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INVITATION TO COMMENT

SPR13-06

Title	Action Requested
Appellate Procedure: Preparation of Transcripts in Felony and Juvenile Appeals	Review and Submit Comments by June 19, 2013
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rules 8.336 and 8.409	January 1, 2014
Proposed by	Contact
Appellate Advisory Committee Hon. Raymond J. Ikola, Chair	Heather Anderson, heather.anderson@jud.ca.gov , 415-865-7691

Executive Summary and Origin

This proposal is intended to improve the administration of justice in appellate proceedings in felony and juvenile cases by alerting parties and the court that they may request a copy of the reporter's transcript in computer-readable format. It also seeks input on the helpfulness of the current requirement in these cases for court reporter's to obtain the certification of the presiding judge or his or her designee for extensions of the time to prepare a reporter's transcript. This proposal originated from suggestions made by members of the Appellate Advisory Committee and its Appellate Division Rules Working Group.

Background

Rule 8.336 of the California Rules of Court addresses preparation of the record in felony appeals. Rule 8.409 similarly addresses preparing the record in juvenile appeals. Both of these rules currently provide that the Court of Appeal may extend the time to prepare a reporter's transcript on receipt of both an affidavit showing good cause and a certification by the superior court presiding judge, or a court administrator designated by the presiding judge, that an extension is reasonable and necessary in light of the workload of all reporters in the court. The requirement for a certification by the presiding judge or his or her designee was added to this rule in 1984 as part of a set of changes intended to reduce delay in the preparation of the record on appeal, which included specifying that the presiding judge of the superior court is generally responsible for ensuring the timely preparation of records on appeal (see rule 10.603(c)(10)).

Code of Civil Procedure section 271(a) provides, in relevant part:

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 These proposals are circulated for comment purposes only.

Any court, party, or other person entitled to a transcript may request that it be delivered in computer-readable form, except that an original transcript shall be on paper. A copy of the original transcript . . . shall be delivered in computer-readable form upon request if the proceedings were produced utilizing computer-aided transcription equipment.

Rule 8.130, relating to reporter's transcripts in civil appeals, currently provides that, "[on] request, and unless the superior court orders otherwise, the reporter must provide any party with a copy of the reporter's transcript in computer-readable format." Unlike rule 8.130, the rules relating to a reporter's transcripts in felony and juvenile appeals do not currently indicate that a transcript can be requested in computer-readable format.

The Proposal

This proposal is intended to improve the administration of justice in appellate proceedings by alerting both parties and the court in felony and juvenile appeals to the existing right under Code of Civil Procedure section 271(a) to request a copy of the transcript in computer-readable format. Under this proposal, rules 8.336 and 8.409 would be amended to include a provision similar to the one in rule 8.130 that indicates parties or the court may request a copy of a transcript in that format.¹ Having a reference to this right in the rules of court on reporters' transcripts in felony and juvenile appeals should facilitate such requests by parties. This proposal would also highlight that section 271 specifically provides for requests from courts for copies of transcripts in computer-readable format.

Unlike current rule 8.130, the attached proposed amendments to rules 8.336 and 8.409 would not include a provision allowing the superior court to order that the reporter not provide the transcript in computer-readable format.² It is the committee's understanding that this provision in rule 8.130 was included to address situations in which a reporter did not use computer-aided transcription equipment to record the proceedings and that this provision is no longer necessary because all reporters now use such equipment. The committee would particularly appreciate input on whether this understanding is accurate.

Please note that the cost of transcripts in computer-readable format is set by statute and these amendments are not intended to address those costs, but simply to alert courts and parties of their right to request copies of transcripts in this format.³

¹ In a separate proposal, the Appellate Advisory Committee and Court Executives Advisory Committee are proposing that rule 8.130 be amended to provide, consistent with Code of Civil Procedure section 271(a), that the court may request a copy of a reporter's transcript in computer-readable format.

² In its separate proposal to amend rule 8.130, the Appellate Advisory Committee and Court Executives Advisory Committee are also proposing that this provision be deleted from rule 8.130.

³ Government Code section 69954 provides:

(a) Transcripts prepared by a reporter using computer assistance and delivered on a medium other than paper shall be compensated at the same rate set for paper transcripts, except the reporter may also charge an additional fee not to exceed the cost of the medium or any copies thereof.

(b) The fee for a second copy of a transcript on appeal in computer-readable format ordered by or on behalf of a requesting party within 120 days of the filing or delivery of the original transcript shall be compensated at one-

The committee would also appreciate input on whether the current provision in rules 8.336 and 8.409 requiring certification by the presiding judge or his or her designee for requests to extend the time to prepare a reporter's transcript is sufficiently helpful in discouraging delay in preparation of the record that it should remain in these rules.

Alternatives Considered

The committee considered not recommending any changes to rules 8.336 and 8.409 but concluded that it would be helpful to amend these rules to highlight parties' and courts' rights to request reporters' transcripts in computer-readable format.

