determine, based on their own recollection of those proceedings, whether the statement accurately reflects what happened. If a prosecuting attorney did not participate in the trial court proceedings, then that attorney has no personal recollection of the proceedings to use as a basis for suggesting corrections.
8.917 (8.898 as circulated for comment)	Superior Court of San Diego County Mike Roddy Executive Officer	Rule 8.898. Record when trial proceedings … electronically reported. There appears to be a typo/missing word in the first line of subs.(d)(2)(A). It appears "the flies" should read "the appellant files."	The committee has revised its proposal to correct this error.

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Rule/Issue	Commentator	Comment	Proposed Committee Response
8.922 (8.902 as circulated for comment)	Superior Court of San Diego County Mike Roddy Executive Officer	Rule 8.902. Augmenting … record. Subs.(c) refers back to Rule 8.873, which in turn refers back to Rule 8.841. Unless the Committee had a reason for referring back to Rule 8.873, it appears referencing Rule 8.841 in both rules would be more appropriate.	Based on this comment, the committee has revised its proposal to change this cross-reference as suggested by the commentator.

Chapter 6 – Writ Proceedings

Rule/Issue	Commentator	Comment	Proposed Committee Response
8.930	Superior Court of San Diego County Mike Roddy Executive Officer	Rule 8.930. Application. It appears the reference to Rule 8.883 in subs.(a) should be to Rule 8.913.	The committee has revised its proposal to correct this cross-reference.
8.931	Amy Carlson McConnell Staff Attorney Appellate Division Superior Court of San Francisco County	Rule 8.931(d)(6): This proposed subdivision should be revised to state, "The court may allow the petition to be filed without a proof of service in emergency circumstances." Ordinarily, the court should not consider any petition, particularly one for extraordinary relief, without proof of service on the opposing party.	This language is based on rule 8.490, which addresses writ proceedings in the Court of Appeal. The committee believes that it is appropriate to use that language as a model here.
8.931	Public Counsel Law Center, et. al	Rules 8.931(a) and 8.932(b)(l): To avoid giving the impression that self-represented petitioners are treated differently from petitioners with counsel, we suggest that rather than requiring self-represented petitioners to use the proposed Judicial Council form for writ petitions, the rules encourage (or strongly encourage) self-represented petitioners to use the form. We would prefer to have one rule that governs both petitioners represented by counsel and self-represented petitioners, rather than having separate	The committee believes that it is preferable to include a requirement, similar to that relating to petitions for writs of habeas corpus, that self-represented litigants use the Judicial Council form. The goal of this form is to assist self-represented litigants in preparing a petition. Currently, many self-represented litigants find it very difficult to prepare such petitions and courts, in turn, find it difficult when petitions do not contain necessary

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Rule/Issue	Commentator	Comment	Proposed Committee Response
		rules governing each. Alternatively, the rules could be revised to require all petitioners to use the Judicial Council form. If the drafters find it necessary to impose stricter rules on self-represented petitioners, then at a minimum Rule 8.931(a) should specify the procedure a self-represented petitioner must follow to establish "good cause" to permit the filing of a petition that is not on the form.	information. The committee's intent is to make the process of preparing these petitions easier for litigants and more helpful to the courts. As litigants and courts gain experience with this form, the committee would welcome suggestions for improving either the form or the rule.
8.931	Superior Court of Los Angeles County (no specified individual)	Petitioners who are not represented by attorneys on Writ Proceedings should be required to file their petitions on Judicial Council form APP-151. A form is especially helpful to assist both the Petitioner and the Court in providing required information in a format that is easily understandable and assists with identifying the issues at hand and the relief sought.	No response required.
8.931	Superior Court of San Diego County Mike Roddy Executive Officer	Mandatory Use of Form APP-151. This court supports the provision of Rule 8.931(a) requiring the use of APP-151 by unrepresented writ petitioners.	No response required.
8.932	Amy Carlson McConnell Staff Attorney Appellate Division Superior Court of San Francisco County	Rule 8.932: This proposed rule should be revised to contain a subsection similar to proposed rule 8.931(b) regarding contents of supporting documents on writs. As it is written, petitions for writ submitted by attorneys are not required to attach necessary supporting documents.	The requirements in rule 8.901 concerning supporting documents would apply to attorneys under subdivision (a), which provides that the requirements of rule 8.901 are generally applicable to any petition for an extraordinary writ filed by an attorney.
8.932	Superior Court of San Diego County Mike Roddy Executive Officer	Rule 8.932. Petitions filed by an attorney…. It appears the references to Rule 8.901 in subs.(a) should be to Rule 8.930 and that the references to Rule 8.883 in subs.(b)(6) should be to Rule 8.913. Recommended edit: Insert "of points and authorities" after	The committee has revised its proposal to correct these cross-references. In the recent revisions to the California Rules of

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Rule/Issue	Commentator	Comment	Proposed Committee Response
		"memorandum" in subs.(b)(5).	Court, all references to "memorandum of points and authorities" were shortened to "memorandum" and a definition of memorandum was incorporated into rule 1.6.
8.933	Superior Court of San Diego County Mike Roddy Executive Officer	Rule 8.933. Opposition. Recommended edit: Insert "of points and authorities" after "memorandum" in subs.(a)(2).	See response to comments immediately above.
8.935	Superior Court of San Diego County Mike Roddy Executive Officer	Rule 8.935. Remittitur. It appears the reference to Rule 8.890 should be to Rule 8.920.	The committee has revised its proposal to correct these cross-references.
8.936	Superior Court of San Diego County Mike Roddy Executive Officer	Rule 8.936. Costs. It appears the reference to Rule 8.891 should be to Rule 8.921.	The committee has revised its proposal to correct these cross-references.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

Other

Rule/Issue	Commentator	Comment	Proposed Committee Response
Rule 10.1100	Appellate Court Committee of the San Diego County Bar Association Lisa Willhelm Cooney Chair	We comment briefly on proposed rule 10.1100, governing the assignment of judges to hear Appellate Division matters. We recognize that this is a complex topic. It has been under discussion at least since the municipal and superior courts were consolidated almost a decade ago. Our Committee previously commented that, as a general rule, an Appellate Division judge should be from a different court than the court where the Appellate Division is sitting. Proposed rule 10.1100(c) states: "Judges assigned may include judges from another county, judges retired from the superior court or a court of higher jurisdiction, or a panel of judges from different superior courts who sit in turn in each of those superior courts." The rule does not expressly state whether a judge may sit in the Appellate Division in the court to which that judge is assigned. We suggest that the Judicial Council carefully consider whether this issue should be resolved explicitly by rule or whether the Chief Justice should be free to make appointments to specific Appellate Divisions as he or she sees fit.	The committee appreciates these comments and will consider issues concerning the composition of the appellate division during the next committee year.
	Superior Court of San Diego County Mike Roddy Executive Officer	<u>Topics Covered by Specified Court of Appeal Rules for Which no Corresponding Appellate Division Rule is Being Proposed</u>. The Invitation seeks comments as to whether any of the topics covered by specified Court of Appeal rules for which no corresponding Appellate Division rule is being proposed should be added to the appellate division rules. It would be helpful to include or cross-reference the provisions of Rules 8.13 and 8.16 to avoid the potential perception that Appellate Division rules are subject to different procedures. Express proof of service provisions such as those contained	The committee appreciates these comments and will consider proposing such additional appellate division rules during the next committee year.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

Rule/Issue	Commentator	Comment	Proposed Committee Response
		in Rule 8.25 would also be a helpful addition. Unrepresented litigants don't understand the proof of service requirement and many filings are delayed for this reason. The addition of a proof of service form for appeals or criminal matters would also be helpful.	

