

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT

SPR11-06

Title	Action Requested
Appellate Procedure: Clerk's Transcript and <i>Civil Case Information Statement</i>	Review and submit comments by Monday, June 20, 2011
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 8.122, and revise <i>Civil Case Information Statement</i> (form APP-004)	January 1, 2012
Proposed by	Contact
Appellate Advisory Committee Hon. Kathryn Doi Todd, Chair	Heather Anderson, 415-865-7691 heather.anderson@jud.ca.gov

Discussion

This proposal is a follow-up to a proposal that was circulated for comment in spring 2010.

Rule 8.122 of the California Rules of Court addresses the contents of clerk's transcripts in civil appeals in the Court of Appeal. This rule requires that certain documents be included in clerk's transcripts in all cases and permits the parties to designate additional documents that they want included in these transcripts. Because rule 8.124 provides that an appendix used in lieu of a clerk's transcript must contain all of the documents that rule 8.122 requires be included in a clerk's transcript, the requirements in rule 8.122 also govern the contents of appendixes.

Currently, rule 8.122 requires that the clerk's transcript contain any notice of intention to move for a new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order, and any order on such motion and any notice of its entry. While these notices and motions may not be at issue on appeal, the filing of these notices and motions, their procedural validity, and the date that the trial court notified the parties of its order on such motions are very important in determining the timeliness of an appeal under rule 8.108. Thus, including these materials in the clerk's transcript or appendix helps the court determine the timeliness of the appeal once the record is filed.

However, the Court of Appeal also tries to assess the timeliness of civil appeals at an earlier stage in the proceedings. In these civil appeals, the appellant is required to complete and submit a

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

Civil Case Information Statement (form APP-004) shortly after filing the notice of appeal. This form requests information to help the Court of Appeal determine the timeliness of the appeal, including information about any notice of intention to move for a new trial and any motion to vacate the judgment, for judgment notwithstanding the verdict, or reconsideration of an appealed order.

To assist the Court of Appeal in determining timeliness at this earlier stage in the proceedings, this proposal would require that copies of the notices, motions, and related materials be attached to the *Civil Case Information Statement* rather than included in the clerk's transcript. Rule 8.122 would be amended to eliminate the requirement that these documents be included in the clerk's transcript in every appeal. Instead, parties would include these documents in the clerk's transcript only if they were relevant to the issues on appeal.

Although attaching copies of these documents to the *Civil Case Information Statement* would facilitate earlier determination of the timeliness of an appeal, the committee notes that it would add to the appellant's expense in submitting the *Civil Case Information Statement*. In those cases that proceed to filing of the record, this increased expense may be offset by a reduction in the cost of the clerk's transcript or appendix. However, if the parties wish to raise an issue relating to any of these motions in the appeal, these documents would still need to be included in the clerk's transcript, and thus there would be no offsetting reduction in expenses.

Rule 8.122 of the California Rules of Court would be amended, effective January 1, 2012, to read:

Title 8. Appellate Rules

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

Chapter 2. Civil Appeals

Article 2. Record on Appeal

Rule 8.122. Clerk’s transcript

(a) * * *

(b) Contents of transcript

(1) The transcript must contain:

(A) The notice of appeal;

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

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

~~(D) Any notice of intention to move for a new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order, and any order on such motion and any notice of its entry;~~

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

~~(F)~~(E) The register of actions, if any.

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

~~(3)–(4) * * *~~

(c)–(d) * * *

Advisory Committee Comment

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Subdivision (a). * * *

~~Subdivision (b). The supporting and opposing memoranda and attachments to any motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order are not required to be included in the clerk’s transcript under subdivision (b)(1)(D) but may be included by designation of a party under (b)(3) or on motion of a party or the reviewing court under rule 8.155.~~

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

Subdivision (c). * * *

CIVIL CASE INFORMATION STATEMENT		COURT OF APPEAL CASE NUMBER <i>(if known)</i>
COURT OF APPEAL, _____ APPELLATE DISTRICT, DIVISION _____		FOR COURT USE ONLY DRAFT NOT APPROVED BY JUDICIAL COUNCIL 3/21/11
ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i> _____		
TELEPHONE NO.:	FAX NO. <i>(Optional)</i> :	
E-MAIL ADDRESS <i>(Optional)</i> :	ATTORNEY FOR <i>(Name)</i> :	
APPELLANT:		
RESPONDENT:		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
JUDGES <i>(all who participated in case):</i>		Superior Court Case Number:
NOTE TO APPELLANT: You must file this form with the clerk of the Court of Appeal within 10 days after the clerk mails you a notice that this form must be filed. You must attach to this form (1) a copy of the judgment or order being appealed that shows the date it was entered (see Cal. Rules of Court, rule 8.104 for definition of "entered"); (2) a copy of any notice of intention to move for a new trial or notice of motion and motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order, and any order on such motion and any notice of its entry (copies of the supporting and opposing memoranda and attachments to these motions are NOT required); and (3) proof of service of this form on all parties to the appeal.		

A. APPEALABILITY

PART I – APPEAL INFORMATION

1. Appeal is from:

- Judgment after jury trial
- Judgment after court trial
- Default judgment
- Judgment after an order granting a summary judgment motion
- Judgment of dismissal under Code Civ. Proc., § 581d, 583.250, 583.360, or 583.430
- Judgment of dismissal after an order sustaining a demurrer
- An order after judgment under Code Civ. Proc., § 904.1(a)(2)
- An order or judgment under Code Civ. Proc., § 904.1(a)(3)–(13)
- Other *(describe and specify code section that authorizes this appeal):*

2. Does the judgment appealed from dispose of all causes of action, including all cross-actions between the parties?

- Yes No *(If no, please explain why the judgment is appealable):*

B.

