

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on February 22, 2008,

effective on January 1, 2009.

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

2
3 *Division 2 repealed and adopted effective January 1, 2009.*

4
5 **Advisory Committee Comment**

6
7 **Division 2.** The rules relating to the superior court appellate division begin with Chapter 1, which
8 contains general rules applicable to appeals in all three types of cases within the jurisdiction of the
9 appellate division—limited civil, misdemeanor, and infraction. Because the procedures relating to taking
10 appeals and preparing the record in limited civil, misdemeanor, and infraction appeals differ, there are
11 separate chapters addressing these topics: Chapter 2 addresses taking appeals and record preparation in
12 limited civil cases, and Chapter 3 addresses taking appeals and record preparation in misdemeanor cases.
13 Because the procedures for briefing and rendering decisions are generally the same in limited civil and
14 misdemeanor appeals, Chapter 4 addresses these procedures in appeals of both types of cases. To make
15 the distinct procedures for appeals in infraction proceedings easier to find and understand, these
16 procedures are located in a separate chapter—Chapter 5. Chapter 6 addresses writ proceedings in the
17 appellate division.

18
19 **Chapter 1. General Rules Applicable to Appellate Division Proceedings**

20
21 *Chapter 1 repealed and adopted effective January 1, 2009.*

22
23
24 **Rule 8.800. Application of division**

25
26 The rules in this division apply to:

- 27
28 (1) Appeals in the appellate division of the superior court; and
29
30 (2) Writ proceedings, motions, applications, and petitions in the appellate division of
31 the superior court.

32
33 *Rule 8.800 adopted effective January 1, 2009.*

34
35
36 **Rule 8.802. Construction**

37
38 **(a) Construction**

39
40 The rules in this division must be construed to ensure that the proceedings they
41 govern will be justly and speedily determined.

42
43 **(b) Terminology**

44
45 As used in this division:

- 1
- 2 (1) “Must” is mandatory;
- 3
- 4 (2) “May” is permissive;
- 5
- 6 (3) “May not” means is not permitted to;
- 7
- 8 (4) “Will” expresses a future contingency or predicts action by a court or person
- 9 in the ordinary course of events, but does not signify a mandatory duty; and
- 10
- 11 (5) “Should” expresses a preference or a nonbinding recommendation.
- 12

13 **(c) Construction of additional terms**

14 In the rules:

- 15
- 16
- 17 (1) Each tense (past, present, or future) includes the others;
- 18
- 19 (2) Each gender (masculine, feminine, or neuter) includes the others;
- 20
- 21 (3) Each number (singular or plural) includes the other; and
- 22
- 23 (4) The headings of divisions, chapters, articles, rules, and subdivisions are
- 24 substantive.
- 25

26 *Rule 8.802 adopted effective January 1, 2009.*

27

28

29 **Rule 8.804. Definitions**

30

31 As used in this division, unless the context or subject matter otherwise requires:

- 32
- 33 (1) “Action” includes special proceeding.
- 34
- 35 (2) “Case” includes action or proceeding.
- 36
- 37 (3) “Civil case” means a case prosecuted by one party against another for the
- 38 declaration, enforcement, or protection of a right or the redress or prevention of a
- 39 wrong. Civil cases include all cases except criminal cases.
- 40
- 41 (4) “Unlimited civil cases” and “limited civil cases” are defined in Code of Civil
- 42 Procedure section 85 et seq.
- 43

- 1 (5) “Criminal case” means a proceeding by which a party charged with a public offense
2 is accused and brought to trial and punishment.
3
- 4 (6) “Rule” means a rule of the California Rules of Court.
5
- 6 (7) “Local rule” means every rule, regulation, order, policy, form, or standard of
7 general application adopted by a court to govern practice and procedure in that
8 court or by a judge of the court to govern practice or procedure in that judge’s
9 courtroom.
10
- 11 (8) “Presiding judge” includes the acting presiding judge or the judge designated by the
12 presiding judge.
13
- 14 (9) “Judge” includes, as applicable, a judge of the superior court, a commissioner, or a
15 temporary judge.
16
- 17 (10) “Person” includes a corporation or other legal entity as well as a natural person.
18
- 19 (11) “Appellant” means the appealing party.
20
- 21 (12) “Respondent” means the adverse party.
22
- 23 (13) “Party” is a person appearing in an action. Parties include both self-represented
24 persons and persons represented by an attorney of record. “Party,” “applicant,”
25 “petitioner,” or any other designation of a party includes the party’s attorney of
26 record.
27
- 28 (14) “Attorney” means a member of the State Bar of California.
29
- 30 (15) “Counsel” means an attorney.
31
- 32 (16) “Prosecuting attorney” means the city attorney, county counsel, or district attorney
33 prosecuting an infraction or misdemeanor case.
34
- 35 (17) “Complaint” includes a citation.
36
- 37 (18) “Service” means service in the manner prescribed by a statute or rule.
38
- 39 (19) “Declaration” includes “affidavit.”
40
- 41 (20) “Recycled” as applied to paper means “recycled printing and writing paper” as
42 defined by Public Contract Code section 12209.
43

1 (21) “Trial court” means the superior court from which an appeal is taken.

2
3 (22) “Reviewing court” means the appellate division of the superior court.

4
5 (23) “Judgment” includes any judgment or order that may be appealed.

6
7 *Rule 8.804 adopted effective January 1, 2009.*

8
9 **Advisory Committee Comment**

10
11 **Item (18).** See rule 1.21 for general requirements relating to service, including proof of service.

12
13
14 **Rule 8.806. Applications**

15
16 **(a) Service and filing**

17
18 Except as these rules provide otherwise, parties must serve and file all applications,
19 including applications to extend time to file records, briefs, or other documents and
20 applications to shorten time. Applications to extend the time to prepare the record
21 on appeal may be filed in either the trial court or the appellate division. All other
22 applications must be filed in the appellate division. For good cause, the presiding
23 judge of the court where the application was filed, or his or her designee, may
24 excuse advance service.

25
26 **(b) Contents**

27
28 The application must:

29
30 (1) State facts showing good cause to grant the application; and

31
32 (2) Identify any previous applications relating to the same subject filed by any
33 party in the same appeal or writ proceeding.

34
35 **(c) Envelopes**

36
37 An application must be accompanied by addressed, postage-prepaid envelopes for
38 the clerk’s use in mailing copies of the order on the application to all parties.

39
40 **(d) Disposition**

41
42 Unless the court determines otherwise, the presiding judge of the court in which the
43 application was filed, or his or her designee, may rule on the application.

1
2 *Rule 8.806 adopted effective January 1, 2009.*

3
4 **Advisory Committee Comment**

5
6 **Subdivision (a).** See rule 1.21 for the meaning of “serve and file,” including the requirements for proof of
7 service.

8
9 **Subdivisions (a) and (d).** These provisions permit the presiding judge to designate another judge, such as
10 the trial judge, to handle applications.

11
12
13 **Rule 8.808. Motions**

14
15 **(a) Motion and opposition**

16
17 (1) Except as these rules provide otherwise, to make a motion in the appellate
18 division a party must serve and file a written motion, stating the grounds and
19 the relief requested and identifying any documents on which it is based.

20
21 (2) A motion must be accompanied by a memorandum and, if it is based on
22 matters outside the record, by declarations or other supporting evidence.

23
24 (3) Any opposition to the motion must be served and filed within 15 days after the
25 motion is filed.

26
27 **(b) Disposition**

28
29 (1) The court may rule on a motion at any time after an opposition or other
30 response is filed or the time to oppose has expired.

31
32 (2) On a party’s request or its own motion, the appellate division may place a
33 motion on calendar for a hearing. The clerk must promptly send each party a
34 notice of the date and time of the hearing.

35
36 *Rule 8.808 adopted effective January 1, 2009.*

37
38 **Advisory Committee Comment**

39
40 **Subdivision (a)(1).** See rule 1.21 for the meaning of “serve and file,” including the requirements for
41 proof of service.

42
43 **Subdivision (b).** Although a party may request a hearing on a motion, a hearing will be held only if the
44 court determines that one is needed.

1
2 **Rule 8.810. Extending time**

3
4 **(a) Computing time**

5
6 The Code of Civil Procedure governs computing and extending the time to do any
7 act required or permitted under these rules.

8
9 **(b) Extension by trial court**

10
11 (1) For good cause and except as these rules provide otherwise, the presiding
12 judge of the trial court, or his or her designee, may extend the time to do any
13 act to prepare the record on appeal.

14
15 (2) The trial court may not extend the time to do an act if that time—including
16 any valid extension—has expired.

17
18 (3) Notwithstanding anything in these rules to the contrary, the trial court may
19 grant an initial extension to any party to do any act to prepare the record on
20 appeal on an ex parte basis.

21
22 **(c) Extension by appellate division**

23
24 For good cause and except as these rules provide otherwise, the presiding judge of
25 the appellate division, or his or her designee, may extend the time to do any act
26 required or permitted under these rules, except the time to file a notice of appeal.

27
28 **(d) Application for extension**

29
30 (1) An application to extend time must include a declaration stating facts, not
31 mere conclusions, and must be served on all parties. For good cause, the
32 presiding judge of the appellate division, or his or her designee, may excuse
33 advance service.

34
35 (2) The application must state:

36
37 (A) The due date of the document to be filed;

38
39 (B) The length of the extension requested;

40
41 (C) Whether any earlier extensions have been granted and, if so, their
42 lengths; and

43

1 (D) Good cause for granting the extension, consistent with the policies and
2 factors stated in rule 8.811.
3

4 **(e) Notice to party**
5

6 (1) In a civil case, counsel must deliver to his or her client or clients a copy of any
7 stipulation or application to extend time that counsel files. Counsel must
8 attach evidence of such delivery to the stipulation or application or certify in
9 the stipulation or application that the copy has been delivered.
10

11 (2) The evidence or certification of delivery under (1) need not include the
12 address of the party notified.
13

14 *Rule 8.810 adopted effective January 1, 2009.*
15

16 **Advisory Committee Comment**
17

18 **Subdivision (b)(1).** This provision permits the presiding judge to designate another judge, such as the
19 trial judge, to handle applications to extend time.
20

21
22 **Rule 8.811. Policies and factors governing extensions of time**
23

24 **(a) Policies**
25

26 (1) The time limits prescribed by these rules should generally be met to ensure
27 expeditious conduct of appellate business and public confidence in the
28 efficient administration of appellate justice.
29

30 (2) The effective assistance of counsel to which a party is entitled includes
31 adequate time for counsel to prepare briefs or other documents that fully
32 advance the party's interests. Adequate time also allows the preparation of
33 accurate, clear, concise, and complete submissions that assist the courts.
34

35 (3) For a variety of legitimate reasons, counsel or self-represented litigants may
36 not always be able to prepare briefs or other documents within the time
37 specified in the rules of court. To balance the competing policies stated in (1)
38 and (2), applications to extend time in the appellate division must demonstrate
39 good cause under (b). If good cause is shown, the court must extend the time.
40

41 **(b) Factors considered**
42

1 In determining good cause, the court must consider the following factors when
2 applicable:

- 3
- 4 (1) The degree of prejudice, if any, to any party from a grant or denial of the
5 extension. A party claiming prejudice must support the claim in detail.
6
- 7 (2) In a civil case, the positions of the client and any opponent with regard to the
8 extension.
9
- 10 (3) The length of the record, including the number of relevant trial exhibits. A
11 party relying on this factor must specify the length of the record.
12
- 13 (4) The number and complexity of the issues raised. A party relying on this factor
14 must specify the issues.
15
- 16 (5) Whether there are settlement negotiations and, if so, how far they have
17 progressed and when they might be completed.
18
- 19 (6) Whether the case is entitled to priority.
20
- 21 (7) Whether counsel responsible for preparing the document is new to the case.
22
- 23 (8) Whether other counsel or the client needs additional time to review the
24 document.
25
- 26 (9) Whether counsel or a self-represented party responsible for preparing the
27 document has other time-limited commitments that prevent timely filing of the
28 document. Mere conclusory statements that more time is needed because of
29 other pressing business will not suffice. Good cause requires a specific
30 showing of other obligations of counsel or a self-represented party that:
31
- 32 (A) Have deadlines that as a practical matter preclude filing the document by
33 the due date without impairing its quality; or
34
- 35 (B) Arise from cases entitled to priority.
36
- 37 (10) Illness of counsel or a self-represented party, a personal emergency, or a
38 planned vacation that counsel or a self-represented party did not reasonably
39 expect to conflict with the due date and cannot reasonably rearrange.
40
- 41 (11) Any other factor that constitutes good cause in the context of the case.
42

43 *Rule 8.811 adopted effective January 1, 2009.*

1
2
3 **Rule 8.812. Relief from default**
4

5 For good cause, the presiding judge of the appellate division, or his or her designee, may
6 relieve a party from a default for any failure to comply with these rules, except the failure
7 to file a timely notice of appeal.

8
9 *Rule 8.812 adopted effective January 1, 2009.*
10

11
12 **Rule 8.813. Shortening time**
13

14 For good cause and except as these rules provide otherwise, the presiding judge of the
15 appellate division, or his or her designee, may shorten the time to do any act required or
16 permitted under these rules.

17
18 *Rule 8.813 adopted effective January 1, 2009.*
19

20
21 **Rule 8.814. Substituting parties; substituting or withdrawing attorneys**
22

23 **(a) Substituting parties**
24

25 Substitution of parties in an appeal or original proceeding must be made by serving
26 and filing a motion in the appellate division. The clerk of the appellate division
27 must notify the trial court of any ruling on the motion.
28

29 **(b) Substituting attorneys**
30

31 A party may substitute attorneys by serving and filing in the appellate division a
32 stipulation signed by the party represented and the new attorney.
33

34 **(c) Withdrawing attorney**
35

36 (1) An attorney may request withdrawal by filing a motion to withdraw. Unless
37 the court orders otherwise, the motion need be served only on the party
38 represented and the attorneys directly affected.
39

40 (2) The proof of service need not include the address of the party represented. But
41 if the court grants the motion, the withdrawing attorney must promptly
42 provide the court and the opposing party with the party's current or last known
43 address and telephone number.

1
2 (3) In all appeals and in original proceedings related to a trial court proceeding,
3 the appellate division clerk must notify the trial court of any ruling on the
4 motion.

5
6 *Rule 8.814 adopted effective January 1, 2009.*

7
8
9 **Rule 8.816. Address and telephone number of record; notice of change**

10
11 **(a) Address and telephone number of record**

12
13 In any case pending before the appellate division, the appellate division will use the
14 address and telephone number that an attorney or unrepresented party provides on
15 the first document filed in that case as the address and telephone number of record
16 unless the attorney or unrepresented party files a notice under (b).

17
18 **(b) Notice of change**

19
20 (1) An attorney or unrepresented party whose address or telephone number
21 changes while a case is pending must promptly serve and file a written notice
22 of the change in the appellate division in which the case is pending.

23
24 (2) The notice must specify the title and number of the case or cases to which it
25 applies. If an attorney gives the notice, the notice must include the attorney's
26 California State Bar number.

27
28 **(c) Matters affected by notice**

29
30 If the notice under (b) does not identify the case or cases in which the new address
31 or telephone number applies, the clerk may use the new address or telephone
32 number as the person's address and telephone number of record in all pending and
33 concluded cases.

34
35 **(d) Multiple addresses**

36
37 If an attorney or unrepresented party has more than one address, only one address
38 may be used in a given case.

39
40 *Rule 8.816 adopted effective January 1, 2009.*

41
42 **Chapter 2. Appeals and Records in Limited Civil Cases**

1 Chapter 2 repealed and adopted effective January 1, 2009.

2
3 **Article 1. Taking Civil Appeals**

4
5 Article 1 adopted effective January 1, 2009.

6
7
8 **Rule 8.820. Application of chapter**

9
10 The rules in this chapter apply to appeals in limited civil cases, except small claims cases.

11
12 Rule 8.820 adopted effective January 1, 2009.

13
14 **Advisory Committee Comment**

15
16 Chapters 1 and 4 of this division also apply in appeals in limited civil cases.

17
18
19 **Rule 8.821. Notice of appeal**

20
21 **(a) Notice of appeal**

- 22
23 (1) To appeal from a judgment or appealable order in a limited civil case, except a
24 small claims case, an appellant must serve and file a notice of appeal in the
25 superior court that issued the judgment or order being appealed. The appellant
26 or the appellant's attorney must sign the notice.
27
28 (2) The notice of appeal must be liberally construed and is sufficient if it
29 identifies the particular limited civil case judgment or order being appealed.
30
31 (3) Failure to serve the notice of appeal neither prevents its filing nor affects its
32 validity, but the appellant may be required to remedy the failure.

33
34 **(b) Filing fee**

- 35
36 (1) Unless otherwise provided by law, the notice of appeal must be accompanied
37 by the filing fee required under Government Code section 70621, an
38 application for a waiver of court fees and costs on appeal under rules 3.50–
39 3.63, or an order granting such an application. The filing fee is nonrefundable.
40
41 (2) The clerk must file the notice of appeal even if the appellant does not present
42 the filing fee or an application for, or order granting, a waiver under rules
43 3.50–3.63.

1 **(c) Failure to pay filing fee**
2

3 (1) The clerk must promptly notify the appellant in writing if:
4

5 (A) The court receives a notice of appeal without the filing fee required by
6 (b) or an application for, or order granting, a fee waiver under rules
7 3.50–3.63;
8

9 (B) A check for the filing fee is dishonored; or
10

11 (C) An application for a waiver under rules 3.50–3.63 is denied.
12

13 (2) A clerk’s notice under (1) must state that the court may dismiss the appeal
14 unless, within 15 days after the notice is sent, the appellant either:
15

16 (A) Pays the fee; or
17

18 (B) Files an application for a waiver under rules 3.50–3.63 if the appellant
19 has not previously filed such an application.
20

21 (3) If the appellant fails to take the action specified in the notice given under (2),
22 the appellate division may dismiss the appeal, but may vacate the dismissal for
23 good cause.
24

25 **(d) Notification of the appeal**
26

27 (1) When the notice of appeal is filed, the trial court clerk must promptly mail a
28 notification of the filing of the notice of appeal to the attorney of record for
29 each party and to any unrepresented party. The clerk must also mail or deliver
30 this notification to the appellate division clerk.
31

32 (2) The notification must show the date it was mailed and must state the number
33 and title of the case and the date the notice of appeal was filed.
34

35 (3) A copy of the notice of appeal is sufficient notification under (1) if the
36 required information is on the copy or is added by the trial court clerk.
37

38 (4) The mailing of a notification under (1) is a sufficient performance of the
39 clerk’s duty despite the death of the party or the discharge, disqualification,
40 suspension, disbarment, or death of the attorney.
41

42 (5) Failure to comply with any provision of this subdivision does not affect the
43 validity of the notice of appeal.

1
2 **(e) Notice of cross-appeal**

3
4 As used in this rule, “notice of appeal” includes a notice of cross-appeal and
5 “appellant” includes a respondent filing a notice of cross-appeal.

6
7 *Rule 8.821 adopted effective January 1, 2009.*

8
9 **Advisory Committee Comment**

10
11 **Subdivision (a).** Notice of Appeal/Cross-Appeal (Limited Civil Case) (form APP-102) may be used to file
12 the notice of appeal required under this rule. This form is available at any courthouse or county law
13 library or online at www.courtinfo.ca.gov/forms.

14
15 **Subdivision (b).** The filing fee required under Government Code section 70621 is \$180 if the amount
16 claimed in the case is \$10,000 or less and \$300 if the amount claimed in the case is more than \$10,000.

17
18
19 **Rule 8.822. Time to appeal**

20
21 **(a) Normal time**

22
23 Unless a statute or rule 8.823 provides otherwise, a notice of appeal must be filed
24 on or before the earliest of:

- 25
26 (1) 30 days after the trial court clerk mails the party filing the notice of appeal a
27 document entitled “Notice of Entry” of judgment or a file-stamped copy of the
28 judgment, showing the date either was mailed;
29
30 (2) 30 days after the party filing the notice of appeal serves or is served by a party
31 with a document entitled “Notice of Entry” of judgment or a file-stamped
32 copy of the judgment, accompanied by proof of service; or
33
34 (3) 90 days after the entry of judgment.

35
36 **(b) What constitutes entry**

37
38 For purposes of this rule:

- 39
40 (1) The entry date of a judgment is the date the judgment is filed under Code of
41 Civil Procedure section 668.5 or the date it is entered in the judgment book.
42
43 (2) The date of entry of an appealable order that is entered in the minutes is the
44 date it is entered in the permanent minutes. But if the minute order directs that

1 a written order be prepared, the entry date is the date the signed order is filed;
2 a written order prepared under rule 3.1312 or similar local rule is not such an
3 order prepared by direction of a minute order.
4

5 (3) The entry date of an order that is not entered in the minutes is the date the
6 signed order is filed.
7

8 **(c) Premature notice of appeal**
9

10 (1) A notice of appeal filed after judgment is rendered but before it is entered is
11 valid and is treated as filed immediately after entry of judgment.
12

13 (2) The appellate division may treat a notice of appeal filed after the trial court
14 has announced its intended ruling, but before it has rendered judgment, as
15 filed immediately after entry of judgment.
16

17 **(d) Late notice of appeal**
18

19 If a notice of appeal is filed late, the appellate division must dismiss the appeal.
20

21 *Rule 8.822 adopted effective January 1, 2009.*
22

23 **Advisory Committee Comment**
24

25 Under rule 8.804(23), the term “judgment” includes any order that may be appealed.
26
27

28 **Rule 8.823. Extending the time to appeal**
29

30 **(a) Extension of time**
31

32 This rule operates only to increase the time to appeal otherwise prescribed in rule
33 8.822(a); it does not shorten the time to appeal. If the normal time to appeal stated
34 in rule 8.822(a) would be longer than the time provided in this rule, the time to
35 appeal stated in rule 8.822(a) governs.
36

37 **(b) Motion for a new trial**
38

39 If any party serves and files a valid notice of intention to move for a new trial, the
40 time to appeal from the judgment is extended for all parties as follows:
41

42 (1) If the motion is denied, until the earliest of:
43

1 (A) 15 days after the trial court clerk mails, or a party serves, an order
2 denying the motion or a notice of entry of that order;

3
4 (B) 15 days after denial of the motion by operation of law; or

5
6 (C) 90 days after entry of judgment; or

7
8 (2) If any party serves an acceptance of a conditionally ordered additur or
9 remittitur of damages under a trial court finding of excessive or inadequate
10 damages, until 15 days after the date the party serves the acceptance.

11
12 **(c) Motion to vacate judgment**

13
14 If, within the time prescribed by rule 8.822 to appeal from the judgment, any party
15 serves and files a valid notice of intention to move to vacate the judgment or a valid
16 motion to vacate the judgment, the time to appeal from the judgment is extended for
17 all parties until the earliest of:

18
19 (1) 15 days after the trial court clerk mails, or a party serves, an order denying the
20 motion or a notice of entry of that order;

21
22 (2) 45 days after the first notice of intention to move or motion is filed; or

23
24 (3) 90 days after entry of judgment.

25
26 **(d) Motion for judgment notwithstanding the verdict**

27
28 (1) If any party serves and files a valid motion for judgment notwithstanding the
29 verdict and the motion is denied, the time to appeal from the judgment is
30 extended for all parties until the earliest of:

31
32 (A) 15 days after the trial court clerk mails, or a party serves, an order
33 denying the motion or a notice of entry of that order;

34
35 (B) 15 days after denial of the motion by operation of law; or

36
37 (C) 90 days after entry of judgment.

38
39 (2) Unless extended by (e)(2), the time to appeal from an order denying a motion
40 for judgment notwithstanding the verdict is governed by rule 8.822.

41
42 **(e) Motion to reconsider appealable order**

43

1 If any party serves and files a valid motion to reconsider an appealable order under
2 Code of Civil Procedure section 1008(a), the time to appeal from that order is
3 extended for all parties until the earliest of:

4
5 (1) 15 days after the superior court clerk mails, or a party serves, an order denying
6 the motion or a notice of entry of that order;

7
8 (2) 45 days after the first motion to reconsider is filed; or

9
10 (3) 90 days after entry of the appealable order.

11
12 **(f) Cross-appeal**

13
14 (1) If an appellant timely appeals from a judgment or appealable order, the time
15 for any other party to appeal from the same judgment or order is extended
16 until 10 days after the trial court clerk mails notification of the first appeal.

17
18 (2) If an appellant timely appeals from an order granting a motion for a new trial,
19 an order granting—within 75 days after entry of judgment—a motion to
20 vacate the judgment, or a judgment notwithstanding the verdict, the time for
21 any other party to appeal from the original judgment or from an order denying
22 a motion for judgment notwithstanding the verdict is extended until 10 days
23 after the clerk mails notification of the first appeal.

24
25 **(g) Showing date of order or notice; proof of service**

26
27 An order or notice mailed by the clerk under this rule must show the date it was
28 mailed. An order or notice served by a party must be accompanied by proof of
29 service.

30
31 *Rule 8.823 adopted effective January 1, 2009.*

32
33
34 **Rule 8.824. Writ of supersedeas**

35
36 **(a) Petition**

37
38 (1) A party seeking a stay of the enforcement of a judgment or order pending
39 appeal may serve and file a petition for writ of supersedeas in the appellate
40 division.

41
42 (2) The petition must bear the same title as the appeal.

43

1 (3) The petition must explain the necessity for the writ and include a
2 memorandum.

3
4 (4) If the record has not been filed in the reviewing court:

5
6 (A) The petition must include a statement of the case sufficient to show that
7 the petitioner will raise substantial issues on appeal, including a fair
8 summary of the material facts, the issues that are likely to be raised on
9 appeal, and any oral statement by the court supporting its rulings related
10 to these issues.

11
12 (B) The petitioner must file the following documents with the petition:

13
14 (i) The judgment or order, showing its date of entry;

15
16 (ii) The notice of appeal, showing its date of filing;

17
18 (iii) Any application for a stay filed in the trial court and any opposition
19 to that application; and

20
21 (iv) Any other document from the trial court proceeding that is
22 necessary for proper consideration of the petition.

23
24 (C) The documents listed in (B) must comply with the following
25 requirements:

26
27 (i) They must be bound together at the end of the petition or in
28 separate volumes not exceeding 300 pages each. The pages must be
29 consecutively numbered;

30
31 (ii) They must be index-tabbed by number or letter; and

32
33 (iii) They must begin with a table of contents listing each document by
34 its title and its index-tab number or letter.

35
36 (5) The petition must be verified.

37
38 **(b) Opposition**

39
40 (1) Unless otherwise ordered, any opposition must be served and filed within 15
41 days after the petition is filed.

1 (2) An opposition must state any material facts not included in the petition and
2 include a memorandum.

3
4 (3) The court may not issue a writ of supersedeas until the respondent has had the
5 opportunity to file an opposition.

6
7 **(c) Temporary stay**

8
9 (1) The petition may include a request for a temporary stay pending the ruling on
10 the petition.

11
12 (2) A separately filed request for a temporary stay must be served on the
13 respondent. For good cause, the presiding judge may excuse advance service.

14
15 **(d) Issuing the writ**

16
17 (1) The court may issue the writ on any conditions it deems just.

18
19 (2) The court must notify the trial court, under rule 8.904, of any writ or stay that
20 it issues.

21
22 *Rule 8.824 adopted effective January 1, 2009.*

23
24
25 **Rule 8.825. Abandonment, voluntary dismissal, and compromise**

26
27 **(a) Notice of settlement**

28
29 (1) If a civil case settles after a notice of appeal has been filed, either as a whole
30 or as to any party, the appellant who has settled must immediately serve and
31 file a notice of settlement in the appellate division. If the parties have
32 designated a clerk's or a reporter's transcript and the record has not been filed
33 in the appellate division, the appellant must also immediately serve a copy of
34 the notice on the trial court clerk.

35
36 (2) If the case settles after the appellant receives a notice setting oral argument,
37 the appellant must also immediately notify the appellate division of the
38 settlement by telephone or other expeditious method.

39
40 (3) Within 45 days after filing a notice of settlement—unless the court has
41 ordered a longer time period on a showing of good cause—the appellant who
42 filed the notice of settlement must file an abandonment under (b).

1 (4) If the appellant does not file an abandonment or a letter stating good cause
2 why the appeal should not be dismissed within the time period specified under
3 (3), the court may dismiss the appeal as to that appellant and order each side to
4 bear its own costs on appeal.

5
6 (5) Subdivision (a) does not apply to settlements requiring findings to be made by
7 the Court of Appeal under Code of Civil Procedure section 128(a)(8).

8
9 **(b) Abandonment**

10
11 (1) The appellant may serve and file an abandonment of the appeal or a
12 stipulation to abandon the appeal in the appellate division.

13
14 (2) If the record has not been filed in the appellate division, the filing of an
15 abandonment effects a dismissal of the appeal and restores the trial court's
16 jurisdiction. If the record has been filed in the appellate division, the appellate
17 division may dismiss the appeal and direct immediate issuance of the
18 remittitur.

19
20 (3) The clerk must promptly notify the adverse party of an abandonment. If the
21 record has not been filed in the appellate division, the clerk must also
22 immediately notify the trial court.

23
24 (4) If the appeal is abandoned before the clerk has completed preparation of the
25 transcript, the clerk must refund any portion of a deposit exceeding the
26 preparation cost actually incurred.

27
28 (5) If the appeal is abandoned before the reporter has filed the transcript, the
29 reporter must inform the trial court clerk of the cost of the portion of the
30 transcript that the reporter has completed. The clerk must pay that amount to
31 the reporter from the appellant's deposited funds and refund any excess
32 deposit.

33
34 **(c) Approval of compromise**

35
36 If a guardian or conservator seeks approval of a proposed compromise of a pending
37 appeal, the appellate division may, before ruling on the compromise, direct the trial
38 court to determine whether the compromise is in the minor's or the conservatee's
39 best interest and to report its findings.

40
41 *Rule 8.825 adopted effective January 1, 2009.*

42
43 **Advisory Committee Comment**

1
2 Abandonment of Appeal (Limited Civil Case) (form APP-106) may be used to file an abandonment under
3 this rule. This form is available at any courthouse or county law library or online at
4 www.courtinfo.ca.gov/forms.
5

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

7
8 *Article 2 adopted effective January 1, 2009.*
9

10 11 **Rule 8.830. Record on appeal**

12 13 **(a) Normal record**

14
15 Except as otherwise provided in this chapter, the record on an appeal to the
16 appellate division in a civil case must contain the following, which constitute the
17 normal record on appeal:
18

19 (1) A record of the written documents from the trial court proceedings in the form
20 of one of the following:
21

22 (A) A clerk's transcript under rule 8.832;
23

24 (B) If the court has a local rule for the appellate division electing to use this
25 form of the record, the original trial court file under rule 8.833; or
26

27 (C) An agreed statement under rule 8.836.
28

29 (2) If an appellant wants to raise any issue that requires consideration of the oral
30 proceedings in the trial court, the record on appeal must include a record of
31 these oral proceedings in the form of one of the following:
32

33 (A) A reporter's transcript under rule 8.834 or a transcript prepared from an
34 official electronic recording under rule 8.835;
35

36 (B) If the court has a local rule for the appellate division permitting this form
37 of the record, an official electronic recording of the proceedings under
38 rule 8.835;
39

40 (C) An agreed statement under rule 8.836; or
41

42 (D) A statement on appeal under rule 8.837.
43

1 **(b) Presumption from the record**

2
3 The appellate division will presume that the record in an appeal includes all matters
4 material to deciding the issues raised. If the appeal proceeds without a reporter's
5 transcript, this presumption applies only if the claimed error appears on the face of
6 the record.

7
8 *Rule 8.830 adopted effective January 1, 2009.*

9
10 **Advisory Committee Comment**

11
12 **Subdivision (a).** The options of using the original trial court file instead of a clerk's transcript under
13 (1)(B) or an electronic recording itself, rather than a transcript, under (2)(B) are available only if the court
14 has local rules for the appellate division authorizing these options.

15
16
17 **Rule 8.831. Notice designating the record on appeal**

18
19 **(a) Time to file**

20
21 Within 10 days after filing the notice of appeal, an appellant must serve and file a
22 notice in the trial court designating the record on appeal. The appellant may
23 combine its notice designating the record with its notice of appeal.