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Comments on the Proposed Forms

General Comments

Form/Issue	Commentator	Comment	Proposed Committee Response
General	Superior Court of Los Angeles County (no specified individual)	Additional forms and information sheets included in these changes will be of great benefit to the litigants and to the court staff. At present, there are no forms in the Appellate Division available to the public, and it places a burden on the appellate staff when trying to assist customers.	No response required.

Forms for Appeals in Limited Civil Cases

Form/Issue	Commentator	Comment	Proposed Committee Response
Form APP-101-INFO	Andrea Nelson Interim Assistant CEO/ Director of Operations Superior Court of Butte County	Very informative; will be very helpful to both the litigant and as a training tool for staff.	No response required.
Form APP-101-INFO	Superior Court of Orange County	P.1, Paragraph 2 and in footer "CRC 8.880–8.891" – Modify to reflect rule numbers 8.910–8.921.	The committee has modified its proposal to correct this cross-reference.
Form APP-101-INFO	Superior Court of San Diego County Mike Roddy Executive Officer	Recommended modification [of Form APP-101-INFO] to second paragraph of No.1 on p.1: …The party that appeals may also ask the appellate division to determine if it there was substantial sufficient evidence supporting the trial court's decision. *This is typically referred to as review for "substantial" evidence. However, the usual definition of the word "substantial" does not*	Based on this comment and further discussions, the committee has modified this portion of the proposed form to remove the definition of substantial evidence and instead focus on how the court conducts a review for substantial evidence.

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Form/Issue	Commentator	Comment	Proposed Committee Response
		apply when it is used in appeals. In the appellate context, "substantial" evidence means some reasonable, believable evidence that supports the decision. In conducting this review, the appellate division generally will not reconsider the trial court's judgment about which side had more or stronger evidence or whether witnesses in the trial court were telling the truth or lying. No matter how much evidence there may have been on the other side, the appellate division generally only looks to see whether there was ~~substantial~~ *any believable evidence* supporting the trial court's decision. In other words, the appellate division generally will not overturn the trial court's decision unless the record clearly shows that the trial court made a prejudicial error or there was not substantial enough evidence supporting that decision.	
Form APP-101-INFO	Public Counsel Law Center, et. al	Item 4 ("What Decisions Can Be Appealed?"): Consider adding to the very end of this item (borrowing from the writ petition information form): "You should also check if there are any published court decisions that indicate whether the type of ruling you wish to challenge is appealable.	The committee considered but ultimately decided not to make this change.
Form APP-101-INFO	Public Counsel Law Center, et. al	Item 6 ("When Do I File the Notice of Appeal?"): At the end of the first sentence, add ", or within 180 days after entry of the judgment, whichever is earlier (see rule 8.822)" so the sentence reads: "In a limited civil case, except in the very limited circumstances listed in rule 8.823, you must file your notice of appeal within 60 calendar days after the trial court mails or a party serves either a document called a 'Notice of Entry' of the trial court judgment or a file-stamped copy of the judgment, or within 180 days after entry of the judgment, whichever is earlier (see rule 8.822)."	The committee has modified this sentence in the proposed form as suggested by the commentator.

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Form/Issue	Commentator	Comment	Proposed Committee Response
Form APP-101-INFO	Superior Court of Orange County	Item 8 - "the notice of appeal must be accompanied by a $100 filing fee" – Recommend removing actual amount of filing fee so that form does not have to be revised if filing fee changes.	The committee believes that it is helpful to include the amount of the fee in the form. The amount is also included in the Rules of Court. Both have been updated to reflect changes the amount of this fee that took effect on January 1, 2008.
Form APP-101-INFO	Superior Court of Orange County	Item 9 - "Do I Need to Do Anything Else After I File My Notice of Appeal?" – This section fails to inform appellant that the Notice Designating Record on Appeal must be served pursuant to rule 8.831(a).	The committee has revised the proposed form to include information about serving the Notice Designating the Record on Appeal.
Form APP-101-INFO	Superior Court of San Diego County Mike Roddy Executive Officer	Item 9(A)(2) - Insert "local" before "rule" in first sentence of at top of p.4 [consistent with 9(B)(2) on p.5].	The committee has revised the proposed form as suggested by the commentator.
Form APP-101-INFO	Public Counsel Law Center, et. al	Item 9.B(4) ("Statement on appeal"): Consistent with our suggestion above, we recommend modifying the second paragraph of this section to replace the requirement that self-represented litigants use the Judicial Council form for statements on appeal with encouragement that they use the form. Please also see our comments on Rule 8.837(b)(2), above.	The committee believes that it is preferable to require that self-represented litigants use this form and therefore did not make this suggested change.
Form APP-101-INFO	Superior Court of San Diego County Mike Roddy Executive Officer	Item 9(B)(4) - It would be helpful if express proof of service requirements were noted in the second paragraph. on p.6, the fourth paragraph of No.10 on p.7 and the second paragraph of No.15 on p.10. Typo at bottom of p.6: "The judge then reviews ~~the~~ any objections, makes any additional corrections to the statement, and then certifies the statement as a complete and accurate summary of the trial court proceedings."	The committee has revised the proposed form to include information about proof of service. The committee has revised the proposed form to correct this error.

