



# JUDICIAL COUNCIL OF CALIFORNIA

APPELLATE ADVISORY  
COMMITTEE

[www.courts.ca.gov/aac.htm](http://www.courts.ca.gov/aac.htm)  
[aac@jud.ca.gov](mailto:aac@jud.ca.gov)

## APPELLATE ADVISORY COMMITTEE RULES SUBCOMMITTEE OPEN MEETING NOTICE AND AGENDA

Open to the Public (Cal. Rules of Court, rule 10.75(c)(1))  
THIS MEETING IS BEING CONDUCTED BY ELECTRONIC MEANS  
THIS MEETING IS BEING RECORDED

**Date:** Thursday, January 12, 2017  
**Time:** 12:00 Noon  
**Public Call-in Number:** 1-877-820-7831, Passcode: 5846649

Meeting materials will be posted on the advisory body web page on the California Courts website at least three business days before the meeting.

Agenda items are numbered for identification purposes only and will not necessarily be considered in the indicated order.

### **I. OPEN MEETING (CAL. RULES OF COURT, RULE 10.75(C)(1))**

#### **Call to Order and Roll Call**

### **II. PUBLIC COMMENT (CAL. RULES OF COURT, RULE 10.75(K)(2))**

#### **Written Comment**

In accordance with California Rules of Court, rule 10.75(k)(1), written comments pertaining to any agenda item of a regularly noticed open meeting can be submitted up to one complete business day before the meeting. For this specific meeting, comments should be e-mailed to [aac@jud.ca.gov](mailto:aac@jud.ca.gov) or mailed or delivered to Judicial Council of California, attention: Heather Anderson. Only written comments received by Wednesday, January 11 will be provided to advisory body members.

### **III. DISCUSSION AND POSSIBLE ACTION ITEMS (ITEMS X-X)**

#### **Item A**

#### **Settled Statements**

Consider whether to recommend amendments to the rule regarding settled statements or a form to address difficulties in the timely preparation of these statements.

**Item B**

**Format of electronic reporter's transcripts**

Consider whether to recommend amending rule 8.144 to include additional provisions regarding the format of electronic reporter's transcripts

**~~Item C~~**

**~~Record on Appeal in Juvenile Case~~**

~~Consider whether to develop rule regarding the record in cases where the appellant is not a party who would ordinarily have access to the record of the trial court proceedings~~

**Item D**

**Verification of Writ Petitions**

Consider whether to recommend amendments to the rules regarding writ petitions to consistently reflect statutory requirements for verification of petitions

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**IV. ADJOURNMENT**

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**Adjourn**

Item A



## JUDICIAL COUNCIL OF CALIFORNIA

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# MEMORANDUM

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**Date**

January 9, 2017

**Action Requested**

Please read before January 12 rules  
subcommittee conference call

**To**

Members of the Appellate Advisory  
Committee's Rules Subcommittee

**Deadline**

January 12, 2017

**From**

Heather Anderson, Supervising Attorney,  
Legal Services

**Contact**

Heather Anderson  
415-865-7691  
heather.anderson@jud.ca.gov

**Subject**

Settled statements

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### Introduction

Item 6 on the committee's annual agenda this committee year is to consider whether to recommend amendments to the rule regarding settled statements in unlimited civil cases or a form to address difficulties in the timely preparation of these statements (this is a priority 1 project with a proposed January 1, 2018 completion date). Attached for the subcommittee's review and consideration are draft amendments to California Rules of Court, rule 8.137 and *Appellant's Notice Designating Record on Appeal (Unlimited Civil)* (form APP-003) that are designed to implement this suggestions.

### Background

Settled statements are one of the methods permitted under the Rules of Court to prepare a record of the trial court proceedings for an appeal. A settled statement is a summary of the trial court proceedings prepared by the appellant and approved by the trial court (this contrasts with an agreed statement, which is not reviewed by the trial court but is agreed to by the parties). Settled statements are typically used as the record of the oral proceedings in the trial court, replacing a reporter's transcript, but they can also be used to provide a record of the documents filed in the trial court, replacing a clerk's transcript or appendix.

### **Settled statements in unlimited civil cases**

Rule 8.137 addresses the use of settled statements in appeals to the Court of Appeal in unlimited civil cases. This rule reflects a basic presumption that court reporter's transcripts will be available in these unlimited civil cases and a preference for use of these transcripts. Under subdivision (a) of this rule, an appellant must file a motion asking to use a settled statement and must support this motion with a showing that a reporter's transcript is not available to the appellant:

#### (a) Motion to use settled statement

- (1) An appellant intending to proceed under this rule must serve and file in superior court with its notice designating the record on appeal under rule 8.121 a motion to use a settled statement instead of a reporter's transcript or both reporter's and clerk's transcripts.
- (2) The motion must be supported by a showing that:
  - (A) A substantial cost saving will result and the statement can be settled without significantly burdening opposing parties or the court;
  - (B) The designated oral proceedings were not reported or cannot be transcribed;  
or
  - (C) The appellant is unable to pay for a reporter's transcript and funds are not available from the Transcript Reimbursement Fund (see rule 8.130(c)). A party proceeding in forma pauperis is deemed unable to pay for a transcript.

The rule also provides very little direction regarding how a proposed statement is to be prepared and how it is to be reviewed and approved by the trial court.

Given that court reporters were historically present to record the proceedings in unlimited civil cases and the hurdle of having to file a motion, in the past, settled statements were a little-used option in Court of Appeal proceedings. As noted by committee member Joseph Lane, however, times have changed. Court reports are no longer present to record the proceedings in many civil cases and therefore more appellants are now trying to use the settled statements procedure. This has proved problematic, as appellants attempt to navigate the motion procedure and prepare proposed statements and trial court attempt to review and certify proposed statement. These problems are having an increasing impact on both litigants and the Courts of Appeal.

### **Statements on appeal in limited civil cases**

A statement on appeal is the equivalent of a settled statement in a limited civil case appealed to the appellate division of the superior court. Unlike in unlimited civil cases, historically, court

reporters were often not present to record the proceedings in limited civil cases. Statements on appeal were therefore commonly used to prepare the record in these cases and continue to be used currently.

Rule 8.837 addresses statements on appeal in limited civil cases. Unlike rule 8.137, this rule, adopted effective January 1, 2009, does not require the appellant to file a motion requesting to use a statement on appeal; the appellant may simply elect in his or her record designation to use a statement on appeal. Rule 8.837 also provides fairly detailed directions to appellants regarding the content of proposed statements on appeal and to trial courts about reviewing and approving (certifying) these statements. At the same time as it adopted this rule, the Judicial Council also approved *Proposed Statement on Appeal (Limited Civil Case)* (form APP-104) which provides a template to appellants for preparing a proposed statement.<sup>1</sup> Rule 8.837 generally requires self-represented appellants to use this form.

### **Draft Rule Amendments and Form Revisions**

Committee member Joseph Lane suggested that rule 8.137 be amended to clarify the procedure for getting a final certified statement to the appropriate clerk for transmission to the Court of Appeal. He also noted, however, that there might be other suggestions regarding improving this procedure. Because trial courts are familiar with the statement on appeal procedure and form APP-104 in limited civil cases, staff believes that these may be helpful models to consider adapting to address the problems that have arisen as reporter's transcripts have become less available in unlimited civil cases.

