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INVITATION TO COMMENT SPR13-07

Title	Action Requested
Appellate Procedure: Reporter's Transcripts in Civil Appeals	Review and submit comments by June 19, 2013
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rules 8.130 and 8.834 ¹	January 1, 2014
Proposed by	Contact
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Executive Summary and Origin

This proposal is intended to generate revenue for trial courts and provide costs savings and efficiencies for trial courts and for litigants by establishing a fee to cover trial court costs associated with administering trust accounts for payment of reporter's transcript costs in civil appeals, establishing a lower deposit amount for reporter's transcripts of proceedings that have already been transcribed, allowing the submission of certified transcripts in lieu of a deposit for a reporter's transcript only when the certified transcripts contain all of the designated proceedings and are in the required format for reporter's transcripts, and making other changes to the rules relating to reporter's transcripts in civil appeals. This proposal originated from a referral from the California Supreme Court and suggestions made by the Court Executives Advisory Committee, a trial court administrator, a clerk/administrator of one of the Courts of Appeal, and attorneys.

Background

Rules 8.130 and 8.834 establish procedures relating to reporter's transcripts in civil appeals to the Court of Appeal and superior court appellate division, respectively. Under these rules, appellants in civil appeals who wish to use a reporter's transcript must file a notice with the trial court that designates which of the oral proceedings from the trial court they want included in the

¹ Please note that in a separate invitation to comment relating to the appellate division rules and forms, the Appellate Advisory Committee is proposing other changes to rule 8.834.

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 These proposals are circulated for comment purposes only.

reporter's transcript. Respondents may then designate additional proceedings to be included in the transcript. With its notice of designation, each designating party must either deposit with the trial court the approximate cost of the transcript or provide a substitute authorized under the rules. The fees for reporter's transcripts are set by statute.² Under rule 8.834, the deposit made by a party for a reporter's transcript is based on the reporter's estimate of the cost of preparing that transcript. Under rule 8.130, the deposit for the reporter's transcript may be based on either a written estimate obtained from the court reporter or based on a rate established in the rule per full day or half day of proceedings. The deposit rate established by rule 8.130 is based on the estimated cost of preparing a transcript of a full day or half day of proceedings at the statutory rate for an original reporter's transcript.

When a court reporter finishes preparing a transcript of the proceedings designated by the parties, the rules require the reporter to bill the designating parties at the statutory rate and to send a copy of the bill to the trial court. Under the rules, the clerk of the trial court then pays the reporter for the transcript from the funds deposited by the designating parties, refunds any excess to the depositing party, and notifies the parties of any additional amounts needed.

Administration of trust accounts for deposits of fees for reporter's transcripts

Although many court reporters are employees of the trial court, when court reporters prepare and sell reporter's transcripts, they are acting in the capacity of independent contractors. When the court holds a deposit of the fees for a reporter's transcript in a civil appeal, it holds these funds in trust for the depositing party and for the court reporter in that reporter's capacity as an independent contractor.

Handling these trust accounts consumes trial court staff time and thus consumes increasingly scarce trial court resources. Government Code Section 70632 authorizes the charging of a fee by courts for handling funds held in trust.³ The Judicial Council has not, to date, adopted a rule

² The main statute addressing fees for reporter's transcripts is Government Code section 69950, which provides in full:

(a) The fee for transcription for original ribbon or printed copy is eighty-five cents (\$0.85) for each 100 words, and for each copy purchased at the same time by the court, party, or other person purchasing the original, fifteen cents (\$0.15) for each 100 words.

(b) The fee for a first copy to any court, party, or other person who does not simultaneously purchase the original shall be twenty cents (\$0.20) for each 100 words, and for each additional copy, purchased at the same time, fifteen cents (\$0.15) for each 100 words.

(c) Notwithstanding subdivisions (a) and (b), if a trial court had established transcription fees that were in effect on January 1, 2012, based on an estimate or assumption as to the number of words or folios on a typical transcript page, those transcription fees shall be the transcription fees for proceedings in those trial courts, and the policy or practice for determining transcription fees in those trial courts shall not be unilaterally changed.

Government Code section 69954 addresses the fees for reporter's transcripts in computer-readable format.

³ This section provides in full:

The clerk of the court shall charge a reasonable fee for handling funds held in trust for non-court parties or entities. The amount of the fee for handling the funds shall be based on rules adopted by, or guidelines and policies authorized by, the Judicial Council under subdivision (a) of Section 77206. This fee shall be deposited into the Trial Court Trust Fund.

setting a fee for administering the trust accounts for deposits of fees for reporter's transcripts in civil cases.

Deposits of previously prepared transcripts

Sometimes a party in a trial court proceeding will purchase reporter's transcripts of all or part of the proceedings before any appeal is filed, for example, if a party needs a transcript for purposes of filing a petition for a writ during the trial court proceedings. In recognition of the fact that parties may already have purchased transcripts of all or part of the proceedings that they need for an appeal, rule 8.130, relating to reporter's transcripts in civil appeals to the Court of Appeal, currently allows a party, in lieu of depositing funds for a reporter's transcript, to deposit with the trial court a certified transcript of a designated proceeding. The current rule provides that such a certified transcript can be of only part of the proceedings designated for inclusion in the clerk's transcript, in which case it replaces only the deposit for that part of the reporter's transcript. Rule 8.834, relating to reporter's transcripts in civil appeals to the superior court appellate division, does not currently provide for depositing certified transcripts in lieu of a deposit for a reporter's transcript.

There have been a number of difficulties with the current procedure established by rule 8.130. Under rule 8.144, there are requirements for the format of reporter's transcripts used as part of the record on appeal. Among other things, this rule requires that: (1) the pages in reporter's transcripts be consecutively numbered; (2) the cover of each volume identify the page numbers within that volume and the appellate case name, number, and party contact information; and (3) the transcript include chronological and alphabetical indexes to the entire reporter's transcript. Transcripts prepared during the trial court proceedings typically do not comply with these format requirements. For purposes of the record on appeal, the Courts of Appeal are generally unwilling to accept transcripts that are not in the correct format for a reporter's transcript.

Rule 8.130 does not currently address who is responsible for putting previously prepared transcripts into the appropriate format for reporter's transcripts on appeal. Where a party has already purchased a transcript or transcripts of all of the proceedings designated for inclusion in a reporter's transcript, that party may be able to put the transcript or transcripts into the required format for a reporter's transcript. This is much more difficult when a party has a certified transcript of only part of the designated proceedings, as it requires coordination with a court reporter or reporters regarding pagination and indices. Alternatively, a court reporter could prepare a reporter's transcript that incorporates proceedings that were previously transcribed. In such a situation, the court reporter would not need to retranscribe those proceedings, but would need to spend time repaginating the previously prepared transcripts and preparing the indices and cover(s) that encompass those previously prepared transcripts.⁴ When court reporters have been

⁴ Rule 8.336(d)(4), relating to reporter's transcripts in felony appeals, explicitly addresses such situations: 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

asked to prepare reporter's transcripts that include previously transcribed proceedings, however, there have sometimes been disagreements about whether the court reporter should be paid the rate established by statute for preparing an original transcript, the statutory rate for a copy of a transcript, or some other amount. A recent case addressing the applicable statutory rate for reporter's transcripts, *Hendrix v. Superior Court of San Bernardino County* (2011) 191 Cal.App.4th 889, concluded that the statutory rate for an original transcript only applies to the first transcription of the reporter's notes.

