

NOTICE REGARDING ELECTRONIC FILING FOR SELF-REPRESENTED LITIGANTS

California Rules of Court, rule [8.71](#) requires that for parties with attorneys, *all* filings in civil cases be made through the Court's electronic filing system (TrueFiling).

Self-represented litigants, however, are exempt from the requirement to file documents electronically. (CRC, rule 8.71(b). However, if a self-represented litigant chooses to file documents electronically, he or she is bound by the rules of electronic filing laid out in California Rules of Court, Article 5. Represented parties are *required* to file electronically.

When electronically filing, you must comply with the requirements of TrueFiling and California Rules of Court, rule [8.74](#). By electronically filing any document with the court, you agree to file *all* documents electronically. You also agree to receive service of documents electronically unless you notify the court and all parties that you do not accept electronic service and choose to be served paper copies at an address you provide. (CRC, rules 8.71(b)(2) and [8.78\(a\)\(2\)](#).)

For electronic filing support, registration and training, please review the following resources at courts.ca.gov/2dca:

- Register for TrueFiling
- TrueFiling Quick Start Guide
- TrueFiling Support and Training
- Guide to Creating Electronic Appellate Documents
- How to Prepare Electronic Filings
- Frequently asked questions regarding electronic filing

Please note: any references contained within this self-help manual regarding document formatting (for example, color covers), apply only to paper filings.

DISCLAIMER

The materials included here are not legal advice and may not be used as legal authority. The primary legal authority for the practices described in this manual is the California Rules of Court.¹ This manual does not replace or supersede the California Rules of Court. It is merely a general summary of the applicable rules. The rules themselves are subject to change, and you should consult them directly.

In the event the information here differs from the California Rules of Court, you must follow the California Rules of Court. The California Rules of Court are referred to throughout this manual as "CRC" (for example, "CRC, rule 8.108").

The California Rules of Court are available at any law library, on the Internet at www.courts.ca.gov/rules, or can be ordered for a fee by calling (800) 328-9352.

¹ See CRC, rules 8.100-8.278 if you are appealing from the unlimited jurisdiction of the superior court to the Court of Appeal. Appeals from the limited jurisdiction of the superior court to the appellate division of the superior court are covered by CRC, rules 8.800-8.891; transfer from the Appellate Division of Superior Court to the Court of Appeal is covered by CRC rules 8.1000-8.1018. This manual discusses only appeals to the Second Appellate District Court of Appeal, not to the Appellate Division.

CHAPTER 2

DESIGNATING THE RECORD

After filing the *Notice of Appeal*, the appellant needs to designate the record. That means picking out which documents in the trial court record you want the justices to see when they are reviewing your case and deciding your appeal. The **record** in an appeal is the official account of what went on at the hearing or trial that is being appealed.

A party designates the record by listing what items to include in a *Notice Designating Record on Appeal*. (See [Notice Designating Record on Appeal](#).) This notice must be served and filed at the superior court within **10 days** of the filing of the *Notice of Appeal*. (CRC, rule [8.121\(a\)](#).) A record is required in every case. Because the short time period between the filing of the *Notice of Appeal* and the *Notice Designating Record on Appeal*, **appellants often file both documents at the same time**. However, the Court does not require that they be filed simultaneously.

The record may consist of two parts:

1. A clerk's transcript (CRC, rule [8.122](#)), and
2. A reporter's transcript (CRC, rule [8.130](#)).

The **clerk's transcript** can include anything that is in the superior court file—the papers that were filed, the orders that were made, the things that were done. A clerk's transcript is prepared by the superior court based on what you listed in the *Notice Designating the Record on Appeal*. Or instead of having the superior court prepare a clerk's transcript, you individually or with the opposing party may prepare and file a rule 8.124 appendix (see CRC, rule 8.124 (discussed later)). Either a clerk's transcript or a rule 8.124 appendix is required in all cases.

The **reporter's transcript** is a word-for-word record of everything that was said in court during the hearings or trial. Notes taken down by a certified court reporter are transcribed for the appeal.

With very few exceptions, the appellant must pay the fees for the preparation of both the clerk's transcript (unless they elect to produce an 8.124 appendix) and the reporter's transcript.

