

<p>Title</p>	<p>Appellate Procedure: Rules and Forms for the Superior Court Appellate Divisions (repeal Cal. Rules of Court rules 8.700–8.793; renumber rules 8.900–8.916 as rules 8.950–8.966; adopt new rules 8.800–8.906 and 10.1100–10.1108; repeal Judicial Council forms CR-130 and TR-150, TR-155, TR-160, and TR-165; and approve new forms APP-101-INFO, APP-102, APP-103, APP-104, and APP-105 relating to appeals in limited civil cases, APP-150-INFO and APP-151 relating to petitions for extraordinary writs, CR-131-INFO, CR-132, CR-133, CR-134, CR-135, and CR-136 relating to appeals in misdemeanor cases, and CR-141-INFO, CR-142, CR-143, and CR-144 relating to appeals in infraction cases)</p>
<p>Summary</p>	<p>This proposal would completely revise all of the rules relating to the superior court appellate divisions to place the rules in a more logical order, reflect current practices, fill in gaps in the rules, eliminate outdated language, and update the remaining language so it is similar to the recently revised rules for the Courts of Appeal. A complete package of new forms for civil and criminal appeals and writ proceedings in the appellate divisions are also proposed to assist litigants, particularly self-represented litigants, in these proceedings.</p>
<p>Source</p>	<p>Appellate Advisory Committee Hon. Kathryn Doi Todd, Chair</p>
<p>Staff</p>	<p>Heather Anderson, Committee Counsel, 415-865-7691, heather.anderson@jud.ca.gov</p>
<p>Discussion</p>	<p><u>Background</u> The existing rules for the superior court appellate divisions were originally adopted in 1945, along with the rest of the appellate rules. Since then, while specific provisions have been amended over the years, these rules have not been comprehensively reviewed and updated. Many of the rules use language that is outdated and difficult to understand and embody procedures that do not reflect current practice. As evidenced by some of the chapter headings—such as “Appeals from Municipal and Justice Courts in Civil Cases”—the appellate division rules also contain outdated references to the former municipal and justice courts.</p> <p>Until recently, the rules relating to the Supreme Court and Courts of Appeal were similarly outdated and difficult to understand. To update and improve these rules, the Appellate Rules Project Task Force was formed. For five years, that task force, working under the direction of</p>

the Appellate Advisory Committee, reviewed these Supreme Court and Court of Appeal rules and, working in installments, developed proposals to reorganize and update them. The goals of this earlier project were to clarify the meaning of these rules and facilitate their use by practitioners, parties, and court personnel by removing the many ambiguous, inconsistent, obsolete, and redundant provisions that had accumulated in the rules since they were originally enacted. On January 1, 2005, the fourth and final installment of revisions to the California Rules of Court relating to the Supreme Court and Courts of Appeal took effect.

Late in 2003, the Appellate Advisory Committee began the task of developing a similar set of proposed revisions to the appellate division rules. The committee formed a working group—the Appellate Division Rules Working Group—composed of committee members and others with knowledge of appellate division procedures and practices, to develop proposed revisions to these rules. In December 2006, the working group presented its recommendations to the Appellate Advisory Committee. The committee is now seeking public comment on this proposal.

Premises Underlying the Proposal

Many of the procedures followed in the superior court appellate divisions are similar, if not exactly the same, as the procedures followed in the Courts of Appeal. As noted above, because of the work already done by the Appellate Rules Project Task Force, the rules for the Courts of Appeal were recently updated. In developing its proposed revisions to the appellate division rules, the committee therefore took as its starting premise that the language of the Court of Appeal rules should be used as a model for revisions to equivalent provisions in the appellate division rules.

There are, however, some important, substantive differences between proceedings in the appellate divisions and in the Courts of Appeal. For example, because of jurisdictional distinctions, civil matters in the appellate divisions involve smaller amounts in controversy and criminal matters involve lesser penalties than matters in the Courts of Appeal. Unlike in Court of Appeal matters, in appellate division matters, reporter’s transcripts may not be available as the record of the oral proceedings in the trial court, but an official electronic recording may be available. Also, unlike in criminal matters in the Courts of Appeal, criminal defendants in appellate division matters are not always entitled to either appointed counsel or free records. Where required to reflect such substantive differences between the appellate

divisions and the Courts of Appeal, the proposal uses language that differs from that in the Court of Appeal rules.