Transcript Reimbursement Fund applications

Business and Professions Code section 8030.2 et seq. establishes a fund, called the Transcript Reimbursement Fund, administered by the Court Reporters Board to "provide shorthand reporting services to low-income litigants in civil cases, who are unable to otherwise afford those services." On application by a low-income litigant in a civil appeal, this fund can either pay court reporters in advance for a reporter's transcripts in a civil appeal or reimburse such a litigant who purchases a transcript. Until 2011, the applicable statutes establishing the Transcript Reimbursement Fund only provided for payment when a low-income litigant was represented by counsel. In 2011, Business and Professions Code section 8030.5 was enacted, creating a pilot program to provide reimbursement of transcript costs for self-represented low-income litigants and, effective January 2013, this program was extended until January 1, 2017. However, the statutes establishing the Transcript Reimbursement Fund place a cap of \$30,000 per year on what can be spent for reimbursement of transcripts for self-represented litigants.

Under rule 8.130, in lieu of depositing funds for a designated reporter's transcript, a party may file with the court a copy of a Transcript Reimbursement Fund application for payment of the transcript costs that the party has filed with the Court Reporters Board.⁵ Rule 8.130 currently provides that the court reporter must begin preparing the transcript if the board approves the party's application for payment. If the application is denied, the rule requires the appellant to deposit the cost of the transcript or notify the court that he or she elects to use another form of the record. Thus, under current rule 8.130, it is only when the board makes its decision about an application that the next step in the appellate process is triggered; while action by the board is pending, the appeal does not proceed.

In both 2011 and 2012, the Court Reporters Board exhausted the funds available for payment of transcript costs for self-represented litigants well before the end of the calendar year for which these funds were allocated (by July in 2011 and April in 2012). Under statutes then in effect, once the funds for the year were exhausted, the board deferred consideration of subsequently received applications until the following year, when another \$30,000 became available to pay for the transcripts requested by self-represented litigants. Since, under rule 8.130, appeals in which a Transcript Reimbursement Fund application has been filed do not proceed until the application is either granted or denied, there were delays of many months in appeals in which the Court Reporters Board deferred action on pending applications filed by self-represented litigants. It is

⁵ Rule 8.834 does not currently contain a similar procedure.

the committees' understanding that delays in processing Transcript Reimbursement Fund applications filed by self-represented litigants are likely to continue, as the total amount requested in the applications from 2012 that were deferred to 2013 exceeds the \$30,000 available for distribution in 2013.

Default options

Some appellants who designate a reporter's transcript may be unaware of how much such a transcript will cost them or unaware that a fee waiver will not cover the cost of the reporter's transcript. As a result, some appellants will not make the required deposit of funds after they have designated such a transcript. This triggers the general procedures for defaults in procurement of the record established by rules 8.140 and 8.842, which require the court to send parties notice of the default and of the sanctions that may be applied if the default is not cured by a specified date. Currently, dismissal of the appeal is the only sanction specified in these rules for an appellant who fails to take an action necessary to procure the record. In contrast, in other situations where an appellant learns about what he or she must pay in order to obtain a reporter's transcript, the Rules of Court provide the appellant with options for pursuing the appeal other than proceeding with a reporter's transcript. As noted above, under rule 8.130(c)(3), when an appellant has applied to the Court Reporters Board for payment of the cost of a reporter's transcript and that board denies the appellant's application, the appellant is given the option of filing an agreed or settled statement under rule 8.134 or 8.137. Similarly, under rules 8.866 and 8.919, relating to appeals in misdemeanor and infraction cases, when the appellant is notified of the cost of a reporter's transcript, he or she is given the option of choosing to proceed using a statement on appeal instead of using a reporter's transcript.

Copy of transcript for court in computer-readable format

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

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(f)(4) 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." This rule does not currently specifically provide for requests by courts for a copy of a transcript in computer-readable format. Rule 8.834 does not currently include any provision regarding requests by either a court or a party for a copy of a transcript in computer-readable format.

Disputed charges for reporter's transcripts

In February 2010, the California Supreme Court denied a petition for review in the case of *Gomez v. City of San Diego* (S177774). The petitioner in that case, under the procedure established by rule 8.130, had deposited funds with the trial court for a reporter's transcript in a

civil appeal. After the transcript was prepared, the petitioner did not receive a bill from the court reporters. The trial court, however, paid the court reporters the amount that the reporters requested for the transcript and refunded the remainder to the petitioner. The petitioners sought an additional refund, claiming that they had been charged nearly three times what the transcript should have cost at the statutory rate. The trial court denied this request and the Court of Appeal also denied the petitioner's motion for an order requiring payment of the refund. The petitioner then sought review in the Supreme Court. Both the petition and letters filed by several amicus curiae suggested that the practice of charging more than the statutory rate for reporter's transcripts was widespread⁶ and raised questions about the role of the court with regard to the fees charged by court reporters for transcripts. When the Supreme Court denied the petition for review in this case, it stated, "The court will refer the concerns raised by petitioner and amicus curiae to the Judicial Council for consideration of a possible change to the Rules of Court."

In addition to administering the Transcript Reimbursement Fund, the Court Reporters Board is charged with investigating complaints about the actions of licensed shorthand reporters, "for alleged acts or omissions constituting grounds for disciplinary action under the chapter" (Bus. & Prof. Code, § 8008). Business and Professions Code section 8025 provides that disciplinary action may be imposed on shorthand reporters for, among other things, "violation of this chapter or the statutes, rules, and regulations pertaining to certified shorthand reporters." It is the committees' understanding that, under its disciplinary authority, the Court Reporters Board considers complaints about court reporters failing to provide required bills for reporter's transcripts and charging fees in excess of those authorized by statute and, in appropriate cases, will order the court reporter to issue a refund of fees that exceed the statutory rate.

The Proposal

This proposal is intended to generate revenue for trial courts and provide costs savings and efficiencies for trial courts and for litigants by making several changes to the rules relating to reporter's transcripts in civil appeals.

Administration of trust accounts for deposits of fees for reporter's transcripts

To generate revenue to offset superior court costs associated with handling trust accounts for deposits of fees for reporter's transcripts, this proposal would amend rules 8.130 and 8.834 to require parties who deposit funds with the trial court for the cost of a reporter's transcript to pay a fee of \$50 to the superior court. This would implement the authority given by Government Code section 70632 for the Judicial Council to set and courts to charge a fee for handling funds held in trust. The amount of the proposed fee was calculated based on information submitted by 44 superior courts regarding their average costs for administering these trust accounts.

⁶ In the petition to the Supreme Court, the firm representing the petitioner indicated that it had experience in thousands of appeals over many years and that, in its experience, the problem of charges for transcripts exceeding the statutory rate is "routine" and "chronic." Amicus similarly indicated that their experience was that this practice was widespread.

