



JUDICIAL COUNCIL OF CALIFORNIA

INFORMATION TECHNOLOGY
ADVISORY COMMITTEE

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INFORMATION TECHNOLOGY ADVISORY COMMITTEE

MINUTES OF OPEN MEETING

June 17, 2017

10:00 AM - 11:10 AM

Teleconference

Advisory Body Members Present:	Hon. Terence L. Bruiniers, Chair; Hon. Robert B. Freedman, Vice Chair; Mr. Brian Cotta; Hon. Julie R. Culver; Prof. Dorothy J. Glancy ; Hon. Michael S. Groch; Hon. Sheila F. Hanson; Hon. Samantha P. Jessner; Hon. Jackson Lucky; Hon. Louis R. Mauro; Mr. Terry McNally; Hon. James Mize; Mr. Snorri Ogata; Mr. Robert Oyung; Hon. Alan G. Perkins; Hon. Peter J. Siggins; Mr. Don Willenburg; Mr. David H. Yamasaki
Advisory Body Members Absent:	Ms. Alison Merrilees for Hon. Mark Stone; Mr. Darrel Parker; Hon. Joseph Wiseman
Others Present:	Hon. Daniel J. Buckley; Mr. Mark Dusman; Ms. Renea Stewart; Ms. Kathy Fink; Ms. Fati Farmanfarman; Ms. Jamel Jones; Mr. Patrick O'Donnell; Ms. Tara Lundstrom; Ms. Katherine Sher; Ms. Jessica Craven; Ms. Jackie Woods

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 10:02 AM, and took roll call.

Approval of Minutes

The advisory body reviewed and approved the minutes of the March 18, 2016, Information Technology Advisory Committee (ITAC) meeting. Approved with no changes; and the ITAC April 29, 2016 email action approved with no changes.

DISCUSSION AND ACTION ITEMS (ITEMS 1-11)

Item 1

Opening Remarks and Chair Report

Update: Hon. Terence Bruiniers noted that Judge Kyle Brodie has been appointed to the Judicial Council and he thanked Judge Brodie for his contributions to ITAC. Judge Jackson Lucky will take over as the executive co-sponsor of the Next Generation Hosting Strategy workstream and will be working with Mr. Brian Cotta. Also Ms. Tara Lundstrom has moved on to the council's Criminal Justice Services office and finally Ms. Renea Stewart is retiring in late July; this is her

last meeting. The chair thanked both for their outstanding efforts and service to ITAC.

Nominations for next term have been received. There are 8 ITAC positions and recommendations have been provided to the E&P Committee. The Chief will announce appointments in early August.

Assembly Bill 2244 e-filing service and court fees is a bill ITAC could support with some changes. An amended bill will be presented next week to the Sentate. It incorporates changes per the input of a convened working group of several ITAC members, JCTC members, and staff. The Judicial Council has formally supported the bill. Justice Bruiniers thanked the workstreams and staff for their work.

Item 2

Case Management System (CMS) Data Exchange Workstream Status Report

Update on the progress of this workstream.

Update: Mr. David Yamasaki provided an update. He thanked participating CIOs involved for their diligent work. There are 6 justice partners involved with this project. The approach has been standardized with justice partners and vendors. Materials will be maintained in a HyperOffice repository for courts to use. Next steps include validation by ITAC team regarding governance. The first phase of governance will be completed by October 2016 led by Judge Freedman and presented to ITAC. Product will continue to evolve going forward.

Item 3

E-Filing Strategy Workstream Status Report

Update on the progress of this workstream.

Update: Mr. Snorri Ogata provided an update. He is presenting this ITAC approved project to the Judicial Council on June 24. The workstream requested an extension for a Request for Proposal (RFP) recruitment to procure vendors. While working through the requirements, the members noted the need to have a statewide identity management system, and has reached out to the other workstreams to align with vendors known throughout the state system.

Item 4

Next Generation Hosting Workstream Status Report

Update on the progress of this workstream.

Update: Mr. Brian Cotta provided an update. Discussions around various branch models have happened, identifying pros and cons of each. Looking at hardware and software as well. Also looking at minimum requirements. JCIT presented on the

CCTC in detail to the workstream; and the group was impressed with the amount of detail. Meeting in July in the Bay Area to discuss costs and options. Court CIO's also meeting at this time. Will share the CCTC presentations slide deck with ITAC members.

Item 5

Video Remote Interpreting Workstream Status Report

Update on the progress of this workstream.

Update: Justice Bruiniers provided an update. Workstream is not quite kicked off yet; this is a joint effort with the language access plan. Judicial Council will consider pilot proposal. An executive summary is included in the materials. Team prepared draft RFP to select vendors. Ready to go once approved by council. This is still a no cost pilot, with equipment to be deployed in real time settings. Collecting data and trying to engage NCSC as well. There are about 15 courts interested in the pilot. Hope to have the project up and running by end of 2016.

Item 6

Self-Represented Litigants (SRL) E-Services Workstream Status Report

Update on the progress of this workstream.

Update: Hon. James Mize provided an update on this workstream. SRL has 23 members, have had 2 meetings so far and started reviewing scope and looking at other state portals. They have formed 4 workgroups: technology, other state programs, document access (policy and integration), and requirements. Next steps will be to finalize workgroups and to schedule meetings of these groups. Next workstream meeting is June 22.

Item 7

Disaster Recovery Framework Workstream Status Report

Update on the progress of this workstream.

Update: Mr. Brian Cotta provided an update. This workstream has had three meetings and has developed a concrete list of business recovery requirements. Also developed a list of high level technical requirements. They are also putting together a survey for the courts that includes questions regarding type of backup platform, number of courts using tapes, amount of raw gross data being backed up, and input of priority systems. They hope to create requirements for a backup solution and list of recovery options. They are requesting an extension due to a late start of the workstream. Solutions and recommendations are framed to fit small and large courts. One of the deliverables will be a framework/workflow document for any size court.

Item 8**Tactical Plan Update Workstream Status Report**

Update on the progress of this workstream.

Update: Ms. Kathleen Fink provided an update. The Tactical Plan is updated every 2 years. Met for kick off on May 3. Membership has been confirmed and work has begun. The next meeting is on June 21 to finalize the branch Tactical Plan progress report, discuss proposed branch business drivers, and further analyze strengths, weaknesses, opportunities, and threats to the branch.

Item 9**ITAC Projects Subcommittee Report**

Update: Hon. Robert Freedman provided an update. There are no current projects, but there is a potential project with Data Exchange Workstream to revitalize a standard set of codes in charging documents. The goal is to arrive to a standard set of tables anyone can use. Will scope in Projects Subcommittee and work with the Data Exchange Workstream.

Item 10**ITAC Rules & Policy Subcommittee Report**

Update: Hon. Peter Siggins provided an update and thanked Ms. Tara Lundstrom, who has changed jobs, for her dedicated work on the rules. Most everything is a work in progress and out for public comment. Will report back to ITAC in October after public comment ends. Have a couple of potential projects that might align with Data Exchange Workstream. Will reach out to them to discuss.

Item 11**Joint Appellate Technology Subcommittee Report**

Update: Hon. Louis Mauro provided an update on two pending projects: forms modernization and electronic signatures, both are out for public comment. The next subcommittee meeting is on June 22 to review public comments. Will share comments at the next ITAC meeting.

A D J O U R N M E N T

There being no further business, the meeting was adjourned at 11:05am.

Approved by the advisory body on enter date.



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date	Action Requested
July 26, 2016	Please review by August 1 meeting
To	Deadline
Information Technology Advisory Committee	August 1, 2016
From	Contact
Tara Lundstrom, Attorney Criminal Justice Services Office	Tara Lundstrom, 415-865-7995 tara.lundstrom@jud.ca.gov
Subject	
Modernization Project: Legislative and rules proposals to promote e-filing, e-service, and e-business	

Background

Recognizing that courts are swiftly proceeding to a paperless world, the Information Technology Advisory Committee (“ITAC”) is leading a multi-year effort to comprehensively review and modernize the statutes and rules so that they will be consistent with and foster modern e-business practices. ITAC is coordinating with six other advisory committees with relevant subject matter expertise, including the Civil and Small Claims Advisory Committee (“CSCAC”), the Family and Juvenile Law Advisory Committee (“FJLAC”), and the Criminal Law Advisory Committee (“CLAC”).

This modernization project is being carried out in two phases. Last year, ITAC and the other advisory committees completed phase I—an initial round of technical rule amendments to address language in the rules that was incompatible with the current statutes and rules governing e-filing and e-service and with e-business practices in general. This year, the advisory committees are undertaking phase II, which involves a more in-depth examination of any statutes and rules that may hinder e-business practices.

Information Technology Advisory Committee

July 26, 2016

Page 2

Discussion

Three modernization proposals will be presented to ITAC for its review and recommendation during its August 8 meeting: (1) a rules proposal to amend titles 2, 3, and 5 of the California Rules of Court; (2) a legislative proposal to amend the Code of Civil Procedure; and (3) a legislative proposal to amend the Penal Code. Additional modernization proposals will be presented to ITAC during its August 25 meeting.

Rules proposal to amend titles 2, 3, and 5 of the California Rules of Court

This spring, ITAC, CSCAC, and FJLAC circulated for public comment a rules proposal that would amend the rules in titles 2, 3 and 5. This proposal includes new formatting rules for electronic documents. It also includes amendments to the various rules identified by the committees during phase I as requiring a substantive change, as well as technical amendments that were missed during phase I.

Seven comments were submitted in response to the invitation to comment; two agreed with the proposal, three agreed with the proposal if modified, and two did not indicate their position. On July 12, ITAC's Rules and Policy Subcommittee and CSCAC's Unlimited Civil and Complex Case Subcommittee met to review the public comments. They recommended the following changes to the rules proposal, as circulated:

1. Add the phrase "may be suppressed" to rules 2.109, 3.1110(c), and 3.1113(d) on page numbering. With this change, the proposed rule amendments read: "The page number may be suppressed and need not appear on the first page."
2. Add an advisory committee comment to rule 2.2506(b)(3) to state a preference for text searchable exhibits for the convenience of the court and the parties. The proposed advisory committee comment reads as follows:

Although not required, there is a preference that electronically filed exhibits be text searchable for the convenience of the court and the parties.
3. Revise the language in rules 2.551(b)(6), 2.577(d)(4), and 3.1302(b) addressing lodged records to better reflect the purpose of the rule amendments—to modernize the process for returning the lodged record in cases involving motions to seal to accommodate electronic records—and to remove the proposed notice requirement prior to deletion of electronic lodged records. The proposed amendments to rules 2.551(b)(6) and 2.577(d)(4)

Information Technology Advisory Committee

July 26, 2016

Page 3

read as follows:¹

~~If the court denies the motion or application to seal, the clerk must return the lodged record to the submitting party and must not place it in the case file unless that party notifies the clerk in writing that the record is to be filed. Unless otherwise ordered by the court, the submitting party must notify the clerk within 10 days after the order denying the motion or application. the moving party may notify the court that the lodged record is to be filed unsealed. This notification must be received within 10 days of the order denying the motion or application to seal, unless otherwise ordered by the court. Upon receipt of this notification, the clerk must unseal and file the record. If the moving party does not notify the court within 10 days of the order, the clerk must (i) return the lodged record to the moving party if it is in paper form or (ii) permanently delete the lodged record if it is in electronic form.~~

4. Add “the notice of motion and motion” to rule 3.1113(d). With this change, the proposed amendment to rule 3.1113(d) reads:

The page limit does not include the caption page, the notice of motion and motion, exhibits, declarations, attachments, the table of contents, the table of authorities, or the proof of service.

5. Revise the proposed amendment to rule 3.1306(c)(2) to provide:

Either make arrangements with the clerk to have the file in the courtroom at the time of the hearing or confirm with the clerk that the file is electronically accessible to the court.

Additional suggestion for ITAC review. During the joint subcommittee meeting, the subcommittees reviewed lodged records—rules 2.551(b)(6), 2.577(d)(4), and 3.1302(b)—as one issue. Subsequent to the meeting, staff ran into difficulties incorporating the subcommittees’ recommendation into rule 3.1302(b).

Rule 3.1302(b) differs from rules 2.551 and 2.557 in three significant ways: (1) whereas rules 2.551 and 2.577 govern lodged records in the context of sealing motions, rule 3.1302(b) does not

¹ As described below, staff ran into difficulties implementing this recommended revision with respect to rule 3.1302(b), which was included in the joint subcommittees’ recommended amendments. The subcommittees considered rule 3.1302(b) in its combined review of all three rules, but they did not look at separately at the rule during the joint subcommittee meeting.

Information Technology Advisory Committee

July 26, 2016

Page 4

and, thus, does not necessarily address lodged materials of a sensitive nature; (2) whereas rules 2.551 and 2.577 require the return or permanent deletion of lodged records, rule 3.1302(b) gives the court discretion in deciding whether to keep or return the lodged materials; and (3) whereas the court order denying the sealing motion under rules 2.551 and 2.577 puts the submitting party on notice of the imminent deletion of lodged records, the submitting party would not be notified that a court has deleted electronic lodged materials under rule 3.1302(b), unless the court sends a separate notice of deletion. Based on these differences, staff suggest that the committees recommend the proposed rule amendments largely as they were circulated with one minor change: the last two sentences would be combined to clarify that the notice of deletion is required only if the clerk elects to permanently delete the lodged materials.

Circulated version:

Material lodged physically with the clerk must be accompanied by an addressed envelope with sufficient postage for mailing the material. Material lodged electronically must clearly specify the electronic address to which the materials may be returned a notice of deletion may be sent. After determination of the matter, the clerk may mail or send the material if in paper form back to the party lodging it. If the lodged material is in electronic form, the clerk may permanently delete it. The clerk must send notice of the deletion to the party who lodged the material.

Recommended version:

Material lodged physically with the clerk must be accompanied by an addressed envelope with sufficient postage for mailing the material. Material lodged electronically must clearly specify the electronic address to which the materials may be returned a notice of deletion may be sent. After determination of the matter, the clerk may mail or send the material if in paper form back to the party lodging it. If the lodged material is in electronic form, the clerk may permanently delete it after sending notice of the deletion to the party who lodged the material.

During its July 28 meeting, CSCAC members will discuss whether to recommend the proposed language suggested by staff. Staff will report orally to ITAC on CSCAC's discussion and recommendations at the August 1 ITAC meeting.

This proposal will next be presented to the Judicial Council Technology Committee ("JCTC") and to the Rules and Projects Committee ("RUPRO") during their August 8 and September 7 meetings, respectively. Attached to this memorandum is a draft Judicial Council report

Information Technology Advisory Committee

July 26, 2016

Page 5

(containing the proposed rule amendments and a comment chart listing all comments received and proposed responses) for the committee's review.

Legislative proposal to amend the Code of Civil Procedure

This spring, ITAC also circulated for public comment a legislative proposal that would amend the Code of Civil Procedure provisions governing e-filing, e-service, and e-signatures. Specifically, this legislative proposal would (1) authorize the use of electronic signatures for signatures made under penalty of perjury on electronically filed documents, (2) provide for a consistent effective date of electronic filing and service across courts and case types, (3) consolidate the mandatory electronic filing provisions, (4) clarify the application of section 1010.6's electronic service provisions in sections 664.5 and 1011, and (5) codify provisions that are currently in the California Rules of Court on mandatory electronic service, effective date of electronic service, protections for self-represented persons, and proof of electronic service.

Fourteen commentators submitted comments in response to the invitation to comment: four agreed with the proposal, seven agreed if modified, and three did not indicate their position. On July 8, ITAC's Rules and Policy Subcommittee met to review the public comments. They proposed the following changes to the legislative proposal:

1. Specifically address the term "other person," as used in Code of Civil Procedure section 1010.6(a), in the Judicial Council report.
2. Revise Code of Civil Procedure sections 1010.6(a)(5) and (b)(3) to address electronic filing and service at 12:00 a.m. and on non-court days as follows:
 - a. Subdivision (a)(5): "Any document that is served electronically between 12:00 a.m. and 11:59:59 p.m. on a court day shall be deemed served on that court day. Any document that is served electronically on a non-court day shall be deemed served on the next court day."
 - b. Subdivision (b)(3): "Any document that is electronically filed with the court after the close of business on any day shall be deemed to have been filed received electronically by the court between 12:00 a.m. and 11:59:59 on a court day shall be deemed filed on that court day. Any document that is received electronically on a non-court day shall be deemed filed on the next court day. "Close of business," as used in this paragraph, shall mean 5 p.m. or the time at which the court would not accept filing at the court's filing counter, whichever is earlier."

Information Technology Advisory Committee

July 26, 2016

Page 6

This legislative proposal will be presented to CSCAC for input on the proposed legislative amendments.² Staff will present orally on any input provided by CSCAC during the August 1 ITAC meeting. This proposal will next be presented to JCTC and to the Policy Coordination and Liaison Committee (“PCLC”) during their August 8 and October 27 meetings, respectively. Attached to this memorandum is a draft Judicial Council report containing the proposed legislative amendments and a comment chart listing all comments received and proposed responses.

Legislative proposal to amend the Penal Code

This spring, ITAC and CLAC circulated for public comment a legislative proposal that would provide express authority for permissive electronic filing and service in criminal proceedings. It would add section 690.5 to the Penal Code to apply the electronic filing and service provisions of Code of Civil Procedure section 1010.6 to criminal actions.

Three comments were received in response to the invitation to comment; all three were favorable. During its July 7 meeting, CLAC reviewed the comments and recommended that the Judicial Council sponsor legislation to enact proposed new Penal Code section 690.5.

This proposal will next be presented to JCTC and to PCLC during their August 8 and October 27 meetings, respectively. Attached to this memorandum is a draft Judicial Council report containing the proposed new statute and a comment chart listing all comments received and proposed responses.

Committee’s Task

The committee is tasked with reviewing the comments and:

- Recommending to RUPRO and JCTC that the Judicial Council adopt all or part of the rules proposal and recommending to PCLC and JCTC that the Judicial Council sponsor all or part the legislative proposals;
- Rejecting the proposals; or
- Asking staff or group members for further information and analysis.

Attachments

1. Draft Judicial Council report for the rules proposal amending titles 2, 3, and 5 of the California Rules of Court (including proposed amendments and comment chart)

² Before circulating for public comment, the following advisory committees provided input on this proposal: CSCAC, FJLAC, and the Advisory Committee on Providing Access and Fairness.

Information Technology Advisory Committee

July 26, 2016

Page 7

2. Draft Judicial Council report for the legislative proposal amending the Code of Civil Procedure (including proposed amendments and comment chart)
3. Draft Judicial Council report for the legislative proposal amending the Penal Code (including proposed amendments and comment chart)



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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 27, 2016

Title	Agenda Item Type
Technology: Modernization of the Rules of Court (Phase II of the Rules Modernization Project)	Action Required
	Effective Date
	January 1, 2017
Rules, Forms, Standards, or Statutes Affected	Date of Report
Amend rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.252, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392	July 20, 2016
	Contact
	Tara Lundstrom, 415-865-7995 tara.lundstrom@jud.ca.gov
Recommended by	
Information Technology Advisory Committee Hon. Terence L. Bruiniers, Chair	
Civil and Small Claims Advisory Committee Hon. Raymond M. Cadei, Chair	
Family and Juvenile Law Advisory Committee Hon. Jerilyn L. Borack, Cochair Hon. Mark A. Juhas, Cochair	

Executive Summary

The Information Technology Advisory Committee recommends amending various rules in titles 2, 3, and 5 of the California Rules of Court as part of phase II of the Rules Modernization Project. These amendments are substantive changes to the rules that are intended to promote electronic filing, electronic service, and modern e-business practices. The Civil and Small

Claims Advisory Committee and the Family and Juvenile Law Advisory Committee also recommend the amendments to the rules in their respective subject-matter areas.

Recommendation

The Information Technology Advisory Committee recommends that the Judicial Council, effective January 1, 2017:

1. Amend rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.252, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392.

The text of the amended rules is attached at pages 9–24.

Previous Council Action

The Information Technology Advisory Committee (ITAC) is leading the Rules Modernization Project, a multiyear effort to comprehensively review and modernize the California Rules of Court so that they will be consistent with and foster modern e-business practices. To ensure that each title is revised in view of any statutory requirements and policy concerns unique to that area of law, ITAC is coordinating with other advisory committees, including the Civil and Small Claims Advisory Committee (CSCAC) and the Family and Juvenile Law Advisory Committee (FJLAC), with relevant subject-matter expertise.

The Rules Modernization Project is being carried out in two phases. Phase I culminated in the Judicial Council’s adoption of an initial round of technical rule amendments to address language in the rules that was incompatible with the current statutes and rules governing electronic filing and service, and with e-business practices in general. This rules proposal is part of phase II, which involves a more in-depth examination of any statutes and rules that may hinder electronic filing, electronic service, and modern e-business practices.

Rationale for Recommendation

This proposal includes new formatting rules for electronic documents. It also includes amendments to the various rules identified by the committees during phase I as requiring a substantive change, as well as technical amendments that were missed during phase I.

The rule amendments in titles 2 and 3 have been reviewed and recommended by ITAC and CSCAC; those in title 5 have been reviewed and recommended by ITAC and FJLAC.

Formatting of electronically filed documents

Rule 2.256(b) states the formatting requirements for documents that are electronically filed in the trial courts. This proposal would add references to rule 2.256(b) in rules 2.100, 2.114, and 2.104 to clarify that the formatting requirements in rule 2.256(b) apply to electronically filed “papers,” exhibits, and forms.

Text-searchable electronic “papers.” This proposal would amend rule 2.256(b) to provide that an electronically filed document must be text searchable unless it is an exhibit or Judicial Council form. This requirement would apply to “papers,” which are defined in rule 2.3(2) as “all documents except exhibits, copies of exhibits that are offered for filing in any case, but does not include Judicial Council and local court forms, records on appeal in limited civil cases, or briefs filed in appellate divisions.” This proposal is intended to discourage litigants from printing and scanning “papers” before electronically filing them, which creates documents that are not text searchable.

Because converting from a document created with word processing software to portable document format (“PDF”) may result in a slight reduction or enlargement of font size in the document, this proposal would amend rule 2.118 by adding a new subdivision (a)(3) to provide that a clerk may not reject papers for filing solely because “[t]he font size is not exactly the point size required by rules 2.104 and 2.110(c) on papers submitted electronically in portable document format (PDF). Minimal variation in font size may result from converting a document created using word processing software to PDF format.”

The invitation to comment specifically requested comment on whether the rules should require that electronic exhibits be text searchable. Based on the comments received, the committees decided not to recommend making this a requirement at this time. They have instead recommended adding an advisory committee comment to state a preference for making electronic exhibits text searchable.

Electronic bookmarks for exhibits. This proposal would amend rule 3.1110(f) to require that electronic exhibits contain electronic bookmarks, unless they are submitted by a self-represented litigant. The electronic bookmarks must have (1) links to the first page of each exhibit and (2) titles that identify the exhibit number or letter and briefly describe the exhibit. This proposal would also add an Advisory Committee Comment, which would state that, under current technology, software programs that allow users to apply electronic bookmarks to electronic documents are available for free. In addition, this proposal would amend rule 3.1113(i) to require electronic bookmarking where authorities or cases are lodged in electronic form.

Page numbering

This proposal would amend the rules governing pagination for “papers,” motion documents, and motion memoranda—rules 2.109, 3.1110(c), and 3.1113(h)—to provide that page numbering must begin with the first page and use only Arabic numerals (e.g., 1, 2, 3) and that the page number may be suppressed and need not appear on the first page. These amendments recognize that judicial officers find it easier to navigate electronic documents when the page number in the footer matches the page number of the electronic document. To provide for consistency, this method of page numbering would apply to both electronic and paper documents, and, as a result,

the pages of tables of content in memoranda will no longer be paginated using lower-case Roman numerals.¹

To ensure that the amendment to rule 3.1113(h) would not alter the number of pages allowed for memoranda, this proposal would also amend rule 3.1113(d) by providing that the caption page and the notice of motion and motion are not counted in determining whether a memorandum exceeds the page limit. Subdivision (d) already provides that exhibits, declarations, attachments, the table of contents, the table of authorities, and the proof of service are not counted.

Proof of electronic service

This proposal would amend rule 2.251(i) to conform the requirements for proof of electronic service to the statutes and rules governing electronic service. It would also eliminate the requirement that the person completing the proof of electronic service state the time of electronic service.

Electronic service by a party. In stating the requirements for proof of electronic service, rule 2.251(i) incorporates the requirements for proof of service by mail in Code of Civil Procedure section 1013a, subject to several exceptions. Code of Civil Procedure section 1013a requires that proof of service by mail be made by affidavit or certificate showing that the “the person making the service” is “not a party to the cause,” and subdivision (i) of rule 2.251 does not currently provide an exception to this requirement. However, subdivision (e) of rule 2.251 and the statute governing electronic service expressly allow for electronic service by a party. (See Code Civ. Proc., § 1010.6(a)(1)(A).) To eliminate this internal inconsistency, this proposal would add another exception to rule 2.251(i) to recognize that parties may electronically serve documents.

Time of electronic service. This proposal would amend rule 2.251(i)(1) to remove the requirement that the proof of electronic service state the time of electronic service. In practice, this requirement has proved unworkable: the person completing the proof of electronic service will not know the precise time of electronic service until after the document is served. Because this requirement also appears in the proof of service for fax filing, this proposal would make the same change to rule 2.306(h)(1).

Paper courtesy copies

At present, the rules are silent as to whether paper courtesy copies may be required when documents are filed electronically. This proposal would add a new subdivision (i) to rule 2.252 to provide that a judge may request that electronic filers submit paper courtesy copies of an electronically filed document.

¹ The Information Technology Advisory Committee and the Appellate Advisory Committee have recommended similar amendments to the pagination requirements in rules 8.204(b) and 8.74(b) for appellate briefs and documents that are electronically filed in the appellate courts.

“Return” of lodged records

During phase I of the Rules Modernization Project, the Judicial Council amended rules 2.551, 2.577, and 3.1302 to provide for the return of materials lodged in electronic form. The advisory committees and commentators raised concerns that the rule language regarding the return of electronic materials did not necessarily mean that the court would be required to delete the electronic record maintained in its document management system. Accordingly, the committees decided to revisit these rules this year and provide for a new process that addresses these concerns.

The purpose of amending rules 2.551(b)(6) and 2.577(d)(4) is to modernize the process for returning the lodged record to accommodate electronic records. It is not intended to change the basic underlying procedure: when a motion to seal is denied, rules 2.551(b)(6) and 2.577(d)(4) provide for the return of the lodged record to the moving party or, in the alternative, allow the moving party to notify the court within 10 days of the order denying the motion that the record is to be filed unsealed.

To better reflect this purpose, the committees decided to revise the amendments to rules 2.551(b)(6) and 2.577(d)(4) to provide that the moving party has 10 days following an order denying a motion or application to seal—unless ordered otherwise by the court—to notify the court that the lodged record is to be filed unsealed. The clerk must unseal and file the record upon receiving the notification. If the clerk does not receive notification within 10 days of the order, the clerk must return the lodged records if in paper form or permanently delete the lodged records if in electronic form. Based on comments received in response to the invitation to comment, the committees decided not to require that courts send a separate notice of destruction prior to destroying electronic lodged records. The court order denying the sealing motion was thought to provide sufficient notice to the moving party.

The committees also revised rule 3.1302(b) to provide that courts may continue to maintain other lodged materials; however, if the court elects not to maintain them, they must be returned by mail if in paper form or permanently deleted after notifying the party lodging the material if in electronic form. The committees decided to require that a notice be sent prior to destruction of any electronic lodged records under rule 3.1302 because the submitting party would not otherwise have notice of the destruction.

Additional technical amendments to the rules

Lastly, this proposal would make additional technical amendments to the rules that were not identified during phase I of the Rules Modernization Project. These technical changes include the following:

- Amending rule 2.104 to clarify that the font size must be not smaller than 12 points on papers if they are filed electronically or on paper;
- Amending rule 2.110 to refer to “font” instead of “type”;

- Amending rule 2.111(1) to delete the language “if available” in reference to fax and e-mail addresses on the first page of papers;
- Amending rule 2.551(b)(3)(B) to replace language related to paper documents with language that is inclusive of electronic documents;
- Amending rules 2.551(f) and 2.577(g) to provide that if sealed records are in electronic form, the court must establish appropriate access controls to ensure that only authorized persons may access them;
- Amending rule 3.250(b) to describe the process for retaining the originals of papers that are not filed where the originals are in electronic form;
- Amending rule 3.751 to recognize that a party may agree to electronic service, or a court may require electronic service by local rule or court order, under rule 2.251 in complex civil cases;
- Amending rule 3.823(d) to cross-reference Code of Civil Procedure sections 1013 and 1010.6;
- Amending rule 3.1306 to provide that a party who requests judicial notice of material in electronic form must make arrangements to have it electronically accessible to the court at the time of the hearing;
- Amending rule 3.1362 to recognize that an attorney requesting to be relieved as counsel may serve notice of the motion, the declaration, and the proposed order by electronic means, subject to certain safeguards;
- Amending rule 5.66 to recognize that the proof of service of a response to a petition or complaint may be on *Proof of Electronic Service* (form POS-050/EFS-050);
- Amending rules 5.380(c), 5.390(e), 5.392(b), (d), and (f) to replace the term “mail” and “mailing” with “serve” and “serving”; and
- Amending rule 5.390(e) to recognize that a clerk may file a certificate of electronic service.

Comments, Alternatives Considered, and Policy Implications

This rules proposal circulated for public comment during the spring 2016 cycle. Seven comments were submitted in response to the invitation to comment; two agreed with the proposal, three agreed with the proposal if modified, and two did not indicate their position. The committee’s specific responses to each comment are available in the attached comment chart at pages 25–56.

The committees considered various alternatives in proposing rule amendments, including whether exhibits should be text searchable, whether the rules should allow for paper courtesy copies, and whether self-represented litigants should be exempt from all or some of the new electronic requirements. The invitation to comment requested specific comment on several of these alternatives.

Several commentators expressed concerns if the rules were amended to require that electronic exhibits be text searchable. These concerns included the difficulties in applying Optical Character Recognition (“OCR”) software to voluminous and poorly reproduced exhibits and the possible expense of obtaining OCR software of sufficient quality. In light of these comments, the

committees decided not to require that electronic exhibits be text searchable at this time. Instead, they recommended adding an advisory committee comment stating a preference for electronic exhibits that are text searchable.

Commentators also responded to the request for comment on the proposed new rule on courtesy copies. Several appreciated the flexibility built into the proposed new rule and thought it would ultimately promote the transition to paperless case environments. One commentator questioned allowing for courtesy copies because they eliminate the primary benefit of electronic filing for litigants: the time and expense saved by not delivering paper copies to the courthouse. Another commentator preferred omitting reference to courtesy copies from the rules or, in the alternative, also allowing for courtesy copies by local rule.

After careful consideration of the commentators' concerns, the committees decided to recommend a rule on courtesy copies that left it to the discretion of the individual judge to request copies. The committees viewed disallowing courtesy copies as unworkable at present, especially because filings in complex civil cases are often voluminous. In addition, the committees opted not to leave the rules silent on the issue of courtesy copies; the absence of a rule on courtesy copies has caused considerable confusion for litigants as they must ascertain whether a particular judge wants courtesy copies before filing. The new rule would require that judges request courtesy copies. Lastly, the committees viewed adopting local rules on courtesy copies as less conducive to making the transition to a paperless case environment; even as judicial officers become increasingly comfortable working in a paperless case environment, they would still receive courtesy copies.

Lastly, several commentators questioned the balance struck by the committees with respect to self-represented litigants. One requested that self-represented, disabled, and low-to-moderate income litigants be exempted from the requirement that "papers" be text searchable and that disabled and low-to-moderate income litigants be exempted from the electronic bookmarking requirement. In declining to pursue these recommendations, the committees took the following under consideration: (1) word processing software readily converts documents to PDF with no extra expense and minimal effort; (2) many electronic filing service providers convert documents from word processing format to PDF as part of their services; (3) self-represented litigants may always opt out of electronic filing and file on paper; (4) open source electronic bookmarking software is available for free; (5) competent attorneys could be expected to know or learn how to apply electronic bookmarks; (6) the time spent applying electronic bookmarks should be no more than the time required to tab paper exhibits; and (7) disabled litigants may request reasonable accommodations under the Americans with Disabilities Act.

Another commentator questioned why self-represented litigants were exempt from the electronic bookmarking requirement. With a view to promoting both electronic filing and access to the courts, the committees concluded that the electronic bookmarking requirement would be too burdensome for self-represented litigants; it requires downloading additional software and

possessing certain technical knowhow. Because self-represented litigants may always opt out of electronic filing entirely, the committees preferred to lower potential barriers to electronic filing.

Implementation Requirements, Costs, and Operational Impacts

The committees expect that the amendments would ultimately result in efficiency gains and cost savings for the courts at minimal expense, if any, to litigants. Requiring that electronic papers be text searchable would assist judicial officers and research attorneys. Although courts may incur additional expense for clerk review of filings to ensure text searchability, it is expected that the requirement will result in overall savings from avoiding significant cost and delay of applying OCR software to electronically filed documents. At the same time, this new requirement is not expected to result in additional costs to litigants, who may readily convert documents created using word processing software, including open source software, to PDF. The conversion process is faster and less expensive than printing and scanning papers.

Electronic bookmarks will facilitate and expedite the review of electronic exhibits by judicial officers and research attorneys. Adding electronic bookmarks to electronic exhibits would not result in any additional costs to litigants as open source software is available. Electronic bookmarks are also cheaper and less time intensive to apply compared to tabbing or separating paper exhibits. Because self-represented parties are exempt from the bookmarking requirement, it would not negatively impact them.

The notice requirement in rule 3.1302(b) for lodged electronic materials may result in costs for courts, but courts can avoid that cost retaining and not deleting the lodged materials. Notice is required only if courts elect to delete electronic lodged materials.

Attachments and Links

1. Cal. Rules of Court, rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.252, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392, at pages 9–24
2. Chart of comments, at pages 25–56

Rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.252, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392 of the California Rules of Court would be amended, effective January 1, 2017, to read:

Title 2. Trial Court Rules

Rule 2.100. Form and format of papers presented for filing in the trial courts

(a)–(b) * * *

(c) Electronic format of papers

Papers that are submitted or filed electronically must meet the requirements in rule 2.256(b).

Rule 2.103. Size, quality, and color of papers

All papers filed must be 8½ by 11 inches. All papers not filed electronically must be on opaque, unglazed paper, white or unbleached, of standard quality not less than 20-pound weight.

Rule 2.104. ~~Printing;~~ Font size; printing

Unless otherwise specified in these rules, all papers filed must be prepared using a font size not smaller than 12 points. All papers not filed electronically must be printed or typewritten or be prepared by a photocopying or other duplication process that will produce clear and permanent copies equally as legible as printing ~~in a font not smaller than 12 points.~~

Rule 2.105. Font style

The font style must be essentially equivalent to Courier, Times New Roman, or Arial.

Rule 2.109. Page numbering

Each page must be numbered consecutively at the bottom unless a rule provides otherwise for a particular type of document. The page numbering must begin with the first page and use only Arabic numerals (e.g., 1, 2, 3). The page number may be suppressed and need not appear on the first page.

Rule 2.110. Footer

(a)–(b) * * *

1 (c) **Type Font size**
 2

3 The title of the paper in the footer must be in at least 10-point type font.
 4

5 **Rule 2.111. Format of first page**
 6

7 The first page of each paper must be in the following form:
 8

- 9 (1) In the space commencing 1 inch from the top of the page with line 1, to the left of
 10 the center of the page, the name, office address or, if none, residence address or
 11 mailing address (if different), telephone number, fax number and e-mail address (~~if~~
 12 ~~available~~), and State Bar membership number of the attorney for the party in whose
 13 behalf the paper is presented, or of the party if he or she is appearing in person. The
 14 inclusion of a fax number or e-mail address on any document does not constitute
 15 consent to service by fax or e-mail unless otherwise provided by law.
 16

17 (2)–(11) * * *
 18

19 **Rule 2.114. Exhibits**
 20

21 Exhibits submitted with papers not filed electronically may be fastened to pages of the
 22 specified size and, when prepared by a machine copying process, must be equal to
 23 computer-processed materials in legibility and permanency of image. Exhibits submitted
 24 with papers filed electronically must meet the requirements in rule 2.256(b)(1) and (2).
 25

26 **Rule 2.118. Acceptance of papers for filing**
 27

28 (a) **Papers not in compliance**
 29

30 The clerk of the court must not accept for filing or file any papers that do not
 31 comply with the rules in this chapter, except the clerk must not reject a paper for
 32 filing solely on the ground that:
 33

- 34 (1) It is handwritten or hand-printed; ~~or~~
 35
 36 (2) The handwriting or hand printing on the paper is in a color other than
 37 black or blue-black; or
 38
 39 (3) The font size is not exactly the point size required by rules 2.104 and
 40 2.110(c) on papers submitted electronically in portable document
 41 format (PDF). Minimal variation in font size may result from
 42 converting a document created using word processing software to PDF.
 43

1 (b)–(c) * * *

2
3 **Rule 2.140. Judicial Council forms**

4
5 Judicial Council forms are governed by the rules in this chapter and chapter 4 of title
6 1. Electronic Judicial Council forms must meet the requirements in rule 2.256(b)(1) and
7 (2).

8
9 **Rule 2.251. Electronic service**

10
11 (a)–(h) * * *

12
13 (i) **Proof of service**

14
15 (1) Proof of electronic service may be by any of the methods provided in Code of
16 Civil Procedure section 1013a, ~~except that~~ with the following exceptions:

17
18 (A) The proof of electronic service does not need to state that the person
19 making the service is not a party to the case.

20
21 (B) The proof of electronic service must state:

22
23 (A) (1) The electronic service address of the person making the
24 service, in addition to that person's residence or business address;

25
26 (B) (2) The date ~~and time~~ of the electronic service, instead of the date
27 and place of deposit in the mail;

28
29 (C) (3) The name and electronic service address of the person served,
30 in place of that person's name and address as shown on the
31 envelope; and

32
33 (D) (4) That the document was served electronically, in place of the
34 statement that the envelope was sealed and deposited in the mail
35 with postage fully prepaid.

36
37 (2) * * *

38
39 (3) Under rule 3.1300(c), proof of electronic service of the moving papers must
40 be filed at least five court days before the hearing.

41
42 (4) * * *

1 (j) * * *

2
3 **Rule 2.252. General rules on electronic filing of documents**

4
5 (a)–(h) * * *

6
7 **(i) Paper courtesy copies**

8
9 A judge may request that electronic filers submit paper courtesy copies of an
10 electronically filed document.

11
12 **Rule 2.256. Responsibilities of electronic filer**

13
14 (a) * * *

15
16 **(b) Format of documents to be filed electronically**

17
18 A document that is filed electronically with the court must be in a format specified
19 by the court unless it cannot be created in that format. The format adopted by a
20 court must meet the following requirements:

21
22 (1)–(2) * * *

23
24 **(3) The document must be text searchable, unless it is an exhibit or Judicial**
25 **Council or local form.**

26
27 If a document is filed electronically under the rules in this chapter and cannot be
28 formatted to be consistent with a formatting rule elsewhere in the California Rules
29 of Court, the rules in this chapter prevail.

30
31 **Advisory Committee Comment**

32
33 **Subdivision (b)(3).** Although not required, there is a preference that electronically filed exhibits
34 be text searchable for the convenience of the court and the parties.

35
36 **Rule 2.306. Service of papers by fax transmission**

37
38 (a)–(g) * * *

39
40 **(h) Proof of service by fax**

41
42 Proof of service by fax may be made by any of the methods provided in Code of
43 Civil Procedure section 1013(a), except that:

1
2 (1) The ~~time~~, date, and sending fax machine telephone number must be used
3 instead of the date and place of deposit in the mail;

4
5 (2)–(5) * * *

6
7 **Rule 2.551. Procedures for filing records under seal**

8
9 (a) * * *

10
11 (b) **Motion or application to seal a record**

12
13 (1)–(2) * * *

14
15 (3) *Procedure for party not intending to file motion or application*

16
17 (A) * * *

18
19 (B) If the party that produced the documents and was served with the notice
20 under (A)(iii) fails to file a motion or an application to seal the records
21 within 10 days or to obtain a court order extending the time to file such
22 a motion or an application, the clerk must promptly ~~remove~~ transfer all
23 the documents in (A)(i) from the envelope, container, or secure
24 electronic file ~~where they are located and place them in~~ to the public
25 file. If the party files a motion or an application to seal within 10 days
26 or such later time as the court has ordered, these documents are to
27 remain conditionally under seal until the court rules on the motion or
28 application and thereafter are to be filed as ordered by the court.

29
30 (4)–(5) * * *

31
32 (6) *Return of lodged record*

33
34 If the court denies the motion or application to seal, ~~the clerk must return the~~
35 ~~lodged record to the submitting party and must not place it in the case file~~
36 ~~unless that party notifies the clerk in writing that the record is to be filed.~~
37 ~~Unless otherwise ordered by the court, the submitting party must notify the~~
38 ~~clerk within 10 days after the order denying the motion or application. the~~
39 ~~moving party may notify the court that the lodged record is to be filed~~
40 ~~unsealed. This notification must be received within 10 days of the order~~
41 ~~denying the motion or application to seal, unless otherwise ordered by the~~
42 ~~court. On receipt of this notification, the clerk must unseal and file the record.~~
43 ~~If the moving party does not notify the court within 10 days of the order, the~~

1 clerk must (i) return the lodged record to the moving party if it is in paper
 2 form or (ii) permanently delete the lodged record if it is in electronic form.

3
 4 (c)–(d) * * *

5
 6 (e) **Order**

7
 8 (1) If the court grants an order sealing a record and if the sealed record is in
 9 paper format, the clerk must substitute on the envelope or container for the
 10 label required by (d)(2) a label prominently stating “SEALED BY ORDER
 11 OF THE COURT ON (DATE),” and must replace the cover sheet required by
 12 (d)(3) with a filed-endorsed copy of the court’s order. If the sealed record is
 13 in an electronic format, the clerk must file the court’s order, ~~store~~ maintain
 14 the record ordered sealed in a secure manner, and clearly identify the record
 15 as sealed by court order on a specified date.

16
 17 (2)–(4) * * *

18
 19 (f) **Custody of sealed records**

20
 21 Sealed records must be securely filed and kept separate from the public file in the
 22 case. If the sealed records are in electronic form, appropriate access controls must
 23 be established to ensure that only authorized persons may access the sealed records.

24
 25 (g)–(h) * * *

26
 27 **Rule 2.577. Procedures for filing confidential name change records under seal**

28
 29 (a) * * *

30
 31 (b) **Application to file records in confidential name change proceedings under seal**

32
 33 An application by a confidential name change petitioner to file records under seal
 34 must be filed at the time the petition for name change is submitted to the court. The
 35 application must be made on the *Application to File Documents Under Seal in*
 36 *Name Change Proceeding Under Address Confidentiality Program (Safe at Home)*
 37 *(form NC-410)* and be accompanied by a *Declaration in Support of Application to*
 38 *File Documents Under Seal in Name Change Proceeding Under Address*
 39 *Confidentiality Program (Safe at Home)* (form NC-420), containing facts sufficient
 40 to justify the sealing.

41
 42 (c) * * *

43

1 **(d) Procedure for lodging of petition for name change**

2
3 (1)–(3) * * *

4
5 (4) ~~If the court denies the application to seal, the clerk must return the lodged~~
6 ~~record to the petitioner and must not place it in the case file unless the~~
7 ~~petitioner notifies the clerk in writing within 10 days after the order denying~~
8 ~~the application that the unsealed petition and related papers are to be filed.~~
9 the moving party may notify the court that the lodged record is to be filed
10 unsealed. This notification must be received within 10 days of the order
11 denying the motion or application to seal, unless otherwise ordered by the
12 court. On receipt of this notification, the clerk must unseal and file the record.
13 If the moving party does not notify the court within 10 days of the order, the
14 clerk must (i) return the lodged record to the moving party if it is in paper
15 form or (ii) permanently delete the lodged record if it is in electronic form.

16
17 **(e)** * * *

18
19 **(f) Order**

20
21 (1)–(2) * * *

22
23 (3) For petitions transmitted in paper form, if the court grants an order sealing a
24 record, the clerk must strike out the notation required by (d)(2) on the
25 *Confidential Cover Sheet* that the matter is filed “CONDITIONALLY
26 UNDER SEAL,” add a notation to that sheet prominently stating “SEALED
27 BY ORDER OF THE COURT ON (DATE),” and file the documents under
28 seal. For petitions transmitted electronically, the clerk must file the court’s
29 order, ~~store~~ maintain the record ordered sealed in a secure manner, and
30 clearly identify the record as sealed by court order on a specified date.

31
32 (4)–(5) * * *

33
34 **(g) Custody of sealed records**

35
36 Sealed records must be securely filed and kept separate from the public file in the
37 case. If the sealed records are in electronic form, appropriate access controls must
38 be established to ensure that only authorized persons may access the sealed records.

39
40 **(h)** * * *

41

Title 3. Civil Rules

Rule 3.250. Limitations on the filing of papers

(a) * * *

(b) Retaining originals of papers not filed

(1) Unless the paper served is a response, the party who serves a paper listed in (a) must retain the original with the original proof of service affixed. If served electronically under rule 2.251, the proof of electronic service must meet the requirements in rule 2.251(i).

(2) The original of a response must be served, and it must be retained by the person upon whom it is served.

(3) An original must be retained under (1) or (2) in the paper or electronic form in which it was created or received.

(4) All original papers must be retained until six months after final disposition of the case, unless the court on motion of any party and for good cause shown orders the original papers preserved for a longer period.

(c) * * *

Rule 3.751. Electronic service

Parties may consent to electronic service, or the court may require electronic service by local rule or court order, under rule 2.251. The court may provide in a case management order that documents filed electronically in a central electronic depository available to all parties are deemed served on all parties.

Rule 3.823. Rules of evidence at arbitration hearing

(a)–(c) * * *

(d) Delivery of documents

For purposes of this rule, “delivery” of a document or notice may be accomplished manually, by electronic means under Code of Civil Procedure section 1010.6 and rule 2.251, or ~~by mail~~ in the manner provided by Code of Civil Procedure section 1013. If service is by electronic means, the times prescribed in this rule for delivery of documents, notices, and demands are increased as provided by Code of Civil

1 Procedure section 1010.6. by two days. If service is in the manner provided by mail
 2 Code of Civil Procedure section 1013, the times prescribed in this rule are
 3 increased as provided by five days that section.

4
 5 **Rule 3.1110. General format**

6
 7 (a)–(b) * * *

8
 9 (c) **Pagination of documents**

10
 11 Documents ~~bound together~~ must be consecutively paginated. ~~If the document is~~
 12 ~~filed electronically,~~ The page numbering must begin with the first page and use
 13 only Arabic numerals (e.g., 1, 2, 3). The page number may be suppressed and need
 14 not appear on the first page.

15
 16 (d)–(e) * * *

17
 18 (f) **Format of exhibits**

19
 20 (1) An index of exhibits must be provided. The index must briefly describe the
 21 exhibit and identify the exhibit number or letter and page number.

22
 23 (2) Pages from a single deposition must be designated as a single exhibit.

24
 25 (3) Each paper exhibit must be separated by a hard 8½ x 11 sheet with hard
 26 paper or plastic tabs extending below the bottom of the page, bearing the
 27 exhibit designation. ~~An index to exhibits must be provided. Pages from a~~
 28 single deposition and associated exhibits must be designated as a single
 29 exhibit.

30
 31 (4) Electronic exhibits must meet the requirements in rule 2.256(b)(1) and (2).
 32 Unless they are submitted by a self-represented party, electronic exhibits
 33 must include electronic bookmarks with links to the first page of each exhibit
 34 and with bookmark titles that identify the exhibit number or letter and briefly
 35 describe the exhibit.

36
 37 (g) * * *

38
 39 **Advisory Committee Comment**

40
 41 **Subdivision (f)(4).** Under current technology, software programs that allow users to apply
 42 electronic bookmarks to electronic documents are available for free.

1 **Rule 3.1113. Memorandum**

2
3 (a)–(c) * * *

4
5 **(d) Length of memorandum**

6
7 Except in a summary judgment or summary adjudication motion, no opening or
8 responding memorandum may exceed 15 pages. In a summary judgment or summary
9 adjudication motion, no opening or responding memorandum may exceed 20 pages. No
10 reply or closing memorandum may exceed 10 pages. The page limit does not include the
11 caption page, the notice of motion and motion, exhibits, declarations, attachments, the
12 table of contents, the table of authorities, or the proof of service.

13
14 (e)–(g) * * *

15
16 **(h) Pagination of memorandum**

17
18 (1) The pages of a memorandum must be numbered consecutively beginning with
19 the first page and using only Arabic numerals (e.g., 1, 2, 3). The page number may
20 be suppressed and need not appear on the first page.

21
22 (2) Notwithstanding any other rule, a memorandum that includes a table of
23 contents and a table of authorities must be paginated as follows:

24
25 (A) The caption page or pages must not be numbered;

26
27 (B) The pages of the tables must be numbered consecutively using lower-
28 case roman numerals starting on the first page of the tables; and

29
30 (C) The pages of the text must be numbered consecutively using Arabic
31 numerals starting on the first page of the text.

32
33 **(i) Copies of authorities**

34
35 (1) A judge may require that if any authority other than California cases, statutes,
36 constitutional provisions, or state or local rules is cited, a copy of the
37 authority must be lodged with the papers that cite the authority, and if in
38 paper form, the authority must be tabbed or separated as required by rule
39 3.1110(f)(3). If in electronic form, the authority must be electronically
40 bookmarked as required by rule 3.1110(f)(4).

41
42 (2) If a California case is cited before the time it is published in the advance
43 sheets of the Official Reports, the party must include the title, case number,

1 date of decision, and, if from the Court of Appeal, district of the Court of
 2 Appeal in which the case was decided. A judge may require that a copy of
 3 that case must be lodged, ~~and~~ If in paper form, the copy must be tabbed or
 4 separated as required by rule 3.1110(f)(3). If in electronic form, the copy
 5 must be electronically bookmarked as required by rule 3.1110(f)(4).

6
 7 (3) * * *

8
 9 (j)–(m) * * *

10
 11 **Rule 3.1302. Place and manner of filing**

12
 13 (a) * * *

14
 15 (b) **Requirements for lodged material**

16
 17 Material lodged physically with the clerk must be accompanied by an addressed
 18 envelope with sufficient postage for mailing the material. Material lodged
 19 electronically must clearly specify the electronic address to which ~~the materials~~
 20 ~~may be returned~~ a notice of deletion may be sent. After determination of the matter,
 21 the clerk may mail or send the material if in paper form back to the party lodging it.
 22 If the lodged material is in electronic form, the clerk may permanently delete it
 23 after sending notice of the deletion to the party who lodged the material.

24
 25 **Rule 3.1306. Evidence at hearing**

26
 27 (a)–(b) * * *

28
 29 (c) **Judicial notice**

30
 31 A party requesting judicial notice of material under Evidence Code sections 452 or
 32 453 must provide the court and each party with a copy of the material. If the
 33 material is part of a file in the court in which the matter is being heard, the party
 34 must:

- 35
 36 (1) Specify in writing the part of the court file sought to be judicially noticed;
 37 and
 38
 39 (2) Either make arrangements with the clerk to have the file in the courtroom at
 40 the time of the hearing or confirm with the clerk that the file is electronically
 41 accessible to the court.
 42

1 **Rule 3.1362. Motion to be relieved as counsel**

2
3 (a)–(c) * * *

4
5 **(d) Service**

6
7 The notice of motion and motion, the declaration, and the proposed order must be
8 served on the client and on all other parties who have appeared in the case. The
9 notice may be by personal service, electronic service, or mail.

10
11 (1) If the notice is served on the client by mail under Code of Civil Procedure
12 section 1013, it must be accompanied by a declaration stating facts showing
13 that either:

14
15 (1A) The service address is the current residence or business address of the
16 client; or

17
18 (2B) The service address is the last known residence or business address of
19 the client and the attorney has been unable to locate a more current
20 address after making reasonable efforts to do so within 30 days before
21 the filing of the motion to be relieved.

22
23 (2) If the notice is served on the client by electronic service under Code of Civil
24 Procedure section 1010.6 and rule 2.251, it must be accompanied by a
25 declaration stating that the electronic service address is the client’s current
26 electronic service address.

27
28 As used in this rule, “current” means that the address was confirmed within 30 days
29 before the filing of the motion to be relieved. Merely demonstrating that the notice
30 was sent to the client’s last known address and was not returned or no electronic
31 delivery failure message was received is not, by itself, sufficient to demonstrate
32 that the address is current. If the service is by mail, Code of Civil Procedure section
33 1011(b) applies.

34
35 (e) * * *

1 **Title 5. Family and Juvenile Rules**

2

3 **Rule 5.66. Proof of service**

4

5 **(a) Requirements to file proof of service**

6

7 Parties must file with the court a completed form to prove that the other party

8 received the petition or complaint or response to petition or complaint.

9

10 **(b) Methods of proof of service**

11

12 (1) The proof of service of summons may be on a form approved by the Judicial

13 Council or a document or pleading containing the same information required

14 in *Proof of Service of Summons* (form FL-115).

15

16 (2) The proof of service of response to petition or complaint may be on a form

17 approved by the Judicial Council or a document or pleading containing the

18 same information required in *Proof of Service by Mail* (form FL-335), ~~or~~

19 *Proof of Personal Service* (form FL-330), or *Proof of Electronic Service*

20 (form POS-050/EFS-050).

21

22 **Rule 5.380. Agreement and judgment of parentage in Domestic Violence Prevention**

23 **Act cases**

24

25 **(a)–(b) * * ***

26

27 **(c) Notice of Entry of Judgment**

28

29 When an *Agreement and Judgment of Parentage* (form DV-180) is filed, the court

30 must ~~mail~~ serve a *Notice of Entry of Judgment* (form FL-190) on the parties.

31

32 **Rule 5.390. Bifurcation of issues**

33

34 **(a)–(d) * * ***

35

36 **(e) Notice by clerk**

37

38 Within 10 days after the order deciding the bifurcated issue and any statement of

39 decision under rule 3.1591 have been filed, the clerk must ~~mail~~ serve copies to the

40 parties and file a certificate of mailing or a certificate of electronic service.

1 **Rule 5.392. Interlocutory appeals**

2
3 (a) * * *

4
5 (b) **Certificate of probable cause for appeal**

6
7 (1) * * *

8
9 (2) If it was not in the order, within 10 days after the clerk ~~mails~~ serves the order
10 deciding the bifurcated issue, a party may notice a motion asking the court to
11 certify that there is probable cause for immediate appellate review of the
12 order. The motion must be heard within 30 days after the order deciding the
13 bifurcated issue is ~~mailed~~ served.

14
15 (3) The clerk must promptly ~~mail~~ serve notice of the decision on the motion to
16 the parties. If the motion is not determined within 40 days after ~~mailing of~~
17 serving the order on the bifurcated issue, it is deemed granted on the grounds
18 stated in the motion.

19
20 (c) * * *

21
22 (d) **Motion to appeal**

23
24 (1) If the certificate is granted, a party may, within 15 days after the ~~mailing of~~
25 court serves the notice of the order granting it, serve and file in the Court of
26 Appeal a motion to appeal the decision on the bifurcated issue. On ex parte
27 application served and filed within 15 days, the Court of Appeal or the trial
28 court may extend the time for filing the motion to appeal by not more than an
29 additional 20 days.

30
31 (2)–(6) * * *

32
33 (e) * * *

34
35 (f) **Proceedings if motion to appeal is granted**

36
37 (1) * * *

38
39 (2) The partial record filed with the motion will be considered the record for the
40 appeal unless, within 10 days from the date notice of the grant of the motion
41 is ~~mailed~~ served, a party notifies the Court of Appeal of additional portions of
42 the record that are needed for the full consideration of the appeal.

43

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

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SPR16-25

Technology: Modernization of the Rules of Court (Phase II of the Rules Modernization Project) (amend rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.252, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392)

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	Commentator	Position	Comment	Committee Response
1.	David Chapman Judge Superior Court of Riverside County	AM	<p>In courts that have electronic access to all of its own files, there is no need for a party requesting judicial notice of the court’s own records to “provide the court . . . with a copy of the material.”</p> <p>(c)(2) as written makes no sense – how does someone “make arrangements to have a file electronically accessible”</p> <p>It is suggested beginning that sentence with “If the file is not electronically accessible to the court” so it would read: “If the file is not electronically accessible to the court , make arrangements with the clerk to have the file in the courtroom at the time of the hearing.” An alternative would be “or confirm with the clerk that the file is electronically accessible to the court” so it would say “Either make arrangements with the clerk to have the file in the courtroom at the time of the hearing or confirm with the clerk that the file is electronically accessible to the court.”</p>	<p>The committees appreciate Judge Chapman’s input.</p> <p>The committees agree. The proposed amendment to rule 3.1306(c)(2) has been revised to provide: <u>“Either make arrangements with the clerk to have the file in the courtroom at the time of the hearing or confirm with the clerk that the file is electronically accessible to the court.”</u></p>
2.	Orange County Bar Association by Todd G. Friedland President	A	<p>The proposal asks for specific comments. The proposal to allow judges to receive courtesy copies would not hinder efforts of courts to move towards paperless and electronic documents. We are hesitant to advocate requiring all exhibits be text searchable at this early juncture, but agreeable assuming “where</p>	<p>The committees appreciate the Orange County Bar Association’s support. They have opted to revise the rules proposal to state a preference for text searchable exhibits in an advisory committee comment, but have decided not to make this a requirement in the rules at this time.</p>

SPR16-25

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	Commentator	Position	Comment	Committee Response
			feasible” language is used. The language “where feasible” gives the litigant some comfort that best efforts should be used to ensure exhibits are text searchable but not mandatory. Costs to litigants to obtain the necessary software programming to ensure that its documents are text searchable should be assessed.	
3.	State Bar Committee on Administration of Justice by Saul Bercovitch Legislative Counsel San Francisco	NI	<p><i>Does the proposal appropriately address the stated purpose?</i></p> <p>Generally, yes. The stated purpose of the proposed amendments is “to promote electronic filing, electronic service, and modern e-business practices.” Widespread consensus exists in the legal community that text-searchable and electronically bookmarked documents are easier to read and interact with on electronic media (including both computers and e-readers). Yet absent an accompanying mandate that litigants electronically file documents in all state courts, these particular amendments (text searchability and bookmarking) tend to <i>reflect</i> existing e-business practices more than they <i>promote</i> wider adoption of these practices. PDF writers are built into most word processors, and they are simpler and more cost effective than printing documents and scanning them (which creates much larger file sizes). The efficiencies built into the technology itself therefore already promote electronic filing and service. What the</p>	<p>The committees appreciate the input of the State Bar Committee on Administration of Justice.</p> <p>No response required.</p>

SPR16-25

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	Commentator	Position	Comment	Committee Response
			<p>rules will do, however, is render electronic media more accessible to judicial officers, who in turn may be more inclined to mandate electronic filing or service than they would have previously. To this extent, the rules appear to promote the stated purpose.</p> <p>Some may argue that the amendment requiring electronic bookmarking will actually hinder the proposal's stated purpose. The argument is that electronic bookmarking creates a lot of work for little return, so litigants may be inclined to forego electronic media in favor of simpler paper formatting. In the experience of CAJ's members, judicial officers and litigants who use electronic media to review "papers" do use electronic bookmarks frequently. Ultimately, electronic bookmarking may not complicate a filing any more than adding tabs to paper filings. It is true that electronic bookmarking will, for many, result in an initial learning curve. But the benefits for judicial officers and litigants alike should overcome a relatively simple learning process. And, as noted above, the easier electronic media is to use and interact with, the more likely it will be that courts transition from paper files to electronic media. Bookmarking is a step in that direction.</p> <p>There is another way in which</p>	

SPR16-25

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	Commentator	Position	Comment	Committee Response
			<p>bookmarks promote the proposal's stated purpose: for the reasons addressed below, CAJ is not in favor of requiring exhibits to be text searchable. Without text searchability for exhibits, voluminous electronic filings become virtually unnavigable on electronic media. Consider a motion for summary judgment that attaches 20 declarations, each of which contains one or more exhibits. If all of those supporting documents are combined into a single PDF that is not text searchable—as they often are in electronic filings—the reader must scroll through hundreds of pages to find a referenced exhibit. This complication could lead many, including judges who may otherwise be inclined to review the filing on electronic media, to print out the declarations and exhibits, thereby defeating the purpose of promoting electronic filing and service.</p> <p><i>Should the rules require that electronic exhibits be text searchable to the extent feasible?</i></p> <p>No. CAJ agrees with the proposal's exemption of exhibits from the text-searchability requirement. Saving an electronic memorandum of points and authorities as a PDF is no more difficult than printing a paper copy. But many exhibits attorneys affix to their filings originate as paper documents, which are often</p>	<p>The committees opted to revise the rules proposal to state a preference for text searchable exhibits in an advisory committee comment, but have decided not to make this a requirement in the rules at this time.</p>

SPR16-25

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	Commentator	Position	Comment	Committee Response
			<p>poorly reproduced. Scanning and applying Optical Character Recognition (“OCR”) software to a few pages is relatively simple, assuming the attorney has the necessary software. But it can take a fair amount of time to apply OCR software to a voluminous document (particularly a problem when a filer is on a tight deadline), and the process can be difficult with poorly reproduced exhibits. Compounding the issue is the fact that OCR software could potentially be expensive. While free, open-source services exist, the software quality is not always reliable, at least yet.</p> <p>Further, even where the attorney has OCR software, OCR functionality can be highly dependent on the quality of the document subject to the OCR. Often clients will only have access to poorly reproduced or handwritten documents for which OCR software cannot accurately recognize text. Attempts to apply OCR software to those types of documents—to the extent it is possible to do so at all—often results in glitchy or imperfect character recognition. Given the current state of the technology, therefore, a rule that mandates text searchability for all exhibits would be unworkable, at least without exceptions that would severely muddy the rule.</p> <p><i>Does the proposal to require that “papers” be</i></p>	

SPR16-25

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	Commentator	Position	Comment	Committee Response
			<p><i>text searchable encourage converting documents created using word processing documents to PDF?</i> Yes.</p> <p><i>Would concerns about metadata associated with the PDF instead encourage scanning and applying OCR software?</i> They should not.</p> <p><i>Or is this concern easily mitigated by Electronic Filing Service Providers or by applying data scrubbing software?</i> Mitigation likely is not necessary.</p> <p>There should be no concerns about document metadata being carried into electronic documents that are saved as PDFs. When a document is saved as a PDF, the PDF writer (e.g., Acrobat) strips the document's metadata (including tracked changes) from the document and does not transfer any underlying document properties to the PDF. (CAJ uses Acrobat as a continuing example, but different PDF writers should work the same way.) Acrobat <i>will</i> create new creation-date and author metadata for the PDF itself, and Acrobat takes that data from the computer on which the document is saved as a PDF. But this data should not reveal sensitive underlying document information, and it is possible to use a data scrubber to remove that</p>	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p>

SPR16-25

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	Commentator	Position	Comment	Committee Response
			<p>data in the rare event that it does contain sensitive information.</p> <p>The one scenario litigants should be careful about is document redaction. Most PDF writers do not automatically burn in redactions (i.e., remove the underlying text). But in recent years, Adobe has modified its software to prompt users to burn in redactions, rendering the process user-friendly.</p> <p>Of note, federal courts nationwide mandate e-filing, and many federal courts specifically require that documents be submitted in PDF format. <i>E.g.</i>, N.D. Cal. L. R. 5-1(e) (2) (“Documents filed electronically must be submitted in PDF format. Documents which the filer has in an electronic format must be converted to PDF from the word processing original, not scanned, to permit text searches and to facilitate transmission and retrieval. If the filer possesses only a paper copy of a document, it may be scanned to convert it to PDF format.”); C.D. Cal. L. R. 5-4.3.1 (“Documents filed electronically must be submitted in PDF. . . . PDF IMAGES CREATED BY SCANNING PAPER DOCUMENTS ARE PROHIBITED.”). Anecdotal evidence suggests that unintentionally retained metadata has not been an issue in federal court filings, although some</p>	

SPR16-25

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			<p>courts have online FAQs that guide litigants through these issues. <i>E.g.</i>, https://www.cacd.uscourts.gov/e-filing/faq/pdf-related%20questions (Central District of California); http://www.cand.uscourts.gov/pages/946 (Northern District of California).</p> <p><i>Would the proposed rule on paper courtesy copies hinder or promote efforts to move courts toward paperless case environments?</i></p> <p>If anything, the proposed rule should encourage courts to move toward paperless case environments. The practical reality is that many judges will still want and use paper documents, regardless of whether those documents are submitted by litigants or effectively paid for by taxpayers when the judicial officers print those documents themselves. Hence, a rule prohibiting courtesy copies entirely is currently unworkable. The proposed amendment to rule 2.252 (“A judge may request that electronic filers submit paper courtesy copies of an electronically filed document.”) would enact the next-best alternative—an opt-in system that puts the burden on judges to request courtesy copies (as opposed to an opt-out system that judicial officers may neglect to exercise, even if they do not want or need courtesy copies).</p>	<p>No response required.</p>

SPR16-25

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4.	State Bar of California, Standing Committee on the Delivery of Legal Services by Phong S. Wong Chair Los Angeles	AM	<ul style="list-style-type: none"> • <u>Does the proposal appropriately address the stated purpose?</u> <p>Yes.</p> <ul style="list-style-type: none"> • <u>Should the rules require that electronic exhibits be text searchable to the extent feasible?</u> <p>Yes. The requirement would provide leeway for self-represented litigants and others such as low-income or disabled clients to e-file exhibits that are not text searchable.</p> <ul style="list-style-type: none"> • <u>Does the proposal to require that “papers” be text searchable encourage converting documents created using word processing documents to PDF? Would concerns about metadata associated with the PDF instead encourage scanning and applying OCR software? Or is this concern easily mitigated by Electronic Filing Service Providers or by applying data scrubbing software?</u> <p>Yes to first question. SCDLS has no comments about the remaining questions.</p> <ul style="list-style-type: none"> • <u>Would the proposed rule on paper courtesy copies hinder or promote efforts to move courts toward paperless case environments?</u> 	<p>The committees appreciate the input of the State Bar’s Standing Committee on the Delivery of Legal Services.</p> <p>The committees have opted to revise the rules proposal to state a preference for text searchable exhibits in an advisory committee comment, but have decided not to make this a requirement in the rules at this time.</p> <p>No response required.</p>

SPR16-25

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			<p>The effect of this proposal on moving toward a paperless environment seems to depend on specific court preferences. For example, if a court prefers to review documents in paper form, the court is likely already printing its own paper copies regardless of whether paper courtesy copies are required of litigants, and no paper is likely being saved.</p> <p>Additional Comments</p> <p>The rule (see Rule 2.256) should exempt self-represented litigants from e-filing documents that are text-searchable. Despite the stated availability of free software permitting litigants to convert documents into text-searchable PDFs, some self-represented litigants may find it challenging to find, access, or use this technology, or otherwise be unfamiliar with it. Having this requirement may discourage some self-represented litigants from e-filing at all (which would be contrary to the proposal's general intent to promote e-filing). The rule (see Rule 3.1110(f)) should also not require that all litigants other than self-represented litigants file exhibits with electronic bookmarking. This could pose a significant barrier for some low-income, moderate-income, or disabled clients, etc. In particular, disabled litigants will need access to the specific technology required to make these e-filed documents into searchable</p>	<p>No response required.</p> <p>The committees appreciate this suggestion, but decline to pursue it. They weighed the following considerations in decided to recommend that all electronic “papers” be text searchable: (1) word processing software readily converts documents to PDF with no extra expense and minimal effort; (2) many electronic filing service providers convert documents from word processing format to PDF as part of their services; (3) self-represented litigants may always opt out of electronic filing and file on paper; (4) open source electronic bookmarking software is available for free; (5) competent attorneys could be expected to know or learn how to apply electronic bookmarks; (6) the time spent applying electronic bookmarks should be no more than the time required to tab paper exhibits; and (7) disabled litigants may request reasonable accommodations under the Americans with Disabilities Act.</p>

SPR16-25

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			PDFs, and some may also face difficulties gaining physical access to buildings where public shared computers are available. Even if some litigants have legal representation, they may not be able to afford to pay legal counsel additional fees to do electronic bookmarking or to convert their documents into searchable PDFs.	
5.	Superior Court of Orange County Judicial Assistance Group Sheri A. Bull Program Coordinator	NI	<p>GENERAL COMMENTS</p> <p>REJECTION OF DOCUMENTS OFFERED FOR FILING FOR NON-COMPLIANCE WITH FORM AND FORMAT RULES – PAGE NUMBERING, SEARCHABLE TEXT, AND BOOKMARKING EXHIBITS</p> <p><i>COMMENT:</i> The proposals for consistent page numbering, searchable text documents, and exhibit formatting will all assist judges, research attorneys and staff work more efficiently, and are therefore good. However, enforcement is problematic. CRC, Rule 2.118 states that a clerk may not reject a filing because it is hand written or the font size is not exactly correct. The rule is essentially moot. Clerks cannot take the time to check documents for exact compliance with form and format requirements in rules because courts are being funded, on average, at only 72% of funding need and because of the sheer number of documents filed.</p>	<p>The committees appreciate the input from the Superior Court of Orange County’s Judicial Assistance Group.</p> <p>The committees carefully considered the additional burden on clerks resulting from the proposed amendments to rule 2.100 (requiring that “papers” filed electronically be text searchable) and rule 2.109 (requiring that all papers be numbered consecutively using only Arabic numerals). These two amendments would be subject to the general requirement in rule 2.118 that clerks “must not accept for filing or file any papers that do not comply with the rules in this chapter.” The proposed amendment to rule 3.1110(f) (requiring that electronic exhibits contain electronic bookmarks) is not subject to rule 2.118 because it does not fall within chapter 1</p>

SPR16-25

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			<p>In addition to font size (Rule 2.104) and style (Rule 2.105), clerks will likely not have time to check for page numbering (proposed Rules 2.109, 3.1110(c), and 3.1113(h)), whether the documents submitted is text searchable (proposed Rule 2.256(b)(3)), or whether the exhibit format requirements are followed (proposed Rule 3.1110(f)). As laudable and useful as these proposals are, they will be difficult to enforce. It may be far more effective for courts to require by contract that EFSP's, as part of their service to filers, comply with these rules by numbering the pages properly and making documents text searchable before submitting to the court.</p> <p>PERMANENTLY DELETING RECORDS IN ELECTRONIC ENVIRONMENT</p> <p><i>PROPOSAL:</i> Rule 2.551(b)(6), Rule 2.577(d)(4), and Rule 3.1302(b) contemplate that the clerk “permanently delete” a document that has been filed, or offered for filing in certain situations, and send notice of the deletion.</p>	<p>of title 2 of the California Rules of Court.</p> <p>The committees note that rule 2.118 currently requires rejecting filings for failure to comply with the prescribed font size. Even though courts may not have the resources for clerks to check every document for font size, the committee determined that it would be beneficial to provide an exception in the rules for minimal font variation attributable to converting documents from word processing format to PDF. Anecdotal evidence from practitioners suggests that some have had documents rejected due to minor variations in font size caused by conversion. At the very least, the concern that a document might be rejected due to such variations has caused some practitioners to create PDFs by scanning.</p> <p>The purpose of amending rule 2.551(b)(6) is to modernize the process for returning the lodged record in cases involving motions to seal to accommodate electronic records. It is not intended to change the basic underlying procedure in subdivision (b)(6) of the rule. In the event that a motion is denied, subdivision (b)(6) provides for the return of the record to the moving party or, in the alternative, allows the moving party to notify</p>