24
25 **(b) Contents**

26
27 The notice must specify:

28
29 (1) The date the notice of appeal was filed;

30
31 (2) Which form of the record of the written documents from the trial court
32 proceedings listed in rule 8.830(a)(1) the appellant elects to use. If the
33 appellant elects to use a clerk's transcript, the notice must also:

34
35 (A) Provide the filing date of each document that is required to be included
36 in the clerk's transcript under 8.832(a)(1) or, if the filing date is not
37 available, the date it was signed; and

38
39 (B) Designate, as provided under 8.832(b), any documents in addition to
40 those required under 8.832(a)(1) that the appellant wants included in the
41 clerk's transcript;

42
43 (3) Whether the appellant elects to proceed with or without a record of the oral
44 proceedings in the trial court;

- 1
2 (4) If the appellant elects to proceed with a record of the oral proceedings in the
3 trial court, the notice must specify which form of the record listed in rule
4 8.830(a)(2) the appellant elects to use;
5
6 (5) If the appellant elects to use a reporter’s transcript, the notice must designate
7 the proceedings to be included in the transcript as required under rule 8.834;
8
9 (6) If the appellant elects to use an official electronic recording, the appellant
10 must attach a copy of the stipulation required under rule 8.835(c); and
11
12 (7) If the appellant elects to use an agreed statement, the appellant must attach to
13 the notice either the agreed statement or stipulation as required under rule
14 8.836(c)(1).
15

16 *Rule 8.831 adopted effective January 1, 2009.*

17
18 **Advisory Committee Comment**

19
20 Notice Designating Record on Appeal (Limited Civil Case) (form APP-103) may be used to file the
21 designation required under this rule. This form is available at any courthouse or county law library or
22 online at www.courtinfo.ca.gov/forms. To assist parties in making appropriate choices, courts are
23 encouraged to include information about whether the proceedings were recorded by a court reporter or
24 officially electronically recorded in any information that the court provides to parties concerning their
25 appellate rights.
26

27 If the appellant designates a clerk’s transcript or reporter’s transcript under this rule, the respondent will
28 have an opportunity to designate additional documents to be included in the clerk’s transcript under rule
29 8.832(b)(2) or additional proceedings to be included in the reporter’s transcript under rule 8.834(a)(3).
30

31
32 **Rule 8.832. Clerk’s transcript**

33
34 **(a) Contents of clerk’s transcript**

- 35
36 (1) The clerk’s transcript must contain:
37
38 (A) The notice of appeal;
39
40 (B) Any judgment appealed from and any notice of its entry;
41
42 (C) Any order appealed from and any notice of its entry;
43
44 (D) Any notice of intention to move for a new trial, or motion to vacate the
45 judgment, for judgment notwithstanding the verdict, or for

1 reconsideration of an appealed order, with supporting and opposing
2 memoranda and attachments, and any order on such motion and any
3 notice of its entry;

4
5 (E) The notice designating the record on appeal; and

6
7 (F) The register of actions, if any.

8
9 (2) Each document listed in (1)(A), (B), (C), and (D) must show the date
10 necessary to determine the timeliness of the appeal under rule 8.822 or 8.823.

11
12 (3) If designated by any party, the clerk's transcript must also contain:

13
14 (A) Any other document filed or lodged in the case in the trial court;

15
16 (B) Any exhibit admitted in evidence, refused, or lodged; and

17
18 (C) Any jury instructions that any party submitted in writing, the cover page
19 required by rule 2.1055(b)(2), and any written jury instructions given by
20 the court.

21
22 **(b) Notice of designation**

23
24 (1) Within 10 days after the appellant serves a notice under rule 8.831 indicating
25 that the appellant elects to use a clerk's transcript, the respondent may serve
26 and file a notice in the trial court designating any additional documents the
27 respondent wants included in the clerk's transcript.

28
29 (2) A notice designating documents to be included in a clerk's transcript must
30 identify each designated document by its title and filing date or, if the filing
31 date is not available, the date it was signed. A notice designating documents in
32 addition to those listed in (a)(1) may specify portions of designated documents
33 that are not to be included in the clerk's transcript. For minute orders or jury
34 instructions, it is sufficient to collectively designate all minute orders or all
35 minute orders entered between specified dates, or all written instructions
36 given, refused, or withdrawn.

37
38 (3) All exhibits admitted in evidence, refused, or lodged are deemed part of the
39 record, but a party wanting an exhibit included in the transcript must specify
40 that exhibit by number or letter in its designation. If the trial court has returned
41 a designated exhibit to a party, the party in possession of the exhibit must
42 promptly deliver it to the trial court clerk.

1 **(c) Deposit for cost of clerk’s transcript**
2

3 (1) Within 30 days after the respondent files a designation under (b)(1) or the time
4 to file it expires, whichever first occurs, the trial court clerk must send:

5
6 (A) To the appellant, notice of the estimated cost to prepare an original and
7 one copy of the clerk’s transcript; and

8
9 (B) To each party other than the appellant, notice of the estimated cost to
10 prepare a copy of the clerk’s transcript for that party’s use.

11
12 (2) A notice under (1) must show the date it was sent.

13
14 (3) Within 10 days after the clerk sends a notice under (1), the appellant and any
15 party wanting to purchase a copy of the clerk’s transcript must deposit the
16 estimated cost with the clerk, unless otherwise provided by law or the party
17 submits an application for, or an order granting, a waiver of the cost under
18 rules 3.50–3.63.

19
20 **(d) Preparing the clerk’s transcript**
21

22 (1) Within 30 days after the appellant deposits the estimated cost of the transcript
23 or the court files an order waiving that cost, the clerk must:

24
25 (A) Prepare an original and one copy of the clerk’s transcript and certify the
26 original; and

27
28 (B) Prepare any additional copies for which the parties have made deposits.

29
30 (2) If the appeal is abandoned or dismissed before the clerk has completed
31 preparation of the transcript, the clerk must refund any portion of the deposit
32 under (c)(3) exceeding the preparation cost actually incurred.
33

34 *Rule 8.832 adopted effective January 1, 2009.*
35

36
37 **Rule 8.833. Trial court file instead of clerk’s transcript**
38

39 **(a) Application**
40

41 If the court has a local rule for the appellate division electing to use this form of the
42 record, the original trial court file may be used instead of a clerk’s transcript. This

1 rule and any supplemental provisions of the local rule then govern unless the trial
2 court orders otherwise after notice to the parties.

3
4 **(b) Cost estimate; preparation of file; transmittal**

5
6 (1) Within 10 days after the appellant serves a notice under rule 8.831 indicating
7 that the appellant elects to use a clerk’s transcript, the trial court clerk may
8 mail the appellant a notice indicating that the appellate division for that court
9 has elected by local court rule to use the original trial court file instead of a
10 clerk’s transcript and providing the appellant with an estimate of the cost to
11 prepare the file, including the cost of sending the index under (4).

12
13 (2) Within 10 days after the clerk mails the estimate under (1), the appellant must
14 deposit the estimated cost with the clerk, unless otherwise provided by law or
15 the party submits an application for, or an order granting, a waiver of the cost
16 under rules 3.50–3.63.

17
18 (3) Within 10 days after the appellant deposits the cost or the court files an order
19 waiving that cost, the trial court clerk must put the trial court file in
20 chronological order, number the pages, and attach a chronological index and a
21 list of all attorneys of record, the parties they represent, and any unrepresented
22 parties.

23
24 (4) The clerk must send copies of the index to all attorneys of record and any
25 unrepresented parties for their use in paginating their copies of the file to
26 conform to the index.

27
28 (5) If the appellant elected to proceed with a reporter’s transcript, the clerk must
29 send the prepared file to the appellate division with the reporter’s transcript. If
30 the appellant elected to proceed without a reporter’s transcript, the clerk must
31 immediately send the prepared file to the appellate division.

32
33 *Rule 8.833 adopted effective January 1, 2009.*

34
35
36 **Rule 8.834. Reporter’s transcript**

37
38 **(a) Notice**

39
40 (1) A notice designating a reporter’s transcript under rule 8.831 must specify the
41 date of each proceeding to be included in the transcript and may specify
42 portions of the designated proceedings that are not to be included.

1 (2) If the appellant designates less than all the testimony, the notice must state the
2 points to be raised on the appeal; the appeal is then limited to those points
3 unless, on motion, the appellate division permits otherwise.

4
5 (3) If the appellant serves and files a notice under 8.831 designating a reporter's
6 transcript, the respondent may, within 10 days after such service, serve and
7 file a notice in the trial court designating any additional proceedings the
8 respondent wants included in the reporter's transcript.

9
10 (4) The clerk must promptly mail a copy of each notice to the reporter. The copy
11 must show the date it was mailed.

12
13 **(b) Deposit or waiver**

14
15 (1) Within 10 days after the clerk mails a notice under (a)(4), the reporter must
16 file the estimate with the clerk—or notify the clerk in writing of the date that
17 he or she notified the appellant directly—of the estimated cost of preparing the
18 reporter's transcript.

19
20 (2) Within 10 days after the clerk notifies the appellant of the estimated cost of
21 preparing the reporter's transcript or within 10 days after the reporter notifies
22 the appellant directly—the appellant must deposit with the clerk an amount
23 equal to the estimated cost or file with the clerk a waiver of the deposit signed
24 by the reporter. The clerk must then promptly notify the reporter to prepare the
25 transcript.

26
27 **(c) Contents of reporter's transcript**

28
29 (1) The reporter must transcribe all designated proceedings and must note in the
30 transcript where any proceedings were omitted and the nature of those
31 proceedings. The reporter must also note where any exhibit was marked for
32 identification and where it was admitted or refused, identifying such exhibits
33 by number or letter.

34
35 (2) The reporter must not transcribe the voir dire examination of jurors, any
36 opening statement, or the proceedings on a motion for new trial, unless they
37 are designated.

38
39 (3) If a party designates a portion of a witness's testimony to be transcribed, the
40 reporter must transcribe the witness's entire testimony unless the parties
41 stipulate otherwise.

1 (4) The reporter must not copy any document includable in the clerk’s transcript
2 under rule 8.832.

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

5
6 (1) Within 20 days after the clerk notifies the reporter to prepare the transcript
7 under (b)(2)—or the reporter receives the fees from the appellant—the
8 reporter must prepare and certify an original of the reporter’s transcript and
9 file it in the trial court. The reporter must also file one copy of the original
10 transcript or more than one copy if multiple appellants equally share the cost
11 of preparing the record.

12
13 (2) When the transcript is completed, the reporter must bill each designating party
14 at the statutory rate and send a copy of the bill to the clerk. The clerk must pay
15 the reporter from that party’s deposited funds and refund any excess deposit or
16 notify the party of any additional funds needed. In a multiple reporter case, the
17 clerk must pay each reporter who certifies under penalty of perjury that his or
18 her transcript portion is completed.

19
20 (3) If the appeal is abandoned or is dismissed before the reporter has filed the
21 transcript, the reporter must inform the clerk of the cost of the portion of the
22 transcript that the reporter has completed. The clerk must pay that amount to
23 the reporter from the appellant’s deposited funds and refund any excess
24 deposit.

25
26 **(e) Notice when proceedings cannot be transcribed**

27
28 (1) If any portion of the designated proceedings were not reported or cannot be
29 transcribed, the trial court clerk must so notify the designating party by mail;
30 the notice must show the date it was mailed.

31
32 (2) Within 10 days after the notice under (1) is mailed, the designating party must
33 notify the court whether the party elects to proceed with or without a record of
34 the oral proceedings that were not reported or cannot be transcribed. If the
35 party elects to proceed with a record of these oral proceedings, the notice must
36 specify which form of the record listed in rule 8.830(a)(2) other than a
37 reporter’s transcript the party elects to use. The party must comply with the
38 requirements applicable to the form of the record elected.

39
40 (3) This remedy supplements any other available remedies.

41
42 *Rule 8.834 adopted effective January 1, 2009.*

1
2 **Rule 8.835. Record when trial proceedings were officially electronically recorded**

3
4 **(a) Application**

5
6 This rule applies only if:

- 7
8 (1) The trial court proceedings were officially recorded electronically under
9 Government Code section 69957; and
10
11 (2) The electronic recording was prepared in compliance with applicable rules
12 regarding electronic recording of court proceedings.
13

14 **(b) Transcripts from official electronic recording**

15
16 Written transcripts of official electronic recordings may be prepared under rule
17 2.952. A transcript prepared and certified as provided in that rule is prima facie a
18 true and complete record of the oral proceedings it purports to cover and satisfies
19 any requirement in these rules or in any statute for a reporter's transcript of oral
20 proceedings.
21

22 **(c) Use of official recording as record of oral proceedings**

23
24 If the court has a local rule for the appellate division permitting this, on stipulation
25 of the parties or on order of the trial court under rule 8.837(d), the original of an
26 official electronic recording of the trial court proceedings, or a copy made by the
27 court, may be transmitted as the record of these oral proceedings without being
28 transcribed. Such an official electronic recording satisfies any requirement in these
29 rules or in any statute for a reporter's transcript of these proceedings.
30

31 **(d) Notice when proceedings were not officially electronically recorded or cannot**
32 **be transcribed**

- 33
34 (1) If the appellant elects under rule 8.831 to use a transcript prepared from an
35 official electronic recording or the recording itself, the trial court clerk must
36 notify the appellant by mail if any portion of the designated proceedings was
37 not officially electronically recorded or cannot be transcribed. The notice must
38 show the date it was mailed.
39
40 (2) Within 10 days after the notice under (1) is mailed, the appellant must notify
41 the court whether the appellant elects to proceed with or without a record of
42 the oral proceedings that were not recorded or cannot be transcribed. If the
43 party elects to proceed with a record of these oral proceedings, the notice must

1 specify which form of the record listed in rule 8.830(a)(2) other than an
2 electronic recording the appellant elects to use. The appellant must comply
3 with the requirements applicable to the form of the record elected.
4

5 *Rule 8.835 adopted effective January 1, 2009.*
6

7
8 **Rule 8.836. Agreed statement**
9

10 **(a) What is an agreed statement**
11

12 An agreed statement is a summary of the trial court proceedings that is agreed to by
13 the parties. If the parties have prepared an agreed statement or stipulated to prepare
14 one, the appellant can elect under rule 8.831 to use an agreed statement as the
15 record of the documents filed in the trial court, replacing the clerk's transcript, and
16 as the record of the oral proceedings in the trial court, replacing the reporter's
17 transcript.
18

19 **(b) Contents of an agreed statement**
20

21 (1) The agreed statement must explain the nature of the action, the basis of the
22 appellate division's jurisdiction, and the rulings of the trial court relating to
23 the points to be raised on appeal. The statement should recite only those facts
24 that a party considers relevant to decide the appeal and must be signed by the
25 parties.
26

27 (2) If the agreed statement replaces a clerk's transcript, the statement must be
28 accompanied by copies of all items required by rule 8.832(a)(1), showing the
29 dates required by rule 8.832(a)(2).
30

31 (3) The statement may be accompanied by copies of any document includable in
32 the clerk's transcript under rule 8.832(a)(3).
33

34 **(c) Time to file; extension of time**
35

36 (1) If an appellant indicates on its notice designating the record under rule 8.831
37 that it elects to use an agreed statement under this rule, the appellant must file
38 with the notice designating the record either the agreed statement or a
39 stipulation that the parties are attempting to agree on a statement.
40

41 (2) If the appellant files a stipulation under (1), within 30 days after filing the
42 notice of designation under rule 8.831, the appellant must either:
43

- 1 (A) File the statement if the parties were able to agree on the statement; or
2
3 (B) File both a notice stating that the parties were not able to agree on the
4 statement and a new notice designating the record under rule 8.831. In
5 the new notice designating the record, the appellant may not elect to use
6 an agreed statement.

7
8 *Rule 8.836 adopted effective January 1, 2009.*
9

10
11 **Rule 8.837. Statement on appeal**

12
13 **(a) Description**

14
15 A statement on appeal is a summary of the trial court proceedings that is approved
16 by the trial court. An appellant can elect under rule 8.831 to use a statement on
17 appeal as the record of the oral proceedings in the trial court, replacing the
18 reporter's transcript.

19
20 **(b) Preparing the proposed statement**

21
22 (1) If the appellant elects in its notice designating the record under rule 8.831 to
23 use a statement on appeal, the appellant must serve and file a proposed
24 statement within 20 days after filing the notice under rule 8.831. If the
25 appellant does not file a proposed statement within this time, the trial court
26 clerk must promptly notify the appellant by mail that it must file the proposed
27 statement within 15 days after the notice is mailed and that failure to comply
28 will result in the appeal being dismissed.

29
30 (2) Appellants who are not represented by an attorney must file their proposed
31 statement on *Statement on Appeal (Limited Civil Case)* (form APP-104). For
32 good cause, the court may permit the filing of a statement that is not on form
33 APP-104.

34
35 **(c) Contents of the proposed statement**

36
37 The proposed statement must contain:

38
39 (1) A condensed narrative of the oral proceedings that the appellant believes
40 necessary for the appeal and a summary of the trial court's holding and
41 judgment. Subject to the court's approval, the appellant may present some or
42 all of the evidence by question and answer.
43

1 (2) A statement of the points the appellant is raising on appeal. If the condensed
2 narrative under (A) covers only a portion of the oral proceedings, then the
3 appeal is limited to the points identified in the statement unless, on motion, the
4 appellate division permits otherwise.

5
6 (A) The statement must specify the intended grounds of appeal by clearly
7 stating each point to be raised but need not identify each particular ruling
8 or matter to be challenged.

9
10 (B) The statement must include as much of the evidence or proceeding as
11 necessary to support the stated grounds. Any evidence or portion of a
12 proceeding not included will be presumed to support the judgment or
13 order appealed from.

14
15 (C) If one of the grounds of appeal is insufficiency of the evidence, the
16 statement must specify how it is insufficient.

17
18 (D) If one of the grounds of appeal challenges the giving, refusal, or
19 modification of a jury instruction, the statement must include any
20 instructions submitted orally and identify the party that requested the
21 instruction and any modification.

22
23 **(d) Review of the appellant's proposed statement**

24
25 (1) Within 10 days after the appellant files the proposed statement, the respondent
26 may serve and file proposed amendments to that statement.

27
28 (2) No later than 10 days after the respondent files proposed amendments or the
29 time to do so expires, a party may request a hearing to review and correct the
30 proposed statement. No hearing will be held unless ordered by the trial court
31 judge, and the judge will not ordinarily order a hearing unless there is a factual
32 dispute about a material aspect of the trial court proceedings.

33
34 (3) If a hearing is ordered, the court must promptly set the hearing date and
35 provide the parties with at least 5 days' written notice of the hearing date.

36
37 (4) Except as provided in (6), if no hearing is ordered, no later than 10 days after
38 the time for requesting a hearing expires, the trial court judge must review the
39 proposed statement and any proposed amendments and make any corrections
40 or modifications to the statement necessary to ensure that it is an accurate
41 summary of the trial court proceedings. If a hearing is ordered, the trial court
42 judge must make any corrections or modifications to the statement within 10
43 days after the hearing.

- 1
2 (5) The trial court judge must not eliminate the appellant’s specification of
3 grounds of appeal from the proposed statement.
4
5 (6) If the trial court proceedings were reported by a court reporter or officially
6 electronically recorded under Government Code section 69957 and the trial
7 court judge determines that it would save court time and resources, instead of
8 correcting a proposed statement on appeal:
9
10 (A) If the court has a local rule for the appellate division permitting the use
11 of an official electronic recording as the record of the oral proceedings,
12 the trial court judge may order that the original of an official electronic
13 recording of the trial court proceedings, or a copy made by the court, be
14 transmitted as the record of these oral proceedings without being
15 transcribed. The court will pay for any copy of the official electronic
16 recording ordered under this subdivision; or
17
18 (B) Unless the court has a local rule providing otherwise, the trial court
19 judge may order that a transcript be prepared as the record of the oral
20 proceedings. The court will pay for any transcript ordered under this
21 subdivision.
22

23 **(e) Review of the corrected statement**
24

- 25 (1) If the trial court judge makes any corrections or modifications to the proposed
26 statement under (d), the clerk must send copies of the corrected or modified
27 statement to the parties.
28
29 (2) Within 10 days after the statement is sent to the parties, any party may serve
30 and file proposed modifications or objections to the statement.
31

32 **(f) Certification of the statement on appeal**
33

- 34 (1) If the trial court judge does not make any corrections or modifications to the
35 proposed statement under (d)(4) and does not order either the use of an official
36 electronic recording or the preparation of a transcript in lieu of correcting the
37 proposed statement under (d)(6), the judge must promptly certify the
38 statement.
39
40 (2) If the trial court judge corrects or modifies an appellant’s proposed statement
41 under (d), within five days after the time for filing proposed modifications or
42 objections has expired, the judge must review any proposed modifications or
43 objections to the statement filed by the parties, make any corrections or

1 modifications to the statement necessary to ensure that it is an accurate
2 summary of the trial court proceedings, and certify the statement.

3
4 *Rule 8.837 adopted effective January 1, 2009.*

5
6 **Advisory Committee Comment**

7
8 **Subdivision (b).** *Proposed Statement on Appeal (Limited Civil Case) (form AP-104) is available at any*
9 *courthouse or county law library or online at www.courtinfo.ca.gov/forms.*

10
11 **Subdivision (d).** Under rule 8.804, the term “judge” includes a commissioner or a temporary judge.
12

13
14 **Rule 8.838. Form of the record**

15
16 **(a) Paper and format**

17
18 Except as otherwise provided in this rule, clerk’s and reporter’s transcripts must
19 comply with the paper and format requirements of rule 8.144(a).

20
21 **(b) Indexes**

22
23 At the beginning of the first volume of each:

24
25 (1) The clerk’s transcript must contain alphabetical and chronological indexes
26 listing each document and the volume and page where it first appears;

27
28 (2) The reporter’s transcript must contain alphabetical and chronological indexes
29 listing the volume and page where each witness’s direct, cross, and any other
30 examination, begins; and

31
32 (3) The reporter’s transcript must contain an index listing the volume and page
33 where any exhibit is marked for identification and where it is admitted or
34 refused.

35
36 **(c) Binding and cover**

37
38 (1) Clerk’s and reporter’s transcripts must be bound on the left margin in volumes
39 of no more than 300 sheets, except that transcripts may be bound at the top if
40 required by a local rule of the appellate division.

41
42 (2) Each volume’s cover, preferably of recycled stock, must state the title and trial
43 court number of the case, the names of the trial court and each participating

1 trial judge, the names and addresses of appellate counsel for each party, the
2 volume number, and the inclusive page numbers of that volume.

3
4 (3) In addition to the information required by (2), the cover of each volume of the
5 reporter's transcript must state the dates of the proceedings reported in that
6 volume.

7
8 *Rule 8.838 adopted effective January 1, 2009.*
9

10
11 **Rule 8.839. Record in multiple appeals**

12
13 **(a) Single record**

14
15 If more than one appeal is taken from the same judgment or a related order, only
16 one record need be prepared, which must be filed within the time allowed for filing
17 the record in the latest appeal.

18
19 **(b) Cost**

20
21 If there is more than one separately represented appellant, they must equally share
22 the cost of preparing the record, unless otherwise agreed by the appellants or
23 ordered by the trial court. Appellants equally sharing the cost are each entitled to a
24 copy of the record.

25
26 *Rule 8.839 adopted effective January 1, 2009.*
27

28
29 **Rule 8.840. Filing the record**

30
31 When the record is complete, the trial court clerk must promptly send the original to
32 the appellate division and send to the appellant and respondent copies of any
33 certified statement on appeal and any copies of transcripts or official electronic
34 recordings that they have purchased. The appellate division clerk must promptly file
35 the original and mail notice of the filing date to the parties.

36
37 *Rule 8.840 adopted effective January 1, 2009.*
38

39
40 **Rule 8.841. Augmenting and correcting the record in the appellate division**

41
42 **(a) Augmentation**

1 (1) At any time, on motion of a party or its own motion, the appellate division
2 may order the record augmented to include:

3
4 (A) Any document filed or lodged in the case in the trial court; or

5
6 (B) A certified transcript—or agreed statement or a statement on appeal—of
7 oral proceedings not designated under rule 8.831.

8
9 (2) A party must attach to its motion a copy, if available, of any document or
10 transcript that it wants added to the record. The pages of the attachments must
11 be consecutively numbered, beginning with the number 1. If the appellate
12 division grants the motion, it may augment the record with the copy.

13
14 (3) If the party cannot attach a copy of the matter to be added, the party must
15 identify it as required under rules 8.831.

16
17 **(b) Correction**

18
19 (1) On agreement of the parties, motion of a party, or on its own motion, the
20 appellate division may order the correction or certification of any part of the
21 record.

22
23 (2) The appellate division may order the trial court to settle disputes about
24 omissions or errors in the record or to make corrections pursuant to stipulation
25 filed by the parties in that court.

26
27 **(c) Omissions**

28
29 (1) If a clerk or reporter omits a required or designated portion of the record, a
30 party may serve and file a notice in the trial court specifying the omitted
31 portion and requesting that it be prepared, certified, and sent to the appellate
32 division. The party must serve a copy of the notice on the appellate division.

33
34 (2) The clerk or reporter must comply with a notice under (1) within 10 days after
35 it is filed. If the clerk or reporter fails to comply, the party may serve and file a
36 motion to augment under (a), attaching a copy of the notice.

37
38 **(d) Notice**

39
40 The appellate division clerk must send all parties notice of the receipt and filing of
41 any matter under this rule.

42
43 *Rule 8.841 adopted effective January 1, 2009.*

1
2
3 **Rule 8.842. Failure to procure the record**

4
5 **(a) Notice of default**

6
7 If a party fails to do any act required to procure the record, the trial court clerk must
8 promptly notify that party by mail that it must do the act specified in the notice
9 within 15 days after the notice is mailed and that, if it fails to comply, the reviewing
10 court may impose the following sanctions:

- 11
12 (1) If the defaulting party is the appellant, the court may dismiss the appeal; or
13
14 (2) If the defaulting party is the respondent, the court may proceed with the appeal
15 on the record designated by the appellant.

16
17 **(b) Sanctions**

18
19 If the party fails to take the action specified in a notice given under (a), the trial
20 court clerk must promptly notify the appellate division of the default, and the
21 appellate division may impose one of the following sanctions:

- 22
23 (1) If the defaulting party is the appellant, the reviewing court may dismiss the
24 appeal but may vacate the dismissal for good cause; or
25
26 (2) If the defaulting party is the respondent, the reviewing court may order the
27 appeal to proceed on the record designated by the appellant, but the
28 respondent may obtain relief from default under rule 8.60(d).

29
30 *Rule 8.842 adopted effective January 1, 2009.*

31
32 **Chapter 3. Appeals and Records in Misdemeanor Cases**

33
34 *Chapter 3 repealed and adopted effective January 1, 2009.*

35
36 **Article 1. Taking Appeals in Misdemeanor Cases**

37
38 *Article 1 adopted effective January 1, 2009.*

39
40 **Rule 8.850. Application of chapter**

41
42 The rules in this chapter apply only to appeals in misdemeanor cases. In postconviction
43 appeals, misdemeanor cases are cases in which the defendant was convicted of a
44 misdemeanor and was not charged with any felony. In preconviction appeals,

1 misdemeanor cases are cases in which the defendant was charged with a misdemeanor
2 but was not charged with any felony. A felony is “charged” when an information or
3 indictment accusing the defendant of a felony is filed or a complaint accusing the
4 defendant of a felony is certified to the superior court under Penal Code section 859a.

5
6 *Rule 8.850 adopted effective January 1, 2009.*

7
8 **Advisory Committee Comment**

9
10 Chapters 1 and 4 of this division also apply in appeals from misdemeanor cases. The rules that apply in
11 appeals in felony cases are located in chapter 3 of division 1 of this title.

12
13 Penal Code section 1466 provides that an appeal in a “misdemeanor or infraction case” is to the appellate
14 division of the superior court, and Penal Code section 1235(b), in turn, provides that an appeal in a
15 “felony case” is to the Court of Appeal. Penal Code section 691(g) defines “misdemeanor or infraction
16 case” to mean “a criminal action in which a misdemeanor or infraction is charged *and does not include a*
17 *criminal action in which a felony is charged* in conjunction with a misdemeanor or infraction” (emphasis
18 added), and section 691(f) defines “felony case” to mean “a criminal action in which a felony is charged
19 *and includes a criminal action in which a misdemeanor or infraction is charged in conjunction with a*
20 *felony” (emphasis added).*

21
22 As rule 8.304 from the rules on felony appeals provides, the following types of cases are felony cases, not
23 misdemeanor cases: (1) an action in which the defendant is charged with a felony and a misdemeanor, but
24 is convicted of only the misdemeanor; (2) an action in which the defendant is charged with felony, but is
25 convicted of only a lesser offense; or (3) an action in which the defendant is charged with an offense filed
26 as a felony but punishable as either a felony or a misdemeanor, and the offense is thereafter deemed a
27 misdemeanor under Penal Code section 17(b). Rule 8.304 makes it clear that a “felony case” is an action
28 in which a felony is charged *regardless of the outcome of the action*. Thus the question of which rules
29 apply—these rules governing appeals in misdemeanor cases or the rules governing appeals in felony
30 cases—is answered simply by examining the accusatory pleading: if that document charged the defendant
31 with at least one count of felony (as defined in Penal Code, section 17(a)), the Court of Appeal has
32 appellate jurisdiction and the appeal must be taken under the rules on felony appeals *even if the*
33 *prosecution did not result in a punishment of imprisonment in a state prison.*

34
35 It is settled case law that an appeal is taken to the Court of Appeal not only when the defendant is charged
36 with and convicted of a felony, but also when the defendant is charged with both a felony and a
37 misdemeanor (Pen. Code, § 691(f)) but is convicted of only the misdemeanor (e.g., *People v. Brown*
38 (1970) 10 Cal.App.3d 169); when the defendant is charged with a felony but is convicted of only a lesser
39 offense (Pen. Code, § 1159; e.g., *People v. Spreckels* (1954) 125 Cal.App.2d 507); and when the
40 defendant is charged with an offense filed as a felony but punishable as either a felony or a misdemeanor,
41 and the offense is thereafter deemed a misdemeanor under Penal Code section 17(b) (e.g., *People v.*
42 *Douglas* (1999) 20 Cal.4th 85; *People v. Clark* (1971) 17 Cal.App.3d 890).

43
44 Trial court unification did not change this rule: after as before unification, “Appeals in felony cases lie to
45 the [C]ourt of [A]ppeal, regardless of whether the appeal is from the superior court, the municipal court,
46 or the action of a magistrate. Cf. Cal. Const. art. VI, § 11(a) [except in death penalty cases, Courts of
47 Appeal have appellate jurisdiction when superior courts have original jurisdiction ‘in causes of a type
48 within the appellate jurisdiction of the [C]ourts of [A]ppeal on June 30, 1995. . . .’]” (“Recommendation
49 on Trial Court Unification” (July 1998) 28 *Cal. Law Revision Com. Rep.* 455–56.)

1
2 **Rule 8.851. Appointment of appellate counsel**

3
4 **(a) Standards for appointment**

5
6 (1) On application, the appellate division must appoint appellate counsel for a
7 defendant convicted of a misdemeanor who:

8
9 (A) Is subject to incarceration or a fine of more than \$500 (including penalty
10 and other assessments), or who is likely to suffer significant adverse
11 collateral consequences as a result of the conviction; and

12
13 (B) Was represented by appointed counsel in the trial court or establishes
14 indigency.

15
16 (2) On application, the appellate division may appoint counsel for any other
17 indigent defendant convicted of a misdemeanor.

18
19 (3) A defendant is subject to incarceration or a fine if the incarceration or fine is
20 in a sentence, is a condition of probation, or may be ordered if the defendant
21 violates probation.

22
23 **(b) Application; duties of trial counsel and clerk**

24
25 (1) If defense trial counsel has reason to believe that the client is indigent and will
26 file an appeal, counsel must prepare and file in the trial court an application to
27 the appellate division for appointment of counsel.

28
29 (2) If the defendant was represented by appointed counsel in the trial court, the
30 application must include trial counsel's declaration to that effect. If the
31 defendant was not represented by appointed counsel in the trial court, the
32 application must include a declaration of indigency in the form required by the
33 Judicial Council.

34
35 (3) When the trial court receives an application, the clerk must promptly send it to
36 the appellate division. A defendant may, however, apply directly to the
37 appellate division for appointment of counsel at any time after filing the notice
38 of appeal.

39
40 **(c) Defendant found able to pay in trial court**

41
42 (1) If a defendant was represented by appointed counsel in the trial court and was
43 found able to pay all or part of the cost of counsel in proceedings under Penal

1 Code section 987.8 or 987.81, the findings in those proceedings must be
2 included in the record or, if the findings were made after the record is sent to
3 the appellate division, must be sent as an augmentation of the record.
4

- 5 (2) In cases under (1), the appellate division may determine the defendant's
6 ability to pay all or part of the cost of counsel on appeal, and if it finds the
7 defendant able, may order the defendant to pay all or part of that cost.
8

9 *Rule 8.851 adopted effective January 1, 2009.*
10

11 **Advisory Committee Comment**
12

13 Request for Court-Appointed Lawyer in Misdemeanor Appeal (form CR-133) may be used to request that
14 appellate counsel be appointed in a misdemeanor case. If the appellant was not represented by the public
15 defender or other appointed counsel in the trial court, the appellant must use *Defendant's Financial*
16 *Statement on Eligibility for Appointment of Counsel and Reimbursement* (form MC-210) to show
17 indigency. These forms are available at any courthouse or county law library or online at
18 www.courtinfo.ca.gov/forms.
19

20
21 **Rule 8.852. Notice of appeal**
22

23 **(a) Notice of appeal**
24

- 25 (1) To appeal from a judgment or an appealable order of the trial court in a
26 misdemeanor case, the defendant or the People must file a notice of appeal in
27 the trial court. The notice must specify the judgment or order—or part of it—
28 being appealed.
29
30 (2) If the defendant appeals, the defendant or the defendant's attorney must sign
31 the notice of appeal. If the People appeal, the attorney for the People must sign
32 the notice.
33
34 (3) The notice of appeal must be liberally construed in favor of its sufficiency.
35

36
37 **(b) Notification of the appeal**
38

- 39 (1) When a notice of appeal is filed, the trial court clerk must promptly mail a
40 notification of the filing to the attorney of record for each party and to any
41 unrepresented defendant. The clerk must also mail or deliver this notification
42 to the appellate division clerk.
43

- 1 (2) The notification must show the date it was mailed or delivered, the number
2 and title of the case, the date the notice of appeal was filed, and whether the
3 defendant was represented by appointed counsel.
4
5 (3) The notification to the appellate division clerk must also include a copy of the
6 notice of appeal.
7
8 (4) A copy of the notice of appeal is sufficient notification under (1) if the
9 required information is on the copy or is added by the trial court clerk.
10
11 (5) The mailing of a notification under (1) is a sufficient performance of the
12 clerk’s duty despite the discharge, disqualification, suspension, disbarment, or
13 death of the attorney.
14
15 (6) Failure to comply with any provision of this subdivision does not affect the
16 validity of the notice of appeal.
17

18 *Rule 8.852 adopted effective January 1, 2009.*

19
20 **Advisory Committee Comment**

21
22 Notice of Appeal (Misdemeanor) (form CR-132) may be used to file the notice of appeal required under
23 this rule. This form is available at any courthouse or county law library or online at
24 www.courtinfo.ca.gov/forms.
25

26 **Subdivision (a).** The only orders that a defendant can appeal in a misdemeanor case are (1) orders
27 granting or denying a motion to suppress evidence (Penal Code section 1538.5(j)); and (2) orders made
28 after the final judgment that affects the substantial rights of the defendant (Penal Code section 1466).
29

30
31 **Rule 8.853. Time to appeal**

32
33 **(a) Normal time**

34
35 A notice of appeal must be filed within 30 days after the rendition of the judgment
36 or the making of the order being appealed. If the defendant is committed before
37 final judgment for insanity or narcotics addiction, the notice of appeal must be filed
38 within 30 days after the commitment.
39

40 **(b) Cross-appeal**

41
42 If the defendant or the People timely appeal from a judgment or appealable order,
43 the time for any other party to appeal from the same judgment or order is either the

1 time specified in (a) or 15 days after the trial court clerk mails notification of the
2 first appeal, whichever is later.