Because this would be a new fee, it is not specifically identified among the fees that must be waived as part of an initial fee waiver under rule 3.55 or that may be waived as part of such a fee waiver under rule 3.56. However, the committees' view is that this fee may be waived under rule 3.56(6) as another fee "itemized in the [fee waiver] application." The committee would particularly appreciate input on whether this fee should be included on the list of specific fees and costs that must be waived as part of an initial fee waiver under rule 3.55 or that may be waived as part of such a fee waiver under rule 3.56.

Deposits of previously prepared transcripts

This proposal would improve efficiency for both trial courts and litigants by making several changes to the procedure in rule 8.130 that allows parties to submit certified transcripts of all or part of the designated proceedings in lieu of all or part of a deposit for a reporter's transcript:

- **Requiring that transcripts submitted to the court meet format requirements for reporter's transcripts:** This proposal would require that transcripts submitted in lieu of a deposit for a reporter's transcript meet the format requirements for reporter's transcripts under rule 8.144. This would address the problems associated with such transcripts not being in the proper format for an appellate record. It would also clearly place responsibility on the designating party for ensuring that such transcripts are in the proper format. If, as suggested below, the certified transcripts submitted to the court cover all of the designated proceedings, it should be easier for the designating party to put these transcripts into the proper format for a reporter's transcript.
- **Permitting substitution of certified transcripts for a deposit only when the substituted transcripts include all designated proceedings:** This proposal would also limit the procedure for providing previously purchased certified transcripts in lieu of a deposit for a reporter's transcript to situations in which the certified transcripts provided to the court cover all of the proceedings that the party has designated for inclusion in the reporter's transcript. Because the court reporter would not be preparing a transcript in such situations, the proposal would also eliminate requirements for certain notices to the court reporter when a designating party has provided the court with transcripts of all the designated proceedings. These changes are intended to maintain litigants' ability to use transcripts that they have already purchased in some cases, but also eliminate the challenges associated with meeting the format requirements for reporter's transcripts, such as consecutive pagination and preparation of indices, that currently arise when a party tries to substitute a certified transcript for only part of the designated proceedings. However, making this change is likely to result in some additional parties having to obtain a reporter's transcript that includes proceedings for which that party already has a certified transcript. The committees would therefore particularly appreciate comments on whether rule 8.130 should continue to permit parties to substitute a certified transcript of part of the proceedings designated for inclusion in a reporter's transcript in lieu of making a part of the deposit for the reporter's transcript.

- **Establishing a different formula for calculating the required deposit for a reporter's transcript of proceedings that have been previously transcribed:** As noted above, if the procedure for substituting certified transcripts for the reporter's transcript deposit is limited to situations in which the certified transcripts include all the designated proceedings, some parties will likely need to obtain, and thus make deposits for, a reporter's transcript that includes proceedings that have already been transcribed. As also noted above, a recent case addressing the applicable statutory rate for reporter's transcripts, *Hendrix v. Superior Court of San Bernardino County* (2011) 191 Cal.App.4th 889, concluded that the statutory rate for an original transcript only applies to the first transcription of the reporter's notes. In recognition of this case law, this proposal would amend rule 8.130 to set a lower rate for calculating required reporter's transcript deposits for those proceedings that have already been transcribed by a court reporter. The proposed new deposit rate for proceedings that were previously transcribed is approximately one-quarter the deposit rate specified for proceedings that were not previously transcribed. This proposed rate is based on Government Code section 69950(b), which provides that the fee for a first copy of a reporter's transcript to any court, party, or other person who does not simultaneously purchase the original is twenty cents (\$0.20) for each 100 words, which is slightly less than one-quarter the fee of eighty-five cents (\$0.85) for each 100 words that Government Code section 69950(a) establishes for the original transcription. To further facilitate calculating appropriate deposits, this proposal would require that parties identify in their notices designating reporter's transcripts those proceedings for which a certified transcript has previously been prepared.

In addition to making the above changes to rule 8.130, this proposal would add a provision to rule 8.834 allowing the same modified procedure for submitting certified transcripts in lieu of a deposit in civil appeals to the superior court appellate division.

Transcript Reimbursement Fund applications

To address concerns about delay in the resolution of appeals filed by self-represented litigants who have applied to the Transcript Reimbursement Fund for payment of their reporter's transcript costs on appeal, this proposal would amend rule 8.130 so that the progress on the appeal is no longer dependent on whether the Court Reporters Board has acted on the application. The proposed amendments would provide that, within 90 days after an appellant files a copy of his or her Transcript Reimbursement Fund application with the court, the litigant must either submit a copy of the Court Reporters Board's approval of the application or take one of following actions: (1) submit a deposit for the reporter's transcript or the reporter's waiver of this deposit; (2) file an agreed statement or a stipulation that the parties are attempting to agree on a statement under rule 8.134; (3) file a motion to use a settled statement instead of a reporter's transcript under rule 8.137; (4) notify the superior court clerk that he or she elects to proceed without a record of the oral proceedings; or (5) notify the superior court that it is abandoning the appeal. Similarly, the proposed amendments would provide that within the same time frame, a respondent must either submit a deposit for the reporter's transcript or the reporter's waiver of this deposit or notify the clerk that he or she no longer wants the additional proceedings he or she designated for inclusion in the reporter's transcript.

Note that if a low-income litigant can pay for a transcript using his or her own funds, these changes will not interfere with his or her ability to obtain payment of transcript costs from the Transcript Reimbursement Fund, since this fund can reimburse such litigants for these costs at a later date. However, these changes will mean that those low-income litigants who want a reporter's transcript and whose Transcript Reimbursement Fund applications are not approved within 90 days after the litigant submits a copy of the application to the court will need to choose between making a deposit for such a transcript and possibly later receiving reimbursement of this cost from the board or taking one of the other permissible actions identified in the rule. There may be some litigants for whom another form of the record will not be adequate, who cannot afford to make the required deposit for a reporter's transcript, and who are unable to obtain a reporter's waiver of this deposit. As was the case before payments from the Transcript Reimbursement Fund were available, these litigants may not be able to pursue their appeals.

In addition to making the above changes to rule 8.130, this proposal would add a provision to rule 8.834 allowing the same modified procedure for submitting a Transcript Reimbursement Fund application in lieu of a deposit for a reporter's transcript in civil appeals to the superior court appellate division.

Default options

To reduce dismissals for procedural default in procurement of the record, this proposal would amend both rule 8.130 and rule 8.834 so that, like rules 8.866 and 8.919 relating to appeals in misdemeanor and infraction cases, when appellants learn what the cost of the reporter's transcript is and/or that they must pay that cost, they would be given the option of choosing another form of the record of the oral proceedings. In rule 8.130, these new options would be presented to the appellant in the default notice if the appellant failed to make a required deposit for a designated reporter's transcript. In rule 8.834, these options would be presented to the appellant in the clerk's notice transmitting the court reporter's estimate of the cost of the designated transcript. In addition to allowing the appellant to choose a form of the record other than a reporter's transcript, the proposal would give the appellant the option of informing the court that he or she now wants to proceed without a record of the oral proceedings or wants to abandon the appeal altogether. This would give appellants the opportunity to make decisions about whether and how to proceed with an appeal without a reporter's transcript, rather than having the reviewing court make such a decision in the context of a default. This proposal would also amend these rules to separately identify the options for respondents who have designated a reporter's transcript, since respondents cannot make some of the choices available to appellants.