Implementation Requirements, Costs, and Operational Impacts

This proposal should not impose significant implementation burdens on the superior courts or Court of Appeal.

third the rate set forth for a second copy of a transcript as provided in Section 69950. A reporter may also charge an additional fee not to exceed the cost of the medium or any copies thereof.

(c) The fee for a computer-readable transcript shall be paid by the requesting court, party, or person, unless the computer-readable transcript is requested by a party in lieu of a paper transcript required to be delivered to that party by the rules of court. In that event, the fee shall be chargeable as statute or rule provides for the paper transcript.

(d) Any court, party, or person who has purchased a transcript may, without paying a further fee to the reporter, reproduce a copy or portion thereof as an exhibit pursuant to court order or rule, or for internal use, but shall not otherwise provide or sell a copy or copies to any other party or person.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal reasonably achieve the stated purpose?
- Would this proposal have an impact on public's access to the courts? If a positive impact, please describe. If a negative impact, what changes might lessen the impact?
- Are there any court reporters who do not utilize computer-aided transcription equipment to record court proceedings? If not, is there any reason to retain the current exception to the requirement that court reporters provide transcripts in computer-readable format on request, as required under Code of Civil Procedure section 271?
- Are the current provisions in rules 8.336 and 8.409 requiring certification by the presiding judge or his or her designee for requests to extend the time to prepare a reporter's transcript sufficiently helpful in discouraging delay in preparation of the record that they should remain in these rules?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide costs savings? If so, please quantify. If not, what changes might be made that would provide savings, or greater savings?
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- If this proposal would be cumbersome or difficult to implement in a court of your size, what changes would allow the proposal to be implemented more easily or simply in a court of your size?

Rules 8.336 and 8.409 of the California Rules of Court would be amended, effective January 1, 2014, to read:

Title 8. Appellate Rules

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

Chapter 3. Criminal Appeals

Article 2. Record on Appeal

Rule 8.336. Preparing, certifying, and sending the record

(a)–(c) ***

(d) Reporter’s transcript

- (1) Except as provided in (a) or (b), the reporter must begin preparing the reporter’s transcript immediately on being notified by the clerk under rule 8.304(c)(1) that the notice of appeal has been filed.
- (2) The reporter must prepare an original and the same number of copies of the reporter’s transcript as (c) requires of the clerk’s transcript, and must certify each as correct. On request, the reporter must provide the Court of Appeal and any party with a copy of the reporter’s transcript in computer-readable format. Each computer-readable copy must comply with the format, labeling, content, and numbering requirements of Code of Civil Procedure section 271(b).
- (3) The reporter must deliver the original and all copies to the superior court clerk as soon as they are certified, but no later than 20 days after the notice of appeal is filed.
- (4) Any portion of the transcript transcribed during trial must not be retyped unless necessary to correct errors, but must be repaginated and bound with any portion of the transcript not previously transcribed. Any additional copies needed must not be retyped but must be prepared by photocopying or an equivalent process.
- (5) In a multireporter case, the clerk must accept any completed portion of the transcript from the primary reporter one week after the time prescribed by (3) even if other portions are uncompleted. The clerk must promptly pay each reporter who certifies that all portions of the transcript assigned to that reporter are completed.

(e) Extension of time

- (1) The superior court may not extend the time for preparing the record.

1 (2) The reviewing court may order one or more extensions of time for preparing the
2 record, including a reporter's transcript, not exceeding a total of 60 days, on receipt
3 of:

4
5 (A) An affidavit showing good cause; and
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7 (B) In the case of a reporter's transcript, certification by the superior court
8 presiding judge, or a court administrator designated by the presiding judge, that
9 an extension is reasonable and necessary in light of the workload of all
10 reporters in the court.
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12 (f)–(h) ***
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15 Chapter 5. Juvenile Appeals and Writs

16 Article 2. Appeals

17 Rule 8.409. Preparing and sending the record

18 (a) ***
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20 (b) Preparing and certifying the transcripts

21 Within 20 days after the notice of appeal is filed:
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23 (1) The clerk must prepare and certify as correct an original of the clerk's transcript and
24 sufficient copies to comply with (d); and
25

26 (2) The reporter must prepare, certify as correct, and deliver to the clerk an original of
27 the reporter's transcript and the same number of copies as (1) requires of the clerk's
28 transcript. On request, the reporter must provide the Court of Appeal and any party
29 with a copy of the reporter's transcript in computer-readable format. Each computer-
30 readable copy must comply with the format, labeling, content, and numbering
31 requirements of Code of Civil Procedure section 271(b).
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37 (c) Extension of time

38 (1) The superior court may not extend the time to prepare the record.
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40 (2) The reviewing court may order one or more extensions of time for preparing the
41 record, including a reporter's transcript, not exceeding a total of 60 days, on receipt
42 of:
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44 (A) An affidavit showing good cause; and
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(B) In the case of a reporter's transcript, certification by the superior court presiding judge, or a court administrator designated by the presiding judge, that an extension is reasonable and necessary in light of the workload of all reporters in the court.

(d) ***