

# Judicial Council of California

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## INVITATION TO COMMENT SPR15-06

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Title	Action Requested
Appellate Procedure: Appendixes	Review and submit comments by June 17, 2015
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 8.124	January 1, 2016
Proposed by	Contact
Appellate Advisory Committee	Heather Anderson,
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### Executive Summary and Origin

Based on a suggestion received from an attorney, the Appellate Advisory Committee is proposing to amend the rule governing the use of appendixes in lieu of clerk's transcripts in unlimited civil appeals to eliminate the provision encouraging parties to prepare a joint appendix.

### The Proposal

California Rules of Court, rule 8.124 provides for the use of appendixes prepared by the parties in lieu of clerk's transcripts in unlimited civil appeals. Under this rule, appellants and respondents may prepare either individual appendixes, which are filed with their respective briefs, or a joint appendix, which must be filed with the appellant's opening brief. Currently, subdivision (a)(3) of this rule provides that the parties may prepare separate appendixes, but are encouraged to stipulate to a joint appendix.

Attorneys have reported that the provision encouraging the use of a joint appendix is not necessary and sometimes causes problems for litigants. Both joint appendixes and appellant's appendixes are required to contain all the items required to be included in a clerk's transcript under rule 8.122 and any other item that could be included in a clerk's transcript that is necessary for proper consideration of the issues on appeal. This includes, for both joint and appellant's appendixes "any item that the appellant should reasonably assume the respondent will rely on." If the appellant is able to anticipate the items the respondent will need in the appendix, then a joint appendix will not be necessary—all the necessary items will be in the appellant's appendix. If, however, the respondent does need additional items, this will not become clear until after the appellant files his or her brief and the respondent can see the issues being raised on appeal, in which case a respondent's appendix will be needed. Since respondents generally cannot

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anticipate whether additional items will be needed until after appellant's brief is filed and the deadline for filing a joint appendix is passed, attorneys report that joint appendixes generally are not used and thus it is not efficient for them to spend time trying to develop a joint appendix. Despite this, because of the provision encouraging the use of joint appendixes, the respondent may insist on trying to prepare a joint appendix, resulting in disputes between litigants and inefficiencies.

This proposal would delete the provision in current rule 8.124 that encourages parties to file a joint appendix. This would not prevent litigants from preparing a joint appendix where it is worthwhile to do so, but it would eliminate the pressure to spend time on preparing joint appendixes where it does not make sense.

### **Alternatives Considered**

The committee considered not proposing these rule amendments. However, the committee concluded that eliminating the encouragement to use joint appendixes would be helpful to litigants.

### **Implementation Requirements, Costs, and Operational Impacts**

This proposed change would not impose any implementation requirements on courts and no operational impacts on courts are anticipated.

## **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on whether the proposal appropriately addresses the stated purpose.

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

- Would the proposal provide cost savings? If so please quantify.
- 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?
- How well would this proposal work in courts of different sizes?

Rule 8.124 of the California Rules of Court would be amended, effective January 1, 2016, to read:

1 **Rule 8.124. Appendixes**

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3 **(a) Notice of election**

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5 (1)–(2) \* \* \*

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7 (3) The parties may prepare separate appendixes, ~~but are encouraged to~~ or they may  
8 stipulate to a joint appendix.

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10 **(b)–(g) \* \* \***

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