3
4 **(c) Premature notice of appeal**

5
6 A notice of appeal filed before the judgment is rendered or the order is made is
7 premature, but the appellate division may treat the notice as filed immediately after
8 the rendition of the judgment or the making of the order.

9
10 **(d) Late notice of appeal**

11
12 The trial court clerk must mark a late notice of appeal “Received [date] but not
13 filed” and notify the party that the notice was not filed because it was late.

14
15 **(e) Receipt by mail from custodial institution**

16
17 If the trial court clerk receives a notice of appeal by mail from a custodial institution
18 after the period specified in (a) has expired but the envelope shows that the notice
19 was mailed or delivered to custodial officials for mailing within the period specified
20 in (a), the notice is deemed timely. The clerk must retain in the case file the
21 envelope in which the notice was received.

22
23 *Rule 8.853 adopted effective January 1, 2009.*

24
25
26 **Rule 8.854. Stay of execution and release on appeal**

27
28 **(a) Application**

29
30 Pending appeal, the defendant may apply to the appellate division:

31
32 (1) For a stay of execution after a judgment of conviction or an order granting
33 probation; or

34
35 (2) For bail for release from custody, to reduce bail for release from custody, or
36 for release on other conditions.

37
38 **(b) Showing**

39
40 The application must include a showing that the defendant sought relief in the trial
41 court and that the court unjustifiably denied the application.

1 **(c) Service**

2
3 The application must be served on the prosecuting attorney.

4
5 **(d) Interim relief**

6
7 Pending its ruling on the application, the appellate division may grant the relief
8 requested. The appellate division must notify the trial court of any stay that it
9 grants.

10
11 *Rule 8.854 adopted effective January 1, 2009.*

12
13 **Advisory Committee Comment**

14
15 **Subdivision (c).** As defined in rule 8.804, the “prosecuting attorney” may be the city attorney, county
16 counsel, district attorney, or state Attorney General, depending on what government agency filed the
17 criminal charges.

18
19
20 **Rule 8.855. Abandoning the appeal**

21
22 **(a) How to abandon**

23
24 An appellant may abandon the appeal at any time by filing an abandonment of the
25 appeal signed by the appellant or the appellant’s attorney of record.

26
27 **(b) Where to file; effect of filing**

28
29 (1) The appellant must file the abandonment in the appellate division.

30
31 (2) If the record has not been filed in the appellate division, the filing of an
32 abandonment effects a dismissal of the appeal and restores the trial court’s
33 jurisdiction.

34
35 (3) If the record has been filed in the appellate division, the appellate division
36 may dismiss the appeal and direct immediate issuance of the remittitur.

37
38 **(c) Clerk’s duties**

39
40 (1) The appellate division clerk must immediately notify the adverse party of the
41 filing or of the order of dismissal.

42
43 (2) If the record has not been filed in the appellate division, the clerk must
44 immediately notify the trial court.

- 1
2 (3) If a reporter’s transcript has been requested, the clerk must immediately notify
3 the reporter if the appeal is abandoned before the reporter has filed the
4 transcript.

5
6 *Rule 8.855 adopted effective January 1, 2009.*

7
8 **Advisory Committee Comment**

9
10 Abandonment of Appeal (Misdemeanor) (form CR-137) may be used to file an abandonment under this
11 rule. This form is available at any courthouse or county law library or online at
12 www.courtinfo.ca.gov/forms.

13
14 **Article 2. Record in Misdemeanor Appeals**

15
16 *Article 2 adopted effective January 1, 2009.*

17
18
19 **Rule 8.860. Normal record on appeal**

20
21 **(a) Contents**

22
23 Except as otherwise provided in this chapter, the record on an appeal to a superior
24 court appellate division in a misdemeanor criminal case must contain the following,
25 which constitute the normal record on appeal:

- 26
27 (1) A record of the written documents from the trial court proceedings in the form
28 of one of the following:

29
30 (A) A clerk’s transcript under rule 8.861 or 8.867; or

31
32 (B) If the court has a local rule for the appellate division electing to use this
33 form of the record, the original trial court file under rule 8.863.

- 34
35 (2) If an appellant wants to raise any issue that requires consideration of the oral
36 proceedings in the trial court, the record on appeal must include a record of
37 the oral proceedings in the form of one of the following:

38
39 (A) A reporter’s transcript under rules 8.865–8.867 or a transcript prepared
40 from an official electronic recording under rule 8.868;

41
42 (B) If the court has a local rule for the appellate division permitting this form
43 of the record, an official electronic recording of the proceedings under
44 rule 8.868; or

1
2 (C) A statement on appeal under rule 8.869.

3
4 **(b) Stipulation for limited record**

5
6 If, before the record is certified, the appellant or counsel for the appellant and the
7 People stipulate in writing that any part of the record is not required for proper
8 determination of the appeal and file that stipulation in the trial court, that part of the
9 record must not be prepared or sent to the appellate division.

10
11 *Rule 8.860 adopted effective January 1, 2009.*

12
13
14 **Rule 8.861. Contents of clerk's transcript**

15
16 Except in appeals covered by rule 8.867 or when the parties have filed a stipulation under
17 rule 8.860(b) that any of these items is not required for proper determination of the
18 appeal, the clerk's transcript must contain:

- 19
20 (1) The complaint, including any notice to appear, and any amendment;
21
22 (2) Any demurrer or other plea;
23
24 (3) All court minutes;
25
26 (4) Any jury instructions that any party submitted in writing, the cover page required by
27 rule 2.1055(b)(2), and any written jury instructions given by the court;
28
29 (5) Any written communication between the court and the jury or any individual juror;
30
31 (6) Any verdict;
32
33 (7) Any written findings or opinion of the court;
34
35 (8) The judgment or order appealed from;
36
37 (9) Any motion or notice of motion for new trial, in arrest of judgment, or to dismiss
38 the action, with supporting and opposing memoranda and attachments;
39
40 (10) Any transcript of a sound or sound-and-video recording furnished to the jury or
41 tendered to the court under rule 2.1040; and
42
43 (11) The notice of appeal; and

1
2 (12) If the appellant is the defendant:

3
4 (A) Any written defense motion denied in whole or in part, with supporting and
5 opposing memoranda and attachments;

6
7 (B) If related to a motion under (A), any search warrant and return;

8
9 (C) Any document admitted in evidence to prove a prior juvenile adjudication,
10 criminal conviction, or prison term. If a record was closed to public
11 inspection in the trial court because it is required to be kept confidential by
12 law, it must remain closed to public inspection in the appellate division
13 unless that court orders otherwise; and

14
15 (D) The probation officer's report.

16
17 *Rule 8.861 adopted effective January 1, 2009.*

18
19
20 **Rule 8.862. Preparation of clerk's transcript**

21
22 **(a) When preparation begins**

23
24 Unless the original court file will be used in place of a clerk's transcript under rule
25 8.863, the clerk must begin preparing the clerk's transcript immediately after the
26 notice of appeal is filed.

27
28 **(b) Format of transcript**

29
30 The clerk's transcript must comply with rule 8.144.

31
32 **(c) When preparation must be completed**

33
34 Within 20 days after the notice of appeal is filed, the clerk must complete
35 preparation of an original clerk's transcript for the appellate division, one copy for
36 the appellant, and one copy for the prosecuting attorney. If there is more than one
37 appellant, the clerk must prepare an extra copy for each additional appellant who is
38 represented by separate counsel or self-represented.

39
40 **(d) Certification**

41
42 The clerk must certify as correct the original and all copies of the clerk's transcript.

1 *Rule 8.862 adopted effective January 1, 2009.*

2
3 **Advisory Committee Comment**

4
5 Rule 8.872 addresses when the clerk’s transcript is sent to the appellate division in misdemeanor appeals.

6
7
8 **Rule 8.863. Trial court file instead of clerk’s transcript**

9
10 **(a) Application**

11
12 If the court has a local rule for the appellate division electing to use this form of the
13 record, the original trial court file may be used instead of a clerk’s transcript. This
14 rule and any supplemental provisions of the local rule then govern unless the trial
15 court orders otherwise after notice to the parties.

16
17 **(b) When original file must be prepared**

18
19 Within 20 days after the filing of the notice of appeal, the trial court clerk must put
20 the trial court file in chronological order, number the pages, and attach a
21 chronological index and a list of all attorneys of record, the parties they represent,
22 and any unrepresented parties.

23
24 **(c) Copies**

25
26 The clerk must send a copy of the index to the appellant and the prosecuting
27 attorney for use in paginating their copies of the file to conform to the index. If
28 there is more than one appellant, the clerk must prepare an extra copy of the index
29 for each additional appellant who is represented by separate counsel or self-
30 represented.

31
32 *Rule 8.863 adopted effective January 1, 2009.*

33
34 **Advisory Committee Comment**

35
36 Rule 8.872 addresses when the original file is sent to the appellate division in misdemeanor appeals.

37
38
39 **Rule 8.864. Record of oral proceedings**

40
41 **(a) Appellant’s election**

42
43 The appellant must notify the trial court whether he or she elects to proceed with or
44 without a record of the oral proceedings in the trial court. If the appellant elects to

1 proceed with a record of the oral proceedings in the trial court, the notice must
2 specify which form of the record of the oral proceedings in the trial court the
3 appellant elects to use:
4

5 (1) A reporter's transcript under rules 8.865–8.867 or a transcript prepared from
6 an official electronic recording of the proceedings under rule 8.868(b). If the
7 appellant elects to use a reporter's transcript, the clerk must promptly mail a
8 copy of appellant's notice making this election and the notice of appeal to
9 each court reporter;

10
11 (2) An official electronic recording of the proceedings under rule 8.868(c). If the
12 appellant elects to use the official electronic recording itself, rather than a
13 transcript prepared from that recording, the appellant must attach a copy of the
14 stipulation required under rule 8.868(c); or

15
16 (3) A statement on appeal under rule 8.869.
17

18 **(b) Time for filing election**

19
20 The notice of election required under (a) must be filed no later than the following:
21

22 (1) If no application for appointment of counsel is filed, 20 days after the notice
23 of appeal is filed; or
24

25 (2) If an application for appointment of counsel is filed before the period under
26 (A) expires, either 10 days after the court appoints counsel to represent the
27 defendant on appeal or denies the application for appointment of counsel or 20
28 days after the notice of appeal is filed, whichever is later.
29

30 **(c) Statement on appeal when proceedings cannot be transcribed or were not**
31 **recorded**
32

33 (1) If the appellant elects under (a) to use a reporter's transcript or a transcript
34 prepared from an official electronic recording or the recording itself, the trial
35 court clerk must notify the appellant within 10 days after the appellant files
36 this election if any portion of the oral proceedings listed in rule 8.865 was not
37 reported or officially recorded electronically or cannot be transcribed. The
38 notice must indicate that the appellant may use a statement on appeal as the
39 record of the portion of the proceedings that was not recorded or cannot be
40 transcribed.
41

42 (2) Within 15 days after this notice is mailed by the clerk, the appellant must file a
43 notice with the court stating whether the appellant elects to use a statement on

1 appeal as the record of the portion of the proceedings that was not recorded or
2 cannot be transcribed.

3
4 *Rule 8.864 adopted effective January 1, 2009.*

5
6 **Advisory Committee Comment**

7
8 Notice Regarding Record of Oral Proceedings (Misdemeanor) (form CR-134) may be used to file the
9 election required under this rule. This form is available at any courthouse or county law library or online
10 at www.courtinfo.ca.gov/forms. To assist parties in making an appropriate election, courts are encouraged
11 to include information about whether the proceedings were recorded by a court reporter or officially
12 electronically recorded in any information that the court provides to parties concerning their appellate
13 rights.

14
15
16 **Rule 8.865. Contents of reporter's transcript**

17
18 Except in appeals covered by rule 8.867 or when the parties have filed a stipulation under
19 rule 8.860(b) or the trial court has ordered that any of these items is not required for
20 proper determination of the appeal, the reporter's transcript must contain:

- 21
22 (1) The oral proceedings on the entry of any plea other than a not guilty plea;
23
24 (2) The oral proceedings on any motion in limine;
25
26 (3) The oral proceedings at trial, but excluding the voir dire examination of jurors and
27 any opening statement;
28
29 (4) Any jury instructions given orally;
30
31 (5) Any oral communication between the court and the jury or any individual juror;
32
33 (6) Any oral opinion of the court;
34
35 (7) The oral proceedings on any motion for new trial;
36
37 (8) The oral proceedings at sentencing, granting or denying probation, or other
38 dispositional hearing;
39
40 (9) If the appellant is the defendant, the reporter's transcript must also contain:
41
42 (A) The oral proceedings on any defense motion denied in whole or in part
43 except motions for disqualification of a judge;
44

1 (B) Any closing arguments; and

2
3 (C) Any comment on the evidence by the court to the jury.

4
5 *Rule 8.865 adopted effective January 1, 2009.*

6
7
8 **Rule 8.866. Preparation of reporter's transcript**

9
10 **(a) When preparation begins**

11
12 (1) Unless the court has a local rule providing otherwise, the reporter must
13 immediately begin preparing the reporter's transcript if the notice sent to the
14 reporter by the clerk under rule 8.864(a)(1) indicates either:

15
16 (A) That the defendant was represented by appointed counsel at trial; or

17
18 (B) That the appellant is the People.

19
20 (2) If the notice sent to the reporter by the clerk under rule 8.864(a)(1) indicates
21 that the appellant is the defendant and that the defendant was not represented
22 by appointed counsel at trial:

23
24 (A) Within 10 days after the date the clerk mailed the notice under rule
25 8.864(a)(1), the reporter must file with the clerk the estimated cost of
26 preparing the reporter's transcript; and

27
28 (B) The clerk must promptly notify the appellant and his or her counsel of
29 the estimated cost of preparing the reporter's transcript. The notification
30 must show the date it was mailed.

31
32 (C) Within 10 days after the date the clerk mailed the notice under (B), the
33 appellant must do one of the following:

34
35 (i) Deposit with the clerk an amount equal to the estimated cost of
36 preparing the transcript;

37
38 (ii) File a declaration of indigency supported by evidence in the form
39 required by the Judicial Council; or

40
41 (iii) Notify the clerk that he or she will be using a statement on appeal
42 instead of a reporter's transcript.

1 (D) The clerk must promptly notify the reporter to begin preparing the
2 transcript when:

3
4 (i) The clerk receives the required deposit under (C)(i); or

5
6 (ii) The trial court determines that the defendant is indigent and orders
7 that the defendant receive the transcript without cost.

8
9 **(b) Format of transcript**

10
11 The reporter's transcript must comply with rule 8.144.

12
13 **(c) Copies and certification**

14
15 The reporter must prepare an original and the same number of copies of the
16 reporter's transcript as rule 8.862 requires of the clerk's transcript and must certify
17 each as correct.

18
19 **(d) When preparation must be completed**

20
21 The reporter must deliver the original and all copies to the trial court clerk as soon
22 as they are certified but no later than 20 days after the reporter is required to begin
23 preparing the transcript under (a).

24
25 **(e) Multi-reporter cases**

26
27 In a multi-reporter case, the clerk must accept any completed portion of the
28 transcript from the primary reporter one week after the time prescribed by (d) even
29 if other portions are uncompleted. The clerk must promptly pay each reporter who
30 certifies that all portions of the transcript assigned to that reporter are completed.

31
32 *Rule 8.866 adopted effective January 1, 2009.*

33
34 **Advisory Committee Comment**

35
36 **Subdivision (a).** If the appellant was not represented by the public defender or other appointed counsel in
37 the trial court, the appellant must use *Defendant's Financial Statement on Eligibility for Appointment of*
38 *Counsel and Reimbursement* (form MC-210) to show indigency. This form is available at any courthouse
39 or county law library or online at www.courtinfo.ca.gov/forms.

40
41
42 **Rule 8.867. Limited normal record in certain appeals**

1 If the People appeal from a judgment on a demurrer to the complaint, including any
2 notice to appear, or if the defendant or the People appeal from an appealable order other
3 than a ruling on a motion for new trial, the normal record is composed of:

4
5 (1) Record of the documents filed in the trial court

6
7 A clerk's transcript or original trial court file containing:

8
9 (A) The complaint, including any notice to appear, and any amendment;

10
11 (B) Any demurrer or other plea;

12
13 (C) Any motion or notice of motion granted or denied by the order appealed
14 from, with supporting and opposing memoranda and attachments;

15
16 (D) The judgment or order appealed from and any abstract of judgment or
17 commitment;

18
19 (E) Any court minutes relating to the judgment or order appealed from; and

20
21 (F) The notice of appeal.

22
23 (2) Record of the oral proceedings in the trial court

24
25 If an appellant wants to raise any issue which requires consideration of the oral
26 proceedings in the trial court, a reporter's transcript, transcript prepared under rule
27 8.866 or a settled statement under rule 8.869 summarizing any oral proceedings
28 incident to the judgment or order being appealed.

29
30 *Rule 8.867 adopted effective January 1, 2009.*

31
32
33 **Rule 8.868. Record when trial proceedings were officially electronically recorded**

34
35 **(a) Application**

36
37 This rule applies only if:

38
39 (1) The trial court proceedings were officially recorded electronically under
40 Government Code section 69957; and

41
42 (2) The electronic recording was prepared in compliance with applicable rules
43 regarding electronic recording of court proceedings.

1
2 **(b) Transcripts from official electronic recording**
3

4 Written transcripts of an official electronic recording may be prepared under rule
5 2.952. A transcript prepared and certified as provided in that rule is prima facie a
6 true and complete record of the oral proceedings it purports to cover, and satisfies
7 any requirement in these rules or in any statute for a reporter's transcript of oral
8 proceedings.
9

10 **(c) Use of official recording as record of oral proceedings**
11

12 If the court has a local rule for the appellate division permitting this, on stipulation
13 of the parties or on order of the trial court under rule 8.869(d)(5), the original of an
14 official electronic recording of the trial court proceedings, or a copy made by the
15 court, may be transmitted as the record of these oral proceedings without being
16 transcribed. Such an electronic recording satisfies any requirement in these rules or
17 in any statute for a reporter's transcript of these proceedings.
18

19 **(d) When preparation begins**
20

21 (1) If the appellant files an election under rule 8.864 to use a transcript of an
22 official electronic recording or a copy of the official electronic recording as
23 the record of the oral proceedings, unless the trial court has a local rule
24 providing otherwise, preparation of a transcript or a copy of the recording
25 must begin immediately if either:
26

27 (A) The defendant was represented by appointed counsel at trial; or
28

29 (B) The appellant is the People.
30

31 (2) If the appellant is the defendant and the defendant was not represented by
32 appointed counsel at trial:
33

34 (A) Within 10 days after the date the defendant files the election under rule
35 8.864(a)(1), the clerk must notify the appellant and his or her counsel of
36 the estimated cost of preparing the transcript or the copy of the
37 recording. The notification must show the date it was mailed.
38

39 (B) Within 10 days after the date the clerk mailed the notice under (A), the
40 appellant must do one of the following:
41

42 (i) Deposit with the clerk an amount equal to the estimated cost of
43 preparing the transcript or the copy of the recording;

1
2 (ii) File a declaration of indigency supported by evidence in the form
3 required by the Judicial Council; or

4
5 (iii) Notify the clerk that he or she will be using a statement on appeal
6 instead of a transcript or copy of the recording.

7
8 (C) Preparation of the transcript must begin when:

9
10 (i) The clerk receives the required deposit under (B)(i); or

11
12 (ii) The trial court determines that the defendant is indigent and orders
13 that the defendant receive the transcript or the copy of the
14 recording without cost.

15
16 *Rule 8.868 adopted effective January 1, 2009.*

17
18 **Advisory Committee Comment**

19
20 **Subdivision (d).** If the appellant was not represented by the public defender or other appointed counsel in
21 the trial court, the appellant must use *Defendant's Financial Statement on Eligibility for Appointment of*
22 *Counsel and Reimbursement* (form MC-210) to show indigency. This form is available at any courthouse
23 or county law library or online at www.courtinfo.ca.gov/forms.

24
25
26 **Rule 8.869. Statement on appeal**

27
28 **(a) Description**

29
30 A statement on appeal is a summary of the trial court proceedings that is approved
31 by the trial court. An appellant can elect under rule 8.864 to use a statement on
32 appeal as the record of the oral proceedings in the trial court, replacing the
33 reporter's transcript.

34
35 **(b) Preparing the proposed statement**

36
37 (1) If the appellant elects under rule 8.864 to use a statement on appeal, the
38 appellant must prepare, serve, and file a proposed statement within 20 days
39 after filing the record preparation election.

40
41 (2) Appellants who are not represented by an attorney must file their proposed
42 statement on *Proposed Statement on Appeal (Misdemeanor)* (form CR-135).
43 For good cause, the court may permit the filing of a statement that is not on
44 form CR-135.

1
2 (3) If the appellant does not file a proposed statement within the time specified in
3 (1), the trial court clerk must promptly notify the appellant by mail that the
4 proposed statement must be filed within 15 days after the notice is mailed and
5 that failure to comply will result in the appeal being dismissed.
6

7 **(c) Contents of the proposed statement on appeal**
8

9 A proposed statement prepared by the appellant must contain:
10

11 (1) A condensed narrative of the oral proceedings that the appellant believes
12 necessary for the appeal and a summary of the trial court's holding and the
13 sentence imposed on the appellant. Subject to the court's approval, the
14 appellant may present some or all of the evidence by question and answer; and
15

16 (2) A statement of the points the appellant is raising on appeal. The appeal is then
17 limited to those points unless the appellate division determines that the record
18 permits the full consideration of another point.
19

20 (A) The statement must specify the intended grounds of appeal by clearly
21 stating each point to be raised but need not identify each particular ruling
22 or matter to be challenged.
23

24 (B) The statement must include as much of the evidence or proceeding as
25 necessary to support the stated grounds. Any evidence or portion of a
26 proceeding not included will be presumed to support the judgment or
27 order appealed from.
28

29 (C) If one of the grounds of appeal is insufficiency of the evidence, the
30 statement must specify how it is insufficient.
31

32 (D) If one of the grounds of appeal challenges the giving, refusal, or
33 modification of a jury instruction, the statement must include any
34 instructions submitted orally and identify the party that requested the
35 instruction and any modification.
36

37 **(d) Review of the appellant's proposed statement**
38

39 (1) Within 10 days after the appellant files the proposed statement, the respondent
40 may serve and file proposed amendments to that statement.
41

42 (2) No later than 10 days after either the respondent files proposed amendments or
43 the time to do so expires, a party may request a hearing to review and correct

1 the proposed statement. No hearing will be held unless ordered by the trial
2 court judge, and the judge will not ordinarily order a hearing unless there is a
3 factual dispute about a material aspect of the trial court proceedings.
4

5 (3) If a hearing is ordered, the court must promptly set the hearing date and
6 provide the parties with at least 5 days' written notice.
7

8 (4) Except as provided in (6), if no hearing is ordered, no later than 10 days after
9 the time for requesting a hearing expires, the trial court judge must review the
10 proposed statement and any proposed amendments and make any corrections
11 or modifications to the statement necessary to ensure that it is an accurate
12 summary of the trial court proceedings. If a hearing is ordered, the trial court
13 judge must make any corrections or modifications to the statement within 10
14 days after the hearing.
15

16 (5) The trial court judge must not eliminate the appellant's specification of
17 grounds of appeal from the proposed statement.
18

19 (6) If the trial court proceedings were reported by a court reporter or officially
20 recorded electronically under Government Code section 69957 and the trial
21 court judge determines that it would save court time and resources, instead of
22 correcting a proposed statement on appeal:
23

24 (A) If the court has a local rule for the appellate division permitting the use
25 of an official electronic recording as the record of the oral proceedings,
26 the trial court judge may order that the original of an official electronic
27 recording of the trial court proceedings, or a copy made by the court, be
28 transmitted as the record of these oral proceedings without being
29 transcribed. The court will pay for any copy of the official electronic
30 recording ordered under this subdivision; or
31

32 (B) Unless the court has a local rule providing otherwise, the trial court
33 judge may order that a transcript be prepared as the record of the oral
34 proceedings. The court will pay for any transcript ordered under this
35 subdivision.
36

37 **(e) Review of the corrected statement**
38

39 (1) If the trial court judge makes any corrections or modifications to the statement
40 under (d), the clerk must send copies of the corrected or modified statement to
41 the parties.
42

1 (2) Within 10 days after the statement is sent to the parties, any party may serve
2 and file proposed modifications or objections to the statement.

3
4 **(f) Certification of the statement on appeal**

5
6 (1) If the trial court judge does not make any corrections or modifications to the
7 proposed statement under (d)(4) and does not order either the use of an official
8 electronic recording or preparation of a transcript in lieu of correcting the
9 proposed statement under (d)(6), the judge must promptly certify the
10 statement.

11
12 (2) If the trial court judge corrects or modifies an appellant’s proposed statement
13 under (d), within five days after the time for filing proposed modifications or
14 objections under (e) has expired, the judge must review any proposed
15 modifications or objections to the statement filed by the parties, make any
16 corrections or modifications to the statement necessary to ensure that it is an
17 accurate summary of the trial court proceedings, and certify the statement.

18
19 **(g) Extensions of time**

20
21 For good cause, the trial court may grant an extension of not more than 15 days to
22 do any act required or permitted under this rule.

23
24 *Rule 8.869 adopted effective January 1, 2009.*

25
26 **Advisory Committee Comment**

27
28 Rules 8.806, 8.810, and 8.812 address applications for extensions of time and relief from default.

29
30 **Subdivision (b).** *Proposed Statement on Appeal (Misdemeanor)* (form CR-135) is available at any
31 courthouse or county law library or online at www.courtinfo.ca.gov/forms.

32
33 **Subdivision (d).** Under rule 8.804, the term “judge” includes a commissioner or a temporary judge.

34
35
36 **Rule 8.870. Exhibits**

37
38 **(a) Exhibits deemed part of record**

39
40 Exhibits admitted in evidence, refused, or lodged are deemed part of the record, but
41 may be transmitted to the appellate division only as provided in this rule.

42
43 **(b) Notice of designation**

1 (1) Within 10 days after the last respondent’s brief is filed or could be filed under
2 rule 8.882, if the appellant wants the appellate division to consider any
3 original exhibits that were admitted in evidence, refused, or lodged, the
4 appellant must serve and file a notice in the trial court designating such
5 exhibits.

6
7 (2) Within 10 days after a notice under (1) is served, any other party wanting the
8 appellate division to consider additional exhibits must serve and file a notice
9 in trial court designating such exhibits.

10
11 (3) A party filing a notice under (1) or (2) must serve a copy on the appellate
12 division.

13
14 **(c) Request by appellate division**

15
16 At any time, the appellate division may direct the trial court or a party to send it an
17 exhibit.

18
19 **(d) Transmittal**

20
21 Unless the appellate division orders otherwise, within 20 days after the first notice
22 under (b) is filed or after the appellate division directs that an exhibit be sent:

23
24 (1) The trial court clerk must put any designated exhibits in the clerk’s possession
25 into numerical or alphabetical order and send them to the appellate division
26 with two copies of a list of the exhibits. If the appellate division clerk finds the
27 list correct, the clerk must sign and return one copy to the trial court clerk.

28
29 (2) Any party in possession of designated exhibits returned by the trial court must
30 put them into numerical or alphabetical order and send them to the appellate
31 division with two copies of a list of the exhibits sent. If the appellate division
32 clerk finds the list correct, the clerk must sign and return one copy to the
33 party.

34
35 **(e) Return by appellate division**

36
37 On request, the appellate division may return an exhibit to the trial court or to the
38 party that sent it. When the remittitur issues, the appellate division must return all
39 exhibits to the trial court or to the party that sent them.

40
41 *Rule 8.870 adopted effective January 1, 2009.*

1 **Rule 8.871. Juror-identifying information**

2
3 **(a) Applicability**

4
5 In a criminal case, a clerk’s transcript, a reporter’s transcript, or any other document
6 in the record that contains juror-identifying information must comply with this rule.
7

8 **(b) Juror names, addresses, and telephone numbers**

9
10 (1) The name of each trial juror or alternate sworn to hear the case must be
11 replaced with an identifying number wherever it appears in any document.
12 The trial court clerk must prepare and keep under seal in the case file a table
13 correlating the jurors’ names with their identifying numbers. The clerk and the
14 reporter must use the table in preparing all transcripts or other documents.
15

16 (2) The addresses and telephone numbers of trial jurors and alternates sworn to
17 hear the case must be deleted from all documents.
18

19 **(c) Potential jurors**

20
21 Information identifying potential jurors called but not sworn as trial jurors or
22 alternates must not be sealed unless otherwise ordered under Code of Civil
23 Procedure section 237(a)(1).
24

25 *Rule 8.871 adopted effective January 1, 2009.*

26
27 **Advisory Committee Comment**

28
29 This rule implements Code of Civil Procedure section 237.
30
31

32 **Rule 8.872. Sending and filing the record in the appellate division**

33
34 **(a) When the record is complete**

35
36 (1) If the appellant elected under rule 8.864 to proceed without a record of the
37 oral proceedings in the trial court, the record is complete when the clerk’s
38 transcript is certified as correct or, if the original trial court file will be used
39 instead of the clerk’s transcript, when that original file is ready for
40 transmission as provided under rule 8.863(b).
41

42 (2) If the appellant elected under rule 8.864 to proceed with a record of the oral
43 proceedings in the trial court, the record is complete when the clerk’s

1 transcript is certified as correct or the original file is ready for transmission as
2 provided in (1) and:

3
4 (A) If the appellant elected to use a reporter's transcript, the certified
5 reporter's transcript is delivered to the court under rule 8.866;

6
7 (B) If the appellant elected to use a transcript prepared from an official
8 electronic recording, the transcript has been prepared under rule 8.868;

9
10 (C) If the parties stipulated to the use of an official electronic recording of
11 the proceedings, the electronic recording has been prepared under rule
12 8.868; or

13
14 (D) If the appellant elected to use a statement on appeal, the statement on
15 appeal has been certified by the trial court or a transcript or an official
16 electronic recording has been prepared under rule 8.869(d)(6).

17
18 **(b) Sending the record**

19
20 When the record is complete, the clerk must promptly send:

21
22 (1) The original record to the appellate division;

23
24 (2) One copy of the clerk's transcript or index to the original court file and one
25 copy of any record of the oral proceedings to each appellant who is
26 represented by separate counsel or is self-represented; and

27
28 (3) One copy of the clerk's transcript or index to the original court file and one
29 copy of any record of the oral proceedings to the respondent.

30
31 **(c) Filing the record**

32
33 On receipt, the appellate division clerk must promptly file the original record and
34 mail notice of the filing date to the parties.

35
36 *Rule 8.872 adopted effective January 1, 2009.*

37
38
39 **Rule 8.873. Augmenting or correcting the record in the appellate division**

40
41 **(a) Subsequent trial court orders**

1 If, after the record is certified, the trial court amends or recalls the judgment or
2 makes any other order in the case, including an order affecting the sentence or
3 probation, the clerk must promptly certify and send a copy of the amended abstract
4 of judgment or other order as an augmentation of the record to all those who
5 received the record under rule 8.872(b). If there is any additional document or
6 transcript related to the amended judgment or new order that any rule or order
7 requires be included in the record, the clerk must send these documents or
8 transcripts with the amended abstract of judgment or other order. The clerk must
9 promptly copy and certify any such document and the reporter must promptly
10 prepare and certify any such transcript.

11
12 **(b) Omissions**

13
14 If, after the record is certified, the trial court clerk or the reporter learns that the
15 record omits a document or transcript that any rule or order requires to be included,
16 the clerk must promptly copy and certify the document or the reporter must
17 promptly prepare and certify the transcript. Without the need for a court order, the
18 clerk must promptly send the document or transcript as an augmentation of the
19 record to all those who received the record under rule 8.872(b).

20
21 **(c) Augmentation or correction by the appellate division**

22
23 At any time, on motion of a party or on its own motion, the appellate division may
24 order the record augmented or corrected as provided in rule 8.841.

25
26 *Rule 8.873 adopted effective January 1, 2009.*

27
28 **Chapter 4. Briefs, Hearing, and Decision in Limited Civil and Misdemeanor**
29 **Appeals**

30
31 *Chapter 4 adopted effective January 1, 2009.*

32
33
34 **Rule 8.880. Application**

35
36 Except as otherwise provided, the rules in this chapter apply to both civil and
37 misdemeanor appeals in the appellate division.

