



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

Title	Agenda Item Type
Appellate Procedure: Reporter's Transcripts in Civil Appeals	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 8.130 and 8.834 ¹ and revise forms APP-003 and APP-010	January 1, 2014
Recommended by	Date of Report
Appellate Advisory Committee	August 2, 2013
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Executive Summary

The Appellate Advisory Committee and Court Executives Advisory Committee recommend amending the rules relating to reporter's transcripts in civil appeals to, among other things: (1) establish a fee to cover trial court costs associated with administering trust accounts for payment of reporter's transcript costs in civil appeals, (2) establish a lower deposit amount for reporter's transcripts of proceedings that have already been transcribed, and (3) allow the submission of certified transcripts in lieu of a deposit for a reporter's transcript only when the certified transcripts contain all of the designated proceedings and are in the required format for

¹ Please note that in a separate report relating to the appellate division rules and forms, the Appellate Advisory Committee is recommending other changes to rule 8.834.

reporter's transcripts. These changes are intended to generate revenue for trial courts and provide costs savings and efficiencies for trial courts and for litigants.

Recommendation

The Appellate Advisory Committee and Court Executives Advisory Committee recommend that the Judicial Council, effective January 1, 2014:

1. Amend rules 8.130 and 8.834 to:
 - Require parties who deposit funds with the trial court for the cost of a reporter's transcript in a civil appeal to pay a fee of \$50 to the superior court;
 - Give appellants, when they learn what the cost of the reporter's transcript is and/or that they must pay that cost, the option of choosing another form of the record of the oral proceedings, informing the court that they now want to proceed without a record of the oral proceedings, or choosing to abandon the appeal altogether; and
 - Clarify that a party who believes that a reporter's estimate or invoice for the cost of a transcript is excessive may file a complaint with the Court Reporters Board.
2. Further amend rule 8.130 to:
 - Limit the procedure for providing previously purchased certified transcripts in lieu of a deposit for a reporter's transcript to situations in which the certified transcripts provided to the court cover all of the proceedings that the party has designated for inclusion in the reporter's transcript;
 - Require that transcripts submitted in lieu of a deposit for a reporter's transcript meet the format requirements for reporter's transcripts under rule 8.144;
 - Set a lower rate for calculating required reporter's transcript deposits for those proceedings that have already been transcribed by a court reporter;
 - Require that parties identify in their notices designating reporter's transcripts those proceedings for which a certified transcript has previously been prepared;
 - Require that, if a party files a Transcript Reimbursement Fund application, within 90 days after a copy of that application is filed with the court, the party must either submit a copy of the Court Reporters Board's provisional approval of the application or take one of the alternative actions specified in the rule;
 - Provide that the court may request a copy of a reporter's transcript in computer-readable format; and
 - Clarify that a court reporter's claim for an additional deposit for a reporter's transcript must be based on an estimate that is calculated using the statutory rate for reporter's transcripts;

3. Further amend rule 8.834 to:
 - Allow the same procedure for submitting certified transcripts or Transcript Reimbursement Fund applications in lieu of a deposit for a reporter's transcript as permitted under rule 8.130;
 - Add a provision noting that the court or parties may request a transcript in computer-readable format; and
 - Clarify that a court reporter's estimate of the cost of preparing the reporter's transcript must be calculated at the statutory rate.
4. Revise *Appellant's Notice Designating Record on Appeal (Unlimited Civil)* (form APP-003); and *Respondent's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-010) to include spaces for parties to indicate whether proceedings designated for inclusion in a reporter's transcript were previously transcribed.²

The text of the proposed rules is attached at pages 18–28.

Previous Council Action

The predecessor to rule 8.130, relating to reporter's transcripts in civil appeals to the Court of Appeal, was adopted by the Judicial Council effective July 1, 1943. The predecessor to rule 8.834, relating to reporter's transcripts in civil appeals to the superior court appellate division, was adopted by the Judicial Council effective September 15, 1945, as part of a set of rules intended to make the procedures for appeals to the appellate division as similar as possible to the procedures for appeals to the Court of Appeal. As adopted, both rules required appellants who wished to use a reporter's transcript to file a notice with the trial court designating the oral proceedings to be included in the transcript, allowed respondents to designate additional proceedings for inclusion in the transcript, and required appellants, upon receipt from the clerk of the estimated cost of the transcript, to deposit with the trial court either the estimated amount or a waiver of this deposit signed by the court reporter.

Effective January 1, 1991, as part of an effort to reduce delay in appellate proceedings, the Judicial Council amended the predecessor to rule 8.130 to require that the deposit for a reporter's transcript be made, or the reporter's waiver of this deposit be filed, by the appellant or respondent at the same time as that party filed its notice of designation. These amendments also

² Please note that in a separate report relating to the appellate division rules and forms, the Appellate Advisory Committee is also recommending revising *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) and *Respondent's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-110) to similarly include spaces for parties to indicate whether proceedings designated for inclusion in a reporter's transcript were previously transcribed.

provided that the deposit could be based either on a reporter's estimate of the cost of the transcript or calculated at a rate set in the rule for a full or half day of proceedings. The rate for calculating the deposit set in the rule was based on the rate for reporter's transcripts established by statute. In addition, these amendments added a specific requirement that when the transcript was completed, the court reporter would bill the appellant at the statutory rate with a copy to the clerk, and the clerk would pay the reporter from the deposited funds. Corresponding changes were not made to the rule for civil appeals to the superior court appellate division.

Effective July 1, 1991, the Judicial Council amended the predecessor to rule 8.130 to provide for the filing of a notice of designation without a deposit when the designating party showed he or she was likely eligible for and had initiated the process of seeking reimbursement of the cost of the reporter's transcript from the Transcript Reimbursement Fund. Effective January 1, 1993, the Judicial Council further amended this rule to permit the substitution of an original transcript of the proceedings specified in the notice designating proceedings for a required deposit. Corresponding changes were not made to the rule for civil appeals to the superior court appellate division.

Rationale for Recommendation

Rules 8.130 and 8.834 establish procedures relating to reporter's transcripts in civil appeals to the Court of Appeal and superior court appellate division, respectively. Under these rules, appellants in civil appeals who wish to use a reporter's transcript must file a notice with the trial court that designates which of the oral proceedings from the trial court they want included in the reporter's transcript. Respondents may then designate additional proceedings to be included in the transcript. With its notice of designation, each designating party must either deposit with the trial court the approximate cost of the transcript or provide a substitute authorized under the rules. The fees for reporter's transcripts are set by statute.³ Under rule 8.834, the deposit made by a party for a reporter's transcript is based on the reporter's estimate of the cost of preparing that transcript. Under rule 8.130, the deposit for the reporter's transcript may be based on either a written estimate obtained from the court reporter or based on a rate established in the rule per full

³ The main statute addressing fees for reporter's transcripts is Government Code section 69950, which provides in full:

- (a) The fee for transcription for original ribbon or printed copy is eighty-five cents (\$0.85) for each 100 words, and for each copy purchased at the same time by the court, party, or other person purchasing the original, fifteen cents (\$0.15) for each 100 words.
- (b) The fee for a first copy to any court, party, or other person who does not simultaneously purchase the original shall be twenty cents (\$0.20) for each 100 words, and for each additional copy, purchased at the same time, fifteen cents (\$0.15) for each 100 words.
- (c) Notwithstanding subdivisions (a) and (b), if a trial court had established transcription fees that were in effect on January 1, 2012, based on an estimate or assumption as to the number of words or folios on a typical transcript page, those transcription fees shall be the transcription fees for proceedings in those trial courts, and the policy or practice for determining transcription fees in those trial courts shall not be unilaterally changed.

Government Code section 69954 addresses the fees for reporter's transcripts in computer-readable format.

day or half day of proceedings. The deposit rate established by rule 8.130 is based on the estimated cost of preparing a transcript of a full day or half day of proceedings at the statutory rate for an original reporter's transcript.

When a court reporter finishes preparing a transcript of the proceedings designated by the parties, the rules require the reporter to bill the designating parties at the statutory rate and to send a copy of the bill to the trial court. Under the rules, the clerk of the trial court then pays the reporter for the transcript from the funds deposited by the designating parties, refunds any excess to the depositing party, and notifies the parties of any additional amounts needed.

Administration of trust accounts for deposits of fees for reporter's transcripts

Although many court reporters are employees of the trial court, when court reporters prepare and sell reporter's transcripts, they act in the capacity of independent contractors. When the court holds a deposit of the fees for a reporter's transcript in a civil appeal, it holds these funds in trust for the depositing party and for the court reporter in that reporter's capacity as an independent contractor.

Handling these trust accounts consumes trial court staff time and thus consumes increasingly scarce trial court resources. Government Code section 70632 authorizes the charging of a fee by courts for handling funds held in trust.⁴ The Judicial Council has not, to date, adopted a rule setting a fee for administering these trust accounts.

To offset superior court costs associated with handling these trust accounts, this proposal recommends amending rules 8.130 and 8.834 to require parties who deposit funds with the trial court for the cost of a reporter's transcript to pay a fee of \$50 to the superior court. This would implement the authority given by Government Code section 70632 for the Judicial Council to set and courts to charge a fee for handling funds held in trust. The amount of the proposed fee was calculated based on information submitted by 44 superior courts about their average costs for administering these trust accounts. Note that this \$50 applies only if the designating party chooses to deposit funds with the superior court; if parties obtain a waiver of this deposit from the court reporter, the \$50 fee would not apply.

Deposits of previously prepared transcripts

Sometimes a party in a trial court proceeding will purchase reporter's transcripts of all or part of the proceedings before any appeal is filed, for example, if a party needs a transcript for filing a petition for a writ during the trial court proceedings. In recognition of the fact that parties may already have purchased transcripts of all or part of the proceedings that they need for an appeal,

⁴ This section provides in full:

The clerk of the court shall charge a reasonable fee for handling funds held in trust for non-court parties or entities. The amount of the fee for handling the funds shall be based on rules adopted by, or guidelines and policies authorized by, the Judicial Council under subdivision (a) of Section 77206. This fee shall be deposited into the Trial Court Trust Fund.

rule 8.130, relating to reporter's transcripts in civil appeals to the Court of Appeal, currently allows a party, in lieu of depositing funds for a reporter's transcript, to deposit with the trial court a certified transcript of a designated proceeding. The current rule provides that such a certified transcript can be of all or only part of the proceedings designated for inclusion in the clerk's transcript. If it is for only part of the designated proceedings, the transcript replaces only the deposit for that part of the reporter's transcript. Rule 8.834, relating to reporter's transcripts in civil appeals to the superior court appellate division, does not currently provide for depositing certified transcripts in lieu of a deposit for a reporter's transcript.

There have been a number of difficulties with the current procedure established by rule 8.130 for depositing certified transcripts in lieu of all or part of a deposit for a reporter's transcript. Under rule 8.144, there are format requirements for reporters' transcripts used as part of the record on appeal. Among other things, this rule requires that (1) the pages in reporters' transcripts be consecutively numbered; (2) the cover of each volume identify the page numbers within that volume and the appellate case name, number, and party contact information; and (3) the transcript include chronological and alphabetical indexes to the entire reporter's transcript. Transcripts prepared during the trial court proceedings do not comply with these format requirements. For purposes of the record on appeal, the Courts of Appeal are generally unwilling to accept transcripts that are not in the correct format for a reporter's transcript.

Rule 8.130 does not currently address who is responsible for putting previously prepared transcripts into the appropriate format for reporter's transcripts on appeal. Where a party has already purchased a transcript or transcripts of all of the proceedings designated for inclusion in a reporter's transcript, it may be relatively simple to put the transcript or transcripts into the required format. This is much more difficult when a party has a certified transcript of only part of the designated proceedings, as it requires coordination with a court reporter or reporters regarding pagination and indices. Alternatively, a court reporter could prepare a reporter's transcript that incorporates proceedings that were previously transcribed. In such a situation, the court reporter would not need to retranscribe those proceedings, but would need to spend time repaginating the previously prepared transcripts and preparing the indices and cover(s) that encompass those previously prepared transcripts.⁵ When court reporters have been asked to prepare reporter's transcripts that include previously transcribed proceedings, however, there have sometimes been disagreements about whether the court reporter should be paid the rate established by statute for preparing an original transcript, the statutory rate for a copy of a transcript, or some other amount. A recent case addressing the applicable statutory rate for reporter's transcripts, *Hendrix v. Superior Court of San Bernardino County* (2011) 191

⁵ Rule 8.336(d)(4), relating to reporter's transcripts in felony appeals, explicitly addresses such situations:

Any portion of the transcript transcribed during trial must not be retyped unless necessary to correct errors, but must be repaginated and bound with any portion of the transcript not previously transcribed. Any additional copies needed must not be retyped but must be prepared by photocopying or an equivalent process.

Cal.App.4th 889, concluded that the statutory rate for an original transcript only applies to the first transcription of the reporter's notes.

