



## Judicial Council of California · Administrative Office of the Courts

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 25, 2013

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Title	Agenda Item Type
Appellate Procedure: Preparation of Transcripts in Felony and Juvenile Appeals	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 8.336 and 8.409	January 1, 2014
Recommended by	Date of Report
Appellate Advisory Committee	August 2, 2013
Hon. Raymond J. Ikola, Chair	Contact
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### Executive Summary

The Appellate Advisory Committee recommends amending the rules relating to reporter's transcripts in felony and juvenile appeals to: (1) alert parties and courts that, under statute, they may request a copy of the reporter's transcript in computer-readable format, (2) establish a procedure implementing the exception to the statute's requirement to prepare transcripts in that format upon request, and (3) clarify that the existing procedure for requesting extensions of time applies to requests by court reporters for additional time to prepare transcripts.

### Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2014, amend rules 8.336 and 8.409 to:

1. Alert parties and courts that, under Code of Civil Procedure section 271, they may request a copy of a reporter's transcript in computer-readable format and that, upon request, unless the trial court orders otherwise, the court reporter must provide the transcript in that format;

2. Clarify that the existing provisions relating to extensions of time apply to requests from court reporters for extensions of time to prepare transcripts; and
3. Make other nonsubstantive changes.

The text of the proposed rules is attached at pages 6–8.

### **Previous Council Action**

The predecessor to rule 8.336, regarding reporter’s transcripts in felony appeals, was adopted by the Judicial Council as part of the original Rules for the Supreme Court and District Courts of Appeal, effective September 1, 1928. Effective January 1, 2002, the Judicial Council amended the predecessor to rule 8.130, relating to reporter’s transcripts in civil appeals to the Court of Appeal, to alert parties that under Code of Civil Procedure section 271 they may request a copy of the reporter’s transcript in computer-readable format and to establish a procedure implementing the exception to the statute’s requirement to prepare transcripts in that format upon request. No similar change was made to the predecessor to rule 8.336. The predecessor to rule 8.409, regarding reporter’s transcripts in juvenile appeals, was adopted by the Judicial Council effective January 1, 2005; before that time, juvenile appeals were generally governed by the same rules as felony appeals.

### **Rationale for Recommendation**

#### **Reporter’s transcript in computer-readable format**

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

Any court, party, or other person entitled to a transcript may request that it be delivered in computer-readable form, except that an original transcript shall be on paper. A copy of the original transcript . . . shall be delivered in computer-readable form upon request if the proceedings were produced utilizing computer-aided transcription equipment.

Rule 8.130 of the California Rules of Court, relating to reporter’s transcripts in civil appeals, currently provides that, “[o]n request, and unless the superior court orders otherwise, the reporter must provide any party with a copy of the reporter’s transcript in computer-readable format.”<sup>1</sup> Rules 8.336 and 8.409, which address preparation of the record on appeal in felony and juvenile appeals, respectively, do not currently include a similar provision.

This proposal is intended to improve the administration of justice in appellate proceedings by amending rules 8.336 and 8.409 to include a provision similar to that in rule 8.130 alerting the court and parties to this statutory authority and establishing a procedure to implement the

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<sup>1</sup> In its separate proposal to amend rule 8.130, the Appellate Advisory Committee and the Court Executives Advisory Committee are proposing that this provision be amended to address requests from the Court of Appeal for copies of transcripts in computer-readable format, so the language of all three rules, if amended, would be similar.

exception to the statute's requirement to prepare transcripts in computer-readable format upon request. Note that the cost of computer-readable transcripts is set by statute, and these amendments are not intended to address those costs, but simply to alert courts and parties of their right to request copies of transcripts in this format.<sup>2</sup>

### **Extensions of time to prepare record**

Rules 8.336 and 8.409 include provisions addressing extensions of time to prepare the record (see 8.336(e) and 8.409(c)). In other contexts, questions have arisen about whether such provisions apply to requests by court reporters for extensions of time to prepare transcripts. This proposal would amend these provisions to clarify that, consistent with current practice, they do apply to extension requests from court reporters.

## **Comments, Alternatives Considered, and Policy Implications**

### **Comments**

This proposal was circulated for public comment between April 19 and June 19, 2013, as part of the regular spring 2013 comment cycle. Eleven individuals or organizations submitted comments on this proposal. Eight commentators agreed with the proposal, two did not indicate a position on the proposal, and one did not support the proposal. The full text of the comments received and the committee responses is set out in the attached comment chart at pages 9–15. The main substantive comments and the committee's responses are discussed below.

