

Judicial Council of California

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INVITATION TO COMMENT SPR17-02

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|---|---|
| Title | Action Requested |
| Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form | Review and submit comments by April 28, 2017 |
| Proposed Rules, Forms, Standards, or Statutes | Proposed Effective Date |
| Amend Cal. Rules of Court, rule 8.144 | January 1, 2018 |
| Proposed by | Contact |
| Appellate Advisory Committee Hon. Louis R. Mauro, Chair | Heather Anderson, 415-865-7691 heather.anderson@jud.ca.gov |

Executive Summary and Origin

The Appellate Advisory Committee is proposing amendments to the rule regarding the format of the record on appeal to incorporate requirements for reporters' transcripts that are delivered in electronic form. This proposal is based on a suggestion from a court reporters association.

Background

Code of Civil Procedure section 271 authorizes courts and parties to receive, on request, copies of reporters' transcripts in "computer-readable form." Subdivision (b) of this statute establishes default standards for the format of such transcripts, but provides that these defaults apply "[e]xcept as modified by standards adopted by the Judicial Council."

Rule 8.144 generally addresses the format of the record on appeal, including the format of reporters' transcripts. Currently, this rule contains only the following provision regarding the format of computer-readable reporters' transcripts:

A computer-readable copy of a reporter's transcript must be in a text-searchable format approved by the reviewing court while maintaining original document formatting.

(Cal. Rules of Court, rule 8.144(a)(4).)

There are additional formatting issues and questions that arise when a transcript is in electronic format that it may be helpful for rule 8.144 to address.

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 These proposals are circulated for comment purposes only.

The Proposal

The committee is proposing amendments to rule 8.144 to provide additional guidance regarding the format for reporters' transcripts that are delivered in electronic form. To make the overall rule clearer, the committee is also proposing reorganizing some of the existing provisions. The main amendments include:

- Current subdivisions (a), (b), and (c), which establish general formatting requirements for reporters' and clerks' transcripts, would be consolidated into a single subdivision (a), titled *Format*. This should make it easier for rule users to find all of the general formatting requirements. To make this longer subdivision easier to follow, each paragraph would be given a heading. This also preserves the most of the headings now used in subdivisions (b) and (c). In addition, a proposed new requirement that each index begin on a separate page would be placed here, as having each index begin on a separate page would be helpful in all transcripts, whether in paper or electronic form.
- The current provisions that specifically relate to transcripts that are in paper form would be gathered together in a new subdivision (b). This reorganization should make finding these specific formatting requirements easier.
- New subdivision (c) would address the specific requirements for reporters' transcripts in delivered in electronic form, including that the transcript be in a full-text searchable PDF or other searchable format approved by the court; include an electronic bookmark to each heading, subheading, and component of the transcript; and permit users to copy and paste, keeping the original formatting. This new subdivision would include separate paragraphs for both general requirements and special requirements for multireporter or multivolume transcripts that are in electronic format. As with proposed subdivisions (a) and (b), this structure should make it easier for rule users to find all of the requirements relating to reporters' transcripts delivered in electronic form in one place.

Other nonsubstantive changes to the rule are also incorporated in this proposal.

Alternatives Considered

The committee considered not recommending any changes to rule 8.144 but concluded that providing more guidance on the format of reporters' transcripts in electronic form would be helpful.

Implementation Requirements, Costs, and Operational Impacts

No appreciable implementation requirements, costs, or operation impacts 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 it is necessary for the rule to require the court reporter to both digitally and electronically sign a transcript that is delivered in electronic form? If only one requirement were included, which would be preferable?

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

- 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 three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

Attachments and Links

Proposed amendments to Cal. Rules of Court, rule 8.144, at pages 4–8

1 Title 8. Appellate Rules

2
3 Division 1. Rules Relating to the Supreme Court and Courts of Appeal

4
5 Chapter 2. Civil Appeals

6
7 Article 2. Record on Appeal

8
9 Rule 8.144. Form of the record

10
11 (a) ~~Paper and~~ Format

12
13 (1) General

14 In the clerk's and reporter's transcripts:

15
16 (A) All documents filed must have a page size of 8½ by 11 inches. ~~If filed~~
17 ~~in paper form, the paper must be white or unbleached and of at least 20-~~
18 ~~pound weight;~~

19
20 (B) The text must be reproduced as legibly as printed matter;

21
22 (C) The contents must be arranged chronologically;

23
24 (D) The pages must be consecutively numbered, except as provided in (e);
25 and

26
27 (E) The margin must be at least 1¼ inches from the left edge.

28
29 ~~(2) If filed in paper form, in the clerk's transcript only one side of the paper may~~
30 ~~be used; in the reporter's transcript both sides may be used, but the margins~~
31 ~~must then be 1¼ inches on each edge.~~

32
33 ~~(3)~~(2) Line numbering

34 In the reporter's transcript the lines on each page must be consecutively
35 numbered and must be double-spaced or one-and-a-half-spaced; double-
36 spaced means three lines to a vertical inch.