When you file the *Notice Designating Record on Appeal*, you will need to make a decision about what type of record you would like. There are four options on the first page of the designation form. You must choose one:

1. Appendix only; no Reporter's Transcript,
2. Appendix and Reporter's Transcript,
3. Appendix and Agreed or Settled Statement,
4. Clerk's Transcript only; no Reporter's Transcript,
5. Clerk's Transcript and Reporter's Transcript, and
6. Clerk's Transcript and Agreed or Settled Statement.

The record is an extremely important part of an appeal. Think of the record as a package that contains all of the information that the justices might need to know about what happened in the trial court in order to review the case. You can only put into the package those items (filings, transcripts, orders, motions, minutes, etc.) that were part of the trial court proceedings. Furthermore, when writing your brief and conducting oral argument, you can only refer to parts of the trial court proceedings that are included in the package. The contents of the record limit the scope of issues and information that the parties can use in their arguments and that the Court of Appeal will consider as it reviews the case. Anything in the record can be examined and considered. For the purpose of appellate review, any parts of the superior court trial that are not included in the record *do not exist*, and therefore will not be examined or considered by the Court and cannot be used by either party to support their case.

What you choose to include will depend on the issues that you are appealing. The appellant needs to think about the trial, what rulings may have been legally wrong, and what part of the record will best tell the Court of Appeal why these rulings were legally wrong. These are the items the appellant should put into the package and designate for the record.

The following section will tell you how to designate the record.

Preparing the Clerk's Transcript/CRC, Rule 8.124 Appendix

In all appeals, the Court requires either a clerk's transcript or a rule 8.124 appendix. These contain the same material and serve the same purpose: to provide the court with the procedural history of the hearing or trial that is being appealed. Both are "books" that contain the papers that were filed in the trial court in chronological order. The difference between the two is that the clerk's transcript is prepared by the superior court while the 8.124 appendix is either prepared jointly by the appellant and respondent or by either of the parties individually. Additionally, the appellant must pay for the preparation of the clerk's transcript; the only cost associated with preparing an 8.124 appendix is the expense of photocopying and binding the relevant documents. With these differences in mind, the clerk's transcript and 8.124 appendix will be discussed separately.

Clerk's Transcript

In order to have the clerk's transcript prepared, the appellant must properly complete pages 1 and 2 of the *Notice Designating Record on Appeal*. This involves checking a box on page 1 indicating that the appellant would like to proceed with a clerk's transcript, and then, on page 2, listing all of the documents that the appellant would like included in the clerk's transcript ([Notice Designating Record on Appeal](#)). Within **10 days** of the filing of the *Notice of Appeal*, the appellant must serve and file the completed *Notice Designating Record on Appeal* at the superior court. The superior court, not the Court of Appeal, prepares the record.

The clerk's transcript automatically includes (CRC, rule [8.122\(b\)](#)):

- The *Notice of Appeal*,
- The judgment or order being appealed and any notice of entry,
- Any notice of intention to move for new trial, to vacate the judgment, for judgment notwithstanding the verdict, or for motion for reconsideration,

- Any notices or stipulations to prepare the clerk’s or reporter’s transcripts or to proceed by agreed or settled statement, and
- The register of actions, if any.

You must specifically designate any other document you want included. Ordinarily, this means you should go to the clerk’s office at the superior court to look at the entire file for your case. That’s the only way you will be able to pick the documents you want to include in the clerk’s transcript and know the names of those documents, the dates they were filed, etc. To designate a document, list the date of the filing or lodging of a document and its exact title. If the date on which the document was filed is unknown, use the date the document was signed. The appellant does not have to individually designate each jury instruction or minute order. You can list “all” jury instructions and “all” minutes.

All exhibits, whether admitted into evidence or refused, are considered part of the clerk’s transcript. If some or all of the exhibits are needed in the appeal, the ones to be used are designated, and most often transmitted to the court under CRC, rule [8.224](#), after the respondent’s brief is filed. However, if a party wants one or more of the exhibits copied and put in the clerk’s transcript to be available while the briefs are being written, the exhibits to be included must be noted by number or letter in the *Notice Designating Record on Appeal*.