38
39 *Rule 8.880 adopted effective January 1, 2009.*

40
41
42 **Rule 8.881. Notice of briefing schedule**

43

1 When the record is filed, the clerk of the appellate division must promptly mail a notice
2 to each appellate counsel or unrepresented party giving the dates the briefs are due.

3
4 *Rule 8.881 adopted effective January 1, 2009.*

5
6
7 **Rule 8.882. Briefs by parties and amici curiae**

8
9 **(a) Briefs by parties**

- 10
11 (1) The appellant must serve and file an appellant's opening brief within 30 days
12 after the record is filed in the appellate division.
13
14 (2) Any respondent's brief must be served and filed within 30 days after the
15 appellant files its opening brief.
16
17 (3) Any appellant's reply brief must be served and filed within 20 days after the
18 respondent files its brief.
19
20 (4) No other brief may be filed except with the permission of the presiding judge.
21
22 (5) Instead of filing a brief, or as part of its brief, a party may join in a brief or
23 adopt by reference all or part of a brief in the same or a related appeal.

24
25 **(b) Failure to file a brief**

- 26
27 (1) If a party in a civil appeal fails to timely file an appellant's opening brief or a
28 respondent's brief, the appellate division clerk must promptly notify the party
29 by mail that the brief must be filed within 15 days after the notice is mailed
30 and that if the party fails to comply, the court may impose one of the
31 following sanctions:
32
33 (A) If the brief is an appellant's opening brief, the court may dismiss the
34 appeal; or
35
36 (B) If the brief is a respondent's brief, the court may decide the appeal on the
37 record, the appellant's opening brief, and any oral argument by the
38 appellant.
39
40 (2) If the appellant in a misdemeanor appeal fails to timely file an opening brief,
41 the appellate division clerk must promptly notify the appellant by mail that the
42 brief must be filed within 30 days after the notice is mailed and that if the

1 appellant fails to comply, the court may impose one of the following
2 sanctions:

3
4 (A) If the appellant is the defendant and is represented by appointed counsel
5 on appeal, the court may relieve that appointed counsel and appoint new
6 counsel; or

7
8 (B) In all other cases, the court may dismiss the appeal.

9
10 (3) If the respondent in a misdemeanor appeal is the defendant and the respondent
11 fails to timely file a brief, the appellate division clerk must promptly notify the
12 respondent by mail that the brief must be filed within 30 days after the notice
13 is mailed and that if the respondent fails to comply, the court will decide the
14 appeal on the record, the appellant's opening brief, and any oral argument by
15 the appellant.

16
17 (4) If a party fails to comply with a notice under (1), (2), or (3), the court may
18 impose the sanction specified in the notice.

19
20 **(c) Amicus curiae briefs**

21
22 (1) Within 14 days after the appellant's reply brief is filed or was required to be
23 filed, whichever is earlier, any person or entity may serve and file an
24 application for permission of the presiding judge to file an amicus curiae brief.
25 For good cause, the presiding judge may allow later filing.

26
27 (2) The application must state the applicant's interest and explain how the
28 proposed amicus curiae brief will assist the court in deciding the matter.

29
30 (3) The proposed brief must be served and must accompany the application and
31 may be combined with it.

32
33 (4) The Attorney General may file an amicus curiae brief without the presiding
34 judge's permission, unless the brief is submitted on behalf of another state
35 officer or agency; but the presiding judge may prescribe reasonable conditions
36 for filing and answering the brief.

37
38 **(d) Service and filing**

39
40 (1) Copies of each brief must be served as required by rule 8.25.
41

- 1 (2) Unless the appellate division provides otherwise by local rule or order in the
2 specific case, only the original brief, with proof of service, must be filed in the
3 appellate division.
4
5 (3) A copy of each brief must be served on the trial court clerk for delivery to the
6 judge who tried the case.
7
8 (4) A copy of each brief must be served on a public officer or agency when
9 required by rule 8.29.

10
11 *Rule 8.882 adopted effective January 1, 2009.*
12

13
14 **Rule 8.883. Contents and form of briefs**

15
16 **(a) Contents**

- 17
18 (1) Each brief must:
19
20 (A) State each point under a separate heading or subheading summarizing
21 the point and support each point by argument and, if possible, by citation
22 of authority; and
23
24 (B) Support any reference to a matter in the record by a citation to the
25 volume and page number of the record where the matter appears.
26
27 (2) An appellant's opening brief must:
28
29 (A) State the nature of the action, the relief sought in the trial court, and the
30 judgment or order appealed from;
31
32 (B) State that the judgment appealed from is final or explain why the order
33 appealed from is appealable; and
34
35 (C) Provide a summary of the significant facts limited to matters in the
36 record.

37
38 **(b) Length**

- 39
40 (1) A brief produced on a computer must not exceed 6,800 words, including
41 footnotes. Such a brief must include a certificate by appellate counsel or an
42 unrepresented party stating the number of words in the brief. The person

1 certifying may rely on the word count of the computer program used to
2 prepare the brief.

3
4 (2) A brief produced on a typewriter must not exceed 20 pages.

5
6 (3) The certificate under (1) and any attachment under (d) are excluded from the
7 limits stated in (1) or (2).

8
9 (4) On application, the presiding judge may permit a longer brief for good cause.
10 A lengthy record or numerous or complex issues on appeal will ordinarily
11 constitute good cause. If the court grants an application to file a longer brief, it
12 may order that the brief include a table of contents and a table of authorities.

13
14 **(c) Form**

15
16 (1) A brief may be reproduced by any process that produces a clear, black image
17 of letter quality. The paper must be white or unbleached, recycled, 8½ by 11
18 inches, and of at least 20-pound weight. Both sides of the paper may be used if
19 the brief is not bound at the top.

20
21 (2) Any conventional typeface may be used. The typeface may be either
22 proportionally spaced or monospaced.

23
24 (3) The type style must be roman; but for emphasis, italics or boldface may be
25 used or the text may be underscored. Case names must be italicized or
26 underscored. Headings may be in uppercase letters.

27
28 (4) Except as provided in (10), the type size, including footnotes, must not be
29 smaller than 13-point.

30
31 (5) The lines of text must be at least one-and-a-half-spaced. Headings and
32 footnotes may be single-spaced. Quotations may be block-indented and single-
33 spaced. Single-spaced means six lines to a vertical inch.

34
35 (6) The margins must be at least 1½ inches on the left and right and 1 inch on the
36 top and bottom.

37
38 (7) The pages must be consecutively numbered.

39
40 (8) The brief must be bound on the left margin, except that briefs may be bound at
41 the top if required by a local rule of the appellate division. If the brief is
42 stapled, the bound edge and staples must be covered with tape.

43

1 (9) The brief need not be signed.

2
3 (10) If the brief is produced on a typewriter:

4
5 (A) A typewritten original and carbon copies may be filed only with the
6 presiding justice's permission, which will ordinarily be given only to
7 unrepresented parties proceeding in forma pauperis. All other
8 typewritten briefs must be filed as photocopies.

9
10 (B) Both sides of the paper may be used if a photocopy is filed; only one
11 side may be used if a typewritten original and carbon copies are filed.

12
13 (C) The type size, including footnotes, must not be smaller than standard
14 pica, 10 characters per inch. Unrepresented incarcerated litigants may
15 use elite type, 12 characters per inch, if they lack access to a typewriter
16 with larger characters.

17
18 **(d) Noncomplying briefs**

19
20 If a brief does not comply with this rule:

21
22 (1) The reviewing court clerk may decline to file it, but must mark it "received
23 but not filed" and return it to the party; or

24
25 (2) If the brief is filed, the presiding judge may with or without notice:

26
27 (A) Order the brief returned for corrections and refiling within a specified
28 time;

29
30 (B) Strike the brief with leave to file a new brief within a specified time; or

31
32 (C) Disregard the noncompliance.

33
34 *Rule 8.883 adopted effective January 1, 2009.*

35
36
37 **Rule 8.884. Appeals in which a party is both appellant and respondent**

38
39 **(a) Briefing sequence and time to file briefs**

40
41 In an appeal in which any party is both an appellant and a respondent:

1 (1) The parties must jointly—or separately if unable to agree—submit a proposed
2 briefing sequence to the appellate division within 20 days after the second
3 notice of appeal is filed.

4
5 (2) After receiving the proposal, the appellate division must order a briefing
6 sequence and prescribe briefing periods consistent with rule 8.882(a).

7
8 **(b) Contents of briefs**

9
10 (1) A party that is both an appellant and a respondent must combine its
11 respondent’s brief with its appellant’s opening brief or its reply brief, if any,
12 whichever is appropriate under the briefing sequence that the appellate
13 division orders under (a).

14
15 (2) A party must confine a reply brief to points raised in its own appeal.

16
17 (3) A combined brief must address each appeal separately.

18
19 *Rule 8.884 adopted effective January 1, 2009.*

20
21
22 **Rule 8.885. Oral argument**

23
24 **(a) Calendaring and sessions**

25
26 Unless otherwise ordered, all appeals in which the last reply brief was filed or the
27 time for filing this brief expired 45 or more days before the date of a regular
28 appellate division session must be placed on the calendar for that session by the
29 appellate division clerk. By order of the presiding judge or the division, any appeal
30 may be placed on the calendar for oral argument at any session.

31
32 **(b) Notice of argument**

33
34 As soon as all parties’ briefs are filed or the time for filing these briefs has expired,
35 the appellate division clerk must send a notice of the time and place of oral
36 argument to all parties. The notice must be sent at least 20 days before the date for
37 oral argument. The presiding judge may shorten the notice period for good cause; in
38 that event, the clerk must immediately notify the parties by telephone or other
39 expeditious method.

40
41 **(c) Waiver of argument**

42
43 Parties may waive oral argument.

1
2 **(d) Conduct of argument**

3
4 Unless the court provides otherwise:

5
6 (1) The appellant, petitioner, or moving party has the right to open and close. If
7 there are two or more such parties, the court must set the sequence of
8 argument.

9
10 (2) Each side is allowed 10 minutes for argument. If multiple parties are
11 represented by separate counsel, or if an amicus curiae—on written request—
12 is granted permission to argue, the court may apportion or expand the time.

13
14 (3) Only one counsel may argue for each separately represented party.

15
16 *Rule 8.885 adopted effective January 1, 2009.*

17
18 **Advisory Committee Comment**

19
20 Subdivision (a). Under rule 10.1108, the appellate division must hold a session at least once each quarter,
21 unless no matters are set for oral argument that quarter, but may choose to hold sessions more frequently.

22
23
24 **Rule 8.886. Submission of the cause**

25
26 **(a) When the cause is submitted**

27
28 A cause is submitted when the court has heard oral argument or approved its waiver
29 and the time has expired to file all briefs and papers, including any supplemental
30 brief permitted by the court. The appellate division may order the cause submitted
31 at an earlier time if the parties so stipulate.

32
33 **(b) Vacating submission**

34
35 The court may vacate submission only by an order stating its reasons and setting a
36 timetable for resubmission.

37
38 *Rule 8.886 adopted effective January 1, 2009.*

39
40
41 **Rule 8.887. Decisions**

42
43 **(a) Written opinions**

1 Appellate division judges are not required to prepare a written opinion in any case
2 but may do so when they deem it advisable or in the public interest. A decision by
3 opinion must identify the participating judges, including the author of the majority
4 opinion and of any concurring or dissenting opinion, or the judges participating in a
5 “by the court” opinion.

6
7 **(b) Filing the decision**

8
9 The appellate division clerk must promptly file all opinions and orders of the court
10 and promptly send copies showing the filing date to the parties and, when relevant,
11 to the trial court.

12
13 **(c) Opinions certified for publication**

14
15 (1) Opinions certified for publication must comply to the extent practicable with
16 the *California Style Manual*.

17
18 (2) When the decision is final as to the appellate division in a case in which the
19 opinion is certified for publication, the clerk must immediately send:

20
21 (A) To the Reporter of Decisions: two paper copies and one electronic copy
22 in a format approved by the Reporter.

23
24 (B) To the Courts of Appeal for the district: one copy bearing the notation
25 “To be published in the Official Reports.” The Courts of Appeal clerk
26 must promptly file that copy or make a docket entry showing its receipt.

27
28 *Rule 8.887 adopted effective January 1, 2009.*

29
30
31 **Rule 8.888. Finality and modification of decision**

32
33 **(a) Finality of decision**

34
35 (1) Except as otherwise provided in this rule, an appellate division decision,
36 including an order dismissing an appeal involuntarily, is final 30 days after the
37 decision is filed.

38
39 (2) If the appellate division certifies a written opinion for publication or partial
40 publication after its decision is filed and before its decision becomes final in
41 that court, the finality period runs from the filing date of the order for
42 publication.

1 (3) The following appellate division decisions are final in that court when filed:

2
3 (A) The denial of a petition for writ of supersedeas;

4
5 (B) The denial of an application for bail or to reduce bail pending appeal;
6 and

7
8 (C) The dismissal of an appeal on request or stipulation.

9
10 **(b) Modification of judgment**

11
12 (1) The appellate division may modify its decision until the decision is final in
13 that court. If the clerk's office is closed on the date of finality, the court may
14 modify the decision on the next day the clerk's office is open.

15
16 (2) An order modifying a decision must state whether it changes the appellate
17 judgment. A modification that does not change the appellate judgment does
18 not extend the finality date of the decision. If a modification changes the
19 appellate judgment, the finality period runs from the filing date of the
20 modification order.

21
22 **(c) Consent to increase or decrease in amount of judgment**

23
24 If an appellate division decision conditions the affirmance of a money judgment on
25 a party's consent to an increase or decrease in the amount, the judgment is reversed
26 unless, before the decision is final under (a), the party serves and files two copies of
27 a consent in the appellate division. If a consent is filed, the finality period runs from
28 the filing date of the consent. The clerk must send one file-stamped copy of the
29 consent to the trial court with the remittitur.

30
31 *Rule 8.888 adopted effective January 1, 2009.*

32
33
34 **Rule 8.889. Rehearing**

35
36 **(a) Power to order rehearing**

37
38 (1) On petition of a party or on its own motion, the appellate division may order
39 rehearing of any decision that is not final in that court on filing.

40
41 (2) An order for rehearing must be filed before the decision is final. If the clerk's
42 office is closed on the date of finality, the court may file the order on the next
43 day the clerk's office is open.

1
2 **(b) Petition and answer**

3
4 (1) A party may serve and file a petition for rehearing within 15 days after:

5
6 (A) The decision is filed;

7
8 (B) A publication order restarting the finality period under rule 8.888(a)(2),
9 if the party has not already filed a petition for rehearing;

10
11 (C) A modification order changing the appellate judgment under rule
12 8.888(b); or

13
14 (D) The filing of a consent under rule 8.888(c).

15
16 (2) A party must not file an answer to a petition for rehearing unless the court
17 requests an answer. The clerk must promptly send to the parties copies of any
18 order requesting an answer and immediately notify the parties by telephone or
19 another expeditious method. Any answer must be served and filed within 8
20 days after the order is filed unless the court orders otherwise. A petition for
21 rehearing normally will not be granted unless the court has requested an
22 answer.

23
24 (3) The petition and answer must comply with the relevant provisions of rule
25 8.883.

26
27 (4) Before the decision is final and for good cause, the presiding judge may
28 relieve a party from a failure to file a timely petition or answer.

29
30 **(c) No extensions of time**

31
32 The time for granting or denying a petition for rehearing in the appellate division
33 may not be extended. If the court does not rule on the petition before the decision is
34 final, the petition is deemed denied.

35
36 **(d) Effect of granting rehearing**

37
38 An order granting a rehearing vacates the decision and any opinion filed in the case.
39 If the appellate division orders rehearing, it may place the case on calendar for
40 further argument or submit it for decision.

41
42 *Rule 8.889 adopted effective January 1, 2009.*

1
2 **Rule 8.890. Remittitur**

3
4 **(a) Proceedings requiring issuance of remittitur**

5
6 An appellate division must issue a remittitur after a decision in an appeal.

7
8 **(b) Clerk's duties**

9
10 (1) If an appellate division case is not transferred to the Court of Appeal under
11 rule 8.1000 et seq., the appellate division clerk must:

12
13 (A) Issue a remittitur immediately after the Court of Appeal denies transfer,
14 or the period for granting transfer under rule 8.1008(c) expires;

15
16 (B) Send the remittitur to the trial court with a file-stamped copy of the
17 opinion or order; and

18
19 (C) Return to the trial court with the remittitur all original records, exhibits,
20 and documents sent to the appellate division in connection with the
21 appeal, except any certification for transfer under rule 8.1005, the
22 transcripts or statement on appeal, briefs, and the notice of appeal.

23
24 (2) If an appellate division case is transferred to a Court of Appeal under rule
25 8.1000 et seq., on receiving the Court of Appeal remittitur, the appellate
26 division clerk must issue a remittitur and return documents to the trial court as
27 provided in rule 8.1018.

28
29 **(c) Immediate issuance, stay, and recall**

30
31 (1) The appellate division may direct immediate issuance of a remittitur only on
32 the parties' stipulation or on dismissal of the appeal on the request or
33 stipulation of the parties under rule 8.825(c)(2).

34
35 (2) On a party's or its own motion or on stipulation, and for good cause, the court
36 may stay a remittitur's issuance for a reasonable period or order its recall.

37
38 (3) An order recalling a remittitur issued after a decision by opinion does not
39 supersede the opinion or affect its publication status.

40
41 **(d) Notice**

1 The remittitur is deemed issued when the clerk enters it in the record. The clerk
2 must immediately send the parties notice of issuance of the remittitur, showing the
3 date of entry.

4
5 *Rule 8.890 adopted effective January 1, 2009.*

6
7
8 **Rule 8.891. Costs and sanctions in civil appeals**

9
10 **(a) Right to costs**

- 11
12 (1) Except as provided in this rule, the prevailing party in a civil appeal is entitled
13 to costs on appeal.
14
15 (2) The prevailing party is the respondent if the appellate division affirms the
16 judgment without modification or dismisses the appeal. The prevailing party is
17 the appellant if the appellate division reverses the judgment in its entirety.
18
19 (3) If the appellate division reverses the judgment in part or modifies it, or if there
20 is more than one notice of appeal, the appellate division must specify the
21 award or denial of costs in its decision.
22
23 (4) In the interests of justice, the appellate division may also award or deny costs
24 as it deems proper.

25
26 **(b) Judgment for costs**

- 27
28 (1) The appellate division clerk must enter on the record and insert in the
29 remittitur judgment awarding costs to the prevailing party under (a).
30
31 (2) If the clerk fails to enter judgment for costs, the appellate division may recall
32 the remittitur for correction on its own motion or on a party's motion made not
33 later than 30 days after the remittitur issues.

34
35 **(c) Procedure for claiming or opposing costs**

- 36
37 (1) Within 30 days after the clerk sends notice of issuance of the remittitur, a
38 party claiming costs awarded by the appellate division must serve and file in
39 the trial court a verified memorandum of costs under rule 3.1702(a)(1).
40
41 (2) A party may serve and file a motion in the trial court to strike or tax costs
42 claimed under (1) in the manner required by rule 3.1700.
43

1 (3) An award of costs is enforceable as a money judgment.

2
3 **(d) Recoverable costs**

4
5 (1) A party may recover only the costs of the following, if reasonable:

6
7 (A) Filing fees;

8
9 (B) The amount the party paid for any portion of the record, whether an
10 original or a copy or both, subject to reduction by the appellate division
11 under subdivision (e);

12
13 (C) The cost to produce additional evidence on appeal;

14
15 (D) The costs to notarize, serve, mail, and file the record, briefs, and other
16 papers;

17
18 (E) The cost to print and reproduce any brief, including any petition for
19 rehearing or review, answer, or reply; and

20
21 (F) The cost to procure a surety bond, including the premium and the cost to
22 obtain a letter of credit as collateral, unless the trial court determines the
23 bond was unnecessary.

24
25 (2) Unless the court orders otherwise, an award of costs neither includes
26 attorney's fees on appeal nor precludes a party from seeking them under rule
27 3.1702.

28
29 **(e) Sanctions**

30
31 (1) On motion of a party or its own motion, the appellate division may impose
32 sanctions, including the award or denial of costs, on a party or an attorney for:

33
34 (A) Taking a frivolous appeal or appealing solely to cause delay; or

35
36 (B) Committing any unreasonable violation of these rules.

37
38 (2) A party's motion under (1) must include a declaration supporting the amount
39 of any monetary sanction sought and must be served and filed before any
40 order dismissing the appeal but no later than 10 days after the appellant's
41 reply brief is due. If a party files a motion for sanctions with a motion to
42 dismiss the appeal and the motion to dismiss is not granted, the party may file

1 a new motion for sanctions within 10 days after the appellant’s reply brief is
2 due.

3
4 (3) The court must give notice in writing if it is considering imposing sanctions.
5 Within 10 days after the court sends such notice, a party or attorney may serve
6 and file an opposition, but failure to do so will not be deemed consent. An
7 opposition may not be filed unless the court sends such notice.

8
9 (4) Unless otherwise ordered, oral argument on the issue of sanctions must be
10 combined with oral argument on the merits of the appeal.

11
12 *Rule 8.891 adopted effective January 1, 2009.*

13
14 **Chapter 5. Appeals in Infraction Cases**

15
16 *Chapter 5 adopted effective January 1, 2009.*

17
18 **Article 1. Taking Appeals in Infraction Cases**

19
20 *Article 1 adopted effective January 1, 2009.*

21
22
23 **Rule 8.900. Application of chapter**

24
25 The rules in this chapter apply only to appeals in infraction cases. An infraction case is a
26 case in which the defendant was convicted only of an infraction and was not charged with
27 any felony. A felony is “charged” when an information or indictment accusing the
28 defendant of a felony is filed or a complaint accusing the defendant of a felony is
29 certified to the superior court under Penal Code section 859a.

30
31 *Rule 8.900 adopted effective January 1, 2009.*

32
33 **Advisory Committee Comment**

34
35 Chapter 1 of this division also applies in appeals from infraction cases. Chapters 3 and 4 of this division
36 apply to appeals in misdemeanor cases. The rules that apply in appeals in felony cases are located in
37 chapter 3 of division 1 of this title.

38
39 Penal Code section 1466 provides that an appeal in a “misdemeanor or infraction case” is to the appellate
40 division of the superior court, and Penal Code section 1235(b), in turn, provides that an appeal in a
41 “felony case” is to the Court of Appeal. Penal Code section 691(g) defines “misdemeanor or infraction
42 case” to mean “a criminal action in which a misdemeanor or infraction is charged *and does not include a*
43 *criminal action in which a felony is charged in conjunction with a misdemeanor or infraction*” (emphasis
44 added), and section 691(f) defines “felony case” to mean “a criminal action in which a felony is charged
45 *and includes a criminal action in which a misdemeanor or infraction is charged in conjunction with a*
46 *felony*” (emphasis added).

1
2 As rule 8.304 from the rules on felony appeals makes clear, a “felony case” is an action in which a felony
3 is charged regardless of the outcome of the action. Thus the question of which rules apply—these
4 appellate division rules or the rules governing appeals in felony cases—is answered simply by examining
5 the accusatory pleading: if that document charged the defendant with at least one count of felony (as
6 defined in Penal Code, section 17(a)), the Court of Appeal has appellate jurisdiction and the appeal must
7 be taken under the rules on felony appeals even if the prosecution did not result in a punishment of
8 imprisonment in a state prison.

9
10 It is settled case law that an appeal is taken to the Court of Appeal not only when the defendant is charged
11 with and convicted of a felony, but also when the defendant is charged with both a felony and a
12 misdemeanor (Pen. Code, § 691(f)) but is convicted of only the misdemeanor (e.g., *People v. Brown*
13 (1970) 10 Cal.App.3d 169); when the defendant is charged with a felony but is convicted of only a lesser
14 offense (Pen. Code, § 1159; e.g., *People v. Spreckels* (1954) 125 Cal.App.2d 507); and when the
15 defendant is charged with an offense filed as a felony but punishable as either a felony or a misdemeanor,
16 and the offense is thereafter deemed a misdemeanor under Penal Code section 17(b) (e.g., *People v.*
17 *Douglas* (1999) 20 Cal.4th 85; *People v. Clark* (1971) 17 Cal.App.3d 890).

18
19 Trial court unification did not change this rule: after as before unification, “Appeals in felony cases lie to
20 the [C]ourt of [A]ppel, regardless of whether the appeal is from the superior court, the municipal court,
21 or the action of a magistrate. Cf. Cal. Const. art. VI, § 11(a) [except in death penalty cases, Courts of
22 Appeal have appellate jurisdiction when superior courts have original jurisdiction ‘in causes of a type
23 within the appellate jurisdiction of the [C]ourts of [A]ppel on June 30, 1995. . . .’]” (“Recommendation
24 on Trial Court Unification” (July 1998) 28 Cal. Law Revision Com. Rep. 455–56.)

25 26 27 **Rule 8.901. Notice of appeal**

28 29 **(a) Notice of appeal**

30
31 (1) To appeal from a judgment or an appealable order in an infraction case, the
32 defendant or the People must file a notice of appeal in the trial court that
33 issued the judgment or order being appealed. The notice must specify the
34 judgment or order—or part of it—being appealed.

35
36 (2) If the defendant appeals, the defendant or the defendant’s attorney must sign
37 the notice of appeal. If the People appeal, the attorney for the People must sign
38 the notice.

39
40 (3) The notice of appeal must be liberally construed in favor of its sufficiency.

41 42 **(b) Notification of the appeal**

43
44 (1) When a notice of appeal is filed, the trial court clerk must promptly mail a
45 notification of the filing to the attorney of record for each party and to any
46 unrepresented defendant. The clerk must also mail or deliver this notification
47 to the appellate division clerk.

1 A notice of appeal filed before the judgment is rendered or the order is made is
2 premature, but the appellate division may treat the notice as filed immediately after
3 the rendition of the judgment or the making of the order.

4
5 **(d) Late notice of appeal**

6
7 The trial court clerk must mark a late notice of appeal “Received [date] but not
8 filed” and notify the party that the notice was not filed because it was late.

9
10 **(e) Receipt by mail from custodial institution**

11
12 If the trial court clerk receives a notice of appeal by mail from a custodial institution
13 after the period specified in (a) has expired but the envelope shows that the notice
14 was mailed or delivered to custodial officials for mailing within the period specified
15 in (a), the notice is deemed timely. The clerk must retain in the case file the
16 envelope in which the notice was received.

17
18 *Rule 8.902 adopted effective January 1, 2009.*

19
20
21 **Rule 8.903. Stay of execution on appeal**

22
23 **(a) Application**

24
25 Pending appeal, the defendant may apply to the appellate division for a stay of
26 execution after a judgment of conviction.

27
28 **(b) Showing**

29
30 The application must include a showing that the defendant sought relief in the trial
31 court and that the court unjustifiably denied the application.

32
33 **(c) Service**

34
35 The application must be served on the prosecuting attorney.

36
37 **(d) Interim relief**

38
39 Pending its ruling on the application, the appellate division may grant the relief
40 requested. The appellate division must notify the trial court of any stay that it
41 grants.

42
43 *Rule 8.903 adopted effective January 1, 2009.*

1
2 Advisory Committee Comment
3

4 Subdivision (c). Under rule 8.804, the prosecuting attorney means the city attorney, county counsel, or
5 district attorney prosecuting the infraction.
6
7

8 **Rule 8.904. Abandoning the appeal**
9

10 **(a) How to abandon**
11

12 An appellant may abandon the appeal at any time by filing an abandonment of the
13 appeal signed by the appellant or the appellant's attorney of record.
14

15 **(b) Where to file; effect of filing**
16

17 (1) The appellant must file the abandonment in the appellate division.
18

19 (2) If the record has not been filed in the appellate division, the filing of an
20 abandonment effects a dismissal of the appeal and restores the trial court's
21 jurisdiction.
22

23 (3) If the record has been filed in the appellate division, the appellate division
24 may dismiss the appeal and direct immediate issuance of the remittitur.
25

26 **(c) Clerk's duties**
27

28 (1) The appellate division clerk must immediately notify the adverse party of the
29 filing or of the order of dismissal.
30

31 (2) If the record has not been filed in the appellate division, the clerk must
32 immediately notify the trial court.
33

34 (3) If a reporter's transcript has been requested, the clerk must immediately notify
35 the reporter if the appeal is abandoned before the reporter has filed the
36 transcript.
37

38 *Rule 8.904 adopted effective January 1, 2009.*
39

40 Advisory Committee Comment
41

42 Abandonment of Appeal (Infraction) (form CR-145) may be used to file an abandonment under this rule.
43 This form is available at any courthouse or county law library or online at www.courtinfo.ca.gov/forms.
44

1 **Article 2. Record in Infraction Appeals**

2
3 *Article 2 adopted effective January 1, 2009.*

4
5
6 **Rule 8.910. Normal record on appeal**

7
8 **(a) Contents**

9
10 Except as otherwise provided in this chapter, the record on an appeal to a superior
11 court appellate division in an infraction criminal case must contain the following,
12 which constitute the normal record on appeal:

13
14 (1) A record of the written documents from the trial court proceedings in the form
15 of one of the following:

16
17 (A) A clerk’s transcript under rule 8.912 or 8.920; or

18
19 (B) If the court has a local rule for the appellate division electing to use this
20 form of the record, the original trial court file under rule 8.914.

21
22 (2) If an appellant wants to raise any issue that requires consideration of the oral
23 proceedings in the trial court, the record on appeal must include a record of
24 the oral proceedings in the form of one of the following:

25
26 (A) A statement on appeal under rule 8.916;

27
28 (B) If the court has a local rule for the appellate division permitting this form
29 of the record, an official electronic recording of the proceedings under
30 rule 8.917; or

31
32 (C) A reporter’s transcript under rules 8.918–8.920 or a transcript prepared
33 from an official electronic recording under rule 8.917.

34
35 **(b) Stipulation for limited record**

36
37 If before the record is certified, the appellant, or counsel for the appellant, and the
38 People stipulate in writing that any part of the record is not required for proper
39 determination of the appeal and file the stipulation in the trial court, that part of the
40 record must not be prepared or sent to the appellate division.

41
42 *Rule 8.910 adopted effective January 1, 2009.*

1
2 **Rule 8.911. Prosecuting attorney’s notice regarding the record**

3
4 If the prosecuting attorney does not want to receive a copy of the record on appeal, within
5 10 days after the notification of the appeal under rule 8.901(b) is mailed to the
6 prosecuting attorney, the prosecuting attorney must serve and file a notice indicating that
7 he or she does not want to receive the record.

8
9 *Rule 8.911 adopted effective January 1, 2009.*

10
11
12 **Rule 8.912. Contents of clerk’s transcript**

13
14 Except in appeals covered by rule 8.920 or when the parties have filed a stipulation under
15 rule 8.910(b) that any of these items is not required for proper determination of the
16 appeal, the clerk’s transcript must contain:

- 17
18 (1) The complaint, including any notice to appear, and any amendment;
19
20 (2) Any demurrer or other plea;
21
22 (3) All court minutes;
23
24 (4) Any written findings or opinion of the court;
25
26 (5) The judgment or order appealed from;
27
28 (6) Any motion or notice of motion for new trial, in arrest of judgment, or to dismiss
29 the action, with supporting and opposing memoranda and attachments;
30
31 (7) Any transcript of a sound or sound-and-video recording tendered to the court under
32 rule 2.1040;
33
34 (8) The notice of appeal; and
35
36 (9) If the appellant is the defendant:
37
38 (A) Any written defense motion denied in whole or in part, with supporting and
39 opposing memoranda and attachments; and
40
41 (B) If related to a motion under (A), any search warrant and return.

42
43 *Rule 8.912 adopted effective January 1, 2009.*

1
2
3 **Rule 8.913. Preparation of clerk's transcript**
4

5 **(a) When preparation begins**
6

7 Unless the original court file will be used in place of a clerk's transcript under rule
8 8.914, the clerk must begin preparing the clerk's transcript immediately after the
9 notice of appeal is filed.
10

11 **(b) Format of transcript**
12

13 The clerk's transcript must comply with rule 8.144.
14

15 **(c) When preparation must be completed**
16

17 Within 20 days after the notice of appeal is filed, the clerk must complete
18 preparation of an original clerk's transcript for the appellate division and one copy
19 for the appellant. If there is more than one appellant, the clerk must prepare an extra
20 copy for each additional appellant who is represented by separate counsel or self-
21 represented. If the defendant is the appellant, a copy must also be prepared for the
22 prosecuting attorney unless the prosecuting attorney has notified the court under
23 rule 8.911 that he or she does not want to receive the record. If the People are the
24 appellant, a copy must also be prepared for the respondent.
25

26 **(d) Certification**
27

28 The clerk must certify as correct the original and all copies of the clerk's transcript.
29

30 *Rule 8.913 adopted effective January 1, 2009.*
31

32 **Advisory Committee Comment**
33

34 Rule 8.922 addresses when the clerk's transcript is sent to the appellate division in infraction appeals.
35
36

37 **Rule 8.914. Trial court file instead of clerk's transcript**
38

39 **(a) Application**
40

41 If the court has a local rule for the appellate division electing to use this form of the
42 record, the original trial court file may be used instead of a clerk's transcript. This
43 rule and any supplemental provisions of the local rule then govern unless the trial
44 court orders otherwise after notice to the parties.

1
2 **(b) When original file must be prepared**

3
4 Within 20 days after the filing of the notice of appeal, the trial court clerk must put
5 the trial court file in chronological order, number the pages, and attach a
6 chronological index and a list of all attorneys of record, the parties they represent,
7 and any unrepresented parties.