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Form/Issue	Commentator	Comment	Proposed Committee Response
Form APP-101-INFO	Superior Court of San Diego County Mike Roddy Executive Officer	Item 9c - The reference to Rule 8.883(d) in on p.7 is incorrect. The rule regarding the content and form of briefs is 8.913, but it doesn't appear to contain a provision permitting the attachment of exhibits. The reference to Rule 8.883 in No.10 on p.7 is also incorrect.	The committee has revised the proposed form to delete this provision.
Form APP-101-INFO	Superior Court of Orange County	Item 9C "You can also attach up to 10 pages of exhibits from the trial court to the brief that you file in the appellate division" – This is not a provision of new rule 8.913.	The committee has revised the proposed form to delete this provision.
Form APP-101-INFO	Superior Court of Orange County	Item 10 "You should read rule 8.883 of the California Rules of Court, which sets out" – Replace rule 8.883 with rules 8.912 and 8.914. "You can get this rule" – Replace with "You can get these rules"	The committee has revised its proposal to correct this cross-reference. The committee has revised the proposed form to correct this error.
Form APP-101-INFO	Public Counsel Law Center, et. al	Item 14.B ("Reporter's Transcript"): Correct the typo in the last sentence of the first paragraph of this section: the reference to a "clerk's" transcript should be a reference to a "reporter's" transcript.	The committee has revised the proposed form to correct this error.
Form APP-101-INFO	Superior Court of Orange County	Item 14b "The reporter will not prepare a copy of the clerk's transcript for you unless you deposit the cost or obtain a waiver of this cost." – Modify to reflect "The reporter will not prepare a copy of the <u>reporter's</u> transcript for you unless you deposit the cost or obtain a waiver of this cost <u>from the court reporter</u>."	The committee has revised the proposed form to correct the incorrect reference to the clerk's transcript. The committee also revised the form to delete any reference to waiver of the cost of a reporter's transcript.

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Form/Issue	Commentator	Comment	Proposed Committee Response
Form APP-101-INFO	Superior Court of San Diego County Mike Roddy Executive Officer	Rule 8.915. Oral argument. With respect to subs.(d), it is this court's experience that 5 minutes per side is more than adequate for oral argument in infractions and most other cases heard on the appellate division calendar. While this court recognizes that the rule gives it discretion to limit the time for argument, the 15 minutes proposed in the rule creates a presumption that 15 minutes is a reasonable standard. We request that the time be reduced to 5 minutes per side in infractions and 10 minutes per side in other cases. The adoption of this change would require corresponding modifications to Forms APP-101-INFO, CR-131 & CR-141.	The committee revised the proposed rules relating to oral argument as suggested by this commentator and modified the proposed form to reflect this revision in the rules.
Form APP-102 Notice of Appeal	Andrea Nelson Interim Assistant CEO/ Director of Operations Superior Court of Butte County	Disagree—Plain language forms are not as easy to use for litigants or court staff. False premise that "plain language" forms are easy to understand/use—especially for self-represented litigants. Self-help centers such as our have reported this format as more challenging for pro pers as they require additional explanation, making it difficult on the part of the self-help intern and the litigant. <u>Areas of concern</u>: 1st half of the 1st page (instructions)—why not include in APP 101? All but 1st paragraph can be deleted from APP-102. Boxed area for Case name too small (most are handwritten)—this format only allows for typed insertions. Additional instructions at every paragraph—form becomes too lengthy. Forms should provide concise/uniform way to	The committee has tried very hard to make these forms easy for self-represented litigants to understand and use. The committee has incorporated many changes to this and the other proposed forms that were suggested by both the "plain language" editors and court staff who reviewed the draft forms. Even though these forms tell users to read the applicable information sheet, some may not do this. The committee therefore believes it is important to include essential instructions relating to the notice of appeal on this form. In response to this comment, the committee has revised the proposed form to enlarge this box. The form does include brief instructions in many paragraphs, such as "check a or b" or "fill in the

Form/Issue	Commentator	Comment	Proposed Committee Response
		receive basic info. Plain language forms typically have more pages, thus placing additional financial burden on litigants for increased copy costs. Inefficient format—making it harder for processing clerks and judicial officers to locate specific information.	date", but this type of instructions is common on many Judicial Council forms, including those that are not in plain language format. This notice of appeal form is one page longer than the equivalent form for the Court of Appeal that is not in the plain language format. The other proposed forms are also probably longer than they would be if they were in the traditional form format. The committee believes, however, that these forms will be easier for most litigants to complete and that the essential information on these forms is easy to locate.
Form APP-102 Notice of Appeal	Public Counsel Law Center, et. al	Instructions, third paragraph: This paragraph should be corrected, possibly as follows: "You must file this form no later than 60 days after the trial court mails or a party serves a document called a 'Notice of Entry' of the trial court judgment or a file-stamped copy of the judgment, or within 180 days after entry of the judgment, whichever is earlier."	To make this provision shorter, the committee has revised this proposed form to state that "You must file this form no later than (1) 60 days after the trial court mails or a party serves a document called a Notice of Entry of the trial court judgment or a file-stamped copy of the judgment or (2) 180 days after entry of the judgment, whichever is earlier (see rule 8.823 for very limited exceptions)"
Form APP-102 Notice of Appeal	Public Counsel Law Center, et. al	Item 2: Perhaps the form could also ask the litigant to provide the date that notice of entry of judgment (if any) was mailed or served.	The committee considered this suggestion but ultimately decided not to add this to the form.
Form APP-102 Notice of Appeal	Public Counsel Law Center, et. al	The bolded language just above the date and signature line on the last page should be corrected to be consistent with rule 8.822 governing the time to appeal. For example: "Except in the very limited circumstances listed in rule 8.823, you must file this form no later than 60 days after the trial court mails or a party serves a document called a 'Notice of Entry' of the trial court judgment or a file-	Consistent with the information sheet (APP-101 INFO), the committee has revised this proposed for to state that "Except in the very limited circumstances listed in rule 8.823, you must file this form no later than (1) 60 days after the trial court mails or a party serves a document called a 'Notice of Entry' of the trial court judgment or a file-

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Form/Issue	Commentator	Comment	Proposed Committee Response
		stamped copy of the judgment, or within 180 days after entry of the judgment, whichever is earlier."	stamped copy of the judgment or (2) 180 days after entry of the judgment, whichever is earlier."
Form APP-102 Notice of Appeal	Superior Court of Orange County	P.1, footer "Cal. Rules of Court, rule 8.823" – Modify to reflect "Cal. Rules of Court, rule 8.821"	The committee has revised this proposed form to correct this cross-reference.
Form APP-103 Notice designating record on appeal	Andrea Nelson Interim Assistant CEO/ Director of Operations Superior Court of Butte County	Same comments as above re: plain language format.	See responses to comments of Ms. Nelson on APP-102. above, at page 5.
Form APP-103 Notice designating record on appeal	Superior Court of Orange County	P. 1, Paragraph 3—"You must file this form." • Modify to reflect "you must serve and file this form" as required by new rule 83831(a) • Add certificate of mailing and instructions to the form to increase compliance.	The committee has revised this proposed form to clarify that this notice must be served and filed. The committee did not add a certificate of mailing to the form, however. When such certificates are individually included on each form, every form must be revised when these certificates need revision. As an alternative, the committee plans to work on a proposal for a separate proof of service form that can be used with any of these appellate division forms.
Form APP-103 Notice designating record on appeal	Superior Court of Orange County	Rule 83831 (b)(1) requires appellant to provide date the notice of appeal was filed. The form does not provide a space for this information.	The committee has revised this proposed form to add a space for the date the notice of appeal was filed.
Form APP-103 Notice designating record on appeal	Superior Court of Orange County	Items 2b and 2c—"in rule 8.820" Modify to reflect "in rule 8.832"	The committee had revised this proposed form to delete items 2b and 2c. which contain these cross-references.