SPR16-25

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			<p><i>COMMENT on DESTRUCTION:</i> In a typical electronic record environment it may not be</p>	<p>the court that the record is to be filed (unsealed).</p> <p>To better reflect this purpose, the committees decided to revise subdivision (b)(6) as follows:</p> <p>If the court denies the motion or application to seal, the clerk must return the lodged record to the submitting party and must not place it in the case file unless that party notifies the clerk in writing that the record is to be filed. Unless otherwise ordered by the court, the submitting party must notify the clerk within 10 days after the order denying the motion or application. <u>the moving party may notify the court that the lodged record is to be filed unsealed. This notification must be received within 10 days of the order denying the motion or application to seal, unless otherwise ordered by the court. On receipt of this notification, the clerk must unseal and file the record. If the moving party does not notify the court within 10 days of the order, the clerk must (i) return the lodged record to the moving party if it is in paper form or (ii) permanently delete the lodged record from the court record if it is in electronic form.</u></p> <p>While there may be technical issues with the ability to completely “delete” all electronic</p>

SPR16-25

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			<p>possible to ‘delete’ a document, if ‘delete’ means remove all copies. A typical electronic court environment would likely have several copies of documents, one in the production environment used by judges and court staff, at least one in a back-up database, and at least one in a duplicate document database accessed by lawyers and the public. Moreover, the back-up database may be optical disks where the image cannot be removed unless the entire disk is destroyed. In the future, court document databases maybe stored in the cloud, which may involve storing different documents in different servers, likely in different locations, and with at least one back-up in yet another location. Therefore, permanent deletion is virtually impossible to guarantee.</p> <p>Focusing on the intended outcome of ‘destruction’, is the issue one of access to the document, as opposed to the mechanics of deletion? If a document is no longer accessible to the public, it is effectively ‘destroyed’. This can be accomplished with changes to document access codes, often referred to as security levels. Instead of stating “the clerk must . . . permanently delete”, the rules should say “the clerk must . . . eliminate public access to the document”, or something similar, for example the language proposed for Rules 2.551(f) and 2.577(g).</p>	<p>documents, the crucial legal point is that the lodged materials record should be deleted or removed <i>from the record</i>. The proposed new language—“permanently deleted the lodged record”—achieves this purpose. Merely removing public access controls would not.</p> <p>The committees view deletion as necessary here, where lodged materials are accompanied with a request that they be filed under seal. The sensitive nature of these documents requires that they be permanently deleted if the motion is denied, unless otherwise requested by the party. Because existing statutes require the destruction of similarly sensitive court records (e.g., the destruction of juvenile records under Welfare and Institutions Code section 826(a)), the committees are confident that case management systems have the capability of deleting lodged materials or can be repurposed to do so.</p>

SPR16-25

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			<p>Finally, the ‘deletion’ of a document when the court denies the motion or application is problematic in the event of appeal or review of the judge’s decision. If the clerk destroys the document that was the subject of the motion, the clerk cannot provide a copy to the reviewing court. If, instead, the document is retained electronically, but public access denied, then it can be produced for the reviewing court.</p> <p>More specifically, in Probate case, supporting documents are lodged and may be considered as part of subsequent Court rulings. For example, in Orange, the practice is to require all original documents to be submitted by fiduciaries in support of their inventory and appraisals or accountings, including financial account statements, original closing escrow statements, and original residential care facility or long-term care facility bills to be lodged separately from the inventory and appraisal or accounting. The court scans these documents and returns the originals to the filer. The proposal should, therefore, include language to the effect of “if lodged documents serve judicial benefit, the judge may direct the clerk to retain the records indefinitely”.</p> <p><i>COMMENT on NOTICE OF DESTRUCTION:</i> Sending a notice of document deletion seems</p>	<p>Rule 2.551 currently does not contemplate the retention of lodged materials that are submitted with a motion to seal for purposes of any appeals, regardless of whether these materials are submitted in paper or electronic form. Because this suggestion is beyond the scope of the current rules proposal, it will be deferred for further review by the committees next year.</p> <p>Rules 2.551 would apply to lodged materials in probate cases only if they are submitted in connection with a motion to seal. Any lodged materials in probate cases that are submitted with a motion to seal must be deleted if the motion is denied, unless otherwise specified by the moving party.</p> <p>The committees agree that sending a separate notice of deletion is unnecessary here because the</p>

SPR16-25

Technology: Modernization of the Rules of Court (Phase II of the Rules Modernization Project) (amend rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.252, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392)

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			<p>unnecessary, particularly in light of the comments above about the inability to completely delete. The court record already captures if a motion to seal a document was granted or not and the status of the lodged document itself, which serves as notice. It is not clear what sending a notice of destruction is intended to accomplish. Requiring notice would be an added workload to staff and would require regular auditing to ensure that all notices have properly gone out. If the rules are changed to say that the document is not accessible to the public, then the document is still present in the court record.</p> <p>ELECTRONIC PROOF OF SERVICE – REMOVING TIME OF SERVICE <i>PROPOSAL: Rule 2.251(i)</i> <i>(B) The proof of <u>electronic</u> service must state:</i> <i>(B) (2) The date and time of the electronic service, instead of the date and place of deposit in the mail;</i> </p> <p><i>COMMENT:</i> For most documents, the time of service is not relevant to the validity of the service to allow the court to proceed. However, there are instances where the time of service is critical. For example, CRC, Rule 3.1203 states</p>	<p>court will issue an order denying the motion to seal. The denial order is sufficient to notify the moving party that he or she must request that the lodged material be filed unsealed within 10 days of the order, or the court will permanently delete the lodged material. Accordingly, the committees have revised the proposed amendment to eliminate the notice requirement.</p> <p>The committees understand this concern. ITAC is concurrently pursuing a legislative proposal that would amend the cut-off time for the effective date of electronic service to 11:59:59 p.m. With this legislation, it is expected that the exact time</p>

SPR16-25

Technology: Modernization of the Rules of Court (Phase II of the Rules Modernization Project) (amend rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.252, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392)

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			<p>that “a party seeking an ex parte order must notify all parties no later than 10:00 a.m. the court day before the ex parte appearance” Not including the time on the proof in these cases may result in the parties and the court preparing for a hearing that cannot take place when the party being served objects that they were not notified by 10 AM. Not having the time also precludes the clerk from notifying the judge whether or not there was valid notice given. There may not be a lot of these cases, and even fewer where the objection is raised, so the deletion may pose no problem most of the time. Alternatively, consider not deleting the language “and time”, and adding “, if relevant to validity of service” or something like that.</p> <p>EXEMPTION FOR SELF-REPRESENTED PARTY</p> <p><i>PROPOSAL:</i> Proposed Rule 3.1110(f)(4) exempts self-represented parties from book marking exhibits.</p> <p><i>COMMENT:</i> This is yet another example of the Judicial Council’s unnecessary deference to self-represented litigants. Self-represented</p>	<p>of electronic service will be an issue in far fewer cases. The proof of electronic service will reflect the date when the document was electronically served, and judicial officers and clerks should be able to ascertain the effective date of filing with this information.</p> <p>That said, there will still be instances when the exact time of electronic service will be an issue. On balance, the committees determined that the benefits of eliminating the time requirement from proofs of electronic service outweighed the costs. Only after electronic service has been effected will the exact time of electronic service be known. Requiring that the proof of electronic service specify the time of electronic service has led many to leave the time blank for fear of committing perjury. The committees also reasoned that there are other means for ascertaining the time of electronic service when needed.</p> <p>The committees decline to pursue this recommendation at this time. The proposed amendments are tailored to promote electronic</p>

SPR16-25

Technology: Modernization of the Rules of Court (Phase II of the Rules Modernization Project) (amend rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.252, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392)

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			<p>litigants are not necessarily incapable of complying with format requirements and do not need a blanket exemption. The Advisory Committee Comment seemingly supports this, noting that bookmark programs are free. A survey of self-represented litigants using e-filing indicated that fewer than 5% of SRLs had difficulty finding a way to engage in e-filing in civil cases. A very similar study in Texas experienced the same results. Instead of a blanket exemption, a process similar to that in CRC Rule 2.253(b)(4) for requesting an excuse from mandatory e-filing should be developed applicable to electronic records generally.</p> <p>INVITATION TO COMMENT SPR16-25 SPECIFIC COMMENTS</p> <p>Does the proposal appropriately address the stated purpose?</p> <p><input type="checkbox"/> Should the rules require that electronic exhibits be text searchable to the extent feasible? <i>YES</i></p> <p><input type="checkbox"/> Does the proposal to require that “papers” be text searchable encourage converting documents created using word processing documents to PDF? Would concerns about metadata associated with the PDF instead encourage scanning and applying OCR</p>	<p>filing and service in the trial courts. Adding electronic bookmarks to exhibits requires downloading additional software and possessing certain technical knowhow. Because self-represented litigants may always opt out of electronic filing entirely, the committees decided to lower potential barriers to electronic filing.</p> <p>The committees have opted to revise the rules proposal to state a preference for text searchable exhibits in an advisory committee comment, but have decided not to make this a requirement in the rules at this time.</p>

SPR16-25

Technology: Modernization of the Rules of Court (Phase II of the Rules Modernization Project) (amend rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.252, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392)

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			<p>software? Or is this concern easily mitigated by Electronic Filing Service Providers or by applying data scrubbing software?</p> <p><i>While PDF is, on one sense, a proprietary format, it is now so ubiquitous that it is reasonable to require its use. There are also so many programs, many free, for producing PDFs and addressing metadata issues that it is not burdensome to require its use.</i></p> <p><input type="checkbox"/> Would the proposed rule on paper courtesy copies hinder or promote efforts to move courts toward paperless case environments?</p> <p><i>In the long run, yes; however, because the trend is to receive paper courtesy copies based on judicial preference, this may take some time to fully implement.</i></p> <p><i>Allowing courtesy copies also eliminates one of the big secondary savings from e-filing, not having to deliver a paper copy to the courthouse. It is time to move into the future. If judges or staff want a paper copy, print one out, don't make the litigants do this.</i></p> <p>The advisory committees also seek comments from <i>courts</i> on the following cost and implementation matters:</p>	<p>No response required.</p> <p>The committees share these concerns. After careful consideration, they decided it was best to leave this decision to the individual judge's discretion, especially in view of the voluminous filings submitted in complex civil cases. Over time, the committees expect that judges will become increasingly comfortable operating in paperless case environments and will request fewer paper courtesy copies.</p>

SPR16-25

Technology: Modernization of the Rules of Court (Phase II of the Rules Modernization Project) (amend rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.252, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392)

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			<p><input type="checkbox"/> Would the proposal provide cost savings? If so please quantify.</p> <p><i>The potential savings from electronic records complying with the new rules would be offset by added costs checking for compliance with the rules. The new rules mandate that all documents that do NOT meet the stated standards, including being text searchable, would be rejected by the courts. This will have significant workload costs, with additional document review criteria needed for every eFiling. The text searchable criteria seems especially burdensome, as clerks would need to perform a text search on all electronic documents individually to ensure compliance.</i></p> <p><i>Implementing formatting guidelines, bookmarking and text searchable functionality can help judges or commissioners be able to navigate more quickly in the courtroom. However electronic document viewing applications, such as ELF, may require modification to support the bookmarked exhibits. Without available funds to modernize the technology used, the saving benefits may not be immediately realized.</i></p>	<p>The committees understand the concern about creating additional burden for courts. The amendments to rule 2.100 (requiring that “papers” filed electronically be text searchable) and rule 2.109 (requiring that all papers be numbered consecutively using only Arabic numerals) are consistent with the other formatting rules in chapter 1 of title 2. They will also result in substantial cost efficiencies for the courts, not only in terms of judicial time, but also in the time and expense of applying OCR software to all electronically filed documents. It is also possible that some aspects of clerk review might be processed automatically, depending on the policy files of each court’s electronic filing management systems.</p> <p>As acknowledged by the Judicial Assistance Group, courts already lack sufficient resources to provide for clerk review of all filings for compliance with the rules. In lieu of delaying the implementation date of these new formatting requirements, each court will continue to allocate resources to clerk review as it sees fit.</p> <p>Moreover, the concern about resources points to the larger issue of whether the council should reconsider the utility of rule 2.118, which requires</p>

SPR16-25

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			<p><input type="checkbox"/> 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.</p> <p><i>Courts would need time to work with eFiling applications to ensure they support new guidelines. Courts will also need time to communicate with justice partners, the public, as well as training for staff and judges.</i></p> <p><i>We would like clarification whether the implementation of amendments to the CRC would apply to Family Law and Juvenile case types or if there are any limitations or discretion by our court that can be specified.</i></p> <p><i>We need about 6 months to implement training and procedure updates to get staff familiar with PDF capabilities, text searchable guidelines,</i></p>	<p>that clerks reject filings if they do not comply with the formatting rules in chapter 1 of title 2. The larger question of whether rule 2.118 should be modified is outside the scope of the present rules proposal, as circulated, but it will be referred for further consideration to the Civil and Small Claims Advisory Committee.</p> <p>Yes, the proposed amendments to titles 2 and 3 would apply to family and juvenile proceedings. The trial court rules in title 2 of the California Rules of Court “apply to all cases in the superior courts unless otherwise specified by a rule or statute.” (Cal. Rules of Court, rule 2.2.) The civil rules in title 3 “apply to all civil cases in the superior courts, including general civil, <i>family</i>, <i>juvenile</i>, and probate cases, unless otherwise</p>

SPR16-25

Technology: Modernization of the Rules of Court (Phase II of the Rules Modernization Project) (amend rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.252, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392)

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			<p><i>and what staff should be looking for when accepting or rejecting documents due to formatting errors.</i></p> <p><input type="checkbox"/> Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p> <p><i>Not if it is expected that attorneys would fully comply and clerks would be able to check for compliance after only two months' notice. While we support text searchable documents, the public still needs education regarding how to create one. Orange County still receives a high volume of non-text searchable electronic documents even though it is a less efficient process for the parties involved. A phased in approach seems more pragmatic, where in the first year the filings would not be rejected. During that time, courts could notify parties that future filings that are not text searchable would be rejected.</i></p> <p><i>If exhibits must be e-filed, bookmarked and text</i></p>	<p>provided by a statute or rule in the California Rules of Court.” (<i>Id.</i>, rule 3.10, italics added; see also <i>id.</i>, rule 5.2(d) [“Except as otherwise provided in these rules, all provisions of law applicable to civil actions generally apply to a proceeding without reference to this rule. To the extent that these rules conflict with provisions in other statutes or rules, these rules prevail”].)</p> <p>Please see the committees’ response above to these concerns.</p> <p>The only change to the filing of exhibits in these</p>

SPR16-25

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			<p><i>searchable, this may require changes to the e-filing applications, so we would recommend a phased approach. Would the courts be responsible for enforcement of these electronic filing guidelines? If so, courts might see possible delays/continuances in court trials if parties do not adhere to the amended CRC guidelines.</i></p> <p><i>This concern would be more easily mitigated if Electronic Filing Service Providers and/or courts apply data scrubbing software.</i></p>	<p>amendments is the new requirement that electronic exhibits contain electronic bookmarks. Because rule 2.118 does not apply to rule 3.1110, clerks would not be required to reject for filing any electronic exhibits that do not comply with this new requirement. It would be left to each individual court to decide whether and how to enforce it.</p>
6.	Superior Court of San Diego County by Mike Roddy Executive Officer	A	No specific comment.	The committees appreciate the support of the Superior Court of San Diego County.
7.	TCPJAC/CEAC Joint Rules Subcommittee	AM	<p>Suggested Modifications:</p> <p>Rule 2.109. Page numbering Did the Committee consider the additional work required to ensure page limitations on briefs, if the document is consecutively numbered using only Arabic numerals? Typically we see Roman numerals used until the brief begins and then Arabic numerals are used. This makes it easy to see that the brief meets the page limitation.</p> <p>Rule 2.111. Format of first page We suggest adding language to (7), as this</p>	<p>The committees appreciate the input of the TCPJAC/CEAC Joint Rules Subcommittee.</p> <p>The committees considered the subcommittee's concerns that the proposed amendment to rule 2.109 would result in an increase in workload for clerks. After weighing the costs and benefits, the committee decided to pursue the proposed amendment because of its significant benefit to judicial officers in referencing page numbers from the bench.</p> <p>The committees decided against pursuing this suggestion because it is outside of the rules</p>

SPR16-25

Technology: Modernization of the Rules of Court (Phase II of the Rules Modernization Project) (amend rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.252, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392)

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			<p>information would be useful to the court: “(7) Below the nature of the paper or the character of the action or proceeding, the name of the judge and department, if any, to which the case is assigned. assigned. assigned, including the type of event, date and time.”</p> <p>Rule 2.252(i) Paper Courtesy Copies The Rules of Court have not previously addressed the inherent authority of judges to request that lawyers provide copies of filed documents to assist the Court in its adjudicatory responsibilities. Rather, the subject of “courtesy copies” has been left to judicial discretion or to direction provided by local rule. For example, many judges will require counsel to create a binder of motions in limine and related papers and to lodge the copies at or before the final status conference or on the date of trial. Some courts also require copies of certain types of documents to be lodged in particular types of proceedings for the benefit of the judge presiding over the case. (See, e.g., Los Angeles Superior County Court Rule 3.232(1) (specifying contents of a trial notebook to be lodged in CEQA cases); Orange County Superior Court Rule 317 (requiring courtesy copies of “all filings generated by their motions in limine” and organization of such motions in three-ring binders if there are four or more motions in limine); Merced Superior Court Rule</p>	<p>proposal, as circulated. It will be referred to the Civil and Small Claims Advisory Committee for future consideration.</p> <p>After careful consideration, the committees decline to pursue these suggestions. The committees determined that the proposed rule amendment struck the appropriate balance by providing judicial officers with discretion to request paper courtesy copies when needed, while also promoting the larger shift toward a paperless case environment. The committees viewed adopting local rules on paper courtesy copies as less conducive to making this transition: even as judicial officers become increasingly comfortable working in a paperless case environment, they would still receive paper courtesy copies under the local rule. The flexible approach provided in the rule amendment would allow each judge to make that shift at his or her own pace.</p>

SPR16-25

Technology: Modernization of the Rules of Court (Phase II of the Rules Modernization Project) (amend rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.252, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392)

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			<p>2E (requiring courtesy copies of all motion papers except for motions in cases designated as “complex”); Alameda County Superior Court Rule 3.30 (for civil cases “[a]n identical courtesy copy of any paper filed, lodged, or otherwise submitted in support of, in opposition to, or in connection with any motion or application must be delivered to the courtroom clerk assigned to the Department in which the motion or application will be heard”).)</p> <p>Courts that have had experience with electronic documents have adopted a variety of approaches. Some trial courts have, by local rule, left it to individual judges to request or to order courtesy copies when needed. (See, e.g., Santa Barbara County Superior Court Rule 1012(b)(4) (“The court may by order require the delivery of paper courtesy copies of e-filed documents.”); Monterey County Superior Court Rule 1.06E (“A judge may order a paper courtesy copy at any time, either printed or through electronic delivery”).) Others have required courtesy copies to be filed for particular case types or circumstances. (See, e.g., San Francisco Superior Court Rule 2.11T (electronic filers must submit “one courtesy paper copy of all filed documents requiring Court review, action, or signature directly to the assigned Judge’s department); Alameda County Superior Court Rule 1.85(i) (when a document</p>	

SPR16-25

Technology: Modernization of the Rules of Court (Phase II of the Rules Modernization Project) (amend rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.252, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392)

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			<p>is electronically filed in a criminal case in connection with a hearing two or fewer days from the date of filing, a paper copy must be delivered to the department where the matter is heard.)</p> <p>It is most important that judicial officers be able to review pleadings in whatever format (paper or electronic image) best facilitates the performance of their Constitutional responsibilities. In addition, it is important that the Rules of Court allow flexibility. It is likely that, over time, more judges will opt for review of pleadings in an electronic format. Moreover, some dockets and case types lend themselves to easier electronic review than others depending, for example, on the size and complexity of motions and their accompanying evidence.</p> <p>It is very important that the Rules of Court continue to allow individual and local options and flexibility with respect to courtesy copies. Due to the wide variation in practice of many courts in the early stages of implementing e-filing, we recommend deferring formulation of the rule this year and adopting option 1 below. In the event, the decision is made to proceed with a rule at this time, we recommend option 2 to ensure the ability of courts to create local rules that will work best for their jurisdictions.</p>	

SPR16-25

Technology: Modernization of the Rules of Court (Phase II of the Rules Modernization Project) (amend rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.252, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392)

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			<p>(1) Delete proposed subsection (i) of Rule 2.252. This would leave judicial officers and local courts with the flexibility to deal with the issue of courtesy copies as local practices evolve either overall or in particular case types. Moreover, the current proposal which addresses courtesy copies in the context of electronic filing, might be read to suggest, by negative implication, that courtesy copies are not permitted in other contexts (i.e., if the current proposal might cast doubt on the ability of judges to request or order courtesy copies when a document is not electronically filed).</p> <p>(2) Redraft the proposal to expressly allow the alternative of a local rule to require courtesy copies. We suggest the following language: “A judge may order that electronic filers submit paper courtesy copies of an electronically filed document, or courtesy copies may be required by local rule.”</p> <p>Rule 2.551(b)(6) Return of lodged record It seems unnecessary and would create additional workload to, “send notice of deletion to the submitting party.” We suggest deleting this text or at least adding the word, “may”, before it to allow for the court’s ability to do</p>	<p>The committees agree that sending a separate notice of deletion is unnecessary here because the court will issue an order denying the motion to seal. The denial order is sufficient to notify the moving party that he or she must request that the lodged records be filed unsealed within 10 days of</p>

SPR16-25

Technology: Modernization of the Rules of Court (Phase II of the Rules Modernization Project) (amend rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.252, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392)

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			<p>this.</p> <p>We suggest deleting the language, “The clerk must not place the lodged record in the case file unless that party notifies the clerk in writing that the record is to be filed.” Since the document has been returned or deleted, this statement is not necessary. Instead, we suggest the wording be changed to, “If the petitioner notifies the clerk in writing that the record is to be filed, then the party shall resubmit the document for filing.”</p> <p>This change in wording also eliminates the problematic term, “in the case file,” when referring to electronic files. There is a repository of digital documents and data attached to each case. Security settings are used to control access to various documents. There is no physical “case file.”</p> <p>Rule 2.551(e)(1) In the last sentence, the phrase, “...clearly identify the record as sealed by court order on a specified date.” may be problematic</p>	<p>the order, or the court will permanently delete the lodged records, if in electronic form. Accordingly, the committee has revised the proposed amendment to eliminate the notice requirement.</p> <p>The intent behind the amendments is not to change the current process for paper lodged records, but to provide a parallel process for electronic lodged records. The committees revised the proposed amendment to make this clear. In addition, resubmission of the lodged records would be burdensome for both the moving party and the court, and could potentially lead to errors. Instead, if the moving party notifies the court that the lodged records should be filed, the rule would provide that the court must unseal and file it. This is consistent with current practices and procedures.</p> <p>The committees revised the amendments to eliminate reference to the term “case file.”</p> <p>This requirement is currently in the rules and is outside the scope of the rules proposal, as circulated. The committees may take this into</p>

SPR16-25

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	Commentator	Position	Comment	Committee Response
			<p>depending on the meaning. If this is accomplished through the Register of Action (ROA) only, and not applied to the sealed record itself, it would be fine. The digitally stored document will effectively be sealed by changing the security setting on it. The ROA will have the court order and date. However, if this means to require altering the digitally stored document to include the court order and date, this would require extensive changes to case management systems. We recommend deleting the phrase and ending the sentence as, "...and clearly identify the record as sealed on the Register of Actions." This makes it clear no document can or will be modified.</p> <p>Rule 2.577(d)(4) As above, it seems unnecessary and would create additional workload to, "send notice of deletion to the petitioner." We suggest deleting this text or at least adding the word, "may", before it to allow for the court's ability to do this.</p> <p>We suggest deleting the language, "The clerk must not place the lodged record in the case file unless that party notifies the clerk in writing within 10 days after the order denying the application that the unsealed petition and related papers are to be filed." Since the document has been returned or</p>	<p>consideration in developing future modernization proposals.</p> <p>The committees have revised the proposed amendment to rule 2.577(d)(4) to remove the notice requirement.</p> <p>Please see the committees' response above.</p>

SPR16-25

Technology: Modernization of the Rules of Court (Phase II of the Rules Modernization Project) (amend rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.252, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>deleted, this statement is not necessary. Instead, we suggest the wording be changed to, “If the petitioner notifies the clerk in writing within 10 days after the order denying the application that the unsealed petition and related papers are to be filed, then the party shall resubmit the document for filing.”</p> <p>This change in wording also eliminates the problematic term, “in the case file,” when referring to electronic files. There is a repository of digital documents and data attached to each case. Security settings are used to control access to various documents. There is no physical “case file.”</p> <p>Rule 2.577(f)(3) As above, in the last sentence, the phrase, “...clearly identify the record as sealed by court order on a specified date.” may be problematic depending on the meaning. If this is accomplished through the Register of Action (ROA) only, and not applied to the sealed record itself, it would be fine. The digitally stored document will effectively be sealed by changing the security setting on it. The ROA will have the court order and date. However, if this means to require altering the digitally stored document to include the court order and date, this would require extensive changes to case management systems. We recommend deleting</p>	<p>Please see the committees’ response above.</p>

SPR16-25

Technology: Modernization of the Rules of Court (Phase II of the Rules Modernization Project) (amend rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.252, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>the phrase and ending the sentence as, "...and clearly identify the record as sealed on the Register of Actions." This makes it clear no document can or will be modified.</p> <p>Rule 3.1110(f) Format of Exhibits (4) The language in this section is too restrictive. We suggest a change in the second sentence from, "...electronic exhibits must include electronic bookmarks..." to "...electronic documents must include electronic bookmarks for each subsidiary document, such as each exhibit and each declaration, contained therein..."</p> <p>Rule 3.1302(b) As above, it seems unnecessary and would create additional workload to require the clerk to send notice of deletion. We suggest deleting the text, "The clerk must send notice of deletion to the submitting party," or at least changing the word, "must" to "may".</p>	<p>The committees decided to retain the language that was circulated for public comment, which requires more generally that exhibits include electronic bookmarks with links to the first page of each exhibit. Depending on the experience applying this rule, the committees may revisit it to determine whether more precision is desirable.</p> <p>Distinct from rules 2.551 and 2.557, which govern the lodged records in the context of sealing motions, rule 3.1302 does not address lodged materials of a sensitive nature. The committees determined that these lodged materials may be maintained by the court. But if the court elects to destroy them, notice would need to be sent to the moving party. Unlike rules 2.551 and 2.557, where the court issues an order denying the motion to seal or the motion for a confidential name change, the court would not otherwise put the moving party on notice of the destruction.</p> <p>To better clarify that rule 3.1302(b) requires notice only if the court opts to delete the lodged</p>

SPR16-25

Technology: Modernization of the Rules of Court (Phase II of the Rules Modernization Project) (amend rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.252, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
				materials, the committees have revised the amendment by combining the last two sentences as follows: <u>“If the lodged material is in electronic form, the clerk may permanently delete it after sending notice of the deletion to the party who lodged the material.”</u>

DRAFT



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 15, 2016

Title	Agenda Item Type
Technology: Electronic Filing, Service, and Signatures	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011	January 1, 2018
Recommended by	Date of Report
Information Technology Advisory Committee	July 20, 2016
Hon. Terence L. Bruiniers, Chair	Contact
	Tara Lundstrom, 415-865-7995
	tara.lundstrom@jud.ca.gov

Executive Summary

The Information Technology Advisory Committee recommends that the Judicial Council propose adding new Code of Civil Procedure section 1013b and amending sections 664.5, 1010.6, and 1011. This legislative proposal would (1) authorize the use of electronic signatures for signatures made under penalty of perjury on electronically filed documents, (2) provide for a consistent effective date of electronic filing and service across courts and case types, (3) consolidate the mandatory electronic filing provisions, (4) clarify the application of section 1010.6's electronic service provisions in sections 664.5 and 1011, and (5) codify provisions that are currently in the California Rules of Court on mandatory electronic service, effective date of electronic service, protections for self-represented persons, and proof of electronic service.

Recommendation

The Information Technology Advisory Committee recommends that the Judicial Council, effective January 1, 2018:

1. Sponsor legislation enacting new Code of Civil Procedure section 1013b; and

2. Sponsor legislation amending Code of Civil Procedure sections 664.5, 1010.6, and 1011.

The text of the proposed new and amended statutes is attached at pages 9–14.

Previous Council Action

Superior courts across the state are implementing new case management systems that have electronic filing capabilities. Since January 1, 2000, Code of Civil Procedure section 1010.6 has authorized permissive electronic filing and service in the superior courts. (Stats. 1999, ch. 514, § 1.) The Judicial Council first adopted statewide rules implementing permissive electronic filing and service in the trial courts in 2002.

Four years ago, the Legislature enacted Assembly Bill 2073, which authorized the Superior Court of Orange County to implement a mandatory electronic filing and service pilot project. (Stats. 2012, ch. 320; codified at Code Civ. Proc., § 1010.6(d).) AB 2073 also instructed the Judicial Council to adopt uniform rules to permit mandatory electronic filing and service in specified civil actions. (Code Civ. Proc., § 1010.6(f).) Upon adoption of those rules, AB 2073 allowed superior courts to require mandatory electronic filing by local rule. (*Id.*, § 1010.6(g).) Effective July 1, 2013, the council adopted uniform rules providing for mandatory electronic filing and service in civil cases. The trial court rules now provide a framework for mandatory and permissive filing and service in civil cases.

Rationale for Recommendation

This legislative proposal builds on the lessons learned in promulgating the uniform mandatory electronic filing and service rules, as well as the experience of the Superior Court of Orange County and other superior courts in implementing mandatory and permissive electronic filing. It would amend the Code of Civil Procedure to authorize electronic signatures, promote consistency in the requirements for electronic filing and service, codify various provisions in the trial court rules, and clarify the application of section 1010.6's electronic service provisions in other statutes.

In developing this proposal, the Information Technology Advisory Committee (ITAC) sought input from the Civil and Small Claims Advisory Committee, the Family and Juvenile Law Advisory Committee, and the Advisory Committee on Providing Access and Fairness.

Proposed amendments to section 1010.6

The proposed amendments to section 1010.6 would authorize electronic signatures on electronically filed documents, provide for consistency in the effective date of filing across courts and case types, consolidate the mandatory electronic filing provisions, and codify the provisions that are currently in the rules on mandatory electronic service, effective date of electronic service, and protections for self-represented litigants.

Authorize electronic signatures on electronically filed documents. Section 1010.6(b)(2)(B) currently requires that anyone who electronically files a document signed under penalty of perjury must print, sign, and keep the document indefinitely. These requirements have proved burdensome for litigants, especially government agencies and other high-frequency filers.

This proposal would amend subdivision (b)(2)(B) to provide that electronically filed documents may in the future be signed under penalty of perjury by means of an electronic signature. The proposed amendment would require that the electronic signature satisfy procedures, standards, and guidelines established by the Judicial Council. The language mirrors Government Code section 68150(g), which currently authorizes electronic signatures by judges and the courts.

To accommodate those without access to electronic-signature technology, the proposal would also retain but modify the procedures required in the current statute. The proposed amendment would still allow documents to be printed and signed by hand (in lieu of an electronic signature); however, it would eliminate the requirement that the original signature be maintained indefinitely. Instead, it would require the person signing the document to maintain the original signatures only until “final disposition of the case” as defined in Government Code section 68151(c).

Provide for a consistent effective date of filing across courts and case types. Under current law, where electronic filing is permissive, documents must be received before the “close of business”—which is defined as 5 p.m. or the time at which the court would not accept filing at its filing counter, whichever is earlier—in order to be deemed filed that day. (Code Civ. Proc., § 1010.6(b)(3).) However, in authorizing the Superior Court of Orange County’s mandatory electronic filing pilot project, the Legislature provided that the court “may permit documents to be filed electronically until 12 a.m. of the day after the court date that the filing is due, and the filing shall be considered timely.” (*Id.*, § 1010.6(d)(1)(D).)

With the exception of the Superior Court of Orange County’s mandatory electronic filing pilot project, the statute is silent as to when documents must be electronically filed for mandatory electronic filing cases to be deemed filed that day. (See *id.*, § 1010.6(g)(2).) In adopting uniform rules for mandatory electronic filing, the Judicial Council elected to allow courts to provide by local rule for up-until-midnight electronic filing in mandatory electronic filing cases (the approach provided by the Legislature for the Superior Court of Orange County’s mandatory electronic filing pilot project); otherwise, in the absence of such a local rule, the document must be filed by “close of business” to be deemed filed that day. (Cal. Rules of Court, rule 2.253(b)(7).) The rules also define “close of business” as “5 p.m. or any other time on a court day at which the court stops accepting documents for filing at its filing counter, whichever is earlier.” (*Id.*, rule 2.250(b)(10).)

Accordingly, the current statute and rules allow for both inter- and intracourt variation in the effective date for electronic filing depending on (1) whether electronic filing is permissive or mandatory for the case type and (2) what time a court stops accepting filings each day. The

potential for variation has increased in recent years as budget concerns have caused many courts to cut back on the hours that their filing counters are open. To provide for consistency across courts and case types, the committee recommends that the cutoff time be midnight for determining the effective date of filing for both permissive and mandatory electronic filing.

In response to comments requesting that the statute specifically address documents received electronically by a court at 12:00 a.m. and on non-court days, the committee revised the proposal as follows: “Any document received electronically by the court between 12:00 a.m. and 11:59:59 on a court day shall be deemed filed on that court day. Any document that is received electronically on a non-court day shall be deemed filed on the next court day.”

Codify the effective date of electronic service. The statute is silent with respect to the effective date of electronic service. Instead, the effective date of electronic service is specified in rule 2.251(h)(4), which provides that electronic service that “occurs after the close of business is deemed to have occurred on the next court day.” As noted above, the rules define “close of business” as “5 p.m. or any other time on a court day at which the court stops accepting documents for filing at its filing counter, whichever is earlier.” (*Id.*, rule 2.250(b)(10).)

This proposal would codify the effective date of service by adding a new paragraph (5) to section 1010.6(a). To provide for consistency across courts and with the proposed effective date of electronic filing, the new paragraph would provide: “Any document that is served electronically between 12:00 a.m. and 11:59:59 p.m. on a court day shall be deemed served on that court day. Any document that is served electronically on a non-court day shall be deemed served on the next court day.”

Consolidate the mandatory electronic filing provisions. Subdivision (d) of section 1010.6 provides that the Superior Court of Orange County may establish a pilot project to require that parties to specified civil actions electronically file and serve documents. Subdivision (g) provides that trial courts may require mandatory electronic filing by local rule after the Judicial Council adopts uniform mandatory electronic filing and service rules. Because the statutory authorization for the pilot project expired on July 1, 2014, this proposal would amend section 1010.6 to eliminate references to the pilot project and consolidate the provisions governing mandatory electronic filing in subdivision (d).

Codify the mandatory electronic service provisions. This proposal would codify the mandatory electronic service provisions from the rules. Subdivision (a) of section 1010.6—which governs electronic service in trial courts generally—does not expressly authorize mandatory electronic service. (See Code Civ. Proc., § 1010.6(a)(2) [authorizing electronic service of a document “when a party has agreed to accept service electronically in that action”].)¹ Subdivisions (c) and

¹ Subdivision (a)(3) does allow courts to electronically serve a document if the party has agreed to accept electronic service or the court has ordered electronic service under subdivisions (c) or (d), which currently refer to mandatory electronic service in complex civil cases and the Superior Court of Orange County’s pilot project. But it does not expressly allow courts—other than the Superior Court of Orange County—to require electronic service of a

(d) recognize that mandatory electronic service may be required by court order in complex civil cases or by local rule as part of the Superior Court of Orange County’s electronic filing pilot project. The authority for the mandatory electronic service rules is instead derived from subdivision (f) of section 1010.6, which required the Judicial Council, on or before July 1, 2014, to adopt uniform rules to permit mandatory electronic filing and service of documents in the trial courts.

In adopting rules to implement subdivision (f), the Judicial Council decided to allow courts to require electronic service by local rule or court order. (Cal. Rules of Court, rule 2.251(c)(1) [“A court may require parties to serve documents electronically in specified actions by local rule or court order, as provided in the Code of Civil Procedure section 1010.6 and the rules . . .”].) Similarly, under rule 2.251(c)(2), if a court requires a party to electronically file documents in an action, the party “must also serve documents and accept service of documents electronically from all other parties,” subject to certain exceptions. (See also *id.*, rule 2.251(b) [providing that a party consents to electronic service by electronic filing of any document with the court, unless the party is self-represented].)

To codify these rules, this proposal would amend subdivision (d) not only to consolidate the mandatory electronic filing provisions, but also to authorize mandatory electronic service. Authorizing mandatory electronic service in revised subdivision (d) would track the language in current subdivisions (c) and (d), which authorize both mandatory electronic filing and service in complex cases and through the Superior Court of Orange County’s pilot project. This proposal would also codify these rules by amending subdivision (a)(2) to recognize that electronic service is required when a court has ordered electronic service under subdivisions (c) or (d) (as revised).

Codify the protections for self-represented persons. The trial court rules that implement the electronic filing and service provisions of section 1010.6 already contain significant protections for self-represented persons. Rules 2.251(c)(2)(B) and 2.253(b)(2) exempt self-represented persons from mandatory electronic filing and service. These rules were adopted in response to the instructions in section 1010.6(f) that the uniform mandatory electronic filing and service rules include statewide policies on unrepresented litigants.

This proposal would codify the exceptions for self-represented persons by adding a new subdivision (d)(4) to provide that unrepresented persons are exempt from mandatory electronic filing and service. It would also amend subdivisions (a)(2) and (3) to provide that mandatory electronic service applies to parties and other persons only if they are represented.

document in cases other than complex civil cases. Nevertheless, because this proposal would amend subdivision (d) to address mandatory electronic service in all courts, this proposal would not need to make any further amendments to subdivision (a)(3).

Proposed amendments to sections 664.5 and 1011

The proposed amendments to sections 664.5 and 1011 would clarify the application of section 1010.6's electronic service provisions. Under section 1010.6(a)(2), a document may be electronically served whenever "a document may be served by mail, express mail, overnight delivery, or facsimile transmission." Similarly, subdivision (a)(3) currently provides that where the parties have consented to electronic service, or the court has required electronic service (by order or local rule in complex civil cases or in the Superior Court of Orange County's mandatory electronic filing pilot project), a court may also electronically serve any document issued by the court that is not required to be personally served.

Section 664.5 provides for mailing notice of the entry of judgment. To clarify the application of section 1010.6, references to "mail" and "certificate of mailing" would be replaced with the more inclusive terms "serve" and "certificate of service."

Section 1011 recognizes possible means of service. This proposal would add a new subdivision (c) to cross-reference section 1010.6: "Electronic service shall be permitted pursuant to Section 1010.6 and the rules on electronic service in the California Rules of Court." This language is taken directly from section 1013, which governs service of notices or other papers. (See Code Civ. Proc., § 1013(g).)

Proposed new section 1013b

Proposed new section 1013b would codify the trial court rule governing proof of electronic service. Currently, the Code of Civil Procedure addresses proof of service by mailing, but not proof of electronic service. (See Code Civ. Proc., § 1013a.) Proof of electronic service is addressed only in the California Rules of Court. (See Cal. Rules of Court, rule 2.251(i).) To fix this apparent statutory gap and to assist other advisory committees in their efforts to modernize their statutes, the legislative proposal would add a new section 1013b.²

The proposed language for section 1013b(a)(1) is not currently in rule 2.251; it is intended to correct an oversight in the rule that conflicts with section 1010.6.³ Code of Civil Procedure section 1013a requires that proof of service by mail be made by affidavit or certificate showing that "the person making the service" is "not a party to the cause." However, Code of Civil Procedure section 1010.6 allows for electronic service by a party. (Code Civ. Proc., § 1010.6(a)(1)(A) ["Electronic service may be performed directly *by a party*, by an agent of a party, including the party's attorney, or through an electronic filing service provider," italics

² ITAC is currently leading a collaborative, multiyear effort to modernize the statutes and rules to facilitate e-business, electronic filing, and electronic service. As part of phase II of this project, ITAC and the Probate and Mental Health Advisory Committee have recommended a legislative proposal to amend the Probate Code to authorize electronic service of notices and other papers. The Probate Code currently cross-references Code of Civil Procedure section 1013a for proof of mailing. (See Prob. Code, § 1261.) Introducing a new section 1013b on proof of electronic service to the Code of Civil Procedure would avoid adding a reference to the rules in the Probate Code.

³ This year, the Judicial Council adopted rule amendments that will eliminate this requirement from the rule effective January 1, 2017.

added].) To reflect this difference, proposed section 1013b(a) would add another exception to the general requirement that proof of electronic service be made by any of the methods provided in section 1013a for proof of mailing. Proposed section 1013b(a)(1) would recognize that proof of electronic service need not state that the party making the service is “not a party to the cause.”

The proposed language for section 1013b(a)(2) is taken directly from rule 2.251(i)(1). In stating the requirements for proof of electronic service, rule 2.251(i)(1) incorporates the requirements for proof of mailing in Code of Civil Procedure section 1013a, subject to several exceptions. The proposed language for section 1013b(a)(2) differs from the language in rule 2.251(i)(1) in one way: it would require that the proof of electronic service list only the date of electronic service, not the time and date.⁴ In practice, it has been difficult to implement the requirement that the proof of electronic service list the time of electronic service; the person executing the proof of electronic service will not know the exact time of electronic service until after it has occurred.

The proposed language for section 1013b(b) is taken directly from rule 2.251(i)(2), which provides that proof of electronic service may be in electronic form and may be electronically filed with the court. Proposed section 1013b(c) modifies the language in rule 2.251(i)(4) to cross-reference the proposed new signature requirements (discussed above) in Code of Civil Procedure section 1010.6(b)(2)(B).

Comments, Alternatives Considered, and Policy Implications

The rules proposal circulated for public comment on the spring 2016 cycle. Fourteen commentators submitted comments in response to the invitation to comment: four agreed with the proposal, seven agreed if modified, and three did not indicate their position. The committee’s specific responses to each comment are available in the attached comment chart at pages 15–32.

One commentator expressed concern about the term “other person” in section 1010.6(a) and questioned to whom this term applied. The committee considered the commentator’s suggestion to identify these individuals in the statute, but declined to pursue it in light of the wide variety of individuals who might fall under the category of persons other than parties. Instead, the committee determined that providing further clarification was best left for implementing rules proposals. Comprehensively identifying those who fall in the category of “other person” is complicated because it varies by case type. For example, these individuals might include grandparents, siblings, caregivers, and other adult relatives in juvenile dependency proceedings, whereas it might include creditors, known heirs and devisees, and anyone requesting special notice in probate proceedings. The Welfare and Institutions Code and Probate Code recognize service on and by these individuals.

The committee also considered recommending a 5:00 p.m. cutoff time for the effective date of electronic filing and service in proposed new subdivision (a)(5) and amended subdivision (b)(3)

⁴ This year, the Judicial Council adopted rule amendments, effective January 1, 2017, that will also eliminate this requirement from the rule.

of Code of Civil Procedure section 1010.6. In light of the input received by the public and other advisory committees, the committee decided to retain its recommendation that midnight be the cutoff time. Although valid concerns were raised both in support of and against a midnight cutoff time, the committee decided that it preferred this option after weighing the arguments. A midnight cutoff time would best serve the needs of self-represented litigants, many of whom are unable to electronically file and serve during regular work hours.

Implementation Requirements, Costs, and Operational Impacts

To the extent that this proposal would codify existing requirements in the trial court rules, it is not expected to result in any additional costs or to otherwise affect the implementation of electronic filing and service in the superior courts. Standardizing the cutoff time for the effective date of electronic filing and service at midnight would require those courts that allow for electronic filing and service until close of business to make modifications to their case management systems. Overall, however, providing consistency and clarity across courts and case types is expected to result in efficiency gains for litigants.

To implement the authorization for electronic signatures, the Judicial Council would need to adopt standards and guidelines governing electronic signatures by parties and other persons. This would require staff time and resources. Because electronic signatures would be applied by the party or person either directly or through an electronic filing service provider, it is expected that there will be minimal implementation or ongoing costs for courts. Because original signatures made under penalty of perjury would no longer need to be retained indefinitely, it is expected to result in efficiencies for litigants and government agencies.

Attachments and Links

1. Proposed Code of Civil Procedure sections 664.5, 1010.6, 1011, and 1013b, at pages 9–14
2. Chart of comments, at pages 15–32

Section 1013b of the Code of Civil Procedure would be enacted and sections 664.5, 1010.6, and 1011 would be amended, effective January 1, 2018, to read:

1 **§ 664.5.**
2

3 (a) In any contested action or special proceeding other than a small claims action or an
4 action or proceeding in which a prevailing party is not represented by counsel, the party
5 submitting an order or judgment for entry shall prepare and ~~mail~~ serve a copy of the
6 notice of entry of judgment to all parties who have appeared in the action or proceeding
7 and shall file with the court the original notice of entry of judgment together with the
8 proof of service ~~by mail~~. This subdivision does not apply in a proceeding for dissolution
9 of marriage, for nullity of marriage, or for legal separation.

10
11 (b) Promptly upon entry of judgment in a contested action or special proceeding in which
12 a prevailing party is not represented by counsel, the clerk of the court shall ~~mail~~ serve
13 notice of entry of judgment to all parties who have appeared in the action or special
14 proceeding and shall execute a certificate of such ~~mailing~~ service and place it in the
15 court's file in the cause.

16
17 (c) * * *

18
19 (d) Upon order of the court in any action or special proceeding, the clerk shall ~~mail~~ serve
20 notice of entry of any judgment or ruling, whether or not appealable.

21
22 (e) The Judicial Council shall, ~~by January 1, 1999, adopt a rule of court for the purposes~~
23 ~~of providing~~ provide by rule of court that, upon entry of judgment in a contested action or
24 special proceeding in which a state statute or regulation has been declared
25 unconstitutional by the court, the Attorney General is promptly notified of the judgment
26 and that a certificate of that ~~mailing~~ service is placed in the court's file in the cause.

27
28 **§ 1010.6.**
29

30 (a) A document may be served electronically in an action filed with the court as provided
31 in this section, in accordance with rules adopted pursuant to subdivision (e).

32
33 (1) For purposes of this section:

34
35 (A) "Electronic service" means service of a document, on a party or other person, by
36 either electronic transmission or electronic notification. Electronic service may be
37 performed directly by a party or other person, by an agent of a party or other person,
38 including the party's or other person's attorney, or through an electronic filing service
39 provider.
40

1 (B) “Electronic transmission” means the transmission of a document by electronic means
2 to the electronic service address at or through which a party or other person has
3 authorized electronic service.
4

5 (C) “Electronic notification” means the notification of the party or other person that a
6 document is served by sending an electronic message to the electronic address at or
7 through which the party or other person has authorized electronic service, specifying the
8 exact name of the document served, and providing a hyperlink at which the served
9 document may be viewed and downloaded.
10

11 (2) If a document may be served by mail, express mail, overnight delivery, or facsimile
12 transmission, electronic service of the document is authorized when a party or other
13 person has agreed to accept service electronically in that action or when a court has
14 ordered electronic service on a represented party or other represented person under
15 subdivision (c) or (d).
16

17 (3) In any action in which a party or other person has agreed to accept electronic service
18 under paragraph (2), or in which the court has ordered electronic service on a represented
19 party or other represented person under subdivision (c) or (d), the court may
20 electronically serve any document issued by the court that is not required to be personally
21 served in the same manner that parties electronically serve documents. The electronic
22 service of documents by the court shall have the same legal effect as service by mail,
23 except as provided in paragraph (4).
24

25 (4) * * *
26

27 (5) Any document that is served electronically between 12:00 a.m. and 11:59:59 p.m. on
28 a court day shall be deemed served on that court day. Any document that is served
29 electronically on a non-court day shall be deemed served on the next court day.
30

31 (b) A trial court may adopt local rules permitting electronic filing of documents, subject
32 to rules adopted pursuant to subdivision (e) and the following conditions:
33

34 (1) * * *
35

36 (2)(A) When a document to be filed requires ~~the~~ a signature, not under penalty of perjury,
37 ~~of an attorney or a self-represented party~~, the document shall be deemed to have been
38 signed by ~~that attorney or self-represented party~~ the person filing if filed electronically.
39

40 (B) When a document to be filed requires the signature, under penalty of perjury, of any
41 person, the document shall be deemed to have been signed by that person if filed
42 electronically and if either of the following conditions is satisfied:

1
2 (i) That person has signed a printed form of the document ~~has been signed by that person~~
3 prior to, or on the same day as, the date of filing. The attorney or person filing the
4 document represents, by the act of filing, that the declarant has complied with this
5 section. The attorney or person filing the document shall maintain the printed form of the
6 document bearing the original signature until final disposition of the case, as defined in
7 subdivision (c) of Government Code section 68151, and make it available for review and
8 copying upon the request of the court or any party to the action or proceeding in which it
9 is filed.

10
11 (ii) That person has signed the document using a computer or other technology in
12 accordance with procedures, standards, and guidelines established by the Judicial Council
13 pursuant to this section.

14
15 (3) Any document ~~that is electronically filed with the court after the close of business on~~
16 ~~any day shall be deemed to have been filed~~ received electronically by the court between
17 12:00 a.m. and 11:59:59 on a court day shall be deemed filed on that court day. Any
18 document that is received electronically on a non-court day shall be deemed filed on the
19 next court day. "Close of business," as used in this paragraph, shall mean 5 p.m. or the
20 time at which the court would not accept filing at the court's filing counter, whichever is
21 earlier.

22
23 (4)-(6) * * *

24
25 (c) * * *

26
27 (d) A superior court may, by local rule, require electronic filing and service in civil cases,
28 subject to the requirements and conditions stated in subdivision (b) of this section, the
29 rules adopted by the Judicial Council under subdivision (f), and the following conditions:
30

31 ~~(1) Notwithstanding subdivision (b), the Orange County Superior Court may, by local~~
32 ~~rule and until July 1, 2014, establish a pilot project to require parties to specified civil~~
33 ~~actions to electronically file and serve documents, subject to the requirements set forth in~~
34 ~~paragraphs (1), (2), (4), (5), and (6) of subdivision (b) and rules adopted pursuant to~~
35 ~~subdivision (e) and the following conditions:~~

36
37 ~~(A)~~ The court shall have the ability to maintain the official court record in electronic
38 format for all cases where electronic filing is required.

39
40 ~~(B)~~(2) The court and the parties shall have access either to more than one electronic filing
41 service provider capable of electronically filing documents with the court, or to electronic
42 filing access directly through the court. Any fees charged by the court shall be for no

1 more than the actual cost of the electronic filing and service of the documents, and shall
 2 be waived when deemed appropriate by the court, including, but not limited to, for any
 3 party who has received a fee waiver. Any fees charged by an electronic filing service
 4 provider shall be reasonable and shall be waived when deemed appropriate by the court,
 5 including, but not limited to, for any party who has received a fee waiver.

6
 7 ~~(C)~~(3) The court shall have a procedure for the filing of nonelectronic documents in order
 8 to prevent the program from causing undue hardship or significant prejudice to any party
 9 in an action, including, but not limited to, unrepresented parties.

10
 11 (4) Unrepresented persons are exempt from mandatory electronic filing and service.

12
 13 ~~(D) A court that elects to require electronic filing pursuant to this subdivision may permit~~
 14 ~~documents to be filed electronically until 12 a.m. of the day after the court date that the~~
 15 ~~filing is due, and the filing shall be considered timely. However, if same day service of a~~
 16 ~~document is required, the document shall be electronically filed by 5 p.m. on the court~~
 17 ~~date that the filing is due. Ex parte documents shall be electronically filed on the same~~
 18 ~~date and within the same time period as would be required for the filing of a hard copy of~~
 19 ~~the ex parte documents at the clerk's window in the participating county. Documents~~
 20 ~~filed on or after 12 a.m., or filed upon a noncourt day, will be deemed filed on the soonest~~
 21 ~~court day following the filing.~~

22
 23 ~~(2) If a pilot project is established pursuant to paragraph (1), the Judicial Council shall~~
 24 ~~conduct an evaluation of the pilot project and report to the Legislature, on or before~~
 25 ~~December 31, 2013, on the results of the evaluation. The evaluation shall review, among~~
 26 ~~other things, the cost of the program to participants, cost-effectiveness for the court,~~
 27 ~~effect on unrepresented parties and parties with fee waivers, and ease of use for~~
 28 ~~participants.~~

29
 30 (e) * * *

31
 32 (f) The Judicial Council shall, ~~on or before July 1, 2014,~~ adopt uniform rules to permit
 33 the mandatory electronic filing and service of documents for specified civil actions in the
 34 trial courts of the state, ~~which shall be informed by any study performed pursuant to~~
 35 ~~paragraph (2) of subdivision (d) and~~ which shall include statewide policies on vendor
 36 contracts, privacy, access to public records, unrepresented parties, parties with fee
 37 waivers, hardships, reasonable exceptions to electronic filing, and rules relating to the
 38 integrity of electronic service. These rules shall conform to the conditions set forth in this
 39 section, as amended from time to time.

40
 41 ~~(g) (1) Upon the adoption of uniform rules by the Judicial Council for mandatory~~
 42 ~~electronic filing and service of documents for specified civil actions in the trial courts of~~

1 the state, as specified in subdivision (f), a superior court may, by local rule, require
2 mandatory electronic filing, pursuant to paragraph (2) of this subdivision.

3
4 ~~(2) Any superior court that elects to adopt mandatory electronic filing shall do so~~
5 ~~pursuant to the requirements and conditions set forth in this section, including, but not~~
6 ~~limited to, paragraphs (1), (2), (4), (5), and (6) of subdivision (b) of this section, and~~
7 ~~subparagraphs (A), (B), and (C) of paragraph (1) of subdivision (d), and pursuant to the~~
8 ~~rules adopted by the Judicial Council, as specified in subdivision (f).~~

9
10 **§ 1011.**

11
12 The service may be personal, by delivery to the party or attorney on whom the service is
13 required to be made, or it may be as follows:

14
15 (a)–(b) * * *

16
17 (c) Electronic service shall be permitted pursuant to Section 1010.6 and the rules on
18 electronic service in the California Rules of Court.

19
20 **§ 1013b.**

21
22 (a) Proof of electronic service may be made by any of the methods provided in Section
23 1013a, with the following exceptions:

24
25 (1) The proof of electronic service does not need to state that the person making the
26 service is not a party to the cause.

27
28 (2) The proof of electronic service shall state:

29
30 (A) The electronic service address of the person making the service, in addition to that
31 person's residence or business address;

32
33 (B) The date of the electronic service, instead of the date and place of deposit in the mail;

34
35 (C) The name and electronic service address of the person served, in place of that
36 person's name and address as shown on the envelope; and

37
38 (D) That the document was served electronically in place of the statement that the
39 envelope was sealed and deposited in the mail with postage fully prepaid.

40
41 (b) Proof of electronic service may be in electronic form and may be filed electronically
42 with the court.

1

2 (c) Proof of electronic service shall be signed as provided in subparagraph (B) of

3 paragraph (2) of subdivision (b) of Section 1010.6.

DRAFT

LEG16-10

Technology: Electronic Filing, Service, and Signatures (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Bet Tzedek Legal Services by Janet R. Morris, Esquire Attorney	A	<p>Bet Tzedek supports the proposal to eliminate the wet signature requirement for electronically assembled and filed documents and to establish procedures for an electronic signature.</p> <p>In our our experience in managing a large self help conservatorship clinic; consistency and accuracy is achieved when there is a single electronically signed and filed document.</p> <p>We would also like to suggest that there be a way to receive the court’s orders by email as well so that a litigant could download and print them. This will assist litigants who cannot make it back to the courthouse easily to retrieve their orders post hearing.</p>	<p>The committee appreciates Bet Tzedek Legal Services’ support.</p> <p>Code of Civil Procedure section 1010.6(a)(3) currently authorizes a court to electronically serve “any document issued by the court that is not required to be personally served.” With the roll out of new case management systems that allow for electronic filing throughout the state, courts will increasingly be able to take advantage of this existing authority and provide for electronic service of court-issued documents.</p>
2.	California Department of Child Support Services by Alisha A. Griffin Director Rancho Cordova	NI	<p>DCSS has reviewed LEG16-10 entitled Technology: Electronic Filing, Service, and Signature, and is supportive of the changes JCC has proposed. The JCC proposals address much of what this department tried to address with AB 1519, namely the requirement to keep an original wet signature on a document signed under penalty of perjury indefinitely (CCP 1010.6). The fact that your proposal seeks to amend that section to permit these documents be signed by means of electronic signature is a huge step forward so long as it does not run</p>	<p>The committee appreciates the input of the California Department of Child Support Services. This legislative proposal would not affect the application of Family Code section 17400(b)(3)—which governs “[n]otwithstanding any other law”—to electronically filed pleadings signed under penalty of perjury by an agent of the local child support agency.</p>

LEG16-10

Technology: Electronic Filing, Service, and Signatures (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

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Commentator	Position	Comment	Committee Response
		<p>afoul of Family Code Section 17400(b)(3) or the resulting Judicial Council Rules of Court, which states:</p> <p>Notwithstanding any other law, effective July 1, 2016, a local child support agency may electronically file pleadings signed by an agent of the local child support agency under penalty of perjury. An original signed pleading shall be executed prior to, or on the same day as, the day of electronic filing. Original signed pleadings shall be maintained by the local child support agency for the period of time proscribed by subdivision (a) of Section 68152 of the Government Code. A local child support agency may maintain the original signed pleading by way of an electronic copy in the Statewide Automated Child Support System. The Judicial Council, by July 1, 2016, shall develop rules to implement this subdivision.</p> <p>We appreciate that the language is not mandatory in that it permits those without access to e-signature to still sign manually and then only retain the document until final deposition of the case. This option will allow our department to take a phased implementation approach if our system changes cannot be completed by the JCC effective date of January 1, 2018.</p> <p>The department appreciates the opportunity to</p>	<p>No response required.</p>

LEG16-10**Technology: Electronic Filing, Service, and Signatures** (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

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	Commentator	Position	Comment	Committee Response
			<p>comment on your proposal and the work done by the JCC to advance, promote, and expand legal electronic communications. The department suggests only that the above Rule of Court or any others that may be impacted be considered prior to implementation so that all bodies of law on this issue are in line with one another.</p>	<p>The committee agrees and intends to propose implementing amendments to the California Rules of Court that next year. It is contemplated that e-signature standards and guidelines would also be developed next year, in collaboration with the Court Executives Advisory Committee.</p>
3.	<p>Laurel Halbany MRHFM LLC Oakland</p>	AM	<p>The proposed changes to electronic service rules should retain a filing and service deadline of “close of business” (that is, 5:00 p.m.) for a document to be considered timely filed and served that court day.</p> <p>Changing the deadline to “before midnight” invites gamesmanship and will, in effect, eliminate a full day from the required time of service. Vendors such as LexisNexis allow automated service, such that a document may be uploaded with the direction that it is automatically served at a particular time - for example, that a document uploaded at 4:45 p.m. not actually be served and available to opposing parties until just before midnight. While it is not uncommon for attorneys to work somewhat later than 5:00 p.m., it is far less common to be working at midnight. Thus, parties have every incentive to delay service until close to midnight, depriving their opponents of additional time to review and respond to document served.</p>	<p>The committee appreciates Ms. Halbany’s input.</p> <p>On balance, the committee determined that the benefits of allowing for electronic service up until midnight outweighed the costs. The committee also considered that the risk of gamesmanship is mitigated by the deadline extension of two court days for responding to electronically served documents (as provided in Code of Civil Procedure section 1010.6(a)(4)).</p>

LEG16-10**Technology: Electronic Filing, Service, and Signatures** (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

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	Commentator	Position	Comment	Committee Response
			Additionally, the proposal is silent as to the timeliness of documents served precisely at midnight.	The committee has revised the legislative proposal to address the effective date of filing for documents that are electronically filed and served at 12:00 a.m.
4.	Lisa Los Angeles	AM	I feel that the filing deadline should be restricted to 5:00 p.m. Support staff should not have to bear the burden of working until midnight to pick up the slack for attorneys that wait until the last minute to draft and/or make revisions.	The committee shares this concern. On balance, however, the committee determined that the benefits of allowing for electronic service up until midnight outweighed the detriments and costs.
5.	Mark W. Lomax Attorney Pasadena	AM	<p>(1) Since C.C.P. section 1010.6(a)(1)(A) authorizes two methods of electronic service--electronic transmission and electronic notification—proposed new C.C.P. section 1013b, which will prescribe proof of electronic service, should require that a proof of electronic service state which method of service was used.</p> <p>(2) Proposed new C.C.P. section 1013b does not seem to contemplate service by electronic notification. It does not require a proof of electronic service effected by electronic notification to contain information that would be important if service were disputed, such as the name of the electronic service provider. Here is the relevant portion of a proof of electronic service made by electronic notification, which was filed in 2016 in a complex litigation case in the Los Angeles Superior Court: "Service was effectuated via</p>	<p>The committee appreciates Mr. Lomax’s input. It declines to pursue these recommendations because the proposed new Code of Civil Procedure section 1013b adequately covers electronic service by both electronic transmission and electronic notification.</p> <p>New proposed Code of Civil Procedure section 1013b sufficiently contemplates electronic service by notification. The requirement in proposed section 1013b(a)(2)(D) that the proof of electronic service state that “the document was served electronically” contemplates electronic service by notification. This conclusion is supported by section 1010.6(a), which expressly recognizes “electronic service” as including “electronic transmission” and “electronic notification.” Thus, “electronic notification” is a form of electronic service of a document. (See Code Civ. Proc., §</p>

LEG16-10**Technology: Electronic Filing, Service, and Signatures** (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

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	Commentator	Position	Comment	Committee Response
			<p>electronic service by Case Anywhere, the matter's e-service provider pursuant to court order dated March 14, 2011. I uploaded onto the Case Anywhere document depository a true and correct copy of the document being served, and the Case Anywhere electronic service system e-mailed notices of uploading of the same, which notices included links to the documents uploaded, to the parties indicated in the attached electronic service list.” As you can see, very little of the contents of this proof of service would be required by proposed new section 1013b.</p> <p>(3) Under current law, proof of service by mail is prescribed by C.C.P. section 1013a. Instead of amending section 1013a to include a provision prescribing proof of electronic service, the Judicial Council proposal recommends enacting a new C.C.P. section, 1013b, that will prescribe proof of electronic service. This could cause confusion in some cases since section 1013a is cross-referenced in a number of statutes. (See, e.g., C.C.P. §§405.23, 594(b), and 684.220(c); Civ. Code</p>	<p>1010.6(a)(1)(C) [defining “electronic notification” as “the notification of the party or other person that a <i>document is served</i> by sending an electronic message to the electronic address at or through which the party or other person has authorized electronic service, specifying the exact name of the document served, and providing a hyperlink at which the served document may be viewed and downloaded,” italics added].)</p> <p>The committee also viewed providing information about the electronic service provider (“EFSP”) as unnecessary because EFSPs, in effect, step into the shoes of the postal service for purposes of electronic service. Just as the proof of service under section 1013a does not require identification of the mail carrier used to effect service by mail, the proof of electronic service would not identify the EFSP used to effect electronic service.</p> <p>The committee agrees that statutes referencing section 1013a would need to be updated to include references to proposed new section 1013b, where appropriate. It determined that this approach was preferable to adding proposed new section 1013b to section 1013a because it will ultimately provide for greater clarity in the law. It will also allow the committee to examine each statute to ensure that accompanying references to “mail” are replaced with “serve,” where appropriate. The committee intends to undertake this review in recommending</p>

LEG16-10

Technology: Electronic Filing, Service, and Signatures (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

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	Commentator	Position	Comment	Committee Response
			<p>§1719(g); Gov. Code §915.2(c); Labor Code §3082; and Prob. Code §1261.) The fact that section 1013a is cross-referenced in those statutes, and that new section 1013b will not be, may lead some attorneys and courts to conclude that service under those statutes cannot be made electronically.</p> <p>(4) There are special provisions for service of papers under title 9 (§§680.010-724.260) of the Code of Civil Procedure, the Enforcement of Judgments Law. To avoid confusion about the application of section 1010.6 to service of papers under title 9, the council should consider appropriate proposed amendments to chapter 4 (§§684.010-684.310) of division 1 of title 9, regarding service of papers. It should be noted that the council has specific rulemaking authority under title 9 (C.C.P. §681.030) and that the California Law Revision Commission has continuing authorization to review and make recommendations concerning enforcement of judgments (C.C.P. §681.035).</p> <p>(5) I strongly support amending C.C.P. section 664.5 to substitute “serve” for “mail” because of a conflict between section 664.5 and the California Rules of Court. Under C.R.C. rules 8.104(a)(2) (unlimited cases) and 8.822(a)(2) (limited cases), any manner of service of notice of entry of judgment permitted by the Code of Civil Procedure, including electronic service</p>	<p>additional modernization proposals next year.</p> <p>This recommendation is outside the scope of this legislative proposal as circulated. The committee will take it under consideration in reviewing additional legislative proposals to modernize the Code of Civil Procedure next year.</p> <p>The committee appreciates this support.</p>

LEG16-10

Technology: Electronic Filing, Service, and Signatures (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

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	Commentator	Position	Comment	Committee Response
			<p>when permitted under C.C.P. section 1010.6 and C.R.C. rules 2.250-2.261, is sufficient to trigger the running of the time to file a notice of appeal. Rules 8.104(a)(2) and 8.822(a)(2) conflict with C.C.P. section 664.5, which requires a party or the clerk to “mail” (not “serve”) notice of entry of judgment.</p>	
6.	Orange County Bar Association by Todd G. Friedland President	AM	<p>CCP Section 1010.6(a) authorizes service by electronic means. Specifically, 1010.6(a)(2) addresses acceptance of electronic service, and 1010.6(a)(3) allows the court to serve its documents electronically. The proposed amendments to both of these provisions would include “other person[s].” The definitions at 1010.6(a)(1)(A) as proposed, and currently (B) and (C) mention “other person,” but provide no guidance. For purposes of clarification, it is suggested that the language of the section or of the Advisory Committee Comments, indicate who is contemplated as an “other person.” It is believed this clarification is of increased importance, given subsequent provisions of the section dealing with court-ordered electronic service.</p> <p>Further, subdivisions (a)(1)(B) and (C) indicate that “a party or other person” has authorized electronic service. This appears consistent with the proposed language for inclusion in 1010.6(a)(2) and (3) where either a party or other person has agreed to electronic service,</p>	<p>The committee appreciates this input, but declines to pursue this suggestion. The term “other person” is intended to encompass a variety of different individuals, depending on case type, who are not parties to the proceedings (e.g., grandparents, siblings, caregivers, and other adult relatives, among others, in juvenile cases). Because this is a legislative proposal, the committee cannot add an advisory committee comment. It also has concerns about trying to identify the full range of individuals contemplated by the statute. However, the committee will consider developing an implementing rules proposal that would amend the rules to provide further guidance on this issue.</p> <p>The committee declines to pursue this suggestion. The term “authorized” is not intended to refer to whether the party or other person has consented to electronic service. Instead, it refers to the electronic service address that the party or other person has provided for the purpose of receiving</p>

LEG16-10

Technology: Electronic Filing, Service, and Signatures (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

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	Commentator	Position	Comment	Committee Response
			<p>but not where the court has ordered such service. It is suggested thought be given as to whether the use of “authorized” is accurate or desirable in subdivisions (a)(1)(B) and (C).</p> <p>Additionally, the discussion of these particular amendments notes, at page 5 of the proposal, that the mandatory electronic service imposed by 1010.6(a)(2) and (3) would apply, “to parties and other persons only if they are represented.” This is not clear from the proposed language. To avoid confusion, it is suggested that the word “represented” be inserted before “other person” in the respective provisions providing for court-ordered electronic service.</p> <p>Section 1010.6(a)(5) and (b)(3) apply to the effective dates of service and filing, respectively. As written, the proposed language is silent as to service or filing made at midnight. Further, in both instances, the proposed language uses the concept of a court day. In connection with service, this poses a problem as service, traditionally, may be made on any day. As to filing, this could pose a problem were the language interpreted as allowing filing only on a court day, that is, one might dispute not the effective date of filing, but the very effectiveness of filing.</p> <p>For these reasons, it is suggested that a version of the language of the Orange County Superior</p>	<p>documents served electronically, regardless of whether electronic service is permissive or mandatory.</p> <p>The committee agrees and has incorporated this suggestion into the proposal by revising the proposed amendment to section 1010.6(a)(2) and (3) to provide “on a represented party or other <i>represented person</i>.” (Italics added.)</p> <p>The committee agrees and has revised the proposal to address documents that electronically served and filed at 12:00 a.m. and on non-court days.</p>

LEG16-10**Technology: Electronic Filing, Service, and Signatures** (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

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	Commentator	Position	Comment	Committee Response
			<p>Court pilot program as to date of filing, be adopted as to both service and filing. Assuming the concept of “court day” is retained in connection with service, the following is provided for consideration: Electronically [served – in the case of 1010.6(a)(5)] [filed – in the case of 1010.6(b)(3)] documents [served] [filed] prior to midnight on a court day will be deemed [served] [filed] as of that day. Filing occurs at the time the document is received by the court and a confirmation of receipt is created. Any document electronically [served] [filed] at or after midnight, or filed on a noncourt day, will be deemed [served] [filed] on the next court day.</p> <p>Request for Specific Comments 1 - For the reasons set forth above, the proposal does not address the stated purpose. Further, there is concern with the inconsistencies posed by the provisions proposed for codification and CRC Rule 2.251.</p> <p>Specifically, the proposed language at 1010.6(a)(2) and (3) leads a party to expect either an agreement or a court order before they would be subject to mandatory electronic service. This, however, is not the case per Rule 2.251(b)(1)(B) which provides that the act of electronically filing any document with the court is evidence that the party has agreed to accept such service. This has proven to be an</p>	<p>This suggestion is outside the scope of this legislative proposal, as circulated. The committee may consider this recommendation in developing implementing rules proposals. The committee further notes that rule 2.251(b)(1)(B)—which provides that “[t]he act of e-filing is evidence that the party agrees to accept service at the electronic service address the party has furnished to the court”—does not apply to self-represented</p>

LEG16-10

Technology: Electronic Filing, Service, and Signatures (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