Copy of transcript for court in computer-readable format

This proposal would amend rule 8.130 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. It would also delete the provision allowing the superior court to order that the reporter not provide the transcript in computer-readable format. It is the committees' understanding that this provision was included in the rule 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 committees would particularly appreciate input on whether this understanding is accurate. In addition this proposal would add a provision to rule 8.834 similarly noting that the court or parties may request a transcript in computer-readable format.⁷

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.⁸

Disputed charges for reporter's transcripts

This proposal includes several amendments intended to address concerns about excessive charges for reporter's transcripts, including:

- Amending rule 8.130(b)(2) to clarify that, like a court reporter's bill for a completed transcript under 8.130(f)(2), a reporter's claim for an additional deposit for a reporter's transcript must be based on an estimate that is calculated using the statutory rate for reporter's transcripts;
- Amending rule 8.834(b)(2) to clarify that a court reporter's estimate of the cost of preparing the reporter's transcript in an appeal to the superior court appellate division must be calculated at the statutory rate; and
- Adding new provisions to both rule 8.130 and rule 8.834 clarifying that while a designating party must comply with the deposit requirements established by these rule notwithstanding any dispute over the cost of a reporter's transcript, a party who believes that a reporter's estimate or invoice for the cost of a transcript is excessive may file a complaint with the Court Reporters Board.

⁷ Please note that in a separate invitation to comment relating to reporter's transcripts in felony and juvenile appeals, the Appellate Advisory Committee is proposing adding a similar provision indicating that either the court or parties can request a copy of the reporter's transcript in computer-readable format.

⁸ 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-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.

These amendments are intended to recognize that the rates for reporter's transcripts have been set by Government Code sections 69950 and 69954 and that the Court Reporters Board has been tasked with enforcement of statutes relating to court reporters.

Other proposed amendments

In addition to the amendments described above, this proposal would amend both rule 8.130 and rule 8.834 to add a requirement that the court reporter notify all parties when a transcript is complete. This amendment is intended to establish a method for non-designating respondents to receive notice that the reporter's transcript has been completed so that they can purchase a copy from the reporter.

Alternatives Considered

The committees considered not proposing any amendments to the rules relating to reporter's transcripts in civil appeals at this time. However, the committees concluded that, given the current fiscal crisis in the courts, it was important to provide revenues to offset trial court costs associated with handling trust accounts for deposits of fees for reporter's transcripts and that, to reduce costs for both courts and litigants, it was also important to address problems with the currently available alternatives to transcript deposits.

As an alternative to establishing a fee for administering the trust accounts and making other changes to these rules, the committees considered completely eliminating the procedure for depositing funds for reporter's transcripts with the trial courts. However, the committees concluded that eliminating this procedure might have the unintended consequences of making it more difficult for litigants to timely obtain reporter's transcripts and thus potentially delay the resolution of appeals.

The committees also considered completely eliminating the procedure allowing for submission of certified transcripts in lieu of making a deposit for a reporter's transcript. However, the committees concluded that this would take away from litigants a useful low-cost option for preparing the record on appeal.

Implementation Requirements, Costs, and Operational Impacts

There would be some costs for trial courts associated with implementing the proposed new fee for administering trust accounts for reporter's transcript deposits, including, potentially, costs to train staff concerning the new fee and costs to modify case management systems to reflect this new fee. These should be one-time costs that are offset by the new revenue generated by the fee.

There would also be some costs for trial courts associated with implementing the proposed new procedures relating to substitutes for reporter's transcript deposits, including certified transcripts and Transcript Reimbursement Fund applications, and the proposed new options given to appellants when they are notified of the cost of reporter's transcripts. These too should be one-time costs that are offset by improvements in the efficiency and reduction in problems associated with deposits and substitutes for deposits.

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?
- Should the proposed new fee for handling trust accounts for deposits for reporter's transcripts be included on the list of specific fees and costs that must be waived as part of an initial fee waiver under rule 3.55 or that may be waived as part of such a fee waiver under rule 3.56 or should it be simply be one of the unlisted "other fees or expenses" that may be waived under rule 3.56(6)?
- Should rule 8.130 be amended to completely eliminate the authority for parties to substitute a certified transcript in lieu of making a deposit for the reporter's transcript?
- If this authority is not eliminated, should rule 8.130 continue to permit parties to substitute a certified transcript of part of the proceedings designated for inclusion in a reporter's transcript in lieu of making a part of the deposit for the reporter's transcript?
- 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?

The advisory committees 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 2 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 8.130 and 8.834 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 2. Civil Appeals

Article 2. Record on Appeal

Rule 8.130. Reporter’s transcript

(a) Notice

(1) ~~If in the A notice designating the record on appeal under rule 8.121, the appellant elects to use designating a reporter’s transcript, in that notice the appellant must specify the date of each proceeding to be included in the transcript and may specify portions of designated proceedings that are not to be included. The notice must identify any proceeding for which a certified transcript has previously been prepared by placing an asterisk before that proceeding.~~

(2) * * *

(3) If the appellant serves and files a notice designating a reporter’s transcript, the respondent may, within 10 days after such service, serve and file a notice in superior court designating any additional proceedings the respondent wants included in the transcript. The notice must identify any proceeding for which a certified transcript has previously been prepared by placing an asterisk before that proceeding.

(4) * * *

(5) Except when a party submits a certified transcript that contains all the designated proceedings under (b)(3)(C) with the notice of designation, the any-notice of designation must be served on each known reporter of the designated proceedings.

DRAFTERS’ NOTES:⁹

- **Paragraphs (a)(1) and (3)** – The draft amendments to these provisions are part of the amendments intended to establish an alternative to depositing a certified transcripts of part of the designated proceedings. They are designed to alert the court and the court reporter to designated proceedings that the reporter has already transcribed and, therefore, for which a different formula would apply for calculation of a deposit.

⁹ Drafters' Notes are included in this invitation to comment following the proposed amendments to each subdivision of the rules to help explain the changes that are being proposed; they are not part of the rules proposal and will not appear in any rules ultimately adopted by the Judicial Council.