In addition, to reflect the fact that these are “smaller” matters and often involve unrepresented litigants, the committee took as its second premise that these appellate division procedures should be kept as simple as possible. The committee therefore chose not to include in the proposed appellate division rules some provisions currently found in the Court of Appeal rules. To facilitate resolution of these matters as quickly as possible, the committee chose not to propose extending some of the time frames in the appellate division rules to correspond with those in the Courts of Appeal.

Finally, unlike the work of the Appellate Rules Project Task Force, with this appellate division project, the committee did not confine itself to proposing only nonsubstantive changes to the rules. In addition to changes intended only to clarify existing procedures, the committee is also proposing a wide variety of substantive changes that are intended to improve appellate division procedures. Some of these proposed substantive changes incorporate changes that were made over the years to the Court of Appeal rules, but not to the appellate division rules. Others are new ideas generated by the working group and the Appellate Advisory Committee.

Structure of the Proposal

Rules

The first part of this proposal is the proposed new appellate division rules. This part of the proposal begins with a table of contents of the new rules, showing the new rule numbers and titles for all of the proposed appellate division rules. This table of contents is helpful in seeing the overall structure of the proposed rules.

This is followed by the proposed text of the new rules. Please note that because of the extensive revisions and rearranging of subdivisions, revisions are *not* indicated by the usual underscoring and strikethrough of the text. Instead, the committee is proposing repealing all of the current rules and replacing them with all new rules. These new rules are divided into 7 chapters: chapters 1 through 6 in title 8, division 2, titled “Rules Relating to the Superior Court Appellate Division” and in title 10, Judicial Administration Rules, chapter 2, titled “Rules Relating to the Superior Court Appellate Division.”

The text of each rule is followed by reviser's notes. These reviser's notes identify the Court of Appeal or appellate division rules on which the proposed new rules are based and point out any other sources for the rules. These notes also describe any ways in which the proposed rules differ from the Court of Appeal rules and any major substantive changes that would be made in appellate division procedures under this proposal.

Following the text of all the proposed rules are two conversion tables: one listing the current rule numbers and the corresponding proposed rule numbers and the other listing the proposed rule numbers and the corresponding current rule numbers.

After the tables are the current appellate division rules that would be repealed.

Finally, there is a list of the Court of Appeal rules for which no corresponding appellate division rule is being proposed. The committee would appreciate comments on whether any of the topics covered by these rules should be added to the appellate division rules.

Forms

The second part of this proposal consists of proposed new Judicial Council forms relating to appellate division proceedings.

As the working group considered revisions to the appellate division rules, the members came to the conclusion that forms could be very helpful in assisting appellate division litigants, particularly self-represented litigants, through some of the basic steps in the appellate process, including preparing a notice of appeal and designating the record on appeal. The working group therefore developed new Judicial Council forms, including information sheets, for civil and criminal appeals and writ proceedings that are intended to help litigants better understand and follow the applicable appellate division procedures.

The proposed forms are grouped together in packets based on the type of case in which they would be used: appeals in limited civil cases (APP-101-INFO through APP-105), appeals in misdemeanor cases (CR-131-INFO through CR-136), appeals in infraction cases (CR-141-INFO through CR-144), and writ proceedings (APP-15-INFO and APP-151). Within each packet, the proposed forms appear in the order in which they would likely be used in a typical proceeding, starting with an information sheet about each type of proceeding.

Some of these proposed forms are designed to replace existing Judicial Council forms. For example, the proposed *Notice of Appeal (Misdemeanor)* (form CR-132) is designed to replace current *Notice of Appeal– Misdemeanor (Defendant)* (form CR-130). Under this proposal, these existing forms would be repealed.

The Main Substantive Changes Proposed

The committee's proposal would make many substantive changes in the appellate division rules and procedures. These substantive changes in the rules are described in the reviser's notes that follow the proposed text of the new rules. Only the main substantive changes are summarized here.

Organization of the Rules

Currently, the appellate division rules begin with a chapter that contains rules applicable to both civil and criminal appeals, including rules relating to briefing and decisions, as well as rules relating to administration of the appellate divisions. This is followed by separate chapters relating to civil and criminal appeals, some of which duplicate or refer back to rules in the first chapter.

In this proposal, the rules would be placed in a more logical sequence, following the order of events in a typical appeal, and duplicative provisions would be eliminated. As in the reorganized Court of Appeal rules that took effect on January 1, 2007, the rules regarding administration of the appellate divisions that are currently in title 8 would be moved to title 10 of the rules, which generally addresses administrative matters.