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			<p>unhappy trap for litigants and their counsel in litigation brought in the Orange County courts where electronic filing is mandatory. These proposals are made to facilitate and encourage greater use of electronic filing. Accordingly, without some acknowledgment of these inconsistencies and attendant changes to the provisions of the code section or the Rule, this will continue to be a potential trap, growing in parallel with electronic filings.</p> <p>It is urged that, after the proposed amendments are finalized, the forgoing provisions of Rule 2.251, together with other of its provisions such as (h)(4) utilizing “close of business,” be reviewed to avoid conflicts with relevant statutes and ensure consistency in this area.</p> <p>2- CCP Section 1010.6(a)(5) and (b)(3) should provide that documents electronically served and filed up until midnight be deemed served or filed on that day. Please see comments above in the general discussion as to proposed language, time, and “court day.”</p>	<p>litigants. (See Cal. Rules of Court, rule 2.251(b)(1)(B) [“This subparagraph (B) does not apply to self-represented parties; they must affirmatively consent to electronic service under subparagraph (A)”].) This means that self-represented litigants must provide separate consent to both electronic filing <i>and</i> service.</p> <p>The committee agrees and intends to develop a rules proposal to implement the legislation, if enacted.</p> <p>The committee agrees and has revised the rules proposal to incorporate the suggestions by specifically addressing documents that are electronically filed and served at 12:00 a.m. and on non-court days.</p>
7.	State Bar Committee on Administration of Justice by Saul Bercovitch Legislative Counsel San Francisco	A	<p>As discussed below, CAJ agrees with the proposed amendments.</p> <p>CAJ agrees with the proposed amendments to section 1010.6, requiring that the person filing electronically signed documents maintain custody of the original</p>	<p>The committee appreciates the input of the State Bar Committee on Administration of Justice.</p> <p>No response required.</p>

LEG16-10

Technology: Electronic Filing, Service, and Signatures (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

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	Commentator	Position	Comment	Committee Response
			<p>signed documents only until final disposition of the case, rather than indefinitely as it is presently required. CAJ supports the use of electronic signatures under the requirements that the electronic signature satisfy the procedures, standards and guidelines of the Judicial Council, to be consistent with the language in Government Code Section 68150(g).</p> <p>CAJ agrees that the amendments to section 1010.6 are necessary to provide a consistent, effective date of filing, so that any document received electronically by the court before midnight on a court day shall be deemed to have been filed on that court day, and any document received after midnight is deemed to have been filed on the next court day. CAJ believes this is more clear than the current requirement that documents be received “by the close of business” which may be 5:00 p.m., or earlier, and is often changing due to budget considerations of the courts who are limiting filing counter times.</p> <p>CAJ agrees that the proposed amendments to sections 664.5 and 1011 to reference “service” instead of “mail” are a necessary update to the language, and agrees that the recognition of electronic service as a permissible method of service in section 1011 should be added as proposed.</p>	<p>No response required.</p> <p>No response required.</p>

LEG16-10

Technology: Electronic Filing, Service, and Signatures (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

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	Commentator	Position	Comment	Committee Response
			<p>CAJ agrees that the new section 1013b is sufficient to address proof of service requirements as to electronic service.</p> <p>Our specific comments as solicited are as follows:</p> <p><i>Does the Proposal appropriately address the stated purpose?</i></p> <p>CAJ agrees that the proposals as stated do address the purpose, which is in major part to update the Code of Civil Procedure to properly address electronic filing and electronic service issues.</p> <p><i>Should the Code of Civil Procedure Section 1010.6(a)(5) and (b)(3) provide that documents electronically filed and served up until midnight be deemed filed or served on that day? Or should 5 p.m. be the cutoff time for electronic filing and electronic service?</i></p> <p>CAJ agrees that documents electronically filed and served up until midnight should be deemed filed or served on that day. CAJ discussed an alternative 5:00 p.m. cut-off time for electronic filing and electronic service. In discussing this, members of CAJ agreed that a midnight deadline promotes more conformity and consistency. Members referenced the Los Angeles County and Orange County e-filing</p>	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p>

LEG16-10

Technology: Electronic Filing, Service, and Signatures (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

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	Commentator	Position	Comment	Committee Response
			<p>systems, as well as the federal filing systems, which allow for a midnight deadline for e-filing citing their efficiency. Additionally, members cited the convenience factor of being able to file documents after standard business hours, especially for self-represented litigants who may need to be at work during ordinary court hours, and solo/small firm practitioners. Finally, members of CAJ placed significance on the fact that any risk of purported “abuse” of midnight filing deadlines is mitigated by the extended two court days allotted for electronic service presently under Code of Civil Procedure Section 1010.6(a)(4), which remains unchanged in the proposal.</p>	
8.	<p>State Bar of California, Standing Committee on the Delivery of Legal Services by Phong S. Wong Chair Los Angeles</p>	A	<ul style="list-style-type: none"> • <u>Does the proposal appropriately address the stated purpose?</u> <p>Yes.</p> <ul style="list-style-type: none"> • <u>Should Code of Civil Procedure section 1010.6(a)(5) and (b)(3) provide that documents electronically filed and served up until midnight be deemed filed or served on that day? Or should 5 p.m. be the cutoff time for electronic filing and electronic service?</u> <p>SCDLS believes midnight should be the cutoff time.</p> <p>Additional Comments</p>	<p>The committee appreciates the input of the State Bar’s Standing Committee on the Delivery of Legal Services.</p> <p>No response required.</p>

LEG16-10

Technology: Electronic Filing, Service, and Signatures (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

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	Commentator	Position	Comment	Committee Response
			<p>SCDLS supports the proposal because it protects self-represented litigants by not requiring that they file electronically, and it protects indigent individuals represented by counsel because there the electronic filing fee will not be incurred by parties with an approved fee waiver.</p>	<p>No response required.</p>
9.	Superior Court of Los Angeles County	AM	<ul style="list-style-type: none"> • With regard to the time deadline for electronic filing, we suggest that the views of the attorneys and advocates for self-represented litigants would be most important. • This proposal would provide cost savings due to a likely reduction in staff hours currently spent serving large numbers of the public at filing windows and processing paper documents and files. • Making this law effective one year after approval would be sufficient for implementation in LASC. • We believe it would work well in larger courts (100 judicial officers or more). We have no comment regarding smaller courts. • Removing the time of electronic service from the proof of electronic service could cause difficulties if the proof of service is 	<p>The committee appreciates the input of the Superior Court of Los Angeles County.</p> <p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>The committee understands this concern. By amending the cut-off time for the effective date of electronic service to midnight, it is expected that</p>

LEG16-10

Technology: Electronic Filing, Service, and Signatures (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			challenged by way of motion as there would be no way for the judicial officer to determine the time and date of service other than by declaration or sworn testimony. This could cost the court money in terms of judicial time spent on this issue.	the exact time of electronic service will be an issue in fewer cases. The proof of electronic service will reflect the date when the document was electronically served, and judicial officers and clerks should be able to ascertain the effective date of filing with this information.
10.	Superior Court of Orange County Civil and Probate Managers by Bryan Chae Principal Analyst	NI	One of the requirements is that if the court wants to use eFiling Service Providers, they must provide more than one. While I think the purpose of this is prevent the monopolization of eFiling services by one private company, this rule does not effectively eliminate that. EFSPs frequently specialize. For example, one company may only file Family cases and another Civil. If those were the only 2 EFSPs, they still have effective monopolies.	The committee appreciates the input from the Superior Court of Orange County's Civil and Probate Managers. The committee declines to pursue this recommendation at present because it is outside the scope of the proposal, as circulated. However, the committee will take this suggestion under consideration next year. Meanwhile, courts may take this into consideration when certifying EFSPs and deciding whether to require electronic filing. Postponing mandatory e-filing is always an option if there are insufficient EFSPs for each case type to provide for a competitive electronic filing environment.
11.	Superior Court of Orange County Family Law and Juvenile Court Managers by Michelle Wang Program Coordinator Specialist	NI	Would government agencies be exempt from maintaining original documents until "final disposition of the case" or is maintaining the electronic copy of documents sufficient?	Similar to other electronic filers (with the exception described below for local child support agencies), government agencies would have two options when electronically filing documents signed under penalty of perjury: (1) electronically signing the document under the standards and guidelines developed by the Judicial Council, or (2) printing out the document, physically signing it, and maintaining the original until final disposition of the case. Government agencies would not be required to maintain the original

LEG16-10**Technology: Electronic Filing, Service, and Signatures** (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
				<p>documents if they electronically sign documents under option (1). These proposed amendments are intended to facilitate e-filing, while still ensuring that signatures made under penalty of perjury may be verified and validated if their authenticity comes into question during the pendency of the proceeding.</p> <p>As noted above, Family Code section 17400(b)(3) provides an exception for “pleadings signed by an agent of the local child support agency under penalty of perjury.” These pleadings may be maintained “by way of an electronic copy in the Statewide Automated Child Support System.” They must be retained “for the period of time prescribed by subdivision (a) of Section 68152 of the Government Code.”</p>
12.	Superior Court of San Bernardino County by Kelly McNamara Managing Attorney	AM	The proposed changes are a good start, but do not go far enough in addressing the obstacles faced by litigants who are indigent or otherwise entitled to file and obtain copies of forms at no cost, such as petitioners for domestic violence restraining orders. Until and unless the requirement to print and provide a "wet" signature is eliminated entirely, these filers will see minimal (if any) benefit from the proposed changes. The current legislation shifts the cost burden to these litigants (paper, toner, etc.) and presents an obstacle to access that many are unable to overcome. Until this obstacle is removed, the legislation does nothing to	<p>The committee appreciates this input and shares the concern about promoting access for indigent litigants. It expects that the proposed electronic signature requirements will ultimately benefit indigent litigants, who would not be required to print and retain the original “wet” signature if they elect to electronically sign forms. This means that if they fill out the forms online, they would be able to electronically sign and electronically file the document without ever printing it out.</p> <p>In developing the standards and guidelines for electronic signatures in collaboration with the Court Executives Advisory Committee, the</p>

LEG16-10

Technology: Electronic Filing, Service, and Signatures (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			promote equal access, and I would be unable to support it.	committee will keep the needs of indigent and self-represented litigants in mind to ensure that the electronic signature requirements are accessible to all litigants. Judicial Council forms should also be revised to implement the legislation and allow for the application of electronic signatures to forms that require signatures under penalty of perjury.
13.	Superior Court of San Diego County by Mike Roddy Executive Officer	A	No specific comment.	The committee appreciates the Superior Court of San Diego County's support.
14.	Hon. Rebecca Wightman Commissioner Superior Court of San Francisco County	AM	<p>I am absolutely in favor of legislation that will accomplish the items identified in the Executive Summary of the proposal.</p> <p>I listed "agree if modified" only because it was unclear from the proposal as to whether it addressed an ongoing problem that has been occurring with one of the biggest institutional filers in the area of child support proceedings in connection with CRC 2.257 (re: retention of documents filed electronically that are signed under penalty of perjury). This has been extremely problematic in the areas of signed proofs of service. Many child support agencies have "paperless" files, and there is a statewide practice of imaging originals for their records, but not keeping originals. There are also many thousands of documents that are signed by process servers (service of governmental</p>	<p>The committee appreciates Commissioner Wightman's support.</p> <p>No response required.</p>

LEG16-10

Technology: Electronic Filing, Service, and Signatures (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>complaints, OSCs re contempt) vs. state or county employees (Motions, Orders after Hearing), the latter being such that electronic signatures are likely not difficult to create). Several years ago, CRC 2.257 was an impediment to getting many local child support agencies to e-file more documents (through courts' e-filing systems), and we were told at that time that the corresponding CCP sections were being looked at and it was suggested that everything get addressed at once.</p> <p>I'm now wondering if anyone at the Judicial Council consulted with the AB1058 Program Manager on this topic.</p> <p>I apologize for not being particularly tech savvy, but it has been my experience that when certain general civil statutes are amended, in particular ones that also apply to Family Law, the area and operations of child support cases, are sometimes overlooked. Sometimes there is a need to carve out an exception for DCSS that works for their system, and other times there should not be an exception and they need to adjust. However, has the question/issue even been discussed during the process of preparing this proposal?</p> <p>I would ask that Fam/Juv consult with Judicial Council's AB1058 Program Manager and the State Dept. of Child Support Services (DCSS)</p>	<p>The committee shares Commissioner Wightman's concerns that its proposal be reviewed by others with subject matter expertise relevant to family proceedings. To that end, the committee presented this proposal to the Family and Juvenile Law Advisory Committee for its input prior to circulation. No concerns were raised at the time about the proposed amendments related to electronic signatures. In addition, the Department of Child Support Services provided specific comment offering its general support of the proposal so long as it does not conflict with Family Code section 17400(b)(3); it does not, for the reasons stated above.</p> <p>Please see response above.</p>

LEG16-10

Technology: Electronic Filing, Service, and Signatures (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			to make sure that the proposal here goes far enough to accommodate their statewide system.	

DRAFT



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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 15, 2016

Title	Agenda Item Type
Criminal Procedure: Legislation Applying the Electronic Filing and Service Provisions of Civil Procedure section 1010.6(a) and (b) to Criminal Actions	Action Required
	Effective Date
	January 1, 2018
Rules, Forms, Standards, or Statutes Affected	Date of Report
Enact Penal Code section 690.5	July 25, 2016
Recommended by	Contact
Criminal Law Advisory Committee	Kimberly DaSilva, (415) 865-4534
Hon. Tricia Ann Bigelow, Chair	kimberly.dasilva@jud.ca.gov
Information Technology Advisory Committee	Tara Lundstrom, (415) 865-7995
Hon. Terence L. Bruiniers, Chair	tara.lundstrom@jud.ca.gov

Executive Summary

The Information Technology Advisory Committee (ITAC) is leading a modernization project to amend the statutes and California Rules of Court to facilitate electronic filing and service and to foster modern e-business practices. This legislative proposal, developed jointly by ITAC and the Criminal Law Advisory Committee (CLAC), would provide express authority for permissive electronic filing and service in criminal proceedings by adding a statute to the Penal Code applying the electronic filing and service provisions of Code of Civil Procedure section 1010.6 to criminal actions.

Recommendation

ITAC and CLAC recommend that the Judicial Council sponsor legislation enacting new Penal Code section 609.5, effective January 1, 2018.

The text of the new statute is attached at page 4.

Previous Council Action

ITAC is leading a multiyear effort to comprehensively review and modernize statutes and the California Rules of Court so that they will be consistent with and foster modern e-business practices. ITAC is coordinating with other advisory committees, including CLAC, with relevant subject-matter expertise.

This modernization project is being carried out in two phases. Phase I culminated in the Judicial Council's adoption of an initial round of technical rule amendments to address language in the rules that was incompatible with the current statutes and rules governing electronic filing and service, and with e-business practices in general. In the absence of express legislation authorizing electronic filing and service in criminal proceedings, the committees did not recommend similar amendments to the rules governing criminal proceedings.

This legislative proposal is part of phase II, which involves a more in-depth examination of any statutes and rules that may hinder electronic filing, electronic service, and modern e-business practices.

Rationale for Recommendation

Code of Civil Procedure section 1010.6 authorizes the electronic filing and service of documents in civil proceedings. No corresponding authority exists in the Penal Code to authorize the electronic filing and service of documents in criminal cases. This proposal would add section 690.5 to part 2 of the Penal Code to expressly apply section 1010.6(a) and (b) to criminal proceedings.

Because some county justice partners may not have sufficient resources to undertake electronic filing and service in criminal cases, new Penal Code section 690.5 would incorporate only the permissive provisions of section 1010.6 into the Penal Code. Under this proposal, courts would not be authorized to require mandatory electronic filing and service in criminal actions. Rather, for those courts with the resources to implement electronic filing and service in criminal matters, this proposal would provide them with express authority to do so, provided the parties consent to electronic filing and service.

Comments, Alternatives Considered, and Policy Implications

This proposal circulated for public comment during the spring 2016 cycle. Three comments were received in response; all three agreed with the proposal. The comments are available in the attached comment chart at pages 5–6.

The committees considered proposing amendments to the criminal rules of the California Rules of Court authorizing electronic filing and service. They concluded that express statutory authority would be clearer.

Implementation Requirements, Costs, and Operational Impacts

Because the proposal is permissive, rather than mandatory, county justice partners would not be required to electronically file and serve in criminal proceedings. Rather, the proposal would provide the option where county justice partners are technologically capable of making the transition and where the court allows for electronic filing. Hence, no implementation costs or operational impacts would be forced on courts or counties. Efficiencies and cost savings gained through implementing electronic filing and service procedures in criminal proceedings would likely offset any significant costs or operational impacts on participating courts and counties.

Attachments and Links

1. Penal Code section 690.5, at page 4
2. Chart of comments, at pages 5–6

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Section 690.5 of the Penal Code would be added, effective January 1, 2018, to read:

1 **§ 690.5. Applicability of Code of Civil Procedure section 1010.6; exceptions**

2

3 (a) Subdivisions (a) and (b) of Code of Civil Procedure section 1010.6 are applicable to criminal
4 actions, except as otherwise provided in this code.

5

6 (b) The Judicial Council shall adopt uniform rules for the electronic filing and service of
7 documents in criminal cases in the trial courts of this state.

LEG16-03**Criminal Procedure: Application of Code of Civil Procedure section 1010.6(a) and (b) to Criminal Actions**

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Orange County Bar Association By Todd Friedland President	A		The committees appreciate the support of the Orange County Bar Association
2.	State Bar of California, Standing Committee on the Delivery of Legal Services By Phong S. Wong Chair	A	<p><u>Does the proposal appropriately address the stated purpose?</u></p> <p>Yes. In an effort to reduce the inefficiencies and economic burdens in our court systems associated with paper filings and hard-copy service of process, the Information Technology Advisory Committee for the Judicial Council is leading a modernization project to facilitate electronic filings and service. Up until now, although the Code of Civil Procedure authorizes electronic filing and service in civil proceedings, there is no corresponding authority in the Penal Code that would authorize such filings in criminal cases.</p> <p>This proposed legislative amendment would authorize such electronic filings in criminal cases, but would not make such electronic process mandatory. Such process would only be permissive and applicable where the courts in a particular jurisdiction have the resources to implement electronic filing and service in criminal matters, and only where the parties consent to electronic filing and service. Given the language in the amendment that requires the affected parties to consent to electronic filing and service, this amendment would have no</p>	<p>The committees appreciate the input of the State Bar's Standing Committee on the Delivery of Legal Services.</p> <p>No response required.</p> <p>No response required.</p>

LEG16-03**Criminal Procedure: Application of Code of Civil Procedure section 1010.6(a) and (b) to Criminal Actions**

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			impact on persons of low income or other vulnerable populations who may not have access to electronic methods of service: those persons simply would not consent to electronic service of process and would continue to receive hard-copy notices and hard-copy service of process.	
3.	Superior Court of California, County of San Diego By Mike Roddy Executive Officer	A		The committees appreciate the support of the Superior Court of San Diego County.



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MEMORANDUM

<p>Date July 26, 2016</p> <p>To Members of the Information Technology Advisory Committee</p> <p>From Hon. Louis K. Mauro, Chair Joint Appellate Technology Subcommittee Katherine Sher, Attorney, Legal Services Office</p> <p>Subject Consideration of public comments and further action on SPR16-26 – Technology: Modernization of the Appellate Rules of Court (Phase II of the Rules Modernization Project)</p>	<p>Action Requested Please review for August 1st meeting</p> <p>Deadline August 1st, 2016</p> <p>Contact Katherine Sher (415) 865-8031 phone katherine.sher@jud.ca.gov</p>
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Introduction

Earlier this year, on the recommendation of the Joint Appellate Technology Subcommittee (JATS), the Appellate Advisory Committee (AAC) and Information Technology Advisory Committee (ITAC) recommended circulating for comment changes to appellate rules and forms to facilitate modern e-business practices, e-filing and e-service. These changes represent “Phase II” of the ongoing project of modernizing the appellate court rules and forms, and include more substantive changes than were included in Phase I, as well as continuing the process of making necessary technical changes. The Judicial Council’s Rules and Projects Committee approved that recommendation, and the proposal was circulated for public comment between April 15, 2016 and June 14, 2016. A copy of the Invitation to Comment, with the text of the proposed amended rules and forms, is included in your meeting materials. JATS met by teleconference on June 30th to discuss the comments received. This memo discusses the public comments and

Information Technology Advisory Committee

July 26, 2016

Page 2

JATS's recommendations made in response to those comments. The AAC will consider the comments and JATS's recommendations at its meeting on July 26th, 2016. At the August 1st ITAC meeting staff will summarize the AAC's discussion for ITAC's members.

Please also note that in the attached version of the proposed amended rules, as recommended to be revised in response to comments, the language added in various Advisory Committee Comments stating that the record can be sent to the reviewing court in electronic form, which was originally drafted referencing rule 8.72(a), has been revised to reference rule 8.71(c). This change reflects the expected adoption of the revised appellate e-filing rules proposed in SPR16-06, which will delete the existing provision of rule 8.72(a) regarding permissive electronic filing generally, and will create new rule 8.71(c), exempting trial courts from mandatory electronic filing but allowing them to file electronically.

In addition, a change to rule 8.124(d) has been added to the proposed changes to the rules, after the comment period ended. This change is made to correct an error inadvertently made when rule 8.124(d) was amended as part of last year's Rules Modernization changes, changing the reference to the format requirements of rule 8.144(a)-(c) to instead to refer to 8.144(b)-(d). The subdivisions of rule 8.144 were not re-lettered, and the change now added to this proposal corrects the reference back.

Public Comments

Comments from five commentators were received. Two commentators agreed with the proposal, none disagreed, and three agreed if modified. The full comment chart, showing the full text of the comments received and staff's proposed committee responses, is attached. The main substantive comments and staff's proposed responses are discussed below, but there are other comments and responses discussed only in the draft comment chart, so **please review the draft comment chart carefully**.

Orange County Bar Association Comment

The Orange County Bar Association (OCBA) comments that the changes in the advisory committee comments to various rules, noting that the record may be sent from the Superior Court to the reviewing court in electronic form, fails to address the statutory requirements for reporter's transcripts including the requirement that the original of the reporter's transcript be on paper. OCBA suggests that the proposed changes may not be statutorily authorized and recommends legislative changes before full implementation.

The proposed changes were developed with full consideration of the statutory framework in which the rules must function. The statutes allow for rulemaking regarding the formatting of electronic copies of a reporter's transcript, as is proposed here. Nor do the statutes regarding

Information Technology Advisory Committee

July 26, 2016

Page 3

court reporters and reporters' transcripts limit the ability of the reviewing courts to accept an electronically transmitted record, including an electronic copy of a reporter's transcript, from the Superior Court, as is already possible under the existing rules, and indeed is done in some cases. The proposed changes are an attempt to encourage use of an electronic record, with an appropriately formatted electronic copy of the reporter's transcript, wherever possible. JATS does not recommend any change to the proposed rules in response to this comment.

Orange County Superior Court Staff Members' Comment

Orange County Superior Court staff have submitted a number of comments regarding the proposed changes. They support most of the proposed changes. However, in some areas the staff members suggest that implementation of the changes will be time-consuming and impose new costs on the Superior Courts.

In particular, the Orange County Court staff reads the new requirements for formatting of an electronic copy of a reporter's transcript, in rule 8.144 (a), as requiring court staff to convert reporter's transcripts – and other documents – that are not created in the right format. This is not the intent of the rule. The formatting requirement clearly applies only to 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." Moreover, the format requirement is intended to allow reviewing courts to work with reporters to determine the format in which an electronic copy of a reporter's transcript is submitted, setting minimum requirements while allowing flexibility as the reporters' preferred technologies may change over time. No Superior Court will have to convert a transcript into a suitable format. If for some reason it is not possible to get an electronic copy of the transcript from the reporter in the correct format, the court has the option of transmitting a paper copy to the reviewing court.

The Orange County Court staff asks for revised language regarding computer-readable copies of sealed transcript to be added to rules 8.613(i)(3) and 8.619(e)(3), and more generally suggest that the issue of how confidential records transmitted electronically are to be handled must be addressed. This is an issue that JATS specifically considered developing a proposal to address, but has deferred action to allow more time, and the benefit of longer experience with appellate e-filing, before rules are created. JATS recommends against revising this proposal as suggested, but notes that this issue should be addressed in the future.

The Orange County Court staff generally suggests that there will be costs to training court staff on the proper format for a record to be transmitted electronically, potentially costs for software to scan documents, and that it will take time to achieve the necessary training to implement the changes – although in the end, costs savings will result when the record can be transmitted electronically. They suggest that the effective date of the changes be delayed to allow six months for implementation. JATS does not recommend a delay in the effective date of the proposal. The proposed changes give trial courts flexibility as to whether to send the record, or any part of it, electronically. As any change is optional, no delay in the effective date should be necessary.

Information Technology Advisory Committee

July 26, 2016

Page 4

Superior Court of San Diego County Comment

The Superior Court of San Diego County expresses support for the proposal, but suggests that the rules be revised to allow the court to request an electronic original of a reporter's transcript, rather than, as is currently required, receiving a hard copy original and an electronic copy. The requirement that the original of a reporter's transcript be on paper is statutory, set forth in Code of Civil Procedure section 271. This requirement can only be changed by legislation.

The San Diego court also suggests that if there is going to be a separate form for proof of electronic service, that form should be modified so that a party could use it when more than one kind of service is used, e.g., when one party is served electronically and another by mail. This, the court notes, would avoid the need to create and file multiple proofs of service. Such a change is not minor and would require re-circulation of the revised form. JATS recommends that the forms be created as proposed. After litigants and courts have had some experience with the newly created forms, the AAC and ITAC may wish to consider whether changes should be made.

TCPJAC/CEAC Joint Rules Subcommittee

The Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee (JRS) note, in support of the proposal, that it will provide cost savings by assisting courts and court users in utilizing electronic filing.

JRS comments that it is important to allow records to be submitted in paper form when necessary. The proposal is intended to encourage trial courts to electronically transmit records when possible, but in no way mandates electronic transmission.

In several areas – the need to revise local rules, additional staff training, and impact on justice partners -- JRS suggests that some changes may be needed in response to the proposal but that any such changes should be minimal. Like the Orange County Court staff, JRS suggests that additional time may be needed for implementation, suggesting that the changes go into effect 120 days from approval. As discussed above in response to the comments of the Orange County court staff, JATS does not recommend delaying implementation of the changes.

Finally, JRS suggests that it would be more “streamlined” to include electronic service as an option on the existing appellate forms for proof of service, rather than creating separate forms for proof of electronic service. In developing the new forms, JATS considered this approach. Because the legal requirements for service and proof of service are different when a document is served electronically, JATS decided – and the AAC and ITAC agreed – that creation of separate proof of electronic service forms would be less confusing to parties.

Committee Task

Staff has prepared a draft of the report that could be submitted to the Judicial Council on this proposal, and a draft of the proposed text of the rule amendments as modified as recommended

Information Technology Advisory Committee

July 26, 2016

Page 5

in this memorandum. The proposed amended and newly created forms are also attached, but remain unchanged from those circulated with the Invitation to Comment. The committee's task with respect to this proposal is to review the rules and forms proposal, including the public comments received on the proposed changes, and:

- Ask staff or group members for further information and analysis;
- Recommend to RUPRO that all or part of the proposal be submitted to the Judicial Council for consideration during its October 28, 2016 meeting; or
- Reject the proposal.

Attachments

- Comment chart with proposed responses.
- Cal. Rules of Court, amendments to title 8 and title 10, showing changes to the language circulated with the Invitation to Comment recommended by JATS.
- Draft amended and proposed new forms. These are identical to the versions circulated with the Invitation to Comment, as JATS has not recommended any changes to these forms.
- Draft report to Judicial Council.



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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 27, 2016

Title	Agenda Item Type
Technology: Modernization of the Appellate Rules of Court (Phase II of the Rules Modernization Project)	Action Required
	Effective Date
	January 1, 2017
Rules, Forms, Standards, or Statutes Affected	Date of Report
Amend Cal. Rules of court, rules 8.104, 8.124, 8.130, 8.144, 8.150, 8.336, 8.409, 8.416, 8.450, 8.452, 8.454, 8.456, 8.480, 8.482, 8.489, 8.613, 8.619, 8.625, 8.834, 8.866, 8.919, 8.1007, and 10.1028; approve forms APP-009E and APP-109E; and revise forms APP-002, APP-003, APP-004, APP-005, APP-006, APP-007, APP-008, APP-009, APP-009-INFO, APP-010, APP-011, APP-012, APP-101-INFO, APP-102, APP-103, APP-104, APP-106, APP-107, APP-109, APP-109-INFO, APP-110, APP-150-INFO, APP-151, CR-120, CR-126, CR-132, CR-133, CR-134, CR-135, CR-137, CR-141-INFO, CR-142, CR-143, CR-145, JV-810, JV-816, JV-817, JV-822, JV-825, and MC-275	July 26, 2016
	Contact
	Katherine Sher, 415-865-8031 katherine.sher@jud.ca.gov
	Heather Anderson, 415-865-7691 heather.anderson@jud.ca.gov
Recommended by	
Information Technology Advisory Committee	
Hon. Terence L. Bruiniers, Chair	
Appellate Advisory Committee	
Hon. Raymond J. Ikola, Chair	

Executive Summary

The Information Technology Advisory Committee (ITAC) and Appellate Advisory Committee (AAC) recommend adoption of changes to the appellate rules and forms to facilitate modern e-business practices, e-filing, and e-service. Last year, technical changes to the appellate rules were approved to eliminate rule language inconsistent with current e-filing, e-service, and other e-business practices of the appellate courts. This year, ITAC and the AAC recommend more substantive changes to the rules to facilitate and encourage use of modern e-business practices by the appellate courts, as well as further necessary technical changes to rules and forms.

Recommendation

The AAC and ITAC recommend that the Judicial Council, effective January 1, 2017:

- Add language to rule 8.104 providing that an order signed electronically has the same effect as an order signed on paper;
- Correct the reference in rule 8.124, subdivision (d), to the format requirements of rule 8.144 (b)-(d) to refer instead to rule 8.144 (a)-(c)
- Add language in rule 8.144, subdivision (a), setting the format standard for computer-readable copies of reporters' transcripts as any text-searchable format approved by the reviewing court and make corresponding changes to rules 8.130, 8.336, 8.409, 8.416, 8.450, 8.613, 8.619, 8.625, 8.834, 8.866, and 8.919 where those rules refer to the existing format standard;
- Add language to the advisory committee comments to rules 8.150, 8.336, 8.409, 8.416, 8.450, 8.454, 8.480, 8.482, and 8.1007 stating that “[u]nder rule 8.71(c), the superior court clerk may send the record to the reviewing court in electronic form”¹;
- Replace the word “mail” with “send” and “mailed” with “sent” in rules 8.450 and 8.454, and add e-mail to the list of ways the superior court clerk can send out notice as required under those rules;
- In rules 8.452 and 8.456, allow notice from the clerk of the reviewing court to the clerk of the respondent court in specified urgent situations to be by telephone or e-mail, where only telephonic notice is allowed under the existing rule;
- In rule 10.1028, allow the clerk of a Court of Appeal to keep a true and correct electronic copy of the reporter's transcript in a criminal case in which the court affirms a judgment of conviction, changing the existing requirement that the original, paper transcript be kept;
- Revise forms APP-002, APP-003, APP-004, APP-005, APP-006, APP-007, APP-008, APP-010, APP-011, APP-012, APP-102, APP-103, APP-104, APP-106, APP-107, APP-110, APP-151, CR-126, CR-132, CR-133, CR-134, CR-135, CR-137, CR-142, CR-143,

¹ The reference to rule 8.71(c) is to the rule as proposed to be amended by proposal SPR16-06, Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices, also on the agenda to be considered for adoption at the October 27th Judicial Council meeting.

CR-145, JV-810, JV-816, JV-817, and JV-822 to remove the words “optional” or “if available” where the forms ask for an e-mail address or fax number;

- Remove the integrated proof of service from forms APP-002, APP-005, and APP-007;
- Add to form APP-004, *Civil Case Information Statement*, an integrated proof of service that would allow proof of service by mail, personal delivery, or electronic service;
- Add to form APP-009 a note that it should not be used for proof of electronic service and that new form APP-009E should be used instead;
- Add information to form APP-009-INFO, *Information Sheet for Proof of Service (Court of Appeal)*, regarding electronic service and the new form APP-009E, *Proof of Electronic Service (Court of Appeal)*;
- Create new form APP-009E, *Proof of Electronic Service (Court of Appeal)*, and add references to this new form throughout the forms whenever the existing APP-009, *Proof of Service (Court of Appeal)*, is referenced;
- Change information on proof of service in form APP-101-INFO, *Information on Appeal Procedures for Limited Civil Cases*, to reflect the possibility of electronic service and to provide information on APP-109E, *Proof of Electronic Service (Appellate Division)*, the new form for proof of electronic service;
- Add language to form APP-109 noting that proposed new form APP-109E should be used for proof of electronic service;
- Add information to form APP-109-INFO, “*What Is Proof of Service?*” regarding electronic service and the new form APP-109E, *Proof of Electronic Service (Appellate Division)*;
- Create new form APP-109E, *Proof of Electronic Service*;
- Change information on proof of service in form APP-150-INFO, *Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases*, to reflect the possibility of electronic service;
- Add space for an attorney e-mail address on form CR-120, *Notice of Appeal—Felony*;
- Add space for a petitioner’s e-mail address on form JV-825, *Petition for Extraordinary Writ (Juvenile Dependency)*;
- Add language to form MC-275, *Petition for Writ of Habeas Corpus*, to reflect that different requirements as to the number of copies to be filed apply if the Petition is filed electronically.

Previous Council Action

Last year, as part of Phase I of the Rules Modernization Project, technical changes were made throughout the appellate rules to clarify the application of those rules to electronically filed documents, change language (such as the use of the words “mail” and “file-stamped”) that might inhibit use of e-filing or e-service, and otherwise ensure that the rules are consistent with modern e-filing, e-service and e-business practices. These changes were made as part of the overall Rules Modernization proposal and became effective January 1, 2016.

Rationale for Recommendation

Recognizing that the appellate courts are swiftly proceeding to a paperless world, ITAC is leading the Rules Modernization Project, a collaborative effort to comprehensively review and modernize the California Rules of Court so that they will be consistent with and foster modern e-business practices. Last year, a first round of modernizing changes was made to the appellate rules. This set of recommended changes continues that work, making technical modernizing changes throughout those rules, adding advisory committee comment language to encourage trial courts to send the record to the reviewing court electronically where possible, and creating an updated standard for the format of a computer-readable copy of a reporter's transcript. In addition, the recommended changes include similar updating changes throughout the appellate forms and create new forms for proof of electronic service in the courts of appeal and the appellate divisions of the superior courts. These changes are recommended to ensure that the rules and forms facilitate use of e-filing and e-service in the appellate courts as those courts move to mandatory e-filing systems.

The change to rule 8.124(d) was added to this proposal after it was circulated for comment. This change is made to correct an error inadvertently made when rule 8.124(d) was amended as part of last year's Rules Modernization changes, changing the reference to the format requirements of rule 8.144(a)-(c) to instead to refer to 8.144(b)-(d). The subdivisions of rule 8.144 were not re-lettered, and the change now added to this proposal corrects the reference back.

Comments, Alternatives Considered, and Policy Implications

This proposal was circulated from April 15, 2016 to June 14, 2016 in the regular spring 2016 comment cycle. Comments from five commentators were received. Two commentators agreed with the proposal, none disagreed, and two agreed if modified. The full comment chart, showing the full text of the comments received and the committees' responses, is attached at pages __-__.

Formatting of an electronic copy of a reporter's transcript.

Several commentators raised issues regarding the newly created formatting standard for an electronic copy of a reporter's transcript in rule 8.144 (a)(4). The Orange County Bar Association suggests that because there is a statutory requirement that the original of a reporter's transcript be on paper, the new language of rule 8.144(a)(4), and the added advisory committee comment language added for numerous rules, stating that the record may be sent to the reviewing court in electronic form, may exceed what is statutorily authorized. Conversely, the Superior Court of San Diego suggests that a change be incorporated to say that a court can request an electronic original of a reporter's transcript.

Although the requirement for the original transcript to be on paper is statutory and cannot be changed by rule of court, the committees note that the recommended changes are within what is allowed under statute. Code of Civil Procedure section 271 (a) requires that the original of a reporter's transcript be "on paper." However, section 271 (b) expressly allows Judicial Council

to set the standard for a computer-readable copy of a transcript – a standard that needs to be set, as the statutory fallback standard is for the copy to be “on disks in standard ASCII code.” The committees considered requiring text-searchable PDF format, but decided on the more open-ended language, as new programs are beginning to be used by reporters that offer similar or enhanced capabilities.

Nor do the committees believe that the new advisory committee comments noting that the trial court record may be sent to the reviewing court electronically conflicts with the requirement that the original of a reporter’s transcript be on paper. The record as sent to the reviewing court of course includes many components, of which the reporter’s transcript is only one, and any or all of those may be transmitted in electronic form. As both trial courts and appellate courts move towards keeping records electronically, the practice of transmitting the record electronically will become more and more common – and the proposed language recognizes and encourages this.

The staff of the Orange County Superior Court comments, with regard to the new formatting standard under rule 8.144(a), that they believe it will, at least initially, take staff training and acquisition of software to allow Superior courts to send the record in the required format. The committees note, first, that the standard applies only to reporter’s transcripts – no formatting standard is set for any other document sent by a trial court to the reviewing court. The intent is for the reporter to create the electronic copy in the appropriate format, not to impose a new standard for electronic formatting on the Superior Courts. The committees further note that Superior Courts continue to have the option to send a record in paper form.

New forms for proof of electronic service.

The Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee questions whether creation of a separate proof of service form for proof of electronic service (new form APP-009E, for the Courts of Appeal, and APP-109E, for the Appellate Divisions) might be more confusing to litigants than adding electronic service as an option on the existing proof of service forms. The committees specifically considered this question in developing the new forms, and determined that creation of separate forms and information sheets would make it easier for litigants to understand the different requirements that apply when service is performed electronically. In addition, it is anticipated that attorneys and parties will opt for one form or the other and use the chosen form consistently. Separate forms will be easier and less cluttered for repeat users.

The Superior Court of San Diego County raises the related question of whether the new proof of electronic service forms should be revised to make it possible to use these forms when multiple parties are served using different forms of service – for example, when one party is served electronically and another by mail. The committees recommend adoption of the forms as proposed, but note that this issue may be addressed in the future, when litigants and courts have had experience with the new forms and can know how best to revise them.

Additional time for implementation.

Staff from the Superior Court of Orange County suggests that implementation of the changes might take longer than two months, and suggest that the changes become effective six months from approval. Similarly, the JRS suggests that the changes become effective 120 days from approval to allow time for case management system changes, changes to court processes, staff training, revision of local rules and informing the public and justice partners about the changes.

As the Orange County court staff also note, however, if the Superior Court still has the option to send paper transcripts to a reviewing court, this would allow time for implementation without a delay in the changes becoming effective – courts could simply choose how to proceed even under the changed rules.

The changes to the rules do not require Superior Courts to transmit documents to a reviewing court electronically; they only comment that this is allowed. The new format requirements apply only to reporter's transcripts and are intended to accommodate any type of electronic formatting likely to be in current use by court reporters when they create electronic copies of transcripts.

The committees recognize that there will be some staff training required on the use of the new electronic proof of service forms, and members of the public will also need to be educated as to the existence and use of these new forms. However, the committees expect that two months from approval should provide sufficient time for implementation.

Alternatives Considered

In addition to the alternatives considered as a result of the public comments, discussed above, the committees considered the following issues.

With regard to the new language added in multiple advisory committee comments stating that the record can be sent from the trial court to the reviewing court in electronic form, the committees considered whether substantive changes are needed in those rules addressing preparation of the record on appeal to put in place express protections for indigent, incarcerated, or other litigants who may be unable to access a record in electronic form, such that those litigants would be able to receive the record in paper form. Because the proposed changes are nonsubstantive and simply restate what is already permitted under the existing language of the rules, the committees decided that the proposed changes should be made to encourage the use of records in electronic form.

With regard to the change to rule 10.1028, the committees considered whether to delay the rule change until legislative action can be pursued to provide that the original of a reporter's transcript would no longer be required to be in paper form. Such a legislative change would address the storage problem faced by the Courts of Appeal. Because legislative change is uncertain, the committees determined that the change in the rule should be made.

With regard to removing the language from forms stating that e-mail addresses or fax numbers are "optional" or only to be provided "if available," the committees considered several options. First, leaving those forms stating that these fields are "optional" was determined to be undesirable because the courts want to have the e-mail addresses of parties and counsel

whenever possible. Second, the committees considered whether the spaces provided for e-mail and fax should state that they are to be provided “if available.” The committees determined that this language is unnecessary; parties know to leave the spaces blank if they do not have fax or e-mail. Third, the committees considered whether to leave these changes until other changes are proposed to the forms. However, the committees determined that it was more efficient to address the issue on all forms through this proposal.

Implementation Requirements, Costs, and Operational Impacts

Because the recommended rule changes are largely technical, they are not expected to generate new costs. To the extent that the changes encourage courts to begin transmitting records to reviewing courts electronically, there will be cost savings as to copying costs, shipping costs, and the staff time necessary to copy paper records

Attachments and Links

1. Proposed Cal. Rules of Court, rules 8.104, 8.130, 8.144, 8.150, 8.336, 8.409, 8.416, 8.450, 8.452, 8.454, 8.456, 8.480, 8.482, 8.489, 8.613, 8.619, 8.625, 8.834, 8.866, 8.919, 8.1007, and 10.1028, at pages __-__.
2. Proposed forms APP-002, APP-003, APP-004, APP-005, APP-006, APP-007, APP-008, APP-009, APP-009E, APP-009-INFO, APP-010, APP-011, APP-012, APP-101-INFO, APP-102, APP-103, APP-104, APP-106, APP-107, APP-109, APP-109E, APP-109-INFO, APP-110, APP-150-INFO, APP-151, CR-120, CR-126, CR-132, CR-133, CR-134, CR-135, CR-137, CR-141-INFO, CR-142, CR-143, CR-145, JV-810, JV-816, JV-817, JV-822, JV-825, and MC-275 at pages __-__.
3. Chart of comments, at pages __-__.

Rules 8.104, 8.124, 8.130, 8.144, 8.150, 8.336, 8.409, 8.416, 8.450, 8.452, 8.454, 8.456, 8.480, 8.482, 8.489, 8.613, 8.619, 8.625, 8.834, 8.866, 8.919, 8.1007, and 10.1028 of the California Rules of Court would be amended, effective January 1, 2017, to read:

1 **Rule 8.104. Time to appeal**

2
3 (a)–(b) * * *

4
5 (c) **What constitutes entry**

6
7 For purposes of this rule:

8
9 (1) The entry date of a judgment is the date the judgment is filed under Code of
10 Civil Procedure section 668.5, or the date it is entered in the judgment book.

11
12 (2) The entry date of an appealable order that is entered in the minutes is the date
13 it is entered in the permanent minutes. But if the minute order directs that a
14 written order be prepared, the entry date is the date the signed order is filed; a
15 written order prepared under rule 3.1312 or similar local rule is not such an
16 order prepared by direction of a minute order.

17
18 (3) The entry date of an appealable order that is not entered in the minutes is the
19 date the signed order is filed.

20
21 (4) The entry date of a decree of distribution in a probate proceeding is the date it
22 is entered at length in the judgment book or other permanent court record.

23
24 (5) An order signed electronically has the same effect as an order signed on
25 paper.

26
27 (d)–(e) * * *

28
29 **Rule 8.124. Appendixes**

30
31 (a)–(c) * * *

32
33 (d) **Form of appendix**

34
35 (1) An appendix must comply with the requirements of rule 8.144 ~~(b)–(d)~~ (a)–(c)
36 for a clerk’s transcript.

37
38 (2)–(3) * * *

39
40 (e)–(g) * * *

41
42

1 **Rule 8.130. Reporter’s transcript**

2
3 (a)–(e) * * *

4
5 (f) **Filing the transcript; copies; payment**

6
7 (1)–(3) * * *

8
9 (4) On request, and unless the superior court orders otherwise, the reporter must
10 provide the Court of Appeal or any party with a copy of the reporter’s
11 transcript in computer-readable format. Each computer-readable copy must
12 comply with the ~~format, labeling, content, and numbering requirements of~~
13 Code of Civil Procedure section 271(b) requirements of rule 8.144(a)(4).

14
15 (g)–(h) * * *

16
17
18 **Rule 8.144. Form of the record**

19
20 (a) **Paper and format**

21
22 (1)–(3) * * *

23
24 (4) A computer-readable copy of a reporter’s transcript must be in a text-
25 searchable format approved by the reviewing court while maintaining
26 original document formatting.

27
28 (4)(5) The clerk’s and reporter’s transcripts must comply with rules 8.45–8.47
29 relating to sealed and confidential records.

30
31 (b)–(f) * * *

32
33 **Advisory Committee Comment**

34
35 **Subdivisions (a) and (b).** Subdivision (a)(4) is adopted under Code of Civil Procedure section
36 271(b), which allows the Judicial Council to adopt format requirements for computer-readable
37 copies of a reporter’s transcript. Subdivisions (a)(4)–(5) and (b) refer to special requirements
38 concerning sealed and confidential records established by rules 8.45–8.47. Rule 8.45(c)(2) and (3)
39 establish special requirements regarding references to sealed and confidential records in the
40 alphabetical and chronological indexes to clerk’s and reporter’s transcripts.

41
42
43 **Rule 8.150. Filing the record**

44
45 (a) **Superior court clerk’s duties**

1 When the record is complete, the superior court clerk must promptly send the
2 original to the reviewing court and the copy to the appellant.

3
4 (b) * * *

5
6 **Advisory Committee Comment**

7
8 **Subdivision (a).** Under rule ~~8.72(a), 8.71(c)~~, the superior court clerk may send the record to the
9 reviewing court in electronic form ~~where permitted by the reviewing court and not otherwise~~
10 ~~prohibited.~~

11
12 **Rule 8.336. Preparing, certifying, and sending the record**

13
14 (a)–(c) * * *

15
16 (d) **Reporter’s transcript**

17
18 (1) * * *

19
20 (2) The reporter must prepare an original and the same number of copies of the
21 reporter’s transcript as (c) requires of the clerk’s transcript, and must certify
22 each as correct. On request, and unless the trial court orders otherwise, the
23 reporter must provide the Court of Appeal and any party with a copy of the
24 reporter’s transcript in computer-readable format. Each computer-readable
25 copy must comply with the ~~format, labeling, content, and numbering~~
26 ~~requirements of Code of Civil Procedure section 271(b)~~ requirements of rule
27 8.144(a)(4).

28
29 (3)–(5) * * *

30
31 (*Subd (d) amended effective January 1, 2016; previously amended effective January 1,*
32 *2007, and January 1, 2014.*)

33
34 (e)–(h) * * *

35
36 **Advisory Committee Comment**

37
38 **Subdivision (a).** Subdivision (a) implements Code of Civil Procedure section 269(b).

39
40 **Subdivision (d).** This subdivision is intended to implement Code of Civil Procedure section 271,
41 which allows any court, party, or other person entitled to a reporter’s transcript to request that it
42 be delivered in computer-readable format (except that an original transcript must be on paper) and
43 requires the reporter to provide the transcript in that format upon request if the proceedings were
44 produced using computer-aided transcription equipment. This subdivision establishes procedures
45 relating to such requests and procedures for court reporters to apply to the superior court for relief
46 from this requirement if the proceedings were not produced using computer-aided transcription
47 equipment. Government Code section 69954 establishes the fees for reporter’s transcripts in
48 computer-readable format.

1
2 **Subdivision (f).** Examples of confidential records include Penal Code section 1203.03 diagnostic
3 reports, records closed to inspection by court order under *People v. Marsden* (1970) 2 Cal.3d 118
4 or *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, in-camera proceedings on a confidential
5 informant, and defense expert funding requests (Pen. Code, § 987.9; *Keenan v. Superior Court*
6 (1982) 31 Cal.3d 424, 430).

7
8 **Subdivision (g).** Under rule ~~8.72(a)~~, ~~8.71(c)~~, the superior court clerk may send the record to the
9 reviewing court in electronic form ~~where permitted by the reviewing court and not otherwise~~
10 ~~prohibited~~.

11
12
13
14 **Rule 8.409. Preparing and sending the record**

15
16 **(a)–(b)** * * *

17
18 **(c) Preparing and certifying the transcripts**

19
20 Within 20 days after the notice of appeal is filed:

- 21
22 (1) The clerk must prepare and certify as correct an original of the clerk's
23 transcript and one copy each for the appellant, the respondent, the child's
24 Indian tribe if the tribe has intervened, and the child if the child is represented
25 by counsel on appeal or if a recommendation has been made to the Court of
26 Appeal for appointment of counsel for the child under rule 8.403(b)(2) and
27 that recommendation is either pending with or has been approved by the
28 Court of Appeal but counsel has not yet been appointed; and
29
30 (2) The reporter must prepare, certify as correct, and deliver to the clerk an
31 original of the reporter's transcript and the same number of copies as (1)
32 requires of the clerk's transcript. On request, and unless the trial court orders
33 otherwise, the reporter must provide the Court of Appeal and any party with a
34 copy of the reporter's transcript in computer-readable format. Each
35 computer-readable copy must comply with the ~~format, labeling, content, and~~
36 ~~numbering requirements of Code of Civil Procedure section~~
37 ~~271(b)~~ requirements of rule 8.144(a)(4).

38
39 **(d)–(e)** * * *

40
41 **Advisory Committee Comment**

42
43 **Subdivisions (a)–(b)** * * *

44
45 **Subdivision (c)(2).** This subdivision is intended to implement Code of Civil Procedure section
46 271, which allows any court, party, or other person entitled to a reporter's transcript to request
47 that it be delivered in computer-readable format (except that an original transcript must be on
48 paper) and requires the reporter to provide the transcript in that format upon request if the

1 proceedings were produced using computer-aided transcription equipment. This subdivision
 2 establishes procedures relating to such requests and procedures for court reporters to apply to the
 3 superior court for relief from this requirement if the proceedings were not produced using
 4 computer-aided transcription equipment. Government Code section 69954 establishes the fees for
 5 reporters' transcripts in computer-readable format.

6
 7 **Subdivision (e).** Under rule 8.72(a), 8.71(c), the superior court clerk may send the record to the
 8 reviewing court in electronic form where permitted by the reviewing court and not otherwise
 9 prohibited. Subsection (1)(B) clarifies that when a child's Indian tribe has intervened in the
 10 proceedings, the tribe is a party who must receive a copy of the appellate record. The statutes that
 11 require notices to be sent to a tribe by registered or certified mail return receipt requested and
 12 generally be addressed to the tribal chairperson (25 U.S.C. § 1912(a), 25 C.F.R. § 23.11, and
 13 Welf. & Inst. Code, § 224.2) do not apply to the sending of the appellate record.

14
 15
 16 **Rule 8.416. Appeals from all terminations of parental rights; dependency appeals in**
 17 **Orange, Imperial, and San Diego Counties and in other counties by local rule**

18
 19 (a)–(b) * * *

20
 21 (c) **Preparing, certifying, and sending the record**

22
 23 (1) Within 20 days after the notice of appeal is filed:

24
 25 (A) The clerk must prepare and certify as correct an original of the clerk's
 26 transcript and one copy each for the appellant, the respondent, the
 27 district appellate project, the child's Indian tribe if the tribe has
 28 intervened, and the child if the child is represented by counsel on
 29 appeal or if a recommendation has been made to the Court of Appeal
 30 for appointment of counsel for the child under rule 8.403(b)(2) and that
 31 recommendation is either pending with or has been approved by the
 32 Court of Appeal but counsel has not yet been appointed; and

33
 34 (B) The reporter must prepare, certify as correct, and deliver to the clerk an
 35 original of the reporter's transcript and the same number of copies as
 36 (A) requires of the clerk's transcript. On request, and unless the trial
 37 court orders otherwise, the reporter must provide the Court of Appeal
 38 and any party with a copy of the reporter's transcript in computer-
 39 readable format. Each computer-readable copy must comply with the
 40 format, labeling, content, and numbering requirements of Code of Civil
 41 Procedure section 271(b) requirements of rule 8.144(a)(4).

42
 43 (2) When the clerk's and reporter's transcripts are certified as correct, the clerk
 44 must immediately send:

45
 46 (A) The original transcripts to the reviewing court by the most expeditious
 47 method, noting the sending date on each original; and

1 (B) One copy of each transcript to the district appellate project and to the
 2 appellate counsel for the following, if they have appellate counsel, by
 3 any method as fast as United States Postal Service express mail:

4
 5 (i) The appellant;

6
 7 (ii) The respondent;

8
 9 (iii) The child's Indian tribe if the tribe has intervened; and

10
 11 (iv) The child.

12
 13 (3) If appellate counsel has not yet been retained or appointed for the appellant or
 14 the respondent or if a recommendation has been made to the Court of Appeal
 15 for appointment of counsel for the child under rule 8.403(b)(2) and that
 16 recommendation is either pending with or has been approved by the Court of
 17 Appeal but counsel has not yet been appointed, when the transcripts are
 18 certified as correct, the clerk must send that counsel's copies of the
 19 transcripts to the district appellate project. If a tribe that has intervened is not
 20 represented by counsel when the transcripts are certified as correct, the clerk
 21 must send that counsel's copy of the transcripts to the tribe.

22
 23 (d)–(h) * * *

24
 25
 26 **Advisory Committee Comment**

27
 28 **Subdivision (c).** Under rule 8.72(a), 8.71(c), the superior court clerk may send the record to the
 29 reviewing court in electronic form where permitted by the reviewing court and not otherwise
 30 prohibited.

31
 32 **Subdivision (g).** Effective January 1, 2007, revised rule 8.416 incorporates a new subdivision (g)
 33 to address a failure to timely file a brief in all termination of parental rights cases and in
 34 dependency appeals in Orange, Imperial, and San Diego Counties. Under the new subdivision,
 35 appellants would not have the full 30-day grace period given in rule 8.412(d) in which to file a
 36 late brief, but instead would have the standard 15-day grace period that is given in civil cases.
 37 The intent of this revision is to balance the need to determine the appeal within 250 days with the
 38 need to protect appellants' rights in this most serious of appeals.

39
 40 **Subdivision (h).** Subdivision (h)(1) recognizes certain reviewing courts' practice of requiring
 41 counsel to file any request for oral argument within a time period other than 15 days after the
 42 appellant's reply brief is filed or due to be filed. The reviewing court is still expected to determine
 43 the appeal "within 250 days after the notice of appeal is filed." (Subdivision (e).)

44
 45
 46 **Rule 8.450. Notice of intent to file writ petition to review order setting hearing**
 47 **under Welfare and Institutions Code section 366.26**
 48

1 (a)–(f) * * *

2
3 (g) **Sending the notice of intent**

- 4
5 (1) When the notice of intent is filed, the superior court clerk must
6 immediately ~~mail~~ send a copy of the notice to:
7
8 (A) The attorney of record for each party;
9
10 (B) Each party, including the child if the child is 10 years of age or older;
11
12 (C) Any known sibling of the child who is the subject of the hearing if that
13 sibling either is the subject of a dependency proceeding or has been
14 adjudged to be a dependent child of the juvenile court as follows:
15
16 (i) If the sibling is under 10 years of age, on the sibling’s attorney;
17
18 (ii) If the sibling is 10 years of age or over, on the sibling and the
19 sibling’s attorney.
20
21 (D) The mother, the father, and any presumed and alleged parents;
22
23 (E) The child’s legal guardian, if any;
24
25 (F) Any person currently awarded by the juvenile court the status of the
26 child’s de facto parent;
27
28 (G) The probation officer or social worker;
29
30 (H) Any Court Appointed Special Advocate (CASA) volunteer;
31
32 (I) The grandparents of the child, if their address is known and if the
33 parents’ whereabouts are unknown; and
34
35 (J) If the court knows or has reason to know that an Indian child is
36 involved, the Indian custodian, if any, and tribe of the child or the
37 Bureau of Indian Affairs as required under Welfare and Institutions
38 Code section 224.2.
39
40 (2) The clerk must promptly send by first-class mail, e-mail, or fax a copy of the
41 notice of intent and a list of those to whom the notice of intent was sent to:
42
43 (A) The reviewing court; and
44
45 (B) The petitioner if the clerk ~~mailed~~ sent the notice of intent to the Indian
46 custodian, tribe of the child, or the Bureau of Indian Affairs.

- 1
2 (3) If the party was notified of the order setting the hearing only by mail, the
3 clerk must include the date that the notification was mailed.
4

5 **(h)–(j) * * ***

6
7 **Advisory Committee Comment**
8

9 **Subdivision (d).** The case law generally recognizes that the reviewing courts may grant
10 extensions of time under these rules for exceptional good cause. (See, e.g., *Jonathan M. v.*
11 *Superior Court* (1995) 39 Cal.App.4th 1826, and *In re Cathina W.* (1998) 68 Cal.App.4th 716
12 [recognizing that a late notice of intent may be filed on a showing of exceptional circumstances
13 not under the petitioner’s control].) It may constitute exceptional good cause for an extension of
14 the time to file a notice of intent if a premature notice of intent is returned to a party shortly
15 before the issuance of an order setting a hearing under Welfare and Institutions Code section
16 366.26.
17

18 **Subdivision (e)(4).** See rule 8.25(b)(5) for provisions concerning the timeliness of documents
19 mailed by inmates or patients from custodial institutions.
20

21 **Subdivision (f)(1).** A party who prematurely attempts to file a notice of intent to file a writ
22 petition under Welfare and Institutions Code section 366.26 is not precluded from later filing
23 such a notice after the issuance of an order setting a hearing under Welfare and Institutions Code
24 section 366.26.
25

26 **Subdivision (i).** Under rule 8.72(a); 8.71(c), the superior court clerk may send the record to the
27 reviewing court in electronic form where permitted by the reviewing court and not otherwise
28 prohibited.
29
30

31 **Rule 8.452. Writ petition to review order setting hearing under Welfare and**
32 **Institutions Code section 366.26**
33

34 **(a)–(g) * * ***
35

36 **(h) Decision**
37

- 38 (1) Absent exceptional circumstances, the reviewing court must decide the
39 petition on the merits by written opinion.
40
41 (2) The reviewing court clerk must promptly notify the parties of any decision
42 and must promptly send a certified copy of any writ or order to the court
43 named as respondent.
44
45 (3) If the writ or order stays or prohibits proceedings set to occur within 7 days
46 or requires action within 7 days—or in any other urgent situation—the
47 reviewing court clerk must make a reasonable effort to notify the clerk of the

1 respondent court by telephone or e-mail. The clerk of the respondent court
2 must then notify the judge or officer most directly concerned.

- 3
4 (4) The reviewing court clerk need not give telephonic or e-mail notice of the
5 summary denial of a writ, unless a stay previously issued will be dissolved.

6
7 (i) * * *

8
9
10 **Rule 8.454. Notice of intent to file writ petition under Welfare and Institutions Code**
11 **section 366.28 to review order designating specific placement of a dependent**
12 **child after termination of parental rights**

13
14 (a)–(f) * * *

15
16 (g) **Sending the notice of intent**

- 17
18 (1) When the notice of intent is filed, the superior court clerk must
19 immediately ~~mail~~ send a copy of the notice to:
20
21 (A) The attorney of record for each party;
22
23 (B) Each party, including the child if the child is 10 years of age or older;
24
25 (C) Any known sibling of the child who is the subject of the hearing if that
26 sibling either is the subject of a dependency proceeding or has been
27 adjudged to be a dependent child of the juvenile court as follows:
28
29 (i) If the sibling is under 10 years of age, on the sibling's attorney;
30
31 (ii) If the sibling is 10 years of age or over, on the sibling and the
32 sibling's attorney;
33
34 (D) Any prospective adoptive parent;
35
36 (E) The child's legal guardian if any;
37
38 (F) Any person currently awarded by the juvenile court the status of the
39 child's de facto parent;
40
41 (G) The probation officer or social worker;
42
43 (H) The child's Court Appointed Special Advocate (CASA) volunteer, if
44 any; and
45
46 (I) If the court knows or has reason to know that an Indian child is
47 involved, the Indian custodian, if any, and tribe of the child or the

1 Bureau of Indian Affairs as required under Welfare and Institutions
2 Code section 224.2.

- 3
- 4 (2) The clerk must promptly send by first-class mail, e-mail, or fax a copy of the
5 notice of intent and a list of those to whom the notice of intent was sent to:
6
- 7 (A) The reviewing court; and
8
- 9 (B) The petitioner if the clerk ~~mailed~~ sent a copy of the notice of intent to
10 the Indian custodian, tribe of the child, or the Bureau of Indian Affairs.
11
- 12 (3) If the party was notified of the postplacement order only by mail, the clerk
13 must include the date that the notification was mailed.
14

15 (h)–(j) * * *

16
17 **Advisory Committee Comment**

18
19 **Subdivision (f)(2).** See rule 8.25(b)(5) for provisions concerning the timeliness of documents
20 mailed by inmates or patients from custodial institutions.
21

22 **Subdivision (i).** Under rule 8.72(a), 8.71(c), the superior court clerk may send the record to the
23 reviewing court in electronic form where permitted by the reviewing court and not otherwise
24 prohibited.
25

26
27 **Rule 8.456. Writ petition under Welfare and Institutions Code section 366.28 to**
28 **review order designating or denying specific placement of a dependent child**
29 **after termination of parental rights**
30

31 (a)–(g) * * *

32
33 **(h) Decision**

- 34
- 35 (1) Absent exceptional circumstances, the reviewing court must review the
36 petition and decide it on the merits by written opinion.
37
- 38 (2) The reviewing court clerk must promptly notify the parties of any decision
39 and must promptly send a certified copy of any writ or order to the court
40 named as respondent.
41
- 42 (3) If the writ or order stays or requires action within 7 days—or in any other
43 urgent situation—the reviewing court clerk must make a reasonable effort to
44 notify the clerk of the respondent court by telephone or e-mail. The clerk of
45 the respondent court must then notify the judge or officer most directly
46 concerned.
47

1 (4) The reviewing court clerk need not give telephonic or e-mail notice of the
2 summary denial of a writ, unless a stay previously issued and will be
3 dissolved.

4
5 (5) Rule 8.490 governs the filing, modification, finality of decisions, and
6 remittitur in writ proceedings under this rule.

7
8 (i) * * *

9
10
11 **Rule 8.480. Appeal from order establishing conservatorship**

12
13 (a)–(e) * * *

14
15 **Advisory Committee Comment**

16
17 **Subdivision (a).** Under rule 8.72(a); 8.71(c), the superior court clerk may send the record to the
18 reviewing court in electronic form where permitted by the reviewing court and not otherwise
19 prohibited.

20
21 **Rule 8.482. Appeal from judgment authorizing conservator to consent to**
22 **sterilization of conservatee**

23
24 (a)–(i) * * *

25
26 **Advisory Committee Comment**

27
28 **Subdivision (a).** Under rule 8.72(a); 8.71(c), the superior court clerk may send the record to the
29 reviewing court in electronic form where permitted by the reviewing court and not otherwise
30 prohibited.

31
32
33 **Rule 8.489. Notice to trial court**

34
35 (a) * * *

36
37 (b) **Notice by telephone**

38
39 (1) If the writ or order stays or prohibits proceedings set to occur within 7 days
40 or requires action within 7 days—or in any other urgent situation—the
41 reviewing court clerk must make a reasonable effort to notify the clerk of the
42 respondent court by telephone or e-mail. The clerk of the respondent court
43 must then notify the judge or officer most directly concerned.

44
45 (2) The clerk need not give telephonic or e-mail notice of the summary denial of
46 a writ, whether or not a stay previously issued.
47

1
2 **Rule 8.613. Preparing and certifying the record of preliminary proceedings**

3
4 **(a)–(h) * * ***

5
6 **(i) Computer-readable copies**

- 7
8 (1) When the record of the preliminary proceedings is certified as complete and
9 accurate, the clerk must promptly notify the reporter to prepare five
10 computer-readable copies of the transcript and two additional computer-
11 readable copies for each codefendant against whom the death penalty is
12 sought.
13
14 (2) Each computer-readable copy must ~~comply with the format, labeling,
15 content, and numbering requirements of Code of Civil Procedure section
16 271(b)~~ comply with the requirements of rule 8.144(a)(4) and any additional
17 requirements prescribed by the Supreme Court, and must be further labeled to
18 show the date it was made.
19
20 (3) A computer-readable copy of a sealed transcript must be placed on a separate
21 disk and clearly labeled as confidential.
22
23 (4) The reporter is to be compensated for computer-readable copies as provided
24 in Government Code section 69954(b).
25
26 (5) Within 20 days after the clerk notifies the reporter under (1), the reporter
27 must deliver the computer-readable copies to the clerk.
28

29 **(j)–(l) * * ***

30
31
32 **Rule 8.619. Certifying the trial record for completeness**

33
34 **(a)–(d) * * ***

35
36 **(e) Computer-readable copies**

- 37
38 (1) When the record is certified as complete, the clerk must promptly notify the
39 reporter to prepare five computer-readable copies of the transcript and two
40 additional computer-readable copies for each codefendant sentenced to death.
41
42 (2) Each computer-readable copy must ~~comply with the format, labeling,
43 content, and numbering requirements of Code of Civil Procedure section
44 271(b)~~ comply with the requirements of rule 8.144(a)(4) and any additional
45 requirements prescribed by the Supreme Court, and must be further labeled to
46 show the date it was made.

- 1
2 (3) A computer-readable copy of a sealed transcript must be placed on a separate
3 disk and clearly labeled as confidential.
4
5 (4) The reporter is to be compensated for computer-readable copies as provided
6 in Government Code section 69954(b).
7
8 (5) Within 10 days after the clerk notifies the reporter under (1), the reporter
9 must deliver the computer-readable copies to the clerk.

10
11 **(f)–(h) * * ***
12
13

14 **Rule 8.625. Certifying the record in pre-1997 trials**
15

16 **(a) * * ***
17

18 **(b) Sending the transcripts to counsel for review**
19

- 20 (1) When the clerk and the reporter certify that their respective transcripts are
21 correct, the clerk must promptly send a copy of each transcript to each
22 defendant's trial counsel, to the Attorney General, to the district attorney, to
23 the California Appellate Project in San Francisco, and to the Habeas Corpus
24 Resource Center, noting the sending date on the originals.
25
26 (2) The copies of the reporter's transcript sent to the California Appellate Project
27 and the Habeas Corpus Resource Center must be computer-readable copies
28 complying with ~~the format, labeling, content, and numbering requirements of~~
29 ~~Code of Civil Procedure section 271(b)~~ the requirements of rule
30 8.144(a)(4) and any additional requirements prescribed by the Supreme
31 Court, and must be further labeled to show the date it was made.
32
33 (3) When the clerk is notified of the appointment or retention of each defendant's
34 appellate counsel, the clerk must promptly send that counsel copies of the
35 clerk's transcript and the reporter's transcript, noting the sending date on the
36 originals. The clerk must notify the Supreme Court, the Attorney General,
37 and each defendant's appellate counsel in writing of the date the transcripts
38 were sent to appellate counsel.
39

40 **(c)–(e) * * ***
41
42

43 **Rule 8.834. Reporter's transcript**
44

1 (a)–(c) * * *

2
3 **(d) Filing the reporter’s transcript; copies; payment**

4
5 (1)–(3) * * *

6
7 (4) On request, and unless the trial court orders otherwise, the reporter must
8 provide the reviewing court or any party with a copy of the reporter’s
9 transcript in computer-readable format. Each computer-readable copy
10 must ~~comply with the format, labeling, content, and numbering requirements~~
11 of Code of Civil Procedure section 271(b) comply with the requirements of
12 rule 8.144(a)(4).
13

14 (e)–(f) * * *

15
16
17 **Rule 8.866. Preparation of reporter’s transcript**

18
19 (a)–(c) * * *

20
21 **(d) When preparation must be completed**

22
23 (1) The reporter must deliver the original and all copies to the trial court clerk as
24 soon as they are certified but no later than 20 days after the reporter is required
25 to begin preparing the transcript under (a). Only the presiding judge of the
26 appellate division or his or her designee may extend the time to prepare the
27 reporter’s transcript (see rule 8.810).
28

29 (2) On request, and unless the trial court orders otherwise, the reporter must
30 provide the reviewing court or any party with a copy of the reporter’s transcript
31 in computer-readable format. Each computer-readable copy must comply with
32 the requirements of rule 8.144(a)(4).
33

34 (e)–(f) * * *

35
36
37 **Rule 8.919. Preparation of reporter’s transcript**

38
39 (a)–(c) * * *

40
41 **(d) When preparation must be completed**

42
43 (1) The reporter must deliver the original and all copies to the trial court clerk as
44 soon as they are certified but no later than 20 days after the reporter is required
45 to begin preparing the transcript under (a). Only the presiding judge of the

1 appellate division or his or her designee may extend the time to prepare the
2 reporter's transcript (see rule 8.810).

- 3
4 (2) On request, and unless the trial court orders otherwise, the reporter must
5 provide the reviewing court or any party with a copy of the reporter's transcript
6 in computer-readable format. Each computer-readable copy must comply with
7 the requirements of rule 8.144(a)(4).

8
9
10 **Rule 8.1007. Transmitting record to Court of Appeal**

11
12 (a)–(b) * * *

13
14 **Advisory Committee Comment**

15
16 Under rule 8.72(a), 8.71(c), the superior court clerk may send the record to the reviewing court in
17 electronic form where permitted by the reviewing court and not otherwise prohibited.

18
19
20 **Rule 10.1028. Preservation and destruction of Court of Appeal records**

21 (a)–(c) * * *

22 **(d) Time to keep other records**

- 23 (1) Except as provided in (2), the clerk may destroy all other records in a case 10
24 years after the decision becomes final, as ordered by the administrative
25 presiding justice or, in a court with only one division, by the presiding
26 justice.
27
28 (2) In a criminal case in which the court affirms a judgment of conviction, the
29 clerk must keep the original reporter's transcript or a true and correct
30 electronic copy thereof for 20 years after the decision becomes final.

31
32 **Advisory Committee Comment**

33
34 **Subdivision (d).** Subdivision (d) permits the Court of Appeal to keep an electronic copy of the
35 reporter's transcript in lieu of keeping the original. Although subdivision (a) allows the Court of
36 Appeal to maintain its records in any format that satisfies the otherwise applicable standards for
37 maintenance of court records, including electronic formats, the original of a reporter's transcript
38 is required to be on paper under Code of Civil Procedure section 271(a). Subdivision (d) therefore
39 specifies that an electronic copy may be kept, to clarify that the paper original need not be kept by
40 the court.

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO.: _____ NAME: _____ FIRM NAME: _____ STREET ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (name): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
Plaintiff/Petitioner: _____ Defendant/Respondent: _____	
<input type="checkbox"/> NOTICE OF APPEAL <input type="checkbox"/> CROSS-APPEAL (UNLIMITED CIVIL CASE)	CASE NUMBER: _____

Notice: Please read *Information on Appeal Procedures for Unlimited Civil Cases* (Judicial Council form APP-001) before completing this form. This form must be filed in the superior court, not in the Court of Appeal. A copy of this form must also be served on the other party or parties to this appeal. You may use an applicable Judicial Council form (such as APP-009 or APP-009E) for the proof of service. When this document has been completed and a copy served, the original may then be filed with the court with proof of service.