8
9 **(c) Copies**

10
11 The clerk must send a copy of the index to the appellant for use in paginating his or
12 her copy of the file to conform to the index. If there is more than one appellant, the
13 clerk must prepare an extra copy of the index for each additional appellant who is
14 represented by separate counsel or self-represented. If the defendant is the
15 appellant, a copy must also be prepared for the prosecuting attorney unless the
16 prosecuting attorney has notified the court under rule 8.911 that he or she does not
17 want to receive the record. If the People are the appellant, a copy must also be
18 prepared for the respondent.

19
20 *Rule 8.914 adopted effective January 1, 2009.*

21
22 **Advisory Committee Comment**

23
24 Rule 8.922 addresses when the original file is sent to the appellate division in infraction appeals.

25
26
27 **Rule 8.915. Record of oral proceedings**

28
29 **(a) Appellant's election**

30
31 The appellant must notify the trial court whether he or she elects to proceed with or
32 without a record of the oral proceedings in the trial court. If the appellant elects to
33 proceed with a record of the oral proceedings in the trial court, the notice must
34 specify which form of the record of the oral proceedings in the trial court the
35 appellant elects to use:

36
37 (1) A statement on appeal under rule 8.916;

38
39 (2) If the court has a local rule for the appellate division permitting this, an
40 official electronic recording of the proceedings under rule 8.917(c). The
41 appellant must attach to the notice a copy of the stipulation required under rule
42 8.917(c); or

1 (3) A reporter’s transcript under rules 8.918–8.920 or a transcript prepared from
2 an official electronic recording of the proceedings under rule 8.917(b). If the
3 appellant elects to use a reporter’s transcript, the clerk must promptly mail a
4 copy of appellant’s notice making this election and the notice of appeal to
5 each court reporter.

6
7 **(b) Time for filing election**

8
9 The notice of election required under (a) must be filed with the notice of appeal.

10
11 **(c) Statement on appeal when proceedings cannot be transcribed or were not**
12 **recorded**

13
14 (1) If the appellant elects under (a) to use a reporter’s transcript or a transcript
15 prepared from an official electronic recording or the recording itself, the trial
16 court clerk must notify the appellant within 10 days after the appellant files
17 this election if any portion of the oral proceedings listed in rule 8.918 was not
18 reported or officially recorded electronically or cannot be transcribed. The
19 notice must indicate that the appellant may use a statement on appeal as the
20 record of the portion of the proceedings that was not recorded or cannot be
21 transcribed.

22
23 (2) Within 15 days after this notice is mailed by the clerk, the appellant must
24 serve and file a notice with the court stating whether the appellant elects to use
25 a statement on appeal as the record of the portion of the proceedings that was
26 not recorded or cannot be transcribed.

27
28 *Rule 8.915 adopted effective January 1, 2009.*

29
30 **Advisory Committee Comment**

31
32 Notice of Appeal and Record of Oral Proceedings (Infraction) (form CR-142) may be used to file the
33 election required under this rule. This form is available at any courthouse or county law library or online
34 at www.courtinfo.ca.gov/forms. To assist appellants in making an appropriate election, courts are
35 encouraged to include information about whether the proceedings were recorded by a court reporter or
36 officially electronically recorded in any information that the court provides to parties concerning their
37 appellate rights.

38
39
40 **Rule 8.916. Statement on appeal**

41
42 **(a) Description**

43
44 A statement on appeal is a summary of the trial court proceedings that is approved
45 by the trial court.

1
2 **(b) Preparing the proposed statement**
3

4 (1) If the appellant elects under rule 8.915 to use a statement on appeal, the
5 appellant must prepare and file a proposed statement within 20 days after
6 filing the record preparation election. If the defendant is the appellant and the
7 prosecuting attorney appeared in the case, the defendant must serve a copy of
8 the proposed statement on the prosecuting attorney. If the People are the
9 appellant, the prosecuting attorney must serve a copy of the proposed
10 statement on the respondent.

11
12 (2) Appellants who are not represented by an attorney must file their proposed
13 statements on *Proposed Statement on Appeal (Infraction)* (form CR-143). For
14 good cause, the court may permit the filing of a statement that is not on form
15 CR-143.

16
17 (3) If the appellant does not file a proposed statement within the time specified in
18 (1), the trial court clerk must promptly notify the appellant by mail that the
19 proposed statement must be filed within 15 days after the notice is mailed and
20 that failure to comply will result in the appeal being dismissed.

21
22 **(c) Contents of the proposed statement on appeal**
23

24 A proposed statement prepared by the appellant must contain:
25

26 (1) A condensed narrative of the oral proceedings that the appellant believes
27 necessary for the appeal and a summary of the trial court's holding and the
28 sentence imposed on the appellant. Subject to the court's approval, the
29 appellant may present some or all of the evidence by question and answer; and
30

31 (2) A statement of the points the appellant is raising on appeal. The appeal is then
32 limited to those points unless the appellate division determines that the record
33 permits the full consideration of another point.

34
35 (A) The statement must specify the intended grounds of appeal by clearly
36 stating each point to be raised but need not identify each particular ruling
37 or matter to be challenged.

38
39 (B) The statement must include as much of the evidence or proceeding as
40 necessary to support the stated grounds. Any evidence or portion of a
41 proceeding not included will be presumed to support the judgment or
42 order appealed from.
43

1 (C) If one of the grounds of appeal is insufficiency of the evidence, the
2 statement must specify how it is insufficient.

3
4 **(d) Review of the appellant’s proposed statement**

5
6 (1) Within 10 days after the appellant files the proposed statement, the respondent
7 may serve and file proposed amendments to that statement.

8
9 (2) No later than 10 days after the respondent files proposed amendments or the
10 time to do so expires, a party may request a hearing to review and correct the
11 proposed statement. No hearing will be held unless ordered by the trial court
12 judge, and the judge will not ordinarily order a hearing unless there is a factual
13 dispute about a material aspect of the trial court proceedings.

14
15 (3) If a hearing is ordered, the court must promptly set the hearing date and
16 provide the parties with at least 5 days’ written notice of the hearing date.

17
18 (4) Except as provided in (6), if no hearing is ordered, no later than 10 days after
19 the time for requesting a hearing expires, the trial court judge must review the
20 proposed statement and any proposed amendments and make any corrections
21 or modifications to the statement necessary to ensure that it is an accurate
22 summary of the trial court proceedings. If a hearing is ordered, the trial court
23 judge must make any corrections or modifications to the statement within 10
24 days after the hearing.

25
26 (5) The trial court judge must not eliminate the appellant’s specification of
27 grounds of appeal from the proposed statement.

28
29 (6) If the trial court proceedings were reported by a court reporter or officially
30 recorded electronically under Government Code section 69957 and the trial
31 court judge determines that it would save court time and resources, instead of
32 correcting a proposed statement on appeal:

33
34 (A) If the court has a local rule for the appellate division permitting the use
35 of an official electronic recording as the record of the oral proceedings,
36 the trial court judge may order that the original of an official electronic
37 recording of the trial court proceedings, or a copy made by the court, be
38 transmitted as the record of these oral proceedings without being
39 transcribed. The court will pay for any copy of the official electronic
40 recording ordered under this subdivision; or

41
42 (B) Unless the court has a local rule providing otherwise, the trial court
43 judge may order that a transcript be prepared as the record of the oral

1 proceedings. The court will pay for any transcript ordered under this
2 subdivision.

3
4 **(e) Review of the corrected statement**

5
6 (1) If the trial court judge makes any corrections or modifications to the statement
7 under (d), the clerk must send copies of the corrected or modified statement to
8 the parties. If the prosecuting attorney did not appear at the trial, the clerk will
9 not send a copy of the statement to the prosecuting attorney.

10
11 (2) Within 10 days after the statement is sent to the parties, any party may serve
12 and file proposed modifications or objections to the statement.

13
14 **(f) Certification of the statement on appeal**

15
16 (1) If the trial court judge does not make any corrections or modifications to the
17 proposed statement under (d)(4) and does not direct the preparation of a
18 transcript in lieu of correcting the proposed statement under (d)(6), the judge
19 must promptly certify the statement.

20
21 (2) If the trial court judge corrects or modifies an appellant’s proposed statement
22 under (d), within five days after the time for filing proposed modifications or
23 objections under (e) has expired, the judge must review any proposed
24 modifications or objections to the statement filed by the parties, make any
25 corrections or modifications to the statement necessary to ensure that it is an
26 accurate summary of the trial court proceedings, and certify the statement.

27
28 **(g) Extensions of time**

29
30 For good cause, the trial court may grant an extension of not more than 15 days to
31 do any act required or permitted under this rule.

32
33 *Rule 8.916 adopted effective January 1, 2009.*

34
35 **Advisory Committee Comment**

36
37 Rules 8.806, 8.810, and 8.812 address applications for extensions of time and relief from default.

38
39 **Subdivision (b).** Proposed Statement on Appeal (Infraction) (form CR-143) is available at any
40 courthouse or county law library or online at www.courtinfo.ca.gov/forms.

41
42 **Subdivision (d).** Under rule 8.804, the term “judge” includes a commissioner or a temporary judge.

1 **Rule 8.917. Record when trial proceedings were officially electronically recorded**
2

3 **(a) Application**
4

5 This rule applies only if:

6
7 (1) The trial court proceedings were officially recorded electronically under
8 Government Code section 69957; and

9
10 (2) The electronic recording was prepared in compliance with applicable rules
11 regarding electronic recording of court proceedings.
12

13 **(b) Transcripts from official electronic recording**
14

15 Written transcripts of official electronic recordings may be prepared under rule
16 2.952. A transcript prepared and certified as provided in that rule is prima facie a
17 true and complete record of the oral proceedings it purports to cover, and satisfies
18 any requirement in these rules or in any statute for a reporter's transcript of oral
19 proceedings.
20

21 **(c) Use of official recording as record of oral proceedings**
22

23 If the court has a local rule for the appellate division permitting this, on stipulation
24 of the parties or on order of the trial court under rule 8.916(b), the original of an
25 official electronic recording of the trial court proceedings, or a copy made by the
26 court, may be transmitted as the record of these oral proceedings without being
27 transcribed. This official electronic recording satisfies any requirement in these
28 rules or in any statute for a reporter's transcript of these proceedings.
29

30 **(d) When preparation begins**
31

32 (1) If the appellant is the People, preparation of a transcript or a copy of the
33 recording must begin immediately after the appellant files an election under
34 rule 8.915(a) to use a transcript of an official electronic recording or a copy of
35 the official electronic recording as the record of the oral proceedings.

36
37 (2) If the appellant is the defendant:
38

39 (A) Within 10 days after the date the appellant files the election under rule
40 8.915(a), the clerk must notify the appellant and his or her counsel of the
41 estimated cost of preparing the transcript or the copy of the recording.
42 The notification must show the date it was mailed.
43

1 (B) Within 10 days after the date the clerk mailed the notice under (A), the
2 appellant must do one of the following:

3
4 (i) Deposit with the clerk an amount equal to the estimated cost of
5 preparing the transcript or the copy of the recording;

6
7 (ii) File a declaration of indigency supported by evidence in the form
8 required by the Judicial Council; or

9
10 (iii) Notify the clerk that he or she will be using a statement on appeal
11 instead of a transcript or copy of the recording.

12
13 (C) Preparation of the transcript must begin when:

14
15 (i) The clerk receives the required deposit under (B)(i); or

16
17 (ii) The trial court determines that the defendant is indigent and orders
18 that the defendant receive the transcript or the copy of the
19 recording without cost.

20
21 *Rule 8.917 adopted effective January 1, 2009.*

22
23 **Advisory Committee Comment**

24
25 **Subdivision (d).** The appellant must use *Defendant's Financial Statement on Eligibility for Appointment*
26 *of Counsel and Reimbursement* (form MC-210) to show indigency. This form is available at any
27 courthouse or county law library or online at www.courtinfo.ca.gov/forms.

28
29
30 **Rule 8.918. Contents of reporter's transcript**

31
32 Except in appeals covered by rule 8.920 or when the parties have filed a stipulation under
33 rule 8.910(b) or the trial court has ordered that any of these items is not required for
34 proper determination of the appeal, the reporter's transcript must contain:

35
36 (1) The oral proceedings on the entry of any plea other than a not guilty plea;

37
38 (2) The oral proceedings on any motion in limine;

39
40 (3) The oral proceedings at trial, but excluding any opening statement;

41
42 (4) Any oral opinion of the court;

43
44 (5) The oral proceedings on any motion for new trial;

1
2 (6) The oral proceedings at sentencing or other dispositional hearing;

3
4 (7) If the appellant is the defendant, the reporter's transcript must also contain:

5
6 (A) The oral proceedings on any defense motion denied in whole or in part except
7 motions for disqualification of a judge; and

8
9 (B) The closing arguments.

10
11 *Rule 8.918 adopted effective January 1, 2009.*

12
13
14 **Rule 8.919. Preparation of reporter's transcript**

15
16 **(a) When preparation begins**

17
18 (1) The reporter must immediately begin preparing the reporter's transcript if the
19 notice sent to the reporter by the clerk under rule 8.915(a)(3) indicates that the
20 appellant is the People.

21
22 (2) If the notice sent to the reporter by the clerk under rule 8.915(a)(3) indicates
23 that the appellant is the defendant:

24
25 (A) Within 10 days after the date the clerk mailed the notice under rule
26 8.915(a)(3), the reporter must file with the clerk the estimated cost of
27 preparing the reporter's transcript; and

28
29 (B) The clerk must promptly notify the appellant and his or her counsel of
30 the estimated cost of preparing the reporter's transcript. The notification
31 must show the date it was mailed.

32
33 (C) Within 10 days after the date the clerk mailed the notice under (B), the
34 appellant must do one of the following:

35
36 (i) Deposit with the clerk an amount equal to the estimated cost of
37 preparing the transcript;

38
39 (ii) File a declaration of indigency supported by evidence in the form
40 required by the Judicial Council; or

41
42 (iii) Notify the clerk that he or she will be using a statement on appeal
43 instead of a reporter's transcript.

1
2 (D) The clerk must promptly notify the reporter to begin preparing the
3 transcript when:

4
5 (i) The clerk receives the required deposit under (C)(i); or

6
7 (ii) The trial court determines that the defendant is indigent and orders
8 that the defendant receive the transcript without cost.

9
10 **(b) Format of transcript**

11
12 The reporter's transcript must comply with rule 8.144.

13
14 **(c) Copies and certification**

15
16 The reporter must prepare an original and the same number of copies of the
17 reporter's transcript as rule 8.913(c) requires of the clerk's transcript and must
18 certify each as correct.

19
20 **(d) When preparation must be completed**

21
22 The reporter must deliver the original and all copies to the trial court clerk as soon
23 as they are certified but no later than 20 days after the reporter is required to begin
24 preparing the transcript under (a).

25
26 **(e) Multi-reporter cases**

27
28 In a multi-reporter case, the clerk must accept any completed portion of the
29 transcript from the primary reporter one week after the time prescribed by (d) even
30 if other portions are uncompleted. The clerk must promptly pay each reporter who
31 certifies that all portions of the transcript assigned to that reporter are completed.

32
33 *Rule 8.919 adopted effective January 1, 2009.*

34
35 **Advisory Committee Comment**

36
37 **Subdivision (a).** The appellant must use *Defendant's Financial Statement on Eligibility for Appointment*
38 *of Counsel and Reimbursement* (form MC-210) to show indigency. This form is available at any
39 courthouse or county law library or online at www.courtinfo.ca.gov/forms.

40
41
42 **Rule 8.920. Limited normal record in certain appeals**

1 If the People appeal from a judgment on a demurrer to the complaint, including any
2 notice to appear, or if the defendant or the People appeal from an appealable order other
3 than a ruling on a motion for new trial, the normal record is composed of:

4
5 (1) Record of the documents filed in the trial court

6
7 A clerk's transcript or original trial court file containing:

8
9 (A) The complaint, including any notice to appear, and any amendment;

10
11 (B) Any demurrer or other plea;

12
13 (C) Any motion or notice of motion granted or denied by the order appealed
14 from, with supporting and opposing memoranda and attachments;

15
16 (D) The judgment or order appealed from and any abstract of judgment;

17
18 (E) Any court minutes relating to the judgment or order appealed from; and

19
20 (F) The notice of appeal.

21
22 (2) Record of the oral proceedings in the trial court

23
24 If an appellant wants to raise any issue that requires consideration of the oral
25 proceedings in the trial court, a reporter's transcript, transcript prepared under rule
26 8.918, or a settled statement under rule 8.915 summarizing any oral proceedings
27 incident to the judgment or order being appealed.

28
29 *Rule 8.920 adopted effective January 1, 2009.*

30
31
32 **Rule 8.921. Exhibits**

33
34 **(a) Exhibits deemed part of record**

35
36 Exhibits admitted in evidence, refused, or lodged are deemed part of the record but
37 may be transmitted to the appellate division only as provided in this rule.

38
39 **(b) Notice of designation**

40
41 (1) Within 10 days after the last respondent's brief is filed or could be filed under
42 rule 8.927, if the appellant wants the appellate division to consider any
43 original exhibits that were admitted in evidence, refused, or lodged, the

1 appellant must serve and file a notice in the trial court designating such
2 exhibits.

3
4 (2) Within 10 days after a notice under (1) is served, any other party wanting the
5 appellate division to consider additional exhibits must serve and file a notice
6 in trial court designating such exhibits.

7
8 (3) A party filing a notice under (1) or (2) must serve a copy on the appellate
9 division.

10
11 **(c) Request by appellate division**

12
13 At any time the appellate division may direct the trial court or a party to send it an
14 exhibit.

15
16 **(d) Transmittal**

17
18 Unless the appellate division orders otherwise, within 20 days after notice under (b)
19 is filed or after the appellate division directs that an exhibit be sent:

20
21 (1) The trial court clerk must put any designated exhibits in the clerk's possession
22 into numerical or alphabetical order and send them to the appellate division
23 with two copies of a list of the exhibits sent. If the appellate division clerk
24 finds the list correct, the clerk must sign and return one copy to the trial court
25 clerk.

26
27 (2) Any party in possession of designated exhibits returned by the trial court must
28 put them into numerical or alphabetical order and send them to the appellate
29 division with two copies of a list of the exhibits sent. If the appellate division
30 clerk finds the list correct, the clerk must sign and return one copy to the
31 party.

32
33 **(e) Return by appellate division**

34
35 On request, the appellate division may return an exhibit to the trial court or to the
36 party that sent it. When the remittitur issues, the appellate division must return all
37 exhibits to the trial court or to the party that sent them.

38
39 *Rule 8.921 adopted effective January 1, 2009.*

40
41
42 **Rule 8.922. Sending and filing the record in the appellate division**

1 **(a) When the record is complete**

2
3 (1) If the appellant elected under rule 8.915 to proceed without a record of the
4 oral proceedings in the trial court, the record is complete when the clerk's
5 transcript is certified as correct or, if the original trial court file will be used
6 instead of the clerk's transcript, when that original file is ready for
7 transmission as provided under rule 8.914(b).

8
9 (2) If the appellant elected under rule 8.915 to proceed with a record of the oral
10 proceedings in the trial court, the record is complete when the clerk's
11 transcript is certified as correct or the original file is ready for transmission as
12 provided in (1) and:

13
14 (A) If the appellant elected to use a reporter's transcript, the certified
15 reporter's transcript is delivered to the court under rule 8.919;

16
17 (B) If the appellant elected to use a transcript prepared from an official
18 electronic recording, the transcript has been prepared under rule 8.917;

19
20 (C) If the parties stipulated to the use of an official electronic recording of
21 the proceedings, the electronic recording has been prepared under rule
22 8.917; or

23
24 (D) If the appellant elected to use a statement on appeal, the statement on
25 appeal has been certified by the trial court or a transcript or copy of an
26 official electronic recording has been prepared under rule 8.916(d)(6).

27
28 **(b) Sending the record**

29
30 When the record is complete, the clerk must promptly send:

31
32 (1) The original record to the appellate division;

33
34 (2) One copy of the clerk's transcript or index to the original court file and one
35 copy of any record of the oral proceedings to each appellant who is
36 represented by separate counsel or is self-represented;

37
38 (3) If the defendant is the appellant, one copy of the clerk's transcript or index to
39 the original court file and one copy of any record of the oral proceedings to
40 the prosecuting attorney unless the prosecuting attorney has notified the court
41 under rule 8.911 that he or she does not want to receive the record; and
42

1 (4) If the People are the appellant, a copy of the clerk’s transcript or index to the
2 original court file and one copy of any record of the oral proceedings to the
3 respondent.

4
5 **(c) Filing the record**

6
7 On receipt, the appellate division clerk must promptly file the original record and
8 mail notice of the filing date to the parties.

9
10 *Rule 8.922 adopted effective January 1, 2009.*

11
12
13 **Rule 8.923. Augmenting or correcting the record in the appellate division**

14
15 **(a) Subsequent trial court orders**

16
17 If, after the record is certified, the trial court amends or recalls the judgment or
18 makes any other order in the case, including an order affecting the sentence or
19 probation, the clerk must promptly certify and send a copy of the amended abstract
20 of judgment or other order as an augmentation of the record to all those who
21 received the record under rule 8.872(b). If there is any additional document or
22 transcript related to the amended judgment or new order that any rule or order
23 requires be included in the record, the clerk must send these documents or
24 transcripts with the amended abstract of judgment or other order. The clerk must
25 promptly copy and certify any such document and the reporter must promptly
26 prepare and certify any such transcript.

27
28 **(b) Omissions**

29
30 If, after the record is certified, the trial court clerk or the reporter learns that the
31 record omits a document or transcript that any rule or order requires to be included,
32 the clerk must promptly copy and certify the document or the reporter must
33 promptly prepare and certify the transcript. Without the need for a court order, the
34 clerk must promptly send the document or transcript as an augmentation of the
35 record to all those who received the record under rule 8.922(b).

36
37 **(c) Augmentation or correction by the appellate division**

38
39 At any time, on motion of a party or on its own motion, the appellate division may
40 order the record augmented or corrected as provided in rule 8.841.

41
42 *Rule 8.923 adopted effective January 1, 2009.*

1 **Article 3. Briefs, Hearing, and Decision in Infraction Appeals**

2
3 *Article 3 adopted effective January 1, 2009.*

4
5
6 **Rule 8.925. General application of chapter 4**

7
8 Except as provided in this article, rules 8.880–8.890 govern briefs, hearing, and decision
9 in the appellate division in infraction cases.

10
11 *Rule 8.925 adopted effective January 1, 2009.*

12
13
14 **Rule 8.926. Notice of briefing schedule**

15
16 When the record is filed, the clerk of the appellate division must promptly mail, to each
17 appellate counsel or unrepresented party, a notice giving the dates the briefs are due.

18
19 *Rule 8.926 adopted effective January 1, 2009.*

20
21
22 **Rule 8.927. Briefs**

23
24 **(a) Time to file briefs**

- 25
26 (1) The appellant must serve and file an appellant’s opening brief within 30 days
27 after the record is filed in the appellate division.
28
29 (2) Any respondent’s brief must be served and filed within 30 days after the
30 appellant files its opening brief.
31
32 (3) Any appellant’s reply brief must be served and filed within 20 days after the
33 respondent files its brief.
34
35 (4) No other brief may be filed except with the permission of the presiding judge.
36
37 (5) Instead of filing a brief, or as part of its brief, a party may join in a brief or
38 adopt by reference all or part of a brief in the same or a related appeal.

39
40 **(b) Failure to file a brief**

- 41
42 (1) If the appellant fails to timely file an opening brief, the appellate division clerk
43 must promptly notify the appellant by mail that the brief must be filed within

1 20 days after the notice is mailed and that if the appellant fails to comply, the
2 court may dismiss the appeal.

3
4 (2) If the respondent is the defendant and the respondent fails to timely file a
5 brief, the appellate division clerk must promptly notify the respondent by mail
6 that the brief must be filed within 20 days after the notice is mailed and that if
7 the respondent fails to comply, the court will decide the appeal on the record,
8 the appellant's opening brief, and any oral argument by the appellant.

9
10 (3) If a party fails to comply with a notice under (1) or (2), the court may impose
11 the sanction specified in the notice.

12
13 **(c) Service and filing**

14
15 (1) Copies of each brief must be served as required by rule 8.25.

16
17 (2) Unless the appellate division provides otherwise by local rule or order in the
18 specific case, only the original brief, with proof of service, must be filed in the
19 appellate division.

20
21 (3) A copy of each brief must be served on the trial court clerk for delivery to the
22 judge who tried the case.

23
24 (4) A copy of each brief must be served on a public officer or agency when
25 required by rule 8.29.

26
27 *Rule 8.927 adopted effective January 1, 2009.*

28
29
30 **Rule 8.928. Contents and form of briefs**

31
32 **(a) Contents**

33
34 (1) Each brief must:

35
36 (A) State each point under a separate heading or subheading summarizing
37 the point and support each point by argument and, if possible, by citation
38 of authority; and

39
40 (B) Support any reference to a matter in the record by a citation to the
41 volume and page number of the record where the matter appears.

42
43 (2) An appellant's opening brief must:

- 1
2 (A) State the nature of the action, the relief sought in the trial court, and the
3 judgment or order appealed from;
4
5 (B) State that the judgment appealed from is final or explain why the order
6 appealed from is appealable; and
7
8 (C) Provide a summary of the significant facts limited to matters in the
9 record.

10
11 **(b) Length**

- 12
13 (1) A brief produced on a computer must not exceed 5,100 words, including
14 footnotes. Such a brief must include a certificate by appellate counsel or an
15 unrepresented party stating the number of words in the brief. The person
16 certifying may rely on the word count of the computer program used to
17 prepare the brief.
18
19 (2) A brief produced on a typewriter must not exceed 15 pages.
20
21 (3) The certificate under (1) and any attachment under (d) are excluded from the
22 limits stated in (1) or (2).
23
24 (4) On application, the presiding judge may permit a longer brief for good cause.
25 A lengthy record or numerous or complex issues on appeal will ordinarily
26 constitute good cause.

27
28 **(c) Form**

- 29
30 (1) A brief may be reproduced by any process that produces a clear, black image
31 of letter quality. The paper must be white or unbleached, recycled, 8½ by 11
32 inches, and of at least 20-pound weight. Both sides of the paper may be used if
33 the brief is not bound at the top.
34
35 (2) Any conventional typeface may be used. The typeface may be either
36 proportionally spaced or monospaced.
37
38 (3) The type style must be roman; but for emphasis, italics or boldface may be
39 used or the text may be underscored. Case names must be italicized or
40 underscored. Headings may be in uppercase letters.
41
42 (4) Except as provided in (10), the type size, including footnotes, must not be
43 smaller than 13-point.

- 1
2 (5) The lines of text must be unnumbered and at least one-and-a-half-spaced.
3 Headings and footnotes may be single-spaced. Quotations may be block-
4 indented and single-spaced. Single-spaced means six lines to a vertical inch.
5
6 (6) The margins must be at least 1½ inches on the left and right and 1 inch on the
7 top and bottom.
8
9 (7) The pages must be consecutively numbered.
10
11 (8) The brief must be bound on the left margin, except that briefs may be bound at
12 the top if required by a local rule of the appellate division. If the brief is
13 stapled, the bound edge and staples must be covered with tape.
14
15 (9) The brief need not be signed.
16
17 (10) If the brief is produced on a typewriter:
18
19 (A) A typewritten original and carbon copies may be filed only with the
20 presiding justice’s permission, which will ordinarily be given only to
21 unrepresented parties proceeding in forma pauperis. All other
22 typewritten briefs must be filed as photocopies.
23
24 (B) Both sides of the paper may be used if a photocopy is filed; only one
25 side may be used if a typewritten original and carbon copies are filed.
26
27 (C) The type size, including footnotes, must not be smaller than standard
28 pica, 10 characters per inch. Unrepresented incarcerated litigants may
29 use elite type, 12 characters per inch, if they lack access to a typewriter
30 with larger characters.
31

32 **(d) Noncomplying briefs**
33

34 If a brief does not comply with this rule:
35

- 36 (1) The reviewing court clerk may decline to file it, but must mark it “received
37 but not filed” and return it to the party; or
38
39 (2) If the brief is filed, the presiding judge may with or without notice:
40
41 (A) Order the brief returned for corrections and refiling within a specified
42 time;
43

1 (B) Strike the brief with leave to file a new brief within a specified time; or

2
3 (C) Disregard the noncompliance.

4
5 *Rule 8.928 adopted effective January 1, 2009.*

6
7
8 **Rule 8.929. Oral argument**

9
10 **(a) Calendaring and sessions**

11
12 Unless otherwise ordered, all appeals in which the last reply brief was filed or the
13 time for filing this brief expired 45 or more days before the date of a regular
14 appellate division session must be placed on the calendar for that session by the
15 appellate division clerk. By order of the presiding judge or the appellate division,
16 any appeal may be placed on the calendar for oral argument at any session.

17
18 **(b) Notice of argument**

19
20 As soon as all parties' briefs are filed or the time for filing these briefs has expired,
21 the appellate division clerk must send a notice of the time and place of oral
22 argument to all parties. The notice must be sent at least 20 days before the date for
23 oral argument. The presiding judge may shorten the notice period for good cause; in
24 that event, the clerk must immediately notify the parties by telephone or other
25 expeditious method.

26
27 **(c) Waiver of argument**

28
29 Parties may waive oral argument.

30
31 **(d) Conduct of argument**

32
33 Unless the court provides otherwise:

34
35 (1) The appellant, petitioner, or moving party has the right to open and close. If
36 there are two or more such parties, the court must set the sequence of
37 argument.

38
39 (2) Each side is allowed 5 minutes for argument. If multiple parties are
40 represented by separate counsel, or if an amicus curiae—on written request—
41 is granted permission to argue, the court may apportion or expand the time.

42
43 (3) Only one counsel may argue for each separately represented party.

1
2 *Rule 8.929 adopted effective January 1, 2009.*

3
4 **Advisory Committee Comment**

5
6 **Subdivision (a).** Under rule 10.1108, the appellate division must hold a session at least once each quarter,
7 unless no matters are set for oral argument that quarter, but may choose to hold sessions more frequently.

8
9 **Chapter 6. Writ Proceedings**

10
11 *Chapter 6 adopted effective January 1, 2009.*

12
13
14 **Rule 8.930. Application**

15
16 **(a) Writ proceedings governed**

17
18 Except as provided in (b), the rules in this chapter govern proceedings in the
19 appellate division for writs of mandate, certiorari, or prohibition, or other writs
20 within the original jurisdiction of the appellate division. In all respects not provided
21 for in this chapter, rule 8.883, regarding the form and content of briefs, applies.

22
23 **(b) Writ proceedings not governed**

24
25 The rules in this chapter do not apply to petitions for writs of supersedeas under rule
26 8.824 or writs not within the original jurisdiction of the appellate division.

27
28 *Rule 8.930 adopted effective January 1, 2009.*

29
30 **Advisory Committee Comment**

31
32 Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases (form APP-150-
33 INFO) provides additional information about proceedings for writs in the appellate division of the
34 superior court. This form is available at any courthouse or county law library or online at
35 www.courtinfo.ca.gov/forms.

36
37 **Subdivision (b).** The superior courts, not the appellate divisions, have original jurisdiction in habeas
38 corpus proceedings (see Cal. Const., art. VI, §10). Habeas corpus proceedings in the superior courts are
39 governed by rules 4.550 et. seq.

40
41
42 **Rule 8.931. Petitions filed by persons not represented by an attorney**

43
44 **(a) Petitions**

1 A person who is not represented by an attorney and who petitions the appellate
2 division for a writ under this chapter must file the petition on *Petition for Writ*
3 *(Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151). For good cause
4 the court may permit an unrepresented party to file a petition that is not on form
5 APP-151.

6
7 **(b) Contents of supporting documents**

8
9 (1) The petition must be accompanied by an adequate record, including copies of:

10
11 (A) The ruling from which the petition seeks relief;

12
13 (B) All documents and exhibits submitted to the trial court supporting and
14 opposing the petitioner's position;

15
16 (C) Any other documents or portions of documents submitted to the trial
17 court that are necessary for a complete understanding of the case and the
18 ruling under review; and

19
20 (D) A reporter's transcript or electronic recording of the oral proceedings
21 that resulted in the ruling under review.

22
23 (2) If a transcript or electronic recording under (1)(D) is unavailable, the record
24 must include a declaration by counsel or, if the petitioner is unrepresented, by
25 the petitioner:

26
27 (A) Explaining why the transcript or electronic recording is unavailable and
28 fairly summarizing the proceedings, including the petitioner's arguments
29 and any statement by the court supporting its ruling; or

30
31 (B) Stating that the transcript or electronic recording has been ordered, the
32 date it was ordered, and the date it is expected to be filed, which must be
33 a date before any action requested of the appellate division other than
34 issuance of a temporary stay supported by other parts of the record.

35
36 (3) A declaration under (2) may omit a full summary of the proceedings if part of
37 the relief sought is an order to prepare a transcript for use by an indigent
38 criminal defendant in support of the petition and if the declaration
39 demonstrates the petitioner's need for and entitlement to the transcript.

40
41 (4) In extraordinary circumstances, the petition may be filed without the
42 documents required by (1)(A)–(C) if counsel or, if the petitioner is
43 unrepresented, the petitioner files a declaration that explains the urgency and

1 the circumstances making the documents unavailable and fairly summarizes
2 their substance.

3
4 (5) If the petitioner does not submit the required record or explanations or does
5 not present facts sufficient to excuse the failure to submit them, the court may
6 summarily deny a stay request, the petition, or both.