In title 8, chapter 1 of the proposed new rules would address general issues applicable in all appellate division proceedings, such as definitions and extensions of time. Note that, to make it easier for litigants, particularly self-represented litigants, to understand these provisions, the committee has proposed that applicable definitions and rules of construction be repeated here, rather than simply referencing the definitions and construction rules from title 1.

Chapter 2 would address filing appeals and record preparation in limited civil cases. Unlike in the current rules in which there is a single chapter addressing appeals in criminal cases, under this proposal there would be separate chapters—chapters 3 and 4—addressing filing appeals and record preparation in misdemeanor and infraction cases. These separate chapters, titled Appeals and Records

in Misdemeanor Criminal Cases and Appeals and Appeals and Records in Infraction Criminal Cases and Appeals, respectively, are intended to make it easier for litigants to identify the rules applicable in their cases. The committee would particularly appreciate comments on this reorganization and on whether keeping the word “criminal” in the chapter titles is helpful.

The rules relating to briefing, oral argument, and decisions would be moved to a new chapter 5. Finally, a new chapter 6 would be added, addressing writ proceedings in the appellate divisions.

Information Sheets

The committee is proposing four new Judicial Council forms that provide basic information to litigants about appeals and writ proceedings in the superior court appellate divisions:

- *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO);
- *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO);
- *Information on Appeal Procedures for Infractions* (form CR-141-INFO); and
- *Information on Proceedings for Extraordinary Writs in the Appellate Division of the Superior Court* (form APP-150-INFO).

These information sheets are intended to help litigants, particularly self-represented litigants, understand what appeals and writ proceedings are, and are not, and to understand the main steps in these review processes. Proposed form CR-141-INFO would replace current form TR-150, *Instructions on Appeal Procedures for Infractions*.

Appointment of Counsel

This proposal retains the current procedure embodied in rule 8.786 that calls for appointment of appellate counsel in misdemeanor cases by the appellate division. The committee would appreciate comments about whether, in the interests of saving time, the trial court should be authorized to appoint counsel in any circumstances.

This proposal also includes a new form that could be used to request appointment of counsel for an indigent defendant in a misdemeanor appeal: *Application for Appointment of Counsel in Misdemeanor Appeal* (form CR-133).

Notices of Appeal

Under this proposal, the time to file a notice of appeal in limited civil, misdemeanor, and infraction appeals in the appellate division would be increased from 30 days to 60 days after the entry of judgment or order being appealed. This would make the time frame for filing a notice of appeal in these appellate division matters the same as for appeals in the Courts of Appeal. This change is being proposed to eliminate a trap for the unwary. Since the time to file a notice of appeal is jurisdictional, if an appellant mistakenly believes that he or she has 60 days, as an appellant does in the Court of Appeal, and does not file the notice of appeal within the current 30-day period, his or her appeal must be dismissed. The committee understands that litigants currently make this error with some frequency. The committee believes that establishing a uniform notice of appeal period will address this problem and make the appellate process easier to navigate, particularly for self-represented litigants.

The committee also understands that the change from a 30- to a 60-day notice of appeal period may raise concerns about record preparation in appeals, however. Because many infraction proceedings, as well as some limited civil and misdemeanor proceedings, are neither recorded by a court reporter nor officially electronically recorded, preparing a settled statement is the only option for providing a record of the oral proceedings in the trial court. Extending the time to file the notice of appeal would mean that the trial court judges or other judicial officers in these cases must try to recall events that occurred up to 60 days earlier, rather than just 30 days. Trying to recall a case from two months earlier may be difficult given the relatively large volume of these matters.

The committee would particularly appreciate comments concerning whether this proposal appropriately balances the potential benefits and burdens associated with changing the time for filing the notice of appeal in these cases. We would especially appreciate comments about whether the notice of appeal period in infraction cases should remain 30 days.

In addition to the proposed change in the deadline for filing the notice of appeal, the committee is proposing three new notice of appeal forms:

- *Notice of Appeal (Limited Civil Case)* (form APP-102);
- *Notice of Appeal (Misdemeanor)* (form CR-132); and
- *Notice of Appeal (Infraction)* (form CR-142).

These forms are designed to be easy to understand and use, particularly for self-represented litigants. The proposed new *Notice of Appeal (Misdemeanor)* (form CR-132) is designed to replace current, *Notice of Appeal–Misdemeanor (Defendant)* (form CR-130) and the proposed *Notice of Appeal and Record Preparation Election (Infraction)* (form CR-142) is designed to replace current *Notice of Appeal (Infraction)* (form TR-155).