1. NOTICE IS HEREBY GIVEN that (name): _____
 appeals from the following judgment or order in this case, which was entered on (date): _____
- Judgment after jury trial
 - Judgment after court trial
 - Default judgment
 - Judgment after an order granting a summary judgment motion
 - Judgment of dismissal under Code of Civil Procedure, §§ 581d, 583.250, 583.360, or 583.430
 - Judgment of dismissal after an order sustaining a demurrer
 - An order after judgment under Code of Civil Procedure, § 904.1(a)(2)
 - An order or judgment under Code of Civil Procedure, § 904.1(a)(3)–(13)
 - Other (describe and specify code section that authorizes this appeal): _____

2. For cross-appeals only:
- a. Date notice of appeal was filed in original appeal: _____
 - b. Date superior court clerk mailed notice of original appeal: _____
 - c. Court of Appeal case number (if known): _____

Date: _____

 (TYPE OR PRINT NAME)

 (SIGNATURE OF PARTY OR ATTORNEY)

ATTORNEY (name, State Bar number, and address): NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	STATE BAR NO.:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:		
APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)		SUPERIOR COURT CASE NUMBER:
RE: Appeal filed on (date):		COURT OF APPEAL CASE NUMBER (if known):
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.		

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:
------------	-----------------------------

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.*)

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
------------------------------------	---------------

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:
------------	-----------------------------

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:
------------	-----------------------------

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)

TO BE FILED IN THE COURT OF APPEAL

APP-004

COURT OF APPEAL, _____ APPELLATE DISTRICT, DIVISION _____	COURT OF APPEAL CASE NUMBER (if known):
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY
APPELLANT: RESPONDENT: SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	SUPERIOR COURT CASE NUMBER:
JUDGES (all who participated in case):	
CIVIL CASE INFORMATION STATEMENT	
NOTE TO APPELLANT: You must file this form with the clerk of the Court of Appeal within 15 days after the clerk mails you the notification of the filing of the notice of appeal required under rule 8.100(e)(1). You must attach to this form a copy of the judgment or order being appealed that shows the date it was entered (see Cal. Rules of Court, rule 8.104 for definition of "entered"). A copy of this form must also be served on the other party or parties to this appeal. (CAUTION: An appeal in a limited civil case (Code Civ. Proc., § 85) may be taken ONLY to the appellate division of the superior court (Code Civ. Proc., § 904.2) or to the superior court (Code Civ. Proc., § 116.710 [small claims cases]).	

PART I – APPEAL INFORMATION

A. APPEALABILITY

1. Appeal is from:

- Judgment after jury trial
- Judgment after court trial
- Default judgment
- Judgment after an order granting a summary judgment motion
- Judgment of dismissal under Code Civ. Proc., § 581d, 583.250, 583.360, or 583.430
- Judgment of dismissal after an order sustaining a demurrer
- An order after judgment under Code Civ. Proc., § 904.1(a)(2)
- An order or judgment under Code Civ. Proc., § 904.1(a)(3)–(13)
- Other (describe and specify code section that authorizes this appeal):

2. Does the judgment appealed from dispose of all causes of action, including all cross-actions between the parties?

- Yes No (If no, please explain why the judgment is appealable):

B. TIMELINESS OF APPEAL (Provide all applicable dates.)

1. Date of entry of judgment or order appealed from:
2. Date that notice of entry of judgment or a copy of the judgment was served by the clerk or by a party under California Rules of Court, rule 8.104:
3. Was a motion for new trial, for judgment notwithstanding the verdict, for reconsideration, or to vacate the judgment made and denied?

- Yes No (If yes, please specify the type of motion):

Date notice of intention to move for new trial (if any) filed:

Date motion filed:

Date motion denied:

Date denial served:

4. Date notice of appeal or cross-appeal filed:

C. BANKRUPTCY OR OTHER STAY

Is there a related bankruptcy case or a court-ordered stay that affects this appeal? Yes No

(If yes, please attach a copy of the bankruptcy petition [without attachments] and any stay order.)

APPELLATE CASE TITLE:	APPELLATE COURT CASE NUMBER:
-----------------------	------------------------------

D. APPELLATE CASE HISTORY (*Provide additional information, if necessary, on attachment I.D.*) Is there now, or has there previously been, any appeal, writ, or other proceeding related to this case pending in any California appellate court?

Yes No (If yes, insert name of appellate court):

Appellate court case no.:

Title of case:

Name of trial court:

Trial court case no.:

E. SERVICE REQUIREMENTS

Is service of documents in this matter, including a notice of appeal, petition, or brief, required on the Attorney General or other nonparty public officer or agency under California Rules of Court, rule 8.29 or a statute?

Yes No (*If yes, please indicate the rule or statute that applies*)

- | | |
|--|--|
| <input type="checkbox"/> Rule 8.29 (e.g., constitutional challenge; state or county party) | <input type="checkbox"/> Code Civ. Proc., § 1355 (Escheat) |
| <input type="checkbox"/> Bus. & Prof. Code, §16750.2 (Antitrust) | <input type="checkbox"/> Gov. Code, § 946.6(d) (Actions against public entities) |
| <input type="checkbox"/> Bus. & Prof. Code, § 17209 (Unfair Competition Act) | <input type="checkbox"/> Gov. Code, § 4461 (Disabled access to public buildings) |
| <input type="checkbox"/> Bus. & Prof. Code, § 17536.5 (False advertising) | <input type="checkbox"/> Gov. Code, § 12656(a) (False Claims Act) |
| <input type="checkbox"/> Civ. Code, § 51.1 (Unruh, Ralph, or Bane Civil Rights Acts; antiboycott cause of action; sexual harassment in business or professional relations; civil rights action by district attorney) | <input type="checkbox"/> Health & Saf. Code, § 19954.5 (Accessible seating and accommodations) |
| <input type="checkbox"/> Civ. Code, § 55.2 (Disabled access to public conveyances, accommodations, and housing) | <input type="checkbox"/> Health & Saf. Code, § 19959.5 (Disabled access to privately funded public accommodations) |
| | <input type="checkbox"/> Pub. Resources Code, § 21167.7 (CEQA) |
| | <input type="checkbox"/> Other (specify statute): |

NOTE: The rule and statutory provisions listed above require service of a copy of a party's notice of appeal, petition, or brief on the Attorney General or other public officer or agency. Other statutes requiring service on the Attorney General or other public officers or agencies may also apply.

PART II – NATURE OF ACTION

A. Nature of action (*check all that apply*):

1. Conservatorship
2. Contract
3. Eminent domain
4. Equitable action a. Declaratory relief b. Other (*describe*):
5. Family law
6. Guardianship
7. Probate
8. Real property rights a. Title of real property b. Other (*describe*):
9. Tort
 - a. Medical malpractice
 - b. Product liability
 - c. Other personal injury
 - d. Personal property
 - e. Other tort (*describe*):
10. Trust proceedings
11. Writ proceedings in superior court
 - a. Mandate (Code Civ. Proc., § 1085)
 - b. Administrative mandate (Code Civ. Proc., § 1094.5)
 - c. Prohibition (Code Civ. Proc., § 1102)
 - d. Other (*describe*):
12. Other action (*describe*):

B. This appeal is entitled to calendar preference/priority on appeal (*cite authority*):

APPELLATE CASE TITLE:	APPELLATE COURT CASE NUMBER:
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NOTICE TO PARTIES: A copy of this must be served on the other party or parties to this appeal. If served by mail or personal delivery, A PARTY TO THE APPEAL MAY NOT PERFORM THE MAILING OR DELIVERY HIMSELF OR HERSELF. Electronic service is authorized only if ordered by the court or if the party served has agreed to accept electronic service. A person who is at least 18 years old must complete the information below and serve all pages of this document. When all pages of this document have been completed and a copy served, the original may then be filed with the court.

PROOF OF SERVICE

Mail Personal Service Electronic Service

1. At the time of service I was at least 18 years of age.
2. My residence or business address is (*specify*):

3. I mailed, personally delivered, or electronically served a copy of the *Civil Case Information Statement (Appellate)* as follows (*complete a, b, or c*):
 - a. **Mail.** I am a resident of or employed in the county where the mailing occurred and am not a party to this legal action.
 - (1) I enclosed a copy in an envelope **and**
 - (a) deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
 - (b) **placed** the envelope for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
 - (2) The envelope was addressed and mailed as follows:
 - (a) Name of person served:
 - (b) Address on envelope:

 - (c) Date of mailing:
 - (d) Place of mailing (*city and state*):
 - b. **Personal delivery.** I am not a party to this legal action. I personally delivered a copy as follows:
 - (1) Name of person served:
 - (2) Address where delivered:

 - (3) Date delivered:
 - (4) Time delivered:
 - c. **Electronic service.** My electronic service address is (*specify*):
 I electronically served a copy as follows:
 - (1) Name of person served:
 - (2) Electronic service address of person served:
 - (3) On (*date*):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)



(SIGNATURE OF DECLARANT)

TO BE FILED IN THE SUPERIOR COURT

APP-005

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.:
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	COURT OF APPEAL CASE NUMBER:
ABANDONMENT OF APPEAL (UNLIMITED CIVIL CASE)	
SUPERIOR COURT CASE NUMBER:	

The undersigned appellant hereby abandons the appeal filed on (date): _____ in the above-entitled action.

Date:

_____ (TYPE OR PRINT NAME)  _____ (SIGNATURE OF APPELLANT OR ATTORNEY)

NOTE: File this form in the superior court if the record has not yet been filed in the Court of Appeal. If the record has already been filed in the Court of Appeal, you cannot use this form; you must file a request for dismissal in the Court of Appeal. You can use form APP-007 to file a request for dismissal in the Court of Appeal. A copy of this form must also be served on the other party or parties to this appeal, and proof of service filed with this form. You may use an applicable Judicial Council form (such as APP-009 or APP-009E) for the proof of service. When this document has been completed and a copy served, the original may then be filed with the court with proof of service.

APPELLANT: RESPONDENT:	COURT OF APPEAL CASE NUMBER:
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8. The reasons that I need an extension to file this brief are stated

below

on a separate declaration. You may use *Attached Declaration (Court of Appeal)* (form APP-031) for this purpose.

(Please specify; see Cal. Rules of Court, rule 8.63, for factors used in determining whether to grant extensions):

9. For attorneys filing application on behalf of client, I certify that I have delivered a copy of this application to my client (Cal. Rules of Court, rule 8.60).

10. A proof of service of this application on all other parties is attached (see Cal. Rules of Court, rule 8.50). You may use *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) for this purpose.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

 (TYPE OR PRINT NAME)



 (SIGNATURE OF PARTY OR ATTORNEY)

Order on Application is below on a separate document

ORDER

EXTENSION OF TIME IS:

Granted to (date): _____

Denied

Date: _____



 (SIGNATURE OF PRESIDING JUSTICE)

TO BE FILED IN THE COURT OF APPEAL

APP-007

COURT OF APPEAL		APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:		SUPERIOR COURT CASE NUMBER:	
NAME:			
FIRM NAME:			
STREET ADDRESS:			
CITY:	STATE:	ZIP CODE:	
TELEPHONE NO.:	FAX NO.:		
E-MAIL ADDRESS:			
ATTORNEY FOR (name):			
APPELLANT:			
RESPONDENT:			
REQUEST FOR DISMISSAL OF APPEAL (CIVIL CASE)			

The undersigned appellant hereby requests that the appeal filed on (date): _____ in the above entitled action be dismissed.

Date:

(TYPE OR PRINT NAME)

▲ _____
(SIGNATURE OF APPELLANT OR ATTORNEY)

NOTE: File this form in the Court of Appeal if the record on appeal has already been filed in the Court of Appeal. If the record has not yet been filed in the Court of Appeal, you cannot use this form; you must file an *Abandonment of Appeal (Unlimited Civil Case)* (form APP-005) in the superior court. A copy of this form must also be served on the other party or parties to this appeal, and proof of service filed with this form. You may use an applicable Judicial Council form (such as APP-009 or APP-009E) for the proof of service. When this document has been completed and a copy served, the original may then be filed with the court with proof of service.

TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL	APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):		SUPERIOR COURT CASE NUMBER:
APPELLANT/ PETITIONER: RESPONDENT/ REAL PARTY IN INTEREST:		
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS		
(Check one): <input type="checkbox"/> INITIAL CERTIFICATE <input type="checkbox"/> SUPPLEMENTAL CERTIFICATE		
Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.		

1. This form is being submitted on behalf of the following party (name):
2. a. There are no interested entities or persons that must be listed in this certificate under rule 8.208.
- b. Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
(1)	
(2)	
(3)	
(4)	
(5)	

Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date:

(TYPE OR PRINT NAME)

▶

(SIGNATURE OF APPELLANT OR ATTORNEY)

PROOF OF SERVICE (Court of Appeal) <input type="checkbox"/> Mail <input type="checkbox"/> Personal Service	
Notice: This form may be used to provide proof that a document has been served in a proceeding in the Court of Appeal. Please read <i>Information Sheet for Proof of Service (Court of Appeal)</i> (form APP-009-INFO) before completing this form. Do not use this form for proof of electronic service. See form APP-009E.	
Case Name: Court of Appeal Case Number: Superior Court Case Number:	

1. At the time of service I was at least 18 years of age and **not a party to this legal action**.
2. My residence business address is (*specify*):
3. I mailed or personally delivered a copy of the following document as indicated below (*fill in the name of the document you mailed or delivered and complete either a or b*):
 - a. **Mail**. I mailed a copy of the document identified above as follows:
 - (1) I enclosed a copy of the document identified above in an envelope or envelopes **and**
 - (a) **deposited** the sealed envelope(s) with the U.S. Postal Service, with the postage fully prepaid.
 - (b) **placed** the envelope(s) for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope(s) with postage fully prepaid.
 - (2) Date mailed:
 - (3) The envelope was or envelopes were addressed as follows:
 - (a) Person served:
 - (i) Name:
 - (ii) Address:
 - (b) Person served:
 - (i) Name:
 - (ii) Address:
 - (c) Person served:
 - (i) Name:
 - (ii) Address:
- Additional persons served are listed on the attached page (*write "APP-009, Item 3a" at the top of the page*).
- (4) I am a resident of or employed in the county where the mailing occurred. The document was mailed from (city and state):

Case Name:	Court of Appeal Case Number:
	Superior Court Case Number:

3. b. **Personal delivery.** I personally delivered a copy of the document identified above as follows:

(1) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

(2) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

(3) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

Names and addresses of additional persons served and delivery dates and times are listed on the attached page (*write "APP-009, Item 3b" at the top of the page*).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)



(SIGNATURE OF PERSON COMPLETING THIS FORM)

PROOF OF ELECTRONIC SERVICE (Court of Appeal)	
Notice: This form may be used to provide proof that a document has been served in a proceeding in the Court of Appeal. Please read <i>Information Sheet for Proof of Service (Court of Appeal)</i> (form APP-009-INFO) before completing this form.	
Case Name: Court of Appeal Case Number: Superior Court Case Number:	

1. At the time of service I was at least 18 years of age.
2. a. My residence business address is (*specify*):

b. My electronic service address is (*specify*):
3. I electronically served the following documents (*exact titles*):
4. I electronically served the documents listed in 3. as follows:
 - a. Name of person served:
On behalf of (*name or names of parties represented, if person served is an attorney*):
 - b. Electronic service address of person served:
 - c. On (*date*): The documents listed in 3. were served electronically on the persons and in the manner described in an attachment (*write "APP-009E, Item 4" at the top of the page*).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)

 _____
(SIGNATURE OF PERSON COMPLETING THIS FORM)

INFORMATION SHEET FOR PROOF OF SERVICE (COURT OF APPEAL)

GENERAL INFORMATION ABOUT SERVICE AND PROOF OF SERVICE

This information sheet provides instructions for completing *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E). This information sheet is not part of the proof of service and does not need to be copied, served, or filed.

Rule 8.25 of the California Rules of Court provides that before filing any document in court in a case in the Court of Appeal, a party must serve, by any method permitted by the Code of Civil Procedure, one copy of the document on the attorney for each party separately represented, on each unrepresented party, and on any other person or entity when required by statute or rule. Other rules specifically require that certain documents be served, including the notice of appeal and notice designating the record on appeal in civil appeals and briefs in both civil and criminal appeals.

To “serve” a document on a person means to have that document delivered to the person. The general requirements concerning service are set out in Code of Civil Procedure sections 1010.6–1013a. There are three main ways to serve documents: (1) by mail, (2) by personal delivery, or (3) by electronic service. Regardless of what method of service is used, the Code of Civil Procedure provides that a document in a court case can only be served by a person who is over 18 years of age. Service by mail or personal delivery must be by someone who is not a party in the case; electronic service may be performed directly by a party. Electronic service may be by electronic transmission, transmitting a document to the electronic service address of a person, or by electronic notification, sending a message to the electronic service address specifying the exact name of the document served and providing a hyperlink at which the served document may be viewed and downloaded.

If you are a party to the case and wish to serve documents by mail or personal delivery, you must therefore have someone else who is over 18 and who is not a party to the case serve any documents in your case. You will need to give the person doing the serving (the server) the names and addresses of all those who must be served. You will also need to give the server one copy of each document that needs to be served for each person or entity that is being served.

If you are serving documents electronically, you can do this yourself or have another person over 18 do it for you. The person doing the serving (the server) will need the names and electronic service addresses of all those who must be served, and the document to be served in a form that allows it to be electronically transmitted or made available by hyperlink.

Rule 8.25 also requires the party filing a document in the court to attach to the document presented for filing a proof of service showing the required service. *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) may be used to provide this required proof of service in any proceeding in the Court of Appeal. The server should follow the instructions below for completing the *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E). If another person is serving the documents for you—as is required if the document will be served by mail or personal delivery—tell the server to give you the original form when it is completed. You will need to attach this original proof of service to the document you are filing.

INSTRUCTIONS FOR THE SERVER (THE PERSON WHO IS SERVING THE DOCUMENTS) IF SERVING BY MAIL OR PERSONAL DELIVERY

If you are serving a document for a party in a court case, it is your responsibility to prepare the proof of service. You can use *Proof of Service (Court of Appeal)* (form APP-009) to prepare this proof of service in any case in the Court of Appeal. The proof of service should be printed or typed. If you have Internet access, a fillable version of form APP-009 is available at www.courts.ca.gov/forms. You can fill out most of the form before you serve the document, but you should sign and date the form only after you have finished serving the document.

Complete the top section of *Proof of Service (Court of Appeal)* (form APP-009) as follows:

1. *First box, left side:* Check whether the document is being served by mail or by personal delivery.
2. *Third box, left side:* Print the name of the case in which the document is being filed, the Court of Appeal case number, and the superior court case number. Use the same case name and numbers as are on the top of the document that you are serving.
3. *Box, top of form, right side:* Leave this box blank for the court's use.

Complete items 1–3 as follows:

1. You are stating that you are over the age of 18 and that you are not a party to this action.
2. Check one of the boxes and provide your home or business address.

3. Fill in the name of the document that you are serving.
- a. If you are serving the document by mail, check box a. and BEFORE YOU SEAL AND MAIL THE ENVELOPE, fill in the following information:
- (1) Check box (1)(a) if you will personally deposit the document with the U.S. Postal Service such as at a U.S. Postal Service Office or U.S. Postal Service mailbox; Check box (1)(b) if you will put the document in the mail at your place of business.
 - (2) Provide the date the documents are being mailed.
 - (3) Provide the name and address of each person to whom you are mailing the document. If you need more space to list additional names and addresses, check the box after item (3)(c) and attach a page listing them. At the top of the page, write "APP-009, Item 3a."
 - (4) You are stating that you live or work in the county in which the document is being mailed. Provide the city and state from which the document is being mailed.

Once you have finished filling out these parts of the form, make one copy of *Proof of Service (Court of Appeal)* (form APP-009) with this information filled in for each person you are serving by mail and put this copy in the envelope with the document you are serving. Seal the envelope and mail the document as you have indicated on the proof of service.

- b. If you personally delivered the document, check box 3b. For a party represented by an attorney, delivery needs to be made by giving the document directly to the party's attorney or by leaving the document in an envelope or package clearly labeled to identify the attorney being served with a receptionist at the attorney's office or an individual in charge of the office. For a party who is not represented by an attorney, delivery needs to be made by giving the document directly to the party or by leaving the document at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening. Under b, for each person to whom you delivered the document, you need to provide:
- (1) The name of the person;
 - (2) The address at which you delivered the document;
 - (3) The date on which you delivered the document; and
 - (4) The time at which you delivered the document.

If you need more space to list additional names, addresses, and delivery dates and times, check the box under item 3b and attach a page listing this information. At the top of the page, write "APP-009, Item 3b."

At the bottom of the form, print your name, sign the form, and fill in the date on which you signed the form. **By signing, you are stating under penalty of perjury that all the information you have provided on *Proof of Service (Court of Appeal)* is true and correct.**

Give the original completed *Proof of Service* to the party for whom you served the document.

INSTRUCTIONS FOR THE SERVER (THE PERSON WHO IS SERVING THE DOCUMENTS) IF SERVING ELECTRONICALLY

If you are serving a document for a party in a court case, it is your responsibility to prepare the proof of service. If you are serving a document electronically, you can use *Proof of Electronic Service (Court of Appeal)* (form APP-009E) to prepare this proof of service in any case in the Court of Appeal. The proof of service should be printed or typed. A fillable version of form APP-009E is available at www.courts.ca.gov/forms. You can fill out most of the form before you serve the document, but you should sign and date the form only after you have finished serving the document.

Complete the top section of *Proof of Service (Court of Appeal)* (form APP-009E) as follows:

1. *Third box, left side:* Print the name of the case in which the document is being filed, the Court of Appeal case number, and the superior court case number. Use the same case name and numbers as are on the top of the document that you are serving.
2. *Box, top of form, right side:* Leave this box blank for the court's use.

Complete items 1–4 as follows:

1. You are stating that you are over the age of 18.
2. a. Check one of the boxes and provide your home or business address.
- b. Provide your electronic service address. This is the address at which you have agreed to accept electronic service.

Continued on the reverse

3. Fill in the names of the documents that you are serving.
4. Fill in the information for the person to whom you are sending the document. If you are serving more than one person, check the box after item (4)(c) and attach a page listing the persons served, with the electronic service address and date and time of service for each person served. At the top of the page, write "APP-009E, Item 4."
 - a. Provide the name of the person being served. If the person being served is an attorney, also fill in the name or name of the parties represented.
 - b. Provide the electronic service address of the person to whom you are sending the document.
 - c. Provide the date on which you transmitted the document.

After you have filled in the information in items 1–4, create an electronic copy of the *Proof of Electronic Service (Court of Appeal)* (form APP-009E). Transmit the filled in form with the document you are serving to each person served.

At the bottom of the form, print your name, sign the form, and fill in the date on which you signed the form. **By signing, you are stating under penalty of perjury that all the information you have provided on *Proof of Electronic Service (Court of Appeal)* is true and correct.**

If you are not the party for whom the documents are served, give the original completed Proof of Service to the party for whom you served the document.

ATTORNEY (name, State Bar number, and address): STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
RESPONDENT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)	SUPERIOR COURT CASE NUMBER:
Re: Appeal filed on (date):	COURT OF APPEAL CASE NUMBER (if known):
Notice: Please read Judicial Council form APP-001 before completing this form. This form must be filed in the superior court, not in the Court of Appeal.	

1. RECORD OF THE DOCUMENTS FILED IN THE SUPERIOR COURT

The appellant has elected to use a clerk's transcript under rule 8.122.

- a. **Additional documents.** (If you want any documents from the superior court proceedings in addition to the documents designated by the appellant to be included in the clerk's transcript, you must identify those documents here.)

In addition to the documents designated by the appellant, I request that the clerk include in the transcript the following documents from the superior court proceedings. (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
(1)		
(2)		
(3)		

See additional pages.

- b. **Additional exhibits.** (If you want any exhibits from the superior court proceedings in addition to those designated by the appellant to be included in the clerk's transcript, you must identify these exhibits here.)

In addition to the exhibits designated by the appellant, 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)			

See additional pages.

CASE NAME:	SUPERIOR COURT CASE NUMBER:
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1. c. Copy of clerk's transcript. I request a copy of the clerk's transcript. *(check (1) or (2).)*
- (1) I will pay the superior court clerk for this transcript when I receive the clerk's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, I will not receive a copy.
- (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.)*

2. RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT

The appellant has elected to use a reporter's transcript under rule 8.130.

- a. **Designation of additional proceedings.** *(If you want any oral proceedings in addition to the proceedings designated by the appellant to be included in the reporter's transcript, you must identify those proceedings here.)*
- (1) In addition to the proceedings designated by the appellant, 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?
(a)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(b)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(c)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(d)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(e)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(f)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(g)						<input type="checkbox"/> Yes <input type="checkbox"/> No

See additional pages.

CASE NAME:	SUPERIOR COURT CASE NUMBER:
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2. a. (2) **Deposit for additional proceedings**

I have (*check a, b, c, or d*):

- (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(b)(3)(B).
- (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).

b. **Copy of reporter's transcript.**

- (1) I request a copy of the reporter's transcript.
- (2) I request that the reporters provide (*check (a), (b), or (c)*):
- (a) My copy of the reporter's transcript in paper format.
- (b) My copy of the reporter's transcript in computer-readable format.
- (c) My copy of the reporter's transcript in paper format and a second copy of the reporter's transcript in computer-readable format.

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

Date:

(TYPE OR PRINT NAME)



(SIGNATURE OF APPELLANT OR ATTORNEY)

ATTORNEY OR PARTY WITHOUT ATTORNEY: NAME: FIRM NAME: STREET ADDRESS: CITY: TELEPHONE NO.: E-MAIL ADDRESS: ATTORNEY FOR (<i>name</i>):	STATE BAR NO.: STATE: ZIP CODE: FAX NO.:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:		
RESPONDENT'S NOTICE ELECTING TO USE AN APPENDIX (UNLIMITED CIVIL CASE)		SUPERIOR COURT CASE NUMBER:
RE: Appeal filed on (<i>date</i>):		COURT OF APPEAL CASE NUMBER (<i>if known</i>):
Notice: Please read Judicial Council form APP-001 before completing this form. This form must be filed within 10 days after the notice of appeal is filed. It must be filed in the superior court, not in the Court of Appeal.		

The appellant in this case has not been granted a waiver of the fees for preparing a clerk's transcript. I elect under rule 8.124(a) to use an appendix in lieu of a clerk's transcript.

Date: _____

(TYPE OR PRINT NAME)



(SIGNATURE OF RESPONDENT OR ATTORNEY)

TO BE FILED IN THE COURT OF APPEAL

APP-012

COURT OF APPEAL	APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:		SUPERIOR COURT CASE NUMBER:
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
E-MAIL ADDRESS:		
ATTORNEY FOR (name):		
APPELLANT:		
RESPONDENT:		
STIPULATION FOR EXTENSION OF TIME TO FILE BRIEF (CIVIL CASE)		

Notice: Please read Judicial Council form APP-001 before completing this form. Before a brief is due, parties may extend the time to file the brief up to a maximum of 60 days by filing one or more stipulations. However, parties may not stipulate to extend the time to file a brief if the court has previously granted an application to extend the time to file the brief. See California Rules of Court, rule 8.212(b).

1. All parties to this appeal stipulate to extend the time under Cal. Rules of Court, rule 8.212(a), to file the following brief (*check one*):

- appellant's opening brief (AOB)
- respondent's brief (RB)
- combined respondent's brief (RB) and appellant's opening brief (AOB) (see rule 8.216)
- combined appellant's reply brief (ARB) and respondent's brief (RB) (see rule 8.216)
- appellant's reply brief (ARB)

2. This brief is now due on (date):

3. The parties agree to extend the due date by (number): _____ days, so that the new date is (date):

4. The time to file this brief (*check one*):

- has not been extended by stipulations previously.
- has been extended previously by one or more stipulations totaling (number) _____ days.

The combined extensions to file this brief by this stipulation and any previous stipulation do not exceed 60 days. (See rule 1.10 regarding the computation of time.)

5. For attorneys filing on behalf of a client, I certify that I have delivered a copy of this stipulation to my client. (See rule 8.60.)

6. A proof of service of this stipulation on all parties is attached (see rule 8.50). You may use *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) for this purpose.

Date:

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY)

(IF SIGNED BY AN ATTORNEY, NAME OF PARTY REPRESENTED)

APPELLANT: RESPONDENT:	COURT OF APPEAL CASE NUMBER:
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Date: _____

_____ (TYPE OR PRINT NAME)

_____ (IF SIGNED BY AN ATTORNEY, NAME OF PARTY REPRESENTED)

_____ (SIGNATURE OF PARTY OR ATTORNEY)

Date: _____

_____ (TYPE OR PRINT NAME)

_____ (IF SIGNED BY AN ATTORNEY, NAME OF PARTY REPRESENTED)

_____ (SIGNATURE OF PARTY OR ATTORNEY)

Date: _____

_____ (TYPE OR PRINT NAME)

_____ (IF SIGNED BY AN ATTORNEY, NAME OF PARTY REPRESENTED)

_____ (SIGNATURE OF PARTY OR ATTORNEY)

APP-101-INFO Information on Appeal Procedures for Limited Civil Cases

GENERAL INFORMATION

1 What does this information sheet cover?

This information sheet tells you about appeals in limited civil cases. These are civil cases in which the amount of money claimed is \$25,000 or less.

If you are the party who is appealing (asking for the trial court's decision to be reviewed), you are called the APPELLANT, and you should read Information for the Appellant, starting on page 2. If you received notice that another party in your case is appealing, you are called the RESPONDENT and you should read Information for the Respondent, starting on page 11.

This information sheet does not cover everything you may need to know about appeals in limited civil cases. It is meant only to give you a general idea of the appeal process. To learn more, you should read rules 8.800–8.843 and 8.880–8.891 of the California Rules of Court, which set out the procedures for limited civil appeals. You can get these rules at any courthouse or county law library or online at www.courts.ca.gov/rules.

2 What is an appeal?

An appeal is a request to a higher court to review a decision made by a judge or jury in a lower court. **In a limited civil case, the court hearing the appeal is the appellate division of the superior court and the lower court—called the “trial court” in this information sheet—is the superior court.**

It is important to understand that **an appeal is NOT a new trial**. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits. The appellate division's job is to review a record of what happened in the trial court and the trial court's decision to see if certain kinds of legal errors were made:

For information about appeal procedures in other kinds of cases, see:

- *Information on Appeal Procedures for Unlimited Civil Cases* (form APP-001)
- *Information on Appeal Procedures for Infractions* (form CR-141-INFO)
- *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO)

You can get these forms at any courthouse or county law library or online at www.courts.ca.gov/forms.

- **Prejudicial error:** The appellant (the party who is appealing) may ask the appellate division to determine if an error was made about either the law or court procedures in the case that caused substantial harm to the appellant (this is called “prejudicial error”).

Prejudicial error can include things like errors made by the judge about the law, errors or misconduct by the lawyers, incorrect instructions given to the jury, and misconduct by the jury that harmed the appellant. When it conducts its review, the appellate division presumes that the judgment, order, or other decision being appealed is correct. It is the responsibility of the appellant to show the appellate division that an error was made and that the error was harmful.

- **No substantial evidence:** The appellant may also ask the appellate division to determine if there was substantial evidence supporting the judgment, order, or other decision being appealed. When it conducts its review, the appellate division only looks to see if there was evidence that reasonably supports the decision. The appellate division generally will not reconsider the jury's or trial court's conclusion about which side had more or stronger evidence or whether witnesses were telling the truth or lying.

The appellate division generally will not overturn the judgment, order, or other decision being appealed unless the record clearly shows that one of these legal errors was made.



APP-101-INFO**Information on Appeal Procedures for Limited Civil Cases****3 Do I need a lawyer to represent me in an appeal?**

You do not *have* to have a lawyer; if you are an individual (rather than a corporation, for example), you are allowed to represent yourself in an appeal in a limited civil case. But appeals can be complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about the appeal procedures, you should talk to a lawyer.

If you decide not to use a lawyer, you must put your address, telephone number, fax number (if available), and e-mail address (if available) on the first page of every document you file with the court and let the court know if this contact information changes so that the court can contact you if needed.

4 Where can I find a lawyer to help me with my appeal?

You have to hire your own attorney if you want one. You can get information about finding an attorney on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-lowcosthelp in the Getting Started section.

INFORMATION FOR THE APPELLANT

This part of the information sheet is written for the appellant—the party who is appealing the trial court’s decision. It explains some of the rules and procedures relating to appealing a decision in a limited civil case. The information may also be helpful to the respondent. Additional information for respondents can be found starting on page 11 of this information sheet.

5 Who can appeal?

Only a party in the trial court case can appeal a decision in that case. You may not appeal on behalf of a friend, a spouse, a child, or another relative unless you are a legally appointed representative of that person (such as the person’s guardian or conservator).

6 Can I appeal any decision the trial court made?

No. Generally, you can only appeal the final judgment—the decision at the end that decides the whole case. Other rulings made by the trial court before the final judgment generally cannot be separately appealed but can be reviewed only later as part of an appeal of the final judgment. There are a few exceptions to this general rule. Code of Civil Procedure section 904.2 lists a few types of orders in a limited civil case that can be appealed right away. These include orders that:

- Change or refuse to change the place of trial (venue)
- Grant a motion to quash service of summons or grant a motion to stay or dismiss the action on the ground of inconvenient forum
- Grant a new trial or deny a motion for judgment notwithstanding the verdict
- Discharge or refuse to discharge an attachment or grant a right to attach
- Grant or dissolve an injunction or refuse to grant or dissolve an injunction
- Appoint a receiver
- Are made after final judgment in the case

(You can get a copy of Code of Civil Procedure section 904.2 at <http://leginfo.legislature.ca.gov/faces/codes.xhtml>.)

7 How do I start my appeal?

First, you must serve and file a notice of appeal. The notice of appeal tells the other party or parties in the case and the trial court that you are appealing the trial court’s decision. You may use *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (form APP-102) to prepare a notice of appeal in a limited civil case. You can get form APP-102 at any courthouse or county law library or online at www.courts.ca.gov/forms.

APP-101-INFO Information on Appeal Procedures for Limited Civil Cases

8 How do I “serve and file” the notice of appeal?

“Serve and file” means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (“serve”) the notice of appeal to the other party or parties in the way required by law. If the notice of appeal is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the notice of appeal has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the notice of appeal, who was served with the notice of appeal, how the notice of appeal was served (by mail, in person, or electronically), and the date the notice of appeal was served.
- Bring or mail the original notice of appeal and the proof of service to the trial court that issued the judgment, order, or other decision you are appealing. You should make a copy of the notice of appeal you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the notice of appeal to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-serving.htm.

9 Is there a deadline to file my notice of appeal?

Yes. In a limited civil case, except in the very limited circumstances listed in rule 8.823, you must file your notice of appeal within **30 days** after the trial court clerk or a party serves either a document called a “Notice of Entry” of the trial court judgment or a file-stamped copy of the judgment or within 90 days after entry of the judgment, whichever is earlier.

This deadline for filing the notice of appeal cannot be extended. If your notice of appeal is late, the appellate division will not be able to consider your appeal.

10 Do I have to pay to file an appeal?

Yes. Unless the court waives this fee, you must pay a fee for filing your notice of appeal. You can ask the clerk of the court where you are filing the notice of appeal what the fee is or look up the fee for an appeal in a limited civil case in the current Statewide Civil Fee Schedule linked at www.courts.ca.gov/7646.htm (note that the “Appeal and Writ Related Fees” section is near the end of this schedule and that there are different fees for limited civil cases depending on the amount demanded in the case). If you cannot afford to pay the fee, you can ask the court to waive it. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at www.courts.ca.gov/forms. You can file this application either before you file your notice of appeal or with your notice of appeal. The court will review this application to determine if you are eligible for a fee waiver.

11 If I file a notice of appeal, do I still have to do what the trial court ordered me to do?

Filing a notice of appeal does NOT automatically postpone most judgments or orders, such as those requiring you to pay another party money or to deliver property to another party (see Code of Civil Procedure sections 917.1–917.9 and 1176; you can get a copy of these laws at www.leginfo.ca.gov/calaw.html). These kinds of judgments or orders will be postponed, or “stayed,” only if you request a stay and the court grants your request. In most cases, other than unlawful detainer cases in which the trial court’s judgment gives a party possession of the property, if the trial court denies your request for a stay, you can apply to the appellate division for a stay. If you do not get a stay and you do not do what the trial court ordered you to do, court proceedings to collect the money or otherwise enforce the judgment or order may be started against you.

APP-101-INFO**Information on Appeal Procedures for Limited Civil Cases****12 What do I need to do after I file my notice of appeal?**

You must ask the clerk of the trial court to prepare and send the official record of what happened in the trial court in your case to the appellate division.

Since the appellate division judges were not there to see what happened in the trial court, an official record of what happened must be prepared and sent to the appellate division for its review. You can use *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) to ask the trial court to prepare this record. You can get form APP-103 at any courthouse or county law library or online at www.courts.ca.gov/forms.

You must serve and file this notice designating the record on appeal within 10 days after you file your notice of appeal. “Serving and filing” this notice means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (“serve”) the notice to the other party or parties in the way required by law. If the notice is mailed or personally delivered, it must be by someone who is not a party to the case—not you.
- Make a record that the notice has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the notice, who was served with the notice, how the notice was served (by mail, in person, or electronically), and the date the notice was served.
- Bring or mail the original notice and the proof of service to the trial court that issued the judgment, order, or other decision you are appealing. You should make a copy of the notice you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the notice to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California

Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-serving.htm.

13 What is the official record of the trial court proceedings?

There are three parts of the official record:

- A record of the documents filed in the trial court (other than exhibits)
- A record of what was said in the trial court (this is called the “oral proceedings”)
- Exhibits that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court

Read below for more information about these parts of the record.

a. Record of the documents filed in the trial court

The first part of the official record of the trial court proceedings is a record of the documents that were filed in the trial court. There are three ways in which a record of the documents filed in the trial court can be prepared for the appellate division:

- (1) A clerk’s transcript
- (2) The original trial court file or
- (3) An agreed statement

Read below for more information about these options.

(1) Clerk’s transcript

Description: A clerk’s transcript is a record of the documents filed in the trial court prepared by the clerk of the trial court.

Contents: Certain documents, such as the notice of appeal and the trial court judgment or order being appealed, must be included in the clerk’s transcript. These documents are listed in rule 8.832(a) of the California Rules of Court and in *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103).

APP-101-INFO**Information on Appeal Procedures for Limited Civil Cases**

If you want any documents other than those listed in rule 8.832(a) to be included in the clerk's transcript, you must tell the trial court in your notice designating the record on appeal. You can use form APP-103 to do this. You will need to identify each document you want included in the clerk's transcript by its title and filing date or, if you do not know the filing date, the date the document was signed.

If you—the appellant—request a clerk's transcript, the respondent also has the right to ask the clerk to include additional documents in the clerk's transcript. If this happens, you will be served with a notice saying what other documents the respondent wants included in the clerk's transcript.

Cost: The appellant is responsible for paying for preparing a clerk's transcript. The trial court clerk will send you a bill for the cost of preparing an original and one copy of the clerk's transcript. You must do one of the following things within 10 days after the clerk sends this bill or the appellate division may dismiss your appeal:

- Pay the bill.
- Ask the court to waive the cost because you cannot afford to pay. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at www.courts.ca.gov/forms. The court will review this application to determine if you are eligible for a fee waiver.
- Give the court a copy of a court order showing that your fees in this case have already been waived by the court.

Completion and delivery: After the cost of preparing the clerk's transcript has been paid or waived, the trial court clerk will compile the requested documents into a transcript format and, when the record on appeal is complete, will forward the original clerk's transcript to the appellate division for filing. The trial court clerk will send you a copy of the transcript. If the

respondent bought a copy, the clerk will also send a copy of the transcript to the respondent.

(2) Trial court file

When available: If the court has a local rule allowing this, the clerk can send the appellate division the original trial court file instead of a clerk's transcript (see rule 8.833 of the California Rules of Court).

Cost: As with a clerk's transcript, the appellant is responsible for paying for preparing the trial court file. The trial court clerk will send you a bill for this preparation cost. You must do one of the following things within 10 days after the clerk sends this bill or the appellate division may dismiss your appeal:

- Pay the bill.
- Ask the court to waive the cost because you cannot afford to pay. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at www.courts.ca.gov/forms. The court will review this application to determine if you are eligible for a fee waiver.
- Give the court a copy of a court order showing that your fees in this case have already been waived by the court.

Completion and delivery: After the cost of preparing the trial court file has been paid or waived and the record on appeal is complete, the trial court clerk will send the file and a list of the documents in the file to the appellate division. The trial court clerk will also send a copy of the list of documents to the appellant and respondent so that you can put your own files of documents from the trial court in the correct order.

(3) Agreed statement

Description: An agreed statement is a summary of the trial court proceedings agreed to by the parties (see rule 8.836 of the California Rules of Court).

APP-101-INFO**Information on Appeal Procedures for Limited Civil Cases**

When available: If you and the respondent agree to this, you can use an agreed statement instead of a clerk’s transcript. To do this, you must attach to your agreed statement all of the documents that are required to be included in a clerk’s transcript. If you choose this alternative, you must file with your notice designating the record on appeal either the agreed statement or a written agreement with the respondent (a “stipulation”), stating that you are trying to agree on a statement. Within the next 30 days, you must then file the agreed statement or tell the court that you were unable to agree on a statement and file a new notice designating the record.

b. Record of what was said in the trial court (the “oral proceedings”)

The second part of the official record of the trial court proceedings is a record of what was said in the trial court (this is called a record of the “oral proceedings”). You do not *have* to send the appellate division a record of the oral proceedings. But if you want to raise any issue in your appeal that would require the appellate division to consider what was said in the trial court, the appellate division will need a record of those oral proceedings. For example, if you are claiming that there was not substantial evidence supporting the judgment, order, or other decision you are appealing, the appellate division will need a record of the oral proceedings.

You are responsible for deciding how the record of the oral proceedings will be provided and, depending on what option you select and your circumstances, you may also be responsible for paying for preparing this record or for preparing an initial draft of the record. If you do not take care of these responsibilities, a record of the oral proceedings in the trial court will not be prepared and sent to the appellate division. **If the appellate division does not receive this record, it will not be able to review any issues that are based on what was said in the trial court and it may dismiss your appeal.**

In a limited civil case, you can use *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) to tell the court whether you want a record of the oral proceedings and, if so, the form of the record that you want to use. You can get form APP-103 at any

courthouse or county law library or online at www.courts.ca.gov/forms.

There are four ways in which a record of the oral proceedings can be prepared for the appellate division:

- (1) If you or the other party arranged to have a court reporter there during the trial court proceedings, the reporter can prepare a record, called a “*reporter’s transcript*.”
- (2) If the proceedings were officially electronically recorded, the trial court can have a transcript prepared from that recording or, if the court has a local rule permitting this and you and the other party agree (“stipulate”) to this, you can use the *official electronic recording* itself instead of a transcript.
- (3) You can use an *agreed statement*.
- (4) You can use a *statement on appeal*.

Read below for more information about these options.

(1) Reporter’s transcript

Description: A reporter’s transcript is a written record (sometimes called a “verbatim” record) of the oral proceedings in the trial court prepared by a court reporter. Rule 8.834 of the California Rules of Court establishes the requirements relating to reporter’s transcripts.

When available: If a court reporter was there in the trial court and made a record of the oral proceedings, you can choose (“elect”) to have the court reporter prepare a reporter’s transcript for the appellate division. In most limited civil cases, however, a court reporter will not have been there unless you or another party in your case made specific arrangements to have a court reporter there. Check with the court to see if a court reporter made a record of the oral proceedings in your case before choosing this option.

Contents: If you elect to use a reporter’s transcript, you must identify by date (this is called “designating”) what proceedings you want to be included in the reporter’s transcript. You can use

APP-101-INFO**Information on Appeal Procedures for Limited Civil Cases**

the same form you used to tell the court you wanted to use a reporter's transcript—*Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103)—to do this.

If you elect to use a reporter's transcript, the respondent also has the right to designate additional proceedings to be included in the reporter's transcript. If you elect to proceed without a reporter's transcript, however, the respondent may not designate a reporter's transcript without first getting an order from the appellate division.

Cost: The appellant is responsible for paying for preparing a reporter's transcript. The trial court clerk or the court reporter will notify you of the cost of preparing an original and one copy of the reporter's transcript. You must deposit payment for this cost (and a fee for the trial court) or one of the substitutes allowed by rule 8.834 with the trial court clerk within 10 days after this notice is sent. (See rule 8.834 for more information about this deposit and the permissible substitutes, such as a waiver of this deposit signed by the court reporter.)

Unlike the fee for filing the notice of appeal and the costs for preparing a clerk's transcript, the court cannot waive the fee for preparing a reporter's transcript. A special fund, called the Transcript Reimbursement Fund, may be able to help pay for the transcript. You can get information about this fund at: www.courtreportersboard.ca.gov/consumers/index.shtml#rtf. If you are unable to pay the cost of a reporter's transcript, a record of the oral proceedings can be prepared in other ways, by using an agreed statement or a statement on appeal, which are described below.

Completion and delivery: After the cost of preparing the reporter's transcript or a permissible substitute has been deposited, the court reporter will prepare the transcript and submit it to the trial court clerk. When the record is complete, the trial court clerk will submit the original transcript to the appellate division and send you a copy of the transcript. If the respondent has purchased it, a

copy of the reporter's transcript will also be mailed to the respondent.

(2) Official electronic recording or transcript

When available: In some limited civil cases, the trial court proceedings were officially recorded on approved electronic recording equipment. If your case was officially recorded, you can choose ("elect") to have a transcript prepared from the recording. Check with the trial court to see if the oral proceedings in your case were officially electronically recorded before you choose this option. If the court has a local rule permitting this and all the parties agree ("stipulate"), a copy of an official electronic recording itself can be used as the record, instead of preparing a transcript. If you choose this option, you must attach a copy of this agreement ("stipulation") to your notice designating the record on appeal.

Cost: The appellant is responsible for paying for preparing this transcript or making a copy of the official electronic recording. If you cannot afford to pay this cost, you can ask the court to waive it. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at www.courts.ca.gov/forms. The court will review this application to determine if you are eligible for a fee waiver.

Completion and delivery: After the estimated cost of the transcript or official electronic recording has been paid or waived, the clerk will have the transcript or copy of the recording prepared. When the transcript is completed or the copy of the official electronic recording is prepared and the rest of the record is complete, the clerk will send it to the appellate division.

(3) Agreed statement

Description: An agreed statement is a written summary of the trial court proceedings agreed to by all the parties.

When available: If the trial court proceedings were not recorded either by a court reporter or by official electronic recording equipment or if you

APP-101-INFO**Information on Appeal Procedures for Limited Civil Cases**

do not want to use one of these options, you can choose (“elect”) to use an agreed statement as the record of the oral proceedings (please note that it may take more of your time to prepare an agreed statement than to use either a reporter’s transcript or official electronic recording, if they are available).

Contents: An agreed statement must explain what the trial court case was about, describe why the appellate division is the right court to consider an appeal in this case (why the appellate division has “jurisdiction”), and describe the rulings of the trial court relating to the points to be raised on appeal.

The statement should include only those facts that you and the other parties think are needed to decide the appeal.

Preparation: If you elect to use this option, you must file the agreed statement with your notice designating the record on appeal or, if you and the other parties need more time to work on the statement, you can file a written agreement with the other parties (called a “stipulation”) stating that you are trying to agree on a statement. If you file this stipulation, within the next 30 days you must either file the agreed statement or tell the court that you and the other parties were unable to agree on a statement and file a new notice designating the record.

(4) Statement on appeal

Description: A statement on appeal is a summary of the trial court proceedings that is approved by the trial court judge who conducted those proceedings (the term “judge” includes commissioners and temporary judges).

When available: If the trial court proceedings were not recorded either by a court reporter or by official electronic recording equipment or if you do not want to use one of these options, you can choose (“elect”) to use a statement on appeal as the record of the oral proceedings (please note that it may take more of your time to prepare a statement on appeal than to use either a reporter’s transcript or official electronic recording, if they are available).

Contents: A statement on appeal must include:

- A statement of the points you (the appellant) are raising on appeal;
- A summary of the trial court’s rulings and judgment; and
- A summary of the testimony of each witness and other evidence that is relevant to the issues you are raising on appeal.

(See rule 8.837 of the California Rules of Court for more information about what must be included in a statement on appeal and the procedures for preparing a statement. You can get a copy of this rule at any courthouse or county law library or online at www.courts.ca.gov/rules.)

Preparing a proposed statement: If you elect to use a statement on appeal, you must prepare a proposed statement. If you are not represented by a lawyer, you must use *Proposed Statement on Appeal (Limited Civil Case)* (form APP-104) to prepare your proposed statement. You can get form APP-104 at any courthouse or county law library or online at www.courts.ca.gov/forms.

Serving and filing a proposed statement: You must serve and file the proposed statement with the trial court within 20 days after you file your notice designating the record. “Serve and file” means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (“serve”) the proposed statement to the respondent in the way required by law. If the proposed statement is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the proposed statement has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the proposed statement, who was served with the proposed statement, how the proposed statement was served (by mail, in person, or electronically), and the date the proposed statement was served.

APP-101-INFO**Information on Appeal Procedures for Limited Civil Cases**

- File the original proposed statement and the proof of service with the trial court. You should make a copy of the proposed statement you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the proposed statement to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-serving.htm.

Review and modifications: The respondent has 10 days from the date you serve your proposed statement to serve and file proposed changes (called “amendments”) to this statement. The trial court judge then reviews both your proposed statement and any proposed amendments filed by the respondent. The trial judge will either make or order you (the appellant) to make any corrections or modifications to the statement that are needed to make sure that the statement provides an accurate summary of the testimony and other evidence relevant to the issues you indicated you are raising on appeal.

Completion and certification: If the judge makes any corrections or modifications to the proposed statement, the corrected or modified statement will be sent to you and the respondent for your review. If the judge orders you to make any corrections or modifications to the proposed statement, you must serve and file the corrected or modified statement within the time ordered by the judge. If you or the respondent disagree with anything in the modified or corrected statement, you have 10 days from the date the modified or corrected statement is sent to you to serve and file objections to the statement. The judge then reviews any objections, makes or orders you to make any additional corrections to the statement, and certifies the statement as an accurate summary of the testimony and other evidence relevant to the issues you indicated you are raising on appeal.

Sending statement to the appellate division: Once the trial court judge certifies the statement on

appeal, the trial court clerk will send the statement to the appellate division along with any record of the documents filed in the trial court.

c. Exhibits

The third part of the official record of the trial court proceeding is the exhibits, such as photographs, documents, or other items that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court. Exhibits are considered part of the record on appeal, but the clerk will not include any exhibits in the clerk’s transcript unless you ask that they be included in your notice designating the record on appeal. *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103), includes a space for you to make this request.

You also can ask the trial court to send original exhibits to the appellate division at the time briefs are filed (see rule 8.843 for more information about this procedure and see below for information about briefs).

Sometimes, the trial court returns an exhibit to a party at the end of the trial. If the trial court returned an exhibit to you or another party and you or the other party ask for that exhibit to be included in the clerk’s transcript or sent to the appellate division, the party who has the exhibit must deliver that exhibit to the trial court clerk as soon as possible.

14 What happens after the official record has been prepared?

As soon as the record on appeal is complete, the clerk of the trial court will send it to the appellate division. When the appellate division receives the record, it will send you a notice telling you when you must file your brief in the appellate division.

15 What is a brief?

Description: A “brief” is a party’s written description of the facts in the case, the law that applies, and the party’s argument about the issues being appealed. If you are represented by a lawyer in your appeal, your lawyer will prepare your brief. If you are not represented by a

APP-101-INFO Information on Appeal Procedures for Limited Civil Cases

lawyer, you will have to prepare your brief yourself. You should read rules 8.882–8.884 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in limited civil appeals, including requirements for the format and length of these briefs. You can get copies of these rules at any courthouse or county law library or online at www.courts.ca.gov/rules.

Contents: If you are the appellant, your brief, called an “appellant’s opening brief,” must clearly explain what you believe are the legal errors made in the trial court. Your brief must refer to the exact places in the clerk’s transcript and the reporter’s transcript (or the other forms of the record you are using) that support your argument. Remember that an appeal is not a new trial. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits so do not include any new evidence in your brief.

Serving and filing: You must serve and file your brief in the appellate division by the deadline the court set in the notice it sent you, which is usually 30 days after the record is filed in the appellate division. “Serve and file” means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (“serve”) the brief to the other parties in the way required by law. If the brief is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the brief has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail, in person, or electronically), and the date the brief was served.
- File the original brief and the proof of service with the appellate division. You should make a copy of the brief you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-serving.htm.

You and the other parties can agree (stipulate) to extend the time for filing this brief by up to 30 days (see rule 8.882(b) for requirements for these agreements). You can also ask the court to extend the time for filing this brief if you can show good cause for an extension (see rule 8.811(b) for a list of the factors the court will consider in deciding whether there is good cause for an extension). You can use *Application for Extension of Time to File Brief (Limited Civil Case)* (form APP-106) to ask the court for an extension.

If you do not file your brief by the deadline set by the appellate division, the court may dismiss your appeal.

16 What happens after I file my brief?

Within 30 days after you serve and file your brief, the respondent may, but is not required to, respond by serving and filing a respondent’s brief. If the respondent does not file a brief, the appellant does not automatically win the appeal. The court will decide the appeal on the record, the appellant’s brief, and any oral argument by the appellant.

If the respondent files a brief, within 20 days after the respondent’s brief was filed, you may, but are not required to, file another brief replying to the respondent’s brief. This is called a “reply brief.”

17 What happens after all the briefs have been filed?

Once all the briefs have been filed or the time to file them has passed, the appellate division will notify you of the date for oral argument in your case.

18 What is “oral argument?”

“Oral argument” is the parties’ chance to explain their arguments to the appellate division judges in person. You do not have to participate in oral argument if you do not want to; you can notify the appellate division that you want to “waive” oral argument. If all parties waive oral argument, the judges will decide your appeal based on the briefs and the record that were submitted. But if

APP-101-INFO**Information on Appeal Procedures for Limited Civil Cases**

one party waives oral argument and another party or parties does not, the appellate division will hold oral argument with the party or parties who did not waive it.

If you do choose to participate in oral argument, you will have up to 10 minutes for your argument unless the appellate division orders otherwise. Remember that the judges will have already read the briefs, so you do not need to read your brief to the judges. It is more helpful to tell the judges what you think is most important in your appeal or ask the judges if they have any questions you could answer.

19 What happens after oral argument?

After oral argument is held (or the date it was scheduled passes if all the parties waive oral argument), the judges of the appellate division will make a decision about your appeal. The appellate division has 90 days after the date scheduled for oral argument to decide the appeal. The clerk of the court will mail you a notice of the appellate division's decision.

20 What should I do if I want to give up my appeal?

If you decide you do not want to continue with your appeal, you must file a written document with the appellate division notifying it that you are giving up (this is called “abandoning”) your appeal. You can use *Abandonment of Appeal (Limited Civil Case)* (form APP-107) to file this notice in a limited civil case. You can get form APP-107 at any courthouse or county law library or online at www.courts.ca.gov/forms.

INFORMATION FOR THE RESPONDENT

This section of this information sheet is written for the respondent—the party responding to an appeal filed by another party. It explains some of the rules and procedures relating to responding to an appeal in a limited civil case. The information may also be helpful to the appellant.

21 I have received a notice of appeal from another party. Do I need to do anything?

You do not *have* to do anything. The notice of appeal simply tells you that another party is appealing the trial court's decision. However, this would be a good time to get advice from a lawyer, if you want it. You do not *have* to have a lawyer; if you are an individual (not a corporation, for example), you are allowed to represent yourself in an appeal in a limited civil case. But appeals can be complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about the appeal procedures, you should talk to a lawyer. You must hire your own lawyer if you want one. You can get information about finding a lawyer on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-lowcosthelp.htm.

22 If the other party appealed, can I appeal too?

Yes. Even if another party has already appealed, you may still appeal the same judgment or order. This is called a “cross-appeal.” To cross-appeal, you must serve and file a notice of appeal. You can use *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (form APP-102) to file this notice in a limited civil case. Please read the information for appellants about filing a notice of appeal, starting on page 2 of this information sheet, if you are considering filing a cross-appeal.

23 Is there a deadline to file a cross-appeal?

Yes. You must serve and file your notice of appeal within either the regular time for filing a notice of appeal (generally 30 days after mailing or service of Notice of Entry of the judgment or a file-stamped copy of the judgment) or within 10 days after the clerk of the trial court mails notice of the first appeal, whichever is later.

24 I have received a notice designating the record on appeal from another party. Do I need to do anything?

You do not *have* to do anything. A notice designating the record on appeal lets you know what kind of official record the appellant has asked to be sent to the appellate

APP-101-INFO**Information on Appeal Procedures for Limited Civil Cases**

division. Depending on the kind of record chosen by the appellant, however, you may have the option to:

- Add to what is included in the record
- Participate in preparing the record *or*
- Ask for a copy of the record

Look at the appellant's notice designating the record on appeal to see what kind of record the appellant has chosen and read about that form of the record in the response to question (13) above. Then read below for what your options are when the appellant has chosen that form of the record.

(a) Clerk's transcript

If the appellant is using a clerk's transcript, you have the option of asking the clerk to include additional documents in the clerk's transcript.

To do this, within 10 days after the appellant serves its notice designating the record on appeal, you must serve and file a notice designating additional documents to be included in the clerk's transcript.

Whether or not you ask for additional documents to be included in the clerk's transcript, you must pay a fee if you want a copy of the clerk's transcript. The trial court clerk will send you a notice indicating the cost for a copy of the clerk's transcript. If you want a copy, you must deposit this amount with the court within 10 days after the clerk's notice was sent. If you cannot afford to pay this cost, you can ask the court to waive it. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at www.courts.ca.gov/forms. The court will review this application and determine if you are eligible for a fee waiver. The clerk will not prepare a copy of the clerk's transcript for you unless you deposit payment for the cost or obtain a fee waiver.

(b) Reporter's transcript

If the appellant is using a reporter's transcript, you have the option of asking for additional proceedings to be included in the reporter's transcript. To do this, within 10 days after the appellant files its notice designating the record

on appeal, you must serve and file a notice designating additional proceedings to be included in the reporter's transcript.

Whether or not you ask for additional proceedings to be included in the reporter's transcript, you must generally pay a fee if you want a copy of the reporter's transcript. The trial court clerk or reporter will send you a notice indicating the cost of preparing a copy of the reporter's transcript. If you want a copy of the reporter's transcript, you must deposit this amount (and a fee for the trial court) or one of the substitutes allowed by rule 8.834 with the trial court clerk within 10 days after this notice is sent. (See rule 8.834 for more information about this deposit and the permissible substitutes, such as a waiver of this deposit signed by the court reporter.)

Unlike the fee for preparing a clerk's transcript, the court cannot waive the fee for preparing a reporter's transcript. A special fund, called the Transcript Reimbursement Fund, may be able to help pay for the transcript. You can get information about this fund at:

www.courtreportersboard.ca.gov/consumers/index.shtml#trf. The reporter will not prepare a copy of the reporter's transcript for you unless you deposit the cost of the transcript, or one of the permissible substitutes, or your application for payment by the Transcript Reimbursement Fund is approved.

If the appellant elects not to use a reporter's transcript, you may not designate a reporter's transcript without first getting an order from the appellate division.

(c) Agreed statement

If you and the appellant agree to prepare an agreed statement (a summary of the trial court proceedings that is agreed to by the parties), you and the appellant will need to reach an agreement on that statement within 30 days after the appellant files its notice designating the record.

(d) Statement on appeal

If the appellant elects to use a statement on appeal (a summary of the trial court proceedings that is approved by the trial court), the appellant

APP-101-INFO**Information on Appeal Procedures for Limited Civil Cases**

will send you a proposed statement to review. You will have 10 days from the date the appellant sent you this proposed statement to serve and file suggested changes (called “amendments”) that you think are needed to make sure that the statement provides an accurate summary of the testimony and other evidence relevant to the issues the appellant indicated he or she is raising on appeal. “Serve and file” means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (“serve”) the proposed amendments to the appellant in the way required by law. If the proposed amendments are mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the proposed amendments have been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the proposed amendments, who was served with the proposed amendments, how the proposed amendments were served (by mail, in person, or electronically), and the date the proposed amendments were served.
- File the original proposed amendments and the proof of service with the trial court. You should make a copy of the proposed amendments you are planning to file for your own records before you file them with the court. It is a good idea to bring or mail an extra copy of the proposed amendments to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-serving.htm.

25 What happens after the official record has been prepared?

As soon as the record on appeal is complete, the clerk of the trial court will send it to the appellate division. When the appellate division receives this record, it will send you a notice telling you when you must file your brief in the appellate division.

A brief is a party’s written description of the facts in the case, the law that applies, and the party’s argument about the issues being appealed. If you are represented by a lawyer, your lawyer will prepare your brief. If you are not represented by a lawyer in your appeal, you will have to prepare your brief yourself. You should read rules 8.882–8.884 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in limited civil appeals, including requirements for the format and length of these briefs. You can get these rules at any courthouse or county law library or online at www.courts.ca.gov/rules.htm.

The appellant serves and files the first brief, called an “appellant’s opening brief.” You may, but are not required to, respond by serving and filing a respondent’s brief within 30 days after the appellant’s opening brief is filed. “Serve and file” means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (“serve”) the brief to the other parties in the way required by law. If the brief is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the brief has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail, in person, or electronically), and the date the brief was served.
- File the original brief and the proof of service with the appellate division. You should make a copy of the brief you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

APP-101-INFO**Information on Appeal Procedures for Limited Civil Cases**

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-serving.htm.

You and the other parties can agree (stipulate) to extend the time for filing this brief by up to 30 days (see rule 8.882(b) for requirements for these agreements). You can also ask the court to extend the time for filing this brief if you can show good cause for an extension (see rule 8.811(b) for a list of the factors the court will consider in deciding whether there is good cause for an extension). You can use *Application for Extension of Time to File Brief (Limited Civil Case)* (form APP-106) to ask the court for an extension.

If you do not file a respondent's brief, the appellant does not automatically win the appeal. The court will decide the appeal on the record, the appellant's brief, and any oral argument by the appellant. Remember that an appeal is not a new trial. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits, so do not include any new evidence in your brief.

If you file a respondent's brief, the appellant then has an opportunity to serve and file another brief within 20 days replying to your brief.

26 What happens after all the briefs have been filed?

Once all the briefs have been filed or the time to file them has passed, the court will notify you of the date for oral argument in your case.

“Oral argument” is the parties’ chance to explain their arguments to appellate division judges in person. You do not have to participate in oral argument if you do not want to; you can notify the appellate division that you want to “waive” oral argument. If all parties waive oral argument, the judges will decide the appeal based on the briefs and the record that were submitted. But if one party waives oral argument and another party or parties does not, the appellate division will hold oral argument with the party or parties who did not waive it.

If you do choose to participate in oral argument, you will have up to 10 minutes for your argument unless the appellate division orders otherwise. Remember that the

judges will have already read the briefs, so you do not need to read your brief to the judges. It is more helpful to tell the judges what you think is most important in the appeal or ask the judges if they have any questions you could answer.

After oral argument is held (or the scheduled date passes if all parties waive argument), the judges of the appellate division will make a decision about the appeal. The appellate division has 90 days after oral argument to decide the appeal. The clerk of the court will mail you a notice of the appellate division's decision.

APP-102**Notice of Appeal/Cross-Appeal
(Limited Civil Case)**

Clerk stamps date here when form is filed.

Instructions

- This form is only for appealing in a **limited civil case**. You can get other forms for appealing in unlimited civil cases at any courthouse or county law library or online at www.courts.ca.gov/forms.
- 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.
- You must serve and file this form **no later than 30 days** after the trial court or a party serves a document called a Notice of Entry of the trial court judgment or a file-stamped copy of the judgment or 90 days after entry of judgment, whichever is earlier (see rule 8.823 of the California Rules of Court for very limited exceptions). **If your notice of appeal is late, your appeal will be dismissed.**
- 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-109-INFO) and on the California Courts Online Self-Help Center at 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

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:**

The clerk will fill in the number below

Appellate Division Case Number:**1 Your Information**

a. Name of appellant (the party who is filing this appeal):

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: _____

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: _____

Fax: _____



Trial Court Case Number:

Trial Court Case Name: _____

2 This is (*check a or b*):

- a. The first appeal in this case.
- b. A cross-appeal (an appeal filed after the first appeal in this case (*complete (1), (2), and (3)*)).
- (1) The notice of appeal in the first appeal was filed on (*fill in the date that the other party filed its notice of appeal in this case*): _____
- (2) The trial court clerk served notice of the first appeal on (*fill in the date that the clerk served the notice of the other party's appeal in this case*): _____
- (3) The appellate division case number for the first appeal is (*fill in the appellate division case number of the other party's appeal, if you know it*): _____

3 Judgment or Order You Are AppealingI am/My client is appealing (*check a or b*):

- a. The final judgment in the trial court case identified in the box on page 1 of this form.
The date the trial court entered this judgment was (*fill in the date*): _____
- b. Other:
- (1) An order made after final judgment in the case.
The date the trial court entered this order was (*fill in the date*): _____
- (2) An order changing or refusing to change the place of trial (venue).
The date the trial court entered this order was (*fill in the date*): _____
- (3) An order granting a motion to quash service of summons.
The date the trial court entered this order was (*fill in the date*): _____
- (4) An order granting a motion to stay or dismiss the action on the ground of inconvenient forum.
The date the trial court entered this order was (*fill in the date*): _____
- (5) An order granting a new trial.
The date the trial court entered this order was (*fill in the date*): _____
- (6) An order denying a motion for judgment notwithstanding the verdict.
The date the trial court entered this order was (*fill in the date*): _____
- (7) An order granting or dissolving an injunction or refusing to grant or dissolve an injunction.
The date the trial court entered this order was (*fill in the date*): _____



Trial Court Case Name: _____

Trial Court Case Number: _____

3 (continued)

- (8)
-
- An order appointing a receiver.

The date the trial court entered this order was (*fill in the date*): _____

- (9)
-
- Other action (
- please describe and indicate the date the trial court took the action you are appealing*
-):

4 Record Preparation Election

Complete this section only if you are filing the first appeal in this case. If you are filing a cross-appeal, skip this section and go to the signature line.

Check a or b if you are filing the first appeal in this case:

- a. I have/My client has completed *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) and attached it to this notice of appeal.
- b. I/My client will complete *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) later. I understand that I must file this notice in the trial court within 10 days of the date I file this notice of appeal.

REMINDER: Except in the very limited circumstances listed in rule 8.823, you must serve and file this form no later than (1) 30 days after the trial court clerk or a party serves either a document called a Notice of Entry of the trial court judgment or a file-stamped copy of the judgment or (2) within 90 days after entry of judgment, whichever is earlier. If your notice of appeal is late, your appeal will be dismissed.

Date: _____

Type or print your name


Signature of appellant/cross-appellant or attorney

APP-103

Appellant's Notice Designating Record on Appeal (Limited Civil Case)

Instructions

- This form is only for choosing (“designating”) the record 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.
- This form can be attached to your notice of appeal. If it is not attached to your notice of appeal, you must serve and file this form within 10 days after you file your notice of appeal. **If you do not file this form on time, the court may dismiss your appeal.**
- 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 on the California Courts Online Self-Help Center site at 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.

Clerk stamps date here when form is 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

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:

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: _____

- 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: _____

Fax: _____



Trial Court Case Name: _____

Trial Court Case Number: _____

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.

Record of the Documents Filed in the Trial Court

- ③ I elect (choose)/My client elects to use the following record of the documents filed in the trial court (check a or b and fill in any required information):

- a. **Clerk's Transcript.** (Fill out (1)–(4).) Note that, if the appellate division has adopted a local rule permitting this, the clerk may prepare and send the original court file to the appellate division instead of a clerk's transcript.

- (1) **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
(a) Notice of appeal	
(b) Notice designating record on appeal (this document)	
(c) Judgment or order appealed from	
(d) Notice of entry of judgment (if any)	
(e) 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)	
(f) Ruling on any item included under (e)	
(g) Register of actions or docket	

- (2) **Additional documents.** If you want any documents in addition to the required documents listed in (1) above to be included in the clerk's transcript, you must identify those documents here.

- I request that the clerk include in the transcript the following documents that were filed in the trial court. (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
(a)	
(b)	
(c)	
(d)	
(e)	

- Check here if you need more space to list other documents and attach a separate page or pages listing those documents. At the top of each page, write "APP-103, item 3a(2)."



Trial Court Case Name: _____

Trial Court Case Number: _____

③ a. (continued)

(3) Exhibits.

- I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the trial court. (*For each exhibit, give the exhibit number (such as Plaintiff's #1 or Defendant's A) and a brief description of the exhibit and indicate whether or not the court admitted the exhibit into evidence. If the trial court has returned a designated exhibit to a party, the party who has that exhibit must deliver it to the trial court clerk as soon as possible.*)

Exhibit Number	Description	Admitted Into Evidence	
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No

- Check here if you need more space to list other exhibits and attach a separate page or pages listing those exhibits. At the top of each page, write "APP-103, item 3a(3)."

(4) Payment for clerk's transcript. (Check a or b.)

- (a) I will pay the trial court clerk for this transcript myself when I receive the clerk's estimate of the costs of the transcript. I understand that if I do not pay for the transcript, it will not be prepared and provided to the appellate division.
- (b) I am asking that the clerk's transcript be provided at no cost to me because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record (*check (i) or (ii) and submit the checked document*):
- (i) An order granting a waiver of the cost under rules 3.50–3.58.
- (ii) An application for a waiver of court fees and costs under rules 3.50–3.58 (*Use Request to Waive Court Fees (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.*)

OR

- b. **Agreed statement.** (*You must complete item ⑤d, 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 3a(1) above and in rule 8.832 of the California Rules of Court.*)

Record of Oral Proceedings in the Trial Court

You do not have to provide the appellate division with a record of what was said in the trial court (this is called a record of the "oral proceedings"). But, if you do not, the appellate division will not be able to consider what was said during the trial court proceedings in deciding whether a legal error was made in those proceedings.

④ I elect (choose)/My client elects to proceed (*check a or b*):

- a. WITHOUT a record of the oral proceedings in the trial court (*skip item ⑤*); *sign and date this form*). I understand that if I proceed without a record of the oral proceedings, the appellate division will not be able to consider what was said in the trial court during those proceedings in deciding whether a legal error was made.

(Write initials here): _____



Trial Court Case Number:

Trial Court Case Name: _____

4 (continued)

- b. WITH a record of the oral proceedings in the trial court (*complete item 5 below*). I understand that if I elect (choose) to proceed WITH a record of the oral proceedings in the trial court, I have to choose the record I want to use and take the actions described below to make sure this record is provided to the appellate division. I understand that if I do not take the actions described below and the appellate division does not receive this record, I am not likely to succeed in my appeal.