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Form/Issue	Commentator	Comment	Proposed Committee Response
Form APP-103 Notice designating record on appeal	Superior Court of San Diego County Mike Roddy Executive Officer	The references to Rule 8.820 on p.2 are incorrect. It appears they should be to Rule 8.832.	The committee had revised this proposed form to delete items 2b and 2c. which contain these cross-references.
Form APP-103 Notice designating record on appeal	Public Counsel Law Center, et. al	Item 4.b(l)(a): correct the typo by replacing the first "clerk's" with "clerk" so the phrase reads "I will pay the trial court clerk for this transcript myself. . ."	The committee has revised this proposed form to incorporate this correction.
Form APP-103 Notice designating record on appeal	Public Counsel Law Center, et. al	Item 4.d(1): Consistent with our suggestion above, we recommend replacing the requirement that self-represented litigants use the Judicial Council form for statements on appeal with encouragement that they use the form.	The committee believes that it is preferable to require that self-represented litigants use this form and therefore did not make this suggested change.
Form APP-103 Notice designating record on appeal	Superior Court of Orange County	Item 5a—Rule 8.831(b)(2)(A) states that the notice must provide the filing date of each document that is required to be included in the clerk's transcript under 8.831(a)(1) or, if the filing date is not available, the date is was signed. #5a does not provide a space for this information. Modify 5a to reflect "provide the date it was filed or, if the filing date is not available, the date it was signed." "(at the top of each page, write APP-103, item 5b)"	The committee has revised the proposed form to include space to provide the filing date for these required documents. The committee has corrected the references to form number.
Form APP-104 Statement on Appeal	Public Counsel Law Center, et. al	Instructions, fourth bullet point: We suggest the words "if it is based on such issues" be added at the end of the sentence, so the sentence reads: "If you have chosen to prepare a statement on appeal and do not file this form on time, the	The committee does not believe it is necessary to add this suggested language. Both the information sheet, APP-101-INFO, and the notice designating the record on appeal, APP-103, explain that a record of

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Form/Issue	Commentator	Comment	Proposed Committee Response
		court will not be able to review any issues that are based on what happened during the oral proceedings, so you are not likely to succeed in your appeal if it is based on such issues."	the oral proceedings is only necessary if the appellant wants to raise an issue that requires the appellate division to consider what was said in the trial court. Therefore, the underlying assumption if the appellant is preparing a statement on appeal is that he or she wants to raise an issue that requires a record of the oral proceedings.
Form APP-104 Statement on Appeal	Superior Court of San Diego County Mike Roddy Executive Officer	Express reference to the proof of service requirement in the last bullet on p.1 similar to that included in CR-135 would be helpful. P.5, Number 8(a): Replace "substantial" with "sufficient" in accordance with recommended changes to APP-101-INFO.	The committee has revised the proposed form to include a reference to proof of service.
Form APP-104 Statement on Appeal	Public Counsel Law Center, et. al	Item 5, italicized paragraph following a(4): insert "what was said" after "summarizing" so the phrase reads "summarizing what was said at the hearing on this motion . . . ." (This makes it consistent with others in the form.) Last paragraph: replace "you/your client" with "the other party/parties" and insert "what was said" after "summarizing" (as above). In addition, the Attachment page numbers should be 5b-2 and 5b-3.	The committee has revised the form to incorporate these corrections.
Form APP-104 Statement on Appeal	Superior Court of Orange County	P. 6, Item a—"I direct the clerk to file this statement and to send copies to the parties." There is no provision in rule 8.837 for the clerk to send copies to the parties if statement is certified by trial judge without corrections.	Based on this comment, the committee has modified proposed rule 8.840, which generally addresses transmission of the completed record to the parties, to clarify that the court must send the parties a copy of any certified statement on appeal. The committee has also modified proposed rule 8.837 to eliminate the duplicative provision relating to transmission of certified statements on appeal.

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Form/Issue	Commentator	Comment	Proposed Committee Response
Form APP-104 Statement on Appeal	Andrea Nelson Interim Assistant CEO/ Director of Operations Superior Court of Butte County	Same plain language format comments. P. 6—revision or certification by judicial officer should be on stand alone form as statement cannot be filed until after judicial officer is ready to revise/certify (30 days later from filing Statement of Appeal). Its current practice to file a document requiring judge's signature to be filed only after it is signed by the judge. Form appears to assume (by having the judicial revision/certification on last page) that respondent will not make any proposed amendment to statement.	See responses to comments of Ms. Nelson on APP-102. above, at page 5. The committee has modified its proposal to provide for a separate form for the judge's certification or other order after review of the proposed statement.
Form APP-104 Statement on Appeal	Presiding Judges & Court Executive Officers Joint Rules Working Group Hon. George C. Hernandez, Jr. and Mary Beth Todd, Co-Chairs	We recommend that *Statement on Appeal* and the *Trial Judges Review of Proposed Statement* be drafted on separate forms so the distinct filing actions which may occur on two separate dates are accurately entered into the record.	The committee has modified its proposal to provide for a separate form for the judge's certification or other order after review of the proposed statement.
Form APP-105	Andrea Nelson Interim Assistant CEO/ Director of Operations Superior Court of Butte County	Same concerns on plain language format.	See responses to comments of Ms. Nelson on APP-102. above, at page 5.
Form APP-105	Superior Court of Orange County	P. 1, Paragraph 4—"If the record has been filed in the appellate division, take or mail the completed form and your proof of service to the appellate division clerk's office." Rule 8.825(c)(1) states that once the record is filed in the appellate division, appellant may file a request to dismiss the appeal (not an abandonment).	The committee has modified proposed rule 8.825 to provide that all abandonments must be filed in the appellate division.