7
8 **(c) Form of supporting documents**

9
10 (1) Documents submitted under (b) must comply with the following requirements:

11
12 (A) They must be bound together at the end of the petition or in separate
13 volumes not exceeding 300 pages each. The pages must be consecutively
14 numbered.

15
16 (B) They must be index-tabbed by number or letter.

17
18 (C) They must begin with a table of contents listing each document by its
19 title and its index-tab number or letter. If a document has attachments,
20 the table of contents must give the title of each attachment and a brief
21 description of its contents.

22
23 (2) The clerk must file any supporting documents not complying with (1), but the
24 court may notify the petitioner that it may strike or summarily deny the
25 petition if the documents are not brought into compliance within a stated
26 reasonable time of not less than five days.

27
28 (3) Unless the court orders otherwise by local rule or in the specific case, only one
29 set of any separately bound supporting documents needs to be filed in support
30 of a petition, answer, opposition, or reply.

31
32 **(d) Service**

33
34 (1) The petition and one set of supporting documents must be served on any
35 named real party in interest, but only the petition must be served on the
36 respondent.

37
38 (2) The proof of service must give the telephone number of each attorney or
39 unrepresented party served.

40
41 (4) The petition must be served on a public officer or agency when required by
42 statute or rule 8.29.

1 (5) The clerk must file the petition even if its proof of service is defective, but if
2 the petitioner fails to file a corrected proof of service within five days after the
3 clerk gives notice of the defect the court may strike the petition or impose a
4 lesser sanction.

5
6 (6) The court may allow the petition to be filed without proof of service.

7
8 *Rule 8.931 adopted effective January 1, 2009.*

9
10 **Advisory Committee Comment**

11
12 **Subdivision (a).** *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151) is
13 available at any courthouse or county law library or online at www.courtinfo.ca.gov/forms.

14
15 **Subdivision (d).** Rule 8.25, which generally governs service and filing in appellate divisions, also applies
16 to the original proceedings covered by this rule.

17
18
19 **Rule 8.932. Petitions filed by an attorney for a party**

20
21 **(a) General application of rule 8.931**

22
23 Except as provided in this rule, rule 8.931 applies to any petition for an
24 extraordinary writ filed by an attorney.

25
26 **(b) Form and content of petition**

27
28 (1) A petition for an extraordinary writ filed by an attorney may, but is not
29 required to be, filed on *Petition for Writ (Misdemeanor, Infraction, or Limited*
30 *Civil Case*) (form APP-151).

31
32 (2) The petition must disclose the name of any real party in interest.

33
34 (3) If the petition seeks review of trial court proceedings that are also the subject
35 of a pending appeal, the notice “Related Appeal Pending” must appear on the
36 cover of the petition, and the first paragraph of the petition must state the
37 appeal’s title and any appellate division docket number.

38
39 (4) The petition must be verified.

40
41 (5) The petition must be accompanied by a memorandum, which need not repeat
42 facts alleged in the petition.

1 (6) Rule 8.883(b) governs the length of the petition and memorandum, but the
2 verification and any supporting documents are excluded from the limits stated
3 in rule 8.883(b)(1) and (2).

4
5 (7) If the petition requests a temporary stay, it must explain the urgency.

6
7 *Rule 8.932 adopted effective January 1, 2009.*

8
9
10 **Rule 8.933. Opposition**

11
12 **(a) Preliminary opposition**

13
14 (1) Within 10 days after the petition is filed, the respondent or any real party in
15 interest, separately or jointly, may serve and file a preliminary opposition.

16
17 (2) An opposition must contain a memorandum and a statement of any material
18 fact not included in the petition.

19
20 (3) Within 10 days after an opposition is filed, the petitioner may serve and file a
21 reply.

22
23 (4) Without requesting opposition or waiting for a reply, the court may grant or
24 deny a request for temporary stay, deny the petition, issue an alternative writ
25 or order to show cause, or notify the parties that it is considering issuing a
26 peremptory writ in the first instance.

27
28 **(b) Return or opposition; reply**

29
30 (1) If the court issues an alternative writ or order to show cause, the respondent or
31 any real party in interest, separately or jointly, may serve and file a return by
32 demurrer, verified answer, or both. If the court notifies the parties that it is
33 considering issuing a peremptory writ in the first instance, the respondent or
34 any real party in interest may serve and file an opposition.

35
36 (2) Unless the court orders otherwise, the return or opposition must be served and
37 filed within 30 days after the court issues the alternative writ or order to show
38 cause or notifies the parties that it is considering issuing a peremptory writ in
39 the first instance.

40
41 (3) Unless the court orders otherwise, the petitioner may serve and file a reply
42 within 15 days after the return or opposition is filed.

1 (4) If the return is by demurrer alone and the demurrer is not sustained, the court
2 may issue the peremptory writ without granting leave to answer.

3
4 *Rule 8.933 adopted effective January 1, 2009.*

5
6
7 **Rule 8.934. Notice to trial court**

8
9 **(a) Notice if writ issues**

10
11 If a writ or order issues directed to any judge, court, or other officer, the appellate
12 division clerk must promptly send a certified copy of the writ or order to the person
13 or entity to whom it is directed.

14
15 **(b) Notice by telephone**

16
17 (1) If the writ or order stays or prohibits proceedings set to occur within seven
18 days or requires action within seven days—or in any other urgent situation—
19 the appellate division clerk must make a reasonable effort to notify the clerk
20 of the respondent court by telephone. The clerk of the respondent court must
21 then notify the judge or officer most directly concerned.

22
23 (2) The clerk need not give notice by telephone of the summary denial of a writ,
24 whether or not a stay previously issued.

25
26 *Rule 8.934 adopted effective January 1, 2009.*

27
28
29 **Rule 8.935. Finality and remittitur**

30
31 **(a) Finality of decision**

32
33 (1) Except as otherwise provided in this rule, an appellate division decision in a
34 writ proceeding is final 30 days after the decision is filed.

35
36 (2) The denial of a petition for a writ within the appellate division's original
37 jurisdiction without issuance of an alternative writ or order to show cause is
38 final in that court when filed.

39
40 (3) If necessary to prevent mootness or frustration of the relief granted or to
41 otherwise promote the interests of justice, an appellate division may order
42 early finality in that court of a decision granting a petition for a writ within its
43 original jurisdiction or denying such a petition after issuing an alternative writ

1 or order to show cause. The decision may provide for finality in that court on
2 filing or within a stated period of less than 30 days.

3
4 **(b) Remittitur**

5
6 The appellate division must issue a remittitur after a decision in a writ proceeding,
7 except when the court denies a writ petition without issuing an alternative writ or
8 order to show cause. Rule 8.890 governs issuance of a remittitur in these
9 proceedings.

10
11 *Rule 8.935 adopted effective January 1, 2009.*

12
13
14 **Rule 8.936. Costs**

15
16 **(a) Entitlement to costs**

17
18 Except in a criminal proceeding or other proceeding in which a party is entitled to
19 court-appointed counsel, the prevailing party in an original proceeding is entitled to
20 costs if the court resolves the proceeding after issuing an alternative writ, an order
21 to show cause, or a peremptory writ in the first instance.

22
23 **(b) Award of costs**

24
25 (1) In the interests of justice, the court may award or deny costs as it deems
26 proper.

27
28 (2) The opinion or order resolving the proceeding must specify the award or
29 denial of costs.

30
31 (3) Rule 8.891(b)–(d) governs the procedure for recovering costs under this rule.

32
33 *Rule 8.936 adopted effective January 1, 2009.*

34
35 **Division 3. Trial of Small Claims Cases on Appeal**

36
37
38 **Rule 8.900 8.950. Application**

39
40 ***

41
42 *Rule 8.950 renumbered effective January 1, 2009; adopted as rule 151 effective July 1, 1964; previously*
43 *amended effective January 1, 1977, and January 1, 2005; previously amended and renumbered as rule*
44 *8.900 effective January 1, 2007.*

1
2
3 **Rule ~~8.902~~ 8.952. Definitions**

4
5 ***

6
7 *Rule 8.952 renumbered effective January 1, 2009; adopted as rule 158 effective July 1, 1964; previously*
8 *amended and renumbered as rule 156 effective July 1, 1991, and as rule 8.902 effective January 1, 2007;*
9 *previously amended effective January 1, 2005.*

10
11
12 **Rule ~~8.904~~ 8.954. Filing the appeal**

13
14 ***

15
16 *Rule 8.954 renumbered effective January 1, 2009; adopted as rule 152 effective July 1, 1964; previously*
17 *amended effective July 1, 1973, January 1, 1977, January 1, 1979, January 1, 1984, July 1, 1991, and*
18 *January 1, 2005; previously amended and renumbered as rule 8.904 effective January 1, 2007.*

19
20 **Rule ~~8.907~~ 8.957. Record on appeal**

21
22 ***

23
24 *Rule 8.957 renumbered effective January 1, 2009; adopted as rule 153 effective July 1, 1964; previously*
25 *amended effective July 1, 1972, July 1, 1973, January 1, 1977, and January 1, 2005; amended and*
26 *renumbered as rule 8.907 effective January 1, 2007.*

27
28 **Rule ~~8.910~~ 8.960. Continuances**

29
30 ***

31
32 *Rule 8.960 renumbered effective January 1, 2009; adopted as rule 154 effective July 1, 1964; previously*
33 *amended effective January 1, 1977, July 1, 1991, and January 1, 2005; previously renumbered as rule*
34 *8.910 effective January 1, 2007.*

35
36 **Rule ~~8.913~~ 8.963. Abandonment, dismissal, and judgment for failure to bring to**
37 **trial**

38
39 ***

40
41 *Rule 8.963 renumbered effective January 1, 2009; adopted as rule 157 effective July 1, 1964; amended*
42 *and renumbered as rule 155 effective July 1, 1991; previously amended effective January 1, 1972, July 1,*
43 *1972, and January 1, 2005; previously amended and renumbered as rule 8.913 effective January 1, 2007.*

44
45 **Rule ~~8.916~~ 8.966. Examination of witnesses**

1 ***

2
3 *Rule 8.966 renumbered effective January 1, 2009; adopted as rule 157 effective July 1, 1999; previously*
4 *amended and renumbered as rule 8.916 effective January 1, 2007.*

5
6
7 **Title 10. Judicial Administration Rules**

8
9 **Division 5. Appellate Court Administration**

10
11 **Chapter 2. Rules Relating to the Superior Court Appellate Division**

12
13 *Chapter 2 adopted effective January 1, 2009.*

14
15
16 **Rule 10.1100. Assignments to the appellate division**

17
18 **(a) Goal**

19
20 In making assignments to the appellate division, the Chief Justice will consider the
21 goal of promoting the independence and the quality of the appellate division.

22
23 **(b) Factors considered**

24
25 Factors considered in making the assignments may include:

26
27 (1) Length of service as a judge;

28
29 (2) Reputation in the judicial community;

30
31 (3) Degree of separateness of the appellate division work from the judge's regular
32 assignments; and

33
34 (4) Any recommendation of the presiding judge.

35
36 **(c) Who may be assigned**

37
38 Judges assigned may include judges from another county, judges retired from the
39 superior court or a court of higher jurisdiction, or a panel of judges from different
40 superior courts who sit in turn in each of those superior courts.

41
42 **(d) Terms of service**

1 In specifying terms of service to the appellate division, the Chief Justice will
2 consider the needs of the court.

3
4 *Rule 10.1100 adopted effective January 1, 2009.*

5
6 **Advisory Committee Comment**
7

8 The Chief Justice is responsible for assigning judges to the appellate division as provided in article VI,
9 section 4 of the California Constitution and by statute.

10
11
12 **Rule 10.1104. Presiding judge**

13
14 **(a) Designation of acting presiding judge**

15
16 (1) The presiding judge of the appellate division must designate another member
17 of the appellate division to serve as acting presiding judge in the absence of
18 the presiding judge. If the presiding judge does not make that designation, the
19 appellate division judge among those present who has the greatest seniority in
20 the appellate division must act as presiding judge. When the judges are of
21 equal seniority in the appellate division, the judge who is also senior in service
22 in the superior court must act as presiding judge.

23
24 (2) As used in these rules, “presiding judge” includes acting presiding judge.

25
26 **(b) Responsibilities**

27
28 The presiding judge of the appellate division may convene the appellate division at
29 any time and must supervise the business of the division.

30
31 *Rule 10.1104 adopted effective January 1, 2009.*

32
33 **Advisory Committee Comment**
34

35 Under Code of Civil Procedure section 77(a), the Chief Justice is responsible for designating one of the
36 judges of each appellate division as the presiding judge.

37
38
39 **Rule 10.1108. Sessions**

40
41 The appellate division of each superior court must hold a session at least once each
42 quarter unless there are no matters set for oral argument that quarter. The time and place
43 of any session is determined by the presiding judge of the appellate division.

44
45 *Rule 10.1108 adopted effective January 1, 2009.*

1
2 **Division 2. Rules on Appeal to the Superior Court**

3
4 **Chapter 1. Appellate Division Rules**

5
6
7 **Rule 8.700. Appellate rules**

8
9 All references in the California Rules of Court to “appellate department” mean “appellate
10 division.” Rules that apply to an appeal taken from a municipal court judgment to the
11 appellate division of the superior court apply to an appeal taken from a unified superior
12 court (trial court) judgment to the appellate division of the unified superior court
13 (reviewing court).

14
15 *Rule 8.700 repealed effective January 1, 2009; adopted as rule 100 effective June 3, 1998; renumbered*
16 *effective January 1, 2007.*

17
18
19 **Rule 8.701. Appellate division assignments**

20
21 **(a) Goal**

22
23 The Chief Justice, in making appointments to the appellate division of the superior
24 or unified court, will consider the goal of promoting the independence and the
25 quality of the appellate division.

26
27 **(b) Factors considered**

28
29 Factors to be used in making the appointments may include:

30
31 (1) Length of service as a judge;

32
33 (2) Reputation within the judicial community;

34
35 (3) Degree of separateness of the appellate division work from the judge’s regular
36 assignments; and

37
38 (4) Any recommendation of the presiding judge.

39
40 **(c) Judges assigned**

41
42 Judges assigned may include judges from another county; judges retired from the
43 superior or unified court, or court of higher jurisdiction; or a panel of judges from

1 different superior or unified courts who sit in turn in each of those superior or
2 unified courts.

3
4 **(d) Terms of service**

5
6 In specifying terms of service to the appellate division, the Chief Justice will
7 consider the needs of the court.

8
9 *Rule 8.701 repealed effective January 1, 2009; adopted as rule 100.5 effective June 3, 1998; previously*
10 *amended and renumbered effective January 1, 2007.*

11
12
13 **Rule 8.702. Sessions**

14
15 The appellate department of a superior court shall hold one or more regular sessions each
16 month at a time or times and at a place to be determined by the judges of the department
17 by order entered in the minutes. The department may hold sessions at any other time and
18 place found necessary or convenient.

19
20 *Rule 8.702 repealed effective January 1, 2009; adopted as rule 101; renumbered effective January 1,*
21 *2007.*

22
23
24 **Rule 8.703. Powers of presiding judge**

25
26 The presiding judge of the appellate department may convene the court at any time and
27 shall supervise the business of the department. Except as otherwise provided in these
28 rules, applications to extend time for filing briefs, applications to extend or shorten time
29 for opposing a motion, and applications relating to other matters of routine shall be
30 served and filed; but the presiding judge of the reviewing court may require an additional
31 showing to be made and for good cause may excuse advance service. The application
32 may be granted or denied by the presiding judge, unless the court otherwise determines.

33
34 In the absence of the presiding judge, the regular judge of the department among those
35 present who is senior in service thereon shall act as presiding judge, and in the case of
36 equal seniority then the judge who is also senior in service in the superior court shall act
37 as presiding judge. The words "presiding judge," wherever used in these rules, include
38 the acting presiding judge.

39
40 *Rule 8.703 repealed effective January 1, 2009; adopted as rule 102; previously amended effective July 1,*
41 *1972, January 1, 1977, and July 1, 1996; renumbered effective January 1, 2007.*

1 **Rule 8.704. Calendars and notice of hearing**

2
3 **(a) Calendar**

4
5 The clerk of the court, unless otherwise ordered, shall place upon the calendar for
6 hearing at each regular session all appeals of which such department has
7 jurisdiction, wherein the records on appeal were filed not less than 50 days prior to
8 the date of the session. Any appeal may, by order of the presiding judge or the
9 department, be placed on the calendar for hearing at any session of the department.

10
11 **(b) Notice of hearing**

12
13 As soon as the record on appeal in any case is filed, the clerk shall mail to the
14 attorney appearing of record for each party, or if any party has appeared without
15 attorney, then to such party personally, at the address of such attorney, or party
16 appearing in the record, a notice stating that said record has been filed and giving
17 the date at which the appeal will be heard and the dates when each party must file
18 briefs, as provided in these rules. Failure of the clerk to mail any such notice shall
19 not affect the jurisdiction of the appellate department.

20
21 *Rule 8.704 repealed effective January 1, 2009; adopted as rule 103; renumbered effective January 1,*
22 *2007.*

23
24
25 **Rule 8.705. Motions**

26
27 **(a) Motions and opposition**

28
29 Except as otherwise provided in these rules all motions in the reviewing court shall
30 be made by the filing of a typewritten motion, with proof of service on all other
31 parties, stating the grounds of the motion, the papers, if any, on which it is based,
32 and the order or other relief requested. Each copy of the motion shall be
33 accompanied by a memorandum of points and authorities, and if the motion is based
34 on matters not appearing of record by affidavits or other evidence in support
35 thereof. Any showing in opposition to the motion shall be served and filed within 7
36 days after the filing of the motion.

37
38 **(b) Disposition of motion**

39
40 Motions may be disposed of after opposition has been filed or the time for filing
41 opposition has expired. The reviewing court may place any motion on the calendar
42 for hearing or may otherwise dispose of the motion as it may determine. When a

1 motion has been placed on the calendar for hearing, the clerk shall mail to each
2 party a notice showing the date and time designated for the hearing.

3
4 *Rule 8.705 repealed effective January 1, 2009; adopted as rule 104; renumbered effective January 1,*
5 *2007.*
6

7
8 **Rule 8.706. Briefs and records**
9

10 **(a) Time for filing**
11

12 In civil and criminal cases the appellant shall file an opening brief within 20 days
13 after the filing of record on appeal; the respondent shall file a brief within 20 days
14 after the filing of appellant's opening brief, and the appellant may file a reply brief
15 within 10 days after the filing of respondent's brief, but not later than the time of
16 the hearing. Any party may join another party or other parties in a brief or may
17 adopt by reference any brief in the same or a companion case.
18

19 **(b) Brief of amicus curiae**
20

21 A brief of amicus curiae may be filed on permission first obtained from the
22 presiding judge, subject to conditions he or she may prescribe. If the brief is in
23 support of the position of one of the parties, that fact shall be noted in the brief's
24 heading.
25

26 The Attorney General may file an amicus curiae brief without obtaining the
27 presiding judge's permission, unless the Attorney General is presenting the brief on
28 behalf of another state officer or agency; but the presiding judge may prescribe
29 reasonable conditions for filing and answering the brief.
30

31 **(c) Contents of briefs**
32

33 Each brief shall state concisely the propositions of both law and fact relied on by
34 the party filing it, with reference (by line and page, if possible) to the parts of the
35 record supporting such propositions of fact and citations of the authorities for such
36 propositions of law. Each point to be made, with the argument in support thereof,
37 shall be presented separately under an appropriate heading with subheadings if
38 desired, showing its nature. No quotation or extract from the record or from any
39 legal authority shall exceed 15 full lines of typewriting, and no brief shall exceed 15
40 pages in length, except by permission of the presiding judge.
41

42 **(d) Format**
43

1 All briefs shall be prepared as provided in rule 8.204(b), except that such briefs
2 shall be bound at the top.
3

4 **~~(e) Service and filing~~**
5

6 Every brief shall, before filing, be served by the party filing it on each adverse party
7 who has appeared separately, and every brief of amicus curiae shall, before filing,
8 be served on all parties to the appeal. The original brief, with proof of service
9 thereof, shall be filed with the clerk. The clerk shall not file any brief which does
10 not conform to these rules or which is tendered to him for filing after the time fixed
11 by these rules or by any order extending or fixing the time therefor, unless by order
12 of the presiding judge. The presiding judge may make such order, in his discretion,
13 where the infraction of the rules is of minor character and will not affect the rights
14 of the parties or seriously hamper the court in its examination of the appeal. Service
15 in unfair competition cases under Business and Professions Code section 17209
16 must also comply with rule 8.212(c).
17

18 **~~(f) Copy for trial judge~~**
19

20 No brief shall be filed without proof of the deposit of one copy with the clerk of the
21 trial court for delivery to the judge who presided at the trial of the case. The clerk
22 shall deliver the brief to the judge and need not maintain a copy in the court file.
23

24 **~~(g) Use of recycled paper for records on appeal from limited civil cases and for~~**
25 **~~briefs filed in the appellate divisions~~**
26

27 The use of recycled paper is required for the original record on appeal from a
28 limited civil case and for any brief filed with the court in a matter to be heard in the
29 appellate division. The use of recycled paper is required for all copies of these
30 documents filed with the court or served on other parties.
31

32 **~~(h) Unfair competition cases~~**
33

34 In an unfair competition proceeding under Business and Professions Code section
35 17200 et seq., each brief and each petition shall contain the following statement on
36 the front cover: "Unfair competition case. (See Bus. & Prof. Code, § 17209 and Cal.
37 Rules of Court, rule 8.212(c).)"
38

39 *Rule 8.706 repealed effective January 1, 2009; adopted as rule 105; previously amended effective*
40 *January 1, 1967, July 1, 1969, July 1, 1971, July 1, 1972, January 1, 1976, July 1, 1976, July 1, 1977,*
41 *July 1, 1980, July 1, 1996, July 1, 1997, July 1, 1999, and July 1, 2000; previously amended and*
42 *renumbered effective January 1, 2007.*
43
44

1 **Rule 8.707. Decisions**

2
3 **(a) Time to decide**

4
5 The appellate division must hear and decide, or take under submission, each appeal
6 at the session in which it was set for hearing unless, for good cause entered in the
7 minutes, the court continues the case to another date or orders it submitted on briefs
8 to be filed.

9
10 **(b) Written opinions**

11
12 Appellate division judges are not required to prepare a written opinion in any case
13 but may do so when they deem it advisable or in the public interest. Appellate
14 division opinions certified for publication must comply to the extent practicable
15 with the *California Style Manual*.

16
17 **(c) Transmitting opinions**

18
19 When the judgment is final as to the appellate division in a case in which the
20 opinion is certified for publication, the clerk must immediately send to the Reporter
21 of Decisions two paper copies and one electronic copy in a format approved by the
22 Reporter, and to the Court of Appeal for the district another copy bearing the
23 notation "To be published in the Official Reports." The Court of Appeal clerk must
24 promptly file that copy or make a docket entry showing its receipt.

25
26 *Rule 8.707 repealed effective January 1, 2009; repealed and adopted as rule 106 effective January 1,*
27 *2003; renumbered effective January 1, 2007.*

28
29
30 **Rule 8.708. Finality, modification, and rehearing**

31
32 **(a) When judgment is final**

33
34 An appellate division judgment is final:

35
36 (1) 15 days after judgment is pronounced; or

37
38 (2) If a party timely files a petition for rehearing or application for certification,
39 30 days after judgment is pronounced or when all such petitions or
40 applications are denied, whichever is earlier.

41
42 **(b) Modification of judgment**

1 The appellate division may modify its judgment until the judgment is final in that
2 court. An order modifying an opinion must state whether it changes the appellate
3 judgment. A modification that does not change the appellate judgment does not
4 extend the time for the judgment's finality. If a modification changes the appellate
5 judgment, the finality period runs from the filing date of the modification order.
6

7 **(e) Rehearing**
8

9 (1) On petition of a party or on its own motion, the appellate division may order
10 rehearing at any time before its judgment is final.

11
12 (2) A party may serve and file a petition for rehearing within 15 days after
13 judgment is pronounced or a modification order changing the appellate
14 judgment is filed.

15
16 (3) Any answer to the petition must be served and filed within 8 days after the
17 petition is filed.

18
19 (4) The petition and answer must comply as nearly as possible with rules 8.500
20 and 8.504.

21
22 (5) If the appellate division orders rehearing, it may place the case on calendar for
23 further argument or submit it for decision.
24

25 **(d) Extensions of time**
26

27 The periods specified in this rule may not be extended except as provided in Code
28 of Civil Procedure section 12a.
29

30 *Rule 8.708 repealed effective January 1, 2009; repealed and adopted as rule 107 effective January 1,*
31 *2003; previously amended and renumbered effective January 1, 2007.*
32
33

34 **Rule 8.709. Consent to modification**
35

36 If the appellate department orders that a judgment be reversed and a new trial granted or
37 that, in the alternative, the judgment be affirmed on condition that the party in whose
38 favor judgment has been rendered consent to a remission of a portion thereof, or on
39 condition that the party against whom the judgment has been rendered consent to an
40 addition thereto, then, unless otherwise ordered, the judgment of reversal and granting of
41 a new trial shall become effective unless within 15 days after the filing of the decision
42 two copies of a written consent by such party to the remission or addition is filed in the
43 appellate department, and becomes final as provided in rule 8.708. The filing of written

1 consent is not a modification of the judgment, within the meaning of rule 8.708. A copy
2 of the consent shall be transmitted with the remittitur to the trial court.

3
4 *Rule 8.709 repealed effective January 1, 2009; adopted as rule 108; previously amended effective July 1,*
5 *1980; previously amended and renumbered effective January 1, 2007.*
6

7 8 **Chapter 2. Appeals to the Appellate Division in Limited Civil Cases**

9 10 **Rule 8.750. Filing notice of appeal**

11 **(a) Form of notice**

12
13
14
15 An appeal in a civil case, except a small claims case, from a judgment of a
16 municipal or justice court or from a particular part thereof is taken by filing with the
17 clerk of that court a notice of appeal therefrom. The notice shall be signed by the
18 appellant or by his attorney and shall be sufficient if it states in substance that the
19 appellant appeals from a specified judgment or a particular part thereof. A notice of
20 appeal shall be liberally construed in favor of its sufficiency.
21

22 **(b) Notification by clerk**

23
24 The clerk of the trial court shall forthwith mail a notification of the filing of the
25 notice of appeal to the attorney of record of each party other than the appellant, or if
26 the party is not represented by an attorney, then to the party at his last known
27 address. The notification shall state the number and title of the action or proceeding
28 and the date the notice of appeal was filed. Such mailing is a sufficient performance
29 of the clerk's duty notwithstanding the death of the party or the death, discharge,
30 suspension, disbarment or disqualification of his attorney prior to the giving of the
31 notification. The failure of the clerk to give such notification shall not affect the
32 validity of the appeal.
33

34 **(c) Payment of filing fee in civil appeals**

35
36 At the time of filing the notice of appeal or within 10 days thereafter the appellant
37 shall pay to the clerk of the municipal or justice court the filing fee prescribed by
38 section 26824 of the Government Code. The filing fee shall be nonrefundable.
39

40 **(d) Excuse from payment of filing fee**

41
42 If the appellant is indigent, payment of the filing fee may be excused on the same
43 basis as payment of a filing fee in the trial court is excused.
44

1 **(e) — Notice of cross appeal**

2
3 As used in this rule, “notice of appeal” includes notice of cross appeal, and
4 “appellant” includes any party who files a cross appeal.
5

6 *Rule 8.750 repealed effective January 1, 2009; adopted as rule 121; previously amended effective July 1,*
7 *1964, January 1, 1977, and January 1, 1980; renumbered effective January 1, 2007.*
8
9

10 **Rule 8.751. Time of filing notice of appeal**

11
12 **(a) — Normal time**

13
14 Except as otherwise provided by statute or rule 8.752, a notice of appeal shall be
15 filed on or before the earliest of the following dates:
16

17 (1) — 30 days after the date of mailing by the clerk of the court of a document
18 entitled “notice of entry” of judgment or appealable order;
19

20 (2) — 30 days after the date of service of a document entitled “notice of entry” of
21 judgment or appealable order by any party upon the party filing the notice of
22 appeal, or by the party filing the notice of appeal; or
23

24 (3) — 90 days after the date of entry of the judgment.
25

26 For the purposes of this subdivision, a file stamped copy of the judgment or
27 appealable order may be used in place of the document entitled “notice of entry.”
28

29 **(b) — What constitutes entry**

30
31 For the purposes of this rule:
32

33 (1) — The date of entry of a judgment shall be the date of its entry in the minute
34 book or docket unless the entry expressly directs that a written order be
35 prepared, signed and filed, in which case the date of entry shall be the date of
36 filing of the signed order.
37

38 (2) — The date of entry of an order which is not entered in the minutes or docket
39 shall be the date of filing of the order signed by the court.
40

41 **(c) — Premature notice**

42

1 A notice of appeal filed prior to entry of the judgment, but after its rendition, shall
2 be valid and shall be deemed to have been filed immediately after entry. A notice of
3 appeal filed prior to rendition of the judgment, but after the judge has announced his
4 intended ruling, may, in the discretion of the reviewing court for good cause, be
5 treated as filed immediately after entry of the judgment.
6

7 *Rule 8.751 repealed effective January 1, 2009; adopted as rule 122; previously amended effective*
8 *January 5, 1953, July 1, 1964, September 17, 1965, July 1, 1978, January 1, 1982, September 22, 1982,*
9 *and January 1, 1991; previously amended and renumbered effective January 1, 2007.*
10

11

12 **Rule 8.752. Extension of time and cross-appeal**

13

14 **(a) New trial proceeding**

15

16 When a valid notice of intention to move for a new trial is served and filed by any
17 party within the time in which, under rule 8.751, a notice of appeal may be filed,
18 and the motion is denied, the time for filing the notice of appeal from the judgment
19 is extended for all parties until 15 days after either entry of the order denying the
20 motion or denial thereof by operation of law, but in no event may such notice of
21 appeal be filed later than 90 days after the date of entry of the judgment whether or
22 not the motion for new trial has been determined.
23

24 **(b) Motion to vacate**

25

26 When a valid notice of intention to move to vacate a judgment or to vacate a
27 judgment and enter another and different judgment is served and filed by any party
28 on any ground within the time in which, under rule 8.751, a notice of appeal from
29 the judgment may be filed, or such shorter time as may be prescribed by statute, and
30 the motion is denied or not decided by the trial court within 75 days after entry of
31 the judgment, the time for filing the notice of appeal from the judgment is extended
32 for all parties until 15 days after entry of the order denying the motion to vacate or
33 until 90 days after entry of the judgment, whichever shall be less.
34

35 **(c) Cross-appeal**

36

37 When a timely notice of appeal is filed under subdivision (a) of rule 8.751 or under
38 subdivision (a) or (b) of this rule, any other party may file a notice of appeal within
39 10 days after mailing of notification by the trial court clerk of such first appeal or
40 within the time otherwise prescribed by the applicable subdivision, whichever
41 period last expires. If a timely notice of appeal is filed from an order granting a
42 motion for a new trial or granting, within 75 days after entry of judgment, a motion
43 to vacate the judgment or to vacate judgment and enter another and different

1 judgment, any party other than the appellant, within 10 days after mailing of
2 notification by the trial court clerk of such appeal, may file a notice of appeal from
3 the judgment or from an order denying a motion for judgment notwithstanding the
4 verdict, and on that appeal may present any question which he might have presented
5 on an appeal from the judgment as originally entered or from the order denying a
6 motion for judgment notwithstanding the verdict.

7
8 **(d) — Notification of cross-appeal**

9
10 On the filing by a party of a notice of cross appeal, the trial court clerk shall mail a
11 notification thereof as provided in subdivision (b) of rule 8.750.

12
13 *Rule 8.752 repealed effective January 1, 2009; adopted as rule 123; previously amended effective*
14 *January 5, 1953, January 2, 1962, July 1, 1964, September 17, 1965, January 1, 1971, and January 1,*
15 *1976; previously amended and renumbered effective January 1, 2007.*

16
17
18 **Rule 8.753. Reporter's transcript**

19
20 **(a) — Notice to prepare transcript**

21
22 ~~When an appellant desires to present any point which requires a consideration of the~~
23 ~~oral proceedings, including oral instructions given or refused by the court, he shall~~
24 ~~serve on the respondent and file with the clerk of the trial court, within 10 days after~~
25 ~~filing of the notice of appeal, a notice to prepare a reporter's transcript of the oral~~
26 ~~proceedings and such oral instructions given or refused as he shall desire~~
27 ~~transcribed. A copy of this notice shall be transmitted by the clerk without delay to~~
28 ~~the reporter who shall within 10 days thereafter file his estimate with the clerk or~~
29 ~~notify the clerk in writing of the date that he notified the appellant directly of the~~
30 ~~estimated cost of preparing the reporter's transcript on appeal. The voir dire~~
31 ~~examination of jurors, the opening statements, the arguments to the jury, and the~~
32 ~~proceedings on a motion for new trial shall not be transcribed as part of the oral~~
33 ~~proceedings unless they are specified in the notice to the clerk. The oral proceedings~~
34 ~~shall include such portions of depositions as have been received in evidence and~~
35 ~~such portions thereof as shall have been offered and rejected. The portions rejected~~
36 ~~and the objections thereto shall be clearly indicated.~~

37
38 **(b) — Partial transcript by stipulation or designation**

39
40 The parties, by stipulation filed with the clerk of the trial court within the time
41 prescribed for filing the notice to prepare a reporter's transcript, may direct that any
42 part of the oral proceedings be not transcribed. If the appellant, in his notice to the
43 clerk, states the points to be raised by him on the appeal, he may designate the
44 portions of the oral proceedings to be transcribed, or direct the omission of any

1 portions which he deems unnecessary, and in such event shall be precluded from
2 presenting any grounds for reversal not embraced within the points stated by him,
3 unless the reviewing court on motion shall permit the appellant to present additional
4 errors or grounds of appeal on such terms as it may prescribe. Within 10 days after
5 the service of the appellant's notice to prepare the reporter's transcript pursuant to
6 this rule, or to prepare the clerk's transcript pursuant to subdivision (a) of rule
7 8.754, the respondent may serve and file a notice designating the oral proceedings,
8 including oral instructions given or refused not designated in the appellant's notice,
9 which he desires transcribed. Only those portions of the oral proceedings and
10 instructions designated in the notices of the parties shall be transcribed; provided,
11 however, that if any portion of the testimony of a witness is designated by either
12 party for inclusion in the reporter's transcript, the whole of his testimony shall be
13 included unless the parties otherwise stipulate.