Record Preparation

The current appellate division rules relating to record preparation are particularly archaic and confusing. For example, the rules relating to records in criminal appeals do not refer to clerk’s transcripts at all; the elements of the record that must be prepared by the clerk are identified as part of a general rule relating to the contents of the record. These rules do not include separate provisions relating to reporter’s transcripts in criminal appeals; the provisions relating to reporter’s transcripts are part of the rule relating to settled statements.

Because the rules regarding record preparation are currently so confusing, the committee is suggesting many changes to these rules.

Designation of the record: The committee is proposing new rules that would identify the different forms of the record that can be used in appellate division proceedings, such as reporter’s transcripts, official electronic recordings, and statements on appeal. The committee is also proposing new rules that would require the appellant to designate what form of the record will be used. To assist litigants with this record designation process, the committee is proposing new record designation forms:

- *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103);
- *Record Preparation Election (Misdemeanor)* (form CR-134); and
- *Notice of Appeal and Record Preparation Election (Infraction)* (form CR-142).

Record of the documents filed in the trial court: The proposed new rules would lay out the elements of a clerk’s transcript in criminal appeals more clearly, using the provisions of the Court of Appeal rule as a model. The proposal would also allow the original trial court file to be used in lieu of a clerk’s transcript in limited civil, misdemeanor, or infraction appeals if there is a local appellate division rule authorizing this use.

Record of oral proceedings in the trial court: The proposed new rules would require the appellant to notify the court whether he or she wants to proceed with or without a record of the oral proceedings. The proposed new record designation forms would help litigants fulfill this requirement by including spaces for the appellant to make this election. In misdemeanor and infraction appeals, the proposed new rules would lay out the elements of reporter’s transcript more clearly, using the provisions of the Court of Appeal rule as a model. The proposal would also add new rules for limited civil, misdemeanor, and infraction appeals that reiterate a court’s existing authority to use official electronic recordings of the trial court proceedings as the record in the appellate division under the circumstances specified in current statutes and rules. As provided in these statutes and rules, if the appellate division had adopted a local rule permitting this practice, the new rules would permit the use of the official electronic recording itself as the official record of the oral proceedings.

The proposal would also completely revise the provisions in rules relating to settled statements. Among other things, in the proposed rules, these statements would be renamed “statements on appeal,” rather than settled statements. The confusing terminology about “settling” and “engrossing” such statements would be replaced with language that is easier to understand. Current rule 8.789, titled “Experimental rule on use of recordings to facilitate settlement of statements,” would also be repealed, although some provisions of this rule, such as the provision that no hearing will be held to review an appellant’s proposed statement unless ordered by the court, would be incorporated into the proposed new rules.

Under this proposal, if the appellant elected to use a statement on appeal, the appellant would be required to prepare a draft statement for review by the trial court judge or other judicial officer who conducted the proceedings in the trial court, as is the current practice. The proposal includes new “statement on appeal” forms designed to assist appellants in preparing such proposed statements and facilitate the review of these statements by the trial court judicial officers:

- *Statement on Appeal (Limited Civil Case)* (form APP-104);
- *Statement on Appeal (Misdemeanor)* (form CR-135); and
- *Statement on Appeal (Infraction)* (form CR-143).

Form CR-143 is designed to replace current *Proposed Statement on Appeal (Infraction)* (form TR-160). Similar to requirements

applicable to petitions for writs of habeas corpus, the proposed rules would require that appellants who are not represented by attorneys file their proposed statements on appeal on these Judicial Council forms. The committee would particularly appreciate comments on this requirement.

This proposal would also establish a new, alternate, procedure for trial court judicial officers when an appellant presents a proposed statement on appeal for review. Instead of reviewing and correcting such a proposed statement, if the trial court proceedings were either recorded by a court reporter or officially electronically recorded, this proposal would permit the judicial officer to order that a transcript be prepared (at the court's expense). This proposed provision is intended to save both the courts' and litigants' time and expense. The committee understands that, in many cases, proposed statements prepared by appellants are not complete and accurate and must be completely rewritten by the trial court judicial officer. In such circumstances, if the trial court proceedings were reported or officially electronically recorded, it may be quicker, simpler, and ultimately less costly to have a transcript prepared instead of having the judicial officer take the time to review a proposed statement, make corrections, have it sent to the appellant, have the appellant review it, and then have the judicial officer review any objections submitted by the appellant. The proposed statement prepared by the appellant, including the appellant's statement of the points the appellant is raising on appeal, would still be transmitted to the appellate division with the transcript. The committee believes that this procedure could have the benefit of freeing up time that judges can use to focus on hearings in other cases that need their attention.