1. Date of entry of judgment or order appealed from: ____/____/____

2. Date that notice of entry of judgment or a copy of the judgment was served by the clerk or by a party under California Rules of Court, rule 8.104: ____/____/____

3. Was a motion for new trial, for judgment notwithstanding the verdict, for reconsideration, or to vacate the judgment made and denied? Yes No *(If yes, please specify the type of motion and attach a copy of the notice of motion and motion, any order on the motion, and any notice of its entry (copies of the supporting and opposing memoranda and attachments to these motions are NOT required). If the motion was for a new trial, also attach a copy of the notice of intention to move for a new trial. If more than one of these motions was filed, provide information about additional motions on attachment I.B.):*

Date notice of intention to move for new trial (if any) filed: ____/____/____

Date motion filed: ____/____/____ Date motion denied: ____/____/____ Date denial served: ____/____/____

4. Date notice of appeal or cross-appeal filed: ____/____/____

APPELLATE CASE TITLE:	COURT OF APPEAL CASE NUMBER:
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C. BANKRUPTCY OR OTHER STAY

Is there a related bankruptcy case or a court-ordered stay that affects this appeal? Yes No *(If yes, please attach a copy of the bankruptcy petition [without attachments] and any stay order.)*

D. APPELLATE CASE HISTORY *(Provide additional information, if necessary, on attachment I.D.)*

Is there now, or has there previously been, any appeal, writ, or other proceeding related to this case pending in any California appellate court? Yes No *(If yes, insert name of appellate court):*

Appellate court case no.: _____ Title of case: _____
 Name of trial court: _____ Trial court case no.: _____

E. SERVICE REQUIREMENTS

Is service of documents in this matter, including a notice of appeal, petition, or brief, required on the Attorney General or other nonparty public officer or agency under California Rules of Court, rule 8.29 or a statute? Yes No *(If yes, please indicate the rule or statute that applies):*

- | | |
|--|--|
| <input type="checkbox"/> Rule 8.29 (e.g., constitutional challenge; state or county party) | <input type="checkbox"/> Code Civ. Proc., § 1355 (Escheat) |
| <input type="checkbox"/> Bus. & Prof. Code, §16750.2 (Antitrust) | <input type="checkbox"/> Gov. Code, § 946.6(d) (Actions against public entities) |
| <input type="checkbox"/> Bus. & Prof. Code, § 17209 (Unfair Competition Act) | <input type="checkbox"/> Gov. Code, § 4461 (Disabled access to public buildings) |
| <input type="checkbox"/> Bus. & Prof. Code, § 17536.5 (False advertising) | <input type="checkbox"/> Gov. Code, § 12656(a) (False Claims Act) |
| <input type="checkbox"/> Civ. Code, § 51.1 (Unruh, Ralph, or Bane Civil Rights Acts; antiboycott cause of action; sexual harassment in business or professional relations; civil rights action by district attorney) | <input type="checkbox"/> Health & Saf. Code, § 19954.5 (Accessible seating and accommodations) |
| <input type="checkbox"/> Civ. Code, § 55.2 (Disabled access to public conveyances, accommodations, and housing) | <input type="checkbox"/> Health & Saf. Code, § 19959.5 (Disabled access to privately funded public accommodations) |
| | <input type="checkbox"/> Pub. Resources Code, § 21167.7 (CEQA) |
| | <input type="checkbox"/> Other <i>(specify statute):</i> |

NOTE: The rule and statutory provisions listed above require service of a copy of a party's notice of appeal, petition, or brief on the Attorney General or other public officer or agency. Other statutes requiring service on the Attorney General or other public officers or agencies may also apply.

PART II – NATURE OF ACTION

A. Nature of action *(check all that apply):*

1. Conservatorship
2. Contract
3. Eminent domain
4. Equitable action a. Declaratory relief b. Other *(describe):*
5. Family law
6. Guardianship
7. Probate
8. Real property rights a. Title of real property b. Other *(describe):*
9. Tort

a. <input type="checkbox"/> Medical malpractice	b. <input type="checkbox"/> Product liability
c. <input type="checkbox"/> Other personal injury	d. <input type="checkbox"/> Personal property
e. <input type="checkbox"/> Other tort <i>(describe):</i>	
10. Trust proceedings
11. Writ proceedings in superior court

a. <input type="checkbox"/> Mandate (Code Civ. Proc., § 1085)	b. <input type="checkbox"/> Administrative mandate (Code Civ. Proc., § 1094.5)
c. <input type="checkbox"/> Prohibition (Code Civ. Proc., § 1102) d. <input type="checkbox"/> Other <i>(describe):</i>	
12. Other action *(describe):*

B. This appeal is entitled to calendar preference/priority on appeal *(cite authority):*

Item SPR11-06 Response Form

Title: **Appellate Procedure: Clerk's Transcript and *Civil Case Information Statement*** (amend Cal. Rules of Court, rule 8.122, and revise form APP-004)

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

Internet: www.courts.ca.gov/policyadmin-invitationstocomment.htm

Email: invitations@jud.ca.gov

Mail: Ms. Camilla Kieliger
Judicial Council, 455 Golden Gate Avenue
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

DEADLINE FOR COMMENT: 5:00 p.m., Monday, June 20, 2011

Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.