14
15 **(c) — ~~Deposit or waiver of reporter's charges~~**

16
17 The notice given by the appellant under the foregoing provisions of this rule shall
18 not be effective for any purpose unless, within 10 days after notification from the
19 clerk of his estimate of the cost of preparing the reporter's transcript as designated
20 by the notices of the parties, or within 10 days after being notified directly by the
21 reporter, the appellant shall either deposit with the clerk an amount of cash equal to
22 the estimated cost with directions to apply the same to the fees of the reporter or file
23 with the clerk a waiver of such deposit signed by the reporter. When the appellant
24 has complied with the provisions hereof, the clerk shall forthwith direct the reporter
25 to prepare the reporter's transcript in accordance with the notices of the parties.

26
27 **(d) — ~~Preparation of transcript~~**

28
29 Within 20 days after direction from the clerk or the receipt of the fees from the
30 appellant the reporter shall complete and file with the clerk an original reporter's
31 transcript as directed, and certify the same as correct. One week after the deadline
32 for filing the transcript, the clerk shall accept completed portions of the transcript
33 from the lead reporter in a multi-reporter case even if not all portions of the
34 transcript are complete. The clerk shall pay promptly each reporter who certifies
35 under penalty of perjury that all of his or her portions of the transcript are
36 completed. The reporter shall note in the transcript all places where omissions of
37 any oral proceedings occur (and the nature of the omitted matter) and shall also
38 indicate the place where exhibits were received in evidence or were offered and
39 marked for identification, and shall identify the exhibits so received or so offered.
40 The reporter shall not transcribe or copy in the reporter's transcript any documents
41 which, under the provisions of rule 8.754, may be included in the clerk's transcript
42 on appeal.
43

1 **(e) — Settled statement where transcript unavailable**

2
3 If, without fault of the appellant, the reporter refuses or becomes unable or fails to
4 transcribe all or any portion of the oral proceedings designated by the parties, any
5 party may, within 15 days after the expiration of the time allowed by this rule for
6 such transcription, or of any lawful extension thereof, and on 5 days' written notice,
7 make a motion for leave to prepare a statement of the portions of the oral
8 proceedings which the reporter refuses, is unable, or fails to transcribe. If the trial
9 court grants the motion, proceedings for the settlement of the statement shall be had
10 as provided in rule 8.756, except that the party making the motion shall serve and
11 file his proposed statement within 20 days after the making of the order granting
12 leave therefor and the adverse party shall serve and file his proposed amendments to
13 such statement within 10 days after service of the statement. If the settled statement
14 contains all the oral proceedings, it shall become a part of the record on appeal in
15 lieu of the reporter's transcript, but if it contains only a portion of the oral
16 proceedings, it shall be incorporated in the reporter's transcript. This remedy is in
17 addition to any remedy given by law.

18
19 *Rule 8.753 repealed effective January 1, 2009; adopted as rule 124; previously amended effective*
20 *January 5, 1953, July 21, 1964, and January 1, 1992; previously amended and renumbered effective*
21 *January 1, 2007.*

22
23
24 **Rule 8.754. Clerk's transcript and original papers**

25
26 **(a) — Appellant's designation of papers or records**

27
28 Within 10 days after filing the notice of appeal, the appellant shall serve on the
29 respondent and file with the clerk of the trial court a notice designating the papers
30 or records on file or lodged with the clerk, including the clerk's minutes and any
31 written opinion of the trial court and exhibits either admitted in evidence or
32 rejected, and any notices, affidavits, orders, and written instructions given or
33 refused, which he desires incorporated in the record on appeal. The notice
34 designating papers and records and the notice to prepare the reporter's transcript
35 may be included in the same document, and both notices may be included in the
36 document containing the notice of appeal.

37
38 **(b) — Designation by respondent or by stipulation**

39
40 Within 10 days after service of the appellant's notice, the respondent may serve on
41 the appellant and file with the clerk a notice designating additional papers or
42 records, including the clerk's minutes, any written opinion of the trial court, and
43 exhibits either admitted in evidence or rejected, and any notices, affidavits, orders,
44 and written instructions given or refused, to be included in the record on appeal. In

1 lieu of such individual notices the parties, within 10 days after the filing of the
2 notice of appeal, may file a written stipulation designating the papers or records to
3 be included in the record on appeal.
4

5 ~~(e) — Clerk's charges~~

6
7 The notice given by the appellant under the foregoing provisions of this Rule shall
8 not be effective for any purpose unless, within 10 days after notification from the
9 clerk of his estimate of the cost of preparing the transcript, the appellant shall make
10 arrangements with the clerk for the payment thereof.
11

12 ~~(d) — Preparation of clerk's transcript~~

13
14 Within 10 days after the appellant has arranged for payment of the cost of the
15 transcript, as provided in (e), the clerk shall prepare and certify a transcript
16 consisting of either copies or originals, as specified in (e), of:
17

18 The following whether designated in the notices or stipulations or referred to in the
19 statements of the parties or not:

20
21 (1) — The notice of appeal;

22
23 (2) — The notices or stipulations to prepare the clerk's transcript and the reporter's
24 transcript, if any, and the notices or stipulations for the preparation of a settled
25 statement or agreed statement, if any;

26
27 (3) — The judgment appealed from with an endorsement by the clerk showing the
28 date notice of entry thereof was mailed by the clerk or served by a party; and
29

30 (4) — Any notice of intention to move for a new trial or motion to vacate the
31 judgment, and the ruling thereon, if any; and
32

33 The following, if they have been designated by any of the parties:

34
35 (5) — The judgment roll, or such parts thereof as have been designated by the
36 parties; and
37

38 (6) — Any other papers or records, including exhibits admitted in evidence or
39 rejected, notices, affidavits, orders, and written instructions given or refused,
40 on file or lodged with the clerk.
41

42 ~~(e) — Matters not to be copied~~

1 Except when the record on appeal is prepared by a photocopying process as
2 provided in subdivision (a) of rule 8.144, captions and formal parts of papers and
3 verifications and proofs of service of such papers shall be omitted unless one of the
4 parties expressly requests their inclusion, but the clerk shall state in his transcript
5 the nature of such omitted matters. No exhibit admitted in evidence or rejected,
6 notice, affidavit, pleading, order, written instructions given or refused, or other
7 paper on file or lodged with the clerk (except the notice of appeal) shall be copied if
8 it is possible for the clerk to transmit the original to the reviewing court, but where
9 such matters are properly designated by the parties in either notice or stipulation, or
10 referred to in the list accompanying an agreed statement, or are otherwise required
11 by these rules, the clerk shall include the originals thereof in the record on appeal,
12 and transmit them to the reviewing court. The notice of appeal, matters appearing
13 only in the minutes or other records of the trial court, and anything properly
14 designated or referred to, the original of which it is not possible to transmit, shall be
15 copied by the clerk, and the copies made part of the record on appeal. In no event
16 shall the clerk copy in his transcript or transmit to the reviewing court (except by
17 order of that court or stipulation of the parties) the original of any deposition.
18

19 **(f) — Appeal on judgment roll**
20

21 Where the appellant has designated only a clerk's transcript consisting of part or all
22 of the matters specified in (a) and (b) and has not given notice to prepare a
23 reporter's transcript, the respondent may not require the preparation of a reporter's
24 transcript but he may counterdesignate any exhibits, affidavits, papers or records
25 which may properly be included in a clerk's transcript. Where the appellant has
26 designated only the papers and records constituting the judgment roll and has not
27 given notice to prepare a reporter's transcript, the judgment roll shall constitute the
28 record on appeal, and the respondent may not require any addition thereto: In either
29 case, however, on motion of the respondent the reviewing court may allow
30 augmentation of the record whenever it is necessary to prevent a miscarriage of
31 justice.
32

33 *Rule 8.754 repealed effective January 1, 2009; adopted as rule 125; previously amended effective*
34 *January 1, 1953, January 5, 1953, July 1, 1964, July 1, 1968, and July 1, 1971; previously amended and*
35 *renumbered effective January 1, 2007.*
36

37
38 **Rule 8.755. Agreed statement**
39

40 **(a) — Contents of agreed statement**
41

42 An appeal may be presented on a record consisting in whole or in part of an agreed
43 statement. Within 30 days after filing the notice of appeal, the appellant shall file

1 with the clerk of the trial court the original statement signed by the parties. The
2 statement shall show the nature of the controversy, the basis on which it is claimed
3 that the reviewing court has jurisdiction and how the questions arose in and were
4 decided by the trial court, and should set forth only such facts alleged and proved,
5 or sought to be proved, as are necessary to a determination of the questions on
6 appeal. The statement shall contain a copy of the judgment and a copy of the notice
7 of appeal with its filing date, together with any notice of intention to move for a
8 new trial or motion to vacate the judgment, the ruling thereon, if any, and a recital
9 or resumé of any oral proceedings thereon. The statement shall be accompanied by
10 a list of such exhibits admitted in evidence or rejected, notices, affidavits, orders,
11 instructions given or refused, or other papers on file or lodged with the clerk, as the
12 parties desire to have transmitted to the reviewing court, with the statement.
13

14 **(b) — Extension of time**

15
16 Within 10 days after filing the notice of appeal, the parties may file with the clerk of
17 the trial court a preliminary stipulation stating that they are attempting to prepare an
18 agreed statement. This stipulation shall have the effect of extending for a period of
19 40 days from the date of filing of the notice of appeal the time for service and filing
20 of the notices of the appellant provided for in rules 8.753, 8.754, and 8.756 in the
21 event that the parties are unable to agree on a statement.
22

23 *Rule 8.755 repealed effective January 1, 2009; adopted as rule 126; previously amended effective*
24 *January 5, 1953, and July 1, 1964; previously amended and renumbered effective January 1, 2007.*
25

26
27 **Rule 8.756. Settled statement**

28
29 **(a) — Proposal of narrative statement**

30
31 If, in lieu of a reporter's transcript, the appellant desires to set forth the oral
32 proceedings by a settled statement, he shall serve and file a notice so stating within
33 10 days after filing the notice of appeal. Within 20 days thereafter the appellant
34 shall serve and file a condensed statement in narrative form of all or such portions
35 of the oral proceedings as he deems material to the determination of the points on
36 appeal. Where necessary for the purposes of accuracy, clarity or convenience,
37 portions of the evidence may be set forth by question and answer, subject to the
38 approval of the court in settling the statement. If the condensed statement purports
39 to cover only a portion of the oral proceedings, the appellant shall state the points to
40 be raised by him on appeal, and in such event shall be precluded from presenting
41 any grounds for reversal not embraced within the points stated by him unless the
42 reviewing court, on motion, shall permit him to present additional errors or grounds
43 of appeal on such terms as it may prescribe. Within 10 days after service of said

1 narrative statement the respondent may serve and file his proposed amendments
2 thereto. The appellant in his condensed statement and the respondent in his
3 proposed amendments may incorporate any oral instructions given or refused which
4 such party deems material.
5

6 **(b) — Appellant’s transcript available to respondent**
7

8 If the appellant has prepared his proposed statement from an entire or partial
9 transcript of the oral proceedings, and after service of his proposed statement
10 declines to make such transcript available to the respondent, the municipal court, on
11 such terms and conditions as it deems just, may direct the appellant to make his
12 copy of the transcript available to the respondent. If the appellant fails to comply
13 with such direction, the court on motion of the respondent shall strike the proposed
14 statement from the files.
15

16 **(c) — Settlement and engrossment**
17

18 On the filing by the respondent of his proposed amendments or on the expiration of
19 the time therefor (whichever shall first occur), the clerk shall set a time not more
20 than 10 days thereafter for settlement of the statement by the judge who tried the
21 case, and shall give not less than 5 days’ notice by mail to all parties of the time set.
22 At the time set, or at the time to which the judge may continue the hearing, he shall
23 settle the statement and fix the time within which the appellant shall engross it as
24 settled. Within the time so fixed the appellant shall engross the statement in
25 accordance with the order of the judge and shall serve and file the engrossed
26 statement. If the respondent does not serve and file objections to the engrossed
27 statement within five days thereafter, it shall be presumed that it is engrossed in
28 accordance with the order of the judge and shall be presented by the clerk to the
29 judge for certification. If the parties stipulate that the statement as originally served
30 or as engrossed is correct, such stipulation shall have the same effect as certification
31 thereof by the judge.
32

33 *Rule 8.756 repealed effective January 1, 2009; adopted as rule 127; renumbered effective January 1,*
34 *2007.*
35
36

37 **Rule 8.757. Correction and certification of record**
38

39 **(a) — Request for correction of record**
40

41 Immediately on the completion of the clerk’s and reporter’s transcripts the clerk
42 shall mail notice thereof to all parties, and within 10 days after mailing of such

1 notice, any party may file a request for correction of such transcripts. If no request
2 for correction is filed within such time, the clerk shall certify the record as correct.

3
4 **(b) ~~Hearing and certification~~**

5
6 If any party files a request for correction of the transcripts within such time, the
7 clerk shall set a time not more than 10 days thereafter for certification of the
8 transcripts by the judge who tried the case, and shall give not less than 5 days'
9 notice thereof by mail to all parties. At the time set or at the time to which the judge
10 may continue the hearing, he shall determine the request for correction, and if none
11 is allowed, shall certify the transcripts as correct. If corrections are allowed by the
12 judge, he shall fix the time within which they shall be made by the clerk or reporter,
13 and on the transcripts being corrected as directed, shall certify them as correct. If no
14 time for correction is fixed by the trial judge, the corrections shall be made by the
15 clerk or reporter within 30 days after their allowance. The parties at any time may
16 stipulate that the whole or any portion of the record is correct, and such stipulation
17 shall render unnecessary the certification by either the clerk or judge of the record
18 or the portion stipulated to by the parties.

19
20 *Rule 8.757 repealed effective January 1, 2009; adopted as rule 128; previously amended effective*
21 *January 5, 1953; renumbered effective January 1, 2007.*
22
23

24 **Rule 8.758. Form of record**

25
26 **(a) ~~Size of paper, etc.~~**

27
28 The reporter's transcript shall be prepared as provided in subdivision (b) of rule
29 8.144. All papers copied by the clerk for the record shall be prepared as provided in
30 subdivision (a) of rule 8.144.
31

32 **(b) ~~Indexes~~**

33
34 The clerk shall include at the beginning of each volume of his transcript an
35 alphabetical and a chronological index referring to each paper or record therein, and
36 he shall also include a list of original exhibits, notices, affidavits, orders, written
37 instructions given or refused, and other papers included in the record with a brief
38 description of each of them. The reporter shall include at the beginning of each
39 volume of his transcript an alphabetical and a chronological index referring to the
40 page at which the direct examination, the cross examination, the redirect
41 examination, and the recall of each witness begins. He shall also indicate in a
42 separate table in the first volume of the reporter's transcript the page at which any
43 exhibit or other document copied therein appears, and the page at which he has

1 noted the omission of any exhibit or other document. The contents of each transcript
2 shall be arranged chronologically. So far as practicable the arrangement and
3 indexing of an agreed or settled statement shall conform to the foregoing
4 requirements.

5
6 ~~(c) —~~ **Binding and cover**

7
8 The reporter's transcript shall be bound in volumes of not more than 300 pages. The
9 cover of each volume shall be of the same size as the pages therein, and there shall
10 be endorsed thereon the title of the case, the name of the trial judge and judicial
11 district, and the names and addresses of the attorneys representing the parties on the
12 appeal.

13
14 *Rule 8.758 repealed effective January 1, 2009; adopted as rule 129; previously amended effective*
15 *January 5, 1953, January 1, 1968, July 1, 1969, and July 1, 1971; previously amended and renumbered*
16 *effective January 1, 2007.*

17
18
19 **Rule 8.759. Transmission and filing of record**

20
21 When the appellant has paid or been excused from paying the filing fee and the record on
22 appeal has been completed in accordance with these rules, the clerk of the trial court shall
23 forthwith transmit the record to the county clerk for filing, and may be compelled to do
24 so by order of the reviewing court, made on motion.

25
26 *Rule 8.759 repealed effective January 1, 2009; adopted as rule 130; previously amended effective July 1,*
27 *1964, July 1, 1970, January 1, 1977, and January 1, 1980; renumbered effective January 1, 2007.*

28
29
30 **Rule 8.760. Record on cross-appeal**

31
32 Where several parties appeal from the same judgment or any part or parts thereof, or
33 where there is a cross appeal pursuant to rule 8.752, a single record on appeal shall be
34 prepared and filed within the time prescribed for filing the record in the latest appeal.
35 Such record shall be prepared in accordance with rules 8.753 and 8.754 unless all
36 appellants give notice of intention to proceed under rule 8.756, or unless the parties
37 stipulate to proceed under rule 8.755. Unless the trial court orders otherwise, the initial
38 expense of preparing the record shall be borne equally by the parties appealing.

39
40 *Rule 8.760 repealed effective January 1, 2009; adopted as rule 131; previously amended effective*
41 *January 5, 1953, and July 1, 1964; previously amended and renumbered effective January 1, 2007.*

1 **Rule 8.761. Augmentation and correction of record**

2
3 **(a) Augmentation**

4
5 On suggestion of any party or on its own motion, the reviewing court, on such terms
6 as it deems proper, may order that the original or a copy of a paper, record or
7 exhibit offered at or used on the trial or hearing below and on file in or lodged with
8 the trial court be transmitted to it, or that portions of the oral proceeding be
9 transcribed, certified and transmitted to it, or that an agreed or settled statement of
10 portions of the oral proceedings be prepared and transmitted to it; and when so
11 transmitted they shall be deemed part of the record on appeal.
12

13 **(b) Correction**

14
15 If any material part of the record is incorrect in any respect, or lacks proper
16 certification, the reviewing court, on suggestion of any party or on its own motion,
17 may direct that it be corrected or certified.
18

19 **(c) Correction by trial court or parties**

20
21 The reviewing court may submit to the trial court for settlement any differences of
22 the parties with respect to alleged omissions or errors in the record, and the trial
23 court shall make the record conform to the truth. The reviewing court may also
24 direct that omissions or errors be corrected pursuant to the stipulation of the parties
25 filed with the clerk of that court.
26

27 *Rule 8.761 repealed effective January 1, 2009; adopted as rule 132; previously amended effective*
28 *January 5, 1953, and July 1, 1964; renumbered effective January 1, 2007.*
29
30

31 **Rule 8.762. Abandonment and dismissal**

32
33 **(a) Before record filed**

34
35 At any time before the filing of the record in the reviewing court, the appellant may
36 file in the office of the clerk of the trial court a written abandonment of the appeal;
37 or the parties may file in said office a stipulation for abandonment. The filing of
38 either document shall operate to dismiss the appeal and to restore the jurisdiction of
39 the trial court. Upon such a dismissal, the appellant shall be entitled to the return of
40 that portion of any deposit in excess of the actual cost of preparation of the record
41 on appeal up to that time.
42

1 ~~(b) After record filed~~

2
3 After the filing of the record in the reviewing court an appeal may be dismissed by
4 that court on written request of the appellant or stipulation of the parties filed with
5 the clerk of the reviewing court.
6

7 ~~(c) Dismissal by court~~

8
9 If the appellant shall fail to perform any act necessary to procure the preparation or
10 filing of the record on appeal or shall otherwise fail to prosecute his appeal with
11 diligence, and such failure is the fault of the appellant and not of any court officer
12 or any other party, the appeal may be dismissed by the reviewing court on motion of
13 the respondent or on its own motion.
14

15 ~~(d) Notification by clerk~~

16
17 The clerk of the court in which an abandonment is filed shall immediately notify the
18 adverse party of the filing thereof. The clerk of the reviewing court shall
19 immediately notify the parties of any order of dismissal made by that court.
20

21 ~~(e) Approval of compromise~~

22
23 Whenever the guardian of a minor or of an insane or incompetent person seeks
24 approval of a proposed compromise of a case pending on appeal, the reviewing
25 court may, by order, refer the matter to the trial court with instructions to hear the
26 same and determine whether the proposed compromise is for the best interests of
27 the ward, and to report its findings. On receipt of the report, the reviewing court
28 shall make its order approving or disapproving the compromise.
29

30 *Rule 8.762 repealed effective January 1, 2009; adopted as rule 133; previously amended effective*
31 *January 6, 1947, January 5, 1953, and July 1, 1964; renumbered effective January 1, 2007.*
32
33

34 ~~Rule 8.763. Hearing~~

35
36 Appeals in civil cases shall be calendared, argued and determined, notice of hearings
37 shall be given, and petitions for rehearing and answers thereto shall be filed and acted
38 upon as prescribed in chapter 1 of this division (commencing with rule 8.700).
39

40 *Rule 8.763 repealed effective January 1, 2009; adopted as rule 134 effective January 5, 1953; previously*
41 *amended effective July 1, 1964, and January 1, 1977; previously amended and renumbered effective*
42 *January 1, 2007.*
43
44

1 **Rule 8.764. Costs on appeal**

2
3 **(a) Rights to costs**

4
5 Except as provided in this rule, the prevailing party shall be entitled to costs on
6 appeal from a municipal or justice court as an incident to the judgment on appeal. In
7 the case of a general and unqualified affirmance of the judgment, or the dismissal of
8 an appeal, the respondent shall be deemed the prevailing party; in the case of a
9 reversal, in whole or in part, or of a modification of the judgment, the appellant
10 shall be deemed the prevailing party. In any case in which the interests of justice
11 require it, the reviewing court may make any award or apportionment of costs
12 which it deems proper. If the appeal is frivolous or taken solely for the purpose of
13 delay or if any party has required in the record on appeal the inclusion of any matter
14 not reasonably material to the determination of the appeal, or has been guilty of any
15 other unreasonable infraction of the rules governing appeals, the reviewing court
16 may impose upon offending attorneys or parties those penalties, including the
17 withholding or imposing of costs, that the circumstances of the case and the
18 discouragement of like conduct may require.

19
20 **(b) Entry of judgment for costs**

21
22 In any case on appeal from a municipal or justice court in which the reviewing court
23 directs the manner in which costs shall be awarded or denied, the clerk shall enter
24 on the record and insert in the remittitur a judgment in accordance with those
25 directions. In the absence of those directions by the reviewing court, the clerk shall
26 enter on the record and insert in the remittitur to the municipal or justice court a
27 judgment for costs as follows:

28
29 (1) In the case of a general and unqualified affirmance of the judgment, for the
30 respondent;

31
32 (2) In the case of a dismissal of the appeal, for the respondent;

33
34 (3) In the case of a modification of the judgment, for the appellant; and

35
36 (4) In the case of a reversal of the judgment, in whole or in part, with or without
37 directions, for the appellant.

38
39 If the clerk fails to enter judgment for costs as provided in this subdivision, the
40 reviewing court, on motion made not later than 30 days after issuance of the
41 remittitur, or on its own motion, may recall it for correction.

1 ~~(e) — Items recoverable as costs~~

2
3 The party to whom costs are awarded may recover only the following, if actually
4 incurred:

5
6 (1) — ~~The cost of preparation of an original and one copy of any type of record on~~
7 ~~appeal authorized by these rules if that party is the appellant, or one copy of~~
8 ~~the record if the party is the respondent, subject to reduction by order of the~~
9 ~~reviewing court pursuant to subdivision (a) of this rule; but the expense of any~~
10 ~~method of preparation in excess of the cost of preparing the record in~~
11 ~~typewriting shall not be recoverable as costs, unless the parties so stipulate;~~

12
13 (2) — ~~The cost of production of additional evidence; and~~

14
15 (3) — ~~Filing and notary fees and expense of service, transmission, and filing of the~~
16 ~~record, briefs, and other papers.~~

17
18 ~~(d) — Procedure for claiming costs~~

19
20 ~~If costs are awarded to a party by a reviewing court and the party claims those costs,~~
21 ~~the party shall, within 30 days after the remittitur is filed with the trial court, serve~~
22 ~~on all parties and file with the clerk of the trial court a memorandum of costs,~~
23 ~~verified as prescribed by rule 3.1700(a)(1).~~

24
25 ~~A party may move to have costs taxed in the same manner and within a like time~~
26 ~~after service of a copy of the memorandum of costs, as prescribed by rule~~
27 ~~3.1700(b). After the costs have been taxed, or after the time for taxing the costs has~~
28 ~~expired, the award of costs may be enforced in the same manner as a money~~
29 ~~judgment.~~

30
31 ~~(e) — Procedure for imposing sanctions~~

32
33 (1) — ~~A party seeking monetary sanctions on the ground that the appeal is frivolous~~
34 ~~or taken solely for purposes of delay or that there has been an unreasonable~~
35 ~~infraction of the rules governing appeals shall serve and file a motion under~~
36 ~~rule 8.705 no later than 10 days after the time the appellant's reply brief is due~~
37 ~~or at the time of filing a motion to dismiss the appeal.~~

38
39 (2) — ~~A party who filed a motion to dismiss the appeal before filing a brief may~~
40 ~~make or renew the motion for sanctions up to 10 days after the time the~~
41 ~~appellant's reply brief is due.~~

1 ~~(3) A motion under (1) or (2) shall include a declaration supporting the amount of~~
2 ~~sanctions being sought.~~

3
4 ~~(4) The court shall notify a party or an attorney if it is considering imposing~~
5 ~~sanctions on its own motion or on motion of a party.~~

6
7 ~~(5) The party or attorney against whom sanctions are sought may serve and file a~~
8 ~~written opposition within 10 days after notice from the court that it is~~
9 ~~considering imposing sanctions; failure to do so shall not be deemed consent~~
10 ~~to the award of sanctions. An opposition should not ordinarily be filed unless~~
11 ~~the court has sent notice that it is considering imposing sanctions or requests~~
12 ~~the party's or attorney's views.~~

13
14 ~~(6) Unless otherwise ordered, the issue of sanctions and their amount will be~~
15 ~~argued at the time of oral argument on the merits of the appeal.~~

16
17 ~~*Rule 8.764 repealed effective January 1, 2009; adopted as rule 135; previously amended effective July 1,*~~
18 ~~*1964, January 1, 1987, July 1, 1991, and July 1, 2000; previously amended and renumbered effective*~~
19 ~~*January 1, 2007.*~~

20
21
22 ~~**Rule 8.765. Definitions**~~

23
24 ~~In this chapter, unless the context or subject matter otherwise requires:~~

25
26 ~~(1) The past, present and future tenses shall each include the other; the masculine,~~
27 ~~feminine and neuter gender shall each include the other; and the singular and plural~~
28 ~~number shall each include the other.~~

29
30 ~~(2) "Trial court" means the municipal or justice court from which an appeal is taken~~
31 ~~pursuant to these rules; "reviewing court" applies to the court in which an appeal is~~
32 ~~pending, and means the appellate department of the superior court.~~

33
34 ~~(3) The party appealing is known as the "appellant," and the adverse party as the~~
35 ~~"respondent."~~

36
37 ~~(4) "Shall" is mandatory and "may" is permissive.~~

38
39 ~~(5) "Party," "appellant," "respondent," "petitioner," or other designation of a party~~
40 ~~include such party's attorney of record. Whenever under these rules a notice is~~
41 ~~required to be given to or served on a party, such notice or service shall be made on~~
42 ~~his attorney of record, if he has one.~~

1 ~~(6) “Serve and file” mean that a document filed in a court is to be accompanied by~~
2 ~~proof of prior service in a manner permitted by law of one copy of the document on~~
3 ~~counsel for each adverse party who is represented by separate counsel.~~

4
5 ~~(7) “Judgment” includes any judgment, order or decree from which an appeal lies.~~

6
7 ~~(8) “Judgment roll” with respect to a justice court consists of the same papers as in the~~
8 ~~municipal court.~~

9
10 ~~(9) “Presiding judge” includes the acting presiding judge.~~

11
12 ~~(10) “Clerk” with respect to a justice court means the judge if there be no clerk.~~

13
14 ~~(11) “Written,” “writing,” “typewriting” and “typewritten” include other methods of~~
15 ~~duplication equivalent in legibility to typewriting.~~

16
17 ~~(12) Rule and subdivision headings do not in any manner affect the scope, meaning or~~
18 ~~intent of the provisions of these rules.~~

19
20 *Rule 8.765 repealed effective January 1, 2009; adopted as rule 136; previously amended effective*
21 *January 5, 1953, July 1, 1964, and January 1, 1977; previously amended and renumbered effective*
22 *January 1, 2007.*

23
24
25 **~~Rule 8.766. Applications on routine matters~~**

26
27 ~~Except as otherwise provided in these rules, applications to extend time for filing briefs,~~
28 ~~applications to shorten time, and applications relating to other matters of routine shall be~~
29 ~~served and filed; but the presiding judge of the reviewing court may require an additional~~
30 ~~showing to be made and for good cause may excuse advance service. The application~~
31 ~~shall set forth facts showing:~~

32
33 ~~(1) Good cause for granting the application; and~~

34
35 ~~(2) Any previous applications granted or denied to any party after filing of the notice of~~
36 ~~appeal.~~

37
38 ~~The application may be granted or denied by the presiding judge, unless the court~~
39 ~~otherwise determines. The applicant shall provide to the clerk addressed, postage prepaid~~
40 ~~envelopes and sufficient additional copies of the application for later mailing by the clerk~~
41 ~~to all other parties of a copy of the order granting or denying the application, together~~
42 ~~with a copy of the application.~~

1 *Rule 8.766 repealed effective January 1, 2009; adopted as rule 137; previously amended effective*
2 *January 1, 1974, January 1, 1975, and July 1, 1996; previously amended and renumbered effective*
3 *January 1, 2007.*

4
5
6 **Rule 8.767. Extension and shortening of time**

7
8 **(a) — Computation of time**

9
10 ~~The time for doing any act required or permitted under these rules shall be~~
11 ~~computed and extended in the manner provided by the Code of Civil Procedure.~~

12
13 **(b) — Extension by trial court**

14
15 ~~The presiding judge of the trial court, or a judge designated by him, for good cause~~
16 ~~shown on application made as provided in rule 8.766, may extend the time for doing~~
17 ~~any act involved in the preparation of the record on appeal in a civil case, prior to~~
18 ~~the expiration of such time or any valid extension thereof; provided, however, that~~
19 ~~the time specified for payment of the fee for filing the record in the reviewing court~~
20 ~~may not be extended by the trial court. Such extensions granted to any party shall~~
21 ~~not exceed 60 days in the aggregate for any and all acts in preparation of the record,~~
22 ~~and no single extension shall be for a period in excess of 10 days. Anything in these~~
23 ~~rules to the contrary notwithstanding, the initial extension granted to any party by~~
24 ~~the trial court may be granted ex parte.~~

25
26 **(c) — Extension by presiding judge**

27
28 ~~The presiding judge of the reviewing court, for good cause shown, may extend the~~
29 ~~time for doing any act required or permitted under these rules, except the time for~~
30 ~~filing a notice of appeal. An application for extension of time shall be made as~~
31 ~~provided in rule 8.766.~~

32
33 **(d) — Shortening time**

34
35 ~~The presiding judge of the reviewing court, for good cause shown, may shorten the~~
36 ~~time for serving or filing a paper incident to an appeal. An application to shorten~~
37 ~~time shall be made as provided in rule 8.766.~~

38
39 *Rule 8.767 repealed effective January 1, 2009; adopted as rule 138; previously amended effective July 1,*
40 *1964, January 1, 1974, and January 1, 1977; previously amended and renumbered effective January 1,*
41 *2007.*

1 **Rule 8.768. Substitution of parties and attorneys**

2
3 **(a) Parties**

4
5 Whenever a substitution of parties to a pending appeal is necessary, it shall be made
6 by proper proceedings instituted for that purpose in the trial court. On suggestion
7 thereof and the presentation of a certified copy of the order of substitution made by
8 the trial court, a like order of substitution shall be made in the reviewing court.
9

10 **(b) Attorneys**

11
12 Withdrawal or substitution of attorneys may be effected by serving and filing a
13 stipulation in the reviewing court, signed by the party, the retiring attorney and any
14 substituted attorney. In the absence of stipulation, withdrawal or substitution may
15 be effected only by an order made pursuant to a motion in the reviewing court;
16 except that unless otherwise ordered by the court, service of the motion need be
17 made only on the party and the attorneys directly affected thereby. A notification of
18 any withdrawal or substitution shall be given by the clerk of the reviewing court to
19 the clerk of the trial court, and substituted counsel shall forthwith give notice
20 thereof to all parties.
21

22 *Rule 8.768 repealed effective January 1, 2009; adopted as rule 139; previously amended effective July 1,*
23 *1964, and January 1, 1977; renumbered effective January 1, 2007.*
24
25

26 **Rule 8.769. Writ of supersedeas**

27
28 A petition for a writ of supersedeas shall bear the same title as the appeal, and shall be
29 served and filed in the reviewing court in which the appeal is pending. The petition shall
30 be verified, and shall contain a statement of the necessity for the writ, and supporting
31 points and authorities. If the record on appeal has not been filed with the reviewing court,
32 the petition shall contain a description of the judgment, the date of its entry, the fact and
33 date of filing of the notice of appeal, and a statement of the subject matter of the appeal
34 sufficient to advise the reviewing court of the question involved. A request for a
35 temporary stay pending the granting or denial of the writ may be included in the petition,
36 or may be made separately and without service on the respondent. The writ may be issued
37 on any conditions which the reviewing court deems just.
38

39 If the writ or stay issues, the reviewing court shall notify the trial court pursuant to rule
40 8.490(k).
41

42 *Rule 8.769 repealed effective January 1, 2009; adopted as rule 140; previously amended effective*
43 *January 1, 1984; previously amended and renumbered effective January 1, 2007.*
44

1
2 **Rule 8.770. Substitute judge where trial judge unavailable**

3
4 Whenever by these rules any act is required to be done by the judge who tried the case,
5 and such judge is unavailable or unable to act at the time fixed therefor, the act shall be
6 done by another judge of the same court, to be designated by the presiding judge thereof,
7 or if there is no judge of the court available to act, then the act shall be done by a judge
8 designated by the Chairman of the Judicial Council.