- 1 • **Paragraph (a)(5)** – The draft amendments to this provision are part of the amendments
2 intended to limit the current procedure for depositing a certified transcript to situations in
3 which that transcript includes all of the designated proceedings. In that circumstance, these
4 amendments would eliminate the requirement that the party serve the known court
5 reporters. Such service is not necessary if the court reporter will not be preparing a
6 reporter’s transcript.
7
8

9 **(b) Deposit or substitute for cost of transcript**

10
11 (1) With its notice of designation, a party must deposit with the superior court clerk the
12 approximate cost of transcribing the proceedings it designates, using and a fee of \$50
13 for the superior court to hold this deposit in trust. The deposit must be either:
14

15 (A) The amount specified in the reporter’s written estimate; or

16 (B) An amount calculated ~~at~~ as follows:

17
18 (i) For proceedings that have not previously been transcribed: \$325 per
19 fraction of the day’s proceedings that did not exceed three hours, or \$650
20 per day or fraction that exceeded three hours.
21

22 (ii) For proceedings that have previously been transcribed: \$80 per fraction
23 of the day’s proceedings that did not exceed three hours, or \$160 per day
24 or fraction that exceeded three hours.
25

26
27 (2) If the reporter believes the deposit is inadequate, within 15 days after the clerk mails
28 the notice under (d)(1) the reporter may file with the clerk and mail to the
29 designating party an estimate of the transcript’s total cost at the statutory rate,
30 showing the additional deposit required. The party must deposit the additional sum
31 within 10 days after the reporter mails the estimate.
32

33 (3) Instead of a deposit under (1), the party may substitute:

34
35 (A) The reporter’s written waiver of a deposit, ~~a copy of a Transcript~~
36 Reimbursement Fund application filed under (c)(1), or a certified transcript of
37 the designated proceedings. A reporter may waive the deposit for—and a party
38 may submit a certified transcript of—a part of the designated proceedings, but
39 such a waiver or transcript replaces the deposit for only that part.
40

41 (B) A copy of a Transcript Reimbursement Fund application filed under (c)(1).

42
43 (C) A certified transcript of all of the proceedings designated by the party. The
44 transcript must comply with the format requirements of rule 8.144.
45
46

1 **DRAFTERS' NOTES:**
2

- 3 • **Paragraph (b)(1)** – The draft amendments to this provision are intended to address
4 concerns about the cost to trial courts of administering the trust accounts containing
5 deposits for reporter’s transcripts in civil appeals. These amendments would require that, in
6 addition to the deposit for the reporter’s transcript, an appellant must pay the court a fee for
7 holding this deposit in trust.
8
- 9 • **Subparagraph (b)(1)(B)** – The draft amendments to these provisions are part of the
10 amendments intended to establish an alternative to depositing a certified transcript of part of
11 the designated proceedings. These amendments would establish different formulas for
12 calculating the required deposit for a transcript of a proceeding depending on whether that
13 proceeding had been previously transcribed by the court reporter. The language is modeled
14 on the language of rule 8.336(d), relating to reporter’s transcripts in felony appeals, which
15 provides, in relevant part:

16
17 Any portion of the transcript transcribed during trial must not be retyped unless
18 necessary to correct errors, but must be repaginated and bound with any portion of the
19 transcript not previously transcribed. Any additional copies needed must not be retyped
20 but must be prepared by photocopying or an equivalent process.
21

22 The suggested amount of the deposit specified in proposed 8.130(b)(1)(B)(ii) for
23 proceedings that were previously transcribed is approximately one-quarter the rate specified
24 in 8.130(b)(1)(B)(ii) for proceedings that were not previously transcribed. This suggested
25 rate is based on Government Code section 69950(b), which provides that the fee for a first
26 copy of a reporter’s transcript to any court, party, or other person who does not
27 simultaneously purchase the original is \$.20 per 100 words, which is slightly less than one-
28 quarter the rate of \$.85 per 100 words for the original.
29

- 30 • **Paragraph (b)(2)** – The draft amendment to this provision is part of the amendments
31 intended to address concerns about ensuring that charges for reporter’s transcripts are
32 consistent with statute. It would clarify that, like the reporter’s bill for a transcript under
33 8.130(f)(2), a reporter’s claim for an additional deposit must be based on an estimate that is
34 calculated using the statutory rate that establishes the fee for reporter’s transcripts.
35
- 36 • **Paragraph (b)(3)** – The draft amendments to this provision separate out the available
37 alternatives to making a deposit for a court reporter’s transcript.
38
- 39 • **Subparagraph (b)(3)(C)** – The draft amendments to this provision are part of the
40 amendments intended to limit the current procedure for depositing a certified transcript to
41 situations in which that transcript includes all of the designated proceedings. They would
42 allow parties to continue the practice of substituting existing transcripts for a deposit, but
43 only where such transcripts contain all of the designated proceedings and meet the format
44 requirements of rule 8.144. This change is intended to eliminate format problems, such as
45 transcript consecutive pagination, when only a partial transcript is deposited. When a party
46 only has transcripts of some of the designated proceedings, the amendments authorize that
47 party to instead make the reduced deposit specified in (b)(1) for those proceedings that
48 have already been transcribed.
49
50

1 (c) **Transcript Reimbursement Fund application**

2
3 (1) With its notice of designation, a party may serve and file a copy of its application to
4 the Court Reporters Board for payment or reimbursement from the Transcript
5 Reimbursement Fund under Business and Professions Code section 8030.2 et seq.
6

7 (2) Within 90 days after the appellant serves and files a copy of its application to the
8 Court Reporters Board, the appellant must either file with the superior court a copy
9 of the Court Reporters Board’s approval of the application or take one of the
10 following actions:

11
12 (A) Deposit the amount required under (b) or the reporter’s written waiver of this
13 deposit;

14
15 (B) File an agreed statement or a stipulation that the parties are attempting to agree
16 on a statement under rule 8.134;

17
18 (C) File a motion to use a settled statement instead of a reporter’s transcript under
19 rule 8.137;

20
21 (D) Notify the superior court clerk that it elects to proceed without a record of the
22 oral proceedings; or

23
24 (E) Notify the superior court that it is abandoning the appeal.
25

26 (3) Within 90 days after the respondent serves and files a copy of its application to the
27 Court Reporters Board, the respondent must either file with the superior court a copy
28 of the Court Reporters Board’s approval of the application or take one of the
29 following actions:

30
31 (A) Deposit the amount required under (b) or the reporter’s written waiver of this
32 deposit; or

33
34 (B) Notify the superior court clerk that it no longer wants the additional
35 proceedings it designated for inclusion in the reporter’s transcript.
36

37 (4) If the appellant fails to timely take one of the actions specified in (2) or the
38 respondent fails to timely make the deposit or send the notice under (3), the superior
39 court clerk must promptly issue a notice of default under rule 8.140.
40

41 (2)(5) If the Court Reporters Board approves the application for payment or
42 reimbursement, the reporter’s time to prepare the transcript under (f)(1) begins when
43 the reporter receives notice of the approval.
44

45 (3) ~~If the Court Reporters Board denies the application for payment or reimbursement,~~
46 ~~the party’s time to deposit the reporter’s fee or substitute under (b), or to file an~~

1 ~~agreed or settled statement under rule 8.134 or 8.137, is extended until 30 days after~~
2 ~~the board mails notice of the denial.~~

3
4 **DRAFTERS' NOTES:**

5 The draft amendments to this provision are part of the amendments that address concerns
6 about delays in the resolution of appeals associated with awaiting action by the Court Reporters
7 Board on applications for reimbursement of transcript costs.