### ***Reporter's transcript in computer-readable format***

Unlike current rule 8.130, the proposal that circulated for public comment did not include language allowing the superior court to order that the reporter not provide the transcript in computer-readable format. This provision in rule 8.130 implements the exception in Code of Civil Procedure section 271 for those situations in which a court reporter did not use computer-aided transcription equipment to record the proceedings, and therefore cannot produce a computer-readable transcript, by providing that a court reporter may apply to the superior court for an exemption. The committee did not include this language in its original proposal because it understood that all reporters now use computer-aided transcription equipment and therefore

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<sup>2</sup> Government Code section 69954 provides, in relevant part:

(a) Transcripts prepared by a reporter using computer assistance and delivered on a medium other than paper shall be compensated at the same rate set for paper transcripts, except the reporter may also charge an additional fee not to exceed the cost of the medium or any copies thereof.

(b) The fee for a second copy of a transcript on appeal in computer-readable format ordered by or on behalf of a requesting party within 120 days of the filing or delivery of the original transcript shall be compensated at one-third the rate set forth for a second copy of a transcript as provided in Section 69950. A reporter may also charge an additional fee not to exceed the cost of the medium or any copies thereof.

(c) The fee for a computer-readable transcript shall be paid by the requesting court, party, or person, unless the computer-readable transcript is requested by a party in lieu of a paper transcript required to be delivered to that party by the rules of court. In that event, the fee shall be chargeable as statute or rule provides for the paper transcript.

concluded that an exemption procedure was not needed. The committee sought input on whether its understanding was accurate. Two commentators, including the California Court Reporters Association, provided input on this issue. Both indicated that some court reporters are still unable to produce computer-readable transcripts. Based on these comments, the committee revised the proposal to incorporate language similar to that in rule 8.130 allowing the superior court to order that the reporter not provide the transcript in computer-readable format.

The Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Working Group opposed the proposal in part based on its view that the proposed amendments relating to transcripts in computer-readable format unnecessarily repeated statutory language. The Appellate Advisory Committee agreed in principle that the Rules of Court should not simply repeat statutory language and considered not recommending language regarding parties' and courts' right to request reporters' transcripts in computer-readable format, given that this right is established by Code of Civil Procedure section 271. However, the committee concluded that the proposed rule amendments implement, rather than simply repeat, this statutory right and, as reflected in the support for the proposal expressed by the majority of the commentators, would provide helpful guidance to litigants and courts. To clarify its intent, the committee revised the proposal to include advisory committee comments to these rules indicating that these provisions are designed to implement section 271.

#### ***Extensions of time to prepare record***

Both rule 8.336 and rule 8.409 provide that, in the case of extension requests relating to reporters' transcripts, the reviewing court may extend time only on receipt of both an affidavit showing good cause and a certification by the superior court presiding judge, or a court administrator designated by the presiding judge, that an extension is reasonable and necessary in light of the workload of all reporters in the court. The requirement for a certification by the presiding judge or his or her designee was added to this rule in 1984 as part of a set of changes intended to reduce delay in the preparation of the record on appeal, which included specifying that the presiding judge of the superior court is generally responsible for ensuring the timely preparation of records on appeal (see rule 10.603(c)(10)).

The committee specifically sought input on whether the current requirement for certification by the presiding judge or his or her designee is helpful enough in discouraging delay in preparation of the record that it should remain in these rules. Three commentators provided input on this issue, and all three indicated that the current certification requirement was helpful. Based on this input, the committee is not recommending any change in this requirement.

#### **Other alternatives considered**

The committee also considered not recommending any changes to rules 8.336 and 8.409 but concluded that it would be helpful to amend these rules and the accompanying advisory committee comments to highlight the application of the extension procedure to reporter's transcripts and parties' and courts' statutory right to request reporters' transcripts in computer-readable format.

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

This proposal should impose no significant implementation burdens on the superior courts or Court of Appeal.

### **Relevant Strategic Plan Goals and Operational Plan Objectives**

This proposal will further the Judicial Council's Strategic Plan Goal: III. Modernization of management and administration and Operational Plan Objective: 5. Develop and implement effective trial and appellate case management rules, procedures, techniques, and practices to promote the fair, timely, consistent, and efficient processing of all types of cases.

### **Attachments**

1. Cal. Rules of Court, rules 8.336 and 8.409, at pages 6–8
2. Comment chart, at pages 9–15

Rules 8.336 and 8.409 of the California Rules of Court are amended, effective January 1, 2014, to read:

**Title 8. Appellate Rules**

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

**Chapter 3. Criminal Appeals**

**Article 2. Record on Appeal**

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

(a)–(c) \* \* \*

**(d) Reporter’s transcript**

(1) Except as provided in (a) or (b), the reporter must begin preparing the reporter’s transcript immediately on being notified by the clerk under rule 8.304(c)(1) that the notice of appeal has been filed.