Within **10 days** after service of appellant’s designation, the respondent may provide a list of additional items to be included in the clerk’s transcript. (CRC, rule [8.122\(a\)\(2\)](#).) This list must also be specific as to the title of each document and the date it was filed.

Clerk’s Fees

After the respondent’s designation is filed, or the time to file has passed, the superior court appeals clerk locates the documents that have been designated and determines the cost of preparing the clerk’s transcript. The cost of a clerk’s transcript depends on how many pages there are. The superior court charges a copying fee based on the number of pages designated, and a volume fee based on the number of volumes in the clerk’s transcript. The superior court appeals clerk then notifies the parties of the estimated cost of the clerk’s transcript and, upon payment by the

appellant, begins to prepare it. Unless the court waives appellant's \$100 deposit (which was paid at the time of the filing of the *Notice of Appeal*), that money is put toward the cost of the clerk's transcript. If the total cost is more than \$100, the superior court sends a notice of the remaining amount that is due. A person who is unable to pay for the clerk's transcript can file with the superior court an application for a waiver of the clerk's transcript fees. (CRC, rule [8.122\(c\)\(3\)](#); [Information Sheet on Waiver of Appellate Court Fees \(Supreme Court, Court of Appeal, Appellate Division\) APP-015/FW-015-INFO.](#)) **The appellant pays the entire cost for preparation of the original clerk's transcript and one copy, even when the respondent has designated items to be included.**

The respondent does not automatically get a copy of the record. If he or she wants a copy of the clerk's and/or reporter's transcript, the request must be made promptly. The superior court appeals clerk will provide the respondent with an estimate of the cost to prepare the clerk's transcript. (CRC, rule 8.122(c).) The respondent has **10 days** to pay the estimated cost or submit an application to waive costs. (CRC, rule 8.122(c)(3), Form FW-001 and APP-016/FW-016).

If the respondent does not wish to have to pay for his or her own copy, he or she may borrow the appellant's copy after notifying the appellant no more than **20 days** after the record is filed in the Court of Appeal. The record is lent to the respondent when the appellant's opening brief is served, and returned to appellant when the respondent's brief is served. (CRC, rule [8.153](#).)

If fees are not paid, the superior court sends a *Notice of Default* telling the appellant to pay within **15 days** or the appeal may be dismissed. (CRC, rule [8.140\(a\)](#).) If the fees are not paid within **15 days** after that *Notice of Default* is sent, the superior court sends a *Notice of Failure to Clear Default* to all parties and to the Court of Appeal. The Court of Appeal then dismisses the appeal.

Once the designation has been made and the fees paid, the appeals division of the superior court will prepare the clerk's transcript. The papers you designated on your *Notice Designating Record on Appeal* are arranged chronologically in the order in which they were filed in the superior court, beginning with the first papers filed in the case and ending with the last

papers filed in the case. After the papers are arranged in order, they are numbered in sequence. The clerk prepares two indexes and inserts them at the beginning of the transcript. One index lists the papers in the order they were filed, and the second index lists the papers in alphabetical order by the first letter of the first word in the title of the document. Each index includes the page numbers and, if there is more than one volume, the volume number where the papers can be found in the transcript. A cover is prepared, and everything is then bound in book form.

8.124 Appendix

Any party may elect to proceed by an 8.124 appendix. Within **10 days** of filing the *Notice of Appeal*, the appellant must serve and file his or her intention to proceed under CRC, rule [8.124](#), along with a Proof of Service on all parties. The appellant gives notice of his or her intention by checking a box on the first page of the [Notice Designating Record on Appeal](#) form.

For detailed directions on how to construct an 8.124 appendix, see [Guide to Creating Electronic Appellate Documents](#).

If the appellant opts for a clerk's transcript, but the respondent would prefer an 8.124 appendix, the respondent may file an election to proceed with an appendix within **10 days** of the filing of the notice of appeal and, if timely, this election will govern the record preparation, and the parties must proceed with an appendix. However, if the appellant would prefer a clerk's transcript, the appellant must challenge the election of an 8.124 appendix by filing a written motion in superior court. The motion must be filed within **10 days** after the *Notice Designating Record on Appeal* is served and filed. (CRC, rule 8.124(a)(1).)