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Forms for Appeals in Misdemeanor Cases

Form/Issue	Commentator	Comment	Proposed Committee Response
Form CR-131-INFO	Andrea Nelson Interim Assistant CEO/ Director of Operations Superior Court of Butte County	Agree as is. Very informative, it will be very helpful to both the litigant and as a training tool for staff.	No response required
Form CR-131-INFO	Superior Court of Orange County	Page 1, Paragraph 3—"If you want an attorney and you are not indigent or if the court turns down your request to appoint counsel, you must retain *your own attorney*." Change wording of "your own attorney" to "an attorney at your own expense." Page 1, Paragraph2—"rules 8.800–8.889" Rule 8.889 doesn't exist any longer, should be 8.884. Page 1, Number 1, Paragraph 2—"The party that appeals may also ask the appellate division to determine if *it* there was substantial evidence supporting the trial court's decision." Remove the word "it." Page 1, footer "Cal. Rules of Court, rules 8.800–*8.889*" Rule 8.889 doesn't exist any longer, should be 8.884.	The committee has revised the proposed form to incorporate this suggested change. The committee has revised its proposal to correct this cross-reference. The committee has revised the proposed for to correct this error. The committee has revised its proposal to correct this cross-reference.
Form CR-131-INFO	Superior Court of San Diego County Mike Roddy Executive Officer	CR-131-INFO Information on Appeal Procedures for Misdemeanors. The reference to Rules 8.800—8.889 in paragraph 2. of "General Information" is over-inclusive. The same clarification of the "substantial evidence" concept recommended with respect to APP-101-INFO is recommended here.	The committee has revised its proposal to correct this cross-reference. Based on this comment and further discussions, the committee has modified this portion of the proposed form to remove the definition of substantial evidence and instead focus on how the court conducts a review for substantial evidence.

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Form/Issue	Commentator	Comment	Proposed Committee Response
Form CR-131-INFO	Superior Court of San Diego County Mike Roddy Executive Officer	P.2. No.3 Typo: "supress"	The committee has revised the proposed form to correct this error.
Form CR-131-INFO	Superior Court of Orange County	P. 2, Number 5—"If your notice of appeal is late, your appeal will be dismissed." No provision in proposed rules to dismiss appeal.	The committee has revised the proposed form to indicate that if the notice of appeal is late, the court will not be able to consider the appeal. The committee believes that this revised sentence is more consistent with the language of proposed rule 8.853 which provides that "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."
Form CR-131-INFO	Superior Court of San Diego County Mike Roddy Executive Officer	There is an extra "only" in the first line on p.3.	The committee has revised the proposed form to correct this error.
Form CR-131-INFO	Superior Court of Orange County	P. 3, Number 8, Paragraph 2—"*you must retain your own attorney"* Change working of "your own attorney" to "an attorney at your own expense."	The committee has revised the proposed form to incorporate this suggested change.
Form CR-131-INFO	Superior Court of Orange County	P. 4, Number 2, Paragraph 1—"In some misdemeanor cases, the trial court proceedings *were*" Change word "were" to "are."	The committee has revised the proposed form to incorporate this suggested change.
Form CR-131-INFO	Superior Court of Orange County	P. 5, Paragraph 3—"You must also serve a copy of the statement on the respondent…" Add certificate of mailing and instructions to the form to increase compliance.	The committee did not add a certificate of mailing to the form. When such certificates are individually included on each form, every form must be revised when these certificates need revision. As an

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Form/Issue	Commentator	Comment	Proposed Committee Response
			alternative, the committee plans to work on a proposal for a separate proof of service form that can be used with any of these appellate division forms.
Form CR-131-INFO	Superior Court of Orange County	P. 6, Number 10—"What Happens After I File My Notice of Appeal?" Self represented violators will have difficulty complying absent judicial council forms.	The committee understands that self-represented litigants may have difficulty preparing briefs. This is an area where assistance though the development of Judicial Council forms did not appear to be feasible.
Form CR-131-INFO	Superior Court of San Diego County Mike Roddy Executive Officer	Rule 8.915. Oral argument. With respect to subs.(d), it is this court's experience that 5 minutes per side is more than adequate for oral argument in infractions and most other cases heard on the appellate division calendar. While this court recognizes that the rule gives it discretion to limit the time for argument, the 15 minutes proposed in the rule creates a presumption that 15 minutes is a reasonable standard. We request that the time be reduced to 5 minutes per side in infractions and 10 minutes per side in other cases. The adoption of this change would require corresponding modifications to Forms APP-101-INFO, CR-131 & CR-141.	The committee revised the proposed rules relating to oral argument as suggested by this commentator and modified the proposed form to reflect this revision in the rules.
Form CR-132 Notice of Appeal	Andrea Nelson Interim Assistant CEO/ Director of Operations Superior Court of Butte County	Same concerns on plain language format. Change Rule number reference in footnote from 8.853(b) to 8.852.	See responses to comments of Ms. Nelson on APP-102. above, at page 5. The committee has revised the proposed form to correct this cross-reference.
Form CR-132 Notice of Appeal	Superior Court of Orange County	P. 1—Superior Court of California, County of (file stamp box) Box needs to be longer to accommodate file stamp. P. 1, Paragraph 3—last sentence "If your notice of appeal is late, your appeal *will* be dismissed." Change the word "will" to "may."	The committee has used a standard-sized file stamp box on this form. The committee believes it is appropriate to use "will" here. Because the time for filing the notice of appeal is jurisdictional, the court cannot extend this time or

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Form/Issue	Commentator	Comment	Proposed Committee Response
			relieve a party from default for filing a late notice of appeal. Please note, however, that based on other comments, the committee has revised this sentence to state that "If your notice of appeal is late, the court will not take your appeal." The committee believes that this revised sentence is more consistent with the language of proposed rule 8.853 which provides that "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."
		P. 1, Paragraph 5—"Take or mail the completed form to the clerk's office *for* the same." Change the word "for" to "at."	The committee believes that the word "for" is appropriate here.
		P. 2, Number 2—"I am My client is appealing after" Remove the word "after."	The committee has revised the proposed form to incorporate this suggested change.
		P. 2, under Reminder, last sentence—"If your notice of appeal is late, your appeal *will* be dismissed" Change the word "will" to may."	See response to comments concerning P.1, Paragraph 3 above.
Form CR-133 Application for Appointment of Counsel	Andrea Nelson Interim Assistant CEO/ Director of Operations Superior Court of Butte County	Same concerns on plain language format.	See responses to comments of Ms. Nelson on APP-102. above, at page 5.
		Recommend deleting bullet "This form can be attached to your Notice of Appeal"—if attached, it might be missed. Suggest changing it to "Submitted with...."	The committee has revised the proposed form to provide that the form can be filed at the same time as the notice of appeal.
Form CR-133 Application for Appointment of Counsel	Superior Court of Orange County	P. 1—Superior Court of California, County of (file stamp box) Box needs to be longer to accommodate file stamp.	The committee has used a standard-sized file stamp box on this form.
		P. 1, Paragraph 5—"Take or mail the completed form to the clerk's office *for* the same" Change the word "for" to "at."	The committee believes that the word "for" is appropriate here.