37
38 ~~(4) A computer-readable copy of a reporter's transcript must be in a text-~~
39 ~~searchable format approved by the reviewing court while maintaining~~
40 ~~original document formatting.~~

1 ~~(5)~~(3) Sealed and confidential records

2 The clerk's and reporter's transcripts must comply with rules 8.45–8.47
3 relating to sealed and confidential records.

4
5 ~~(b)~~(4) Indexes

6 Except as provided in rule 8.45, at the beginning of the first volume of each:

7
8 ~~(1)~~(A) The clerk's transcript must contain alphabetical and chronological
9 indexes listing each document and the volume, where applicable, and
10 page where it first appears;

11
12 ~~(2)~~(B) The reporter's transcript must contain alphabetical and
13 chronological indexes listing the volume, where applicable, and page
14 where each witness's direct, cross, and any other examination, begins;
15 and

16
17 ~~(3)~~(C) The reporter's transcript must contain an index listing the volume,
18 where applicable, and page where any exhibit is marked for
19 identification and where it is admitted or refused. The index must
20 identify each exhibit by number or letter and a brief description of the
21 exhibit.

22
23 (D) Each index required by (A), (B), and (C) must begin on a separate
24 page.

25
26 ~~(e)~~(5) Binding and Cover

27
28 ~~(1) — If filed in paper form, clerk's and reporter's transcripts must be bound on the~~
29 ~~left margin in volumes of no more than 300 sheets.~~

30
31 ~~(2)~~(A) Each volume's cover must state the title and trial court number of
32 the case, the names of the trial court and each participating trial judge,
33 the names and addresses of appellate counsel for each party, the
34 volume number, and the inclusive page numbers of that volume.

35
36 ~~(3)~~(B) In addition to the information required by ~~(2)~~(A), the cover of each
37 volume of the reporter's transcript must state the dates of the
38 proceedings reported in that volume.

39
40 **(b) Additional requirements for record in paper form**

41
42 In addition to complying with (a), if the record is filed in paper form:
43

- 1 (1) The paper must be white or unbleached and of at least 20-pound weight;
2
3 (2) In the clerk’s transcript only one side of the paper may be used; in the
4 reporter’s transcript both sides may be used, but the margins must then be 1¼
5 inches on each edge.
6
7 (3) Clerks’ and reporters’ transcripts must be bound on the left margin in
8 volumes of no more than 300 sheets.
9

10 **(c) Additional requirements for reporter’s transcript delivered in electronic form**
11

12 (1) General
13

14 In addition to complying with (a), a reporter’s transcript delivered in
15 electronic format must:
16

- 17 (A) Be generated electronically; it must not be created from a scanned
18 document.
19
20 (B) Be in full text-searchable PDF (portable document format) or other
21 searchable format approved by the court.
22
23 (C) Be paginated beginning with the first page or cover page as page 1 and
24 consecutively numbered using only Arabic numerals (e.g., 1, 2, 3)
25 throughout the document, including indices and certificates. The
26 electronic page counter in a PDF file viewer must match the transcript
27 page numbering.
28
29 (D) Include an electronic bookmark to each heading, subheading, and
30 component of the transcript, including all sessions or hearings (date
31 lines), all witness examinations, the index, and all exhibits. All
32 bookmarks and hyperlinks, when clicked, must retain the user’s
33 currently selected zoom settings.
34
35 (E) Be digitally and electronically signed by the court reporter.
36
37 (F) Permit users to copy and paste, keeping the original formatting, but
38 with headers, footers, line numbers, and page numbers excluded.
39
40 (G) Permit courts to electronically add filed/received stamps.
41
42

1 (2) Multivolume or multireporter transcripts

2
3 In addition to the requirements in (1), multivolume or multireporter
4 transcripts delivered in electronic format must comply with the following
5 requirements:

6
7 (A) Each individual reporter must include the cover page required by (a)(3),
8 the indexes required by (a)(4), and a digitally and electronically signed
9 certificate in its respective portion of the transcript.

10
11 (B) The transcript must be merged into a single electronic document, which
12 may consist of multiple volumes.

13
14 (C) The primary reporter must prepare a master index for the merged
15 transcript that includes all of the information from the indexes required
16 under (A). This master index must be the first bookmark in the
17 transcript, regardless of where the master index is located within the
18 transcript.

19
20 (3) Additional functionality or enhancements

21
22 Nothing in this rule prohibits courts from accepting additional functionality
23 or enhancements in reporters' transcripts delivered in electronic form.

24
25 (d) * * *

26
27 (e) **Pagination in multiple reporter cases**

28
29 (1) In a multiple reporter case, each reporter must estimate the number of pages
30 in each segment reported and inform the designated primary reporter of the
31 estimate. The primary reporter must then assign beginning and ending page
32 numbers for each segment.

33
34 (2) If a segment exceeds the assigned number of pages, the reporter must number
35 the additional pages with the ending page number, a hyphen, and a new
36 number, starting with 1 and continuing consecutively.

37
38 (3) If a segment has fewer than the assigned number of pages, on the last page of
39 the segment, before the certificate page, the reporter must add a hyphen to the
40 last page number used, followed by the segment's assigned ending page
41 number, and state in parentheses “(next volume and page number is ____).”
42

1 (f) * * *

2

3

Advisory Committee Comment

4

5 **Subdivision (a)(3) and (4)(b).** ~~Subdivision (a)(4) is adopted under Code of Civil Procedure~~
6 ~~section 271(b), which allows the Judicial Council to adopt format requirements for computer-~~
7 ~~readable copies of a reporter's transcript. Subdivisions (a)(5) Paragraphs (3) and (b)(4) of~~
8 subdivision (a) refer to special requirements concerning sealed and confidential records
9 established by rules 8.45–8.47. Rule 8.45(c)(2) and (3) establishes special requirements regarding
10 references to sealed and confidential records in the alphabetical and chronological indexes to
11 clerks' and reporters' transcripts.

12