If the parties ultimately decide to proceed by appendix, there are two options: a joint appendix or a separate appendix from each party.

A **joint appendix** is the simplest of the two. A joint appendix is prepared by both parties and contains all the documents needed by both the appellant and respondent. (CRC, rule 8.124(b). The Court prefers this type of appendix.

If the parties cannot cooperate to create a joint appendix, each side must prepare their own appendix, meaning the appellant files an **appellant's appendix**, the respondent files a **respondent's appendix**, and

if necessary, the appellant files an **appellant's supplemental appendix**. In either case, the joint or appellant's appendix must be served on the respondent(s) and filed with the court at the same time as the appellant's opening brief. A respondent's appendix, if any, must be served on the appellants and filed with the court at the same time as the respondent's brief. An appellant's supplemental appendix, if any, must be served on the respondent and filed with the court at the same time as the appellant's reply brief. For information on the timing for the filing of the briefs, see **Chapter 4**.

In filing an appendix, you are certifying that the papers included are true and that correct copies of the documents are filed or lodged with the superior court. (CRC, rules 8.124(d), (g).) The documents must be identical to the originals in the superior court file.

All exhibits admitted in evidence or rejected are considered as part of the appendix even if they are not physically included in the bound volumes. (CRC, rule 8.124(b)(4).) They can later be lodged with the Court of Appeal by transmitting them under CRC, rule [8.224](#).

From a financial perspective, the advantage of an appendix is that it only costs the appellant or both parties the expense and time of photocopying the relevant documents and binding.

Reporter's Transcript

The reporter's transcript is a word-for-word, typewritten record of everything that was said in court during the trial or hearing. It is an optional part of the record on appeal. The appellant should consider requesting a reporter's transcript if what was said at the trial or hearing relates to the issues the appellant wants to talk about on appeal. If what was said at the trial or hearing has nothing to do with the issues for the appeal and the appellant does not want it typed up, the appellant does not need to request a reporter's transcript. If you choose to go without a reporter's transcript, be sure that you will not need any part of it to make your case. **Without the reporter's transcript, you will not be able to refer to it or use anything that was said during the trial to support your argument.**

As discussed in the section on the clerk's transcript, within **10 days** of the filing of the *Notice of Appeal*, you must serve and file a *Notice Designating Record on Appeal* with the appeals section of the superior court. On page 1, the appellant must indicate whether he or she wants a reporter's transcript by checking the proper box. *If the appellant does not ask for a reporter's transcript, the respondent may not ask for one either.* (CRC, rule [8.130\(a\)\(4\)](#).)

If you choose to proceed without a reporter's transcript, you can skip the rest of this section.

If you do elect to have a reporter's transcript prepared, you must make a list of each day that is to be typed up (transcribed). The list must include the date, the reporter's name, department (that the trial or hearing was in that day), and the nature of the proceedings. This information can be found in the minutes located in the superior court file. Page 3 of the form, *Notice Designating Record on Appeal* may be used for this purpose. This list must be filed with the superior court. If only a portion of a witness's testimony is needed, the respondent(s) must agree to that, and a stipulation must be filed with the superior court.³ If you choose to include this limited part of a witness's testimony, you must set out the issues that you intend to raise on appeal. (CRC, rule [8.130\(a\)\(2\)](#).)

If you already have a copy of the reporter's transcript, and you want it to be part of the record on appeal, include the date(s) in your designation with a notation that the date has been prepared and you will lodge it directly with the Court of Appeal. (CRC, rule [8.130\(b\)\(3\)\(C\)](#).) The transcript that you lodge with the Court of Appeal must be free of any alterations, modifications, deletions or insertions. If the transcript has been altered in any fashion, it cannot be used as part of the record on appeal.

³ A stipulation is a written agreement between the parties about something they are going to do. In this context, it is an agreement that only parts of the testimony will be considered in the appeal. It is signed by all counsel and self-represented parties. If you want or need a stipulation, call or write counsel or a self-represented party and ask whether he or she is willing to agree to what you propose. If he or she is agreeable, prepare a written statement that "The parties agree (stipulate) to . . ." setting out what has been agreed to. Add a separate signature line for each counsel or self-represented party to sign, with the person's name typed under the signature line and a place for the date on which the document was signed.