To address these problems, the committees are recommending several changes to the procedure in rule 8.130 that allows parties to submit certified transcripts of all or part of the designated proceedings in lieu of all or part of a deposit for a reporter's transcript:

- **Requiring that transcripts submitted to the court meet rule 8.144's format requirements for reporters' transcripts:** This would address the problems associated with transcripts submitted in lieu of a deposit for a reporter's transcript not being in the proper format for an appellate record. It would also clearly place responsibility on the designating party for ensuring that such transcripts are in the proper format. If, as suggested below, the certified transcripts submitted to the court cover all of the designated proceedings, it should be easier for these transcripts to be put into the proper format for a reporter's transcript.
- **Permitting substitution of certified transcripts for a deposit ONLY when the substituted transcripts include all designated proceedings:** These changes are intended to maintain litigants' ability to use transcripts that they have already purchased in some cases, but also eliminate the challenges associated with meeting the format requirements for reporters' transcripts, such as consecutive pagination and preparation of indices, that currently arise when a party tries to substitute a certified transcript for only part of the designated proceedings. Because the court reporter would not be transcribing the proceedings in such situations, the proposal would also eliminate requirements for certain notices to the court reporter when a designating party has provided the court with transcripts of all the designated proceedings.
- **Establishing a different formula for calculating the required deposit for a reporter's transcript of proceedings that have been previously transcribed:** As noted above, if the procedure for substituting certified transcripts for the reporter's transcript deposit is limited to situations in which the certified transcripts include all the designated proceedings, some parties will likely need to obtain, and thus make deposits for, a reporter's transcript that includes proceedings that have already been transcribed. As also noted above, a recent case addressing the applicable statutory rate for reporter's transcripts, *Hendrix v. Superior Court of San Bernardino County* (2011) 191 Cal.App.4th 889, concluded that the statutory rate for an original transcript only applies to the first transcription of the reporter's notes. In recognition of this case law, this proposal would amend rule 8.130 to set a lower rate for calculating required reporter's transcript deposits for those proceedings that have already been transcribed by a court reporter. The proposed new deposit rate for proceedings that were previously transcribed is approximately one-quarter the deposit rate specified for proceedings that were not previously transcribed. This proposed rate is based on Government Code section 69950(b), which provides that the fee for a first copy of a reporter's transcript to any court, party, or other person who does not simultaneously purchase the original is twenty cents (\$0.20) for each 100 words, which is slightly less than one-quarter the fee of eighty-

five cents (\$0.85) for each 100 words that Government Code section 69950(a) establishes for the original transcription. To further facilitate calculating appropriate deposits, this proposal would require that parties identify in their notices designating reporter's transcripts those proceedings for which a certified transcript has previously been prepared.

In addition to making the above changes to rule 8.130, this proposal would add a provision to rule 8.834 allowing the same modified procedure for submitting certified transcripts in lieu of a deposit in civil appeals to the superior court appellate division.

Transcript Reimbursement Fund applications

Business and Professions Code section 8030.2 et seq. establishes a fund, called the Transcript Reimbursement Fund, administered by the Court Reporters Board to "provide shorthand reporting services to low-income litigants in civil cases, who are unable to otherwise afford those services." On application by a low-income litigant in a civil appeal, this fund can either provisionally approve payment for a reporter's transcript in a civil appeal before the transcript is prepared or reimburse an eligible litigant who purchases a transcript.

Until 2011, the applicable statutes establishing the Transcript Reimbursement Fund only provided for payment when a low-income litigant was represented by counsel. In 2011, Business and Professions Code section 8030.5 was enacted, creating a pilot program to provide reimbursement of transcript costs for self-represented low-income litigants and, effective January 2013, this program was extended until January 1, 2017. However, the statutes establishing the Transcript Reimbursement Fund place a cap of \$30,000 per year on what can be spent for reimbursement of transcripts for self-represented litigants.

Under rule 8.130, in lieu of depositing funds for a designated reporter's transcript, a party may file with the court a copy of a Transcript Reimbursement Fund application that the party has filed with the Court Reporters Board.⁶ Rule 8.130 currently provides that the court reporter must begin preparing the transcript if the board approves the party's application for payment. If the application is denied, the rule requires the appellant to deposit the cost of the transcript or notify the court that he or she elects to use another form of the record. Thus, under current rule 8.130, it is only when the board makes its decision about an application that the next step in the appellate process is triggered; while action by the board is pending, the appeal does not proceed.

In both 2011 and 2012, the Court Reporters Board exhausted the funds available for payment of transcript costs for self-represented litigants well before the end of the calendar year for which these funds were allocated (by July in 2011 and April in 2012). Under statutes then in effect, once the funds for the year were exhausted, the board deferred consideration of subsequently received applications until the following year, when another \$30,000 became available to pay for the transcripts requested by self-represented litigants. Since, under rule 8.130, appeals in which a Transcript Reimbursement Fund application has been filed do not proceed until the application is

⁶ Rule 8.834 does not currently contain a similar procedure.

either granted or denied, there were delays of many months in appeals in which the Court Reporters Board deferred action on pending applications filed by self-represented litigants. It is the committees' understanding that delays in processing Transcript Reimbursement Fund applications filed by self-represented litigants are likely to continue, as the total amount requested in the applications from 2012 that were deferred to 2013 exceeds the \$30,000 available for distribution in 2013.

To address concerns about delay in the resolution of appeals filed by self-represented litigants who have applied to the Transcript Reimbursement Fund for payment of their reporter's transcript costs on appeal, this proposal would amend rule 8.130 so that the progress on the appeal is no longer dependent on whether the Court Reporters Board has acted on the application. The proposed amendments would provide that, within 90 days after an appellant files a copy of his or her Transcript Reimbursement Fund application with the court, the litigant must either submit a copy of the Court Reporters Board's provisional approval of the application or take one of following actions: (1) submit a deposit for the reporter's transcript or the reporter's waiver of this deposit; (2) file an agreed statement or a stipulation that the parties are attempting to agree on a statement under rule 8.134; (3) file a motion to use a settled statement instead of a reporter's transcript under rule 8.137; (4) notify the superior court clerk that he or she elects to proceed without a record of the oral proceedings; or (5) serve and file an abandonment of the appeal. Similarly, the proposed amendments would provide that within the same time frame, a respondent must either submit a deposit for the reporter's transcript or the reporter's waiver of this deposit or notify the clerk that he or she no longer wants the additional proceedings he or she designated for inclusion in the reporter's transcript.

Note that if a low-income litigant can pay for a transcript using his or her own funds, these changes will not interfere with his or her ability to obtain payment of transcript costs from the Transcript Reimbursement Fund, since this fund can reimburse such litigants for these costs at a later date. However, these changes will mean that those low-income litigants who want a reporter's transcript and whose Transcript Reimbursement Fund applications are not provisionally approved within 90 days after the litigant submits a copy of the application to the court will need to choose between making a deposit for such a transcript and possibly later receiving reimbursement of this cost from the board or taking one of the other permissible actions identified in the rule. There may be some litigants for whom another form of the record will not be adequate, who cannot afford to make the required deposit for a reporter's transcript, and who are unable to obtain a reporter's waiver of this deposit. As was the case before payments from the Transcript Reimbursement Fund were available, these litigants may not be able to pursue their appeals.

In addition to making the above changes to rule 8.130, this proposal would add a provision to rule 8.834 allowing the same modified procedure for submitting a Transcript Reimbursement Fund application in lieu of a deposit for a reporter's transcript in civil appeals to the superior court appellate division.

Default options

Some appellants who designate a reporter's transcript may be unaware of how much such a transcript will cost them or unaware that a fee waiver will not cover the cost of the reporter's transcript. As a result, some appellants will not make the required deposit of funds after they have designated such a transcript. This triggers the general procedures for defaults in procurement of the record established by rules 8.140 and 8.842, which require the court to send parties notice of the default and of the sanctions that may be applied if the default is not cured by a specified date. Currently, dismissal of the appeal is the only sanction specified in these rules for an appellant who fails to take an action necessary to procure the record. In contrast, in other situations where an appellant learns about what he or she must pay in order to obtain a reporter's transcript, the Rules of Court provide the appellant with options for pursuing the appeal other than proceeding with a reporter's transcript. As noted above, under rule 8.130(c)(3), when an appellant has applied to the Court Reporters Board for payment of the cost of a reporter's transcript and that board denies the appellant's application, the appellant is given the option of filing an agreed or settled statement under rule 8.134 or 8.137. Similarly, under rules 8.866 and 8.919, relating to appeals in misdemeanor and infraction cases, when the appellant is notified of the cost of a reporter's transcript, he or she is given the option of choosing to proceed using a statement on appeal instead of using a reporter's transcript.

To reduce dismissals for procedural defaults in procurement of the record, this proposal would amend both rule 8.130 and rule 8.834 so that, like rules 8.866 and 8.919 relating to appeals in misdemeanor and infraction cases, when appellants learn what the cost of the reporter's transcript is and/or that they must pay that cost, they would be given the option of choosing another form of the record of the oral proceedings. In rule 8.130, these new options would be presented to the appellant in the default notice if the appellant failed to make a required deposit for a designated reporter's transcript. In rule 8.834, these options would be presented to the appellant in the clerk's notice transmitting the court reporter's estimate of the cost of the designated transcript. In addition to allowing the appellant to choose a form of the record other than a reporter's transcript, the proposal would give the appellant the option of informing the court that he or she now wants to proceed without a record of the oral proceedings or wants to abandon the appeal altogether. This would give appellants the opportunity to make decisions about whether and how to proceed with an appeal without a reporter's transcript, rather than having the reviewing court make such a decision in the context of a default. This proposal would also amend these rules to separately identify the options for respondents who have designated a reporter's transcript, since respondents cannot make some of the choices available to appellants.

Copy of transcript for court 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(f)(4) currently provides that, “[on] 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.” This rule does not currently specifically provide for requests by courts for a copy of a transcript in computer-readable format. Rule 8.834 does not currently include any provision regarding requests by either a court or a party for a copy of a transcript in computer-readable format.

To more fully implement Code of Civil Procedure section 271(a), this proposal would amend rule 8.130 to provide that the Court of Appeal may request a copy of a reporter’s transcript in computer-readable format. In addition this proposal would add a provision to rule 8.834 similarly noting that the court or parties may request a transcript in computer-readable format.⁷

Please note that the cost of transcripts in computer-readable format is set by statute⁸ and these amendments are not intended to address those costs, but simply to alert courts and parties of their statutory right to request copies of transcripts in this format and establish procedures for implementing this statutory right.

Disputed charges for reporter’s transcripts

In February 2010, the California Supreme Court denied a petition for review in the case of *Gomez v. City of San Diego* (S177774). The petitioner in that case, under the procedure established by rule 8.130, had deposited funds with the trial court for a reporter’s transcript in a civil appeal. After the transcript was prepared, the petitioner did not receive a bill from the court reporters. The trial court, however, paid the court reporters the amount that the reporters requested for the transcript and refunded the remainder to the petitioner. The petitioner sought an

⁷ Please note that in a separate report relating to reporter’s transcripts in felony and juvenile appeals, the Appellate Advisory Committee is recommending adding a similar provision indicating that either the court or parties can request a copy of the reporter’s transcript in computer-readable format to the rules relating to reporter’s transcripts in felony and juvenile appeals.

⁸ Government Code section 69954 provides:

(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.

(d) Any court, party, or person who has purchased a transcript may, without paying a further fee to the reporter, reproduce a copy or portion thereof as an exhibit pursuant to court order or rule, or for internal use, but shall not otherwise provide or sell a copy or copies to any other party or person.

additional refund, claiming that the amount that had been charged was nearly three times what the transcript should have cost at the statutory rate. The trial court denied this request and the Court of Appeal also denied the petitioner's motion for an order requiring payment of the refund. The petitioner then sought review in the Supreme Court. Both the petition and letters filed by several amicus curiae suggested that the practice of charging more than the statutory rate for reporter's transcripts was widespread⁹ and raised questions about the role of the court with regard to the fees charged by court reporters for transcripts. When the Supreme Court denied the petition for review in this case, it stated, "The court will refer the concerns raised by petitioner and amicus curiae to the Judicial Council for consideration of a possible change to the Rules of Court."

In addition to administering the Transcript Reimbursement Fund, the Court Reporters Board is charged with investigating complaints about the actions of licensed shorthand reporters, "for alleged acts or omissions constituting grounds for disciplinary action under the chapter" (Bus. & Prof. Code, § 8008). Business and Professions Code section 8025 provides that disciplinary action may be imposed on shorthand reporters for, among other things, "violation of this chapter or the statutes, rules, and regulations pertaining to certified shorthand reporters." It is the committees' understanding that, under its disciplinary authority, the Court Reporters Board considers complaints about court reporters' failing to provide required bills for reporter's transcripts and charging fees in excess of those authorized by statute and, in appropriate cases, will order the court reporter to issue a refund of fees that exceed the statutory rate.