Staff also notes that changes to the settled statement procedures would likely be of interest to other Judicial Council advisory bodies. In particular, these changes would impact trial court operations and could potentially have impacts in family law cases. Staff therefore suggests that input be sought on any proposal developed by the committee both from the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee and from the Family and Juvenile Law Advisory Committee.

### **Possible amendments to rule 8.137**

Attached for your consideration are possible amendments to rule 8.137 that would incorporate many provisions from rule 8.837 and make other changes designed to make it easier to use the settled statement procedure in unlimited civil case. The following are the main changes suggested:

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<sup>11</sup> You can access this form at: <http://www.courts.ca.gov/documents/app104.pdf>

- Adding a new subdivision that describes what a settled statement is (proposed subdivision a). This should help litigants better understand this option;
- Eliminating the requirement to file a motion requesting to use a settled statement if either the proceedings were not recorded by a court reporter or the appellant has received a fee waiver (proposed subdivision b). This should both help reduce barriers for appellants and reduce burdens on the trial court in cases in which the motion would have been granted;
- Requiring self-represented appellants to use a proposed statement on appeal form, modeled on APP-104, unless the trial court authorizes them not to (proposed subdivision c). This should both help appellants prepare proposed statements and make it easier for the trial court judge to review proposed statements;
- Adding provisions from rule 8.837 regarding the contents of proposed statements (proposed subdivision d). This should also both help appellants prepare proposed statements and make it easier for the trial court judge to review proposed statements. Note that these proposed amendments would include requiring the appellant to specify, in all cases, the grounds for the appeal; currently, rule 8.137 only requires such a specification when the proposed statement describes less than all the testimony.
- Adding provisions from rule 8.837 regarding the trial court's review of proposed statements (proposed subdivision f). This should clarify and simplify the procedure for the trial court and bring consistency to the procedures for statements in limited and unlimited civil cases. Among other things, these proposed amendments would:
  - Eliminate the current requirement that the trial court hold a hearing to “settle” the statement in every case; instead, a hearing would only be held if ordered by the trial court and would not ordinarily be ordered unless there was a factual dispute about a material aspect of the proceeding.
  - Specifically authorize the judge to send a proposed statement back to the appellant for correction without holding a hearing if the statement is missing essential material.
  - Allow the judge to make modifications and corrections to the statement, rather than sending it back to the appellant, if the judge so chooses;
  - If a court reporter did record the proceedings and the trial court adopts a rule authorizing this, allow the trial court judge to order preparation of a reporter's transcript instead of reviewing and correcting the statement. The court would be required to pay for any transcript ordered under this provision.
- Adding provisions from rule 8.837 regarding review of modified or corrected statements (proposed subdivision g). This procedure ensures that the parties have an opportunity to review and object to any modified statement before it is certified by the judge.

- Adding a requirements that any stipulation of the parties to a statement be served and filed and that the final statement be immediately submitted to the clerk for transmission of the record on appeal (proposed subdivision (h)). These requirements are intended to reduce delay in transmission of the final statements on appeal to the Court of Appeal.

Issues that the subcommittee may want to consider in reviewing these draft rule amendments include:

- Does the subcommittee wish to recommend moving forward with circulating amendments to rule 8.137 that are modelled on rule 8.837?
- If amendments to rule 8.137 are proposed, should they include the elements described above?
- Are there additional provisions that the subcommittee should consider incorporating into rule 8.137?

#### **Possible revisions to form APP-003**

Attached for your review are possible revisions to *Appellant's Notice Designating Record on Appeal (Unlimited Civil)* (form APP-003), shown as handwritten additions and deletions, which would conform this form to the proposed amendments to rule 8.137 discussed above.

Specifically, revisions are proposed to section 2.b. on the form reflect the elimination of the requirement to file a motion requesting to use a settled statement if either the proceedings were not recorded by a court reporter or the appellant has received a fee waiver

#### **Possible new form APP-014**

Attached for your review is a copy of the current *Proposed Statement on Appeal (Limited Civil Case)* (form APP-104) with possible revisions to create a similar form for use in unlimited civil cases shown as handwritten additions and deletions.

Note that APP-104 was developed with limited civil cases in mind. Limited civil cases have a narrower range of case types – for example, they do not include family law cases – and the proceedings are typically shorter and simpler than for unlimited civil cases. For this reason, it is not clear if a form like APP-104 will work in unlimited civil cases, either in its current format or even with additional modifications.

Issues that the subcommittee may want to consider in reviewing this draft form include:

- Does the subcommittee wish to recommend moving forward with circulating a proposed statement of appeal form for unlimited civil cases modeled on form APP-104?
- If such a form is proposed:
  - Are there additional items that need to be included on the form?

- Should the form include additional space for the summary of any of the items?
- Are there items for which the summary is always likely to be too long to fit on the form and, therefore that the form should require be done by way of attachment?
- Should the form include the final section asking the appellant to summarize the final judgment or should this be replaced with a requirement to attach a copy of the judgment? Note that the appellate will be required to attach a copy of the judgment to the Civil Case Information Statement that must be filed in the Court of Appeal at approximately the same time as a proposed statement must be filed in the trial court.

### **Rules Subcommittee Task**

The subcommittee's task is to analyze this proposal and:

- Approve the proposal as presented and recommend to the full committee that it seek approval from RUPRO to circulate the proposal for public comment;
- Modify the proposal and recommend to the full committee that it seek approval from RUPRO to circulate the modified proposal for public comment;
- Recommend to the full committee that it reject the proposal; or
- Ask staff, committee members, or other advisory bodies for further information/analysis.

## 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 8.137. Settled statement

**(a) Description**

A settled statement is a summary of the superior court proceedings that is approved by the superior court. An appellant may either elect or move to use a settled statement as the record of the oral proceedings in the superior court, instead of a reporter's transcript, and may move to use a settled statement as the record of the written documents from the superior court proceedings, instead of a clerk's transcript or appendix.

**(a)(b) ~~Motion to use settled statement~~ When may be used**

(1) An appellant may elect in its notice designating the record on appeal under rule 8.121 to use a settled statement as the record of the oral proceedings in the superior court without filing a motion under (2) if:

(A) The designated oral proceedings in the superior court were not reported by a court reporter; or

(B) The appellant has an order waiving his or her court fees and costs.

~~(1)~~(2) An appellant intending to proceed under this rule for reasons other than those listed in (1) must serve and file in superior court with its notice designating the record on appeal under rule 8.121 a motion to use a settled statement instead of a reporter's transcript or both reporter's and clerk's transcripts.

~~(2)~~(A) The motion must be supported by a showing that:

~~(A)~~(i) A substantial cost saving will result and the statement can be settled without significantly burdening opposing parties or the court;

~~(B)~~(ii) The designated oral proceedings were not reported or cannot be transcribed; or

~~(C)~~(iii) Although the appellant does not have a fee waiver, he or she is unable to pay for a reporter's transcript and funds are not available from the Transcript Reimbursement Fund (see rule 8.130(c)). A party proceeding in forma pauperis is deemed unable to pay for a transcript.

~~(3)~~(B) If the court denies the motion, the appellant must file a new notice designating the record on appeal under rule 8.121 within 10 days after the superior court clerk sends, or a party serves, the order of denial.