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Form/Issue	Commentator	Comment	Proposed Committee Response
		Judicial Officer's order. Consider including an "order" portion on this same form.	The committee will consider developing an order form in the future.
Form CR-134 Record Preparation Election	Andrea Nelson Interim Assistant CEO/ Director of Operations Superior Court of Butte County	Same concerns on plain language format.	See responses to comments of Ms. Nelson on APP-102. above, at page 5.
Form CR-134 Record Preparation Election	Superior Court of Orange County	P. 1— Superior Court of California, County of (file stamp box) Box needs to be longer to accommodate file stamp. P. 1, Paragraph 5—"Take or mail the completed form to the clerk's office *for* the same" Change the word "for" to "at." P. 1—footer "Cal. Rules of court, rule 8.861" Should be "8.861–8.873" to include all applicable record elections. P. 3(b)(2) end of first sentence—"that was made as the record of what was said in my *cases*" The word "*cases*" should be singular "case." P. 3(c)(2) —"I will file my *proposed statement* later" Add the word "on appeal" after statement. P. 3(c)(2) —"the court *can* dismiss my appeal" Change the word "can" to "may."	The committee has used a standard-sized file stamp box on this form. The committee believes that the word "for" is appropriate here. The committee has revised the proposed form to refer to rules 8.864-8.867, as these address the forms of the record covered by this form. The committee has revised the proposed form to correct this error. The committee has revised the proposed form to incorporate this suggested change. The committee has revised the proposed form to incorporate this suggested change.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

Form/Issue	Commentator	Comment	Proposed Committee Response
Form CR-135 Statement on Appeal	Andrea Nelson Interim Assistant CEO/ Director of Operations Superior Court of Butte County	Same concerns on plain language format.	See responses to comments of Ms. Nelson on APP-102. above, at page 5.
Form CR-135 Statement on Appeal	Superior Court of Orange County	P. 1— Superior Court of California, County of (file stamp box) Box needs to be longer to accommodate file stamp. P. 1, Paragraph 3—"This form can be attached *to* Record" Add the word "the" after "to." P. 1, Paragraph 7—"other party or parties, to the clerk's office *for* the same" Change the word "for" to "at," P.2, Number 4a—"…list all of the charges indicated on the complaint…" Could also be a citation… P. 3, right above Number 6—Paragraph starting with "please attach." This is a duplicate (see top of page above (b)). P. 3, Number 6a—"I/My client testified that…" This is a duplicate, it should be under (b) only. P. 3, Number 6c—"…an officer from the police department, sheriff's office, or other public safety agency." Recommend changing to "an officer from the government agency." P. 3, Number 6d—"police department, sheriff's office, or other public safety agency…" Infraction version of this form uses the phrase "government agency"	The committee has used a standard-sized file stamp box on this form. The committee has revised the proposed form to correct this error. The committee believes that the word "for" is appropriate here. The committee has revised the proposed form to include a reference to citations. The committee has revised this provision to eliminate the duplication. The committee has revised this provision to eliminate the duplication. The committee has revised this provision to refer to "government agency." The committee has revised this provision to refer to "government agency."

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

Form/Issue	Commentator	Comment	Proposed Committee Response
		P. 5, Number 7b—"I/My client was *not found guilty* of the following offenses (list all of the offenses for which you were/your client was *not found guilty*)" Change working of "not found guilty" to "found not guilty" in both places. P. 6—Reminder "If you do not file this form, the court *can* dismiss your appeal" Change word "can" to "may." P. 6—signature line "Signature of appellant or attorney." Typo, should be "appellant."	The committee has revised the proposed form to incorporate this suggested change. The committee has revised the proposed form to incorporate this suggested change. The committee has revised the proposed form to correct this error.
Form CR-135 Statement on Appeal	Superior Court of San Diego County Mike Roddy Executive Officer	CR-135 Statement on Appeal. P.6, No.9(a): Replace "substantial" with "sufficient" in accordance with recommended changes to CR-131.	The committee is not recommending this change. The term "substantial evidence" is the term used in cases and legal treatises. The committee believes using a different term here would be confusing.
Form CR-135 Statement on Appeal	Andrea Nelson Interim Assistant CEO/ Director of Operations Superior Court of Butte County	Revision/certification by the judicial officer should be on a stand alone form because the statement cannot be filed until after the judicial officer is ready to revise/certify, which can be several days after petitioner has produced statement. Form appears to assume (by having judicial officer revision/certification on last page) that respondent will not make any proposed amendments to the statement.	The committee has modified its proposal to provide for a separate form for the judge's certification or other order after review of the proposed statement.
Form CR-135 Statement on Appeal	Presiding Judges & Court Executive Officers Joint Rules Working Group Hon. George C. Hernandez, Jr. and Mary Beth Todd, Co-Chairs	We recommend that *Statement on Appeal* and the *Trial Judges Review of Proposed Statement* be drafted on separate forms so the distinct filing actions which may occur on two separate dates are accurately entered into the record.	The committee has modified its proposal to provide for a separate form for the judge's certification or other order after review of the proposed statement.

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Form/Issue	Commentator	Comment	Proposed Committee Response
Form CR-136 Abandonment of Appeal	Andrea Nelson Interim Assistant CEO/ Director of Operations Superior Court of Butte County	Same concerns on plain language format.	See responses to comments of Ms. Nelson on APP-102. above, at page 5.
Form CR-136 Abandonment of Appeal	Superior Court of Orange County	P. 1, Paragraph 4—"Take or mail the completed form to the clerk's office for the" Change the word "for" to "at." P. 1, footer—(no rule of court is listed) Should reflect "Cal. Rules of Court, rule 8.855"	The committee believes that the word "for" is appropriate here. The committee has revised the proposed form to add a reference to rule 8.855.

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Forms for Appeals in Infraction Cases

Form/Issue	Commentator	Comment	Proposed Committee Response
Form CR-141-INFO	Andrea Nelson Interim Assistant CEO/ Director of Operations Superior Court of Butte County	Agree if modified. Very informative; will be helpful to both the litigant and as a training tool for staff. Change Rule number reference in footnote from 8.880-8.906 to 8.880-8.920.	No response required. The committee has revised the proposal to correct this cross-reference.
Form CR-141-INFO	Superior Court of San Diego County Mike Roddy Executive Officer	CR-141-INFO Information on Appeal Procedures for Infractions. The same clarification of the "substantial evidence" concept recommended with respect to APP-101-INFO is recommended here.	Based on this comment and further discussions, the committee has modified this portion of the proposed form to remove the definition of substantial evidence and instead focus on how the court conducts a review for substantial evidence.
Form CR-141-INFO	Superior Court of Orange County	P. 1, Paragraph 1—"Infractions, such as many traffic violations for which you can get a ticket or violations of some *city* ordinances" Add "or county" after "city." P. 2, Number 3—"the party that was convicted of committing an infraction typically appeals *that* conviction." Change the word "that" to "the." P. 2, Number 5—last sentence, "your appeal *will* be dismissed" Change word of "will to "may." P. 4(2), first sentence—"In some infractions cases, the trial court proceedings *were* officially" Change the word "were" to "are."	The committee has revised the proposed form to incorporate this suggested change. The committee believes the word "that" is appropriate here. The committee believes it is appropriate to use "will" here. Because the time for filing the notice of appeal is jurisdictional, the court cannot extend this time or relieve a party from default for filing a late notice of appeal. The committee has revised the proposed form to incorporate this suggested change.