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

(3) – (5) \* \* \*

**(e) Extension of time**

(1) The superior court may not extend the time for preparing the record.

(2) The reviewing court may order one or more extensions of time for preparing the record, including a reporter’s transcript, not exceeding a total of 60 days, on receipt of:

(A) ~~An affidavit~~ A declaration showing good cause; and

(B) In the case of a reporter’s transcript, certification by the superior court presiding judge, or a court administrator designated by the presiding judge, that an extension is reasonable and necessary in light of the workload of all reporters in the court.

1 (f)–(h) \* \* \*

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3  
4 **Advisory Committee Comment**

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6 **Subdivision (a).** \* \* \*

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

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

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20 **Article 2. Appeals**

21 **Rule 8.409. Preparing and sending the record**

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23 (a) \* \* \*

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25 (b) **Preparing and certifying the transcripts**

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

- 28  
29 (1) The clerk must prepare and certify as correct an original of the clerk’s transcript and  
30 sufficient copies to comply with (d); and  
31  
32 (2) The reporter must prepare, certify as correct, and deliver to the clerk an original of  
33 the reporter’s transcript and the same number of copies as (1) requires of the clerk’s  
34 transcript. On request, and unless the trial court orders otherwise, the reporter must  
35 provide the Court of Appeal and any party with a copy of the reporter’s transcript in  
36 computer-readable format. Each computer-readable copy must comply with the  
37 format, labeling, content, and numbering requirements of Code of Civil Procedure  
38 section 271(b).

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40 (c) **Extension of time**

- 41  
42 (1) The superior court may not extend the time to prepare the record.  
43  
44 (2) The reviewing court may order one or more extensions of time for preparing the  
45 record, including a reporter’s transcript, not exceeding a total of 60 days, on receipt  
46 of:  
47

1 (A) A declaration showing good cause; and

2  
3 (B) In the case of a reporter's transcript, certification by the superior court  
4 presiding judge, or a court administrator designated by the presiding judge, that  
5 an extension is reasonable and necessary in light of the workload of all  
6 reporters in the court.

7  
8 (d) \* \* \*

9  
10 **Advisory Committee Comment**

11  
12 **Subdivision (a).** \* \* \*

13  
14 **Subdivision (b).** This subdivision is intended to implement Code of Civil Procedure section 271, which  
15 allows any court, party, or other person entitled to a reporter's transcript to request that it be delivered in  
16 computer-readable format (except that an original transcript must be on paper) and requires the reporter to  
17 provide the transcript in that format upon request if the proceedings were produced using computer-aided  
18 transcription equipment. This subdivision establishes procedures relating to such requests and procedures  
19 for court reporters to apply to the superior court for relief from this requirement if the proceedings were  
20 not produced using computer-aided transcription equipment. Government Code section 69954 establishes  
21 the fees for reporters' transcripts in computer-readable format.

22  
23 **Subdivision (d).** \* \* \*

**SPR13-06****Appellate Procedure: Preparation of Transcripts in Felony and Juvenile Appeals** (Amend Cal. Rules of Court, rules 8.336 and 8.409)

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Appellate Court Committee of the San Diego Bar Association By: Rupa G. Singh, Chair San Diego, California	A	We strongly support the Judicial Council's idea to clarify the rules for transcript preparation in felony and juvenile appeals to reflect the availability of transcripts in computer-readable format under Code of Civil Procedure section 271, subdivision (a).	The committee notes the commentator's support for the proposal.
2.	Appellate Defenders, Inc., California Appellate Project - San Francisco, First District Appellate Project, and Sixth District Appellate Program By: Jonathan Soglin, Executive Director, First District Appellate Project San Francisco, California	A	We strongly support the proposed amendments to rules 8.336 and 8.409 to provide that in criminal and juvenile appeals, as is already the case in civil appeals, parties or the court may request a copy of a transcript in computer-readable format. Many appellate attorneys prefer to review a transcript in electronic form. The proposed amendment would facilitate that option.	The committee notes the commentator's support for the proposal.
3.	California Academy of Appellate Lawyers By: Robert A. Olson, President Los Angeles, California	NI	The Academy has no comment on this proposal.	No response required
4.	California Court Clerks Association By: Charlene Ynson, President Fresno, California	A	<b>Support but request clarification as indicated below.</b>  Is it understood that the Court may request the electronic copy to be in-lieu of the "original" copy the court receives and not an additional copy, if the court so chooses? This question also applies to existing Rule 8.130. Also, can the party request an electronic copy in lieu of the normal paper copy?	The committee notes the commentator's support for the proposal.  Code of Civil Procedure section 271 provides that an original reporter's transcript shall be on paper.

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**Appellate Procedure: Preparation of Transcripts in Felony and Juvenile Appeals** (Amend Cal. Rules of Court, rules 8.336 and 8.409)

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	Commentator	Position	Comment	Committee Response
			<p>Does the proposal reasonably achieve the stated purpose? <i>YES</i></p> <p>Would this proposal have an impact on public’s access to the courts? If a positive impact, please describe. If a negative impact, what changes might lessen the impact? <i>In time it may save some money for the courts and counsel. Some savings may be offset by the need to provide appellants with paper copies.</i></p> <p>Are the current provisions in rules 8.336 and 8.409 requiring certification by the presiding judge or his or her designee for requests to extend the time to prepare a reporter’s transcript sufficiently helpful in discouraging delay in preparation of the record that they should remain in these rules? <i>Yes</i></p> <p>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. <i>Minimal requirements</i></p> <p>Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? <i>Yes</i></p>	<p>The committee appreciates this input.</p> <p>The committee appreciates this input.</p> <p>Based on this and other comments, the committee is not proposing any change to this existing language in rules 8.336 and 8.409.</p> <p>The committee appreciates this input.</p>

**SPR13-06****Appellate Procedure: Preparation of Transcripts in Felony and Juvenile Appeals** (Amend Cal. Rules of Court, rules 8.336 and 8.409)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
5.	California Court Reporters Association By: Pam Katros, Chair Judicial Procedures Committee	NI	<p>The California Court Reporters Association, CCRA, agrees in part with this proposal. While the majority of court reporters in the state are able to comply with the proposal in Rule of Court 8.336(d)(2) to provide transcripts in computer-readable format, there is still a small percentage of court reporters who are unable to provide this service. CCRA believes the language “and unless the superior court orders otherwise” should remain to enable reporters who are not able to supply transcripts in computer-readable format a protection against violating the rule.</p> <p>Regarding proposed Rules 8.336 and 8.409 requiring certification by the presiding judge or his or her designee for requests to extend time to prepare a reporter’s transcript, CCRA understands individual courts and appellate courts handle these matters differently. CCRA believes it is an unnecessary step to require reporters to seek signature of presiding judges or their designees and would prefer seeking extensions directly from the appellate court. The timelines are established in the law which the reporters must follow. There are consequences to the reporters if they do not comply.</p>	<p>Based on this and other comments, the committee has revised the proposal to include language similar to that in rule 8.130 allowing the trial court to issue an order relieving the reporter of the obligation to produce a transcript in computer-readable format. The committees have also revised the proposal to include amendments to the advisory committee comment to clarify that this rule provision is intended to implement Code of Civil Procedure section 271.</p> <p>Based on this and other comments, the committee is not proposing any change to this existing language in rules 8.336 and 8.409.</p>
6.	Committee on Appellate Courts State Bar of California By: Kira Klatchko, Acting Chair 2012-2013	A	The Committee supports this proposal.	The committee notes the commentator’s support for the proposal.

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
	San Francisco, California			
7.	Court of Appeal Fourth District, Division One By: Hon. Judith McConnell, Presiding Justice San Diego, California	A	We support the proposed changes to rules 8.336(d)(2) and 8.409(b)(2).  The revised rules should retain the requirement that the presiding judge, or his or her designee, certify requests to extend the time to prepare the reporter's transcript as reasonable and necessary.	The committee notes the commentator's support for the proposal.  Based on this and other comments, the committee is not proposing any change to this existing language in rules 8.336 and 8.409.
8.	Office of the County Counsel By: James Owens, Assistant City Counsel Los Angeles, California	A	This proposed amendment would be useful because, if a party requests a transcript in such format, there would be authority to cite if questions arise from the reporter.	The committee notes the commentator's support for the proposal.
9.	Orange County Bar Association By: Wayne R. Gross, President Newport Beach, California	A	No additional comment.	The committee notes the commentator's support for the proposal.
10.	Superior Court of San Diego County By: Mike Roddy, Executive Officer	A	No additional comments.	The committee notes the commentator's support for the proposal.
11.	TCPJAC/CEAC Joint Rules Working Group	N	Given the reductions in trial court staffing that are needed to review and implement rule changes, the JRWG does not agree with going forward with this proposal. It is also the position of the JRWG that verbatim reference to existing statutory or legislative language in the rules of court is redundant and unnecessary and in the case of this proposal imposes additional requirements on the court reporters.	Based on this and other comments, the committee has revised the proposal to include language similar to that in rule 8.130 allowing the trial court to issue an order relieving the reporter of the obligation to produce a transcript in computer-readable format. The committees have also revised the proposal to include amendments to the advisory committee comment to clarify that this rule provision is intended to implement Code of

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**Appellate Procedure: Preparation of Transcripts in Felony and Juvenile Appeals** (Amend Cal. Rules of Court, rules 8.336 and 8.409)

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	Commentator	Position	Comment	Committee Response
			<p><b><u>Operational impacts identified by the working group:</u></b></p> <p><b>1. Cause a Potential Fiscal Impact</b>            There may be a possible fiscal impact on courts that are responsible for paying the costs associated with preparation of felony and juvenile court reporter transcripts whether prepared by paper or in computer-readable format or both.</p> <p>Not all courts can ensure that all of their reporters have the capability to provide transcripts in computer-readable format. For courts that have limited reporters on staff may incur extra expense to use a pro tem reporter to comply with this requirement. At a time when courts are facing severe budget reductions, there is no funding to pay for these additional pro tem reporters.</p> <p>It is suggested that implementation be advised, but not mandated for those courts who cannot comply with this requirement.</p> <p><b>2. Create an Impact on Existing Automated Systems</b>            No impact identified.</p> <p><b>3. Raise any Trial Court Labor or Employment Related Concerns</b>            This proposal may raise labor/employee</p>	<p>Civil Procedure section 271.</p> <p>As noted above, based on this and other comments, the committee has revised the proposal to include language similar to that in rule 8.130 allowing the trial court to issue an order relieving the reporter of the obligation to produce a transcript in computer-readable format. The committees have also revised the proposal to include amendments to the advisory committee comment to clarify that this rule provision is intended to implement Code of Civil Procedure section 271.</p> <p>As noted above, based on this and other comments, the committee has revised the proposal to include language similar to that in rule 8.130</p>

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**Appellate Procedure: Preparation of Transcripts in Felony and Juvenile Appeals** (Amend Cal. Rules of Court, rules 8.336 and 8.409)

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	Commentator	Position	Comment	Committee Response
			<p>concerns for courts that have limited reporters on staff and need contract with pro tem reporters that provide this capability since the use of pro tem reporter complicates coordination of the preparation of the record.</p> <p><b>4. Require Development of Local Rules or Forms</b> Courts may need to develop local rules/forms if no Judicial Council forms are available.</p> <p><b>5. Create Need for Additional Training, Which Requires the Commitment of Staff Time and Court Resources</b> No impact identified.</p> <p><b>6. Increase Court Staff Workload</b> The proposed changes may increase staff workload for court reporters to prepare paper and <u>computer-readable</u> format transcripts. Preparing transcripts in computer-readable format may also save time and materials (paper, ink) for court reporters.</p> <p>Most judicial officers and court staff also prefer computer-readable files because it saves time and physical space in handling transcripts.</p> <p><b>7. Change the Responsibilities of the Presiding Judge and/or Supervising Judge</b> No impact identified.</p>	<p>allowing the trial court to issue an order relieving the reporter of the obligation to produce a transcript in computer-readable format.</p> <p>As noted above, based on this and other comments, the committee has revised the proposal to include language similar to that in rule 8.130 allowing the trial court to issue an order relieving the reporter of the obligation to produce a transcript in computer-readable format.</p>

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	Commentator	Position	Comment	Committee Response
			<p><b>8. Create an Impact on Court Security</b> No impact identified.</p> <p><b>9. Create an Impact on Local or Statewide Justice Partners</b> No impact identified.</p> <p><b>10. Implementation</b> If all available reporters have the capability to produce transcripts in computer-readable format, then two months from the time the Judicial Council approves this proposal to the effective date is more than sufficient time to implement this proposal. If it is the intent of this rule to require reporters to provide transcripts in computer readable format, then a longer implementation period would be required if any reporter does not currently have that capability.</p> <p><b>11. Are there Any Other Major Fiscal or Operational Impacts</b> No impact identified.</p> <p><b>12. Request for Specific Comments</b> None offered.</p>	<p>As noted above, based on this and other comments, the committee has revised the proposal to include language similar to that in rule 8.130 allowing the trial court to issue an order relieving the reporter of the obligation to produce a transcript in computer-readable format.</p>