**~~(b)~~(c) Time to file; contents of proposed statement**

- (1) Within 30 days after filing its notice designating the record on appeal electing under (b)(1) to use a settled statement or within 30 days after the superior court clerk sends, or a party serves, an order granting a motion to use a settled statement under (b)(2), the appellant must serve and file a proposed statement in superior court, a condensed narrative of the oral proceedings that the appellant believes necessary for the appeal. Subject to the court's approval in settling the statement, the appellant may present some or all of the evidence by question and answer.
- (2) Appellants who are not represented by an attorney must file their proposed statement on *Statement on Appeal (Unlimited Civil Case)* (form APP-014). For good cause, the court may permit the filing of a statement that is not on form APP-014.

**(d) Contents of proposed statement**

The proposed statement must contain

- ~~(2)~~(1) A statement of the points the appellant is raising on appeal. If the condensed narrative under (3) covers only a portion of the oral proceedings, describes less than all the testimony, the appellant must state the points to be raised on appeal; the appeal is then limited to those the points identified in the statement unless the reviewing court determines that the record permits the full consideration of another point or, on motion, the reviewing court permits otherwise.
- (2) A summary of the trial court's rulings and judgment.
- (3) A condensed narrative of the oral proceedings that the appellant believes necessary for the appeal.
  - (A) The condensed narrative must include a concise factual summary of the evidence and the testimony of each witness that is relevant to the points which the appellant states under (1) are being raised on appeal. Subject to the court's approval in settling the statement, the appellant may present some or all of the

evidence by question and answer. Any evidence or portion of a proceeding not included will be presumed to support the judgment or order appealed from.

(B) If one of the points which the appellant states under (1) is being raised on appeal is a challenge to the giving, refusal, or modification of a jury instruction, the condensed narrative must include any instructions submitted orally and not in writing and must identify the party that requested the instruction and any modification.

~~(3)~~(4) An appellant intending to use a settled statement instead of both reporter's and clerk's transcripts must accompany the condensed narrative with copies of all items required by rule 8.122(b)(1), showing the dates required by rule 8.122(b)(2), and may be accompanied by copies of any document includable in the clerk's transcript under rule 8.122(b)(3) and (4).

**(e) Respondent's proposed amendments**

~~(4)~~(1) Within 20 days after the appellant serves the condensed narrative, the respondent may serve and file proposed amendments.

~~(5)~~(2) The proposed statement and proposed amendments may be accompanied by copies of any document includable in the clerk's transcript under rule 8.122(b)(3) and (4).

**(e)(f) Settlement, preparation, and certification****Review of appellant's proposed statement**

~~(1) The clerk must set a date for a settlement hearing by the trial judge that is No later than 10 days after the respondent files proposed amendments or the time to do so expires, whichever is earlier, and must give the parties at least five days' notice of the hearing date a party may request a hearing to review and correct the proposed statement. No hearing will be held unless ordered by the trial court judge, and the judge will not ordinarily order a hearing unless there is a factual dispute about a material aspect of the trial court proceedings.~~

~~(2) At the hearing, the judge must settle the statement and fix the times within which the appellant must prepare, serve, and file it.~~

~~(2) Except as provided in (5), if no hearing is ordered, no later than 10 days after the time for requesting a hearing expires, the trial court judge must review the proposed statement and any proposed amendments filed by the respondent and take one of the following actions:~~

~~(A) If the proposed statement does not contain material required under (d), the trial judge may order the appellant to prepare a new proposed statement. The order~~

must identify the additional material that must be included in the statement to comply with (d) and the date by which the new proposed statement must be served and filed. If the appellant does not serve and file a new proposed statement as directed, rule 8.140 applies.

(B) If the trial judge does not issue an order under (A), the trial judge must either:

- (i) Make any corrections or modifications to the statement necessary to ensure that it is an accurate summary of the evidence and the testimony of each witness that is relevant to the points which the appellant states under (d)(1) are being raised on appeal; or
- (ii) Identify the necessary corrections and modifications and order the appellant to prepare a statement incorporating these corrections and modifications.

(3) If a hearing is ordered, the court must promptly set the hearing date and provide the parties with at least 5 days' written notice of the hearing date. No later than 10 days after the hearing, the trial court judge must either:

(A) Make any corrections or modifications to the statement necessary to ensure that it is an accurate summary of the evidence and the testimony of each witness that is relevant to the points which the appellant states under (d)(1) are being raised on appeal; or

(B) Identify the necessary corrections and modifications and order the appellant to prepare a statement incorporating these corrections and modifications.

(4) The trial court judge must not eliminate the appellant's specification of grounds of appeal from the proposed statement.

(5) If the trial court proceedings were reported by a court reporter, the trial court judge determines that it would save court time and resources, and the court has a local rule permitting this, the trial court judge may order that a transcript be prepared as the record of the oral proceedings instead of correcting a proposed statement on appeal. The court will pay for any transcript ordered under this subdivision.

**(g) Review of the corrected statement**

(1) If the trial court judge makes any corrections or modifications to the proposed statement under (f), the clerk must serve copies of the corrected or modified statement on the parties. If under (f) the trial court judge orders the appellant to prepare a statement incorporating corrections and modifications, the appellant must

serve and file the corrected or modified statement within the time ordered by the court. If the appellant does not serve and file a corrected or modified statement as directed, rule 8.140 applies.

- (2) Within 10 days after the corrected or modified statement is served on the parties, any party may serve and file proposed modifications or objections to the statement.
- (3) ~~If the respondent does not object to the prepared statement within five days after it is filed, it will be deemed properly prepared and the clerk must present it to the judge for certification.~~ Within 10 days after the time for filing proposed modifications or objections under (2) has expired, the judge must review the corrected or modified statement and any proposed modifications or objections to the statement filed by the parties. The procedures in (f)(2) or (2) apply if the judge determines that further corrections or modifications are necessary to ensure that the statement is an accurate summary of the evidence and the testimony of each witness relevant to the points which the appellant states under (d)(1) are being raised on appeal.

**(h) Certification of the statement on appeal**

- (1) If the trial court judge does not make or order any corrections or modifications to the proposed statement under (f)(2), (f)(3), or (g)(3) and does not order the preparation of a transcript in lieu of correcting the proposed statement under (f)(5), the judge must promptly certify the statement.
- ~~(4)~~(2) The parties<sup>2</sup> may serve and file a stipulation that the statement as originally served under (c) or as ~~prepared~~ corrected or modified under (f)(2), (f)(3), or (g)(3) is correct. Such a stipulation is equivalent to the judge's certification of the statement.
- (3) Upon certification of the statement under (1) or receipt of a stipulation under (2), the certified statement must immediately be transmitted to the clerk for filing of the record under rule 8.150.