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Form/Issue	Commentator	Comment	Proposed Committee Response
Form CR-141-INFO	Superior Court of San Diego County Mike Roddy Executive Officer	It appears the references to "form CR-141" in No.8 on p.5 should be to CR-142.	The committee has revised the proposed form to correct this error.
Form CR-141-INFO	Superior Court of San Diego County Mike Roddy Executive Officer	P. 6, first sentence - Rule 8.915. With respect to subs.(d), it is this court's experience that 5 minutes per side is more than adequate for oral argument in infractions and most other cases heard on the appellate division calendar. While this court recognizes that the rule gives it discretion to limit the time for argument, the 15 minutes proposed in the rule creates a presumption that 15 minutes is a reasonable standard. We request that the time be reduced to 5 minutes per side in infractions and 10 minutes per side in other cases. The adoption of this change would require corresponding modifications to Forms APP-101-INFO, CR-131 & CR-141.	The committee revised the proposed rules relating to oral argument as suggested by this commentator and modified the proposed form to reflect this revision in the rules.
Form CR-142 Notice of Appeal and Record Preparation Election	Andrea Nelson Interim Assistant CEO/ Director of Operations Superior Court of Butte County	Same concerns on plain language format.	See responses to comments of Ms. Nelson on APP-102. above, at page 5.
Form CR-142 Notice of Appeal and Record Preparation Election	Superior Court of Orange County	P. 1—Superior Court of California, County of (file stamp box) Box needs to be longer to accommodate file stamp. P. 1, Paragraph 3—"your appeal *will* be dismissed" Change the word "will" to "may."	The committee has used a standard-sized file stamp box on this form. The committee believes it is appropriate to use "will" here. Because the time for filing the notice of appeal is jurisdictional, the court cannot extend this time or relieve a party from default for filing a late notice of appeal. Please note, however, that based on other comments, the committee has revised this sentence

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Form/Issue	Commentator	Comment	Proposed Committee Response
			to state that "If your notice of appeal is late, the court will not take your appeal." The committee believes that this revised sentence is more consistent with the language of proposed rule 8.902 which provides that "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."
		P. 1, Paragraph 5—"Take or mail the completed form to the clerk's office *for* the same court" Change the word "for" to "at."	The committee believes that the word "for" is appropriate here.
Form CR-142 Notice of Appeal and Record Preparation Election	Superior Court of Orange County	P. 3(c), (2)—"I will file my proposed *statement* later" Add the words "on appeal" after "statement."	The committee has revised the proposed form to incorporate this suggested change.
Form CR-142 Notice of Appeal and Record Preparation Election	Superior Court of San Diego County Mike Roddy Executive Officer	CR-142 Notice of Appeal and Record Preparation Election. Typo on p.3 at No.4(c)(1): "CR-14" should be "CR-143."	The committee has revised the proposed form to correct this error.
Form CR-142 Notice of Appeal and Record Preparation Election	Superior Court of Orange County	P. 4—Reminder "If your notice of appeal is late, your appeal *will* be dismissed" Change the word "will to "may."	The committee believes it is appropriate to use "will" here. Because the time for filing the notice of appeal is jurisdictional, the court cannot extend this time or relieve a party from default for filing a late notice of appeal; it must dismiss the appeal. Please note, however, that based on other comments, the committee has revised this sentence to state that "If

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Form/Issue	Commentator	Comment	Proposed Committee Response
			your notice of appeal is late, the court will not take your appeal." The committee believes that this revised sentence is more consistent with the language of proposed rule 8.853 which provides that "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."
Form CR-142 Notice of Appeal and Record Preparation Election	Superior Court of San Diego County Mike Roddy Executive Officer	The reference to "30 days" in REMINDER on p.4 should be 60 as Rule 8.882 is currently drafted.	The committee has revised the proposed rules to provide that the time to file the notice of appeal is 30 days after judgment is rendered
Form CR-143 Statement on Appeal	Andrea Nelson Interim Assistant CEO/ Director of Operations Superior Court of Butte County	Same concerns on plain language format. Change Rule number reference in footnote from 8.837 to 8.899.	See responses to comments of Ms. Nelson on APP-102. above, at page 5. The committee has revised the proposal to correct this cross-reference.
Form CR-143 Statement on Appeal	Superior Court of Orange County	P. 1—Superior Court of California, County of (file stamp box) Box needs to be longer to accommodate file stamp . P. 1, Number 7—"other party or parties, to the clerk's office *for* the same" Change the word "for" to "at." P. 2, Number 4a & b—"citation" May also be a complaint (example: misdemeanor reduced to an infraction). P. 3, Number 5d—"An officer from the government agency that *cited* me…" May be a complaint.	The committee has used a standard-sized file stamp box on this form. The committee believes that the word "for" is appropriate here. The committee has revised the proposed form to include references to complaints.

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Form/Issue	Commentator	Comment	Proposed Committee Response
		P. 4, Number 5e—"…that *cited* me…" May be a complaint P. 4, Number 6(b)— "I/My client was *not found guilty* of the following offenses (list all of the offenses for which you were/your client was *not found guilty*)" Change working of "not found guilty" to "found not guilty" P. 5—Reminder "the court *can* dismiss your appeal" Change the word "can" to "may."	The committee has revised the proposed form to incorporate this suggested change. The committee has revised the proposed form to incorporate this suggested change.
Form CR-143 Statement on Appeal	Superior Court of San Diego County Mike Roddy Executive Officer	P.5, Number, 8(a): Replace "substantial" with "sufficient" in accordance with recommended changes to CR-141. The reference to "30 days" in REMINDER on p. 5 should be 60 as Rule 8.882 is currently drafted.	The committee is not recommending this change. The term "substantial evidence" is the term used in cases and legal treatises. The committee believes using a different term here would be confusing. The committee has revised the proposed rules to provide that a proposed statement on appeal must be filed within 20 days after the appellant in an infraction case files the notice of appeal and record preparation election and has modified the form to reflect this change.
Form CR-143 Statement on Appeal	Andrea Nelson Interim Assistant CEO/ Director of Operations Superior Court of Butte County	Revision/certification by judicial officer should be on stand alone form (just as indicated on APP-104 above).	The committee has modified its proposal to provide for a separate form for the judge's certification or other order after review of the proposed statement.
Form CR-143 Statement on Appeal	Presiding Judges & Court Executive Officers Joint Rules Working Group Hon. George C. Hernandez, Jr. and Mary Beth Todd, Co-Chairs	We recommend that *Statement on Appeal* and the *Trial Judges Review of Proposed Statement* be drafted on separate forms so the distinct filing actions which may occur on two separate dates are accurately entered into the record.	The committee has modified its proposal to provide for a separate form for the judge's certification or other order after review of the proposed statement.