9
10 *Rule 8.770 repealed effective January 1, 2009; adopted as rule 141; renumbered effective January 1,*
11 *2007.*

12
13
14 **Rule 8.771. Presumption where record not complete**

15
16 If a record on appeal does not contain all of the papers, records and oral proceedings, but
17 is certified by the judge or the clerk, or stipulated to by the parties, in accordance with
18 these rules, it shall be presumed in the absence of proceedings for augmentation that it
19 includes all matters material to a determination of the points on appeal. On an appeal on
20 the judgment roll alone, or on a partial or complete clerk's transcript, the foregoing
21 presumption shall not apply unless the error claimed by appellant appears on the face of
22 the record.

23
24 *Rule 8.771 repealed effective January 1, 2009; adopted as rule 142; previously amended effective*
25 *January 5, 1953; renumbered effective January 1, 2007.*

26
27
28 **Rule 8.772. Scope and construction**

29
30 **(a) Courts and proceedings covered**

31
32 This chapter applies to appeals from municipal and justice courts in civil cases,
33 except small claims cases. The rules shall be liberally construed to secure the just
34 and speedy determination of appeals.

35
36 **b) Relief from default**

37
38 The reviewing court for good cause may relieve a party from a default occasioned
39 by any failure to comply with these rules, except the failure to give timely notice of
40 appeal.

41
42 *Rule 8.772 repealed effective January 1, 2009; adopted as rule 143; previously amended effective July 1,*
43 *1964, and January 1, 1977; renumbered effective January 1, 2007.*

1
2 **Rule 8.773. Remittitur**

3
4 **(a) Issuance and transmission**

5
6 Upon the expiration of the period during which a transfer may be ordered, the clerk
7 of the superior court shall remit to the court from which the appeal was taken a
8 certified copy of the judgment of the superior court and of its opinion, if any, and
9 also all the original exhibits, orders, affidavits, papers, and documents which were
10 sent to the superior court in connection with the appeal, except the statement or
11 transcript on appeal and the notice of appeal. After the certified copy of the
12 judgment has been remitted to the court below, the superior court has no further
13 jurisdiction of the appeal or of the proceedings thereon, and the lower court shall
14 make all orders necessary to carry its judgment or order into effect or otherwise
15 proceed in conformity to the decision on appeal.
16

17 **(b) Issuance forthwith**

18
19 The court may direct the immediate issuance of the remittitur on stipulation of the
20 parties.
21

22 **(c) Stay of issuance**

23
24 The court, for good cause, may stay the issuance of the remittitur for a reasonable
25 period.
26

27 **(d) Recall of remittitur**

28
29 A remittitur may be recalled by order of the court on its own motion, on motion
30 after notice supported by affidavits, or on stipulation setting forth the facts which
31 would justify the granting of a motion.
32

33 *Rule 8.773 repealed effective January 1, 2009; adopted as rule 144; previously amended effective July 1,*
34 *1964, and January 1, 1977; renumbered effective January 1, 2007.*
35

36 **Chapter 3. Appeals to the Appellate Division in Criminal Cases**

37
38
39 **Rule 8.780. Applicability to felonies, misdemeanors, infractions**

40
41 **(a) Rules applicable to felonies and superior courts**

42
43 Rule 8.300 et seq. applies to appeals from the judgments and appealable orders of
44 all courts in felony cases, and to appeals from the judgments and appealable orders

1 of superior courts in all criminal cases. References in those rules to “superior court”
2 mean “the court that pronounced judgment or issued the appealable order,” and
3 include a municipal or justice court that pronounced judgment or issued an
4 appealable order in a felony case.
5

6 **(b) — Rules applicable to misdemeanors and infractions**
7

8 Rule 8.781 et seq. applies to appeals from the judgments and appealable orders of
9 municipal and justice courts in misdemeanor and infraction cases.
10

11 *Rule 8.780 repealed effective January 1, 2009; adopted as rule 180 effective January 1, 1994; previously*
12 *amended and renumbered effective January 1, 2007.*
13

14
15 **Rule 8.781. Definitions**
16

17 The definitions in rules 1.5, 1.6, and 8.10 apply to this chapter unless the context
18 otherwise requires.
19

20 *Rule 8.781 repealed effective January 1, 2009; adopted as rule 181 effective January 1, 1983; previously*
21 *amended and renumbered effective January 1, 2007.*
22

23
24 **Rule 8.782. Notice of appeal**
25

26 **(a) — Time for filing**
27

28 An appeal in a criminal case from a judgment or appealable order of a municipal or
29 justice court is taken by filing with the clerk of that court a written notice of appeal
30 signed by the appellant or appellant’s attorney. The notice shall specify the
31 judgment or order or part thereof from which the appeal is taken. The notice shall
32 be liberally construed in favor of its sufficiency.
33

34 The notice of appeal shall be filed within 30 days after the rendition of the judgment
35 or the making of the order; but if the defendant is committed before final judgment
36 for insanity or narcotics addiction or indeterminately as a mentally disordered sex
37 offender, the notice of appeal shall be filed within 30 days after the commitment.
38

39 If the notice of appeal is not filed within the time prescribed, the appeal shall be
40 void and of no effect. A notice received after the expiration of the time prescribed
41 shall be marked by the clerk “Received (date) but not filed”, and the clerk shall
42 advise the party seeking to file the notice that it was received but not filed because
43 the period for filing had elapsed.
44

1 A notice of appeal filed prior to the time prescribed is premature but may, in the
2 discretion of the reviewing court for good cause, be treated as filed immediately
3 after the rendition of the judgment or the making of the order.
4

5 References in this subdivision to the clerk apply to the judge of a justice court, in
6 the absence of a clerk.
7

8 **(b) Notification by clerk**
9

10 The clerk of the trial court, or the judge thereof if there is no clerk, shall forthwith
11 mail a notification of the filing of the notice of appeal to each party other than the
12 appellant. The notification shall state the number and title of the case and the date
13 the notice of appeal was filed. The failure of the clerk or judge to give such
14 notification shall not affect the validity of the appeal.
15

16 *Rule 8.782 repealed effective January 1, 2009; adopted as rule 182; previously amended September 15,*
17 *1961, July 1, 1964, November 13, 1968, January 1, 1972, and January 1, 1982; renumbered effective*
18 *January 1, 2007.*
19
20

21 **Rule 8.783. Record on appeal**
22

23 **(a)** The record on an appeal to a Superior Court from a municipal or an inferior court
24 in a criminal case shall consist of the following items, or so many thereof as may
25 exist in the particular case:
26

27 (1) The complaint;
28

29 (2) The plea or pleas of the defendant;
30

31 (3) All written instructions given, or requested and refused;
32

33 (4) The verdict, or if a jury was waived, the entry of such waiver in the minutes or
34 docket, and the finding of the court upon the issues;
35

36 (5) Any written motion or notice of motion for new trial, in arrest of judgment or
37 to dismiss or otherwise terminate the action, or the entry in the minutes or
38 docket of any oral motion to the same effect, and the order of the court
39 thereon;
40

41 (6) Any demurrer to the complaint, and the order of the court thereon;
42

43 (7) All other minutes of the court relating to the action;
44

1 ~~(8) The judgment, and the order appealed from, if the appeal is from an order;~~

2
3 ~~(9) The notice of appeal;~~

4
5 ~~(10) Any statement or transcript on appeal, or both, settled and certified by the trial~~
6 ~~judge as hereinafter provided for in rules 8.784 and 8.788;~~

7
8 ~~(11) All exhibits, instructions, orders, affidavits, papers and documents properly~~
9 ~~referred to and identified in such statement or transcript, as provided in rule~~
10 ~~8.784;~~

11
12 ~~(12) If the appeal is from an order made after judgment, items 2, 3, 4, 5, 6 and 7~~
13 ~~may be omitted, and the record shall include any written motion and any~~
14 ~~written notice of motion, the denial or granting of which is the order appealed~~
15 ~~from, or the entry in the minutes or docket of any such oral motion, and all~~
16 ~~minutes of the court relating to such motion.~~

17
18 ~~(b) The matters included in the foregoing item 1 to 9 inclusive, 11 and 12 of~~
19 ~~subdivision (a), or so many of them as may be pertinent to the appeal taken, shall be~~
20 ~~prepared by the clerk of the trial court, or by the judge thereof if there is no clerk.~~
21 ~~The notice of appeal, matters appearing in the minutes or docket of the trial court~~
22 ~~and any other part of the record, the original of which it is not possible to transmit~~
23 ~~to the superior court, shall be copied as provided in subdivision (a) of rule 8.144~~
24 ~~and the copies made part of the record on appeal; but the originals of all other~~
25 ~~matters shall be included in the record. As soon as the statement on appeal,~~
26 ~~including the transcript, if any, has been settled and certified, or the right of the~~
27 ~~appellant to have a statement settled and certified shall have terminated, as~~
28 ~~elsewhere provided in these rules, the clerk of the trial court, or the judge thereof if~~
29 ~~there is no clerk, shall forthwith transmit the record on appeal, with his certificate~~
30 ~~that the parts thereof are originals or copies, as the case may be, to the clerk of the~~
31 ~~superior court to which the appeal is taken.~~

32
33 ~~*Rule 8.783 repealed effective January 1, 2009; adopted as rule 183; previously amended effective*~~
34 ~~*January 6, 1947, and July 1, 1971; previously amended and renumbered effective January 1, 2007.*~~

35
36
37 ~~**Rule 8.784. Statement or transcript**~~

38
39 ~~(a) Where a consideration of the evidence or any part thereof, or of any proceedings~~
40 ~~which do not otherwise constitute a part of the record on appeal as defined in rule~~
41 ~~8.783, is necessary to a determination of the appeal, the same must be set forth in a~~
42 ~~statement on appeal settled and certified as provided in these rules, and if not so set~~
43 ~~forth, it shall be presumed that they were such as to support the judgment or order~~

1 appealed from. If all or any part of such evidence or other proceedings was reported
2 by an official reporter, the appellant may give notice in his proposed statement that
3 he intends to file a reporter's transcript of the evidence and proceedings so reported,
4 and to make the same a part of the statement, and if he gives such notice he may
5 omit any other statement of the evidence and proceedings so reported from his
6 proposed statement.

7
8 ~~(b) In every such statement the appellant shall specify the grounds on which he intends~~
9 ~~to rely upon appeal and set forth so much of the evidence and other proceedings as~~
10 ~~are necessary for a decision upon said grounds. Said grounds of appeal shall be~~
11 ~~stated with sufficient particularity to apprise the court and the opposing party of the~~
12 ~~rulings or other matters of which the appellant intends to complain, but this may be~~
13 ~~done by any general description calling attention to the points to be made, without~~
14 ~~specifying each separate ruling or other matter to be complained of. If one of said~~
15 ~~grounds of appeal is insufficiency of the evidence, the particulars in which it is~~
16 ~~insufficient shall also be stated, unless a reporter's transcript containing the whole~~
17 ~~thereof is to be made a part of the statement. No ground of appeal not so specified~~
18 ~~shall be considered by the superior court unless it shall appear to the satisfaction of~~
19 ~~said Court that the record on appeal fairly and fully presents the evidence and other~~
20 ~~proceedings necessary for a decision thereon.~~

21
22 ~~(c) It shall not be necessary in any such statement or transcript to copy any exhibit,~~
23 ~~instruction, order, affidavit, paper or document on file with the trial court, but the~~
24 ~~same may be merely referred to by any designation sufficient to identify it. If any~~
25 ~~point is to be made on appeal as to the giving, refusal or modification of~~
26 ~~instructions, it shall be necessary to show by said statement or transcript whether~~
27 ~~any oral instructions were given and, if so, what they were, and by whom requested,~~
28 ~~and if the written instructions included in the record under rule 8.783 do not show~~
29 ~~by whom requested, or what modifications were made in instructions given as~~
30 ~~modified, these facts shall be set forth in the statement.~~

31
32 ~~(d) An appellant who desires to have a statement settled shall, within 15 days after~~
33 ~~filing notice of appeal, serve on the respondent and file with the trial court a~~
34 ~~proposed statement on appeal. If in such proposed statement appellant gives notice~~
35 ~~that a reporter's transcript is to be filed and made a part thereof, as provided in~~
36 ~~subdivision (a) of this rule, appellant may file, within 15 days after the filing of the~~
37 ~~proposed statement, a transcript of the evidence or other proceedings reported by an~~
38 ~~official reporter, certified by that reporter to be correct, and shall within five days~~
39 ~~after such filing, notify the respondent thereof. Any such transcript, when settled~~
40 ~~and certified as provided in rule 8.788, shall become a part of the statement. If the~~
41 ~~transcript is not filed or notice is not given of its filing within the time limited by~~
42 ~~these rules or any lawful extension thereof, the appellant's right to have the~~

1 transcript settled and certified as a part of the statement shall terminate and the trial
2 court shall proceed upon the other parts of the proposed statement as provided in
3 rule 8.788. If the failure to file such transcript in time results from the refusal,
4 failure or inability of the reporter to make all or any part of the transcript, the
5 appellant may, within five days after expiration of the time for filing such transcript,
6 move the trial court for leave to file amendments to the statement to cover the
7 matters originally proposed to be in the transcript. If the trial court grants the
8 motion, the appellant shall serve and file amendments within 15 days after the
9 making of the order and such amendments and the original statement shall be
10 settled and certified as provided in rule 8.788. If the appellant fails to serve and file
11 a proposed statement on appeal within the time limited by these rules, or any lawful
12 extension thereof, the right to have a statement settled and certified shall forthwith
13 terminate.

14
15 *Rule 8.784 repealed effective January 1, 2009; adopted as rule 184; previously amended effective July*
16 *31, 1938, January 6, 1947, and July 1, 1980; previously amended and renumbered effective January 1,*
17 *2007.*

18
19
20 **~~Rule 8.785. Amendments to statement or transcript~~**

21
22 ~~The respondent may within 15 days after such statement is filed, or notice is given of the~~
23 ~~filing of such transcript, serve on the appellant and file proposed amendments to the~~
24 ~~statement or transcript, or both.~~

25
26 *Rule 8.785 repealed effective January 1, 2009; adopted as rule 185; previously amended effective*
27 *January 1, 1973, and July 1, 1980; renumbered effective January 1, 2007.*

28
29
30 **~~Rule 8.786. Counsel on appeal~~**

31
32 **~~(a) Standards for appointment~~**

33
34 ~~On application of defendant appellant, the appellate department shall appoint~~
35 ~~counsel on appeal for any defendant appellant convicted of a misdemeanor who is~~
36 ~~subject to incarceration or a fine of more than \$500 (including penalty and other~~
37 ~~assessments), or who is likely to suffer significant adverse collateral consequences~~
38 ~~as a result of the conviction, if the defendant appellant was represented by~~
39 ~~appointed counsel in the trial court. On application, the appellate department shall~~
40 ~~appoint counsel for any other such defendant appellants who establish their~~
41 ~~indigency as in the Courts of Appeal. A defendant is subject to incarceration or a~~
42 ~~fine if the incarceration or fine is in a sentence, or is a condition of probation, or~~
43 ~~may be ordered if the defendant violates probation. The appellate department may~~
44 ~~appoint counsel for any other indigent defendant appellant.~~

1
2 **(b) — Application; duty of trial counsel**
3

4 If defense trial counsel believes that the client is indigent and will file an appeal,
5 counsel shall prepare and file in the trial court an application to the appellate
6 department for appointment of counsel. If the defendant appellant was represented
7 by appointed counsel in the trial court, the application shall include counsel's
8 declaration to that effect. If the defendant appellant was not represented by
9 appointed counsel in the trial court, the application shall include a declaration of
10 indigency supported by evidence in the form required by the Court of Appeal for
11 the district where the court is located. The trial court shall transmit the application
12 to the appellate department along with the record on appeal. A defendant appellant
13 may, however, apply directly to the appellate department for appointment of
14 counsel at any time after the notice of appeal is filed.
15

16 The appellate department may take a reasonable time to confirm that the defendant-
17 appellant still seeks the appointment of counsel. In the case of a defendant appellant
18 not represented by appointed counsel in the trial court, the appellate department
19 may take a reasonable time to confirm the facts stated in the declaration of
20 indigency.
21

22 **(c) — Defendant found able to pay in trial court**
23

24 If a defendant was represented by appointed counsel in the trial court and was found
25 able to pay all or part of the cost of the trial counsel in proceedings under Penal
26 Code section 987.8 or 987.81, the findings in those proceedings shall be included in
27 the record of any appeal by the defendant or, if made after the record on appeal is
28 transmitted to the appellate department, shall be transmitted to the appellate
29 department as an augmentation of the record. In those cases, the appellate
30 department shall conduct appropriate proceedings to determine the defendant's
31 ability to pay or contribute to the expense of counsel on appeal, and if it finds that
32 the defendant is able, shall order the defendant to pay all or part of the cost.
33

34 *Rule 8.786 repealed effective January 1, 2009; adopted as rule 185.5 effective January 1, 1994;*
35 *renumbered effective January 1, 2007.*
36

37 **Rule 8.787. Extensions of time and relief from default**
38

39 **(a) — Extensions of time**
40

41 The court from which the appeal is taken, or a judge thereof, may for good cause
42 shown by affidavit make an order granting not more than a total of 15 days
43 additional to the time limited in these rules for serving and filing the statement, or

1 for filing the transcript and giving notice thereof, or for proposing amendments
2 thereto, or for engrossing the statement or transcript, or both, and presenting the
3 same for certification. The superior court to which an appeal is taken, or if the
4 appeal is to be heard in an appellate department, the presiding judge thereof, may,
5 for good cause shown by affidavit, further extend the time for doing any act
6 required by these rules, except the time for filing the notice of appeal. Every such
7 extension shall be made upon application as provided in rule 8.766 before the time
8 extended, including any previous extensions thereof, has expired.

9
10 **(b) Relief from default**

11
12 The superior court may for good cause relieve a party from a default occasioned by
13 any failure to comply with these rules, except failure to give timely notice of appeal.

14
15 *Rule 8.787 repealed effective January 1, 2009; adopted as rule 186; previously amended effective*
16 *January 6, 1947, and July 1, 1971; previously amended and renumbered effective January 1, 2007.*

17
18
19 **Rule 8.788. Settlement of statement or transcript**

20
21 Upon the filing of such proposed amendments or the expiration of the time for filing
22 them, the trial judge shall forthwith fix a time for settlement of the statement or
23 transcript, or both, which time shall be as early as the business of the court will permit,
24 either in chambers or in open court, and cause notice to be mailed, at least five days
25 before the time fixed, to each party, or, if any party appears by attorney, then to the
26 attorney, if the mailing address of the party or attorney appears in the files of the case in
27 which the appeal is taken. The trial judge shall at the time fixed, or any other time to
28 which the matter may be continued, settle the statement or transcript, or both, and the
29 amendments proposed, if any, correcting, altering, or rewriting the statement or
30 transcript, or both, as may be necessary to make it set forth fairly and truly the evidence
31 and proceedings relating to the specified grounds of appeal or the matters set forth by the
32 appellant in support of it.

33
34 The appellant's specifications of grounds of appeal shall not in any case be eliminated
35 from the settled statement. At the time of settlement the judge may direct the appellant to
36 engross the statement or transcript, or both, as settled. Thereupon the appellant shall
37 engross the statement or transcript, or both, as corrected and settled and present it to the
38 judge for certification within five days from the date of settlement, and if the appellant
39 fails to do so within that period or any lawful extension, the right to have the statement or
40 transcript settled or certified shall terminate. If a statement or transcript is settled and
41 engrossed, if engrossment is ordered, the trial judge shall certify to its correctness. A
42 judge may settle and certify the statement or transcript after or before ceasing to be the
43 trial judge. If the trial judge dies, is removed from office, becomes disqualified, or is

1 absent from the state at the time for settling or certifying a statement or transcript, it may
2 be settled or certified by any other judge of the court qualified to act.

3
4 The clerk of the trial court shall promptly mail copies of the statement, as settled and
5 certified by the judge, to counsel for the parties and to unrepresented parties, unless the
6 judge certifies that the statement proposed and filed by the appellant was settled without
7 significant change.

8
9 *Rule 8.788 repealed effective January 1, 2009; adopted as rule 187; previously amended effective July 1,*
10 *1989; renumbered effective January 1, 2007.*

11
12
13 **Rule 8.789. Experimental rule on use of recordings to facilitate settlement of**
14 **statements**

15
16 **(a) Scope of experiment**

17
18 Notwithstanding any other rule, a municipal of justice court may provide by local
19 rule that this rule applies to every appeal in a misdemeanor case in which all or part
20 of the proceedings were officially recorded electronically.

21
22 **(b) Appellate counsel**

23
24 Counsel retained for the appeal shall file notice of his or her appearance in the trial
25 court. The clerk of the reviewing court shall send the trial court notice of the
26 appointment of counsel on appeal, which shall be filed as an appearance by the trial
27 court.

28
29 **(c) Trial court clerk's duties**

30
31 (1) The clerk of the trial court shall retain custody of the original sound recording,
32 unless ordered to deliver it to the reviewing court.

33
34 (2) To the extent feasible, the clerk shall make the original sound recording
35 available to the parties and counsel for listening in court facilities during
36 normal business hours.

37
38 (3) Within ten days after the notice of appeal is filed, the clerk of the trial court
39 shall prepare and label one copy of the original sound recording for each party
40 and a copy for the court's file; the copies shall be on standard audio cassette
41 tapes or on CD-ROM.

1 (4) ~~The clerk shall promptly mail a copy of the sound recording to counsel on~~
2 ~~appeal, if known to the clerk, for each party to the appeal. If the clerk has not~~
3 ~~received notice of the appointment or retention of counsel on appeal, the copy~~
4 ~~shall be mailed to trial counsel and to each party unrepresented at trial and on~~
5 ~~appeal. Each copy shall be accompanied by a copy of this rule and an~~
6 ~~information leaflet published by the Administrative Office of the Courts.~~

7
8 **~~(d) Proposed statement~~**

9
10 ~~Counsel for the appellant (or the appellant, if unrepresented at trial and on the~~
11 ~~appeal) shall prepare a proposed statement of the case which shall include:~~

12
13 (1) ~~A summary of the grounds of the appeal complying with rule 8.784(b).~~

14
15 (2) ~~A narrative statement summarizing the basic events in the case, and as much~~
16 ~~of the evidence and rulings of the court as are relevant to the appeal. Any~~
17 ~~portion of the statement may be in the form of a verbatim transcription of the~~
18 ~~sound recording. The proposed statement shall, within 30 days after the~~
19 ~~mailing of the copy of the sound recording, be served on the opposing counsel~~
20 ~~of record or on the opposing party if unrepresented and filed in the trial court.~~
21 ~~If the proposed statement is not served and filed within that time, or any~~
22 ~~extension, the appellant may not proceed with the appeal unless relieved from~~
23 ~~the default.~~

24
25 **~~(e) Obligation of counsel~~**

26
27 ~~Unless counsel on appeal has been appointed or retained, the preparation, service~~
28 ~~and filing of the proposed statement as set forth in subdivision (e), and the other~~
29 ~~obligations imposed on counsel by this rule, are part of the obligation of~~
30 ~~representing a party at trial.~~

31
32 ~~If counsel on appeal has been appointed or retained, that counsel has the primary~~
33 ~~responsibility for complying with subdivision (d) and fulfilling the other obligations~~
34 ~~imposed on counsel by this rule; and trial counsel has the duty to cooperate fully~~
35 ~~with appellate counsel to facilitate compliance.~~

36
37 **~~(f) Proposed corrections and additions~~**

38
39 ~~Within 20 days after service of the proposed statement, counsel for the respondent~~
40 ~~(or the respondent, if unrepresented) shall serve on the person who served the~~
41 ~~proposed statement and file either a written acceptance of the proposed statement as~~
42 ~~accurate or proposed corrections and additions to the proposed statement. Unless~~

1 good cause is shown in a motion for an order permitting late filing, failure to timely
2 serve and file proposed corrections and additions is deemed an acceptance.

3
4 If proposed corrections and additions are served and filed, counsel for the parties
5 have an obligation to confer in person or by telephone and seek to arrive at a
6 stipulated final statement or to narrow the area of disagreement. This obligation is
7 not applicable when a party is unrepresented.

8
9 A stipulated final statement, or stipulated summary of remaining points of
10 disagreement, shall be prepared and filed in the trial court by the appellant within
11 10 days after service of proposed corrections and additions.

12
13 **(g) — Resolution of disputes**

14
15 If the respondent files proposed corrections and additions, the clerk shall refer the
16 file to the judge who tried the case or, in the judge's absence, to another judge of
17 the court:

18
19 (1) — Forthwith after a stipulated summary of points of disagreement is filed; or

20
21 (2) — Forthwith after the respondent files proposed corrections and additions, if one
22 of the parties was unrepresented at trial and remains unrepresented; or

23
24 (3) — Twenty days after the respondent files proposed corrections and additions, if
25 no stipulated final statement nor stipulated summary of points of disagreement
26 has been filed.

27
28 (4) — The judge shall resolve all disputed issues of fact, using the available sound
29 recordings of the proceedings to supplement the judge's memory and notes of
30 the case. No hearing or conference shall be held unless ordered by the judge.
31 A party may suggest that a hearing be ordered.

32
33 (5) — Within 20 days from the date the file is referred by the clerk, the judge shall
34 certify in writing the resolution of the disputed issues. The clerk shall
35 promptly file the judge's certificate and mail copies to counsel for the parties
36 and to unrepresented parties

37
38 **(h) — Certification and transmittal**

39
40 The clerk of the trial court shall certify and transmit to the reviewing court as part of
41 the trial court file, pursuant to subdivision (j), either:
42

1 (1) ~~A proposed statement which has been expressly accepted and the respondent's~~
2 ~~acceptance forthwith upon filing of the acceptance; or~~
3

4 (2) ~~A proposed statement as to which no proposed correction and additions have~~
5 ~~been timely filed promptly after expiration of time within which to file~~
6 ~~proposed corrections and additions, along with the clerk's certificate that~~
7 ~~corrections and additions were not proposed. If the respondent has moved for~~
8 ~~an order permitting late filing of proposed corrections and additions, the clerk~~
9 ~~shall defer certification and transmittal until the motion is decided; and if it is~~
10 ~~denied, the clerk shall thereupon certify and transmit the file, including the~~
11 ~~proposed statement and all papers pertaining to the motion; or~~
12

13 (3) ~~A stipulated final statement forthwith upon its filing; or~~
14

15 (4) ~~The judge's certificate resolving disputed issues pursuant to subdivision (g)~~
16 ~~and all proposed statements, proposed corrections and additions, and~~
17 ~~stipulations of the parties forthwith upon filing the judge's certificate~~
18 ~~resolving disputed issues.~~
19

20 **(i) ~~Returning of copy of the sound recording~~**
21

22 ~~Upon signing a stipulated final statement, or upon receiving a copy of the judge's~~
23 ~~certificate resolving disputed issues, or upon receiving notice of the filing of the~~
24 ~~record in the reviewing court, or at the request of the reviewing court, trial counsel~~
25 ~~and any unrepresented party without counsel on appeal shall deliver the copy of the~~
26 ~~sound recording to the clerk of the superior court appellate division for the use of~~
27 ~~any counsel on appeal; or, if trial counsel is in the same law office as counsel on~~
28 ~~appeal, shall deliver the copy to counsel on appeal and promptly file a notice with~~
29 ~~the appellate division stating that it has been delivered or will be delivered to~~
30 ~~counsel on appeal when the appeal is assigned.~~
31

32 **(j) ~~In lieu of the clerk's record on appeal specified in rule 8.783, the clerk shall transmit~~**
33 ~~to the reviewing court the complete trial court file on the case with a copy of all~~
34 ~~docket entries in the trial court. The original or a copy of the docket entries shall be~~
35 ~~retained in the trial court. The file copy of the sound recording shall be transmitted~~
36 ~~as part of the file.~~
37

1 ~~(k) The provisions of rule 8.761 concerning augmentation and correction of the record~~
2 ~~apply. The reviewing court may order from the trial court the original sound~~
3 ~~recording to clarify any question concerning the trial court proceedings. The clerk~~
4 ~~of the reviewing court shall return the original sound recording to the trial court as~~
5 ~~soon as possible but no later than the time when the decision of the reviewing court~~
6 ~~is final.~~

7
8 ~~(l) The provisions of rule 8.787 concerning extensions of time and relief from default~~
9 ~~apply to this rule.~~

10
11 ~~(m) This rule does not limit a court's power to order a full verbatim transcript of the~~
12 ~~proceedings. If a transcript is ordered, this rule is inapplicable to the case.~~

13
14 *Rule 8.789 repealed effective January 1, 2009; adopted as rule 187.5 effective January 1, 1983;*
15 *previously amended effective January 1, 2003; previously amended and renumbered effective January 1,*
16 *2007.*

17
18
19 **Rule 8.790. Abandonment of appeal**

20
21 ~~An appellant may at any time abandon his appeal by filing a written abandonment~~
22 ~~thereof. Such abandonment shall be filed in the trial court if the record has not yet been~~
23 ~~filed in the superior court, or in the superior court if the record has been filed in that~~
24 ~~court. Upon the filing of a written abandonment in the trial court the jurisdiction of that~~
25 ~~court shall thereby be restored and it shall at once take such proceedings as may be~~
26 ~~necessary to enforce its judgment or order as if no such appeal had been taken. Upon the~~
27 ~~filing of such abandonment in the superior court, that court shall dismiss the appeal and~~
28 ~~issue its remittitur forthwith.~~

29
30 *Rule 8.790 repealed effective January 1, 2009; adopted as rule 188; previously amended effective*
31 *January 6, 1947; renumbered effective January 1, 2007.*

32
33
34 **Rule 8.791. Additions to record**

35
36 ~~On a sufficient showing by affidavit, or otherwise, that evidence was taken or~~
37 ~~proceedings were had in the trial court or that papers are there on file which are material~~
38 ~~to a disposition of the appeal and are not included in the record on appeal, and a showing~~
39 ~~of good cause why the same have not been included in said record, the superior court~~
40 ~~may authorize the trial judge to make a further certificate as to such evidence or other~~
41 ~~proceedings or papers, and direct the same, when so certified, to be added to the record.~~

42
43 *Rule 8.791 repealed effective January 1, 2009; adopted as rule 189; renumbered effective January 1,*
44 *2007.*

1
2
3 **Rule 8.792. Hearings and dismissals**
4

5 Appeals to the superior court in criminal cases shall be calendared, argued and
6 determined, notice of hearings shall be given, and petitions for rehearing and answers
7 thereto shall be filed and acted upon as prescribed in the rules adopted by the Judicial
8 Council for appellate departments of the superior court.
9

10 If the appeal is not brought to a hearing within the time limited, or the appellant
11 otherwise fails to prosecute it with diligence, or if the appeal is irregular in any
12 substantial respect, the superior court may, on motion of the respondent or on its own
13 motion, after written notice to the appellant, order it dismissed.
14

15 *Rule 8.792 repealed effective January 1, 2009; adopted as rule 190; previously effective January 1, 1977;*
16 *renumbered effective January 1, 2007.*
17
18

19 **Rule 8.793. Remittiturs**
20

21 **(a) Issuance and transmission**
22

23 Upon the expiration of the period during which a transfer may be ordered, unless a
24 new trial is to be had in the superior court, the clerk of the superior court shall remit
25 to the court from which the appeal was taken a certified copy of the judgment of the
26 superior court and of its opinion, if any, and also all the original exhibits, orders,
27 affidavits, papers and documents which were sent to said superior court in
28 connection with said appeal, except the statement or transcript on appeal and the
29 notice of appeal. After such certified copy of the judgment has been remitted to the
30 court below, the superior court has no further jurisdiction of the appeal or of the
31 proceedings thereon, and the lower court shall make all orders necessary to carry its
32 judgment or order into effect or otherwise proceed in conformity to the decision on
33 appeal.
34

35 **(b) Issuance forthwith**
36

37 The court may direct the immediate issuance of the remittitur on stipulation of the
38 parties.
39

40 **(c) Stay of issuance**
41

42 The court, for good cause, may stay the issuance of the remittitur for a reasonable
43 period.
44

1 **(d) Recall of remittitur**

2

3 ~~A remittitur may be recalled by order of the court on its own motion, on motion~~
4 ~~after notice supported by affidavits, or on stipulation setting forth the facts which~~
5 ~~would justify the granting of a motion.~~

6

7 *Rule 8.793 repealed effective January 1, 2009; adopted as rule 191; previously amended effective*
8 *January 2, 1962, and July 1, 1964; renumbered effective January 1, 2007.*