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	STATE BAR NO.:	
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:		
<b>APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)</b>		SUPERIOR COURT CASE NUMBER:
RE: Appeal filed on (date):		COURT OF APPEAL CASE NUMBER (if known):
<b>Notice: Please read form APP-001 before completing this form. This form must be filed in the superior court, not in the Court of Appeal.</b>		

### 1. RECORD OF THE DOCUMENTS FILED IN THE SUPERIOR COURT

I elect to use the following method of providing the Court of Appeal with a record of the documents filed in the superior court (check a, b, c, d, or e and fill in any required information):

- a.  A clerk's transcript under rule 8.122. (You must check (1) or (2) and fill out the clerk's transcript section on page 2 of this form.)
- (1)  I will pay the superior court clerk for this transcript myself when I receive the clerk's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the Court of Appeal.
- (2)  I request that the clerk's transcript be provided to me at no cost because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record (check (a) or (b)):
- (a)  An order granting a waiver of court fees and costs under rule 3.50 et seq.; or
- (b)  An application for a waiver of court fees and costs under rule 3.50 et seq. (Use Request to Waive Court Fees (form FW-001) to prepare and file this application.)
- b.  An appendix under rule 8.124.
- c.  The original superior court file under rule 8.128. (NOTE: Local rules in the Court of Appeal, First, Third, Fourth, and Fifth Appellate Districts, permit parties to stipulate to use the original superior court file instead of a clerk's transcript; you may select this option if your appeal is in one of these districts and all the parties have stipulated to use the original superior court file instead of a clerk's transcript in this case. Attach a copy of this stipulation.)
- d.  An agreed statement under rule 8.134. (You must complete item 2b(2) below and attach to your agreed statement copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.134(a).)
- e.  A settled statement under rule 8.137. (You must complete item 2b(3) below and attach to your proposed statement on appeal copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.137(b)(3).)

### 2. RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT

I elect to proceed:

- a.  WITHOUT a record of the oral proceedings in the superior court. I understand that without a record of the oral proceedings in the superior court, the Court of Appeal will not be able to consider what was said during those proceedings in determining whether an error was made in the superior court proceedings.

CASE NAME:	SUPERIOR COURT CASE NUMBER:
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2. b.  WITH the following record of the oral proceedings in the superior court:
- (1)  A reporter's transcript under rule 8.130. (You must fill out the reporter's transcript section on page 3 of this form.) I have (check all that apply):
- (a)  Deposited the approximate cost of transcribing the designated proceedings with this notice as provided in rule 8.130(b)(1).
- (b)  Attached a copy of a Transcript Reimbursement Fund application filed under rule 8.130(c)(1).
- (c)  Attached the reporter's written waiver of a deposit for (check either (i) or (ii)):
- (i)  all of the designated proceedings.
- (ii)  part of the designated proceedings.
- (d)  Attached a certified transcript under rule 8.130(b)(3)(C).
- (2)  An agreed statement. (Check and complete either (a) or (b) below.)
- (a)  I have attached an agreed statement to this notice.
- (b)  All the parties have agreed in writing (stipulated) to try to agree on a statement. (You must attach a copy of this stipulation to this notice.) I understand that, within 40 days after I file the notice of appeal, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.
- (3)  A settled statement under rule 8.137. (You must attach the motion required under rule 8.137(a) to this form.)

(a)  The oral proceedings in the superior court were not reported by a court reporter.

(b)  The oral proceedings in the superior court were reported by a court reporter, but the appellant has an order waiving his or her court fees and is unable to pay for a reporter's transcript.

(c)  I am requesting to use a settled statement for reasons other than those listed in (a) or (b) ←

(You must check (a), (b), or (c) below)

**3. RECORD OF AN ADMINISTRATIVE PROCEEDING TO BE TRANSMITTED TO THE REVIEWING COURT**

I request that the clerk transmit to the reviewing court under rule 8.123 the record of the following administrative proceeding that was admitted into evidence, refused, or lodged in the superior court (*give the title and date or dates of the administrative proceeding*):

Title of Administrative Proceeding	Date or Dates
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**4. NOTICE DESIGNATING CLERK'S TRANSCRIPT**

*(You must complete this section if you checked item 1a. above indicating that you elect to use a clerk's transcript as the record of the documents filed in the superior court.)*

a. **Required documents.** The clerk will automatically include the following items in the clerk's transcript, but you must provide the date each document was filed or, if that is not available, the date the document was signed.

Document Title and Description	Date of Filing
--------------------------------	----------------

- (1) Notice of appeal
- (2) Notice designating record on appeal (*this document*)
- (3) Judgment or order appealed from
- (4) Notice of entry of judgment (*if any*)
- (5) Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order (*if any*)
- (6) Ruling on one or more of the items listed in (5)
- (7) Register of actions or docket (*if any*)

CASE NAME:	SUPERIOR COURT CASE NUMBER:
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#### 4. NOTICE DESIGNATING CLERK'S TRANSCRIPT

- b. **Additional documents.** (If you want any documents from the superior court proceeding in addition to the items listed in 4a. above to be included in the clerk's transcript, you must identify those documents here.)

I request that the clerk include the following documents from the superior court proceeding in the transcript. (You must identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed.)

	Document Title and Description	Date of Filing
(8)		
(9)		
(10)		
(11)		
(12)		

See additional pages.

#### c. Exhibits to be included in clerk's transcript

I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the superior court (for each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit. Indicate whether or not the court admitted the exhibit into evidence):

	Exhibit Number	Description	Admitted (Yes/No)
(1)			
(2)			
(3)			
(4)			
(5)			

See additional pages.

#### 5. NOTICE DESIGNATING REPORTER'S TRANSCRIPT

(You must complete this section if you checked item 2b(1) above indicating that you elect to use a reporter's transcript as the record of the oral proceedings in the superior court. Please remember that you must pay for the cost of preparing the reporter's transcript.)

- a. I request that the reporters provide (check one):

- (1)  My copy of the reporter's transcript in paper format.
- (2)  My copy of the reporter's transcript in computer-readable format.
- (3)  My copy of the reporter's transcript in paper format and a second copy in computer-readable format.

(Code Civ. Proc., § 271; Cal. Rules of Court, rule 8.130(f)(4).)

CASE NAME:	SUPERIOR COURT CASE NUMBER:
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**5. b. Proceedings**

I request that the following proceedings in the superior court be included in the reporter's transcript. *(You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings—for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions—the name of the court reporter who recorded the proceedings, and whether a certified transcript of the designated proceeding was previously prepared.)*

	Date	Department	Full/Partial Day	Description	Reporter's Name	Prev. prepared?
(1)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(2)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(3)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(4)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(5)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(6)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(7)						<input type="checkbox"/> Yes <input type="checkbox"/> No

c. The proceedings designated in 5b  include  do not include all of the testimony in the superior court.

If the designated proceedings DO NOT include all of the testimony, state the points that you intend to raise on appeal *(rule 8.130(a)(2) provides that your appeal will be limited to these points unless, on motion, the reviewing court permits otherwise).*

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

▲

\_\_\_\_\_  
(SIGNATURE OF APPELLANT OR ATTORNEY)

014

Unlimited

# APP-104

## Proposed Statement on Appeal (Limited Civil Case)

Clerk stamps date here when form is filed.

