

Invitation to Comment

Title	Appellate Procedure: Clerks Transcript in Civil Appeals (amend Cal. Rules of Court, rules 8.122 and 8.832).
Summary	This proposal would amend the rules relating clerk’s transcripts in civil appeals to eliminate the requirement that these transcripts contain the supporting and opposing memoranda and attachments relating to certain posttrial motions.
Source	Appellate Advisory Committee Hon. Kathryn Doi Todd, Chair
Staff	Heather Anderson, Committee Counsel, 415-865-7691, heather.anderson@jud.ca.gov

Discussion

Rules 8.122 and 8.832 of the California Rules of Court address the contents of clerk’s transcripts in civil appeals in the Court of Appeal and superior court appellate division, respectively. These rules require that certain documents be included in clerk’s transcripts in all cases and permit the parties to designate additional documents that they want included in these transcripts. Rule 8.122 also governs the contents of any appendix used in lieu of a clerk’s transcript because rule 8.124 provides that an appendix must contain all of those documents that are required to be included in a clerk’s transcript under rule 8.122.

Currently, rules 8.122 and 8.832 both require that the clerk’s transcript contain any notice of intention to move for a new trial, or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order, with supporting and opposing memoranda and attachments, and any order on such motion and any notice of its entry. The filing of these notices and motions, their procedural validity, and the date that the trial court notified the parties of its order on such motions are very important in determining the timeliness of an appeal under rules 8.108 and 8.823. However, the supporting and opposing memoranda and attachments to these motions can often be voluminous and the content may not always be necessary to determining the timeliness of the appeal or relevant to the issues that are being raised on appeal.

The requirement to include the supporting and opposing memoranda and attachments in the clerk’s transcript was added to the rules effective January 2008 as part of an effort to make language in the rules on civil and criminal appeals more consistent. Based on comments received since this change took effect, the committee is concerned that the costs of including these items in the clerk’s transcript in every civil appeal outweighs the benefits in terms of assisting the court with determining timeliness in some appeals. The

longer a clerk's transcript is, the more time it takes the trial court clerk to prepare the transcript, the more it costs the parties to obtain a copy of the transcript, and the more it costs the Court of Appeal to store the record in the case. To reduce these costs, this proposal would amend rules 8.122 and 8.832 to eliminate the requirement that supporting and opposing memoranda and attachments to these motions be included in the clerk's transcript. It would also amend the advisory committee comment accompanying rule 8.122 and add a comment to rule 8.832 clarifying that these supporting and opposing memoranda and attachments need not be included in the clerk's transcript. The Court of Appeal would, of course, retain the authority to order that the record be augmented with these memoranda and attachments if it concluded that they were necessary to determine timeliness in a particular appeal. The committee would particularly appreciate comments on whether this change strikes the appropriate balance between minimizing the costs associated with the clerk's transcript and facilitating the courts' ability to determine the timeliness of appeals.

The committee would also particularly appreciate comments about whether it would be better to require that the copies of the notices and motions and related materials that now are required to be included in the clerk's transcript instead be attached to the *Civil Case Information Statement* (form APP-004). In civil appeals to the Court of Appeal, the appellant is required to complete and submit a *Civil Case Information Statement* shortly after filing the notice of appeal. This form requests information to help the Court of Appeal determine the timeliness of the appeal, including information about any notice of intention to move for a new trial and any motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order. Attaching copies of these documents to the *Civil Case Information Statement* would facilitate earlier determination about the timeliness of an appeal. However, it would also add to the appellant's expense in submitting the *Civil Case Information Statement* and, if the parties wished to raise an issue relating to any of these motions in the appeal, these documents would still need to be included in the clerk's transcript.

Rules 8.122 and 8.832 of the California Rules of Court would be amended, effective January 1, 2011, to read:

Title 8. Appellate Rules

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

Chapter 2. Civil Appeals

Rule 8.122. Clerk’s transcript

(a) * * *

(b) Contents of transcript

(1) The transcript must contain:

(A) The notice of appeal;

(B) Any judgment appealed from and any notice of its entry;

(C) Any order appealed from and any notice of its entry;

(D) Any notice of intention to move for a new trial, or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order, ~~with supporting and opposing memoranda and attachments,~~ and any order on such motion and any notice of its entry;

(E) Any notices or stipulations to prepare clerk’s or reporter’s transcripts or to proceed by agreed or settled statement; and

(F) The register of actions, if any.

(2) Each document listed in (1)(A), (B), (C), and (D) must show the date necessary to determine the timeliness of the appeal under rule 8.104 or 8.108.

(3) – (4) * * *

(c) – (d) * * *

1 **Advisory Committee Comment**

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3 **Subdivision (a).** * * *

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5 **Subdivision (b).** The supporting and opposing memoranda and attachments to any motion to vacate the
6 judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order are not
7 required to be included in the clerk’s transcript under subdivision (b)(1)(D).

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9 Subdivision (b)(1)(F) requires the clerk’s transcript to include the register of actions, if any. This
10 provision is intended to assist the reviewing court in determining the accuracy of the clerk’s transcript.

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12 **Subdivision (c).** * * *

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

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

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20 **Rule 8.832. Clerk’s transcript**

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22 **(a) Contents of clerk’s transcript**

23
24 (1) The clerk’s transcript must contain:

25
26 (A) The notice of appeal;

27
28 (B) Any judgment appealed from and any notice of its entry;

29
30 (C) Any order appealed from and any notice of its entry;

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32 (D) Any notice of intention to move for a new trial, or motion to vacate the
33 judgment, for judgment notwithstanding the verdict, or for
34 reconsideration of an appealed order, ~~with supporting and opposing~~
35 ~~memoranda and attachments~~, and any order on such motion and any
36 notice of its entry;

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38 (E) The notice designating the record on appeal; and

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40 (F) The register of actions, if any.

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42 (2) Each document listed in (1)(A), (B), (C), and (D) must show the date necessary
43 to determine the timeliness of the appeal under rule 8.822 or 8.823.
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1 (3) * * *

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3 (b) – (d) * * *

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5 Advisory Committee Comment

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7 Subdivision (a). The supporting and opposing memoranda and attachments to any motion to vacate the
8 judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order are not
9 required to be included in the clerk’s transcript under subdivision (a)(1)(D).

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Item SPR10-06 Response Form

Title: **Appellate Procedure: Clerks Transcript in Civil Appeals** (amend Cal. Rules of Court, rules 8.122 and 8.832)

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

Internet: <http://www.courtinfo.ca.gov/invitationstocomment/>

Email: invitations@jud.ca.gov

Mail: Ms. Camilla Kieliger
Judicial Council, 455 Golden Gate Avenue
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 18, 2010