(Write initials here): _____

5 I want to use the following record of what was said in the trial court proceedings in my case (*check and complete only one of the following below—a, b, c, d, or e*):

- a. **Reporter’s Transcript.** *This option is available only if there was a court reporter in the trial court who made a record of what was said in court. Check with the trial court to see if there was a court reporter in your case before choosing this option. (Complete (1) and (2).):*

(1) **Designation of proceedings to be included in reporter’s transcript.** I request that the following proceedings in the trial 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	Description	Reporter’s Name	Prev. prepared?
(a)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(b)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(c)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(d)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(e)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(f)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(g)				<input type="checkbox"/> Yes <input type="checkbox"/> No

Check here if you need more space to list other proceedings and attach a separate page or pages listing those proceedings. At the top of each page, write “APP-103, item 5a.”

- (2) The proceedings designated in (1) include do not include all of the testimony in the trial court. If the designated proceedings DO NOT include all of the testimony, state the points that you intend to raise on appeal. (*Rule 8.834(a)(2) provides that your appeal will be limited to these points unless, on motion, the appellate division permits otherwise.*)

Check here if you need more space to list other points and attach a separate page or pages listing those points. At the top of each page, write “APP-103, item 5a(2).”



Trial Court Case Name: _____

Trial Court Case Number: _____

5 a. (continued)

- (3) **Payment for reporter's transcript.** I will pay for this transcript myself or request payment from the Transcript Reimbursement Fund when I receive the court reporter's estimate of the costs of this transcript. I understand that if I do not pay the trial court clerk's office for this transcript, file with the court a written waiver of this deposit signed by the reporter, or receive approval of my Transcript Reimbursement Fund application, the transcript will not be prepared and provided to the appellate division.

(Write initials here): _____

- I request that the reporters provide (*check one*):
- (i) My copy of the reporter's transcript in paper format.
- (ii) My copy of the reporter's transcript in computer-readable format.
- (iii) My copy of the reporter's transcript in paper format and a second copy of the reporter's transcript in computer-readable format.

OR

- b. **Transcript From Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. (Check and complete (1) or (2).):*
- (1) I will pay the trial court clerk for this transcript myself when I receive the clerk's estimate of the costs of the transcript. I understand that if I do not pay for the transcript, it will not be prepared and provided to the appellate division.
- (2) I am asking that the transcript be provided at no cost to me because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record (*check (a) or (b) and submit the appropriate document*):
- (a) An order granting a waiver of the cost under rules 3.50–3.58.
- (b) An application for a waiver of court fees and costs under rules 3.50–3.58. (*Use Request to Waive Court Fees (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.*)

OR

- c. **Copy of Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court, the court has a local rule for the appellate division permitting the use of the official electronic recording itself as the record of the proceedings, and all of the parties have agreed (stipulated) that they want to use the recording itself as the record of what was said in the case. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. You must attach a copy of your agreement (stipulation) with the other parties to this notice. (Check and complete (1) or (2).):*
- (1) I will pay the trial court clerk for this copy of the recording myself when I receive the clerk's estimate of the costs of this copy. I understand that if I do not pay for this copy of the recording, it will not be prepared and provided to the appellate division.
- (2) I am asking that a copy of the recording be provided at no cost to me because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record (*check (a) or (b) and submit the appropriate document*):
- (a) An order granting a waiver of the cost under rules 3.50–3.58.
- (b) An application for a waiver of court fees and costs under rules 3.50–3.58. (*Use Request to Waive Court Fees (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.*)



Trial Court Case Name: _____

Trial Court Case Number: _____

⑤ (continued)

OR

- d. **Agreed Statement.** *An agreed statement is a summary of the trial court proceedings agreed to by the parties. See form APP-101-INFO for information about preparing an agreed statement. (Check (1) or (2).):*
- (1) I have attached an agreed statement to this notice.
- (2) All the parties have agreed in writing (stipulated) to try to agree on a statement (*you must attach a copy of this agreement (stipulation) to this notice*). I understand that, within 30 days after I file this notice, 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.

OR

- e. **Statement on Appeal.** *A statement on appeal is a summary of the trial court proceedings approved by the trial court. See form APP-101-INFO for information about preparing a proposed statement. (Check (1) or (2).):*
- (1) I have attached my proposed statement on appeal to this notice. (*If you are not represented by a lawyer in this appeal, you must use Proposed Statement on Appeal (Limited Civil Case) (form APP-104) to prepare and file this proposed statement. You can get a copy of form APP-104 at any courthouse or county law library or online at www.courts.ca.gov/forms.htm.*)
- (2) I have NOT attached my proposed statement on appeal to this notice. I understand that I must serve and file this proposed statement in the trial court within 20 days of the date I file this notice and that if I do not file the proposed statement on time, the court may dismiss my appeal.

Date: _____

*Type or print your name*_____
Signature of appellant or attorney

APP-104**Proposed Statement on Appeal
(Limited Civil Case)****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.
- This form can be attached to your *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103). If it is not attached to that notice, this form must be filed **no later than 20 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.**
- 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-109-INFO) and on the California Courts Online Self-Help Center at 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.

Clerk stamps date here when form is 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

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:**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 ZipMailing address (*if different*): _____
Street City State Zip

Phone: _____ E-mail: _____

- 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 ZipMailing address (*if different*): _____
Street City State Zip

Phone: _____ E-mail: _____

Fax: _____



Trial Court Case Number:

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.

Proposed Statement

4 **Reasons for Your 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:

- 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 Number: _____

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."

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."



Trial Court Case Name: _____

Trial Court Case Number: _____

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)."

(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 Number:

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)."
- (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)."

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."

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.



Trial Court Case Number:

Trial Court Case Name: _____

(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.”

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.”

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.”

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.”



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."

Date: _____

 Type or print your name



 Signature of appellant or attorney

APP-106**Application for Extension of Time
to File Brief (Limited Civil Case)****Instructions**

- This form is only for requesting an extension of time to file a brief in an 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.courtinfo.ca.gov/forms.
- 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-109-INFO) and on the California Courts Online Self-Help Center at www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving.
- Take or mail the completed form and proof of service on the other parties to the appellate division clerk's office. 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.

Clerk stamps date here when form is filed.

You fill in the name and street address of the court that issued the judgment or order that is being appealed:

Superior Court of California, County of

You fill in the number and name of the trial court case in which the judgment or order is being appealed:

Trial Court Case Number:**Trial Court Case Name:**

You fill in the appellate division case number:

Appellate Division Case Number:**1 Your Information**

- a. Name of party requesting extension of time to file brief:

- b. Party'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: _____

- c. Party'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: _____**Fax:** _____

Appellate Division

Appellate Division Case Number:

Case Name: _____

2 I am requesting an extension on the time to file:

- Appellant’s opening brief, which is now due on *(date)*: _____
- Respondent’s brief, which is now due on *(date)*: _____
- Appellant’s reply brief, which is now due on *(date)*: _____

3 I am requesting that the time to file the brief identified in 2 be extended to *(date)*: _____

4 I have have not received a notice under rule 8.882(c) from the clerk that this brief must be filed in 1 days.

5 The time to file the brief: *(check all that apply)*:

- Has not been extended before
- Has been extended before by the stipulation of the parties. The parties stipulated to *(number of extensions)* _____ totaling *(number of days)* _____
- Has been extended before by the court. The court granted *(number of extensions)* _____ totaling *(number of days)* _____

6 I am not able to stipulate to an extension to file this brief because *(check one)*:

- The other party is not willing to stipulate to an extension.
- Other reason *(please describe the reason)*:

7 The reason I need an extension to file this brief is *(describe the reason you need an extension; see rule 8.811(b), for the factors the court will consider in deciding whether there is good cause to grant an extension)*:

8 The last brief filed by any party in this case was:

- The appellant’s opening brief, filed on *(date)*: _____
- The respondent’s brief, filed on *(date)*: _____

9 If this extension is being requested by a lawyer on behalf of a client, the lawyer must complete this item.

- I certify that I have delivered a copy of this application to my client (rule 8.810(e)). I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

Type or print your name

Signature of party or attorney

APP-107**Abandonment of Appeal
(Limited Civil Case)**

Clerk stamps date here when form is filed.

Instructions

- This form is only for abandoning (giving up) an appeal in a **limited civil case**.
- *Limited Civil Cases* Before you fill out this form, read *Information on Appeal Procedures for* (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.courtinfo.ca.gov/forms.
- 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-109-INFO) and on the California Courts Online Self-Help Center at www.courtinfo.ca.gov/selfhelp-serving/lowcost/getready.htm.
- Take or mail the completed form and proof of service on the other parties to the appellate division clerk's office. 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

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:**1 Your Information**

- a. Name of appellant (the party who is filing this appeal):

- b. Appellant's contact information (*skip this if the appellant has a lawyer for this appeal*):

Street address: _____

Mailing address (*if different*): _____
Street City State Zip

Phone: _____ **E-mail:** _____
Street City State Zip

- c. Appellant's lawyer (*skip this if the appellant does not have a lawyer for this appeal*):

Name: _____ State Bar number: _____

Street address: _____

Mailing address (*if different*): _____
Street City State Zip

Phone: _____ **E-mail:** _____
Street City State Zip

Fax: _____

Appellate Division

Appellate Division Case Number:

Case Name: _____

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 By signing and filing this form, I abandon/my client abandons that appeal.

Date: _____

Type or print your name

Signature of appellant or attorney

APP-109**Proof of Service
(Appellate Division)****Instructions**

- This form is only for providing proof that a document has been served (delivered) in a proceeding in the superior court appellate division. If you are serving a document electronically, please use *Proof of Electronic Service (Appellate Division)* (form APP-109E).
- The person who serves (delivers) a document in this case and who fills out this form:
 - Must be at least 18 years old
 - Must NOT be a party in this case
- Before you fill out this form, read *What Is Proof of Service?* (form APP-109-INFO) to understand your responsibilities.

① At the time I served the documents listed in ④, I was at least 18 years old.

② I am not a party in the case identified in the box on the right side of this page.

③ My home business address is:

Street City State Zip

④ I mailed or personally delivered the following document, as indicated below (*check or fill in the name of the document you are serving and check and complete either a or b*).

- Notice of Appeal/Cross Appeal (Limited Civil Case)
- Notice Designating Record on Appeal (Limited Civil Case)
- Proposed Statement on Appeal (Limited Civil Case Misdemeanor Infraction)
- Appellant's Opening Brief
- Respondent's Brief
- Appellant's Reply Brief
- Abandonment of Appeal (Limited Civil Case)
- Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)
- Other (*write in the name of the document*):
- _____
- _____

a. Service by Mail

- (1) I put one copy of the document identified ④ in an envelope addressed to each person listed in (2), sealed the envelope, and put first-class postage on the envelope.

Clerk stamps date here when form is filed.

You fill in the name and street address of the court that issued the decision that is being challenged in this case:

Superior Court of California, County of

You fill in the number and name of the trial court case in which the decision being challenged was issued:

Trial Court Case Number:

Trial Court Case Name:

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

Appellate Division Case Number:



Appellate Division
Case Name: _____

Appellate Division Case Number: _____

(2) The envelope or envelopes were addressed as follows:

(a) Name of person served:

Address on envelope: _____

Street

City

State Zip

(b) (Name of person served):

Address on envelope: _____

Street

City

State Zip

Check here if you mailed copies of the document identified in (4) to more people. Attach a separate page listing the names and addresses on each additional envelope you mailed. Write "APP-109, Item 4a" on the top of the page.

(3) I mailed the envelope or envelopes on (*date*): _____ from (*city*): _____

(*state*): _____ by depositing the envelope or envelopes (*check one*):

(a) With the U.S. Postal Service or

(b) At an office or business mail drop where I know the mail is picked up every day and deposited with the U.S. Postal Service.

b. Service by Personal Delivery

I personally gave one copy of the document identified in (4) to each of the following people:

(1) (a) Name of person served:

(b) (Address where you gave the documents to this person):

Street

City

State Zip

(c) Date when you gave the documents to this person:

(d) Time when you gave the documents to this person:

(2) (a) Name of person served:

(b) (Address where you gave the documents to this person):

Street

City

State Zip

(c) Date when you gave the documents to this person:

(d) Time when you gave the documents to this person:

Check here if you gave copies of the document identified in (4) to more people. Attach a separate page listing the names of each of these people, the address where you gave each of them the document, and the date and time you gave them the document. Write "APP-109, Item 4b" on the top of the page.

(5) I declare under penalty of perjury under California state law that the information above is true and correct.

Date: _____

Type or print server's name

Server signs here after serving

APP-109E

**Proof of Electronic Service
(Appellate Division)**

Instructions

- This form is only for providing proof that a document has been electronically served (delivered) in a proceeding in the superior court appellate division.
- The person who serves (delivers) a document in this case and who fills out this form must be at least 18 years old.
- Before you fill out this form, read *What Is Proof of Service?* (form APP-109-INFO) to understand your responsibilities.

① At the time I served the documents listed in ③, I was at least 18 years old.

② a. My home business address is:

Street City State Zip

b. My electronic service address is:

③ I electronically served the following document, as indicated below (check or fill in the name of the document you are serving).

- Notice of Appeal/Cross Appeal (Limited Civil Case)*
 - Notice Designating Record on Appeal (Limited Civil Case)*
 - Proposed Statement on Appeal* (*Limited Civil Case* *Misdemeanor* *Infraction*)
 - Appellant’s Opening Brief*
 - Respondent’s Brief*
 - Appellant’s Reply Brief*
 - Abandonment of Appeal (Limited Civil Case)*
 - Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)*
 - Other (write in the name of the document):*
- _____
- _____

Clerk stamps date here when form is filed.

You fill in the name and street address of the court that issued the decision that is being challenged in this case:

Superior Court of California, County of

You fill in the number and name of the trial court case in which the decision being challenged was issued:

Trial Court Case Number:

Trial Court Case Name:

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

Appellate Division Case Number:



Appellate Division

Appellate Division Case Number:

Case Name: _____

④ I electronically served the document checked in ③ as follows

a. (1) Name of person served: _____

On behalf of (name or names of parties represented, if person served is an attorney):

(2) Electronic service address of person served: _____

(3) On (date): _____

b. (1) Name of person served:

On behalf of (name or names of parties represented, if person served is an attorney):

(2) Electronic service address of person served: _____

(3) On (date): _____

Check here if you gave copies of the document listed in ③ to more people. Attach a separate page listing the names of these people, the names of parties represented if the person served is an attorney, the electronic service address used for each person served, and the date you electronically served the document. Write "APP-109E, Item 4" on top of the page.

⑤ I declare under penalty of perjury under California state law that the information above is true and correct.

Date: _____

Type or print server's name



Server signs here after serving

APP-109-INFO**What Is Proof of Service?****GENERAL INFORMATION****What does this information sheet cover?**

This information sheet tells you how to fill out *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E). This information sheet is not part of the proof of service and does not need to be copied, served, or filed.

① What is “serving” a document?

“Serving” a document on a person means having the document delivered to that person. The general requirements for serving documents are set out in California Code of Civil Procedure sections 1010.6–1013a (you can get a copy of these laws at any county law library or online at www.leginfo.ca.gov/calaw.html). There are three main ways to serve documents: (1) by mail, (2) by personal delivery, or (3) by electronic service.

When a document is served by mail, it must be put in a sealed envelope or package that is addressed to the person who is being served and that has the postage fully prepaid. The envelope then has to be deposited with the U.S. Postal Service by leaving it at a U.S. Postal Service office or mail drop or at an office or business mail drop where the person serving the document knows the mail is picked up every day and deposited with the U.S. Postal Service.

When a document is personally delivered to a party who is represented by an attorney, the document must either be given directly to the attorney representing that party or the document can be placed in an envelope or package addressed to the attorney and left with the receptionist at the attorney’s office or with a person who is in charge of the attorney’s office. When a document is personally served on a party who is not represented by an attorney, the document must either be given directly to the party or the document can be given to someone who is at least 18 years old at the party’s residence between the hours of eight in the morning and six in the evening.

You may be able to serve a document electronically if the person being served has agreed to accept electronic service or if the court has ordered the person to accept electronic service. The requirements for electronic service are set out in California Code of Civil Procedure section 1010.6.

When a document is electronically served, it must be served either by electronic transmission or by electronic notification. “Electronic transmission” means sending the document to the person’s electronic service address, an e-mail address the person has given the court and the other parties to the case for this purpose. “Electronic notification” means sending a notice to the person with the exact name of the document and a hyperlink—a link to a web address—at which the document may be viewed and downloaded.

② What documents have to be served?

Rule 8.817 of the California Rules of Court requires that before you file any document with the court in a case in the appellate division of the superior court, you must serve one copy of the document on each of the other parties in the case and on anyone else when required by law (statute or rule of court). Other rules require that certain documents in cases in the appellate division be served, including the notice of appeal and the notice designating the record on appeal in appeals in limited civil cases and briefs in all appeals. (For more information about appeals in general and about these documents, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO), *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO), and *Information on Appeal Procedures for Infractions* (form CR-141-INFO).)

③ Who can serve a document?

State law (the Code of Civil Procedure) says that a document in a court case can only be served by a person who is over 18 years old. Service by mail or by personal delivery must be by someone who is not a party in the case; electronic service may be performed directly by a party.

If you are a party in a case and wish to serve documents by mail or by personal delivery, **you must have someone else who is over 18 and who is not a party in your case serve any documents in your case for you.** You will need to give the person who is serving the document for you (the server) the names and addresses of all the people who need to be served with that document. You will also need to give the server one copy of each document that needs to be served for each person who is being served.

APP-109-INFO What Is Proof of Service?

If you are serving documents electronically, you can do so yourself or have another person over 18 do it for you. The person doing the serving (the server) will need the names and electronic service addresses of everyone who must be served, as well as the document to be served in a form that allows it to be electronically transmitted or made available by hyperlink.

4 What is proof of service?

A “proof of service” shows the court that a document was served as required by the law. Rule 8.817 also requires a party who is filing a document with the court in a case in the appellate division to attach a proof of service to the document he or she wants to file. You can use *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) to give the court this proof of service in any case in the appellate division of the superior court. The server should follow the instructions below for completing the *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E). If another person is serving the documents for you—as is required if the document will be served by mail or personal delivery—tell the server to give you the original form when it is filled out and signed. You will need to attach the original proof of service to the document you want to file.

If you are electronically filing the document, the proof of service may also be filed electronically. However, the original signed proof of service must be kept by the party filing the document and produced upon request.

INFORMATION FOR THE SERVER

5 Who fills out the *Proof of Service* or *Proof of Electronic Service*?

If you are the server (the person who serves a document for a party in a court case), you must prepare and sign the proof of service. If you served the document by mail or personal delivery, you can use *Proof of Service (Appellate Division)* (form APP-109) to prepare this proof of service in any case in the appellate division. If you served the document electronically, you can use *Proof of Electronic Service (Appellate Division)* to prepare the proof of service.

6 How do I fill out the *Proof of Service*?

These instructions are for *Proof of Service (Appellate Division)* (form APP-109), if you are serving the document by mail or personal delivery. If you are serving the document electronically, please see 7 below, for instructions on how to fill out *Proof of Electronic Service (Appellate Division)* (form APP-109E).

You can fill out most of the information on *Proof of Service (Appellate Division)* (form APP-109) by copying the information from the document you are serving before you serve that document. However, you should not sign and date the form until after you have finished serving the document. **By signing form APP-109, you are swearing, under penalty of perjury, that the information that you put in the form is true and correct.**

When you fill out the *Proof of Service (Appellate Division)* (form APP-109), you should print neatly or use a typewriter. If you have Internet access, you can fill out the form online at www.courts.ca.gov/forms (use the “fillable” version of the form).

Filling in the top section of form APP-109:

First box, right side of form: Leave this box blank for the court’s use.

Second box, right side of form: Fill in the name of the county in which the case is filed and the street address of the court. You can copy this information from the first page of the document that you are serving. If the document you are serving is another Judicial Council form, this information will be in the second box on the right-hand side of the form.

Third box, right side of form: Fill in the trial court case name and number. You can copy this information from the first page of the document that you are serving. If the document you are serving is another Judicial Council form, this information will be in the third box on the right-hand side of the form.

Fourth box, right side of form: Fill in the appellate division case number, if you know it. If this number is available, it will be on the first page of the document that you are serving. If the document you are serving is

APP-109-INFO What Is Proof of Service?

another Judicial Council form, this number will be in the fourth box on the right-hand side of the form.

Filling in items 1–5:

Items ① and ②: You are stating, under penalty of perjury, that you are over the age of 18 and that you are not a party in this court case.

Item ③: Check one of the boxes and provide your home or business address. This information is important because, if you serve the document by mail, you must live or work in the county from which the document was mailed.

Item ④: Check or fill in the name of the document that you are serving. If the document you are serving is another Judicial Council form, the name of the document is located on both the top and the bottom of the first page of the form. If the document you are serving is not a Judicial Council form, the name of the document should be on the top of the first page of the document.

a. Check box 4a. if you are serving the document by mail. **BEFORE YOU SEAL AND MAIL THE ENVELOPE WITH THE DOCUMENT YOU ARE SERVING**, fill in the following parts of the form.

- (1) You are stating, under penalty of perjury, that you are putting one copy of the document you identified in item 4 in an envelope addressed to each person listed in 4a.(2), sealing the envelope, and putting first-class postage on the envelope.
- (2) Fill in the name and address of each person to whom you are mailing the document. You can copy this information from the list of people to be served or the envelopes provided by the party for whom you are serving the document. If you need more space to list names and addresses, check the box under item 4a.(2) and attach a page listing them. At the top of the page, write “APP-109, Item 4a.”
- (3) Fill in the date you are mailing the document and the city and state from which you are mailing it. **REMEMBER:** You must live or work in the county from which the document is mailed.

(a) Check box 4a.(3)(a) if you are personally depositing the document with the U.S. Postal Service, such as at a U.S. Post Office or U.S. Postal Service mailbox.

(b) Check box 4a.(3)(b) if you are putting the document in the mail at your place of business.

Once you have finished filling out these parts of the form, make one copy of *Proof of Service (Appellate Division)* (form APP-109) with this information filled in for each person you are serving by mail. Put this copy of *Proof of Service (Appellate Division)* (form APP-109) in the envelope with the document you are serving. Seal the envelope and mail it as you have indicated on the *Proof of Service*.

- b. Check box 4b. If you personally delivered the documents. Remember, when a document is personally delivered to a party who is represented by an attorney, the document must either be given directly to the party’s attorney or the document can be placed in an envelope or package addressed to the attorney and left with the receptionist at the attorney’s office or with a person who is in charge of the attorney’s office. When a document is personally served on a party who is not represented by an attorney, the document must either be given directly to the party or the document can be given to someone who is at least 18 years old at the party’s residence between the hours of eight in the morning and six in the evening.

For each person to whom you personally delivered the document, fill in:

- (a) The person’s name.
- (b) The address at which you delivered the document to this person.
- (c) The date on which you delivered the document to this person.
- (d) The time at which you delivered the document.

If you need space to list more names, addresses, and delivery dates and times, check the box

APP-109-INFO What Is Proof of Service?

under 4b. and attach a page listing this information. At the top of the page, write “APP-109, Item 4b.”

Item ⑤: At the bottom of the form, type or print your name, sign the form, and fill in the date that you signed the form. **By signing this form, you are stating under penalty of perjury that all the information you filled in on *Proof of Service (Appellate Division)* (form APP-109) is true and correct.**

After you have finished serving the document and filled in, signed, and dated *Proof of Service (Appellate Division)* (form APP-109), give the original completed form to the party for whom you served the document.

⑦ How do I fill out the *Proof of Electronic Service*?

You can fill out most of the information on *Proof of Electronic Service (Appellate Division)* (form APP-109E) by copying the information from the document you are serving before you serve that document. However, you should not sign and date the form until after you have finished serving the document. **By signing form APP-109E you are swearing, under penalty of perjury, that the information you have put in the form is true and correct.**

You can fill out the *Proof of Electronic Service (Appellate Division)* (form APP-109E) online at www.courtinfo.ca.gov/forms (use the “fillable” version of the form), or you can print it out and fill it in, printing neatly or using a typewriter.

Filling in the top section of form APP-109E:

First box, right side of form: Leave this box blank for the court’s use.

Second box, right side of form: Fill in the name of the county in which the case is filed and the street address of the court. You can copy this information from the first page of the document that you are serving. If the document you are serving is another

Judicial Council form, this information will be in the second box on the right-hand side of that form.

Third box, right side of form: Fill in the trial court case number and name. You can copy this information from the first page of the document that you are serving. If the document you are serving is another Judicial Council form, this information will be in the third box on the right-hand side of that form.

Fourth box, right side of form: Fill in the appellate division case number, if you know it. If this number is available, it will be on the first page of the document that you are serving. If the document you are serving is another Judicial Council form, this information will be in the fourth box on the right-hand side of that form.

Filling in items 1–5:

Item ①: You are stating, under penalty of perjury, that you are over the age of 18.

Item ②:

a. Check one of the boxes and provide your home or business address.

b. Fill in your electronic service address. This is the address at which you have agreed to accept electronic service, usually an e-mail address.

Item ③: Check or fill in the name of the document that you are serving. If the document you are serving is another judicial Council form, the name of the document is located on both the top and the bottom of the first page of the form. If the document you are serving is not a Judicial Council form, the name of the document should be on the top of the first page of the document.

Item ④: Fill in the name of each person served, and the name or name of the parties represented, if the person served is an attorney. For each person served, fill in that person’s electronic service address and the date you served the person. If you

APP-109-INFO What Is Proof of Service?

need more space to list additional persons served, check the box under item ④ b. and attach a page listing them, with their electronic service addresses and the date each person was served. At the top of the page, write “APP-109E, Item 4.”

When you have filled in the information in items 1–4, create an electronic copy of the *Proof of Electronic Service (Appellate Division)* (form APP-109E) with this information filled in. Transmit the filled in form with the document you are serving to each person served.

Item ⑤: At the bottom of the form, type or print your name, sign the form, and fill in the date that you signed the form. **By signing this form, you are stating under penalty of perjury that all the information you filled in on the *Proof of Electronic Service (Appellate Division)* (form APP-109E) is true and correct.** If you are not the party for whom the documents are served, give the original completed *Proof of Electronic Service (Appellate Division)* (form APP-109E) to the party for whom you served the document.

If you are electronically filing the document that is served, the proof of service may also be filed electronically. However, the original signed proof of service must be kept by the party filing it and produced upon request.

APP-110

Respondent's Notice Designating Record on Appeal (Limited Civil Case)

Clerk stamps date here when form is filed.

Instructions

- This form is only for choosing (“designating”) the record 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.
- 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-109-INFO) or on the California Courts Online Self-Help Center at 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 that is being appealed. 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

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:

1 Your Information

- a. Name of respondent (the party who is responding to an appeal filed by another party):

Name: _____

- b. Respondent’s contact information (*skip this if the respondent has a lawyer for this appeal*):

Street address: _____
Street City State Zip

Mailing address (*if different*): _____
Street City State Zip

Phone: _____ E-mail: _____

- c. Respondent’s lawyer (*skip this if the respondent 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: _____

Fax: _____



Trial Court Case Number:

Trial Court Case Name: _____

Information About the Appeal

- ② On (fill in the date): _____ another party 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): _____ the appellant filed an appellant's notice designating the record on appeal.

Record of the Documents Filed in the Trial Court

- ④ The appellant elected (chose) to use a clerk's transcript under rule 8.832 as the record of the documents filed in the trial court.
- a. **Additional documents or exhibits.** *If you want any documents or exhibits in addition to those designated by the appellant to be included in the clerk's transcript, you must identify those documents here.*

(1) Documents

- In addition to the documents designated by the appellant, I request that the clerk include in the transcript the following documents that were filed in the trial court. *(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
(a)	
(b)	
(c)	
(d)	

- Check here if you need more space to list other documents and attach a separate page or pages listing those documents. At the top of each page, write "APP-110, item 4a(1)."

(2) Exhibits

- I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the trial court. *(For each exhibit, give the exhibit number [such as Plaintiff's #1 or Defendant's A] and a brief description of the exhibit and indicate whether or not the court admitted the exhibit into evidence. If the trial court has returned a designated exhibit to a party, the party who has that exhibit must deliver it to the trial court clerk as soon as possible.)*

Exhibit Number	Description	Admitted Into Evidence	
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No

- Check here if you need more space to list other exhibits and attach a separate page or pages listing those exhibits. At the top of each page, write "APP-110, item 4a(2)."



Trial Court Case Number:

Trial Court Case Name: _____

4 (continued)

- b. **Copy of clerk’s transcript.** I request a copy of the clerk’s transcript. *(Check (1) or (2).)*
- (1) I will pay the trial court clerk for this transcript myself when I receive the clerk’s estimate of the costs of the transcript.
- (2) I am asking that a copy of the clerk’s transcript be provided at no cost to me because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record *(check (a) or (b) and submit the checked document):*
- (a) An order granting a waiver of the cost under rules 3.50–3.58.
- (b) An application for a waiver of court fees and costs under rules 3.50–3.58. *(Use Request to Waive Court Fees (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.)*

Record of Oral Proceedings in the Trial Court

5 The appellant elected to use the following record of what was said in the trial court proceedings *(check and complete only one of the following below—a, b, or c):*

a. **Reporter’s Transcript.** The appellant elected to use a reporter’s transcript under rule 8.834 as the record of the oral proceedings in the trial court.

(1) **Designation of additional proceedings to be included in the reporter’s transcript.** *(If you want any proceedings in addition to the proceedings designated by the appellant to be included in the reporter’s transcript, you must identify those proceedings here.)*

In addition to the proceedings designated by the appellant, I request that the following proceedings in the trial 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	Description	Reporter’s Name	Prev. prepared?
(a)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(b)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(c)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(d)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(e)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(f)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(g)				<input type="checkbox"/> Yes <input type="checkbox"/> No

Check here if you need more space to list other proceedings and attach a separate page or pages listing those proceedings. At the top of each page, write “APP-110, item 5a(1).”



Trial Court Case Number:

Trial Court Case Name: _____

5 a. (continued)

(2) **Copy of reporter's transcript.**

- (a) I request a copy of the reporter's transcript. I will pay for this transcript myself or request payment from the Transcript Reimbursement Fund when I receive the court reporter's estimate of the costs of this transcript. I understand that if I do not pay the trial court clerk's office for this transcript or file with the court a waiver of this deposit signed by the court reporter or receive approval of my Transcript Reimbursement Fund application, I will not receive a copy.
- (b) I request that the court reporter provide (*check one*):
- (i) My copy of the reporter's transcript in paper format.
- (ii) My copy of the reporter's transcript in computer-readable format.
- (iii) My copy of the reporter's transcript in paper format and a second copy of the reporter's transcript in computer-readable format.

OR

- b. **Transcript From Official Electronic Recording.** The appellant elected to use the transcript from an official electronic recording as the record of the oral proceedings in the trial court under rule 8.835(b). I request a copy of this transcript. (*Check and complete (1) or (2).*):
- (1) I will pay the trial court clerk for this transcript myself when I receive the clerk's estimate of the cost of the transcript.
- (2) I am asking that the transcript be provided at no cost to me because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record (*check (a) or (b) and submit the appropriate document*):
- (a) An order granting a waiver of the cost under rules 3.50–3.58.
- (b) An application for a waiver of court fees and costs under rules 3.50–3.58 (*Use Request to Waive Court Fees (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.*)

OR

- c. **Copy of Official Electronic Recording.** The appellant and I have agreed to use the official electronic recording itself as the record of the oral proceedings in the trial court under rule 8.835(a). I request a copy of this recording. (*Check and complete (1) or (2).*):
- (1) I will pay the trial court clerk for this copy of the recording myself when I receive the clerk's estimate of the costs of this copy.
- (2) I am asking that the transcript be provided at no cost to me because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record (*check (a) or (b) and submit the appropriate document*):
- (a) An order granting a waiver of the cost under rules 3.50–3.58
- (b) An application for a waiver of court fees and costs under rules 3.50–3.58 (*Use Request to Waive Court Fees (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.*)

Date: _____

Type or print your name


Signature of respondent or attorney

APP-150-INFO**Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases****GENERAL INFORMATION****① What does this information sheet cover?**

This information sheet tells you about **writ proceedings**—proceedings in which a person is asking for a writ of mandate, prohibition, or review—in misdemeanor, infraction, and limited civil cases, and in certain small claims cases. Please read this information sheet before you fill out *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151). This information sheet does not cover everything you may need to know about writ proceedings. It is only meant to give you a general idea of the writ process. To learn more, you should read rules 8.930–8.936 of the California Rules of Court, which set out the procedures for writ proceedings in the appellate division. You can get these rules at any courthouse or county law library or online at www.courts.ca.gov/rules.

This information sheet does NOT provide information about appeals or proceedings for writs of supersedeas or habeas corpus, or for writs in certain small claims cases.

- For information about appeals, please see the box on the right side of this page.
- For information about writs of habeas corpus, please see rules 4.550–4.552 of the California Rules of Court and *Petition for Writ of Habeas Corpus* (form MC-275).
- For information about writs of supersedeas, please see rule 8.824 of the California Rules of Court. This information sheet applies to writs relating to *postjudgment enforcement actions* of the small claims division. For information about writs relating to other actions by the small claims division, see rules 8.930–8.936 of the California Rules of Court and *Petition for Writ (Small Claims)* (form SC-300).
- For information about writs relating to actions of the superior court on small claims appeals, see rules 8.485–8.493 of the California Rules of Court.

You can get these rules and forms at any courthouse or county law library or online at www.courts.ca.gov/rules for the rules or www.courts.ca.gov/forms for the forms.

② What is a writ?

A writ is an order from a higher court telling a lower court to do something the law says the lower court must do or not to do something the law says the lower court does not have the power to do. In writ proceedings in the appellate division, the lower court is the superior court that took the action or issued the order being challenged.

For information about appeal procedures, see:

- *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO)
- *Information on Appeal Procedures for Infractions* (form CR-141-INFO)
- *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO)

You can get these forms at any courthouse or county law library or online at www.courts.ca.gov/forms.

In this information sheet, we call the lower court the “trial court.”

③ Are there different kinds of writs?

Yes. There are three main kinds of writs:

- Writs of mandate (sometimes called “mandamus”), which are orders telling the trial court to do something.
- Writs of prohibition, which are orders telling the trial court not to do something.
- Writs of review (sometimes called “certiorari”), which are orders telling the trial court that the appellate division will review certain kinds of actions already taken by the trial court.

There are laws (statutes) that you should read concerning each type of writ: see California Code of Civil Procedure sections 1084–1097 about writs of mandate, sections 1102–1105 about writs of prohibition, and sections 1067–1077 about writs of review. You can get copies of these statutes at any county law library or online at leginfo.legislature.ca.gov/faces/codes.xhtml.



APP-150-INFO**Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases****4 Is a writ proceeding the same as an appeal?**

No. In an **appeal**, the appellate division *must* consider the parties' arguments and decide whether the trial court made the legal error claimed by the appealing party and whether the trial court's decision should be overturned based on that error (this is called a "decision on the merits"). In a **writ proceeding**, the appellate division is *not* required to make a decision on the merits; even if the trial court made a legal error, the appellate division can decide not to consider that error now, but to wait and consider the error as part of any appeal from the final judgment. Most requests for writs are denied without a decision on the merits (this is called a "summary denial"). Because of this, appeals are the ordinary way that decisions made by a trial court are reviewed and writ proceedings are often called proceedings for "extraordinary" relief.

Appeals and writ proceedings are also used to review different kinds of decisions by the trial court. Appeals can be used only to review a trial court's final judgment and a few kinds of orders. Most rulings made by a trial court before it issues its final judgment cannot be appealed right away; they can only be appealed after the trial court case is over, as part of an appeal of the final judgment. Unlike appeals, writ proceedings can be used to ask for review of certain kinds of important rulings made by a trial court before it issues its final judgment.

5 Is a writ proceeding a new trial?

No. A **writ proceeding is NOT a new trial**. The appellate division will not consider new evidence, such as the testimony of new witnesses. Instead, if it does not summarily deny the request for a writ, the appellate division reviews a record of what happened in the trial court and the trial court's ruling to see if the trial court made the legal error claimed by the person asking for the writ. When it conducts its review, the appellate division presumes that the trial court's ruling is correct; the person who requests the writ must show the appellate division that the trial court made the legal error the person is claiming.

6 Can a writ be used to address any errors made by a trial court?

No.

Writs can only address certain legal errors. Writs can only address the following types of legal errors made by a trial court:

- The trial court has a legal duty to act but:
 - Refuses to act
 - Has not done what the law says it must do
 - Has acted in a way the law says it does not have the power to act
- The trial court has performed or says it is going to perform a judicial function (like deciding a person's rights under law in a particular case) in a way that the court does not have the legal power to do.

There must be no other adequate remedy. The trial court's error must also be something that can be fixed only with a writ. The person asking for the writ must show the appellate division that there is no adequate way to address the trial court's error other than with the writ (this is called having "no adequate remedy at law"). As mentioned above, appeals are the ordinary way that trial court decisions are reviewed. If the trial court's ruling can be appealed, the appellate division will generally consider an appeal to be good enough (an "adequate remedy") unless the person asking for the writ can show the appellate division that he or she will be harmed in a way that cannot be fixed by the appeal if the appellate division does not issue the writ (this is called "irreparable" injury or harm).

Statutory writs: There are laws (statutes) that provide that certain kinds of rulings can or must be challenged using a writ proceeding. These are called "statutory writs." Here is a list of some of the most common rulings that a statute says can or must be challenged using a writ:

- A ruling on a motion to disqualify a judge (see California Code of Civil Procedure section 170.3(d))
- Denial of a motion for summary judgment (see California Code of Civil Procedure section 437c(m)(1))
- A ruling on a motion for summary adjudication of issues (see California Code of Civil Procedure section 437c(m)(1))

APP-150-INFO**Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases**

- Denial of a stay in an unlawful detainer matter (see California Code of Civil Procedure section 1176)
- An order disqualifying the prosecuting attorney (see California Penal Code section 1424)

You can get copies of these statutes at any county law library or online at leginfo.legislature.ca.gov/faces/codes.xhtml. You will need to check whether there is a statute providing that the specific ruling you want to challenge can or must be reviewed using a writ proceeding. (Note that just because there is a statute requiring or allowing you to ask for a writ to challenge a ruling does not mean that the court must grant your request; the appellate division can still deny a request for a statutory writ.)

Common law writs: Even if there is not a statute specifically providing for a writ proceeding to challenge a particular ruling, most trial court rulings other than the final judgment can potentially be challenged using a writ proceeding if the trial court made the type of legal error described above and the petitioner has no other adequate remedy at law. These writs are called “common law” writs.

7 Can the appellate division consider a request for a writ in *any* case?

No. Different courts have the power (called “jurisdiction”) to consider requests for writs in different types of cases. The appellate division can only consider requests for writs in limited civil, misdemeanor, and infraction cases, and certain small claims cases. A limited civil case is a civil case in which the amount claimed is \$25,000 or less (see California Code of Civil Procedure sections 85 and 88). Misdemeanor cases are cases in which a person has been charged with or convicted of a crime for which the punishment can include jail time of up to one year but not time in state prison (see California Penal Code sections 17 and 19.2). (If the person was also charged with or convicted of a felony in the same case, it is considered a felony case, not a misdemeanor case.) Infraction cases are cases in which a person has been charged with or convicted of a crime for which the punishment can be a fine, traffic school, or some form of community service but cannot include any time in jail or prison (see California Penal Code sections 17 and 19.8). Examples of infractions include traffic tickets or citations for violations of some

city or county ordinances. (If a person was also charged with or convicted of a misdemeanor in the same case, it is considered a misdemeanor case, not an infraction case.) You can get copies of these statutes at any county law library or online at leginfo.legislature.ca.gov/faces/codes.xhtml. The appellate division can consider requests for writs in small claims actions relating to postjudgment enforcement orders.

The appellate division does NOT have jurisdiction to consider requests for writs in either unlimited civil cases (civil cases in which the amount claimed is more than \$25,000) or felony cases (cases in which a person has been charged with or convicted of a crime for which the punishment can include time in state prison). Requests for writs in these cases can be made in the Court of Appeal. The appellate division also does NOT have jurisdiction to consider requests for writs of habeas corpus; requests for these writs can be made in the superior court.

Requests for writs relating to actions of the small claims division *other* than postjudgment enforcement orders are considered by a single judge in the appellate division. (See form SC-300-INFO.) Requests for writs relating to superior court actions in small claims cases on appeal may be made to the Court of Appeal.

8 Who are the parties in a writ proceeding?

If you are asking for the writ, you are called the PETITIONER. You should read “Information for the Petitioner,” beginning on page 4.

The court the petitioner is asking to be ordered to do or not to do something is called the RESPONDENT. In appellate division writ proceedings, the trial court is the respondent.

Any other party in the trial court case who would be affected by a ruling regarding the request for a writ is a REAL PARTY IN INTEREST. If you are a real party in interest, you should read “Information for a Real Party in Interest,” beginning on page 10.

9 Do I need a lawyer to represent me in a writ proceeding?

You do not *have* to have a lawyer; you are allowed to represent yourself in a writ proceeding in the appellate division. But writ proceedings can be very complicated



APP-150-INFO**Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases**

and you will have to follow the same rules that lawyers have to follow. If you have any questions about the writ procedures, you should talk to a lawyer. In limited civil cases and infraction cases, you must hire a lawyer at your own expense if you want one (the court cannot provide one). You can get information about finding a lawyer on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-lowcosthelp.htm.

INFORMATION FOR THE PETITIONER

This part of the information sheet is written for the petitioner—the party asking for the writ. It explains some of the rules and procedures relating to asking for a writ. The information may also be helpful to a real party in interest. There is more information for a real party in interest starting on page 10 of this information sheet.

10 Who can ask for a writ?

Only a party in the trial court proceeding—the plaintiff or defendant in a civil case or the defendant or prosecuting agency in a misdemeanor or infraction case—can ask for a writ challenging a ruling on a motion to disqualify a judge (see California Code of Civil Procedure section 170.3(d)). Parties are also usually the only ones that ask for writs challenging other kinds of trial court rulings. However, in most cases, a person who was not a party does have the legal right to ask for a writ if that person has a “beneficial interest” in the trial court’s ruling. A “beneficial interest” means that the person has a specific right or interest affected by the ruling that goes beyond the general rights or interests the public may have in the ruling.

11 How do I ask for a writ?

To ask for a writ you must serve and file a petition for a writ (see below for an explanation of how to “serve and file” a petition). A petition is a formal request that the appellate division issue a writ. A petition for a writ explains to the appellate division what happened in the trial court, what legal error you (the petitioner) believe the trial court made, why you have no other adequate

remedy at law, and what order you are requesting the appellate division to make.

12 How do I prepare a writ petition?

If you are represented by a lawyer, your lawyer will prepare your petition for a writ. If you are not represented by a lawyer, you must use *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151) to prepare your petition. You can get form APP-151 at any courthouse or county law library or online at www.courts.ca.gov/forms. This form asks you to fill in the information that needs to be in a writ petition.

a. Description of your interest in the trial court’s ruling

Your petition needs to tell the appellate division why you have a right to ask for a writ in the case. As discussed above, usually only a person who was a party in the trial court case—the plaintiff or defendant in a civil case or the defendant or prosecuting agency in a misdemeanor or infraction case—asks for a writ challenging a ruling in that case. If you were a party in the trial court case, say that in your petition. If you were not a party, you will need to describe what “beneficial interest” you have in the trial court’s ruling. A “beneficial interest” means that you have a specific right or interest affected by the ruling that goes beyond the general rights or interests the public may have in the ruling. To show the appellate division that you have a beneficial interest in the ruling you want to challenge, you must describe how the ruling will affect you in a direct and negative way.

b. Description of the legal error you believe the trial court made

Your petition will need to tell the appellate division what legal error you believe the trial court made. Not every mistake a trial court might make can be addressed by a writ. You must show that the trial court made one of the following types of legal errors:

- The trial court has a legal duty to act but:
 - Refuses to act
 - Has not done what the law says it must do



APP-150-INFO**Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases**

- Has acted in a way the law says it does not have the power to act
- The trial court has performed or says it is going to perform a judicial function (like deciding a person's rights under law in a particular case) in a way that the court does not have the legal power to do.

To show the appellate division that the trial court made one of these legal errors, you will need to:

- Show that the trial court has the legal duty or the power to act or not act in a particular way. You will need to tell the appellate division what legal authority—what constitutional provision, statute, rule, or published court decision—establishes the trial court's legal duty or power to act or not act in that way.
- Show the appellate division that the trial court has not acted in the way that this legal authority says the court is required to act. You will need to tell the appellate division exactly where in the record of what happened in the trial court it shows that the trial court did not act in the way it was required to.

c. Description of why you need the writ

One of the most important parts of your petition is explaining to the appellate division why you need the writ you have requested. Remember, the appellate division does not have to grant your petition just because the trial court made an error. You must convince the appellate division that it is important for it to issue the writ.

Your petition needs to show that a writ is the only way to fix the trial court's error. To convince the court you need the writ, you will need to show the appellate division that you have no way to fix the trial court's error other than through a writ (this is called having “no adequate remedy at law”).

This will be hard if the trial court's ruling can be appealed. If the ruling you are challenging can be appealed, either immediately or as part of an appeal of the final judgment in your case, the appellate division will generally consider this appeal to be a good enough way to fix the trial court's ruling (an “adequate remedy”). To be able to explain to the appellate division why you do not have an adequate remedy at law, you will need to find out if the ruling you want to challenge

can be appealed, either immediately or as part of an appeal of the final judgment.

Here are some trial court rulings that can be appealed.

There are laws (statutes) that say that certain kinds of trial court rulings (“orders”) can be appealed immediately. In limited civil cases, California Code of Civil Procedure section 904.2 lists orders that can be appealed immediately, including orders:

- Changing or refusing to change the place of trial (venue)
- Granting a motion to quash service of summons
- Granting a motion to stay or dismiss the action on the ground of inconvenient forum
- Granting a new trial
- Denying a motion for judgment notwithstanding the verdict
- Granting or dissolving an injunction or refusing to grant or dissolve an injunction
- Appointing a receiver
- Made after final judgment in the case

In misdemeanor and infraction cases, orders made after the final judgment that affect the substantial rights of the defendant can be appealed immediately (California Penal Code section 1466).

In misdemeanor cases, orders granting or denying a motion to suppress evidence can also be appealed immediately (California Penal Code section 1538.5(j)).

You can get copies of these statutes at any county law library or online at leginfo.legislature.ca.gov/faces/codes.xhtml. You should also check to see if there are published court decisions that indicate whether you can or must use an appeal or a writ petition to challenge the type of ruling you want to challenge in your case.

If the ruling can be appealed, you will need to show that an appeal will not fix the trial court's error. If the trial court ruling you want to challenge can be appealed, you will need to show the appellate division why that appeal is not good enough to fix the trial court's error. To do that, you will need to show the appellate division how you will be harmed by the trial court's error in a way that cannot be fixed by the appeal if the appellate division does not issue the writ (this is called “irreparable” injury or harm). For example, because of



APP-150-INFO**Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases**

the time it takes for an appeal, the harm you want to prevent may happen before an appeal can be finished.

d. Description of the order you want the appellate division to make

Your petition needs to describe what you are asking the appellate division to order the trial court to do or not do. Writ petitions usually ask that the trial court be ordered to cancel (“vacate”) its ruling, issue a new ruling, or not take any steps to enforce its ruling.

If you want the appellate division to order the trial court not to do anything more until the appellate division decides whether to grant the writ you are requesting, you must ask for a “stay.” If you want a stay, you should first ask the trial court for a stay. You should tell the appellate division whether you asked the trial court for a stay. If you did not ask the trial court for a stay, you should tell the appellate division why you did not do this.

If you ask the appellate division for a stay, make sure you also fill out the “Stay requested” box on the first page of the *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151).

e. Verifying the petition

Petitions for writs must be “verified.” This means that either the petitioner or the petitioner’s attorney must declare under penalty of perjury that the facts stated in the petition are true and correct, must sign the petition, and must indicate the date that the petition was signed. On the last page of the *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151), there is a place for you to verify your petition.

13 Is there anything else that I need to serve and file with my petition?

Yes. Along with the petition, you must serve and file a record of what happened in the trial court (see below for an explanation of how to serve and file the petition). Since the appellate division judges were not there in the trial court, a record of what happened must be sent to the appellate division for its review. The materials that make up this record are called “supporting documents.”

What needs to be in the supporting documents. The supporting documents must include:

- A record of what was said in the trial court about the ruling that you are challenging (this is called the “oral proceedings”) and
- Copies of certain important documents from the trial court.

Read below for more information about these two parts of the supporting documents.

Record of the oral proceedings. There are several ways a record of what was said in the trial court may be provided to the appellate division:

- **A transcript**—A transcript is a written record (often called the “verbatim” record) of the oral proceedings in the trial court. If a court reporter was in the trial court and made a record of the oral proceedings, you can have the court reporter prepare a transcript of those oral proceedings, called a “reporter’s transcript,” for the appellate division. If a reporter was not there, but the oral proceedings were officially recorded on approved electronic recording equipment, you can have a transcript prepared for the appellate division from the official electronic recording of these proceedings. You (the petitioner) must pay for preparing a transcript, unless the court orders otherwise.
- **A copy of an electronic recording**—If the oral proceedings were officially recorded on approved electronic recording equipment, the court has a local rule for the appellate division permitting this recording to be used as the record of the oral proceedings, and all the parties agree (“stipulate”), a copy of the official electronic recording itself can be used as the record of the oral proceedings instead of a transcript. You (the petitioner) must pay for preparing a copy of the official electronic recording, unless the court orders otherwise.
- **A summary**—If a transcript or official electronic recording of what was said in the trial court is not available, your petition must include a declaration (a statement signed by the petitioner under penalty of perjury) either:
 - Explaining why the transcript or official electronic recording is not available and providing a fair summary of the proceedings, including the petitioner’s arguments and any statement by the court supporting its ruling or



APP-150-INFO**Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases**

- o Stating that the transcript or electronic recording has been ordered, the date it was ordered, and the date it is expected to be filed.

Copies of documents from the trial court. Copies of the following documents from the trial court must also be included in the supporting documents:

- The trial court ruling being challenged in the petition
- All documents and exhibits submitted to the trial court supporting and opposing the petitioner’s position
- Any other documents or portions of documents submitted to the trial court that are necessary for a complete understanding of the case and of the ruling being challenged

What if I cannot get copies of the documents from the trial court because of an emergency? Rule 8.931 of the California Rules of Court provides that in extraordinary circumstances the petition may be filed without copies of the documents from the trial court. If the petition is filed without these documents, you must explain in your petition the urgency and the circumstances making the documents available.

Format of the supporting documents. Supporting documents must be put in the format required by rule 8.931 of the California Rules of Court. Among other things, there must be a tab for each document and an index listing the documents that are included. You should carefully read rule 8.931. You can get a copy of rule 8.931 at any courthouse or county law library or online at www.courts.ca.gov/rules.

14 Is there a deadline to ask for a writ?

Yes. For statutory writs, the statute usually sets the deadline for serving and filing the petition. Here is a list of the deadlines for filing petitions for some of the most common statutory writs (you can get copies of these statutes at any county law library or online at leginfo.legislature.ca.gov/faces/codes.xhtml).

Statutory Writ	Filing Deadline
Writ challenging a ruling on a motion to disqualify a judge (see California Code of Civil Procedure section 170.3(d))	10 days after notice to the parties of the decision
Writ challenging the denial of a motion for summary judgment (see California Code of Civil Procedure section 437c(m)(l))	20 days after service of written notice of entry of the order
Writ challenging a ruling on a motion for summary adjudication of issues (see California Code of Civil Procedure section 437c(m)(l))	20 days after service of written notice of entry of the order

For common law writs or statutory writs where the statute does not set a deadline, you should file the petition as soon as possible and not later than 30 days after the court makes the ruling that you are challenging in the petition. While there is no absolute deadline for filing these petitions, writ petitions are usually used when it is urgent that the trial court’s error be fixed. Remember, the court is not required to grant your petition even if the trial court made an error. If you delay in filing your petition, it may make the appellate division think that it is not really urgent that the trial court’s error be fixed and the appellate division may deny your petition. If there are extraordinary circumstances that delayed the filing of your petition, you should explain these circumstances to the appellate division in your petition.

15 How do I “serve” my petition?

Rule 8.931(d) requires that the petition and one set of supporting documents be served on any named real party in interest and that just the petition be served on the respondent trial court. “Serving” a petition on a party means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (“serve”) the petition to the real party in interest and the respondent court in the way required by law. If the petition is mailed or



APP-150-INFO**Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases**

personally delivered, it must be by someone who is not a party to the case—so not you.

- Make a record that the petition has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the petition, who was served with the petition, how the petition was served (by mail, in person, or electronically), and the date the petition was served.

You can get more information about how to serve court documents and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-serving.htm.

16 How do I file my petition?

To file a petition for a writ in the appellate division, you must bring or mail the original petition, including the supporting documents, and the proof of service to the clerk for the appellate division of the superior court that made the ruling you are challenging. If the superior court has more than one courthouse location, you should call the clerk at the courthouse where the ruling you are challenging was made to ask where to file your petition.

You should make a copy of all the documents you are planning to file for your own records before you file them with the court. It is a good idea to bring or mail an extra copy of the petition to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

17 Do I have to pay to file a petition?

There is no fee to file a petition for a writ in a misdemeanor or infraction case, but there is a fee to file a petition for a writ in a limited civil case. You should ask the clerk for the appellate division where you are filing the petition what this fee is. If you cannot afford to pay this filing fee, you can ask the court to waive this fee. To do this, you must fill out a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at www.courts.ca.gov/forms. You can file this application

either before you file your petition or with your petition. The court will review this application and decide whether to waive the filing fee.

18 What happens after I file my petition?

Within 10 days after you serve and file your petition, the respondent or any real party in interest can serve and file preliminary opposition to the petition. Within 10 days after an opposition is filed, you may serve and file a reply to that opposition.

The appellate division does not have to wait for an opposition or reply before it can act on a petition for a writ, however. Without waiting, the appellate division can:

- Issue a stay
- Summarily deny the petition
- Issue an alternative writ or order to show cause
- Notify the parties that it is considering issuing a preemptory writ in the first instance
- Issue a preemptory writ in the first instance if such relief was expressly requested in the petition.

Read below for more information about these options.

a. Stay of trial court proceedings

A stay is an order from the appellate division telling the trial court not to do anything more until the appellate division decides whether to grant your petition. A stay puts the trial court proceedings on temporary hold.

b. Summary denial

A “summary denial” means that the appellate division denies the petition without deciding whether the trial court made the legal error claimed by the petitioner or whether the writ requested by the petitioner should be issued based on that error. Remember, even if the trial court made a legal error, the appellate division can decide not to consider that error now but to wait and consider the error as part of any appeal from the final judgment. No reasons need to be given for a summary denial. Most petitions for writs are denied in this way.



APP-150-INFO**Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases****c. Alternative writ or order to show cause**

An “alternative writ” is an order telling the trial court either to do what the petitioner has requested in the petition (or some modified form of what the petitioner requested) or to show the appellate division why the trial court should not be ordered to do what the petitioner requested. An “order to show cause” is similar; it is an order telling the trial court to show the appellate division why the trial court should not be ordered to do what the petitioner requested in the petition (or some modified form of what the petitioner requested). The appellate division will issue an alternative writ or an order to show cause only if the petitioner has shown that he or she has no adequate remedy at law and the appellate division has decided that the petitioner may have shown that the trial court made a legal error that needs to be fixed.

If the appellate division issues an alternative writ and the trial court does what the petitioner requested (or a modified form of what the petitioner requested as ordered by the appellate division), then no further action by the appellate division is needed and the appellate division may dismiss the petition.

If the trial court does not comply with an alternative writ, however, or if the appellate division issues an order to show cause, then the respondent court or a real party in interest can file a response to the appellate division’s order (called a “return”) that explains why the trial court should not be ordered to do what the petitioner requested. The return must be served and filed within the time specified by the appellate division or, if no time is specified, within 30 days from the date the alternative writ or order to show cause was issued. The petitioner will then have an opportunity to serve and file a reply within 15 days after the return is filed. The appellate division may set the matter for oral argument. When all the papers have been served and filed (or the time to serve and file them has passed) and oral argument is completed, the appellate division will decide the case.

d. Peremptory writ in the first instance

A “peremptory writ in the first instance” is an order telling the trial court to do what the petitioner has requested (or some modified form of what the petitioner requested) that is issued without the appellate division first issuing an alternative writ or order to show cause. It is very rare for the appellate division to issue a peremptory writ in the first instance, and it will not do so

unless the respondent and real parties in interest have received notice that the court might do so, either through the petitioner expressly asking for such relief in the petition, or by the court first notifying the parties and giving the respondent court and any real party in interest a chance to file an opposition.

The respondent court or a real party in interest can file a response to the appellate division’s notice (called an “opposition”) that explains why the trial court should not be ordered to do what the petitioner has requested. The opposition must be served and filed within the time specified by the appellate division or, if no time is specified, within 30 days from the date the notice was issued. The petitioner will then have a chance to serve and file a reply within 15 days after the opposition is filed. The appellate division may then set the matter for oral argument. When all the papers have been served and filed (or the time to serve and file them has passed) and oral argument is completed, the appellate division will decide the case.

19 What should I do if the court denies my petition?

If the court denies your petition, it may be helpful to talk to a lawyer. In a limited civil or infraction case, you must hire a lawyer at your own expense if you want one (the court cannot provide one). You can get information about finding an attorney on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-lowcosthelp.htm.

INFORMATION FOR A REAL PARTY IN INTEREST

This part of the information sheet is written for a real party in interest—a party from the trial court case other than the petitioner who will be affected by a ruling on a petition for a writ. It explains some of the rules and procedures relating to responding to a petition for a writ. The information may also be helpful to the petitioner.



APP-150-INFO**Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases****20 I have received a copy of a petition for a writ in a case in which I am a party. Do I need to do anything?**

You do not *have* to do anything. The California Rules of Court give you the right to file a preliminary opposition to a petition for a writ within 10 days after the petition is served and filed, but you are not required to do this. The appellate division can take certain actions without waiting for any opposition, including:

- Summarily denying the petition
- Issuing an alternative writ or order to show cause
- Notifying the parties that it is considering issuing a peremptory writ in the first instance
- Issuing a peremptory writ in the first instance if such relief was expressly requested in the petition.

Read the response to question 18 for more information about these options.

Most petitions for writs are summarily denied, often within a few days after they are filed. If you have not already received something from the appellate division saying what action it is taking on the petition, it is a good idea to call the appellate division to see if the petition has been denied before you decide whether and how to respond.

This would be a good time to talk to a lawyer. You do not *have* to have a lawyer; you are allowed to represent yourself in a writ proceeding in the appellate division. But writ proceedings can be very complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about writ proceedings or about whether and how you should respond to a writ petition, you should talk to a lawyer. In a limited civil case or infraction case, you must hire a lawyer at your own expense if you want one (the court cannot provide one). You can get information about finding an attorney on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-lowcosthelp.htm.

If the petition has not already been summarily denied, you may, but are not required to, serve and file a preliminary opposition to the petition within 10 days after the petition was served and filed. In general, it is a good idea to consider filing a preliminary opposition if the petition misstates the facts or if you think the petition shows that the trial court made a legal error that may

need to be fixed. However, the appellate division will seldom grant a writ without first issuing an alternative writ, an order to show cause, or a notice that it is considering issuing a peremptory writ. In all these circumstances, you will get notice from the court and have a chance to file a response. Note that the appellate division may issue a peremptory writ without notice if the petitioner expressly asked the court, in the petition, to issue a peremptory writ in the first instance. If the petitioner did that, you may want to consider whether to file a preliminary opposition, to explain why you believe the small claims court made no legal error and why the petitioner is not entitled to a writ.

If you decide to file a preliminary opposition, you must serve that preliminary opposition on all the other parties to the writ proceeding. “Serving and filing” an opposition means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (“serve”) the preliminary opposition to the other parties in the way required by law. If the preliminary opposition is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the preliminary opposition has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the preliminary opposition, who was served with the preliminary opposition, how the preliminary opposition was served (by mail, in person, or electronically), and the date the preliminary opposition was served.
- File the original preliminary opposition and the proof of service with the appellate division. You should make a copy of the preliminary opposition for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the preliminary opposition to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court documents and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California



APP-150-INFO**Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases**

Courts Online Self-Help Center at
www.courts.ca.gov/selfhelp-serving.htm.

21 I have received a copy of an alternative writ or an order to show cause issued by the appellate division. Do I need to do anything?

Yes. Unless the trial court has already done what the alternative writ told it to do, you should serve and file a response called a “return.”

As explained above, the appellate division will issue an alternative writ or an order to show cause if the appellate division has decided that the petitioner may have shown that the trial court made a legal error that needs to be fixed. An “alternative writ” is an order telling the trial court either to do what the petitioner has requested in the petition (or some modified form of what the petitioner requested) or to show the appellate division why the trial court should not be ordered to do what the petitioner requested. An “order to show cause” is similar; it is an order telling the trial court to show the appellate division why the trial court should not be ordered to do what the petitioner requested in the petition (or some modified form of what the petitioner requested).

If the appellate division issues an alternative writ and the trial court does what the petitioner requested (or a modified form of what the petitioner requested as ordered by the appellate division), then no further action by the appellate division is needed and the appellate division may dismiss the petition. If the trial court does not comply with an alternative writ, however, or if the appellate division issues an order to show cause, then the respondent court or the real party in interest may serve and file a response to the appellate division’s order, called a “return.”

A return is your argument to the appellate division about why the trial court should not be ordered to do what the petitioner has requested. If you are represented by a lawyer in the writ proceeding, your lawyer will prepare your return. If you are not represented by a lawyer, you will need to prepare your own return. A return is usually a legal response called an “answer.” An answer is used to admit or deny the facts alleged in the petition, to add to or correct the facts, and to explain any legal defenses to the legal arguments made by the petitioner. You

should read California Code of Civil Procedure sections 430.10–430.80 for more information about answers. You can get copies of these statutes at any county law library or online at leginfo.legislature.ca.gov/faces/codes.xhtml. A return can also include additional supporting documents not already filed by the petitioner.

If you do not file a return when the appellate division issues an alternative writ or order to show cause, it does not mean that the appellate division is required to issue the writ requested by the petitioner. However, the appellate division will treat the facts stated by the petitioner in the petition as true, which makes it more likely the appellate division will issue the requested writ.

Unless the appellate division sets a different filing deadline in its alternative writ or order to show cause, you must serve and file your return within 30 days after the appellate division issues the alternative writ or order to show cause. The return must be served on all the other parties to the writ proceeding. “Serving and filing” the return means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (“serve”) the return to the other parties in the way required by law. If the return is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the return has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the return, who was served with the return, how the return was served (by mail, in person, or electronically), and the date the return was served.
- File the original return and the proof of service with the appellate division. You should make a copy of the return you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the return to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court documents and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California



APP-150-INFO**Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases**

Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-serving.htm.

22 I have received a copy of a notice from the appellate division indicating it is considering issuing a peremptory writ in the first instance. Do I need to do anything?

Yes. You should serve and file a response called an “opposition.”

As explained in the answer to question **18**, a “peremptory writ in the first instance” is an order telling the trial court to do what the petitioner has requested (or some form of what the petitioner requested as ordered by the appellate division) that is issued without the appellate division first issuing an alternative writ or order to show cause. The appellate division will not issue a peremptory writ in the first instance without first giving the parties notice and a chance to file an opposition. However, when the appellate division issues such a notice, it means that the appellate division is strongly considering granting the writ requested by the petitioner.

An opposition is your argument to the appellate division about why the trial court should not be ordered to do what the petitioner has requested. If you are represented by a lawyer in the writ proceeding, your lawyer will prepare your opposition. If you are not represented by a lawyer, you will need to prepare your own opposition. Like a return discussed above, an opposition is usually a legal response called an “answer.” An answer is used to admit or deny the facts alleged in the petition, to add to or correct the facts, and to explain any legal defenses to the legal arguments made by the petitioner. You should read California Code of Civil Procedure sections 430.10–430.80 for more information about answers. You can get copies of these statutes at any county law library or online at leginfo.legislature.ca.gov/faces/codes.xhtml.

Unless the appellate division sets a different deadline in its notice that it is considering issuing a peremptory writ, you must serve and file your opposition within 30 days after the appellate division issues the notice. The opposition must be served on all the other parties to the writ proceeding. “Serving and filing” the opposition means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (“serve”) the opposition to the

other parties in the way required by law. If the opposition is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.

- Make a record that the opposition has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the opposition, who was served with the opposition, how the opposition was served (by mail, in person, or electronically), and the date the opposition was served.
- File the original opposition and the proof of service with the appellate division. You should make a copy of the opposition you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the opposition to the clerk when you file your original, and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court documents and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-serving.htm.

23 What happens after I serve and file my return or opposition?

After you file a return or opposition, the petitioner has 15 days to serve and file a reply. The appellate division may also set the matter for oral argument. When all the papers have been filed (or the time to file them has passed) and oral argument is completed, the appellate division will decide the case.

APP-151**Petition for Writ (Misdemeanor,
Infraction, or Limited Civil Case)**

Clerk stamps date here when form is filed.

Petitioner*(fill in the name of the person asking for the writ)*

v.

Superior Court of California, County of _____

Respondent*(fill in the name of the court whose action or ruling you are challenging)***Real Party in Interest***(fill in the name of any other parties in the trial court case)*

Clerk will fill in the number below:

Appellate Division Case Number: **Stay requested***(see item 12 c. on page 6)***Instructions**

- This form is only for requesting a **writ** in a misdemeanor, infraction, or limited civil case, or a writ challenging a postjudgment enforcement order in a small claims case (see below*).
 - Do *not* use this form for other writs and for appeals. You can get forms to use for those at any courthouse or county law library or online at www.courts.ca.gov/forms.
 - Before you fill out this form, read *Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases* (form APP-150-INFO) to know your rights and responsibilities. You can get form APP-150-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.
 - Unless a special statute sets an earlier deadline, you should file this form no later than **30 days** after the date the trial court took the action or issued the ruling you are challenging in this petition (see form APP-150-INFO, page 7, for more information about the deadline for filing a writ petition). It is your responsibility to find out if a special statute sets an earlier deadline. If your petition is filed late, the appellate division may deny it.
 - Fill out this form and make a copy of the completed form for your records and for the respondent (the trial court whose action or ruling you are challenging) and each of the real parties in interest (the other party or parties in the trial court case).
 - Serve a copy of the completed form on the respondent and on each real party in interest and keep proof of this service. *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-serving.htm.
 - Take or mail the completed form and your proof of service on the respondent and each real party in interest to the clerk's office for the appellate division of the superior court that took the action or issued the ruling you are challenging.
- * **Small Claims cases.** If you are a party in a small claims case, this form is only to be used for requesting a writ relating to a postjudgment enforcement order of a small claims division. For writs relating to other acts of a small claims division, the form to use is the *Petition for Writ (Small Claims)* (form SC-300). See also Cal. Rules of Court, rules 8.970–8.977. For writs relating to acts of a superior court in a small claims appeal, see Cal. Rules of Court, rules 8.485–8.493.



Appellate Division

Appellate Division Case Number:

Case Name: _____

1 Your Information

a. Petitioner (the party who is asking for the writ):

Name: _____

Street address: _____
Street *City* *State* *Zip*

Mailing address (if different): _____
Street *City* *State* *Zip*

Phone: _____ E-mail: _____

b. Petitioner’s lawyer (skip this if the petitioner does not have a lawyer for this petition):

Name: _____ State Bar number: _____

Street address: _____
Street *City* *State* *Zip*

Mailing address (if different): _____
Street *City* *State* *Zip*

Phone: _____ E-mail: _____

Fax: _____

The Trial Court Action or Ruling You Are Challenging

2 I am/My client is filing this petition to challenge an action taken or ruling made by the trial court in the following case:

a. Case name (fill in the trial court case name): _____

b. Case number (fill in the trial court case number): _____

3 The trial court action or ruling I am/my client is challenging is (describe the action taken or ruling made by the trial court): _____

4 The trial court took this action or made this ruling on the following date (fill in the date): _____

5 If you are filing this petition more than 30 days after the date that you listed in **4**, explain the extraordinary circumstances that caused the delay in filing this petition: _____



Appellate Division

Case Name: _____

Appellate Division Case Number: _____

The Parties in the Trial Court Case

- 6 I/My client (*check and fill in a or b*):
- a. was a party in the case identified in 2.
- b. was not a party in the case identified in 2 but will be directly and negatively affected in the following way by the action taken or ruling made by the trial court (*describe how you/your client will be directly and negatively affected by the trial court's action or ruling*):

- 7 The other party or parties in the case identified in 2 was/were (*fill in the names of the parties*):

Appeals or Other Petitions for Writs in This Case

- 8 Did you or anyone else file an appeal about the same trial court action or ruling you are challenging in this petition? (*Check and fill in a or b*):

- a. No
- b. Yes (*fill in the appellate division case number of the appeal*): _____

- 9 Have you filed a previous petition for a writ challenging this trial court action or ruling? (*Check and fill in a or b*):

- a. No
- b. Yes (*Please provide the following information about this previous petition*).

- (1) Petition title (*fill in the title of the petition*): _____
- (2) Date petition filed (*fill in the date you filed this petition*): _____
- (3) Case number (*fill in the case number of the petition*): _____

If you/your client filed more than one previous petition, attach another page providing this information for each additional petition. At the top of each page, write "APP-151, item 9."

Reasons for This Petition

- 10 The trial court made the following legal error or errors when it took the action or made the ruling described in 3 (*check and fill in at least one*):

- a. The trial court has not done or has refused to do something that the law says it *must* do.

- (1) *Describe what you believe the law says the trial court must do*: _____

- (2) *Identify the law (the section of the Constitution or statute, published court decision, or other legal authority) that says the trial court must do this*: _____



Appellate Division

Appellate Division Case Number:

Case Name: _____

10 (continued)

(3) *Identify where in the supporting documents (the record of what was said in the trial court and the documents from the trial court) it shows that the court did not do or refused to do this:*

Check here if you need more space to describe the reason for your petition and attach a separate page or pages describing it. At the top of each page, write "APP-151, item 10a."

b. The trial court has done something that the law says the court *cannot or must not* do.

(1) *Describe what the trial court did:* _____

(2) *Identify where in the supporting documents (the record of what was said in the trial court and the documents from the trial court) it shows that the court did this:* _____

(3) *Identify the law (the section of the Constitution or statute, published court decision, or other legal authority) that says the trial court cannot or must not do this:* _____

Check here if you need more space to describe the reason for your petition and attach a separate page or pages describing it. At the top of each page, write "APP-151, item 10b."

c. The trial court has performed or said it is going to perform a judicial function (like deciding a person's rights under law in a particular situation) in a way the court does not have the legal power to do.

(1) *Describe what the trial court did or said it is going to do:* _____

(2) *Identify where in the supporting documents (the record of what was said in the trial court and the documents from the trial court) it shows that the court did or said it was going to do this:*



Appellate Division

Case Name: _____

Appellate Division Case Number: _____

10 (continued)

(3) Identify the law (the section of the Constitution or statute, published court decision, or other legal authority) that says the trial court does not have the power to do this:

Check here if you need more space to describe this reason for your petition and attach a separate page or pages describing it. At the top of each page, write "APP-151, item 10c."

Check here if there are more reasons for this petition and attach an additional page or pages describing these reasons. At the top of each page, write "APP-151, item 10d."