Reporter's Fees

At the same time that the *Notice Designating Record on Appeal* is filed, the appellant must also include a deposit for reporter's fees. (CRC, rule [8.130\(b\)\(1\)](#).) The cost of the reporter's transcript depends on how many days or hours the reporter is asked to transcribe. Reporter's transcripts are expensive. You can ask the reporter for an estimate in advance or, you may calculate the deposit yourself. The rate is \$650 per day for each day in which there were more than three hours of proceedings, and \$325 per day for each day in which there were less than three hours of proceedings.

If the appellant does not have sufficient funds to cover the deposit, there are a few options. First, the appellant can ask for a waiver of deposit from the reporter(s) themselves. Please note that a waiver of deposit is merely that. It waives only the need for the deposit, not the cost of the reporter's transcript. (CRC, rule [8.130\(b\)\(1\)](#).) This means the appellant will need to pay the reporter's fees sometime in the future. If the reporter(s) grants the waiver, the appellant must provide a copy of the waiver at the time the appellant files the *Notice Designating Record on Appeal*.

The Court of Appeal has the power to waive only its own filing fee of \$775 and cannot waive the reporter's fees. (CRC, rule [8.26\(e\)](#).)

Alternatively, in addition to a notice of designation, a party may serve and file a copy of its application to the Court Reporters Board for payment or reimbursement of monies paid for transcription. (See CRC, rule [8.130\(c\)](#).)

If the appellant has already had some or all of the proceedings transcribed, a certified copy of that transcript can be substituted for the reporter's transcript and the deposit is not necessary. The transcript(s) must comply with CRC, rule [8.144](#). The appellant should be sure to keep a copy of this transcript for writing the brief.

The *Notice Designating Record on Appeal* must be filed with either a money deposit for the cost of the transcript, a signed waiver of deposit, or a certified copy of the transcript.

If, after being served with the appellant's *Notice Designating Record on Appeal*, the respondent wishes to designate additional parts of the transcript, a respondent's designation or *Notice Designating Record on Appeal* must be served and filed with the superior court within **10 days** of the service of the appellant's designation. (CRC, rule [8.130\(a\)\(3\)](#).)

After the time limit for the respondent to designate additional items has passed, it generally takes 30 to 60 days for the transcript to be completed. The Court of Appeal may grant extensions of time for the reporter if he or she is unable to complete the transcript on time. (CRC, rule [8.130\(f\)\(1\)](#).)

Record Problems

If you fail to properly designate the record by not filing a *Notice Designating Record on Appeal* or if you have not paid the costs of the clerk's and/or reporter's transcript, or if you have failed to correct the designation of the record after notice was sent to you by the superior court, you will be sent a *Notice of Default*. (CRC, rule 8.140(a).) A party has **15 days** from the date of the notice to cure the problem. If the problem to be fixed is still not cured after the **15 days**, the superior court sends a *Notice of Failure to Clear Default* to all parties and to the Court of Appeal. If the appellant is the party who has not complied with the rules, the Court of Appeal may dismiss the appeal; if the respondent is the party that has not complied on time, the appeal may go forward on the appellant's record alone. (CRC, rule [8.140\(b\)\(2\)](#).)

If either party discovers that something is missing from the record after the record has been filed, there are ways to fix the problem. If the clerk or reporter left out a required or requested item, a *Notice of Correction* must be filed in the superior court and served on all parties. (CRC, rule [8.155\(b\)](#), [Local Rule 2\(a\)](#).) If the item was not listed in the designation of record, a motion to augment will be needed. (See **Chapter 6**.)

When filing the *Designation of the Record on Appeal* in Los Angeles County, the Court strongly suggests that you make those filings at the appeals section of the Superior Court, Room #111, at 111 North Hill Street, in Los Angeles. However, the court will accept the *Designation of the Record on Appeal* at any superior court clerk's office. Information on the various superior court locations in Second District can be found in [Appendix 3](#).