- 8
9 • **Paragraph (c)(2)** – The draft amendments to this provision would do two main things:
10 ○ Require that within 90 days of filing their applications for reimbursement of transcript
11 costs from the Transcript Reimbursement Fund, appellants either file a copy of the
12 Board's approval of this application or move forward with the appeal; and
13 ○ Expand the options available to an appellant whose application for reimbursement is not
14 approved within this 90-day period to include the options of proceeding with the appeal
15 without a record of the oral proceedings or notifying the court that he or she is
16 abandoning the appeal.
17
18 • **Paragraph (c)(3)** – This potential new provision would do two main things:
19 ○ Require that within 90 days of filing their applications for reimbursement of transcript
20 costs from the Transcript Reimbursement Fund, respondents also either file a copy of
21 the Board's approval of this application or take alternative action;
22 ○ Separately identify what respondents may do if their application for reimbursement from
23 the Transcript Reimbursement Fund is not approved within the 90-day period. It is
24 important to have separate provisions for appellants and respondents because the
25 appellant can make decisions about whether and how to proceed with the appeal that
26 are not available to a respondent.
27
28 • **Paragraph (c)(4)** – This potential new provision would clarify that the rule relating to defaults
29 in the procurement of the record applies if a party fails to take one of the actions required
30 within the applicable 90-day period.

31
32
33 **(d) Superior court clerk's duties**

34
35 (1) The clerk must file a party's notice of designation even if the party does not present
36 the required deposit under (b)(1) or a substitute under (b)(3) with its notice of
37 designation.

38
39 ~~(1)~~(2) If a party designates proceedings to be included in a reporter's transcript and has
40 presented the fee deposit under (b)(1) or a substitute reporter's written waiver of a
41 deposit or a copy of its application to the Court Reporters Board for payment or
42 reimbursement from the Transcript Reimbursement Fund under (b)(3), the clerk must
43 promptly mail the reporter notice of the designation and of the deposit or substitute.
44 The notice must show the date it was mailed.

45
46 ~~(2)~~(3) If a party the appellant does not present the deposit under (b)(1) or a substitute
47 under (b)(3) with its notice of designation or does not present an additional deposit
48 required under (b)(2):

1
2 (A) The clerk must file the notice and promptly issue a notice of default under rule
3 8.140 notify the appellant by mail that, within 15 days after the notice is
4 mailed, the appellant must take one of the following actions or the court may
5 dismiss the appeal:

6
7 (i) Deposit the amount required or a substitute permitted under (b);

8
9 (ii) File an agreed statement or a stipulation that the parties are attempting to
10 agree on a statement under rule 8.134;

11
12 (iii) File a motion to use a settled statement instead of a reporter's transcript
13 under rule 8.137;

14
15 (iv) Notify the superior court clerk that it elects to proceed without a record of
16 the oral proceedings; or

17
18 (v) Notify the superior court that it is abandoning the appeal.

19
20 (B) If the appellant elects to use a reporter's transcript and fails to take one of the
21 actions specified in the notice under (A), rule 8.140(b) and (c) apply.

22
23 (4) If the respondent does not present the deposit under (b)(1) or a substitute under
24 (b)(3) with its notice of designation or does not present an additional deposit required
25 under (b)(2), the clerk must file the notice and promptly issue a notice of default
26 under rule 8.140.

27
28 ~~(3)~~(5) The clerk must promptly notify the reporter if a check for a deposit is dishonored or
29 an appeal is abandoned or is dismissed before the reporter has filed the transcript.

30
31 **DRAFTERS' NOTES:**

- 32
- 33 • **Paragraph (d)(1)** – The draft amendments to this provision are part of the amendments
34 intended to limit the current procedure for depositing a certified transcript to situations in
35 which that transcript contains all of the designated proceedings. These amendments would
36 eliminate the requirement that the clerk notify the court reporter if a party deposits a full
37 certified transcript in lieu of a deposit. Such notice is not necessary if the court reporter will
38 not be preparing a reporter's transcript;
 - 39
40 • **Paragraph (d)(2)** – The draft amendments to this provision are intended to improve the
41 procedures followed when a party fails to make a required deposit for a reporter's transcript.
42 These amendments would do two main things:
 - 43 ○ Establish different procedures in the event of a default by the appellant or the
44 respondent. This distinction is important because the appellant can make decisions
45 about whether and how to proceed with the appeal that are not available to a
46 respondent.
 - 47 ○ Expand the options available to an appellant who has failed to make a timely deposit or
48 permissible substitute. Currently, the only option presented to such an appellant is to

1 make the deposit or substitute. To reduce defaults, these proposed amendments would
2 also permit the appellant to opt for a different form of the record of the oral proceedings,
3 notify the court that he or she will be proceeding without a record of the oral
4 proceedings, or notify the court that he or she is abandoning the appeal.
5
6

7 **(e) Contents of transcript**
8

- 9 (1) Except when a party deposits a certified transcript of all the designated proceedings
10 under (b)(3)(C), the reporter must transcribe all designated proceedings that have not
11 previously been transcribed and include in the transcript a copy of all designated
12 proceedings that have previously been transcribed for which a certified transcript has
13 not been substituted under (b)(3), and The reporter must note in the transcript where
14 any proceedings were omitted and the nature of those proceedings. The reporter must
15 also note where any exhibit was marked for identification and where it was admitted
16 or refused, identifying such exhibits by number or letter.
17

18 (2)-(3) * * *

19
20 **DRAFTERS' NOTES:**

21 The draft amendments to this provision are intended to do two things:
22

- 23 • Clarify that the court reporter will not be preparing a reporter's transcript when a party has
24 deposited a certified transcript in lieu of a deposit for a reporter's transcript. This amendment
25 is part of the amendments intended to limit the current procedure for depositing a certified
26 transcript to situations in which that transcript includes all of the designated proceedings.
27
- 28 • Distinguish between proceedings that still need to be transcribed and those that have
29 already been transcribed. These draft amendments are part of the amendments intended to
30 establish an alternative to depositing a certified transcript of part of the designated
31 proceedings. The possible language to articulate this distinction is similar to that in the
32 proposed amendments to 8.130(b)(1)(B) above and is modeled on the language of rule
33 8.336(d), relating to reporter's transcripts in felony appeals, which provides, in relevant part:
34 "Any portion of the transcript transcribed during trial must not be retyped unless necessary
35 to correct errors, but must be repaginated and bound with any portion of the transcript not
36 previously transcribed."
37

38
39 **(f) Filing the transcript; copies; payment**
40

- 41 (1) Within 30 days after notice is received under (c)~~(2)~~(5) or mailed under (d)~~(1)~~(2), the
42 reporter must prepare and certify an original of the transcript and file it in superior
43 court. The reporter must also file one copy of the original transcript, or more than
44 one copy if multiple appellants equally share the cost of preparing the record (see
45 rule 8.147(a)(2)). Only the reviewing court can extend the time to prepare the
46 reporter's transcript (see rule 8.60).
47

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

7
8 (3) * * *

9
10 (4) On request, ~~and unless the superior court orders otherwise~~, the reporter must provide
11 the Court of Appeal or any party with a copy of the reporter's transcript in computer-
12 readable format. Each computer-readable copy must comply with the format,
13 labeling, content, and numbering requirements of Code of Civil Procedure section
14 271(b).