11 This petition will be granted only if there is no other adequate way to address the trial court's action or ruling other than by issuing the requested writ.

a. Explain why there is no way other than through this petition for a writ—through an appeal, for example—for your arguments to be adequately presented to the appellate division:

b. Explain how you/your client will be irreparably harmed if the appellate division does not issue the writ you are requesting: _____

Order You Are Asking the Appellate Division to Make

12 I request that this court (check and fill in all that apply):

a. order the trial court to do the following (describe what, if anything, you want the trial court to be ordered to do): _____

b. order the trial court not to do the following (describe what, if anything, you want the trial court to be ordered NOT to do): _____



Appellate Division

Case Name: _____

Appellate Division Case Number: _____

12 (continued)

- c. issue a stay ordering the trial court not to take any further action in this case until this court decides whether to grant or deny this petition (*describe below why it is urgent that the trial court not take any further action and check the Stay requested box on page 1 of this form*):

I/My client:

- (1) asked the trial court to stay these proceedings, but the trial court denied this request (*include in your supporting documents a copy of the trial court's order denying your request for a stay*).
- (2) did not ask the trial court to stay these proceedings for the following reasons (*describe below why you did not ask the trial court to stay these proceedings*):

- d. take other action (*describe*): _____

- e. grant any additional relief that the appellate division decides is fair and appropriate.

Supporting Documents

13 Is a record of what was said in the trial court about the action or ruling you are challenging attached as required by rule 8.931(b)(1)(D) of the California Rules of Court?

- a. Yes, a transcript or an official electronic recording of what was said in the trial court is attached.
- b. No, a transcript or official electronic recording is not attached, but I have attached a declaration (a statement signed under penalty of perjury) (*Check (1) or (2)*):
- (1) stating the transcript or electronic recording has been ordered, the date it was ordered, and the date it is expected to be filed.
- (2) explaining why the transcript or official electronic recording is not available and providing a fair summary of what was said in the trial court, including the petitioner's arguments and any statement by the trial court supporting its ruling.



APPELLANT: RESPONDENT	COURT OF APPEAL CASE NUMBER:
--------------------------	------------------------------

8. The court imposed the following punishment:

9. The defendant is is not on bail pending appeal.

10. The reasons that I need an extension to file this brief are stated

below.

on a separate declaration. You may use *Attached Declaration (Court of Appeal)* (form APP-031) for this purpose.

(Please specify; see rule 8.63 for factors used in determining whether to grant extensions):

11. A proof of service of this application on all those entitled to receive a copy of the brief under rule 8.360(d)(1), (2), and (3) is attached (see rule 8.360(d)). You may use *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) for this purpose.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____



(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

Order on Application is below on a separate document

ORDER

EXTENSION OF TIME IS:

Granted to (date): _____

Denied

Date: _____

(SIGNATURE OF PRESIDING JUSTICE)

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.:	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
PEOPLE OF THE STATE OF CALIFORNIA VS.		
Defendant: Date of birth: _____ Cal. Dept. of Corrections and Rehabilitation No. (if any): _____		
NOTICE OF APPEAL—FELONY (DEFENDANT) (Pen. Code, §§ 1237, 1237.5, 1538.5(m); Cal. Rules of Court, rule 8.304)		CASE NUMBER:

NOTICE

- **You must file this form in the SUPERIOR COURT WITHIN 60 DAYS after the court rendered the judgment or made the order you are appealing.**
- **IMPORTANT:** If your appeal challenges the validity of a guilty plea, a no-contest plea, or an admission of a probation violation, you must also complete the Request for Certificate of Probable Cause on page 2 of this form. (Pen. Code, § 1237.5.)

1. Defendant appeals from a judgment rendered or an order made by the superior court.

NAME of defendant:

DATE of the order or judgment:

2. **Complete either item a. or item b. Do not complete both.**

a. *If this appeal is after entry of a plea of guilty or no contest or an admission of a probation violation, check all that apply:*

- (1) This appeal is based on the sentence or other matters occurring after the plea that do not affect the validity of the plea. (Cal. Rules of Court, rule 8.304(b).)
- (2) This appeal is based on the denial of a motion to suppress evidence under Penal Code section 1538.5.
- (3) This appeal challenges the validity of the plea or admission. *(You must complete the Request for Certificate of Probable Cause on page 2 of this form and submit it to the court for its signature.)*
- (4) Other basis for this appeal *(you must complete the Request for Certificate of Probable Cause on page 2 of this form and submit it to the court for its signature) (specify):*

b. *For all other appeals, check one:*

- (1) This appeal is after a jury or court trial. (Pen. Code, § 1237(a).)
- (2) This appeal is after a contested violation of probation. (Pen. Code, § 1237(b).)
- (3) Other *(specify):*

3. Defendant requests that the court appoint an attorney for this appeal. Defendant was was not represented by an appointed attorney in the superior court.

4. Defendant's mailing address is: same as in attorney box above.
 as follows:

Date:

(TYPE OR PRINT NAME)



(SIGNATURE OF DEFENDANT OR ATTORNEY)

PEOPLE OF THE STATE OF CALIFORNIA vs. Defendant:	CASE NUMBER:
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REQUEST FOR CERTIFICATE OF PROBABLE CAUSE

I request a certificate of probable cause. The reasonable constitutional, jurisdictional, or other grounds going to the legality of the guilty plea, no-contest plea, or probation violation admission proceeding are (*specify*):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

▲ _____
(SIGNATURE OF DEFENDANT OR ATTORNEY)

COURT ORDER

This Request for Certificate of Probable Cause is (*check one*): granted denied.

Date:

JUDGE

CR-132**Notice of Appeal
(Misdemeanor)**

Clerk stamps date here when form is filed.

Instructions

- This form is only for appealing in a **misdemeanor case**. You can get other forms for appealing in a civil or infraction case at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO) to know your rights and responsibilities. You can get form CR-131-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- **You must file this form no later than 30 days after the trial court issued the judgment or order you are appealing** (see rule 8.853(b) of the California Rules of Court for very limited exceptions). **If your notice of appeal is late, the court will not take your appeal.**
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk's office for the same trial 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

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:**1 Your Information**

- a. Name of Appellant (the party who is filing this appeal):

Name: _____

Street address: _____
Street City State ZipMailing address (if different): _____
Street City State Zip

Phone: _____ E-mail: _____

- b. Appellant's lawyer (skip this if the appellant is filling out this form):

The lawyer filling out this form is (check (1) or (2)):

(1) was the appellant's lawyer in the trial court. (2) is the appellant's lawyer for this appeal.

Name: _____ State Bar number: _____

Street address: _____
Street City State ZipMailing address (if different): _____
Street City State Zip

Phone: _____ E-mail: _____

Fax: _____



Trial Court Case Name: _____

Trial Court Case Number: _____

2 Judgment or Order You Are AppealingI am/My client is appealing (*check one*):

- a. The final judgment of conviction in this case (Penal Code section 1466(b)(1)).
 I am/My client is contesting only the conditions of the probation.
- b. The following order made after the judgment in this case that affects an important right of mine/my client (for example, an order after a probation violation) (Penal Code section 1466(b)(1)).
 An order modifying the conditions of probation.
 Other(*describe the action you are appealing and give the date the trial court took the action*):

- c. The trial court has not yet issued a final judgment in this case. I am appealing before final judgment an order that denied a motion to suppress evidence in this case (Penal Code section 1538.5(j)).
- d. Other action (*describe the action you are appealing and give the date the trial court took the action*):

3 Record on Appeal*See form CR-131-INFO for information about the record on appeal.*

- a. I have attached a completed *Notice Regarding Record on Appeal (Misdemeanor)* (form CR-134).
- b. I have **not** attached a *Notice Regarding Record on Appeal (Misdemeanor)* (form CR-134). I understand that I must file this notice in the trial court within either: (1) 20 days after I file this notice of appeal; or, if it is later, (2) 10 days after the court appoints a lawyer for me (if I file a request for a court-appointed lawyer within 20 days after I file my notice of appeal). I also understand that if I do not file the notice on time, the court will not be able to consider what was said in the trial court in deciding whether an error was made in the trial court proceedings.

4 Court-Appointed Lawyer

- a. I/My client was was not represented by the public defender or another court-appointed lawyer in the trial court.
- b. I am/My client is (*check (1) or (2)*):
- (1) asking the court to appoint a lawyer to represent me/my client in this appeal. I have completed *Request for Court-Appointed Lawyer in Misdemeanor Appeal* (form CR-133) and attached it to this notice of appeal.
- (2) **not** asking the court to appoint a lawyer to represent me/my client in this appeal.

REMINDER—Except in the very limited circumstances listed in rule 8.853, you must file this form no later than 30 days after the trial court issued the judgment or order you are appealing in your case. If your notice of appeal is late, the court will not take your appeal.

Date: _____

Type or print your name_____
Signature of appellant or attorney

CR-133

Request for Court-Appointed Lawyer in Misdemeanor Appeal

Clerk stamps date here when form is filed.

Instructions

- This form is only for requesting that the court appoint a lawyer to represent a person appealing in a **misdemeanor** case.
- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO) to know your rights and responsibilities. You can get form CR-131-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.
- The court is required to appoint a lawyer to represent you on appeal only if you cannot afford to hire a lawyer and
 - (1) your punishment includes going to jail or paying a fine of more than \$500 (including penalty and other assessments), or
 - (2) you are likely to suffer other significant harm as a result of being convicted.
- This form can be filed at the same time as your notice of appeal.
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk’s office for the same trial court where you filed your notice of appeal. 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

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:

1 Your Information

a. Name of Appellant (the party who is filing this appeal):

Name: _____

Street address: _____
Street City State Zip

Mailing address (if different): _____
Street City State Zip

Phone: _____ E-mail: _____

b. Appellant’s lawyer (skip this if the appellant is filling out this form):

Name: _____ State Bar number: _____

Street address: _____
Street City State Zip

Mailing address (if different): _____
Street City State Zip

Phone: _____ E-mail: _____

Fax: _____



Trial Court Case Number: _____

Trial Court Case Name: _____

Information About Your Case

- ② Were you/was your client represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case? (*Check a or b.*)
- a. Yes
- b. No (*Complete and attach Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense (form MC-210) showing that you/your client cannot afford to hire a lawyer. You can get form MC-210 at any courthouse or county law library or online at www.courts.ca.gov/forms.*)
- ③ Describe the punishment the trial court gave you/your client in this case (*check all that apply and fill in any required information*):
- a. Jail time
- b. A fine (including penalty and other assessments) (*fill in the amount of the fine*): \$ _____
- c. Restitution (*fill in the amount of the restitution*): \$ _____
- d. Probation (*fill in the amount of time on probation*): _____
- e. Other punishment (*describe any other punishment that the trial court gave you/your client in this case*):

- ④ Describe any significant harm that you are/your client is likely to suffer because of this conviction:
- _____
- _____
- _____
- _____

Notice to Appellant: If you were represented by appointed counsel in the trial court and the trial court finds that you are able to pay all or part of the cost of that counsel, at the conclusion of the proceedings, the court may also determine after a hearing whether you are able to pay all or a portion of the cost of any attorney appointed to represent you in this appeal. If the court determines that you are at that time able to pay, the court will order you to pay all or part of such cost. Such orders will have the same force and effect as a judgment in a civil action and will be subject to enforcement.

Date: _____

Type or print name_____
Signature of appellant or attorney

CR-134**Notice Regarding Record on Appeal
(Misdemeanor)**

Clerk stamps date here when form is filed.

Instructions

- This form is only for giving the court notice about the record on appeal in a **misdemeanor case**.
- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO) to know your rights and responsibilities. You can get form CR-131-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.
- This form can be filed with your notice of appeal. If it is not filed with your notice of appeal, this form must be filed within either:
 - (1) 20 days after you file your notice of appeal, or, if it is later
 - (2) 10 days after the court appoints a lawyer to represent you on appeal (if you file a request for a court-appointed lawyer within 20 days after you file your notice of appeal).
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk's office for the same trial court where you filed your notice of appeal. 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

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:**1 Your Information**

- a. Name of Appellant (the party who is filing this appeal):

Name: _____

Street address: _____
Street City State ZipMailing address (if different): _____
Street City State Zip

Phone: _____ E-mail: _____

- b. Appellant's lawyer (skip this if the appellant is filling out this form):

The lawyer filling out this form is (check (1) or (2)):

- (1)
-
- was the appellant's lawyer in the trial court. (2)
-
- is the appellant's lawyer for this appeal.

Name: _____ State Bar number: _____

Street address: _____
Street City State ZipMailing address (if different): _____
Street City State Zip

Phone: _____ E-mail: _____

Fax: _____



Trial Court Case Name: _____

Trial Court Case Number: _____

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.

Your Choices About the Record on Appeal

Stipulation for Limited Record

- ③ The respondent and I/my client have agreed (“stipulated”) under rule 8.860 that parts of the normal record on appeal are not required for proper determination of this appeal. A copy of our stipulation identifying those parts of the record that are not required is attached.

Record of Oral Proceedings

You do not have to provide the appellate division with a record of what was said in the trial court (this is called a record of the “oral proceedings”). But, if you do not, the appellate division will not be able to consider what was said during the trial court proceedings in deciding whether a legal error was made in those proceedings.

- ④ I elect (choose)/My client elects to proceed (check a or b):
- a. WITHOUT a record of the oral proceedings in the trial court (skip item ⑤; sign and date this form). I understand that if I proceed without a record of the oral proceedings, the appellate division will not be able to consider what was said in the trial court during those proceedings in deciding whether a legal error was made.
- (Write initials here): _____
- b. WITH a record of the oral proceedings in the trial court (complete item ⑤ below). I understand that if I elect (choose) to proceed WITH a record of the oral proceeding in the trial court, I have to choose the record I want to use and take the actions described below to make sure this record is provided to the appellate division. I understand that if I do not take the actions described below and the appellate division does not receive this record, I am not likely to succeed in my appeal.

(Write initials here): _____



Trial Court Case Number:

Trial Court Case Name: _____

- 5 I want to use the following record of what was said in the trial court proceedings in my case (*check and complete only one—a, b, c, or d*):
- a. **Reporter's Transcript.** *This option is available only if there was a court reporter in the trial court who made a record of what was said in court. Check with the trial court to see if there was a court reporter in your case before choosing this option. Some courts also have local rules that establish procedures for determining whether only a portion of a reporter's transcript or a different form of the record will be sufficient for an effective appeal. Check with the trial court to see if it has such a local rule. (Check and complete (1) or (2)):*
- (1) I will pay the trial court clerk's office for this transcript myself when I receive the court reporter'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 appellate division.
- (2) I am asking that this transcript be prepared at no cost to me because I cannot afford to pay this cost.
- (a) I was represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case.
- (b) I was not represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case, but I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210). (*You can get form MC-210 at any courthouse or county law library or online at www.courts.ca.gov/forms. The court will review this form to decide if you are eligible for a free reporter's transcript.*)

OR

- b. **Transcript From Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. Some courts also have local rules that establish procedures for determining whether only a portion of a transcript or a different form of the record will be sufficient for an effective appeal. Check with the trial court to see if it has such a local rule. (Check and complete (1) or (2).):*
- (1) I will pay the trial court clerk's office for this transcript myself. I understand that if I do not pay for this transcript, it will not be prepared and provided to the appellate division.
- (2) I am asking that this transcript be provided at no cost to me because I cannot afford to pay this cost.
- (a) I was represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case.
- (b) I was not represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case, but I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210). (*You can get form MC-210 at any courthouse or county law library or online at www.courts.ca.gov/forms. The court will review this form to decide if you are eligible for a free reporter's transcript.*)

OR



Trial Court Case Number:

Trial Court Case Name: _____

⑤ (continued)

- c. **Copy of Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court, the court has a local rule for the appellate division permitting the use of the official electronic recording itself as the record of the court proceedings, and you and the respondent (the prosecuting agency) have agreed (stipulated) that you want to use the recording itself as the record of what was said in your case. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. You must attach a copy of your agreement (stipulation) with the respondent to this notice. (Check and complete (1) or (2).):*
- (1) I will pay the trial court clerk's office for this official electronic recording myself. I understand that if I do not pay for this recording, it will not be prepared and provided to the appellate division.
- (2) I am asking that this official electronic recording be provided at no cost to me because I cannot afford to pay this cost.
- (a) I was represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case.
- (b) I was not represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case, but I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210). (You can get form MC-210 at any courthouse or county law library or online at www.courts.ca.gov/forms. The court will review this form to decide if you are eligible for a free reporter's transcript.)

OR

- d. **Statement on Appeal.** A statement on appeal is a summary of the trial court proceedings approved by the trial court. See form CR-131-INFO for information about preparing a proposed statement. (Check and complete (1) or (2).):
- (1) I have attached my proposed statement on appeal to this notice. (If you are not represented by a lawyer in this appeal, you must use Proposed Statement on Appeal (Misdemeanor) (form CR-135) to prepare and file this proposed statement. You can get a copy of form CR-135 at any courthouse or county law library or online at www.courts.ca.gov/forms.)
- (2) I have NOT attached my proposed statement on appeal to this notice. I understand that I must serve and file this proposed statement in the trial court within 20 days of the date I file this notice and that if I do not file the proposed statement on time, the court may dismiss my appeal.

Date: _____

Type or print your name_____
Signature of appellant or attorney

CR-135**Proposed Statement on Appeal
(Misdemeanor)**

Clerk stamps date here when form is filed.

Instructions

- This form is only for preparing a proposed statement on appeal in an **misdemeanor** case.
- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO) to know your rights and responsibilities. You can get form CR-131-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.
- This form can be attached to your *Notice Regarding Record on Appeal (Misdemeanor)* (form CR-134). If it is not attached to that notice, this form must be filed **no later than 20 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.**
- 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-109-INFO) and on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-serving.htm.
- Take or mail the completed form and proof of service on each of 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

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:**

The People of the State of California
v.

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

Appellate Division Case Number:**1 Your Information**

- a. Appellant (the party who is filing this appeal):

Name: _____

Street address: _____
Street City State ZipMailing address (if different): _____
Street City State Zip

Phone: _____ E-mail: _____

- b. Appellant's lawyer (skip this if the appellant is filling out this form):

The lawyer filling out this form (check (1) or (2)):

(1) was the appellant's lawyer in the trial court. (2) is the appellant's lawyer for this appeal.

Name: _____ State Bar number: _____

Street address: _____
Street City State ZipMailing address (if different): _____
Street City State Zip

Phone: _____ E-mail: _____

Fax: _____



The People of the State of California v.

Trial Court Case Number:

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 Regarding Record on Appeal, choosing to use a statement on appeal as the record of what was said in this case.

Proposed Statement

4 Reasons for Your Appeal

Remember, in an appeal, the appellate division can only review a case for whether certain kinds of legal errors were made in the trial court proceedings (read form CR-131-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:

- 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 in detail 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 that 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 this error harmed you/your client:



The People of the State of California v.

Trial Court Case Number: _____

Trial Court Case Name: _____

4 b. (continued)

(2) Describe the error: _____

Describe how this error harmed you/your client: _____

(3) Describe the error: _____

Describe how this error harmed you/your client: _____

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 "CR-135, item 4."

5 The Charges Against Me/My Client

a. The charges against me/my client were (list all of the charges indicated on the citation or complaint filed with the court by the prosecutor): _____

b. I/My client (check (1), (2), or (3))

(1) pleaded not guilty to all of the charges.

(2) pleaded guilty to only the following charges: _____

(3) pleaded guilty to all of these charges.



The People of the State of California v.

Trial Court Case Number:

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 item **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 prosecutor. 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 it. At the top of each page, write "CR-135, Item 6b(1)."

(2) Describe the second motion: _____

The motion was filed by the prosecutor. 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 "CR-135, item 6b(2)."



The People of the State of California v.

Trial Court Case Number:

Trial Court Case Name: _____

- (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 or pages 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 CR-135, item 6b(3).”

7 Summary of Testimony and Other Evidence

a. Was there a trial in your case?

No (skip items b, c, d, e, and f, and go to item (8))

Yes (complete items b, c, d, e, and f)

(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 on or give your opinion about what you 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 “CR-135, Item 7b.”

c. Did an officer from the police department, sheriff’s office, or other government agency that charged you/your client testify at the trial? (Check one):

No

Yes (complete (1) and (2)):

(1) The name of the officer who testified is (fill in the officer’s name): _____

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

Check here if you need more space to summarize the officer’s testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write “CR-135, Item 7c.”



The People of the State of California v.

Trial Court Case Number: _____

Trial Court Case Name: _____

7 (continued)

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

No

Yes (fill out (1)–(4)):

(1) The witness’s name is (fill in the witness’s name): _____

(2) The witness was was not an officer from the police department, sheriff’s office, or other government agency that charged me/my client.

(3) The witness testified on behalf of me/my client. the prosecution.

(4) 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 the witness’s testimony or any exhibits the 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 “CR-135, Item 7d.”

e. 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, whether the witness testified on your/your client’s behalf or the prosecution’s behalf, 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 the witness’s testimony or any exhibits the witness asked to present and whether these objections were sustained. At the top of each page, write “CR-135, item 7e.”

f. Summarize the evidence, other than the testimony, that was given during the trial that is relevant to the reasons you gave in 3 for this appeal (Write a complete and accurate summary of the evidence given by both you and the respondent. Include only the evidence; do not comment or give your opinion about this evidence.):

Check here if you need more space to summarize the evidence and attach a separate page or pages summarizing this evidence. At the top of each page, write “CR-135, Item 7f.”



The People of the State of California v.

Trial Court Case Number: _____

Trial Court Case Name: _____

8 The Trial Court's Findings

a. I/My client was found guilty of the following offenses (list all of the offenses for which you were/your client was found guilty): _____

b. I/My client was found not guilty of the following offenses (list all of the offenses for which you were/your client was found not guilty): _____

9 The Sentence

The trial court imposed the following fine or other punishment on me/my client (check all that apply and fill in any required information):

a. Jail time (fill in the amount of time you are/your client is required to spend in jail): _____

b. A fine (including penalty and other assessments) (fill in the amount of the fine): \$ _____

c. Restitution (fill in the amount of the restitution): \$ _____

d. Probation (fill in the amount of time you are/your client is required to be on probation): _____

e. Other punishment (describe any other punishment that the trial court imposed in this case): _____

REMINDER: You must serve and file this form no later than 20 days after you file your notice regarding the oral proceedings. If you do not file this form on time, the court may dismiss your appeal.

Date: _____

Type or print name



Signature of appellant or attorney

CR-137**Abandonment of Appeal
(Misdemeanor)**

Clerk stamps date here when form is filed.

Instructions

- This form is only for abandoning (giving up) an appeal in a **misdemeanor** case.
- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO) to know your rights and responsibilities. You can get form CR-131-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the appellate division clerk's office. 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

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:***The People of the State of California v.*

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

Appellate Division Case Number:**1 Your Information**

- a. Name of appellant (the party who is filing this appeal):
-
- _____

Street address: _____

*Street**City**State**Zip*

Mailing address (if different): _____

*Street**City**State**Zip*

Phone: _____

E-mail: _____

- b. 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: _____**Fax:** _____

Appellate Division

Appellate Division Case Number:

Case Name: _____

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 By signing and filing this form, I abandon/my client abandons that appeal.

Date: _____

Type or print your name

▲ _____
Signature of appellant or attorney

CR-141-INFO**Information on Appeal Procedures for Infractions****1 What does this information sheet cover?**

This information sheet tells you about appeals in infraction cases. It is only meant to give you a general idea of the appeal process, so it does not cover everything you may need to know about appeals in infraction cases. To learn more, you should read rules 8.900–8.929 of the California Rules of Court, which set out the procedures for infraction appeals. You can get these rules at any courthouse or county law library or online at www.courts.ca.gov/rules.

2 What is an infraction?

Infractions are crimes that can be punished by a fine, traffic school, or some form of community service but not by time in jail or prison. (See Penal Code sections 17, 19.6, and 19.8. You can get a copy of these laws at <http://leginfo.legislature.ca.gov/faces/codes.xhtml>.) Examples of infractions are many traffic violations for which you can get a ticket or violations of some city or county ordinances for which you can get a citation. If you were also charged with or convicted of a misdemeanor, then your case is a misdemeanor case, not an infraction case.

3 What is an appeal?

An appeal is a request to a higher court to review a ruling or decision made by a lower court. **In an infraction case, the court hearing the appeal is the appellate division of the superior court, and the lower court—called the “trial court” in this information sheet—is the superior court.**

It is important to understand that **an appeal is NOT a new trial**. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits. The appellate division’s job is to review a record of what happened in the trial court and the trial court’s decision to see if certain kinds of legal errors were made in the case:

- **Prejudicial error:** The party that appeals (called the “appellant”) may ask the appellate division to determine if an error was made about either the law or court procedures in the case that caused substantial harm to the appellant (this is called

For information about appeal procedures in other cases, see:

- *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO)
- *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO)

You can get these forms at any courthouse or county law library or online at www.courts.ca.gov/forms.

“prejudicial error”). Prejudicial error can include things like errors made by the judge about the law or errors or misconduct by the lawyers that harmed the appellant. When it conducts its review, the appellate division presumes that the judgment, order, or other decision being appealed is correct. It is the responsibility of the appellant to show the appellate division that an error was made and that the error was harmful.

- **No substantial evidence:** The appellant may also ask the appellate division to determine if there was substantial evidence supporting the judgment, order, or other decision being appealed. When it conducts its review, the appellate division only looks to see if there was evidence that reasonably supports the decision. The appellate division generally will not reconsider the trial court’s conclusion about which side had more or stronger evidence or whether witnesses were telling the truth or lying.

The appellate division generally will not overturn the judgment, order, or other decision being appealed unless the record clearly shows that one of these legal errors was made.

4 Do I need a lawyer to appeal?

You do not *have* to have a lawyer; you are allowed to represent yourself in an appeal in an infraction case. But appeals can be complicated, and you will have to follow the same rules that lawyers have to follow. If you have any questions about the appeal procedures, you should talk to a lawyer. You will need to hire a lawyer yourself if you want one. You can get information about finding a lawyer on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-lowcosthelp.htm.



CR-141-INFO**Information on Appeal Procedures for Infractions**

If you are representing yourself, you must put your address, telephone number, fax number (if available), and e-mail address (if available) on the cover of every document you file with the court and let the court know if this contact information changes so that the court can contact you if needed.

5 Who can appeal?

Only a party in the trial court case can appeal a decision in that case. You may not appeal on behalf of a friend, a spouse, a child, or another relative.

The party that is appealing is called the APPELLANT; in an infraction case, this is usually the party convicted of committing the infraction. The other party is called the RESPONDENT; in an infraction case, this is usually the government agency that filed the criminal charges (on court papers, this party is called the People of the State of California).

6 Can I appeal any decision that the trial court made?

No. Generally, you may appeal only a final judgment of the trial court—the decision at the end that decides the whole case. The final judgment includes the punishment that the court imposed. Other rulings made by the trial court before final judgment cannot be separately appealed, but can be reviewed only later as part of an appeal of the final judgment. In an infraction case, the party that was convicted of committing an infraction usually appeals that conviction or the sentence (the fine or other punishment) ordered by the trial court. In an infraction case, a party can also appeal from an order made by the trial court after judgment that affects a substantial right of the appellant (Penal Code section 1466(2)(B)). You can get a copy of this law at <http://leginfo.legislature.ca.gov/faces/codes.xhtml>.

7 How do I start my appeal?

First, you must file a notice of appeal. The notice of appeal tells the other party in the case and the trial court that you are appealing the trial court's decision. You may use *Notice of Appeal and Record on Appeal (Infraction)* (form CR-142) to prepare and file a notice of appeal in an infraction case. You can get

form CR-142 at any courthouse or county law library or online at www.courts.ca.gov/forms.htm.

8 Is there a deadline for filing my notice of appeal?

Yes. In an infraction case, you must file your notice of appeal within **30 days** after the trial court makes (“renders”) its judgment in your case or issues the order you are appealing. The date the trial court makes its judgment is normally the date the trial court orders you to pay a fine or orders other punishment in your case (sentences you). **This deadline for filing the notice of appeal cannot be extended. If your notice of appeal is late, the appellate division will not be able to consider your appeal.**

9 How do I file my notice of appeal?

To file the notice of appeal in an infraction case, you must bring or mail the original notice of appeal to the clerk of the trial court in which you were convicted of the infraction. It is a good idea to bring or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

There is no fee for filing the notice of appeal in an infraction case. You can ask the clerk of that court if there are any other requirements for filing your notice of appeal.

After you file your notice of appeal, the clerk will send a copy of your notice to the office of the prosecuting attorney (for example, the district attorney, county counsel, city attorney, or state Attorney General).

10 If I file a notice of appeal, do I still have to pay my fine or complete other parts of my punishment?

Filing the notice of appeal does NOT automatically postpone the deadline for paying your fine or completing any other part of your sentence. To postpone your sentence, you must ask the trial court for a “stay” of the judgment. If you want a stay, you must first ask the trial court for a stay. You can also apply to the appellate division for a stay, but you must show in your application to the appellate division that you first asked the trial court for a stay and that the trial court



CR-141-INFO**Information on Appeal Procedures for Infractions**

unjustifiably denied your request. Your fine or other parts of your punishment will not be postponed unless the trial court or appellate division grants a stay. If you do not get a stay and you do not pay your fine or satisfy another part of your sentence by the date ordered by the court, a warrant may be issued for your arrest or a civil collections process may be started against you, which could result in a civil penalty being added to your fine.

11 Is there anything else I need to do when I file my notice of appeal?

Yes. When you file your notice of appeal, you must tell the trial court (1) whether you have agreed with the respondent (“stipulated”) that you do not need parts of the normal record on appeal, and (2) whether you want a record of what was said in the trial court (this is called a record of the “oral proceedings”) sent to the appellate division and, if so, what form of that record you want to use. *Notice of Appeal and Record on Appeal (Infraction)* (form CR-142) includes boxes you can check to tell the court whether and how you want to provide this record.

12 In what cases does the appellate division need a record of the oral proceedings?

You do not *have* to send the appellate division a record of what was said in the trial court. But if you want to raise any issue in your appeal that would require the appellate division to consider what was said in the trial court, the appellate division will need a record of these oral proceedings. For example, if you are claiming that there was not substantial evidence supporting the judgment, order, or other decision you are appealing, the appellate division will need a record of the oral proceedings. Since the appellate division judges were not there for the proceedings in the trial court, an official record of these proceedings must be prepared and sent to the appellate court for its review.

Depending on what form of the record you choose to use, you will be responsible for paying to have the official record of the oral proceedings prepared (unless you are indigent) or for preparing an initial draft of the record yourself. If you do not take care of these responsibilities, a record of the oral proceedings in the trial court will not be prepared and sent to the appellate division. If the appellate division does not receive the

record, it will not be able to consider what was said in the trial court in deciding whether a legal error was made and it may dismiss your appeal.

13 What are the different forms of the record?

There are three ways a record of the oral proceedings in a trial court can be prepared and provided to the appellate division in an infraction case:

- a. You can use a *statement on appeal*.
- b. If the proceedings were officially electronically recorded, the trial court can have a transcript prepared from the recording or, if the court has a local rule permitting this and all the parties agree (“stipulate”), you can use the official electronic recording itself as the record, instead of a transcript.
- c. If a court reporter was there during the trial court proceedings, the reporter can prepare a record called a “*reporter’s transcript*.”

Read below for more information about these options.

a. Statement on appeal

Description: A statement on appeal is a summary of the trial court proceedings approved by the trial court judge who conducted the trial court proceedings (the term “judge” includes commissioners and temporary judges).

When available: If the trial court proceedings were not recorded either by a court reporter or by official electronic recording equipment or if you do not want to use either of these forms of the record, you can choose (“elect”) to use a statement on appeal as the record of the oral proceedings in the trial court (please note that it may take more of your time to prepare a statement on appeal than to use either a reporter’s transcript or electronic recording, if they are available).

Contents: A statement on appeal must include:

- A statement of the points you (the appellant) are raising on appeal;
- A summary of the trial court’s rulings and judgment; and



CR-141-INFO**Information on Appeal Procedures for Infractions**

- A summary of the testimony of each witness and other evidence that is relevant to the issues you are raising on appeal.

(See rule 8.916 of the California Rules of Court for more information about what must be included in a statement on appeal and the procedures for preparing a statement. You can get a copy of this rule at any courthouse or county law library or online at www.courts.ca.gov/rules.)

Preparing a proposed statement: If you choose to use a statement on appeal, you must prepare a proposed statement. If you are not represented by a lawyer, you must use *Proposed Statement on Appeal (Infraction)* (form CR-143) to prepare your proposed statement. You can get form CR-143 at any courthouse or county law library or online at www.courts.ca.gov/forms.

Serving and filing a proposed statement: You must serve and file your proposed statement within 20 days after you file your notice of appeal. “Serve and file” means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (“serve”) the proposed statement to the prosecuting attorney and any other party in the way required by law. If the proposed statement is mailed or personally delivered, it must be by someone who is not a party to the case—so not you. If the prosecuting attorney did not appear in your case, you do not need to serve the prosecuting attorney.
- Make a record that the proposed statement has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the proposed statement, who was served with the proposed statement, how the proposed statement was served (by mail, in person, or electronically), and the date the proposed statement was served.
- File the original proposed statement and the proof of service with the trial court. You should make a copy of the proposed statement you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the proposed statement to the clerk when you file your original and ask the

clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-serving.htm.

Review and modifications: The prosecuting attorney and any other party have 10 days from the date you serve your proposed statement to serve and file proposed changes (called “amendments”) to this statement. The trial judge then reviews both your proposed statement and any proposed amendments filed by the prosecuting attorney and any other party. The judge will then make or order you to make any corrections or modifications to the proposed statement that are needed to make sure that the statement provides a complete and accurate summary of the relevant testimony and other evidence.

Completion and certification: If the judge makes or orders you to make any corrections or modifications to the proposed statement, the corrected or modified statement will be sent to you, the prosecuting attorney, and any other party for your review. If you disagree with anything in the judge’s statement, you will have 10 days from the date the statement is sent to you to serve and file objections to the statement. The judge then reviews any objections, makes any additional corrections to the statement, and certifies the statement as a complete and accurate summary of the relevant testimony and other evidence.

Sending the statement to the appellate division: Once the trial judge certifies the statement on appeal, the trial court clerk will send the statement to the appellate division along with the clerk’s transcript.

b. Official electronic recording or transcript from official recording

When available: In some infraction cases, the trial court proceedings are officially recorded on approved electronic recording equipment. If your case was officially recorded, you can ask to have a transcript prepared for the appellate division from the official electronic recording of the proceedings. You should check with the trial court to see if your case was officially electronically recorded before you choose this option. Some courts also have local



rules that establish procedures for deciding whether a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising on appeal. You should check whether the court has such a local rule.

If the court has a local rule for the appellate division permitting this and all the parties agree (“stipulate”), a copy of the official electronic recording itself can be used as the record of these oral proceedings instead of preparing a transcript. You should check with the trial court to see if your case was officially electronically recorded and check to make sure that there is a local rule permitting the use of the recording itself before choosing this option. If you choose this option, you must attach a copy of your agreement with the other parties (called a “stipulation”) to your notice regarding the oral proceedings.

Cost: Ordinarily, the appellant must pay for preparing the transcript or making a copy of the official electronic recording. The court will send you an estimate of the cost for this transcript or the copy of the electronic recording. If you still want this transcript or recording, you must deposit this amount with the court. However, you can also choose to use a statement on appeal instead, or take one of the other actions listed in rule 8.917.

If, however, you are indigent (you cannot afford to pay the cost of the transcript or electronic recording), you may be able to get a free transcript or official electronic recording. You can complete and file *Defendant’s Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210) to show that you are indigent. You can get form MC-210 at any courthouse or county law library or online at www.courts.ca.gov/forms. The court will review this form to decide whether you are indigent.

If you are indigent, an official electronic recording of your case was made, and you show that you need a transcript, the court must provide you with a free transcript. Whether you need a transcript depends on the issues you are raising on appeal. If the issues you are raising on appeal include that there was not substantial evidence supporting the judgment, order, or other decision you are appealing or that there was

misconduct in your case that harmed you, that is generally enough to show that you need a transcript. If you ask for a transcript, the court may ask you what issues you are raising on appeal and may decide that a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising.

If the court finds that you are not indigent, it will send you a notice and you will have a chance to use a statement on appeal instead or take one of the other actions listed in rule 8.917.

Completion and delivery: Once you deposit the estimated cost of the transcript or official electronic recording with the clerk or show the court you are indigent and need a transcript, the clerk will have the transcript or copy of the recording prepared. When the transcript is completed or the copy of the official electronic recording is prepared, the clerk will send the transcript or recording to the appellate division along with the clerk’s transcript.

c. Reporter’s transcript

When available: In some infraction cases, a court reporter is there in the trial court and makes a record of the oral proceedings. If a court reporter made a record of your case, you can ask to have the court reporter prepare a transcript of those oral proceedings, called a “reporter’s transcript.” You should check with the trial court to see if a court reporter made a record of your case before you choose this option. Some courts also have local rules that establish procedures for deciding whether a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising on appeal. You should check whether the court has such a local rule.

Cost: Ordinarily, the appellant must pay for preparing a reporter’s transcript. The court reporter will provide the clerk of the trial court with an estimate of the cost of preparing the transcript, and the clerk will notify you of this estimate. If you want the reporter to prepare a transcript, you must deposit this estimated amount or one of the substitutes allowed under rule 8.919 with the clerk within 10 days after the clerk sends you the estimate. However, under rule 8.919 you can decide to use a different form of the record or take other action instead of proceeding with a reporter’s transcript.



If, however, you are indigent (you cannot afford to pay the cost of the reporter's transcript), you may be able to get a free transcript. You can complete and file *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210) to show that you are indigent. You can get form MC-210 at any courthouse or county law library or online at www.courts.ca.gov/forms. The court will review this form to decide whether you are indigent.

If the court finds that you are indigent, a court reporter made a record of your case, and you show that you need a transcript, the court must provide you with a free transcript. Whether you need a transcript depends on the issues you are raising on appeal. If the issues you are raising on appeal include that there was not substantial evidence supporting the judgment, order, or other decision you are appealing or that there was misconduct in your case that harmed you, that is generally enough to show that you need a transcript. If you ask for a reporter's transcript, the court may ask you what issues you are raising on appeal and may decide that a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising.

If the court finds that you are not indigent, it will send you a notice and you will have a chance to pick another form of the record or take other actions listed in rule 8.919.

Completion and delivery: Once you deposit the estimated cost of the transcript or one of the substitutes allowed under rule 8.919 or show the court you are indigent and need a transcript, the clerk will notify the reporter to prepare the transcript. When the reporter completes the transcript, the clerk will send both the reporter's transcript and clerk's transcript to the appellate division.

14 **Is there any other part of the record that needs to be sent to the appellate division?**

Yes. There are two other parts of the official record that need to be sent to the appellate division:

- **Documents filed in the trial court:** The trial court clerk is responsible for preparing a record of the written documents filed in your case, called a "clerk's transcript," and sending this to the appellate division. (The documents the clerk must include in this transcript are listed in rule 8.912 of the California Rules of Court. You can get a copy of this rule at any courthouse or county law library or online at www.courts.ca.gov/rules.)
- **Exhibits submitted during trial:** Exhibits, such as photographs or maps, that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court are considered part of the record on appeal. If you want the appellate division to consider an exhibit, however, you must ask the trial court clerk to send the original exhibit to the appellate division within 10 days after the last respondent's brief is filed in the appellate division. (See rule 8.921 of the California Rules of Court for more information about this procedure. You can get a copy of this rule at any courthouse or county law library or online at www.courts.ca.gov/rules.)

Sometimes, the trial court returns an exhibit to a party at the end of the trial. If the trial court returned an exhibit to you or another party and you or the other party ask for the exhibit to be sent to the appellate division, the party who has the exhibit must deliver that exhibit to the appellate division as soon as possible.

15 **What happens after the record is prepared?**

As soon as the record of the oral proceeding is ready, the clerk of the trial court will send it to the appellate division along with the clerk's transcript. When the appellate division receives this record, it will send you a notice telling you when you must file your brief in the appellate division.

16 **What is a brief?**

A brief is a party's written description of the facts in the case, the law that applies, and the party's argument about the issues being appealed. If you are represented by a lawyer in your appeal, your lawyer will prepare your



CR-141-INFO**Information on Appeal Procedures for Infractions**

brief. If you are not represented by a lawyer in your appeal, you will have to prepare your brief yourself. You

should read rules 8.927–8.928 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in infraction appeals, including requirements for the format and length of these briefs. You can get these rules at any courthouse or county law library or online at www.courts.ca.gov/rules.

Contents: If you are the appellant (the party who is appealing), your brief, called the “appellant’s opening brief,” must clearly explain what you believe are the legal errors made in the trial court. Your brief must refer to the exact places in the clerk’s transcript and the statement on appeal (or other record of the oral proceedings) that support your argument. Remember that an appeal is not a new trial. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits, so do not include any new evidence in your brief.

Serving and filing: You must serve and file your brief in the appellate division by the deadline the court set in the notice it sent you, which is usually 30 days after the record is filed in the appellate division. **If you do not file your brief by the deadline set by the appellate division, the court may dismiss your appeal.**

“Serve and file” means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (“serve”) the brief to the respondent (the prosecuting agency) and any other party in the way required by law. If the brief is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the brief has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail, in person, or electronically), and the date the brief was served.
- File the original brief and the proof of service with the appellate division. You should make a copy of the brief you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to

stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and at www.courts.ca.gov/selfhelp-serving.htm.

17 What happens after I file my brief?

Within 30 days after you serve and file your brief, the respondent (the prosecuting agency) may, but is not required to, respond by serving and filing a respondent’s brief. If the respondent does not file a brief, the appellant does not automatically win the appeal. The court will decide the appeal on the record, the appellant’s brief, and any oral argument by the appellant.

If the respondent serves and files a brief, within 20 days after the respondent’s brief was served, you may, but are not required to, serve and file another brief replying to the respondent’s brief. This is called a “reply brief.”

18 What happens after all the briefs have been filed?

Once all the briefs have been served and filed or the time to serve and file them has passed, the court will notify you of the date for oral argument in your case.

19 What is oral argument?

“Oral argument” is the parties’ chance to explain their arguments to the appellate division judges in person.

You do not have to participate in oral argument, if you do not want to; you can notify the appellate division that you want to “waive” oral argument. If all parties waive oral argument, the judges will decide your appeal based on the briefs and the record that were submitted. But if one party waives oral argument and another party or parties does not, the appellate division will hold oral argument with the party or parties who did not waive it.

If you do choose to participate in oral argument, you will have up to five minutes for your argument, unless the court orders otherwise. Remember that the judges will already have read the briefs, so you do not need to read your brief to the judges. It is more helpful to tell the judges what you think is most important in your appeal



or ask the judges if they have any questions you could answer.

20 What happens after oral argument?

After oral argument is held (or the date it was scheduled passes if all the parties waive oral argument), the judges of the appellate division will make a decision about your appeal. The appellate division has 90 days after the date scheduled for oral argument to decide the appeal. The clerk of the court will mail you a notice of that decision.

21 What should I do if I want to give up my appeal?

If you decide you do not want to continue with your appeal, you must file a written document with the appellate division notifying it that you are giving up (this is called “abandoning”) your appeal. You can use *Abandonment of Appeal (Infraction)* (form CR-145) to file this notice in an infraction case. You can get form CR-145 at any courthouse or county law library or online at www.courts.ca.gov/forms.

If you decide not to continue your appeal and it is dismissed, you will (with only very rare exceptions) permanently give up the chance to raise any objections to your conviction, sentence, or other matter that you could have raised in the appeal. If your punishment was stayed during the appeal, you may be required to start complying with your punishment immediately after your appeal is dismissed.

CR-142**Notice of Appeal and Record on Appeal (Infraction)**

Clerk stamps date here when form is filed.

Instructions

- This form is only for appealing in an **infraction** case, such as a case about a traffic ticket. You can get other forms for appealing in a civil or misdemeanor case at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- Before you fill out this form, read *Information on Appeal Procedures for Infractions* (form CR-141-INFO) to know your rights and responsibilities. You can get form CR-141-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- You must file this form **no later than 30 days after the trial court issued the judgment or order you are appealing** (see rule 8.902(b) of the California Rules of Court for very limited exceptions). **If your notice of appeal is late, the court will not take your appeal.**
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk's office for the same trial 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

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:**

The clerk will fill in the number below:

Appellate Division Case Number:**1 Your Information**

- a. Name of Appellant (the party who is filing this appeal):

Name: _____

Street address: _____
Street City State ZipMailing address (if different): _____
Street City State Zip

Phone: _____ E-mail: _____

- b. Appellant's lawyer (skip this if the appellant is filling out this form):

The lawyer filling out this form is (check (1) or (2)):

(1) was the appellant's lawyer in the trial court. (2) is the appellant's lawyer for this appeal.

Name: _____ State Bar number: _____

Street address: _____
Street City State ZipMailing address (if different): _____
Street City State Zip

Phone: _____ E-mail: _____

Fax: _____



Trial Court Case Name: _____

Trial Court Case Number: _____

2 Judgment or Order You Are AppealingI am/My client is appealing (*check a, b, or c*):

- a. the final judgment of conviction in the case (Pen. Code § 1466(2)(A)).
The trial court issued (rendered) this judgment on (*fill in the date*):
- b. an order made by the trial court after judgment that affects an important (substantial) right of mine/my client (Pen. Code § 1466(2)(B)).
The trial court issued (rendered) this order on (*fill in the date*):
- c. Other (Describe the action you are appealing and indicate the date the trial court took the action.):

Your Choices About the Record on Appeal**Stipulation for Limited Record**

- 3** The respondent and I/my client have agreed (“stipulated”) under rule 8.910 that parts of the normal record on appeal are not required for proper determination of this appeal. A copy of our stipulation identifying those parts of the record that are not required is attached. *At the top of each page write “CR-142, item 3.”*

Record of Oral Proceedings

You do not have to provide the appellate division with a record of what was said in the trial court (this is called a record of the “oral proceedings”). But, if you do not, the appellate division will not be able to consider what was said during the trial court proceedings in deciding whether an error was made in those proceedings.

- 4** I elect (choose)/My client elects to proceed (*check a or b*):
- a. WITHOUT a record of the oral proceedings in the trial court (*skip item 5*); *sign and date this form*). I understand that if I proceed without a record of the oral proceedings, the appellate division will not be able to consider what was said in the trial court during those proceedings in deciding whether a legal error was made.
(Write initials here): _____
- b. WITH a record of the oral proceedings in the trial court (*complete item 5 below*). I understand that if I elect (choose) to proceed WITH a record of the oral proceedings in the trial court, I have to choose the record I want to use and take the actions described below to make sure this record is provided to the appellate division. I understand that if I do not take the actions described below and the appellate division does not receive this record, I am not likely to succeed in my appeal.
(Write initials here): _____
- 5** I want to use the following record of what was said in the trial court proceedings in my case (*check and complete only one—a, b, c, or d*):
- a. **Statement on Appeal.** *A statement on appeal is a summary of the trial court proceedings approved by the trial court. See form CR-141-INFO for information about preparing a proposed statement. (Check and complete (1) or (2).):*



Trial Court Case Name: _____

Trial Court Case Number: _____

⑤ (continued)

- (1) I have attached my proposed statement on appeal to this notice. *(If you are not represented by a lawyer in this appeal, you must use Proposed Statement on Appeal (Infraction) (form CR-143) to prepare and file this proposed statement. You can get form CR-143 at any courthouse or county law library or online at www.courts.ca.gov/forms.)*
- (2) I have NOT attached my proposed statement on appeal to this notice. I understand that I must serve and file this proposed statement in the trial court within 20 days of the date I file this notice and that if I do not file the proposed statement on time, the court may dismiss my appeal.

OR

- b. **Transcript From Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. Some courts also have local rules that establish procedures for determining whether only a portion of a transcript or a different form of the record will be sufficient for an effective appeal. Check with the trial court to see if it has such a local rule. (Check and (1) or (2).):*
- (1) I will pay the trial court clerk's office for this transcript myself. I understand that if I do not pay for this transcript, it will not be prepared and provided to the appellate division.
- (2) I am asking that this transcript be provided at no cost to me because I cannot afford to pay this cost. I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210). *(You can get form MC-210 at any courthouse or county law library or online at www.courts.ca.gov/forms. The court will review this form to decide if you are eligible for a free transcript.)*

OR

- c. **Copy of Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court, the court has a local rule for the appellate division permitting the use of the official electronic recording itself as the record of the court proceedings, and you and the respondent (the prosecuting agency) have agreed (stipulated) that you want to use the recording itself as the record of what was said in your case. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. You must attach a copy of your agreement (stipulation) with the respondent to this notice. (Check and complete (1) or (2).):*
- (1) I will pay the trial court clerk's office for this official electronic recording myself. I understand that if I do not pay for this recording, it will not be provided to the appellate division.
- (2) I am asking that this official electronic recording be provided at no cost to me because I cannot afford to pay this cost. I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210). *(You can get form MC-210 at any courthouse or county law library or online at www.courts.ca.gov/forms. The court will review this form to decide if you are eligible for a free copy of the official electronic recording.)*



Trial Court Case Name: _____

Trial Court Case Number: _____

⑤ (continued)

OR

- d. **Reporter's Transcript.** *This option is available only if there was a court reporter in the trial court who made a record of what was said in court. Check with the trial court to see if there was a court reporter in your case before choosing this option. Some courts also have local rules that establish procedures for determining whether only a portion of the reporter's transcript or a different form of the record will be sufficient for an effective appeal. Check with the trial court to see if it has such a local rule. (Check (1) or (2)):*
- (1) I will pay the trial court clerk's office for this transcript myself when I receive the court reporter's estimate of the cost of the transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the appellate division.
- (2) I am asking that this transcript be provided at no cost to me because I cannot afford to pay this cost. I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210). (You can get form MC-210 at any courthouse or county law library or online at www.courts.ca.gov/forms. The court will review this form to decide if you are eligible for a free reporter's transcript.)

Date: _____

Type or print your name_____
Signature of appellant or attorney

CR-143**Proposed Statement on Appeal
(Infraction)****Instructions**

- This form is only for preparing a statement on appeal in an **infraction** case, such as a case about a traffic ticket.
- Before you fill out this form, read *Information on Appeal Procedures for Infractions* (form CR-141-INFO) to know your rights and responsibilities. You can get form CR-141-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.
- This form can be filed at the same time as your notice of appeal. If it is not filed with your notice of appeal, this form must be filed **no later than 20 days after you file your notice of appeal. If you have chosen to use a statement on appeal and do not file this form on time, the court may dismiss your appeal.**
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- You must serve a copy of the completed form on each of the other parties in the case 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-109-INFO) and on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-serving.htm.
- Take or mail the completed form and proof of service on each of the other parties to the clerk's office for the same trial 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.

Clerk stamps date here when form is 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

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:**The People of the State of California
v.

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

Appellate Division Case Number:**1 Your Information**

- a. Appellant (the party who is filing this appeal):

Name: _____

Street address: _____
Street City State ZipMailing address (if different): _____
Street City State Zip

Phone: _____ E-mail: _____

- b. Appellant's lawyer (skip this if the appellant is filling out this form):

The lawyer filling out this form (check (1) or (2)):

(1) was the appellant's lawyer in the trial court. (2) is the appellant's lawyer for this appeal.

Name: _____ State Bar number: _____

Street address: _____
Street City State ZipMailing address (if different): _____
Street City State Zip

Phone: _____ E-mail: _____

Fax: _____



The People of the State of California v.

Trial Court Case Number: _____

Trial Court Case Name: _____

Information About Your Appeal

2 On (fill in the date): _____, I/my client filed a *Notice of Appeal and Record on Appeal (Infraction)*, choosing to use a statement on appeal as the record of what was said in this case.

Proposed Statement

3 **Reasons for Your Appeal**

Remember, in an appeal, the appellate division can only review a case for whether certain kinds of legal errors were made in the trial court proceedings (read form CR-141-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:

- 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 this error harmed you/your client: _____

(2) Describe the error: _____

Describe how this error harmed you/your client: _____



The People of the State of California v.

Trial Court Case Number:

Trial Court Case Name: _____

3 (continued)

(3) Describe the error: _____

Describe how this error harmed you/your client: _____

- 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 "CR-143, item 3."

4 The Charges Against Me/My Client

- a. If the charges against you/your client are based on a citation (ticket) you received, provide the citation number (fill in the citation number from your ticket): _____
- b. The charges against me/my client were (list all of the charges indicated on the citation or complaint filed by the prosecutor with the court): _____
- _____
- _____
- c. I/My client (check (1), (2), or (3))
- (1) pleaded not guilty to all of the charges.
- (2) pleaded guilty to only the following charges: _____
- _____
- (3) pleaded guilty to all of the charges.

5 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 **3** for this appeal?
- Yes (fill out b) No (skip to item **6**)
- 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 **3** 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) I/My client made the following requests (motions) in the trial court (check all that apply):
- (a) To submit a photograph or photographs as evidence (describe the photographs):
- _____
- _____

There was was not a hearing on this motion.

The People of the State of California v.

Trial Court Case Number:

Trial Court Case Name: _____

5 b.(1)(a) (continued)

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

The court did did not accept the photographs.

Check here if you need more space to describe the motion and attach a separate page or pages describing it. At the top of each page write "CR-143, item 5b(1)(a)."

(b) To submit a map or maps as evidence (describe the maps): _____

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 court did did not accept the maps.

Check here if you need more space to describe the motion and attach a separate page or pages describing it. At the top of each page write "CR-143, item 5b(1)(b)."

(c) To submit other material as evidence (describe what you asked to submit as evidence):

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 court did did not accept this material.

Check here if you need more space to describe the motion and attach a separate page or pages describing it. At the top of each page write "CR-143, item 5b(1)(c)."

(d) Other (describe any other request you made in the trial court and whether the court granted or denied this request): _____

Check here if you need more space to describe the motion and attach a separate page or pages describing it. At the top of each page write "CR-143, item 5b(1)(d)."



The People of the State of California v.

Trial Court Case Number:

Trial Court Case Name: _____

5 b. (continued)

- (2) The prosecutor made the following request (motion) in the trial court (*describe any request the prosecutor made in the trial court and whether the court granted or denied this request*):

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 court did did not grant this motion.

Other (*describe any other action the trial court took on this motion*): _____

Check here if you need more space to describe the motion and attach a separate page or pages describing it. At the top of each page write "CR-143, item 5b(2)."

- (3) Check here if other motions were filed that are relevant to the reasons you gave in **3** for this appeal, and attach a separate page or pages describing these other motions, identifying who made them 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 CR-143, item 5b(3).

6 Summary of Testimony and Other Evidence

- a. Was there a trial in your case?

No (*skip items b, c, d, e, and f, and go to item 7*)

Yes (*complete items b, c, d, e, and f*)

- 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 3 for this appeal. Include only what you actually said; do not comment on or give your opinion about what you 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 "CR-143, Item 6b."



The People of the State of California v.

Trial Court Case Number:

Trial Court Case Name: _____

6 (continued)

c. Did an officer from the police department, sheriff's office, or other government agency that charged you/your client testify at the trial? (*Check one*):

 No Yes (*complete (1) and (2)*):(1) The name of the officer who testified is (*fill in the officer's name*): _____(2) This officer testified that (*Write a complete and accurate summary of the officer's testimony that is relevant to the reasons you gave in ③ for this appeal. Include only what the officer actually said; do not comment on or give your opinion about what the officer said. Please indicate whether any objections were made concerning the officer's testimony or any exhibits the officer asked to present and whether these objections were sustained.*): _____

_____ Check here if you need more space to summarize the officer's testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write "CR-143, Item 6c."d. Were there any other witnesses at the trial? No Yes (*fill out (1)–(4)*):(1) The witness's name is (*fill in the witness's name*): _____(2) The witness was was not an officer from the government agency that charged me/my client.(3) The witness testified on behalf of me/my client. the prosecution.(4) This witness testified that (*Write a complete and accurate summary of the witness's testimony that is relevant to the reasons you gave in ③ 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 the witness's testimony or any exhibits the witness asked to present and whether these objections were sustained.*): _____

e. Check here if other witnesses gave testimony at the trial that is relevant to the reasons you gave in ③ for this appeal. Attach a separate page or pages identifying each other witness that testified at your trial, stating whether that witness testified on your/your client's behalf or the prosecution's behalf, summarizing what that witness said in his or her testimony that is relevant to the reasons you gave in ③ for this appeal, and indicating whether any objections were made concerning the witness's testimony or any exhibits the witness asked to present and whether these objections were sustained. At the top of each page, write "CR-143, item 6e."



The People of the State of California v.

Trial Court Case Number: _____

Trial Court Case Name: _____

6 (continued)

f. Summarize the evidence, other than the testimony, that was given during the trial that is relevant to the reasons you gave in 3 for this appeal (Write a complete and accurate summary of the evidence given by both you and the respondent. Include only the evidence; do not comment or give your opinion about this evidence.):

Check here if you need more space to summarize the evidence and attach a separate page or pages summarizing this evidence. At the top of each page, write "CR-143, Item 6f."

7 The Trial Court's Findings

a. I/My client was found guilty of the following offenses (list all of the offenses for which you were/your client was found guilty): _____

b. I/My client was found not guilty of the following offenses (list all of the offenses for which you were/your client was found not guilty): _____

c. The following charges were dismissed after proof of correction was shown to the judge (list all of the charges that were dismissed): _____

8 The Sentence

The trial court imposed the following fine or other punishment on me/my client (check all that apply and fill in any required information):

a. A fine of (fill in the amount of the fine): \$ _____

b. Traffic school

c. Community service (fill in the number of hours): _____

d. Other punishment (describe any other punishment that the court imposed in this case):

REMINDER: You must serve and file this form no later than 20 days after you file your notice of appeal. If you do not file this form on time, the court may dismiss your appeal.

Date: _____

Type or print name

Signature of appellant or attorney

CR-145**Abandonment of Appeal
(Infraction)**

Clerk stamps date here when form is filed.

Instructions

- This form is only for abandoning (giving up) an appeal in an **infraction** case, such as a case about a traffic ticket.
- Before you fill out this form, read *Information on Appeal Procedures for Infractions* (form CR-141-INFO) to know your rights and responsibilities. You can get form CR-141-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the appellate division clerk's office. 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

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:***The People of the State of California v.*

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

Appellate Division Case Number:**1 Your Information**

- a. Name of appellant (the party who is filing this appeal):

Street address: _____

Street

City

State

Zip

Mailing address (if different): _____

Street

City

State

Zip

Phone: _____

E-mail: _____

- b. 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: _____

Fax: _____



Appellate Division

Case Name: _____

Appellate Division Case Number:

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 By signing and filing this form, I abandon/my client abandons that appeal.

Date: _____

Type or print your name



Signature of appellant or attorney

TO BE FILED IN THE COURT OF APPEAL

JV-810

COURT OF APPEAL	APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY:	STATE BAR NO:	SUPERIOR COURT CASE NUMBER:
NAME:		<i>FOR COURT USE ONLY</i>
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
E-MAIL ADDRESS:		
ATTORNEY FOR (<i>name</i>):		
APPELLANT:		
RESPONDENT:		
RECOMMENDATION FOR APPOINTMENT OF APPELLATE ATTORNEY FOR CHILD (California Rules of Court, Rule 5.661)		

INSTRUCTIONS—READ CAREFULLY

- Read the entire form *before* completing any items.
- This form must be clearly handprinted in ink or typed.
- Complete all applicable items in the proper spaces. If you need additional space, add an extra page and check the "Additional pages attached" box on page 2.
- If you are filing this form in the Court of Appeal, file the original and 4 copies.
- If you are filing this form in the California Supreme Court, file the original and 10 copies.
- A copy must be served on the local district appellate project.
- Notify the clerk of the court in writing if you change your address after filing your form.

Individual Courts of Appeal or the Supreme Court may require documents other than or in addition to this form. Contact the clerk of the reviewing court for local requirements.

APPELLATE CASE TITLE:	COURT OF APPEAL CASE NUMBER:
-----------------------	------------------------------

1. Trial counsel, court-appointed guardian ad litem for the child under rule 5.662, or the child in the above-captioned case:
 - a. Name:
 - b. I am the trial counsel guardian ad litem child
 - c. Address:
 - d. Telephone number:
2. I recommend that an appellate attorney be appointed for the child in this case.
3. The child's best interests cannot be protected without the appointment of counsel on appeal for the following reasons (*check all that apply*):
 - a. An actual or potential conflict exists between the interests of the child and the interests of any respondent.
 - b. The child did not have an attorney serving as his or her guardian ad litem in the trial court.
 - c. The child is of a sufficient age or development such that he or she is able to understand the nature of the proceedings, and
 - (1) The child expresses a desire to participate in the appeal; or
 - (2) The child's wishes differ from his or her trial counsel's position.
 - d. The child took a legal position in the trial court adverse to that of one of his or her siblings, and an issue has been raised in an appellant's opening brief regarding the siblings' adverse positions.
 - e. The appeal involves a legal issue regarding a determination of parentage, the child's inheritance rights, educational rights, privileges identified in division 8 of the Evidence Code, consent to treatment, or tribal membership.
 - f. Postjudgment evidence completely undermines the legal underpinnings of the juvenile court's judgment under review, and all parties recognize this and express a willingness to stipulate to reversal of the juvenile court's judgment.
 - g. The child's trial counsel or guardian ad litem, after reviewing the appellate briefs, believes that the legal arguments contained in the respondents' briefs do not adequately represent or protect the best interests of the child.
 - h. The existence of any other factors relevant to the child's best interests (*specify*):
4. State the facts that support your recommendation:

Additional pages attached

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, except for matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date:

(TYPE OR PRINT NAME)

_____
(SIGNATURE OF APPLICANT)

APPELLATE CASE TITLE:	COURT OF APPEAL CASE NUMBER:
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PROOF OF SERVICE

I served a copy of the foregoing *Recommendation for Appointment of Appellate Attorney for Child* on the following by personally delivering a copy to the person served, OR by delivering a copy to a competent adult at the usual place of residence or business of the person served and thereafter mailing a copy by first-class mail to the person served at the place where the copy was delivered, OR by placing a copy in a sealed envelope and depositing the envelope directly in the United States mail with postage prepaid or at my place of business for same-day collection and mailing with the United States mail, following our ordinary business practices with which I am readily familiar:

1. District appellate project

a. Name and address:

b. Date of service:

c. Method of service:

2. Other

a. Name and address:

b. Date of service:

c. Method of service:

TO BE FILED IN THE COURT OF APPEAL

JV-816

COURT OF APPEAL	APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:		SUPERIOR COURT CASE NUMBER(S):
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY: STATE: ZIP CODE:		
TELEPHONE NO.: FAX NO.:		
E-MAIL ADDRESS:		
ATTORNEY FOR (name):		
Case Name: In re _____, person(s), coming under the juvenile court law		
APPELLANT:		
RESPONDENT:		
APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF (JUVENILE DELINQUENCY CASE)		

1. I (name): _____ request that the time to file (check one)

- appellant's opening brief (AOB)
- respondent's brief (RB)
- combined respondent's brief (RB) and appellant's opening brief (AOB) (see rule 8.216)
- combined appellant's reply brief (ARB) and respondent's brief (RB) (see rule 8.216)
- appellant's reply brief (ARB)

now due on (date): _____ be extended to (date): _____

2. I have have not received a rule 8.412(d)(1) notice.

3. I have received

- no previous extensions to file this brief.
- the following previous extensions:

(number of extensions): _____ extensions from the court totaling (total number of days): _____

Did the court mark any previous extension "no further?" Yes No

4. The last brief filed by any party was: AOB RB RB and AOB ARB and RB
filed on (date): _____

5. The record in this case is:

	<u>Volumes (#)</u>	<u>Pages (#)</u>	<u>Date filed</u>
Clerk's Transcript:	_____	_____	_____
Reporter's Transcript:	_____	_____	_____
Augmentation/Other:	_____	_____	_____

6. The juvenile was adjudicated a ward of the court based on commission of the following offense(s):

7. The disposition followed (check one):

- a contested hearing
- an admission

APPELLANT: RESPONDENT:	COURT OF APPEAL CASE NUMBER:
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8. The court imposed the following disposition:

9. The reasons that I need an extension to file this brief are stated

below.

on a separate declaration. You may use *Attached Declaration (Court of Appeal)* (form APP-031) for this purpose.

(Please specify; see Cal. Rules of Court, rule 8.63, for factors used in determining whether to grant extensions):

10. A proof of service of this application on all other parties is attached (see Cal. Rules of Court, rule 8.412(e)). You may use *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) for this purpose.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date:

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY)

Order on Application is below on a separate document

ORDER

EXTENSION OF TIME IS:

Granted to (date): _____

Denied

Date: _____

(SIGNATURE OF PRESIDING JUSTICE)

TO BE FILED IN THE COURT OF APPEAL

JV-817

COURT OF APPEAL	APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER:	
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:		SUPERIOR COURT CASE NUMBER(S):	
NAME:			
FIRM NAME:			
STREET ADDRESS:			
CITY:	STATE:		ZIP CODE:
TELEPHONE NO.:	FAX NO.:		
E-MAIL ADDRESS:			
ATTORNEY FOR (name):			
Case Name: In re _____, person(s), coming under the juvenile court law			
APPELLANT:			
RESPONDENT:			
APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF (JUVENILE DEPENDENCY CASE)			

1. I (name): _____ request that the time to file (check one)

- appellant's opening brief (AOB)
- respondent's brief (RB)
- combined respondent's brief (RB) and appellant's opening brief (AOB) (see rule 8.216)
- combined appellant's reply brief (ARB) and respondent's brief (RB) (see rule 8.216)
- appellant's reply brief (ARB)

now due on (date): _____ be extended to (date): _____

2. I have have not received a rule 8.412(d)(1) notice.

3. I have received

- no previous extensions to file this brief.
- the following previous extensions:

(number of extensions): _____ extensions from the court totaling (total number of days): _____

Did the court mark any previous extension "no further?" Yes No

4. The last brief filed by any party was: AOB RB RB and AOB ARB and RB
filed on (date): _____

5. The record in this case is:

	<u>Volumes (#)</u>	<u>Pages (#)</u>	<u>Date filed</u>
Clerk's Transcript:	_____	_____	_____
Reporter's Transcript:	_____	_____	_____
Augmentation/Other:	_____	_____	_____

6. The order appealed from was made under Welfare and Institutions Code (check all that apply):

- a. section 360 (declaration of dependency) Removal of custody from parent or guardian Other orders
 with review of section 300 jurisdictional findings
- b. section 366.26
 Termination of parental rights Appointment of guardian Planned permanent living arrangement

APPELLANT: RESPONDENT:	COURT OF APPEAL CASE NUMBER:
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6. c. Section 366.28
 d. Other appealable orders relating to dependency (*specify*):

7. The reasons that I need an extension to file this brief are stated:
 below.
 on a separate declaration. You may use *Attached Declaration (Court of Appeal)* (form APP-031) for this purpose.

(Please specify; see Cal. Rules of Court, rule 8.63, for factors used in determining whether to grant extensions. Note that an exceptional showing of good cause is required in cases subject to rule 8.416.)

8. A proof of service of this application on all other parties is attached (see Cal. Rules of Court, rule 8.412(e)). You may use *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) for this purpose.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

 (TYPE OR PRINT NAME)

 (SIGNATURE OF PARTY OR ATTORNEY)

Order on Application is below on a separate document

ORDER

EXTENSION OF TIME IS:

Granted to (*date*): _____
 Denied

Date: _____

 (SIGNATURE OF PRESIDING JUSTICE)

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
NOTICE OF INTENT TO FILE WRIT PETITION AND REQUEST FOR RECORD TO REVIEW ORDER DESIGNATING OR DENYING SPECIFIC PLACEMENT OF A DEPENDENT CHILD AFTER TERMINATION OF PARENTAL RIGHTS (California Rules of Court, Rule 8.454)	CASE NUMBER:

NOTICE

The juvenile court has ordered or denied a specific placement for this child. If you want an appeals court to review the juvenile court's decision, you must first tell the juvenile court by filing a Notice of Intent. You may use this form as your Notice of Intent. In most cases, you have only 7 days from the court's placement decision to file a Notice of Intent. Please see page 2 for your specific deadline for filing this form.

1. Petitioner's name:
2. Petitioner's address:
3. Petitioner's phone number:
4. Petitioner is
 - a. child's caretaker (specify dates in your care):
 - b. child
 - c. county welfare department
 - d. legal guardian
 - e. other (state relationship to child or interest in the case):
5. Child's name: _____ Child's date of birth: _____
6. a. On (date): _____ the juvenile court terminated parental rights under Welfare and Institutions Code section 366.26.
- b. On (date): _____ the court made a specific placement order or denied a specific placement request that the dependent child is to reside in, be retained in, or be removed from a specific placement. Petitioner intends to file a writ petition to challenge the specific placement order or the denial of a specific placement request made by the court on that date and requests that the clerk assemble the record.

Date: _____

 (TYPE OR PRINT NAME)

 (SIGNATURE OF PETITIONER CHILD'S ATTORNEY)

The Notice of Intent to File Writ Petition must be signed by the person intending to file the writ petition, or, if it is to be filed on behalf of the child, by the child's attorney of record. See the back of this form for more information.

PLEASE READ THE BACK OF THIS FORM FOR IMPORTANT INFORMATION AND DEADLINES

HOW DO I CHALLENGE THE COURT'S PLACEMENT DECISION AFTER TERMINATION OF PARENTAL RIGHTS?

- File this *Notice of Intent to File Writ Petition and Request for Record* in the juvenile court within the time listed below in the next box. This will let the court know you intend to file a writ petition, and the court will prepare the record.
- You will be notified after the record is filed in the Court of Appeal, and you will get a copy of the record. **You have 10 days after the record is filed in the Court of Appeal to file and serve your writ petition.**
- You may use the optional Judicial Council form JV-825 to complete your writ petition, or, if you have an attorney, your attorney can write the writ petition for you.
- After you file a writ petition in the Court of Appeal you must send a copy of the petition to all of the parties in the case, to the child's CASA volunteer, to the child's present caregiver, and to any de facto parent who has standing to participate in the juvenile court proceedings.

SEE CAL. RULES OF COURT, RULES 8.454–8.456

WHEN DO I HAVE TO FILE MY NOTICE OF INTENT TO FILE WRIT PETITION AND REQUEST FOR RECORD?

- If you were present when the court granted or denied the specified placement, you must file the *Notice of Intent* within 7 days from the date the court granted or denied the specified placement.
- If you were not present in court but were given notice by mail of the court's decision to grant or deny the specified placement, you must file the *Notice of Intent* within 12 days from the date the clerk mailed the notification.
- If the order granting or denying the specific placement was made by a referee not acting as a temporary judge, you must file the *Notice of Intent* within 17 days from the date the court set the hearing.

SIGNATURE ON NOTICE OF INTENT

- Must be signed by the person who intends to file the writ petition, *or*
- If petition will be filed on behalf of a child, by the child's attorney, *or*
- The reviewing court may waive this requirement for good cause on the basis of a declaration by the attorney of record explaining why the party could not sign the notice. (Cal. Rules of Court, rule 8.450(e)(3).)

TO BE FILED IN THE COURT OF APPEAL

JV-825

COURT OF APPEAL	APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER <i>(Court will provide):</i>
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In re the Matter of:

(Name and date of birth of subject child or children)

Petitioners

v.

Superior Court of California, County of

Respondent

Real Party in Interest

FILE STAMP

Superior Court No.

Superior Court No.

Related Appeal Pending

Appellate Court No.

**PETITION FOR EXTRAORDINARY WRIT
(California Rules of Court, Rules 8.452, 8.456)**

STAY REQUESTED *(see item 11).*

INSTRUCTIONS—READ CAREFULLY

- Read the entire form *before* completing any items.
- This petition must be clearly handprinted in ink or typed.
- Complete all applicable items in the proper spaces. If you need additional space, add an extra page and mark the additional page box.
- If you are filing this petition in the Court of Appeal, file the original and 4 copies.
- If you are filing this petition in the California Supreme Court, file the original and 10 copies.
- Notify the clerk of the court in writing if you change your address after filing your petition.

Individual Courts of Appeal or the Supreme Court may require documents other than or in addition to this form. Contact the clerk of the reviewing court for local requirements.

CASE NAME:	CASE NUMBER:
------------	--------------

1. This *Petition for Extraordinary Writ (Juvenile Dependency)* is filed on behalf of petitioner.
 - a. Name:
 - b. Address:

 - c. Phone number:
 - d. E-mail:
2. Petitioner is the

<ol style="list-style-type: none"> a. <input type="checkbox"/> child b. <input type="checkbox"/> mother c. <input type="checkbox"/> father d. <input type="checkbox"/> guardian 	<ol style="list-style-type: none"> e. <input type="checkbox"/> de facto parent f. <input type="checkbox"/> county welfare department g. <input type="checkbox"/> district attorney h. <input type="checkbox"/> other (<i>state relationship to child or interest in the case</i>):
---	--
3. The *Petition for Extraordinary Writ (Juvenile Dependency)* pertains to the following child or children (*specify number of children*): _____
 - a. Name of child:
Child's date of birth:
 - b. Name of child:
Child's date of birth:
 - c. Name of child:
Child's date of birth:
 - d. Name of child:
Child's date of birth:
 Continued in Attachment 3.
4. This petition seeks extraordinary relief from the order of (*name*):
 - a. setting a hearing under Welfare and Institutions Code section 366.26 to consider termination of parental rights, guardianship, or another planned permanent living arrangement.
OR
 - b. designating a specific placement after a placement order under Welfare and Institutions Code section 366.28.
OR
 - c. other (*specify*):
5. The challenged order was made on (*date of hearing*):
6. The order was erroneous on the following grounds (*specify*):
7.
 - a. Supporting documents are attached.
 - b. Because of exigent circumstances, supporting documents are not attached (*explain*):
8. Summary of factual basis for petition (*Petitioner need not repeat facts as they appear in the record. Petitioner must reference each specific portion of the record, its significance to the grounds alleged, and disputed aspects of the record*):

Additional pages attached.

CASE NAME:	CASE NUMBER:
------------	--------------

9. Points and authorities in support of the petition are attached (*number of pages attached*):

10. Petitioner requests that this court direct the trial court to (*check all that apply*):

- a. Vacate the order for hearing under section 366.26.
- b. Vacate the order designating a specific placement after termination of parental rights under section 366.28.
- c. Remand for hearing.
- d. Order that reunification services be
 provided continued.
- e. Order visitation between the child and petitioner.
- f. Return or grant custody of the child to petitioner.
- g. Terminate dependency.
- h. Other (*specify*):

11. Petitioner requests a temporary stay pending the granting or denial of the petition for extraordinary writ.

- a. Hearing date (*must specify*):
- b. Reasons for stay (*specify*):

Additional pages attached.

12. Total number of pages attached:

13 I am the petitioner attorney for petitioner.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, except for matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date:

(TYPE OR PRINT NAME)



 (SIGNATURE OF PETITIONER ATTORNEY)

Address:

Name:

Address:

CDC or ID Number:

(Court)

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner	vs.	Respondent

No.

(To be supplied by the Clerk of the Court)

INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.

- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the superior court, you only need to file the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal in paper form and you are an attorney, file the original and 4 copies of the petition and, if separately bound, 1 set of any supporting documents (unless the court orders otherwise by local rule or in a specific case). If you are filing this petition in the Court of Appeal electronically and you are an attorney, follow the requirements of the local rules of the court for electronically filed documents. If you are filing this petition in the Court of Appeal and you are *not* represented by an attorney, file the original and one set of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and 10 copies of the petition and, if separately bound, an original and 2 copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court (as amended effective January 1, 2007). Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

This petition concerns:

- A conviction Parole
- A sentence Credits
- Jail or prison conditions Prison discipline
- Other (*specify*):

1. Your name:
2. Where are you incarcerated?
3. Why are you in custody? Criminal conviction Civil commitment

Answer items a through i to the best of your ability.

- a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").
- b. Penal or other code sections:
- c. Name and location of sentencing or committing court:
- d. Case number:
- e. Date convicted or committed:
- f. Date sentenced:
- g. Length of sentence:
- h. When do you expect to be released?
- i. Were you represented by counsel in the trial court? Yes No *If yes, state the attorney's name and address:*
4. What was the LAST plea you entered? (*Check one*):
- Not guilty Guilty Nolo contendere Other:
5. If you pleaded not guilty, what kind of trial did you have?
- Jury Judge without a jury Submitted on transcript Awaiting trial

6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "The trial court imposed an illegal enhancement." (*If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page 4. For additional grounds, make copies of page 4 and number the additional grounds in order.*)

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts on which your conviction is based. *If necessary, attach additional pages.* CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel, you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is, *who* did exactly *what* to violate your rights at what time (*when*) or place (*where*). (*If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.*)

b. Supporting cases, rules, or other authority (*optional*):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

7. **Ground 2 or Ground _____** *(if applicable)*:

a. Supporting facts:

b. Supporting cases, rules, or other authority:

8. Did you appeal from the conviction, sentence, or commitment? Yes No If yes, give the following information:
- a. Name of court ("Court of Appeal" or "Appellate Division of Superior Court"):
 - b. Result:
 - c. Date of decision:
 - d. Case number or citation of opinion, if known:
 - e. Issues raised: (1)
(2)
(3)
 - f. Were you represented by counsel on appeal? Yes No If yes, state the attorney's name and address, if known:
9. Did you seek review in the California Supreme Court? Yes No If yes, give the following information:
- a. Result:
 - b. Date of decision:
 - c. Case number or citation of opinion, if known:
 - d. Issues raised: (1)
(2)
(3)
10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:
11. Administrative review:
- a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500.) Explain what administrative review you sought or explain why you did not seek such review:
 - b. Did you seek the highest level of administrative review available? Yes No
Attach documents that show you have exhausted your administrative remedies.

SPR16-26

Technology: Modernization of the Appellate Rules of Court (Phase II of the Rules Modernization Project) (rules 8.104, 8.130, 8.144, 8.150, 8.336, 8.409, 8.416, 8.450, 8.452, 8.454, 8.456, 8.480, 8.482, 8.489, 8.613, 8.619, 8.625, 8.834, 8.866, 8.919, 8.1007, and 10.1028; approve forms APP-009E and APP-109E; and revise forms APP-002, APP-003, APP-004, APP-005, APP-006, APP-007, APP-008, APP-009, APP-009-INFO, APP-010, APP-011, APP-012, APP-101-INFO, APP-102, APP-103, APP-104, APP-106, APP-107, APP-109, APP-109-INFO, APP-110, APP-150-INFO, APP-151, CR-120, CR-126, CR-132, CR-133, CR-134, CR-135, CR-137, CR-141-INFO, CR-142, CR-143, CR-145, JV-810, JV-816, JV-817, JV-822, JV-825, and MC-275)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	[Proposed] Committee Response
1.	Orange County Bar Association by Todd G. Friedland, President	AM	The OCBA believes that the proposal appropriately addresses the stated purposes except that no adequate discussion is made of the statutory requirements of such statutes as C.C.P. §269 (which requires all official court reporters to take down the required testimony in shorthand and write out all transcripts in longhand or typewriter or printing machine) and C.C.P. §271 (which requires all “original” transcripts to be on paper). Each of the provisions adding Advisory Committee Comments merely authorize electronic copies to be submitted in an effort to avoid legislative issues over the changes which do not appear statutorily authorized in most instances. The OCBA recommends legislative changes before full implementation.	The committees were mindful, in developing the proposed changes, of the statutory requirements regarding court reporting and reporter’s transcripts. With the statutory framework remaining, for now, unchanged, the committees have chosen to take the action allowed under those statutes by proposing changes the standards set in the Rules of Court for the formatting of electronic copies of reporter’s transcripts. Code of Civil Procedure section 271, in addition to allowing Judicial Council to set standards for the formatting of electronic copies of reporters’ transcripts, also provides that a court entitled to a transcript may request to receive it in computer-readable form. Under proposed rule 8.71(c) (as proposed in SPR16-06, a trial court will be allowed to file any document electronically in a reviewing court – including a copy of a reporter’s transcript included as part of the trial court record. The intent of the addition to the Advisory Committee Comments is to encourage trial courts to send all or part of the record electronically by reminding them that this is permitted.
2.	Members of the Orange County Superior Court staff, as relayed by Sheri Bull, Lead Staff, Rules and Forms	AM	<ul style="list-style-type: none"> Whether the proposal appropriately addresses the stated purpose; <p><i>The changes to the forms the</i></p>	The committees appreciate the careful attention to the proposal of the Orange County Court staff members.

SPR16-26

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	Commentator	Position	Comment	[Proposed] Committee Response
	Committee, Judicial Assistance Group		<p><i>Criminal Appellate unit uses (CR-132, CR-133, CR-134, CR-135, CR-137, CR-141-INFO, CR-142, CR-143, CR-145 and MC-275), are minimal with no particular impact. They all add a line for the appellant to add an Email Address to their contact information or reference the new POS for Electronic Service (APP-109E) created.</i></p> <p><i>We did notice that there are also supposed to be changes made to the felony form CR-120 and the application to extend the filing time form CR-126, however those forms were not provided in the samples attached. However, if the changes are just related to entering an e-mail address, there is no impact.</i></p> <ul style="list-style-type: none"> • Specific comments on newly created subdivision 8.144(a)(4); <p><i>Though the proposal to amend</i></p>	<p>The committees note that the proposed amended forms CR-120 and CR-126 were inadvertently omitted from the Invitation to Comment packet as originally posted, but were posted shortly thereafter. Notice was given to the commentator that these forms had been added, and no further comments were received. The changes to those forms were relatively minor: addition of a space for attorney e-mail on CR-120, and on CR-126, removing the words “if available” after “e-mail” and adding a reference to the newly created proof of electronic service.</p>

SPR16-26

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	Commentator	Position	Comment	[Proposed] Committee Response
			<p><i>these CRC's [stating that under rule 8.72(a), the superior court clerk may send the record....] appears to allow for discretion by our court, if adopted and the responsibility is placed on the courts to ensure that the documents being transmitted to the COA are in proper electronic format as well as text searchable, we believe this will have a substantial impact on the trial courts. We believe courts will incur significant costs to convert non-searchable documents by requiring the purchase software and dedicating staff to convert older records.</i></p> <ul style="list-style-type: none"> • Specific comments on the change to the advisory committee comments to rules 8.150, 8.336, 8.409, 8.416, 8.450, 8.454, 8.480, 8.482, and 8.1007; and <ul style="list-style-type: none"> <i>8.150 – agree with advisory committee comment</i> <i>8.336 – agree with the</i> 	<p>The committees appreciate the concern raised regarding the impact on trial courts of the new formatting requirement for electronic copies of reporters' transcripts. The committees' expectation is that the reporters themselves will be primarily responsible for ensuring that electronic copies of transcripts are in the proper format, just as reporters now are responsible for ensuring that their transcripts meet the otherwise applicable format requirements. The committees further note that if sending the record electronically would be a significant burden on the trial court – such as when older records would need to be converted – the trial court is not required to send it electronically, and may send it on paper.</p> <p>The committee notes the support of the commentator for these provisions. No response is necessary.</p>

SPR16-26

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	Commentator	Position	Comment	[Proposed] Committee Response
			<p><i>proposed rule changes and advisory committee comments</i></p> <p>8.409 – <i>agree with the proposed rule changes and advisory committee comments</i></p> <p>8.416 – <i>agree with the proposed rule changes and advisory committee comments under subdivision (c)</i></p> <p>8.454 – <i>agree with the proposed rule changes and advisory committee comments under subdivision (i)</i></p> <p>8.480 – <i>agree with advisory committee comment</i></p> <p>8.482 – <i>agree with advisory committee comment</i></p> <p>8.613 – <i>agree with most of the proposed rule changes; in subdivision (i) (2), line 1 delete “comply</i></p>	<p>The committees appreciate the commentator’s careful review and recommend that the suggested correction be made to 8.613(i)(2).</p>

SPR16-26

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	Commentator	Position	Comment	[Proposed] Committee Response
			<p><i>with the” to avoid repetition. See 8.619 subdivision (e) (2). Suggest changing subdivision (i) (3) to read “A computer-readable copy of a sealed transcript must be placed on a separate disk document or electronic file and clearly be labeled as confidential.”</i></p> <p>8.619 – agree with advisory committee comment. Suggest changing subdivision (e) (3) to read “A computer-readable copy of a sealed transcript must be placed on a separate disk document or electronic file and clearly be labeled as confidential.”</p> <p>8.625 – agree with the</p>	<p>With regard to the proposed changes to rules 8.613(i)(3) and 8.619(e)(3) regarding computer-readable copies of sealed transcripts, and the general comment regarding the need for the rules to address the handling of confidential documents when they are transmitted electronically, the committees considered taking action on this topic. The committees decided that more time, and more appellate court experience with e-filing, were needed to allow the development of workable, appropriate statewide rules in this area.</p>

SPR16-26

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	Commentator	Position	Comment	[Proposed] Committee Response
			<p><i>proposed rule changes</i></p> <p>8.834 – <i>agree with the proposed rule changes</i></p> <p>8.866 – <i>agree with the proposed rule changes</i></p> <p>8.919 – <i>agree with the proposed rule changes</i></p> <p>8.1007 – <i>agree with advisory committee comment</i></p> <p>10.1028 – <i>agree with the proposed rule changes and advisory committee comments under subdivision (d)</i></p> <p><i>These changes may be burdensome for Superior Courts as there needs to be consideration of the impact on staff, software to convert documents, procedures and training. In the long run, this will help the Court of Appeals navigate more quickly through documents, the costs associated with obtaining this</i></p>	<p>The committees appreciate the commentator calling attention to the needs of the Superior Courts as the appellate courts shift to mandatory e-filing. The committees again note that for now, electronic transmission of the record is optional for the Superior Court. The committees hope that this flexibility allows Superior Courts to move at their own pace towards electronically transmitting the record, without the change presenting a burden.</p>

SPR16-26

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	Commentator	Position	Comment	[Proposed] Committee Response
			<p><i>ability should be considered.</i></p> <p><i>There is no mention as to the security level of confidential documents (i.e. psychotropic medication reports, applications, etc...); if implemented, we would need the CRC's to address the handling of confidential documents.</i></p> <ul style="list-style-type: none"> • Specific comments on creation of separate proof of service forms for proof of electronic service. <p><i>This requires public education on which correct form to use - minimal impact.</i></p> <p>The advisory committees also seek comments from <i>courts</i> on the following cost and implementation matters:</p> <ul style="list-style-type: none"> • Would the proposal provide cost savings? <p><i>Long term there will be a cost savings as courts will no longer be required to print/copy court records.</i></p>	<p>As noted above in response to the comment on rules 8.613 and 8.619, the committees considered action on the topic of how confidential or sealed documents should be handled when they are transmitted electronically. The committees decided that more time, and more appellate court experience with e-filing, were needed to allow the development of workable, appropriate statewide rules in this area.</p>

SPR16-26

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	Commentator	Position	Comment	[Proposed] Committee Response
			<p><i>However, there will be some short term costs associated to implement the changes.</i></p> <p><i>While cost savings are expected with eService, the overall impact with appellate may be limited as notices are fairly infrequent day to day. To increase usage, it might be helpful to think of solutions to increase acceptance of eService among self-represented litigants.</i></p> <p><i>With regard to electronic records on appeal, our reviewing court – Fourth District Court of Appeal, Division Three – does not yet accept electronic records on appeal. When that time comes, this Court foresees noticeable savings.</i></p> <ul style="list-style-type: none"> • What would the implementation requirements be for courts? <p><i>Would require communication to the court reporters of rule</i></p>	<p>The committees appreciate the commentator’s analysis of the potential long term savings and potential short term costs to the Superior Courts. The committees’ intent is to allow flexibility to the Superior Courts as they move to a system of electronic transmission of the record, and thus to minimize the costs of making this change.</p>

SPR16-26

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	Commentator	Position	Comment	[Proposed] Committee Response
			<p><i>changes and its respective effective date. Changes to the court reporters processes would be needed to comply with the proposed changes.</i></p> <p><i>The court would be required to build an infrastructure to allow for submission of electronic reporter transcripts. Possible changes to case management systems will be needed.</i></p> <p><i>Some one-time costs to purchase OCR software, update procedures and get staff familiar with PDF functionalities. Courts will need to train staff to ensure appeals sent to the COA are in proper format (i.e. clerk or reporter's transcripts).</i></p> <p><i>Minimal regarding posting of new forms and updating of procedures with the new language regarding electronic signature and changing mailed to sent</i></p>	<p>As noted above, the committees anticipate that compliance with the new formatting requirements for electronic copies of reporter's transcript will be up to the reporters – and the language was intended to accommodate the current electronic formatting practices of court reporters. The intent was not to impose new burdens on the Superior Courts or have them convert transcripts to the required format.</p>

SPR16-26

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All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	[Proposed] Committee Response
			<p><i>This Court is already capable of performing the e-business practices on which the proposed rule changes are based.</i></p> <ul style="list-style-type: none"> • Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? <p><i>We recommend providing the courts 6 months to implement. This will allow time to purchase OCR software, create procedures, train staff and implement.</i></p> <p><i>If the Court still has the option to send paper clerk and reporter transcripts, it would provide us with time to implement the necessary changes.</i></p>	<p>Electronic transmission of the record, or any part of the record, remains entirely optional for the Superior Courts. The committees hope that this flexibility allows the Superior Courts to implement the changes at their own pace. The committees do not recommend any delay in the effective date of the proposed changes.</p>
3.	Superior Court of San Diego County by Mike Roddy, Court Executive Officer	AM	Q: Does the proposal appropriately address the stated purpose? Yes.	The committees note the commentator's support for the proposal.

SPR16-26

Technology: Modernization of the Appellate Rules of Court (Phase II of the Rules Modernization Project) (rules 8.104, 8.130, 8.144, 8.150, 8.336, 8.409, 8.416, 8.450, 8.452, 8.454, 8.456, 8.480, 8.482, 8.489, 8.613, 8.619, 8.625, 8.834, 8.866, 8.919, 8.1007, and 10.1028; approve forms APP-009E and APP-109E; and revise forms APP-002, APP-003, APP-004, APP-005, APP-006, APP-007, APP-008, APP-009, APP-009-INFO, APP-010, APP-011, APP-012, APP-101-INFO, APP-102, APP-103, APP-104, APP-106, APP-107, APP-109, APP-109-INFO, APP-110, APP-150-INFO, APP-151, CR-120, CR-126, CR-132, CR-133, CR-134, CR-135, CR-137, CR-141-INFO, CR-142, CR-143, CR-145, JV-810, JV-816, JV-817, JV-822, JV-825, and MC-275)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	[Proposed] Committee Response
			<p>Request for specific comments on changes to rules: Proposed rule 8.866 (d)(2) states in part: “On request, and unless the trial court orders otherwise, the reporter must provide the reviewing court or any party with a copy of the reporter’s transcript in computer-readable format.”</p> <p>Code of Civil Procedure section 271 requires a hard-copy original (see proposed addition of Advisory Committee Comment to rule 10.1028), so reporter would not be providing electronic format in lieu of original hard copy. Our court would like to recommend that, upon the request of the court, an electronic original can be provided in lieu of a hard-copy original. This would greatly assist those courts that are moving toward a paperless system.</p> <p>Request for specific comments on creation of separate proof of service forms for proof of electronic service. If a separate proof of service form is to be created, suggest that it have multi-select options for service (e.g., one party served via electronic service and another served via mail, etc.) to avoid having to create multiple proofs of service.</p>	<p>The committees note that the statutory requirement in Code of Civil Procedure Section 271 that the original of a reporter’s transcript be on paper can only be changed by legislation.</p> <p>The committees appreciate these comments and this suggestion. Under rule 10.22, a proposal for new or modified rules or forms must be circulated for public comment before it is recommended for adoption by the Judicial Council, unless it presents a “nonsubstantive technical change or correction or a minor substantive change that is unlikely to create controversy.” Since these suggested changes would be substantive and have</p>

SPR16-26

Technology: Modernization of the Appellate Rules of Court (Phase II of the Rules Modernization Project) (rules 8.104, 8.130, 8.144, 8.150, 8.336, 8.409, 8.416, 8.450, 8.452, 8.454, 8.456, 8.480, 8.482, 8.489, 8.613, 8.619, 8.625, 8.834, 8.866, 8.919, 8.1007, and 10.1028; approve forms APP-009E and APP-109E; and revise forms APP-002, APP-003, APP-004, APP-005, APP-006, APP-007, APP-008, APP-009, APP-009-INFO, APP-010, APP-011, APP-012, APP-101-INFO, APP-102, APP-103, APP-104, APP-106, APP-107, APP-109, APP-109-INFO, APP-110, APP-150-INFO, APP-151, CR-120, CR-126, CR-132, CR-133, CR-134, CR-135, CR-137, CR-141-INFO, CR-142, CR-143, CR-145, JV-810, JV-816, JV-817, JV-822, JV-825, and MC-275)

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	Commentator	Position	Comment	[Proposed] Committee Response
			<p>Would the proposal provide cost savings? No – increased costs - additional cost of electronic copy since original must still be in hard-copy (see above).</p>	<p>not been circulate for public comment, the committee cannot recommend them for adoption at this time. The committees recommend adoption of the new proof of electronic service forms as proposed. When the courts and litigants have had experience with the use of those forms, further changes, such as those suggested, may be considered.</p> <p>The committees believe there may be some cost savings to the Superior Courts and Appellate Courts as Superior Courts may transmit the record to the reviewing court electronically, saving copying and shipping costs and staff time, and allowing more efficient review of the record at the reviewing court.</p>
4.	State Bar of California Committee on Appellate Courts by Paul J. Killion Chair, 2015–2016	A	<p>Technology: Modernization of the Appellate Rules of Court (Phase II of the Rules Modernization Project) - SPR16-26:</p> <p>The Committee on Appellate Courts supports this proposal.</p> <p>Thank you for your consideration of our comments.</p>	The committees note the commentator’s support for the proposal. No response is necessary.

SPR16-26

Technology: Modernization of the Appellate Rules of Court (Phase II of the Rules Modernization Project) (rules 8.104, 8.130, 8.144, 8.150, 8.336, 8.409, 8.416, 8.450, 8.452, 8.454, 8.456, 8.480, 8.482, 8.489, 8.613, 8.619, 8.625, 8.834, 8.866, 8.919, 8.1007, and 10.1028; approve forms APP-009E and APP-109E; and revise forms APP-002, APP-003, APP-004, APP-005, APP-006, APP-007, APP-008, APP-009, APP-009-INFO, APP-010, APP-011, APP-012, APP-101-INFO, APP-102, APP-103, APP-104, APP-106, APP-107, APP-109, APP-109-INFO, APP-110, APP-150-INFO, APP-151, CR-120, CR-126, CR-132, CR-133, CR-134, CR-135, CR-137, CR-141-INFO, CR-142, CR-143, CR-145, JV-810, JV-816, JV-817, JV-822, JV-825, and MC-275)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	[Proposed] Committee Response
			<p><u>Disclaimer</u></p> <p>This position is only that of the State Bar of California’s Committee on Appellate Courts. This position has not been adopted by the State Bar’s Board of Trustees or overall membership, and is not to be construed as representing the position of the State Bar of California. Committee activities relating to this position are funded from voluntary sources.</p>	
5.	TCPJAC/CEAC Joint Rules Subcommittee (JRS) by Claudia Ortega, Senior Analyst Judicial Council and Trial Court Leadership	A	<p>General comment: The proposed changes should be implemented because it is likely that they will provide cost savings and efficiencies. The proposal will assist courts and court users utilizing electronic means of filing. It will also probably speed up processing times, reduce paper and labor costs in producing numerous copies, decrease mailing/shipping costs, and simply the overall processes for transferring information.</p> <p>While the JRS supports this proposal, it cautions against any modifications to the rules and forms that would eliminate the ability to submit paper records to the reviewing court when it is</p>	<p>The committees note the commentator’s support for the proposal.</p> <p>The committees note that the proposal does not mandate that a Superior Court transmit records electronically. Superior Courts can continue to send records in paper form when necessary.</p>

SPR16-26

Technology: Modernization of the Appellate Rules of Court (Phase II of the Rules Modernization Project) (rules 8.104, 8.130, 8.144, 8.150, 8.336, 8.409, 8.416, 8.450, 8.452, 8.454, 8.456, 8.480, 8.482, 8.489, 8.613, 8.619, 8.625, 8.834, 8.866, 8.919, 8.1007, and 10.1028; approve forms APP-009E and APP-109E; and revise forms APP-002, APP-003, APP-004, APP-005, APP-006, APP-007, APP-008, APP-009, APP-009-INFO, APP-010, APP-011, APP-012, APP-101-INFO, APP-102, APP-103, APP-104, APP-106, APP-107, APP-109, APP-109-INFO, APP-110, APP-150-INFO, APP-151, CR-120, CR-126, CR-132, CR-133, CR-134, CR-135, CR-137, CR-141-INFO, CR-142, CR-143, CR-145, JV-810, JV-816, JV-817, JV-822, JV-825, and MC-275)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	[Proposed] Committee Response
			<p>necessary to do so.</p> <p>Regarding the requirement to develop local rules and/or forms: The proposed changes may require some courts to revise their local rules. However, this impact will likely be minimal and courts generally review local rules twice a year at minimum.</p> <p>Regarding additional training: Staff training is a necessity with any change, new forms, and new formats. However, some of this training is already taking place given implementation of new case management systems.</p> <p>Regarding impact on local or statewide justice partners: Stakeholders and the public would need notification of rule changes (e.g., notice via court websites and other distribution methods). However, while there is an impact on justice partners, it is not significant.</p> <p>Request for Specific Comments:</p> <ul style="list-style-type: none"> • Whether the proposal appropriately addresses the stated purpose. Comment: Yes, it appears the proposal addresses the purpose. • Specific comments on newly created subdivision 8.144(a)(4): Comment: As long as 	<p>The committees do not anticipate that courts will need to revise their local rules in response to the proposed changes.</p> <p>The committees agree that necessary staff training with regard to the proposed changes should be minimal.</p> <p>The committees agree that the impact on justice partners should be minimal.</p>

SPR16-26

Technology: Modernization of the Appellate Rules of Court (Phase II of the Rules Modernization Project) (rules 8.104, 8.130, 8.144, 8.150, 8.336, 8.409, 8.416, 8.450, 8.452, 8.454, 8.456, 8.480, 8.482, 8.489, 8.613, 8.619, 8.625, 8.834, 8.866, 8.919, 8.1007, and 10.1028; approve forms APP-009E and APP-109E; and revise forms APP-002, APP-003, APP-004, APP-005, APP-006, APP-007, APP-008, APP-009, APP-009-INFO, APP-010, APP-011, APP-012, APP-101-INFO, APP-102, APP-103, APP-104, APP-106, APP-107, APP-109, APP-109-INFO, APP-110, APP-150-INFO, APP-151, CR-120, CR-126, CR-132, CR-133, CR-134, CR-135, CR-137, CR-141-INFO, CR-142, CR-143, CR-145, JV-810, JV-816, JV-817, JV-822, JV-825, and MC-275)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	[Proposed] Committee Response
			<p>the language does not limit the reviewing court's needs for paper copies or documents, this subdivision is a necessary change.</p> <ul style="list-style-type: none"> • Specific comments on creation of separate proof of service forms for proof of electronic service. Comment: It would seem like a more streamlined process to simply include electronic service as an option on a proof of service form rather than have a totally separate form. It seems more confusing to have a specific form simply because the method of service was different. <p>The advisory committees also seek comments from courts on the following cost and implementation matters:</p> <ul style="list-style-type: none"> • Would the proposal provide cost savings? Comment: It is likely that cost savings would be achieved by less paper, labor, and mailing costs related to the preparation of documents. • What would the implementation requirements be for courts? Comment: Courts may need to revise local rules, modify training for staff, and make updates to processes and/or case management systems depending upon record of actions that may need to be changed or updated. The public and other stakeholders or 	<p>The committees considered revising the existing proofs of service for the appellate courts to include proof of electronic service as an option. Because some of the legal requirements regarding service and proof of service are different when a document is served electronically, the committees decided that creation of a separate proof of electronic service would likely be less confusing to parties.</p> <p>With regard to implementation requirements and time for implementation, most of the proposed changes are minor, and in many cases simply add comments recognizing options open to the courts for electronic transmission of the record. As to the changes to the format of an electronic copy of the reporter's transcript, the intent of the committees was to draft language that would accommodate the current practices of court reporters.</p>

SPR16-26

Technology: Modernization of the Appellate Rules of Court (Phase II of the Rules Modernization Project) (rules 8.104, 8.130, 8.144, 8.150, 8.336, 8.409, 8.416, 8.450, 8.452, 8.454, 8.456, 8.480, 8.482, 8.489, 8.613, 8.619, 8.625, 8.834, 8.866, 8.919, 8.1007, and 10.1028; approve forms APP-009E and APP-109E; and revise forms APP-002, APP-003, APP-004, APP-005, APP-006, APP-007, APP-008, APP-009, APP-009-INFO, APP-010, APP-011, APP-012, APP-101-INFO, APP-102, APP-103, APP-104, APP-106, APP-107, APP-109, APP-109-INFO, APP-110, APP-150-INFO, APP-151, CR-120, CR-126, CR-132, CR-133, CR-134, CR-135, CR-137, CR-141-INFO, CR-142, CR-143, CR-145, JV-810, JV-816, JV-817, JV-822, JV-825, and MC-275)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	[Proposed] Committee Response
			justice partners would need to be notified of the changes. <ul style="list-style-type: none"> • Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Comment. No. The JRS requests an implementation period of at least 120 days from council approval to provide the courts with sufficient time to make the necessary case management system changes, changes to court processes, train staff, revise local rules, and inform the public and justice system partners. 	The committees believe that the proposed changes allow the Superior Courts flexibility to move at their own pace to electronic transmission of the record to the reviewing court. The committees do not recommend any delay in the effective date of the proposed changes.



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

<p>Date July 26, 2016</p> <p>To Members of the Information Technology Advisory Committee</p> <p>From Hon. Louis R. Mauro, Chair, Joint Appellate Technology Subcommittee Katherine Sher, Attorney, Legal Services Office</p> <p>Subject Consideration of public comments and further action on SPR16-06 – Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices</p>	<p>Action Requested Please review for August 1st meeting</p> <p>Deadline August 1, 2016</p> <p>Contact Katherine Sher (415) 865-8031 phone katherine.sher@jud.ca.gov</p>
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Introduction

Earlier this year, on the recommendation of the Joint Appellate Technology Subcommittee (JATS), the Appellate Advisory Committee (AAC) and Information Technology Advisory Committee (ITAC) recommended circulating for comment a comprehensive revision of the appellate e-filing rules, rules 8.70 to 8.79, and a corresponding change to rule 8.204. The proposed changes are intended to ensure that the rules of court reflect the actual e-filing practices of the appellate courts, to eliminate conflicts between appellate court local rules and the rules of court, and to ensure consistency in the e-filing practices of the Courts of Appeal where such consistency is desirable. The Judicial Council's Rules and Projects Committee approved that recommendation, and the proposal was circulated for public comment between April 15, 2016 and June 14, 2016. This memo discusses the public comments received and JATS's recommendations made in response to those comments. The AAC will consider the comments

Information Technology Advisory Committee

July 26, 2016

Page 2

and JATS's recommendations at its meeting on July 26th and July 27th, 2016. At the August 1st ITAC meeting staff will summarize the AAC's discussion for ITAC members.

Public Comments

Comments from eleven organizations and one individual were received, several of them lengthy and detailed with suggestions for specific changes. Four commentators agreed with the proposal, none disagreed, six agreed if modified, and one suggested modifications but did not indicate a position on the proposal. The full comment chart, showing the full text of the comments received and staff's proposed committee responses, is attached. The chart is organized so as to show all of the comments received regarding each proposed change together, with general comments in a separate section. (The comments of the California Appellate Court Clerks Association, submitted in the form of comments interpolated in the text of the comments submitted by the Second District Court of Appeal, are presented in the chart separately from the Second District Court of Appeal comments, without repetition of the Second District Court's comments.) The main substantive comments and staff's proposed responses are discussed below (organized rule by rule), but there are other comments and responses discussed only in the draft comment chart, so **please review the draft comment chart carefully.**

Rule 8.71

Rule 8.71(b)(2)

As circulated, rule 8.71(b)(2) required a self-represented party who wished to file documents electronically to agree to do so by filing and serving a notice. The California Appellate Court Clerks Association (CACCA) asks why self-represented parties who wish to use electronic filing should have to file and serve a special notice. CACCA suggests revising the proposed language of rule 8.71(b)(2) to allow a self-represented party to agree to file documents electronically by submitting a document electronically and serving it electronically on other parties. JATS recommends making this change, with slightly revised language as reflected in the comment chart and attached revised version of the proposed amended rules.

Rule 8.71(b)(3)

CACCA and the Second District Court of Appeal (the Second District) both ask why rule 8.71(b)(3), as circulated, did not give self-represented parties the option of filing documents electronically. Staff recommends revision of the proposed language as suggested by the Second District, to allow but not require self-represented parties to file non-electronically, with the added revision suggested by CACCA changing "by non-electronic means" to "in paper form."

Rule 8.71 (d)

Information Technology Advisory Committee

July 26, 2016

Page 3

The Second District suggests that rule 8.71(d) be revised to provide specifically that a motion can be filed to show good cause or undue prejudice and request exemption from e-filing. The State Bar Standing Committee on the Delivery of Legal Services (SCDLS) similarly suggests that the rule should specify a procedure for requesting exemption from e-filing. Because different courts of appeal have different practices and different local rules as to how a party requests exemption from e-filing, JATS recommends leaving the language unchanged from the proposal as circulated.

Rule 8.72

The Second District asks why, in rule 8.72 (a), the rule language requiring each court to publish its e-filing requirements is retained, when e-filing will now be mandatory in all appellate courts and any local rule imposing specific requirements would be required to be published with or without this language. JATS recommends against the suggested change of deleting rule 8.72(a). The requirement is a potentially useful reiteration, in the specific context of the e-filing rules, that any local requirements for e-filing must be published.

Rule 8.73

Rule 8.73(b)

With regard to rule 8.73(b), regarding a court's contract with an electronic filing service provider, the Family Violence Appellate Project (FVAP) suggests a change to strengthen the language of rule 8.73(b) so that it would encourage courts, whenever possible, to include in their contracts with electronic filing service providers a requirement that the service provider agree to waive a fee upon court order. JATS recommends that the proposed rule be revised to make the suggested change.

SCDLS suggests that language be added to rule 8.73(b) to specify the circumstances under which a court would be able to order that an electronic filing service provider's fee be waived. Similarly, the Second District suggests revising the proposed added language to read "The contract may require that the electronic filing service provider agree to waive a fee that normally would be charged to a party when the court orders that the filing fee be waived for that party." JATS recommends against making either of these suggested changes. The language as proposed preserves the court's discretion to decide when to order that the e-filing service provider's fee be waived, and to decide separately on the appropriateness of waiver of the court's filing fee and on waiver of the e-filing service provider's fee.

Information Technology Advisory Committee
July 26, 2016
Page 4

Rules 8.73(d) and 8.77(a)

Both CACCA and the Second District comment that the proposed language of rule 8.73(d), requiring the court to notify the electronic filing service provider and the electronic filer when a document is accepted or rejected for filing, does not reflect the actual practice of the appellate courts. CACCA notes that confirmation of filing or rejection is automatically generated when the court accepts or rejects the document. Similarly, CACCA notes that the notice of receipt of a document required under the proposed language of rule 8.77(a)(2) (existing rule 8.79(a)(2)) is also automatically generated. CACCA suggests language stating, in rule 8.73, that a confirmation of filing or rejection “is generated” and in rule 8.77 that “the electronic filer receives a computer generated confirmation.” However, CACCA also submits, with its comment, a comment from the Third District Court of Appeal that notes that the courts cannot control what is received, but only what they send.

The Second District similarly notes that the e-filing service provider, not the court, gives notice of receipt and notice of acceptance or rejection of a document for filing to the electronic filer.

In response to these comments, JATS recommends the modifications shown in the attached revised version of the proposed amended rules. The revised language reflects that the court must “arrange to” give notice to the electronic filer of receipt and acceptance or rejection of a document. The change retains the requirement of notice but permits flexibility in how the notice is delivered.

Rule 8.74

Rule 8.74(b)(2)

The California Court Reporters Association (CCRA) comments on rule 8.74(b)(2), regarding the standards for formatting of electronic documents, that more specific format requirements be set for a reporter’s transcript, including a requirement for hyperlinks. JATS recommends against this change. Most of rule 8.74 is taken, unchanged, from existing rule 8.76(b), which generally leaves it to each court to set its own electronic format requirements. Moreover, specific requirements as to the format of reporters’ transcripts are set forth elsewhere in both statute (Code of Civil Procedure section 271) and rule (e.g., rule 8.144), and any proposal to change formatting requirements for transcripts must be drafted with due consideration of those existing requirements.

SCDLS notes that the imposition of a requirement that e-filed documents be submitted in text-searchable format may pose a barrier for some parties. JATS recommends against any change to the proposed language, and notes that the existing requirement for the appellate courts that

software for creating and reading documents must be in the public domain or available at reasonable cost remains unchanged. The new requirement is intended to ensure that courts receive documents in a format that allows for the efficient review of those documents, while keeping e-filing accessible.

D’vora Tirschwell, a writ attorney for the First District Court of Appeal, asks that the rules be revised to include, in the rule 8.72(b)(2) requirements for formatting of electronically filed documents, specific bookmarking requirements, as are imposed under the First District’s Local Rules. JATS recommends against this change. JATS believes that it would be better to address this issue on a statewide basis when the appellate courts, including those relatively new to e-filing, have had more experience in implementing e-filing systems, and the statewide requirements can be developed with the benefit of that experience.

Rule 8.74(b)(3) and 8.204(b)(7) – pagination requirements

Several commentators comment on the new requirements for pagination of documents, which would require that the page numbering of electronically filed documents use only Arabic numerals and begin with page 1 on the first page or cover page. The Second District Court of Appeal suggests adding the words “may be suppressed” in the last sentence of proposed rule 8.73(b)(3) so that it reads “The page number may be suppressed and need not appear on the cover page,” and that a corresponding change be made in rule 8.204(b)(7) CACCA agrees. JATS recommends making this change. Although the new language is taken from the proposed language being considered for the trial court rules (to be added to rules 2.109, 3.1110 and 3.1113 as part of proposal SPR16-25, Rules Modernization Phase 2), the suggested addition clarifies the intent of the rule: that by numbering starting with page 1 on the first or cover page – shown or not -- and then consecutively throughout all parts of a document, the electronic page numbers will match those shown on the document pages. Indeed, the suggested language may address CCRA’s concern that the new language of rule 8.74 (b)(3) does not clearly require a cover page to have a page number, by clarifying that although the page number may be suppressed on the cover page, the cover page must have a page number.

Rule 8.75

CCRA comments that rule 8.75(d) should be changed to require a digital signature on a reporter’s transcript, as this is needed to ensure that the text is not changed.

Rule 8.75 is renumbered from existing rule 8.77, but otherwise unchanged. No commentator other than CCRA has raised the issue of whether the generally applicable requirements for signatures on electronically filed documents should be revised to address issues specifically

Information Technology Advisory Committee

July 26, 2016

Page 6

applicable to reporters' transcripts, and it is unclear whether the application of the existing rule has, in practice, caused any difficulties. JATS recommends that no change to this rule be made in the existing proposal, and that any change proposed in the future be developed with input from court reporters and other affected parties.

Rule 8.77

The concerns raised by CACCA and the Second District regarding how notice is sent to an electronic filer when a document is received, filed, or rejected for filing are discussed above in the discussion of comments on rule 8.73(b)(3).

The Second District notes, as to rule 8.77(a)(2)(C), which requires the confirmation that a document has been accepted for e-filing to include a notice of the fees assessed for filing, that the current appellate e-filing system does not provide fee information when confirmation is sent. JATS recommends that the subsection be deleted as suggested, to eliminate the conflict between the rule and the current practice.

Rule 8.78

Several commentators expressed concern regarding the deletion of renumbered rule 8.78(a)(2)(b) (existing rule 8.71(a)(2)(b)) which states that the act of electronically filing a document is evidence that the party agrees to accept electronic service. The Second District Court of Appeal notes that elimination of this provision would "cause more work, trouble and cost for all concerned." The State Bar Committee on Appellate Courts (SBCAC) comments that a majority of its members find this change unduly burdensome, and suggests that instead of requiring parties to "opt-in" to e-filing, that the rule be changed instead to have e-filing create a presumption that a party agrees to receive e-service, with the party having the opportunity to "opt-out" by filing and serving a notice. SBCAC notes that a minority of its members approved of the language of the rule as circulated. Those members expressed concern that automatic "opt-in" to accepting e-service could result in self-represented parties, aided in e-filing a document by a self-help center or a friend or family member, would be unaware of the e-service implications but then would be "bound by rules recognizing the validity of service of documents they never actually received or reviewed."

The Santa Clara County Bar Association Committee on Appellate Courts (SCCBACAC) suggests that the wholesale deletion of the presumption that a party that electronically files documents agrees to accept electronic service goes too far, as most parties prefer to receive electronic service. SCCBACAC suggests that the proposed language be revised to restore the

Information Technology Advisory Committee

July 26, 2016

Page 7

presumption that e-filing a document indicates consent to accept e-service, adding a provision to allow a party to opt out of receiving documents electronically by filing and serving a notice that the party does not accept electronic service.

JATS recommends making the change suggested by SCCBACAC, with some minor changes in the suggested language. The language suggested by SCCBACAC maintains protections for those parties who cannot or do not want to receive documents electronically, while making it easier for courts and litigants in those cases where parties wish to receive documents electronically.

Rule 8.79

FVAP suggests that the “or” at the end of rule 8.79(a)(1)(A) should be “and/or.” JATS notes that the style convention for the rules of court is to use “or” and to clarify in the language introducing the options that either or both of the options may be chosen. JATS recommends that the language be adopted as shown in the proposed revised rules.

Rule 8.204

Comments on the proposed change to rule 8.204(b)(7), regarding the pagination of briefs, are discussed above in the discussion of the related changes to rule 8.74(b)(3). In addition, CACCA and the Second District suggest that the proposed amendments to rule 8.204 include amendments to change the requirement set forth in rule 8.204 (b)(8) that paper briefs be bound, to reflect the preference of most appellate courts that briefs be submitted unbound. Although the change in format of paper briefs does not directly pertain to electronic filing, JATS members noted in discussing this comment that receiving briefs unbound makes it easier for courts to scan paper briefs and convert them to electronic form.

The change regarding the binding of paper briefs was not included in the proposal as circulated for comment. Rule 10.22 sets the standard for when a change can be made without being circulated for public comment: when it is a “nonsubstantive technical change or a minor substantive change unlikely to create controversy.”

JATS recommends making the change as shown in the attached proposed revised rules, so that the rule would require that briefs be submitted unbound, except where a local rule or court order provides otherwise. This minor change will allow each court to determine whether it wishes to receive paper briefs bound or unbound.

The Second District also suggests the deletion of rule 8.40(b) and rule 8.204(b)(10), which set the requirements for the color of the cover when a brief is submitted in paper form. Because this change was not included in the proposal as circulated for comment, and it is unclear whether appellate practitioners might have concerns, JATS does not recommend addressing this issue at this time.

Information Technology Advisory Committee

July 26, 2016

Page 8

Rule 8.212

Although rule 8.212(c)(2)(C), setting forth requirements for the filing of multiple paper copies of a brief when it would be an undue hardship for a party to file an electronic copy, is not affected by the proposed changes as circulated, FVAP suggests that this rule be revised to remove the requirements for filing of multiple paper copies and to allow any paper copy be served on the Court of Appeal rather than the Supreme Court. Because these requirements were not addressed in the proposal as circulated, JATS recommends that consideration of these suggestions be taken up in the future.

General Comments

The Civil and Probate Managers for the Superior Court of Orange County note that there should be a clear delineation between the filing date – when a document is received electronically – and the time the document is considered officially filed. It is unclear what specific provisions, if any, the Civil and Probate Managers would suggest need clarification. The proposed amended rules include language taken unchanged from existing rule 8.75(d) which clearly delineates between the receipt of a document and the filing of that document. JATS does not recommend any change to the proposal in response to this comment.

Responses to specific questions posed in Invitation to Comment

Protections for parties unable to use e-filing or e-service

SCDLS notes, in response to the question whether the proposal provides adequate protections for parties who cannot use e-filing or e-service, that more specificity as to the procedure for requesting a hardship exemption from e-filing would better ensure that those parties who need such an exemption can request it. As discussed above with regard to rule 8.71(d), JATS does not recommend changing the rule as proposed, as the proposed language gives needed flexibility to the appellate courts to set their own procedures.

SCDLS further notes that the requirement that documents be in a text-searchable format may pose a barrier to some parties who wish to e-file. As noted above in the discussion of rule 8.74(b)(2), JATS does not recommend changing the rule as proposed. The existing requirement for the appellate courts that software for creating and reading documents must be in the public domain or available at reasonable cost remains unchanged, and JATS does not expect that the new format requirement will not pose significant barriers to e-filing.

Information Technology Advisory Committee

July 26, 2016

Page 9

Finally, in response to this question, SCDLS suggests that rule 8.73(b) be revised to set out the circumstances under which a court would order that an electronic filing service provider's fee be waived. As noted above in the discussion of this provision, JATS found that the provision as circulated (with the slight changes, proposed by FVAP, discussed above) gives the appellate courts necessary discretion in making this decision.

Cost savings to courts

In their responses to the specific question posed in the Invitation to Comment of whether the proposal would provide cost savings, both CACCA and the Second District note that deletion of subsection (a)(3) from rule 8.78 – creating a presumption that a party who has used e-filing consents to acceptance of e-service – will not have cost savings. As discussed above with regard to rule 8.78(a)(2), JATS proposes revising the rule to restore the presumption that a party who e-files thus consents to acceptance of e-service, creating a procedure allowing a party to e-file while opting out of e-service. JATS hopes that this change addresses the cost concerns of CACCA and the Second District.

Time for implementation

Finally, CACCA and the Second District both suggest that two months from adoption of the proposed changes would not be sufficient time for implementation of the changes to the rules. The intent of this proposal is to bring the rules of court for appellate e-filing and e-service up to date in light of the practices adopted by those appellate courts that have implemented e-filing. JATS expects that any changes in existing procedures required to implement the amended rules will be minor, and does not recommend delaying the effective date of the changes.

Committee Task

Staff has prepared a draft of the report that could be submitted to the Judicial Council on this proposal, and a draft of the proposed text of the rule amendments as modified as recommended in this memorandum. The committee's task with respect to this proposal is to review the rules proposal, including the public comments received on the proposed changes, and:

- Ask staff or group members for further information and analysis;
- Recommend to RUPRO that all or part of the proposal be submitted to the Judicial Council for consideration during its October 28, 2016 meeting; or
- Reject the proposal.

Attachments

- Comment chart with proposed responses.

Information Technology Advisory Committee

July 26, 2016

Page 10

- Cal. Rules of Court, amendments to title 8, rules 8.70 to 8.79 and 8.204, showing changes to the language circulated with the Invitation to Comment recommended by JATS.
- Draft report to Judicial Council.



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 27, 2016

Title	Agenda Item Type
Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend title 8 (Cal. Rules of Court, rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204)	January 1, 2017
Recommended by	Date of Report
Information Technology Advisory Committee	July 26, 2016
Hon. Terence L. Bruiniers, Chair	Contact
Appellate Advisory Committee	Katherine Sher, 415-865-8031
Hon. Raymond J. Ikola, Chair	katherine.sher@jud.ca.gov
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Executive Summary

The Information Technology Advisory Committee (ITAC) and the Appellate Advisory Committee (AAC) propose changes to the appellate rules to reflect the e-filing practices used by the appellate courts. These changes will eliminate conflicts between appellate court local rules and the rules of court, and ensure consistency in the e-filing practices of the Courts of Appeal where such consistency is desirable.

Recommendation

The AAC and ITAC recommend that the Judicial Council, effective January 1, 2017:

- Revise rule 8.70 to eliminate outdated references to e-filing “projects” in the appellate courts.

- Reorganize the appellate e-filing rules so that the rules pertaining to e-filing come first, followed by the e-service rules.
- Renumber rule 8.71 as rule 8.78 and revise it to apply only to e-service, with e-filing covered under new rule 8.71. (A detailed description of proposed renumbered rule 8.78 is given below.)
- Create new rule 8.71, implementing mandatory e-filing in the appellate courts; exempting self-represented parties from mandatory e-filing unless they agreed to e-file, by e-filing a document or otherwise; exempting trial courts from e-filing unless they agreed to e-file; and requiring appellate courts to have procedures for parties to ask to be excused from e-filing upon a showing of undue hardship or significant prejudice.
- Delete rule 8.72, which specifies which documents may be filed electronically, with some of its provisions moved into new rule 8.71.
- Renumber rule 8.73 as rule 8.79 and revise it to apply only to orders for e-service. (A detailed description of proposed renumbered rule 8.79 is given below.)
- Renumber rule 8.74 as rule 8.72 and revise it to reflect that e-filing is proposed to be mandatory.
- Renumber rule 8.75 as rule 8.73, and add a provision stating that whenever possible, a court should include in its contract with an electronic filing service provider a requirement that the provider agree to waive any fee to be charged to a party upon a court order for waiver.
- Renumber rule 8.76 as rule 8.74, add a requirement that a court's required electronic filing format be text-searchable while maintaining original document formatting, and add a standard for pagination of e-filed documents.
- Renumber rule 8.77 as rule 8.75.
- Renumber rule 8.78 as rule 8.76.
- Renumber rule 8.79 as rule 8.77, add language requiring the court to "arrange for" confirmation of filing to an electronic filer, delete the requirement that such a notice include notice of any fees assessed for the filing, and revise the provision regarding delayed delivery of a filing due to technical problems with the court's electronic filing system, allowing a filer who misses a deadline to file late and move to have the document accepted as timely filed.

- Revise rule 8.78, renumbered from existing rule 8.71, so a party who files a document electronically will be able, by filing a notice with the court and serving it on the other parties, to indicate that the party prefers to be served paper copies; to apply the rule to nonparties who agree to or otherwise are required to accept electronic service or to electronically serve documents; to state that a proof of electronic service need not state that the person making service is not a party, and to delete the requirement that a proof of electronic service state time of service.
- Revise rule 8.79, renumbered from existing rule 8.73, to apply only to orders for electronic service, to distinguish between orders to electronically serve other parties and orders for a party to accept electronic service and to delete the subdivision which prohibited the court from ordering a party to electronically file or serve documents if the party objected to paying the electronic filing service provider fee.
- Revise rule 8.204 to require that briefs be consecutively paginated with Arabic numerals, with the cover page as page 1, and allowing the number to be suppressed from the cover page, and to require that briefs submitted in paper form be submitted unbound unless otherwise provided by local rule or court order.

Previous Council Action

Rules 8.70 to 8.79, the existing appellate e-filing rules, were adopted effective July 1, 2010. Some provisions have been amended since that time.

Rationale for Recommendation

When the rules governing e-filing in the appellate courts, California Rules of Court rules 8.70 to 8.79, were first adopted in 2010, the Courts of Appeal had just begun to implement e-filing systems. By the end of this year, it is anticipated that all of the six District Courts of Appeal will have implemented systems making e-filing and e-service mandatory for most parties in most cases. The Supreme Court will follow in 2017. Many of the originally adopted e-filing rules are simply no longer applicable, such as those referring to e-filing pilot projects. In other instances, the rules need to be amended to reflect the current e-filing practices and preferences of the appellate courts. The Joint Appellate Technology Subcommittee (JATS), a joint subcommittee of the Appellate Advisory Committee and the Information Technology Advisory Committee, undertook to propose revisions to the appellate e-filing rules so that they do not conflict with the practices of the appellate courts and, where the experience of those courts has shown that a certain practice is desirable, amend the rules to ensure statewide consistency. The committees recommend adopting certain rule changes now to reflect existing practices and needs, but to wait on other proposals until all the appellate courts -- including the California Supreme Court -- have implemented e-filing and can better evaluate the desirability of additional statewide e-filing rules. The committees recommend adoption of these proposed amendments to bring the appellate e-filing rules up to date and into conformity with current e-filing practices.

Mandatory E-filing

The proposed amendments to the e-filing rules recognize that in those appellate courts that have already implemented e-filing, e-filing is mandatory in most cases. Proposed rule 8.71 states that except as otherwise provided in the rules, in the local rules of the reviewing court, or by court order, all parties are required to file all documents electronically. Exemptions are created for self-represented parties and trial courts, who are not required to e-file, but may agree to do so. Under the proposed language for rule 8.71(d), a party must be excused from e-filing upon a showing of undue hardship or significant prejudice, and each court must also have a process allowing a party to apply for such an excuse.

The existing requirements for a court to give notice when a document is received by the court and when a document is accepted or rejected for filing are revised to reflect the actual practice of the courts and electronic filing service providers, which is that the notice is automatically generated by the e-filing system. Under amended rule 8.73(d)(3) (renumbered from rule 8.75(d)(3)) and 8.77(a), the court will "arrange" to give notice to the electronic filer of receipt, filing or rejection of filing.

The amendments to the rules also change the procedure used when a party is prevented from timely filing a document because of technical problems with the electronic filing system. Under amended rule 8.77(d) (renumbered from 8.79(d)) a new procedure is created allowing a party to file a document as soon as practicable, on paper or electronically, accompanied with a motion asking that the document be accepted as timely filed.

Revised Rules for E-Service

Under the existing rules governing e-service, a party is automatically considered to have consented to receive electronic service of documents if that party electronically files any document with the court. The amendments to rule 8.78 (renumbered from rule 8.71) will allow a party to opt out of e-service by filing a notice with the court and serving it on the other parties, even if that party chooses to electronically file documents.

Comments, Alternatives Considered, and Policy Implications

This proposal was circulated from April 15, 2016 to June 14, 2016 in the regular spring 2016 comment cycle. Comments from twelve commentators were received. Four commentators agreed with the proposal, none disagreed, six agreed if modified, and one suggested modifications but did not indicate a position on the proposal. The full comment chart, showing the full text of the comments received and the committees' responses, is attached at pages ___-___.

E-filing by self-represented parties.

To protect self-represented parties who may not have ready access to the resources needed to e-file documents, proposed rule 8.71 exempts self-represented parties from mandatory e-filing. In the proposed language of rule 8.71(b) as circulated for comment, a self-represented party could only opt in to e-filing by filing a notice with the court and serving it on the other parties. The

California Appellate Court Clerks Association (CACCA) noted that this places an unnecessary burden on self-represented parties who wish to use e-filing, and on the courts as well. CACCA suggested that subsection 8.71(b)(3) be revised to provide that a self-represented party can agree to e-filing simply by electronically filing a document with the court. Based on this comment, the committees have revised proposed rule 8.71(b)(3) to allow a self-represented party to agree to e-filing by electronically filing any document.

Comments from both CACCA and the Second District Court of Appeal noted that rule 8.71(b)(3) as circulated prohibited self-represented parties, in cases where there are both self-represented and represented parties, from e-filing unless the party affirmatively agreed to e-file. The committees have revised proposed rule 8.71(b)(3) to delete the requirement that self-represented litigants file in paper form, but to provide that a self-represented party in such a case may file documents in paper form.

Excuse from e-filing.

The Second District Court of Appeal (the Second District) suggested that in rule 8.71(d), the requirement for a court to have a process for parties to apply for relief from mandatory e-filing should be replaced with a specific requirement that the court excuse a party on the motion of that party showing good cause or undue prejudice. The State Bar Standing Committee on the Delivery Services commented that greater specificity as to procedure would make it easier for those parties needing exemption to apply. Because different courts of appeal have different practices and different local rules as to how a party requests exemption from e-filing, the committees declined to make the suggested change.

Publication of e-filing requirements.

The Second District commented that the rule 8.72(a) requirement for each appellate court to publish its local e-filing requirements (renumbered from rule 8.74(a)) is unnecessary, as any variations in e-filing requirements are done by local rule, which must be published. The committees believe that it is valuable to state, in the context of the rules of court specifically regarding appellate e-filing, that any local requirements for e-filing must be published. The committees therefore declined to revise the proposed rule as suggested.

Contracts with e-filing service providers

Proposed rule 8.73(b) (renumbered and revised from rule 8.75(b)) would expressly allow a court's contract with an electronic filing service provider to require that the service provider, upon court order, waive an electronic filing service provider fee that would normally be charged to an electronic filer. This new provision is meant to encourage courts to include this protection in their contracts with electronic filing service providers. The new language takes a different approach to protecting parties for whom these fees may be a hardship; it will delete the language of existing rule 8.73(a)(2)(B), which prohibits a court from ordering a party to electronically file or serve documents if that party objects to paying the electronic filing service provider fee.

The Second District suggested that the new language be revised to read “The contract may require that the electronic filing service provider waive a fee that normally would be charged to a party when the court orders that the filing fee be waived for that party.” The committees declined to make this revision, as the intent is to allow the court to decide separately whether an electronic filing service provider’s fee should be waived in a particular instance, whether or not the filing fee has been waived.

The Family Violence Appellate Project suggested strengthening the language to say that “Whenever possible, the contract should require” fee waiver upon court order. As this may provide greater protection to parties in need of it, the committees have revised the rule with the suggested language.

How notice is given when documents are received or filed.

The proposed rules as circulated renumbered but otherwise left unchanged the provisions of rules 8.75(d) (renumbered 8.73(d)) and 8.79 (a) (renumbered 8.77(a)), which state requirements for courts to send notice to electronic filers when documents are received and when they are accepted or rejected for filing. Both CACCA and the Second District commented that in practice, such notices are automatically generated by the e-filing system. The committees have revised these rules to provide that the court will "arrange" to provide such notice, thus retaining the requirement for notice but providing flexibility as to how the notice is delivered, now and in the future as technology changes.

Third District Court of Appeal (in a comment included in CACCA’s comments) and the Second District both commented that rule 8.77(a)(2)(C), which requires that when a document has been filed, notice to an electronic filer must specify the fees assessed for the filing, goes beyond what the current e-filing systems can do. Both of the courts suggested deleting the provision, and the committees have revised the rule to do so.

Formatting issues

The amended rules make several changes regarding the required format for documents e-filed in the appellate courts, and there were many comments on these changes.

In rule 8.74(b) (renumbered from rule 8.76(b)) and rule 8.204(b)(7), the rules put in place a new requirement for the pagination of electronically filed documents, applicable also under rule 8.204 to all briefs, whether electronically or paper filed. The new requirement states that documents/briefs are to be numbered starting with page one on the cover or first page, and using only Arabic numerals. The requirement mirrors that which will apply to various documents filed in trial courts under rules 2.109, 3.1110, and 3.1113, under the Rules Modernization Phase 2 proposal, SPR16-25. Existing rule 8.204(b)(7) allows the tables and body of an appellate brief to have different numbering systems. This means the page numbering of an electronically filed brief, such as a PDF, differs from the numbering shown on the pages – complicating the court’s task in reviewing these documents. The change is intended to make sure that PDF (or other electronic document format) page numbers match those shown on the pages.

The Second District, with the support of CACCA, suggested that the language of both rules be revised to say that “the page number may be suppressed and need not appear on the cover page.” This suggested change may also help to address the concern of the California Court Reporters Association (CCRA) which, in its comment, read the rule as allowing a cover page not to be numbered – which would leave the page numbering of an electronic document out of sync with what is shown on the pages. The Committees have revised these rules to make this change.

Although the subject of how paper briefs are to be bound was not addressed in the proposed rules as circulated, both CACCA and the Second District see the amendment of rule 8.204 (b)(8) as a minor change unlikely to create controversy, and as an opportunity to bring that rule into conformance with the current preference of most appellate courts, which is that briefs be submitted unbound to assist in scanning them into electronic form. To ensure that each appellate court can continue to set its own policy as to whether briefs should be bound or unbound, the committees have made the suggested change to rule 8.204 (b)(8) to state that paper briefs should be submitted unbound, with the addition of language stating “unless otherwise provided by local rule or court order.”

The Second District further suggested that rule 8.204(b)(8) and (b)(10), together with rule 8.40, be revised to eliminate the requirements for cover color for paper briefs. The committees declined to make these newly proposed changes, which go beyond the scope of the proposed rules. Appellate local rules currently address this issue.

CCRA commented that the rules should specify further requirements for the electronic format of a reporter’s transcript, such as hyperlinks. CCRA also suggested that rule 8.75(d), renumbered but otherwise unchanged from rule 8.77(d), be revised to require a digital signature on an electronically submitted copy of a reporter’s transcript. Requirements specifically applicable to reporters’ transcripts are not recommended at this time. The committees recommend that any such changes be developed with input from court reporters and other affected parties.

Commentator D’vora Tirschwell, a writ attorney for the First District Court of Appeal, commented that the rules should require descriptive bookmarking of electronically filed documents. Ms. Tirschwell further suggested that the rules require that electronically filed exhibits be submitted in “volumes” of no more than 300 pages each. JATS, in developing this proposal, specifically considered whether to address these issues, and decided to wait to take action until all of the appellate courts have had more experience implementing e-filing. The committees therefore declined to make these changes, but will be considering these issues in the future.

Alternatives Considered

In addition to the alternatives considered as a result of the public comments, discussed above, the committees considered whether this comprehensive revision of the appellate e-filing rules should be completely delayed until all of the appellate courts, including the Supreme Court, have

implemented e-filing. Although on some topics, such as requirements for bookmarking electronic documents, the committees decided that further experience was needed before a rule should be proposed, the committees concluded that it was important to update the appellate e-filing rules in line with current practices. By doing so, the committees hope that courts and litigants will no longer face the confusion created when a statewide rule does not fit with existing practices.

Implementation Requirements, Costs, and Operational Impacts

Because this proposal is intended to update the rules of court in line with the e-filing practices already implemented in many appellate courts and rolling out in others, and because trial courts are specifically exempted from mandatory appellate court e-filing, the proposal should not impose significant implementation requirements. To the extent the changes facilitate e-filing and e-service in the appellate courts, and ensure that the appellate courts receive e-filed documents in their preferred formats, they should provide some cost efficiencies.

Attachments and Links

1. Cal. Rules of Court, rules 8.70-8.79 and rule 8.204, at pages ___-___.
2. Chart of comments, at pages ___-___.

Rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204 of the California Rules of Court would be amended, effective January 1, 2017, to read:

Title 8. Appellate Rules

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

Chapter 1. General Provisions

Article 5. E-filing

Rule 8.70. ~~Purpose, a~~ Application, construction, and definitions

Rule 8.71. ~~Electronic service~~ filing

Rule 8.72. ~~Documents that may be filed electronically~~ Responsibilities of court

Rule 8.73. ~~Court order requiring electronic service or filing~~ Contracts with electronic filing service providers

Rule 8.74. ~~Responsibilities of court~~ Responsibilities of electronic filer

Rule 8.75. ~~Contracts with electronic filing service providers~~ Requirements for signatures on documents

Rule 8.76. ~~Responsibilities of electronic filer~~ Payment of filing fees

Rule 8.77. ~~Requirements for signatures on documents~~ Actions by court on receipt of electronic filing

Rule 8.78. ~~Payment of filing fees~~ Electronic service

Rule 8.79. ~~Actions by court on receipt of electronic filing~~ Court order requiring electronic service

Rule 8.70. Purpose, aApplication, construction, and definitions

(a) Purpose

The purpose of the rules in this article is to facilitate the implementation and testing of e-filing projects in the Supreme Court and the Courts of Appeal.

(b)(a) Application

Notwithstanding any other rules to the contrary, the rules in this article govern filing and service by electronic means in the Supreme Court and any the Courts of Appeal that elects to implement an e-filing project.

(e)(b) Construction

The rules in this article must be construed to authorize and permit filing and service by electronic means to the extent feasible.

(d)(c) Definitions

As used in this article, unless the context otherwise requires:

- 1 (1) “The court” means the Supreme Court or ~~any~~ a Court of Appeal ~~that elects to~~
2 ~~implement an e-filing project.~~
- 3
- 4 (2) ~~A document may be in paper or electronic form.~~ A “document” is:
- 5
- 6 (A) Any filing submitted to the reviewing court, including a brief, a
7 petition, an appendix, or a motion;
- 8
- 9 (B) Any document transmitted by a trial court to the reviewing court,
10 including a notice or a clerk’s or reporter’s transcript; or
- 11
- 12 (C) Any writing prepared by the reviewing court, including an opinion, an
13 order, or a notice.
- 14
- 15 (D) A document may be in paper or electronic form.
- 16
- 17 (3) “Electronic service” is service of a document on a party or other person by
18 either electronic transmission or electronic notification. Electronic service
19 may be performed directly by a party, by an agent of a party including the
20 party’s attorney, through an electronic filing service provider, or by a court.
- 21
- 22 (4) “Electronic transmission” means the transmission of a document by
23 electronic means to the electronic service address at or through which a party
24 or other person has authorized electronic service.
- 25
- 26 (5) “Electronic notification” means the notification of a party or other person that
27 a document is served by sending an electronic message to the electronic
28 service address at or through which the party or other person has authorized
29 electronic service, specifying the exact name of the document served and
30 providing a hyperlink at which the served document can be viewed and
31 downloaded.
- 32
- 33 (6) “Electronic service address” of a party means the electronic address at or
34 through which the party has authorized electronic service.
- 35
- 36 (7) An “electronic filer” is a party filing a document in electronic form directly
37 with the court, by an agent, or through an electronic filing service provider.
- 38
- 39 (8) “Electronic filing” is the electronic transmission to a court of a document in
40 electronic form.
- 41
- 42 (9) An “electronic filing service provider” is a person or entity that receives an
43 electronic filing from a party for retransmission to the court or for electronic
44 service on other parties, or both. In submission of filings, the electronic filing
45 service provider does so on behalf of the electronic filer and not as an agent
46 of the court.

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Advisory Committee Comment

The definition of “electronic service” has been amended to provide that a party may effectuate service not only by the electronic transmission of a document, but also by providing electronic notification of where a document served electronically may be located and downloaded. This amendment is intended to modify the rules on electronic service to expressly authorize electronic notification as a legally effective alternative means of service to electronic transmission. This rules amendment is consistent with the amendment of Code of Civil Procedure section 1010.6, effective January 1, 2011, to authorize service by electronic notification. (See Stats. 2010, ch. 156 (Sen. Bill 1274).) The amendments change the law on electronic service as understood by the appellate court in *Insyst, Ltd. v. Applied Materials, Inc.* (2009) 170 Cal.App.4th 1129, which interpreted the rules as authorizing electronic transmission as the only effective means of electronic service.

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Rule 8.71. Electronic service

18
19

(a) — Authorization for electronic service

20
21

(1) — ~~A document may be electronically served under these rules:~~

22
23

(A) — ~~If electronic service is provided for by law or court order; or~~

24
25
26
27

(B) — ~~If the recipient agrees to accept electronic services as provided by these rules and the document is otherwise authorized to be served by mail, express mail, overnight delivery, or fax transmission.~~

28
29

(2) — ~~A party indicates that the party agrees to accept electronic service by:~~

30
31
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33

(A) — ~~Serving a notice on all parties that the party accepts electronic service and filing the notice with the court. The notice must include the electronic service address at which the party agrees to accept service; or~~

34
35
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37

(B) — ~~Electronically filing any document with the court. The act of electronic filing is evidence that the party agrees to accept service at the electronic service address that the party has furnished to the court under rule 8.76(a)(4).~~

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(3) — ~~A party that has consented to electronic service under (2) and has used an electronic filing service provider to serve and file documents in a case consents to service on that electronic filing service provider as the designated agent for service for the party in the case, until such time as the party designates a different agent for service.~~

45
46
47

(4) — ~~A document may be electronically served on a nonparty if the nonparty consents to electronic service or electronic service is otherwise provided for by law or court order.~~

1
2 **(b) — Maintenance of electronic service lists**

3
4 ~~When the court orders or permits electronic filing in a case, it must maintain and~~
5 ~~make available electronically to the parties an electronic service list that contains~~
6 ~~the parties' current electronic service addresses, as provided by the parties that have~~
7 ~~filed electronically in the case.~~

8
9 **(c) — Service by the parties**

10
11 ~~Notwithstanding (b), parties are responsible for electronic service on all other~~
12 ~~parties in the case. A party may serve documents electronically directly, by an~~
13 ~~agent, or through a designated electronic filing service provider.~~

14
15 **(d) — Change of electronic service address**

16
17 ~~(1) — A party whose electronic service address changes while the appeal or original~~
18 ~~proceeding is pending must promptly file a notice of change of address~~
19 ~~electronically with the court and must serve this notice electronically on all~~
20 ~~other parties.~~

21
22 ~~(2) — A party's election to contract with an electronic filing service provider to~~
23 ~~electronically file and serve documents or to receive electronic service of~~
24 ~~documents on the party's behalf does not relieve the party of its duties under~~
25 ~~(1).~~

26
27 ~~(3) — An electronic service address is presumed valid for a party if the party files~~
28 ~~electronic documents with the court from that address and has not filed and~~
29 ~~served notice that the address is no longer valid.~~

30
31 **(e) — Reliability and integrity of documents served by electronic notification**

32
33 ~~A party that serves a document by means of electronic notification must:~~

34
35 ~~(1) — Ensure that the documents served can be viewed and downloaded using the~~
36 ~~hyperlink provided;~~

37
38 ~~(2) — Preserve the document served without any change, alteration, or modification~~
39 ~~from the time the document is posted until the time the hyperlink is~~
40 ~~terminated; and~~

41
42 ~~(3) — Maintain the hyperlink until the case is final.~~

43
44 **(f) — Proof of service**

45

1 (1) ~~Proof of electronic service may be by any of the methods provided in Code of~~
2 ~~Civil Procedure section 1013a, except that the proof of service must state:~~

3
4 (A) ~~The electronic service address of the person making the service, in~~
5 ~~addition to that person's residence or business address;~~

6
7 (B) ~~The date and time of the electronic service, instead of the date and~~
8 ~~place of deposit in the mail;~~

9
10 (C) ~~The name and electronic service address of the person served, in place~~
11 ~~of that person's name and address as shown on the envelope; and~~

12
13 (D) ~~That the document was served electronically, in place of the statement~~
14 ~~that the envelope was sealed and deposited in the mail with postage~~
15 ~~fully prepaid.~~

16
17 (2) ~~Proof of electronic service may be in electronic form and may be filed~~
18 ~~electronically with the court.~~

19
20 (3) ~~The party filing the proof of electronic service must maintain the printed~~
21 ~~form of the document bearing the declarant's original signature and must~~
22 ~~make the document available for inspection and copying on the request of the~~
23 ~~court or any party to the action or proceeding in which it is filed, in the~~
24 ~~manner provided in rule 8.77(c).~~

25
26 (g) **Electronic service by or on court**

27
28 (1) ~~The court may electronically serve any notice, order, opinion, or other~~
29 ~~document issued by the court in the same manner that parties may serve~~
30 ~~documents by electronic service.~~

31
32 (2) ~~A document may be electronically served on a court if the court consents to~~
33 ~~electronic service or electronic service is otherwise provided for by law or~~
34 ~~court order. A court indicates that it agrees to accept electronic service by:~~

35
36 (A) ~~Serving a notice on all parties that the court accepts electronic service.~~
37 ~~The notice must include the electronic service address at which the~~
38 ~~court agrees to accept service; or~~

39
40 (B) ~~Adopting a local rule stating that the court accepts electronic service.~~
41 ~~The rule must indicate where to obtain the electronic service address at~~
42 ~~which the court agrees to accept service.~~

43
44 **Rule 8.71. Electronic filing**

45

1 **(a) Mandatory electronic filing**
2

3 Except as otherwise provided by these rules, the local rules of the reviewing court,
4 or court order, all parties are required to file all documents electronically in the
5 reviewing court.
6

7 **(b) Self-represented parties**
8

9 (1) Self-represented parties are exempt from the requirement to file documents
10 electronically.
11

12 (2) A self-represented party may agree to file documents electronically. A self-
13 represented party agrees to file documents electronically by filing a notice
14 with the court and serving it on the other parties. By electronically filing any
15 document with the court, a self-represented party agrees to file documents
16 electronically.
17

18 (3) In cases involving both represented and self-represented parties, represented
19 parties are required to file documents electronically; however, in these cases,
20 each self-represented party is to file documents by nonelectronic means
21 unless the self-represented party affirmatively agrees otherwise may file
22 documents in paper form.
23

24 **(c) Trial courts**
25

26 Trial courts are exempt from the requirement to file documents electronically, but
27 are permitted to file documents electronically.
28

29 **(d) Excuse for undue hardship or significant prejudice**
30

31 A party must be excused from the requirement to file documents electronically if
32 the party shows undue hardship or significant prejudice. A court must have a
33 process for parties, including represented parties, to apply for relief and a procedure
34 for parties excused from filing documents electronically to file them by
35 conventional means in paper form.
36
37

1 **(e) Applications for fee waivers**

2
3 The court may permit electronic filing of an application for waiver of court fees
4 and costs in any proceeding in which the court accepts electronic filings.