This proposal includes several amendments intended to address disputed charges for reporter's transcripts, including:

- Amending rule 8.130(b)(2) to clarify that, like a court reporter's bill for a completed transcript under 8.130(f)(2), a reporter's claim for an additional deposit for a reporter's transcript must be based on an estimate that is calculated using the statutory rate for reporter's transcripts;
- Amending rule 8.834(b)(2) to clarify that a court reporter's estimate of the cost of preparing the reporter's transcript in an appeal to the superior court appellate division must be calculated at the statutory rate; and
- Adding new provisions to both rule 8.130 and rule 8.834 clarifying that while a designating party must comply with the deposit requirements established by these rule notwithstanding any dispute over the cost of a reporter's transcript, a party who believes that a reporter's estimate or bill for the cost of a transcript is excessive may file a complaint with the Court Reporters Board.

⁹ In the petition to the Supreme Court, the firm representing the petitioner indicated that it had experience in thousands of appeals over many years and that, in its experience, the problem of charges for transcripts exceeding the statutory rate is "routine" and "chronic." Amicus similarly indicated that their experience was that this practice was widespread.

These amendments are intended to recognize that the rates for reporter's transcripts have been set by Government Code sections 69950 and 69954 and that the Court Reporters Board has been tasked with enforcement of statutes relating to court reporters.

Other proposed amendments

In addition to the amendments described above, this proposal would amend both rule 8.130 and rule 8.834 to add a requirement that the court reporter notify all parties to the appeal when a transcript is complete. This amendment is intended to establish a method for non-designating respondents to receive notice that the reporter's transcript has been completed so that they can timely purchase a copy from the appropriate reporter.

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. Twelve individuals or organizations submitted comments on this proposal. Four commentators agreed with the proposal and two agreed with the proposal if modified. The remaining six commentators did not indicate a position on the proposal overall, but provided comments on specific aspects of the proposal. The full text of the comments received and the committee responses are set out in the attached comment chart at pages 36–61. The main substantive comments and the committee's responses are discussed below.

Fee for administration of trust accounts for deposits of funds for reporter's transcripts.

One commentator expressed support for the proposed new \$50 fee for administering trust accounts for deposits of funds for reporters' transcripts the fee and two commentators expressed opposition to this fee. While the committees appreciate the two commentators' concerns about potentially increasing the current fees for a civil appeal by adding the proposed \$50 fee, the committees concluded that the revenue this fee would generate is important to allow superior courts to continue performing the function of holding deposits for reporter's transcript fees. The committees therefore recommend that the Judicial Council adopt the amendments establishing this fee.

One of the commentators that opposed the fee suggested that, instead of establishing a separate fee, the current \$100 fee under Government Code section 68926.1 for trial court costs related to preparing a clerk's transcript and other appeal processing could be increased. For both policy and practical reasons, the committees concluded that this fee is a more appropriate approach than attempting to increase the fee established by Government Code section 68926.1. On a policy level, the committee's view is that it is most appropriate that only those the individuals who avail themselves of the deposit procedure should pay for the courts' trust-administration services. Not all appellants proceed using a reporter's transcript and among those that do, some pay the court reporter directly. The committees do not think it is appropriate for appellants to pay for trust-administration services that they do not use. On a practical level, Government Code section

70632 already authorizes the Judicial Council to adopt fees for administering trust accounts for non-court parties or entities. In contrast, even if the Judicial Council sponsored an amendment to Government Code section 68926.1 and such an amendment was signed into law, it would be at least a year before such an amendment could take effect, delaying the receipt of needed funds for the trial courts.

Four commentators provided input on the waiver of the proposed new \$50 fee. Because this fee would be new, it is not specifically identified among the fees that must be waived as part of an initial fee waiver under rule 3.55 or that may be waived as part of such a fee waiver under rule 3.56. The committees' view is that this fee may be waived under rule 3.56(6) as another fee "itemized in the [fee waiver] application." However, the committee specifically sought input on whether this fee should be included on the list of specific fees and costs that must be waived as part of an initial fee waiver under rule 3.55 or that may be waived as part of such a fee waiver under rule 3.56. All four commentators who responded to this question suggested that this fee should be on the list of specific fees and costs that must be waived as part of an initial fee waiver under rule 3.55. Based on these comments, the committees will recommend to the group that will be considering suggested amendments to the fee waiver rules that this fee be added to list of fees that must be waived as part of an initial fee waiver

Previously transcribed proceedings. Five commentators expressed support for various aspects of the amendments relating to previously transcribed proceedings, including limiting the ability to deposit previously prepared transcripts to situations in which all of the proceedings designated by the depositing party are included in the deposited transcript and establishing a lower deposit rate for previously transcribed proceedings. Based on these comments, the committees recommend that these amendments be adopted as circulated for public comment.

Two commentators suggested that court reporters, rather than parties, should generally be responsible for repaginating previously transcribed proceedings and preparing indices for transcripts submitted in lieu of a deposit for a reporter's transcript. The committees note that while the proposed amendments would require that transcripts that a party deposits in lieu of depositing funds for a reporter's transcript be in the format required by rule 8.144, the proposed amendments do not specify how a depositing party ensures that the transcripts are in this required format. Parties may work with court reporters to accomplish this. However, it is the committees' understanding that under the current rules some parties have successfully repaginated and prepared indices for previously purchased transcripts and submitted these in lieu of a deposit for a reporter's transcript. The committees' view is that the amendments to these rules should not take this option away from parties, particularly since this is the lowest-cost option available to parties who have the necessary transcripts for the appeal.

Time to prepare reporter's transcript. The proposal that was circulated for public comment did not include substantive changes to the current rule provisions relating to the time within which a

court reporter must prepare a transcript and what triggers the duty of the clerk to notify the court reporter to begin preparing the transcript. The Superior Court of Los Angeles County suggested several amendments to the provisions, mainly to clarify: (1) that it is the court's receipt of a copy of the Court Reporters Board's provisional approval of a Transcript Reimbursement Fund application, rather than receipt of an application for such reimbursement, that should trigger notice from the clerk to the court reporter; and (2) that it is this notice from the clerk that, in turn, starts the time running for the court reporter to prepare the transcript. The committees agreed with these suggestions and revised the proposal to incorporate them, with minor changes.

Notification when transcript complete. As indicated above, the proposal circulated for public comment included proposed amendments to both rule 8.130 and rule 8.834 to add a requirement that the court reporter notify all parties when a transcript is complete. The intent of this provision was to make it easier for parties who did not designate part of the reporter's transcript to order a copy of that transcript from the appropriate court reporter. Two commentators provided input on these amendments. One commentator specifically expressed support for this notice requirement, but also suggested that the notice should provide information about the option of lending the record under rule 8.153. The California Court Reporters Association, as an apparent alternative approach, suggested that the clerks should be required to notify all parties that the record has been filed.

In response to these comments, the committees have revised the proposal to clarify that the court reporter would provide notice to all parties *to the appeal* when the transcript is complete. The committees note that there is already a requirement that the reviewing court notify all parties to the appeal when the record is filed and it is at that point that respondents who did not designate a transcript could avail themselves of the lending procedure. The proposed notice from the court reporter would come earlier in the life of the appeal, giving respondents more time to order and review a reporter's transcript. Direct notice from the lead court reporter would also make it considerably easier for respondents to identify who to contact to order a copy of the transcript. The committees concluded that this procedure would place only a small additional burden on court reporters, which should be offset by the potential additional income from respondents ordering transcripts. The designation of the record, which is sent to the court reporters, contains contact information for the parties to the appeal. In addition, in order to send the required bill to designating parties when the transcript is complete, reporters typically need to contact the court or check online docket information, where available, to ensure that they have current contact information for designating parties. Obtaining current contact information for other parties to the appeal at the same time should not appreciably increase burdens on the court reporters.

Copy of transcript for court in computer-readable format. As indicated above, rule 8.130(f)(4) currently provides that, “[on] 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.” The proposal that was circulated for public comment would have deleted the provision in this rule allowing the superior court to order that the reporter not provide the transcript in computer-

readable format. That change was proposed based on the committees' understanding that this provision was no longer necessary. This provision 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 to apply to the superior court for an order exempting the reporter from the obligation to produce the transcript in this format. The committees understood that all reporters now use computer-aided transcription equipment and therefore it was unnecessary to have an exemption procedure.

The committees specifically sought input on whether this understanding was accurate. The California Court Reporters Association suggested that there is still a small percentage of court reporters who are unable to provide transcripts in computer-readable format and therefore that the provision that allows the superior court to order that a transcript not be provided in this format should be preserved. The Appellate Advisory Committee also received similar input from the The Trial Court Presiding Judges Advisory Committee/Court Executive Officers Advisory Committee Joint Rules Working Group (joint rules working group) on a separate proposal to add a provision concerning transcripts in computer-readable format to the rules relating to appeals in felony and juvenile cases. Based on this input, the committees revised the proposal to maintain the language in rule 8.130(f)(4) allowing the superior court to order that the reporter not provide the transcript in computer-readable format.

The joint rules working group did not take a position on this proposal to amend rules 8.130 and 8.834, but that group did oppose the separate proposal to add a provision concerning transcripts in computer-readable format to the rules relating to appeals in felony and juvenile cases in part based on its view that the provision unnecessarily repeated statutory language. The committees concluded that the proposed provisions implement, rather than simply repeat, this statutory right and provide helpful guidance to litigants and courts. To clarify their intent, the committees revised the proposal to include amendments to the advisory committee comments to these rules indicating that these provisions are designed to implement section 271.

Other alternatives considered

The committees considered not proposing any amendments to the rules relating to reporter's transcripts in civil appeals at this time. However, the committees concluded that, given the current fiscal crisis in the courts, it was important to provide revenues to offset trial court costs associated with handling trust accounts for deposits of fees for reporters' transcripts and that, to reduce costs for both courts and litigants, it was also important to address problems with the currently available alternatives to transcript deposits.

As an alternative to establishing a fee for administering the trust accounts and making other changes to these rules, the committees considered completely eliminating the procedure for depositing funds for reporters' transcripts with the trial courts. However, the committees concluded that eliminating this procedure might have the unintended consequences of making it

more difficult for litigants to timely obtain reporter's transcripts and thus potentially delay the resolution of appeals.

The committees also considered completely eliminating the procedure allowing for submission of certified transcripts in lieu of making a deposit for a reporter's transcript. However, the committees concluded that this would take away from litigants a useful low-cost option for preparing the record on appeal.

Implementation Requirements, Costs, and Operational Impacts

There would be some costs for trial courts associated with implementing the proposed new fee for administering trust accounts for reporter's transcript deposits, including, potentially, costs to train staff concerning the new fee and costs to modify case management systems to reflect this new fee. These are one-time costs that should be offset by the new revenue generated by the fee.

There would also be some costs for trial courts associated with implementing the proposed new procedures relating to substitutes for reporter's transcript deposits, including certified transcripts and Transcript Reimbursement Fund applications, and the proposed new options given to appellants when they are notified of the cost of reporter's transcripts. These too should be one-time costs that are offset by improvements in the efficiency and reduction in problems associated with deposits and substitutes for deposits.

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 8.130 and 8.834, at pages 18–28
2. Forms APP-003 and APP-010, at pages 29–35
3. Comment chart, at pages 36–61

Rules 8.130 and 8.834 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 2. Civil Appeals

Article 2. Record on Appeal

Rule 8.130. Reporter's transcript

(a) Notice

(1) ~~If in the A notice designating the record on appeal under rule 8.121, the appellant elects to use designating a reporter's transcript, in that notice the appellant must specify the date of each proceeding to be included in the transcript and may specify portions of designated proceedings that are not to be included. The notice must identify any proceeding for which a certified transcript has previously been prepared by checking the appropriate box on Appellant's Notice Designating Record on Appeal (Unlimited Civil) (form APP-003) or, if that form is not used, placing an asterisk before that proceeding in the notice.~~

(2) * * *

(3) If the appellant serves and files a notice designating a reporter's transcript, the respondent may, within 10 days after such service, serve and file a notice in superior court designating any additional proceedings the respondent wants included in the transcript. The notice must identify any proceeding for which a certified transcript has previously been prepared by checking the appropriate box on Respondent's Notice Designating Record on Appeal (Unlimited Civil Case) (form APP-010) or, if that form is not used, placing an asterisk before that proceeding in the notice.

(4) * * *

(5) Except when a party submits a certified transcript that contains all the designated proceedings under (b)(3)(C) with the notice of designation, the any notice of designation must be served on each known reporter of the designated proceedings.

(b) Deposit or substitute for cost of transcript

(1) With its notice of designation, a party must deposit with the superior court clerk the approximate cost of transcribing the proceedings it designates, using and a fee of \$50 for the superior court to hold this deposit in trust. The deposit must be either:

- 1 (A) The amount specified in the reporter's written estimate; or
 2
 3 (B) An amount calculated ~~at~~ as follows:
 4
 5 (i) For proceedings that have not previously been transcribed: \$325 per
 6 fraction of the day's proceedings that did not exceed three hours, or \$650
 7 per day or fraction that exceeded three hours.
 8
 9 (ii) For proceedings that have previously been transcribed: \$80 per fraction
 10 of the day's proceedings that did not exceed three hours, or \$160 per day
 11 or fraction that exceeded three hours.
 12
 13 (2) If the reporter believes the deposit is inadequate, within 15 days after the clerk mails
 14 the notice under (d)(1) the reporter may file with the clerk and mail to the
 15 designating party an estimate of the transcript's total cost at the statutory rate,
 16 showing the additional deposit required. The party must deposit the additional sum
 17 within 10 days after the reporter mails the estimate.
 18
 19 (3) Instead of a deposit under (1), the party may substitute:
 20
 21 (A) The reporter's written waiver of a deposit, a copy of a Transcript
 22 Reimbursement Fund application filed under (c)(1), or a certified transcript of
 23 the designated proceedings. A reporter may waive the deposit for—and a party
 24 may submit a certified transcript of—a part of the designated proceedings, but
 25 such a waiver or transcript replaces the deposit for only that part.
 26
 27 (B) A copy of a Transcript Reimbursement Fund application filed under (c)(1).
 28
 29 (C) A certified transcript of all of the proceedings designated by the party. The
 30 transcript must comply with the format requirements of rule 8.144.
 31

32 (c) **Transcript Reimbursement Fund application**

- 33
 34 (1) With its notice of designation, a party may serve and file a copy of its application to
 35 the Court Reporters Board for payment or reimbursement from the Transcript
 36 Reimbursement Fund under Business and Professions Code section 8030.2 et seq.
 37
 38 (2) Within 90 days after the appellant serves and files a copy of its application to the
 39 Court Reporters Board, the appellant must either file with the superior court a copy
 40 of the Court Reporters Board's provisional approval of the application or take one of
 41 the following actions:
 42
 43 (A) Deposit the amount required under (b) or the reporter's written waiver of this
 44 deposit;
 45

1 (B) File an agreed statement or a stipulation that the parties are attempting to agree
2 on a statement under rule 8.134;

3
4 (C) File a motion to use a settled statement instead of a reporter’s transcript under
5 rule 8.137;

6
7 (D) Notify the superior court clerk that it elects to proceed without a record of the
8 oral proceedings; or

9
10 (E) Serve and file an abandonment under rule 8.244.

11
12 (3) Within 90 days after the respondent serves and files a copy of its application to the
13 Court Reporters Board, the respondent must either file with the superior court a copy
14 of the Court Reporters Board’s provisional approval of the application or take one of
15 the following actions:

16
17 (A) Deposit the amount required under (b) or the reporter’s written waiver of this
18 deposit; or

19
20 (B) Notify the superior court clerk that it no longer wants the additional
21 proceedings it designated for inclusion in the reporter’s transcript.

22
23 (4) If the appellant fails to timely take one of the actions specified in (2) or the
24 respondent fails to timely make the deposit or send the notice under (3), the superior
25 court clerk must promptly issue a notice of default under rule 8.140.

26
27 ~~(2)~~(5) If the Court Reporters Board provisionally approves the application for payment or
28 reimbursement, the reporter’s time to prepare the transcript under (f)(1) begins when
29 the reporter receives notice of the provisional approval from the clerk under (d)(2).

30
31 ~~(3)~~ If the Court Reporters Board denies the application for payment or reimbursement,
32 the party’s time to deposit the reporter’s fee or substitute under (b), or to file an
33 agreed or settled statement under rule 8.134 or 8.137, is extended until 30 days after
34 the board mails notice of the denial.

35
36 **(d) Superior court clerk’s duties**

37
38 (1) The clerk must file a party’s notice of designation even if the party does not present
39 the required deposit under (b)(1) or a substitute under (b)(3) with its notice of
40 designation.

41
42 ~~(1)~~(2) If a party designates proceedings to be included in a reporter’s transcript and has
43 presented the fee deposit, or a substitute under (b)(3), The clerk must promptly mail
44 the reporter notice of the designation and of the deposit or substitute- and notice to
45 prepare the transcript, showing the date the notice was mailed to the reporter, when
46 the court receives: The notice must show the date it was mailed.

- 1
2 (A) The required deposit under (b)(1);
3
4 (B) A reporter's written waiver of a deposit under (b)(3); or
5
6 (C) A copy of the Court Reporters Board's provisional approval of the party's
7 application for payment from the Transcript Reimbursement Fund under (c).
8

9 ~~(2)~~(3) If a party the appellant does not present the deposit under (b)(1) or a substitute
10 under (b)(3) with its notice of designation; or does not present an additional deposit
11 required under (b)(2):
12

13 (A) The clerk must ~~file the notice and~~ promptly issue a notice of default under rule
14 8.140-notify the appellant by mail that, within 15 days after the notice is
15 mailed, the appellant must take one of the following actions or the court may
16 dismiss the appeal:
17

18 (i) Deposit the amount required or a substitute permitted under (b);
19

20 (ii) File an agreed statement or a stipulation that the parties are attempting to
21 agree on a statement under rule 8.134;
22

23 (iii) File a motion to use a settled statement instead of a reporter's transcript
24 under rule 8.137;
25

26 (iv) Notify the superior court clerk that it elects to proceed without a record of
27 the oral proceedings; or
28

29 (v) Serve and file an abandonment under rule 8.244.
30

31 (B) If the appellant elects to use a reporter's transcript and fails to take one of the
32 actions specified in the notice under (A), rule 8.140(b) and (c) apply.
33

34 (4) If the respondent does not present the deposit under (b)(1) or a substitute under
35 (b)(3) with its notice of designation or does not present an additional deposit required
36 under (b)(2), the clerk must file the notice of designation and promptly issue a notice
37 of default under rule 8.140.
38

39 ~~(3)~~(5) The clerk must promptly notify the reporter if a check for a deposit is dishonored or
40 an appeal is abandoned or is dismissed before the reporter has filed the transcript.
41

42 (e) **Contents of transcript**
43

44 (1) Except when a party deposits a certified transcript of all the designated proceedings
45 under (b)(3)(C), the reporter must transcribe all designated proceedings that have not
46 previously been transcribed and include in the transcript a copy of all designated

1 proceedings that have previously been transcribed for which a certified transcript has
2 not been substituted under (b)(3), and The reporter must note in the transcript where
3 any proceedings were omitted and the nature of those proceedings. The reporter must
4 also note where any exhibit was marked for identification and where it was admitted
5 or refused, identifying such exhibits by number or letter.

6
7 (2)–(3) * * *

8
9 **(f) Filing the transcript; copies; payment**

- 10
11 (1) Within 30 days after notice is ~~received under (c)(2) or~~ mailed under (d)(1)(2), the
12 reporter must prepare and certify an original of the transcript and file it in superior
13 court. The reporter must also file one copy of the original transcript, or more than
14 one copy if multiple appellants equally share the cost of preparing the record (see
15 rule 8.147(a)(2)). Only the reviewing court can extend the time to prepare the
16 reporter’s transcript (see rule 8.60).
17
18 (2) When the transcript is completed, the reporter must notify all parties to the appeal
19 that the transcript is complete, bill each designating party at the statutory rate, and
20 send a copy of the bill to the superior court clerk. The clerk must pay the reporter
21 from that party’s deposited funds and refund any excess deposit or notify the party of
22 any additional funds needed. In a multiple reporter case, the clerk must pay each
23 reporter who certifies under penalty of perjury that his or her transcript portion is
24 completed.
25
26 (3) * * *
27
28 (4) On request, and unless the superior court orders otherwise, the reporter must provide
29 the Court of Appeal or any party with a copy of the reporter’s transcript in computer-
30 readable format. Each computer-readable copy must comply with the format,
31 labeling, content, and numbering requirements of Code of Civil Procedure section
32 271(b).
33

34 **(g) Disputes over transcript costs**

35
36 Notwithstanding any dispute that may arise over the estimated or billed costs of a
37 reporter’s transcript, a designating party must timely comply with the requirements under
38 this rule regarding deposits for transcripts. If a designating party believes that a reporter’s
39 estimate or bill is excessive, the designating party may file a complaint with the Court
40 Reporters Board.

41
42 **(g)(h) * * ***

43
44 **Advisory Committee Comment**

45
46 Under rule 8.121 an appellant may serve and file a notice *designating* a reporter’s transcript and the notice
47 must identify the proceedings to be *included*. The wording recognizes that under rule 8.130(b)(3) the

1 appellant, instead of depositing the reporter's cost to transcribe the proceedings, may substitute certified
2 transcripts of proceedings that have already been transcribed (e.g., daily transcripts) and hence need only
3 be designated for inclusion in the transcript.
4

5 **Subdivision (a).** Subdivision (a)(1) requires that every notice designating a reporter's transcript identify
6 which proceedings are to be included, and that it do so by specifying the date or dates on which those
7 proceedings took place. Those proceedings for which a certified transcript has previously been prepared
8 must be identified in the party's designation. If the appellant does not want a portion of the proceedings
9 on a given date to be included, the notice should identify that portion by means of a descriptive reference
10 (e.g., "August 3, 2004, but not the proceedings on defendant's motion to tax costs").
11

12 As used in subdivision (a)(1), the phrase "proceedings" includes all instructions that the court gives,
13 whether or not submitted in writing, and any instructions that counsel orally propose but the court refuses;
14 all such instructions are included in the reporter's transcript if designated under this rule. All instructions
15 that counsel submit in writing, whether or not given to the jury, are lodged with the superior court clerk
16 and are included in the clerk's transcript if designated under rule 8.122.
17

18 Under subdivision (a), portions of depositions read in open court but not reported, or not read but lodged
19 with the superior court clerk, are included in the clerk's transcript if designated under rule 8.122.
20

21 **Subdivision (b).** Where a certified transcript has been previously prepared, subdivision (b) makes clear
22 that the certified transcript may be filed in lieu of a deposit for the transcript only where the certified
23 transcript contains all of the proceedings identified in the notice of designation and the transcript complies
24 with the format requirements of rule 8.144. Otherwise, where a certified transcript has been previously
25 prepared for only some of the designated proceedings, subdivision (b)(1) authorizes a reduced fee to be
26 deposited for those proceedings. This reduced deposit amount was established in recognition of the
27 holding in *Hendrix v. Superior Court of San Bernardino County* (2011) 191 Cal.App.4th 889 that the
28 statutory rate for an original transcript only applies to the first transcription of the reporter's notes. The
29 amount of the deposit is based on the rate established by Government Code section 69950(b) for a first
30 copy of a reporter's transcript purchased by any court, party, or other person who does not simultaneously
31 purchase the original.
32

33 To eliminate any ambiguity, subdivision (b)(3) recognizes, first, that a party may substitute a court
34 reporter's written waiver or a certified transcript of a deposit for part of the designated proceedings and,
35 second, that in such event the waiver ~~or transcript~~ replaces the deposit for only that part.
36

37 Subdivision (b) and subdivision (f) refer to the "statutory rate" for reporter's transcripts. The fees for
38 reporter's transcripts are established by Government Code sections 69950 and 69554.
39

40 **Subdivision (c).** Under subdivision (c), an application to the Court Reporters Board for payment or
41 reimbursement of the cost of the reporter's transcript from the Transcript Reimbursement Fund (Bus. &
42 Prof. Code, § 8030.8) is a permissible substitute for the required deposit of the reporter's fee (subd.
43 (b)(3)) and thereby prevents issuance of a notice of default (subd. (d)~~(4)~~(5)).
44

45 Business and Professions Code sections 8030.6 and 8030.8 use the term "reimbursement" to mean not
46 only a true reimbursement, i.e., repaying a party who has previously paid the reporter out of the party's
47 own funds (see *id.*, § 8030.8, subd. (d)), but also a direct payment to a reporter who has not been
48 previously paid by the party (see *id.*, § 8030.6, subs. (b) and (d)). Subdivision (f) recognizes this special
49 dual meaning by consistently using the compound phrase "payment or reimbursement."
50

1 **Subdivision (d).** Under subdivision (d)(1), the clerk’s notice to the reporter must show the date on
2 which the clerk mailed the notice. This provision is intended to establish the date when the period for
3 preparing the reporter’s transcript under subdivision (f)(1) begins to run.
4

5 **Subdivision (e).** Subdivision (e)(1) clarifies that: (1) when a certified transcript containing all of the
6 proceedings identified in the notice of designation is submitted in lieu of a deposit, the court reporter will
7 not prepare a reporter’s transcript; and (2) that the court reporter will only transcribe those proceedings
8 that have not previously been transcribed and will include a copy of those proceedings that have
9 previously been transcribed in the reporter’s transcript. Under rule 8.144, the full transcript, including the
10 previously transcribed material, must meet the format requirements for a reporter’s transcript.
11

12 Subdivision (e)(3) is not intended to relieve the reporter of the duty to report all oral proceedings,
13 including the reading of instructions or other documents.
14

15 **Subdivision (f).** Subdivision (f)(1) requires the reporter to prepare and file additional copies of the record
16 “if multiple appellants equally share the cost of preparing the record. . . .” The reason for the requirement
17 is explained in the comment to rule 8.147(a)(2).
18

19 Subdivision (f)(4) is intended to implementing statutory provisions (e.g., Code Civ. Proc., § 271; Gov.
20 Code, § 69954), subdivision (f)(4) Code of Civil Procedure section 271, which allows any court, party, or
21 other person entitled to a reporter’s transcript to request that it be delivered in computer-readable format
22 (except that an original transcript must be on paper) and requires the reporter to provide a party, on
23 request, with a copy of the reporter’s transcript in computer-readable that format upon request if the
24 proceedings were produced utilizing computer-aided transcription equipment. But in recognition of the
25 fact that in some instances the reporter may be unable to provide a copy in that format, This the
26 subdivision establishes procedures relating to such requests and also authorizes procedures for the court
27 reporters to apply to the superior court for relief from this requirement if the proceedings were not
28 produced utilizing computer-aided transcription equipment. Government Code section 69954 establishes
29 the fees for reporter’s transcripts in computer-readable format.
30
31

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

33 **Chapter 2. Appeals and Records in Limited Civil Cases**

34 **Article 2. Record in Civil Appeals**

35 **Rule 8.834. Reporter’s transcript**¹⁰

36 **(a) Notice**

- 37
- 38 (1) A notice designating a reporter’s transcript under rule 8.831 must specify the date of
39 each proceeding to be included in the transcript and may specify portions of the
40 designated proceedings that are not to be included. The notice must identify any
41 proceeding for which a certified transcript has previously been prepared by checking
42
43
44
45

¹⁰ Please note that in a separate report relating to the appellate division rules and forms, the Appellate Advisory Committee is recommending other changes to rule 8.834.