### Instructions

- This form is only for preparing a proposed statement on appeal in a **limited civil case**.
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).
- This form can be attached to your *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-003). If it is not attached to that notice, this form must be filed **no later than 30 days after you file that notice**. If you have chosen to prepare a statement on appeal and do not file this form on time, the court may dismiss your appeal. *or if you had to file a motion requesting to use a settled statement, within 30 days after you are served with an order granting that motion*
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-009-INFO) and on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).
- Take or mail the original completed form and proof of service on the other parties to the clerk's office for the same court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

Superior Court of California, County of

*San Diego*

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

Trial Court Case Number:

Trial Court Case Name:

You fill in the appellate division case number (if you know it):

Appellate Division Case Number:

*Court of Appeal*

### 1 Your Information

- a. Name of Appellant (the party who is filing this appeal):
- Name: \_\_\_\_\_
- b. Appellant's contact information (skip this if the appellant has a lawyer for this appeal):
- Street address: \_\_\_\_\_  
Street City State Zip
- Mailing address (if different): \_\_\_\_\_  
Street City State Zip
- Phone: \_\_\_\_\_ E-mail (if available): \_\_\_\_\_
- c. Appellant's lawyer (skip this if the appellant does not have a lawyer for this appeal):
- Name: \_\_\_\_\_ State Bar number: \_\_\_\_\_
- Street address: \_\_\_\_\_  
Street City State Zip
- Mailing address (if different): \_\_\_\_\_  
Street City State Zip
- Phone: \_\_\_\_\_ E-mail (if available): \_\_\_\_\_
- Fax (if available): \_\_\_\_\_



*Approved January 1, 2018*

Trial Court Case Name: \_\_\_\_\_

Information About Your Appeal

- 2 On (fill in the date): \_\_\_\_\_, I/my client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.
- 3 On (fill in the date): \_\_\_\_\_, I/my client filed a notice designating the record on appeal, electing to use a statement on appeal.

The court sent or the other party served me with an order granting my motion to use a settled statement

Proposed Statement

4 Reasons for Your Appeal

*Please note Court of Appeal*  
 Remember, in an appeal, the appellate division can only review a case for whether certain kinds of legal errors were made (read form APP-101-INFO to learn about these legal errors):

- There was not "substantial evidence" supporting the judgment, order, or other decision you are appealing.
  - A "prejudicial error" was made during the trial court proceedings.
- The appellate division: *Court of Appeal:*
- Cannot retry your case or take new evidence.
  - Cannot consider whether witnesses were telling the truth or lying.
  - Cannot consider whether there was more or stronger evidence supporting your position than there was supporting the trial court's decision.

(Check all that apply and describe the legal error or errors you believe were made that are the reason for this appeal.)

a.  There was not substantial evidence that supported the judgment, order, or other decision that I/my client indicated in the notice of appeal is being appealed in this case. (Explain why you think the judgment, order, or other decision was not supported by substantial evidence):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

b.  The following error or errors about either the law or court procedure was/were made that caused substantial harm to me/my client. (Describe each error and how you were/your client was harmed by that error.)

(1) Describe the error: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Describe how you were/your client was harmed by the error: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Trial Court Case Name: \_\_\_\_\_

(2) Describe the error: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Describe how you were/~~your client was~~ harmed by the error: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(3) Describe the error: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Describe how you were/~~your client was~~ harmed by the error: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to describe these or other errors and attach a separate page or pages describing the errors. At the top of each page, write "APP-104, item 4."

014

**5 The Dispute**

a. In the trial court, I/~~my client~~ was the (check one):

- plaintiff (the party who filed the complaint in the case).
- defendant (the party against whom the complaint was filed).

b. The plaintiff's complaint in this case was about (briefly describe what was claimed in the complaint filed with the trial court): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

c. The defendant's response to this complaint was (briefly describe how the defendant responded to the complaint filed with the trial court): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to describe the dispute and attach a separate page or pages describing it. At the top of each page, write "APP-104, Item 5."

014

014



Trial Court Case Name: \_\_\_\_\_

**6 Summary of Any Motions and the Court's Order on the Motion**

a. Were any motions (requests for the trial court to issue an order) made in this case that are relevant to the reasons you gave in **(4)** for this appeal?

Yes (fill out b)       No (skip to **(7)**)

b. In the spaces below, describe any motions (requests for orders) that were made in the trial court that are relevant to the reasons you gave in **(4)** for this appeal. Write a complete and accurate summary of what was said at any hearings on these motions and indicate how the trial court ruled on these motions.

(1) Describe the first motion: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

The motion was filed by the  plaintiff.  defendant.

There  was  was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

The trial court  granted this motion.  did not grant this motion.

Other (describe any other action the trial court took concerning this motion): \_\_\_\_\_

\_\_\_\_\_

Check here if you need more space to describe this motion and attach a separate page or pages describing this motion. At the top of each page, write "APP-104, Item 6b(1)."

014

(2) Describe the second motion: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

The motion was filed by the  plaintiff.  defendant.

There  was  was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

The trial court  granted this motion.  did not grant this motion.



Trial Court Case Name: \_\_\_\_\_

Other (describe any other action the trial court took concerning this motion): \_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to describe this motion and attach a separate page or pages describing this motion. At the top of each page, write "APP-104, item 6b(2)." 014

(3)  Check here if any other motions were filed that are relevant to the reasons you gave in (4) for this appeal and attach a separate page describing each motion, identifying who made the motion and whether there was a hearing on the motion, summarizing what was said at the hearing on the motion, and indicating whether the trial court granted or denied the motion. At the top of each page, write "APP-104, item 6b(3)." 014

**7 Summary of Testimony and Other Evidence**

a. Was there a trial in your case?

- No (skip items b, c, d, and e and go to item (8))
- Yes (check (1) or (2) and complete items b, c, d, and e)
  - (1)  Jury trial
  - (2)  Trial by judge only

b. Did you/~~your client~~ testify at the trial?

- No
- Yes (Write a complete and accurate summary of the testimony you/~~your client~~ gave that is relevant to the reasons you gave in (4) for this appeal. Include only what you actually said; do not comment or give your opinion about what was said. Please indicate whether any objections were made concerning your/~~your client's~~ testimony or any exhibits you/~~your client~~ asked to present and whether these objections were sustained.): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to summarize your/~~your client's~~ testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write "APP-104, Item 7b." 014

c. Were there any other witnesses at the trial whose testimony is relevant to the reasons you gave in (4) for this appeal?

- No
- Yes (complete items (1), (2), and (3)):
  - (1) The witness's name is (fill in the witness's name): \_\_\_\_\_
  - (2) The witness testified on behalf of the (check one):  plaintiff.  defendant.



(3) This witness testified that *(Write a complete and accurate summary of the witness's testimony that is relevant to the reasons you gave in ④ for this appeal. Include only what the witness actually said; do not comment on or give your opinion about what the witness said. Please indicate whether any objections were made concerning this witness's testimony or any exhibits this witness asked to present and whether these objections were sustained.)*: \_\_\_\_\_

Check here if you need more space to summarize this witness's testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write "APP-104, Item 7c." c14

d.  Check here if any other witnesses gave testimony at the trial that is relevant to the reasons you gave in ④ for this appeal. Attach a separate page or pages identifying each witness and who the witness testified for, summarizing what that witness said in his or her testimony that is relevant to the reasons you gave in ④ for this appeal, and indicating whether any objections were made concerning this witness's testimony or any exhibits the witness asked to present and whether these objections were sustained. At the top of each page, write "APP-104, Item 7d." c14

e. Summarize the evidence, other than testimony, that was given during the trial that is relevant to the reasons you gave in ④ for this appeal. *(Write a complete and accurate summary of the evidence given by both you and the respondent. Include only the evidence given; do not comment on or give your opinion about this evidence.)*: \_\_\_\_\_

Check here if you need more space to describe the evidence and attach a separate page or pages describing the evidence. At the top of each page, write "APP-104, Item 7e." c14

**8 The Trial Court's Findings**

Did the trial court make findings in the case?

No

Yes *(describe the findings made by the trial court)*: \_\_\_\_\_

Check here if you need more space to describe the trial court's findings and attach a separate page or pages describing these findings. At the top of each page, write "APP-104, Item 8." c14

Trial Court Case Name: \_\_\_\_\_

Trial Court Case Number: \_\_\_\_\_

**9 The Trial Court's Final Judgment**

The trial court issued the following final judgment in this case (check all that apply and fill in any required information):

- a. I/My client was required to:
  - pay the other party damages of (fill in the amount of the damages): \$ \_\_\_\_\_
  - do the following (describe what you were ordered to do): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

- b. The other party was required to:
  - pay me/my client damages of (fill in the amount of the damages): \$ \_\_\_\_\_
  - do the following (describe what the other party was ordered to do): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

- c.  Other (describe): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Check here if you need more space to describe the trial court's judgment or order and attach a separate page or pages describing this judgment or order. At the top of each page, write "APP-104, Item 9."  
 014

Date: \_\_\_\_\_

\_\_\_\_\_  
Type or print your name

\_\_\_\_\_  
Signature of appellant or attorney

**Item B**



## JUDICIAL COUNCIL OF CALIFORNIA

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# MEMORANDUM

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**Date**

January 9, 2017

**Action Requested**

Please read before January 12 rules  
subcommittee conference call

**To**

Members of the Appellate Advisory  
Committee's Rules Subcommittee

**Deadline**

January 12, 2017

**From**

Heather Anderson, Supervising Attorney,  
Legal Services

**Contact**

Heather Anderson  
415-865-7691  
heather.anderson@jud.ca.gov

**Subject**

Format for electronic reporter's transcripts

---

### Introduction

Item 6 on the committee's annual agenda this committee year is to consider whether to recommend or support amendments the statute that currently requires the original reporter's transcript be in paper format (this is a priority 1 project with a proposed January 1, 2018 completion date). As you may recall, the committee worked with representatives of the California Court Reporters Association last year on such legislation. Those representatives have also suggested that, to fully implement such a statutory change, rule 8.144, the rule that addresses the format of reporter's transcripts, should also be amended. Attached for the subcommittee's review and consideration are draft amendments to California Rules of Court that are designed to implement these suggestions.

### Background

Code of Civil Procedure section 271 authorizes courts and parties to receive, on request, copies of reporter's 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 addresses the form of the record on appeal, including the format of reporter's transcripts. Currently, this rule contains the following provision regarding the format of computer-readable reporter's 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.

As you may recall, last year the committee worked with representatives of the California Court Reporters Association on draft legislation to amend Code of Civil Procedure section 271 to eliminate the requirement that the original reporter's transcript be in paper format. These draft amendments would also have eliminated the archaic default format provisions in the statute and replaced them with a provision specifying that the format requirements for electronic reporter's transcripts are to be established by rules adopted by the Judicial Council. The committee chair and representatives of the association prepared an initial draft of suggested amendments to rule 8.144 to establish these formatting requirements, a copy of which is attached.

### **Draft Rule Amendments**

Attached for the subcommittee's consideration is a staff draft of possible amendments to rule 8.144 that is intended to incorporate all of the formatting requirements suggested in the initial draft prepared last year. Staff has, however, modified the language of some of the proposed provisions to conform to Judicial Council rule-drafting conventions, such as using "must" rather than "shall" to indicate a mandatory obligation. In addition, staff is suggesting reorganizing other parts of this rule to make them clearer and improve the overall rule structure. As a result, the proposed new provisions relating to electronic transcripts would be placed in a different subdivision than in the initial draft from last year. The main amendments in the attached draft include:

- Current subdivisions (a), (b), and (c), which all establish general formatting requirements for reporter's, as well as clerk's, transcripts, would be consolidated into a single subdivision (a). This should make it easier to find all of the general formatting requirements. To make this longer subdivision easier to follow, each paragraph would be given a heading. This should also preserve the headings now used in subdivisions (b) and (c). In addition, the proposed new requirement that each index begin on a separate page would be placed here, as it appears to make sense for this requirement to apply to all transcripts, whether in paper or electronic format.
- The current provisions that specifically relate to transcripts that are in paper form would be gathered together in a new subdivision (b). This should make it easier to find these specific formatting requirements.

- New subdivision (c) would address the specific requirements for electronic reporter's transcripts. It would include paragraphs for both general requirements and requirements for multi-reporter or multi-volume transcripts. As with proposed subdivisions (a) and (b), this structure should make it easier for rule users to find all of the requirements relating to electronic reporter's transcripts in one place. In addition, this structure would avoid having to reletter any additional subdivisions of the rule.
- The only suggested substantive change to the initial draft is to clarify that, for multi-reporter or multi-volume transcripts, the lead reporter is responsible for preparing the master index. This is an issue on which the subcommittee could recommend that specific comments be sought.

### **Rules Subcommittee Task**

The subcommittee's task is to analyze this proposal and:

- Approve the proposal as presented and recommend to the full committee that it seek approval from RUPRO to circulate the proposal for public comment;
- Modify the proposal and recommend to the full committee that it seek approval from RUPRO to circulate the modified proposal for public comment;
- Recommend to the full committee that it reject the proposal; or
- Ask staff or committee members for further information/analysis.

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

27  
28 ~~(2) If filed in paper form, in the clerk's transcript only one side of the paper may~~  
29 ~~be used; in the reporter's transcript both sides may be used, but the margins~~  
30 ~~must then be 1¼ inches on each edge.~~

31  
32 ~~(3)~~(2) Line numbering

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

36  
37 ~~(4) A computer readable copy of a reporter's transcript must be in a text-~~  
38 ~~searchable format approved by the reviewing court while maintaining~~  
39 ~~original document formatting.~~

40  
41 ~~(5)~~(3) Sealed and confidential records

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

1  
2 ~~(b)(4)~~Indexes

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

4  
5 ~~(1)~~(A) The clerk's transcript must contain alphabetical and  
6 chronological indexes listing each document and the volume, where  
7 applicable, and page where it first appears;

8  
9 ~~(2)~~(B) The reporter's transcript must contain alphabetical and  
10 chronological indexes listing the volume, where applicable, and page  
11 where each witness's direct, cross, and any other examination, begins;  
12 and

13  
14 ~~(3)~~(C) The reporter's transcript must contain an index listing the  
15 volume, where applicable, and page where any exhibit is marked for  
16 identification and where it is admitted or refused. The index must  
17 identify each exhibit by number or letter and a brief description of the  
18 exhibit.

19  
20 (D) Each index must begin on a separate page.

21  
22 ~~(e)(3)~~Binding and Cover

23  
24 ~~(1) — If filed in paper form, clerk's and reporter's transcripts must be bound on the~~  
25 ~~left margin in volumes of no more than 300 sheets.~~

26  
27 ~~(2)~~(A) Each volume's cover must state the title and trial court number of  
28 the case, the names of the trial court and each participating trial judge,  
29 the names and addresses of appellate counsel for each party, the  
30 volume number, and the inclusive page numbers of that volume.

31  
32 ~~(3)~~(B) In addition to the information required by ~~(2)~~(A), the cover of  
33 each volume of the reporter's transcript must state the dates of the  
34 proceedings reported in that volume.

35  
36 **(b) Additional requirements for record in paper form**

37  
38 In addition to complying with (a), if the record is filed in paper form:

39  
40 (1) The paper must be white or unbleached and of at least 20-pound weight;

41

1           (2) In the clerk’s transcript only one side of the paper may be used; in the  
2           reporter’s transcript both sides may be used, but the margins must then be 1¼  
3           inches on each edge.

4  
5           (3) Clerk’s and reporter’s transcripts must be bound on the left margin in  
6           volumes of no more than 300 sheets.

7  
8   (c) **Additional requirements for electronic reporter’s transcripts**

9  
10   (1) General

11  
12           In addition to complying with (a), a reporter’s transcript delivered in  
13           electronic form must:

14  
15           (A) Be generated electronically; it must not be created from a scanned  
16           document.

17  
18           (B) Be in full-text searchable PDF (portable document format) or other  
19           searchable format approved by the court.

20  
21           (C) Be paginated beginning with the first page or cover page as page 1 and  
22           be consecutively numbered using only Arabic numerals (e.g., 1, 2, 3)  
23           throughout the document, including indices and certificates. The  
24           electronic page counter in a PDF file viewer must match the transcript  
25           page numbering.

26  
27           (D) Include an electronic bookmark to each heading, subheading and  
28           component of the transcript, including all sessions or hearings (date  
29           lines), all witness examinations, the index, and all exhibits. All  
30           bookmarks and hyperlinks, when clicked, must retain the user’s  
31           currently selected zoom settings

32  
33           (E) Be digitally and electronically signed by the court reporter.

34  
35           (F) Permit users to copy and paste, keeping the original formatting, but  
36           with headers, footers, line and page numbers excluded.

37  
38           (G) Permit courts to electronically add filed/received stamps.

39  
40           (H) Be encrypted and password protected when stored and transmitted  
41           electronically.

42  
43   (2) Multivolume or multi-reporter transcripts

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(A) Each individual reporter must include the cover page required by (a)(3), the indexes required by (a)(4), and the certificate in their respective portion of the transcript.

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

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

(3) Additional functionality or enhancements

Nothing in this rule prohibits courts from accepting additional functionality or enhancements in electronic reporter’s transcripts.

(d) – (f) \* \* \*

**Advisory Committee Comment**

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

**Subdivision (c).** This subdivision is adopted under Code of Civil Procedure section 271(b), which allows the Judicial Council to adopt format requirements for computer-readable copies of a reporter’s transcript.

**Rule 8.144** [Add new (f), (g) and (h) and change existing (f) to (i)]

**(f) Reporter's electronic transcripts**

(1) A reporter's transcript delivered in electronic form must be generated electronically and shall not be created from a scanned document. The transcript must comply with subsections (a) through (e) of this rule, except for requirements pertaining to paper form.

(2) It must be in full-text searchable PDF (portable document format) or other searchable format approved by the court.

(3) The page numbering must begin with the first page or cover page as page 1 and be consecutively numbered using only Arabic numerals (e.g., 1, 2, 3) throughout the document, including indices and certificates. The electronic page counter in a PDF file viewer must match the transcript page numbering.

(4) Each transcript shall include an electronic bookmark to each heading, subheading and component of the document, including all sessions or hearings (date lines), all witness examinations, the index, and all exhibits.

(5) Certified shorthand reporters shall digitally and electronically sign electronic transcripts. Any tamper-proofing of the transcript must permit courts to electronically add filed/received stamps.

(6) Transcripts for sealed or confidential proceedings must comply with rules 8.45 through 8.47 of the California Rules of Court.

(7) All bookmarks and hyperlinks, when clicked, must retain the user's currently selected zoom settings.

(8) Users shall have the ability to copy and paste, keeping the original formatting, but with headers, footers, line and page numbers excluded.

(9) When stored and transmitted electronically, reporter's electronic transcripts shall be encrypted and password protected.

**(g) Multiple reporter and multiple volume reporter's transcripts**

The following additional format requirements apply to reporter's electronic transcripts in multiple-reporter cases or multiple volume cases:

(1) All indexes shall be on separate pages (e.g., there shall be a separate index on separate pages for sessions/hearings (date lines), witnesses, and exhibits). There shall also be a master index. The master index shall be the first bookmark regardless of where the master index is located within the transcript. The master index shall contain all sessions/hearings (date lines), witnesses

(alphabetical and chronological), and exhibits (marked, received and refused), if such occurred on the record.

(2) The transcript must be merged into a single electronic document, which may consist of multiple volumes, excluding sealed and/or confidential documents. Each individual reporter must include a cover page, index and certificate in their respective portion of the document. Beginning and ending page numbers may be assigned for each segment pursuant to rule 8.144(e).

**(h) Additional enhancements**

Nothing in this rule prohibits courts from accepting additional functionality or enhancements in reporter's electronic transcripts.

DRAFT

Item C

Item D



## JUDICIAL COUNCIL OF CALIFORNIA

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# MEMORANDUM

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**Date**

January 10, 2017

**Action Requested**

Please read before January 12 rules  
subcommittee conference call

**To**

Members of the Appellate Advisory  
Committee's Rules Subcommittee

**Deadline**

January 12, 2017

**From**

Heather Anderson, Supervising Attorney,  
Legal Services

**Contact**

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**Subject**

Rule requirements for verification of writ  
petitions

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### Introduction

Item 12 on the committee's annual agenda this committee year is to consider whether to recommend amendments to the rules regarding writ petitions to consistently reflect statutory requirements for verification of petitions (this is a priority 2 project with a proposed January 1, 2018 completion date). Attached for the subcommittee's review and consideration are draft amendments to various California Rules of Court that add references to the verification requirement.

### Background

The statutes addressing petitions for writs of mandate, certiorari, prohibition, and habeas corpus all require that the petitions seeking these writs must be verified.<sup>1</sup> Some of the California Rules of Court that address these writ petitions also include provisions that specifically require verification, reflecting these statutory requirements. For example, rule 8.486, the general rule relating to petitions for writs of mandate, certiorari, and prohibition in the Supreme Court and

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<sup>1</sup> See Code of Civil Procedure sections 1069, 1086, and 1103 and Penal Code section 1474.

Court of Appeal, provides in subdivision (a)(4) that “[t]he petition must be verified.”<sup>2</sup> However, there are some rules relating to writ petitions that do not specifically refer to a verification requirement. For example, rule 8.495, relating to review of Workers’ Compensation Appeals Board cases, does not specifically refer to verification of the petition.

In *New York Knickerbockers v. Workers Compensation Appeals Board* (2015) 240 Cal.App.4th 1229, the Second District Court of Appeal discussed the absence of a provision addressing verification in rule 8.495:

It is true, the rule of the California Rules of Court specifically governing petitions for writs of review addressing decisions of the Appeals Board does not require verification. (Cal. Rules of Court, rule 8.495.) Other California Rules of Court, such as rule 8.496(a)(1), which governs petitions to review decisions of the Public Utilities Commission, explicitly require verification. Code of Civil Procedure section 1069 specifically requires verification, and this provision is made applicable to petitions to review decisions of the Appeals Board by Labor Code section 5954. The California Constitution requires the Judicial Council to adopt rules for court administration, and practice and procedure, not “inconsistent with statute.” (Cal. Const., art. VI, § 6, subd. (d).) Here, to the extent rule 8.495 does not require verification for petitions for writs of review addressing Appeals Board decisions, that rule would be inconsistent with Code of Civil Procedure section 1069 and Labor Code section 5954 and therefore not controlling.

To avoid any implication that the California Rules of Court relating to these writ petitions are inconsistent with the statutory provisions requiring verification, the committee included on its annual agenda consideration of whether to amend the rules relating to writ petitions to consistently reflect these verification requirements.

### **Draft Rule Amendments**

Staff reviewed all of the rules relating to writ proceedings in Title 8 of the California Rules of Court and identified those that do not currently include verification provisions. Attached for the subcommittee’s review are draft amendments to rule 8.495 and several other rules relating to writ petitions that would add references to verification of the petition. For all of the rules included in this draft other than rule 8.495, the Judicial Council has actually approved a form

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<sup>2</sup> See also, for example, rule 8.496, relating to review of Public Utilities Commission cases, rule 8.498, relating to review of Agricultural Labor Relations Board and Public Employment Relations Board cases, and rule 8.703, relating to review of California Environmental Quality Act Cases under Public Resources Code sections 21168.6.6, 21178–21189.3, and 21189.50–21189.57.

petition to use in the case type covered by the rule and the form petition includes a verification, even though the verification requirement is not mentioned in the rule.<sup>3</sup>

### **Rules Subcommittee Task**

The subcommittee's task is to analyze this proposal and decide whether to:

- Approve the proposal as presented and recommend to the full committee that it seek approval from RUPRO to circulate the proposal for public comment;
- Modify the proposal and recommend to the full committee that it seek approval from RUPRO to circulate the modified proposal for public comment;
- Recommend to the full committee that it reject the proposal; or
- Ask staff or committee members for further information/analysis.

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<sup>3</sup> For rules 8.380 and 8.384, the relevant Judicial Council form is *Petition for Writ of Habeas Corpus* (form MC-275). For rules 8.452 and 8.456, the relevant Judicial Council form is *Petition For Extraordinary Writ* (form JV-825). For rule 8.931, the relevant Judicial Council form is *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151). For rule 8.972, the relevant Judicial Council form is *Petition for Writ (Small Claims)* (form SC-300).

## Title 8. Appellate Rules

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

#### Chapter 4. Habeas Corpus Appeals and Writs

##### **Rule 8.380. Petition for writ of habeas corpus filed by petitioner not represented by an attorney**

**(a) Required Judicial Council form**

A person who is not represented by an attorney and who petitions a reviewing court for writ of habeas corpus seeking release from, or modification of the conditions of, custody of a person confined in a state or local penal institution, hospital, narcotics treatment facility, or other institution must file the petition on *Petition for Writ of Habeas Corpus* (form MC-275). For good cause the court may permit the filing of a petition that is not on that form, but the petition must be verified.

**(b) Form and content**

A petition filed under (a) need not comply with the provisions of rules 8.40, 8.204, or 8.486 that prescribe the form and content of a petition and require the petition to be accompanied by a memorandum. If any supporting documents accompanying the petition are sealed or confidential records, rules 8.45–8.47 govern these documents.

**(c) \* \* \***

##### **Rule 8.384. Petition for writ of habeas corpus filed by an attorney for a party**

**(a) Form and content of petition and memorandum**

- (1) A petition for habeas corpus filed by an attorney need not be filed on *Petition for Writ of Habeas Corpus* (form MC-275) but must contain the information requested in that form and must be verified. All petitions filed by attorneys, whether or not on form MC-275, must be either typewritten or produced on a computer, and must comply with this rule and rules 8.40(b)–(c) relating to document covers and 8.204(a)(1)(A) relating to tables of contents and authorities. A petition that is not on form MC-275 must also comply with the remainder of rule 8.204(a) and 8.204(b).
- (2) Any memorandum accompanying the petition must comply with rule 8.204(a)–(b). Except in habeas corpus proceedings related to sentences of death, any memorandum must also comply with the length limits in rule 8.204(c).

- (3) The petition and any memorandum must support any reference to a matter in the supporting documents by a citation to its index number or letter and page.

(b) – (d) \* \* \*

## **Chapter 5. Juvenile Appeals and Writs**

### **Article 3. Writs**

#### **Rule 8.452. Writ petition to review order setting hearing under Welfare and Institutions Code section 366.26**

##### **(a) Petition**

- (1) The petition must be liberally construed and must include:

- (A) The identities of the parties;
- (B) The date on which the superior court made the order setting the hearing;
- (C) The date on which the hearing is scheduled to be held;
- (D) A summary of the grounds of the petition; and
- (E) The relief requested.

- (2) The petition must be verified.

~~(2)~~(3) The petition must be accompanied by a memorandum.

(b) – (i) \* \* \*

#### **Rule 8.456. Writ petition under Welfare and Institutions Code section 366.28 to review order designating or denying specific placement of a dependent child after termination of parental rights**

##### **(a) Petition**

- (1) The petition must be liberally construed and must include:

- (A) The identities of the parties;

- (B) The date on which the superior court made the posttermination placement order;
- (C) A summary of the grounds of the petition; and
- (D) The relief requested.

(2) The petition must be verified.

~~(2)~~(3) The petition must be accompanied by a memorandum.

(b) – (i) \* \* \*

## Chapter 8. Miscellaneous Writs

### Rule 8.495. Review of Workers’ Compensation Appeals Board cases

#### (a) Petition

- (1) A petition to review an order, award, or decision of the Workers’ Compensation Appeals Board must include:
  - (A) The order, award, or decision to be reviewed; and
  - (B) The workers’ compensation judge’s minutes of hearing and summary of evidence, findings and opinion on decision, and report and recommendation on the petition for reconsideration.
- (2) If the petition claims that the board’s ruling is not supported by substantial evidence, it must fairly state and attach copies of all the relevant material evidence.
- (3) The petition must be verified.
- ~~(3)~~(4) The petition must be accompanied by proof of service of a copy of the petition on the Secretary of the Workers’ Compensation Appeals Board in San Francisco, or two copies if the petition is served in paper form, and one copy on each party who appeared in the action and whose interest is adverse to the petitioner. Service on the board’s local district office is not required.

(b) – (c) \* \* \*

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

**Chapter 6. Writ Proceedings**

**Rule 8.931. Petitions filed by persons not represented by an attorney**

**(a) Petitions**

A person who is not represented by an attorney and who petitions the appellate division for a writ under this chapter must file the petition on *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151). For good cause the court may permit an unrepresented party to file a petition that is not on form APP-151, but the petition must be verified.

**(b) – (d) \* \* \***

**Division 3. Rules Relating to Appeals and Writs in Small Claims Cases**

**Chapter 2. Writ Petitions**

**Rule 8.972. Petitions filed by persons not represented by an attorney**

**(a) Petitions**

- (1) A person who is not represented by an attorney and who requests a writ under this chapter must file the petition on a *Petition for Writ (Small Claims)* (form SC-300). For good cause the court may permit an unrepresented party to file a petition that is not on that form, but the petition must be verified.
- (2) If the petition raises any issue that would require the appellate division judge considering it to understand what was said in the small claims court, it must include a statement that fairly summarizes the proceedings, including the parties' arguments and any statement by the small claims court supporting its ruling.
- (3) The clerk must file the petition even if it is not verified but if the party asking for the writ fails to file a verification within five days after the clerk gives notice of the defect, the court may strike the petition.

**(b) – (d) \* \* \***