15
16 **DRAFTERS' NOTES:**

- 17
18 • **Paragraph (f)(2)** – These draft amendments would add a requirement that the court reporter
19 notify all parties when a transcript is complete. This draft amendment is intended to
20 establish a method for non-designating respondents to receive notice that the reporter's
21 transcript has been completed so that they can purchase a copy from the reporter.
22
23 • **Paragraph (f)(4)** – This draft amendment is intended to implement the authority under Code
24 of Civil Procedure section 271(a) for a court to request a copy of a reporter's transcript in
25 computer-readable format. It would also delete the authority of the superior court to provide
26 an exception to the requirement that provide such transcripts in computer-readable format
27 on request. This change is proposed in recognition of the fact that section 271 requires that
28 transcripts "be delivered in computer-readable form upon request if the proceedings were
29 produced utilizing computer-aided transcription equipment" and the committees'
30 understanding that all transcripts are now produced using such equipment.

31
32
33 **(g) Disputes over transcript costs**

34
35 Notwithstanding any dispute that may arise over the estimated or invoiced costs of a
36 reporter's transcript, a designating party must timely comply with the requirements under
37 this rule regarding deposits for transcripts. If a designating party believes that a reporter's
38 estimate or invoice is excessive, the designating party may file a complaint with the
39 Court Reporters Board.

40
41 **DRAFTERS' NOTES:**

42 This new draft provision is part of the amendments intended to address concerns about
43 ensuring that charges for reporter's transcripts are consistent with statute. It would clarify that a
44 designating party must comply with the deposit requirements established by this rule
45 notwithstanding any dispute over the cost of a reporter's transcript, but would also indicate that
46 a party who believes that a reporter's estimate or invoice for the cost of a transcript is excessive
47 may file a complaint with the Court Reporters Board.

1
2
3 ~~(g)(h)~~ * * *
4

5 Advisory Committee Comment

6
7 Under rule 8.121 an appellant may serve and file a notice *designating* a reporter's transcript and the notice
8 must identify the proceedings to be *included*. The wording recognizes that under rule 8.130(b)(3) the
9 appellant, instead of depositing the reporter's cost to transcribe the proceedings, may substitute certified
10 transcripts of proceedings that have already been transcribed (e.g., daily transcripts) and hence need only
11 be designated for inclusion in the transcript.
12

13 **Subdivision (a).** Subdivision (a)(1) requires that every notice designating a reporter's transcript identify
14 which proceedings are to be included, and that it do so by specifying the date or dates on which those
15 proceedings took place. Those proceedings for which a certified transcript has previously been prepared
16 should be identified with an asterisk. If the appellant does not want a portion of the proceedings on a
17 given date to be included, the notice should identify that portion by means of a descriptive reference (e.g.,
18 "August 3, 2004, but not the proceedings on defendant's motion to tax costs").
19

20 As used in subdivision (a)(1), the phrase "proceedings" includes all instructions that the court gives
21 orally, whether or not submitted in writing, and any instructions that counsel orally propose but the court
22 refuses; all such instructions are included in the reporter's transcript if designated under this rule. All
23 instructions that counsel submit in writing, whether or not given to the jury, are lodged with the superior
24 court clerk and are included in the clerk's transcript if designated under rule 8.122.
25

26 Under subdivision (a), portions of depositions read in open court but not reported, or not read but lodged
27 with the superior court clerk, are included in the clerk's transcript if designated under rule 8.122.
28

29 **Subdivision (b).** Where a certified transcript has been previously prepared, subdivision (b) makes clear
30 that the certified transcript may be filed in lieu of a deposit for the transcript only where the certified
31 transcript contains all of the proceedings identified in the notice of designation and the transcript complies
32 with the format requirements of rule 8.144. Otherwise, where a certified transcript has been previously
33 prepared for only some of the designated proceedings, subdivision (b)(1) authorizes a reduced fee to be
34 deposited for those proceedings. This reduced deposit amount was established in recognition of the
35 holding in *Hendrix v. Superior Court of San Bernardino County* (2011) 191 Cal.App.4th 889 that the
36 statutory rate for an original transcript only applies to the first transcription of the reporter's notes. The
37 amount of the deposit is based on the rate established by Government Code section 69950(b) for a first
38 copy of a reporter's transcript purchased by any court, party, or other person who does not simultaneously
39 purchase the original.
40

41 To eliminate any ambiguity, subdivision (b)(3) recognizes, first, that a party may substitute a court
42 reporter's written waiver or a certified transcript of a deposit for part of the designated proceedings and,
43 second, that in such event the waiver ~~or transcript~~ replaces the deposit for only that part.
44

45 Subdivision (b) and subdivision (f) refer to the "statutory rate" for reporter's transcripts. The fees for
46 reporter's transcripts are established by Government Code sections 69950 and 69554.
47

48 **Subdivision (c).** Under subdivision (c), an application to the Court Reporters Board for payment or
49 reimbursement of the cost of the reporter's transcript from the Transcript Reimbursement Fund (Bus. &
50

1 Prof. Code, § 8030.8) is a permissible substitute for the required deposit of the reporter’s fee (subd.
2 (b)(3)) and thereby prevents issuance of a notice of default (subd. (d)(45)).
3

4 Business and Professions Code sections 8030.6 and 8030.8 use the term “reimbursement” to mean not
5 only a true reimbursement, i.e., repaying a party who has previously paid the reporter out of the party’s
6 own funds (see *id.*, § 8030.8, subd. (d)), but also a direct payment to a reporter who has not been
7 previously paid by the party (see *id.*, § 8030.6, subds. (b) and (d)). Subdivision (f) recognizes this special
8 dual meaning by consistently using the compound phrase “payment or reimbursement.”
9

10 **Subdivision (d).** Under subdivision (d)(42), the clerk’s notice to the reporter must show the date on
11 which the clerk mailed the notice. This provision is intended to establish the date when the period for
12 preparing the reporter’s transcript under subdivision (f)(1) begins to run.
13

14 **Subdivision (e).** Subdivision (e)(1) clarifies that: (1) when a certified transcript containing all of the
15 proceedings identified in the notice of designation is submitted in lieu of a deposit, the court reporter will
16 not prepare a reporter’s transcript; and (2) that the court reporter will only transcribe those proceedings
17 that have not previously been transcribed and will include a copy of those proceedings that have
18 previously been transcribed in the reporter’s transcript. Under rule 8.144, the full transcript, including the
19 previously transcribed material, must meet the format requirements for a reporter’s transcript.
20

21 Subdivision (e)(3) is not intended to relieve the reporter of the duty to report all oral proceedings,
22 including the reading of instructions or other documents.
23

24 **Subdivision (f).** Subdivision (f)(1) requires the reporter to prepare and file additional copies of the record
25 “if multiple appellants equally share the cost of preparing the record. . . .” The reason for the requirement
26 is explained in the comment to rule 8.147(a)(2).
27