1 the appropriate box on *Appellant's Notice Designating Record on Appeal (Limited*
2 *Civil Case* (form APP-103) or, if that form is not used, placing an asterisk before
3 that proceeding.

4
5 (2) * * *

6
7 (3) If the appellant serves and files a notice under rule 8.831 designating a reporter's
8 transcript, the respondent may, within 10 days after such service, serve and file a
9 notice in the trial court designating any additional proceedings the respondent wants
10 included in the reporter's transcript. The notice must identify any proceeding for
11 which a certified transcript has previously been prepared by checking the appropriate
12 box on *Respondent's Notice Designating Record on Appeal (Limited Civil Case)*
13 (form APP-110) or, if that form is not used, placing an asterisk before that
14 proceeding.

15
16 (4) Except when a party deposits a certified transcript of all the designated proceedings
17 under (b)(2)(D) with the notice of designation, ~~the~~ the clerk must promptly mail a copy
18 of each notice to the reporter. The copy must show the date it was mailed.

19
20 **(b) Deposit or ~~waiver~~ substitute for cost of transcript**

21
22 (1) Within 10 days after the clerk mails a notice under (a)(4), the reporter must file the
23 estimate with the clerk—or notify the clerk in writing of the date that he or she
24 notified the appellant directly—of the estimated cost of preparing the reporter's
25 transcript at the statutory rate.

26
27 (2) Within 10 days after the clerk notifies the appellant of the estimated cost of
28 preparing the reporter's transcript—or within 10 days after the reporter notifies the
29 appellant directly—the appellant must do one of the following:

30
31 (A) Deposit with the clerk an amount equal to the estimated cost and a fee of \$50
32 for the superior court to hold this deposit in trust; ~~or~~

33
34 (B) File with the clerk a written waiver of the deposit signed by the reporter;

35
36 (C) File a copy of a Transcript Reimbursement Fund application filed under (3);

37
38 (D) File a certified transcript of all of the designated proceedings. The transcript
39 must comply with the format requirements of rule 8.144; or

40
41 (E) Notify the clerk that:

42
43 (i) He or she now elects to use a statement on appeal instead of a reporter's
44 transcript. The appellant must prepare, serve, and file a proposed
45 statement on appeal within 20 days after serving and filing the notice and

1 must otherwise comply with the requirements for statements on appeal
2 under rule 8.837;

3
4 (ii) He or she now elects to proceed without a record of the oral proceedings
5 in the trial court; or

6
7 (iii) He or she is abandoning the appeal by filing an abandonment in the
8 reviewing court under rule 8.825.

9
10 (3) With its notice of designation, a party may serve and file a copy of its application to
11 the Court Reporters Board for payment or reimbursement from the Transcript
12 Reimbursement Fund under Business and Professions Code section 8030.2 et seq.

13
14 (A) Within 90 days after the appellant serves and files a copy of its application to
15 the Court Reporters Board, the appellant must either file with the court a copy
16 of the Court Reporters Board's provisional approval of the application or take
17 one of the following actions:

18
19 (i) Deposit the amount required under (2) or the reporter's written waiver of
20 this deposit;

21
22 (ii) Notify the superior court that he or she now elects to use a statement on
23 appeal instead of a reporter's transcript. The appellant must prepare,
24 serve, and file a proposed statement on appeal within 20 days after
25 serving and filing the notice and must otherwise comply with the
26 requirements for statements on appeal under rule 8.837;

27
28 (iii) Notify the superior court that that he or she elects to proceed without a
29 record of the oral proceedings; or

30
31 (iv) Notify the superior court that he or she is abandoning the appeal by filing
32 an abandonment in the reviewing court under rule 8.825.

33
34 (B) Within 90 days after the respondent serves and files a copy of its application to
35 the Court Reporters Board, the respondent must either file with the court a
36 copy of the Court Reporters Board's provisional approval of the application or
37 take one of the following actions:

38
39 (i) Deposit the amount required under (2) or the reporter's written waiver of
40 this deposit; or

41
42 (ii) Notify the superior court that the respondent no longer wants the
43 additional proceedings it designated for inclusion in the reporter's
44 transcript.

1 (C) If the appellant fails to timely take one of the actions specified in (A) or the
2 respondent fails to timely make the deposit or send the notice under (B), the
3 clerk must promptly issue a notice of default under rule 8.842.

4
5 (D) If the Court Reporters Board provisionally approves the application, the
6 reporter's time to prepare the transcript under (d)(1) begins when the clerk
7 mails notice of the provisional approval under (4).

8
9 (4) The clerk must ~~then~~ promptly notify the reporter to prepare the transcript when the
10 court receives:

11
12 (A) The required deposit under (2)(A);

13
14 (B) A waiver of the deposit signed by the reporter under (2)(B); or

15
16 (C) A copy of the Court Reporters Board's provisional approval of the party's
17 application for payment from the Transcript Reimbursement Fund under (3).

18
19 (c) **Contents of reporter's transcript**

20
21 (1) Except when a party deposits a certified transcript of all the designated proceedings
22 under (b)(2)(D), the reporter must transcribe all designated proceedings that have not
23 previously been transcribed and provide a copy of all designated proceedings that
24 have previously been transcribed. ~~and~~ The reporter must note in the transcript where
25 any proceedings were omitted and the nature of those proceedings. The reporter must
26 also note where any exhibit was marked for identification and where it was admitted
27 or refused, identifying such exhibits by number or letter.

28
29 (2)–(4) * * *

30
31 (d) **Filing the reporter's transcript; copies; payment**

32
33 (1) Within 20 days after the clerk notifies the reporter to prepare the transcript under
34 (b)(2), ~~—or the reporter receives the fees from the appellant—~~ the reporter must
35 prepare and certify an original of the reporter's transcript and file it in the trial court.
36 The reporter must also file one copy of the original transcript or more than one copy
37 if multiple appellants equally share the cost of preparing the record.

38
39 (2) When the transcript is completed, the reporter must notify all parties to the appeal
40 that the transcript is complete, bill each designating party at the statutory rate, and
41 send a copy of the bill to the clerk. The clerk must pay the reporter from that party's
42 deposited funds and refund any excess deposit or notify the party of any additional
43 funds needed. In a multiple reporter case, the clerk must pay each reporter who
44 certifies under penalty of perjury that his or her transcript portion is completed.

45
46 (3) * * *

1
2 (4) On request, and unless the trial court orders otherwise, the reporter must provide the
3 reviewing court or any party with a copy of the reporter’s transcript in computer-
4 readable format. Each computer-readable copy must comply with the format,
5 labeling, content, and numbering requirements of Code of Civil Procedure section
6 271(b).

7
8 **(e) Disputes over transcript costs**

9
10 Notwithstanding any dispute that may arise over the estimated or billed costs of a
11 reporter’s transcript, a designating party must timely comply with the requirements under
12 this rule regarding deposits for transcripts. If a designating party believes that a reporter’s
13 estimate or bill is excessive, the designating party may file a complaint with the Court
14 Reporters Board.

15
16 **(e)(f) * * ***

17
18 **Advisory Committee Comment**

19
20 **Subdivision (d)(4).** This subdivision is intended to implement Code of Civil Procedure section 271,
21 which allows any court, party, or other person entitled to a reporter’s transcript to request that it be
22 delivered in computer-readable format (except that an original transcript must be on paper) and requires
23 the reporter to provide the transcript in that format upon request if the proceedings were produced
24 utilizing computer-aided transcription equipment. This subdivision establishes procedures relating to such
25 requests and procedures for court reporters to apply to the superior court for relief from this requirement
26 if the proceedings were not produced utilizing computer-aided transcription equipment. Government
27 Code section 69954 establishes the fees for reporter’s transcripts in computer-readable format.
28

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i> TELEPHONE NO.: _____ FAX NO. <i>(optional)</i> : _____ E-MAIL ADDRESS <i>(optional)</i> : _____ ATTORNEY FOR <i>(Name)</i> : _____	
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 <i>(date)</i> :	Court of Appeal Case Number <i>(if known)</i> :
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 *(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 attached the following document *(check (a) or (b))*:
 - (a) An order granting a waiver of court fees and costs under rule 3.50 et seq.; or
 - (b) An application for a waiver of court fees and costs under rule 3.50 et seq. *(Use Request to Waive Court Fees (form FW-001) to prepare and file this application.)*
- b. An appendix under rule 8.124.
- c. The original superior court file under rule 8.128. *(NOTE: Local rules in the Court of Appeal, First, Third, Fourth, and Fifth Appellate Districts, permit parties to stipulate to use the original superior court file instead of a clerk's transcript; you may select this option if your appeal is in one of these districts and all the parties have stipulated to use the original superior court file instead of a clerk's transcript in this case. Attach a copy of this stipulation.)*
- d. An agreed statement under rule 8.134. *(You must complete item 2b(2) below and attach to your agreed statement copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.134(a).)*
- e. A settled statement under rule 8.137. *(You must complete item 2b(3) below and attach to your proposed statement on appeal copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.137(b)(3).)*

2. RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT

I elect to proceed:

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

Case Name:	Superior Court Case Number:
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- 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).
 - (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 a. above to be included in the clerk's transcript, you must identify those documents here.)*

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

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

See additional pages.

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

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

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

See additional pages.

5. NOTICE DESIGNATING REPORTER'S TRANSCRIPT

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

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

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

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

Case Name:	Superior Court Case Number:
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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)

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i> TELEPHONE NO.: _____ FAX NO. : _____ E-MAIL ADDRESS: _____ ATTORNEY FOR <i>(Name)</i> : _____	
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 <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 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:
------------	-----------------------------

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 attached the following document (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. 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.)

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?
(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

See additional pages.

CASE NAME:

SUPERIOR COURT CASE NUMBER:

2. 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).)

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

Date:

 (TYPE OR PRINT NAME)



 (SIGNATURE OF APPELLANT OR ATTORNEY)

SPR13-07**Appellate Procedure: Reporter's Transcripts in Civil Appeals.** Amend Cal. Rules of Court, rules 8.130 and 8.834

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

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Committee Response
1.	Appellate Court Committee San Diego County Bar Association By: Rupa G. Sinngh	NI	We agree with the proposed changes to Rules 8.130 and 8.834, but have concerns about requiring parties who deposit funds with the trial court for a reporter's transcript to pay an additional fee of \$50 to the superior court for handling reporter transcript deposits that are held in trust. See comments on specific provisions below.	
2.	California Academy of Appellate Lawyers By: Robert A. Olson, President Los Angeles, California	NI	See comments on specific provisions below.	
3.	California Appellate Court Clerks Association By: Charlene Ynson, President Fresno, California	A	Most of the proposed changes affect the trial court and so we do not comment except as to: See comments on specific provisions below.	
4.	California Appellate Law Group By: William M. Hancock, Principal San Francisco	A	See comments on specific provisions below.	
5.	California Court Reporters Association By: Pam Katros, Chair Judicial Procedures Committee	NI	The California Court Reporters Association, CCRA, agrees in part with the proposals made to 8.130 and 8.834. See comments on specific provisions below.	
6.	Committee on Appellate Courts State Bar of California By: Kira Klatchko, Acting Chair	NI	The Committee believes that the proposed rule changes identify an area in need of attention and that, in general, they would be effective in	

SPR13-07

Appellate Procedure: Reporter’s Transcripts in Civil Appeals. Amend Cal. Rules of Court, rules 8.130 and 8.834

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

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Committee Response
			remediating various problems. However, the Committee feels that certain logistical details have to be further considered, that some additional, related changes should be made, and that some of the proposed changes should not be made. See comments on specific provisions below.	
7.	Court of Appeal Fourth District, Division One By: Hon. Judith McConnell, Presiding Justice San Diego, California	NI	See comments on specific provisions below.	
8.	Court Reporters Board By: Yvonne K. Fenner, Executive Officer	NI	See comments on specific provisions below.	
9.	Orange County Bar Association By: Wayne R. Gross, President Newport Beach, California	A	No additional comments	No response required.
10.	Standing Committee on the Delivery of Legal Services State Bar of California S. Lynn Martinez, Chair	AM	See comments on specific provisions below.	
11.	Superior Court of Los Angeles County	AM	1. Does the proposal appropriately address the stated purpose? Yes, however we have questions/suggestions to the following rules:	

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Appellate Procedure: Reporter’s Transcripts in Civil Appeals. Amend Cal. Rules of Court, rules 8.130 and 8.834

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

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Committee Response
			<p>See comments on specific provisions below.</p> <p>Suggest that all proposed changes to CRC 8.834 be submitted and reviewed by the Appellate Division Working Group. The introduction of Transcript Reimbursement Fund requirements to Limited Civil Appeals is new. The 90-day-approval-or-choose-alternateperiod may reduce delays with <i>unlimited</i> civil appeals, but it likely will cause longer delays with limited civil appeals once the parties realize they have this option.</p> <p>5. Would the proposal provide cost savings? If so please quantify. Estimated annual cost savings for handling reporter deposits in LASC: \$90,835.20. [\$63.08 (according to cost survey per case) x 1440 cases (which is 90% of all Unlimited Civil Appeals - approx. 1600 annually)]</p> <p>6. What would the implementation requirements be for courts? In LASC, approximately 30 appeal clerks court-wide would need approximately 1 hour of training regarding the new fee and rule revisions.</p> <p>7. Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p>	<p>The Appellate Division Rules Working Group has reviewed this proposal and recommended that the Appellate Advisory Committee support its adoption by the Judicial Council.</p> <p>The committees appreciate this information</p>

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Appellate Procedure: Reporter’s Transcripts in Civil Appeals. Amend Cal. Rules of Court, rules 8.130 and 8.834

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

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Committee Response
			Probably. This would be adequate for Appeals. 8. How well would this proposal work in courts of different sizes? The revisions could work in LASC, which handles the majority of civil appeals state-wide.	
12.	Superior Court of San Diego County By: Mike Roddy, Executive Officer	A	See comments on specific provisions below.	

SPR13-07**Appellate Procedure: Reporter’s Transcripts in Civil Appeals.** Amend Cal. Rules of Court, rules 8.130 and 8.834

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

8.130(a) and 8.834(a) – Identification of previously transcribed proceedings		
Commentator	Comment	Committee Response
California Court Reporters Association By: Pam Katros, Chair Judicial Procedures Committee	CCRA agrees with the proposals to include the language concerning previously prepared transcripts. It is an easy way to alert the court reporter that the transcript has already been transcribed.	No response required.
Committee on Appellate Courts State Bar of California By: Kira Klatchko Acting Chair	The Committee proposes that the forms for designating records be changed to state the new requirement to indicate which designated transcripts have already been prepared. It suggests that a checkbox, rather than an asterisk requirement, would better draw attention to the need to provide this information. In addition, the Committee proposes that the form state the amount of the required deposits for partial/full days and proceedings that have/have not already been transcribed.	<p>The committees agree with the suggestion to add a checkbox to the Judicial Council forms for designating the record - <i>Appellant's Notice Designating Record on Appeal (Unlimited Civil)</i> (form APP-003), <i>Respondent's Notice Designating Record on Appeal (Unlimited Civil Case)</i> (form APP-010), <i>Appellant's Notice Designating Record on Appeal (Limited Civil Case)</i> (form APP-103), and <i>Respondent's Notice Designating Record on Appeal (Limited Civil Case)</i> – and have modified the proposal to include recommended revisions to forms APP-003 and APP-010. The revisions to forms APP-103 and APP-110 have been incorporated in a separate proposal relating to the appellate division rules and forms because other revisions to these forms were being recommended as part of that proposal.</p> <p>The committees are not recommending at this time that these forms include information about required deposits for partial/full days and proceedings that have/have not already been transcribed. Currently, these forms do not address the amount of the deposit required. Adding this to the forms would be substantive change that was not included in the proposal circulated for public comment. The committees will therefore consider this suggestion during the next rules cycle.</p>

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Appellate Procedure: Reporter’s Transcripts in Civil Appeals. Amend Cal. Rules of Court, rules 8.130 and 8.834

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

8.130(b)(1) and 8.834(b)(2)(A) – Proposed new \$50 fee		
Commentator	Comment	Committee Response
<p>Appellate Court Committee San Diego County Bar Association By: Rupa G. Sinng</p>	<p>The ACC appreciates the necessity to generate revenue to offset superior court costs, especially in light of the ongoing budget cuts. However, raising a party’s costs to obtain a reporter’s transcript – an already costly undertaking – might unduly impede that party’s access to justice.</p> <p>Transcribing a trial court proceeding is very often a necessary step to filing an appeal and the expense of obtaining the necessary reporter’s transcript(s) for an appeal is already costly. Currently, the required deposit to transcribe a proceeding that has not previously been transcribed is \$650 per day of the proceeding. Depending on the number of days transcribed, total fees for reporter’s transcripts frequently amount to thousands of dollars. Requiring a party to pay an additional fee is excessive, and places another burden on a party seeking to vindicate its rights. This is especially true as the new fee would be in addition to (1) the \$100 fee that parties are already required to deposit with the superior court under Government Code section 68926.1, subdivision (a)(1) for the preparation of the clerk’s transcript or other appeal processing or notification, and (2) the \$755 filing fee that parties are also already required to pay to the Court of Appeal under Government Code section 68926 and 68926.1, subdivision (b). The ACC respectfully requests that no additional fee be charged to parties for obtaining a reporter’s transcript.</p> <p>If however, the Judicial Council is nonetheless inclined to require the additional \$50 payment, the ACC requests that this new fee be included among the fees that can be waived as part of an initial fee waiver under Rule 3.55.</p>	<p>The committees appreciate the commentators concerns about the current cost of pursuing an appeal in a civil case and about potentially increasing that cost by adding the proposed \$50 fee. The committees are recommending this fee because they concluded that the revenue it would generate is important to allow superior courts to continue performing the function of holding deposits for reporter’s transcript fees. However, based on this and other suggestions, the committees will recommend to the group that will be considering developing a proposal for amendments to the fee waiver rules that this fee be added to the list of fees that must be waived as part of an initial fee waiver.</p>

SPR13-07**Appellate Procedure: Reporter’s Transcripts in Civil Appeals.** Amend Cal. Rules of Court, rules 8.130 and 8.834

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

8.130(b)(1) and 8.834(b)(2)(A) – Proposed new \$50 fee

Commentator	Comment	Committee Response
California Academy of Appellate Lawyers By: Robert A. Olson, President Los Angeles, California	This proposal affects the costs of reporter’s transcripts. A new provision will require payment of \$50 to a trial court when its staff handles a trust account for a reporter’s transcript. The Academy is concerned about adding to already-existing deposit costs for obtaining a reporter’s transcript. Accordingly, we support the suggestion to include the \$50 fee as part of the standard fee waiver procedure for those qualifying for fee waivers due to hardship.	Based on this and other suggestions, the committees will recommend to the group that will be considering developing a proposal for amendments to the fee waiver rules that this fee be added to the list of fees that must be waived as part of an initial fee waiver.
Committee on Appellate Courts State Bar of California By: Kira Klatchko Acting Chair	The Committee opposes the proposed \$50 charge. While appreciating the need for trial courts to offset costs and raise revenues in difficult economic times, the Committee feels it is arbitrary to include pay-for-use charges for some things and not others and that heading up a path where there are numerous such charges could cause confusion and error. As an alternative, the Committee believes the \$100 fee paid to the superior court under Government Code section 68926.1 could be increased. At the same time, that section could be amended to recognize the reality that the fee is routinely charged in cases regardless of whether or not a clerk’s transcript is being prepared. The \$100 has, in effect, become a general fee for the services that the superior court provides in getting appeals off the ground and it should formally be redefined as such. The Committee recognizes, however, that this proposed change is beyond the scope of this rule proposal, would require a statutory change, and could potentially raise a host of new issues about raising fees in general.	The committees appreciate that it may not always be clear why there are separate fees for some court services while the costs of other services are encompassed within the filing fee. In adopting Government Code section 70632, the Legislature identified administering trust accounts for non-court parties or entities as a service for which a separate fee, borne by the individuals who avail themselves of that service, is appropriate. The proposed \$50 fee simply applies that policy decision in the case of trust accounts for reporter’s transcript fees in civil cases. For both policy and practical reasons, the committees concluded that this fee is a more appropriate approach than attempting to increase the fee established by Government Code section 68926.1 to offset court costs for preparing clerk’s transcripts and other appeal processing. On a policy level, the committee’s view is that it is most appropriate that only those the individuals who avail themselves of the deposit procedure should pay for the courts’ trust-administration services. Not all appellants proceed using a reporter’s transcript and among those that do, some pay the court reporter directly. The committees do not think it is appropriate for appellants to pay for trust administration services that they do not use. In contrast, there are processing

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8.130(b)(1) and 8.834(b)(2)(A) – Proposed new \$50 fee		
Commentator	Comment	Committee Response
	<p>If the new \$50 fee <i>is</i> adopted to cover the costs of maintaining transcript deposits in trust, the Committee feels that trial courts should be required to provide parties with an accounting following the disbursement of funds. In the experience of members of the Committee, in the vast majority of appeals there is neither a partial refund nor a request for additional funds. Since deposits are merely an estimate of what the price will be under statutory rates, this suggests that, as a practical matter, court reporters are routinely paid the fee that is estimated, regardless of the actual situation.</p>	<p>costs in all appeals, even those in which a clerk’s transcript is not used, so it is appropriate for all appellants to pay the fee established by Government Code section 68926.1. On a practical level, Government Code section 70632 already authorizes the Judicial Council to adopt fees for administering trust accounts for non-court parties or entities. In contrast, even if the Judicial Council sponsored an amendment to Government Code section 68926.1 and such an amendment was signed into law, it would be at least a year before such an amendment could take effect, delaying the receipt of needed funds for the trial courts.</p> <p>Under both rule 8.130(f)(2) and rule 8.834(d)(2), when a transcript is complete, the court reporter is required to “bill each designating party at the statutory rate and send a copy of the bill to the clerk.” The clerk is then required to “pay the reporter from that party’s deposited funds and refund any excess deposit or notify the party of any additional funds needed.” Under these existing provisions, which would not be changed by this proposal, the court reporter is paid by the court based on the bill submitted by that reporter and the party is required to receive a copy of this bill. This should enable the depositing party to determine if any refund is due and to request that from a court if it has not already been paid. If a court report fails to provide a depositing party with the required copy of this bill or the depositing party believes that a reporter’s bill is excessive, the designating party may file a complaint with the Court Reporters Board Proposed, as clarified in proposed new 8.130(g) and rule 8.834(e).</p>

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8.130(b)(1) and 8.834(b)(2)(A) – Proposed new \$50 fee

Commentator	Comment	Committee Response
<p>Standing Committee on the Delivery of Legal Services State Bar of California S. Lynn Martinez, Chair</p>	<p>This Committee believes that the proposed new fee for handling trust accounts for deposits for transcripts should be included on the list of specific fees that must be waived under rule 3.55.</p> <p>The Committee fears that if the trust handling fee is subject to discretionary rather than mandatory waiver, some indigent litigants will be forced to pay this fee. Particularly, unrepresented indigent litigants who do not qualify for the Transcript Reimbursement Fund (or indigent litigants who qualify for the Transcript Reimbursement Fund but cannot be reimbursed due to depletion of funds in 2013 by unfulfilled applications from 2012) may be forced to pay this fee, thus resulting in a deterrent to an appeal or imposing more of a financial hardship on these litigants.</p> <p>The proposal does not explain why the waiver of this fee should not be made mandatory. In general, the Committee seeks to ensure that access to the courts is not limited for low-income people merely based on the inability to pay fees. If financial hardship has already been established with the initial fee waiver, it would be an additional hardship for an indigent litigant (represented or unrepresented) to pay this fee on top of the deposit for the transcript. Without a compelling reason to make this waiver discretionary, the Committee believes that the fee waiver should be mandatory for those litigants already found to be eligible due to their income level.</p>	<p>Based on this and other suggestions, the committees will recommend to the group that will be considering developing a proposal for amendments to the fee waiver rules that this fee be added to the list of fees that must be waived as part of an initial fee waiver.</p>
<p>Superior Court of Los Angeles County</p>	<p>It [the fee] should be included in the initial fee waiver under rule 3.55 because it is akin to the appeal filing fee and fees for the preparation of the clerk's transcript. If the appellant automatically qualified for a waiver of those fees under rule 3.55, it would waste court resources to require</p>	<p>Based on this and other suggestions, the committees will recommend to the group that will be considering developing a proposal for amendments to the fee waiver rules that this fee be added to the list of fees that must be waived as part of an initial fee waiver.</p>

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8.130(b)(1) and 8.834(b)(2)(A) – Proposed new \$50 fee		
Commentator	Comment	Committee Response
	the appellant to submit a separate application for waiver of this new fee and for our Judges to spend time reviewing the application. The majority of appellants who can afford to post the deposit for reporter fees will likely be able to afford the new fee for handling the deposit.	
Superior Court of San Diego County By: Mike Roddy, Executive Officer	Our court agrees with the proposal to charge a fee to establish the subject trust account. We question whether it would be possible to expand the fee so that it includes multiple types of trust accounts that are established and held by the court.	No response required. This particular fee is being recommended only with respect to trust accounts for reporter’s transcript fees in civil cases. However, Government Code section 70632 provides authorization for the Judicial Council to adopt fees for administering trust accounts for non-court parties or entities. Thus proposals for other fees that fall within this statutory authorization could be submitted to the Judicial Council.

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8.130(b)(1)(B(ii)–Deposit for reviously transcribed proceedings		
Commentator	Comment	Committee Response
California Appellate Law Group By: William M. Hancock, Principal San Francisco	I think the modification of fees prepared for previously prepared transcripts is an extremely good idea -- and think the fee for "preparing" already prepared transcripts might even be lower -- my understanding is that the fee is only for numbering the transcript pages consecutively and preparing the necessary indices.	The committees notes that the proposed amendment to rule 8.130(b)(1)(B(ii) establishes the rate for calculating a designating party’s deposit with the court for a court reporter’s transcript. This rule does not set the rate that must be paid to a court reporter for a transcript; that rate is set by statute. The proposed reduced deposit rate is, however, based on the rate set by Government Code section 69950(b) for a first copy of a reporter’s transcript to any court, party, or other person who does not simultaneously purchase the original. The statutes regarding fees for reporter’s transcripts do not currently set a separate fee for re-paginating previously transcribed material or preparing indices.
Committee on Appellate Courts State Bar of California By: Kira Klatchko Acting Chair	The Committee recommends that the new rules be clarified to indicate whether a party designating a transcript that has already been prepared for <i>another</i> party be entitled to the new rate for reformatting a pre-existing transcript for the purposes of an appeal. If parties are entitled to the lower rates under that circumstance, court reporters should be required to charge it even if a record designation does not indicate that a transcript has already been prepared.	The committees notes that the proposed amendment to rule 8.130(b)(1)(B(ii) establishes the rate for calculating a designating party’s deposit with the court for a court reporter’s transcript. This rule does not set the rate that must be paid to a court reporter for a transcript; that rate is set by statute. As noted in the invitation to comment, a recent case addressing the applicable statutory rate for reporter’s transcripts, <i>Hendrix v. Superior Court of San Bernardino County</i> (2011) 191 Cal.App.4th 889, concluded that the statutory rate for an original transcript only applies to the first transcription of the reporter’s notes. Based on this, the proposed reduced deposit rate that would be established by the amendment to rule 8.130(b)(1)(B(ii) generally applies to “proceedings that have previously been transcribed;” the proposed amendment does not require that the transcription have been done for the designating party.

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8.130(b)(1)(B(ii)–Deposit for reviously transcribed proceedings

Commentator	Comment	Committee Response
Court of Appeal Fourth District, Division One By: Hon. Judith McConnell, Presiding Justice San Diego, California	We support the proposed amendments to rule 8.130(b)(1)(B) regarding the use of previously prepared transcripts in civil appeals consistent with rule 8.336(d) relating to felony appeals.	No response required

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8.130(b)(3)(C) and 8.834(b)(2)(D)–Substitution of previously transcribed proceedings for deposit		
Commentator	Comment	Committee Response
California Appellate Law Group By: William M. Hancock, Principal San Francisco	I also think the default should be that the reporter will prepare the RT that consists of previously prepared transcripts and that a party would prepare the transcript only in unusual circumstances.	The proposed amendments to rules 8.130 (b)(3)(C) and 8.834(b)(2)(D) would require that transcripts submitted in lieu of a deposit meet the format requirements of rule 8.144. This would place a burden on the depositing party to ensure that this is done, but it would not specify how the party is to accomplish this. The committees’ view is that this provides the depositing party with flexibility to determine the more appropriate approach for the particular circumstances.
Committee on Appellate Courts State Bar of California By: Kira Klatchko Acting Chair	<p>The Invitation to Comment requests input particularly on “whether rule 8.130 should continue to permit parties to substitute a certified transcript of part of the proceedings designated for inclusion in a reporter’s transcript in lieu of making a part of the deposit for the reporter’s transcript.” (Invitation, p. 7.)</p> <p>Members of the Committee have found that what happens in practice when parties deposit existing transcripts that are not rule 8.144 compliant varies from District to District. Sometimes, the superior court directs the court reporter to reissue the transcripts in a compliant format. In other instances, however, the noncompliant transcripts are forwarded to the Court of Appeal, which accepts them. But problems arise when multiple volumes of non-complying transcripts, or a mixture of pre-existing and newly created ones, result in a record that is not integrated.</p> <p>The Committee’s view is that if one is going to tackle this issue, the submission of partial transcripts should not be allowed. Allowing the submission of partial transcripts would simply perpetuate the problems that the rule change is designed</p>	<p>The committees appreciate this input and notes that the proposed amendments to 8.130 (b)(3)(C) and 8.834(b)(2)(D) are intended to alter some of these current practices. Among other things, these proposed amendments would require that transcripts submitted in lieu of a deposit meet the format requirements of rule 8.144, which would place a burden on the depositing party to ensure that this is done.</p>

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8.130(b)(3)(C) and 8.834(b)(2)(D)–Substitution of previously transcribed proceedings for deposit		
Commentator	Comment	Committee Response
	<p>to address. The new pricing for making pre-existing transcripts rule 8.144 compliant takes the sting out of the change, and will ensure that parties can benefit from their existing investments in transcripts.</p> <p>While broadly welcoming the proposed changes, the Committee also offers the following comments and suggestions:</p> <p>The Committee is concerned that the proposals — and the discussion in the Invitation to Comment — appear to encourage parties already in possession of all the required transcripts to themselves convert these into a reporter’s transcript compliant with rule 8.144, as opposed to having the court reporter do so at the new lower rate. The Committee fears that this could lead to poorly prepared records. In addition, transcripts that have been modified by parties — with, for example, the insertion of new page numbers and indexes — cannot really be considered “originals,” as required by the Court of Appeal. Therefore, the Committee recommends that the rules require that the preparation of compliant transcripts be done by the responsible court reporter. Parties could either arrange for these transcripts to be produced before a designation is filed and then deposit them with the superior court or, alternatively, file a designation with a deposit of funds.</p> <p>The Committee is uncertain what the procedure would be if an appellant deposits a complete rule 8.144 compliant transcript, but the respondent then either designates or deposits an additional transcript. This could result in a nonintegrated record, with separate reporter’s transcripts from each side of the case. On the other hand, if the court reporter creates an integrated transcript in this situation, it would mean that the</p>	<p>As noted above, the proposed amendments to rules 8.130 (b)(3)(C) and 8.834(b)(2)(D) would place a burden on the depositing party to ensure that transcripts submitted in lieu of a deposit meet the format requirements of rule 8.144. These amendments do not specify how the party is to accomplish this. The committees’ view is that this provides the depositing party with flexibility to determine the more appropriate approach for the particular circumstances.</p> <p>The committees concluded that these circumstances – in which an appellant submits a transcript in lieu of a deposit for a reporter’s transcript and the respondent counter-designates additional proceedings to be included in a reporter’s transcript – are likely to occur in only a very small number of cases. The committees view was that the rules did not need to account for this unlikely</p>

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8.130(b)(3)(C) and 8.834(b)(2)(D)–Substitution of previously transcribed proceedings for deposit		
Commentator	Comment	Committee Response
	<p>expense already incurred by the appellant in making a transcript compliant would have been wasted, and it is unclear who would bear the additional expense of having to reformat that transcript a second time.</p> <p>* * *</p> <p>The Committee recommends that, in limited circumstances, parties be allowed to include previously prepared, certified transcripts of self-contained proceedings in an appendix instead of designating a separate reporter’s transcript. The Committee suggests that this should be permitted in appeals of summary judgments, judgments of dismissal following the sustaining of a demurrer, orders granting or denying anti-SLAPP motions, and certain other proceedings where the entirety of a reporter’s transcript is likely to be less than 50 or, perhaps, 75 pages. This would provide a streamlined and economical method for parties to utilize previously obtained transcripts of proceedings as an alternative to the procedures set forth in the proposed new rules. It would also reduce the burden on trial courts. The Committee notes that in federal appeals, short transcripts are routinely included in the “excerpts of record,” which, broadly speaking, are the federal equivalent of an appendix.</p>	<p>scenario, that the courts involved would appropriately address such a situation if it arose.</p> <p>The committees appreciate this suggestion and will consider it during the next rules cycle.</p>
<p>Court of Appeal Fourth District, Division One By: Hon. Judith McConnell, Presiding Justice San Diego, California</p>	<p>We also agree with the proposed revisions to rule 8.130 designed to ensure that a previously prepared transcript of less than all of the proceedings to be transcribed will be integrated into the entire transcript in accordance with the formatting requirements of rule 8.144.</p>	<p>No response required</p>
<p>Superior Court of Los Angeles County</p>	<p>3. Should rule 8.130 be amended to eliminate the authority for parties to substitute a certified transcript in lieu of making a deposit for the reporter's transcript? No, as long as the certified transcript includes all the proceedings designated and they are required to submit them to</p>	<p>The committees appreciate this input.</p>

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8.130(b)(3)(C) and 8.834(b)(2)(D)–Substitution of previously transcribed proceedings for deposit		
Commentator	Comment	Committee Response
	<p>the trial court appeal clerk for review before being transmitted to the reviewing court.</p> <p>4. If this authority is not eliminated, should rule 8.130 continue to permit parties to substitute a certified transcript of part of the proceedings designated for inclusion in a reporter's transcript in lieu of making a part of the deposit for the reporter's transcript?</p> <p>No. They should indicate on their notice of designation, as required by the new rules, that they previously paid for transcripts for particular proceeding date(s) and the reporter must reproduce them in the final transcript at a reduced rate. This will ensure compliance with rule 8.144 with respect to pagination, indexing, and cover pages.</p>	<p>The committees appreciate this input but notes that the proposed amendment to rule 8.130(b)(1)(B(ii) establishes the rate for calculating a designating party’s deposit with the court for a court reporter’s transcript. This rule does not set the rate that must be paid to a court reporter for a transcript; that rate is set by statute. The proposed reduced deposit rate is, however, based on an appellate court decision – <i>Hendrix v. Superior Court of San Bernardino County</i> (2011) 191 Cal.App.4th 889 – which concluded that the statutory rate for an original transcript only applies to the first transcription of the reporter’s notes and Government Code section 69950(b), which sets the fee for a first copy of a reporter’s transcript to any court, party, or other person who does not simultaneously purchase the original.</p>

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8.130(c) and 8.834(b)(4) – Transcript Reimbursement Fund applications		
Commentator	Comment	Committee Response
California Appellate Court Clerks Association By: Charlene Ynson, President Fresno, California	Neither in the proposed language below nor in the drafter’s notes, can we find reference to the fact that the board often sends notice of either a provisional approval, or notice of deferring approval. It may be helpful to note somewhere that if approval is not made or approval is deferred beyond 90 days from the filing of the application, the applicant must take the following action.	Based on this comment and the comments from the Court Reporter’s Board below, the committees have revised the proposal to refer to provisional approvals. Under this revised proposal, only the submission of a provisional approval would satisfy the requirements of proposed rules 8.130(c) and 8.834(b)(3); a deferred approval would not meet these requirements and the designating party would be required to take one of the other actions specified by the rule or be in default.
California Court Reporters Association By: Pam Katros, Chair Judicial Procedures Committee	CCRA also agrees with the amendments concerning the Transcript Reimbursement Fund.	No response required.
Court Reporters Board By: Yvonne K. Fenner, Executive Officer	Our board chair as well as staff and I have reviewed the proposal to amend the Rules of Court and really have only one correction to make. On page 4 under the heading “Transcript Reimbursement Fund applications,” the second sentence contains wording that “this fund can either pay court reporters in advance...” which is incorrect. The fund can only pay on final invoices, so we have a process in place whereby we issue a provisional approval in advance in applicable cases, meaning we will pay upon receipt of a final invoice and proof of delivery.	Based on this comment, the committees have revised the proposal to refer to provisional approvals.

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8.130(d)(3)(A) and 8.834(b)(5)(C) – Notice of default		
Commentator	Comment	Committee Response
California Appellate Court Clerks Association By: Charlene Ynson, President Fresno, California	As to the proposed highlighted addition to Section (d)(3)(A) below. Would it not be simpler to leave the original language re: notice must be given under rule 8.140 and add the proposed language to Rule 8.140?	This proposed amendment would apply when the appellant fails to make the required deposit or substitute for a designated reporter’s transcript and establishes specific options in those circumstances. Rule 8.140, in contrast, applies to a variety of different defaults in the procurement of the record. The committees concluded that it would be easier for rule users if the specific provisions applicable when there is a default in making a required deposit for a reporter’s transcript appear in the rule relating to those deposits, rather than in the general default rule.
Superior Court of Los Angeles County	8.834(b)(5)(C): Suggest that the reference to "8.140" be changed to " 8.842 ," which is the rule governing "defaults" for Limited Civil appeals. They match in substance.	The committees did not find a reference rule 8.834 to in rule 8.140.

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8.130(d)(2) and 8. 834(b)(3)– Notice to the reporter of deposit or substitute		
Commentator	Comment	Committee Response
Superior Court of Los Angeles County	<p>8.130(d)(2): We suggest this be modified to read similar to the newly modified 8.834(b)(4), i.e.:</p> <p>"The clerk must promptly notify the reporter to prepare the transcript when the court receives:</p> <p>(A) The required deposit under (b)(1); or</p> <p>(B) A waiver of the deposit signed by the reporter under (b)(3)(A); or</p> <p>(C) A copy of the approval of an application to the Court Reporters Board for payment or reimbursement from the Transcript Reimbursement Fund under (c)(2) or (c)(3).</p> <p>The notice must specify which of the above was received, the proceeding date(s) to be included in the transcript, and the date the notice is mailed to the reporter."</p> <p>A written notice from the court should be the impetus for the preparation of the transcript, not the mailing of a copy of the notice of designation. The reporter should have already received copies of the designations from the parties, as required under 8.130(a)(4). What the reporter needs is confirmation that payment has been secured to proceed with the preparation of the transcript, confirmation of which proceeding dates to include (there may have been errors in the initial designations served and filed by the parties), acknowledgment of when the transcript is due (from the date of mailing of the notice), and where to submit the transcripts and invoices.</p> <p>Suggest the language, "a copy of the application" be changed to "a copy of the approval of the application," for two reasons:</p> <p>1) The court should not notify the reporter to commence preparation of a transcript before it is certain that the</p>	<p>The committees agree with this suggestion and have revised the proposal to incorporate this suggestion with minor alterations. Since designating parties will not have served the designation on the court reporters that were not know to them, the committees have retained the current requirement that the clerk notify the court reporter of the designation, but has combined that with notice to prepare the transcript and the triggering events suggested by the commentator.</p> <p>The committees agree with this suggestion and have revised the proposal to incorporate this suggestion with minor alterations. This would not increase the number of notices sent to the court reporter by the clerk in cases in</p>

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8.130(d)(2) and 8. 834(b)(3)– Notice to the reporter of deposit or substitute		
Commentator	Comment	Committee Response
	<p>application has been approved, and before it is certain that the party still wants to pursue reporter's transcript after the 90 day period ends. We believe this was the original intent because the rule makes it a requirement for the party to file an approval with the court within the 90 day period following application.</p> <p>2) The time for preparation of the transcript should not begin as indicated in rule 8.130(c)(5), (when the reporter "receives notice" of the approval of the application presumably from the Court Reporters Board) but rather when the court mails a written notice to the reporter to prepare transcript upon receipt of the application approval from the party. It appears that this was the original intent of the rule because it was specific that the notice to reporter to prepare transcript indicate the date the notice was mailed. Otherwise, how will the court know when the transcripts are due? How will they know when the party is in default? How can anyone determine for certain when a reporter "received notice" unless that reporter is required to verify that in writing? To ensure that appeals proceed in a timely manner, the court should be required to mail notice of when to prepare the transcript, and the time for submission of those transcripts should only run from the date of the mailing of that notice.</p> <p><i>B. 8. 834(b)(3):</i> Suggest this be changed to: "The clerk must promptly notify the reporter to prepare the transcript when the court receives: (A) The required deposit under (2)(A); or (B) A waiver of the deposit signed by the reporter under (2)(B); or (C) A copy of the approval of an application to the Court Reporters Board for payment or reimbursement from the Transcript Reimbursement Fund under (b)(4)(A) or (B).</p>	<p>which a Transcript Reimbursement Fund application has been filed, but simply would replace the notice the rule now requires be sent when a copy of the application is submitted to the court with a notice when the provisional approval is submitted to the court. This timing makes more sense and may result in reducing the number of notices sent in these cases, as some parties will not submit a provisional approval to the court.</p> <p>The committees agree with this suggestion and have revised the proposal to incorporate this suggestion with minor alterations.</p>

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8.130(d)(2) and 8. 834(b)(3)– Notice to the reporter of deposit or substitute		
Commentator	Comment	Committee Response
	<p>The notice must specify which of the above was received, the proceeding date(s) to be included in the transcript, and the date the notice is mailed to the reporter."</p> <p>The reasons for the suggested changes are the same as discussed above for 8.130(d)(2).</p>	

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8.130(f)(1) and 8.834(d)(1)–Time to complete transcript		
Commentator	Comment	Committee Response
Court of Appeal Fourth District, Division One By: Hon. Judith McConnell, Presiding Justice San Diego, California	Based on our belief that the current rules’ requirements for judicial certification of requests to extend the time to prepare the reporter’s transcript are effective in discouraging record preparation delays, we urge that these requirements be retained in these rules.	The committees appreciate this input.
Superior Court of Los Angeles County	<p><i>8.130(f)(1):</i> Suggested change: <i>"Within 30 days after notice is received under (c)(5) or mailed under (d)(2), the reporter must prepare ... "</i> to "Within 30 days after notice to prepare transcript is mailed under (d)(2), the reporter must prepare ... "</p> <p>As discussed above, we believe the time to prepare and submit transcripts should be determined only from the date the court mails notice to a reporter to prepare transcript. This will avoid ambiguity regarding when a Transcript Reimbursement Fund application is actually approved, and when a reporter "receives notice" of that approval – presumably from the Court Reporters Board. When Business and Professions Code section 8030 was modified, section 8030.6 (which previously stated requirements regarding notice of the approval) appears to have been deleted.</p> <p><i>8.834(d)(1):</i> This rule was not modified by the advisory committee, but we suggest that it should be, as with the companion rule 8.130(f)(1) above, to avoid the ambiguity of determining the date when "the clerk notifies the reporter," or when "the reporter receives the fees from the appellant" as discussed above. The clerk should be required to notify the reporter in writing and the date of mailing should start the time for preparation of the transcript.</p> <p>Suggested change: <i>"Within 20 days after the clerk notifies the</i></p>	<p>The committees agree with this suggestion and have revised the proposal to incorporate this suggestion with minor alterations. The committees note that this provision and the other provisions discussed below only set the outside deadline for completion of a transcript, the reporter can always begin and complete a transcript earlier.</p> <p>The committees agree with this suggestion and have revised the proposal to incorporate this suggestion with minor alterations. A separate provision concerning the time to complete a reporter’s transcript when a designating party is paying the reporter directly is not needed since the proposed amendment to rule 8.834(b)(4) would require the clerk to notify the court reporter when the court receives a waiver of the deposit signed by the reporter, These waivers are used when parties are directly paying the court reporter.</p>

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8.130(f)(1) and 8.834(d)(1)–Time to complete transcript

Commentator	Comment	Committee Response
	<p><i>reporter to prepare the transcript under (b)(2)-or the reporter receives the fees from the appellant-the reporter must prepare ... "</i> to "Within 20 days after notice to prepare transcript is mailed under (b)(4), the reporter must prepare ... "</p> <p><i>8.130(c)(5) and 8.834(b)(5)(D):</i> We suggest the language <i>"begins when the reporter receives notice of the approval, "be modified to read, " . . . begins on the date the court mails notice to prepare transcript."</i></p> <p>As discussed above, we believe the time to prepare and submit transcripts should be determined only from the date the court mails notice to a reporter to prepare transcript.</p> <p>Otherwise, how will the trial court know when the transcripts are due? How will they know when the party is in default? How can anyone determine for certain when a reporter "received notice" unless that reporter is required to verify receipt in writing? Also, the rules are ambiguous about who is required to mail notice of approval to the reporter since the revised Business and Professions Code section 8030.5 does not specify this and section 8030.6 (which did contain these details previously) appears to have been deleted. To ensure that appeals proceed in a timely manner, the court should be required to mail notice to the reporter indicating when to prepare the transcript, and the time for submission of those transcripts should only run from the date of the mailing of that notice.</p>	<p>The committees agree with this suggestion and have revised the proposal to incorporate this suggestion with minor alterations.</p>

SPR13-07**Appellate Procedure: Reporter’s Transcripts in Civil Appeals.** Amend Cal. Rules of Court, rules 8.130 and 8.834

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

8.130(f)(2) and 8.834(d)(2) – Notification when transcript is complete		
Commentator	Comment	Committee Response
California Court Reporters Association By: Pam Katros, Chair Judicial Procedures Committee	CCRA believes when the transcript is completed and submitted to the appeals division, it should be the requirement of the clerks to notify all parties that the record has been filed.	The committees have revised the proposal to clarify that only parties to the appeal must be served with this notice. This provision is being proposed in order to assist parties who did not designate a reporter’s transcript but who later wish to purchase a copy from the court reporter. When the record is filed with the reviewing court, under rules 8.150 and 8.840, all the parties are notified. A party could purchase a copy of a reporter’s transcript from a reporter at that time, although this occurs later in the proceedings.
Committee on Appellate Courts State Bar of California By: Kira Klatchko Acting Chair	The Committee welcomes the proposed requirement for court reporters to notify non-designating respondents when a transcript is available. However, the Committee recommends that this notice should also inform respondents of their right to borrow an appellant’s copy of the record pursuant to rule 8.153.	The committees appreciate this input. However, this provision is being proposed in order to assist parties who did not designate a reporter’s transcript but who wish to purchase a copy from the court reporter when it is ready. This notice would be sent before the record is available to be lent. When the record is filed with the reviewing court, under rules 8.150, that court notifies all the parties and it is the filing of the record with the reviewing court that triggers the time period within which the record may be lent under rule 8.153.

SPR13-07

Appellate Procedure: Reporter’s Transcripts in Civil Appeals. Amend Cal. Rules of Court, rules 8.130 and 8.834

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8.130(f)(4) and 8.834(d)(4) – Transcripts in computer-readable format		
Commentator	Comment	Committee Response
California Court Reporters Association By: Pam Katros, Chair Judicial Procedures Committee	While the majority of court reporters in the state are able to comply with the proposal in Rule of Court 8.130(f)(4) and 8.834(d)(4) 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.	Based on this comment, the committees revised the proposal to maintain the current language of 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.
Court of Appeal Fourth District, Division One By: Hon. Judith McConnell, Presiding Justice San Diego, California	We agree with the proposed changes to rule 8.130(f)(4) that provide for the right to obtain a reporter’s transcript in computer-readable format.	No response required
Superior Court of Los Angeles County	F. Question about 8.130(f)(4) and 8. 834(d)(4): Does this rule mean that the party can choose to designate a computer-readable copy be prepared (in addition to the paper original) for the reviewing court? Or only that the reviewing court can order a computer-readable copy from the reporter directly and pay for it? Who pays for this copy if the reviewing court orders the trial court to provide a computer-readable copy from the reporter?	The committees’ intent is that the reviewing court would determine whether to order a copy of a transcript in computer-readable format for itself. Government Code section 69954 governs compensation for copies of transcripts in computer-readable format. Subdivision (c) of that statute generally provides that “The fee for a computer-readable transcript shall be paid by the requesting court, party, or person.”

SPR13-07**Appellate Procedure: Reporter’s Transcripts in Civil Appeals.** Amend Cal. Rules of Court, rules 8.130 and 8.834

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

8.130(g) and 8.834(e) – Disputes over transcript costs		
Commentator	Comment	Committee Response
California Court Reporters Association By: Pam Katros, Chair Judicial Procedures Committee	CCRA believes disputes over transcript costs are rare and does not object to adding the language advising litigants that a complaint may be filed with the Court Reporters Board.	No response required.
Court of Appeal Fourth District, Division One By: Hon. Judith McConnell, Presiding Justice San Diego, California	We are also concerned that proposed rule 8.130(g), in response to the Supreme Court’s referral of the complaints of the parties and amici in <i>Gomez v. City of San Diego</i> (S177774), will not effect a change in the status quo.	The committees appreciate this concern and acknowledge that the proposed amendment may not address all of the issues identified by the parties and amici in <i>Gomez</i> . The committee concluded that it was important, however, to recognize that the rates for reporter’s transcripts have been set by statute and that the Court Reporters Board has been tasked with enforcement of statutes relating to court reporters. It is the committees’ understanding that the Board has investigated complaints that court reporters have charged fees for transcripts that exceed the statutory rate and that the Board has imposed sanctions for such statutory violations that include reimbursement of the excessive fees. The committees hope that by highlighting both the requirements that transcript fee estimates and bills be based on the rates set by statute and the Court Reporters Board’s role in enforcing these statutes, court reporters will be encouraged to comply with the statutory and rule requirements and parties will be aware that a complaint to the Board provides a potential avenue for relief. The committees also welcome suggestions for additional amendments to the Rules of Court or other actions the Judicial Council might take to address the issues identified by the parties and amici in <i>Gomez</i> .