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Form/Issue	Commentator	Comment	Proposed Committee Response
Form CR-143 Statement on Appeal	Superior Court of Orange County	P. 6—signature line "Signature of trial judge" Should read same as CR-135 "Signature of trial court judicial officer"	The committee has revised the signature line on this form as suggested by the commentator.
Form CR-144 Abandonment of Appeal	Andrea Nelson Interim Assistant CEO/ Director of Operations Superior Court of Butte County	Same concerns on plain language format.	See responses to comments of Ms. Nelson on APP-102. above, at page 5.
Form CR-144 Abandonment of Appeal	Superior Court of Orange County	P. 1—Superior Court of California, County of (file stamp box) Box needs to be longer to accommodate file stamp. P. 1, Paragraph 2—"Take or mail the completed form to the clerk's office *for* the same court" Change the word "for" to "at."	The committee has used a standard-sized file stamp box on this form. The committee believes that the word "for" is appropriate here.

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Forms for Writ Proceedings

Rule/Issue	Commentator	Comment	Proposed Committee Response
Form APP-150-INFO	Andrea Nelson Interim Assistant CEO/ Director of Operations Superior Court of Butte County	Agree as is. Very informative; will be very helpful to both the litigant and as a training tool for staff.	No response required.
Form APP-150-INFO	Public Counsel Law Center, et. al	Information for the Petitioner, second sentence: Correct a typo by replacing "an" with "a" before "writ"	The committee has revised the proposed form to correct this error.
Form APP-150-INFO	Public Counsel Law Center, et. al	Item 4, second paragraph after bullet points: This paragraph suggests that a writ petition may never challenge a trial court ruling on the admissibility of evidence. Although we agree that writ petitions challenging evidentiary rulings are unlikely to succeed in light of the deferential standard of review, we are unaware of a rule categorically barring such challenges. Therefore, we suggest deleting the phrase "rulings on the admissibility of evidence and."	The committee has revised the proposed form to incorporate this suggested change.
Form APP-150-INFO	Public Counsel Law Center, et. al	Item 6: Consistent with our suggestion above, we recommend replacing the requirement that self-represented litigants use the Judicial Council form for filing writ petitions with encouragement that they use the form. Please also see our comments on Rules 8.931(a) and 8.932(b)(l), above.	The committee believes that it is preferable to require that self-represented litigants use this form and therefore did not make this suggested change.
	Superior Court of San Diego County Mike Roddy Executive Officer	It appears the reference to Rule 8.901 at the top of p.7 should be to Rule 8.931. Chart at Number 8, p.7. Writ proceedings under PC 999(a) and 1538.5(i) don't apply to misdemeanors or infractions. Consequently, such writs would not be within the jurisdiction of the appellate division. Denials of motions to	The committee has revised the proposed form to correct this error. The committee has revised the proposed form to delete the references to these writ proceedings

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Rule/Issue	Commentator	Comment	Proposed Committee Response
		suppress in these cases are immediately appealable pursuant to PC 1510 and 1538.5(j).	
Form APP-150-INFO	Superior Court of Orange County	P. 8, Number 9—"Rule 8.931(e) requires that the petition" Modify to reflect rule number 8.931(d).	The committee has revised the proposed form to correct this error.
Form APP-150-INFO	Superior Court of San Diego County Mike Roddy Executive Officer	Number 9 on p.8. Reference to Rule 8.931(e) should be to (d).	The committee has revised the proposed form to correct this error.
Form APP-150-INFO	Public Counsel Law Center, et. al	Item 14, second paragraph after bullet points: Correct typo in second sentence of this paragraph by replacing "an" with "a" before "writ proceeding in the appellate division."	The committee has revised the proposed form to correct this error.
Form APP-151	Andrea Nelson Interim Assistant CEO/ Director of Operations Superior Court of Butte County	Recommend that the instructions not be included in the actual Petition. First bullet can be included to direct the party to the information.	The committee believes it is important to include critical instructions on this form because litigants do not always read separate information sheets, even when urged to do so.
Form APP-151	Public Counsel Law Center, et. al	Instructions, sixth bullet point: replace "same court" with "appellate division of the superior court" so the sentence reads: "Take or mail the completed form and your proof of service on the real party in interest to the clerk's office for the appellate division of the superior court that took the action or issued the ruling you are challenging." (This is consistent with APP- 150-INFO, item 10.)	The committee has revised the proposed form to incorporate this suggested change.
Form APP-151	Superior Court of San Diego County Mike Roddy Executive Officer	APP-151 Petition for Writ. Instructions, fifth paragraph., p.1: It would be helpful if the Instructions also referenced the need to serve the Respondent trial court with the petition. (Rule 8.931(d).)	The committee has revised the proposed form to incorporate this suggested change.

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Rule/Issue	Commentator	Comment	Proposed Committee Response
Form APP-151	Public Counsel Law Center, et. al	Item 12(a): replace "superior court" with "trial court" (for consistency).	The committee has revised the proposed form to incorporate this suggested change.
Form APP-151	Public Counsel Law Center, et. al	Item 13 : Add language concerning situations in which the reporter's transcript is not available, based on APP-150-INFO, item 7: "If a transcript or official electronic recording of these proceedings is not available, your petition must include a declaration either (1) explaining why the transcript or official electronic recording is unavailable and fairly summarizing the proceedings, including the petitioner's arguments and any statement by the court supporting its ruling or (2) stating that the transcript or electronic recording has been ordered, the date it was ordered, and the date it is expected to be filed."	The committee has revised the proposed form to incorporate this suggested change.
Form APP-151	Superior Court of Orange County	P. 6, Number14—"Rule 8.8901()(1)(A)-(C)" Modify to reflect rule number 8.8901(b)(1)(A)-(C)	The committee has revised the proposed form to correct this error.
Form APP-151	Superior Court of San Diego County Mike Roddy Executive Officer	The references to Rule 8.901 on p.6 should be to Rule 8.931. In addition, "b" should be inserted in the second reference.	The committee has revised the proposed form to correct this error.
Form APP-151	Public Counsel Law Center, et. al	Verification: Unless it is necessary to include these terms, we suggest omitting the word "official" and the phrase "communicated in the course of official business" from the verification. We are concerned that these terms could intimidate certain self-represented litigants, who might assume they are required to obtain certifications or comply with other kinds of formalities in order to submit this form.	The committee has revised the proposed form to use the verification language from Code of Civil Procedure section 2015.5.

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Other Suggestions

Form/Issue	Commentator	Comment	Proposed Committee Response
	Superior Court of San Diego County Mike Roddy Executive Officer	Form Modification Suggested: The title of MC 210 should be expanded to reflect the possible waiver of record preparation costs referenced in Forms CR-134 & CR-142.	The committee will consider this suggestion during the next committee year.

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