5
6 **(f) Effect of document filed electronically**

7
8 (1) A document that the court, a party, or a trial court files electronically under the
9 rules in this article has the same legal effect as a document in paper form.

10
11 (2) Filing a document electronically does not alter any filing deadline.

12
13 **(g) Paper documents**

14
15 When it is not feasible for a party to convert a document to electronic form by
16 scanning, imaging, or another means, the court may allow that party to file the
17 document in paper form.

18
19 **Rule 8.72. Documents that may be filed electronically**

20
21 **(a) — In general**

22
23 ~~The court may permit electronic filing of a document by a party or trial court in any~~
24 ~~appeal or original proceeding unless the rules in this article or other legal authority~~
25 ~~expressly prohibit electronic filing.~~

26
27 **(b) — Application for waiver of court fees and costs**

28
29 ~~The court may permit electronic filing of an application for waiver of court fees and~~
30 ~~costs in any proceeding in which the court accepts electronic filings.~~

31
32 **(c) — Orders, opinions, and notices**

33
34 ~~The court may electronically file any notice, order, opinion, or other document~~
35 ~~prepared by the court.~~

36
37 **(d) — Effect of document filed electronically**

38
39 (1) ~~A document that the court, a party, or a trial court files electronically under~~
40 ~~the rules in this article has the same legal effect as a document in paper form.~~

41
42 (2) ~~Filing a document electronically does not alter any filing deadline.~~

43
44 *Rule 8.72 adopted effective July 1, 2010.*

45

1 **Rule 8.73. ~~Court order requiring electronic service or filing~~**

2
3 **(a) ~~Court order~~**

4
5 (1) ~~The court may, on the motion of any party or on its own motion, provided~~
6 ~~that the order would not cause undue hardship or significant prejudice to any~~
7 ~~party, order all parties to:~~

8
9 (A) ~~Serve all documents electronically, except when personal service is~~
10 ~~required by statute or rule;~~

11
12 (B) ~~File all documents electronically; or~~

13
14 (C) ~~Serve and file all documents electronically, except when personal~~
15 ~~service is required by statute or rule.~~

16
17 (2) ~~The court will not:~~

18
19 (A) ~~Order a self-represented party to electronically serve or file documents;~~

20
21 (B) ~~Order a party to electronically serve or file documents if the party~~
22 ~~would be required to pay a fee to an electronic filing service provider to~~
23 ~~file or serve the documents and the party objects to paying this fee in its~~
24 ~~opposition to the motion under (1); or~~

25
26 (C) ~~Order a trial court to electronically serve or file documents.~~

27
28 (3) ~~If the reviewing court proposes to make an order under (1) on its own motion,~~
29 ~~the court must mail notice to the parties. Any party may serve and file an~~
30 ~~opposition within 10 days after the notice is mailed or as the court specifies.~~

31
32 **(b) ~~Additional provisions of order~~**

33
34 ~~The court's order may also provide that documents previously filed in paper form~~
35 ~~may be resubmitted in electronic form.~~

36
37 **(c) ~~Filing in paper form~~**

38
39 ~~When it is not feasible for a party to convert a document to electronic form by~~
40 ~~scanning, imaging, or another means, the court may allow that party to serve, file,~~
41 ~~or serve and file the document in paper form.~~

42
43 **Rule 8.74 8.72. Responsibilities of court**

44
45 **(a) Publication of electronic filing requirements**

46

1 ~~When the court permits electronic filing it~~ The court will publish, in both electronic
 2 and print formats, the court's electronic filing requirements.

3
 4 **(b) Problems with electronic filing**

5
 6 If the court is aware of a problem that impedes or precludes electronic filing, it
 7 must promptly take reasonable steps to provide notice of the problem.

8
 9 **Rule 8.75 8.73. Contracts with electronic filing service providers**

10
 11 **(a) Right to contract**

- 12
 13 (1) The court may contract with one or more electronic filing service providers to
 14 furnish and maintain an electronic filing system for the court.
 15
 16 (2) If the court contracts with an electronic filing service provider, the court may
 17 require electronic filers to transmit the documents to the provider.
 18
 19 (3) If the court contracts with an electronic service provider or the court has an
 20 in-house system, the provider or system must accept filing from other
 21 electronic filing service providers to the extent the provider or system is
 22 compatible with them.

23
 24 **(b) Provisions of contract**

25
 26 The court's contract with an electronic filing service provider may allow the
 27 provider to charge electronic filers a reasonable fee in addition to the court's filing
 28 fee. Whenever possible, the contract may should require that the electronic filing
 29 service provider agree to waive a fee that normally would be charged to a party
 30 when the court orders that the fee be waived for that party. The contract may also
 31 allow the electronic filing service provider to make other reasonable requirements
 32 for use of the electronic filing system.

33
 34 **(c) Transmission of filing to court**

35
 36 An electronic filing service provider must promptly transmit any electronic filing
 37 and any applicable filing fee to the court.

38
 39 **(d) Confirmation of receipt and filing of document**

- 40
 41 (1) An electronic filing service provider must promptly send to an electronic filer
 42 its confirmation of the receipt of any document that the filer has transmitted
 43 to the provider for filing with the court.
 44

1 (2) The electronic filing service provider must send its confirmation to the filer's
2 electronic service address and must indicate the date and time of receipt, in
3 accordance with rule 8.77 ~~9(a)~~.

4
5 (3) After reviewing the documents, the court must arrange to promptly
6 transmit ~~to the electronic filing service provider and the electronic filer the~~
7 ~~court's~~ confirmation of filing or notice of rejection ~~of filing, to the electronic~~
8 ~~filer~~ in accordance with rule 8.77 ~~9~~.

9
10 **(e) Ownership of information**

11 All contracts between the court and electronic filing service providers must
12 acknowledge that the court is the owner of the contents of the filing system and has
13 the exclusive right to control the system's use.
14

15
16 **Rule 8.76 8.74. Responsibilities of electronic filer**

17
18 **(a) Conditions of filing**

19 Each electronic filer must:

- 20
21
22 (1) Comply with any court requirements designed to ensure the integrity of
23 electronic filing and to protect sensitive personal information;
24
25 (2) Furnish information that the court requires for case processing;
26
27 (3) Take all reasonable steps to ensure that the filing does not contain computer
28 code, including viruses, that might be harmful to the court's electronic filing
29 system and to other users of that system;
30
31 (4) Furnish one or more electronic service addresses, in the manner specified by
32 the court, at which the electronic filer agrees to accept service; and
33
34 (5) Immediately provide the court and all parties with any change to the
35 electronic filer's electronic service address.
36

37 **(b) Format of documents to be filed electronically**

- 38
39 (1) A document that is filed electronically with the court must be in a format
40 specified by the court unless it cannot be created in that format.
41
42 (2) The format adopted by a court must meet the following minimum
43 requirements:
44
45 (A) The format must be text-searchable while maintaining original document
46 formatting.

1
2
3 (1) (B) The software for creating and reading documents must be in the
4 public domain or generally available at a reasonable cost.

5
6 (2) (C) The printing of documents must not result in the loss of document
7 text, format, or appearance.

8
9 (3) The page numbering of a document filed electronically must begin with the
10 first page or cover page as page 1 and use only Arabic numerals (e.g., 1, 2,
11 3). The page number may be suppressed and need not appear on the cover
12 page.

13
14 (4) If a document is filed electronically under the rules in this article and cannot
15 be formatted to be consistent with a formatting rule elsewhere in the
16 California Rules of Court, the rules in this article prevail.

17
18 **Rule 8.77 8.75. Requirements for signatures on documents**

19
20 **(a) Documents signed under penalty of perjury**

21
22 If a document to be filed electronically must be signed under penalty of perjury, the
23 following procedure applies:

- 24
25 (1) The document is deemed signed by the declarant if, before filing, the
26 declarant has signed a printed form of the document.
27
28 (2) By electronically filing the document, the electronic filer certifies that (1) has
29 been complied with and that the original signed document is available for
30 inspection and copying at the request of the court or any other party.
31
32 (3) At any time after the document is filed, any other party may serve a demand
33 for production of the original signed document. The demand must be served
34 on all other parties but need not be filed with the court.
35
36 (4) Within five days of service of the demand under (3), the party on whom the
37 demand is made must make the original signed document available for
38 inspection and copying by all other parties.
39
40 (5) At any time after the document is filed, the court may order the filing party to
41 produce the original signed document in court for inspection and copying by
42 the court. The order must specify the date, time, and place for the production
43 and must be served on all parties.

44
45 **(b) Documents not signed under penalty of perjury**
46

1 If a document does not require a signature under penalty of perjury, the document
2 is deemed signed by the party if the document is filed electronically.

3
4 **(c) Documents requiring signatures of multiple parties**

5
6 When a document to be filed electronically, such as a stipulation, requires the
7 signatures of multiple parties, the following procedure applies:

- 8
9 (1) The party filing the document must obtain the signatures of all parties either
10 in the form of an original signature on a printed form of the document or in
11 the form of a copy of the signed signature page of the document. By
12 electronically filing the document, the electronic filer indicates that all parties
13 have signed the document and that the filer has the signatures of all parties in
14 a form permitted by this rule in his or her possession.
15
16 (2) The party filing the document must maintain the original signed document
17 and any copies of signed signature pages and must make them available for
18 inspection and copying as provided in (a)(2). The court and any other party
19 may demand production of the original signed document and any copies of
20 signed signature pages in the manner provided in (a)(3)–(5).
21

22 **(d) Digital signature**

23
24 A party is not required to use a digital signature on an electronically filed
25 document.
26

27 **(e) Judicial signatures**

28
29 If a document requires a signature by a court or a judicial officer, the document
30 may be electronically signed in any manner permitted by law.
31

32 **Rule 8.78 8.76. Payment of filing fees**

33
34 **(a) Use of credit cards and other methods**

35
36 The court may permit the use of credit cards, debit cards, electronic fund transfers,
37 or debit accounts for the payment of filing fees associated with electronic filing, as
38 provided in Government Code section 6159 and other applicable law. The court
39 may also authorize other methods of payment.
40

41 **(b) Fee waivers**

42
43 Eligible persons may seek a waiver of court fees and costs, as provided in
44 Government Code section 68634.5 and rule 8.26.
45

46 **Advisory Committee Comment**

47

1 **Subdivision (b).** A fee charged by an electronic filing service provider under
 2 rule ~~8.75(b)~~ 8.73(b) is not a court fee that can be waived under Government Code section 68634.5
 3 and rule 8.26.

4
 5 **Rule ~~8.79~~ 8.77. Actions by court on receipt of electronic filing**

6
 7 **(a) Confirmation of receipt and filing of document**

8
 9 (1) *Confirmation of receipt*

10
 11 When the court receives an electronically submitted document, the court
 12 must **arrange to** promptly send the electronic filer confirmation of the court's
 13 receipt of the document, indicating the date and time of receipt. A document
 14 is considered received at the date and time the confirmation of receipt is
 15 created.

16
 17 (2) *Confirmation of filing*

18
 19 If the document received by the court under (1) complies with filing
 20 requirements, the court must **arrange to** promptly send the electronic filer
 21 confirmation that the document has been filed. The filing confirmation must
 22 indicate the date and time of filing and is proof that the document was filed
 23 on the date and at the time specified. The filing confirmation must also
 24 specify:

25
 26 (A) Any transaction number associated with the filing; **and**

27
 28 (B) The titles of the documents as filed by the court; **and**

29
 30 ~~(C) The fees assessed for the filing.~~

31
 32 (3) *Transmission of confirmations*

33
 34 The court must **arrange to** send receipt and filing confirmation to the
 35 electronic filer at the electronic service address that the filer furnished to the
 36 court under rule 8.764(a)(4). The court **or the electronic filing service**
 37 **provider** must maintain a record of all receipt and filing confirmations.

38
 39 (4) *Filer responsible for verification*

40
 41 In the absence of **the court's** confirmation of receipt and filing, there is no
 42 presumption that the court received and filed the document. The electronic
 43 filer is responsible for verifying that the court received and filed any
 44 document that the electronic filer submitted to the court electronically.

45
 46 **(b) Notice of rejection of document for filing**

47

1 If the clerk does not file a document because it does not comply with applicable
 2 filing requirements, the court must **arrange to** promptly send notice of the rejection
 3 of the document for filing to the electronic filer. The notice must state the reasons
 4 that the document was rejected for filing.

5
 6 **(c) Document received after close of business**

7
 8 A document that is received electronically by the court after 11:59 p.m. is deemed
 9 to have been received on the next court day.

10
 11 **(d) Delayed delivery**

12
 13 ~~If a technical problem with a court's electronic filing system prevents the court
 14 from accepting an electronic filing on a particular court day, and the electronic filer
 15 demonstrates that he or she attempted to electronically file the document on that
 16 day, the court must deem the document as filed on that day.~~

17
 18 If a filer fails to meet a filing deadline imposed by court order, rule, or statute
 19 because of a failure at any point in the electronic transmission and receipt of a
 20 document, the filer may file the document on paper or electronically as soon
 21 thereafter as practicable and accompany the filing with a motion to accept the
 22 document as timely filed. For good cause shown, the court may enter an order
 23 permitting the document to be filed nunc pro tunc to the date the filer originally
 24 sought to transmit the document electronically.

25
 26 **(e) Endorsement**

- 27
 28 (1) The court's endorsement of a document electronically filed must contain the
 29 following: "Electronically filed by [Name of Court], on _____ (date)," followed by the name of the court clerk.
 30
 31 (2) The endorsement required under (1) has the same force and effect as a
 32 manually affixed endorsement stamp with the signature and initials of the
 33 court clerk.
 34
 35 (3) A record on appeal, brief, or petition in an appeal or original proceeding that
 36 is filed and endorsed electronically may be printed and served on the
 37 appellant or respondent in the same manner as if it had been filed in paper
 38 form.
 39
 40

41 **Rule 8.71 8.78. Electronic service**

42
 43 **(a) Authorization for electronic service; exceptions**

- 44
 45 (1) A document may be electronically served under these rules:
 46

- 1 (A) If electronic service is provided for by law or court order; or
 2
 3 (B) If the recipient agrees to accept electronic services as provided by these
 4 rules and the document is otherwise authorized to be served by mail,
 5 express mail, overnight delivery, or fax transmission.
 6

7 (2) A party indicates that the party agrees to accept electronic service by:
 8

9 (A) ~~S(A) S~~ serving a notice on all parties that the party accepts electronic
 10 service and filing the notice with the court. The notice must include the
 11 electronic service address at which the party agrees to accept service;
 12 ~~or;~~
 13

14 (B) Electronically filing any document with the court. The act of electronic
 15 filing ~~is evidence that the party shall be deemed to show that the~~
 16 ~~party agrees to accept service at the electronic service address that the~~
 17 ~~party has furnished to the court under rule 8.764(a)(4), unless the party~~
 18 ~~serves a notice on all parties and files the notice with the court that the~~
 19 ~~party does not accept electronic service and chooses instead to be~~
 20 ~~served paper copies at an address specified in the notice.~~
 21

22 (3) ~~A party that has consented to electronic service under (2) and has used an~~
 23 ~~electronic filing service provider to serve and file documents in a case~~
 24 ~~consents to service on that electronic filing service provider as the designated~~
 25 ~~agent for service for the party in the case, until such time as the party~~
 26 ~~designates a different agent for service.~~
 27

28 (4) (3) A document may be electronically served on a nonparty if the nonparty
 29 consents to electronic service or electronic service is otherwise provided for
 30 by law or court order. For purposes of this rule, the word "party" includes a
 31 nonparty who has agreed to or is otherwise required by law or court order to
 32 accept electronic service or to electronically serve documents.
 33

34 (b) **Maintenance of electronic service lists**
 35

36 When the court orders or permits electronic ~~filing~~ service in a case, it must
 37 maintain and make available electronically to the parties an electronic service list
 38 that contains the parties' current electronic service addresses as provided by the
 39 parties that have ~~filed electronically~~ been ordered to or have consented to electronic
 40 service in the case.
 41

42
 43 (c) **Service by the parties**
 44

1 Notwithstanding (b), parties are responsible for electronic service on all other
 2 parties in the case. A party may serve documents electronically directly, by an
 3 agent, or through a designated electronic filing service provider.
 4

5 **(d) Change of electronic service address**
 6

7 (1) A party whose electronic service address changes while the appeal or original
 8 proceeding is pending must promptly file a notice of change of address
 9 electronically with the court and must serve this notice electronically on all
 10 other parties.
 11

12 (2) A party's election to contract with an electronic filing service provider to
 13 electronically file and serve documents or to receive electronic service of
 14 documents on the party's behalf does not relieve the party of its duties under
 15 (1).
 16

17 ~~(3) An electronic service address is presumed valid for a party if the party files~~
 18 ~~electronic documents with the court from that address and has not filed and~~
 19 ~~served notice that the address is no longer valid.~~
 20

21 **(e) Reliability and integrity of documents served by electronic notification**
 22

23 A party that serves a document by means of electronic notification must:
 24

25 (1) Ensure that the documents served can be viewed and downloaded using the
 26 hyperlink provided;
 27

28 (2) Preserve the document served without any change, alteration, or modification
 29 from the time the document is posted until the time the hyperlink is
 30 terminated; and
 31

32 (3) Maintain the hyperlink until the case is final.
 33

34 **(f) Proof of service**
 35

36 (1) Proof of electronic service may be by any of the methods provided in Code of
 37 Civil Procedure section 1013a, ~~except that the proof of service must state~~
 38 with the following exceptions:
 39

40 (A) The proof of electronic service does not need to state that the person
 41 making the service is not a party to the case.
 42

43 (B) The proof of electronic service must state:
 44

45 (i) The electronic service address of the person making the service, in
 46 addition to that person's residence or business address;

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(B) (ii) The date ~~and time~~ of the electronic service, instead of the date and place of deposit in the mail;

(C) (iii) The name and electronic service address of the person served, in place of that person's name and address as shown on the envelope; and

(D) (iv) That the document was served electronically, in place of the statement that the envelope was sealed and deposited in the mail with postage fully prepaid.

(2) Proof of electronic service may be in electronic form and may be filed electronically with the court.

(3) The party filing the proof of electronic service must maintain the printed form of the document bearing the declarant's original signature and must make the document available for inspection and copying on the request of the court or any party to the action or proceeding in which it is filed, in the manner provided in rule 8.77(e)75.

(g) Electronic service by or on court

(1) The court may electronically serve any notice, order, opinion, or other document issued by the court in the same manner that parties may serve documents by electronic service.

(2) A document may be electronically served on a court if the court consents to electronic service or electronic service is otherwise provided for by law or court order. A court indicates that it agrees to accept electronic service by:

(A) Serving a notice on all parties that the court accepts electronic service. The notice must include the electronic service address at which the court agrees to accept service; or

(B) Adopting a local rule stating that the court accepts electronic service. The rule must indicate where to obtain the electronic service address at which the court agrees to accept service.

Rule 8.739. Court order requiring electronic service ~~or filing~~

(a) Court order

(1) The court may, on the motion of any party or on its own motion, provided that the order would not cause undue hardship or significant prejudice to any party, order some or all parties to **do either or both of the following:**

1 (A) Serve all documents electronically, except when personal service is
2 required by statute or rule; or

3
4 (B) ~~File all~~ Accept electronic service of documents; ~~electronically; or~~

5
6 ~~(C) Serve and file all documents electronically, except when personal~~
7 ~~service is required by statute or rule.~~

8
9 (2) The court will not:

10
11 (A) Order a self-represented party to electronically serve ~~or file~~ or accept
12 electronic service of documents;

13
14 (B) ~~Order a party to electronically serve or file documents if the party~~
15 ~~would be required to pay a fee to an electronic filing service provider to~~
16 ~~file or serve the documents and the party objects to paying this fee in its~~
17 ~~opposition to the motion under (1); or~~

18
19 ~~(C) Order a trial court to electronically serve or file documents.~~

20
21 (3) If the reviewing court proposes to make an order under (1) on its own motion,
22 the court must mail notice to the parties. Any party may serve and file an
23 opposition within 10 days after the notice is mailed or as the court specifies.
24

25 ~~(b) Additional provisions of order~~

26
27 ~~The court's order may also provide that documents previously filed in paper form~~
28 ~~may be resubmitted in electronic form.~~

29
30 ~~(e) (b) Filing~~ Serving in paper form

31
32 When it is not feasible for a party to convert a document to electronic form by
33 scanning, imaging, or another means, the court may allow that party to serve, ~~file,~~
34 ~~or serve and file~~ the document in paper form.

35
36 **Chapter 2. Civil Appeals**

37
38 **Article 3. Briefs in the Court of Appeal**

39
40 **Rule 8.204. Contents and form of briefs**

41
42 (a) * * *

43
44 (b) **Form**

- 1 (1) A brief may be reproduced by any process that produces a clear, black image
2 of letter quality. All documents filed must have a page size of 8½ by 11
3 inches. If filed in paper form, the paper must be white or unbleached and of at
4 least 20-pound weight.
5
- 6 (2) Any conventional font may be used. The font may be either proportionally
7 spaced or monospaced.
8
- 9 (3) The font style must be roman; but for emphasis, italics or boldface may be
10 used or the text may be underscored. Case names must be italicized or
11 underscored. Headings may be in uppercase letters.
12
- 13 (4) Except as provided in (11), the font size, including footnotes, must not be
14 smaller than 13-point, and both sides of the paper may be used.
15
- 16 (5) The lines of text must be unnumbered and at least one-and-a-half-spaced.
17 Headings and footnotes may be single-spaced. Quotations may be block-
18 indented and single-spaced. Single-spaced means six lines to a vertical inch.
19
- 20 (6) The margins must be at least 1½ inches on the left and right and 1 inch on the
21 top and bottom.
22
- 23 (7) The pages must be consecutively numbered. ~~The tables and the body of the~~
24 ~~brief may have different numbering systems. The page numbering must begin~~
25 with the cover page as page 1 and use only Arabic numerals (e.g. 1, 2, 3). The
26 page number may be suppressed and need not appear on the cover page.
27
- 28 (8) If filed in paper form, the brief must be bound on the left margin filed
29 unbound unless otherwise provided by local rule or court order. If the brief is
30 stapled, the bound edge and staples must be covered with tape.
31
- 32 (9) The brief need not be signed.
33
- 34 (10) If filed in paper form, the cover must be in the color prescribed by rule
35 8.40(b). In addition to providing the cover information required by rule
36 8.40(c), the cover must state:
37
- 38 (A) The title of the brief;
39
- 40 (B) The title, trial court number, and Court of Appeal number of the case;
41
- 42 (C) The names of the trial court and each participating trial judge;
43
- 44 (D) The name of the party that each attorney on the brief represents.
45
- 46 (11) If the brief is produced on a typewriter:

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- (A) A typewritten original and carbon copies may be filed only with the presiding justice’s permission, which will ordinarily be given only to unrepresented parties proceeding in forma pauperis. All other typewritten briefs must be filed as photocopies.
- (B) Both sides of the paper may be used if a photocopy is filed; only one side may be used if a typewritten original and carbon copies are filed.
- (C) The type size, including footnotes, must not be smaller than standard pica, 10 characters per inch. Unrepresented incarcerated litigants may use elite type, 12 characters per inch, if they lack access to a typewriter with larger characters.

(c)–(e) * * *

Advisory Committee Comment

* * *

SPR16-06

Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (amend title 8 (rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204))

All comments are verbatim unless indicated by an asterisk (*).

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	[Proposed] Committee Response
1.	California Appellate Court Clerks Association by Kevin Lane, President	AM	See comments on specific provisions below.	
2.	California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	AM	See comments on specific provisions below.	
3.	California Court Reporters Association by Karen Kronquest, Director, Division B	AM	See comments on specific provisions below.	
4.	Family Violence Appellate Project (FVAP) by Jennafer Dorfman Wagner, Esq. Director of Programs	A	See comments on specific provisions below.	
5.	Orange County Bar Association by Todd G. Friedland, President	A	See comments on specific provisions below.	
6.	Santa Clara County Bar Association, Committee on Appellate Courts by Audra Ibarra and Associate Justice Miguel Marquez, Sixth District Court of Appeal, Co-Chairs	AM	See comments on specific provisions below.	
7.	Superior Court of Los Angeles County	A	No comment.	The committees note the court's support for the proposal. No response is necessary.

SPR16-06

Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (amend title 8 (rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204))

All comments are verbatim unless indicated by an asterisk (*).

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	[Proposed] Committee Response
8.	Civil and Probate Managers for the Superior Court of Orange County By Bryan Chae, Principal Analyst	NI	See comments on specific provisions below.	
9.	Superior Court of San Diego County by Mike Roddy, Court Executive Officer	A	See comments on specific provisions below.	
10.	State Bar of California Committee on Appellate Courts by Paul J. Killion Chair, 2015–2016	AM	See comments on specific provisions below.	
11.	State Bar of California, Standing Committee on the Delivery of Legal Services, by Phong S. Wong 2015–2016 Chair	AM	See comments on specific provisions below.	
12.	D'vora Tirschwell Writ Attorney First District Court of Appeal	AM	See comments on specific provisions below.	

SPR16-06

Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (amend title 8 (rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204))

All comments are verbatim unless indicated by an asterisk (*).

Rule 8.71(b)(2)		
Commentator	Comment	[Proposed] Committee Response
California Appellate Court Clerks Association by Kevin Lane, President	<p>Rule 8.71 page 10 section (b) (2) Why require a notice be filed with the court that a self-rep party agrees to e-filing...the DCA's believe the same purpose would be served by the following suggested edit:</p> <p>(2) A self-represented party may agree to file documents electronically. A self-represented party agrees to file documents electronically by filing a notice with the court and serving it on the other parties. <u>By submitting an electronic document to the court, and serving it electronically on other parties, a self-represented party agrees to electronic filing with the court.</u></p>	<p>Several commentators have noted that requiring a self-represented party to "opt in" to e-filing by filing and serving a notice could place an unwanted burden on both the party and the court. Although the committees were concerned in developing the proposed rule that self-represented parties not be compelled to use e-filing, nor to accept electronic service, a self-represented party will still be able, using the approach suggested by CACCA, to decide whether or not to e-file. Moreover, under the proposed language for rule 8.78 regarding e-service, a party will not be compelled to accept e-service because the party has e-filed a document. The committees therefore recommend that the language suggested by the commentator for rule 8.71 (b)(2) be adopted with the suggested change, but with the added sentence revised to read "By electronically filing any document with the court, a self-represented party agrees to file documents electronically."</p>

Rule 8.71(b)(3)		
Commentator	Comment	[Proposed] Committee Response
California Appellate Court Clerks Association by Kevin Lane, President	<p>In subsection (3), we propose to delete subsection (3) altogether as we feel it is confusing or in the alternative substituting "may" in place of "is to", and to delete "unless the self-represented party affirmatively agrees otherwise."</p> <p>Rule 8.71 (b)(3): "Committee to consider: Since there is no definition of 'non-electronic means,' should we state 'paper' documents?"</p>	<p>See response below to comment on this subsection by the California Court of Appeal, Second Appellate District.</p>

SPR16-06

Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (amend title 8 (rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204))

All comments are verbatim unless indicated by an asterisk (*).

Rule 8.71(b)(3)		
Commentator	Comment	[Proposed] Committee Response
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	<p>Rule 8.71 page 10 section (b) (3) Why insist on filing by non-electronic means? Instead, mirror the language in the section right above wherein “may file” is used. Also we recommend a hyphen in nonelectronic, i.e., non-electronic.</p> <p>See below for revised (b) (3). Additions highlighted in yellow, deletions with strikeout.</p> <p>In cases involving both represented and self-represented parties, represented parties are required to file documents electronically; however, in these cases, each a self-represented party is to may file documents by non-electronic means unless the self-represented party affirmatively agrees otherwise.</p>	<p>The committees agree that self-represented parties in cases involving both represented and self-represented parties should be given the option of filing electronically or on paper. In response to the comment by CACCA, above, regarding the term “nonelectronic means” the committees note that the convention in the appellate rules is to use the language “in paper form” or “in paper format.” See, e.g., rule 8.40 (b).</p> <p>The committees therefore recommend that the proposed changes to rule 8.71(b)(3) be adopted with the following language:</p> <p>“In cases involving both represented and self-represented parties, represented parties are required to file documents electronically, however, in these cases, a self-represented party may file documents in paper form.”</p>

Rule 8.71(d)		
Commentator	Comment	[Proposed] Committee Response
California Appellate Court Clerks Association by Kevin Lane, President	Committee to consider: Since there is no definition for ‘conventional means,’ should we state ‘paper’?	See response below to comment on this subsection by the California Court of Appeal, Second Appellate District.
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	<p>Rule 8.71 page 10 section (d)</p> <p>Delete</p> <p>A party must be excused from the requirement to file documents electronically if the party shows undue hardship or significant prejudice. A court must have a process for</p>	The committees, in developing the proposed rule, intended to preserve the ability of each district court of appeal to implement its own procedures for parties to apply to be excused from filing electronically. The committees therefore decline to make the suggested change, but recommend that “by conventional means” be changed to “in paper form” as

SPR16-06

Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (amend title 8 (rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204))

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Rule 8.71(d)		
Commentator	Comment	[Proposed] Committee Response
	<p>parties, including represented parties, to apply for relief and a procedure for parties excused from filing documents electronically to file them by conventional means.</p> <p>And replace with: The court will, on the motion of a party showing of good cause or undue prejudice, excuse a party from filing documents electronically. Said motion may be filed in paper.</p> <p>The above sentence would show the process as well, i.e. by motion.</p>	suggested by CACCA.
<p>State Bar of California, Standing Committee on the Delivery of Legal Services,by Phong S. Wong 2015–2016 Chair</p>	<p>Self-represented parties are exempt from e-filing unless they opt-in/agree to e-file, and any party (regardless of representation) can request to be exempt from e-filing upon showing of undue hardship or significant prejudice. However, the exact process for requesting a hardship exemption is not clear and appears it would likely vary from court to court (see Rule 8.71(d)). SCDLS suggests incorporating more specificity regarding the process for requesting hardship/prejudice exemption from e-filing, for parties who are low-income or moderate-income, limited English proficient (LEP), disabled, etc., as this will make filing for exemption more readily accessible to all litigants.</p>	See response above to comment on this subsection by the California Court of Appeal, Second Appellate District.

SPR16-06

Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (amend title 8 (rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204))

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Rule 8.72(a)		
Commentator	Comment	[Proposed] Committee Response
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	<p>Rule 8.72 (a) page 12 and 13</p> <p>WHY require us to publish the already published rules? Rule 8.71 (a) states E-filing is mandatory. This is a holdover from the days when court had to mandate e-filing. In addition, if a court requires any variations of e-filing, it will do so by local rule, which is already covered and already requires publication. DELETE section (a) shown below and renumber (b) Problems with electronic filing to (a)</p> <p>(a)Publication of electronic filing requirements When the court permits electronic filing it The court will publish, in both electronic and print formats, the court's electronic filing requirements.</p> <p>New (a) Problems with electronic filing</p>	<p>8.72 (a): The language of proposed rule 8.72(a) is taken directly from existing rule 8.74(a), changed only to reflect that e-filing is now mandatory in all of the courts of appeal. The requirement for each court to publish its own local e-filing requirements reiterates, in the context of the general rules for appellate e-filing, the generally applicable requirement that the courts of appeal publish whatever specific local requirements they may impose. The committees therefore decline to make the suggested change.</p>

Rule 8.73(b)		
Commentator	Comment	[Proposed] Committee Response
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	<p>8.73 (b) page 13 Insert "filing" before fee in line 30, on page 13 as shown below highlighted in yellow.</p> <p>The court's contract with an electronic filing service provider may allow the provider to charge electronic filers a reasonable fee in addition to the court's filing fee. <u>The contract may require that the electronic filing service</u></p>	<p>The intent of the proposed language is to allow the court to order the waiver of an electronic service provider's fee, if the contract so allows. The proposed addition of the word "filing" would impose such waivers across the board whenever a court orders the waiver of a filing fee. The committee declines the suggested change, and recommends that the proposed amended language of rule 8.73(b) be adopted without this change, giving courts the discretion to order the waiver of an electronic service</p>

SPR16-06

Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (amend title 8 (rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204))

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Rule 8.73(b)		
Commentator	Comment	[Proposed] Committee Response
	<p><u>provider agree to waive a fee that normally would be charged to a party when the court orders that the filing fee be waived for that party.</u> The contract may also allow the electronic filing service provider to make other reasonable requirements for use of the electronic filing system.</p>	<p>provider's fee, or not, as a separate decision from the decision to waive the court's filing fee.</p> <p>Please see response, below, to comment by the Family Violence Appellate Project, for language recommended by the committees to be added to the changes to this subsection.</p>
<p>State Bar of California, Standing Committee on the Delivery of Legal Services,by Phong S. Wong 2015–2016 Chair</p>	<p>Finally, permitting electronic filing service providers to charge additional fees for e-filing could pose a barrier to low or moderate-income litigants. Though the rules do also provide that the court can order this fee be waived in certain circumstances, it is unclear what these circumstances would be (see Rule 8.73(b)). SCDLS suggests setting forth specifics regarding the circumstances under which a court may order that the additional fee charged by electronic filing service providers be waived, as this will also make e-filing more accessible to all litigants. It is good that the rule clarifies that electronic filing would no longer automatically be considered consent to accept electronic service, and parties can choose to receive service of documents in paper form, which would be helpful to parties who are self-represented or low-income (see Rule 8.78).</p>	<p>With regard to rule 8.73 (b), the intent of the proposed language is to allow courts, by contract, to provide that the court can order the waiver of an electronic service provider's fee in the court's discretion, as when the court has ordered the waiver of the court's filing fee due to the economic hardship it would pose for a party. The committees believe that the decision is appropriately left in the court's discretion. The committees therefore recommend that the proposed language be adopted as circulated, with the additions discussed in the response to the comments of the Family Violence Appellate Project.</p>
<p>Family Violence Appellate Project (FVAP) by Jennafer Dorfman Wagner, Esq. Director of Programs</p>	<p>While exempting pro se litigants from e-filing avoids concerns that indigent pro se litigants who qualify for fee waivers will be subject to mandatory e-filing fees, we would encourage the courts to negotiate vendor contracts that provide for all litigants who qualify for fee waivers to e-file without cost and without having to submit credit card information to e-file. For many litigants, e-filing is vastly</p>	<p>8.73(b): The proposed language of rule 8.73(b) is intended to provide some protection for litigants who may have difficulty paying an electronic filing service provider's fee, while recognizing that the court's ability to order the waiver of such fees is subject to the court's contract with the particular provider. The committees agree that courts should be encouraged to include provisions allowing the court to order</p>

SPR16-06

Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (amend title 8 (rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204))

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Rule 8.73(b)		
Commentator	Comment	[Proposed] Committee Response
	<p>more convenient, time-saving, and less expensive than traditional paper filing. Currently, proposed Rule 8.73(b) provides, “. . . The contract may require that the electronic filing service provider agree to waive a fee that normally would be charged to a party when the court orders that the fee be waived for that party.” We suggest changing the language as follows: “. . . <u>Wherever possible, t</u> The contract may <u>should</u> require that the electronic filing service provider agree to waive a fee that normally would be charged to a party when the court orders that the fee be waived for that party.”</p>	<p>that fees be waived.</p> <p>The committees therefore recommend that the amendments to subsection 8.73(b) be adopted with the changes suggested by the Family Violence Appellate Project.</p>

Rule 8.73(d)(3) and Rule 8.77(a)		
Commentator	Comment	[Proposed] Committee Response
<p>California Appellate Court Clerks Association by Kevin Lane, President</p>	<p>Rule 8.73 (d)(3): “Since the confirmation of filing or rejection is automatically generated when the deputy either accepts or rejects the document, the DCA’s suggest the wording in red font below. The problem with this rule is if the electronic filer “unchecks” the notification box to receive these notices (confirmation of filing or rejection), they will not receive the notice and the courts will not know that it was not received.”</p> <p>Suggested language for rule 8.73 (d)(3): “Following review of the documents for filing, an automatic confirmation of filing or rejection of a document is generated by the electronic filing system in compliance with rule 8.77.”</p>	<p>See response below to comment on these subsections by the California Court of Appeal, Second Appellate District.</p>

SPR16-06

Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (amend title 8 (rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204))

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Rule 8.73(d)(3) and Rule 8.77(a)		
Commentator	Comment	[Proposed] Committee Response
	<p>Rule 8.77 (a) (1), suggested language: “When the court receives an electronically submitted document, the court or the court’s service provider must promptly send the electronic filer will receive a computer generated confirmation of the receipt of the document, indicating the date and time of receipt.... filed. The filing confirmation must indicate the ...”</p> <p>Rule 8.77 (a)(2), suggested language: “If the document received by the court under (1) complies with filing requirements, the court or the court’s service provider must promptly send the electronic filer receives a computer generated confirmation”</p> <p>CACCA also submits this further comment from the Third District Court of Appeal: “How do we control what they receive? We can only control what we send. We can verify or track what we send.”</p> <p>And this further comment on rule 8.77(a)(2) from the Third District Court of Appeal: “Delete section (C) The fees assessed for the filing. The current system does not support this section.</p>	<p>The Third District Court of Appeal suggests that proposed rule 8.77(a)(2)(C), which renumbers but otherwise does not change existing rule 8.79(a)(2)(C), imposes a requirement which the existing e-filing systems are not capable of meeting. To eliminate the conflict between the existing rule and current practices, the committees recommend the deletion of subsection 8.77(a)(2)(C).</p>
<p>California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the</p>	<p>8.73 (d) (3) Page 14 and 8.77 (a) (1) and (2) pages 16 and 17</p> <p>Confirmation of filings go through the current TrueFiling</p>	<p>8.73(d)(3): Both the Second District Court of Appeal and CACCA suggest that the language of rule 8.73(d)(3) should reflect the actual practice of the appellate courts, which is that notice that a document has been filed or rejected is</p>

SPR16-06

Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (amend title 8 (rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204))

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Rule 8.73(d)(3) and Rule 8.77(a)		
Commentator	Comment	[Proposed] Committee Response
Court	<p>system, i.e., the emails to the electronic filer come from ImageSoft (it is part of the TrueFiling system) and are automatically generated. The court does not send an email directly to the filer. Therefore, the section in rule 8.73 (d)(3) and 8.77(a) (1) and (2) must be modified. See below for modification to rule 8.73.</p> <p>For rule 8.77, insert “or the court’s service provider”, as shown further below. Additions highlighted in yellow, deletions with strikethrough.</p> <p>a) Rule 8.73, Contracts with electronic filing service providers: (d) (3)</p> <p>After reviewing the documents, the court must promptly transmit to the electronic filing service provider and the electronic filer the court’s confirmation of filing or notice of rejection in accordance with rule 8.779 to the electronic service provider, who will immediately send the notice to the electronic filer.</p> <p>b) Rule 8.77 (a) Confirmation of receipt – Page 17</p> <p>(1) When the court receives an electronically submitted document, the court or the court’s service provider must promptly send the electronic filer confirmation that the document has been filed. The filing confirmation must indicate the ...</p> <p>(2) Confirmation of filing</p>	<p>automatically generated.</p> <p>The committees note that the proposed language of rule 8.73(d)(3) is unchanged from the language of existing rule 8.75(d)(3). Moreover, the language proposed by CACCA fails to specify what the court and the electronic service provider are required to do with regard to sending notice. However, the committees agree that the rule should reflect the practice, which is that the courts do not directly notify an electronic filer of filing or rejection of a document.</p> <p>The committees therefore recommend that the proposed amendments be revised to state that the court “must arrange” to promptly give notice to the electronic filer. This language will retain the requirement of notice but provide flexibility for how the notice is delivered, now and in the future as technology changes.</p> <p>The committees recommend that the proposed amendments be revised to state that the court “must arrange” to promptly give notice to the electronic filer. This language will retain the requirement of notice but provide flexibility for how the notice is delivered.</p>

SPR16-06

Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (amend title 8 (rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204))

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Rule 8.73(d)(3) and Rule 8.77(a)		
Commentator	Comment	[Proposed] Committee Response
	If the document received by the court under (1) complies with filing requirements, the court or the court's service provider must promptly send the electronic filer confirmation	

Rule 8.74(b)		
Commentator	Comment	[Proposed] Committee Response
California Court Reporters Association by Karen Kronquest, Director, Division B	Rule 8.74(b) – states the format for attorneys to file electronic documents. It should also contain the minimum requirements for a reporter's transcript, including hyperlinks, etc.	The committees note that the only changes proposed to existing rule 8.76 (renumbered as rule 8.74) are to put in place a requirement that electronically filed documents be in a text searchable format, and that pagination begin with the cover or first page as 1 and use only Arabic numerals. More specific format requirements applicable to reporters' transcripts are set forth elsewhere in the rules, including in rule 8.144, and no changes to those requirements were included in the proposed changes as circulated for comment. Any potential changes to these requirements should be circulated for comment before a change is made.

Rule 8.74(b)(2)		
Commentator	Comment	[Proposed] Committee Response
State Bar of California, Standing Committee on the Delivery of Legal Services,by Phong S. Wong 2015–2016 Chair	Also, requiring that the format of the documents e-filed be text-searchable may pose an additional barrier to certain parties who wish to e-file such as those who are low or moderate-income, LEP, or disabled, as they may not have ready access to the technology for this (see Rule 8.74(b)). Additionally, some disabled litigants may also face	Although the committees appreciate the need to keep e-filing accessible to litigants who may find it difficult to meet specific format requirements, they proposed this new requirement with the understanding that the rules need to consider and balance the needs of the courts and the needs of litigants. Text-searchable format is important to allow efficient court review

SPR16-06

Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (amend title 8 (rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204))

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Rule 8.74(b)(2)		
Commentator	Comment	[Proposed] Committee Response
	difficulties gaining physical access to buildings where public, shared computers are available.	of documents, and software for the creation of text-searchable documents is readily available for reasonable or no cost. Parties who find this requirement too great of a barrier may request exemption from e-filing under the proposed language of rule 8.71(d).
D'vora Tirschwell Writ Attorney First District Court of Appeal	<p>Descriptive electronic bookmarking of exhibits and section headings in briefs is required by the First Appellate District's Local Rule 16. Electronic bookmarks serve the same function of index tabs in paper-filed documents, which are required by other court rules (e.g., rule 8.486(c)(1)(B)).</p> <p>Descriptive electronic bookmarks are <i>*absolutely critical*</i> to sifting through an electronic record, particularly in writ proceedings, which are often time-sensitive and require speedy review.</p> <p>I do not read the proposed rules as conflicting with the electronic bookmarking requirements of the First Appellate District's Local Rule 16. Because electronic bookmarks are so necessary for court staff, however, I recommend proposed rule 8.74(b)(2), which sets forth minimum requirements for the formatting of electronically-filed documents, expressly include a requirement for descriptive electronic bookmarks to the first page of each exhibit and each section heading in a brief. I further suggest that descriptive electronic bookmarks be defined as including not only the exhibit number or letter as indicated in a required index of contents, but also a short description of the document (such as Exh. 1-Notice of MSJ).</p>	<p>The committees considered including specific requirements for bookmarking of electronic documents in this proposal. However, because some of the courts of appeal have only recently begun using e-filing, the committees decided to wait until all of the courts of appeal have had more experience with e-filing, and better know what bookmarking requirements work best for them, before moving towards a statewide rule on this topic.</p>

SPR16-06

Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (amend title 8 (rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204))

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Rule 8.74(b)(3)		
Commentator	Comment	[Proposed] Committee Response
California Appellate Court Clerks Association by Kevin Lane, President	Comment on Second District Court of Appeal’s proposed change to rule 8.74 (b)(3): “Agreed – the DCA’s really like the addition of ‘may be suppressed’!”	8.74(b)(3): See response below to comment on this subsection by the California Court of Appeal, Second Appellate District.
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	8.74 (b) (3) page 15 a) Insert “may be suppressed and” in line 11. The page numbering of a document filed electronically must begin with the first page or cover page as page 1 and use only Arabic numerals (e.g., 1, 2, 3). The page number may be suppressed and need not appear on the cover page.	8.74(b)(3): Both the Second District Court of Appeal and CACCA recommend the addition of the phrase “may be suppressed” to the language proposed for rule 8.74(b)(3). The committees note that the language for rule 8.74 (b)(3) is taken from the parallel rule proposed for the trial courts, in rules 2.109, 3.1110 and 3.1113 as proposed to be amended in proposal SPR16-25. However, the language need not be identical to the language that will be used in the trial court rules. The committees therefore recommend that the proposed amendments to rule 8.74(b)(3) be revised to add the words “may be suppressed and” after “page number,” as suggested by the Second District Court of Appeal.
California Court Reporters Association by Karen Kronquest, Director, Division B	Rule 8.74(b)(3) – states the cover does not need a page number. In order to file a reporter’s transcript electronically it needs to have a page number on every single page, otherwise the pagination will be incorrect when uploading.	The committees note that the intent of the new requirement for pagination is to ensure that the pagination of an electronically filed document match the pagination shown on the document, with the first page (or cover, if there is one) as page 1 and then all further pages numbered with consecutive Arabic numerals. Although the page number may be suppressed on the cover or first page, that page will be required to be page 1. (See response, above, to comments by Court of Appeal for the Second Appellate District for discussion of exact language to be used.)

SPR16-06

Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (amend title 8 (rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204))

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Rule 8.75(d)		
Commentator	Comment	[Proposed] Committee Response
California Court Reporters Association by Karen Kronquest, Director, Division B	Rule 8.75(d)- digital signature not required. You must have a digital signature on a reporter's transcript otherwise it enables someone to change the text without anyone every knowing it. The digital signature that we use lets you know that it has been changed, on what date, and who did it.	The committees note that this language remains unchanged from existing rule 8.77. The intent was not to make a substantive change at this time as to when a digital signature is required. The committees recommend that the amendments, which simply renumber the rule, be adopted as circulated for comment.

Rule 8.78(a)(2)		
Commentator	Comment	[Proposed] Committee Response
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	8.78 (a) (2) (b) page 19 Opposed to the deletion of section (a)(2)(b). Currently this rule works and there is no advantage to removing it. Instead it would cause more work, trouble, and cost for all concerned. Electronically filing any document with the court. The act of electronic filing is evidence that the party agrees to accept service at the electronic service address that the party has furnished to the court under rule 8.76(a)(4).	Please see response to comment by Santa Clara County Bar Association Committee on Appellate Courts.
Santa Clara County Bar Association, Committee on Appellate Courts by Audra Ibarra and Associate Justice Miguel Marquez, Sixth District Court of Appeal, Co-	The proposed rule would, among other things, permit parties to choose between receiving documents electronically or in hard copy. The SCCBA Committee suggests that rather than offering a procedure for "opting into" electronic service, the rule should offer a procedure for "opting out" of electronic service. An "opt out" option	The committees' intent, in drafting the changes to the rule regarding e-service, was to separate out parties' decisions regarding use of e-filing and acceptance of e-service. With some exceptions, parties will be mandated to use e-filing under the proposed changes to the rules. Rule 8.78(a)(3) was proposed to be deleted because using e-filing to establish

SPR16-06**Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices** (amend title 8 (rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204))

All comments are verbatim unless indicated by an asterisk (*).

Rule 8.78(a)(2)		
Commentator	Comment	[Proposed] Committee Response
Chairs	<p>would be both more efficient and more effective because most parties prefer electronic service and are unlikely to choose paper service.</p> <p>Under the current rule, a party that electronically files documents is presumed to agree to accept electronic service. (See Cal. Rules of Court, rule 8.71(a)(2)(B).) This presumption is appropriate because most parties that can file documents electronically prefer to receive electronic service. Electronic service is quicker than service of paper copies by mail or by courier. It allows counsel who are traveling to access the documents before returning to their offices, and avoids the need to convert paper copies to electronic form in order to distribute the document to clients and colleagues.</p> <p>The Information Technology Advisory Committee’s proposal does not suggest that there have been any significant problems with electronic service or that electronic service unfairly disadvantages some parties. Instead, the proposal’s objective appears to be to provide parties wishing to receive paper copies with the option of doing so. Currently, parties lack this option because under the current rule the presumption that a party electronically filing documents has agreed to electronic service is both automatic and absolute. The SCCBA Committee supports giving parties who prefer to receive documents in paper form this option. But the SCCBA Committee’s suggestion would provide this option more efficiently. An “opt out” requirement, as opposed to the proposed “opt-in” requirement, would substantially reduce the number of</p>	<p>acceptance of e-service would, with mandated e-filing, give parties no choice as to whether to accept e-service.</p> <p>However, several commentators have expressed concern that requiring a party to file and serve a notice of acceptance of e-service is unduly burdensome on parties and the courts. The committees agree that an opt-out provision, as suggested by the Santa Clara Bar Association Committee on Appellate Courts (SCBACAC), to allow parties, now mandated to e-file, to decide whether to accept e-service.</p> <p>The committees therefore recommend that the proposed amendments to rule 8.78(a) be revised to include the language suggested by SCBACAC, with the suggested phrase “hard copies” changed to “paper copies.”</p>

SPR16-06

Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (amend title 8 (rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204))

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Rule 8.78(a)(2)		
Commentator	Comment	[Proposed] Committee Response
	<p>notices to be filed, and the burden on the courts and the parties. It would also help avoid confusion in multi-party cases in which only one or two of the many parties wish to be served by paper.</p> <p>The SCCBA Committee recommends that the proposed Rule 8.78 be revised to maintain the current rule's presumption that parties filing documents electronically agree to electronic service, and to add a procedure for "opting out" of electronic service, as follows:</p> <p>(a) Authorization for electronic service; exception</p> <p>(1) A document may be electronically served under these rules:</p> <p style="padding-left: 40px;">(A) If electronic service is provided for by law or court order; or</p> <p style="padding-left: 40px;">(B) If the recipient agrees to accept electronic service as provided by these rules and that document is otherwise authorized to be served by mail, express mail, overnight delivery or fax transmission.</p> <p>(2) A party indicates that the party agrees to accept electronic service by;</p> <p style="padding-left: 40px;">(A) Serving a notice on all parties that the party accepts electronic service and filing the notice with the court. The notice must include the electronic service address at which the parties agrees to accept service; <u>or</u></p>	

SPR16-06

Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (amend title 8 (rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204))

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Rule 8.78(a)(2)		
Commentator	Comment	[Proposed] Committee Response
	<p><u>(B) Electronically filing any document with the court. The act of electronic filing shall be deemed to show that the party agrees to accept service at the electronic service address that the party has furnished to the court under Rule 8.74(a)(4), unless the party serves a notice on all parties and files the notice with the court that the party does not accept electronic service and prefers instead to be served hard copies at an address specified in the notice.</u></p>	
<p>State Bar of California Committee on Appellate Courts by Paul J. Killion Chair, 2015–2016</p>	<p>The members of the Committee on Appellate Courts are divided on the advisability of the proposed change to rule 8.71(a)(2), which currently states that “[a] party indicates that the party agrees to accept electronic service” either: (A) by “[s]erving a notice on all parties that the party accepts electronic service and filing the notice with the court”; or (B) by “[e]lectronically filing any document with the court.” Proposed rule 8.78(a)(2) eliminates the presently existing alternative means of indicating agreement to accept electronic service by electronically filing any document with the court. Under the proposed rule, agreement to accept electronic service may be indicated only by serving a notice on all parties that the party accepts electronic service and filing the notice with the court.</p> <p>A majority of the members of the Committee on Appellate Courts disapprove of the proposed amendment because it is unduly burdensome. In their view, electronic service is often preferable to manual service because it is timelier, more efficient, and more reliable. Requiring parties and</p>	<p>With regard to the specific issue of whether e-filing should create a presumption of consent to acceptance of e-service, see response, above, to the comment from the Santa Clara Bar Association Committee on Appellate Courts.</p>

SPR16-06

Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (amend title 8 (rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204))

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Rule 8.78(a)(2)		
Commentator	Comment	[Proposed] Committee Response
	<p>their attorneys to file a notice in each case therefore imposes an additional step merely so they may opt-in to a regime that is generally preferred. Instead, a majority of the members of the Committee on Appellate Courts believe that rule 8.71(a)(2) should be preserved and that the onus should be on parties to opt-out of electronic service should they prefer manual service.</p> <p>The members of the Committee on Appellate Courts who disapprove of the proposed amendment to rule 8.71(a)(2) recognize that the calculus may be different with respect to self-represented parties. But even assuming that self-represented parties lack the same access to electronic forms of communication as represented parties, proposed rule 8.71(b)(1) addresses that concern by exempting self-represented parties from the requirement of filing documents electronically. Should self-represented parties agree to file documents electronically pursuant to proposed rule 8.71(b)(2) by filing a notice with the court and serving it on the other parties, it is unduly burdensome to require those self-represented parties to additionally opt-in to electronic service. Again, a majority of the members of the Committee believe a preferable approach would be to provide a method for self-represented parties who agree to file documents electronically to opt-out of electronic service in the event such parties prefer to file documents electronically but to receive them manually.</p> <p>A minority of the members of the Committee on Appellate Courts approve of the proposed amendment to rule 8.71(a)(2). The members of the Committee who approve</p>	

SPR16-06

Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (amend title 8 (rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204))

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Rule 8.78(a)(2)		
Commentator	Comment	[Proposed] Committee Response
	of the proposed amendment are concerned that those who are not sophisticated in the use of electronic communication (such as the elderly) or are without regular access to it (such as people of limited means) may accomplish an initial e-filing with the assistance of a clinic, librarian, friend, or family member without understanding the electronic service implications of the e-filing. In those circumstances, the self-represented parties would find themselves bound by rules recognizing the validity of service of documents they never actually received or reviewed.	

Rule 8.79(a)		
Commentator	Comment	[Proposed] Committee Response
Family Violence Appellate Project (FVAP) by Jennafer Dorfman Wagner, Esq. Director of Programs	Finally, we believe that there is an “or” that should be “and/or” in proposed rule 8.739(a)(1)(A)[sic]: “Serve all documents electronically, except when personal service is required by statute or rule; or [and/or] (B) Accept electronic service of documents.”	Use of the word “or” rather than “and/or” is in accordance with the conventions of rule drafting. The committees recommend revision of the amended rule as follows, to clarify that the court may order either or both options: “The court may ... order some or all parties to do either or both of the following;”

Rule 8.204(b)		
Commentator	Comment	[Proposed] Committee Response
California Appellate Court Clerks Association by Kevin Lane, President	Rule 8.204 (b), suggested language: “If filed in paper form, the documents must be filed unbound. the cover must be in the color prescribed by rule 8.40(b). In addition to providing the cover information	8.204(b): See response below to comment on this subsection by the California Court of Appeal, Second Appellate District.

SPR16-06

Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (amend title 8 (rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204))

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Rule 8.204(b)		
Commentator	Comment	[Proposed] Committee Response
	required by rule 8.40(c), the cover or first page must state:	
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	<p>8.204 (b) Form page 23</p> <p>a) Add “may be suppressed and” to section (7) as shown below.</p> <p>The pages must be consecutively numbered. The tables and the body of the brief may have different numbering systems. <u>The page numbering must begin with the cover page as page 1 and use only Arabic numerals (e.g., 1, 2, 3).</u> <u>The page number may be suppressed and need not appear on the cover page.</u></p> <p>b) Delete Section (8). The courts want the paper copy submitted unbound.</p>	<p>8.204 (a)(7): As discussed above with regard to rule 8.74(b)(3), the committees recommend the adoption of the proposed amendment with the suggested added language.</p> <p>CACCA and the Second District both suggest elimination of the requirement set forth in rule 8.204 (b)(8) that paper briefs be bound. Although this proposed change in the format of paper briefs does not directly pertain to electronic filing, the committees note that receiving briefs unbound makes it easier for courts to scan paper briefs and convert them to electronic form. It appears that most of the appellate courts prefer to have paper briefs submitted unbound.</p> <p>As most of the appellate courts are in agreement that the existing rule 8.204(b)(8) is inconsistent with the practices and preferences of those courts, and this is a minor, non-controversial change, the committees recommend that the proposed changes to rule 8.204 be adopted as circulated, with the additional change that rule 8.204(b)(8) be amended to read: “If filed in paper form, the brief must be filed unbound unless otherwise provided by local rule or court order.”</p>

SPR16-06

Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (amend title 8 (rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204))

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Rule 8.204(b)		
Commentator	Comment	[Proposed] Committee Response
	<p>c) In section (10), delete reference to rule 8.40(b) and insert “submit unbound” as shown below. In addition, the recommendation is to delete section (b) rule 8.40 altogether. With mandatory e-filing, color requirements for the cover of documents is no longer relevant and as the majority of the courts do not require additional copies there is no need for this rule.</p> <p>If filed in paper form, file unbound. the cover must be in the color prescribed by rule 8.40(b). In addition to providing the cover information required by rule 8.40(c), the cover or first page must state:</p>	<p>The committees note that the proposed changes regarding the requirements for cover color would require a change to a rule not proposed to be amended in the proposal as circulated. The committees recommend against making such a change without the opportunity for public input.</p>

General Comments		
Commentator	Comment	[Proposed] Committee Response
<p>Family Violence Appellate Project (FVAP) by Jennafer Dorfman Wagner, Esq. Director of Programs</p>	<p>FVAP supports the proposed rules, designed to implement mandatory e-filing at all appellate courts. The proposed rules are consistent with the current appellate e-filing practices and local rules where we have participated in e-filing: the 1st, 2nd, 3rd, and 6th Districts.</p> <p>In regard to the expense of paper filing multiple bound copies, we encourage the Judicial Council to remove these requirements for litigants opting out of the e-filing system which are currently found at Rule of Court 8.212(c), so as to lessen the financial burden placed on pro se or other parties who cannot afford to participate in e-filing or for whom e-filing is not otherwise accessible. We would also</p>	<p>The committees note FVAP’s support for the proposal.</p> <p>The comment regarding the requirements of rule 8.212 suggests changes to provisions of the rules not addressed in this proposal. The committees note the comment and may consider the suggested changes in the future.</p>

SPR16-06

Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (amend title 8 (rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204))

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General Comments		
Commentator	Comment	[Proposed] Committee Response
	<p>encourage the Judicial Council to consider permitting such paper filing to be accepted by the Courts of Appeal, instead of having to be filed at the Supreme Court, which may enable pro per litigants to paper file by hand delivery, instead of going to the expense of mailing briefs.</p> <p>We would also encourage the courts to ensure that all e-filing systems are accessible to persons who utilize screen readers because of visual, hearing or mobility impairments. While opting out of the e-filing system would be permitted under the proposed rules by represented parties for whom e-filing is not accessible, access should be universal.</p>	<p>The committees note the commentator's concern regarding accessibility of e-filing.</p>
<p>Civil and Probate Managers for the Superior Court of Orange County By Bryan Chae, Principal Analyst</p>	<p>While the filing date is the day it arrives electronically, the documents are frequently not reviewed by the clerk until days later. To reduce confusion, there should be a clear delineation between filing date and when the document is considered officially filed.</p>	<p>The committees note that the language proposed for rule 8.73(d), taken from the language of existing rule 8.75(d) (with recommended changes to the language of the circulated rule as discussed above in the response to the comments of the Second District Court of Appeal to rule 8.73(d)) clearly delineates between the receipt of a document and the filing (or rejection) of that document, and requires separate notice to the filing party of each of these events.</p>
<p>State Bar of California Committee on Appellate Courts by Paul J. Killion Chair, 2015–2016</p>	<p>With one exception, the Committee on Appellate Courts supports the changes proposed by the Judicial Council's Information Technology Advisory Committee and Appellate Advisory Committee to the Rules of Court concerning e-filing. By and large, the proposed changes are designed to accomplish the goal of eliminating conflicts between appellate court local rules and the rules of court, and ensuring consistency in the e-filing practices of the Courts of Appeal where such consistency is desirable.</p>	<p>The committees note the support of the Committee on Appellate Courts, and address its specific concerns above.</p>

SPR16-06

Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (amend title 8 (rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204))

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General Comments		
Commentator	Comment	[Proposed] Committee Response
D'vora Tirschwell Writ Attorney First District Court of Appeal	Additionally, it would be helpful if electronic filers were asked not to submit exhibits individually, but rather in electronic "volumes" not exceeding 300 pages each, with consecutive page numbering. (See rule 8.486(c)(1)(A).) The submission of exhibits individually unnecessarily consumes staff time in dealing with the electronic filing.	Requiring electronically submitted exhibits to be submitted in volumes is another area where the committees determined that it would be better to wait to address the issue. When the courts have had more experience with e-filing, they will be better able to assist in development of a rule that fits their needs. In this area, there may also be technological developments that affect what the rule should be. For example, as it becomes technologically possible to transmit and review larger documents, it may be that the size of the "volumes" allowed could be greater than 300 pages.

Responses to Requests for Specific Comments
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Does the proposal appropriately address the stated purpose?
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Commentator	Comment	[Proposed] Committee Response
California Appellate Court Clerks Association by Kevin Lane, President	YES	No response is necessary.
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	YES	No response is necessary.
Orange County Bar Association by Todd G. Friedland, President	The proposal addresses the stated purpose.	No response is necessary.

SPR16-06

Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (amend title 8 (rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204))

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Responses to Requests for Specific Comments		
Does the proposal appropriately address the stated purpose?		
Superior Court of San Diego County by Mike Roddy, Court Executive Officer	Yes	No response is necessary.
State Bar of California, Standing Committee on the Delivery of Legal Services, by Phong S. Wong 2015–2016 Chair	Yes	No response is necessary.

Responses to Requests for Specific Comments		
Are the proposed rules consistent with current appellate e-filing practices and local rules?		
Commentator	Comment	[Proposed] Committee Response
California Appellate Court Clerks Association by Kevin Lane, President	YES, AS FAR AS THEY GO. MORE LATER.	No response is necessary.
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	YES, AS FAR AS THEY GO. In time we will need to address other format changes for e- documents.	No response is necessary.
Orange County Bar Association by Todd G. Friedland, President	The proposed rules are consistent with current appellate e-filing practices and local rules.	No response is necessary.
Superior Court of San Diego County by Mike Roddy, Court Executive Officer	Our court is just beginning e-filing. The juvenile division is far from being	The committees note the San Diego court's support of the proposal, and its reminder that some trial court divisions are not yet able to use e-filing and e-service.

SPR16-06

Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (amend title 8 (rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204))

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Responses to Requests for Specific Comments		
Are the proposed rules consistent with current appellate e-filing practices and local rules?		
	paperless. Our court is making small strides toward electronic filing and service in juvenile appeals. The proposed rules do exempt the trial courts from having to file or serve documents electronically. At least for now, that is an important exemption that must be included.	
State Bar of California, Standing Committee on the Delivery of Legal Services, by Phong S. Wong 2015–2016 Chair	Yes.	No response is necessary.

Responses to Requests for Specific Comments		
Do the proposed rules provide adequate protections for parties who are unable to use e-filing or e-service?		
Commentator	Comment	[Proposed] Committee Response
California Appellate Court Clerks Association by Kevin Lane, President	YES	No response is necessary.
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	YES	No response is necessary.
Orange County Bar Association by Todd G. Friedland, President	The rules provide protections for parties who are unable to efile.	No response is necessary.

SPR16-06

Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (amend title 8 (rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204))

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Responses to Requests for Specific Comments

Do the proposed rules provide adequate protections for parties who are unable to use e-filing or e-service?

Commentator	Comment	[Proposed] Committee Response
<p>State Bar of California, Standing Committee on the Delivery of Legal Services, by Phong S. Wong 2015–2016 Chair</p>	<p>Yes, in part. Self-represented parties are exempt from e-filing unless they opt-in/agree to e-file, and any party (regardless of representation) can request to be exempt from e-filing upon showing of undue hardship or significant prejudice. However, the exact process for requesting a hardship exemption is not clear and appears it would likely vary from court to court (see Rule 8.71(d)). SCDLS suggests incorporating more specificity regarding the process for requesting hardship/prejudice exemption from e-filing, for parties who are low-income or moderate-income, limited English proficient (LEP), disabled, etc., as this will make filing for exemption more readily accessible to all litigants.</p> <p>Also, requiring that the format of the documents e-filed be text-searchable may pose an additional barrier to certain parties who wish to e-file such as those who are low or moderate-income, LEP, or disabled, as they may not have ready access to the technology for this (see Rule 8.74(b)). Additionally, some disabled litigants may also face difficulties gaining physical access to buildings where public, shared computers are available.</p>	<p>On the issue of providing a specific procedure to request an exemption from e-filing, please see response, above, in the section on rule 8.71(d), to the comments of the Second District Court of Appeal.</p> <p>On the issue of requiring electronically filed documents to be in a text searchable format, please see response, above, in the section on rule 8.74(b)(2).</p> <p>On the issue of when a court may order waiver of an electronic filing service provider’s fee, please see response, above, in the section on rule 8.73(b).</p>

SPR16-06

Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (amend title 8 (rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204))

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Responses to Requests for Specific Comments		
Do the proposed rules provide adequate protections for parties who are unable to use e-filing or e-service?		
Commentator	Comment	[Proposed] Committee Response
	Finally, permitting electronic filing service providers to charge additional fees for e-filing could pose a barrier to low or moderate-income litigants. Though the rules do also provide that the court can order this fee be waived in certain circumstances, it is unclear what these circumstances would be (see Rule 8.73(b)). SCDLS suggests setting forth specifics regarding the circumstances under which a court may order that the additional fee charged by electronic filing service providers be waived, as this will also make e-filing more accessible to all litigants. It is good that the rule clarifies that electronic filing would no longer automatically be considered consent to accept electronic service, and parties can choose to receive service of documents in paper form, which would be helpful to parties who are self-represented or low-income (see Rule 8.78).	

Responses to Requests for Specific Comments		
Specific comments are invited on the proposed language to be added in rule 8.78, making nonparties who agree to or are ordered to e-service subject to the rule.		
Commentator	Comment	[Proposed] Committee Response
State Bar of California, Standing Committee on the Delivery of Legal	The proposed language seems fine, as nonparties are not automatically subject to e-	No response is necessary.

SPR16-06

Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (amend title 8 (rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204))

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Responses to Requests for Specific Comments		
Specific comments are invited on the proposed language to be added in rule 8.78, making nonparties who agree to or are ordered to e-service subject to the rule.		
Commentator	Comment	[Proposed] Committee Response
Services, by Phong S. Wong 2015–2016 Chair	service.	

Responses to Requests for Specific Comments (from Courts)		
Are the proposed amended rules consistent with current appellate e-filing practices and local rules?		
Commentator	Comment	[Proposed] Committee Response
California Appellate Court Clerks Association by Kevin Lane, President	YES AS FAR AS THEY GO. MORE LATER.	No response is necessary.
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	YES AS FAR AS THEY GO. See above.	No response is necessary.

SPR16-06

Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (amend title 8 (rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204))

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Responses to Requests for Specific Comments (from Courts)		
Would the proposal provide cost savings? If so please quantify.		
Commentator	Comment	[Proposed] Committee Response
California Appellate Court Clerks Association by Kevin Lane, President	SOME BUT NOT THE DELETION OF SECTION (a)(3) FROM NEW RULE 8.78 (CURRENT 8.71).	See response above to the Santa Clara Bar Association's Committee on Appellate Courts' comment on section 8.78 (a).
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	SOME BUT NOT THE DELETION OF SECTION (a)(3) FROM NEW RULE 8.78 (CURRENT 8.71).	See response above to the Santa Clara Bar Association's Committee on Appellate Courts' comment on section 8.78 (a).

Responses to Requests for Specific Comments (from Courts)		
What would the implementation requirements be for courts?		
Commentator	Comment	[Proposed] Committee Response
California Appellate Court Clerks Association by Kevin Lane, President	A DMS.	As the proposed changes are intended to bring the rules up to date and to bring the rules into alignment with current practices of the appellate courts, the committees expect that the courts will be able to implement the changes using existing resources.
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	A DMS.	As the proposed changes are intended to bring the rules up to date and to bring the rules into alignment with current practices of the appellate courts, the committees expect that the courts will be able to implement the changes using existing resources.

SPR16-06

Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (amend title 8 (rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204))

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Responses to Requests for Specific Comments (from Courts)		
Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?		
Commentator	Comment	[Proposed] Committee Response
California Appellate Court Clerks Association by Kevin Lane, President	NO	The committees expect that any changes in existing procedures required to implement the amended rules will be minor, and does not recommend delaying the effective date of the changes.
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	NO	The committees expect that any changes in existing procedures required to implement the amended rules will be minor, and does not recommend delaying the effective date of the changes.