28 Implementing statutory provisions (e.g., Code Civ. Proc., § 271; Gov. Code, § 69954), subdivision (f)(4)
29 requires the reporter to provide the Court of Appeal or a party, on request, with a copy of the reporter’s
30 transcript in computer-readable format. ~~But in recognition of the fact that in some instances the reporter~~
31 may be unable to provide a copy in that format, the subdivision also authorizes the reporter to apply to the
32 superior court for relief from this requirement. Government Code, § 69954 establishes the fees for
33 reporter’s transcripts in computer-readable format.
34

35 **DRAFTERS’ NOTES:**

36 These draft amendments to the advisory committee comment are intended to reflect the
37 changes to the rule that would (1) eliminate the option of providing certified transcripts in lieu of
38 a deposit for only part of the designated proceedings; and (2) specifically provide for requests
39 by the Court of Appeal for a copy of a reporter’s transcript in computer-readable format.
40
41
42

1 **Division 2. Rules Relating to the Superior Court Appellate Division**

2
3 **Chapter 2. Appeals and Records in Limited Civil Cases**

4
5 **Article 2. Record in Civil Appeals**

6
7 **Rule 8.834. Reporter’s transcript**¹⁰

8
9 **(a) Notice**

- 10
11 (1) A notice designating a reporter’s transcript under rule 8.831 must specify the date of
12 each proceeding to be included in the transcript and may specify portions of the
13 designated proceedings that are not to be included. The notice must identify any
14 proceeding for which a certified transcript has previously been prepared by placing
15 an asterisk before that proceeding.
16
17 (2) * * *
18
19 (3) If the appellant serves and files a notice under rule 8.831 designating a reporter’s
20 transcript, the respondent may, within 10 days after such service, serve and file a
21 notice in the trial court designating any additional proceedings the respondent wants
22 included in the reporter’s transcript. The notice must identify any proceeding for
23 which a certified transcript has previously been prepared by placing an asterisk
24 before that proceeding.
25
26 (4) Except when a party deposits a certified transcript of all the designated proceedings
27 under (b)(2)(D) with the notice of designation, the clerk must promptly mail a copy
28 of each notice to the reporter. The copy must show the date it was mailed.

29
30 **(b) Deposit or ~~waiver~~ substitute**

- 31
32 (1) Within 10 days after the clerk mails a notice under (a)(4), the reporter must file the
33 estimate with the clerk—or notify the clerk in writing of the date that he or she
34 notified the appellant directly—of the estimated cost of preparing the reporter’s
35 transcript at the statutory rate.
36
37 (2) Within 10 days after the clerk notifies the appellant of the estimated cost of
38 preparing the reporter’s transcript or within 10 days after the reporter notifies the
39 appellant directly—the appellant must do one of the following:
40
41 (A) Deposit with the clerk an amount equal to the estimated cost and a fee of \$50
42 for the superior court to hold this deposit in trust; or
43
44 (B) File with the clerk a waiver of the deposit signed by the reporter;

¹⁰ Please note that in a separate invitation to comment relating to the appellate division rules and forms, the Appellate Advisory Committee is proposing other changes to rule 8.834.

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(C) File a copy of a Transcript Reimbursement Fund application filed under (4);

(D) File a certified transcript of all of the designated proceedings. The transcript must comply with the format requirements of rule 8.144; or

(E) Notify the clerk that:

(i) He or she now elects to use a statement on appeal instead of a reporter's transcript. The appellant must prepare, serve, and file a proposed statement on appeal within 20 days after serving and filing the notice and must otherwise comply with the requirements for statements on appeal under rule 8.837;

(ii) He or she now elects to proceed without a record of the oral proceedings in the trial court; or

(iii) He or she is abandoning the appeal.

(3) The clerk must ~~then~~ promptly notify the reporter to prepare the transcript when the court receives:

(A) The required deposit under (2)(A); or

(B) A waiver of the deposit signed by the reporter under (2)(B).

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

(A) Within 90 days after the appellant serves and files a copy of its application to the Court Reporters Board, the appellant must either file with the court a copy of the Court Reporters Board's approval of the application or take one of the following actions:

(i) Deposit the amount required under (2) or the reporter's written waiver of this deposit;

(ii) Notify the superior court that he or she now elects to use a statement on appeal instead of a reporter's transcript. The appellant must prepare, serve, and file a proposed statement on appeal within 20 days after serving and filing the notice and must otherwise comply with the requirements for statements on appeal under rule 8.837;

(iii) Notify the superior court that that he or she elects to proceed without a record of the oral proceedings; or

1
2 (iv) Notify the superior court that he or she is abandoning the appeal.

3
4 (B) Within 90 days after the respondent serves and files a copy of its application to
5 the Court Reporters Board, the respondent must either file with the court a
6 copy of the Court Reporters Board’s approval of the application or take one of
7 the following actions:

8
9 (i) Deposit the amount required under (2) or the reporter’s written waiver of
10 this deposit; or

11
12 (ii) Notify the superior court that the respondent no longer wants the
13 additional proceedings it designated for inclusion in the reporter’s
14 transcript.

15
16 (C) If the appellant fails to timely take one of the actions specified in (A) or the
17 respondent fails to timely make the deposit or send the notice under (B), the
18 clerk must promptly issue a notice of default under rule 8.842.

19
20 (D) If the Court Reporters Board approves the application for payment or
21 reimbursement, the reporter’s time to prepare the transcript under (d)(1) begins
22 when the reporter receives notice of the approval.

23
24 (c) **Contents of reporter’s transcript**

25
26 (1) Except when a party deposits a certified transcript of all the designated proceedings
27 under (b)(2)(D), the reporter must transcribe all designated proceedings that have not
28 previously been transcribed and provide a copy of all designated proceedings that
29 have previously been transcribed. ~~and~~ The reporter must note in the transcript where
30 any proceedings were omitted and the nature of those proceedings. The reporter must
31 also note where any exhibit was marked for identification and where it was admitted
32 or refused, identifying such exhibits by number or letter.

33
34 (2)–(4) * * *

35
36 (d) **Filing the reporter’s transcript; copies; payment**

37
38 (1) * * *

39
40 (2) When the transcript is completed, the reporter must notify all parties that the
41 transcript is complete, bill each designating party at the statutory rate, and send a
42 copy of the bill to the clerk. The clerk must pay the reporter from that party’s
43 deposited funds and refund any excess deposit or notify the party of any additional
44 funds needed. In a multiple reporter case, the clerk must pay each reporter who
45 certifies under penalty of perjury that his or her transcript portion is completed.

1 (3) * * *

2

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

7

8 (e) **Disputes over transcript costs**

9

10 Notwithstanding any dispute that may arise over the estimated or invoiced costs of a
11 reporter's transcript, a designating party must timely comply with the requirements under
12 this rule regarding deposits for transcripts. If a designating party believes that a reporter's
13 estimate or invoice is excessive, the designating party may file a complaint with the
14 Court Reporters Board.

15

16

17 ~~(e)~~(f) * * *

18