Because many elements of this proposal concerning statements on appeal incorporate new procedures, the committee would particularly appreciate comments on these rules and forms.

Copies of the record

Currently, in all criminal appeals, the prosecuting attorney is typically sent a copy of the record on appeal, regardless of whether he or she appeared in the trial court proceedings. Under this proposal, in infraction cases in which the prosecuting attorney did not appear in the trial court proceedings, a copy of the record would not be sent to the prosecuting attorney unless he or she requested a copy. This is intended to save the time and resources that are now spent on making these copies in cases where the prosecuting attorney will not be participating in the appellate process. The committee would

particularly appreciate comments on this proposed change.

Abandonment of Appeals

The proposal includes new “abandonment of appeal” forms designed to assist appellants in abandoning their appeals:

- *Abandonment of Appeal (Limited Civil Case)* (form APP-105);
- *Abandonment of Appeal (Misdemeanor)* (form CR-136); and
- *Abandonment of Appeal (Infraction)* (form CR-144).

Form CR-144 is designed to replace current form, *Abandonment of Appeal (Infraction)* (form TR-165).

Briefs

Under this proposal, the period for filing each brief in the appellate division would be lengthened by 10 days. The new time periods are taken from rule 8.212(a), which establishes the time for filing briefs in civil appeals in the Courts of Appeal. The time frames for the respondent’s and reply briefs are also the same as those in rule 8.360(c), relating to briefs in felony appeals in the Court of Appeals, but the time for the appellant’s opening brief in a criminal appeal in the Courts of Appeal is longer—40 days after the filing of the record instead of 30.

The maximum length of the briefs authorized under the proposed rules would also be increased slightly from 15 pages (4,200 words) to 20 pages (6,800 words). This increase is designed to reduce the burden on both the courts and litigants of having to seek permission to file longer briefs in these matters. These briefs would still be much shorter than the length of briefs in the Courts of Appeal in civil appeals (50 pages (14,000 words)) and criminal appeals (75 pages (25,500 words)).

Oral Argument

Under this proposal, the rules regarding sessions of the appellate division would be revised to require that a session be held at least once a quarter, if there is any matter pending, instead of requiring sessions once a month. This would make requirements for the appellate divisions similar to the requirement for the Courts of Appeal. Courts would, of course, be free to hold sessions more frequently if they wanted. In addition, under this proposal, the court would not set a date for oral argument until after all the briefs were filed or the deadline for filing briefs had passed. This is intended to reduce the number of matters in which oral argument must be re-scheduled because of delays in briefing. Finally, the proposed new rules would clarify that a

party can waive oral argument.

The proposal would also add a provision similar to that in the rules for the Courts of Appeal specifying the length of oral argument. Unless otherwise ordered by the court, proposed rule 8.915 would give each side 15 minutes for argument.

Writ Proceedings

Currently, there are no rules addressing writ proceedings in the appellate division. This proposal includes new rules for such writ proceedings that are modeled on the rules for writ proceedings in the Courts of Appeal. The proposal also includes two new forms to assist litigants in these proceedings:

- *Information on Proceedings for Extraordinary Writs in the Appellate Division of the Superior Court* (form APP-150-INFO);
and
- *Petition for Extraordinary Writ* (form APP-151).

Similar to requirements applicable to petitions for writs of habeas corpus, the proposed rules would require that petitioners who are not represented by attorneys file their petitions on form APP-151. The committee would particularly appreciate comments concerning this requirement.

Attachments

Rules 8.700–8.793 of the Cal. Rules of Court would be repealed, rules 8.900–8.916 would be renumbered as rules 8.950–8.966, new rules 8.800–8.906 and 10.1100–10.1108 would be adopted, Judicial Council forms CR-130 and TR-150, TR-155, and TR-160; would be repealed, and new forms APP-101-INFO, APP-102, APP-103, APP-104, and APP-105, relating to appeals in limited civil cases, APP-150-INFO and APP-151 relating to petitions for extraordinary writs, CR-131-INFO, CR-132, CR-133, CR-134, CR-135, and CR-136 relating to appeals in misdemeanor cases, and CR-141-INFO, CR-142, CR-143, and CR-144 relating to appeals in infraction cases would be approved, effective January 1, 2008, to read: